

ORIGINAL

IN THE SUPERIOR COURT OF PAULDING COUNTY

STATE OF GEORGIA

THE STATE OF GEORGIA

v.

WARRANT NO. 06-2311-FW
PRE-INDICTMENT

MICHAEL WILLIAM LEDFORD

FILED IN COURT
PAULDING COUNTY, GA
05 AUG 10 AM 11:26
TRIAL DEPARTMENT
PAULDING COUNTY COURTS

**DEFENDANT'S MOTION TO BE DRESSED IN CIVILIAN CLOTHES
AND TO BE UNSHACKLED DURING PRETRIAL PROCEEDINGS**

Comes now defendant and moves the Court to allow him to be dressed in civilian clothes and unshackled during pretrial proceedings and in support hereof shows the Court the following:

1.

Defendant has appeared only once in court in this case and that was at the July 31, 2006 initial hearing in the Magistrate Court for Paulding County before the Honorable Chief Magistrate, Martin E. Valbuena. At that hearing defendant was dressed in a bright red jail jumpsuit, and he was handcuffed and shackled. Counsel understands that it is the custom in Paulding County for incarcerated criminal defendants to appear in similar manner in pre-trial proceedings. Counsel has discussed this matter with District Attorney Drew Lane and he is opposed to the

defendant dressing out in civilian clothes except when a jury is present in the court. We did not discuss the shackling issue.

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2.

The reasons for having the client dress out in civilian clothes and to be unshackled even in non-jury matters are several. Most importantly, in a highly publicized case such as this one, the jury is in effect in the courtroom when the defendant appears and is photographed and video taped. Those images enter the community where the jury lives and where those images will begin to negatively affect the jury's perception of the defendant. Secondly, and less importantly, dressing in jail garb and being shackled has an effect on the defendant, on counsel, spectators and even the Court itself. The essence of being in court, the place of justice, is showing respect for the court, and feeling respected as a party in the matter. It is important that the defendant have the ability to participate in the proceedings without being fettered by being the only person in court shackled and dressed in a bizarre red jail jumpsuit.

3.

Another effect is on counsel for the defendant. It's offensive to defense counsel because of the reasons just stated, and it shows disrespect to the Court to have the client dressed in that manner. Defendant suspects that the authorities would argue that the red jump suit and shackles serve a security function.

However, defendant suggests that the concerns expressed herein should supersede that. In any event the state would have the burden of proving to the Court the necessity of such measures. Hall v. State, 215 Ga. App. 248 (1994).

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4.

Other concerns raised by the public display of defendant in jail garb and shackles are the effect on the public, and on the witnesses at the proceeding. People in the courtroom who might come in, not knowing anything about the case, or those watching on television or seeing printed images of the defendant seated there in his chain-gang garb and shackles might reasonably assume that someone in authority has determined that the defendant is a dangerous person or someone in authority has already determined that he is guilty.

5.

In addition a more serious concern would be the public perception that this is not a fair proceeding. This is an open public courthouse. The public can come and go as they please. Certainly the media attention to this case expands the public participation in the case. To some extent those viewing images in the media are present in the courtroom. Those fair-minded citizens who know that the defendant has not been convicted, and that he is presumed innocent at this point under our form of government, who witness the proceeding with the defendant shackled and dressed in a garish red jail jumpsuit , might think that the proceedings are not fair.

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6.

The public expects justice in this case. At the same time the public expects the courts to be run impartially. If we took a picture of these proceedings in the Magistrate Court with the defendant shackled and dressed in the red jumpsuit and posted it in the paper or on the Internet and asked the public their impression of this proceeding, they would come back with the impression that the defendant is already guilty or that someone in authority is not concerned about the appearance of the matter.

7.

