

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, CRIMINAL DIVISION
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 2009CF009771AMB
DIVISION "W"

STATE OF FLORIDA

vs.

DALIA A DIPPOLITO,

Defendant.

STATE'S RESPONSE TO DEFENDANT'S MOTION FOR POST-TRIAL RELEASE
AND APPELLATE BOND

COMES NOW the State of Florida by and through the undersigned Assistant State Attorney, and respectfully requests this Honorable Court to deny the Defendant's request for Post-Trial Release and states:

1. The Defendant was found guilty of Solicitation to Commit First Degree Murder, for the second time, on June 16, 2017. The Defendant was previously convicted on May 13, 2011.
2. Some of the factors the court should consider in addressing the Defendant's appellate bond are: 1. the habits of the defendant as to her respect for the law, 2. her local ties, business, or investments, 3. the severity of the sentence, and 4. any other question of the defendant being tempted to flee the jurisdiction. Younghans v. State, 90 So.2d 308, 310 (Fla. 1956).
 1. The Defendant has repeatedly behaved contrary to any law abiding citizen.
This Defendant entices and encourages others to commit serious felonies

with her assistance. The evidence presented at trial and motion hearings proved that the Defendant was involved in the following:

- a. Planting cocaine and Xanax on multiple occasions to have an innocent person arrested, convicted, and sentenced to a lengthy prison term.
 - b. Repeatedly making false allegations to law enforcement officers and probation officers about serious felonies with the hope of imprisoning an innocent person.
 - c. Stealing large sums of money, falsely accusing others of stealing the funds, and creating fictitious bank records.
 - d. Researching ways to poison her spouse and carrying out the poisoning.
 - e. Using others to pretend to be a doctor and a lawyer for deception.
 - f. Making multiple false statements under oath.
2. The Defendant has no assets, investments, property, or employment tying her to the community. The Defendant's only ties are a few family members.
 3. The Defendant was sentenced to 16 years in the Department of Corrections. The evidence of her guilt was overwhelming.
 4. Shortly after the verdict, the Defendant can be heard on tape enthusiastically discussing a recent case of how an inmate broke out of a maximum security prison using wire cutters that were delivered to him via drone. A copy of the article is attached as Exhibit 1. A transcript of the jail call is attached as Exhibit 2. A copy of the actual call will be provided as soon as an official copy is received.
3. This case is similar to State v. Goodman, 2010CF005829, where the Honorable Judge Colbath denied the defendant's request for appellate bond after his second retrial conviction. Order Denying Defendant's Motion for Bond Pending Appeal is attached as Exhibit 3. Judge Colbath weighed the Younghans factors and denied the bond based on some of the following:

1. The defendant's 16 year prison sentence.
 2. The defendant was convicted as charged by two different juries. ("substantial factor")
 3. The "second conviction increases the perceived likelihood that a third trial, if granted after appeal, would also result in a conviction."
4. This Defendant has proven to be a greater threat and flight risk. In-house arrest provides little protection when this Defendant can orchestrate the ultimate crime using a telephone and manipulating others to carry out her schemes.

WHEREFORE, the undersigned Assistant State Attorney requests this Honorable Court to Deny the Defendant's request for Post-Trial Release.

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY THAT a true and correct copy of the foregoing Motion has been furnished by E-SERVICE to GREG ROSENFELD ESQ at GREG@ROSENFELDLEGAL.COM, this the 2nd day of August, 2017.

Respectfully submitted,

DAVID ARONBERG
STATE ATTORNEY

/s/

By: CRAIG A. WILLIAMS
Assistant State Attorney
Florida Bar No. 0007323
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Exhibit 1

Escaped inmate may have used wire cutters delivered by drone

The Lowell Sun
Lowell Sun

Updated: 2017-07-08 20:30:27.652771

COLUMBIA, S.C. (AP) -- A South Carolina inmate broke out of a maximum-security prison using wire cutters apparently flown in by drone, officials said Friday, describing a new and devilishly hard-to-stop means of escape.

