

STATE OF NEW YORK
WASHINGTON COUNTY SUPREME COURT

THE PEOPLE OF THE STATE OF NEW YORK, EX REL.
KURT MAUSERT, ESQ. ON BEHALF OF KEVIN MONAHAN

PLAINTIFF/PETITIONER

OPPOSITION TO APPELLANT'S
CPLR 7002 MOTION

-against-

EC2023-35243

JEFFREY MURPHY, WASHINGTON CO, SHERIFF'S DEPT, AND JAIL,
AND J. ANTHONY JORDAN, WASHINGTON CO. DISTRICT ATTORNEY

DEFENDANT/RESPONDENT

J. Anthony Jordan, Esq., District Attorney for the County of Washington, hereby affirms
under penalty of perjury:

1. I am the District Attorney for the County of Washington. As such, I am fully familiar with
the facts and circumstances surrounding this matter.
2. I make this affirmation in opposition upon information and belief. The source of this
information and basis for belief is a review of files maintained by the Washington County
District Attorney's Office and applicable law.

The Standard of Review

3. "The action of the bail-fixing court is nonappealable but may be reviewed in a habeas
corpus proceeding if it appears that the constitutional or statutory standards inhibiting

excessive bail or the arbitrary refusal of bail are violated” (People ex rel. Rosenthal on Behalf of Kolman v Wolfson, 48 NY2d 230, 232 [1979]). “It is not the function of the habeas court to examine the bail question afresh or to make a de novo determination of bail. The scope of inquiry is whether or not the bail court abused its discretion by denying bail without reason or for reasons insufficient in law” (People ex rel. Kuby ex rel. Jordan v Merritt, 96 AD3d 607, 608 [1st Dept 2012] *see* CPLR 7010[b]). When the record shows that the bail court considered the applicable statutory factors and the “denial [of bail] is supported by the record, it is an exercise of discretion resting on a rational basis and thus beyond correction in habeas corpus” (People ex rel. Parker v Hasenauer, 62 NY2d 777, 778 [1984]).

4. When making a bail determination pursuant to CPL 510.30(1), a court must take into account information about the defendant’s return to court including the following factors:
- a. The principal's activities and history
 - b. The charges facing the principal
 - c. The principal's criminal conviction record if any
 - d. The principal's record of previous adjudication as a juvenile delinquent
 - e. The principal's previous record with respect to flight to avoid criminal prosecution
 - f. If monetary bail is authorized, according to the restrictions set forth in this title, the principal's individual financial circumstances, and, in cases where bail is

authorized, the principal's ability to post bail without posing undue hardship, as well as his or her ability to obtain a secured, unsecured, or partially secured bond

- g. Any violation by the principal of an order of protection issued by any court
- h. The principal's history of use or possession of a firearm
- i. Whether the charge is alleged to have caused serious harm to an individual or group of individuals
- j. If the principal is a defendant, in the case of an application for a securing order pending appeal, the merit or lack of merit of the appeal.

CPL 510 does not mandate a court give any factor more or less weight than another factor. The factors set forth in CPL 510.30 are not exhaustive and a Court need not address every factor on the record when rendering its decision (*see People ex rel. Griffin v Brann*, 72 Misc 3d 237, 248 [Bronx Co Sup Ct 2020]). “[W]here the parties’ bail argument *already* makes reference to the applicable legal standards for bail, there should be even less need for the court to repeat or paraphrase those standards in its ruling. ‘A court need not engage in a ritualistic incantation in order to establish its consideration of a legal issue. It is sufficient if ... [the court] rules on issues that have been fully presented for determination. *Consideration is implicit in the court's ruling*’” (*Id. quoting United States v Davis*, 53 F3d 638, 642 [4th Cir 1995]).

