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FACTS

The Petitioner is a twenty-two year old woman who was arrested on July 16, 2008 and charged via arrest form by the Orange County Sheriff's Office. She was charged with one count of Child Neglect, a third degree felony in violation of Fla. Stat. § 827.03(3)(c), one count of False Official Statements, a second degree misdemeanor, in violation of Fla. Stat. § 837.06 and one count of Obstructing a Criminal Investigation, a first degree misdemeanor, in violation of Fla. Stat. § 837.055. *See* Appendix A, Arrest Affidavit. The charges stemmed from the Petitioner's report to local police that her two-year-old daughter had been missing since June 9, 2008. Id. Law enforcement maintained that during the course of their investigation the Petitioner had provided false statements about her employment, the babysitter she claimed she had dropped her daughter off with on the day of her daughter's disappearance, and the location of the apartment where she and her daughter had been living. Id. According to police, the Petitioner admitted to lying about her employment and the location of her

babysitter's apartment.

At an initial first appearance, the Petitioner was held without bond. Subsequently, the Petitioner filed a motion requesting bond. *See* Appendix B, Petitioner's Motion for Bond. At the bond hearing, the Petitioner presented testimony from her parents George and Cindy Anthony and her brother Lee Anthony. *See* Appendix C, Bond Hearing Transcript. Testimony was adduced that the Petitioner had lived in Orlando since the age of three (nineteen years). *See* Appendix C at 8. Also, the Petitioner had never traveled outside of the country and did not own a passport. *See* Appendix C at 59. The Petitioner's parents, brother and grandparents all reside in Orlando. There was no evidence that Petitioner had any prior arrests. The Petitioner requested a $10,000 bond which would have been 10 times the approximate standard bond for her charges.

The State of Florida presented testimony via the lead detective in the case that the Petitioner's parents' car, which had been lent to the Petitioner, was being processed with the consent of George Anthony. *See* Appendix C at 74. An Orange County Sheriff's Office cadaver dog had alerted to the vehicle. *See* Appendix C at 106. The lead detective testified over objection that the smell coming from inside the car was that of decomposition and that hair samples consistent with the Petitioner's daughter's color and length of hair were found in the car as well as an as yet unprocessed stain

and dirt. *See* Appendix C at 76. There was a similar alert by the dog to the Petitioner's backyard. *See* Appendix C at 107. The State Attorney's Office requested a $500,000 bond for the Petitioner. A bond which was 500 times greater than the standard.

After listening to all the evidence presented at the bond hearing, the court made the following findings. With regard to the weight of the evidence as to the charged offenses, the court found this evidence substantial. *See* Appendix C at 126. The court found the circumstances of the offense "absolutely bizarre," and noted that it had considered several of the factors enumerated in Fla. R. Crim. Proc. 3.131(b). *See* Appendix C at 125-126. While the court found the alerts by the cadaver dog to be "troubling" and noted that this would "keep him up at night," the court also found that the defendant posed no danger to anyone but her daughter who was missing. *See* Appendix C at 128. With regards to the Petitioner's financial resources, the court found these to be "nil," *See* Appendix C at 126, and her employment record to be "beyond spotty." *See* Appendix C at Id. With regard to the Petitioner's mental state, the court ordered competency evaluations without objections from either party based on a mental state which it found "difficult to describe." *See* Appendix C at 127. Finally, although acknowledging that the Petitioner was entitled to a reasonable bond, the court assigned what it characterized as a "way high" bond of $500,000 as to the child neglect accusation and $100 each for the other misdemeanors for a total of

$500,200 bond. *See* Appendix C at 129, and Appendix D, Court's Order. As an additional condition the court ordered home confinement with an electronic monitor. *See* Appendix D, Court's Order.[1] The court's justification for this "way high" bond was the fact that the Petitioner's conduct had not changed and that she had not been any help in the police's investigation. *See* Appendix C, at 128.

ARGUMENT

Florida Rule of Criminal Procedure 3.131(a) provides that every person charged with a crime or a violation of a municipal or county ordinance shall be entitled to pre-trial release on reasonable conditions unless charged with a capital offense or an offense punishable by life imprisonment. Depending on a person's financial circumstances, excessive bail can be tantamount to no bail at all. *Rawls v. State*, 540 So.2d 946 (Fla. 5th DCA, 1989)(*citing Good v. Wille*, 382 So.2d 408 (Fla. 4th DCA, 1980) and *State ex rel Bardina v. Sandstrom*, 321 So.2d 630 (Fla. 3rd DCA, 1975). A person charged with a crime is entitled to a reasonable bond and an appellate court will

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[1]The court's oral pronouncement at the bond hearing was just "GPS" but the written order specified "home confinement with electronic monitoring" which is more stringent. To the extent that this discrepancy exists this court should also remand the case and order clarification on this point.

grant relief where a petition demonstrates that the amount of bail is unreasonable under the circumstances. *Winer v. Spears*, 771 So.2d 621 (Fla. 3rd DCA, 2000) (*quoting Brazil v. Jenne*, 755 So.2d 784 (Fla. 4th DCA, 2000).