Convicted kidnapper Jimmy Causey, 46, was recaptured at a Texas motel before daybreak, more than two days after bolting to freedom in a plot worthy of a Hollywood script. It was the second time in 12 years that he escaped.

This time, he used a smuggled-in cellphone to coordinate the delivery of the breakout tools, investigators said. Then, with dusk approaching on the Fourth of July, he cut through four fences and left a dummy in his bed that fooled his guards. He got an 18-hour head start.

When he was caught, he had about \$47,000 in cash, an ID card and two guns, authorities said.

"We believe a drone was used to fly in the tools that allowed him to escape," South Carolina Corrections Director Bryan Stirling said. He said investigators were still trying to confirm that, and he didn't elaborate on why they believe a drone was involved.

But an official aerial photo of the prison shows rings of tall fences and an expanse of more than 50 yards between the prison perimeter and the cellblocks, making it unlikely someone could have thrown or catapulted tools to him.

Kevin Tamez, a 30-year law enforcement veteran who consults on prison security as managing partner of the New Jersey-based MPM Group, said he wasn't aware of any other U.S. prison escapes aided by drones.

Tamez said that delivering something heavy such as wire or bolt cutters via drone would require a sophisticated plan and a powerful machine.

"They have to land for you to get the contraband off of them," he said. "They can't drop it like a bomb."

Tamez said there is no easy way for prisons to protect against the use of small, unmanned aircraft, other than hiring more guards to watch the fences.

Stirling said the state is spending millions to install netting at prisons to prevent people from throwing things over, but confessed that won't stop drones.

"Now they're going to fly over the nets," he said. "So what do we do next?"

A tip led Texas Rangers to a motel room in Austin where Causey was found sleeping around 4 a.m. Friday, authorities said. Texas officials released a photo of a handgun, shotgun, four cellphones and stacks of cash found with Causey about 1,200 miles (1,900 kilometers) from the Lieber Correctional Institution prison near Charleston.

Prison officials are investigating how his 8 p.m. disappearance Tuesday went unnoticed until 2 p.m. the next day.

"Everyone who assisted him -- we intend on bringing them to justice as well," State Law Enforcement Division Chief Mark Keel said.

Later Friday, Corrections officials said one Lieber employee had been fired in connection with Causey's disappearance, providing no other details.

Causey was sentenced to life behind bars 13 years ago for holding a lawyer at gunpoint. Authorities said he believed the defense attorney did not do enough to keep him out of prison in the 1990s.

In his first escape, from a different South Carolina prison in 2005, he and another inmate hid in a garbage truck that was leaving the maximum-security institution. They were arrested three days later after a woman delivering pizza to a motel called police.

Drones have been used to deliver contraband such as drugs and cellphones to prisons across the U.S., including two cases in recent years from South Carolina. In May, two men were arrested for trying to fly knives, marijuana and phones into a medium-security state prison. Another man is serving a 15-year sentence after officials found a crashed drone outside a maximum-security institution in 2014.

Authorities in Britain said two inmates there escaped from prison last year by cutting through window bars using a saw and wire cutters that were believed to have been flown in via drone.

Advanced technology and highly motivated prisoners can be a dangerous combination.

"You have nothing to do but sit on the edge of your bunk and figure out ways to get past the system," Tamez said. "You can't get complacent with them. These guys aren't stupid."

Associated Press writer Diana Heidgerd in Dallas contributed to this report.

This story has been corrected to say Causey was loose for 18 hours before prison officials noticed.

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Exhibit 2

Dippolito Jail Call 7/8/17 at 21:34:02 (4:10-6:20)

Def: Totally random. I was reading in the paper, there is this guy who was in prison in Texas, and

James: Huh?

Def: There's a guy who was in prison in Texas

James: Uh huh.

Def: he had somebody fly a drone over and drop off wire cutters. And he cut wires and escaped from prison. And he put a dummy

James: Wow, that's awesome!

Def: He put a

James: What a genius.