- 5. This Court’s role in the current motion is not to make an independent bail determination. (*see People ex rel. Kuby ex rel. Jordan v Merritt*, 96 AD3d 607, 608 [1st Dept 2012]). Rather it is to determine if County Court’s denial of bail was a sound exercise of discretion based on the factors enumerated in CPL 510.30(1) and supported by the record

(see People ex rel. Fischetti v Brann, 166 AD3d 29, 38 [1st Dept 2018]). In this case, the record shows that County Court considered the statutory bail factors and there was a rational basis for the denial of bail. As such, County Court's decision should be upheld (see People ex rel. Parker v Hasenauer, 62 NY2d 777, 778 [1984], see People ex rel. Hunt by Scaring v Warden, Ricker's Is. Correctional Facility, 161 AD2d 475 [1st Dept 1990]).

Statement of Facts

6. On the night of April 15, 2023, 20-year-old Kaylin Gillis and her friends were travelling to a friend's house in Hebron, New York. Kaylin Gillis was the passenger in a car with three other people. It was dark, and there was no cell phone service. While travelling on Patterson Hill Road, Kaylin Gillis and her friends drove onto the Defendant's driveway, mistaking it for their friend's house. Upon learning they were at the wrong house, Kaylin Gillis and her friends turned their vehicles around and began to leave.
7. The Defendant, armed with a shotgun, exited his house. He fired two shots while the cars were driving away, at least one of which was aimed at the car Kaylin Gillis was in. That shot hit and killed Kaylin Gillis.
8. On April 16, 2023, the Defendant was charged with one count of Murder in the Second Degree, a Class A Felony in violation of PL 125.25(1). The Defendant was arraigned in Fort Edward Town Court and remanded without bail because a local court cannot set bail on a Class A Felony (see CPL 530.20[2][a][i]).

9. The Defendant hired attorney Kurt Mausert to represent him. In an interview with the media Mr. Mausert stated on behalf of his client:

The situation where we have an elderly gentleman and his elderly wife living out in the dark woods in Washington County with three vehicles that come roaring into his driveway at a high rated speed, shined their lights at his house, and not leaving when he turns on the floodlights. So, certainly there was cause for an element of fear on Mr. Monahan's part.

10. On April 19, 2023, the Defendant appeared in the Washington County Court before the Honorable Adam Michelini for a Bail Hearing.

11. The Defense acknowledged that the Defendant was charged with a bail eligible defense. The Defense argued that the Defendant had no "Penal Law convictions," has ties to the community, owns his own home, and is a business owner. The defense asked for bail to be set in amount that was not unduly harsh.

12. The People's argument began with an explanation that CPL 510.30 provides the criteria for the Court to consider in making a bail determination. The People then went through the factors in CPL 510.30 relevant to this matter.

Defendant's Activities and History

13. The People informed the Court that the defendant had a recent incident at the Department of Motor Vehicles where he was observed yelling at customers and taking pictures of staff. The People argued that this showed he was impulsive and more likely to make the impulsive decision to flee. The Court stated on the record that it was not considering this argument in its decision.

The Nature of the Charges

14. The People stated that the Defendant is charged with Murder in the Second Degree, a Class A Violent Felony, the highest level of offense in the state. If convicted his minimum sentence would be 15 years to life in prison. The People urged County Court to consider the significance of this: Defendant, who is 65 years old, is a risk of flight because a conviction to this charge would likely result in him spending the rest of his life in prison even if he received the minimum sentence.

15. The evidence of guilt is also strong. The Defendant's attorney has not denied that the Defendant fired the shot that killed Kaylin Gillis. The Defendant's attorney has claimed that the Defendant was fearful of cars being in his driveway. However, deadly physical force may only be used when the actor believes another person is using or about to use deadly physical force or the use of deadly physical force is necessary to prevent a home burglary (*see* PL 35.15, 25.20). As the Defendant shot at Kaylin Gillis while her vehicle was driving away from the house, these defenses will not be available. There is no viable Defense for shooting and killing Kaylin Gillis.

