Electronically filed

NO. 24 CR 000326 FLOYD CIRCUIT COURT

CRIMINAL DIVISION

JUDGE COLEMAN

COMMONWEALTH OF KENTUCKY PLAINTIFF

V. **NOTICE-MOTION-ORDER**

MICHAEL K. MCKINNEY III DEFENDANT

*** *** ***

NOTICE

Please take notice that the Defendant, Michael K. McKinney, III, by and through counsel, will on October 24, 2024, at 2:00 p.m., (Hearing) make the following motion and tender the attached Order.

MOTION TO REDUCE BOND

Comes now the Defendant, Michael K. McKinney III, by and through counsel, Steven R. Romines, and pursuant to KRS 431.066 and 431.525, KRCP 4.02 and 4.16, and Ky Const § 16, and respectfully files this motion to reduce the bond currently imposed upon him in this case. In support of this motion, the Defendant states as follows:

The Defendant, Michael K. McKinney III ("MK") is alleged to have committed the charged crimes on June 18, 2023 but he was not arrested until July 30, 2024, and charged with one (1) count of murder pursuant to KRS 507.020 and seven (7) counts of Complicity to Tampering with Physical Evidence pursuant to 524.100. On July 31, 2024, the Court set bond for the Defendant consistent with the amount and conditions requested by the Commonwealth in their motion filed the same day—five million dollars ($5,000,000) full cash with the condition of

home incarceration with GPS tracking.

Pursuant to KRS 431.066(2), when considering pretrial release, the Court shall consider whether the Defendant presents a risk of flight, a danger to the community, or a risk of not appearing at future proceedings. There is no reason to believe that the Defendant presents any risk of such behaviors, especially considering that the alleged crime occurred nearly 13 months prior to the Defendant being charged, during which time he lived freely in the community without even the slightest incident. This fact alone is sufficient to rebut both flight and danger.

KRS 431.066 further states that "the court shall consider the pretrial risk assessment for a verified and eligible defendant along with the factors set forth in KRS 431.525." In this case, the pretrial risk assessment for Michael McKinney III places his risk of failing to appear at zero (0) points out of seven, his risk of new criminal activity at zero (0) points out of seven, and his risk of new violent criminal activity at two (2) points out of seven. The last of these metrics accords (2) points if charged with a violent offense. It is important to note that the **only** two (2) points on MK's risk assessment arise from a charge of which he is presumed innocent. The risk assessment is a standardized tool codified into Kentucky law, and here, it states in clear numerical form what the facts also demonstrate: that Michael McKinney III is a low-risk defendant with a right to pretrial release.

The Supreme Court of Kentucky's Judicial Guidelines for Pretrial Release remove any ambiguity regarding this matter. A "low risk defendant" is defined as one "who has been determined through the pretrial risk assessment to **either** (1) pose a low risk of flight or failure to appear **or** (2) pose a low risk of anticipated criminal conduct or new criminal activity." KY ST S CT GDS Pretrial Release Section 2 (emphasis added). MK fits **both** standards. The Guidelines for low-risk defendants are unequivocal. "If, based upon the pretrial risk assessment, the court

determines that a defendant poses a low risk of (1) flight or failure to appear or (2) anticipated criminal conduct or new criminal activity, and the court determines that the defendant is likely to appear for trial and is not likely to be a danger to others, the court **shall** order the defendant released on unsecured bond or on the defendant's own recognizance subject to such other least restrictive conditions as the court may order." KY ST S CT GDS Pretrial Release Section 5 (emphasis added). Yet the Defendant herein, despite his low risk status under the Guidelines, recognizes the nature of the charges and is not requesting an unsecured or recognizance bond.

Pursuant to KRS 431.525, the bond of the Defendant shall be sufficient to assure his appearance to the Court, and shall not be oppressive. Further relevant factors when setting a bond on a Defendant were laid out by the 6th Circuit Court of Appeals in United States v. Beaman, 631 F.d2 85, 87 (6th Cir.) when it held:

"Factors to be considered in imposing conditions of release are the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings."

