

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 09-00112-01-CR-W-ODS
)	
CLIFTON D. TAYLOR)	
)	
Defendant.)	

**DEFENDANT’S MOTION TO PROHIBIT
USE OF STUN BELT DURING TRIAL**

COMES NOW the defendant, Clifton D. Taylor, by counsel, Travis D. Poindexter, and moves this Court for an Order prohibiting the use of a stun belt as a restraint during the trial of this matter. In support, Mr. Taylor offers the following:

BRIEF HISTORY

1. On March 13, 2009, Mr. Taylor was charged by criminal complaint with one count of bank robbery in violation of 18 U.S.C. § 2113(a). On April 8, 2009, a one count indictment was returned charging the same.
2. On April 5, 2009, Mr. Taylor entered a plea of not guilty to the charge. Trial in this matter is currently set on the January 11, 2010, criminal trial docket.
3. On November 9, 2009, a hearing was held before the Honorable Robert E. Larsen, U.S. Magistrate Judge, to address complaints expressed by Mr. Taylor in his *Pro Se* filings. Upon the denial of his request for new appointed counsel, Mr. Taylor voiced his concerns with the Court’s decision. Due to the nature and tone of his verbal objections, Mr. Taylor was initially removed from the courtroom by Order of the Court. After a few minutes the Court requested Mr. Taylor return to

the Courtroom to try and discuss his concerns. After again being informed that grounds did not appear to warrant the appointment of new counsel, Mr. Taylor flipped over the counsel table at which time he was restrained by deputies of the U.S. Marshal's Service and escorted out of the courtroom.

4. Due to the Court's concerns about courtroom security, a meeting was scheduled with the U.S. Marshals to tour and review possible scenarios for security at trial. During this meeting, the Marshals indicated that they intended to use a stun belt capable of administering an electrical shock to Mr. Taylor. This stun belt would be worn under Mr. Taylor's clothing and the administration or use of the device would be in the discretion of a Deputy Marshal assigned for the trial.

5. As other security measures could be employed to adequately ensure the restraint of Mr. Taylor and the security of the courtroom, Mr. Taylor would object to the use of any stun belt as an unnecessary and prejudicial restraint on his right to a fair trial.

SUGGESTIONS IN SUPPORT

6. The question for the Court is whether the extra security measure, use of the stun belt, justifies the potential prejudice that the restraint may impose. *United States v. Mahasin*, 442 F.3d 687, 691 (8th Cir.2006). It is within the discretion of the trial court to determine on an individual basis whether restraints, "are justified by a state interest specific to a particular trial." *Id.* (citing *Deck v. Missouri*, 544 U.S. 622, 125 S.Ct. 2007, 2010 (2005)). This determination requires balancing the possibility of prejudice against the need to maintain order in the courtroom and custody over incarcerated persons. *Id.*

7. In *United States v. Honken*, 378 F.Supp 2d 1010 (N.D. Iowa 2004), the district court completed a detailed factual and legal analysis regarding the issue of security versus prejudice to the defendant from wearing a stun belt during trial. In that case, Honken was charged with conspiracy to commit murder and the Government was seeking the death penalty. Of particular note, the Court found specific to the case and individual defendant that, Honken had a history of attempting to escape incarceration, he had been trained in martial arts, the charge itself involved a conspiracy to commit murder, and that Honken had a history of prior involvement with violent offenses.

8. In *Honken*, the Court recognized that, not only must the court exercise its discretion to determine the “need” for security measures but also exercise its discretion to determine the extent of the security measures during trial. *Id.* at 1030 (citing *United States v. Carter*, 815 F.2d 1230, 1231 (8th Cir.1987)). The Court went further to note:

While the Eighth Circuit Court of Appeals has indicated that, to assist appellate analysis, the trial court should articulate the reasons for imposing the security measures, *Hellum*, 28 F.3d at 907, other Circuit Courts of Appeals make such an articulation of reasons mandatory.

Indeed, other Circuit Courts of Appeals have expressly held that the *court* must make the determination of whether or not to use restraints on a defendant at trial; that decision cannot be deferred to corrections officers or the United States Marshals Service *See, e.g., Gonzalez* [v. Pliler, 341 F.3d 897 (9th Cir.2003)] at 902 (“The use of physical restraints is subject to close judicial, not law enforcement, scrutiny. It is the duty of the trial court, not correctional officers, to make the affirmative determinations, in conformance with constitutional standards, to order the physical restraint of a defendant in the courtroom”). *Id.*

9. The Court in *Honken* also observed some the potential constitutional problems created by use of the stun belt. Significant psychological consequences include interfering with a defendant’s Sixth Amendment right to confer with counsel. The fear of receiving a painful and humiliating shock for any gesture that could be perceived as threatening likely hinders a defendant’s

participation in the defense and chilling the inclination to make any movements during trial including those movements necessary for effective communication with counsel. *Id.* at 1035-1036.

10. Additionally, the stun belt could materially affect a defendant's privilege of testifying on his own behalf and being a competent witness. The court noted that, "in the course of litigation, it is not unusual for a defendant, or any witness, to be nervous while testifying. In view of the stun belt and the debilitating and humiliating consequences that such a belt can inflict, it is reasonable to believe that many if not most persons would experience an increase in anxiety if compelled to wear such a belt while testifying at trial. This increased anxiety could impact demeanor, in turn, which impacts a jury's perception. *Id.*

11. In Mr. Taylor's case, his outburst was limited to an isolated incident. He has no history of escape, no specific training in martial arts or self-defense, his "assault" history is limited to municipal infractions, and his conduct did not appear to be directed at an individual.

12. Fair warning and notice to Mr. Taylor that any disruptive behavior could result in his removal from the courtroom for the duration of his trial appears reasonable under the circumstances and the use of a stun belt in this case would unduly prejudice Mr. Taylor's constitutional right to a fair trial.

WHEREFORE, Mr. Taylor requests this Court to Order that use of a stun belt during the trial of this case is prohibited.

Respectfully submitted,

/s/ Travis D. Poindexter
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CERTIFICATE OF SERVICE

In accordance with Rule 49(a), (b) and (d), Fed. R. Crim. P., and Rule 5(b), Fed. R. Civ. P., it is hereby CERTIFIED that one copy of the foregoing motion was electronically delivered to Leena Ramana, Special Assistant U.S. Attorney, Western District of Missouri, 400 E. 9th Street, Kansas City, Missouri, 64106, on this 30th day of December, 2009.

/s/ *Travis D. Poindexter*
TRAVIS D. POINDEXTER