

DISTRICT COURT CITY & COUNTY OF DENVER, COLORADO 520 West Colfax Avenue Denver, Colorado 80204	DATE FILED: October 28, 2020 4:02 PM CASE NUMBER: 2020CR6007
<b>THE PEOPLE OF THE STATE OF COLORADO</b> Plaintiff  v.  Defendant	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case Number:  Courtroom: 4H
<b>DENIAL OF REQUEST TO REDUCE THE AMOUNT OF THE BOND</b>	

THIS MATTER comes before the Court on a request by the Defendant to reduce the amount of his bond. The Court, having considered the arguments of counsel, relevant portions of the court file, and certain limited evidence including a series of photographs of the shooting in this case, finds and rules as follows:

**Analysis**

Bond was set at \$500,000 cash, property, or surety in this case on October 19, 2020, when the case was accepted for direct filing. The Defendant seeks review and reconsideration of the amount of the bond. The People oppose the requested reduction and report that the victim’s family opposes a reduction under the Victim’s Rights Act.

Pursuant to C.R.S. § 16-4-103, the conditions of the bond are to be sufficient to reasonably ensure the appearance of a defendant and to protect the safety of the community, taking into consideration the individual characteristics of that defendant. Further, monetary conditions of a bond must be reasonable. In addition to considering the level of the offense, and individualized risk and circumstances of a defendant, a court may consider a number of other factors under C.R.S. § 16-4-103(5).

There have been no prior events in the Defendant's life similar to those in this case, and the shooting appears to have been the result of a highly charged encounter between the victim and the Defendant. Particularly based on the Defendant's lack of any criminal history, it appears the Defendant would not likely pose a risk to other persons or the community while on bond. As such, the overriding concern regarding the bond in this case is ensuring that the Defendant will appear for all proceedings.

The only valid rationale for a monetary condition of bond as a means to ensure the appearance of a defendant is if the potential loss of the posted or promised money, combined with other factors that make a defendant more likely to appear, is sufficient to offset the disincentive to appear created by the risk of conviction and potential sentence. Several statutory factors increase the likelihood of appearance in this case. The Defendant grew up in Colorado and has lived in the state for most of his life; he is recently married and his immediate family who lives in Colorado; the letters submitted by the defense speak positively regarding the Defendant's character; and, as noted above, he has no prior criminal history, let alone any history of failing to appear for court. Some factors argued by the defense, however, are not so favorable. Although the Defendant's employment is potentially still available to him, it would involve him working again as a security guard, and the charges in this case arise directly from the Defendant's actions in his role as such. Such employment is not acceptable under the circumstances. Further, the Defendant and his family have apparently received serious death threats, and the family has had to keep their location secret. The other types of potential employment suggested by the defense would not appear to be feasible in light of that situation.<sup>1</sup> Additionally, although the Defendant has family in the state, he also has strong family ties to

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<sup>1</sup> Maximum supervision by Pretrial Services will be imposed in this case, which would also effectively preclude the Defendant from working in any event.

individuals outside of the state. Lastly in this regard, the residence where the Defendant would live while on bond does not have a land line which inhibits the ability for the Defendant to be subject to GPS monitoring while on bond.

The most significant factors increasing the risk of nonappearance are the potential sentence and the likelihood of conviction, which are components of the statutory factor of the likely sentence. The Defendant placed significant emphasis on the risk of conviction in arguing for a reduction of the amount of the bond in this matter. In such regard, a strong defense to a criminal charge reduces the risk of conviction and, thereby, reduces the disincentive for a defendant to appear. However, as noted at the recent hearing, this is a unique case in that the shooting was graphically documented in an exceptionally detailed manner. The interaction between the Defendant and the victim, and the shooting itself, are captured by a series of clear, detailed, still-frame photographs mostly separated by fractions of a second. The precision with which the moment of the charged homicide is captured is unprecedented in the Court's experience.

There will be substantially more evidence in this case, and there is a reason the prosecution and defense need time to compile that evidence before trial, but the limited evidence presently available to the Court would rise to the level of proof evident or presumption great.<sup>2</sup> In such regard, there appears to be no question as to the identity of the Defendant, or the fact that he shot and killed the victim. Defense counsel argues that there is a strong self-defense case, however, under C.R.S. § 18-1-704, self-defense requires a reasonable belief by the Defendant of

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<sup>2</sup> The proof evident or presumption great standard applies to capital offense and to crimes of violence for defendants who were on probation, parole, or bond, or have prior convictions for crimes of violence. It does not directly apply to the charge in this case, but it is mentioned because the fact that proof is evident or the presumption is great is a factor that increases the risk a defendant will not appear sufficiently to justify a complete denial of bond in cases that are just above the present case in terms of seriousness. Even though this is not a case in which a denial of bond is contemplated, any fact that affects the risk of nonappearance is relevant to determining the amount of the bond.

an imminent use of unlawful force by the victim, and, critically, deadly force may only be used in this instance if the Defendant both had reasonable grounds to believe and did believe that he or another was in imminent danger of being killed or of receiving great bodily injury.