Considering these factors in the present case alongside the statutory pretrial risk assessment, it is clear that the Defendant is neither a flight risk nor a danger to the public, and that a substantially lower bond would still insure his appearance at all future proceedings.

The Defendant does not deny that the nature and circumstances of the charged offense are grave. However, to this point, there is a dearth against the Defendant. No witnesses implicate him in Amber's death. Forensic tests have produced nothing to suggest his involvement. The accusations against the Defendant are cobbled together from circumstantial inferences, and the

Commonwealth's theory is largely sourced from a single witness, whose inconsistent statements and polygraph results indicate deception. While an unsolved homicide case places an enormous gravity on all involved, this pressure must not be permitted to tip the scale when weighing the actual evidence against the Defendant. The seriousness of the crime does not lower the burden of proof. There is a glaring lack of evidence in the Commonwealth's accusations against Michael McKinney III. Yet the presumption of innocence remains unchanged and the bedrock of the US criminal justice system.

The allegations against the Defendant are not only unsupported by the evidence provided to this point—the evidence weighs against an entirely different person. The motion filed by the Commonwealth states that Amber Spradlin was murdered as "an act of extreme rage," committed by someone "unstable and dangerous." On the night of Amber's death, one individual was indeed displaying violent outbursts and instability—but it was not the Defendant. Roy Kidd was intoxicated to the point of belligerence, and KSP testified under oath at the Grand Jury that Amber was upset and disturbed at Roy Kidd's drunken belligerent behavior and felt he "embarrassed" her in front of her employer. KSP further testified that Amber was so angry at Roy that she was taken upstairs to be separated from him. Roy's unbalanced behavior grew so out-of-control that the Defendant himself called 911 to plead for law enforcement's help in controlling Roy, to no avail. The Commonwealth is reasonable to argue that this was a crime of intense, volatile emotion, but that accusation weighs far less against Michael McKinney III than the Commonwealth suggests. It was Roy Kidd at whom Amber was upset and angry that morning, not MK. It was Roy Kidd who was violent and out of control that morning, not MK. It was Roy Kidd whose cell phone was lying beside Amber's bloody body that morning, not MK's. KSP further testified under oath that due to his intoxication and being covered in blood, Roy

Kidd was a suspect from the outset. He then proceeded to give multiple interviews filled with statements inconsistent with the physical evidence and took a KSP polygraph which showed "deception was indicated" when Roy answered the question "Did you stab or cut that woman?"

Det. Wireman stated unequivocally that "Roy was under the influence of alcohol, so he has some things that doesn't exactly line up with what we know happened." (Det. Wireman, GJ P25). Yet despite his refusal to cooperate further after the polygraph showed "deception was indicated" to every relevant question asked, and forensic testing which showed his blood at the scene, Roy Kidd for some reason became no longer a suspect. After fighting with everyone, defecating and urinating on himself, and embarrassing Amber Spradlin, police claim he probably didn't hurt her because, in the words of the detective, "we believe he did eventually go to sleep." (Det. Wireman, GJ P46)

In addition to assuming he went to sleep, police apparently chose to clear Roy because "Honestly, as inebriated as he was...I don't know how he could do anything." (Det. Wireman, GJ P79) The case herein is, quite literally, that Roy was probably too drunk to wildly stab and cut Amber after he upset and embarrassed her, but he was sober enough that we can nonetheless rely on his statements to implicate MK.

