

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

STATE OF FLORIDA,
Plaintiff,

CASE NO: 2024-CF-3748-

A

-VS-

DIV: II

JUSTIN HAMBY,

Defendant.

/

DEFENDANT'S MOTION TO REDUCE BOND

COMES NOW the Defendant, Justin Hamby, by and through his/her undersigned attorney, pursuant to Rule 3.131 of the Florida Rules of Criminal Procedure, respectfully requests this Honorable Court for entry of an Order releasing the Defendant on his/her own recognizance or reducing the bond previously set in the above-styled cause. In support of the motion the Defendant states that:

1. The Defendant has been arrested on 11/11/2024 in the aforementioned case and is alleged to have committed the new law offenses of Domestic Battery by Strangulation, Aggravated Assault with a Deadly Weapon, False Imprisonment, and Tampering/Obstructing x2.
2. Following his arrest, the Defendant was held at no bond following the States Notice to Seek Pretrial Detention.
3. The State moved for pretrial detention on 11/14/2024, which was subsequently denied by Judge Colaw on 11/26/2024. Bond was set at a total of \$220,000 regarding the remaining counts with GPS and all other conditions.
2. The Defendant will reside at [REDACTED] with his mother [REDACTED] and her husband on their property.
3. The Defendant has a vehicle and a valid drivers license.
4. The Defendant a history of employment locally working for a remodeling company and a horse farm.
5. The Defendant is 30 years old and has no criminal record.

6. The Defendant's family has resided in the Williston and Ocala area for approximately 40+ years.
7. Before his arrest, the Defendant was a primary caretaker for his 2 children for the past 3 years ([REDACTED]). As the primary caretaker he attended medical appointments, dental appointments, and was responsible for transporting to and from their grandparents. The children in question require additional care, since the 4 year old is currently non-verbal.
8. There is no indication that the Defendant is a flight risk as evidenced by his extensive family ties, he is heavily involved in caring for his children, and has no history of failures to appear.
9. There is no indication of a danger to the community from this Defendant. At the time of his arrest, the Defendant was walking out of the incident location residence unarmed and safely. The alleged victim was not reporting any injury to her person to 911 and their shared children were asleep. The firearm present was unloaded and packed. The Defendant was cooperative with law enforcement and his belongings were ready to be moved out of the home and were sitting by the front door.
10. The weight of the evidence presented is primarily testimonial, and the accuser has a history of violence against the accused where she attacked the Defendant while simultaneously claiming he was attacking her. Per LINDAS case 22mm524a.
11. The parties are married but have been separated for approximately 3 years, with neither party initiating divorce or formally seeking a Court ordered parenting plan. The current allegation arises while the 2 were temporarily cohabitating.
12. There is no indication of any mental health concern or instability on the part of the Defendant.
13. There is no record of convictions of the Defendant.
14. Defendant promises to make all court appearances and meet with his attorney if released.

RELEVANT CASELAW

Mesidor v Neumann – 721 So.2d 810. Writ for petition of Habeus Corpus granted for reduction in pretrial bond when Defendant was charged with 1st PBL offense. Petitioner had ties to the community and no prior criminal record. Defendant was indigent and had no property other than automobile, \$200,000 bond was excessive.

Norton-Nugin v State -179 So3rd 557 – Habeus petition granted where Defendant has been charged with four 3rd degree felonies, two counts of aggravated child abuse and two counts of

child neglect. The Defendant had no criminal record and her only asset was a car worth \$2,500. Under the circumstances \$150,000 was an excessive bond.

Robinson v State – 95 So3rd 437 – Habeus petition granted where Defendant charged with two counts of 1st Degree felony child abuse, \$500,000 was excessive given Robinsons financial status, attendance at court proceedings, family ties, long term residence in community and employment history.

Rawls v State – 540 So2d 946 – Habeus granted where Defendant had no prior arrests, lived with his parents and couldn't post bond, and no indication of fleeing jurisdiction. Under the Circumstances the \$20,000 dollar bond was excessive and bond could not be set above \$5,000 on remand.

Crabb v Carson - 189 So.2d 376 – Petition for relief granted in 1966 when 1st DCA determined that \$30,000 bond was excessive even when Defendant had prior criminal record. Bond should be set no higher than \$5,000 under the circumstances. (adjusting for inflation \$5000 is approximately \$48,000 in 2025 dollars per CPI inflation calculator)

<https://www.in2013dollars.com/us/inflation/1966?amount=5000>

IMPROPER USE OF MONETARY BAIL

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.

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) 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, of 14, Fla. Const. If no single condition gives that assurance, then the Court may combine the conditions listed in subsections (A) through (F).

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. 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 5 903.26(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. 5 907.041, 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. *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 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, 672673 (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, the Defendant respectfully requests this Court to enter its Order releasing the Defendant on his/her own recognizance, or in the alternative, reducing the bond in the above-styled case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery or e-service to Assistant State Attorney, Nicole Reed, 120 West University Avenue, Gainesville, Florida, this 20 day February, 2025.

Respectfully submitted,

s/ Matt Landsman _____
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