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**IN THE THIRD JUDICIAL DISTRICT COURT,  
SUMMIT COUNTY, STATE OF UTAH**

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STATE OF UTAH,  
Plaintiff,

v.

KOURI DARDEN RICHINS,  
Defendant.

**MOTION TO SET CONDITIONS FOR  
RELEASE**

Cause No. 231500139

Judge: Richard Mrazik

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KOURI DARDEN RICHINS (“Kouri”), by and through Skye Lazaro of Ray Quinney & Nebeker, P.C. and counsel of record, moves the Court, pursuant to Article I, Section 8 of the Utah Constitution, Utah Code Ann. § 77-20-205 and her previously filed *Motion to Consider Defendant’s Constitutional Right To Bail*<sup>1</sup> to set conditions for her release, including the setting of monetary bail if the court deems appropriate.

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<sup>1</sup> Docket no. 17, filed May 15, 2023.

In light of the facts, circumstances, and law unique to this case, Kouri requests that the Court consider her pretrial release and set conditions for her release. In doing so, this Court can order such conditions as electronic monitoring or other supervision that will satisfy any concerns the Court or the State may have. In support of this motion, Kouri states as follows:

### **BACKGROUND**

1. Kouri has lived in the State of Utah for more than twenty (20) years.
2. Kouri met Eric Richins (“Eric”) in March 2009.
3. Kouri and Eric quickly developed a relationship and began living together in June 2009.
4. In January 2012, Kouri and Eric became engaged to be married, and their first child was born in July 2012.
5. In November 2012, they purchased the home located at 282 Willow Court in Summit County (the “Family Home”). While legal title was put only in Eric’s name, Kouri also contributed her separate funds to the down payment. *See* Objections and Responses to Defendant Katie Richins-Benson’s First Set of Discovery Requests to Plaintiff Kouri Richins, Answer to Interrog. No. 2 and corresponding America First Credit Union Bank Statements, collectively attached as Exhibit 1. Under Utah law, legal title is not dispositive of ownership. *See, e.g., Bradford v. Bradford*, 1999 UT App 373, ¶ 26, 993 P.2d 887 (explaining that trial courts have “broad equitable power to distribute marital property, regardless of who holds title”).
6. Kouri and Eric were then married on June 15, 2013.

7. On the date of their wedding, they executed a premarital agreement (the “Prenup”). A copy of the Prenup is attached as Exhibit 2. The first time that Kouri learned of or saw the Prenup was when Eric’s mother presented it to her moments before she walked down the aisle.

8. Exhibit A to the Prenup is titled “Summary of Significant Separate Property of Husband” and was meant to provide a “summary of [Eric’s] assets and debts.” Exhibit A further provided that it was intended to “give a fair, reasonable, and adequate disclosure of the assets of [Eric] by category.” Under his assets, Eric listed his interest in C&E Stone Masonry, LLC (“C&E”), a forklift, skid steer, scaffolding and saws, two trucks, and a dump trailer. Eric listed no other assets. In particular, Eric did not identify the Family Home as separate, premarital property.

9. While the Prenup also states that Kouri and Eric “do not now have, possess, or claim any right or interest in the present or future income, property, or assets of the other,” it is well-established under Utah law that separate property can become marital property when it has been commingled; when the other spouse has augmented, maintained, or protected the separate property; and when it is fair, just, and equitable. *See Keiter v. Keiter*, 2010 UT App 169, ¶ 22, 235 P.3d 782. From at least September 2013 to March 2022, the mortgage on the Family Home and virtually all upkeep, maintenance, and improvements were paid using Kouri and Eric’s joint funds from joint financial accounts.

