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2015 APR 22 PM 2:24
VIRETAN HANNELL
SUPERIOR COURT CLERK

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MOHAVE

STATE OF ARIZONA,

Plaintiff,

vs.

JUSTIN JAMES RECTOR,

Defendant.

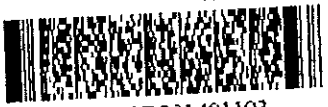
NO: CR 2014-01193

DEFENDANT'S MOTION TO PRECLUDE
LAW ENFORCEMENT OFFICERS FROM
WEARING UNIFORMS OR DISPLAYING
GUNS/ AND OR/ OTHER WEAPONS IN
COURTROOM

(ASSIGNED TO THE HON. LEE JANTZEN)

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COMES NOW Defendant Justin James Rector, by and through undersigned
counsel, and pursuant to the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to
the United States Constitution, and Article II, §§ 1, 4, 13, 23, 24, 32 and 33 of the
Arizona Constitution, who moves this court to prohibit uniformed police officers from
attending trial, and additionally, to limit any police show of force in the courtroom as
more fully set forth in the attached Memorandum attached hereto and incorporated
herein.



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RESPECTFULLY SUBMITTED this 22nd day of April, 2015

By


GERALD T. GAVIN


RON GILLO

MEMORANDUM

The defendant in this case is facing the death penalty. He acknowledges that, in light of that fact, law enforcement will be in the courtroom during trial. Suggesting no law enforcement presence is inappropriate; by the same token, a blatant display of authority is also inappropriate. A sheriff's officer is expected in the courtroom to act as security; other officers may possibly be there to watch the proceedings. If they are in uniform, especially if displaying a badge and weapons in plain sight, there presence conveys apparent State authority.

It is clear the presence of uniformed officers will violate the Defendant's right to a fair trial. In Dennis v. Dees, 278 F.Supp 354 (E.D. La 1968), a federal habeus corpus action brought after the defendant had been convicted in state court proceedings of murdering a fellow inmate. Armed guards were stationed throughout the courtroom. The trial judge sought to excuse the use of obviously excessive force by stating that it merely reflected the policy of the local Sheriff's office. The reviewing court rejected that excuse as insufficient to justify the show of force in the courtroom because the trial judge had effectively abdicated his role as the guardian of the defendant's rights. *Id.* at , "policy" or judgment of local law enforcement officials is not sufficient justification. The discretion is in the court's name and must be exercised, not delegated." State v. Preacher, 167 W.Va. 540, 280 S.E.2d 559, 573 (W.Va. 1981) (citing cases that the trial court should have held an evidentiary hearing on the reasonableness of extra security

1 precautions before allowing a plainclothes deputy sheriff (who was alleged to have jury
2 contact) to sit within the bar 15 feet behind the defendant.)

3 Even when there is a bona fide need for additional security, higher courts have
4 ,conspicuous measures reasonably available that will meet the particular need' should
5 be employed. It is well settled that unusual physical restraints should be employed only
6 as a last resort." Commonwealth v. DeVasto, 7 Mass.App.Ct. 363, 387 N.E.2d 11, 69,
7 1172 (Mass.App.Ct. 1979) (quoting Commonwealth v. Brown, 364 Mass. 471, 476,
8 305 N.E.2d 830 (1973)); accord Commonwealth v. Agiasottelis, 336 Mass. 12, 16, 142;
9 N.E. 386 (1957); Hall v. State, 199 Ind. 592, 159 N.E. 420 (1928) ("In the modern court-
10 room, as little show of arms must be made as possible and ordinarily the necessary
11 restraint can be accomplished by placing non-uniformed guards near the prisoner.");
12 Eaddy v. People, 115 Colo. 488, 492, 174 P.2d 717, 718-719 (1946); Anthony v State,
13 521 P.2d 486, 496 (Alaska 1974); Dorinan v. United States, 435 F.2d 385, 397-98, 140
14 U.S. App. D.C. 313, 325-26 (1970); Kennedy v. Cardwell, 487 F.2d 101, 108-09 (6th Cir.
15 1973); Woods v. Dugger, 923 F.2d 1454 (11th Cir. 1991).

17 "Extraneous influence" from the audience should not be allowed to influence the
18 jury. See Fuselier v. State, 468 So. 2d 45 (Miss. 1985). If it is necessary, the trial court
19 may take whatever steps required to purge the courtroom of potential taint, even to the
20 extent of excluding all members of the audience. No such drastic remedy is requested
21 here. Mr. Rector simply requests that the jury not be intimidated by ranks of armed,
22 uniformed officers in the courtroom.

23 Respectfully, Mr. Rector moves the court to enter an order as follows:

- 24 1. Excluding all uniformed police officers from the courtroom during the trial of this
25 case; and
- 26 2. Requiring that any armed security officers be unobtrusively placed so that the
27 jury cannot see their badge or weapons.
28

1 ORIGINAL of the
2 Forgoing filed this 22nd day of April, 2015 with:

3 Clerk of the Court
4 401 E Spring Street
5 Kingman Arizona 86401

6 COPY of the forgoing delivered
7 This 22nd day of April, 2015 to:

8 Honorable Lee Jantzen
9 Judge of the Superior Court
10 Mohave County Courthouse
11 401 E. Spring Street
12 Kingman Arizona 86401


13 Greg McPhillips
14 Assigned Deputy County Attorney
15 PO Box 7000
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17 Ron Gilleo
18 Mohave County Legal Defender
19 Co-Counsel for Justin James Rector
20 313 Pine Street
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23 Client Justin James Rector
24 Mohave County jail

25 File

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27 BY: 

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