



IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

DISTRICT COURT
FILED

SEP 24 2020

STATE OF OKLAHOMA)
)
 Plaintiff,)
 vs.)
)
 OMAR EMRAN BAABBAD,)
)
 Defendant.)

DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY

Case No. CF-2020-2966

MOTION TO REVOKE BOND AND ISSUE WARRANT FOR CAUSE

COMES NOW the State of Oklahoma by and through its duly elected and acting District Attorney, Steve Kunzweiler, through Assistant District Attorney Mark Hamilton, and respectfully asks this Court to hold Defendant without bond and issue a warrant for cause if Defendant should make the current bond before this Motion is ruled upon, or in the alternative set bond sufficiently high so as to give a foreign nation cause to cooperate in assuring a Defendant bailed out by that Nation is present for court.

STATEMENT OF PERTINENT FACTS AND PROCEDURAL HISTORY

Defendant Omar Emran Ba-abbad used a 2017 Toyota Camry to run over and kill Jeremy Shadrick on June 26, 2020. He was booked into custody for this offence on June 26, 2020. A bond hearing was held on June 27, 2020 under a no-file case number NF-2020-4813. Judge David Guten set a \$500,000 bond at that time.

On July 2, 2020 the State filed an information charging Defendant with Murder in the first degree. This matter was then set for Preliminary Hearing on August 12, 2020 and passed for a second Preliminary Hearing date of September 23, 2020, for the completion of the Medical Examiners Report. In-between those hearing dates, on September 21, the Defendant's bond was revoked and a bond hearing was set for September 23.

On September 23 the Preliminary Hearing was held before Judge April Seibert and Defendant was bound over to Judge Cliff Smith's DCA docket on September 28, 2020. Before binding over Defendant, Judge Seibert reinstated Defendant's original bond of \$500,000 and also included conditions of his release of a GPS tracker and surrendering both his United States and Saudi Arabia passports. Defense attorney Thomas Alder also communicated on September 23 that Defendant has dual citizenship with Saudi Arabia, and significant ties to the foreign country, as one of his parents resides there.

The State now moves the Court to Revoke Bond and Issue a Warrant for Cause in the event Defendant should make bond before this Motion is ruled upon, based upon information provided by law enforcement.

Lieutenant Chase Calhoun has informed the State that he is aware Saudi Arabia has personnel and a system in place to assist its citizens who are in custody in the United States and face serious criminal offenses. He further informs the State this system exists to effectuate the return of the criminal Defendants to Saudi Arabia and then refuses to extradite them to stand trial. He also states that Saudi Arabia bails Defendants out prior to their preliminary hearing whenever possible, (as was attempted in this case) before their passports are taken, and to harbor them once they enter Saudi Arabia. Furthermore, when their passports are taken prior to being released from custody, there is also a system in place to assist Defendants in reaching Canada, where they are then assisted in flying to Saudi Arabia, and extradition is refused.

Thomas Alder has stated in Court that Defendant is a citizen of Saudi Arabia and possesses multiple passports. He has also stated that the foreign nation of Saudi Arabia is actively trying post bond for Defendant. Counsel also commented on Defendant's modest means of income as an Uber Driver, in comparison to the original bond of \$500,000. The only connection the State is aware of

to Tulsa County is one relative and a job which Defendant is surely unable to perform at this time.

Defendant's strong connection to Saudi Arabia is evident by the fact a foreign nation is willing to post bond on Defendant's behalf. This Court has no power to compel Defendant's attendance or to make him stand trial for his crime should he enter Saudi Arabia, which Lieutenant Calhoun informs the State this has happened in similar circumstances after Saudi Arabia has posted bond for other Defendants.

LEGAL AUTHORITY

At this time, the State respectfully requests that the Court revoke Defendant's bond, and in the event he should make bond before this Motion is ruled upon, to issue an *ex parte* Order recommitting Defendant or issuance of a new warrant for cause, in order to hold Defendant without bond until a hearing on bond is held. Guidelines for setting the amount of bail are set forth in *Brill v. Gurich*, 965 P.2d 404 (Okla. Crim. App. 1998). In criminal cases, the accused shall be permitted bail, generally. OK. Art. 2, § 8, 22 O.S. § 1101. In cases in which proof is offered to the court that an individual already on bail is about to abscond, has left the state, or bail is otherwise insufficient, "the judge or magistrate shall require such person to give better security, or for default thereof cause him to be committed[,]" and a new warrant may be issued. 22 O.S. § 1109.

In setting bail, the Court should consider a variety of pertinent factors, including: seriousness of the crime charged, likelihood of conviction, and potential punishment; prior criminal record and history on bail; reputation and mental condition; the defendant's ties to the community; the defendant's familial ties and relationships; the defendant's employment status and record, and financial condition; responsible members of the community to vouch for his reliability; and any other information regarding his life and community ties or that could influence the

likelihood of failing to appear. *Brill*, 965 P.2d at 406. The Court has the discretion to review or revoke bond, even after the initial setting of bond. *Id.* at 409.

