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ALTHOUGH GIVEN PERMISSION BY THE CLIENT TO BLOG ABOUT THIS SITUATION, I HAVE CHANGED CERTAIN FACTS, INCLUDING BUT NOT NECESSARILY LIMITED TO MINOR'S IDENTIFYING INFORMATION AND THE DATE OF THE HEARING, IN ORDER TO PRESERVE CONFIDENTIALITY WITH RESPECT TO THE MINOR INVOLVED. FACTS RELEVANT TO THE ISSUES HAVE NOT BEEN CHANGED.

THE NEW NAME "JOSE" WAS CHOSEN BECAUSE IT DOES APPEAR TO COUNSEL THAT SHACKLED MINORS ARE USUALLY HISPANIC OR BLACK. INDEED, MINORS BROUGHT BEFORE THE JUVENILE COURT ARE USUALLY HISPANIC OR BLACK, BUT THIS MIGHT BE BASED ON THE LACK OF WHITE MINORS WITHIN THE COUNTY OF FRESNO, WHERE THE POPULATION IS ONLY ESTIMATED TO BE ONE MILLION.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO, JUVENILE DIVISION

IN THE MATTER OF: JOSE	Fresno County Superior Court Case No.: **XXXXX-XXX** MOTION TO ALLOW CLIENT THE DIGNITY OF ENTERING THE COURTROOM WITHOUT SHACKLES

RELEVANT PROCEDURAL HISTORY

Shortly before 8:30 a.m. on [deleted], 2009, counsel for the minor showed up outside courtroom 99A at the Juvenile Courthouse for the Superior Court of Fresno County for minor's arraignment on the misdemeanor charge of allegedly violating Penal Code section 242 which had

been filed "on an out of custody basis," meaning the minor was believed to be out of custody. After approximately 10 to 15 minutes, counsel was allowed admission to the courtroom.

At first, the minor appeared to be a no-show, or "failure to appear" (FTA). The longstanding operating procedure for the court in situations involving an FTA where service was by mail, as the documents in this case indicated, is to take the matter off calendar until the minor can be personally served. However, just after counsel mentioned that service appeared to have been by mail and client was not present in court, the Probation Officer indicated that the client was in custody. The matter was trailed to give the Bailiff time to have the minor transported approximately 100 yards from his pod to the courtroom.

Approximately one-and-a-half hours later, the minor had still not been brought to the courtroom. Upon inquiring, the court and counsel were informed that the minor was not present because there was a shortage of shackles and the Bailiff indicated, without providing any reasons, that the minor required shackles.

Defense counsel raised the issue that it was improper to shackle minors in the juvenile court without a "particularized showing" of the necessity for shackling. The court stated, "Yes, there's case law on that."[1] After the Bailiff stated that this would engender a *new* one-hour delay, counsel objected, pointing out that "the default setting under the cases is for minors *not* to be shackled" and that given the case law, the Bailiff should therefore already know the reason for shackling prior to the minor being shackled. The Bailiff stated that the Presiding Judge "downtown" (i.e., at the main courthouse) had promulgated a policy allowing the Sheriff's Department one hour "to investigate" the need for the shackling of prisoners *after* a challenge to shackling. Counsel for the minor again objected, indicating that this essentially reversed the default setting, which should be for no shackling; the law does not permit shackling with the requirement that counsel should then wait a period of time until the Sheriff's Department can investigate the minor's history to find some reason to justify the shackling. Counsel attempted to

[1] As this brief is being written within an hour of having left the courtroom, there is no transcript available at this time. The statement being non-controversial and the matter being heard at 3:00 p.m. before the same court, it is hopeful the quotation will not be rejected for lack of citation.

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argue that such a rule would assume the opposite of what the case law states: that minors may be shackled, counsel may object and the minor's case is delayed until the Sheriff can *then* investigate and come up with some rationale for shackling.

