IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR SEMINOLE COUNTY, FLORIDA

CASE NO. 12-CF-1083-A

STATE OF FLORIDA,

Plaintiff(s).

vs.

GEORGE ZIMMERMAN,

Defendant(s).

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ORDER SETTING BAIL

The Defendant, charged with second-degree murder with a firearm, was granted release on a $150,000 bond on April 20, 2012. Based upon information later discovered, the State filed a Motion to Revoke Bond which was heard on June 1, 2012. After an adversarial evidentiary hearing, the Court revoked the bond pursuant to Fla. R. Crim. P. 3.131(b)(5). On June 25, 2012, the Defendant filed a motion seeking reinstatement of the bond. The State opposed the Defendant's release. The motion was heard on June 29, 2012.

At the hearing, the Court heard testimony and received substantial evidence regarding the Defendant's finances at the time immediately before the April 20, 2012 bond hearing. The Defendant also presented evidence about his good behavior while on electronic monitoring after his release on bond. The Court received substantial evidence regarding the facts of the case itself in an effort to show that the State's case against him is weak. Finally, the Defendant did not offer any explanation of or justification for his deception that was subject to cross examination.

As noted, the Defendant spent a substantial portion of the hearing presenting evidence relating to self-defense in an effort to counter the State's case because, in the initial order, the Court characterized the State's case as "strong." Notably, at the initial bond hearing, this Court had only limited evidence; to that point, the State showed the Defendant had shot and killed Trayvon Martin.[1] There was other evidence presented through the probable cause affidavit and the testimony of Dale Gilbreath, an investigator with the State Attorney's Office, that the Defendant's actions were imminently dangerous to another and that he acted with a depraved mind regardless of human life. The Defendant certainly indicated through cross-examination that he acted in self-defense, but he put forward no evidence of

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[1] This is undisputed. The Defendant apologized on the record for shooting and killing Martin.

such.[2] As a consequence, this Court found as a preliminary matter that the evidence against the Defendant was "strong."

Since the June 29, 2012 hearing addressed whether to reinstate the bond was not an *Arthur* hearing, the presentation of evidence attacking the State's case is of limited relevance at this stage of the proceedings. Nonetheless, the Court reviewed all of the exhibits and considered the witnesses' testimony regarding the Defendant's self-defense theory. The actual questions before the Court at this time are: is the Defendant entitled to bail when he presents false testimony at a prior bond hearing and what recourse there is when the Defendant has shown blatant disregard for the judicial system. The Florida Constitution offers some guidance. Art. I, § 14 states:

> Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident and the presumption is great, every person charged with a crime or a violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no 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, the accused may be detained.

By its plain language, this Court is authorized to detain the Defendant without bail if it is determined that it is necessary to assure the integrity of the judicial process.

Under any definition, the Defendant has flaunted the system. Counsel has attempted to portray the Defendant as being a confused young man who was fearful and experienced a moment of weakness and who may also have acted out of a sense of "betrayal" by the system. Based upon all of the evidence presented, this Court finds the opposite. The Defendant has tried to manipulate the system when he has been presented the opportunity to do so. He is an adult by every legal definition; Trayvon Martin is the only male whose youth is relevant to this case. The Defendant has taken courses in criminal justice with the intention of becoming a police officer, an attorney, a judge, or a magistrate like his father. He has been arrested before, having entered and successfully completed a pre-trial intervention program. He has also obtained an injunction and had an injunction entered against him. The injunction against him has obviously been dissolved at some point for him to have validly obtained a permit to carry the firearm used to shoot Trayvon Martin. He also had the wherewithal to set up a website to collect donations to help defray the costs of his defense. Thus, before this tragic incident, the Defendant had a very sophisticated knowledge of the criminal justice system over and above that of the average, law-abiding citizen.

Moreover, any sense of "betrayal" would be unreasonable. He was cooperative with the Sanford Police Department in that he did give numerous statements upon request. The State notes that his stories changed each retelling, but on the surface he should be deemed to have been cooperative. However, he clearly understood that he was being investigated for committing a homicide and, while he believes that he was justified in his actions, there has been nothing presented which indicates that he was misled into

[2] Argument by counsel is not evidence. *See e.g. Wheeler v. State*, 311 So. 2d 713 (Fla. 4th DCA 1975) (noting that counsel's opening statement is not evidence).

believing that he would not be charged with a crime. Contrary to being betrayed, the Defendant received normal, reasonable treatment and was granted reasonable bail.

