

STATE OF MICHIGAN
IN THE COURT OF APPEALS

PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff-Appellee,

v

Case No. _____

TEKLEBRHAN SAMUEL TESFAI

Circuit & District
Court No. D20-0462-FY¹

Defendant-Appellant.

Philip Mayor (P81691)
Daniel S. Korobkin (P72842)
American Civil Liberties Union
Fund of Michigan
2966 Woodward Ave.
Detroit, MI 48201
(313) 578-6803 (w); (617) 817-2229(c)
Attorneys for Defendant-Appellant

Marcus T. Chmiel (P80556)
Kent County Office of the Defender
146 Monroe Center Suite 920
Grand Rapids, MI 49503
(616) 588-8225(w); (616) 862-9060(c)
Co-counsel for Defendant-Appellant

Christopher R. Becker (P53752)
Prosecuting Attorney
James Benison (P54429)
Kent County Prosecutor's Office
82 Ionia Ave NW
Grand Rapids, MI 49503
chris.becker@kentcountymi.gov
james.benison@kentcountymi.gov
(616) 632-6710
Attorneys for Plaintiff-Appellee

EMERGENCY MOTION FOR MODIFICATION OF RELEASE DECISION

Defendant Teklebrhan Tesfai, a 61-year-old man with no criminal record, appeals by right, pursuant to MCR 6.106(H), requesting review of the circuit court's decision to incarcerate him

¹ The circuit court did not assign a new number to this case when it reviewed the district court's bail determination pursuant to MCR 6.106(H).

indefinitely, in the midst of the COVID-19 pandemic, while he awaits trial. Specifically, Mr. Tesfai seeks review of the circuit court's April 14, 2020 refusal to modify the cash bond of \$15,000 originally imposed by the district court, a bond which both courts knew Mr. Tesfai could not afford. As set forth in the attached brief, the circuit court's bail order was an abuse of discretion in light of the following:

1. Mr. Tesfai was booked into the Kent County Jail on March 8, 2020, and charged with Arson-Preparation to Burn a Dwelling, based on allegations that he left the gas running on the stove in his apartment, which he was also occupying at the time.
2. Mr. Tesfai is a 61-year-old man with no criminal history.
3. On March 9, Mr. Tesfai was arraigned, and bond was set at \$15,000 cash.
4. Mr. Tesfai was subsequently deemed indigent and is represented at trial by the undersigned Kent County Public Defender.
5. Mr. Tesfai remains incarcerated due to his inability to afford to post bond.
6. On March 30, a hearing was held at which defense counsel moved for the \$15,000 bond to be eliminated in light of the COVID-19 pandemic and given Mr. Tesfai's advanced age, which renders him especially vulnerable to the pandemic. Mr. Tesfai also requested a preliminary examination in light of the weak evidence against him.
7. The district court denied the motion, and still has not yet set a date for a preliminary examination because of the COVID-19 crisis.
8. In denying Mr. Tesfai's motion, the district court did not even consider non-financial release conditions in lieu of bond and did not ask defense counsel relevant questions. If released on a personal recognizance bond, Mr. Tesfai can reside with his cousin in Kentwood, Michigan, while awaiting trial.

9. Mr. Tesfai sought emergency review of the district court's decision in the Kent County Circuit court on April 7. Exhibit 1. The Prosecuting Attorney filed a response brief on April 8. Exhibit 2.

10. On April 14, the circuit court denied Mr. Tesfai's motion, without providing any reasons other than "the reasons and law as set forth in the People's response." Exhibit 3.

11. Instead, as the result of the circuit court's denial of Mr. Tesfai's motion, he will remain incarcerated indefinitely in the midst of the worst global health crisis in a century, despite the fact that his age renders him particularly susceptible to the COVID-19 virus. Defense counsel has now been advised by sources at the Kent County Jail that multiple people detained at the jail are already in isolation on suspicion of being infected with coronavirus and are awaiting testing. This means that Mr. Tesfai faces mortal danger during each day he spends in the jail. His unaffordable bond could easily become a pre-trial death sentence.

12. 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 emergency by the Governor.

13. 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 4. The Court of Appeals has made clear that in the vast majority of cases, "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*, unpublished order of the Court of Appeals,

entered March 23, 2020 (Docket No 353226); see also *People v Calloway*, entered March 31, 2020 (Docket No 349870) (similar), both attached as Exhibit 5.

14. On March 29, Governor Whitmer issued an executive order that “strongly encouraged” courts to release older people who do not constitute a proven public health risk. Executive Order No. 2020-29, attached as Exhibit 6.

15. 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.” MCR 6.106(C)–(F) implement these rights and provides that personal recognizance release or unsecured appearance bonds are the default release options.

16. Neither the district nor circuit courts complied with MCR 6.106(C)–(D) by making adequate findings that cash bail is necessary to address any flight risk or danger to the public.

17. Alternatively, the circuit court abused its discretion in approving of cash bail in the amount of \$15,000 given the evidence that Mr. Tesfai could not afford that amount.

18. The circuit court’s decision is also unconstitutional under the United States Constitution because it results in Mr. Tesfai being incarcerated “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). And the prosecution abandoned any defense to this argument below by explicitly refusing to address it. Exhibit 2, p 4.

Accordingly, Mr. Tesfai requests that this Court grant relief (a) ordering his release on his own recognizance or subject only to an unsecured appearance bond; or alternatively, (b) ordering his release subject only to such non-financial conditions as necessary in light of the record, such as that he not live alone while on release and reside with his cousin. Mr. Tesfai also would not object

to a condition requiring him not to reside alone in a housing situation with a gas stove unless the gas supply to the stove has been turned off or disconnected.

Respectfully submitted,

/s/Philip Mayor

Philip Mayor (P81691)
Daniel S. Korobkin (P72842)
American Civil Liberties Union
Fund of Michigan
2966 Woodward Ave.
Detroit, MI 48201
(313) 578-6803(w); 617-817-2229(c)
Attorneys for Defendant-Appellant

Date: April 15, 2020

/s/Marcus T. Chmiel

Marcus T. Chmiel (P80556)
Kent County Office of the Defender
146 Monroe Center Suite 920
Grand Rapids, MI 49503
(616) 588-8225(w); (616) 862-9060(c)
Co-counsel for Defendant-Appellant

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

Defendant Teklebrhan Tesfai, a 61-year-old man who is medically vulnerable to COVID-19 due to his age, appeals by right, pursuant to MCR 6.106(H), requesting review of the circuit court’s decision not to modify the \$15,000 cash bail imposed in Mr. Tesfai’s case, which will result in his indefinite detention while awaiting trial in the midst of a global pandemic. By imposing unaffordable cash bail, lower courts abused their discretion and disregarded the exigencies of the current global health crisis. If an outbreak occurs in the Kent County Jail, Mr. Tesfai’s bond could become a death sentence.

Although this Court need not reach the question, the lower courts’ decisions also amount to a pre-trial detention order that violates the Michigan Court Rules and the United States and Michigan constitutions. The Michigan Court Rules are clear that cash bail is disfavored. They permit cash bail to be imposed only after a court first makes findings, supported by individualized record evidence, that release pursuant to *non*-financial release conditions would be insufficient to protect against an otherwise unmanageable flight risk or danger to the public. Here, the lower courts failed to meaningfully consider the non-cash bail alternatives provided in the Michigan Court Rules and did not engage in an individualized analysis of whether cash bail was truly necessary to address a proven flight risk or danger to others.

The lower courts decisions similarly violate federal constitutional law. The Due Process and Equal Protection Clauses of the Fourteenth Amendment prohibit the incarceration of poor defendants in circumstances when otherwise-similar defendants who are wealthier would be permitted to pay to remain free. Similarly, the Due Process Clause prohibits depriving anyone of their liberty prior to a criminal conviction unless individualized findings have been made that the

defendant will pose an unmanageable flight risk or an identifiable and articulable danger to the public prior to trial. This means that the Fourteenth Amendment—just like the Michigan Court Rules—requires a court, before imposing cash bail, to: (1) make a meaningful inquiry into the defendant’s ability to afford cash bail, (2) properly consider non-financial release conditions before imposing an amount of bail known to be unaffordable, and (3) 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 without paying the proposed amount of cash bail. The courts below failed to do so here.

For these reasons, the circuit court’s refusal to modify Mr. Tesfai’s bond should be reversed and he should be ordered released immediately on his own recognizance, a personal bond, or subject, at most, to appropriate non-financial bond conditions such as being required to reside with his cousin.

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 circuit court’s order is a “release decision,” namely, a decision not to release Mr. Tesfai by modifying his bond, and is therefore reviewable by this court as of right under MCR 6.106(H)(1).²

STATEMENT OF FACTS

Mr. Tesfai is a 61-year-old Black man who, based on arraignment, appears to be easily confused. See Exhibit 7, p 4–5. He has no criminal history. Accordingly, he also has no history of failing to appear in court. He was booked into the Kent County Jail on March 8, 2020

² Although jurisdiction is proper pursuant to MCR 6.106(H), in the alternative this court could also consider the circuit court’s bond decision pursuant to MCR 7.305.

and charged with Arson—Preparation to Burn a Building. See Exhibit 8. The allegations supporting the charge are that Mr. Tesfai left the gas running on his stove while he was asleep in the apartment. See Exhibit 9. On two other occasions, Mr. Tesfai is also alleged to have left his stove running, once resulting in burning of his food, once resulting in gas escaping. *Id.*

At his arraignment, on March 9, bail was set at \$15,000 cash/surety on the grounds of the “serious nature of these charges and the concerns for the community at large and the community at small that lives within the apartment building.” Exhibit 4, pp 7–8. The district court did not consider or discuss any non-financial conditions in lieu of cash bond.

Since Mr. Tesfai’s arraignment, the COVID-19 pandemic has swept the United States and has struck Michigan with particular ferocity. Numerous prisons and jails have experienced outbreaks, and both inmates and guards have already died as a result.³

A hearing was held in Mr. Tesfai’s case on March 30 at which Mr. Tesfai’s newly appointed public defender requested that the unaffordable \$15,000 bond be eliminated in light of the health crisis, Mr. Tesfai’s advanced age, and resulting medical vulnerability. See Exhibit 10, p 4. The district court denied the motion, citing the “recommendation for Court Services” of no PR bond “as this is a serious felony.” Exhibit 10, p 5. The court also stated that Mr. Tesfai was a flight risk and a public danger, but did not cite any reasons or evidence, and did not address the extraordinary health risk posed to Mr. Tesfai from his continued incarceration. *Id.* Nor did the district court consider or discuss any non-financial conditions in lieu of cash bond. The district court did not ask if Mr. Tesfai had found a place to stay if released. In fact,

³ See Jackson & Egan, *Michigan Prisoner Coronavirus Cases Surpass 100*, Detroit Free Press (April 1, 2020), <<https://www.freep.com/story/news/local/michigan/2020/04/01/michigan-prisoners-coronavirus/5099095002/>>; Jackson, *Jail Inmates Test Positive for Coronavirus in Macomb, Oakland Counties*, Detroit Free Press (April 1, 2020), <<https://www.freep.com/story/news/local/michigan/2020/04/01/jail-inmates-test-positive-coronavirus-macomb-oakland-counties/5103711002/>>.

Mr. Tesfai is able to reside with his cousin in Kentwood—a ten minute drive to the court house.

Mr. Tesfai also exercised his right to demand a preliminary examination, given the extremely thin evidence of any specific intent in this case. However, because of the COVID-19 crisis, a date for Mr. Tesfai’s preliminary examination still has not been set, meaning that he will remain incarcerated indefinitely because of his unaffordable bond.

On April 7, 2020, Mr. Tesfai filed an emergency motion for modification of the district court’s release decision in the circuit court. Exhibit 1. The Prosecuting Attorney responded the next day. Exhibit 2. Nearly a week later, on April 14, the circuit court acted by denying Mr. Tesfai’s motion citing only “the reasons and law as set forth in the People’s Response to the motion.” Exhibit 3.

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 such as the constitutional issues and issues regarding the violation of the Michigan Court Rules are, in effect, reviewed de novo. See *People v Luckity*, 460 Mich 484, 488; 596 NW2d 607 (1999).

ARGUMENT

I. The Circuit Court Abused Its Discretion by Denying Mr. Tesfai’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

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emergency in Michigan as a result, 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.”). The Governor’s order was renewed and expanded on April 9. Executive Order No. 2020-42. 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.⁴ The best available public health advice involves preventing the spread of COVID-19 by regularly washing hands, social distancing, and self-quarantining when necessary.⁵ Social distancing requires “remaining out of congregate settings, avoiding mass gatherings, and maintaining distance (approximately 6 feet or 2 meters) from others when possible.”⁶ All of these precautions are virtually impossible in the carceral setting.⁷

On March 15, the Michigan Supreme 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

⁴ 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/>>.

⁵ 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>.

⁶ 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>>.

⁷ 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”).

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.*”⁸ 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, this Court 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*, No 353226 (March 23, 2020); see also *People v Calloway*, No. 349870 (March 31, 2020) (holding that a defendant who pled guilty to delivery of heroin should be released pending appeal of her sentence in light of the COVID-19 pandemic), both attached as Exhibit 5. 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 11 (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. Tesfai’s emergency motion, resulting in his continued indefinite detention in the midst of the COVID-19 pandemic, constitutes an abuse of

⁸ 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>, also attached as Exhibit 1 (emphasis added).

