

**IN THE MAGISTRATE COURT OF CAMDEN COUNTY
STATE OF GEORGIA**

STATE OF GEORGIA,

vs.

ZECHARIAH PRESLEY

Defendant

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WARRANT NO: _____

CHARGES: Voluntary Manslaughter

Vio. of Oath of Office

**ORDER AND JUDGMENT, FINDINGS OF FACT AND CONCLUSIONS OF LAW
PURSUANT TO DEFENDANT ZECHARIAH PRESLEY'S EMERGENCY MOTION
FOR RECONSIDERATION OF THE COURT'S JUNE 29TH, 2018 BOND ORDER AND
INCORPORATED MEMORANDUM OF LAW AND REQUEST FOR EMERGENCY
HEARING**

On or about June 27, 2018, Defendant Zechariah Presley, a former Kingsland, Georgia police officer, was arrested on charges of voluntary manslaughter and violation of his oath of office arising from the shooting death of Anthony Marcel Green. Since voluntarily surrendering to the Camden County Sheriff's Department, the Defendant has remained incarcerated.

After careful consideration of oral arguments and testimony presented at the Court's July 17, 2018 hearing on Defendant's Emergency Motion for Reconsideration of the Court's June 29, 2018 Bond Order, along with a review of all pleadings, affidavits, letters and memorandum of law submitted, the Court hereby finds as follows:

FINDINGS OF FACT

On June 29, 2018, this Court held an Initial Appearance Hearing in the above-styled case. At the hearing, and in support of his request for a reasonable bond, the Defendant presented sworn testimony from one witness, Rev. Joshua Cribbs, Executive Pastor of the Harbor Worship Center, who addressed all four factors set forth by O.C.G.A. § 17-6-1(e). The Defendant presented no additional sworn testimony or other evidence.

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MAGISTRATE COURT

The State in turn proffered a letter from Ms. Teresa Clark (hereinafter "the Statement"), speaking on behalf of Anthony Marcel Green's family, which was read into the record without objection by Ms. Sandy Ortega, the Victim's Assistant for the District Attorney's office. In essence, this Statement contained the Green families' opposition to bond, as well as their opinions that the shooting of Mr. Green was unjustified, that there were unspecified "red flags" which should have prevented the Defendant from being employed or remaining employed as a police officer, along with a statement of unspecified complaints filed against the Defendant when he was employed as a police officer for the City of Kingsland, Georgia. No sworn testimony or other evidence was received from the State. At the conclusion of the hearing, pursuant to O.C.G.A. § 17-6-1(e), this Court denied bond.

On July 6, 2018, the Defendant filed an "Emergency Motion for Reconsideration of the Court's June 29, 2018, Bond Order and Incorporated "Memorandum of Law and Request for Emergency Hearing." A hearing was held on July 17, 2018, at which time the Defendant tendered the sworn testimony of the Rev. Michael Sanos, the Defendant's pastor, who, in support of reasonable bail for the Defendant, addressed all four factors set forth by O.C.G.A. § 17-6-1(e). In addition to filing a supporting memorandum of law, the Defendant also filed sworn affidavits from twenty-three (23) citizens and family members knowledgeable of the Defendant, collectively addressing all four factors set forth in O.C.G.A. § 17-6-1(e).

Without reading same into the record, the State tendered into evidence, without objection, the previously-read Statement. Following argument in opposition to bond, the State rested, offering no sworn testimony, evidence, memorandum of law or sworn affidavits. Although the State remained in opposition to bond, the State did propose several special conditions if the Court was to grant bond to the Defendant.

CONCLUSIONS OF LAW

The criteria to be used in allowing, or setting the amount, kind, and conditions of bail are most fully set out in *Lane v. State*,¹ as modified or further explained by *Ayala v. State*,² *Dunn v. Edwards*,³ *Constantino v. Warren*,⁴ and O.C.G.A. § 17-6-1(e).

