

Randall M Adams
CLERK SUPERIOR COURT

IN THE SUPERIOR COURT OF GLYNN COUNTY

STATE OF GEORGIA

STATE OF GEORGIA *
* CR-2000433
V. *
* Judge Walmsley
GREG MCMICHAEL and *
* TRAVIS MCMICHAEL *

STATE'S RESPONSE TO "DEFENDANTS' OBJECTION TO EXHIBIT 4 ON STATE'S EVIDENCE EXHIBITS LIST FOR BOND HEARING"

COMES NOW THE STATE OF GEORGIA, by and through the undersigned Deputy Chief Assistant District Attorney, and responds to Defendants' objection 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 in broad daylight. Ahmaud Arbery was unarmed and had been jogging at the time. Defendant William Bryan 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 agreed to accept the case. Mr. Barnhill met with Glynn County police investigators the next day, 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. A bond hearing was held on July 17, 2020 and bond was denied in an order dated July 21, 2020.

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. The State is in Compliance with this Court’s “Notice of Hearing”

In this Court’s Notice of Hearing from October 8, 2020, this Court ordered that each party shall deliver:

“1) [t]he names of all Witnesses you will or may call to testify at the hearing and 2) A list of all Exhibits expected to be used at the hearing. Each party shall provide to and opposing party a list of all Exhibits by exhibit number and provide a copy of all documentary and physical evidence that you may offer at the hearing, unless the item has already been formally produced.”

The State filed its response and emailed a copy of our “Evidence & Witness List” on November 5, 2020. Though all the listed items had already been formally produced to Defendants as part of reciprocal discovery with the exception of State’s 4, the State also listed the exhibits by exhibit number and reproduced the items on flash drives sent via overnight shipping, a courtesy copy of which was also shipped to the Court, including a copy of State’s 4. Thus, the State is in compliance with this Court’s above directive.

Nonetheless, Defendants now object to Exhibit 4 (Preliminary Hearing / Probable Cause Transcript) on the basis that “merely referring to a 274-page preliminary hearing transcript, is ‘not a sufficient response.’” However, a closer

reading of Defendants' objection reveals that the Defendants' objection to the State's use of Exhibit 4 is actually based on the fact that the State has not specifically identified its *argument* about the import of certain facts contained therein. The State reads nothing in this Court's order to require the same. Therefore, Defendants' specificity objection should be overruled.

3. Defendants are Not Entitled to a Bond as a Matter of Right

As noted in the State's Response to Defendants' Motions for Bond, 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.

4. “Exhibit 4” - This Court Should Exercise its Sound Discretion to Deny Defendants’ Objection & 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. 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. In fact, 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 remain under investigation for other crimes.

Additionally, though not required by this Court’s order, the State *specifically* points out here that certain facts presented at the preliminary hearing, the subject of

State's 4, reveal Defendants' 1) significant risk of flight, 2) significant danger to persons community, and property, 3) significant risk of committing a new felony, and 4) significant risk of intimidation and obstruction of justice. They include, but are not limited to the following:

- The fact that Defendants were the primary aggressors in this case,
- The fact that Defendant Travis McMichael made a threatening Facebook post regarding thefts in the Satilla Shores neighborhood,
- The fact that on February 23, upon Defendant Greg McMichael seeing Ahmaud Arbery, Defendants chose to arm themselves with firearms,
- The fact that neither Defendant had witnessed Arbery commit any crimes,
- The fact that Defendants used a pickup truck as a weapon to pursue, assault, and trap victim Arbery while on a public street,
- The fact that Defendants chased Arbery, an unarmed jogger, through public streets in broad daylight,
- The fact that neither Defendant initially called 911,
- The fact that Defendants, in concert with Defendant William Bryan, "trapped" Arbery in their Satilla Shores neighborhood,
- The fact that just prior to the fatal shooting of Arbery, Defendant Greg McMichael finally called 911,
- The fact that Arbery repeatedly tried to flee from his assailants, the Defendants,
- The fact that Defendant Travis McMichael raised and pointed a loaded shotgun at Arbery after blocking Arbery in the street with his pickup truck,

- The fact that this act preceded any physical altercation between Arbery and Defendant Travis McMichael,
- The fact that Defendant Travis McMichael thereafter nonetheless shot Arbery, who was unarmed, three (3) times with a 12-gauge shotgun,
- The fact that upon Glynn County Police Officers' (GCPD) arrival on scene, Defendant Greg McMichael almost immediately identified himself as retired law enforcement who possessed a GCPD revolver, and thereafter repeated as much several times,
- The fact that Defendant Greg McMichael called / attempted to contact Glynn County District Attorney's Office staff from the crime scene,
- The fact that Defendants managed to evade arrest by Glynn County authorities for months,
- The fact the Defendant Travis McMichael was overheard using a racial slur referring to Arbery immediately following the shooting and prior to GCPD's arrival,
- The fact that the GBI has discovered that Defendant Travis McMichael has repeatedly used additional racial slurs in the past, and
- The fact that Defendant Bryan and Defendants McMichaels "didn't really know each other" yet Defendant Greg McMichael refers to Defendant Bryan as an "ally" on a recorder jail call after his arrest.

Of note, Defendants, represented by counsel, were parties to the proceeding that is memorialized in State's 4. Therefore, both the State and Defense are aware, with great specificity, of what facts were elicited publicly at the preliminary hearing and are memorialized in State's 4. While it may very well be that the legal standard governing the existence of probable cause for the issuance of arrest warrants and the

legal standard governing matters of bond differ, facts elicited during a preliminary hearing may nonetheless also be instructive to the Court as it considers: 1) risk of flight, 2) danger to persons community, and property, 3) risk of committing a new felony, and 4) risk of intimidation or obstruction of justice in a motion for bond. Perhaps that is why motions for bond are often regularly heard concurrently with preliminary hearings. Regardless, State's exhibit 4, viewed apart and in conjunction with other evidence shows that Defendants are simply not good candidates for bond.

5. Conclusion

WHEREFORE, the State moves this Court to deny Defendants' objection to State's exhibit 4 and also deny Defendants' Motions for Bond.

This the 10th day of November 2020.

/S/ Jesse Evans

JESSE EVANS

Deputy Chief Assistant District Attorney

State Bar # 252342

Office of the District Attorney, Cobb Judicial Circuit

70 Haynes Street

Marietta, GA 30090

Tel. (770) 528-3080

jesse.evans@CobbCounty.org

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 DEFENDANTS' OBJECTION by emailing a copy of the same via the Odyssey E-Filing System to:

Mr. Robert G. Rubin
Peters Rubin Sheffield & Hodges, PA
2786 North Decatur Road Suite 245
Decatur, GA 30033
robertrubin@justiceingeorgia.com
jasonsheffieldattorney@gmail.com
(404) 296-5300

Laura and Frank Hogue
Hogue & Hogue LLP
341 Third Street
PO Box 1795
Macon, GA 31202-1795
(478) 750-8040
laura@hogueandhogue.com
frank@hogueandhogue.com

This the 10th day of November, 2020.

/S/ Jesse Evans

JESSE EVANS

Deputy Chief Assistant District Attorney

State Bar # 252342

Office of the District Attorney, Cobb Judicial Circuit

70 Haynes Street

Marietta, GA 30090

Tel. (770) 528-3080

jesse.evans@CobbCounty.org