IN THE CIRCUIT COUNTY COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, STATE OF FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA, CASE NO.: 10-CF-018429

v. DIVISION: TR-3

MICHAEL EDWARD KEETLEY.
_____/

DEFENDANT'S MOTION TO SET REASONABLE BAIL

COMES NOW, the Defendant, MICHAEL EDWARD KEETLEY, by and through undersigned counsel and pursuant to the United States Constitution, the Florida Constitution, laws and the Rules of Criminal Procedure, and files this motion to set reasonable bail and in support states the following:

l. Mr. Keetley has been charged with two counts of first degree murder and four counts of attempted first degree murder. He is charged with these offenses based upon an incident which took place on November 25, 2010, and has been incarcerated since December 2, 2010.

2. Even though Mr. Keetley is charged with these crimes, he can only be held without bond if the proof of guilt is evident or the presumption of guilt is great. Art. I, § 14, Fla. Const. *State v. Arthur,* 390 So2d. 717,719 (Fla. 1980)(holding that, before pretrial detention may be ordered in a life felony case, State must show that "proof is evident or the presumption great"). *See also*. The degree of proof in this posture is greater than beyond a reasonable doubt. *Elderbroom v. Knowles*, 621 So.2d 518, 520 (Fla. 4th DCA 1993).

3. In *Mininni v. Gillum,* 477 So.2d 1013 (Fla. 2d DCA 1985), the Court affirmed the lower court's setting bail in a capital case holding:

"Nevertheless, having examined the affidavits relied upon by the trial court, we

conclude that proof of Mininni's guilt of first degree murder is neither 'evident' nor 'great' as those terms are employed in the context of bond in capital cases. "*The degree of proof necessary before bail may be denied in such cases was set forth by the supreme court in Russell v. State,* 71 Fla. 236, 71 So. 27 (1916), and *State ex rel. Van Eeghen v. Williams,* 87 So.2d 45 (Fla.1956). *Specifically, the court held that the state is actually held to an even greater degree of proof than that required to establish guilt beyond a reasonable doubt. See also State ex rel. Hyde v. Thursby,* 184 So.2d 505 (Fla. 1st DCA 1966)" (emphasis added).

4. In *State v. Perry*, 605 So.2d 94 (Fla. 3rd DCA 1992), bail in the amount of $250,000 on two counts of First Degree Murder was upheld. The evidence against Perry consisted of the testimony of an accomplice, who had received favorable treatment for his testimony. There was no physical evidence linking Perry to the murders. At the hearing, the accomplice's testimony was impeached by other witnesses and his own prior inconsistent statements. In affirming the lower court's decision to set bail, the Court agreed that these facts did not meet the standard of proof evident or presumption great and therefore bail was appropriately set.

5. In this case the facts are as follows:

In the early morning hours of November 25, 2010 a white male, driving a mini-van drove up to 604 Ocean Mist Court in Ruskin. This area was extremely dark, and was only illuminated by the porch light. Six Hispanic males, the alleged victims in this case, had been playing cards, drinking, smoking marijuana and snorting cocaine during the course of four hours. The white male, wearing a black t-shirt with "SHERIFF" written across it in white or gold letters and armed with a long black gun, allegedly approached the young men, asked for someone named "Creepers" and subsequently began shooting. The entire incident was very quick. After the shooting the male fled the scene in the mini-van. As a result of the shooting, two of the victims

died, and three, Gonzalo Guevara, Daniel Beltran and Richard Cantu, were seriously injured. One, Jose Rodriguez, remained unharmed. The police focused on Mr. Keetley as a result of information that they had received from a former confidential source named Estaban Rivera. It turns out that this "source" was never actually signed as a confidential informant by HCSO. This "source" was arrested for committing crimes during his period of cooperation with the agency. It is contended that within hours of the shooting this "source" sent out a mass text which contained a photograph of Mr. Keetley and identified him as the shooter. This mass text was received by friends and family members of the surviving victims and tainted the subsequent identification of Mr. Keetley by Gonzalo Guevara.

As an example, Jose Rodriguez, the only uninjured person on the porch, initially failed to pick Mr. Keetley out of a photo array. However, after the mass text was shown to him, and after the neighborhood was abuzz with rumors that the "Ice Cream Truck" man was the shooter, he advised law enforcement that the Ice Cream Man was the shooter and selected Mr. Keetley out of a photographic line up. Significantly, Mr. Keetley had owned and operated a purple ice cream truck for several years during which the Ocean Mist neighborhood was part of his route. Jose Rodriguez and his children had purchased ice cream countless times from Mr. Keetley. Yet, Rodriguez failed to identify the Ice Cream Man as the shooter until he was shown the mass text. Up until he saw the mass text, he never even mentioned that the shooter looked familiar, let alone was the Ice Cream Man.