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. Tesfai, due to his age, is at particularly high risk of suffering death of serious injury if he were to contact coronavirus. See *Knight*, Exhibit 11. 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.⁹ Quite simply, Mr. Tesfai'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, and who has clear defenses on the merits at trial.

When the district court denied Mr. Tesfai's emergency motion, and summarily stated that he presents a flight risk, it had no evidence, and cited no evidence, that Mr. Tesfai might flee. In fact, he has resided in the Grand Rapids area for decades, has no criminal history, and thus has never missed a court date. The Prosecuting Attorney's response brief, relied on by the circuit court, also provided no basis to conclude that Mr. Tesfai is a flight risk. See Exhibit 2.

Nor was there sufficient evidence that Mr. Tesfai presents a significant danger to the public to justify his indefinite pre-trial incarceration in the midst of a global pandemic. Police reports suggest that on one prior occasion Mr. Tesfai may have left the stove gas on and on another he burnt his food because he forgot to turn the burner off. On each occasion, Mr. Tesfai was present in the apartment, however, and the allegations are more consistent with potential

⁹ 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); see also Ifran & Belluz, *Why COVID-19 Is So Dangerous for Older Adults*, Vox.com (March 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).

memory or cognitive problems than with criminal intent. Indeed, the allegations against Mr. Tesfai would be insufficient to convince a reasonable jury of specific intent beyond a reasonable doubt. Given that a jury would be unlikely to convict on the evidence, pretrial detention is even less justified than it would normally be. The Prosecuting Attorney's response in the circuit court merely repeats the allegations and notes that the police report indicated that there was a burned up cigarette in Mr. Tesfai's home when the police came. Exhibit 2 at 1–2. But the Prosecuting Attorney ignores that the police report *also* states that Mr. Tesfai was in the apartment at the time and claimed not to be suicidal, Exhibit 9, p 2, that the cigarette was on a chair next to his bed (and thus consistent with Mr. Tesfai's story of having fallen asleep), that it was unknown if the cigarette was from the day in question, and that there were cigarette butts scattered throughout the house, Exhibit 9, p 5 (section entitled "Additional Information").

Finally, as noted, if released, Mr. Tesfai can reside with his cousin who will be able to ensure that Mr. Tesfai does not accidentally harm himself or others. The Prosecuting Attorney's response complains that Mr. Tesfai did not explain this fact to the district court. Exhibit 2, p 2–3. But as the Prosecuting Attorney himself acknowledges, defense counsel *did* indicate that Mr. Tesfai had a stable place he could reside and the district court did not inquire as to where that might be or with whom, as would have been appropriate if this were a source of ongoing concern. Exhibit 10, p 4. In any event, delaying the release of a medically vulnerable pre-trial detainee in the midst of a potentially fatal global pandemic over the technical state of the original record elevates form over life-or-death substance. By the time the circuit court denied Mr. Tesfai's emergency motion, it had in front of it the representation from defense counsel that Mr. Tesfai has a place to reside and it was an abuse of discretion to ignore that fact.

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 Kent County Jail is no longer permitting attorneys to conduct private in-person jail visits, meaning that attorneys can only meet detained clients in a semi-public room through a glass barrier. 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. Tesfai, other detainees, jail staff, and the public at large, the circuit court abused its discretion by authorizing an amount of cash bail that it knew to be unaffordable and that would, therefore, lead to Mr. Tesfai's indefinite detention in a crowded jail setting in the midst of a highly contagious global pandemic. See *Ferguson, supra*, Exhibit 5; *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 all the more true given that 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 Imposed Here Violates Michigan Law, 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,

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art 1, § 16. 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.”).

The Michigan Supreme 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, 14 enumerated conditions. 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). The Michigan Supreme 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 violated the Michigan Court Rules in two interrelated ways. First, it failed to apply, or even acknowledge, the double presumption of pre-trial release—the “favored policy” in this State. *Edmond*, 81 Mich App at 747. Second, the lower

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courts 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 lower courts suggesting that Mr. Tesfai poses an unmanageable flight risk. With respect to the public danger element, the court simply adopted the Prosecuting Attorney's brief as its basis for decision, and that brief fails entirely to examine, as required by MCR 6.106(E), whether non-financial release conditions could address any concerns. Quite the contrary, the Prosecuting Attorney inverts the court rules, by claiming that it is a *defendant's* obligation to persuade a court that non-financial conditions instead of cash bond should be imposed. Exhibit 2, p 3. That is exact opposite of what the law requires.

The circuit court's failure to comply with the Michigan Court Rules constitutes legal error and, thus, abuse of discretion. Accordingly, this Court should order Mr. Tesfai's release with, at most, an unsecured appearance bond in an amount deemed just by the Court, or alternatively with non-financial release conditions pursuant to MCR 6.106(D).

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

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 ensure the defendant's attendance at trial and the safety of the public during the pre-trial period. 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 require that one factor the court must consider when determining release conditions is the “defendant's

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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). A large bail amount may be necessary to deter a wealthy defendant from fleeing the jurisdiction, whereas a nominal amount may be more than sufficient to prevent against the potential flight risk posed by a defendant who makes minimum wage and needs every available dollar simply to pay rent or feed her family. As one court has succinctly explained it: “[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. Tesfai were wealthier and could afford to pay \$15,000, he would be free while pending trial; but since he cannot he is instead detained “on the basis of . . . his economic status.” *Id.*

Here, all that the Prosecuting Attorney (whose reasoning the circuit court adopted) had to say about the amount of bond is that “Defendant told the District Court he was employed, so a bond of \$15,000 cash/surety, requiring \$1,500 to a bonding company, was not inherently unreasonable given all the facts and circumstances. It was tailored to the circumstances to be high enough to motivate anyone posting it to ensure Defendant’s appearance and to protect the community if he was out in society.” Exhibit 2, p 4. This is nonsense. First of all, by the time of the bond hearing in the district court it was obvious that he was unable to afford the bond

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because his attorney told the court so and because he had remained detained for over three weeks. And again, there is no indication *at all* in the record that Mr. Tesfai presents a flight risk, so the Prosecuting Attorney's reference to alleviating the risk of flight is a red herring. As to protecting the community, the prosecution's own theory of the case is that Mr. Tesfai is suicidal. There is no explanation whatsoever as to why a payment of \$1,500 would somehow provide additional protection to the public. In fact, if anything, what the supposed affordability of the bond amount shows, is that Mr. Tesfai was *not* deemed by the arraigning court to be a particularly great threat to society. If he had, in fact, had \$1,500 to spare thanks to being employed at the time of his arrest, Mr. Tesfai would be free right now.

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.¹⁰ 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).

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-

¹⁰ 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 J L & Econ 529 (2017).

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.¹¹ 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 courts below made no findings that can justify the \$15,000 cash bond and the resulting harm to Mr. Tesfai—particularly in light of the grave resulting threat to his health. By refusing to modify 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 Prosecuting Attorney Did Not Respond to Mr. Tesfai’s Constitutional Arguments and Therefore Waived this Issue.

In his motion in the circuit court, Mr. Tesfai laid out in detail why being held on unaffordable bond violates his constitutional rights under the due process and equal protection clauses of the United States Constitution. Exhibit 1, pp 3–4, 17–19. The Prosecuting Attorney simply declined to respond to these arguments on the grounds that “the People simply do not have time to address Defendant’s arguments on this point specifically.”¹² Exhibit 2, p 4. But a party “may not merely state a position and then leave it to [a] court to discover and rationalize the basis for the claim. *People v Mackle*, 241 Mich App 583, 604 n 4; 617 NW 2d 339 (2000). By ignoring Mr. Tesfai’s argument, the Prosecuting Attorney abandoned any argument that the

¹¹ 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>>.

¹² The prosecution also erroneously described Mr. Tesfai as challenging the constitutionality of cash bail in general;

unaffordable bond in Mr. Tesfai's case was, in fact, constitutional, so the circuit court should have ruled for Mr. Tesfai on this issue. At the very least, the circuit court abused its discretion by wholly failing to address Mr. Tesfai's constitutional claims.

Mr. Tesfai re-asserts his constitutional arguments by reference here. Exhibit 1, pp 3–4, 17–19. The Prosecuting Attorney has waived the right to respond, and Mr. Tesfai is entitled to prevail on this issue and should be ordered released on those grounds.

CONCLUSION

For the reasons stated, the circuit court's order should be reversed and Mr. Tesfai should be ordered released with 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
2966 Woodward Ave.
Detroit, MI 48201
(313) 578-6803(w); 617-817-2229(c)
Attorneys for Defendant-Appellant

Date: April 15, 2020

/s/Marcus T. Chmiel
Marcus T. Chmiel (P80556)
Kent County Office of the Defender
146 Monroe Center Suite 920
Grand Rapids, MI 49503
(616) 588-8225(w); (616) 862-9060(c)
Co-counsel for Defendant-Appellant

in fact, he merely challenged it as applied to him under the facts at issue here.

INDEX OF EXHIBITS

Exhibit 1	Defendant-Appellant's Circuit Court Emergency Motion and Brief
Exhibit 2	Prosecuting Attorney's Circuit Court Response Brief
Exhibit 3	Circuit Court Order
Exhibit 4	MSC Administrative Order 2020-1
Exhibit 5	Court of Appeals COVID Release Orders
Exhibit 6	Executive Order 2020-29
Exhibit 7	Transcript of March 9 Arraignment
Exhibit 8	Inmate Lookup
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Exhibit 12	Register of Actions

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Exhibit 1
Defendant-Appellant's Circuit Court
Emergency Motion & Brief

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

PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff-Appellee,

v

Case No.

TEKLEBRHAN SAMUEL TESFAI

District Court No. D2000462FY

Defendant-Appellant.

Philip Mayor (P81691)
Daniel S. Korobkin (P72842)
American Civil Liberties Union
Fund of Michigan
2966 Woodward Ave.
Detroit, MI 48201
(313) 578-6803 (w); (617) 817-2229(c)
Attorneys for Defendant-Appellant

Christopher R. Becker (P53752)
Prosecuting Attorney
Kent County Prosecutor's
Office 82 Ionia Ave NW
Grand Rapids, MI 49503
chris.becker@kentcountymi.gov
(616) 632-6710
Attorney for Plaintiff-Appellee

Marcus T. Chmiel (P80556)
Kent County Office of the Defender
146 Monroe Center Suite 920
Grand Rapids, MI 49503
(616) 588-8225(w); (616) 862-9060(c)
Co-counsel for Defendant-Appellant

EMERGENCY MOTION FOR MODIFICATION OF RELEASE DECISION

Defendant Teklebrhan Tesfai, a 62-year-old man with no criminal record, appeals by right, pursuant to MCR 6.106(H), requesting review of the district court's decision to incarcerate him indefinitely, in the midst of the COVID-19 pandemic, while he awaits trial. Specifically, Mr. Tesfai seeks review of the district court's March 30, 2020 refusal to eliminate the previously imposed cash bond of \$15,000, a bond which the district court knew Mr. Tesfai could not afford.

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As set forth in the attached brief, the district court's bail order was an abuse of discretion in light of the following:

1. Mr. Tesfai was booked into the Kent County Jail on March 8, 2020, and charged with Arson-Preparation to Burn a Dwelling, based on allegations that he left the gas running on the stove in his apartment, which he was also occupying at the time.

2. Mr. Tesfai is a 61-year-old Black man with no criminal history.

3. On March 9, Mr. Tesfai was arraigned, and bond was set at \$15,000 cash.

4. Mr. Tesfai was subsequently deemed indigent and is represented at trial by the undersigned Kent County Public Defender.

5. Mr. Tesfai has remained incarcerated since his arrest due to his inability to afford to post bond.

6. On March 30, a hearing was held at which defense counsel moved for the \$15,000 bond to be eliminated in light of the COVID-19 pandemic and given Mr. Tesfai's advanced age, which renders him especially vulnerable to the pandemic. Mr. Tesfai also requested a preliminary examination in light of the weak evidence against him.

7. The district court denied the motion, and has not yet set a date for a preliminary examination because of the COVID-19 crisis.

8. In denying Mr. Tesfai's motion, the district court did not even consider non-financial release conditions in lieu of bond and did not ask defense counsel relevant questions. If released on a personal recognizance bond, Mr. Tesfai can reside with his cousin in Kentwood, Michigan, while awaiting trial.

9. Instead, as the result of the district court's denial of Mr. Tesfai's motion, he will remain incarcerated indefinitely in the midst of the worst global health crisis in a century, despite

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the fact that his age renders him particularly susceptible to the COVID-19 virus. When there, inevitably, is an outbreak in the Kent County Jail, as is already occurring in other jails and prisons around the state, Mr. Tesfai's unaffordable bond could easily become a pre-trial death sentence.

10. 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 emergency by the Governor.

11. 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 1. The Court of Appeals has made clear that in the vast majority of cases, "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*, unpublished order of the Court of Appeals, entered March 23, 2020 (Docket No 353226); see also *People v Calloway*, entered March 31, 2020 (Docket No 349870) (similar), both attached as Exhibit 2.

12. On March 29, Governor Whitmer issued an executive order that "strongly encouraged" courts to release older people who do not constitute a proven public health risk. Executive Order No. 2020-29, attached as Exhibit 3.

13. 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." MCR 6.106(C)–(F)

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implement these rights and provides that personal recognizance release or unsecured appearance bonds are the default release options.

14. The district court did not comply with MCR 6.106(C)–(D) by making adequate findings that cash bail is necessary to address any flight risk or danger to the public.

