IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT OF
FLORIDA IN AND FOR
MIAMI-DADE COUNTY

JUVENILE DIVISION

CASE NO. J

STATE OF FLORIDA,

Petitioner,

vs.

,

a Child, Respondent.
_____/

MOTION FOR CHILD TO APPEAR AT ALL PROCEEDINGS FREE FROM DEGRADING AND UNLAWFUL RESTRAINTS

The Respondent moves this Court to permit the Respondent to stand before the Court free of shackles, handcuffs, or chains during any and all proceedings. In support of this motion, the Respondent states:

1. The Respondent is in secure detention. The Respondent is scheduled to appear before the Court for sounding. There is no basis to believe that the Respondent poses a threat of violence in court or a risk of escape.

2. Forcing the Respondent to appear before the Court in chains would be contrary to chapter 985 and the rehabilitative purpose of the juvenile system. It would violate the Respondent's right to due process and interferes with the right to

counsel and to participate in the defense of the case, in violation of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and article I, sections 9 and 16 of the Florida Constitution. It violates the Respondent's core right to be free from unnecessary bodily restraint under the Fourteenth Amendment to the United States Constitution and article I, section 9 of the Florida Constitution. It violates international law, and it amounts to child abuse.

3. Prior to September 11, 2006, the routine policy and practice of the Juvenile Division was to require all detained children to appear in handcuffs and shackles. On that date, Judge William Johnson granted the Public Defender's Motion for Child to Appear Free From Degrading and Unlawful Restraints.[1] He ordered that, absent a particularized showing that restraints are necessary, no child was to be shackled in his court. Since that time, the other judges in the Juvenile Division have unshackled individual children on a case-by-case basis.

4. This Court has established a procedure whereby it will make a case-by-case determination regarding the shackling of children in detention scheduled for sounding.

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[1] The Court is intimately familiar with the motion and its appendix, as courtesy copies of both documents were provided to the Court before they were filed, and the motion has been filed in numerous cases before the Court since that time. Copies of the motion and appendix are available at: << http://www.pdmiami.com/unchainthechildren.htm >>. These documents are incorporated herein by reference.

5. However, based on the Court's memorandum describing the anticipated procedure, it would appear the Respondent faces shackling based on a record based on nothing more than a Detention Risk Assessment Instrument (DRAI) scoring secure detention. ("As a general guideline the Risk Assessment which accompanies each child may be used by the Court as a basis for determining risk and protecting the safety and security of the community and the Respondent and other Personnel in the Courtroom.")

6. This would be error. Florida's appellate courts have held that shackles **"should be used only when it is necessary to deter escape or prevent disturbance or potential injury to people in the courtroom."** *Miller v. State*, 852 So. 2d 904, 905 (Fla. 4th DCA 2003) (emphasis supplied); *McCoy v. State*, 503 So. 2d 371 (5th DCA 1987).

7. Florida cases have approved shackling only **"where there is a history or threat of escape, or a demonstrated propensity for violence."** *Jackson v. State*, 698 So. 2d 1299, 1303 (Fla. 4th DCA 1997) (emphasis supplied). *See Diaz v. State*, 513 So. 2d 1045 (Fla. 1987) (defendant had prior record of escapes and prior incidents of violence, including prior murder and armed robbery convictions); *Dufour v. State*, 495 So. 2d 154 (Fla. 1986) (defendant planned escape from jail and was convicted of two murders in Mississippi, where he was on death row); *Czubak v. State*, 644 So. 2d 93 (Fla. 2d DCA 1994) (defendant was previously

escaped convict facing retrial after being tried, convicted, and sentenced to death); *Blanco v. State*, 603 So. 2d 132 (Fla. 3d DCA 1992) (defendant "told corrections officers that he would attempt to escape during the trial and, in the attempt, would batter and inflict bodily injury on persons in the courtroom").

8. The DRAI is a poor proxy for the required determination: It tells the Court nothing about the risk of courtoom violence or the likelihood a child will attempt to flee during the hearing. For example, nonviolent offenses substantially increase the DRAI score, yet they have no bearing on whether a child is likely to engage in courtroom violence or flee from the hearing.

9. Indeed, the Court releases approximately half the children who appear before it for detention sounding. Still more are released before the dates of their adjudicatory hearings and ultimately enter the courtroom through the front door. These facts alone belie the suggestion that the DRAI can be used to create a presumption in favor of the necessity of chaining children for court appearances.

10. The Court may of course consider any relevant records. However, before it can order the Respondent shackled, it must make an individualized finding of necessity based on facts appearing in the record that courtroom safety can only be preserved by the fettering of this particular child. There is no record to support such a finding.

WHEREFORE, the Respondent moves that the Court permit the Respondent to appear free from handcuffs or shackles at all proceedings.

I hereby certify that a true and correct copy of the foregoing was delivered by hand to the Office of the State Attorney, _____, Miami, FL 33131, this ____ day of ____, 2006.

Respectfully submitted,

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