

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

STATE OF FLORIDA

CASE NUMBER: 21CF014470A

v.

ROBERT LEE KESSLER

DIVISION: O

**DEFENDANT'S RESPONSE IN OPPOSITION TO  
STATE'S MOTION FOR PRETRIAL DETENTION AND MOTION TO STRIKE  
STATE'S MOTION**

The State's Motion for Pretrial Detention should be stricken. The prosecution seeks pretrial detention based solely on the fact that the Defendant, Robert Lee Kessler, has been arrested and accused of Second Degree Murder with a Weapon. This is not a legally sufficient basis for the requested relief. Even if viewed in a light most favorable to the State, there are no alleged **facts** that suggest Mr. Kessler poses a threat of harm to the community. Under Article I, Section 14 of the Florida Constitution, Section 907.041, Florida Statutes (2021), and Rules 3.131 and 3.132, Florida Rules of Criminal Procedure (2021), Mr. Kessler moves this Court to strike the scheduled hearing in this matter, as State's motion is facially insufficient, and to set reasonable conditions of pretrial release in this cause.

**LEGAL ARGUMENT**

The primary consideration when imposing the pretrial detention of a defendant is whether doing so is necessary "to protect the community from risk of physical harm to persons." *See*: Section 907.041(1), Florida Statutes (2021). For that reason, "it is the policy of this state that persons committing serious criminal offenses, posing a threat to the safety of the community or the integrity of the judicial process, or failing to appear at trial be detained upon arrest." *Id.* However, Section 907.041(1), Florida Statutes (2021), further provides that "persons found to

meet specified criteria shall be released under certain conditions until proceedings are concluded and adjudication has been determined.” As such, the State cannot be granted the pretrial detention of a defendant if the criteria of the controlling statute are not satisfied.

In this cause, the State seeks pretrial detention under Section 907.041(4)(a)(2), Florida Statutes (2021). Specifically, the State alleges that “based on the Defendant’s past and present patterns of behavior” there is a substantial probability that Mr. Kessler poses a threat of harm to the community. This allegation requires the State to establish beyond a reasonable doubt that pretrial detention is necessary pursuant to the criteria delineated in Section 907.041(4)(c)(5), Florida Statutes (2021), which are as follows:

1. Mr. Kessler is presently charged with a “dangerous crime” as defined by Section 907.041(4), Florida Statutes (2021) (“Element One”);
2. There is a substantial probability that Mr. Kessler committed such crime (“Element Two”);
3. The factual circumstances of the crime indicated disregard for the safety of the community (“Element Three”); and,
4. There are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons (“Element Four”).

In its motion, the State still fails to provide a factual basis for the allegation that Mr. Kessler poses a danger to the community and that there are no conditions of release reasonably sufficient to protect the community. Therefore, the motion is insufficient on its face and should be denied.

It is not enough that Mr. Kessler has been charged with “dangerous crimes” to warrant his pretrial detention. An order for the pretrial detention of a defendant must be based upon a finding of each element of Section 907.041(4)(c)(5), Florida Statute (2019). Thus, a finding that there is a substantial probability that the defendant committed a dangerous crime is not sufficient on its own to support a final order for pretrial detention. A trial court must make findings for each element in

order to deprive an individual the constitutionally protected right to bond and conditions of release. *See: Harris v. Gee*, 2017 Fla. App. LEXIS 11196 (Fla. 2d DCA Feb. 10, 2017); *see also: Nathan v. Gee*, 149 So. 3d 15 (Fla. 2d DCA 2014). Even if this Court finds Element Two satisfied, this Court must still determine whether or not the State’s motion individually satisfies Element Three, Element Four, and Element Five. The State has failed to do so.

Beyond merely offering the facts of the alleged crime, the State fails to explain how the factual circumstances of the crime indicate Mr. Kessler has a disregard for the safety of the community at large. Satisfying Element Two does not thereby automatically satisfy Element Three because an accused’s potential danger to the community from having committed a dangerous crime cannot form the entire basis for holding him without bond. *See: Lepore v. Jenne*, 708 So. 2d 980, 981 (Fla. 4th DCA 1998). Otherwise, every individual charged with a designated “dangerous crime” would be automatically held without bond—contrary to the intent of the Florida Legislature. *See: Sections 907.041(1) and 907.041(3), Florida Statutes (2019).*

Furthermore, the State’s motion does not include a single factual assertion that speaks to Element Four which requires a showing that “there are no conditions of release reasonably sufficient to protect the community.” *See: Section 907.041(4)(c)5, Florida Statutes (2019).* In its motion, the State includes a lengthy statement of probable cause but does not address why it believes that there are no reasonably sufficient conditions of release. The State has not demonstrated why other means, such as bond with the restriction of house arrest, use of an ankle monitor, the imposition of a curfew, or other reasonable restrictions would fail to protect the community. *See: Smith v. State*, 933 So. 2d 689 (Fla. 5th DCA 2006). Therefore, Element Four has not been satisfied.

As it stands, the State’s motion cannot be granted because it fails to satisfy all of the

required elements of Section 907.041(4)(c)(5), Florida Statutes (2020), and is therefore facially insufficient. A finding of facial sufficiency would be a departure from law that would lead to the material injury of Mr. Kessler due to an unlawful pretrial detainment. The State expects this Court to make leaps and bounds based on allegations of mere probable cause to conclude that Mr. Kessler should be detained without bond for the duration of his pretrial proceedings. Such an expectation runs contrary to his presumption of innocence and the lofty burden set forth by the Legislature with respect to pretrial detention. The State has neither alleged nor established that pretrial detention is necessary beyond a reasonable doubt. Therefore, reasonable conditions of pretrial release must be set in accordance with Rule 3.131(b), Florida Rules of Criminal Procedure.

WHEREFORE, Mr. Kessler requests that this Honorable Court deny the State's Motion for Pretrial Detention and set reasonable conditions of pretrial release in this cause.

I HEREBY CERTIFY that a copy of the foregoing objection has been furnished to SCOTT HARMON via e-mail to [!mailprocessingstaff@SAO13th.com](mailto:mailprocessingstaff@SAO13th.com), Assistant State Attorney, Office of the State Attorney of the Thirteenth Judicial Circuit, on this 30th day of November, 2021.

Respectfully submitted,  
LAW OFFICE OF JULIANNE M. HOLT  
PUBLIC DEFENDER

/s/ MARIA G. DUNKER  
Florida Bar # 0084891  
Post Office Box 172910  
Tampa, Florida 33672-0910  
(813) 272-5980  
(813) 388-4267 (fax)  
dunkerm@pd13.state.fl.us

Attorney for ROBERT LEE KESSLER

/dunker\_m