10. Kouri and Eric had three children during their marriage.

### **FINANCIAL ALLEGATIONS**

11. On September 5, 2013, Eric designated Kouri as a joint owner of an America First Credit Union (“AFCU”) account ending in 2204 (the “2204 Account”). *See* Membership Joint Owner Designation, attached as Exhibit 3. The 2204 Account was the main financial account that

Kouri and Eric used throughout their marriage. However, they also had several other joint accounts at AFCU. In addition, they used several credit cards during their marriage from at least the following financial institutions: Bank of America; American Express; and Capital One (Cabela's credit card). These credit cards were joint credit cards and/or connected to the 2204 Account.

12. Pursuant to AFCU's Membership & Account Agreement, "[a]ny joint account owner is authorized and deemed to act for the other owner(s). . . . Any account owner, including any joint owner, may withdraw all funds and/or close the account, stop payment on items drawn on the account, withdraw, or pledge all or any part of funds in the account, without the consent of the other account owner(s). . . ." See America First Credit Union Membership & Account Agreement § I(4)(c), attached as Exhibit 4.

13. Similarly, under Utah law, financial accounts acquired during a marriage and/or containing commingled funds constitute marital property to be equally distributed between spouses. See *Sandusky v. Sandusky*, 2018 UT App 34, ¶¶ 15-19, 417 P.3d 634; *Duffin v. Duffin*, 2022 UT App 60, ¶ 23, 511 P.3d 1240 ("Marital property is ordinarily all property acquired during marriage and it encompasses all of the assets of every nature possessed by the parties, whenever obtained and from whatever source derived.").

14. The Amended Information alleges that Kouri withdrew \$100,000 from Eric's bank accounts and spent in excess of \$30,000 on Eric's credit cards. While the specific accounts and credit cards remain unclear, to the extent any such money was withdrawn from the 2204 Account or any other account held jointly by Kouri and Eric, and to the extent any credit card charges were on joint credit cards or credit cards linked to a joint account, all such funds were equally owned by Kouri and Eric. In other words, they were not just Eric's accounts.

## **ERIC'S RELATIONSHIP WITH CODY WRIGHT**

15. On October 1, 2010, Eric and Cody Wright ("Cody") formed C&E.

16. Eric and Cody each held a 50% interest in C&E.

17. In addition to being business partners, Eric and Cody were friends outside of work.

18. In September 2016, Eric invited Cody to go hunting with him on a property that Eric owned in northern Utah.

19. On September 10, 2016, Eric shot a bull elk despite the fact that he had already filled his 2016 elk permit. As a result, Eric requested that Cody tag the elk with his unfilled 2016 elk permit, and Cody complied.

20. Cody subsequently reported the occurrence to law enforcement, which resulted in Eric being charged with Wanton Destruction of Protected Wildlife, a Class A Misdemeanor. After reporting the unlawful tag, Cody was interrogated by law enforcement. During the interrogation, he made multiple statements criticizing or otherwise calling into question Eric's character. An investigation conducted by the Division of Wildlife Resources included a witness interview that provided evidence Eric had been unlawfully obtaining tags in Linda Richins' name, having them mailed to his residence and filling them without her knowledge between 2003-2007 and again between 2009-2012.<sup>2</sup>

21. In addition to Eric being charged with a Class A Misdemeanor, the Division of Wildlife Resources revoked Eric's big game hunting privileges for a period of eight years, effective June 3, 2019, to June 3, 2027. Eric appealed the decision to the Utah Wildlife Board and

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<sup>2</sup> Department of Nat. Res. Case No. 2017-001986, Incident Report pg(s) 5, 10. These allegations were not prosecuted likely due to being time barred by the Statute of Limitations.

subsequently entered into a stipulation and order, which suspended Eric’s hunting privileges for a period of four years and eight months, running from June 3, 2019, to March 1, 2024. As an avid hunter, this was devastating to Eric.<sup>3</sup>

22. As a result of Cody reporting Eric to law enforcement and calling into question Eric’s character, their relationship was never the same. While they remained business partners, Eric’s trust in Cody deteriorated significantly, and he did not believe that Cody had his best interest at heart.