The statutory factors are whether the Defendant poses (1) a "significant risk" of fleeing from the jurisdiction of the court or failure to appear in court when required; (2) a "significant threat or danger" to any person, the community, or any property in the community; (3) a "significant risk" of committing any felony pending trial; or (4) a "significant risk" of intimidating witnesses or otherwise obstructing justice. In *Lane*, the Court provided additional factors: "(i) the length and character of the defendant's residence in the community; (ii) his employment status and history and his financial condition; (iii) his family ties and relationships; (iv) his reputation, character and mental condition; (v) his past history of response to legal process; (vi) his prior criminal record; (vii) the identity of responsible members of the community who would vouch for the defendant's reliability; (viii) the nature of the current charge, the apparent probability of conviction and the likely sentence, insofar as these factors are relevant to the risk of nonappearance; and (ix) any other factors indicating the defendant's roots in the community."⁵

A defendant who has filed a petition seeking release on bail has the initial burden of showing, by means of evidence indicating roots in the community, that the defendant does not pose a significant risk of fleeing, threatening the community, committing another crime, or

¹ *Lane v. State*, 247 Ga. 387, 276 S.E.2d 644 (1981).

² *Ayala v. State*, 262 Ga. 704, 705, 425 S.E.2d 282 (1993).

³ *Dunn v. Edwards*, 275 Ga. 458, 458, 569 S.E.2d 525 (2002).

⁴ *Constantino v. Warren*, 285 Ga. 851, 853(1), 684 S.E.2d 601 (2009).

⁵ *Lane v. State*, 247 Ga. 387, 388, 276 S.E.2d 644 (1981), citing the ABA Standards, Pretrial Release § 5.3(d).

intimidating a witness.⁶ The initial burden of showing community ties⁷ may be shown by "the length and character of residence in the community, employment status and history, past history of responding to legal process, and prior criminal record."⁸ If the defendant fails to meet the initial burden, the State need not respond; if the defendant produces "some evidence" satisfying the initial burden, then the State has the burden of persuasion and may present any evidence relevant to the four factors in O.C.G.A. § 17-6-1(e).⁹

In the instant case, the Defendant, making application for bond, through witness testimony and some twenty-three (23) sworn affidavits, met his initial burden. If the Defendant had failed to meet this initial burden, the State would have had no need to respond. However, once the Defendant produced the aforementioned evidence he satisfied his initial burden under the law, which then required the State to meet its burden of persuasion presenting evidence relevant to the four factors as outlined in O.C.G.A. § 17-6-1(e), evidence which shows the Defendant poses: a "significant risk" of fleeing from the jurisdiction of the court or failure to appear in court when required; a "significant threat or danger" to any person, the community, or any property in the community; a "significant risk" of committing any felony pending trial; or, a "significant risk" of intimidating witnesses or otherwise obstructing justice.

The Defendant presented sufficient evidence that he has ties to the community and has not been convicted of a crime. The State presented no evidence to rebut this. The Defendant submitted evidence that he poses no "significant" threat or danger to any person, the community, or to any property in the community, or of intimidating witnesses, or obstructing justice. Other

⁶ *Cowards v. The State*, 266 Ga. 191 (1996); *Ayala v. State*, 262 Ga. 704(1), 425 S.E.2d 282 (1993); OCGA § 17-6-1(e).

⁷ *Constantino v. Warren*, 285 Ga. 851, 853(1), 684 S.E.2d 601 (2009); *Dunn v. Edwards*, 275 Ga. 458, 458, 569 S.E.2d 525 (2002).

⁸ *Dunn v. Edwards*, 275 Ga. 458, 458, 569 S.E.2d 525 (2002); *Ayala v. State*, 262 Ga. 704, 705, 425 S.E.2d 282 (1993).

⁹ *Constantino v. Warren*, 285 Ga. 851, 853(1), 684 S.E.2d 601 (2009); *Dunn v. Edwards*, 275 Ga. 458, 458, 569 S.E.2d 525 (2002); *Ayala v. State*, 262 Ga. 704, 705, 425 S.E.2d 282 (1993).

