

STATE OF MICHIGAN
IN THE COURT OF APPEALS

PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff-Appellee,

v

Case No.

MONEASHA FERGUSON

Circuit Court No. 2019-270536-FH

Defendant-Appellant.

_____/

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EMERGENCY MOTION FOR MODIFICATION OF RELEASE DECISION

Defendant Moneasha Ferguson appeals by right, pursuant to MCR 6.106(H), requesting review of the circuit court's decision to incarcerate her without bail for well over a month, in the midst of the COVID-19 pandemic, for the sole reason that, due to public transportation delays, she arrived 20 minutes after the court took the bench. Specifically, Ms. Ferguson seeks review of the

circuit court's March 18, 2020 denial of her emergency motion for pretrial release. As set forth in more detail in the attached brief, the circuit court's denial of Ms. Ferguson's emergency motion for pre-trial release was an abuse of discretion in light of the following:

1. Ms. Ferguson arrested on March 13, 2019, and charged in one complaint for fleeing and eluding, and in a separate complaint for possession with intent to deliver of a controlled substance under 25g, and possession of a firearm during a felony.

2. She was arraigned on all three charges shortly thereafter and bond was set at \$50,000 cash/surety on the fleeing and eluding offense and \$10,000 cash/surety on the other two offenses.

3. Ms. Ferguson remained detained for approximately 11 months because she could not afford bail in her case.

4. In January of 2020, Ms. Ferguson pled guilty with respect to the fleeing and eluding charge and was sentenced to time served plus 2 years of probation.

5. On February 14, 2020, Ms. Ferguson posted bond through a bondsman on the remaining two charges, with respect to which she intends to pursue her constitutional right to a jury trial.

6. On March 2, 2020, Ms. Ferguson was scheduled to appear in court at 8:30 a.m. Court actually convened at 8:51 a.m. Due to public transportation delays, Ms. Ferguson did not arrive at court until 9:11 a.m. By that time, the court had already revoked Ms. Ferguson's bond, issued a warrant for her arrest, and ordered a pre-trial conference for March 17, 2020. Ms. Ferguson was arrested when she arrived at court and has been detained ever since.

7. Due to the COVID-19 pandemic, Ms. Ferguson's March 17 pretrial conference was rescheduled by the court to April 28, 2020.

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8. On March 18, 2020, trial counsel for Ms. Ferguson filed an emergency motion for pretrial release on the grounds that her continued detention while awaiting trial presented an unreasonable risk to her own health and the health of other detainees and jail staff.

9. On the same day, the circuit court refused to even entertain Ms. Ferguson's emergency motion on the grounds that her situation did not, in the court's view, constitute an "emergency." (The circuit court is only entertaining emergency motions at this time due to the COVID-19 pandemic.) The court reached this conclusion despite the fact that the very reason for postponing Ms. Ferguson's pre-trial conference by over 40 days, resulting in her prolonged detention, is the emergency nature of the COVID-19 pandemic. See Order, attached as Exhibit 1. The court's failure even consider Ms. Ferguson's motion on the merits because of the supposed lack of an emergency—during a global pandemic crisis—defies logic and the emergency declarations of the President, Governor and international health officials, and constitutes an abuse of discretion.

10. Earlier this month, when the coronavirus pandemic was already a well-known crisis, the same judge who denied Ms. Ferguson's emergency motion remanded a civil litigant suffering from severe pneumonia to the Oakland County Jail for being late to court, despite counsel having explained to the court that the reason for the litigant's tardiness was that he had been seeking treatment for his health condition.¹

11. The COVID-19 pandemic represents a public health crisis the likes of which has not been seen in living memory. The virus is highly contagious, and there is no vaccine or effective treatment at this time. It has been declared a national emergency by the President and a state

¹ 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/>>.

emergency by the Governor. In response to the crisis, the Michigan Supreme Court has specifically urged trial courts 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.” Administrative Order No. 2020-1, __ Mich __, (2020), p 2, attached as Exhibit 2.

12. The circuit court’s refusal to release Ms. Ferguson after her pre-trial conference was delayed due to the COVID-19 health crisis will result in her remaining incarcerated for *at least* an additional 40 days, and poses an unacceptable health risk to Ms. Ferguson, other detainees, and the public at large. Given that the only justification for Ms. Ferguson’s detention is that she was 20 minutes late to court due to her bus being delayed, the circuit court’s refusal to order her release constitutes a flagrant and callous abuse of discretion.

13. In the alternative, although this Court need not reach the issue if it finds that the circuit court abused its discretion, the circuit court’s denial of Ms. Ferguson’s emergency motion for pre-trial release violated her substantive due process right to be free from pre-trial detention.

14. Accordingly, Ms. Ferguson requests that this Court grant emergency relief by reversing the circuit court’s denial of her emergency motion and ordering her to be released immediately subject only to the \$10,000 surety bond that she already posted. Alternatively, if this Court deems it appropriate, Ms. Ferguson is willing and able to accede to an additional condition of release requiring her to provide assurances that an identified individual can transport her to her next court appearance. In either case, this Court should reassign this matter on remand to a new judge in light of the prejudice he has demonstrated towards Ms. Ferguson.

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Respectfully submitted,

/s/Philip Mayor

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Date: March 20, 2020

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**DEFENDANT’S BRIEF IN SUPPORT OF
EMERGENCY MOTION FOR MODIFICATION OF RELEASE DECISION**

Defendant Moneasha Ferguson appeals by right, pursuant to MCR 6.106(H), requesting review of the circuit court’s decision to incarcerate her without bail for well over a month, in the midst of the COVID-19 pandemic, for the sole reason that, due to public transportation delays, she arrived 20 minutes after the court took the bench. The circuit court’s decision to incarcerate Ms. Ferguson before trial under such circumstances is a flagrant abuse of discretion given the virtually unparalleled health crisis currently afflicting our state and nation. Indeed, the Michigan Supreme Court has specifically urged courts to take appropriate measures to reduce pre-trial incarceration during the crisis—a mandate the circuit court callously 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 circuit court judge recently remanded a civil litigant who was suffering from pneumonia to jail after that defendant was late due to having sought urgent medical treatment for his condition.²

Although this Court need not reach the question, the circuit court’s decision also amounts to a pre-trial detention order in violation of Ms. Ferguson’s constitutional right to substantive due process. 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

² 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/>>.

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. Here, the court has not made any such findings, nor could any such findings be supported on this record. Thus, the denial of Ms. Ferguson's emergency motion for pretrial release also violates her right to due process.

For these reasons, the circuit court's denial of Ms. Ferguson's emergency motion for pretrial release should be reversed and Ms. Ferguson should be ordered released immediately subject only to the surety bond that she already posted. If this Court determines that additional non-financial release conditions are appropriate, such as that Ms. Ferguson provide assurances that an identified individual can provide her with transportation to her next court appearance, Ms. Ferguson would willingly accede to such a condition. In addition, because of the bias that the circuit judge demonstrated towards Ms. Ferguson and the associated callous disregard for her health and the health of other detainees and jail staff, this Court should reassign this matter on remand to a new judge.

JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to MCR 6.106(H). That provision, in relevant part, provides that "[a] party seeking review of a release decision may file a motion in the court having appellate jurisdiction over the court that made the release decision." Here, the Oakland County Circuit Court revoked bail entirely on March 2, 2020, and has not held any subsequent bail hearing for Ms. Ferguson. On March 18, the circuit court refused to hear, and thus effectively denied, Ms. Ferguson's emergency motion for pretrial release. See Order, Exhibit 1.

STATEMENT OF FACTS

Ms. Ferguson was charged with possession with intent to deliver a controlled substance

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under 25g and with possession of a firearm during a felony on April 2, 2019. See Register of Actions for Case No. 2019-270536-FH, attached as Exhibit 3. At the same time, she was also charged in a separate complaint with a charge of fleeing and eluding. See Register of Actions for Case No. 2019-270544-FH, attached as Exhibit 4. At her arraignment, bond on the possession and firearm charges was set at \$10,000 cash/surety; bond for the fleeing and eluding charge was set at \$50,000 cash/surety. Because Ms. Ferguson could not afford the fleeing and eluding bond, she remained detained for approximately 11 months. She ultimately pled guilty to the fleeing and eluding charge, and on January 21, 2020 she was sentenced to time served plus a period of 2 years of probation on that charge. She has continued to pursue her right to a jury trial on the remaining two charges. On or about February 14, 2020, she posted the \$10,000 bond on those two charges through a bail bondsman.

Ms. Ferguson was scheduled to appear in court on her remaining charges on March 2, 2020 at 8:30 a.m. Court did not convene until 8:51 a.m. Exhibit 5, ¶ 4(a); Exhibit 6, p 3. At that time, Ms. Ferguson was not present because her bus was running late, Exhibit 5, ¶ 4(c). (Ms. Ferguson was coming to court by bus because she has a suspended license and is not permitted to drive.) Ms. Ferguson's case was called at 8:51 a.m. Exhibit 6, p 3. Because Ms. Ferguson was not present, the court ordered her bond revoked and issued a warrant for her arrest. Exhibit 6, p 6 (transcript); Exhibit 7 (order).

Ms. Ferguson arrived around 9:11 a.m., 20 minutes after court had convened. Exhibit 6, p 5. The court did not inquire into the reason for her tardiness or give her a chance to explain and instead had her arrested on the spot and remanded to jail.

On the date of Ms. Ferguson's arrest, the circuit court scheduled a pre-trial conference for March 17, 2020. However, the pre-trial conference has now been postponed until April 28 as a

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result of the COVID-19 pandemic.

On March 18, 2020, immediately after Ms. Ferguson's pre-trial conference was rescheduled, trial counsel filed an emergency motion for pretrial release explaining why Ms. Ferguson had been tardy and citing the Michigan Supreme Court's order urging all trial courts to consider the current state of emergency when making release decisions. Exhibit 5. That emergency motion was denied the same day on the grounds that Ms. Ferguson did not establish the existence of any emergency that required urgent action on the court's part. Exhibit 1.

STANDARD OF REVIEW

On appeal, this Court applies an abuse of discretion standard when determining whether to stay, vacate, modify, or reverse the circuit court's ruling regarding bond or release. MCR 6.106(H). "A court 'by definition abuses its discretion when it makes an error of law.'" *Kidder v Ptacin*, 284 Mich App 166, 170; 771 NW2d 806 (2009), quoting *Koon v United States*, 518 US 81, 100; 116 S Ct 2035; 135 L Ed 2d 392 (1996). Thus, under the abuse of discretion standard, questions of law are, in effect, reviewed de novo. See *People v Luckity*, 460 Mich 484, 488; 596 NW2d 607 (1999).

Here, Ms. Ferguson's argument that the circuit court abused its discretion by refusing to consider her emergency motion, resulting in her continued incarceration for well over an additional month in the midst of the COVID-19 pandemic, because her bus was running late, is reviewed to determine whether the circuit court's decision was "outside the range of principled outcomes." *Edry v Adelman*, 486 Mich 634, 639; 786 NW2d 567 (2010). Her claim that the circuit court also violated her right to substantive due process under the United States Constitution by remanding her to jail without any appropriate findings is a question of law that is reviewed de novo.

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ARGUMENT

I. The Circuit Court Abused Its Discretion by Denying Ms. Ferguson's Emergency Motion for Pre-Trial Release.

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 in Michigan as a result of the COVID-19 crisis. A subsequent gubernatorial Administrative Order restricted all gatherings of more than 50 people in any "single indoor shared space and all events of more than 50 people." Executive Order No 2020-11 (March 17, 2020). 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. 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/>>. 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 Social distancing requires "remaining out of congregate settings, avoiding mass gatherings, and maintaining distance (approximately 6 feet or 2 meters) from others when possible." 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>>. All of these precautions are virtually

³ 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>.

impossible in the carceral setting. 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”).

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 Like the Michigan Supreme Court, courts around the state and country are recognizing the importance, both for community health and for the health of incarcerated populations, of releasing pre-trial detainees during this crisis.⁵ As one court recently explained in ordering a pre-trial detainee released, “[t]he more people we crowd into [a] facility, the more we’re increasing the risk to the community.” *United States v Stephens*, No. 15-cr-95, __ F Supp 3d __, 2020 WL 1295155, *2 (SDNY, March 19, 2020), quoting *United States*

⁴ 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](https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Administrative%20Orders/2020-08%2020-03-15%20FormattedOrder%20AO2020-1.pdf)>, also attached as Exhibit 2 (emphasis added).

⁵ See, e.g., Autullo, *Travis County Judges Releasing Inmates to Limit Coronavirus Spread*, The Statesman (March 16, 2020) <<https://www.statesman.com/news/20200316/travis-county-judges-releasing-inmates-to-limit-coronavirus-spread?fbclid=IwAR3VKawwn3bwSLSO9jXBxXNRuaWd1DRLsCBFc-ZkPN1INWW8xnzLPvZYNO4>>; Anderson, *Wayne County Officials Weigh Releasing Jail Inmates Vulnerable to Coronavirus*, Detroit Free Press (March 18, 2020) < <https://www.freep.com/story/news/2020/03/18/wayne-county-jail-inmate-release-coronavirus/2864302001/>>.

v Reihan, No. 20-cr-68 (EDNY, March 12, 2020).

