

October 1, 2020

VIA U.S. MAIL

The Honorable Robert R. Wheeler
Second Judicial Circuit Court Judge
Leon County Courthouse
301 S. Monroe Street, Room 365-K
Tallahassee, FL 32301

Re: *State of Florida v. Katherine D. Magbanua*, No. 16-CF-3036

Dear Judge Wheeler:

We represent the family of Dan Markel—his mother Ruth, his father Phil, and his sister Shelly. On behalf of the Markel family, we respectfully submit this letter to oppose Katherine Magbanua’s motion for pretrial release.

More than six long years after Dan Markel was brutally murdered outside his home, justice has only partially been served. His boys are growing up without their father, and his parents are spending their elder years in searing pain, mourning the death of their son and the loss of their beloved grandchildren. There is still far more work to be done to ensure that every person responsible for Dan’s brutal murder is held accountable. The upcoming retrial of Ms. Magbanua is an important step on the path to justice for Dan, his family, the countless friends, colleagues, and loved ones who continue to mourn him around the world, and the public.

During Ms. Magbanua’s trial last fall, the State presented a mountain of evidence proving that Ms. Magbanua played an integral role in the conspiracy to murder Dan. Ms. Magbanua’s co-conspirator Sigfredo Garcia was convicted of first degree murder and conspiracy to commit murder, and we are confident that Ms. Magbanua will be convicted at the retrial. If Ms. Magbanua were released pending retrial, there is a significant risk that she would flee, attempt to influence witness testimony or otherwise tamper with trial evidence, and/or conspire with or be influenced by members of the Adelson family. These are many of the same reasons Judge Hankinson already twice ruled that Ms. Magbanua was not entitled to bond or pretrial release—including after the first trial—and the First District Court of Appeal denied Ms. Magbanua’s petition for habeas corpus challenging her pretrial detention.

GIBSON DUNN

Circuit Judge Robert R. Wheeler
October 1, 2020
Page 2

See Magbanua v. McNeil, 230 So. 3d 832 (Fla. 1st Dist. Ct. App. 2017). Those reasons are even more compelling today.

Flight Risk. Ms. Magbanua is a quintessential flight risk. She faces charges of first degree murder, conspiracy to commit murder, and solicitation to murder, and the real prospect of decades in prison isolated from her family. The evidence against Ms. Magbanua at her first trial was overwhelming, as was the jurors' reported vote in favor of conviction. Ms. Magbanua has also been able to finance (whether alone or with the support of unknown others) representation by two private Miami-based defense attorneys for four years, and therefore has the financial means to flee.

Witness and Evidence Tampering. There is a substantial risk that Ms. Magbanua would attempt to influence trial testimony or otherwise tamper with trial evidence. Facing the prospect of an effective life sentence and a near-certain conviction, Ms. Magbanua has every incentive to intimidate or otherwise influence witnesses who will testify at her retrial. Ms. Magbanua has a personal relationship with certain witnesses—for example, Yindra Velazquez Mascaro, who has been Ms. Magbanua's friend since childhood and testified as the State's witness at trial. And recorded telephone calls played at Ms. Magbanua's first trial, as well as the other evidence of Ms. Magbanua's central role in Dan's murder, demonstrate that she is capable of heinous violence toward others.

The Adelson Family. There is a substantial risk that Ms. Magbanua would conspire with and/or be influenced by members of the Adelson family. In our opinion, at the first trial the State presented overwhelming evidence that Ms. Magbanua was the critical connection between the men who gunned down Dan in his own garage (Mr. Garcia and Luis Rivera) and the members of the Adelson family who allegedly commissioned Dan's murder. Ms. Magbanua was Charlie Adelson's former girlfriend, and the evidence linking Ms. Magbanua to Charlie and Donna Adelson in connection with Dan's murder is, in our view, overwhelming. For example, in the days and weeks before the murder, Ms. Magbanua and Charlie Adelson were in frequent contact with each other. Ms. Magbanua often communicated with Mr. Garcia, and Charlie Adelson with Donna Adelson, in close proximity to those calls. In the 90 minutes immediately after Dan's murder, again, Ms. Magbanua communicated with both Charlie Adelson and Mr. Garcia; Mr. Adelson and Donna Adelson also spoke during that same time period. And in the weeks and months after Dan's murder, Ms. Magbanua received thousands of dollars from the Adelsons, including "paychecks" for a no-show job and a car. And of course, no plausible explanation has ever been offered as to why Mr. Garcia and Mr. Rivera—two gangsters from South Florida who had no connection to Dan whatsoever—would have killed Dan, other than the obvious one:

