

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

KAMARI GARDNER,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

No. 4D2026-1494

[August 26, 2026]

Petition for Writ of Habeas Corpus to the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Edward Harold Merrigan, Jr., Judge; L.T. Case No. 062026CF001093A88810.

Matthew Rogoff of Rier Jordan, P.A., Miami, for petitioner.

James Uthmeier, Attorney General, Tallahassee, and Sorraya M. Solages-Jones, Senior Assistant Attorney General, West Palm Beach, for respondent.

MAY, J.

The defendant petitions for a writ of habeas corpus from an order denying him bond in an attempted first-degree murder case. The defendant argues the trial court erred in finding the “proof evident or the presumption great” and in refusing to allow him to present witnesses to testify to his amenability to release. For the reasons discussed more fully below, we grant the petition.

The shooting in this case took place at night in a club’s parking lot. The incident involved a dispute between two groups of individuals and was captured on surveillance video without audio. The State arrested the defendant for attempted second-degree murder but ultimately charged him with attempted first-degree murder. The defendant moved to modify bond pursuant to *State v. Arthur*, 390 So. 2d 717 (Fla. 1980). The trial court held two hearings on the motion.

At the initial hearing, the State relied upon police affidavits, the victim’s recorded statement, and the surveillance video. The State focused on what

it saw as key facts in the video to support its claim that “the proof of guilt [of “an offense punishable by life imprisonment”] is evident or the presumption is great.” Art. I, § 14, Fla. Const.

Defense counsel responded that the video did not establish the proof was evident or the presumption great because the defendant’s use of deadly force was justified in accordance with section 776.012, Florida Statutes (2024). Alternatively, defense counsel argued the only offense that was conceivably proven was attempted manslaughter. The defense insisted that the video showed an “impulsive overreaction to an attack or injury” that was “insufficient to prove ill will, hatred, spite, or evil intent,” let alone premeditation, citing *Dorsey v. State*, 74 So. 3d 521, 524 (Fla. 4th DCA 2011). Defense counsel argued the State failed in its proof and the law required the trial court to set a reasonable bond.

The trial court informed the parties that it intended to continue the hearing to review the video and evidence, given the arguments. Defense counsel reminded the court that it could not make a definitive ruling without hearing “Phase Two” evidence and that about a dozen witnesses were there to testify on the defendant’s amenability to release.

At the next hearing, the defendant’s witnesses were again present. Before either party addressed the matter, the trial court announced there was a “substantial probability” the defendant committed the offense, and the court would continue to hold him without bond. Subsequently, the trial court entered an “Order on State’s Motion to Hold the Defendant No Bond.” That order contained limited findings of fact but concluded “the State has shown that as to the Defendant . . . , proof of guilt is evident and that presumption is great that the Defendant [sic]. The Court is declining to exercise its discretion and will not set a bond in this case.”

From this order, the defendant petitions this court. He argues the proof of guilt of attempted first-degree murder, “an offense punishable by life imprisonment,” was not evident because he has a viable self-defense claim and the evidence supports attempted manslaughter at best. The defendant continues to argue the trial court improperly refused to allow the defendant to call his many witnesses to testify to his amenability to release.

The State responds the trial court properly found the proof evident or the presumption great in denying the defendant’s motion for bond.

A defendant has no constitutional right to pretrial release when charged with a capital offense or offense punishable by life if “the proof of guilt is

evident or the presumption great,” but the trial court nonetheless retains the discretion to grant pretrial release. *Arthur*, 390 So. 2d at 717.

The proof necessary to deny bond is “greater than that required to establish guilt beyond a reasonable doubt.” *Elderbroom v. Knowles*, 621 So. 2d 518, 520 (Fla. 4th DCA 1993).

The defense correctly argues that *Arthur* specifically provides a defendant with the opportunity to present evidence of his amenability to release. When a trial court cuts the hearing short, the defendant is deprived of his full *Arthur* hearing.

As we did in *Brackett v. State*, 773 So. 2d 564, 565 (Fla. 4th DCA 2000), we grant the petition for writ of habeas corpus and remand the case to the trial court to hold a new bond hearing where the defendant is afforded:

[the] opportunity to present witnesses pertaining to all aspects of the bond issue, including whether his guilt is evident or the presumption is great. The testimony may also concern petitioner’s amenability to bond, which is addressed to the court’s discretionary decision as to whether bail should or should not be allowed. After allowing petitioner to present such testimony, the trial court shall determine petitioner’s application for bond on the merits.¹

Petition granted.

FORST and SHAW, JJ., concur.

* * *

Not final until disposition of timely-filed motion for rehearing.

¹ We decline to require the appointment of a new judge as requested.