Possibly the most prejudicial effect of the defendant appearing shackled and in jail garb is the effect on the victim's family. The members of the victim's family are in a position to influence the outcome of this case. As in most death penalty¹ cases, whether or not the victim's family desires the death penalty, will influence the district attorney's decision on seeking the death penalty. Also, the victim's family will testify on the victim impact evidence, and their impression of the defendant as he sits in court will be formed and solidified by his appearance in court. The defendant sitting there through out the pretrial proceedings looking like

¹ The District Attorney has not yet declared his intention to seek the death penalty, but that he is considering it. This motion is made in an abundance of caution to protect the defendant in case the death penalty is sought.

he's guilty will impact the defendant's right to have a fair sentencing hearing in this case.

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8.

Finally there is the effect of the defendant's appearance on the Court. We are all aware of the effect of dress on people. The way people are dressed affects our impression of them as a person. It creates an impression unconsciously. The defense is not asking for funds with which to purchase civilian clothes. Defendant's mother can provide clothes to dress-out in.

9.

Defendant moves herein pursuant to the due process clauses of the United States and Georgia Constitutions, The Sixth Amendment and Georgia Constitution Art. I, Sec. I, Par. XI right to an impartial jury and Canon 3 of The Code of Judicial Conduct that requires the Court to conduct itself in a way that shows respect for the participants, and also not to create a situation where the public might have *the perception* that the Court is biased in some way by requiring the defendant to dress in a certain way as set forth herein.

"The presumption of innocence requires the garb of innocence". Eaddy v. People, 115 Colo. 488, 174 P.2d 717, quoted in Pike v. State, 169 Ga. App. 358, 359 (1983), rev'd on other grounds, 253 Ga. 304 (1984). Georgia courts have long

recognized the right of a criminal defendant to appear at trial in civilian clothes rather than in prison or jail garb. Krist v. State, 133 Ga. App. 197, 210 (1974). If there are special circumstances which would authorize special security precautions, such as shackles or special clothing, “which infringe upon the presumption that defendant is innocent requires detailed, demonstrable evidence set forth in the record”. Martinez v. State, 189 Ga. App. 69, 72 (1988); Hall v. State, 215 Ga. App. 248249 (1994). While there are no cases that defendant can find that require the Court to order that defendant be dressed out in civilian clothes in pre-trial proceedings, Grant v. Jones, 192 Ga. App. 209 (1989), the court in Grant might well have granted relief to Grant had he been able to prove that jurors had been present and seen him in jail garb over objection at his arraignment. “The State has rebutted appellant’s allegation that the jurors on his panel were in the courthouse during his arraignment, and thus there was no threat to appellant’s right to be presumed innocent.” Id.

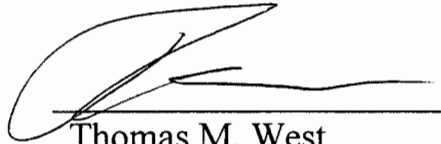
Wherefore, defendant respectfully moves the Court for the reasons stated above to allow defendant to be unshackled and to dress out in civilian clothing for all pretrial and trial court appearances.

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COUNTY OF COLONY, GA

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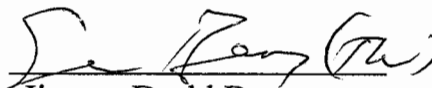
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Respectfully submitted,



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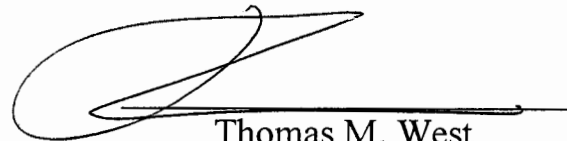
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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the State with a copy of the foregoing by FAXING a copy to (770) 443-7538 and by depositing a copy of same in the United States Mail, in a properly addressed envelope with adequate postage thereon to reach its destination as follows:

Honorable F. Andrew Lane
District Attorney
Paulding Judicial Circuit
Paulding County Courthouse, Room 101
11 Courthouse Square
Dallas, GA 30132

This 11 day of August, 2006.



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