The Commonwealth's motion to set bond states "the person who did this is unstable and dangerous. Additionally, other information in the Commonwealth's possession suggests that the Defendant has a history of violent outburst and mental instability that makes him not only a flight risk but a danger to the public." Amazingly, but not surprisingly, the Grand Jury transcript reveals that the evidence that MK "is suicidal, hears voices telling him to do things, that the voices take control of him, all of that stuff would indicate he has major mental psychiatric issues…" comes from one source—Roy Kidd. (GJ P99) The claim that the Defendant has a

"history of violent outbursts and mental instability" simply has no basis in fact other than from Roy Kidd. The criminal history of the Defendant consists of a single conviction for speeding five miles per hour over the speed limit. Regarding his character and mental condition, the Commonwealth tries to argue that he is dangerous based upon a secondhand account of his alleged depression. From this, the Commonwealth takes an already unreliable description of self-defeating thoughts, and strains it into a pathology of violent action. This is not only unfounded, but an outright inversion of the statements on record. Michael McKinney III is not, and never has been, a danger to the public and his lack of any criminal history in 25 years evidences this fact.

Nor is there any indication that he would, in any way, be a flight risk. The Defendant is a lifelong resident of Floyd County, except for his time attending college at Morehead State University. He has strong family ties to the community, with most of his family living in Floyd and surrounding counties. Three days after Amber's death, MK voluntarily appeared at KSP post in Morehead to provide a DNA sample pursuant to a search warrant. Around the same time, certain members of the Floyd County community began spreading accusations that he should be blamed for Amber's death. Despite the campaign against him, the Defendant continued to stay with his family and further his education in the same places as before. For over a year the intensity of the rumor mill and "Trial by Facebook" increased, and pressure on public officials to hold someone responsible for Amber's death mounted into a fever pitch. Through all this, the Defendant continued to stay in Floyd County when not at Morehead. Even as billboards on public highways called for prosecutorial action, and members of the community passionately blamed the Defendant, he continued to stay with his family in Floyd County. Michael McKinney III has never shown any intention to abscond, nor would he even be able to do so.

The Defendant is well-known to members of the community, and would be recognizable throughout Floyd County. Additionally, conditions such as home incarceration and GPS monitoring could be required as conditions of his bond, as further guarantees against any risk of flight.

It is well established in the Commonwealth of Kentucky that bond amounts should be consistent with those set in similar cases, particularly for defendants with no criminal history.[1] A brief review of bonds set for Defendants in Floyd and Pike Counties over the past three (3) years reflects that the current bond of the Defendant is significantly higher than bonds typically set for Defendants facing the same charges or greater. Some of these Defendants have lengthy criminal records, patterns of failing to appear for Court, and far more evidence underlying their charges than in the case at hand. These bonds range from five thousand dollars ($5,000) Partially Secured to one million dollars ($1,000,000.00) cash. Most notably, on July 1, 2022, Lance Storz was charged in Floyd County case number 22-F-313 with two (2) counts of Murder of a Police Officer, six (6) counts of Attempted Murder of a Police Officer, and one (1) count of First Degree Assault of a Service Animal. His bond was set at one million dollars ($1,000,000.00) cash. Those acts of murder were committed directly in front of eyewitnesses, while the act alleged against the Defendant is based at best on circumstantial evidence which has yet to even be produced by the Commonwealth. The current bond of the Defendant is oppressive, and undermines the principle that bond should only be as high as necessary to ensure compliance with the conditions of the Court.

Section 16 of the Kentucky Constitution provides that "[t]he accused is entitled to bail as a matter of unqualified right when charged with any criminal offense except one that may be

[1] See Abell v. Commonwealth, 94 S.W.2d 541 (Ky. 1997); Glover v. Commonwealth, 285 S.W.3d 187 (Ky. 2009); Commonwealth v. Stevens, 462 S.W.3d 926 (Ky. 2015); and Carlton v. Commonwealth, 595 S.W.2d 68 (Ky. App. 1980).

punished by death. In a capital offense he has such right unless the Commonwealth shall produce proof of manifest guilt or evidence sufficient to create great presumption of guilt." Duke v. Smith, 253 S.W.2d 242, 243 (Ky. 1952).