15. Alternatively, the district court abused its discretion in imposing cash bail in the amount of \$15,000 given the evidence that Mr. Tesfai could not afford that amount.

16. The district court’s bail decision is also unconstitutional under the United States Constitution because it results in Mr. Tesfai being incarcerated “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).

Accordingly, Mr. Tesfai requests that this Court grant relief (a) ordering his release on his own recognizance or subject only to an unsecured appearance bond; or alternatively, (b) ordering his release subject only to such non-financial conditions as necessary in light of the record, such as that he not live alone while on release and reside with his cousin. Mr. Tesfai also would not object to a condition requiring him not to reside alone in a housing situation with a gas stove unless the gas supply to the stove has been turned off or disconnected.

Respectfully submitted,

/s/Philip Mayor
Philip Mayor (P81691)
Daniel S. Korobkin (P72842)
American Civil Liberties Union
Fund of Michigan
2966 Woodward Ave.
Detroit, MI 48201
(313) 578-6803
Attorneys for Defendant-Appellant

/s/Marcus T. Chmiel
Marcus T. Chmiel (P80556)
Kent County Office of the Defender
146 Monroe Center Suite 920
Grand Rapids, MI 49503
(616) 588-8225(w); (616) 862-9060(c)
Co-counsel for Defendant-Appellant

April 7, 2020

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

Defendant Teklebrhan Tesfai, a 61-year-old man who is medically vulnerable to COVID-19 due to his age, appeals by right, pursuant to MCR 6.106(H), requesting review of the district court’s decision to impose \$15,000 cash bail, which will result in his indefinite detention while awaiting trial in the midst of a global pandemic. By imposing unaffordable cash bail, the district court abused its discretion and disregarded the exigencies of the current global health crisis. If an outbreak occurs in the Kent County Jail, Mr. Tesfai’s bond could become a death sentence.

Although this Court need not reach the question, the district court’s decision also amounts to a pre-trial detention order that violates the Michigan Court Rules and the United States and Michigan constitutions. The Michigan Court Rules are clear that cash bail is disfavored. They permit cash bail to be imposed only after a district court first makes findings, supported by individualized record evidence, that release pursuant to *non*-financial release conditions would be insufficient to protect against an otherwise unmanageable flight risk or danger to the public. Here, the district court failed to meaningfully consider the non-cash bail alternatives provided in the Michigan Court Rules and did engage in an individualized analysis of whether cash bail was truly necessary to address a proven flight risk or danger to others.

The district court’s bail determination similarly violates federal constitutional law. The Due Process and Equal Protection Clauses of the Fourteenth Amendment prohibit the incarceration of poor defendants in circumstances when otherwise-similar defendants who are wealthier would be permitted to pay to remain free. Similarly, the Due Process Clause prohibits depriving anyone of their liberty prior to a criminal conviction unless individualized findings have been made that the defendant will pose an unmanageable flight risk or an identifiable and articulable danger to the public prior to trial. This means that the Fourteenth Amendment—just

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like the Michigan Court Rules—requires a court, before imposing cash bail, to: (1) make a meaningful inquiry into the defendant’s ability to afford cash bail, (2) properly consider non-financial release conditions before imposing an amount of bail known to be unaffordable, and (3) 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 without paying the proposed amount of cash bail. The district court failed to do so here.

For these reasons, the district court’s bail determination should be reversed and Mr. Tesfai should be ordered released immediately on his own recognizance, a personal bond, or subject, at most, to appropriate non-financial bond conditions such as being required to reside with his cousin.

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.”

STATEMENT OF FACTS

Mr. Tesfai is a 62-year-old Black man who, based on arraignment, appears to be easily confused. See Exhibit 4, p 4–5. He has no criminal history. Accordingly, he also has no history of failing to appear in court. He was booked into the Kent County Jail on March 8, 2020, and charged with Arson—Preparation to Burn a Building. See Exhibit 5. The allegations supporting the charge are that Mr. Tesfai left the gas running on his stove while he was asleep in the apartment. See Exhibit 6. On two other occasions, Mr. Tesfai is alleged to have also either left his stove running, once resulting in burning of his food, once resulting in gas escaping. *Id.*

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At his arraignment, on March 9, bail was set at \$15,000 cash/surety on the grounds of the “serious nature of these charges and the concerns for the community at large and the community at small that lives within the apartment building.” Exhibit 4, pp 7–8. The district court did not consider or discuss any non-financial conditions in lieu of cash bond. It did order him not to return to the building in question without a police escort if he posted bond and to report to court services and provide a new address where he would be staying. *Id.*

Since Mr. Tesfai’s arraignment, the COVID-19 pandemic has swept the United States, and has struck Michigan with particular ferocity. Numerous prisons and jails have experienced outbreaks, and both inmates and guards have already died as a result.¹

A hearing was held in Mr. Tesfai’s case on March 30 at which Mr. Tesfai’s newly appointed public defender requested that the unaffordable \$15,000 bond be eliminated in light of the health crisis and Mr. Tesfai’s advanced age and resulting medical vulnerability. See Exhibit 7, p 4. The district court denied the motion, citing the “recommendation for Court Services” of no PR bond “as this is a serious felony.” Exhibit 7, p 5. The court also stated that Mr. Tesfai was a flight risk and a public danger, but did not cite any reasons or evidence, and did not address the extraordinary health risk posed to Mr. Tesfai from his continued incarceration. *Id.* Nor did the district court consider or discuss any non-financial conditions in lieu of cash bond. The district court did not ask if Mr. Tesfai had found a place to stay if released. In fact, Mr. Tesfai is able to reside with his cousin in Kentwood.

Mr. Tesfai also exercised his right to demand a preliminary examination, given the extremely thin evidence of any specific intent in this case. However, because of the COVID-19

¹ See Jackson & Egan, *Michigan Prisoner Coronavirus Cases Surpass 100*, Detroit Free Press (April 1, 2020), <<https://www.freep.com/story/news/local/michigan/2020/04/01/michigan-prisoners-coronavirus/5099095002/>>; Jackson, *Jail Inmates Test Positive for Coronavirus in Macomb, Oakland Counties*, Detroit Free Press (April 1, 2020), <<https://www.freep.com/story/news/local/michigan/2020/04/01/jail-inmates-test-positive-coronavirus->

crisis, a date for Mr. Tesfai's preliminary examination still has not been set, meaning that he will remain incarcerated indefinitely because of his unaffordable bond.

STANDARD OF REVIEW

On appeal, this Court applies an abuse of discretion standard when determining whether to stay, vacate, modify, or reverse the District 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 such as the constitutional issues and issues regarding the violation of the Michigan Court Rules are, in effect, reviewed de novo. See *People v Luckity*, 460 Mich 484, 488; 596 NW2d 607 (1999).

ARGUMENT

I. The District Court Abused Its Discretion by Denying Mr. Tesfai'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 in Michigan as a result, 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.² 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.”⁴ All of these precautions are virtually impossible in the carceral setting.⁵

On March 15, the Michigan Supreme 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.*”⁶ 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

² 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-lesser-spread-coronavirus/>>.

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>.

⁴ 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>>.

⁵ 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”).

⁶ 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>, also attached as Exhibit 1 (emphasis added).

granted defendant a personal bond.” *People v Ferguson*, No. 353226 (March 23, 2020); see also *People v Calloway*, No. 349870 (March 31, 2020) (holding that a defendant who pled guilty to delivery of heroin should be released pending appeal of her sentence in light of the COVID-19 pandemic), both attached as Exhibit 2. 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 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 district court’s denial of Mr. Tesfai’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. Tesfai, due to his age, is at particularly high risk of suffering death of serious injury if he were to contact coronavirus. See *Knight*, Exhibit 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](https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(20)30243-7/fulltext)

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[#seccesitle200](#)> (showing that 829 out of 1023 documented fatalities were in patients over 60 and that fatality rates spike dramatically as patients age).⁷ Quite simply, Mr. Tesfai'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, and who has clear defenses on the merits at trial.

When the district court denied Mr. Tesfai's emergency motion, and summarily stated that he presents a flight risk, it had no evidence, and cited no evidence, that Mr. Tesfai might flee. In fact, he has resided in the Grand Rapids area for decades, has no criminal history, and thus has never missed a court date. Nor was there sufficient evidence that Mr. Tesfai presents a significant danger to the public to justify his indefinite pre-trial incarceration in the midst of a global pandemic. Police reports suggest that on one prior occasion Mr. Tesfai may have left the stove gas on and on another he burnt his food because he forgot to turn the burner off. On each occasion, Mr. Tesfai was present in the apartment, however, and the allegations are more consistent with potential memory or cognitive problems than with criminal intent. Indeed, the allegations against Mr. Tesfai would be insufficient to convince a reasonable jury of specific intent beyond a reasonable doubt. Given that a jury would be unlikely to convict on the evidence, pretrial detention is even less justified than it would normally be. Finally, as noted, if released, Mr. Tesfai can reside with his cousin who will be able to ensure that Mr. Tesfai does not accidentally harm himself or others.

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

⁷ See, e.g., Ifran & Belluz, *Why COVID-19 Is So Dangerous for Older Adults*, Vox.com (March 13, 2020) <<https://www.vox.com/2020/3/12/21173783/coronavirus-death-age-covid-19-elderly-seniors>> (documenting studies

Kent County Jail is no longer permitting attorneys to conduct in-person jail visits, meaning that attorneys can only meet detained clients through glass windows in non-private rooms with glass separators that do not facilitate confidentiality and sharing of documents. 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. Tesfai, other detainees, jail staff, and the public at large, the court abused its discretion by imposing an amount of cash bail that it knew to be unaffordable and that would, therefore, lead to Mr. Tesfai's indefinite detention in a crowded jail setting in the midst of a highly contagious global pandemic. See *Ferguson, supra*, Exhibit 2; *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 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 favored policy." *People v Edmond*, 81 Mich App 743, 747; 266 NW2d 640 (1978).

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

A. The District 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,

showing that death rates for coronavirus patients spike at around age 60, even for non-incarcerated patients).

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.”).

The Michigan Supreme 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, 14 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). The Michigan Supreme Court has been “emphatic” that this “rule is to be complied with in spirit, as well as to the letter.” *Spicer*, 402 Mich at 409.

Here, the district court’s decision to impose cash bail violated the Michigan Court Rules

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in two interrelated ways. First, the district 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 district 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 district court suggesting that Mr. Tesfai poses an unmanageable flight risk. With respect to the public danger element, the court stated a concern for public safety, but did not examine on the record, as required by MCR 6.106(E), whether non-financial release conditions could address any concerns. As suggested above, such conditions might have included release with instructions not to reside alone or that, if Mr. Tesfai resides alone, he have the gas disconnected from his stove.

The district court’s failure to comply with the Michigan Court Rules constitutes legal error and, thus, abuse of discretion. Accordingly, this Court should order Mr. Tesfai’s release with, at most, an unsecured appearance bond in an amount deemed just by the Court. In the alternative, if the Court were to find that evidence establishes a danger to the public, the Court should order release subject to such non-financial conditions as suggested above that would alleviate any such risk.

B. Alternatively, the Amount of Cash Bail Imposed by the District Court Was an Abuse of Discretion Because It Was Unaffordable to Mr. Tesfai.

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 ensure the defendant’s attendance at trial and the safety of the public during the pre-trial period. 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

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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). A large bail amount may be necessary to deter a wealthy defendant from fleeing the jurisdiction, whereas a nominal amount may be more than sufficient to prevent against the potential flight risk posed by a defendant who makes minimum wage and needs every available dollar of her budget simply to pay rent or feed her family. As one court has succinctly explained it: "[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. Tesfai were wealthier and could afford to pay \$15,000, 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.⁸ 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).

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.⁹ 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 district court knew that Mr. Tesfai’s \$15,000 bail was unaffordable, yet it made no findings that can justify such an amount and the resulting harm to Mr. Tesfai—particularly in light of the unique risks ongoing pre-trial incarceration poses to his health. By imposing

⁸ 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 J L & Econ 529 (2017).

⁹ 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>>.

unaffordable bail without identifying any specific reason why the amount selected was necessary even though it was unaffordable, the district court abused its discretion.

C. The District 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. Tesfai’s rights under the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. First, the cash bail imposed violates the Equal Protection and Due Process Clauses as a result of the fact that Mr. Tesfai is detained because of his poverty. Second, because the unaffordable bail order is essentially a pre-trial detention order, due process principles requires that it must be supported by individualized factual findings, based on clear and convincing evidence, about flight risk or danger to the public that this record would not support.

i. The Imposition of Unaffordable Bail Unconstitutionally Discriminates Against Mr. Tesfai 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

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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. Tesfai’s freedom resulting from his inability to pay \$15,000 is exactly what happened here. As discussed above, the district court knowingly imposed bail without regard to Mr. Tesfai’s inability to afford that amount. As a result, Mr. Tesfai is detained not because he poses such a risk to the public 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 would be able to purchase his pre-trial freedom even though he would pose the same potential risks. Mr. Tesfai is, therefore, detained in jail only because he lacks the ability to pay \$15,000 (or a lesser sum to a bondsman). Because Mr. Tesfai’s detention is due to his financial inability to afford bail, the district court violated his right to equal protection.

ii. The Imposition of Unaffordable Bail Deprives Mr. Tesfai 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. Tesfai will be detained indefinitely prior to trial. Mr. Tesfai cannot afford the bail amount and is presently incarcerated, so the district 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.”