23. On or about August 23, 2023 C & E Stone Masonry, LLC was ordered to pay \$602,745 after an investigation by the U.S. Department of Labor found the company violated overtime rules by paying workers straight time for all hours worked. The company was additionally cited for failing to maintain records of hours worked each day and week, as required by the Fair Labor Standards Act.<sup>4</sup>

### **ERIC’S DRUG AND ALCOHOL USE**

24. Numerous witness accounts from mutual friends of Eric and Kouri state that Eric was a partier and loved a good time. He would consume alcohol and THC in any form.

25. Witnesses would go on to recount stories about trips and drinking and drugs in Hawaii, Africa, New Orleans, Las Vegas, and Mexico. Witnesses have further recounted that some gummies he bought on the Las Vegas strip in mid-February 2022 had, “Fucked him up bad.”

26. These same witnesses state that Eric largely refrained from drinking around his family, except on the occasion that his sisters, Katie and Amy, would be present during a party.

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<sup>3</sup> Stipulation and Order dated April 27, 2021. *In the Matter of the Privileges of Eric E. Richins to Hunt in the State of Utah*, Case No. 2017-001986.

<sup>4</sup> [Dept of Labor Press Release](#)

## **THE GREECE VACATION**

27. In 2019, Eric, Kouri, and six of their friends traveled to Greece to celebrate a mutual friend's birthday and enjoy a vacation.

28. At that time, Eric was taking a prescription for Lyme disease that he had recently contracted from tick bites he suffered on a recent hunting trip in Texas. Eric was advised not to consume alcohol while on the prescription as combining the two would result in flu-like symptoms, among other things.

29. One day on the vacation, Eric, Kouri, and their six friends went to eat and ordered drinks. As a result of his prescription, Eric ordered a non-alcoholic drink. When the waitress served the drinks, Eric and Kouri questioned the waitress several times to ensure that Eric's drink contained no alcohol. The waitress assured them that it contained no alcohol. However, once Eric took a drink, he quickly became ill. Kouri and one of the friends immediately took a sip of the drink and believed that it contained alcohol.

30. All six friends that were with Eric and Kouri witnessed that Kouri never handled Eric's drink. Instead, the waitress delivered the drink directly to Eric. According to the accounts of the mutual friends, Kouri immediately took Eric back to the room, called his doctor and found a pharmacy to purchase the medications and attended to Eric until he felt better. Several hours later Eric and Kouri rejoined their friends.

31. The State and the State's witness, Katie Richins-Benson, have advanced the narrative that Kouri attempted to poison Eric. To the contrary there has not been a single text message or other document turned over in discovery to support the allegation that Eric ever

believed Kouri attempted to poison him or told Katie that he believed she did. Such statements are specifically contradicted by every witness that was actually present at the time Eric fell ill.

### **VALENTINES DAY 2022**

32. Several years after the Greece vacation, on February 14, 2022, Kouri purchased lunch for her and Eric from a local diner to celebrate Valentine's Day. Eric was not feeling well after lunch and decided to take a nap in the office above the detached garage.

33. At approximately 3:48 p.m., Kouri and Eric corresponded over text. Kouri, who was designated as "My Princess" in Eric's phone, asked Eric how he was feeling. Eric responded: "Okay wish you were here." *See* February 14, 2022, Text Messages, attached as Exhibit 5.

34. After Eric was done napping in the office, he entered the home and the room where the nanny was taking care of his and Kouri's children. Eric and the nanny spoke, and Eric explained that he had fallen asleep.

35. When speaking with Eric, the nanny witnessed that Eric had no hives and was not acting ill. The nanny also did not witness Eric using an epi-pen—something she would have witnessed given the location where the epi-pens were stored in the house. Eric made no mention of taking Benadryl nor did the nanny witness him taking any Benadryl.

36. After Eric explained that he had fallen asleep, he collected the children and took them to soccer practice because he was their soccer coach. In doing so, the nanny witnessed that he appeared to act completely normal.

