

IN THE DISTRICT COURT OF APPEAL

THIRD DISTRICT

STATE OF FLORIDA

YATHOMAS RILEY, PETITIONER

v.

TIMOTHY RYAN, RESPONDENT

CASE NO.:

LT. CASE NO.: F10017310

PETITION FOR WRIT OF HABEAS CORPUS

Respectfully Submitted by: Kionne L. McGhee Law Group, PLLC.
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STATEMENT OF THE CASE AND FACTS

Statement of Facts

1. On June 10, 2010, the Homestead Police Department was dispatched to 1536 NE 8 Street, Apartment #104 responding to a suicide attempt, subsequently characterized as a shooting. (App. 4, page 1).
2. Mr Riley was arrested at the scene. (App. 4, page 8).
3. Mr. Riley was charged with attempting to kill Ms. King with her own firearm.
4. No gunshot residue particles were found on Mr. Riley's hands. (App. 2, page 1).
5. However, Gunshot residue particles *were* found on Ms. King's hands. (App. 2, page 1).
6. Mr. Riley's fingerprints were not found on the weapon that the State alleges was used in the incident. (App. 2, page 1).
7. Mr. Riley called emergency services in order to save Ms. King's life. (App. 1, page 53).
8. Ms. King's version of the events that transpired during the incident have changed multiple times. (App. 1, page 53).
9. Ms. King's versions of the story, where she was allegedly shot from the

front, do not match the findings of the trauma specialist that treated her wounds on arrival. (App. 1, page 63).

10.Mr. Riley was subsequently released on \$50,000 bail and he posted bond.

11.Approximately 8 hours later that day, Mr. Riley voluntarily appeared before the court, where he was informed his charge had been increased to attempted first degree murder, and his bond was revoked.

12.Therefore, Mr. Riley has been incarcerated awaiting trial since June 11, 2010.

13.Mr. Riley has been a resident of Miami-Dade County for 30 years, has children in the community, is not a flight risk, is not a menace to society, and is in good mental health. (Amodio Aff. 5-8); (Fiorino Aff. 3-7); (Bocanegra Aff. 3-7); (Ludovici Statement, page 1); (Family Aff. 3-7).

14.Mr. Riley was declared indigent for costs on April 19th, 2011.

15.Mr. Riley is employed as an up and coming professional light heavyweight boxer and has the ability to resume employment as soon as he is released from detention. (Fiorino Aff. 3-7); (Bocanegra Aff. 3-7).

16.Mr. Riley is being detained without bail.

17.Mr. Riley will be able to procure funds for a bond, should the court grant reasonable bail.

Proceedings Below

An Arthur hearing was held on December 8, 2011, and the court reserved ruling. (App. 1, page 99). During the Arthur hearing the trial court found that based on the State's expert testimony, and without needing to consider arguments by the defense regarding the weigh to be given to the evidence, the State met its burden of "proof evident presumption great." (App. 3, page 4-5). The court issued its ruling on January 3, 2011, denying bail. (App. 3, page 7).

The Petitioner subsequently filed a petition for a writ of habeas corpus in the circuit court. The circuit court dismissed without prejudice, finding that it did not have jurisdiction to hear the petition. The circuit court entered no written order of the dismissal.

STATEMENT OF JURISDICTION

Jurisdiction is proper, pursuant to Fla. R. App. P. 9.100 and Section 79.01 of the Florida Statutes. The Petitioner satisfies the "in custody" requirement because he is incarcerated by the State of Florida at the Metro West Detention Center, in Miami Dade County, Florida. The Petitioner is entitled to immediate release should this petition be granted and the Petitioner is able to make reasonable bail. Consequently, habeas corpus is the appropriate remedy to end the Petitioner's unlawful detention when the Petitioner is detained without bond. *Dyson v.*

Campbell, 921 So. 692 (Fla. 1st DCA 2006). Petitioner's custody is in violation of the United States Constitution and the Florida Constitution. The Petitioner's petition to the circuit court was dismissed without prejudice, and since no ruling on the merits was made the Petitioner is not bar from filing to this honorable court.