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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 district court’s decision to impose what amounts to a pre-trial detention order lacked the requisite narrow tailoring and was unconstitutional.

CONCLUSION

For the reasons stated, the district court’s bail order should be reversed and Mr. Tesfai should be ordered released with a personal bond or, at most, non-financial release conditions.

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Respectfully submitted,

/s/Philip Mayor

Philip Mayor (P81691)
Daniel S. Korobkin (P72842)
American Civil Liberties Union
Fund of Michigan
2966 Woodward Ave.
Detroit, MI 48201
(313) 578-6803
Attorneys for Defendant-Appellant

April 7, 2020

/s/Marcus T. Chmiel

Marcus T. Chmiel (P80556)
Kent County Office of the Defender
146 Monroe Center Suite 920
Grand Rapids, MI 49503
(616) 588-8225(w); (616) 862-9060(c)
Co-counsel for Defendant-Appellant

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Exhibit 2
Prosecuting Attorney's Circuit Court
Response Brief

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STATE OF MICHIGAN
IN THE 17TH CIRCUIT COURT FOR THE COUNTY OF KENT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,
v
TEKLEBRHAN SAMUEL TESFAI,
Defendant.

Hon. Mark A. Trusock
Circuit Case No.
District Case No. D20-0462-FY

James K. Benison (P54429)
Kent County Prosecutor's Office
82 Ionia Avenue NW – Suite 450
Grand Rapids, MI 49503
(616) 632-6710

Marcus Chmiel (P80556)¹
Attorney for Defendant
146 Monroe Center NW – Suite 920
Grand Rapids, MI 49503
(616) 774-8181

PEOPLE'S RESPONSE TO DEFENDANT'S
EMERGENCY MOTION FOR MODIFICATION OF RELEASE DECISION

NOW COME the People of the State of Michigan, through the Kent County Prosecutor's Office, and responds to Defendant's Emergency Motion as follows:

Based on the information in the police reports attached to Defendant's motion, it appears he resided on the second floor of a sixteen-unit apartment complex. Once in the fall of 2019 the fire department was summoned for the odor of natural gas coming from Defendant's unit, and once for a smoking oven in his apartment. Then, two days before Christmas, 2019, in the evening, a resident called 911 based on the strong odor of natural gas in the building; the building had to be evacuated. Police/fire forced their way into Defendant's unit, which had a kitchen chair blocking access to the apartment making the process more difficult. Inside they noticed his stove burner was on to a level of 8/10 but was not lit. The authorities did not locate anyone inside the unit at the time. On January 30, 2020, in the evening, another resident of the complex called 911 because

¹ Defendant's Motion also lists two attorneys from the American Civil Liberties Union Fund of Michigan. There is no indication in the 63rd District Court docket entries that additional attorneys have filed an appearance on behalf of Defendant. As such, the People will not list attorneys not of record nor will copies be provided to attorneys not of record.

of the odor of natural gas; the building again had to be evacuated. Once again, Defendant's apartment was found to be the source of the natural gas, this time with two burners on his stove turned on with no flame and an audible hiss coming from the stove. Defendant claimed to be sleeping; a cigarette was found in the apartment near the stove that had burned itself out without ever having been moved.

At the arraignment, Defendant acknowledged he was being evicted from the apartment complex effective mid-March, 2020, and he said he had no idea where he would be living if released (Arraignment Tr, 7; Exhibit 4 to Defendant's Motion).

At the probable cause conference, present counsel asked for a lower bond and asserted, without specificity, that "I believe that he does have a stable address" (PCC Tr, 4; Exhibit 7 to Defendant's Motion). Neither Defendant nor his counsel provided a name of a relative or friend with whom Defendant could stay, nor was the District Court provided an actual address to which Defendant could be released. The District Court denied the motion to reduce bond based on concerns for the safety of the community with Defendant allegedly having the natural gas on his stove "accidentally" turn on three times and Defendant not notice, with the third time having a lit cigarette near the stove that was never smoked. It is the People's belief at this point that Defendant is a risk to the community without significant mental health treatment, which is why the People opposed a reduction at the time of the probable cause conference.

Defendant's motion is, of course, actually an appeal of the District Court's bond decision, rooted as it is in MCR 6.106(H). Pursuant to that Court Rule, "[t]he reviewing court may not stay, vacate, modify, or reverse the release decision except on finding an abuse of discretion." MCR 6.310(H)(1). An appeal, of course, is heard on the original record and evaluates the trial court's decision at the time it was made, based on the evidence presented at that time. To the extent

Defendant has argued alleged facts that were not in the record before the trial court at the time of the decision, such claims are not relevant to this Court's evaluation of whether the lower court abused its discretion. As such, all alleged factual claims in the motion which attempt to expand the appellate record, such as a claim that Defendant can live with a cousin in Kentwood, should be stricken.²

Defendant argues that "the district court did not even consider nonfinancial release conditions in lieu of bond and *did not ask defense counsel relevant questions*" (Defendant's Motion, ¶ 8, emphasis added; see also Defendant's Brief, 7). It was not the District Court's burden, however, to ask questions of counsel; it was counsel's burden, as the moving party, to persuade the District Court of the need for a modification of the amount or nature of the bond. Defense counsel did not provide a specific address for Defendant, who had told the District Court previously that he was being evicted from his previous residence and therefore could not return there to stay. Defense counsel did not provide a name for any friend or relative with whom Defendant could stay. Defense counsel did not address concerns regarding his client's mental health. In short, defense counsel did not provide to the lower court all the information he now asserts is relevant. The trial court did not abuse its discretion by hearing defense counsel argue the motion, note the concerns in the pre-trial bond report and those raised by the People, and rule based on the information available to it at the time.

² The motion and brief also reference the race of Defendant. Such information is utterly irrelevant to any court's review, and, because considering such information is anathema to the Constitution, the People submit that Defendant should be required to file a revised motion that complies with the law and does not mention that which the Constitution prohibits from being considered. Indeed, if the People were to file a motion or response that noted a defendant's race without specific justification (e.g., perhaps in a written motion to add a count of ethnic intimidation to discuss possible motive), trial counsel and the additional attorneys listed on Defendant's motion would be rightly outraged. The People see no principled reason for the rules to not apply to the defense as well.

Defendant's motion also argues that cash bond is unconstitutional. Because this is an emergency motion requiring an expedited response, the People simply do not have time to address Defendant's arguments on this point specifically. The People briefly note, however, that Defendant told the District Court he was employed, so a bond of \$15,000 cash/surety, requiring \$1,500 to a bonding company, was not inherently unreasonable given all the facts and circumstances. It was tailored to the circumstances to be high enough to motivate anyone posting it to ensure Defendant's appearance and to protect the community if he was out in society, but it was not an amount that was effectively no bond whatsoever.

To the extent Defendant raises policy arguments about how bail should be handled, such arguments are better addressed to the policy makers in Lansing in the Legislature and the Supreme Court. It is clear that cash bond was not considered unconstitutional by the Framers of our government given that the Eighth Amendment prohibits "[e]xcessive bail," not any bail.

Defendant is certainly free to present new arguments to the District Court below to allow that court to make a more informed decision regarding bail, but, as the appellate entity reviewing the lower court's decision, this Court may not simply review the matter *de novo*. Under the standard of review, Defendant has not demonstrated that the trial court's decision was outside the range of principled outcomes. See *People v Mahone*, 294 Mich App 208, 212; 816 NW2d 436 (2011).

THEREFORE, the People respectfully request that Defendant's Motion be DENIED

Date: April 8, 2020

Respectfully submitted,

James K. Benison
Chief Appellate Attorney

Exhibit 3
Circuit Court Order

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

PEOPLE OF THE STATE OF
MICHIGAN

63RD DISTRICT COURT
Case No. D20-0462-FY

vs

ORDER RE: DEFENDANT'S
EMERGENCY MOTION FOR
MODIFICATION OF RELEASE
DECISION

TEKLEBRHAN SAMUEL TESFAI,

Defendant.

_____ /

At a session of said Court, held in the Kent County Courthouse
in the City of Grand Rapids, in said county on APRIL 14, 2020

Present: HON. MARK A. TRUSOCK
Circuit Court Chief Judge

THIS MATTER HAVING BEEN BROUGHT BEFORE ME as Chief Judge of the
Circuit Court of this County and having reviewed Defendant's Emergency Motion for
Modification of Release Decision as well as the People's Response to the defendant's
motion, and being otherwise fully informed, and

Due to the Covid 19 pandemic situation we are currently experiencing in the State of
Michigan, this Court has made its decision based on the written submissions of the
parties and no oral arguments were heard;

NOW, THEREFORE, Defendant's Emergency Motion for Modification of Release
Decision is hereby denied for the reasons and law as set forth in the People's Response to
the motion.



Dated: April 14, 2020

MARK A. TRUSOCK (P38156)
Chief Circuit Court Judge

REC'D & FILED

APR 14 2020


HON. MARK A. TRUSOCK
17th CIRCUIT COURT

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ATTEST: A true copy

I do hereby certify and return that I served a copy of the above order upon the parties by e-mailing a copy of said order to the parties.

Dated: April 14, 2020


TRACY L. KNIFFEN-OATES, Court Clerk

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Exhibit 4
MSC Administrative Order 2020-1

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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 5
Court of Appeals COVID Release Orders

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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

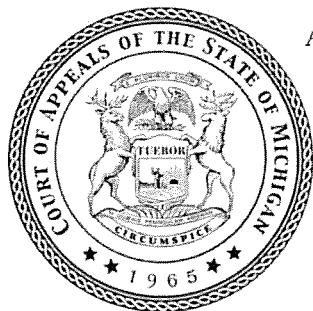
Colleen A. O'Brien
Judges

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

Jerome W. Zimmer Jr.
Chief Clerk

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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

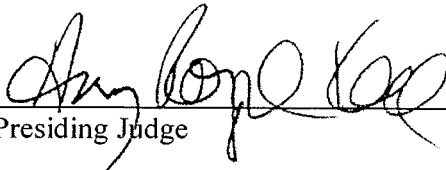
Jonathan Tukel
Judges

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.

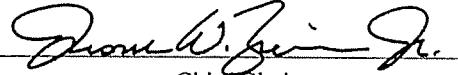

Presiding Judge



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

MAR 31 2020

Date


Chief Clerk

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Exhibit 6
Executive Order 2020-29

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GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GARLIN GILCHRIST II
LT. GOVERNOR

EXECUTIVE ORDER

No. 2020-29

Temporary COVID-19 protocols for entry into Michigan Department of Corrections facilities and transfers to and from Department custody; temporary recommended COVID-19 protocols and enhanced early-release authorization for county jails, local lockups, and juvenile detention centers

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Michigan Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401-.421, and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31-.33.

The Emergency Management Act vests the governor with broad powers and duties to “cop[e] with dangers to this state or the people of this state presented by a disaster or emergency,” which the governor may implement through “executive orders, proclamations, and directives having the force and effect of law.” MCL 30.403(1)-(2). Similarly, the Emergency Powers of the Governor Act of 1945 provides that, after declaring a state of emergency, “the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control.” MCL 10.31(1).

To mitigate the spread of COVID-19, protect the public health, and provide essential protections to vulnerable Michiganders who work at or are incarcerated in prisons, county jails, local lockups, and juvenile detention centers across the state, it is reasonable and necessary to implement limited and temporary COVID-19-related protocols and procedures regarding entry into facilities operated by the Michigan Department of Corrections and transfers to and from the Department’s custody; to recommend limited and temporary COVID-19-related protocols and measures for county jails, local lockups, and juvenile detention centers; and to temporarily suspend certain rules and procedures to facilitate the implementation of those recommendations.

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Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. The Michigan Department of Corrections (the “Department”) must continue to implement risk reduction protocols to address COVID-19 (“risk reduction protocols”), which the Department has already developed and implemented at the facilities it operates and which include the following:
 - (a) Screening all persons arriving at or departing from a facility, including staff, incarcerated persons, vendors, and any other person entering the facility, in a manner consistent with guidelines issued by the Centers for Disease Control and Prevention (“CDC”). Such screening includes a temperature reading and obtaining information about travel and any contact with persons under investigation for COVID-19 infection.
 - (b) Restricting all visits, except for attorney-related visits, and conducting those visits without physical contact to the extent feasible.
 - (c) Limiting off-site appointments for incarcerated persons to only appointments for urgent or emergency medical treatment.
 - (d) Developing and implementing protocols for incarcerated persons who display symptoms of COVID-19, including methods for evaluation and processes for testing, notification of the Department of Health and Human Services (“DHHS”), and isolation during testing, while awaiting test results, and in the event of positive test results. These protocols should be developed in consultation with local public health departments.
 - (e) Notifying DHHS of any suspected case that meets the criteria for COVID-19 through communication with the applicable local public health department.
 - (f) Providing, to the fullest extent possible, appropriate personal protective equipment to all staff as recommended by the CDC.
 - (g) Conducting stringent cleaning of all areas and surfaces, including frequently touched surfaces (such as doorknobs, handles, light switches, keyboards, etc.), on a regular and ongoing basis.
 - (h) Ensuring access to personal hygiene products for incarcerated persons and correctional staff, including soap and water sufficient for regular handwashing.
 - (i) Ensuring that protective laundering protocols are in place.
 - (j) Posting signage and continually educating on the importance of social distancing, handwashing, and personal hygiene.
 - (k) Practicing social distancing in all programs and classrooms—meaning a distance of at least six feet between people in any meeting, classroom, or other group.