While the Court of Criminal Appeals in *Petition of Humphrey*, 601 P.2d 103 (1979), previously rejected the notion of implied public safety exceptions revoking bail, except in capital offenses cases, that decision was prior to the expansion of the Constitution and pertinent statute. In 1988 the bail provisions of the Oklahoma Constitution were amended. Article 2, Section 8 of the Oklahoma Constitution, which previously allowed for the denial of bail only in capital cases, was greatly expanded:

Article 2, Section 8, as amended, directs that in addition to capital offenses, bail may be denied for violent offenses, offenses where the maximum sentence may be life imprisonment or life without parole, felony offenses where the person charged with the offense has been convicted of two or more felony offenses arising out of different transactions; and controlled dangerous substances offenses where the maximum sentence may be at least ten (10) years imprisonment. However, as to the non-capital offenses, bail can be denied ONLY when the proof of guilt is evident, or the presumption great, *and* it must be on the grounds that no condition of release would assure the safety of the community or any person.

Brill, 1998 OK CR 49, ¶ 11, 965 P.2d at 407.

Moreover, in 2006 the Legislature adopted these the circumstances in which a defendant could be held without bond on the basis of public safety.⁸ Specifically, in 22 O.S. § 1101, which previously allowed for denial of bail in capital cases, the Legislature expanded it to include denial of bail for certain non-capital offenses when the safety of people and the community could not be assured with conditions of release. Title 22, Section 1101 now allows the court to deny and revoke bond in the following scenarios: capital cases when guilt is evident, or presumption of guilt is great; violent offenses; offenses with a sentence up to life or life without parole; felony offenses when the defendant has been convicted of two (2) or more felony offenses from different

⁸ See Criminal Procedure—Bailable Offenses—Crime Victim and Witness Notification and Victim Protective Order System, 2006 Okla. Sess. Law Serv. Ch. 130 (S.B. 1037).

occurrences; and drug offenses when the maximum is at least ten (10) years. Ok. Const. Art. 2, § 8; 22 O.S. § 1101(C). In such cases, guilt or the presumption thereof must be evident, and denial of bail “must be on the grounds that no condition of release would assure the safety of *the community or any person.*” Ok. Const. Art. 2, § 8; 22 O.S. § 1101.

While *In re Humphrey* denied the use of public safety as viable provision to allow an *ex parte* warrant, the Court’s ruling was based on the fact neither the Oklahoma Constitution nor Statutes allowed for a public safety exception for anything other than capital offenses at the time. Since then, the statutory revision and the Constitutional authority now allow for a public safety exception as a basis for denial of bond in numerous scenarios.

ARGUMENT

The State makes the request based on the Defendant’s citizenship in a nation which is known to refuse extradition of criminal defendants, the fact Defendant faces a minimum sentence of life in prison if convicted as charged and a maximum of life in prison if convicted under any foreseeable lesser included offence, the chance of conviction is great because his own admissions place him as the actor of the alleged events, and the events are videotaped and show they occurred in accord with the State’s theory of the case and negate any theory of self-defense, the seriousness of the charges against Defendant, his mental condition and relevant history, and the safety of Defendant and the community. 22 O.S. § 701.9, 715.

The Court has the authority to revoke bond and to hold Defendant without bond. As previously noted, Defendant is currently charged with a crime that carries a minimum of life in prison, and any conceivable lesser included offence carries a maximum of life in prison. Thus the court can hold Defendant without bond under 22 O.S. § 1101. The presumption of guilt is great

that Defendant committed Murder in the first degree or some lesser included offence which would qualify under section 1101. The offence is videotaped, the defendant was read his Miranda Rights and confessed to being the actor who committed the acts leading to this case, and the video negates any claim Defendant may make of acting in self-defense.

Furthermore, there is no condition of bond that can ensure Defendant's attendance at trial. GPS monitors are commonly removed by Defendants. The concern is not that Defendant will visit and cause harm to some person or location, but that he will have the assistance of a foreign nation in leaving the United States and entering Saudi Arabia where he can avoid prosecution indefinitely. While there may be reasonable effort that can be made to attempt to prevent Defendant from boarding an Airplane in Tulsa County, there is no reasonable way to prevent an individual who faces life in prison from successfully finding some route to Canada when that individual has the assistance of a foreign nation.

Similarly, holding Defendant's passports from him is not a sufficient guarantee that a Defendant who has a foreign nation actively reaching out to release him from custody will not be able to find an access point for Defendant to cross along the 5,525 mile border between the United States and Canada.

If the Court should find that some amount of bond would be sufficient to ensure Defendant's attendance, it should be an amount of bond sufficient to affect a nation with a Gross Domestic Product of 792 Billion U.S. dollars in 2019 in ensuring Defendants attendance. <https://data.worldbank.org/country/SA>. A bond of \$500,000 which was set to motivate a private citizen employed as an Uber driver, is far too low to compel the 18th largest economy in the world to compel the attendance of Defendant. <https://databank.worldbank.org/data/download/GDP.pdf>

CONCLUSION

For the above made arguments, the State requests the Court to hold Defendant without bond, or in the alternative to set bond in an amount high enough that the prospective loss of such an amount of money would influence the nation of Saudi Arabia to compel the attendance of Defendant at his trial.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing was delivered to Thomas Adler, Attorney of Record for Defendant on the date of filing.



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