Here, the circuit court's refusal to consider and effective denial of Ms. Ferguson's emergency motion, resulting in her continued indefinite detention in the midst of the COVID-19 pandemic, constitutes an abuse of discretion. The only reason that Ms. Ferguson's bond was revoked in the first instance was that she arrived 20 minutes after court convened. For the reasons stated in Section II, *infra*, Ms. Ferguson's tardiness would not provide a legal basis to detain her indefinitely before trial in any event. But given the current pandemic and its potential impact in the carceral setting, the denial of her emergency motion is nothing short of unconscionable. When the circuit court denied Ms. Ferguson's emergency motion, it knew that the reason she was late for court was because of a public transportation delay. It knew this both because trial counsel so advised the court, see Exhibit 5, ¶ 4(c), and because Ms. Ferguson had, in fact, shown up to court. Accordingly, the court had no rational reason to conclude that Ms. Ferguson presented a flight risk or even that she would fail to appear for a future hearing. And by permitting Ms. Ferguson to be released in February pursuant to a \$10,000 cash/surety bail, the court had already determined that Ms. Ferguson did not present a danger to the public while on pre-trial release. The circuit court's refusal to even consider Ms. Ferguson's emergency motion on the grounds that she did not state a basis for emergency consideration is breathtaking. Ms. Ferguson's motion, which was captioned "Emergency Motion for Pretrial Release," clearly explained that immediate consideration of her emergency motion was appropriate because failure to do so would lead to her continued incarceration in a crowded jail, in the midst of a global pandemic, for at least 40 days. Indeed, at the time that it denied Ms. Ferguson's emergency motion, the circuit court had just postponed Ms. Ferguson's pre-trial conference by over 40 days, from March 17 to April 28 *precisely because the COVID-19 pandemic has been declared an*

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emergency and renders large congregations of people dangerous to everyone present and to the community at large. Against this backdrop, it is unfathomable that the court would refuse to even *consider* whether to require Ms. Ferguson to remain in the crowded, high-risk carceral environment for a minimum of 40 additional days instead of releasing her to return to her family and child. By forcing Ms. Ferguson to remain in jail, the circuit court not only jeopardized her health, but also ignored the fact that every unnecessary body in the county jail poses an increased risk to the health of other inmates and jail staff. See *Stephens, supra*, 2020 WL 1295155, *2.

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 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 for trial significantly more difficult when a defendant is detained. 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, by failing to take seriously the exigencies and health implications of the COVID-19 pandemic in denying Ms. Ferguson's emergency motion for pre-trial release, the circuit court abused its discretion by veering "outside the range of principled outcomes." *Barksdale v Bert's Marketplace*, 289 Mich App 652, 657; 797 NW2d 700 (2010). This abuse of discretion in the midst of a global health crisis is all the more stark in light of the fact that, even under normal circumstances, "pretrial release of an accused is a matter of constitutional right and the State's

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avored policy.”⁶ *People v Edmond*, 81 Mich App 743, 747; 266 NW2d 640 (1978).

Unfortunately, this is not the first time that the trial judge in this case has remanded a litigant to jail despite the fact that doing so represents a clear risk to the health of litigants, jail staff, detainees, and the public at large. Approximately a week before the circuit court denied Ms. Ferguson’s emergency motion, the Detroit Free Press reported that the same judge had ordered the incarceration of a 60-year old civil litigant for contempt for being late to a hearing, despite the fact that the litigant was late on account of receiving treatment for pneumonia. See note 1, *supra*. According to the report, the litigant had no history of missing hearings and, incredibly, was actually vomiting into a wastebasket under counsel’s table as the circuit court was reading the order sending him to jail. *Id.* Not only does this demonstrates a stunningly callous use of incarceration to punish tardy litigants, the judge ordered the incarceration of an extremely ill individual who, both because of his age and his health condition, was particularly vulnerable to COVID-19. Worse yet, the individual was suffering from a highly contagious respiratory disease that, if spread, could instantly convert any *other* detainee or jail staff into someone particularly vulnerable to the risk of death or permanent damages stemming from COVID-19.

That callous approach is also evident in this case. The circuit court’s effective denial of Ms. Ferguson’s emergency motion should therefore be reversed. Moreover, because of the extraordinary prejudice this judge has shown towards litigants like Ms. Ferguson who are tardy to a hearing, this case should be reassigned to another judge on remand. See *People v Hegwood*,

⁶ *Edmond* references former General Court Rule 790. Although the court rules governing bail have been amended in various ways since *Edmond*, “[t]he court rule’s bond-setting factors have changed very little during the last 40 years.” Shemka, *Pretrial Bond*, 98 Mich B J 22, 24 (January 2019). Compare *People v Spicer*, 402 Mich 406, 410; 263 NW2d 256 (1978) (quoting the bond factors contained in former Court Rule 790.5), with MCR 6.106(F) (describing the

465 Mich 432, 440 n17; 636 NW 2d 127 (2001) (noting that reassignment is appropriate when a judge has shown “prejudices or improper attitudes regarding [a] particular defendant”).

II. The Circuit Court’s Denial of Ms. Ferguson’s Emergency Motion for Pre-Trial Release Is an Unconstitutional Pre-Trial Detention Order.

If this Court finds that the circuit court abused its discretion by refusing to order, or even consider whether to order, Ms. Ferguson’s release in light of the COVID-19 pandemic, then there would be no need to reach the constitutional error arising from the court’s release decision. However, if this Court does not find that the exigencies of the circumstances required Ms. Ferguson to be released, it must also address the constitutional issue.

It is a violation of fundamental due process principles to order a defendant to be detained pre-trial absent very specific factual findings. 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,

factors a court must examine today).

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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 people who present a “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. There has been no demonstration whatsoever, let alone a compelling one, of special circumstances justifying Ms. Ferguson’s continued pre-trial detention. The circuit court made no findings whatsoever that Ms. Ferguson presented a flight risk or danger to the public in denying her emergency motion for pretrial release. Thus, the circuit court violated Ms. Ferguson’s substantive due process rights as a matter of law, and thereby abused its discretion. In fact, the only consideration cited by the court at all for remanding Ms. Ferguson to jail is that she was 20 minutes late on March 2. Exhibit 6, p 5 (“Your attorney was here. The prosecutor was here. You were not here. The people moved for a bench warrant. I granted it. So, you failed to appear appropriately. Deputies, you may take her.”). Thus, the court’s own words suggest that its reasons for incarcerating her were punitive—which is not a lawful basis for pre-trial detention. See *Salerno*, 481 US at 746–747 (recognizing that pre-trial detention is “impermissible” if it constitutes punishment), citing *Bell v Wolfish*, 441 US 520, 535 & n 16; 99 S Ct 1861; 60 L Ed 2d 447 (1979).

Moreover, the record before the circuit court would not have permitted a finding that Ms. Ferguson constitutes a flight risk or identified and articulable danger to the public in any event. On February 14, she was released after posting bail, reflecting a determination by the court at that time her bail sufficed to address any flight risk or risk that she might harm others. Nothing

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that occurred since justifies a contrary inference. There were no new developments at all with respect to whether Ms. Ferguson risked harming the public. And while a litigant's absence at a court hearing could certainly be evidence of a flight risk in some circumstances, it certainly is not when, as here, that litigant appears in court 20 minutes late and when the reason for the tardiness is explained to be because of public transportation delays. Under the circumstances, no evidence supported a finding that Ms. Ferguson presented an unmanageable flight risk or an identified and articulable risk to the public. As such, denial of her emergency motion for pretrial release violated her right to substantive due process.