Def: He put a dummy in his bed and had an 18 hour head start. And it turns out they caught him in a motel in Texas with \$46,000 cash and fake

James: Wait, how much?

Def: \$46,000 cash.

James: Oh.

Def: and fake IDs. And it turns out somebody tipped them off. And someone ratted him out somehow. And they were saying how, um, prison like experts and stuff were saying, in the article, how they can't prevent drones from coming in. There's nothing you can do to prevent that.

James: No, of course not. It's in the air.

Def: So that was the story. This is like the second time he has tried to escape.

James: Wow, that's awesome! A drone. Somebody sent a drone with a knife?

Def: With wire cutters.

James: So he cut the fence?

Def: Yeah. Everyone here was like pumped up when they read that.

James: The problem, the problem, like it will never happen at Gun Club. I'll tell you that.

Def: God, settle down.

James: Yeah. Actually, you're on the second floor, so...

Def: Crazy.

James: Yeah. Only time you'll see a fence is in the rec yard.

Def: That's insane.

Exhibit 3

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

STATE OF FLORIDA,

v.

JOHN B. GOODMAN,

Defendant.

CRIMINAL DIVISION "W"
FILED CASE NO. 502010CF005829AXXXMB
Circuit Criminal Department

NOV 21 2014

SHARON R. BOCK
Clerk & Comptroller
Palm Beach County

ORDER DENYING DEFENDANT'S MOTION FOR BOND PENDING APPEAL

THIS CAUSE came before the Court on the Defendant's Motion for Bond Pending Appeal ("Motion"), filed November 12, 2014, pursuant to Florida Rule of Criminal Procedure 3.691 and section 903.132, Florida Statutes. On November 19, 2014, the Court heard argument from the parties on the Motion.¹ The Court considered the Motion, argument of the parties, the relevant law, and all other pertinent information.

As a starting point, post-trial release "is not a matter of right, but rests in the sound discretion of the trial court." *State ex rel. Ard v. Shelby*, 97 So. 2d 631, 633 (Fla. 1st DCA 1957). This discretion is not unlimited and must be exercised within the guidelines of section 903.132, Florida Statutes, Florida Rule of Criminal Procedure 3.691, and case law. *Wells v. Wainwright*, 260 So. 2d 196, 197 (Fla. 1972). Both section 903.132 and Rule 3.691 prohibit post-trial release "unless the defendant establishes that the appeal is taken in good faith, on grounds fairly debatable, and not frivolous." Fla. R. Crim. P. 3.691 (a); § 903.123(1), Fla. Stat. (2014). Based on the issues raised in the Defendant's Motion for New Trial, the Court finds that the Defendant's appeal will be taken in good faith, on grounds fairly debatable, and is not frivolous.

¹ A trial court may hear a motion for post-trial release pending appeal by the defendant before or after a notice is filed. See Fla. R. App. P. 9.140(h)(1).

For the first time, the Court now examines the considerations set forth in *Younghans v. State*, 90 So. 2d 308 (Fla.1956):²

Thus, in addition to the question of whether the appeal is taken in good faith, on grounds not frivolous but fairly debatable, the trial judge might consider: (1) the habits of the individual as to respect for the law, (2) his local attachments to the community, by way of family ties, business, or investments, (3) the severity of the punishment imposed for the offense, and any other circumstances relevant to the question of whether the person would be tempted to remove himself from the jurisdiction of the court. In a case where the term of imprisonment is short, the trial court might also consider whether the [denial] of bail would render nugatory the right to appeal from the judgment of conviction.

Id. at 310. Here, there are four factors weighing in favor of denying the Defendant's Motion: (1) the Defendant is facing a lengthy prison sentence; (2) the Defendant is a person who has demonstrated his propensity to flee, (3) the Defendant has been twice found guilty of the charges against him, and (4) the Defendant has the financial means to flee. The Court finds that the length of the Defendant's sentence, in combination with any of the remaining factors, is sufficient to deny the Defendant's Motion. See *Evans v. State*, 863 So. 2d 384, 385 (Fla. 1st DCA 2003) (holding that denial of post-trial release was inappropriate where the defendant was not facing a lengthy sentence and there were no other circumstances to suggest that the defendant might flee to avoid the sentence); see also *Coolley v. State*, 720 So.2d 598 (Fla. 2d DCA 1998) (holding that a minimum mandatory sentence alone does not, in the absence of other supporting facts, justify the conclusion that defendant presents a flight risk).