After further discussion and argument, the court stated that it would trail the case to allow the Sheriff's Department to investigate the minor's history, provide that history to the court and allow minor's attorney to research the issue so as to be able to respond. Counsel objected again that the Bailiff stated that "minor's history" would be provided; counsel stated that what the law required was "reasons for shackling" and not simply "the minor's history." Counsel requested to receive information regarding the reasons prior to returning to court so that counsel could prepare a response to the reasons, rather than merely review the history. The court indicated that the reasons would be provided "in court," indicating that counsel would learn the reasons when the case is recalled at or around 3 p.m. on [deleted], 2009.

Thereafter, counsel attempted to visit the minor at the Juvenile Justice Campus ("JJC"), where he was allegedly being held in J pod. Counsel was unable to effectuate a visit with the minor because, according to the officer at the JJC, he was in the holding cell next to Department 99A at the Juvenile Court Facility and there was no phone service to the officers in that area, making it impossible for the officer to request the minor be returned to the JJC for an attorney visit.

This Motion follows.

POINTS & AUTHORITIES

I

ABSENT A PARTICULARIZED SHOWING OF UNRULINESS, INTENT AND ABILITY TO ESCAPE, OR CONDUCT DISRUPTIVE IN COURT, SHACKLING JOSE IS A VIOLATION OF HIS RIGHTS AND OF THE VALUES THE COURT EXISTS TO UPHOLD

The use of physical restraints absent a showing of necessity. (*In re Deshaun M.* (2007) 148 Cal.App.4th 1384, 1386 [56 Cal.Rptr.3d 627].) A primary concern over the use of restraints is prejudice if viewed by a jury, but this is not the only reason for limiting their use. (*Id*. at 1387.) Shackling prisoners is an "affront to human dignity" and "an affront to the very dignity

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and decorum of judicial proceedings that the judge is seeking to uphold." (*Tiffany A. v. Superior Court of Los Angeles County* (2007) 150 Cal.App.4th 1344, 1355-1356 [59 Cal.Rptr.3d 363].)

> The removal of physical restraints is also desirable to assure that 'every defendant is…brought before the court with the appearance, dignity, and self-respect of a free and innocent man.'

(*People v. Duran* (1976) 16 Cal.3d 282, 290 [545 P.2d 1322], quoting *Eaddy v. People* (1946) 115 Colo. 488, 492 [174 P.2d 717].)[2]

The principles outlined by the California Supreme Court count just as much in proceedings other than jury trials as in jury trials. (*Tiffany A., supra,* 150 Cal.App.4th at 1356.) The standard applied in preliminary hearings for adults is similar to that applied in juvenile proceedings. (*Id.* at 1356-1357.) It is a "lesser showing" than that required at a jury trial. (*Id*. at 1357.)

Although a "lesser showing" is not defined, the courts are clear that a generalized policy which does not take into account the individual characteristics of the accused is unacceptable. The standard applied at a jury trial…

> …was deemed to arise only when a defendant demonstrated through his or her conduct unruliness or an intent to escape, or engaged in other "nonconforming conduct or planned nonconforming conduct" that would disrupt the judicial process unless restraints were in place.

(*Tiffany A., supra,* 150 Cal.App.4th at 1356.)

Arguably, a "lesser showing" might not require a demonstration of conduct that would disrupt the judicial process unless restraints were in place. However, to take that position practically nullifies any consideration of the particularized characteristics of an individual accused person, whether adult or juvenile. Even so, the evidence of conduct utilized in adult cases that justify the use of restraints focuses on conduct relating to court proceedings. This includes threats to kill witnesses, attempts to hide weapons in the courtroom, escape attempts, repeatedly shouting obscenities in a courtroom, kicking the counsel table, attacking officers in

[2] For some reason, our Supreme Court utilized single quotation marks here and those have been retained.

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the courtroom, and throwing oneself on the floor in the courtroom. (*See particularly Duran, supra,* 16 Cal.3d at 291.) So the "lesser showing" should require at least some connection to the potential for disruption within the courtroom.