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- (l) Minimizing crowding, including interactions of groups of 10 or more people, which may include scheduling more times for meal and recreation to reduce person-to-person contact.
2. To mitigate the risk of COVID-19 spreading in county jails, strict compliance with the capacity and procedural requirements regarding county jail overcrowding states of emergency in the County Jail Overcrowding Act (“CJOA”), 1982 PA 325, MCL 801.51 et seq., is temporarily suspended. While this order is in effect, all actions that would be authorized under the CJOA in the event of a declaration of a county jail overcrowding state of emergency are authorized and shall remain authorized without regard to any reduction in jail population or any other such limitations on the duration of authorization imposed by the CJOA.
3. Anyone authorized to act under section 2 of this order is strongly encouraged to consider early release for all of the following, so long as they do not pose a public safety risk:
 - (a) Older people, people who have chronic conditions or are otherwise medically frail, people who are pregnant, and people nearing their release date.
 - (b) Anyone who is incarcerated for a traffic violation.
 - (c) Anyone who is incarcerated for failure to appear or failure to pay.
 - (d) Anyone with behavioral health problems who can safely be diverted for treatment.
4. Effective immediately, all transfers into the Department’s custody are temporarily suspended. Beginning seven (7) days from the effective date of this order, and no more than once every seven (7) days, a county jail or local lockup may request that the director of the Department determine that the jail or lockup has satisfactorily implemented risk reduction protocols as described in section 1 of this order. Upon inspection, if the director of the Department determines that a county jail or local lockup has satisfactorily implemented risk reduction protocols, transfers from that jail or lockup will resume in accordance with the Department’s risk reduction protocols. The director of the Department may reject transfers that do not pass the screening protocol for entry into a facility operated by the Department.
5. Parole violators in the Department’s custody must not be transported to or lodged in a county jail or local lockup unless the director of the Department has determined that such county jail or local lockup has satisfactorily implemented risk reduction protocols as described in section 1 of this order.
6. The State Budget Office must immediately seek a legislative transfer so that counties may be reimbursed for lodging incarcerated persons that would have been transferred into the Department’s custody if not for the suspension of transfers described in section 4 of this order.

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7. Juvenile detention centers are strongly encouraged to reduce the risk that those at their facilities will be exposed to COVID-19 by implementing as feasible the following measures:
 - (a) Removing from the general population any juveniles who have COVID-19 symptoms.
 - (b) Eliminating any form of juvenile detention or residential facility placement for juveniles unless a determination is made that a juvenile is a substantial and immediate safety risk to others.
 - (c) Providing written and verbal communications to all juveniles at such facilities regarding COVID-19, access to medical care, and community-based support.
 - (d) To the extent feasible, facilitating access to family, education, and legal counsel through electronic means (such as telephone calls or video conferencing) at no cost, rather than through in-person meetings.
8. Unless otherwise directed by court order, for juveniles on court-ordered probation, the use of out-of-home confinement for technical violations of probation and any requirements for in-person meetings with probation officers are temporarily suspended.
9. This order is effective immediately and continues through April 26, 2020 at 11:59 pm.

Given under my hand and the Great Seal of the State of Michigan.

Date: March 29, 2020

Time: 7:23 pm



GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE

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Exhibit 7
Transcript of March 9 Arraignment

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STATE OF MICHIGAN

IN THE 63RD DISTRICT COURT FOR THE COUNTY OF KENT

PEOPLE OF THE STATE OF MICHIGAN,

v

Dist. Ct. No. D20-00462-FY

TEKLEBRHAN TESFAI,

Defendant.

_____ /

VIDEO ARRAIGNMENT

BEFORE MICHAEL MILROY, MAGISTRATE

Grand Rapids, Michigan - Monday, March 9, 2020

APPEARANCES:

For the Defendant: MR. FREEMAN HAEHNEL
For Arraignment HAEHNEL & PHELAN
40 Pearl Street, N.W., Suite 845
Grand Rapids, MI 49503
(616) 454-3834

RECORDED BY: DANIELLE WHEELER, CER 8748
Certified Electronic Recorder

TRANSCRIBED BY: MS. SUSAN M. MASON, CER 3266
Certified Electronic Recorder

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TABLE OF CONTENTS

WITNESSES: (People)

None

WITNESSES: (Defense)

None

EXHIBITS:

None

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Grand Rapids, Michigan

Monday, March 9, 2020, at 10:35 a.m..

THE COURT: Your name, sir?

THE DEFENDANT: Teklebrhan Tesfai.

THE COURT: All right. Last name spelled T-E-S-F-A-I?

THE DEFENDANT: Right, sir.

THE COURT: There is a felony Complaint here, it alleges an offense date of January 30, the location 2719 Northvale, and it's a charge of Preparation to Burn a Dwelling-Arson, with allegations you did use, arrange, place, devise or distribute an inflammable combustible or explosive material, liquid substance, or device in or near an apartment building with intent to commit arson of that property, as charged.

This is a felony and if you were convicted, maximum penalty 10 years in prison or a \$15,000 fine or three times the value of that property's damage, whichever is greater.

You have a right to remain silent. Anything you say, anything you write down could be used against you in court and you do have a right to have a lawyer present during any questioning that you might consent to. If you do not have the money to hire a lawyer, sir, you must ask for appointment so you can have a lawyer represent you, and have

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1 a lawyer with you on March 23, at 10:45 for a probable cause
2 conference. You and the lawyer back again on March 30, at
3 10:45 for a preliminary examination hearing, a case that has
4 been set before Judge Smolenski.

5 Counsel, Court Services simply checked the box no
6 PR bond. We don't have a whole lot of information. The
7 Complaint was sworn out before me, the affidavit of probable
8 cause that will be available for review has allegations that
9 this is actually the third event of a similar nature at this
10 apartment building which will cause me to ask this gentleman
11 if you're not in jail, sir, are you allowed to return to
12 2719 Northvale Drive, Northeast, Apartment 204, of that
13 apartment complex or have you been evicted from that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: My question was poor, very poor. Can
16 you go back to 2719 Northvale?

17 THE DEFENDANT: Yeah. Yes, sir.

18 THE COURT: Do you lease an apartment there?

19 THE DEFENDANT: Yeah.

20 THE COURT: And they're letting you go back?

21 THE DEFENDANT: For one year, yeah.

22 THE COURT: Okay. March 30, 2020. Where were you
23 picked up? Where were you picked up? Who got you?

24 THE DEFENDANT: She told me I was evicted because
25 something--problem--evicted because of things I

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1 (unintelligible)--I say no, I don't have no stuff--I just
2 say no, but no--no choice, maybe I'm going to take care of
3 my employment. I'm going to tell to my friends, something
4 like that, don't destroy me like that, so I don't get that
5 kind of problem. But I'm leaving that--I'm leaving that
6 building. I'm going to (unintelligible), I'm just--I take a
7 lease.

8 THE COURT: Does he work?

9 UNIDENTIFIED SPEAKER: Leaving that building.

10 THE COURT: When are you going to be leaving that
11 building?

12 THE DEFENDANT: The 13th, I'm going to be evicted
13 for the 13th.

14 UNIDENTIFIED SPEAKER: Oh, evicted on the 13th.

15 THE COURT: So you got a notice of eviction I
16 suspect, huh?

17 THE WITNESS: Yeah.

18 THE COURT: Okay. So where will you go?

19 THE WITNESS: I have no idea, someplace else,
20 maybe my--(unintelligible) or somebody else. You find
21 somewhere else. Maybe I--(unintelligible)--I don't know.

22 THE COURT: Don't talk too close to the
23 microphone, it becomes a mumble there.

24 THE DEFENDANT: All right.

25 THE COURT: Are you working somewhere?

1 THE DEFENDANT: Yeah, I'm working right now.

2 THE COURT: Where do you work?

3 THE DEFENDANT: Bullman Production.

4 THE COURT: Is that a person or a business?

5 THE DEFENDANT: It's a business. Alpine and
6 Richmond.

7 THE COURT: Richmond--

8 THE DEFENDANT: Alpine and Richmond.

9 THE COURT: Where is that business?

10 THE DEFENDANT: Alpine and Richmond Street. It's
11 Bullman Productions.

12 THE COURT: Well, counsel, obviously I'm dealing
13 with a situation here with allegations of preparation to
14 burn a dwelling down, a dwelling that housed other residents
15 besides this gentleman. I've got some concerns there and
16 obviously where he's going to be because I can't imagine
17 they're letting him go back to Northvale. But in any event
18 any comments in that regard?

19 MR. HAEHNEL: Well, Judge, it sounds as though
20 he's employed. I don't have the opportunity or the luxury
21 of a Court Services report.

22 THE COURT: There's not much in it.

23 MR. HAEHNEL: I would ask for a low ten percent
24 bond, Your Honor.

25 THE COURT: All right. Sir, the Court Services

1 people report that you are a full time employee at Bullman,
2 B-U-L-L-M-A-N Productions, is that right?

3 THE DEFENDANT: Yeah, that's right.

4 THE COURT: Okay. And you have to be out of
5 Northvale by March 11? Did I hear that right?

6 THE DEFENDANT: Yup. You're right.

7 THE COURT: And that you--and at the present time,
8 at the current time you don't know where you will go to
9 live. Is that correct as well?

10 THE DEFENDANT: Right.

11 THE COURT: Okay. Do you have any relatives?
12 Does anybody else live with you at 2719?

13 THE DEFENDANT: No.

14 THE COURT: Or you're there by yourself.

15 THE DEFENDANT: Right.

16 THE COURT: By yourself?

17 THE DEFENDANT: By myself. Yeah.

18 THE COURT: What's today's date?

19 UNIDENTIFIED SPEAKER: Today is the 9th.

20 THE DEFENDANT: The 9th.

21 THE COURT: My goodness, sir, these are serious
22 allegations which I certainly cannot ignore. I can't see
23 why in the world the Court would let you go back to
24 Northvale except to get the things that you need out of that
25 place. I don't want to step on the contract that you have

1 between you and whatever apartment complex that is, but I've
2 got to respect the serious nature of these charges and the
3 concerns for the community at large and the community at
4 small that lives within that apartment building.

5 I'm going to place a \$15,000 cash or surety bond
6 on this matter with conditions that you don't return to
7 Northvale, 2719, Number 204, unless it's with law
8 enforcement so they can monitor as you gather the things
9 that you need.

10 My goodness. I do want you to report to our Court
11 Services here so they can monitor the situation. You're
12 going to need to provide them and this Court with a good
13 address where you will be living so that most importantly
14 the Court and your attorneys can find you to represent you
15 and provide adequate defense for you. In that regard do you
16 have a cell phone number that you can give at this time so
17 we can take it down so your attorneys can have that as well.

18 THE DEFENDANT: 616-802-7538.

19 THE COURT: I've got to make sure I got that.
20 616-802-7538. Okay. We've got that, I wrote that at the
21 bottom of the advice of rights form. Report to Court
22 Services if you bond out, a \$15,000 cash or surety bond
23 seems appropriate because there are a lot of questions here.

24 Any questions, sir?

25 THE DEFENDANT: Thank you.

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1
2
3

THE COURT: Thank you, sir.

(At 10:44 a.m., proceedings concluded)

* * * * *

I certify that this transcript, consisting of 9 pages, is a complete, true and correct transcript of the Video Arraignment proceedings taken in this case on March 9, 2020, as recorded by Danielle Wheeler, CER 8748, and transcribed by myself to the best of my ability.

DATED: April 2, 2020

Susan M. Mason, CER 3266
Certified Electronic Recorder
1950 East Beltline, N.E.
Grand Rapids, MI 49525

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Exhibit 8
Inmate Lookup

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Inmate Lookup

Charge Information

Name: TEKLEBRHAN SAMUEL TESFAI

Age: 61

Booking Date: 03/08/2020

Arresting Agency: KENT COUNTY SHERIFF'S DEPARTMENT

Arrest Report #: 20105031

Charge #: 1

Charge Description: ARSON - DWELLING HOUSE

District Court: 63RD DISTRICT COURT

District Court Case #: D2000462FY

Circuit Court:

Circuit Court Case #:

Bond: \$15000.00

Type of Bond: CASH OR SURETY BOND

Charge Disposition: PRETRIAL

Charge Disposition Date: 03/09/2020

Fines: \$0.00

Information posted on this website is subject to change, is continuously updated, and is subject to verification. Inmate information changes quickly, and the posted information may not reflect current status. Because person may use false identification, true identity can only be confirmed through fingerprint comparison. Posted information should not be relied on for any type of legal action.

The Kent County Sheriff Department does not represent or warrant that posted information is current, accurate or complete. The Kent County Sheriff Department shall not be liable for any act or failure to act based upon the posted information.

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An arrest does not mean that the inmate has been convicted of a crime or a civil infraction.

Contact the Kent County Sheriff Department to report inaccuracies in posted information.