37. Eric initiated a group iMessage text two days after Valentine's dinner that included mutual couple friends and Kouri to set up details to get together for dinner, ultimately deciding on Purgatory in Salt Lake on Saturday, February 19th.



38. At that dinner, the two couples discussed allergic reactions to allergy shots, a topic sparked by one of the guests having to go to urgent care right before dinner to make sure it was ok to consume alcoholic drinks following the shot. Eric seemed confident to those present when he relayed he believed this is what happened to him. The couples joked about how weird it is to be allergic to allergy medicine.

39. On February 20, 2022, Eric and Kouri met different friends at a bar for drinks. Witness accounts state they had never seen Eric and Kouri happier and that Eric made jokes about being allergic to allergy medication.

40. The State and the State's witness Katie Richins-Benson have advanced the narrative that Kouri attempted to poison Eric on this occasion as well. To the contrary, there has not been a single text message or other document turned over in discovery to support the allegation that Eric ever believed Kouri attempted to poison him or told Katie Richins-Benson that he believed she did. These statements are specifically contradicted by several witnesses.

#### **ERIC'S ESTATE PLANNING**

41. On November 3, 2020, Eric created the Eric Richins Living Trust (the "Trust"). Section 1.03 of the Trust sets forth a "Statement of Intent" which provides, in relevant part: "I wish to provide for both my wife and our children during any time that I am incapacitated or after my death." Eric's estate planning attorney explained that she did not often include statements of intent in trust documents. A copy of the Trust is attached as Exhibit 6.

42. Section 8.03 of the Trust further provides that although Eric desired to preserve his trust assets as much as possible for future trust beneficiaries, it was "[his] desire to provide for Kouri Darden Richins's legitimate financial needs using the assets of [the] trust."

43. Kouri was unaware that Eric created the Trust.

44. In addition to creating the Trust, on February 16, 2021, Eric revoked a durable power of attorney that he had previously executed, wherein he designated “Kouri Darden Richins” as his attorney in fact. A copy of the Durable Power of Attorney is attached as Exhibit 7. In the revocation document (the “Revocation”), Eric specifically stated that he “executed a durable power of attorney appointing Kouri Darden Richins to serve as [his] attorney-in-fact,” a copy of which was then attached thereto. In the Revocation, Eric stated that he executed the durable power of attorney on May 8, **2013**, even though he had it notarized before a notary public on May 8, **2018**. The notary public specifically remembered Eric appearing before her on May 8, 2018. In other words, that Eric dated the durable power of attorney as 2013 instead of 2018 was likely a typographical error. This is particularly true given that Kouri and Eric were not married as of May 8, 2013, such that her last name had not yet been changed to “Richins”, as stated in the power of attorney. A copy of the Revocation is attached as Exhibit 8.

45. The Revocation also states: “I have advised Kouri Darden Richins that I have revoked her authority to act as my attorney-in-fact under my May 8, 2013 durable power of attorney.” However, Eric never told Kouri that he revoked the power of attorney, and Kouri learned of the Revocation only after Eric’s death.

### **THE HELOC**

46. On March 19, 2019, Kouri took out a home equity line of credit (“HELOC”) on the Family Home. Kouri signed the Revolving Credit Deed of Trust (the “DOT”) using the authority granted to her by the power of attorney mentioned above. Kouri signed the DOT using the power

of attorney because Eric was out of town on a previously planned hunting trip. Eric was aware of the HELOC prior to Kouri signing the DOT.

47. The DOT was recorded against the Family Home on April 5, 2019.

48. From August 2019-January 2020, HELOC funds were used, in part, to perform work on a home in Heber City, Utah (the “Heber Home”). Eric knew that HELOC funds were used on the Heber Home, and Eric, himself, performed work at the Heber Home.

49. The Amended Information states that Eric learned of the HELOC in September 2020. This statement is undermined by the above facts.