To be sure, the Michigan Court Rules permit a court to revoke a defendant's bail and issue a warrant for their arrest when they violate a condition of release. MCR 6.106(I). However, MCR 6.106(I) does *not* authorize the subsequent ongoing and continuous detention of a pre-trial detainee without any further justification and regardless of the nature of the violation. Nor could it. The substantive due process principles discussed above demand that if a defendant is arrested after bond revocation, the court must make a reasoned decision as to whether continued pre-trial detention is justified for either or the two constitutionally permissible reasons for pre-trial justification: an unmanageable flight risk or an identified and articulable danger to the public. If MCR 6.106(I) were to instead be construed to permit indefinite pre-trial detention any time bond is revoked for any reason, it would constitute an unconstitutional authorization for courts to impose pre-trial punishment. "For under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law." *Wolfish*, 441 US at 525. As the Supreme Court has further 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*

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Wingo, 407 US 514, 532–533; 92 S Ct 2182; 33 L Ed 2d 101 (1972).

Of course, at an arraignment on a revocation warrant, the arraigning court may consider the circumstances that led to the revocation. In some cases, the facts underlying the revocation could indeed demonstrate that the defendant poses a significant risk of flight or an identified and articulable harm the public that could render detention constitutionally justifiable. But under the facts here, indefinite pre-trial detention cannot possibly be justified. Thus, the court abused its discretion and violated Ms. Ferguson’s right to substantive due process, and its effective denial of her emergency motion for pretrial release must be reversed.

CONCLUSION

The circuit court’s decision to remand a defendant to jail for at least two months in the midst of the global COVID-19 pandemic solely because she was 20 minutes late to court as a result of her bus being delayed is truly shocking, as is its related refusal to even consider whether to release Ms. Ferguson under these exigent circumstances. In doing so, the circuit court abused its discretion and violated Ms. Ferguson’s due process rights—and did so in a manner that reflects a troubling pattern of disregard for litigants, detainees, court staff, and the public at large. This Court should reverse the circuit court and order Ms. Ferguson released immediately subject only to the surety bond that she already posted. Alternatively, if this Court deems it appropriate, Ms. Ferguson is willing and able to accede to an additional condition of release requiring her to provide assurances that an identified individual can provide her with transportation to her next court appearance. Finally, this Court should reassign this matter on remand to a new judge in light of the prejudice he demonstrated towards Ms. Ferguson.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on March 20, 2020, the Emergency Motion for Modification of Release Decision and supporting brief, all attachments thereto (including the circuit court's Order dated March 18, 2020, transcript, circuit court register of actions and a copy of this certificate of service were served in person by Michael L. Steinberg, Esq. upon the Oakland County Prosecutors office to the attention of:

Beth Hand (P47057)
Assistant Prosecuting Attorney
Oakland County Prosecutor's Office
1200 N. Telegraph Road
Pontiac, MI 48341-1032
wiegandb@oakgov.com
(248) 858-0656

In addition, I have served a copy of all referenced documents on Ms. Hand by email at wiegandb@oakgov.com.

I declare under penalty of perjury that the statement above is true to the best of my information, knowledge and belief.

Dated: March 20, 2020

/s/Philip Mayor
Philip Mayor
Attorney for Defendant-Appellant

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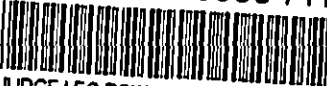
INDEX OF EXHIBITS

EXHIBIT ONE: Order Denying Release
EXHIBIT TWO: MSC Order 1-2020
EXHIBIT THREE: ROA
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EXHIBIT FIVE: Circuit Court Bond Motion 3-18-2020
EXHIBIT SIX: Transcript of Hearing 3-2-2020
EXHIBIT SEVEN: Bond Revocation Order 3-2-2020

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EXHIBIT ONE:
Order Denying Release

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OAKLAND COUNTY 19-270536-FH

 JUDGE LEO BOWMAN
 PEOPLE v. FERGUSON, MONE

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

PEOPLE OF THE STATE OF MICHIGAN,
 Plaintiff,

v.

Case No: 19-270536-FH
 Hon. Leo Bowman

MONEASHA FERGUSON,
 Defendant.

ORDER

At a session of said Court held in the Courthouse in Pontiac,
 Oakland County, Michigan on 3/18/2020

PRESENT: LEO BOWMAN, Circuit Judge

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 OAKLAND COUNTY CLERK
 2020 MAR 19 AM 10:44
 BY: _____
 DEPUTY COUNTY CLERK

This matter is before the Court on defendant's *emergency* motion for pretrial release filed on March 18, 2020. In her motion, defendant requests that this Court hear her motion on an emergency basis because of the COVID-19 state of emergency. The Michigan Supreme Court recently entered a recommendation prompted by the coronavirus (COVID-19) that State Courts should adjourn all civil jury trials as well as all criminal jury trials where the defendant is not in custody. Subsequently, the Sixth Circuit entered its own order related to emergency procedures and it provided that the Sixth Judicial Circuit Court would remain open to handle only essential operations, which included emergency bond motions in criminal cases.

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 her motion heard on an emergency basis is DENIED.

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Having reviewed the Court Record, this Court notes that it set a pretrial for April 28, 2020 at 8:30 a.m. and will hear the motion on that date.

IT IS SO ORDERED.



Hon. Leo Bowman



Date

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EXHIBIT TWO:
MSC Order 1-2020

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Order

Michigan Supreme Court
Lansing, Michigan

March 15, 2020

Bridget M. McCormack,
Chief Justice

ADM File No. 2020-08

David F. Viviano,
Chief Justice Pro Tem

Administrative Order No. 2020-1

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

In Re Emergency Procedures in
Court Facilities

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;

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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

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EXHIBIT THREE:
ROA

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 Register of Actions
[← Go Back](#)**Case Number**

2019-270536-FH

Entitlement

PEOPLE vs. FERGUSON MONEASHA ANN

Judge Name

LEO BOWMAN

Case E-Filed

NO

Case Filed

04/02/2019

Case Disposed

03/02/2020

Date	Code	Desc
03/20/2020	TRN	TRANSCRIPT FILED BENCH WARRANT 03/02/20
03/19/2020	ADJ	ORDER OF ADJOURNMENT FILED PRETRIAL
03/19/2020	ORD	ORDER FILED RE EMERG MTN PRETRIAL RELEASE
03/18/2020	MTN	MOTION FILED PRETRIAL RELEASE/EMERG
03/17/2020	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
03/17/2020	APC	ADJ-COUNSEL 03172020 TO 04282020 BY ORDER
03/17/2020	APR	DATE SET FOR PRETRIAL ON 04282020 08 30 AM Y 09
03/04/2020	ORD	ORDER FILED FOR BENCH WARRANT/NO BOND
03/02/2020	FD	FINAL DISPOSITION
03/02/2020	BW	BENCH WARRANT
03/02/2020	BF	BOND FORFEITED
03/02/2020	OTH	NO NEW BOND SET
03/02/2020	APR	DATE SET FOR PRETRIAL ON 03172020 08 30 AM Y 09
02/14/2020	SBF	SURETY BOND FILED BAIL MY TAIL BOND AGENCY
01/28/2020	LET	LETTER FILED FROM PROSECUTOR