Inmate Bonding Information

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Exhibit 9
Police Reports

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SW

STATE OF MICHIGAN 63RD DISTRICT COURT	COMPLAINT FELONY	CASE NO.: DISTRICT: CIRCUIT:
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Circuit Court ORI: MI-410025J

THE PEOPLE OF THE STATE OF MICHIGAN	V	Defendant's name and address TESFAI, TEKLEBRHAN SAMUEL 2719 NORTHVALE DR NE #204 GRAND RAPIDS, MI 49525	Victim or complainant NORTHVIEW HARBOR APT		
			Complaining Witness DETECTIVE TIMOTHY WADE POTTS		
Co-defendant(s)			Date: ON OR ABOUT 01/30/2020		
City/Twp./Village PLAINFIELD TWP	County in Michigan KENT	Defendant TCN	Defendant CTN 41 20 001487 99	Defendant SID	Defendant DOB 04/02/1958
Police agency report no. KC20105031	Charge See below	Defendant DLN T210789758260	Location 2719 NORTHVALE DR NE 204		Maximum Penalty See below
Witnesses					
DETECTIVE TIMOTHY WADE POTTS NORTHVIEW HARBOR APT FIRE FIGHTER CHAVEZ		DEPUTY MARTIN ALBERT SAMANTHA WISEMAN		DEPUTY RYAN CAVANAUGH PLAINFIELD FIRE AGENT	

STATE OF MICHIGAN, COUNTY OF KENT

The complaining witness says that on the date and at the location described above, the defendant, contrary to law,


COUNT 1

ARSON - PREPARATION TO BURN A DWELLING

did use, arrange, place, devise, or distribute an inflammable, combustible, or explosive material, liquid, substance, or device in or near APARTMENT BUILDING with the intent to commit arson of that property ; contrary to MCL 750.79(1)(d)(vi). [750.791D6]

FELONY: 10 Years and/or \$15,000.00, or 3 times the value of the property damaged or destroyed, whichever is greater. Per Southern Union Co. v United States 567 U.S. ____; No. 11-94 (2012) in order for the court to impose a fine of 3 times the value, the value must be either proven at trial or admitted by the defendant.

The complaining witness asks that defendant be apprehended and dealt with according to law.

Warrant authorized on: 02/05/2020 Date	Complaining witness signature
By: 	Subscribed and sworn to before me on _____ Date
	Judge/Magistrate/Clerk _____ Bar no. _____

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Kent County Sheriff's Office
701 Ball Avenue NE, Grand Rapids, MI 49503

Incident No: 20-105031

Status: Open

Date Reported: Thu 01/30/2020 19:57:00

Dispatch Time: 20:01:00 Arrival Time: 20:09:00 Clear Time: 22:14:00

CFS Number: KSP-0105031-2020

Officers: ALBERT, MARTIN

Detective: POTTS, TIMOTHY

Classification: SUICIDE -ATTEMPTS ONLY -- (99001)

Classification: ARSON -- (20000)

[S:4]

Local Use: ASSIGNED OPEN

Location:

Section / Nbh: /

Description: Mental Health Petition - Assist to Fire

Entered: CADIMPORT

Officer: (99001 SUICIDE -ATTEMPTS ONLY)

CAVANAUGH, RYAN, 10924

[S:2]

Informational: (99001 SUICIDE -ATTEMPTS ONLY)

WISEMAN, SAMANTHA

DOB:

Phone:

[S:2]

Ops:

Race: White Sex: Female

Height: 5' 04" Weight: 250 lbs.

Notes: Original record details added from: SOS query.

Suspect: (20000 ARSON)

Victim: (99001 SUICIDE -ATTEMPTS ONLY)

TESFAI, TELKEBRHAN, SAMUEL

DOB: 04/02/1958 Age: 61

[S:4]

2719 NORTHVALE DR NE 204

Phone: (616)802-7538

GRAND RAPIDS, MI 49525

Race: Black/ Sex: Male

African
American

Victim: (20000 ARSON)

NORTHVIEW HARBOR APTS

[S:4]

Phone:

Property:

1) Apt Building 2719 Northvale DR

[S:4]

Item Num: 20-105031-001 Class: Structures-Other Dwellings

Loss Type: None

Qty: 1

Type: General Property

Reported By:

Reviewed By: ALBERT, DENNIS

Date Printed: 01/31/2020

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Reviewed Date: 01/31/2020

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**INITIAL INCIDENT
INFORMATION:**

Reporting Officer: ALBERT, MARTIN, LIAM

On 1-30-2020 at 2001hrs, Dep Cavanaugh and I were dispatched with Plainfield Fire to the address of [REDACTED] for the report of a strong odor of gas in the apartment. Information while being dispatched was that Telkebrhan Tesfai from apartment [REDACTED] has a history of intentionally turning his gas on from the stove.

ARRIVAL ON SCENE:

Upon arriving at the apartment we were advised that Plainfield Fire was evacuating the building due to the amount gas that was in the apartment building. Upon approach to the apartment I spoke with fire personnel who identified Tesfai as the subject that was standing on the door step at the main entrance. Due to the amount of gas in the building fire personnel were opening doors to ventilate the building with fans.

CONTACT WITH TELKEBRHAN TESFAI:

Dep Cavanaugh I I began to speak with Tesfai. Tesfai was later found to originally be from Eritred, Africa but stated that he understood English well. Tesfai stated that he lives in the apartment by himself and that he was sleeping at the time that fire personnel had woken him up. Tesfai denied that he had turned the gas and was unable to provide an explanation of what had happened. Tesfai stated that he had been at work today and that when he got home he went to sleep.

Due to Tesfai's actions and not knowing the exact reason why he had turned the gas on he was compliant with sitting the rear of patrol vehicle. Prior to getting in a consent search of his person was conducted.

While in the back seat Tesfai continued to deny that he had turned on the gas and that he did not know that it was on. Tesfai denied smelling gas even though the entire building was full of the odor. Tesfai denied that he was attempting to commit suicide tonight.

CONTACT WITH FIRE FIGHTER CHAVEZ:

Chavez stated that he was attempting to evacuate the apartment when they found that the door to [REDACTED] was locked. They were able to get Tesfai to unlock the door and exit the building. Upon inspection of the apartment it was found that burners on the stove were on high with no flame light on any of the burners. There was a sounding of hissing coming from the stove due to the amount of gas that was coming from the burners.

CONTACT WITH DEP CAVANAUGH:

I was advised by Dep Cavanaugh that the apartment is a very small studio type apartment. The bed is in close proximity to the stove and next to the bed was a wooden chair. On the seat of the chair were the remains of a cigarette that was allowed to completely burn. The ash of the cigarette was in a straight line on the chair that showed that it burned down without being moved.

MEDICAL:

Life Ambulance and Plainfield Fire both evaluated Tesfai while he was in my vehicle. Based on the events tonight and prior it was decided that Tesfai would be transported to Butterworth Hospital for a mental health evaluation.

Reported By: _____

Reviewed By: ALBERT, DENNIS

Date Printed: 01/31/2020

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Reviewed Date: 01/31/2020

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PRIOR INCIDENTS.

On 12-23-2019 the Sheriff's Office responded to that address for the same type of incident. During this incident fire personnel needed to make entry into apartment [REDACTED] and in doing so they found that a chair had been placed in front of the door. While speaking with management for this incident it was relayed that approximately a month prior the management had received a complaint of the smell of gas in the building. Upon their inspection they found that the stove burners were again open with no flame. Tesfai was found in the shower by management.

On 11-3-2019 Plainfield Fire was called to the same apartment for smoke in the building. The neighbor that called for this incident reported that the fire alarm for apartment [REDACTED] had been sounding for a couple of hours. Upon inspection it was found that there was burning food on the stove.

MEDICAL EVALUATION:

I followed Tefai to Butterworth Hospital where this information was provided to Dr Duncheon.

MENTAL HEALTH PETITION:

I spoke with Social Worker Frank Tavares while at the Butterworth. Frank asked that I complete a mental health petition for an evaluation to be conducted. This petition was completed and left with Frank.

CONTACT WITH DET POTTS:

Due his involvement with the prior incidents I contacted Det Potts and advised him of the incident and disposition.

STATUS:

TOT Det Potts

M. Albert

CFS SUPPLEMENT - 01/30/2020-19:57:04
(Supplement 1)

Reporting Officer: CADIMPORT

2020-01-30 19:57:04 CALLER IS A NEIGHBOR TO ABOVE, STATING HER NEIGHBOR HAS "ISSUES WITH HIS STOVE A LOT" AND THERE IS A STRONG SMELL OF GAS INSIDE

PH FOR SUBJ LEAVING STOVE ON INTENTIONALLY - PD WILL BE NEEDED TO GO WITH

2020-01-30 19:58:32 BCST FOR TWO

2020-01-30 20:01:47 E03 // OS, MULTIFAM STRUCT, OUT INVEST

2020-01-30 20:05:07 CALLING DTE

2020-01-30 20:05:49 CMD- STRONG ODOR OF GAS; WILL BE EVAC BUILDING NEED < DTE AND RENTAL PROPERTY >

2020-01-30 20:05:58 <UNIT: KSP/4049 SELF-DISPATCHED ONTO INCIDENT>

2020-01-30 20:07:22 DTE NOTIFIED

2020-01-30 20:09:33 CMD START MEDICAL

2020-01-30 20:10:01 IF IT IS LOCATED IN [REDACTED] AND SUBJECT IS ON SITE, PLEASE CONTACT DETECTIVE POTTS

2020-01-30 20:10:37 LIFE ENROUTE NON EMERGE CNY

2020-01-30 20:11:50 CMD - COUPLE SUBJECTS NEED CHECKING OUT MEDICALLY

Reported By: _____

Reviewed By: ALBERT, DENNIS

Date Printed: 01/31/2020

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Reviewed Date: 01/31/2020

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SUPPLEMENT 2 (Supplement 2)

Reporting Officer: CAVANAUGH, RYAN, JON

01/30/20

INFORMATION:

On 01-30-2020 at 2001 hours, Deputy Albert and I were dispatched to [REDACTED] to assist Plainfield Fire with the strong odor of gas.

ARRIVAL ON SCENE:

Upon our arrival, we met with fire personnel on scene who advised that the resident in apt [REDACTED] had left all 4 burners of his stove on with no flame. We were also advised that they had recently responded to his residence for a similar complaint. There was a house watch on the residence indicating that the homeowner intentionally leaves his stove on.

CONTACT WITH TELKEBRHAN TESFAI:

Deputy Albert and I made contact with Tesfai who was standing on the front steps of the apartment building. He advised several times that he had been sleeping and didn't know how the burners on his stove got turned on. He said he didn't turn them on and was in bed after he got home from work. He said he lives alone and he was unable to explain how the burners turned on. I advised him that it was obviously intentional because the 4 burners did not turn on by themselves but he continued to deny knowing how they were turned on. I asked him if the fire department responded to his apartment recently for a similar incident but he said no. He denied several times that they had responded to his apartment recently. When I checked TIMS, I located report 19-166711 on 12-23-19 in which Deputy Megan Forman responded with Plainfield Fire for a similar odor of gas coming from Tesfai's apartment. Tesfai's door had been barricaded with a chair last time but they didn't notice anything suspicious today. Deputy Albert and I escorted Tesfai over to Deputy Albert's patrol car where Deputy Albert interviewed him.

CONTACT WITH SAMANTHA WISEMAN:

While on scene, I spoke with Wiseman who works in the leasing office. Deputy Forman spoke with her during the incident on 12-23-19 and Wiseman told Deputy Forman about another similar incident involving Tesfai. Wiseman went to the leasing office and got some paperwork from 09-04-19 indicating that a resident named Shayanna had smelled gas in the building on that date. She knocked on the other apartments and located the gas leak in another apartment. According to Deputy Forman's report, Tesfai had left the burner on and was in the shower.

ADDITIONAL INFORMATION:

I assisted the apartment complex maintenance, DTE and Plainfield Fire personnel in the apartment when they shut the gas off to Tesfai's stove due to the safety concerns. While in the apartment, I saw that it was a small one room studio apartment. I noticed that there were multiple cigarette butts throughout the department including in an ash tray on the dining room table, in a plastic coffee container and on a chair next to Tesfai's bed. I saw that there were cigarette ashes on the wooden chair by the bed including a strip of ashes as if a cigarette had been burning there at some point while laying on the chair. It is unknown when the ashes were from or if they were even from today. I cleared while they were disconnecting the gas line. Maintenance advised they were going to secure the residence.

STATUS :

TOT original

Reported By: _____

Reviewed By: ALBERT, DENNIS

Date Printed: 01/31/2020

Page 5 of 8

Reviewed Date: 01/31/2020

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Incident No: 20-105031

SUPPLEMENT 3 (Supplement 3)

Reporting Officer: CAVANAUGH, RYAN, JON

01/31/20

Leasing office paperwork attached

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Reported By: _____

Reviewed By: ALBERT, DENNIS

Date Printed: 01/31/2020

Page 7 of 8

Reviewed Date: 01/31/2020

SUPPLEMENT 4 (Supplement 4)

Reporting Officer: POTTS, TIMOTHY, WADE

01/31/20

CONTACT WITH LEASING OFFICE SAMANTHA WISEMAN

I spoke with Samantha Wiseman with the leasing office. She stated that they have 16 people listed as residing in the building.

CHARGES

Due to the repeated amount of times the gas has been left on. The fact that there was a cigarette that was burned very near the stove that was left on, and the extreme danger that this has posed to the general public and first responders I am requesting charges of Explosives - Violation - Vulnerable target, and Arson Preoperation to burn a Building.

DISPOSITION

TOT Original.