#### **KRR PURCHASES THE HOME NEAR MIDWAY**

50. Kouri is the owner of K Richins Realty, LLC (“KRR”), a Utah real estate company.. Eric was only a member of KRR for a handful of days in April 2019, at which point he was removed as a member. Otherwise, Eric has never had any ownership or membership in KRR. *See* KRR Organizational Documents, collectively attached as Exhibit 9.

51. In or around February 2022, KRR entered into an agreement to purchase a home located at 106 North Legacy Way near Midway, Utah (the “Midway Home”). The agreement was between KRR and the seller, and the Midway Home was conveyed solely to KRR. *See* Warranty Deed, attached as Exhibit 10. Kouri did not execute the agreement in her personal capacity, nor did Eric execute the agreement in any capacity as he was not a member of KRR. In other words, not only did Eric not need to sign any documents, but he played no role in executing the transaction.

#### **THE LIFE INSURANCE POLICIES**

52. On November 10, 2014, Eric Richins applied for a life insurance policy through Securian Life Insurance Company. The State alleges that Eric was “unaware” of this policy and

Kouri had obtained it out Eric's knowledge. On November 24, 2014, a medical examination of Eric was conducted prior to the issuance of the policy. The medical exam is signed by both Eric and the person administering the exam. Thus, the State's allegation fails.<sup>5</sup>

53. On June 13, 2017, a life insurance policy was obtained through CMFG Life Insurance Company in the amount of \$250,000 with an additional accidental death rider. The State alleges that Eric was "unaware" of this policy and Kouri had taken it out without Eric's knowledge. The premium was paid from the joint checking account ending 2204. Thus, the State's allegation fails.<sup>6</sup>

54. On September 28, 2017, Eric Richins applied for a life insurance policy in the amount of \$1,000,000 through Auto-Owners Life Insurance Company. The State alleges that Eric was "unaware" of this policy and Kouri had taken it out without Eric's knowledge. On October 20, 2017, a medical examination of Eric was conducted prior to the issuance of the policy. The medical exam is signed by both Eric and the person administering the exam. Thus, the State's allegation fails.<sup>7</sup>

55. On February 4, 2022, an additional \$100,000 policy was offered and accepted in conjunction with the CMFG Life Insurance Policy obtained in 2017.

56. On January 1, 2022, the beneficiary of a life insurance policy intended to fund C&E's buy-sell agreement was changed at approximately 7:21 p.m. Within a matter of minutes, at approximately 7:27 p.m., the beneficiary was changed back to Eric. *See* Correspondence with

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<sup>5</sup> This is the same policy as provided in State's Binder exhibit 14

<sup>6</sup> This is the same policy as provided in State's Binder exhibit 15

<sup>7</sup> This is the same policy as provided in State's Binder exhibit 12

New York Life Insurance Company, attached as Exhibit 11. There is no evidence identifying the computer from which the login was initiated.

### **March 3-4, 2022**

57. On March 3, 2022, Kouri made Eric a drink, and he consumed around two sips of the drink at approximately 9:15 p.m. Kouri subsequently laid down in the bed with Eric for around five minutes. She then went to sleep in one of her children's rooms—a common occurrence in their home—because the child was having a nightmare.

58. Eric actively used his cell phone over the course of the next approximately two and a half hours. Eric was frustrated because he was trying to obtain the horns from an animal that he had recently shot on a hunting trip in Mexico. A trip, according to witness accounts, that the outfitter had not been paid for.

59. From approximately 9:13 p.m. through 10:58 p.m., Eric was actively discussing the situation involving the horns with a friend. At 10:50 p.m., Eric had a phone call with the friend that lasted approximately eight minutes and thirty seconds. *See Eric's Phone Data*, attached as Exhibit 12.