STATEMENT OF THE ISSUE

Whether a criminal defendant, charged with a dangerous crime, is entitled to reasonable bail, when 1) the victim has told multiple and different versions of the alleged incident, many of which are contradicted by the forensic evidence, 2) the defendant had no gun shot residue on his hands or clothing minutes after the alleged incident, 3) the State's expert's version of events is contradicted by the trauma specialist who treated the victim upon arrival at the hospital, 4) the defendant called 911 in order to save the victim's life, 5) the defendant is not a flight risk, 6) is not a menace to society, 7) is gainfully employed, and 8) is indigent.

SUMMARY OF THE ARGUMENT

Mr. Riley is entitled to pre-trial release, because the evidence does not carry the State's burden of proof that is required to that of a degree that is in fact *greater* than beyond a reasonable doubt. A criminal defendant charged with a crime punishable by life is entitled to pre-trial release on reasonable conditions unless

“proof of guilt is evident or the presumption great.”

The question to be addressed when determining whether a criminal defendant that is charged with a dangerous crime is not whether the evidence can carry the burden of guilt beyond a reasonable doubt, but rather whether the evidence shows that the defendant is clearly, plainly, obviously, and conclusively guilty. If the evidence presented is susceptible of multiple interpretations ranging from differing degrees of guilt, to no guilt at all, the State cannot carry its burden of showing that the proof of guilt is evident or the presumption great. Similarly, when substantial factual questions are presented as to the guilt or innocence of the accused, the State cannot carry its burden of showing that the proof of guilt is evident or the presumption great.

Because in this case the victim's version of events have changed drastically multiple times, Mr. Riley tested negative for gunshot residue minutes after the alleged incident, while the victim tested positive for residue, and the State's expert's findings contradict that of the trauma surgeon who treated the victim at the scene, this court must find that the State did not carry its burden of showing proof evident, presumption great, and must grant Mr. Riley's petition for a writ of habeas corpus.

ARGUMENT

MR. RILEY IS ENTITLED TO PRE-TRIAL RELEASE ON REASONABLE CONDITIONS BECAUSE THE STATE DID NOT MEET ITS BURDEN OF PROOF OF GUILT EVIDENT.

The importance of bail to an accused was described by the United States Supreme Court in the following language:

“The traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction... Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning.” *Stack v. Boyle*, 342 U.S. 1 (1951).

Florida has also traditionally recognized the importance of pre-trial bail by providing for it as a matter of right in most cases. *Fla. Const. Art. I, § 14*. Similarly, Rule 3.131(a) of the Florida Rules of Criminal Procedure provides that “unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pre-trial release on reasonable conditions.” *Fla. R. Crim. Pro. 3.131(a)*. Because a criminal defendant is presumed innocent until proven guilty, the Eighth Amendment to United States Constitution prohibits excessive bail. *U.S. Const.*

Amend. XIII. Moreover, Florida case law establishes that the setting of a bond in an amount that an indigent cannot afford is tantamount to setting no bail at all. *Quiin v. Crowden*, 625 So. 2d 1247 (Fla. 4th DCA 1993); *State ex rel Bardina v. Sandstrom* 630, 631 (Fla. 3d DCA 1975); *State ex rel Crabb v. Carson*, 189 So. 2d 376, 377 (Fla. 1st DCA 1966); *Good v. Wille*, 382 So. 2d 408 (Fla. 4th DCA 1980) (granting the petition for writ of habeas corpus because the amount of bail was so excessive that it essentially amounted to a denial of bail).

A. MR. RILEY IS ENTITLED TO PRE-TRIAL RELEASE ON BAIL BECAUSE THE EVIDENCE IS REPLETE WITH SUBSTANTIAL CONTRADICTIONS AND DISCREPANCIES.

Mr. Riley is entitled to pre-trial release, because the evidence does not carry the State's burden of proof that is required to that of a degree that is in fact *greater* than beyond a reasonable doubt. A criminal defendant charged with a crime punishable by life is entitled to pre-trial release on reasonable conditions unless “proof of guilt is evident or the presumption great.” *Stallings v. Ryan*, 979 So. 2d 1167, 1169 (Fla. 3d DCA 2008). The Supreme Court of Florida has defined the standard of proof of guilt evident to mean “to put beyond a question of doubt,” “plain, clear, obvious, conclusive,” and that “which is a greater degree of proof than that establishing guilt merely to the exclusion of a reasonable doubt.” *Russell v. State*, 71 Fla. 236, 240, 71 So. 27, 28 (1916). Whether the evidence is sufficient