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Date	Code	Desc
11/20/2019	OTH	DEFENDANT WILL CONTINUE ON TRIAL DOCKET
11/20/2019	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
11/20/2019	APC	ADJ-COUNSEL 11192019 TO 03022020
11/20/2019	APR	DATE SET FOR TRIAL ON 03022020 08 30 AM Y 09
11/20/2019	ADJ	ORDER OF ADJOURNMENT FILED JURY TRL
11/19/2019	OTH	DEF TO RETURN ON 11/20/2019 @ 11AM
10/24/2019	POS	AFFIDAVIT/PROOF OF SERVICE FILED
10/22/2019	ORD	ORDER FILED SET TRIAL DATE
10/17/2019	JNA	JUDGE NOT AVAILABLE
10/17/2019	APJ	ADJ-JUDGE 10072019 TO 11192019 BY ORDER
10/17/2019	APR	DATE SET FOR TRIAL ON 11192019 01 30 PM Y 09
10/03/2019	APR	DATE SET FOR PRETRIAL ON 10162019 11 30 AM Y 09
09/23/2019	ORD	ORDER FILED DENY MTN SUPPRESS EVID
09/20/2019	DM	DEFENSE MOTION TO SUPRESS EVIDENCE (DENIED)
09/16/2019	APR	DATE SET FOR HEARING ON 09202019 01 30 PM Y 09
09/04/2019	DM	DEFENSE MOTION TO QUASH (DENIED)
09/04/2019	DM	DEFENSE MOTION FOR WALKER HEARING (GRANTED)
08/29/2019	BRF	BRIEF FILED IN SUPT OF RESP TO MTN TO QUASH/SUPPRESS
08/29/2019	PRF	PEOPLES RESP FILED TO MTN TO QUASH WARRANT/SUPPRESS
08/29/2019	PRF	PEOPLES RESP FILED TO MTN TO SUPPRESS STATEMENTS/REQ HR
08/29/2019	POS	AFFIDAVIT/PROOF OF SERVICE FILED
08/28/2019	MPR	MOTION PRAECIPE FILED FOR 09042019 JUDGE 09
08/28/2019	MPR	MOTION PRAECIPE FILED FOR 09042019 JUDGE 09
08/28/2019	MTN	MOTION FILED TO SUPRESS STATEMENTS/REQ WALKER HRG
08/28/2019	MTN	MOTION FILED TO QUASH SEARCH WARRANT/SUPRESS EVIDENCE
08/28/2019	BRF	BRIEF FILED IN SUPT OF MTN TO SUPRESS STATEMENTS
08/28/2019	BRF	BRIEF FILED IN SUPT OF QUASH OF SEARCH WARRANT/SUPRESS
05/20/2019	POS	AFFIDAVIT/PROOF OF SERVICE FILED

Date	Code	Desc
05/20/2019	OTH	DEMAND FOR DISCOVERY FILED
05/08/2019	GIF	GEN INFO FILED 1ST AMD
05/07/2019	PTH	PRE-TRIAL HELD
05/07/2019	APR	DATE SET FOR PRETRIAL ON 09102019 08 30 AM Y 09
05/07/2019	APR	DATE SET FOR TRIAL ON 10072019 08 30 AM Y 09
05/07/2019	ORD	ORDER FILED PRETRIAL
04/19/2019	O	REQUEST FOR ATTORNEY/REIMBURSEMENT FILED
04/10/2019	APR	DATE SET FOR PRETRIAL ON 05072019 08 30 AM Y 09
04/09/2019	DCR	DISTRICT COURT RETURN FILED
04/09/2019	ARR	ARRAIGNMENT IN COURT
04/05/2019	POS	AFFIDAVIT/PROOF OF SERVICE FILED
04/05/2019	GIF	GEN INFO FILED
04/03/2019	N	NTC CT ADMN FILED
04/02/2019	N	NOTICE FROM COURT ADMINISTRATOR FILED
04/02/2019	A	PROSECUTORS ORDER 19-63041
04/02/2019		ARRESTING AGENCY: OAKLAND COUNTY SHERIFF'S DEPT.
04/02/2019		43HP DISTRICT COURT 19H-0164
04/02/2019	CTN	CENTRAL TRACT 63-19-063041-01
04/02/2019	SID	STATE ID 4549623M
04/02/2019	DOF	DATE OF OFFENSE 03/13/19
04/02/2019	CCA	ARRAIGNMENT - TUE, 04092019 AT 0830AM
04/02/2019	DCX	EXAM FOR 04/02/19 WAIVED
04/02/2019	DOB	BIRTH YEAR - 94
04/02/2019	CHG	333.74012A4 C/S DEL/MAN LESS 50GRAMS
04/02/2019		BOUND OVER AS CHARGED
04/02/2019	CHG	750.227B-A WEAPONS-FELONY FIREARM
04/02/2019		BOUND OVER AS CHARGED
04/02/2019	CHG	333.74012A4 C/S DEL/MAN LESS 50GRAMS
04/02/2019		BOUND OVER AS CHARGED
04/02/2019	CHG	750.227B-A WEAPONS-FELONY FIREARM

Date	Code	Desc
04/02/2019		BOUND OVER AS CHARGED
04/02/2019	COB	CONDITIONS ON BOND
04/02/2019	BON	BOND POSTED BY: NOT FURNISHED
04/02/2019		CITY UNKNOWN
04/02/2019		TYPE: CASH/SURETY
04/02/2019		AMOUNT: \$10,000
04/02/2019	APR	DATE SET FOR PRETRIAL ON 04092019 08 30 AM
04/02/2019	APR	DATE SET FOR ARRAIGNMEN ON 04092019 08 30 AM Y

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EXHIBIT FOUR:
Fleeing and Eluding ROA

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Court Explorer

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2019-270544-FH

Entitlement

PEOPLE vs. FERGUSON MONEASHA ANN

Judge Name

LEO BOWMAN

Case E-Filed

NO

Case Filed

04/02/2019

Case Disposed

11/19/2019

Date	Code	Desc
02/12/2020	PAY	PAYMNT SERV/ORD PYMNT OF CAA FILED
01/29/2020	ORP	ORDER OF PROBATION FILED WEBB
01/23/2020	JTS	JUDGMENT OF SENTENCE FILED
01/21/2020	S	SENTENCE
01/21/2020		FOUND GUILTY ON: 11/19/19
01/21/2020		OAKLAND COUNTY JAIL
01/21/2020	CHS	257.602A3-A FLEE/ELUD 3RD DEG
01/21/2020		SENTENCED - CONVICTED BY PLEA G
01/21/2020		SERVE 300 DAYS JAIL, BEGIN 01/21/20 CREDIT FOR 314 DAYS.
01/21/2020		PROBATION FOR 002 YEARS.
01/21/2020	CHS	257.9041C DWLS - 2ND OR SUBS. OFFENSE
01/21/2020		SENTENCED - CONVICTED BY PLEA G
01/21/2020		SERVE 274 DAYS JAIL, BEGIN 01/21/20 CREDIT FOR 314 DAYS.
01/21/2020		PROBATION FOR 002 YEARS.
01/21/2020	DNA	DNA ASSESSMENT FEE \$60

