

IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

MSC No.

Plaintiff-Appellee,

COA No. 353445

v

LC No. 2020-273750-FH

DONALD WALLACE CHANDLER,

Defendant-Appellant.

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EMERGENCY APPLICATION FOR LEAVE TO APPEAL

ORDERS APPEALED AND RELIEF SOUGHT

Defendant appeals the Court of Appeals' order dated April 21, 2020, denying his emergency motion to review bail pursuant to MCR 6.106(H). Judge Jansen dissented, stating that she would have granted the motion and remanded to the trial court to grant bond and place defendant on a tether. See Exhibit A.

Defendant's motion in the Court of Appeals sought review, under MCR 6.106(H)(1), of the Oakland County Circuit Court's order dated April 14, 2020 denying defendant's emergency motion for pretrial release. See Exhibit B-2.

Defendant requests that this Court expedite its consideration of his application for leave to appeal and, in lieu of granting leave to appeal, reverse the circuit court's order and remand with instructions to immediately release defendant on a personal bond or, at most, non-financial release conditions.

QUESTION PRESENTED

Did the trial court abuse its discretion by refusing to modify its unaffordable cash bail order in the midst of a global pandemic when defendant is a medically vulnerable older man confined to a jail that is experiencing an outbreak of COVID-19 when he is charged with non-violent offenses and he presents no flight risk or danger to the public if released?

TABLE OF CONTENTS

ORDERS APPEALED AND RELIEF SOUGHT	ii
QUESTION PRESENTED	iii
INDEX OF AUTHORITIES.....	v
INTRODUCTION	1
STATEMENT OF FACTS	3
ARGUMENT	5
I. The Circuit Court Abused Its Discretion by Denying Mr. Chandler’s Emergency Motion for Pre-Trial Release in the Midst of the COVID-19 Pandemic.	5
II. The Cash Bail Upheld by the Circuit Court Violates Michigan Law and Court Rules and the United States and Michigan Constitutions.	9
A. The Circuit Court Failed to Apply the Michigan Court Rules’ Double Presumption of Release Without Cash Bail.....	9
B. Alternatively, the Amount of Cash Bail Upheld by the Circuit Court Was an Abuse of Discretion Because It Was Unaffordable to Mr. Chandler.....	11
C. The Circuit Court’s Bail Decision Is Unconstitutional Under the Equal Protection and Due Process Clauses of the United States Constitution	13
1. The Imposition of Unaffordable Bail Unconstitutionally Discriminates Against Mr. Chandler Because of His Poverty	14
2. The Imposition of Unaffordable Bail Deprives Mr. Chandler of His Liberty Without Constitutionally Adequate Findings, in Violation of His Right to Substantive Due Process.....	14
CONCLUSION AND RELIEF REQUESTED	16

INDEX OF AUTHORITIES

Cases

<i>Atkins v Michigan</i> , 644 F2d 543 (CA 6, 1981)	22
<i>Barker v Wingo</i> , 407 US 514; 92 S Ct 2182; 33 L Ed 2d 101 (1972)	19, 20
<i>Barksdale v Bert's Marketplace</i> , 289 Mich App 652; 797 NW2d 700 (2010).....	16
<i>Bearden v Georgia</i> , 461 US 660; 103 S Ct 2064; 76 L Ed 2d 221 (1983).....	21
<i>Griffin v Illinois</i> , 351 US 12; 76 S Ct 585; 100 L Ed 891 (1956).....	21
<i>Johnson v Cincinnati</i> , 310 F3d 484 (CA 6, 2002)	22
<i>Kidder v Ptacin</i> , 284 Mich App 166; 771 NW2d 806 (2009)	18
<i>People v Collins</i> , 239 Mich App 125; 607 NW2d 760 (1999)	21
<i>People v Edmond</i> , 81 Mich App 743; 266 NW2d 640 (1978).....	16, 17, 18
<i>People v Jackson</i> , 483 Mich 271; 769 NW2d 630 (2009).....	21
<i>People v Spicer</i> , 402 Mich 406; 263 NW2d 256 (1978).....	17
<i>People v Weatherford</i> , 132 Mich App 165; 346 NW2d 920 (1984).....	19
<i>Stack v Boyle</i> , 342 US 1; 72 S Ct 1; 96 L Ed 3 (1951)	17, 18
<i>Tate v Short</i> , 401 US 395; 91 S Ct 668; 28 L Ed 2d 130 (1971)	21
<i>United States v Babhnani</i> , 493 F3d 63 (CA 2, 2007)	19
<i>United States v Reihan</i> , No. 20-cr-68 (EDNY, March 12, 2020)	14
<i>United States v Salerno</i> , 481 US 739; 107 S Ct 2095; 95 L Ed 2d 697 (1987).....	22
<i>United States v Stephens</i> , No. 15-cr-95, __ F Supp 3d __, 2020 WL 1295155 (SDNY, March 19, 2020).....	14
<i>Washington v Glucksberg</i> , 521 US 702; 117 S Ct 2258; 138 L Ed 2d 772 (1997)	22
<i>Weatherspoon v Oldham</i> , 17-cv-2535, 2018 WL 1053548 (WD Tenn, 2018).....	19, 22
<i>Williams v Illinois</i> , 399 US 235; 90 S Ct 2018; 26 L Ed 2d 586 (1970)	21

Constitutional Provisions

Const 1963, art 1, § 15	16
Const 1963, art 1, § 16.....	16

Statutes

MCL 765.6(1)	16
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Rules

MCR 6.106(C)	17
MCR 6.106(D)	17, 18

MCR 6.106(E).....	17, 18
MCR 6.106(F).....	18, 19
MCR 6.106(H)	12
Other Authorities	
Administrative Order No. 2020-01 (March 15, 2020).....	13
Bick, <i>Infection Control in Jails and Prisons</i> , 45 Clinical Infectious Diseases 1047, 1047 (October 2007)	13
Bryant, <i>Coronavirus Spread at Rikers Is a ‘Public Health Disaster,’ Says Jail’s Top Doctor</i> , The Guardian (April 1, 2020)	8
Centers for Disease Control and Prevention (CDC), Interim U.S. Guidance for Risk Assessment and Public Health Management of Persons with Potential Coronavirus Disease 2019 (COVID-19) Exposures (March 7, 2020).....	13
Dobbie, Goldin & Yang, <i>The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges</i> , 108 Am Econ Rev 201, 235 (2018).....	20
Ifran & Belluz, <i>Why COVID-19 Is So Dangerous for Older Adults</i> , Vox.com (March 13, 2020)	15
Jackson & Tanner, <i>Infection Rate at Michigan Prison Exceeds New York, Chicago Jail Hot Spots</i> , Detroit Free Press (April 16, 2020).....	8
Laitner, <i>He Was Sick With Pneumonia, But a Judge Sent Him to Jail for Being Late to Court</i> , Detroit Free Press (March 10, 2020)	9
Laitner, <i>Oakland County Judge Tosses People in Jail for Showing Up Late, Even Amid Pandemic</i> , Detroit Free Press (April 2, 2020).....	9
Leslie & Pope, <i>The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignment</i> , 60 J L & Econ 529 (2017).....	20
Lowenkamp, VanNostrand & Holsinger, <i>The Hidden Costs of Pretrial Detention</i> (Laura & John Arnold Foundation, 2013)	20
Rich et al., <i>We Must Release Prisoners to Lessen the Spread of Coronavirus</i> , Washington Post (March 17, 2020).....	12
Stevenson, <i>Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes</i> , 34 J L Econ & Org 511, 512, 532 (2018)	19
Verity et al., <i>Estimates of the Severity of Coronavirus Disease 2019: A Model-Based Analysis</i> , The Lancet, table 1 (March 30, 2020)	14
Wingblad, <i>23 Oakland County Jail Inmates Have Confirmed COVID-19</i> , Oakland Press (April 11, 2020)	8, 12
Wingblad, <i>6 Inmates at Oakland County Jail Have COVID-19</i> , Oakland Press (April 3, 2020)	11

INTRODUCTION

Defendant Donald Wallace Chandler seeks emergency relief following the Court of Appeals' denial of his emergency motion to review the Oakland County Circuit Court's decision to uphold an order for \$25,000 cash bail, resulting in the indefinite detention of a medically vulnerable older man while awaiting trial in the midst of a global pandemic that is wreaking havoc in jails and prisons all over the country,¹ including in Michigan.² By upholding this unaffordable cash bail, the circuit court disregarded the exigencies of the current global health crisis. An outbreak of COVID-19 has already occurred in the Oakland County Jail, meaning that Mr. Chandler's bail order could become a death sentence.³ The circuit court's decision under the circumstances is an abuse of discretion given the virtually unparalleled health crisis currently afflicting our state and the entire nation. Indeed, this Court has specifically urged courts to take appropriate measures to reduce pre-trial incarceration during the crisis—a mandate the circuit court plainly disregarded here.

The circuit court's lack of appreciation for the gravity of the COVID-19 pandemic and how judicial actions bear on this health crisis is underscored by the fact that the same judge recently remanded a civil litigant who was suffering from pneumonia to jail after that defendant

¹ See Bryant, *Coronavirus Spread at Rikers Is a 'Public Health Disaster,' Says Jail's Top Doctor*, The Guardian (April 1, 2020) <<https://www.theguardian.com/us-news/2020/apr/01/rikers-island-jail-coronavirus-public-health-disaster>>.

² See Jackson & Tanner, *Infection Rate at Michigan Prison Exceeds New York, Chicago Jail Hot Spots*, Detroit Free Press (April 16, 2020) <<https://www.freep.com/story/news/local/michigan/2020/04/16/infection-rate-michigan-prison-exceeds-new-york-chicago-jail-hotspots/2987935001/>>.

³ See Wingblad, *23 Oakland County Jail Inmates Have Confirmed COVID-19*, Oakland Press (April 11, 2020) <https://www.theoaklandpress.com/news/coronavirus/23-oakland-county-jail-inmates-have-confirmed-covid-19/article_9cb8f138-7b69-11ea-ab69-0f769f8495c1.html>.

was late due to having sought urgent medical treatment for his condition.⁴ And shortly after that, in *People v Ferguson*, COA No. 353226 (unpublished order, entered March 23, 2020), attached as Exhibit B-4, the Court of Appeals reversed the same judge for refusing to grant a personal bond in the midst of the pandemic to a defendant charged with the same felony firearms charge Mr. Chandler faces plus other serious charges far beyond what Mr. Chandler faces here.⁵

Although this Court need not reach the question, the circuit court's decision also amounts to a pre-trial detention order in violation of Mr. Chandler's constitutional right to substantive due process and equal protection. The Due Process Clause prohibits depriving anyone of their liberty prior to a criminal conviction unless individualized findings have been made, with rigorous procedural protections, that the defendant will pose an unmanageable flight risk or an identifiable and articulable danger to the public prior to trial. This means that a court, before imposing pre-trial detention, must make findings supported by clear and convincing evidence that the defendant would be an articulable and identified risk to others or an unmanageable flight risk if released, and that any such risks could not be sufficiently mitigated by other conditions of release. That is simply not the case here, especially if Mr. Chandler were to wear a GPS tether, or be put under a house arrest order. Thus, the denial of Mr. Chandler's emergency motion for pretrial release also violates his right to due process.