The burden of proof necessary to deny bail in a capital case is substantial, as established by the Kentucky Court of Appeals in Thacker v. Asher. In that case, a group of men were drunkenly playing poker, during which the Defendant Ralph Thacker whipped out his pistol and threatened a man—Luke Maiden—before calming down. After the game ended, Maiden was found dead, having apparently been shot in the back, with his own pistol lying nearby. Later that evening, Thacker turned himself in to the police, confessing that he'd been in a "shooting scrape" and left the scene without knowing whether he'd hit anyone. The Court of Appeals of Kentucky held that this evidence did not rise to the level necessary to deny Thacker's right to bail. "The burden is on the Commonwealth and it is the consensus of this Court that the proof offered here is not evident nor is the presumption great." Thacker v. Asher, 394 S.W.2d 588, 589 (Ky. 1965). Compared to the case at hand, the Commonwealth's evidence against MK is vastly insufficient to deny bail under Kentucky law. Likewise, it is axiomatic that a bond which is prohibitively excessive is tantamount to no bail.

Pre-trial detention can affect the Defendant's use of the rights guaranteed to him by the 6th Amendment. An oppressively high bond can hinder his rights to effective counsel, to obtain expert witnesses, and to properly test the state's evidence. In a case as serious as the present, it is of utmost importance to ensure a Constitutional process, and to protect the Defendant's right to defend himself in Court, not to bow to public outrage, rumor mongering and social media pressure. "[T]he presumption of innocence prior to conviction is a continuing one." Duke v. Smith, 253 S.W.2d 242, 244 (Ky. 1952).

WHEREFORE, the Defendant respectfully requests the Court that his bond be reduced to an amount consistent with his criminal history and similarly situated Defendants, with whatever additional conditions or restrictions the Court deems appropriate.

Respectfully submitted,

ROMINES WEIS & YOUNG PSC

_/s/Steven R. Romines_____
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CERTIFICATE

It is hereby certified that a copy of the foregoing was electronically filed this the ___ day of October, 2024.

_/s/Steven R. Romines_____
STEVEN R. ROMINES

Electronically

NO. 24 CR 000326 FLOYD CIRCUIT COURT

CRIMINAL DIVISION

JUDGE COLEMAN

COMMONWEALTH OF KENTUCKY PLAINTIFF

V. **ORDER**

MICHAEL K. MCKINNEY III DEFENDANT

*** *** ***

Upon motion of the Defendant, Michael K. McKinney III, by and through counsel, and the Court being otherwise sufficiently advised;

IT IS HEREBY ORDERED AND ADJUDGED that the Defendants bond is hereby reduced with conditions of :

1. Home incarceration with GPS monitoring.
2. Defendant shall appear at all court hearings including the next hearing scheduled for the 24th day of October, 2024 at 2 p.m.
3. Defendant shall **not have any violations of law** and shall report any arrest immediately.
4. Defendant shall **not possess any type of weapon,** including but not limited to any type of knife or firearm.
5. Defendant shall **not consume or possess any alcoholic beverages or drug not prescribed** to him/her by a treating physician and shall not be upon the premises of any place that sells or serves alcoholic beverages as its primary purpose.
6. Defendant shall **not drive or operate any motor vehicle** unless he/she has a

valid Kentucky operator's license and the vehicle is insured as required by Kentucky law.

7. Defendant shall be **subject to the random testing of his/her blood, breath or urine** for the presence of alcohol or drugs. Such testing shall be at defendant's expense and results shall be submitted to the Court and Attorney for the Commonwealth within 72 hours if requested by the Court, Attorney for the Commonwealth, or any peace officer.

8. Defendant shall not use any prescribed scheduled drug including **buprenorphine or methadone** unless the Court finds the use acceptable based upon an individualized assessment.

9. Defendant shall have **only one Kentucky family physician and one Kentucky pharmacy.**

10. Defendant shall surrender Passport(s).

and any additional conditions or restrictions the Court deems appropriate.

_____
JUDGE

DATE: _____

Tendered by:

_/s/Steven R. Romines_____
Steven R. Romines
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