The Defendant is facing a sixteen (16) year sentence with a minimum mandatory four (4) years to be served in the Department of Corrections. This sentence, combined with any of the three other circumstances suggest the Defendant may flee to avoid serving this sentence, are

² When the Defendant was granted post-trial release in 2012, the Court approved the stipulation of the parties as reflected in the Agreed Order Admitting Defendant to Post-Conviction Bail Pending Appeal. The Court did not examine the *Younghans* considerations at that time.

sufficient factors to deny the Defendant's Motion. The three circumstances relevant to the question of whether the Defendant would be tempted to remove himself from the jurisdiction are (a) the Defendant's demonstrated propensity to flee, (b) the fact that two different juries have found the Defendant guilty, and (c) the Defendant's financial connections. As to the Defendant's demonstrated propensity to flee, the jury found beyond a reasonable doubt that the Defendant is a person who took flight after a crash, contrary to the requirements of the law. In other words, the Defendant willfully left the scene of an accident when he was legally obligated to remain on the scene.

Additionally, because this is the Defendant's second time being found guilty of these charges, the Court finds that this fact makes the Defendant a flight risk. As an aside, the Court recognizes that when imposing a sentence, it is impermissible to consider the first conviction, which this Court set aside. It is inappropriate to hold that first conviction against the Defendant for sentencing purposes. However, in setting a post-trial appellate bond, the Court finds that the fact that the Defendant has been found guilty twice to be a permissible factor to consider, and this Court gives weight to this substantial factor.

Two times, the Defendant has had the advantage of testing the strength of the State's case against him with two different sets of preeminent defense attorneys and their teams. Over the course of multiple weeks of trial, through cross-examination and presentation of his own evidence, the Defendant put forth the best defense that could possibly be imagined. Yet, both juries found him guilty. Although a single conviction would not distinguish the Defendant in "any way from any other defendant seeking post-trial release pending appeal of his or her judgment and sentence," *Evans*, 863 So. 2d at 385, the Court finds that the Defendant's second conviction is a substantial factor increasing the likelihood that the Defendant will flee.

To the reasonable person and to this Defendant, a second conviction increases the perceived likelihood that a third trial, if granted after appeal, would also result in conviction. Likewise, the perceived likelihood that the Defendant will serve a lengthy prison sentence at the conclusion of the judicial process has increased. In light of these increased perceptions of conviction and imposition of a lengthy prison sentence, there is an increased motivation for the Defendant to remove himself from the jurisdiction.

The likelihood of flight is also increased because the Defendant is an individual with the financial means to flee to a country without extradition and to live a very comfortable lifestyle for the rest of his days. Notwithstanding the affidavits provided by the Defendant, the Court finds that the Defendant is a wealthy individual with access to millions of dollars. To the extent that Defendant's personal resources may be limited, the Court considers not only the wealth of the Defendant, but also the wealth of the Defendant's friends and family, individuals whom have demonstrated their willingness to financially assist the Defendant. *See Henley v. Jenne*, 796 So. 2d 1273, 1275 (Fla. 4th DCA 2001). For an individual of such means and access to significant sums of capital, no monetary amount could sufficiently secure the Defendant's continued presence in the jurisdiction. Because this Court finds that financial collateral, with or without additional conditions, is insufficient to ensure that the Defendant will not flee, it is hereby

ORDERED the Defendant's Motion for Bond Pending Appeal is **DENIED**.

DONE AND ORDERED this 21 day of November 2014.


JEFFREY COLBATH
CHIEF CIRCUIT JUDGE

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