For these reasons, the circuit court's denial of Mr. Chandler's emergency motion for pretrial release should be reversed and Mr. Chandler should be ordered released immediately

⁴ See Laitner, *He Was Sick With Pneumonia, But a Judge Sent Him to Jail for Being Late to Court*, Detroit Free Press (March 10, 2020) <<https://www.freep.com/story/news/local/michigan/oakland/2020/03/10/jailed-howard-baum-pneumonia-oakland-county-judge-bowman/5008206002/>>

⁵ See Laitner, *Oakland County Judge Tosses People in Jail for Showing Up Late, Even Amid Pandemic*, Detroit Free Press (April 2, 2020) <<https://www.freep.com/story/news/local/michigan/oakland/2020/04/02/oakland-county-judge-leo-bowman-jail/5101562002/>>.

subject only to an unsecured appearance bond. Alternatively, if absolutely necessary, Mr. Chandler could be released with a tether or is willing to abide by a house arrest order, which would easily ensure that he is neither a flight risk, nor a danger to the public whatsoever.

STATEMENT OF FACTS

Mr. Chandler was arrested on January 3, 2020, and charged with three felonies all related to his possession of a single weapon and one driving misdemeanor. See Register of Actions, Exhibit B-3. At his arraignment, bond in this case was set at \$25,000 cash/surety, no ten percent. On January 15, 2020, Mr. Chandler appeared for a probable cause/pre-examination conference in district court. At this conference, having been deemed indigent, Mr. Chandler was represented by appointed counsel. Mr. Chandler, through counsel, moved for pretrial release pursuant to an unsecured appearance bond, or in the alternative, subject only to non-financial release conditions. The district court continued the high cash bond. When the case was bound over to circuit court, Mr. Chandler unsuccessfully sought a reduction in bond at his arraignment on the information on February 25, 2020. On March 16, 2020, Mr. Chandler filed an emergency motion to reduce bond upon recognizing the dangers he would soon face while incarcerated within the Oakland County Jail. The circuit court denied the motion, stating that it was not an emergency. See Exhibit B-1.

On March 23, 2020, the Court of Appeals issued an order in a similar case before the same judge, finding that “[i]n light of the Supreme Court’s [Administrative] Order, the circuit court should not have delayed deciding defendant’s bond motion. Further, considering the public health factors arising out of the present public health emergency, the circuit court should have granted defendant a personal bond. The case is REMANDED to the circuit court for proceedings to ensure defendant’s immediate release on bond.” See Exhibit B-4. Upon learning of this order,

Mr. Chandler filed another emergency motion on April 7, 2020. See Exhibit B-5. The motion informed the court that Mr. Chandler is medically vulnerable and has had seizures while in jail. *Id.*

The circuit court set the matter for hearing on April 14, 2020 via Zoom video. See Exhibit B-6. At the hearing, Mr. Chandler was not afforded the opportunity to speak on his medical ailments nor chronic conditions as he was muted on the video. The prosecution argued, and the circuit court agreed, that Mr. Chandler had failed to provide sufficient medical documentation to prove that he was at risk due to COVID-19. See 4/14/20 Tr, pp 5, 8, attached as Exhibit B-10. Defense counsel explained that obtaining Mr. Chandler's medical records at this point was nearly impossible due to the fact that only electronic visitation is available at the Oakland County Jail and that Mr. Chandler's appointed attorney would need to obtain a waiver.

The circuit court nonetheless refused to lower bond, primarily on the grounds that Mr. Chandler was a flight risk. It reasoned that Mr. Chandler "knows that he is facing a mandatory two years if he's convicted.... [t]hat would give rise to a heightened potential of flight if he's released on a personal bond, or anything of that nature" *Id.*, p 9. The court also cited a danger to the public based on Mr. Chandler's criminal history which includes a few non-violent offenses, the worst of which is an old stalking offense involving a woman who subsequently married Mr. Chandler. The defense argued that a GPS tether would address any such concerns. *Id.*, pp 9-10. The circuit court denied the motion. See Exhibit B-2.⁶

⁶ At the time of Mr. Chandler's motion in circuit court, the Oakland County Jail had six confirmed inmate COVID-19 cases, without disclosing the number of deputies infected with the virus. See Wingblad, *6 Inmates at Oakland County Jail Have COVID-19*, Oakland Press (April 3, 2020) <https://www.theoaklandpress.com/news/coronavirus/6-inmates-at-oakland-county-jail-have-covid-19/article_a1fe7b48-75df-11ea-ae6b-233d4bf6a9fe.html>. Three days prior to the hearing on Mr. Chandler's motion, the Oakland County Jail had 23 confirmed inmate COVID-19 cases, without disclosing the number of deputies inflicted with the virus. See Wingblad, 23

On April 17, 2020, Mr. Chandler filed an emergency motion in the Court of Appeals pursuant to MCR 6.106(H). On April 21, 2020, the Court of Appeals denied the motion. See Exhibit A. Judge Jansen dissented, stating that she would have granted the motion and remanded to the trial court to grant bond and place defendant on a tether. *Id.*

ARGUMENT

I. The Circuit Court Abused Its Discretion by Denying Mr. Chandler's Emergency Motion for Pre-Trial Release in the Midst of the COVID-19 Pandemic.

Michigan, and our entire nation, are in the midst of a viral pandemic on a scale unknown in living memory. On Tuesday, March 10, Governor Gretchen Whitmer declared a state of emergency, and on March 23 prohibited nearly all public or private gatherings of any group not part of a single-family household. Executive Order No. 2020-21 ("Temporary Requirement to Suspend Activities that Are Not Necessary to Sustain or Protect Life."). President Donald J. Trump declared a national emergency on March 13, and he has subsequently urged Americans not to gather in groups of more than 10 people.

Public health experts have warned that the COVID-19 pandemic presents a particularly severe risk to incarcerated persons and to the attorneys and court and jail staff who interact with them.⁷ The best available public health advice involves preventing the spread of COVID-19 by regularly washing hands, social distancing, and self-quarantining when necessary.⁸ Social

Oakland County Jail Inmates Have Confirmed COVID-19, Oakland Press (April 11, 2020) <https://www.theoaklandpress.com/news/coronavirus/23-oakland-county-jail-inmates-have-confirmed-covid-19/article_9cb8f138-7b69-11ea-ab69-0f769f8495c1.html>.

⁷ See Rich et al., *We Must Release Prisoners to Lessen the Spread of Coronavirus*, Washington Post (March 17, 2020) <<https://www.washingtonpost.com/opinions/2020/03/17/we-must-release-prisoners-lessen-spread-coronavirus/>>.

⁸ See Michigan Department of Health and Human Services, Community Mitigation Strategies <https://www.michigan.gov/coronavirus/0,9753,7-406-98178_98155-521467--,00.html>.

distancing requires “remaining out of congregate settings, avoiding mass gatherings, and maintaining distance (approximately 6 feet or 2 meters) from others when possible.”⁹ All of these precautions are virtually impossible in the carceral setting.¹⁰

On March 15, this Court issued Administrative Order No. 2020-1, telling all state courts to “take any . . . reasonable measures to avoid exposing participants in court proceedings, court employees, and the general public to the COVID-19 crisis.” The order further instructs courts specifically to “take into careful consideration public health factors arising out of the present state of emergency . . . in making pretrial release decisions, *including in determining any conditions of release.*”¹¹ Applying these principles to a case involving a defendant who was both charged with possession of fentanyl with intent to distribute and possession of a firearm in the commission of the felony and who had been late to a previously scheduled trial date, the Michigan Court of Appeals recently held that “considering the public health factors arising out of the current public health emergency, the [trial] court should have granted defendant a personal bond.” *People v Ferguson*, COA No. 353226 (March 23, 2020), attached as Exhibit B-4; see also *People v Calloway*, COA No. 349870 (March 31, 2020) (releasing a defendant who pled guilty to delivery of heroin while awaiting sentencing in light of the COVID-19 pandemic), attached as

⁹ Centers for Disease Control and Prevention (CDC), Interim U.S. Guidance for Risk Assessment and Public Health Management of Persons with Potential Coronavirus Disease 2019 (COVID-19) Exposures (March 7, 2020) <<https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html>>.

¹⁰ See, e.g., Bick, *Infection Control in Jails and Prisons*, 45 Clinical Infectious Diseases 1047, 1047 (October 2007) (noting that, in jail, “[t]he probability of transmission of potentially pathogenic organisms is increased by crowding, delays in medical evaluation and treatment, rationed access to soap, water, and clean laundry, [and] insufficient infection-control expertise”).

¹¹ See Administrative Order No. 2020-01 (March 15, 2020) <https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Administrative%20Orders/2020-08_2020-03-15_FormattedOrder_AO2020-1.pdf>, attached as Exhibit B-9 (emphasis added).

Exhibit B-7. Other courts around the state and country are similarly recognizing the importance, both for community health and for the health of incarcerated populations, of releasing pre-trial detainees during this crisis. See, e.g., *United States v Knight*, No. 18-20180-001 (ED Mich, March 24, 2020), attached as Exhibit B-8 (releasing a medically vulnerable defendant who violated terms of release, over the government’s “grave concerns,” in light of the “dire risk” to defendant’s health of remaining incarcerated); *United States v Stephens*, No. 15-cr-95, ___ F Supp 3d ___, 2020 WL 1295155, *2 (SDNY, March 19, 2020), quoting *United States v Reihan*, No. 20-cr-68 (EDNY, March 12, 2020) (“The more people we crowd into [a] facility, the more we’re increasing the risk to the community.”).

Here, the circuit court’s denial of Mr. Chandler’s emergency motion, resulting in his continued indefinite detention in the midst of the COVID-19 pandemic, constitutes an abuse of discretion. For the reasons stated in Section II, *infra*, unaffordable bail is not lawful in this case anyhow. But given the current pandemic and its potential impact in the carceral setting, the denial of the emergency motion here is a clear abuse of discretion.

That is even more clear given that Mr. Chandler, due to his age and health issues, is at higher risk of suffering death of serious injury if he were to contact coronavirus. See *Knight*, Exhibit B-8. Scientific studies of the impact on COVID-19 pandemic in China show that over 81% of all coronavirus fatalities occur in people over 60 years old. See Verity et al., *Estimates of the Severity of Coronavirus Disease 2019: A Model-Based Analysis*, *The Lancet*, table 1 (March 30, 2020) <[https://www.thelancet.com/journals/laninf/article/PIIS1473-3099\(20\)30243-7/fulltext#seccestitle200](https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(20)30243-7/fulltext#seccestitle200)> (showing that 829 out of 1023 documented fatalities were in patients over 60 and that fatality rates spike dramatically as patients age).¹² Not only that, but according

¹² See, e.g., Ifran & Belluz, *Why COVID-19 Is So Dangerous for Older Adults*, Vox.com (March

to information provided by the CDC, there is a large spike in COVID-19 related deaths in those 55 years or older in comparison to the rest of the population. See *Provisional Death Counts for Coronavirus Disease (COVID-19)*, table 2 (April 15, 2020) <<https://www.cdc.gov/nchs/nvss/vsrr/COVID19/index.htm>> (showing that the fourth most deaths from COVID-19 in the United States occurred in those between the ages of 55 and 64 years old). Mr. Chandler is 56 years old and suffers from seizures. See Exhibit B-10, p 5. Quite simply, Mr. Chandler's unaffordable bond, imposed in the midst of this pandemic, may easily become a death sentence—imposed on someone who remains presumed innocent on the instant charges.

