

IN THE SUPERIOR COURT OF GLYNN COUNTY

Ronald M Adams
CLERK SUPERIOR COURT

STATE OF GEORGIA

STATE OF GEORGIA

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CR-2000433

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V.

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Judge Walmsley

GREG MCMICHAEL and

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TRAVIS MCMICHAEL

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STATE'S RESPONSE TO DEFENDANTS' MOTIONS
FOR BOND

COMES NOW THE STATE OF GEORGIA, by and through the undersigned Deputy Chief Assistant District Attorney, and moves this Court to deny Defendants' Motions for Bond, and shows as follows:

1. Background and Timeline

On February 23, 2020, Defendants knowingly armed themselves with firearms and then initiated and participated in a chase of victim Ahmaud Arbery through a public neighborhood on public streets using Travis McMichael's pickup truck. Defendant Travis McMichael, armed with a 12 gauge shotgun, shot victim Ahmaud Arbery three times with said firearm in the middle of a neighborhood street. Ahmaud Arbery was unarmed and had been jogging at the time. Defendant William Bryan participated in this chase and video recorded portions of this chase and shooting.

On February 23, 2020, the District Attorney for the Brunswick Judicial Circuit, Ms. Jackie Johnson, apparently indicated an intention to recuse herself and her office from the investigation into the death of Ahmaud Arbery, though letters to

that effect were not submitted to the Attorney General's Office until February 26th & 27th. On February 23, Ms. Johnson also contacted Mr. George Barnhill, District Attorney of the Waycross Judicial Circuit, who initially agreed to accept the case. Mr. Barnhill met with Glynn County police investigators on February 24, 2020. The Attorney General's office thereafter appointed Mr. Barnhill and his office to prosecute the matter of the death of Ahmaud Arbery. On April 7, 2020, the Attorney General received correspondence from Mr. Barnhill giving notice of his recusal from the case and requesting the appointment of another prosecutor. On April 13, 2020 the Attorney General appointed Mr. Tom Durden, District Attorney of the Atlantic Judicial Circuit to this case.

On April 29, 2020, the Georgia Bureau of Investigation began investigating threats being made against Glynn County police officers investigating this case. On May 5, 2020, Mr. Durden issued a press release stating that the matter of the death of Ahmaud Arbery should be presented to the Glynn County Grand Jury. That same day the Georgia Bureau of Investigation was formally asked to investigate the matter of the death of Ahmaud Arbery. Co-defendants Travis McMichael and Gregory McMichael were then arrested by the Georgia Bureau of Investigation on Thursday, May 7, 2020.

On Monday May 11, 2020 Mr. Durden recused his office from the matter under O.C.G.A. § 15-18-5(a). Defendant Bryan was then arrested by the Georgia Bureau of Investigation on May 21, 2020. Defendant Bryan then filed a motion for bond on or about May 21, 2020. The matter had been initially scheduled to be heard before this court on June 26, 2020. Thereafter, the State and Defendant agreed to postpone the bond hearing in this matter.

Defendants were indicted on June 24, 2020 and charged with one count of Malice Murder, four counts of Felony Murder, two counts of Aggravated Assault,

one count of False Imprisonment and one count of Criminal Attempt to Commit A Felony for the February 23, 2020 killing of Ahmaud Arbery.

Defendant Bryan filed an amended motion for bond on June 24, 2020. His motions for bond have since been denied by this Court after a hearing on the matter.

Defendant Travis McMichael and Greg McMichael each filed motions for bond on August 6, 2020. Defendants Travis McMichael and Greg McMichael jointly filed a Supplement to Motion for Bond on September 1, 2020.

2. Defendant is Not Entitled to a Bond as a Matter of Right

A criminal defendant is not entitled to a bond as a matter of right on felony offenses where the accused has been incarcerated under 90 days. Constantino v. Warren, 285 Ga. 851 (2009); Myers v. St. Lawrence, 289 Ga. 240 (2011). Pursuant to O.C.G.A. § 17-7-50, Defendant normally would be entitled to a bond if he were not indicted within 90 days of arrest. Rawls v. Hunter, 267 Ga. 109 (1996). However, even in such a case, Defendant would only be entitled to a bond on charges included in the original arrest warrant after 90 days have passed without indictment, but not necessarily on charges added by the Grand Jury. Bryant v. Vowell, 282 Ga. 437 (2007) (rev'd on habeas corpus procedural grounds only); Richardson v. St. Lawrence, 289 Ga. 149 (2011) (citing *Bryant*).

Here, Defendants were indicted within 90 days of their arrest for felony murder and aggravated assault, the charges contemplated in their original arrest warrants. Moreover, the Grand Jury also indicted Defendants individually and as parties to the crime for additional charges including malice murder, false imprisonment and other charges. Consequently, based on the timeliness of indictment and the additional charges in the indictment beyond those included in their initial arrest warrants, Defendants are not entitled to a bond as a matter of right.

3. This Court Should Exercise its Sound Discretion to Deny Defendants Request for Bond

As to a discretionary bond, the initial burden of proof is on Defendant. Dunn v. Edwards, 275 Ga. 458 (2002). Factors to be considered by the Court regarding bond include, but are not limited to, roots in community, length of residence in community, employment status and history, history of responding to legal process, and criminal history. Additionally, while the State admittedly bears the burden of persuasion, Defendant must also produce evidence as to *each* of the four *Ayala* factors. Constantino v. Warren, 285 Ga. 851 (2009); Myers v. St. Lawrence, 289 Ga. 240 (2011). Per *Ayala*, and as codified in O.C.G.A. § 17-16-1, a court shall be *authorized* to release a person on bail only if the court finds that the person: a) poses no significant risk of flight, b) poses no significant danger to persons, community, or property, c) poses no significant risk of committing new felony, and d) poses no significant risk of intimidating witnesses or obstructing justice.

Based on this legal standard, the Court should exercise its sound discretion to deny bond at this time. Defendants have been charged with the most serious offense in the State of Georgia (murder) and they presently face a potential sentence of life without the possibility of parole plus additional potential consecutive time. Moreover, the State filed an Aggravation Notice informing Defendants and the Court that, if convicted after a trial, the State would be recommending a sentence of life without the possibility of parole. Moreover, Defendants also remain under investigation for other crimes. Defendants are simply not good candidates for bond.

4. Conclusion

WHEREFORE, the State moves this Court to deny Defendants' Motions for Bond. Per this Court's October 8, 2020 notice of hearing regarding Defendants' motions for bond, a separate evidence exhibits list and list of potential witnesses is also being furnished to the Court and Defendants but not the Clerk's Office.

This the 5th day of November 2020.

/S/ Jesse Evans

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served opposing counsel with a true and correct copy of the above STATE'S RESPONSE TO DEFENDANT'S MOTION FOR BOND via the Odyssey E-Filing System to:

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Mr. Jason B Sheffield
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Mrs. Laura Hogue
Mr. Frank Hogue
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This the 5TH day of November, 2020.

/S/ Jesse Evans

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