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Date	Code	Desc
01/21/2020		MAINTAIN AND/OR SEEK EMPLOYMENT AS DIRECTED BY P.O.
01/21/2020		PAY: SUP: \$240.00 AT \$10.00 A MONTH
01/21/2020		ATTORNEY FEES
01/21/2020	VRF	VICTIMS RIGHTS FEE \$130
01/21/2020	MSC	STATE MINIMUM COSTS OF \$118.00
01/21/2020		OTHER: COURT APPTD ATTY FEES IF APPLICABLE; RANDOM D -
01/21/2020		RUG TESTING AT LEAST ONCE
01/21/2020		WEEKLY; COMPLETE MENTAL HEALTH TREATMENT; NO -
01/21/2020		CONTACT W/OFFICER KASDORF;
01/21/2020		NO CONTACT WITH ANY FELONS;
01/21/2020		COMPLY WITH DNA TESTING.
01/21/2020		DEFENDANT SHALL SIGN INCOME WITHHOLDING UPON -
01/21/2020		VERIFICATION OF EMPLOYMENT
01/21/2020		SHALL SUBMIT TO DRUG TESTING AS DIRECTED BY P.O.
01/21/2020		NOT USE ANY CONTROLLED SUBSTANCE W/O A PRESCRIPTION
01/21/2020		PARTICIPATE IN OUTPATIENT OR RESIDENTIAL
01/21/2020		SUBSTANCE ABUSE TREATMENT AS DIRECTED
01/21/2020		BY P.O.
01/21/2020		PARTICIPATE IN MENTAL HEALTH TREATMENT.
01/21/2020		NO ASSAULTIVE OR THREATENING BEHAVIOR.
01/21/2020		NOT USE OR POSSESS ANY FIREARM OR OTHER
01/21/2020		DEADLY WEAPON.
01/21/2020	ES	END OF SENTENCE INFORMATION
01/21/2020	S	SENTENCE BEFORE JUDGE BOWMAN
12/17/2019	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
12/17/2019	APC	ADJ-COUNSEL 12172019 TO 01212020
12/17/2019	APR	DATE SET FOR SENTENCE ON 01212020 08 30 AM Y 09
11/20/2019	ABS	ABSTRACT SENT SOS /1708/3200/HD
11/19/2019	PTH	PRE-TRIAL HELD

Date	Code	Desc
11/19/2019	FD	FINAL DISPOSITION
11/19/2019	PLE	PLEA GAC
11/19/2019	APR	DATE SET FOR SENTENCE ON 12172019 08 30 AM Y 09
11/19/2019	DNA	ORDER FOR DNA FILED
11/19/2019	PEX	PEOPLES EXHIBIT NO.1 FILED
10/03/2019	APR	DATE SET FOR PRETRIAL ON 10162019 11 30 AM Y 09
09/20/2019	PTH	PRE-TRIAL HELD CONTINUE ON TRIAL DOCKET
09/16/2019	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
09/16/2019	APC	ADJ-COUNSEL 09102019 TO 09202019
09/16/2019	APR	DATE SET FOR PRETRIAL ON 09202019 01 30 PM Y 09
05/21/2019	POS	AFFIDAVIT/PROOF OF SERVICE FILED
05/21/2019	REQ	REQUEST FILED FOR DISCOVERY
05/07/2019	PTH	PRE-TRIAL HELD
05/07/2019	APR	DATE SET FOR PRETRIAL ON 09102019 08 30 AM Y 09
05/07/2019	APR	DATE SET FOR TRIAL ON 10072019 08 30 AM Y 09
05/07/2019	ORD	ORDER FILED PRETRIAL
04/19/2019	O	REQUEST FOR ATTORNEY/REIMBURSEMENT FILED
04/10/2019	APR	DATE SET FOR PRETRIAL ON 05072019 08 30 AM Y 09
04/09/2019	DCR	DISTRICT COURT RETURN FILED
04/09/2019	ARR	ARRAIGNMENT IN COURT
04/05/2019	GIF	GEN INFO FILED
04/03/2019	N	NTC CT ADMN FILED
04/02/2019	N	NOTICE FROM COURT ADMINISTRATOR FILED
04/02/2019	A	PROSECUTORS ORDER 19-62887
04/02/2019		ARRESTING AGENCY: HAZEL PARK POLICE DEPT.
04/02/2019		43HP DISTRICT COURT 19H-0152
04/02/2019	CTN	CENTRAL TRACT 63-19-062887-01
04/02/2019	SID	STATE ID 4549623M
04/02/2019	DOF	DATE OF OFFENSE 03/04/19
04/02/2019	CCA	ARRAIGNMENT - TUE, 04092019 AT 0830AM

Date	Code	Desc
04/02/2019	DCX	EXAM FOR 04/02/19 WAIVED
04/02/2019	DOB	BIRTH YEAR - 94
04/02/2019	CHG	257.602A3-A FLEE/ELUD 3RD DEG
04/02/2019		BOUND OVER AS CHARGED
04/02/2019	CHG	257.9041C DWLS - 2ND OR SUBS. OFFENSE
04/02/2019		BOUND OVER AS CHARGED
04/02/2019	COB	CONDITIONS ON BOND
04/02/2019	BON	BOND POSTED BY: NOT FURNISHED
04/02/2019		CITY UNKNOWN
04/02/2019		TYPE: CASH/SURETY
04/02/2019		AMOUNT: \$50,000
04/02/2019	APR	DATE SET FOR PRETRIAL ON 04092019 08 30 AM
04/02/2019	APR	DATE SET FOR ARRAIGNMEN ON 04092019 08 30 AM Y

EXHIBIT FIVE:
Circuit Court Bond Motion
3-18-2020

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff,

Case No.2019-270536-FH
Hon. Leo Bowman

vs.

MONEASHA FERGUSON

Defendant.

OAKLAND COUNTY PROSECUTOR
Attorney for the Plaintiff

LAW OFFICES OF MICHAEL L. STEINBERG
By: Michael L. Steinberg (P43481)
Attorney for the Defendant
300 East Fourth Street, Suite 3
Royal Oak, MI 48067
(248) 542-1010

BY:
DEPUTY COUNTY CLERK

2020 MAR 18 AM 11:27

OAKLAND COUNTY CLERK

EMERGENCY MOTION FOR PRETRIAL RELEASE

NOW COMES Defendant, Moneasha Ferguson, by and through her attorney, Michael L. Steinberg, pursuant to Michigan Supreme Court Administrative Order No. 2020-1, US Constitution Am 8 and 1963 Mich Const Art 1 § 16 moves that this Court reinstate a bond previously posted.

1. Defendant is charged with, *inter alia*, Possession with Intent to Deliver a Controlled Substance Under 25g; to wit Fentanyl and Possession of a Firearm during the Commission of a Felony. A \$10,000 surety bond was furnished on February 14, 2020.

2. She is also on probation for a related offense of

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Fleeing and Eluding.

3. Defendant had been compliant with her probation and was in the process of clearing up her driver's license.

4. On March 4, 2020, this Court revoked Defendant's bond for her failure to appear for a trial scheduled at 8:30 am

(a). The Court took the bench at approximately 8:50 am.

(b) Defendant had appeared at approximately 9:10 am

(c) If called to testify, Defendant would inform the Court that her delayed was caused by having to take a bus and that the bus was running late. Her actions were not willful or intentional.

5. Since her incarceration, the State of Michigan has been besieged with an outbreak of novel coronavirus hereinafter COVID-19.