When the circuit court denied Mr. Chandler's emergency motion, and summarily stated that he presents a flight risk, it had no evidence, and cited no evidence, that Mr. Chandler might flee other than the fact that he was facing a mandatory two-year prison sentence. As argued to the circuit court, Mr. Chandler has resided at his current address in Pontiac for more than seven years. And the same thing would have been true in *Ferguson* in which the defendant was also charged with felony firearm. Not only is Mr. Chandler not a flight risk, there was nearly no evidence to support the idea that Mr. Chandler presents a significant danger to the public to justify his indefinite pre-trial incarceration in the midst of a global pandemic. Though Mr. Chandler does have a criminal history, he has no history of violence. And as argued to the circuit court, at most, a GPS tether and house arrest would guarantee that Mr. Chandler is neither a flight risk, nor a danger to the public whatsoever.

There are additional reasons why pre-trial release is particularly urgent in light of the COVID-19 pandemic. While it is always the case that a pre-trial detainee is less able to assist

13, 2020) <<https://www.vox.com/2020/3/12/21173783/coronavirus-death-age-covid-19-elderly-seniors>> (documenting studies showing that death rates for coronavirus patients spike at around age 60, even for non-incarcerated patients).

their attorney in preparing for their case, that is doubly true in the midst of a pandemic. The Oakland County Jail is no longer permitting attorneys to conduct in-person jail visits, meaning that attorneys can only meet detained clients through video. That, of course, makes preparation of a defense significantly more difficult. Furthermore, the ability of defense counsel to access witnesses, documents, and evidence without the defendant's participation is also made more difficult by the conditions of societal lockdown necessitated by the response to the pandemic.

In sum, in light of the COVID-19 pandemic and the concomitant risks to Mr. Chandler, other detainees, jail staff, and the public at large, the court abused its discretion by upholding an amount of cash bail that it knew to be unaffordable and that would lead to Mr. Chandler's indefinite detention in a crowded jail setting in the midst of a highly contagious global pandemic. See *Ferguson, supra*; *Stephens, supra*, 2020 WL 1295155, *2. In so doing, it veered "outside the range of principled outcomes." *Barksdale v Bert's Marketplace*, 289 Mich App 652, 657; 797 NW2d 700 (2010). This abuse of discretion is all the more stark because, even under normal circumstances, "pretrial release of an accused is a matter of constitutional right and the State's favored policy." *People v Edmond*, 81 Mich App 743, 747; 266 NW2d 640 (1978).

II. The Cash Bail Upheld by the Circuit Court Violates Michigan Law and Court Rules and the United States and Michigan Constitutions.

A. The Circuit Court Failed to Apply the Michigan Court Rules' Double Presumption of Release Without Cash Bail.

Michigan's Constitution guarantees that "[a]ll persons shall, before conviction, be bailable by sufficient sureties," except in four specific circumstances not applicable here. Const 1963, art 1, § 15. It further guarantees that "[e]xcessive bail shall not be imposed." Const 1963, art 1, § 16. Similarly, state law guarantees that "[e]xcept as otherwise provided by law, a person accused of a criminal offense is entitled to bail. The amount of bail shall not be excessive." MCL 765.6(1). In turn, the general rule is that "[b]ail set at a figure higher than an amount reasonably

calculated to [assure the presence of the accused at trial] is ‘excessive’.” *Stack v Boyle*, 342 US 1, 5; 72 S Ct 1; 96 L Ed 3 (1951). See also *Edmond*, 81 Mich App at 747 (“Money bail is excessive if it is in an amount greater than reasonably necessary to adequately assure that the accused will appear when his presence is required.”).

This Court has promulgated court rules establishing a *double* presumption that a pre-trial arrestee must be released without any cash bail requirement. First, “the court *must* order the pretrial release of the defendant on personal recognizance, or on an unsecured appearance bond . . . unless the court determines that such release will not reasonably ensure the appearance of the defendant as required, or that such release will present a danger to the public.” MCR 6.106(C) (emphasis added).

Second, even if the court *does* determine that there is evidence of a possible flight risk or danger to the public, the presumption of release without cash bail remains. Before even considering cash bail, a court must next consider releasing the defendant under *non-financial* release conditions, including, but not limited to, fourteen conditions that are specifically enumerated by court rule. MCR 6.106(D). It is only “[i]f the court determines for reasons *it states on the record* that the defendant’s appearance or the protection of the public cannot otherwise be assured [that] money bail, with or without conditions . . . may be required.” MCR 6.106(E) (emphasis added). This Court has been “emphatic” that this “rule is to be complied with in spirit, as well as to the letter.” *People v Spicer*, 402 Mich 406, 409; 263 NW2d 256 (1978).

Here, the circuit court’s decision to uphold the cash bail violated the Michigan Court Rules in two interrelated ways. First, the circuit court failed to apply the double presumption of pre-trial release—the “favored policy” in this state. *Edmond*, 81 Mich App at 747. Second, the circuit court failed to make a specific, evidence-based finding that non-financial release

conditions, such as those listed in MCR 6.106(D), would not suffice to address any concerns.

In fact, as noted above, there was *no* specific evidence at all presented to the circuit court suggesting that Mr. Chandler poses a flight risk. With respect to the public danger element, the court stated a concern for public safety, but did not substantively examine on the record, as required by MCR 6.106(E), why the GPS tether proposed by defense counsel would not be sufficient given Mr. Chandler's lack of any violent criminal history.

The circuit court's failure to comply with the Michigan Court Rules constitutes legal error and, thus, an abuse of discretion. See *Kidder v Ptacin*, 284 Mich App 166, 170; 771 NW2d 806 (2009). Accordingly, this Court should order Mr. Chandler's release on a personal bond or, at most, with conditions as described above.

B. Alternatively, the Amount of Cash Bail Upheld by the Circuit Court Was an Abuse of Discretion Because It Was Unaffordable to Mr. Chandler.

As noted above, the purpose of cash bail is to allow a defendant to remain free while also providing the defendant with an adequate incentive—the return of the security posted—to return court and not offend in the interim. Bail must be set at a “reasonable amount” calculated to accomplish these goals. *Boyle*, 342 US at 1; *Edmond*, 81 Mich App at 747.

Determining the proper amount of bail in any given case necessarily requires an inquiry into the defendant's financial situation. See *id.* The Michigan Court Rules specifically provide that one factor the court must consider when determine what release conditions are appropriate is the “defendant's employment status and history and financial history *insofar as these factors relate to the ability to post money bail.*” MCR 6.106(F)(1)(f) (emphasis added). High bail may be necessary to deter a wealthy defendant from fleeing, whereas nominal bail may be more than sufficient to prevent against the potential flight risk posed by a defendant who makes minimum wage. As one court explained: “[T]he deterrent effect of a bond is necessarily a function of the

totality of a defendant's assets.” *United States v Babhnani*, 493 F3d 63, 77 (CA 2, 2007).

When cash bail is instead set at an amount that is unaffordable to the defendant, the bail requirement is, for all intents and purposes, a pre-trial detention order. See *Weatherspoon v Oldham*, 17-cv-2535, 2018 WL 1053548, at *6 (WD Tenn, 2018) (“[R]equiring money bail as a condition of release at an amount impossible for the defendant to pay is equivalent to a detention order”). Yet MCR 6.106(F)(3) specifically prohibits “pretrial detention . . . on the basis of . . . economic status.” That is precisely what a court does when it imposes bail that is unaffordable to a poor defendant without factoring in what the defendant can afford. If Mr. Chandler were wealthier and could afford to pay \$25,000, he would be free while pending trial; but since he cannot he is instead detained “on the basis of . . . his economic status.” *Id.*

Additionally, it is beyond dispute that unaffordable bond resulting in a defendant's ongoing pre-trial detention inflicts enormous harm on the pursuit of justice. Both academic studies and caselaw demonstrate that being in jail pre-trial tends to induce guilty pleas by causing defendants to plead in order to speed their release from jail.¹³ The same studies also show that pre-trial detention leads to higher conviction rates and more severe sentences. See *id.* As the Supreme Court has explained, “if a defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense. Imposing those consequences on anyone who has not yet been convicted is serious.” *Barker v Wingo*, 407 US 514, 532–533; 92 S Ct 2182; 33 L Ed 2d 101 (1972).

¹³ See, e.g., *People v Weatherford*, 132 Mich App 165, 170; 346 NW2d 920 (1984) (released defendant wanted to go to trial until bail was increased and he was re-jailed). See also Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*, 34 J L Econ & Org 511, 512, 532 (2018) <<https://academic.oup.com/jleo/article/34/4/511/5100740>> (finding that a person who is detained pretrial has a 13 percent increase in the likelihood of being convicted and an 18 percent increase in the likelihood of pleading guilty); Leslie & Pope, *The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignment*, 60

Detention as the result of unaffordable bail also has other “detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness.” *Id.* Pre-trial detention also has detrimental effects on society: Studies show that defendants who are detained before trial are 1.3 times more likely to recidivate, likely because of the economic havoc pre-trial detention wreaks on defendants and their families.¹⁴ It is the height of irrationality to inflict such a toll on a defendant—someone who is presumed innocent until proven guilty—without concrete reasons, supported by concrete evidence, that the unaffordable amount of bail is somehow necessary for some very specific purpose.

Here, the circuit court knew that Mr. Chandler’s \$25,000 bail was unaffordable, yet it made no findings that can justify such an amount and the resulting harm to Mr. Chandler—particularly in light of the unique risks ongoing pre-trial incarceration poses to his health. By imposing unaffordable bail without identifying any specific reason why the amount selected was necessary even though it was unaffordable, the Circuit Court abused its discretion.

C. The Circuit Court’s Bail Decision Is Unconstitutional Under the Equal Protection and Due Process Clauses of the United States Constitution.

The cash bail ordered in this case also violates Mr. Chandler’s rights under the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution for two related reasons as described below.

J L & Econ 529 (2017).

¹⁴ See Lowenkamp, VanNostrand & Holsinger, *The Hidden Costs of Pretrial Detention* (Laura & John Arnold Foundation, 2013) <https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_hidden-costs_FNL.pdf>, pp 19–20 (“Defendants detained pretrial were 1.3 times more likely to recidivate compared to defendants who were released at some point pending trial.”); Dobbie, Goldin & Yang, *The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*, 108 Am Econ Rev 201, 235 (2018), <<https://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.20161503>>.