Contrary to the image presented by the Defendant not by evidence but only by argument of counsel, it appears to this Court that the Defendant is manipulating the system to his own benefit. The evidence is clear that the Defendant and his wife acted in concert, but primarily at the Defendant's direction, to conceal their cash holdings. They spoke in rudimentary code to conceal the true amount of money they were dealing with. Adam Magill, the Defendant's forensic accounting expert, did not dispel this Court's concern that the Defendant was seeking to hide assets. He admitted that one interpretation of the Defendant's actions was to hide money, but he also stated that it was not a very effective way to do so because all of the bank transactions were traceable. The Defendant also neglected to disclose that he had a valid second passport in his safe deposit box. Notably, together with the passport, the money only had to be hidden for a short time for him to leave the country if the Defendant made a quick decision to flee.[3] It is entirely reasonable for this Court to find that, but for the requirement that he be placed on electronic monitoring, the Defendant and his wife would have fled the United States with at least $130,000 of other people's money. The fact that they have spent the money "responsibly" (i.e. without going out to expensive dinners or splurging on nonessentials) is of no consequence in this analysis. The Defendant didn't present any witness to affirmatively state that the Defendant has not received funds from any other source.

His lack of candor was not limited to representations made to the Court. The Defendant is represented by Mark O'Mara, a very well-respected criminal defense attorney in the Central Florida area. At the initial bond hearing, Mr. O'Mara indicated that he would be representing the Defendant without taking a fee. Attorney O'Mara also indicated that he would be filing an affidavit of indigency for costs. The Defendant did not correct his attorney's representations to the court on these issues. The failure to correct these representations meant that for a considerable period of time the Defendant misled his attorney as to his ability to pay counsel. No member of the Defendant's family who had knowledge of the Defendant hiding funds alerted the court.

While not exactly the same, this Court finds that deceiving the Court at a bond hearing is akin to violating a bond condition. There is little authority establishing what "assure the integrity of the judicial process," as set forth in Art. I, § 14 of the Florida Constitution, actually means in operation. *Williams v. Spears*, 814 So. 2d 1167 (Fla. 3d DCA 2002) appears to offer some guidance. There, the Third District Court of Appeal noted that, "[t]he integrity of the judicial process is undercut if the courts do not have effective tools to use where a defendant free on bail commits a new crime." *Id.* at 1170. The Court quoted with approval the Supreme Court of Rhode Island, which stated that "we do not think our

[3] It appears that the Defendant also requests that this Court assume that there are no undisclosed sources of income or money with which the Defendant could abscond if released again.

Constitution must be read as providing a continuing, renewable right to bail on the same charge where a bail condition has been breached. The State need not keep freeing the defendant while upping the ante." *Id.* at 1171 (quoting *Mello v. Superior Court*, 370 A.2d 1262, 1264 (1977)). Moreover, the Court distinguished the concept of preventive detention to protect the public from revocation of bail for violating a condition of that bail by stating "[t]he authority of the court to revoke bail in certain situations ought not to be construed as authority to exercise preventive detention. The former is a sanction for past acts, the latter a prophylactic for the future. We are concerned with the former." *Williams*, 814 So. 2d at 1171 (quoting *Mello*, 370 A.2d at 1265). Thus, the Third District indicated that a violation of a bond condition could justify continued detention.

However, *Williams* specifically addressed the constitutionality of Fla. Stat. §907.0471. Fla. Stat. §907.0471, which became effective in 2000, reads

> Notwithstanding §907.041, a court may, on its own motion, revoke pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new crime while on pretrial release.

Although the above language seems to apply to the violation of general bond conditions, this Court is not presented with an allegation that the Defendant committed a new crime while on pretrial release, so Fla. Stat. §907.0471 does not apply.[4]

This Court must therefore rely on the holding in *State v. Paul*, 783 So. 2d 1042 (Fla. 2001). In *Paul*, the court resolved a conflict between the Third and Fourth District Courts of Appeal regarding the consequences of violating the conditions of release. The Third District had determined that a court had the inherent authority to hold a defendant in pretrial detention, whereas the Fourth District ruled that the violation of a bond condition, without more, would not justify permanent revocation of the bond if the defendant is constitutionally entitled to a bond. The Court would still be required to conduct an analysis under Fla. Stat. §907.041 to determine whether a defendant is entitled to be re-released on a new bond.