6. As a result, the Michigan Supreme Court has issued an Emergency Order Michigan Supreme Court Administrative Order No. 2020-1 greatly curtailing the day to day operation of courts, and adjourning the dockets of the trial courts.

7. The Chief Judge of the Oakland County Circuit Court has also issued an Administrative Order on March 16, 2020. It delineated that all criminal calls are adjourned until March 31, 2020. Further all criminal jury trials are adjourned for 30 days of the effective date of the Administrative Order.

8. In reference to pretrial release, the Supreme Court Administrative Order provides:

7. Trial courts should take any other reasonable

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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,

(Emphasis added) Michigan Supreme Court Administrative Order 2020-01, March 15, 2020 at page 2

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 hands, social distancing, and self-quarantining when necessary.¹ All of these precautions are particularly difficult, if not impossible, in an incarceration setting. Accordingly, Defendant is at heightened risk of infection while they remain incarcerated as the result of the unaffordable bond imposed in this case.

10. 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.²

¹See 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

²See, 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->

11. Consistent with the Michigan Supreme Administrative Order, this Court must take into consideration that Defendant, a participant in a Court proceeding, is at great risk of being subject to harm, being confined and exposed to detainees that are daily circulating into the jail, from the outside. The Order directs this Court 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.**

12. Defendant does not make excuses, other than her unfamiliarity of the duration of the bus ride³ to account for her tardiness, as for her tardiness for Court. Nonetheless, she has been incarcerated for over two weeks. Her failure to comply with prompt attendance was not intentional, rather errant.

13. The exponential explosion of the COVID-19 virus is a factor that has rapidly changed since Defendant's incarceration. Since March 10th, the State of Michigan has seen an emergency declaration, to an Executive Order prohibiting gatherings of more than 250 (March 13) to no more than 50 (March 16) closing all bars, restaurants, etc. There is a possibility of more restrictive provisions as this pandemic worsens. The risk of harm continues to rise rapidly and makes this an emergency situation.

ZkPN1INWW8xnzLPvZYNO4

³Defendant had been Incarcerated on this offense from March 13, 2019-February 14, 2020 and had not taken the bus from her home to the Oakland County Circuit Court prior to her court date of March 3, 2020.

*Since this Motion was dropped,
A pretrial Notice for 4/24/20
was issued*

14. The date of Defendant's next pretrial is unknown due to the Oakland Circuit Court Order as is the date of her next available jury trial date. As a result, she could be required to sit awaiting trial and be further and more gravely exposed to a very dangerous situation.

15. In light of all of the above, it would be Cruel and Unusual Punishment to place Defendant at such a high risk.

WHEREFORE Defendant being without any other relief except as provided by this Honorable Court respectfully requests that it (1) Sanction her for time served from March 3 through the date the Court hears this Motion or Issues an Order which ever is later as a violation of a pretrial release Order (2) Reinstate the 10,000 surety bond previously furnished on February 14, 2020 and require no additional monies or sureties to be paid and provide any other relief it deems just and fair.

Respectfully submitted,

LAW OFFICES OF MICHAEL L. STEINBERG
By: Michael L. Steinberg (P43481)
Attorney for the Defendant
300 East Fourth, Suite 3
Royal Oak, MI 48067
(248) 542-1010

Dated: March 17, 2020

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PROOF OF SERVICE

MICHAEL L. STEINBERG, being first duly sworn, deposes and says that on the 18th day of March 2020, he personally served a copy of the within Motion, Notice of Hearing and Proof of Service upon a representative of the Oakland County Prosecutor's Office , by hand-delivering same to the person in charge of said office.

MICHAEL L. STEINBERG

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Order

Michigan Supreme Court
Lansing, Michigan

March 15, 2020

Bridget M. McCormack,
Chief Justice

ADM File No. 2020-08

David F. Viviano,
Chief Justice Pro Tem

Administrative Order No. 2020-1

Stephen J. Markman
Brian K. Zahra

In Re Emergency Procedures in
Court Facilities

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;

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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


Clerk

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Circuit Court
County of Oakland

1200 N TELEGRAPH RD DEPT 404
PONTIAC, MICHIGAN 48341-0404

SHALINA KUMAR
CHIEF JUDGE

Sixth Judicial Circuit Court
COVID-19 State of Emergency Procedures

SIXTH JUDICIAL CIRCUIT
OF MICHIGAN
(248) 858-5280
FAX 248-975-9784
kumars@oakgov.com

This Order of the Sixth Judicial Circuit Court is issued in response to the COVID-19 (Coronavirus) outbreak and the resulting states of emergency declarations issued by President Donald J. Trump and Governor Gretchen Whitmer, and as authorized by Michigan Supreme Court Administrative Order No. 2020-1.

This Order is issued to implement emergency procedures to reduce the risk of transmission of COVID-19, and to protect the health and safety of the public and all who conduct business in the Circuit Court. This Order shall take immediate effect and continue for 30 calendar days or as otherwise stated in this Order, or until further notice by the court.

The Sixth Judicial Circuit Court will remain open to handle only essential operations as follows:

Criminal Cases

- Arraignments on the information will be done by mail for the next 30 days;
- Emergency bond motions;
- Arraignments on bench warrants and warrants for violations of probation;
- All criminal jury trials scheduled for the next 30 days will be adjourned. Criminal jury trials in progress as of March 16 will continue;
- Sentencing hearings for in-custody defendants will be held by video unless objected to by the defense, and in that case may be adjourned; and
- All criminal calls through March 31 will be adjourned.

Juvenile Cases

- Preliminary hearings for all delinquency and child protective proceedings;
- Issuance of and arraignments on all OTTICs;
- Violation of probation hearings when detention is requested;
- Emergency removal hearings for child protective proceedings;
- In-custody designated and adult court waiver arraignments;
- Safe delivery of newborn hearings;
- Reimbursement department bench warrant dismissal hearings;
- Parental by pass hearings;
- Disposition hearings for in-custody juveniles will be done by video; and
- All trials will be adjourned for 30 days.

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Domestic Relations Cases

- Divorce, custody and parenting time matters alleging an immediate threat of harm to the children; and
- All family division motion calls will be adjourned through March 31. Emergency motions may be heard by telephone when possible.

Friend of the Court Matters

- Early intervention conferences shall be adjourned or handled telephonically, if possible;
- The SMILE Program shall be offered electronically only;
- The FOC payment window will remain open;
- FOC child support reviews will continue;
- Custody and parenting time investigations and parenting time disputes will be addressed using telephone interviews only;
- FOC arraignments on bench warrants will continue; and
- Referee hearings will be adjourned when possible or conducted by telephone when necessary.

Personal Protection Orders

- In-custody arraignments on bench warrants for violation of PPOs by video;
- Contested show cause hearings if defendant remains in custody after arraignment;
- Personal Protection Order petitions of an emergency nature alleging an immediate threat of harm;
- Hearings on a request for entry of a PPO on a case by case basis; and
- Bail hearings for PPO respondents will continue per current practice.