1. The Imposition of Unaffordable Bail Unconstitutionally Discriminates Against Mr. Chandler Because of His Poverty.

It is well established that it is “contrary to the fundamental fairness required by the Fourteenth Amendment” to “deprive [an individual] of his conditional freedom simply because, through no fault of his own, he cannot pay.” *Bearden v Georgia*, 461 US 660, 672–673; 103 S Ct 2064; 76 L Ed 2d 221 (1983); *People v Jackson*, 483 Mich 271, 280; 769 NW2d 630 (2009), quoting *Bearden*. See also *Tate v Short*, 401 US 395, 396; 91 S Ct 668; 28 L Ed 2d 130 (1971); *People v Collins*, 239 Mich App 125, 135–136; 607 NW2d 760 (1999), citing *Tate*. “[T]here can be no equal justice where the kind of trial a man gets depends on the amount of money he has.” *Griffin v Illinois*, 351 US 12, 19; 76 S Ct 585; 100 L Ed 891 (1956). The Supreme Court has explained that “[d]ue process and equal protection principles converge in the Court’s analysis” in cases involving the jailing of poor defendants as the result of their inability to pay court-ordered sums. *Bearden*, 461 US at 665. Furthermore, “the passage of time has heightened rather than weakened [courts’] attempts to mitigate the disparate treatment of indigents in the criminal process.” *Williams v Illinois*, 399 US 235, 241; 90 S Ct 2018; 26 L Ed 2d 586 (1970).

The deprivation of Mr. Chandler’s freedom resulting from his inability to pay is exactly what happened here. Mr. Chandler is detained not because he poses such a flight risk that he cannot be released at all, but, rather, because “through no fault of his own, he cannot pay.” *Bearden*, 461 US at 673. If he were wealthier, he could purchase his pre-trial freedom even though he would pose the same potential risks. Thus, Mr. Chandler’s bond is unconstitutional.

2. The Imposition of Unaffordable Bail Deprives Mr. Chandler of His Liberty Without Constitutionally Adequate Findings, in Violation of His Right to Substantive Due Process.

The imposition of cash bail in this case means that Mr. Chandler will be detained indefinitely prior to trial. Mr. Chandler cannot afford the bail amount and is presently

incarcerated, so the circuit court's bail determination is, in effect, a pre-trial detention order. See *Weatherspoon*, 2018 WL 1053548, at *6 (WD Tenn, 2018).

The “‘general rule’ of substantive due process [is] that the government may not detain a person prior to a judgment of guilt in a criminal trial.” *United States v Salerno*, 481 US 739, 749; 107 S Ct 2095; 95 L Ed 2d 697 (1987). Because criminal defendants have a “fundamental interest in liberty pending trial,” a pre-trial detention that lacks sufficient justification “violate[s] [a defendant’s] right to due process of law.” *Atkins v Michigan*, 644 F2d 543, 550 (CA 6, 1981).

In order to justify pre-trial detention, the governmental interest must be “compelling.” *Salerno*, 481 US at 748. Accordingly, there must be “special circumstances to restrain individuals’ liberty.” *Id.* at 749. “Ordinarily, where a fundamental liberty interest protected by the substantive due process component of the Fourteenth Amendment is involved, the government cannot infringe on that right ‘unless the infringement is narrowly tailored to serve a compelling state interest.’” *Johnson v Cincinnati*, 310 F3d 484, 502 (CA 6, 2002), quoting *Washington v Glucksberg*, 521 US 702, 721; 117 S Ct 2258; 138 L Ed 2d 772 (1997). Therefore, in the context of federal pre-trial detention, the Supreme Court upheld the constitutionality of the Federal Bail Reform Act only because it limits pre-trial detention to “specific categor[ies] of extremely serious offenses,” *and*, in such cases, requires evidentiary proof, by clear and convincing evidence, “that an arrestee presents an *identified and articulable* threat to an individual or the community,” and that “no conditions of release can reasonably assure the safety of the community or any person.” *Salerno*, 481 US at 750 (emphasis added).

These rigorous standards have not been met here as discussed above. As such, the circuit court’s decision to uphold what amounts to a pre-trial detention order lacked the requisite narrow tailoring and was unconstitutional.

CONCLUSION AND RELIEF REQUESTED

For the reasons set forth above, defendant requests that this Court expedite its consideration of his application for leave to appeal and, in lieu of granting leave to appeal, reverse the circuit court's order and remand with instructions to immediately release defendant on a personal bond or, at most, non-financial release conditions.

Respectfully submitted,

/s/ Philip Mayor
Philip Mayor (P81691)
Daniel S. Korobkin (P72842)
American Civil Liberties Union
Fund of Michigan
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Detroit, MI 48201
(313) 578-6803

Will S. Nahikian (P81520)
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Detroit, MI 48226
(248) 227-1978

Attorneys for Defendant-Appellant

Dated: April 27, 2020

Exhibit A: Order Denying Emergency Motion to Review Bond Modification

Court of Appeals, State of Michigan

ORDER

People of MI v Donald Wallace Chandler

Docket No. 353445

LC No. 2020-273750-FH

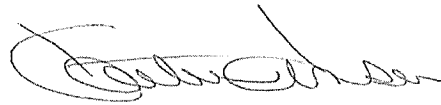
Kathleen Jansen
Presiding Judge

Mark J. Cavanagh

Jonathan Tukul
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The emergency motion to review bail pursuant to MCR 6.106(H) is DENIED.



Presiding Judge

Jansen, J., would grant the motion to review bail and remand to the trial court to grant bond and place defendant on a tether.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

APR 21 2020

Date



Chief Clerk

Exhibit B: Exhibits for Appeal

INDEX OF EXHIBITS

EXHIBIT ONE:	Original Order Denying Release 3-16-2020
EXHIBIT TWO:	Second Order Denying Release 4-14-2020
EXHIBIT THREE:	Register of Actions
EXHIBIT FOUR:	People v. Ferguson, No. 353226.
EXHIBIT FIVE:	Second Circuit Court Bond Motion 4-7-2020
EXHIBIT SIX:	Order Setting the Matter for Hearing via Zoom Video 4-7-2020
EXHIBIT SEVEN:	People v. Calloway, No. 349870.
EXHIBIT EIGHT:	United States v. Knight, No. 18-20180-001 (ED Mich. March 24, 2020).
EXHIBIT NINE:	MSC ORDER 1-2020
EXHIBIT TEN:	Transcript of Hearing 4-14-2020

EXHIBIT ONE:
Original Order Denying Release 3-16-2020

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

v.

Case No: 20-273750-FH
Hon. Leo Bowman

DONALD WALLACE CHANDLER,
Defendant.

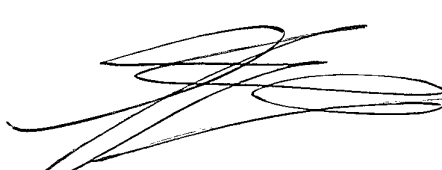
ORDER

At a session of said Court held in the Courthouse in Pontiac,
Oakland County, Michigan on **MAR 16 2020**

PRESENT: LEO BOWMAN, Circuit Judge

This matter is before the Court on defendant's emergency motion to reduce bond filed on March 16, 2020. In his motion, defendant requests that this Court hear his motion on an emergency basis. Upon review of the motion, this Court does not find that defendant's motion is an emergency and will not hear this motion on an emergency basis. Accordingly, defendant's request to have his motion heard on an emergency basis is DENIED. Defendant may resubmit the motion and have it heard pursuant to regular motion protocol and pursuant to the Sixth Circuit's emergency procedures order and its directive regarding criminal matters.

IT IS SO ORDERED.



Hon. Leo Bowman

3-16-20
Date

EXHIBIT TWO:
Second Order Denying Release 4-14-2020

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND**

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

Case No: 20-273750-FH
Hon. Leo Bowman

v.

DONALD WALLACE CHANDLER,
Defendant.

ORDER

At a session of said Court held in the Courthouse in Pontiac,
Oakland County, Michigan on 4/14/2020

PRESENT: LEO BOWMAN, Circuit Judge

This matter is before the Court on defendant's *emergency* motion for modification of release decision filed on April 7, 2020. Administrative Order No. 2020-2 (issued March 18, 2020) defines circuit courts' essential functions as including in-custody criminal defendants' emergency bond motions and directs circuit courts to conduct such hearings remotely.

Having reviewed defendant's motion and the People's response,¹ heard oral arguments as well as considered the public health factors arising out of the present public health emergency, this Court finds that defendant's prior criminal history (including stalking) as well as defendant's current

¹ The People sent an email response, which stated as follows:

People's Response to Defendant's Emergency Motion to Amend Bond:

The People oppose the defendant's motion for the following reasons:

- 1) The People assert that the defendant poses a continued threat to the community based on his conduct.
- 2) The defendant is a Habitual Offender Fourth with 3 prior felony convictions occurring less than a year from the pending charges.
- 3) The defendant is facing a 2 year mandatory sentence on count 2. The People's case is strong and likely to result in a conviction.
- 4) The defense asserts that the defendant has preexisting health issues but has failed to attach any documentation from treating physicians to support this claim.
- 5) The Defendant was on probation at the time of this offense and a violation is pending before Judge Chabot.
- 6) The defendant has additional prior convictions including Fleeing & Eluding 4th, stalking, ouil and other traffic misdemeanors.

Wherefore, based on the above the [] People respectfully request this Honorable Court to deny the motion for the reasons stated above.

Respectfully J. Pietrofesa

charges (including felony firearm that has a mandatory 2-year sentence) such that there is a heightened potential for flight risk and he represents a public safety threat.

Accordingly, IT IS HEREBY ORDERED that defendant's motion is DENIED.

IT IS SO ORDERED.
4/14/2020

Date


/s/ Leo Bowman

Hon. Leo Bowman

VK

EXHIBIT THREE: Register of Actions

Court Explorer

 Register of Actions

 [Go Back](#)

Case Number

2020-273750-FH

Entitlement

PEOPLE vs. CHANDLER DONALD WALLACE

Judge Name

LEO BOWMAN

Case E-Filed

YES

Case Filed

02/12/2020

Case Disposed

00/00/0000

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Date	Code	Desc
04/14/2020	ORD	ORDER FILED DENY EMER MTN MOD RELEASE DECISION
04/08/2020	APR	DATE SET FOR MOTION ON 04142020 10 00 AM Y 09
04/08/2020	ORD	ORDER FILED SET REMOTE HRG
04/07/2020	MTN	MOTION FILED FOR MOD OF RELEASE DECISION
04/07/2020	NOH	NOTICE OF HEARING FILED
04/07/2020	POS	AFFIDAVIT/PROOF OF SERVICE FILED
03/31/2020	TRN	TRANSCRIPT FILED PRELIM 02/12/20
03/25/2020	ADJ	ORDER OF ADJOURNMENT FILED PRETRL
03/24/2020	JNA	JUDGE NOT AVAILABLE COVID19 EMER OPS
03/24/2020	APJ	ADJ-JUDGE 04072020 TO 05152020 BY ORDER
03/24/2020	APR	DATE SET FOR PRETRIAL ON 05152020 08 30 AM Y 09
03/16/2020	DM	DEFENSE MOTION DECLINE TO HEAR AS EMERGENCY
03/16/2020	MTN	MOTION FILED TO REDUCE BOND/EMERGENCY