The photographs of the incident appear to show that the victim slapped the Defendant with his left hand while holding a can of mace in his right hand; that the victim began to back away from the Defendant, taking two full steps, with his hands down at his side; and that, after being slapped, and as the victim was backing away, the Defendant lifted his shirt and pulled out a handgun that had been tucked into his waist band. In the next frame, the Defendant appears to be aiming the handgun at the victim, the slide of the handgun is back and an empty cartridge can be seen ejecting from the handgun. The victim appears to be in the process of stepping even further back, and the victim is spraying what appears to be mace at the Defendant. Later images make clear that the victim's other hand was empty. It is important to note that the photographic images will not be the only evidence in the case. More evidence will certainly be presented at the preliminary hearing, more evidence will be learned through the ongoing investigation of both sides of the case, and vastly more evidence will ultimately be presented at trial if the matter proceeds to one. As such, the discussion above of the photographic images serves merely to evaluate the apparent risk of conviction at this very early point in the case. If the factual circumstances change as additional evidence becomes available, the Defendant may seek reconsideration of the decision regarding the bond that is being made on the limited evidence available to the Court at this time. Nevertheless, the evidence of which the Court is presently aware appears to show that, at the time of the shooting, there was no danger from the victim that placed the Defendant or anyone else in imminent risk of death or great bodily injury, and that the victim was backing away from the Defendant holding a can of mace.

Defense counsel notes that the television news producer who the Defendant was protecting made a statement indicating he believed the Defendant had saved his life from the victim. The after-the-fact statement, however, appears to be inconsistent with the photographic images that document the event in detail. The defense also argues that the prosecution's decision to charge the Defendant with Second Degree Murder rather than First Degree Murder is an acknowledgment of the strength of a self-defense claim. Inconsistently with this, self-defense applies equally to First or Second Degree Murder. Instead, First Degree Murder requires that the decision to kill be made after deliberation, which cannot be a hasty or impulsive act. Although the images of the event appear to be inconsistent with self-defense, they also appear to be inconsistent with a decision to shoot being made after the exercise of reflection and judgment.

As for the potential sentence, the charge in this case is class 2 felony Murder in the Second Degree. It is a statutory crime of violence under C.R.S. § 18-1.3-406, which requires a mandatory sentence to the Department of Corrections between 16 and 48 years plus five years of parole. Additionally, reductions in time awarded by the Department of Corrections are dramatically reduced by statute for crimes of violence, and the parole eligibility date for such offenses is also greatly delayed compared to other crimes. As such, a sentence in this case would be far longer in effect than an equivalent number of years imposed in different case.

The bond schedule for a class 2 felony is generally \$100,000. Not all class 2 felonies are equal. They include property crimes and other non-violent crimes, overwhelmingly they do not involve homicides, and many are not crimes of violence. Based upon the specific facts and risks in this case, a bond above the amount for other types of class 2 felonies is appropriate.

Lastly, the defense argued that the Defendant is being held in an almost uninterrupted lock-down in the jail, that he is denied even basic hygiene, and that he has not even been allowed

to shower or brush his teeth. It is the Court's understanding that the Defendant is in protective custody within the jail because of risks to his safety due to the nature of this case. Such custody would not deprive the Defendant of basic hygiene. Instead, the Court has been advised by the sheriff's office that, although the Defendant is allowed only limited time out of his cell each day, he is absolutely allowed to shower and brush his teeth, among other activities. Additionally, the Defendant's appearance on Webex was inconsistent with him not having bathed for two weeks.

**Ruling**

Weighing all of the above, a lower amount of bond would not appear to be sufficient to offset the disincentive for the Defendant to appear throughout the proceedings created by the risk of conviction and potential sentence in this case. Accordingly, the request to reduce the amount of the bond is denied at this time. However, this decision is made in large part on the potential for conviction indicated by the limited evidence presently available to the Court. If additional evidence becomes available that reduces the likelihood of conviction, the Defendant may request reconsideration of this ruling in light of that evidence.

Additionally, maximum supervision by Pretrial Services is made a condition of the Defendant's bond, and he may not possess or own a firearm while on bond.

SO ORDERED this 28th day of October, 2020

BY THE COURT:



John W. Madden, IV  
District Court Judge