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IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH, SALT LAKE CITY

THE STATE OF UTAH,

Plaintiff,

vs.

GOOD CLIENT,

Defendant.

**MOTION TO RELEASE DEFENDANT
ON HIS OWN RECOGNIZANCE OR TO
REDUCE BAIL**

Case No. 123456789

Judge: Linda Jones

The above-captioned Defendant, Good Client (hereinafter referred to as “Defendant”), by and through his counsel of record, Billy McBride, hereby respectfully files this Motion to Release Defendant on His Own Recognizance or to Reduce Bail (hereinafter referred to as this “Motion”) to move the Court to release Defendant of his own recognizance or to set a reasonable bail, and in support of this motion, Defendant states the following:

1. Defendant was taken into custody on March 11, 2021, and is currently confined at the Salt Lake County jail.
2. Defendant is charged with five counts of Aggravated Sexual Abuse of a Child.
3. Bail in this matter is currently set at \$40,000.00.
4. On or about February 7, 2011, the alleged victim, W.F., reported to her mother that Defendant acted inappropriately towards her on four separate occasions.

5. These occasions allegedly occurred in December of 2010, January of 2011, an unknown date, and February of 2011.

6. With each alleged incident reported, there were many discrepancies in the stories told by the mother of W.F. as well as by W.F. herself.¹

7. These discrepancies included W.F. alleging first that the Defendant touched her breasts in the car to keep her from moving; then that Defendant did not touch W.F.'s breasts but touched her bare vagina inside her underwear; and later, W.F. explained to the nurse examiner that Defendant accidentally touched her private parts with his thumb when he was trying to keep her soup from spilling.² Additional discrepancies include Defendant allegedly placing his hands down the top of W.F.'s shirt, grabbing her bare breasts, but later saying that Defendant touched W.F.'s breasts on the top of her clothing.³

8. W.F. was unable to give consistent times of when the alleged incidences occurred.

9. During W.F.'s forensic interview, she asked the Detective if she would be hooked up to a lie detector test; W.F. seemed quite concerned that she would be.⁴ W.F. looked noticeably relieved when she was told she would not be hooked up to a lie detector test.⁵

10. W.F. has stated multiple times that she was hoping to go back to Honduras to be with her real father and grandmother. It appears that W.F. wanted to get the Defendant in trouble

¹ See Investigative Report attached hereto as "Exhibit A," at 4-16.

² See *id.* at 4.

³ See *id.*

⁴ See *id.* at 4-5.

⁵ See *id.*

so that he would be deported from the United States, and so that she and her mother would leave the United States as well to follow Defendant back to Honduras.⁶

11. The allegations made by W.F. in 2011 were dropped due to unfounded, inconsistent statements.⁷

12. In June of 2014, the West Wendover Police Department in Nevada initiated a case against Defendant once again for statements made by W.F.⁸ On three separate occasions, Defendant was arrested. Nevada authorities in every case declined to extradite Defendant, and a Utah judge even dismissed the case with prejudice.⁹

13. In July of 2014, the Salt Lake Police Department investigated another claim made by W.F. regarding Defendant allegedly sexually abusing her from 2009 to 2014; however, it is not possible that abuse could have occurred in 2009 as the Defendant did not start living in the home of W.F. until 2010. Additionally, W.F. stated that she wanted to get the Defendant kicked out of the home so that she could return to her home country of Honduras to live with her real father or grandmother.¹⁰ This case was closed as well.¹¹

⁶ *See id.* at 5, 10, and 16.

⁷ *See* Exhibit A at 9.

⁸ *See id.*

⁹ *See id.* at 10.

¹⁰ *See Id.*

¹¹ *See id.*

14. In October of 2014, the Unified Police Department investigated yet another claim made by W.F. regarding Defendant.¹² The case was declined by the District Attorney's office and closed.¹³

15. In December of 2020, the Unified Police Department opened another case regarding Defendant and W.F., but it was again closed after it was unsupported by DCFS and declined by the District Attorney's office.¹⁴

16. The Unified Police Department again opened a case regarding Defendant and W.F. on March 12, 2021.¹⁵ No new allegations were made; the case was simply reopened.

17. This present case has led to the incarceration of Defendant.

18. On June 8, 2021, a Preliminary Hearing was held in this matter. Only three of the witnesses Subpoenaed by the Defense appeared and testified.¹⁶ Additionally, the alleged victim was not required to testify based on the State's Motion to Quash which was granted.¹⁷ The case was bound over to District Court for trial.

19. Due to the lack of merit in the cases brought by W.F. against Defendant—which indeed lack merit as shown by the multiple times the cases have been closed, declined by the District Attorney's office, and dismissed with prejudice by a Utah court—the present case should be closed as well for lack of merit and Defendant released from custody on his own recognizance.

¹² See *id.* at 11.

¹³ See Exhibit A at 12.

¹⁴ See *id.* at 16.

¹⁵ See *id.*

¹⁶ See *Minutes of Preliminary Hearing* filed in this Court on June 9, 2021.

¹⁷ See *Id.*

If the Court declines to release Defendant on his own recognizance, then at least a reasonable bail should be set so that Defendant can afford to be released from his unfair and unfounded imprisonment.

20. Defendant has voluntarily turned himself in on three separate occasions when the police were looking to question him.

21. Defendant has promptly and attentively attended the hearings set by the Court on this matter, including extradition proceedings.

22. Defendant has family members residing in the Utah community where he resides and/or visits. These family members and others expect Defendant to live up to the law and all orders and rules of the Court and expect him to attend court when ordered.

