

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA**

STATE OF FLORIDA,

v.

**23-02935-CF
CAPITAL MURDER
DIVISION D**

TOMASZ ROMAN KOSOWSKI
_____ /

MOTION TO SET BOND

Defendant, by and through undersigned counsel, pursuant to Florida Rules of Criminal Procedure Rule 3.131(d), Florida Statute section 907.041, and Article 1, section 14 of the Constitution of the State of Florida, and corresponding Fifth, Eighth and Fourteenth Amendments to the United States Constitution, respectfully moves this Honorable Court to enter an Order setting bond in the above-style cause.

As grounds for this motion, Defendant states:

1. On March 26, 2023, Defendant was arrested on one count of Murder in the First Degree.
2. On March 27, 2023, Defendant appeared before this Honorable Court for his Advisory Hearing. This Court ordered Defendant to be remain in custody at zero bond.
3. On or about April 27, 2023, Defendant was indicted on one count of Murder in the First Degree—a Capital Felony.

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4. On or about April 28, 2023, the State filed its notice of intent to seek the death penalty against Defendant.
5. Under Florida law, specifically Article 1, section 14 of the Florida Constitution, anyone accused of a crime is eligible for pre-trial release unless they stand accused of a capital offense or an offense punishable by life in prison and the State of Florida can establish, by evidence, that proof of guilt is evident, or the presumption of guilt is great.
6. “When a person is charged with a capital or an offense punishable by life imprisonment, it is the state’s burden, in order to foreclose bail as a matter of right, to present evidence beyond the indictment or information which shows that the proof of guilt is evident or the presumption great.” *Juste v. State*, 946 So.2d 102, 103 (Fla. 5th DCA 2007) (citing *State v. Arthur*, 390 So.2d 717 (Fla. 1980)). In such cases, “the state is actually held to an even greater degree of proof than that required to establish guilt beyond a reasonable doubt.” *Mininni v. Gillum*, 477 So.2d 1013, 1015 (Fla. 2d DCA 1985) as quoted in *Vincent v. State*, 18 So.3d 540 (Fla. 2d DCA 2009).
7. Defendant is originally from Poland. When the Defendant was two (2) years old, his parents sought refuge in Berlin, Germany from the armed conflict erupting in Poland at the time. After living in Berlin for a brief

period, Defendant's parents made the decision to immigrate to the United States. Defendant was approximately seven (7) years old.

8. Defendant spent his early childhood years in the greater Kansas City area before the family moved to Albuquerque, New Mexico, where Defendant spent the latter half of his childhood. Defendant attended and graduated from high school there.
9. After graduating high school, Defendant went on to attend college at the University of New Mexico, where he earned a bachelor's degree in music, a bachelor's degree in Biochemistry and a master's degree in biomedical sciences. Defendant then relocated to New England, where he attended medical school at the prestigious Dartmouth College Geisel School of Medicine. Defendant also attended the Tuck School of business during his time at Dartmouth.
10. Defendant graduated from Dartmouth College in 2007 with a Doctor of Medicine (MD) and Master of Business Administration (MBA). Defendant went on to hone his surgical skills at Dartmouth-Hitchcock Medical Center where he completed the general surgery/plastic surgery residency program. In addition to residency, Defendant completed plastic surgery fellowships at Memorial Sloan-Kettering Cancer Center in New York, the Miami Breast Center, and Mark Codner Plastic Surgery in

Atlanta.

11. Up until his arrest for the crime for which he stands accused, Defendant was engaged in a successful career as a plastic surgeon. Defendant has been practicing medicine for eight (8) years, three of which were in the Tampa Bay Area. After a brief time working for Bassin Center for Plastic Surgery in Tampa, Florida, Defendant began working at the Laufer Institute of Plastic Surgery in Dunedin, Florida in 2017. After leaving the Laufer Institute in 2019, Defendant split his time between his primary residence in Tarpon Springs and Miami, where he was practicing medicine.
12. Defendant does not have any prior criminal history.
13. Defendant has strong community ties. His primary residence is a home in Tarpon Springs, which he purchased in 2018. Defendant owns the home free and clear and he has resided there for approximately five (5) years. If released from custody, Defendant plans to reside in his primary residence with his three (3) dachshunds, Gibson, Rigby, and Ozzy.
14. Defendant is a citizen of the United States. He is willing to surrender his United States Passport.
15. Defendant is willing and able to comply with any and all conditions of pre-

trial release this Honorable Court deems necessary. Additionally, he has the means to pay for electronic monitoring.