In the instant case, the bond assigned to the Petitioner was excessive as the court itself acknowledged. The bond given by the court exceeded the standard bond schedule 500 times over. This amount was unjustified in light of a majority of factors elicited at the bond hearing which weigh in Petitioner's favor. First, the Petitioner has lived in the community for nineteen years and her parents, grandparents, and brother all abide in Orlando. Second, the Petitioner has no prior record of arrests. Third, the Petitioner is not a flight risk. Significantly, the Petitioner has never traveled outside of the country and does not even own a passport. While the evidence indicated that the Petitioner waited a long time before reporting her daughter missing, the investigation in the case began because the Petitioner's family went to the police. Clearly, the Petitioner had every opportunity to flee prior to her family contacting the police in reference to her missing daughter and chose to not do so. Fourth, the court found that the petitioner did not pose a danger to the community.

District courts of appeal in Florida have found bonds to be excessive in cases with situations similar to the Petitioners. In *Short v. State*, 550 So.2d 177 (Fla. 5th

DCA, 1989), this court found a $20,000 bail for attempted second degree murder to be excessive in light of the defendant's indigency, family-ties, long term residence in the community and lack of criminal record. Similarly, in *Vetri v. State*, 558 So.2d 1097 (Fla. 5th DCA, 1990), this court also found a $50,000 bond to be excessive and unreasonable for charges of sexual battery on a child under twelve years of age where the defendant had lived and worked in the community for several years, had no prior record, was adjudicated indigent and the state alleged a single act of touching. In the instant case, the charged conduct carries a much lower penalty, yet the Petitioner's bail was set much, much, higher than either of these last two defendants. Cases in other districts also lend support to the Petitioner's position. *Brazil v. Jenne*, 755 So.2d 784 (4th DCA, 2000) (bail in amount of $250.000 was unreasonable and tantamount to no bail where the defendant was a first time offender, had strong ties to the community, resided in the county over forty years and could not afford to post such a high bond); *Mesidor v. Neumann*, 721 So.2d 810 (Fla. 4th DCA, 1998) ($200,000 bail excessive for a defendant charged with sexual battery on a person with a mental defect and kidnapping where the defendant had no property and was a resident of the county for thirteen years and held two jobs); *Cameron v. McCampbell*, 704 So.2d 721 (Fla. 4th DCA, 1998) (bail which exceeded the standard by over five times was unreasonable for defendant charged with six counts of boating under the influence manslaughter where

defendant could not afford the bond); *Alvarez v. Crowder*, 645 SO.2d 63 (Fla. 4th DCA, 1994) (one million dollar bond for defendant charged with trafficking in cannabis over 100 pounds was excessive where defendant had no priors, was long term resident of community, had strong family and business ties to community and was financially stable); *see also Rawls v. State*, 540 So.2d 946 (Fla. 5th DCA, 1989); *Rodriguez v. McRay*, 871 So.2d 1001 (Fla. 3rd DCA, 2004).

Florida Statute § 903.046(1) clearly states that the purpose of a bail determination is to ensure the appearance of a criminal defendant at subsequent proceedings and to protect the community against unreasonable danger from the criminal defendant. While her case has drawn a significant amount of media attention, the Petitioner is **not** accused of orchestrating her daughter's disappearance. There are certainly other methods which could ensure her presence at future court dates which are not as onerous as the bond which was set by the court. Notably, the electronic monitoring of the Petitioner would ensure her presence at future court hearings. It bears repeating that the Petitioner has not exhibited behavior consistent with being a flight risk. She clearly had opportunities to abscond before the police became aware of her daughter's disappearance, yet chose not to do so. Additionally, the Petitioner's family initiated contact with the police in this case in the presence of the petitioner. Bond may not be used to punish an accused. *Rodriguez v. McRay*, 871

So.2d 1001 (Fla. 3rd DCA, 2004).

Finally, the court is required to consider the financial resources of the accused in setting bail. Here, the court found these financial resources to be "nil." The bond entered in this case, **approximately 500 times higher than the standard bond** is, in fact, tantamout to no bond for someone with the Petitioner's financial resources.

In light of the facts adduced at her bond hearing which weighed in favor of a much lower bond, and existence of effective methods to ensure the Petitioner's appearance at future court dates via electronic monitoring, the court's unreasonably high bond is excessive. The court's reasoning that such a high bond was warranted due to the Petitioner's unwillingness to assist authorities falls far short of justifying the excessive bail in light of all the other factors considered by the court. In and of itself, the fact that the petitioner did not assist authorities in their investigation is part and parcel of the offenses with which she is charged and such behavior is taken into account in determining the standard bond schedule; which while it does not control the court's decision, should at least serve as a guide. Thus, this reason is insufficient to justify a bond as elevated as the one here.

CONCLUSION

For the foregoing reasons, this court should grant the Petitioner's writ and enter an order directing the lower court to set a bond in the amount requested below:

$10,000.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished via U.S. Mail and fax to the following:

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CERTIFICATE OF FONT

I hereby certify that a true and correct copy of the foregoing Petition for Writ of Habeas Corpus was generated in Times New Roman, 14 point font, pursuant to Fla. R. App. Proc. 9.210.

Jose A. Baez
Attorney for Petitioner

/s/ Michael Walsh
Michael Walsh
Co-counsel for Petitioner

/s/ Michelle Walsh
Michelle Walsh
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