Reported By: _____

Reviewed By: ALBERT, DENNIS

Date Printed: 01/31/2020

Page 8 of 8

Reviewed Date: 01/31/2020

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History / Notes Item Detail



History Item for Account #69128

Type: Note Date: 9 / 4 / 2019

Category: Time: 10:17 am

Regarding:

9.04.2019: Shayanna reported to Ed that she called on-call a week ago about a gas smell in her building. No one was dispatched out. No work orders recorded. Shay ended up knocking on everyone's door and found the gas leak in another

Attachment:



✓ Information Locked. Editable only by swiseman

Show on Payment Screen

Cancel

Created: 09-04-19 Updated: 09-04-19 Created By: swiseman

20-10-5031

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Memos for Tenant: Teklebrhan Tesfai (too01400)

Date	Type	Status	Notes
01/07/2020	Other	Memo	<p>01.07.2020 Two detectives for the local Kent County Sheriffs office came in to speak with me on if I have had any contact with resident at [REDACTED] They stated that the letter I wrote and taped to the door was still there and it did not look like the resident had been back since the incident on 12.23.2019. They will be contacting their boss to see if they have legal right to do a welfare check. I informed them that the resident has not paid their rent for January and historically he always pays in full no later than the 3rd of the month. -SW</p> <p>12.23.2019- Randy Hemstra and I were walking a vacant unit at [REDACTED] and while leaving the building we saw two fire trucks across the way at building [REDACTED] Randy and I both went over to speak with the fire chief to see what was happening. After investigating they found that the gas stove burners were left on in unit [REDACTED] with one home. They also found the door had a chair up against it making access to the home difficult. The resident was not at home at the time. Local sheriff office was contacted due to the door being blocked. They referred the case # 19-166711. I have emailed my Local Sheriff contact for a copy of the report and have escalated this situation to my regional manager Allison W. I have also sent a formal letter to resident Teklebrhan Tesfai dated 12.23.2019. The letter is also attached to residents Yard file. -SW</p>

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Kent County Sheriff's Office
701 Ball Avenue NE, Grand Rapids, MI 49503

Incident No: 19-166711
Status: Closed

Date Reported: Mon 12/23/2019 15:50:00

Dispatch Time: 15:52:00 Arrival Time: 16:00:03 Clear Time: 16:28:23

CFS Number: KSP-0166711-2019

Officers: FORMAN, MEGAN

Detective:

Classification: SUSPICIOUS SITUATION (CARS, PERSONS, PACKAGES, ETC) -- (98007)

Location: Section / Nbh: /

Description: SUSPICIOUS SITUATION

Entered: CADIMPORT

Informational: (98007 SUSPICIOUS SITUATION (CARS, PERSONS, PACKAGES, ETC))

TESFAI, TELKEBRHAN, SAMUEL

DOB: 04/02/1958 Age: 61

2719 NORTHVALE DR NE 204

Phone: (616)802-7538

GRAND RAPIDS, MI 49525

Race: Black/ Sex: Male

African
American

Informational: (98007 SUSPICIOUS SITUATION (CARS, PERSONS, PACKAGES, ETC))

WISEMAN, SAMANTHA

Phone:

Race: White Sex: Female

Reported By:

Reviewed By: WHEELER, RYAN

Date Printed: 01/31/2020

Page 1 of 3

Reviewed Date: 12/23/2019

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INITIAL INCIDENT

Reporting Officer: FORMAN, MEGAN,
MARGARET

INFORMATION:

On 12-23-19 at 1550 hours I was dispatched to [REDACTED] reference a suspicious situation.

DISPATCH INFORMATION:

Call narrative stated that residents in the building were calling for a smell of natural gas. PFD responded with maintenance and made entry into the apartment and were requesting police.

ARRIVAL:

Upon arrival PFD stated that the apartment was empty, the gas burner was on with no flame, and there was a chair in front of the door which seemed strange.

CONTACT WITH LEASING OFFICE:

I spoke with Samantha Wiseman with the leasing office who stated the resident of that apartment was Teklebrham Tesfai and he drove a red van. She had remembered a previous incident a couple months ago where a resident called for smell of gas and they went into the apartment and the burner was on and he was in the shower. They left a note and he came down to the leasing office stating he did not mean to leave it on.

ATTEMPT CONTACT:

As we were exiting the leasing office a red van MI plate [REDACTED] was parked in front of the address registered to the subject. I attempted contact again at the apartment with no answer. I also called and left a message. The office would call if they saw him as well.

CASE STATUS:

Closed

Reported By: _____

Reviewed By: WHEELER, RYAN

Date Printed: 01/31/2020

Page 2 of 3

Reviewed Date: 12/23/2019

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CFS SUPPLEMENT - 12/23/2019-15:50:41
(Supplement 1)

Reporting Officer: CADIMPORT

2019-12-23 15:24:39 DTE NOTIFIED

2019-12-23 15:50:41 PER PLC03 - THIS MAY HAVE BEEN INTENTIONAL - REQUESTING KCSD

2019-12-23 15:42:35 DTE WILL CONTINUE IN

2019-12-23 15:41:31 CAUSE OF GAS LEAK WAS AN OVEN LEFT ON DTE CAN DISREGARD IF THEY WANT (PLF/PLC03)

2019-12-23 15:17:36 3 STORY APT WOOD FRAME STRUC NOTHING SHOWING WILL BE NORTHVALE CMD (PLF/PLC03)

2019-12-23 15:21:21 BUILDING FULL OF GAS NEED DTE (PLF/PLC03)

2019-12-23 15:13:52 CALLER IS IN APT [REDACTED]

SMELL OF NATURAL GAS ON THE 3RD FLOOR

2019-12-23 15:15:26 CALLER IS IN [REDACTED] WILL BE EXITING THE BLDG. HE WILL KNOCK ON DOORS ON HIS WAY OUT.

2019-12-23 15:14:49 CAN SMELL IT IN THE ENCLOSED STAIRWELL.

2019-12-23 15:15:39 HE DOESN'T BELIEVE THERE ARE ANY OTHER TENANTS ON THE 3RD FLOOR.

2019-12-23 15:54:34 <UNIT: KSP/4239 SELF-DISPATCHED ONTO INCIDENT>

Name information from CAD System:

DAVE EASTER

CAD Role: Initial Caller

CONTACT INFO: Phone [REDACTED]

Reported By: _____

Reviewed By: WHEELER, RYAN

Date Printed: 01/31/2020

Page 3 of 3

Reviewed Date: 12/23/2019

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Kent County Sheriff's Office
701 Ball Avenue NE, Grand Rapids, MI 49503

Incident No: 19-158427

Status: Closed

Date Reported: Sun 11/03/2019 16:59:00

Dispatch Time: 17:01:00 Arrival Time: 17:04:00 Clear Time: 17:14:00

CFS Number: KSP-0158427-2019

Officers: DAY, TANNER

Detective:

Classification: GENERAL ASSISTANCE (ESCORTS, SERVICE CALLS) -- (99008)

Location:

Section / Nbh: /

Description: BROADCAST TO AREA POLICE-BROADCAST OF A
FIRE INCIDENT

Entered: CADIMPORT

Informational: (99008 GENERAL ASSISTANCE (ESCORTS, SERVICE CALLS))

TESFAI, TELKEBRHAN, SAMUEL

DOB: 04/02/1958 Age: 61

2719 NORTHVALE DR NE 204

Phone: (616)802-7538

GRAND RAPIDS, MI 49525

Race: Black/ Sex: Male

African

American

Reported By:

Reviewed By: MOORE, TYSON

Date Printed: 01/31/2020

Page 1 of 3

Reviewed Date: 11/03/2019

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INITIAL INCIDENT

Reporting Officer: DAY, TANNER, J

RESPONDED WITH PLAINFIELD FIRE TO A STRUCTURE FIRE. ARRIVED ON SCENE AND FOUND BURNT FOOD. NO FIRE. SMOKE WAS CLEARED FROM HALLWAY, AND UNITS CLEARED WITH NOTHING FURTHER.

CFS SUPPLEMENT - 11/03/2019-16:59:59
(Supplement 1)

Reporting Officer: CADIMPORT

2019-11-03 16:59:59 CALLER IS NEIGHBOR

THE NEIGHBORS ALARM HAS BEEN GOING OFF FOR THE PAST 2 HOURS.

SEES SMOKE IN THE HALLWAY ?

2019-11-03 17:00:38 GR NOTIFIED

2019-11-03 17:00:33 < CALLER IS TALKING WITH THE NEIGHBOR >

STATING THAT ITS CHICKEN AND HIS COFFEE

2019-11-03 17:00:36 NO FIRE

2019-11-03 17:01:25 FIRE NORTH CHANNEL

2019-11-03 17:01:35 CONTINUE ASSIGNMENT UNTIL COMMAND ADVISES

2019-11-03 17:02:06 C6 NOTIFIED

2019-11-03 17:03:08 <UNIT: KSP/4239 SELF-DISPATCHED ONTO INCIDENT>

2019-11-03 17:04:26 WITH THE EXCEPTION OF PLE03 -

2019-11-03 17:04:11 PLE03 2 STORY MULTI FAM STRUC NOTHING ABD SIDE

E3

2019-11-03 17:04:21 < INCOMING CANCEL >

2019-11-03 17:06:38 CONFIRMED BURNED FOOD

Reported By: _____

Reviewed By: MOORE, TYSON

Date Printed: 01/31/2020

Page 3 of 3

Reviewed Date: 11/03/2019

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Exhibit 10
Transcript of March 30 Bond Hearing

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STATE OF MICHIGAN

IN THE 63RD DISTRICT COURT FOR THE COUNTY OF KENT

PEOPLE OF THE STATE OF MICHIGAN,

v

Dist. Ct. No. D20-00462-FY

TEKLEBRHAN TESFAI,

Defendant.

_____ /

WAIVER OF 21 DAY RULE AND MOTION TO REDUCE BOND

BEFORE HONORABLE JEFFREY J. O'HARA, DISTRICT COURT JUDGE

Grand Rapids, Michigan - Monday, March 30, 2020

APPEARANCES:

For the People: MS. MONICA JANISKEE (P56130)
(Appearing by Phone)
Kent County Prosecutor's Office
82 Ionia, N.W., Suite 450
Grand Rapids, MI 49503
(616) 632-6710

For the Defendant: MR. MARCUS CHMIEL (P80556)
(Appearing on Polycom)
Office of the Defender
920 McKay Tower
Grand Rapids, MI 49503
(616) 774-8181

Defendant: Appearing from jail on Polycom

RECORDED BY: MICHELLE BOMMARITO, CER 8063
Certified Electronic Recorder

TRANSCRIBED BY: MS. SUSAN M. MASON, CER 3266
Certified Electronic Recorder

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TABLE OF CONTENTS

WITNESSES: (People)

None

WITNESSES: (Defense)

None

EXHIBITS:

None

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Grand Rapids, Michigan

Monday, March 30, 2020, at 5:07 p.m..

THE COURT: The next matter before the Court is the People of the State of Michigan versus Tekelbrhan Tesfai. Tesfai?

THE DEFENDANT: Right.

THE COURT: T-E-S-F-A-I?

THE DEFENDANT: Right.

THE COURT: Ms. Janiskee appears on behalf of the People and Mr. Chmiel on behalf of the defendant. Good afternoon again to both parties.

MS. JANISKEE: Good afternoon, Your Honor.

THE COURT: This is the date and time set for the preliminary examination and with that, Ms. Janiskee?

MS. JANISKEE: Your Honor, it is my understanding in talking to Mr. Chmiel that he would also like to set this case for a preliminary examination. I did indicate to him that we would be willing to legally clear the defendant for the treatment at the Core court, the county's mental health court. It's my understanding, however that Mr. Chmiel would still like to take testimony in this case.

THE COURT: Thank you very much. Mr. Chmiel.

MR. CHMIEL: That is accurate information, Your Honor. I would also like to address bond at the appropriate time.

1 THE COURT: Thank you very much. The Court will
2 grant the motion for a waiver of the 21 day rule and we'll
3 set this matter on for a contested preliminary examination,
4 as is the defendant's right, just as soon as possible and
5 practical.

6 With regards to a motion for reduction in bond,
7 Mr. Chmiel, you may be heard.

8 MR. CHMIEL: Thank you, Your Honor. Mr. Tesfai
9 has no prior criminal history. The allegations in this case
10 are he allegedly had a stove turned on that filled an
11 apartment building with some sort of gas, I believe. Mr.
12 Tesfai, I believe that he does have a stable address, he was
13 working. Also, not to quote that the pandemic that we're
14 going over and over again, because I think everybody
15 understands, I would like to point to the 2020-29 Executive
16 Order by Gretchen Whitmer that essentially states
17 individuals of age or in certain classes should be released
18 predominantly. I believe that my client is of the age that
19 he is very susceptible to problems that may be filtering
20 through the jail. Due to that I would ask for a personal
21 recognizance bond. I do not--obviously he has no criminal
22 history and he doesn't have a history of non-compliance with
23 any court order.

24 THE COURT: Thank you. Ms. Janiske, do you wish
25 to be heard regarding bond.

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1 MS. JANISKEE: Just that we would oppose it, Your
2 Honor. You know, I have some concerns with his mental
3 stability based on the circumstances of this particular
4 case, and without having those issues addressed, I believe
5 he's a threat to himself and to the community right now.

6 THE COURT: Thank you very much. The bond is
7 currently set in the amount of \$15,000 cash or surety. The
8 recommendation for Court Services is no PR bond as this is a
9 serious felony.

10 The Court sets bond for a number of reasons, most
11 predominantly the two major factors are seriousness--are
12 safety of the community and risk of flight. Certainly the
13 Court is concerned regarding safety of the community in this
14 matter, and for those reasons the Court is going to
15 respectfully deny the defendant's request for reduction of
16 bond and bond will continue as set. Thank you very much.