03/16/2020	NOH	NOTICE OF HEARING FILED
03/16/2020	POS	AFFIDAVIT/PROOF OF SERVICE FILED
03/10/2020	PTH	PRE-TRIAL HELD
03/10/2020	APR	DATE SET FOR PRETRIAL ON 04072020 08 30 AM Y 09
02/26/2020	APR	DATE SET FOR PRETRIAL ON 03102020 08 30 AM Y 09
02/25/2020	ARR	ARRAIGNMENT IN COURT
02/20/2020	GIF	GEN INFO FILED
02/19/2020	OTH	PAPER PLATE FILED
02/18/2020	NSE	NOTICE SEEK SENTENCE ENHANCEMENT FILED 4TH OR SUB
02/13/2020	DCR	DISTRICT COURT RETURN FILED
02/13/2020	N	NTC CT ADMN FILED
02/13/2020	O	REQUEST FOR ATTORNEY/REIMBURSEMENT FILED
02/12/2020	N	NOTICE FROM COURT ADMINISTRATOR FILED
02/12/2020	A	PROSECUTORS ORDER 20-70795
02/12/2020		ARRESTING AGENCY: MILFORD POLICE DEPT.
02/12/2020		52/1 DISTRICT COURT 20-000051
02/12/2020	CTN	CENTRAL TRACT 63-20-070795-01
02/12/2020	SID	STATE ID 3779624L
02/12/2020	DOF	DATE OF OFFENSE 01/03/20
02/12/2020	CCA	ARRAIGNMENT - TUE, 02252020 AT 0830AM
02/12/2020	DCX	EXAM FOR 02/12/20 HAD
02/12/2020	DOB	BIRTH YEAR - 64
02/12/2020	CHG	750.224F FELON POSS FIREARM
02/12/2020		BOUND OVER AS CHARGED
02/12/2020	CHG	750.227B-A WEAPONS-FELONY FIREARM
02/12/2020		BOUND OVER AS CHARGED
02/12/2020	CHG	750.227C POSS LOADED FIRE IN/UPON MTR
02/12/2020		BOUND OVER AS CHARGED
02/12/2020	CHG	257.9041C DWLS - 2ND OR SUBS. OFFENSE

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02/12/2020		BOUND OVER AS CHARGED
02/12/2020	COB	CONDITIONS ON BOND
02/12/2020	BON	BOND POSTED BY: NOT FURNISHED
02/12/2020		CITY UNKNOWN
02/12/2020		TYPE: CASH/SURETY
02/12/2020		AMOUNT: \$25,000
02/12/2020	APR	DATE SET FOR PRETRIAL ON 02252020 08 30 AM
02/12/2020	APR	DATE SET FOR ARRAIGNMEN ON 02252020 08 30 AM Y

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EXHIBIT FOUR:
People v. Ferguson, No. 353226.

Court of Appeals, State of Michigan

ORDER

People of MI v Moneasha Ann Ferguson

Docket No. 353226

LC No. 2019-270536-FH

Elizabeth L. Gleicher
Presiding Judge

Deborah A. Servitto

Colleen A. O'Brien
Judges

The Court orders that the motion for immediate consideration is GRANTED.

In lieu of granting the “emergency motion for modification of release decision,” which this Court has docketed as an application for leave to appeal, the Court orders that, pursuant to MCR 7.205(E)(2), the March 18, 2020 order of the Oakland Circuit Court declining to hear defendant’s motion for bond until April 28, 2020, hereby is VACATED. Administrative Order No. 2020-2 (issued March 18, 2020) defines circuit courts’ essential functions as including in-custody criminal defendants’ emergency motions regarding bond, and directs circuit courts to conduct such hearings remotely. In light of the Supreme Court’s order, the circuit court should not have delayed deciding defendant’s bond motion. Further, considering the public health factors arising out of the present public health emergency, the circuit court should have granted defendant a personal bond. The case is REMANDED to the circuit court for proceedings to ensure defendant’s immediate release on bond.

This order is to have immediate effect, MCR 7.215(F)(2).

The Court retains no further jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAR 23 2020

Date

Chief Clerk

EXHIBIT FIVE:
Second Circuit Court Bond Motion 4-7-2020

STATE OF MICHIGAN
IN THE 6TH CIRCUIT COURT

STATE OF MICHIGAN,

Plaintiff,

Case No. 2020-273750-FH
HON. LEO BOWMAN (P34867)

V.

DONALD WALLACE CHANDLER,

Defendant.

JOHN PIETROFESA (P53972)
Assistant Oakland County Prosecutor
1200 N. Telegraph, Building #14E
Pontiac, MI 48341
(248) 858-0656

WILL S. NAHIKIAN (P81520)
Attorney for Mr. Chandler
500 Griswold St., Ste. 2450
Detroit, MI 48226
(248) 227-1978

EMERGENCY MOTION FOR MODIFICATION OF RELEASE DECISION

DONALD WALLACE CHANDLER requests the urgent elimination of the \$25K cash/surety, no ten percent, bond requirement imposed in this matter. Mr. Chandler is currently detained only because he cannot afford to pay this bond. In light of the urgent COVID-19 crisis, it is imperative to reduce jail populations. Eliminating unnecessary pre-trial detention in cases such as this one is one vital step to protecting the community at large, inmate populations in our crowded jails, court and jail staff, and defendants themselves. Furthermore, because Mr. Chandler's bond is unaffordable and thus serves as a *de facto* detention order, it was excessive and contrary to MCR 6.106 and the United States and Michigan Constitutions in the first instance, although this Court need not reach that issue if it agrees to order Mr. Chandler released in light of the COVID-19 crisis. The urgency of the current crisis makes it imperative that the bond be eliminated immediately, or is reduced to \$1,500 cash/surety, allowing ten percent, which

Mr. Chandler is capable of paying immediately. In support of this motion, Mr. Chandler states as follows:

Basic Factual and Procedural Background

1. Donald Chandler was arrested on January 3, 2020, for the following charges:
 - a. Count 1 – Weapons – Firearms – Possession by Felon; In violation of MCL 750.224F.
 - b. Count 2 – Possession of a Firearm in the Commission of a Felony; In violation of MCL 750.227b.
 - c. Count 3 – Weapons – Firearms – Possession of a Loaded Firearm in or Upon a Vehicle; In violation of MCL 750.227c.
 - d. Count 4 – Operating – License Suspended; In violation of MCL 257.904(3)(b).
2. Initially, Mr. Chandler was arraigned and his bond was set at 25k cash/surety, no ten percent.
3. On January 15, 2020, Mr. Chandler appeared for a probable cause/pre-examination conference in front of the Honorable Travis Reeds. At this conference, having been deemed indigent, Mr. Chandler was represented by undersigned appointed counsel.
4. Counsel moved that Mr. Chandler be released pursuant only to an unsecured appearance bond or, in the alternative, subject only to non-financial release conditions. Counsel informed the court that maximum cash bail that Mr. Chandler could afford to pay was a low cash bond that would allow for a ten percent payment.
5. The district court nonetheless imposed cash bail of 25k cash/surety, no ten percent. Because Mr. Chandler cannot afford that amount, and *only* for that reason, Mr. Chandler remains incarcerated.

6. Undersigned Counsel again attempted to address bond at the Circuit Court level in-front of this Honorable Court at Mr. Chandler's arraignment on the information that took place on February 25, 2020. However, this Honorable Court informed Mr. Chandler that he must file a motion to address bond.
7. On March 16, 2020 Mr. Chandler filed an Emergency Motion for Bond upon recognizing the dangers he would soon face while incarcerated within the Oakland County Jail. However, this Honorable Court "[did] not find that defendant's motion [was] an emergency and [would] not hear [it] on an emergency basis."¹
8. Similarly, on March 23, 2020 the Michigan Court of Appeals issued an order in an extremely similar case, finding that "[i]n light of the Supreme Court's Order, the circuit court should not have delayed deciding defendant's bond motion.... [f]urther, considering the public health factors arising out of the present public health emergency, the circuit court should have granted defendant a personal bond.... [t]he case is REMANDED to the circuit court for proceedings to ensure defendant's immediate release on bond."²

COVID-19-related Facts and Argument

9. The COVID-19 pandemic that is currently affecting the entire state and nation presents a particularly severe risk to incarcerated persons and to the attorneys and court and jail staff who interact with them. The best available public health advice involves preventing the spread of COVID-19 by regularly washing hands, social distancing, and self-quarantining when necessary.³ All of these precautions are particularly difficult, if not impossible, in the carceral setting. Accordingly, Mr. Chandler is at heightened risk of infection while

¹ A copy of the Original Order has been attached as "Exhibit 1."

² A copy of this Order has been attached as "Exhibit 2."

³ See Michigan Department of Health and Human Services, Community Mitigation Strategies, *available at* https://www.michigan.gov/coronavirus/0,9753,7-406-98178_98155-521467--,00.html

he remains incarcerated as the result of the unaffordable bond imposed in this case.

10. On Tuesday, March 10 Governor Gretchen Whitmer declared a state of emergency in Michigan as a result of the COVID-19 crisis. President Donald J. Trump declared a national emergency on March 13. On March 15, the Michigan Supreme Court issued Administrative Order No. 2020-1, urging all state courts to “take any . . . reasonable measures to avoid exposing participants in court proceedings, court employees, and the general public to the COVID-19 crisis.” The order further instructs courts specifically to “take into careful consideration public health factors arising out of the present state of emergency . . . in making pretrial release decisions, including in determining any conditions of release.”⁴
11. Courts around the country have recognized the importance, both for community health and for the health of incarcerated populations, of releasing pre-trial detainees during this crisis.⁵
12. Accordingly, consistent with the Michigan Supreme Court’s instructions, and with the advice of medical and health professionals, pre-trial detainees who are being held as the result of unaffordable bond should be released urgently absent truly extraordinary facts that demonstrate a concrete, identified, and articulable basis for believing that the individual would flee the jurisdiction or harm a specified individual or individuals if released. Even then, pre-trial detention can only be justified if any such risk cannot be mitigated by resort to alternate, non-financial, conditions of release.

⁴ See Administrative Order No. 2020-01 (March 15, 2020), *available at* https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Administrative%20Orders/2020-08_2020-03-15_FormattedOrder_AO2020-1.pdf.

⁵ See, e.g., Ryan Autullo, *Travis County judges releasing inmates to limit coronavirus spread*, The Statesman (March 16, 2020), *available at* <https://www.statesman.com/news/20200316/travis-county-judges-releasing-inmates-to-limit-coronavirus-spread?fbclid=IwAR3VKawwn3bwSLSO9jXBxXNRuaWd1DRLsCBFc-ZkPN1INWW8xnzLPvZYNO4>.

13. Here, there is no evidence that Mr. Chandler will flee the jurisdiction. To the contrary:
 - a. Mr. Chandler is a 56-year-old Husband and Father, who has lived at his current address (102 W. Kennett, in Pontiac, MI) for 7-years;
 - b. Mr. Chandler would reside with his wife and Joanne Green, who his wife is the current caretaker for;
 - c. Mr. Chandler does not have a passport nor the resources necessary to obtain one;
 - d. Though Mr. Chandler worked for the Detroit News and Free Press in delivering newspapers, he is also on social security disability.
 - e. At most, a GPS tether and house arrest would ensure that Mr. Chandler is not a flight risk.