Gonzalo Guevara's identification of Mr. Keetley is one of the cornerstones of the State's case. However, just like Rodriguez, Guevara had seen Mr. Keetley sell ice cream countless times to Rodriguez and his children. Like Rodriguez, he never told the first responding deputies and detectives that the shooter was the Ice Cream Truck Man or even that he looked familiar. Guevara has testified that he had drank numerous beers, snorted "two bumps" of cocaine, only

viewed the shooter for a matter of seconds and that the entire event happened very quickly. Further, Guevara's sister had received the mass text which displayed a photograph of Mr. Keetley and identified him as the shooter. She had discussed this text at the hospital with Juan Hernandez, a good friend of Jose Rodriguez, and others. Det. Lugo had advised Guevara, his sister and family members that he would come back the following day with photographs to see if he could identify the shooter. It is no wonder that when he looked at the photographic display he identified Mr. Keetley as the shooter. It defies logic that not one friend or family member would discuss the rumors and mass text with Mr. Guevara, especially when they knew how an identification was needed in order to make an arrest and that he would be shown a photographic line-up.

Moreover, not one surviving victim described the shooter as being physically limited in any way, having difficulty handling the gun or limping. In January 2010, Mr. Keetley was operating his truck in the area of "Old Sun City" when he was flagged down by a car. Once stopped and while he was helping a female associated with the car, two armed, masked, black males came into his truck and shot him five times. As a result, Mr. Keetley suffered debilitating injuries to both of his hands which resulted in week long hospitalizations and multiple surgeries. His right hand was rendered virtually useless. He could not perform daily activities without the help of his mother. In the weeks leading up to Thanksgiving Mr. Keetley had reinjured his knee and walked with a pronounced limp. Yet, none of the surviving victims describes the shooter as having any physical disabilities, problems handling the "shotgun", or limping.

Mr. Keetley was arrested after a few days of investigation, based on the identification by Gonzalo Guevara and a ballistics "match" of a projectile and shell casing found during the search of Mr. Keetley's home to projectiles and casings found at the crime scene. The weapon used in this event has never been recovered. Additionally, the shell casings found at the scene were

allegedly fired from a Glock semi-automatic pistol, while the recovered bullets could not have been fired from a Glock. Mr. Keetley has no prior criminal record.

But for Guevara's questionable identification, this is a circumstantial case which does not meet the heightened standard of proof evident or presumption great required to hold an accused without bond. As noted above, this standard is greater than beyond a reasonable doubt.

6. At this point Mr. Keetley has been incarcerated pending trial since December 2, 2010. He has spent almost the entirety of the past seven and a half years in isolation.

7. This length of time in isolation pending trial is cruel and unusual punishment which is prohibited by the Eighth Amendment to the United States Constitution.

> Turning to the first constitutional difficulty, nearly all death penalty States keep death row inmates in isolation for 22 or more hours per day. American Civil Liberties Union (ACLU), A Death Before Dying: Solitary Confinement on Death Row 5 (July 2013) (ACLU Report). This occurs even though the ABA has suggested that death row inmates be housed in conditions similar to the general population, and the United Nations Special Rapporteur on Torture has called for a global ban on solitary confinement longer than 15 days. See *id.*, at 2, 4; ABA Standards for Criminal Justice: Treatment of Prisoners 6 (3d ed. 2011). And it is well documented that such prolonged solitary confinement produces numerous deleterious harms. See, *e.g.*, Haney, Mental Health Issues in Long–Term Solitary and "Supermax" Confinement, 49 Crime & Delinquency 124, 130 (2003) (cataloguing studies finding that solitary confinement can cause prisoners to experience "anxiety, panic, rage, loss of control, paranoia, hallucinations, and self-mutilations," among many other symptoms); Grassian, Psychiatric Effects of Solitary Confinement, 22 Wash U. J. L. & Policy 325, 331 (2006) ("[E]ven a few days of solitary confinement will predictably shift the [brain's] electroencephalogram (EEG) pattern toward an abnormal pattern characteristic of stupor and delirium"); accord, *In re Medley*, 134 U.S. 160, 167–168, 10 S.Ct. 384, 33 L.Ed. 835 (1890); see also *Davis v. Ayala*, —— U.S. ——, 135 S.Ct. 2187, —— L.Ed.2d —— (2015) (KENNEDY, J., concurring).
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> *See Glossip v. Gross*, 135 S.Ct 2726, 2765 (2015) (Breyer,J., dissenting).