A lesser showing which does not require anything more than someone's supposition that, perhaps because of the charges against them, or their history in other circumstances, a minor may disrupt the courtroom should be insufficient to hurdle even the "lesser showing" bar. As the courts discussing this issue in a juvenile setting have repeatedly noted, the values the court seeks to uphold are of high importance. The *Tiffany A.* Court ended its discussion of the issue by stating:

> While we are sympathetic to the obligations and responsibility our conclusion may impose upon the juvenile delinquency court, the Sheriff's Department and the People, those pale in comparison to the values we uphold.

(*Tiffany A., supra,* 150 Cal.App.4th at 1362.)

Shackling, in fact, thwarts the very purpose of the juvenile court system when it treats children like criminals. (Anita Nabha, "Shuffling to Justice: Why Children Should Not Be Shackled in Court" (2008) *Brooklyn Law Review*, vol. 73:4, p. 1551.) Shackling minors not only makes them look like criminals; it makes them think of themselves as criminals. (Daniel Zeno, "Shackling Children During Court Appearances: Fairness and Security in Juvenile Courtrooms" (2009) 12 J. Gender Race & Just 258.) "Shackling is also a physical indication that the juvenile is beyond treatment or rehabilitation." (*Id*. at 275.) As Zeno's article notes, the United States Supreme Court has recognized that shackling creates the unmistakable indication that the shackled individual must be separated from the community at large. (*Ibid*.)

Besides, shackling minors is contrary not only to California case law; it is contrary to statutory law. Penal Code section 688 states that "No person charged with a public offense may be subjected, before conviction, to any more restraint than is necessary for his detention to answer the charge." Minors are persons. ("minor." Webster's Third New International Dictionary, Unabridged. Merriam-Webster, 2002. http://unabridged.merriam-webster.com (last visited [deleted] 2009).)

In the current case, when initially queried, the Bailiff responsible for courtroom security

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in Department 99A was unaware of any particularized reason necessitating the shackling of the minor. Based upon the Bailiff's reaction, no one near the courtroom was aware of any particularized reason necessitating the shackling of the minor. The closest the Bailiff could come to a reason was that the minor was housed in J pod at the detention facility, which the Bailiff believed is reserved for "violent offenders." There is actually no evidence before the court that J pod houses only violent offenders.

The real party in interest – the Bailiff does not have standing in this case anyway – is "the People." The People did not demonstrate any knowledge of the need for (nor had they actually requested) shackles.

Even if the Bailiff's statement about J pod was true, however, it is indicative of a blanket policy to utilize shackles on all minors in J pod. In other words, if someone is in J pod – it does not matter who it is, nor does it depend in any way upon any individualized concerns about that minor – they will be shackled in court. As already noted above, such a blanket policy is disapproved by the courts of the State of California.

The fact that the minor may have been accused of committing violent crimes is insufficient to justify the use of shackles. (*See Solomon v. Superior Court* (1981) 122 Cal.App.3d 532 at 536.) In *Solomon*, there were two defendants charged with armed robbery and only one bailiff to guard them both. The Court, knowing this, observed that there was "no evidence in the record to show that either defendant had posed a particular threat or had engaged in conduct warranting the use of restraints." (*Tiffany A., supra,* 150 Cal.App.4th at 1358.)

On the limited record available to defense counsel, it does not appear that the minor has ever been convicted for any violent crimes, although apparently allegations of violations of Penal Code 211 and 422, among other charges, have been direct-filed in the adult court. There is no indication that the minor has ever disrupted a court proceeding, although he has apparently been present in court on numerous occasions.

CONCLUSION

For the above reasons, counsel for the minor urges the court to uphold the same values, in

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the same way, as they have previously been upheld in the cases cited above: the minor should not be shackled in court.

[deleted], 2009

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JOSE

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