GIBSON DUNN

Circuit Judge Robert R. Wheeler
October 1, 2020
Page 3

that they were hired by members of the Adelson family through Ms. Magbanua, the only known connection between each side of the murder-for-hire conspiracy.

In our opinion, the State has presented overwhelming evidence demonstrating that members of the Adelson family orchestrated Dan's murder. Releasing Ms. Magbanua now would present a significant risk that she would conspire with, or otherwise be influenced by, members of the Adelson family. There is a substantial risk that Ms. Magbanua and members of the Adelson family would strategize, coordinate defenses, script testimony, or work together to influence other witnesses. Alternatively, members of the Adelson family could harm, threaten, bribe, or otherwise attempt to influence Ms. Magbanua and/or members of her family. Indeed, during the first trial, Ms. Magbanua admitted on the stand that she too believed Charlie Adelson was involved in Dan's murder. Her release now would place her at obvious risk of physical and/or financial harm. Any of these scenarios would threaten the integrity of both Ms. Magbanua's retrial as well as any ongoing criminal investigations of members of Adelson family and other potential unindicted co-conspirators.

In sum, all of these factors—the weight of the evidence against Ms. Magbanua, the serious felony offenses with which she is charged, the lengthy prison sentence she faces, the risk that she would flee, the risk that she would influence trial testimony, and the risk that she would conspire with or be influenced by members of the Adelson family—compel the denial of Ms. Magbanua's motion for pretrial release. *See, e.g., Dollar v. State*, 909 So. 2d 399, 401 (Fla. Dist. Ct. App. 5th Dist. 2005) (holding that trial court properly denied motion for bond because “the weight of evidence against the [defendants] is substantial,” their “offenses are serious,” “there was evidence to conclude that they are a flight risk,” and “there is a probability of . . . intimidation of [witnesses]”).

In the more than six years since Dan was brutally murdered, the Markel family has endured unfathomable grief and loss. Their only son was stolen from them, and members of the Adelson family have not allowed them to see their grandchildren—Dan's two young boys—in more than four years. Throughout this horror, the Markels continue to fight for complete justice for their son and to be reunited with their grandsons. The interests of the public and of the Markel family, as victims of this heinous crime, compel the denial of Ms. Magbanua's motion for pretrial release.

We believe it is imperative that the Court has an opportunity to hear the Markel family's concerns before ruling on Ms. Magbanua's motion for pretrial release and would respectfully request the opportunity to address the Court directly at any hearing. *See Fla. Const. Art. I, § 16(b)(6)(b)* (victims have “the right to be heard in any public proceeding involving pretrial or other release from any form of legal constraint, plea, sentencing, adjudication, or parole, and any proceeding during which a right of the victim is implicated”); *Baugh v. State*, 253

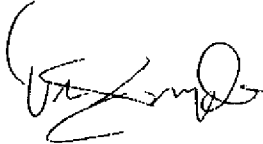
GIBSON DUNN

Circuit Judge Robert R. Wheeler
October 1, 2020
Page 4

So. 3d 761, 764 (Fla. Dist. Ct. App. 1st Dist. 2018) (“Our state constitution establishes that a victim’s rights include the rights to be present ‘and to be heard when relevant’ during ‘all crucial stages of criminal proceedings’” (quoting Fla. Const. Art. I, §16(b)).

We thank the Court for its kind consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Orin Snyder", written in a cursive style.

Orin Snyder

A handwritten signature in black ink, appearing to read "Matthew Benjamin", written in a cursive style.

Matthew Benjamin