than the very serious charge of which the Defendant stands accused but not convicted and the Statement, which will be addressed below, the State presented no evidence to the contrary. Correspondingly, this Court was presented with no evidence that would support the Defendant posing a "significant" threat of failing to appear for hearings and trial or in any way constituting a flight risk. To the contrary, the Defendant turned himself in to authorities after being given notice of the charges now pending against him. The solitary evidence provided to this Court by the State was the aforementioned Statement which this Court did admit under O.C.G.A. 24-8-802. The Defendant argued in response to the admission of that Statement, which was not rebutted, that although admitted without objection the Statement failed to provide sufficient specificity, time-frame, or evidence as to the complaints, red flags, or judgment issues mentioned, and was not sufficiently probative to the issue of the Defendant failing to appear for Court when summoned, being a threat to the community, and/or any of the other factors generic to O.C.G.A. § 17-6-1(e).¹⁰ For the Statement to be sufficiently probative to the issues before the Court, where these stated events could be constitutionally relied upon to deny bond, the State would have had to produce specificity and linkage to establish that such incidents would prove that an accused person poses a danger to the community if released.¹¹ The Court received no such evidence or sworn testimony.

"The most fundamental premise of our criminal justice system is that a person ought not to be punished for a criminal offense until the state demonstrates guilt beyond a reasonable doubt."¹² "Bail is basic to our system of law."¹³ As the United States Supreme Court has so

¹⁰ See Transcript of Bond Hearing of July 17, 2018, and letter dated July 18, 2018 from Patrick T. O'Connor, Esq. to the Honorable J. Alexander Atwood, Cc: Rocky Bridges, Esq. Assistant District Attorney.

¹¹ Prigmore v. State, 327 Ga. App. 368 (2014). Also see, Hardy v. the State, 192 Ga. App. 860 (1989).

¹² Ayala v. State, 262 Ga. 704, 705, 425 S.E.2d 282 (1993); 285 2 ABA, Standards for Criminal Justice 10-1.1 comment (1980).

¹³ Herzog v. United States, 75 S.Ct. 349 (1955). Also see, See the Eighth Amendment; Stack v. Boyle, 342 U.S. 1, 72 S.Ct. 1, 96 L.Ed. 3.

clearly ruled, "Unless [the] right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning."¹⁴ "This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction."¹⁵ Unless clearly rebutted with sufficient evidence pursuant to the standards for denying bond as promulgated in O.C.G.A. § 17-6-1(e), this Court must adhere to this constitutional standard and grant a reasonable bond to the Defendant.

ORDER AND JUDGMENT

THEREFORE, IT IS HEREBY ORDERED that bond on all of the above charges is granted, and the same is hereby set at \$100,000.00 (Total Bond for All Charges inclusive) upon the following conditions:

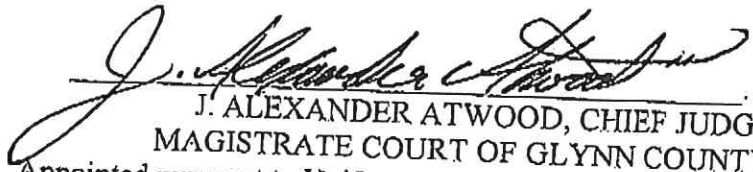
1. The Defendant shall not violate the laws of the State of Georgia or any other governmental entity;
2. The Defendant shall have no contact direct or indirect with the family of Anthony Marcel Green;
3. Prior to release, the Defendant shall surrender his passport into the custody of the Superior Court Clerk of Camden County, Georgia, where it shall remain stored until the outcome of this case now pending against the Defendant;
4. The Defendant shall not have any employment of any nature as a police officer or in the private or public security field;
5. The Defendant shall possess no firearms, weapons or ammunition;
6. The Defendant shall consume no alcohol or illegal drugs;

¹⁴ *Stack v. Boyle*, 342 U.S. 1, 4, 72 S.Ct. 1, 3, 96 L.Ed. 3 (1951)

¹⁵ *Stack v. Boyle*, 72 S.Ct. 1 (1951).

7. The Defendant shall maintain curfew from 7:00 p.m. until 7:00 a.m.;
8. The Defendant shall agree for his attorney to accept service of notice of all proceedings, hearings and trials in this case.

SO ORDERED, on this the 23rd day of July, 2018.


J. ALEXANDER ATWOOD, CHIEF JUDGE
MAGISTRATE COURT OF GLYNN COUNTY
Appointed pursuant to Uniform Magistrate Court Rule 4.2.4