Civil Cases

- Requests for emergency show cause and injunctive orders will be reviewed by the assigned judge or the judge on call;
- Business Court emergencies will be reviewed by the assigned judge or the judge on call; and
- Civil jury and bench trials will be adjourned for 30 days or until further notice by the court.
- No in-person civil motion calls will be conducted through March 31. Motions may be filed and heard, via telephone, at the discretion of the court; and
- Case evaluation hearings scheduled to be heard in the next 30 days will be adjourned until further notice by the court.

The Chief Judge will hear all infectious disease petitions brought by the Oakland County Health Department or the Oakland County Department of Corporation Counsel on behalf of Oakland County.

Public viewing of court video records will be suspended for the next 30 days or until further notice by the court.

All proceedings of the Adult Treatment and Juvenile Drug Courts will be adjourned through April 1, or until further notice by the court.

All matters not referenced above will be suspended or adjourned for 30 days, or as otherwise stated in this Order, until further notice by the Court.

All matters referenced above that will continue per current practice will be handled by video or audio conferencing, if practicable.

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The assigned judge on any matter referenced above may deviate from the provisions of this Order for good cause and upon approval by the Chief Judge.

Questions about the status of specific cases must be directed to the assigned judge's chambers.

IT IS SO ORDERED



Shalina D. Kumar
Chief Circuit Judge

3/14/2020

Date

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EXHIBIT SIX:
Transcript of Hearing 3-2-2020

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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. 2019-270536-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	Defendant/Respondent name(s) and address(es) Moneasha Ann Ferguson
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. Michael L. Steinberg, P43481 300 E. 4 th Street, Suite 3 Royal Oak, MI 48067 248-321-1801
<input type="checkbox"/> 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 3-19-20 ☐ a portion of the ☒ the complete transcript of proceedings, taken in this case
Date before Judge Leo Bowman on 3-2-20, was ordered by
Date(s)
☒ a. Michael L. Steinberg, attorney for Moneasha Ann Ferguson
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: 3-20-20
- ☐ 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.

3-20-20
Date

Reporter/Recorder signature
/s/ Cheryl McKinney
Name (type or print)

CSMR-5594
Certification designation and number
104 Oakland
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

PEOPLE OF THE STATE OF MICHIGAN,

vs

Case No. 19-270536-FH

MONEASHA ANN FERGUSON,

Defendant.

_____ /

BENCH WARRANT

BEFORE THE HONORABLE LEO BOWMAN

PONTIAC, MICHIGAN - MONDAY, MARCH 2, 2020

APPEARANCES:

For the People:

BETH M. HAND (P47057)
Oakland County Prosecutor's Office
1200 N. Telegraph
Pontiac, Michigan 48341
(248) 858-0656

For the Defendant:

MICHAEL L. STEINBERG (P43481)
319 N. Gratiot Avenue
Mount Clemens, Michigan 48043
(248) 542-1010

Videotape Transcription Provided By:
Cheryl McKinney, CSMR-5594
About Town Court Reporting, Inc.
248-634-3369

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WITNESS

PAGE

(None.)

EXHIBITS:

(None offered.)

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Pontiac, Michigan

Monday, March 2, 2020

- - -

(At 8:51 a.m., proceedings convened.)

THE CLERK: Your Honor, calling People versus Ferguson, 2019-270536-FH.

MS. HAND: Good morning, your Honor. Beth Hand appearing on behalf of the People.

THE COURT: Good morning.

MR. STEINBERG: Good morning, Judge. Michael L. Steinberg, P43481, on behalf of the defendant.

THE COURT: Good morning.

MS. HAND: Your Honor, today is the date and time scheduled for trial. The matter was scheduled for 8:30. It's ten to 9:00. The defendant has failed to appear. She previously was in custody. She has since bonded out. The People would move for a bench warrant and bond forfeiture.

MR. STEINBERG: Judge, good morning. With your permission, may I pull out my cell phone to read the number that I sent a text to, to remind her of this court date?

THE COURT: May you what?

MR. STEINBERG: May I pull out my cell phone to read the number I sent a text to?

1 THE COURT: Sure.

2 MR. STEINBERG: Thank you, Judge. I wanted your
3 permission.

4 Okay. On Tuesday, I contacted what was her
5 sister's cell phone number, and I was directed to contact
6 Ms. Ferguson's number as this, 248-703-4191. On Tuesday,
7 at 4:37 p.m., I wrote, "Hi. This is a message for
8 Moneasha, reminder that trial is Monday at 8:30."
9 Response, "Okay. Thank you."

10 I've had one contact with her since she got out,
11 and I believe it was from this number. I just want the
12 record to be preserved that this is my practice, is to use
13 a text, because then I have a memorialization of it.

14 THE COURT: As noted, this is the date and time
15 for trial. This case has been noticed for trial since
16 November. My note in the file for November 19th was,
17 defendant here with counsel, reset the trial date for
18 8:30 a.m., today's date. We adjourned the November date
19 because of the issue about clothing.

20 MR. STEINBERG: Yes, sir.

21 THE COURT: And today -- and the defendant was
22 present, that's also to be noted, when we set the trial
23 date. The defendant has not appeared.

24 The People are ready to proceed?

25 MS. HAND: Yes, your Honor.

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1 THE COURT: Bench warrant is issued. Any bond
2 posted is forfeited.
3 MS. HAND: Thank you, Judge.
4 MR. STEINBERG: Judge, thank you.
5 THE COURT: Thank you, counsel.
6 (At 8:53 a.m., proceedings concluded.)
7 (At 9:11 a.m., proceedings reconvened.)
8 THE CLERK: Your Honor, calling People versus
9 Ferguson, 2019-270536-FH.
10 THE COURT: What's your name?
11 DEFENDANT FERGUSON: Moneasha Ferguson.
12 THE COURT: Your case was up for trial. Your
13 attorney was here. The prosecutor was here. You were not
14 here. The People moved for a bench warrant. I granted
15 it. So, you failed to appear appropriately.
16 Deputies, you may take her.
17 (At 9:11 a.m., proceedings concluded.)
18 - - -
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CERTIFICATION

I certify that this transcript, consisting of 6 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 Monday, March 2, 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.



/s/ Cheryl McKinney, CSMR-5594
About Town Court Reporting, Inc.
248-634-3369

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EXHIBIT SEVEN:
Bond Revocation Order 3-2-2020

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

People
Plaintiff,
-v-
Moneasha Ferguson
Defendant.

Case No. 2019-270536-FH
HONORABLE LEO BOWMAN

ORDER / RE: MOTION

At a session of said Court, held in the City of
Pontiac, Oakland County, Michigan, this 2
day of March, 2020.

Present: **HONORABLE LEO BOWMAN**
Circuit Court Judge

This matter having come before the Court on (Plaintiff/Defendant):

People 's, Motion for Bench Warrant
Name State nature of motion

and the Court being advised in the premises;

IT IS HEREBY ORDERED that the motion is:

- ☒ Granted
☐ Denied
☐ Granted in part, as explained in the comment below.

A TRUE COPY
LISA BROWN
Oakland County Clerk - Register of Deeds
By Lisa Brown
Deputy

Comment: Bench Warrant issued. Bond forfeited. No new bond
set.

LEO BOWMAN

HON. LEO BOWMAN, Circuit Court Judge

APPROVED AS TO SUBSTANCE AND FORM

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