The Florida Supreme Court sided with the Fourth District. It held that "although the breach of a bond condition provides the basis for revocation of the original bond, the trial court's discretion to deny a subsequent application for a new bond is limited by the terms of [Fla. Stat. §907.041]." *Id.* at 1051. The Court was "influenced by [its] concern that adopting the Third District's view would leave the judiciary, the State, and defendants without ascertainable criteria, precise standards, and procedural protections presently existing in the comprehensive statutory scheme and rules, and thus potentially run afoul of a defendant's constitutional rights." *Id.* This Court disagrees with that legal conclusion; there are very ascertainable criteria, namely the specified bond conditions, and willful violation of these conditions would subject a defendant to continued detention or release on new bond conditions at the trial court's discretion. Appellate courts routinely review trial court decisions under an abuse of discretion standard,

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[4] There is probable cause to believe that the Defendant committed a violation of Fla. Stat. §903.035(1), a third-degree felony, but that crime was not committed while the Defendant was on pretrial release.

and this Court has confidence that they would be able to continue to competently do so under circumstances like those presented in the instant case. However, this Court recognizes that "it is free to disagree and to express its disagreement with an appellate court ruling, [but] it is duty-bound to follow it." *State v. Washington*, ___ So. 3d ___, 37 Fla. L. Weekly D1535a, *2 (Fla. 3d DCA June 27, 2012).

This Court's discretion is, therefore, limited by *Paul*. According to *Paul*,

> the trial court was not without recourse to address a defendant's willful violation of bond conditions. For example, upon a violation of bond, the trial court had authority pursuant to Florida Rule of Criminal Procedure 3.131(g) to direct the arrest and commitment of a defendant. If recommitment is ordered, nothing in either the 1997 statute or the rules prevented the court from setting harsher conditions of pretrial release for defendants who seek readmission to bail. Similarly, the court could increase the amount of the bond or prevent further release of the defendant on pretrial recognizance pursuant to rule 3.131(c)(1)-(2). Further, a defendant previously released on bail could become subject to pretrial detention if the trial court found that the defendant qualifies for pretrial detention based upon the statutory criteria. In addition, the State could have attempted to establish that the defendant meets the criteria for pretrial detention for the newly charged offense. Finally, if the concern was that a defendant's conduct evinced disregard of the court's authority, a defendant's conduct for violation of the court's order could be addressed as an indirect or direct criminal contempt of court as long as the protections afforded a defendant for criminal contempt are followed.

Paul, 783 So. 2d at 1052. This Court has, thus far, declined to exercise its contempt powers and the State failed to prove that the Defendant may be held without bond. Further action by this Court, therefore, is limited to his already-effected arrest, the subsequent release on new bond conditions and the possibility of future contempt proceedings.

This Court must, then, determine the appropriate bond amount based upon the criteria set forth in Fla. Stat. §943.046(2). Those are as follows:

(a) <u>The nature and circumstances of the offense charged</u>: The Defendant is charged with second-degree murder with a firearm of an unarmed 17 year old juvenile. If convicted as charged, the Defendant faces the possibility of life in prison with a minimum mandatory term of 25 years to life;

(b) <u>The weight of the evidence against the Defendant</u>: That the Defendant shot and killed the victim is virtually undisputed. The only issue is the viability of the Defendant's self-defense/Stand Your Ground claim;

(c) <u>The Defendant's family ties, length of residence in the community, employment history, financial resources and mental condition</u>: The Defendant has lived in Central Florida for approximately eight years. Since this case has been pending, the Defendant, when free on bail, lived outside the county in a confidential location. He has held several jobs for short periods of time and was attending Seminole State College. However, he no longer works or goes to school in Seminole County. Moreover, none of his family members currently reside in Seminole County. He does not own property in Seminole County. As noted above, he

does have conditional access to substantial sums of money. At the bond hearing of April 20, 2012, the Court gave great weight to the evidence presented with respect to the Defendant's family ties in determining an appropriate bond amount. At this time, the Court gives little weight to Defendant's family ties as assurance that the Defendant will appear for subsequent proceedings. A family member, Shellie Zimmerman, the Defendant's wife, provided the Court direct false testimony concerning funds available to the Defendant. Additional family members had personal knowledge and were directly involved in the transfer of funds, which ultimately resulted in the funds being converted to cash or "parked" in a nominee's account. Family members were either ignorant of the false testimony that was nationally televised or became knowledgeable of the false testimony and did not report the fraud to the Court. At the most recent bond hearing, neither the Defendant nor any family member provided sworn testimony or a sworn explanation to negate the Court's impression that the movement of funds and the false testimony was to aid and assist the Defendant in fleeing the jurisdiction of the Court. There has been no evidence relating to the Defendant's mental condition;