to convict is not the proper inquiry, but rather, the inquiry is whether the evidence presented is contradicted “so that substantial factual questions are presented as to guilt or innocence of the accused.” *State v. Perry*, 605 So. 2d 94, 99 (Fla. 3d DCA 1992). Similarly, where the facts presented are susceptible of multiple interpretations ranging from lesser offenses to no crime at all, the State fails to sustain its burden of proof. *Mininni v. Gillum*, 477 So. 2d 1013, 1015 (Fla. 2d DCA 1985). By the same token, if both sides present significant evidence as to the defendant's guilt and innocence, the State cannot carry its burden of showing that the proof of guilt is evident and the presumption great. *Elderbroom v. Knowles*, 621 So. 2d 518, 521 (Fla. 4th DCA 1993).

In *Mininni*, where the accused's bond was revoked after being charged for first degree murder, and admitting to killing the victim in an altercation, the court granted habeas corpus finding that the evidence was “susceptible of interpretations ranging from a lesser degree of murder down to excusable homicide,” and therefore the State had not carried its burden of proof to a degree greater than beyond a reasonable doubt. *Mininni*, 477 So. 2d at 1015. Similarly, in *Perry*, where the accused was charged with two counts of first degree murder based on the statements of a co-defendant, the court found that the proof of guilt was not evident because the co-defendant's statements were contradicted by previous statements by

the same co-defendant to the police, and other witnesses. *Perry*, 605 So. 2d at 96. In *Elderbroom*, where there was compelling evidence to support both the State and the Defense's version of the case, the court found that the State could not meet its burden that the proof of guilt was evident or the presumption great. *Elderbroom*, 621 So. 2d at 521.

Mr. Riley is entitled to pre-trial release, because the evidence does not carry the State's burden of proof to a degree greater than beyond a reasonable doubt. As in *Mininni*, the evidence is subject to multiple interpretations. Indeed, the evidence here shows that the alleged victim's wounds could have been self-inflicted. Most telling is the fact that the Defendant had *no* gunshot residue on his hands, even though officers arrived on scene immediately. The alleged victim, however, tested **positive** for gunshot residue. Moreover, the 911 call itself went out as a suicide attempt. Furthermore, Dr. Martes, the hospital's trauma specialist, and the only medical expert to see the wounds while untreated, came to a **different** conclusion than that proffered by the State regarding the entry and exit wounds. Because the evidence is susceptible to interpretations ranging from a lesser degree of attempted murder to no crime at all, the State cannot carry its burden of showing that the proof of guilt is evident and the presumption great.

Similarly, as in *Perry*, where the court held that contradictory statements by

the key witness in the case defeated a finding of guilt evident, in this case the key witness has proffered different stories in more than one occasion. Whether her inconsistent stories could convince a jury remains to be seen, however, it is clear that even if it could carry the burden of guilt beyond a reasonable doubt, it certainly cannot carry the much higher burden that is required in order to deny Mr. Riley's bail.

Furthermore, the court failed to weigh the significance of Mr. Riley having no gunshot residue in his hands while gun shot residue was detected on the alleged victim's hands. Similarly, Mr. Riley's prints were not found on the weapon used in the alleged crime. Also, the fact that Mr. Riley was the person that called 911 should be given adequate consideration as well. If it is, as the State proffers, that Mr. Riley attempted to murder Ms. King that night, he would not have sought emergency services to save her life. For these reasons Mr. Riley respectfully requests that this court issues this writ and Mr. Riley be ordered released.

B. WERE THE COURT TO RELEASE MR. RILEY ON BAIL, MR. RILEY SHOULD BE GRANTED A REASONABLE BAIL BECAUSE HE IS NOT A FLIGHT RISK, IS NOT A MENACE TO SOCIETY, AND IS GAINFULLY EMPLOYED.