Defendant's Criminal Conviction Record

16. In response to the Defendant stating he had no prior penal law convictions, the People noted that the Defendant was convicted of a DWI in 1980. The People also noted that the Defendant had been charged with Aggravated Assault with a Weapon in Vermont in 2001, and which was dismissed in 2002. The Court stated on the record that it was not considering this argument in its decision.

The Defendant's Individual Financial Circumstances

17. The Defendant has significant financial means. He owns his own home free and clear of a mortgage and that home is assessed at \$250,000. Per the Defendant, he also owns a business and property in Warren County. The People noted that this not only means the Defendant has the means to post a large amount of bail but that he has the financial means to flee the jurisdiction if released to avoid a lengthy minimum prison sentence.

Defendant's History of Use or Possession of a Firearm

18. The People argued that the use of possession of a firearm was a factor that the legislature determined made someone less likely to return to court. The People argued that the Defendant used a firearm to shoot and kill Kaylin Gillis, making this the most serious type of offense involving a firearm.

Level of Harm Caused by the Offense

19. The People also noted that the legislature determined that a person who causes harm to another is more likely to flee prosecution. The People argued that the Defendant is charged with murder, meaning he caused the most serious harm possible to another person and therefore is the most likely to flee.

20. The People's argument concluded that, pursuant to CPL 510.30(1)(a), (b), (c), (f), (h), and (i), the Defendant was a flight risk. The People asked that the Defendant be remanded without bail or, if the Court were inclined to set bail, the People argued that it should be in the amount of \$250,000 cash, \$500,000 bond, or \$1,000,000 partially

secured bond. The People also requested that if this bail was posted that the Defendant be held on house arrest monitored by GPS.

21. In explaining its findings, County Court noted that it must impose the least restrictive means to assure the Defendant's return to Court. The Court then stated it was relying on the factors set forth in Criminal Procedure Law 510.30. Regarding CPL 510.30(1)(a) and (c), County Court stated that it would not consider the People's arguments relating to the Defendant's outburst at the Department of Motor Vehicles or his criminal history in weighing the factors and making a bail determination.

22. Regarding CPL 510.30(1)(b), County Court stated the Defendant faced a life sentence if convicted and that this was a factor against releasing him on bail.

23. County Court then held that CPL 510.30(1)(h) and (i) supported a finding that the Defendant was a flight risk, finding that Defendant was charged with using a firearm to commit murder. The use of a firearm was a bail factor as was the level of harm caused. County Court concluded that the Defendant was a flight risk and that remanding the Defendant without bail was the only way to assure his appearance in Court.

24. The Defendant now makes the current motion.

**County Court Did Not Abuse Its Discretion When the Defendant
Was Remanded Without Bail**

25. The Defendant first argues that the "single charge facing Mr. Monahan is not probative of a risk of flight" because he is not charged with Escape, Bail Jumping, or a similar

offense. This argument is without merit. In 2020, the New York bail statute was reformed, requiring a court to impose the least restrictive means to assure a defendant's return to court (CPL 510.10[1]). This change has resulted in limited controlling case law regarding bail determinations. The potential life sentence renders the Defendant a flight risk because "[i]t is apodictic that he is much more likely to abscond when facing 25 years-to-life in prison than up to one year in jail" (People v Shafer, 74 Misc 3d 405, 415 [Ulster Co Ct 2021]). "The nature of the charges and the possible sentence faced by the principal, in this instance a mandatory life sentence, may therefore be considered by the bail court, as they are unquestionably factors that are relevant to the risk of flight. It would be naive to think otherwise" (State ex rel. Rooney v Brann, 68 Misc 3d 679, 681-82 [Kings Co Sup Ct 2020]).

26. The Defendant further argues that County Court "focused almost exclusively upon [CPL 510.30(1)] (h), [the use of a firearm] & (i), [the harm caused to another person] and disregarded the other [CPL 510.30(1)] factors." County Court was required to explain its choice of remand on the record (*see* CPL 510.10[1]). To hold that a court must place favorable bail factors on the record when remanding a defendant without bail would be to hold that a court must engage in a ritualistic incantation of the CPL 510.30(1) bail factors (*see* People ex rel. Griffin v Brann, 72 Misc 3d 237, 248 [Bronx Co Sup Ct 2020]).

