

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT,
IN AND FOR ALACHUA COUNTY, FLORIDA

STATE OF FLORIDA
Plaintiff,
vs.

CASE NUMBERS: 01-2020-CF-3294-A, 01-2020-CF-3634-A,
01-2020-CF-3669-A, 01-2021-CF-0659-A

DIVISION I

JABARI MALACHI CREWS.
Defendant.

_____ /

MOTION TO REDUCE BOND

COMES NOW the Defendant, Jabari Malachi Crews, by and through the undersigned Counsel, pursuant to Florida Rule of Criminal Procedure 3.131(d), and respectfully moves this Court for entry of an Order releasing the Defendant on his own recognizance, or in the alternative, reducing the bond previously set in the above-styled cases.

AS GROUNDS for this Motion, the Defendant would show:

1. The Defendant is currently in custody on the following cases:
 - a. 2020-CF-3294
 - i. BURGLARY OF AN UNOCCUPIED CONVEYANCE
 - ii. BURGLARY OF AN UNOCCUPIED CONVEYANCE
 - b. 2020-CF-3634
 - i. GRAND THEFT III: MOTOR VEHICLE
 - ii. FLEEING OR ATTEMPTING TO ELUDE
 - iii. RESISTING WITHOUT VIOLENCE
 - c. 2020-CF-3669
 - i. BURGLARY OF AN UNOCCUPIED CONVEYANCE
 - ii. PETIT THEFT
 - d. 2021-CF-0659
 - i. GRAND THEFT III: MOTOR VEHICLE
2. The Defendant is indigent and cannot post the aggregate bond of \$71,000.

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3. If released, Defendant will reside in Gainesville, Florida.
4. The Defendant has no failure to appear and is not a flight risk.
5. The Defendant promises to maintain contact with Counsel, to abide by all orders of the Court, and to attend all required court appearances.

Request to Take Judicial Notice of Court Filing

The Defendant, pursuant to sections 90.202(6) and 90.203, Florida Statutes, requests that this Court take judicial notice of the “Affidavit of Indigent Status” in the above-styled case and admit the same into evidence and the hearing on this motion.

Memorandum of Law

Bail determinations are subject to equal protection and due process of law under the 14th Amendment to the United States Constitution, and Article I, Sections 2, 9, and 14, of the Florida Constitution. Bail determinations are also subject to the requirements of Chapters 903 and 907, Florida Statutes, and Florida Rules of Criminal Procedure 3.131 and 3.132.

A. Pretrial detention is not authorized

Article I, Section 14 of the Florida Constitution provides that an accused **shall** be released on reasonable conditions unless the offense is punishable by death or life in prison **and** proof of guilt is evident. (emphasis added). The Defendant is not charged with a capital offense or an offense punishable by life imprisonment. To date the State has not filed a motion for pretrial detention in this case nor has it presented evidence that the proof of the Defendant’s guilt is evident or the presumption is great.

B. Improper use of monetary bail

Florida Rule of Criminal Procedure 3.131 codifies the constitutional and statutory “entitle[ment] to pretrial release on reasonable conditions” and the “presumption in favor of release on nonmonetary conditions” Fla. R. Crim. P. 3.131(a) and (b). In accordance with Rule 3.131(b), the Court is required to select the first of the conditions listed in subsections (A)

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through (F) that will “reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process.” Art. 1, § 14, Fla. Const. If no single condition gives that assurance, then the Court may combine the conditions listed in subsections (A) through (F).¹

Consistent with the presumption of nonmonetary release, monetary bail bonds are not reached until subsection (b)(1)(E), which provides that any monetary bail condition may be satisfied by bail bond, cash deposit, or an appearance bond.² A monetary bail condition only serves to assure that the accused will appear for trial. Monetary bail does not serve any purpose in protecting the community from risk of physical harm to persons because funds posted to satisfy such a condition will not be forfeited in the event the accused commits a new crime following release. *See* § 903.26(2)(a), Fla. Stat. (governing when and how bonds are forfeited).

An unaffordable monetary bail condition deprives a Defendant of due process of law as it holds a Defendant in pretrial detention without the State and the Court meeting their respective obligations under the constitution, laws, and rules. § 907.041, Fla. Stat., Fla. R. Crim. P. 3.131 and 3.132, *State v. Arthur*, 390 So. 2d 717 (Fla. 1980). The State bears the burden of not only filing a motion seeking pretrial detention but also proving that the proof of Defendant’s guilt is evident and the presumption of the same is great.³ *Arthur*, 390 So. 2d at 719.

An unaffordable monetary bail condition, which keeps the Defendant incarcerated, deprives a Defendant of equal protection. Equal protection is violated where one Defendant who can afford a monetary bail condition is afforded the constitutional right to liberty and

1 The conditions are listed from least restrictive to most restrictive, and provide for release by A) personal recognizance, B) unsecured appearance bond, C) restrictions on travel, abode, or association, D) supervision by a responsible person or organization, E) execution of secured bond or cash deposit, and/or F) any other reasonable condition to secure appearance. Fla. R. Crim. P. 3.131(b).

2 The terms “bail” and “bond” include any and all forms of pretrial release. § 903.011, Fla. Stat.

3 This standard has been deemed to be proof greater than beyond a reasonable doubt. *See State v. Perry*, 605 So. 2d 94, 96 (Fla. 3d DCA 1992) (“[T]he degree of proof sufficient to deny an accused the right to bail in a capital [or life offense] case under our Constitution, to wit, proof that guilt is evident or the presumption of guilt is great is actually a greater degree of proof than that which is required to establish guilt merely to the exclusion of a reasonable doubt.” (quoting *State ex rel. Van Eeqhen v. Williams*, 87 So. 2d 45, 46 (Fla. 1956))).

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pretrial release, and a similarly situated Defendant who cannot afford the monetary bail condition remains incarcerated. Liberty based solely upon ability to pay has repeatedly been held to deprive the accused of equal protection. *See, e.g., Bearden v. Georgia*, 461 U.S. 660, 672-673 (1983) (“Only if alternate measures are not adequate to meet the State's interests in punishment and deterrence may the court imprison a probationer who has made sufficient bona fide efforts to pay. To do otherwise would deprive the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay the fine.”); *Tate v. Short*, 401 U.S. 395, 398 (1971) (“[T]he Constitution prohibits the State from imposing a fine as a sentence and then automatically converting it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full.”); *Stephens v. State*, 630 So. 2d 1090, 1091 (Fla. 1994) (“[B]efore a person on probation can be imprisoned for failing to make restitution, there must be a determination that that person has, or has had, the ability to pay but has willfully refused to do so.”); *see also Griffin v. Illinois*, 351 U.S. 12, 19 (1956) (“There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.”).

WHEREFORE, Defendant respectfully requests this Court to enter its Order releasing the Defendant on his own recognizance, or in the alternative, reducing the bonds as set.

CERTIFICATE OF SERVICE

THE UNDERSIGNED CERTIFIES that a true and correct copy of the foregoing has been furnished to Brooke King, Assistant State Attorney, via E-Service, on March 2, 2021.

s/ **Alexis J. Giannasoli**
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