8. Significantly, in *Glossip* Justice Breyer was addressing post-conviction confinement. Here, Mr. Keetley has not been convicted and is still presumed innocent of these charges. Because death is different, and for reasons not attributable to him and beyond his

control, this case has been pending for almost eight years with no end in sight.

9. As this Court is aware, the matter concerning penalty phase counsel is currently on appeal. While the appeal is pending the Court cannot set a trial date. No matter how the appeal is decided, the losing party will likely petition for certiorari review to the Florida Supreme Court. This will result in additional delay. If either penalty phase counsel is appointed or if undersigned withdraws and new counsels are appointed additional lengthy delays will occur.

10. Because proof of guilt is not evident and presumption of guilt is not great, Mr. Keetley is being detained without bail or reasonable conditions of release and his continued detention in isolation constitutes cruel and unusual punishment as prohibited by the Eight Amendment to the United States Constitution.

11. Mr. Keetley presents the following biographical details for the Court's consideration:

a. **Age**: Mr. Keetley is 47 years old.

b. **Marital Status**: Mr. Keetley is single.

c. **Children**: Mr. Keetley has no children.

d. **Employment**: Mr. Keetley is physically disabled.

e. **Education**: Mr. Keetley graduated from high school in 1987 and has a vocational degree.

f. **Residence in Community**: Mr. Keetley was born in the Tampa Bay area and was raised in Hillsborough County.

g. **Family Ties**: Mr. Keetley has the following familial ties to this community:

	Family Member	Length of Time in Community
Mother	Esta Keetley	47 years
Father	Michael Keetley, Sr. *Employed By- ASG(Designer)*	47 years
Sister	Jessica Hadley-Keetley	Lifelong

12. Pursuant to Florida Statute § 903.946(2)(a-k), certain criteria should be considered by this Honorable Court in determining whether Mr. Keetley should be released on bail and, if so, under what conditions. In regard to these criteria, Mr. Keetley states the following:

a. The nature and circumstances of the instant offense are described in paragraph 5 above.

b. The weight of the evidence against Mr. Keetley does not meet the required standard to hold him without bond.

c. Defendant's family ties, length of residence in Hillsborough County, and employment history are addressed in paragraph ten (10) above. Mr. Keetley has been incarcerated for seven and a half years and therefore has limited financial resources.

d. Mr. Keetley has never been convicted of a crime of violence, nor has he ever attempted to avoid prosecution or failed to appear for any court proceeding.

e. Mr. Keetley poses no danger to the community upon release from custody. Mr. Keetley was aware of this investigation since November 28, 2010 when he was stopped by law enforcement for "speeding" and questioned as to his whereabouts on November 25, 2010. Despite this knowledge, Mr. Keetley, remained in Hillsborough County and did not attempt to flee the county, state or the United States. Consequently, law enforcement arrested him at his home on December 2, 2010.

f. The source of funds used to post bail will be a collection of money available to Mr. Keetley from his parents. This Court should keep in mind that Mr. Keetley's parents are elderly and their finances have been depleted as a result of this litigation.

g. Mr. Keetley is not on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence.

h. Section 903.046(2)(h) (street value of narcotic) of the Florida Statutes does not apply in this instance.

i. Mr. Keetley has never been accused of obstructing justice or threatening or intimidating a victim or witness, nor is there any evidence to suggest that he would do so in this case, if released.

j. Section 903.046(2)(j) (probable cause that a new crime has been committed while on pretrial release) is not applicable as Mr. Keetley has not been released from custody to pretrial release.

k. Any other factor(s) Mr. Keetley wishes this Court to consider will be raised in Court during the hearing on this matter. Mr. Keetley will reside with his parents if released.

13. The Eighth Amendment to the Constitution of the United States expressly prohibits excessive bail in any cause. The term "excessive" is relative to the Defendant's ability to post said bail. Mr. Keetley suggests this Court set a reasonable bail in this cause.

14. Mr. Keetley is willing to submit to any reasonable restrictions or conditions of bail which this Court deems appropriate including but not limited to: home detention, active GPS monitoring, periodic reporting or any other conditions this Court requires.

15. If released, Mr. Keetley will abide by any conditions that this Court may set and will appear at every stage of the proceedings mandated by this Honorable Court through the trial

of this cause.

WHEREFORE, the Defendant, Michael Keetley, respectfully requests this Honorable Court to enter an Order releasing him on personal recognizance or setting a reasonable bail commensurate with his ability to pay and any conditions the Court deems appropriate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via Electronic mail to Jay Pruner, Assistant State Attorney, pruner_j@sao13th.com, this 18th day of May, 2018.

/s/: Lyann Goudie, Esquire

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