23. Defendant has lived in this community for several years.

24. Being in jail while Defendant is waiting to be sentenced is causing and will cause great hardship to Defendant and his family. Defendant's job, which he has been working extremely hard to retain, is in jeopardy.

25. By submitting this Motion, Defendant hereby warrants and promises to the Court that he will comply with any and all orders issued by the Court, and also hereby warrants and promises that he will show up to Court on the appointed day to participate in hearings, trial, and sentencing if necessary.

26. Defendant's oath that he will attend court and attend to court requirements coupled with his consistent attendance at court—as well as the clear lack of merit in the case brought against Defendant—warrant a new inquiry into the matter of bail.

27. If bail were reduced, Defendant could make bail in the amount of \$5,000.00, which amount is reasonable to secure his presence in court and his performance of the Court's presentencing requirements.

28. Under the Utah Rules of Criminal Procedure, the determination of bail "shall coincide with the recommended bail amount in the Uniform Fine/Bail Schedule unless the magistrate finds substantial cause to deviate from the schedule."¹⁸ The Utah Code of Judicial Administration also states that "[w]hen . . . setting bail, courts should conform to the uniform fine-bail schedule except in cases where aggravating or mitigating circumstances warrant a deviation from the schedule."¹⁹ The present case warrants a deviation from the schedule due to mitigating circumstances such as the fact that (1) every case brought against Defendant by W.F. has been closed due to discrepancies in the stories told by W.F.; that (2) the District Attorney's office has declined the case; and that (3) a Utah court dismissed the case with prejudice. It is clear that W.F.'s claims against Defendant are not meritorious and should, therefore, be dismissed, and Defendant should be released from custody.

29. Under the Utah Constitution, Article I, Section 9, "excessive bail shall not be required."²⁰ The current bail amount of \$40,000.00 is extremely excessive for this case, especially considering its lack of merit. This case has been dismissed numerous times due to lack of evidence and inconsistent statements, the District Attorney's office has declined it, and a Utah court has

¹⁸ Utah R. Crim. P. 7(c)(3)(B).

¹⁹ Utah Code Jud. Admin. 4-302(9).

²⁰ Utah Constitution, Article 1, Section 9.

dismissed the case with prejudice; it is clear that there is no merit to this case, which makes the current bail amount of \$40,000.00 *extremely* excessive and unreasonable.

30. Under Utah Code § 77-20-1,

An individual charged with or arrested for a criminal offense shall be admitted to bail as a matter of right, except if the individual is charged with . . . (c) a felony when there is a substantial evidence to support the charge and the court finds by clear and convincing evidence that the individual would constitute a substantial danger to any other individual or to the community, or is likely to flee the jurisdiction of court, if released on bail.²¹

31. In the present case, there is clear and convincing evidence that Defendant would *not* constitute a substantial danger to any other individual or the community, nor is Defendant likely to flee the jurisdiction of the court if released on bail. Furthermore, W.F. has recanted her story multiple times, she has been unable to keep her story straight, she has been unable to give dates/times of when these alleged events occurred, and she even admitted that she fabricated these stories so she and her family would go back to Honduras;²² W.F.'s recantations demonstrate that there is *not* substantial evidence to support the charge. There is not any clear substantial evidence to support these charges, which have been dropped numerous times because of lack of evidence.²³ In addition, there is absolutely *no* clear and convincing evidence that Defendant would constitute a substantial danger to any other individual or the community, as demonstrated by the length of time that Defendant has not seen W.F., as well as the length of time between the allegations and now; indeed, enough time has passed between Defendant's last contact with W.F., as well as the length of time between the allegations and now, to support and compel the reasonable conclusion

²¹ Utah Code § 77-20-1(2)(c).

²² See Exhibit A at 5, 10, and 16.

²³ *Id.* at 9, 10, and 16.

that Defendant is not a danger to any individual or the community. Finally, Defendant has proved that he is not a flight risk, as he has turned himself in on three separate times for questioning.²⁴ Defendant has an established life and support system in Utah, and has continued to stay in the community despite all of the false accusations W.F. has made against him.

32. Defendant is not a safety risk to the community, considering that the cases brought against Defendant have been closed due to lack of evidence and inconsistent statements.²⁵ Therefore, there is no factual basis upon which to sustain that Defendant is a risk to the community; the fact that the cases against Defendant have been dismissed numerous times proves that Defendant is not a safety risk to the community.

33. There has been a substantial change in circumstances in the case, which warrant a reexamination of the bail set in this matter. The substantial change in circumstances is outlined in the Investigative Report attached hereto as “Exhibit A”; the changes in circumstances are also outlined hereinabove where Exhibit A is cited. Furthermore, the June 8, 2021, preliminary hearing which took place in this case constitutes a substantial change in circumstances because facts can be discovered which add to the base of knowledge for determining bail.

34. Upon the foregoing, Defendant now respectfully moves the Court to reduce bail or to release Defendant on his own recognizance.

WHEREFORE, Defendant moves the Court:

A. For an order releasing Defendant on his recognizance, or for an order releasing him on condition of paying bail in the amount of \$5,000.00.

²⁴ *Id.* at 16.

²⁵ *See id.* at 9, 10, 12, and 16.

- B. Defendant requests a hearing and gives notice of hearing on this matter at next setting.
- C. Defendant also asks that the Court grant any other relief it deems needful and proper under the circumstances.

DATED July 7, 2021.

Altioirem Legal Services

/s/ Billy McBride

Billy McBride,

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2021, I served, via electronic filing, a true and correct copy of the foregoing upon:

Sim Gill

Deputy Salt Lake County Attorney

/s/ Billy McBride