14. Nor is there any concrete evidence that Mr. Chandler poses an identified and articulable danger to others. To the contrary even if this Honorable Court were to require Mr. Chandler to wear a GPS tether and be on house arrest, there would be no risk whatsoever to the public, or others. Not to mention that the majority of Michigan's residents are under a stay at home order. And, of course, Mr. Chandler must still be presumed innocent, so the fact that he has been charged with a crime is not proof that he actually committed the crime in the first place. And the instant charges are in no way probative that Mr. Chandler might offend if released while awaiting trial. See, e.g., *United States v. Demmler*, 532 F Supp 2d 677, 683 (SD Ohio, 2007) (observing that, in setting bail, a "Court will not assume that just because [a defendant] has been charged" with a particular crime that "he is likely to commit these same offenses again during the course of these proceedings").

15. COVID-19 poses a particularly severe health risk to defendants who are older than 50

and those who have pre-existing medical conditions that place them at risk including, but not limited to, heart disease, lung disease, diabetes, and conditions resulting in the individual being immune-compromised. Mr. Chandler is particularly vulnerable because of his age. Not only that, but according to Mr. Chandler, and his wife, he suffers seizures and requires a CPAP machine to sleep at night, which he is not provided within the Oakland County Jail. Accordingly, permitting Mr. Chandler to remain incarcerated is extremely dangerous and particularly cruel—and may in fact constitute deliberate indifference to and failure to accommodate Mr. Chandler's serious health conditions.

16. As of April 7, 2020, Michigan has the third highest number of COVID-19 cases in the United States.⁶ Not only that, but COVID-19 is already spreading within the Oakland County Jail, where as of April 3, 2020, at least 6 inmates are infected and multiple deputies have tested positive as well, without disclosing how many!⁷ Further, according to Mr. Chandler, he believes there have been two deaths within the Oakland County Jail as a result of this pandemic. If true, it is particularly cruel to leave him incarcerated simply due to the inability to afford bond.
17. For these reasons, this Court should immediately revoke the requirement that Mr. Chandler pay bond and release him subject, at most, to a personal bond or any other conditions that do not require payment that the court deems necessary. Any new conditions that are imposed should not in any way restrict Mr. Chandler from accessing medical care as needed or providing any necessary aid and assistance to their family and

⁶ See, e.g., Juweek Adolphe, Pablo Gutierrez, Niko Kommenda, *Coronavirus map of the US: latest cases state by state*, *The Guardian* (April 7, 2020) available at <https://www.theguardian.com/world/ng-interactive/2020/apr/07/coronavirus-map-of-the-us-latest-cases-state-by-state>.

⁷ See, e.g., Aileen Wingblad, *6 inmates at Oakland County Jail have COVID-19*, *The Oakland Press* (April 3, 2020) available at https://www.theoaklandpress.com/news/coronavirus/6-inmates-at-oakland-county-jail-have-covid-19/article_a1fe7b48-75df-11ea-ae6b-233d4b16a9fe.html.

loved ones during this health crisis.

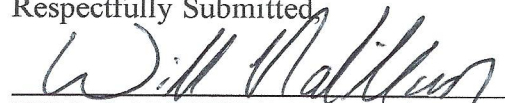
Additional Facts and Argument

18. In addition, Mr. Chandler's bond in this case should be eliminated or is reduced to \$1,500 cash/surety, allowing ten percent, which Mr. Chandler is capable of paying immediately, because the bond was functioning as a pre-trial detention order and was not lawful even in the absence of the COVID-19 pandemic.
19. Article 1, § 15 of the Michigan Constitution guarantees that "[a]ll persons shall, before conviction, be bailable by sufficient sureties," except in circumstance not applicable here. Article 1, § 16 provides that "[e]xcessive bail shall not be imposed."
20. MCR 6.106(C)–(F) implement these rights. MCR 6.106(C) provides that personal recognizance release or unsecured appearance bonds are the default release options. MCR 6.106(D)–(E) require that any risk of flight or danger to the public be addressed by *non-financial* release conditions absent record findings that cash bail is truly necessary. It is only "[i]f the court determines for reasons *it states on the record* that the defendant's appearance or the protection of the public cannot otherwise be assured [that] money bail, with or without conditions . . . may be required." MCR 6.106(E) (emphasis added). The Michigan Supreme Court has been "emphatic" that these rules are "to be complied with in spirit, as well as to the letter." *People v. Spicer*, 402 Mich. 406, 410; 263 NW2d 256 (1978).
21. Here, no court has ever made adequate findings that Mr. Chandler poses a flight risk or danger to the public sufficient to justify imposing release conditions. And no finding could be justified by the facts here for the reasons stated above. Thus, the bond imposed violates MCR 6.106(D)–(E).

22. The current bail condition is also unconstitutional under the Fourteenth Amendment to the United States Constitution. The imposition of unaffordable cash bail without adequate findings violates Mr. Chandler's right to equal protection of the law because they are now being incarcerated "simply because, through no fault of [their] own, [they] cannot pay." *Bearden v Georgia*, 461 US 660, 672–673 (1983). The bail determination also violated Mr. Chandler's right to substantive due process because it amounts to a pre-trial detention order that is not constitutionally sufficient to deprive a defendant of their pre-trial liberty. See *United States v Salerno*, 481 US 739 (1987).

Accordingly, Mr. Chandler requests that this Court grant relief by: (a) ordering the elimination of the bail condition and their immediate release on recognizance or subject only to an unsecured appearance bond; or alternatively, (b) ordering their release subject only to such non-financial conditions as necessary in light of the record and that will not interfere with Mr. Chandler's ability to seek medical treatment and/or care for their family and loved ones; or in the worst-case scenario (c) ordering his release subject to a cash bond of no more than \$1,500 cash/surety, allowing ten percent, which Mr. Chandler can afford.

Respectfully Submitted,



WILL S. NAHIKIAN (P81520)

Attorney for Mr. Chandler

500 Griswold Street, Suite 2450

Detroit, MI 48226

(248) 227-1978

April 7, 2020.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

v.

Case No: 20-273750-FH
Hon. Leo Bowman

DONALD WALLACE CHANDLER,
Defendant.

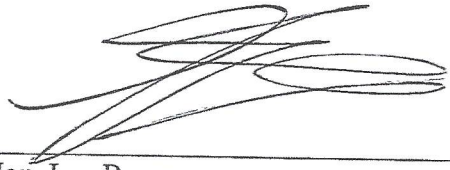
ORDER

At a session of said Court held in the Courthouse in Pontiac,
Oakland County, Michigan on **MAR 16 2020**

PRESENT: LEO BOWMAN, Circuit Judge

This matter is before the Court on defendant's emergency motion to reduce bond filed on March 16, 2020. In his motion, defendant requests that this Court hear his motion on an emergency basis. Upon review of the motion, this Court does not find that defendant's motion is an emergency and will not hear this motion on an emergency basis. Accordingly, defendant's request to have his motion heard on an emergency basis is DENIED. Defendant may resubmit the motion and have it heard pursuant to regular motion protocol and pursuant to the Sixth Circuit's emergency procedures order and its directive regarding criminal matters.

IT IS SO ORDERED.



Hon. Leo Bowman

3-16-20
Date

Court of Appeals, State of Michigan

ORDER

People of MI v Moneasha Ann Ferguson

Docket No. 353226

LC No. 2019-270536-FH

Elizabeth L. Gleicher
Presiding Judge

Deborah A. Servitto

Colleen A. O'Brien
Judges

The Court orders that the motion for immediate consideration is GRANTED.

In lieu of granting the "emergency motion for modification of release decision," which this Court has docketed as an application for leave to appeal, the Court orders that, pursuant to MCR 7.205(E)(2), the March 18, 2020 order of the Oakland Circuit Court declining to hear defendant's motion for bond until April 28, 2020, hereby is VACATED. Administrative Order No. 2020-2 (issued March 18, 2020) defines circuit courts' essential functions as including in-custody criminal defendants' emergency motions regarding bond, and directs circuit courts to conduct such hearings remotely. In light of the Supreme Court's order, the circuit court should not have delayed deciding defendant's bond motion. Further, considering the public health factors arising out of the present public health emergency, the circuit court should have granted defendant a personal bond. The case is REMANDED to the circuit court for proceedings to ensure defendant's immediate release on bond.

This order is to have immediate effect, MCR 7.215(F)(2).

The Court retains no further jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAR 23 2020

Date


Chief Clerk

STATE OF MICHIGAN
IN THE 6TH CIRCUIT COURT

STATE OF MICHIGAN,

Plaintiff,

Case No. 2020-273750-FH
HON. LEO BOWMAN (P34867)

V.

DONALD WALLACE CHANDLER,

Defendant.

JOHN PIETROFESA (P53972)
Assistant Oakland County Prosecutor
1200 N. Telegraph, Building #14E
Pontiac, MI 48341
(248) 858-0656

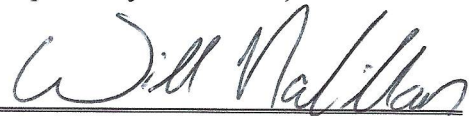
WILL S. NAHIKIAN (P81520)
Attorney for Mr. Chandler
500 Griswold St., Ste. 2450
Detroit, MI 48226
(248) 227-1978

NOTICE OF HEARING

TO ALL PARTIES OR THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendant's Emergency Motion for Modification of Release Decision will be brought for hearing before the Honorable Leo Bowman, in his courtroom at the 6th Circuit Court, the hearing date and time to be set by the Court.

Respectfully Submitted,



WILL S. NAHIKIAN (P81520)
Attorney for Ms. Robinson
500 Griswold St., Ste. 2450
Detroit, MI 48226
P: (248) 227-1978
F: (313) 752-0668

Dated: April 7, 2020

STATE OF MICHIGAN
IN THE 6TH CIRCUIT COURT

STATE OF MICHIGAN,

Plaintiff,

Case No. 2020-273750-FH
HON. LEO BOWMAN (P34867)

V.

DONALD WALLACE CHANDLER,

Defendant.

JOHN PIETROFESA (P53972)
Assistant Oakland County Prosecutor
1200 N. Telegraph, Building #14E
Pontiac, MI 48341
(248) 858-0656

WILL S. NAHIKIAN (P81520)
Attorney for Mr. Chandler
500 Griswold St., Ste. 2450
Detroit, MI 48226
(248) 227-1978

PROOF OF SERVICE

Will S. Nahikian certifies that on the 7th day of April, 2020, he served a copy of Defendant's Emergency Motion for Modification of Release Decision, Notice of Hearing, and this Proof of Service upon: The Oakland County Prosecutor's Office, via email, which was delivered to: pietrofesaj@oakgov.com.

Respectfully Submitted,



WILL S. NAHIKIAN (P81520)
Attorney for Mr. Chandler
500 Griswold St., Ste. 2450
Detroit, MI 48226
P: (248) 227-1978
F: (313) 752-0668

Dated: April 7, 2020

EXHIBIT SIX:
Order Setting the Matter for Hearing via Zoom
Video 4-7-2020

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND**

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

Case No: 20-273750-FH
Hon. Leo Bowman

v.
DONALD WALLACE CHANDLER,
Defendant.

