

FILED ^{PSG}
TIME 9:50 A M

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA JUN 13 2011
IN AND FOR THE COUNTY OF MOHAVE
VIRLYNN TINNELL
CLERK SUPERIOR COURT
BY: PSG DEPUTY

HONORABLE STEVEN F. CONN
DIVISION 3
DATE: JUNE 10, 2011

SC*
VIRLYNN TINNELL, CLERK

COURT NOTICE/ORDER/RULING

STATE OF ARIZONA,
Plaintiff,

vs.

JOHN CHARLES MCCLUSKEY,
Defendant.

No. CR-2010-00823

The Mohave County Attorney's Office, acting in their capacity as counsel for the Sheriff's Office rather than as the prosecutor in this case, has filed a Motion to Reconsider Defense Motion Restricting the Use of Restraints (Specifically Electronic Security Devices) to Be Placed on Defendant During Impending Trial. Because of various scheduling conflicts between the Court, counsel and other persons whose presence may be required, there are limited options as when this motion can be heard before the trial begins on June 14, 2011.

IT IS ORDERED setting this matter for hearing on the above motion on **Monday, June 13, 2011, at 8:00 a.m.**

IT IS ORDERED that the Court will set aside no more than one hour for the above hearing.

The parties should note that setting the hearing at this time is going to have a significant and negative impact upon the Court's routine Monday calendar, which is usually fairly busy. The parties are encouraged to submit in advance any written documents, affidavits or exhibits they may wish the Court to consider on this issue.



The Court hopes that the parties appreciate how frustrating this is to the Court. The defense motion raising this issue was filed on May 23, 2011, well in advance of the Trial and the hearing that was eventually set on all pending motions on June 7, 2011. The Court is aware that prisoners in the past have come to its courtroom equipped with the stun belt but never gave any thought to any legal ramifications of that process. There has never been any activation of the device in this Court's presence, at least to its knowledge. The defense motion in this case was the first time a defendant ever raised the issue of the legality of the stun belt in advance. The motion cited cases addressing procedures to be followed when a challenge to the device is made.

The Court, in all candor, was somewhat surprised upon reading those cases to discover that there was any limitation to the use of a security device which would never be seen by the jury and which would seem to be an efficient way to address security concerns. However, those cases, which include not only federal circuit court decisions which might arguably not be binding upon a state prosecution but also an Arizona Supreme Court decision, hold that at the very least a hearing should be provided upon request at which a defendant may contest the use of shock belts or other restraints.

The Court fully expected to address these issues at the hearing on June 7, 2011, and had allotted more than adequate time to do so. Doing so then would have been very convenient. Doing so at 8:00 a.m. on the Monday before the trial starts is going to be very inconvenient. The Court feels that some better communication between the prosecution and the jail staff could have led to the resolution of this issue in a far more timely fashion.

The Court notes that the motion filed on behalf of the Sheriff's Office suggest that they have unlimited authority in deciding what security measures to use upon inmates in the Mohave County Jail. The issue is not how the Defendant is treated while he is in the jail facility but how he is treated while in the courtroom during his jury trial. To the extent that counsel is suggesting that the judiciary

in this case is usurping the functions of the executive branch, as cited in their pleading, a review of the cases cited in the original defense motion would be in order.

The Court would specifically draw the parties' attention to United States v. Durham, 287 F.3d 1297 (11th Cir. 2002) and an Arizona Supreme Court case, State v. Cruz, 218 Ariz. 149 (2008). It may be argued that the Arizona Supreme Court in Cruz held that Arizona courts would not be bound by federal decisions addressing this issue, but at the very least they held that some hearing had to be held upon the use of a stun belt when requested by a defendant. Presumably, when a hearing is set on a written request by a defendant, the prosecution files no response, makes no argument and leaves the issue at the Court's discretion without presenting factual information in any format, then a trial court has no discretion to do anything other than what this Court did, which was to preclude the use of the stun belt. In addition to the cases cited above, and regardless of whether federal law is controlling on this issue, the parties might want to review United States v. Durham, 219 F.Supp.2d 1234 (2002), the decision issued by the federal trial judge after the case was reversed and remanded by the Court of Appeals. If nothing else, that decision provides some insight into some of the factors a trial judge should consider in trying to balance a defendant's constitutional rights against security concerns. The decision also includes some data regarding the stun belt, but it is unknown whether counsel would agree to or challenge this Court accepting that factual information.

cc:

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