27. The Defendant argues only that improper weight was given to certain factors, not that the statutory criteria was ignored. The record establishes which factors were present for County Court to consider, which factors the court considered in its decision, and the weight each factor was given. It is implied that County Court considered each factor of


the statute and each argument raised by the Defendant and by the People except for the arguments County Court stated explicitly they were not considering (*see United States v Davis*, 53 F3d 638, 642 [4th Cir 1995]). Contrary to the Defendant's assertion, this argument is an acknowledgement that the County Court considered the applicable statutory provisions and that there is a basis in the record to support the decision.

28. "Where the record shows that the bail court considered the [applicable statutory] factors ... and the denial [of bail] is supported by the record, it is an exercise of discretion resting on a rational basis and thus beyond correction in habeas corpus" (*People ex rel. Fischetti v Brann*, 166 AD3d 29, 38 [1st Dept 2018]). In analyzing if a court abused its discretion, the Court of Appeals has held, "if the courts below considered the various relevant factors in making such a determination, there has been no abuse of discretion reviewable by this Court, **even if we would have weighed those factors differently**" (*Estate of Kainer v UBS AG*, 37 NY3d 460, 467 [2021], *emphasis added*). In *Estate of Kainer*, the Court of Appeals had to determine if a trial court's decision on a *forum non conveniens* motion was an abuse of discretion. The Appellate Division, Third Department, In *Cooperstown Eagles, LLC v Vil. of Cooperstown Zoning Bd. of Appeals*, 161 AD3d 1433, had to determine if a zoning board's decision was an abuse of discretion. The Court concluded, "[c]ourts, however, should not engage in their own balancing of the factors, but must yield to the [zoning board's] discretion and weighing of the evidence, **even if the court would have decided the matter differently in the first instance.**" (*emphasis added*).

29. The Defendant argues that County Court gave too much weight to factors (h) and (i) of CPL 510.30(1) and not enough weight to other factors. This alleged error is beyond the scope of habeas review. County Court considered the appropriate statutory factors and placed its reasons for remand on the record, finding that the Defendant was a flight risk because he was facing a life sentence, used a firearm, and caused the death of another person (*see* CPL 510.30[1][b],[h], and [i]). County Court also placed on the record that it was not considering certain arguments made by the People. Even if this reviewing Court would have ruled differently, it should not rule that County Court's decision was an abuse of discretion because there is a rational basis on the record to support County Court's decision (*see* Estate of Kainer v UBS AG, 37 NY3d 460, 467 [2021], People ex rel. Fischetti v Brann, 166 AD3d 29, 38 [1st Dept 2018]).

30. The Defendant faces a strong likelihood of being sentenced to life in prison. He fired a shotgun at a car that was driving *away* from Defendant's home, killing Kaylin Gillis. County Court exercised its discretion and denied the Defendant bail because of the nature of the charges, the use of a firearm, and the harm caused. The decision to remand the Defendant was not an abuse of discretion.

Dated: May 2, 2023



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STATE OF NEW YORK

COUNTY COURT

COUNTY OF WASHINGTON

THE PEOPLE OF THE STATE OF NEW YORK

COMMITMENT

-VS-

KEVIN D. MONAHAN (10/28/1957)

Bail – Town of Hebron

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK:

TO THE SHERIFF OF THE COUNTY OF WASHINGTON (WARREN) - GREETINGS:

An order having been made this day, by the Washington County Judge, that the above named defendant be held to answer to the Hebron Town Court upon charges of:

MURDER IN THE SECOND DEGREE, A-1 FELONY, PL-125.25-01

YOU ARE COMMANDED to receive him into your custody and detain him until he be legally discharged.

Date: April 19, 2023


CLERK

Defendant is remanded to the Washington (Warren) County Sheriff's Department without bail.