ORDER TO SET REMOTE HEARING

At a session of said Court held in the Courthouse in Pontiac,
Oakland County, Michigan on

PRESENT: LEO BOWMAN, Circuit Judge

This matter is before the Court on defendant's *emergency* motion for modification of release decision filed on April 7, 2020. Administrative Order No. 2020-2 (issued March 18, 2020) defines circuit courts' essential functions as including in-custody criminal defendants' emergency bond motions and directs circuit courts to conduct such hearings remotely. Having reviewed defendant's motion and having considered the public health factors arising out of the present public health emergency, this Court finds that it would be appropriate to set the matter for a remote hearing.

Accordingly, IT IS HEREBY ORDERED that a remote hearing shall be held related to defendant's *emergency* motion on April 14, 2020 at 10:00 a.m.¹ This Court's time slot on Tuesdays begins promptly at 10:00 a.m. (limited to one hour) and attorneys can enter "join meeting" by using 812-928-7611 for the Meeting ID.

IT IS SO ORDERED.

Date

4/7/20

Hon. Leo Bowman

VK

¹ The Sixth Circuit uses Zoom for its remote hearings. The website is www.zoom.us. It is recommended that the attorneys download the free application if not already downloaded. This Court notes that defense attorneys may be required to waive their client's appearance for this hearing if there are any logistics issues involved with the Oakland County Jail arranging the defendant's participation for the remote hearing.

EXHIBIT SEVEN:
People v. Calloway, No. 349870.

EXHIBIT EIGHT:

Court of Appeals, State of Michigan

ORDER

People of MI v Travis Joseph Calloway

Docket No. 349870

LC No. 18-018798-FH

Amy Ronayne Krause
Presiding Judge

Kirsten Frank Kelly

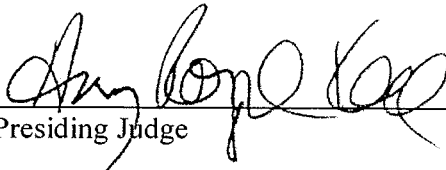
Jonathan Tukel
Judges

The Court orders that the motion for appellate bond is GRANTED. Administrative Order No. 2020-1 (issued March 15, 2020) directs courts to consider the public health factors arising out of the present public health emergency to mitigate the spread of COVID-19. Under the facts before this Court and all of the circumstances, the trial court abused its discretion in denying defendant a bond pending appeal. See MCR 7.209(B)(2). Defendant is to be immediately released on personal bond, subject to defendant agreeing: (a) to prosecute the appeal to decision; (b) to surrender himself to the sheriff of the county in which he was convicted if the sentence is affirmed on appeal or if the appeal is dismissed; (c) to appear in the trial court if the case is remanded for further proceedings; (d) to remain in Michigan unless the trial court gives written approval to leave; and (e) to notify the trial court clerk of a change of address. Any further issues with regard to defendant's bond shall be addressed to the trial court, and supervision of defendant's compliance with the terms of the bond shall be carried out by the trial court, pending further proceedings. The case is REMANDED to the trial court for proceedings consistent with this order to ensure defendant's immediate release pending his appeal.

The motion to file a supplemental brief is GRANTED and the brief is accepted for filing. The prosecutor's response brief to the supplemental brief is due in accordance with Administrative Order No. 2020-4.

The motion to expedite the appeal is DENIED.

This order is to have immediate effect, MCR 7.215(F)(2). The Court retains jurisdiction.


Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAR 31 2020

Date


Chief Clerk

EXHIBIT EIGHT:
United States v. Knight, No. 18-20180-001 (ED
Mich. March 24, 2020)

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

United States of America,

Plaintiff,

Case No. 18-cr-20180-001

v.

Judith E. Levy

United States District Judge

Roosevelt Knight,

Defendant.

_____/

**ORDER PARTIALLY GRANTING MOTION TO
REVOKE ORDER OF DETENTION [96]**

On March 23, 2020, Defendant Roosevelt Knight filed a motion to revoke his order of detention. After being on supervised release for over a year, Defendant was arrested on violation of his supervised release and the Magistrate Judge detained him in Livingston County Jail, where he currently resides. The Court is authorized to revisit the Magistrate Judge's order pursuant to 18 U.S.C. § 3145(b).

Defendant argues that he has suffered from bronchial asthma since early childhood. He seeks release because, while in prison, he is in danger of deadly illness due to the COVID-19 pandemic. As the Center for Disease Control (CDC) acknowledged on March 23, 2020, prison

confinement conditions create a serious risk for the spread of COVID-19, even among a healthy population. *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, CENTER FOR DISEASE CONTROL (March 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>. Defendant's serious respiratory condition puts him at even greater risk. *Id.*

On March 24, 2020, the United States requested via email that it be permitted to respond to Defendant's motion by the end of the week. The United States cited several factors about Defendant's case that render the government "grave[ly] concern[ed]" about a pretrial release, including the nature of Defendant's probation violation. The Court appreciates these concerns, and is very familiar with Defendant's case. However, the Court finds the danger to Defendant to be dire and that time in this case does not permit a response. *See United States v. Travis*, 129 F.3d 1266, at *1 (6th Cir. Oct. 28, 1997) (Table decision) (finding that 18 U.S.C. § 3 "the district court has jurisdiction to reopen the bail issue on its own motion" under 18 U.S.C. § 3142, even though the statute "does not expressly provide for *sua sponte* review of a magistrate judge's

detention order”); *see also* Fed. R. Crim. P. 2 (“These rules are to be interpreted . . . to eliminate unjustifiable [] delay.”)

The Court is permitted to temporarily release an individual in custody “to the extent that the judicial officer determines such release to be necessary for the preparation of the person’s defense or for another compelling reason.” 18 U.S.C. § 3142(i)(4). Because of the particular danger that the COVID-19 pandemic presents to detainees as determined by the CDC, and because of Defendant’s respiratory condition that makes him particularly vulnerable to this disease, the Court finds that Defendant has set forth compelling reasons for his temporary release amidst this growing public health emergency.

Accordingly, the Court grants Defendant’s motion. Defendant is immediately released into the custody of his family on the same terms and conditions that existed prior to his recent arrest, (ECF No. 85), with the following bond modifications:

- Defendant will have weekly contact with the Probation Department as directed;
- Defendant will provide his release address and phone number to the Probation Department within 24 hours of his release from custody; and
- Defendant is required to attend his scheduled treatment appointment at Team Wellness to the extent that it is safe for all parties to do so.

The Court will revisit this Order in six months.

IT IS SO ORDERED.

Dated: March 24, 2020
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on March 24, 2020.

s/William Barkholz
WILLIAM BARKHOLZ
Case Manager

EXHIBIT NINE:
MSC Order 1-2020

Order

March 15, 2020

ADM File No. 2020-08

Administrative Order No. 2020-1

In Re Emergency Procedures in
Court Facilities

Michigan Supreme Court
Lansing, Michigan

Bridget M. McCormack
Chief Justice

David F. Viviano
Chief Justice Pro Tempore

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Justices

Governor Whitmer having declared a state of emergency in response to the serious health risks posed by COVID-19, trial courts are authorized to implement emergency measures to reduce the risk of transmission of the virus and provide the greatest protection possible to those who work and have business in our courts. In support of this goal, on order of the Court, each trial court judge may implement emergency measures regarding court operations to enable continued service while also mitigating the risk of further transmission of the virus. Subject to constitutional and statutory limitations, such emergency measures may include:

1. Trial courts may adjourn any civil matters and any criminal matters where the defendant is not in custody; where a criminal defendant is in custody, trial courts should expand the use of videoconferencing when the defendant consents;
2. In civil cases, trial courts should maximize the use of technology to enable and/or require parties to participate remotely. Any fees currently charged to allow parties to participate remotely should be waived;
3. Trial courts may reduce the number of cases set to be heard at any given time to limit the number of people gathered in entranceways, lobbies, corridors, or courtrooms;
4. Trial courts should maximize the use of technology to facilitate electronic filing and service to reduce the need for in-person filing and service;
5. Trial courts should, wherever possible, waive strict adherence to any adjournment rules or policies and administrative and procedural time requirements;
6. Trial courts should coordinate with the local probation departments to allow for discretion in the monitoring of probationers' ability to comply with conditions without the need for amended orders of probation;

RECEIVED BY MSC 4/27/2020 2:09:01 PM

7. Trial courts should take any other reasonable measures to avoid exposing participants in court proceedings, court employees, and the general public to the COVID-19 virus;
8. In addition to giving consideration to other obligations imposed by law, trial courts are urged to take into careful consideration public health factors arising out of the present state of emergency: a) in making pretrial release decisions, including in determining any conditions of release, b) in determining any conditions of probation;
9. If a Chief Judge or the court's funding unit decides to close the court building to the public, the Chief Judge shall provide SCAO with the court's plan to continue to provide critical services, including handling emergency matters.

The emergency measures authorized in this order are effective until close of business Friday, April 3, 2020, or as provided by subsequent order.

During the state of emergency, trial courts should be mindful that taking reasonable steps to protect the public is more important than strict adherence to normal operating procedures or time guidelines standards. The Court encourages trial courts to cooperate as much as possible with the efforts of the Governor and other state and local officials to mitigate the spread of COVID-19, consistent with our duty to provide essential court services, protect public safety, and remain accessible to the public.

It is so ordered, by unanimous consent.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 15, 2020

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk

EXHIBIT TEN:
Transcript of Hearing 4-14-2020

Approved, SCAO

STATE OF MICHIGAN JUDICIAL DISTRICT 6TH JUDICIAL CIRCUIT COUNTY PROBATE	REPORTER/RECORDER CERTIFICATE OF ORDERING OF TRANSCRIPT ON APPEAL Appeal to: <input checked="" type="checkbox"/> Court of Appeals <input type="checkbox"/> Circuit	CASE NO. 2020-273750-FH
---	--	-----------------------------------

Court address 1200 NORTH TELEGRAPH ROAD, DEPT. 413, PONTIAC, MICHIGAN 48341 **Court telephone no.** (248) 858-0582

Plaintiff/Petitioner name(s) and address(es) People of the State of Michigan	<input type="checkbox"/> Appellant <input checked="" type="checkbox"/> Appellee	V	Defendant/Respondent name(s) and address(es) Donald Wallace Chandler	<input checked="" type="checkbox"/> Appellant <input type="checkbox"/> Appellee
---	--	---	---	--

Attorney, bar no., address and telephone no.
Oakland County Prosecutor's Office
1200 N. Telegraph Road
Pontiac, MI 48341
248-858-0656

Attorney, bar no., address, and telephone no.
William Symula Nahikian, P81520
500 Griswold Street, Suite 2450
Detroit, MI 48226
248-227-1978

☐ Probate In the matter of _____

This certificate must be filed by appellant or reporter/recorder within 7 days on appeals to the Court of Appeals.
This certificate must be filed by appellant within 7 days on appeals to the circuit court.

I am a certified court reporter/recorder for the court designated above and I certify that:

1. On 4-14-20 ☐ a portion of the ☒ the complete transcript of proceedings, taken in this case
Date before Judge Leo Bowman on 4-14-20, was ordered by
Date(s)
☒ a. William Symula Nahikian, attorney for Donald Wallace Chandler
Attorney name (type or print) Name (type or print)
☐ b. the appellant, _____
Name (type or print)
☐ c. the court.
- ☐ 2. Payment has been secured and the transcript will be furnished by me _____
Estimated number of pages is _____ Estimated date of completion _____
- ☒ 3. The transcript has been filed with the court and furnished as requested. Date filed: 4-16-20
- ☐ 4. There is no record to be transcribed.