17 MR. CHMIEL: Thank you, Your Honor.

18 MS. JANISKEE: Thank you, Your Honor.

19 (At 5:11 p.m., proceedings concluded)

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I certify that this transcript, consisting of 6 pages, is a complete, true and correct transcript of the Waiver of 21 Day Rule/Motion to Reduce Bond proceedings taken in this case on March 30, 2020, as recorded by Michelle Bommarito, CER 8063, and transcribed by myself to the best of my ability.

DATED: April 2, 2020

Susan M. Mason, CER 3266
Certified Electronic Recorder
1950 East Beltline, N.E.
Grand Rapids, MI 49525

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Exhibit 11
United States v Knight

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**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

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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

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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

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Exhibit 12
Register of Actions

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Court 0 Case D2000462 Pty D01 Charge ARSON-PREP Type FY Status PEND
Name TESFAI/TEKLEBRHAN/SAMUEL Search

STATE OF MICHIGAN 63RD JUDICIAL DISTRICT ORI 410045J PIN: 20105031	REGISTER OF ACTIONS	CASE NO: D2000462 DOT FY X-REFERENCE #: KC20105031 STATUS: PEND
---	---------------------	---

JUDGE OF RECORD: SMOLENSKI, SARA J.; P-35119
JUDGE: O'HARA, JEFFREY J.; P-38789

STATE OF MICHIGAN v

TESFAI/TEKLEBRHAN/SAMUEL
2719 NORTHVALE DR NE #204
GRAND RAPIDS MI 49525

CTN: 412000148799
TCN: A420215455J

ENTRY DATE: 02/07/20
OFFENSE DATE: 01/30/20
ARREST DATE:
VPN:
CDL: U

DEFENDANT PHONE: (616) 802-7538 VEHICLE TYPE:
DOB: 04/02/1958 SEX: M RACE: B DLN: MI T210789758260

More...

ROA Printed
NEXT ROA CASE D2000462 PTY D01 COUNT 00 INQ TESFAI ST TE
F1-Top F2-Bottom F9-Print F13-Out Q F3/F24-Prior Page U/D

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Court 0 Case D2000462 Pty D01 Charge ARSON-PREP Type FY Status PEND
Name TESFAI/TEKLEBRHAN/SAMUEL Search

VEH YR: VEH MAKE: VIN: PAPER PLATE:

DEFENSE ATTORNEY ADDRESS BAR NO.
DEFENDER PUBLIC # 666 APPOINTED
146 MONROE CENTER AVE NW Telephone No.
SUITE 920 MCKAY TOWER (616) 774-8181
GRAND RAPIDS MI 49503

OFFICER: POTTS/T7 DEPT: KENT COUNTY SHERIFF'S DEP
PROSECUTOR: BECKER, CHRISTOPHER P-53752
VICTIM/DESC:

CNT: 01 C/M/F: F 750791D6 PACC#750.791D6
ARSON-PREPARATION TO BURN A DWELLING
ARRAIGNMENT DATE: 03/09/20 PLEA: EXAM DEMAND PLEA DATE: 03/09/20
More...

ROA Printed
NEXT ROA CASE D2000462 PTY D01 COUNT 00 INQ TESEAL ST TE
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Court 0 Case D2000462 Pty D01 Charge ARSON-PREP Type FY Status PEND
Name TESFAI/TEKLEBRHAN/SAMUEL Search _____

FINDINGS:

DISPOSITION DATE:

SENTENCING DATE:

FINE	COST	ST. COST	CON	MISC.	REST	TOT FINE	TOT DUE
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

JAIL SENTENCE:

PROBATION:

VEH IMMOB START DATE:

NUMBER OF DAYS:

VEH FORFEITURE:

BOND HISTORY:

15,000.00 CASH/SURETY BOND BOND CONTINUED

DATE ACTIONS, JUDGMENTS, CASE NOTES INITIAL

01/30/20

ORIGINAL CHARGE

ARSON-PREP

ALV

02/05/20

AUTHORIZATION OF COMPLAINT DATE

ALV

More...

BOA Printed

NAT BOA CASE D2000462 PTY D01 COUNT 00 INQ TESFAI ST TE
F1-Top F2-Bottom F9-Print F13-Out Q F3/F24-Prior

Page U/D

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Court 0 Case D2000462 Pty D01 Charge ARSON-PREP Type FY Status PEND
Name TESFAI/TEKLEBRHAN/SAMUEL Search

02/07/20 PROS BECKER, CHRISTOPHER P-53752 ALV
1 FILING DATE 020720 ALV
1 COMPLAINT ISSUANCE DATE ALV
WARRANT SIGNED & ISSUED ALV
MAG MILROY, MICHAEL J., P-36374 ALV
02/10/20 WARRANT ENTRY REQUESTED 21020 957A CDS
SYSIDNO (20:) GENERATED BY LEIN 47854250 CDS
03/09/20 MISCELLANEOUS ACTION ALL COUNTS KJA

NAME: TESFAI/TEKLEBRHAN/SAMUEL CASE NO: D2000462 PAGE 2

---DATE--- ACTIONS, JUDGMENTS, CASE NOTES ---INITIAL---

More...

BOA Printed
NAT BOA CASE D2000462 PTY D01 COUNT 00 INQ TESFAI ST TE
F1-Top F2-Bottom F9-Print F13-Out Q F3/F24-Prior Page U/D

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Court 0 Case D2000462 Pty D01 Charge ARSON-PREP Type FY Status PEND
Name TEFAL/TEKLEBRHAN/SAMUEL Search

SCHEDULED FOR PROBABLE CAUSE CONFERENCE

MISCELLANEOUS ACTION 032320 1045A SMOLENSKI, SARA J., P-35119 KJA
SCHEDULED FOR PRELIMINARY EXAMINATION ALL COUNTS KJA

MISCELLANEOUS ACTION 033020 1045A SMOLENSKI, SARA J., P-35119 KJA
SCHEDULED FOR ARRAIGNMENT ALL COUNTS KJA

VIDEO ARRAIGNMENT 030920 230P O'HARA, JEFFREY J., P-38789 KJA
TCN ADDED KJA

MISCELLANEOUS ACTION ALL COUNTS KJA
WARRANT CANCELED FROM LEIN KJA

CANCELLED BY KCSD/LODGED AT KCJ KJA
ARRAIGNMENT HELD ALL COUNTS CDS

MAG MILROY, MICHAEL J., P-36374 CDS
EXAMINATION DEMANDED CDS

CASH/SURETY BOND CDS
BOND SET

\$ 15000.00

More...

BOA Printed
NXT BOA CASE D2000462 PTY D01 COUNT 00 INQ TEFAL ST TE
F1-Top F2-Bottom F9-Print F13-Out Q F3/F24-Prior Page U/D

RECEIVED by MCOA 4/15/2020 4:44:53 PM

Court	Case	Pty	Charge	Type	FY	Status
0	D2000462	D01	ARSON-PREP			PEND
Name	TESFAI/TEKLEBRHAN/SAMUEL		Search			

DANIELLE WHEELER CER#8748
 DEFENDANT ADVISED OF RIGHTS TO TRIAL & ATTORNEY
 APPOINTED COUNSEL PRESENT AT FIRST APPEARANCE
 NO CONTACT W/ VICTIM/VICTIMS AT RESIDENCE/STORE
 REPORT TO COURT SERVICES (632-5350)
 VIDEO ARRAIGNMENT
 CAA REQUESTED
 PRETRIAL RELEASE ORDER GENERATED
 ALL COUNTS
 LT LG ORDERED

CDS CDS CDS CDS CDS CDS CDS CDS
CDS CDS CDS CDS CDS CDS CDS CDS

More...

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Court 0 Case D2000462 Pty D01 Charge ARSON-PREP Type FY Status PEND
Name TESFAI/TEKLEBRHAN/SAMUEL Search _____

case, any notice to appear may be given
to the defendant's attorney instead of the
defendant

b. Abide by any judgment entered in this
case and surrender to serve any sentence
imposed.

c. Do not leave the State of Michigan
without the permission of this court.

d. Do not commit any crime while released.

e. Immediately notify this court, in
writing, of any change of address or
telephone number.

f. Do not enter the following specified
premises or areas:

LOCATION

u. Other:

NO CONTACT WITH LOCATION UNLESS WITH POLICE

CCDS

More...

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Court 0 Case D2000462 Pty D01 Charge ARSON-PREP Type FY Status PEND
Name TESFAI/TEKLEBRHAN/SAMUEL Search _____

STANDBY
REPORT TO COURT SERVICES W/IN 24 HOURS OF R

CDS
CDS

NAME: TESFAI/TEKLEBRHAN/SAMUEL CASE NO: D2000462 PAGE 3

---DATE-----ACTIONS, JUDGMENTS, CASE NOTES-----INITIAL---

-----RELEASE-6161632-5350-----CDS
MUST PROVIDE ADDRESS TO COURT W/IN 24 HOURS CDS
OF RELEASE CDS
NOTICE TO APPEAR GENERATED

ALL COUNTS CDS

03/10/20 ORDER DENYING REQUEST FOR COURT APPOINTED KJA
ATTORNEY FROM CIRCUIT COURT KJA

03/23/20 PROCEEDING HEARD ALL COUNTS KJA

More...

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NEXT BOA CASE D2000462 PTY D01 COUNT 00 INQ TESEAL ST TE
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Court 0 Case D2000462 Pty D01 Charge ARSON-PREP Type FY Status PEND
Name TEFAL/TEKLEBRHAN/SAMUEL Search

JDG O'HARA JEFFREY J.,

P-38789 KJA

BOND CONTINUED

MICHELLE BOMMARITO, CEO #8063

CRT APPOINTS ATTORNEY ON RECORD

PROCEED TO PRELIM DATE 3/30/20 @ 10:45 AM

PRETRIAL RELEASE ORDER GENERATED

ALL COUNTS

IT IS ORDERED:

4. The defendant shall comply with the following terms and conditions that are checked:

a. Personally appear for any examination, arraignment, trial, sentencing, or at any time and place as directed by this court if represented by an attorney in this case, any notice to appear may be given to the defendant's attorney instead of the

More...

ROA Printed

NXT ROA CASE D2000462 PTY D01 COUNT 00 INQ TEFAL ST TE
F1-Top F2-Bottom F9-Print F13-Out Q F3/F24-Prior

Page U/D

RECEIVED by MCOA 4/15/2020 4:44:53 PM

Court 0 Case D2000462 Pty D01 Charge ARSON-PREP Type FY Status PEND
Name TESFAI/TEKLEBRHAN/SAMUEL Search

W/ 24HRS OF RELEASE, MUST PROVIDE ADDRESS
TO COURT W/ 24HRS OF RELEASE
BOND IS CONTINUED. COURT APPOINTS COURT AP
POINTED ATTORNEY
PROCEED TO PRELIM 3/30/20 @ 10:45 AM
NOTICE TO APPEAR GENERATED

KJA
KJA
KJA
KJA
KJA

03/26/20 ALL COUNTS

KJA

MISCELLANEOUS ACTION ALL COUNTS

KJA

NAME: TESFAI/TEKLEBRHAN/SAMUEL CASE NO: D2000462 PAGE 4

---DATE-----ACTIONS, JUDGMENTS, CASE NOTES-----INITIAL---

-----ATT-DEFENDER-PUBLIC-----#-----666-----KJA
ORDER FOR COURT APPOINTED ATTORNEY FILED-FELONY CASE
CIRCUIT COURT KJA
KJA

More...

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NXT BOA CASE D2000462 PTY D01 COUNT 00 INQ TESEAL ST TE
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Court 0 Case D2000462 Pty D01 Charge ARSON-PREP Type FY Status PEND
Name TESFAI/TEKLEBRHAN/SAMUEL Search

03/30/20

PROBABLE CAUSE CONFERENCE HELD
ALL COUNTS

JDG O'HARA JEFFREY J.,

P-38789

BOND CONTINUED

MICHELLE BOMMARITO, CEO #8063

PROS JANISKEE BY PHONE

PD CHMIEL/DEF BY POLYCOM

DEFS MO TO MODIFY BOND IS DENIED

REQ TO ADJ PRELIM IS GRANTED

COURT TO SET PRELIM DATE

PRETRIAL RELEASE ORDER GENERATED

MISCELLANEOUS ACTION ALL COUNTS

SCHEDULED FOR REVIEW ALL COUNTS

REVIEW FOR NEW PRELIM DATE 050120 800A COURT, CLERKS,

2994

IT IS ORDERED:

More...

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Court 0 Case D2000462 Pty D01 Charge ARSON-PREP Type FY Status PEND
Name TESFAI/TEKLEBRHAN/SAMUEL Search _____

writing, of any change of address or
telephone number.
f. Make reports to a court agency as
specified by this court or the agency.

u. Other:

BOND CONTINUED. NO CONTACT WITH NORTHVIEW H
ARBOR APT

NO CONTACT W/LOCATION UNLESS POLICE STANDBY

REPORT TO COURT SERVICES

(632-5350) BY PHONE WITHIN 24HRS OF RELEASE

PRELIM EXAM ADJOURNED - COURT WILL SET NEW

DATE & NOTIFY ALL PARTIES

NOTICE TO APPEAR GENERATED

***** END OF REGISTER OF ACTIONS ***** 04/15/20 09:35

Bottom

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NEXT ROA CASE D2000462 PTY D01 COUNT 00 INQ TESFAI ST TE
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