Florida Rule of Criminal Procedure 3.131 creates a presumption in favor of non-monetary release. *Fla. R. Crim. P.* 3.131(b)(1). This presumption affords the

indigent the same right to pre-trial release as those who can afford to post bail. This presumption has its roots in the equal protection clause of the 5th Amendment to the United States Constitution and Article 1, Section 2 of the Florida Constitution. Its purpose is to afford the indigent Defendant the same right to pre-trial release as those who can afford to post a monetary bail. Moreover, an indigent's financial circumstances must be considered in the setting of a bond. Whether there is sufficient evidence to show that the Defendant could meet the bail as set by the trial court is a significant factor in whether the bail is excessive. *See Cameron v. McCampbell*, 704 So. 2d 721, 723 (Fla. 4th DCA 1998) (granting petitioner's habeas corpus based on excessive bail because there was insufficient evidence showing that petitioner could meet the bail that was set by the trial court). The presumption in favor of pretrial release on non-monetary conditions does not apply to persons charged with a "dangerous crime" as defined in Fla. Stat. § 907.041(4)(a). But even a defendant charged with a dangerous crime may be granted pretrial release on electronic monitoring or on a recognizance (surety) bond. The applicable provision, *Fla. Stat.* § 907.041(4)(b) provides:

“(b) No person charged with a dangerous crime shall be granted non-monetary pretrial release at a first appearance hearing; however, the court shall retain the discretion to release an accused on electronic monitoring

or on recognizance bond if the findings on the record of facts and circumstances warrant such a release.” *Fla. Stat.* § 907.041(4)(b).

Thus, even a person charged with a dangerous crime, at the court’s discretion, may be granted pretrial release on electronic monitoring or a recognizance bond if the facts and circumstances of the case warrant such release.

Reductions in bond must be made on a case-by-case basis with full consideration of the legally relevant factors. *Rawls v. State*, 540 So. 2d 946, 947 (Fla. 5th DCA 1989). Such factors include an accused’s financial resources, family ties, employment history, length and stability of his residence in the community, past criminal convictions, and record of appearing or failing to appear at court proceedings. *See Rawls v. State*, 540 So. 2d 946, 947 (Fla. 5th DCA 1989) (holding that the trial court abused its discretion by strictly adhering to the bond schedule because the Defendant proved that he was indigent, had a strong family connection in the community, and did not have a previous criminal record.).

The *Rawls* court found that bail in the amount of \$20,000 was excessive and directed on remand that the court reduce bail not in excess of \$5000, because petitioner had met the elements set forth in F.S. 903.046 and the underlying rationale for setting a bail (securing the defendant's appearance in court). *Rawls*, 540 So. 2d at 947. In *Sandstrom*, the court found that where “petitioner's guilt was

not evident and presumption of guilt was not great of” the charge first degree murder, a bail in excess of \$50,000 was unreasonable, where the petitioner had no criminal history, had strong ties to the community, and was indigent. *Sandstrom*, 321 So. 2d at 631.

In this case, Mr. Riley has resided in Miami-Dade county for 30 years, has strong family ties to the community, is employed and has not had any prior convictions. Mr. Riley has also been declared indigent and has limited financial resources. Like in *Rawls*, where the court found that a bond of \$20,000 was excessive where a defendant had shown that he was not a flight risk, had strong ties to the community, and was indigent, Mr. Riley is also indigent, has strong ties to the community, and is not a flight risk, therefore he is entitled to reasonable bail. Similarly, as in *Sandstrom*, where the court found that a bond in excess of \$50,000 was unreasonable when petitioner's guilt was not evident and the presumption of guilt not great, this court must find that Mr. Riley should be given a reasonable bail, where the case is subject to opposing interpretations. Furthermore, even if the court were not to grant bail, Mr. Riley could still be considered for house arrest or release under electronic monitoring. *Fla. Stat.* § 907.041(4)(b)

Wherefore, for the foregoing reasons, the Defendant, **Yathomas Riley**, pursuant to Fla. R. App. P. 9.100, and Section 79.01 of the Florida Statutes, prays

this Honorable Court issue a Writ of Habeas Corpus and grant any other relief the Court deems just and proper.

CONCLUSION

Based on the contradicted evidence as to substantial issues of fact regarding Mr. Riley's innocence or guilt in this case, this court must find that the State cannot carry its burden of showing that Mr. Riley is clearly, obviously, plainly, and conclusively guilty of the charges against him and must grant this petition for a writ of habeas corpus. This court should direct the circuit court to set Mr. Riley's bond to a reasonable amount so that Mr. Riley's illegal detention ends.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Petition for Writ of Habeas Corpus is printed in Times New Roman 14-point font, double-spaced, with margins no less than 1 inch and is composed of 3464 words.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition
for a Writ of Habeas Corpus was hand delivered to:

Anna D. Quesada, Esq.
Assistant State Attorney
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Timothy Ryan
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On this 8th day of June, 2012.

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