I declare that the statements above are true to the best of my information, knowledge, and belief.

4-16-20
Date

Reporter/Recorder signature
/s/ Deanna L. Harrison
Name (type or print)

CER-7464
Certification designation and number
104 Oakland Street
Business address
Holly, MI 48442 248-634-3369
City, state, zip Telephone no.

List names, certification designations and numbers, and dates of each proceeding of each reporter or recorder who reported or recorded or transcribed any part of the proceedings:

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

THE PEOPLE OF THE STATE OF MICHIGAN,

vs

Case No. 2020-273750-FH

DONALD WALLACE CHANDLER,

Defendant.

/

MOTION

BEFORE THE HONORABLE LEO BOWMAN

Pontiac, Michigan - Tuesday, April 14, 2020

APPEARANCES:

For the People: JOHN D. PIETROFESA (P53972)
Oakland County Prosecutor's Office
1200 North Telegraph Road
Pontiac, Michigan 48341
(248) 858-0656

For the Defendant: WILLIAM SYMULA NAHIKIAN (P81520)
Will Defend You, PLLC
500 Griswold Street
Suite 2450
Detroit, Michigan 48226
(248) 227-1978

Videotape Transcription Provided By:
Deanna L. Harrison, CER 7464
About Town Court Reporting, Inc.
248-634-3369

TABLE OF CONTENTS

WITNESSES

PAGE

None.

EXHIBITS

Introduced

Admitted

None.

1 Pontiac, Michigan

2 Tuesday, April 14, 2020

3 - - -

4 (At 11:06 a.m., proceedings begin)

5 THE CLERK: -- 273750-FH, for Mr. Donald
6 Chandler.

7 MR. PIETROFESA: John Pietrofesa on behalf of
8 the People.

9 MR. NAHIKIAN: Good morning, Your Honor. Will
10 Nahikian, P81520, on behalf of Mr. Chandler, who is
11 appearing via video.

12 THE COURT: Okay. Counsel, this is your motion.
13 You may proceed.

14 MR. NAHIKIAN: Thank you, Your Honor.

15 I -- I would rely on my motion, but I would like
16 to just note that Mr. -- Mr. Chandler's bond is
17 unaffordable and thus serves as a de facto detention
18 order. It's really the only reason he is incarcerated.
19 The urgency of this crisis makes it imperative that the
20 bond be eliminated immediately.

21 The Michigan Supreme Court has essentially said
22 that pretrial detainees who are being held as a result of
23 the unaffordable bond should be released urgency [sic]
24 absent truly extraordinary facts that demonstrate a con --
25 concrete, identified, and articulate basis for believing

1 the individual would flee the jurisdiction or harm a
2 specified individual. Even then, pretrial detention can
3 only be justified if any such risk cannot be mitigated by
4 resorting to alternate, non-financial conditions of
5 release.

6 As mentioned in my motion, as -- at maximum, a
7 GPS tether would ensure that Mr. Chandler, number one
8 doesn't leave the jurisdiction, number two, that he's not
9 leaving his house, so he's not a threat to others.

10 I think imposing a GPS tether at maximum would
11 ensure protection to the community, and ensure that Mr.
12 Chandler returned to court when required to do so.

13 THE COURT: Anything else, counsel?

14 MR. NAHIKIAN: No, Your Honor.

15 THE COURT: People?

16 MR. PIETROFESA: Judge, I think you know the
17 positions I've taken on all of these cases not to object.
18 This is the first one I'm objecting to.

19 I'm objecting to it for the reasons I put in my
20 response. He's a habitual fourth, he got three felony
21 convictions less than a year ago that he's currently on
22 probation for. There's a violation of probation pending
23 in front of Chabot based on those cases. He's looking at
24 a two-year mandatory sentence at the minimum of
25 everything. He's got other priors, including stalking,

1 and under the (indiscernible) in addition to the felonies
2 he has a fleeing and eluding in addition to those, and I
3 -- I think he poses a threat to the community, and despite
4 what counsel put in the motion, there was no documentation
5 of any health issues as alleged in the motion, which I
6 think would be a bare minimum to bear up what was said, so
7 for all those reasons, we are -- I am objecting to this.

8 MR. NAHIKIAN: Yes, Your Honor. I understand
9 that, and as I stated in my motion, it's quite difficult
10 -- so I -- I originally filed this motion on March 16th,
11 which was probably one of the first motions -- emergency
12 motions filed to the Court. I did that knowing that Mr.
13 Chandler is a vulnerable individual located within the
14 Oakland County Jail. He's 56 years old. He has seizures.
15 He had a seizure while located within the Oakland County
16 Jail; I mean we can ask that jail about that.

17 But the bottom line is it was difficult to get
18 his medical information at that time knowing that I needed
19 some sort of release, and knowing that I couldn't get into
20 the jail anymore.

21 I -- I think I would rely on Mr. Chandler to
22 explain his health -- I guess his health issues to the
23 Court, so the Court has a better understanding of what --

24 THE COURT: Okay. Counsel, do you -- do you
25 have any -- first, are you representing Mr. Chandler on

1 the matter before Judge Chabot here in the Sixth Circuit?

2 MR. NAHIKIAN: No, Your Honor. No, Your Honor,
3 I -- I am not --

4 THE COURT: So --

5 MR. NAHIKIAN: -- I -- I have no knowledge of
6 that case.

7 THE COURT: Do you take any issue with the
8 People's averment that he is on probation to Judge Chabot
9 for fleeing and eluding, stalking, and operating while
10 under the influence of intoxicating liquor?

11 MR. NAHIKIAN: I -- I have nothing, I guess, to
12 negate that, but from my conversations with Mr. Chandler,
13 I believe -- I -- I could be completely wrong here, but I
14 believe the stalking charge was against his now wife. So
15 I -- I believe she was the wife of somebody else at the
16 time, and now she's his wife.

17 MR. PIETROFESA: Judge --

18 THE COURT: But he was convicted of stalking?

19 MR. PIETROFESA: Judge, can I correct something?

20 THE COURT: Sure.

21 MR. PIETROFESA: Those other issues, which I
22 brought up, the OUIL, the fleeing and eluding, the
23 stalking, are not what he's on probation for in front of
24 Judge Chabot.

25 THE COURT: Oh --

1 MR. PIETROFESA: What he's in front of Judge
2 Chabot for is the habitual offense notice, and Molly, I
3 believe is still on the line; she confirmed all of this
4 with me last week when I went through his background, and
5 she can also confirm that he's got a pending violation in
6 front of Judge Chabot.

7 THE COURT: Okay. Let's correct the record.
8 What is he on probation for before Judge Chabot?

9 MR. PIETROFESA: Those -- those were -- what's
10 in the habitual, which isn't in front of me right now
11 (indiscernible) victims were from last April -- larceny in
12 a building perhaps.

13 MR. NAHIKIAN: That sounds right.

14 THE COURT: Okay.

15 MR. NAHIKIAN: I believe it was larceny in a
16 building.

17 THE COURT: Okay. So that's what he's on
18 probation for to Judge Chabot, larceny in a building?

19 MR. PIETROFESA: Yes.

20 MR. NAHIKIAN: Yeah, I believe so.

21 THE COURT: Okay. And the other charges, the
22 fleeing and eluding, stalking, and OUIL, those are just
23 prior convictions?

24 MR. NAHIKIAN: Correct.

25 THE COURT: Okay. Counsel, as it relates to the

1 Supreme Court orders and the Executive Order 2020-2093 --
2 or 29(3) of the Governor's order, explicitly on motions of
3 this nature during the current circumstances, they outline
4 the following outline: Consider a person if it's an older
5 person who has chronic conditions, whether they're
6 medically frail. This wouldn't apply to Mr. Chandler --
7 whether they're pregnant. If they'd had any prior fel --
8 failures to appear. Anyone with behavioral health
9 problems.

10 Those are the considerations that the Court is
11 to review, and as the People pointed out in this case, I
12 -- I saw in your motion what you averred about Mr.
13 Chandler's medical conditions, but I didn't have any
14 documentation to support those, those averments. They
15 weren't part of the motion, and so I don't have anything
16 to confirm those are the conditions that he currently
17 suffers from or that they're even present.

18 The other consideration that the Court takes is
19 that the current charges as the People point out are
20 weapons, firearm, possession by a felony, a felony firearm
21 charge that carries a mandatory two years upon conviction,
22 possession of a loaded firearm in a vehicle, and then
23 driving while license suspended.

24 I'm just satisfied that considering the totality
25 of circumstances here, and even considering the -- the

1 orders handed down by the Supreme Court and the Executive
2 Order from the Governor, that it still requires the Court
3 to make a determination whether or not release would be a
4 issue for public safety, and in Mr. Chandler's case,
5 because the current (indiscernible) and (indiscernible)
6 convicted, he mandatorily does two years, that makes Mr.
7 -- the issue of his potential flight significant. He
8 knows that he is facing a mandatory two years if he's
9 convicted. That would give rise to a heightened potential
10 of flight if he's released on a personal bond, or anything
11 of that nature, and because of the prior criminal record
12 in this case, the stalking, the fleeing and eluding, I'm
13 just not satisfied that in this case, you've made the case
14 that he does not present a safety risk to the public if
15 he's released, and so the motion to release him on a
16 personal bond, the Court is going to deny.

17 I am satisfied again that his prior criminal
18 record, the current charges, and the fact that he has a
19 felony firearm pending if he's convicted on it, he's going
20 to go to -- he'd be sentenced to prison for a minimum of
21 two years, that that raises the potential of his fleeing
22 and not presenting himself for court proceedings.

23 For all of those reasons, the Court denies the
24 motion.

25 MR. NAHIKIAN: Thank you, Your Honor. I -- I

1 would just note that a GPS tether would negate all of
2 those fears of the Court, and the second that he violated
3 the GPS tether, you could throw him back in jail, so I --
4 I guess I don't understand that.

5 THE COURT: Well, counsel, I appreciate your
6 comment, and let me just say that I agree that this motion
7 was of urgency and needed to be heard on an emergency
8 basis, and I've given the defendant that opportunity here
9 today. But counsel, I'm just not convinced that release
10 on a tether would eliminate the potential public safety
11 issues that are at hand. While you indicate that Judge,
12 the moment he violated the tether, it would be known, I --
13 I agree in that regard, but (indiscernible) his violation
14 of the tether requirement and law enforcement getting to
15 the location to (indiscernible) so those are just
16 (indiscernible) and with that said, that's my ruling.

17 MR. PIETROFESA: Thank you, Your Honor.

18 THE COURT: Thank you, counsel.

19 (At 11:17 a.m., proceedings concluded)

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CERTIFICATION

I certify that this transcript, consisting of 11 pages, is a true and accurate transcription, to the best of my ability, of the video proceeding in this case before the Honorable Leo Bowman on Tuesday, April 14, 2020, as recorded by the clerk.

Videotape proceedings were recorded and were provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceedings, or for the content of the videotape provided.

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