(d) <u>The Defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings</u>: Other than the case which was dismissed after completion of pre-trial intervention program, there is no record of convictions or failure to appear. The Court must additionally consider the Defendant's participation in the presentation of false testimony at the initial bond hearing. The Defendant chose as a matter of strategy, after consultation with his attorney, to not personally take the stand and testify under oath to give an explanation concerning the presentation of false testimony. The Defendant requested special treatment to carve out an exception as to when a Defendant is allowed to exercise the right of allocution. The Defendant, through counsel, requested the right to make a statement but not be subject to cross examination. The Court denied the Defendant's request and the Defendant chose not to testify rather than be subject to cross examination. Defense counsel chose not to present any testimony as to matters associated with why the financial transactions were structured as they were. Instead, defense counsel argued for the Court's consideration that the Defendant's youth as a 28 year old man and his fear/confusion were the explanation for the Defendant's participation in the presentation of false testimony. The Court has considered the defense argument. The Court still has yet to hear any sworn testimony as to the circumstances associated with the fraud upon the Court. The forensic accountant was merely a recapitulation not an explanation. Although there is no record of flight to avoid prosecution, this Court finds that circumstances indicate that the Defendant was preparing to flee to avoid prosecution, but such plans were thwarted;

(e) <u>The nature and probability of danger which the Defendant's release poses to the community</u>: This Court does not fear that the Defendant would pose a threat to others in the community if released. Furthermore, there is some concern that his release on bond will provoke anger within the community, but all demonstrations to this point have been non-violent and peaceful. Therefore, this factor carries little weight;

(f) <u>The source of funds used to post bail or procure an appearance bond</u>: Although the language following this clause in the statute indicates that the purpose of this criterion is to ensure that the funds are legally obtained, this Court finds that it is relevant to this case. There is no evidence that the money is ill-gotten or has been squandered. However, the money that is available to post bond was obtained through online donations. As such, it can be deemed almost as "found money." It is not money which the Defendant has earned through his hard work and savings, so forfeiting it for failing to appear would not impact the Defendant's life in the same manner as a similarly-situated defendant who puts his house up as collateral to obtain a surety bond;

(g) <u>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</u>: This does not apply to the Defendant;

(h) <u>The street value of any drug</u>: This does not apply to the Defendant;

(i) <u>The nature and probability of intimidation and danger to the victims</u>: This Court finds no evidence that the Defendant will pose any threat of intimidation or danger to the victim's family or other witnesses;

(j) <u>Whether there is probable cause to believe that the Defendant committed a new crime while on pretrial release</u>: This is a matter of interpretation. There is certainly probable cause to believe that the Defendant violated Fla. Stat. §903.035(3), which would be a third-degree felony, or committed contempt of court by providing such false statements. However, he has not been charged with either of those offenses and they did not technically occur while on pretrial release. Therefore, this Court finds these facts relevant to the question of the suitability of bond, but cannot treat these potential offenses, standing alone, as a basis to hold order pretrial detention as authorized in Fla. Stat. §903.0471;

(k) <u>Any other facts that the Court finds relevant</u>: The Court must set bail that the Defendant can afford to pay, for setting an excessive bail is the functional equivalent of setting no bail at all. *Best v. State*, 28 So. 3d 134, 135 (Fla. 5th DCA 2010). The evidence before the Court is that the Defendant received donations of almost $200,000 and on April 20, 2012, he had approximately $130,000 available to him.

At the bond hearing on April 20, 2012, the State requested that bond be denied, or in the alternative, that it be set at $1,000,000. Had the State known of the Defendant's financial resources, this Court suspects that the State might have requested a higher monetary amount. It is also likely that this Court would have set the higher bail, as the $150,000 was set to ensure the Defendant could meet his bail obligation. *See id.* Based upon the changed circumstances, this Court finds that the bail should be set at $1,000,000. The Defendant has the ability to post such bail. The increased bail is not a punishment; it is meant to allay this Court's concern that the Defendant intended to flee the jurisdiction and a lesser amount would not ensure his presence in court.

ORDERED AND ADJUDGED:

1. The Defendant's bail shall be set at $1,000,000 with the following conditions:
   a. The Defendant shall refrain from criminal activity of any kind;
   b. The Defendant shall not have any contact with the victim's family, directly or indirectly, except as necessary to conduct pretrial discovery through his attorneys;
   c. The Defendant shall be subject to electronic monitoring at his own expense;
   d. The Defendant shall not leave Seminole County without prior authorization by this Court;
   e. The Defendant shall check in with the Pre-trial Release Department every 48 hours;
   f. The Defendant shall not enter the property of the Orlando-Sanford International Airport;
   g. The Defendant shall not open or maintain a bank account;
   h. The Defendant shall not consume any alcohol;
   i. The Defendant shall obey a curfew between 6:00 p.m. and 6:00 a.m.
   j. The Defendant shall not apply for or obtain a passport.

DONE AND ORDERED in chambers at Sanford, Seminole County, Florida this 5th day of July, 2012.

KENNETH R. LESTER, JR., Circuit Judge