16. Defendant is willing to personally appear for all future court hearings set in connection with this case should his presence be required.
17. In the instant case, the allegations made by the State of Florida and disclosures thus far do not support a finding that proof of guilt is evident or the presumption of guilt is great pursuant to *State v. Arthur*, 390 So. 2d 717, 719 (Fla. 1980). Therefore, Defendant is entitled to a reasonable bond.

MEMORANDUM OF LAW

Article I, Section 14 of the Florida Constitution guarantees reasonable conditions of pretrial release to any person charged with a crime, unless no reasonable conditions of release can “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,” or unless the person is charged with a capital offense or “an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great.” FLA. CONST. Art I, § 14. In cases charging a capital felony or a felony punishable by life, the Florida Supreme Court has held that before a court can order pretrial detention of a defendant without bond, the State must bear the burden of proving that the “proof is evident or the presumption great.”

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State v. Arthur, 390 So. 2d 717, 719 (Fla. 1980). Accordingly, “[a]n *Arthur* hearing under Florida law and the Florida Constitution demands more than mere ‘probable cause’ before pretrial detention may be ordered.” *Bleiweiss v. State*, 24 So. 3d 1215, 1216 (Fla. 4th DCA 2009). “Indeed, the state is held to a degree of proof greater than that required to establish guilt beyond a reasonable doubt.” *Elderbloom v. Knowles*, 621 So. 2d 518, 520 (Fla. 4th DCA 1993); *see also* *Preston v. Gee*, 133 So. 3d 1218, 1226 (Fla. 2d DCA 2014). As a result, even if “the state’s evidence is arguably sufficient to convict,” it may still be insufficient to support pretrial detention at an *Arthur* hearing if the State’s case “is contradicted in material respects such that substantial questions of fact are raised as to the guilt or innocence of a defendant.” *Elderbloom*, 621 So. 2d at 520.

As to the reasonable conditions of bond, “[t]he purpose of bond is to ensure the appearance of a criminal defendant at subsequent proceedings and to protect the community from unreasonable danger from the defendant.” *Patterson v. Neuman*, 707 So. 2d 946, 947 (Fla. 4th DCA 1998). In making the determination as to appropriate conditions of bail, including the amount of a reasonable bond, the Florida Statutes require courts to consider several enumerated factors, including, in relevant part:

- (a) The nature and circumstances of the offense charged.
- (b) The weight of the evidence against the defendant.
- (c) The defendant’s family ties, length of residence in the community,

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employment history, financial resources, and mental condition.

(d) The defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings...

e) The nature and probability of danger which the defendant's release poses to the community.

(f) The source of funds used to post bail or procure an appearance bond...

(g) Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence.

(h) The street value of any drug or controlled substance connected to or involved in the criminal charge

(i) The nature and probability of intimidation and danger to victims.

(j) Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release.

(k) Any other facts that the court considers relevant...

FLA. STAT § 903.046(2).

A review of the relevant factors applicable to the instant case clearly demonstrate that Defendant is entitled to a reasonable bond. As discussed above, his age, his life history and ties to the community establish that he would not pose a risk of flight or danger if released. The denial of bond in this case would, thereby, violate his rights to reasonable conditions of bail as guaranteed under the Eighth Amendment to the United States Constitution.

WHEREFORE, Defendant respectfully requests this Honorable Court enter an Order setting a reasonable bond in the above-styled cause.

Respectfully submitted,

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Bjorn E. Brunvand, Esq.

s/J. Jervis Wise
J. Jervis Wise, Esq.

s/Debra B. Tuomey
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s/Amanda Powers Sellers
Amanda Powers Sellers, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished electronically to the Office of the State Attorney in and for the Sixth Judicial Circuit on this 7th day of June, 2023.

s/Bjorn E. Brunvand
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