60. From approximately 11:45 p.m. to 11:56 p.m., Eric was actively using his phone. He scrolled through Instagram and even searched “how far os [sic] it from scottsdale to nogales,” presumably based on his conversation with the friend regarding retrieving the animal horns from Mexico. *See Eric's Phone Data*, attached as Exhibit 13.

61. Kouri woke up in her child's room around 3:00 a.m. When she returned to her and Eric's room, she discovered that Eric was cold and not breathing, and she called 911. The

dispatcher directed Kouri to perform CPR. Kouri had never performed CPR, nor had she ever had any CPR training.

62. Based on the dispatcher's request, Kouri pulled Eric off the bed. Kouri then began performing CPR on Eric based on the instructions given to her by the dispatcher. This was the first time Kouri had ever performed CPR. Paramedics arrived shortly thereafter.

### **EVENTS FOLLOWING ERIC'S DEATH**

63. On March 4, 2022, when Eric's sister, Katie Richins-Benson arrived at the family home, she immediately told investigators that she was Eric's power of attorney. Within a matter of hours after Eric passed away, Katie also contacted Eric's estate planning attorney regarding taking over and addressing Eric's finances. The estate planning attorney explained that it was very early for Katie to be addressing Eric's finances.

64. On March 5, 2022, Kouri was contacted by a long-time friend of Eric's who asked if he could come by the Family Home, not the Midway house, to offer his condolences. Several close friends and family members were also at the house or stopped by at various points during the evening. The gathering was not previously planned but resulted from individuals stopping by to offer condolences. Much of the gathering was spent playing games with Kouri and Eric's children to take their mind off the events of the previous day. The State and the State's witnesses, specifically Amy Richins and Katie Richins-Benson, have advanced the narrative that Kouri was celebrating the day following Eric's death. Such statements are contradicted by the account of others who were present.

65. Instead, witnesses recall overhearing Amy discussing "wanting Dad's truck" with Eric and Kouri's children. Amy stayed the night at the Richins Family Home.

66. On March 6, 2022, Kouri attempted to access a safe that she and Eric had previously purchased using their joint Cabela's credit card, which was connected to the 2204 Account. The safe contained Kouri's personal information and documentation, including her social security card, birth certificate, and passport, among other things. It also contained documentation for Eric that she believed would be necessary to review and have accessible.

67. Upon using the original safe code, she realized the code had been changed. Recognizing that she would need the information contained therein, she contacted a local locksmith to open the safe. The locksmith arrived and began to work on the safe, but ultimately did not open it. Amy was still present and became enraged ordering the locksmith out of the garage. Amy immediately called Katie, then told Kouri, she "could not do anything with the property in her house or anything with her house because it was no longer Kouri's house," claiming that the house belonged to Katie and the Trust. The police were called. Witness accounts indicate that Amy escalated the situation and was never hit by Kouri. However, Kouri did push Amy and ultimately took responsibility for that conduct.

68. Although the locksmith ultimately left without opening the safe, Kouri was able to locate the new code and open it accordingly. The safe contained approximately \$10,000 in cash. As of the date of Kouri's incarceration, the \$10,000 in cash remained in the safe.

69. Approximately one week later, Cody sent a C&E employee to seize all of Eric's work electronics. Around that same time, Cody sent another C&E employee to take and remove Eric's work truck. As a result of Cody directing C&E employees to take Eric's work electronics and truck, the electronics were not identified or located by law enforcement for months after Eric's

death. It is also unclear whether law enforcement ever searched Eric's work truck. Eric's electronics were not turned over to law enforcement for some time.

### **THE SEARCH WARRANTS**

70. Law enforcement executed search warrants on the Family Home and Kouri's personal electronics on April 13, 2022, and May 8, 2023.

71. Law enforcement located no fentanyl in the Family Home.

### **INCONSISTENCIES IN THE INFORMATION(S)**

72. The State filed the original Information on May 8, 2023. That Information contains the following allegations:

- a. Kouri contacted via text message C.L. between December 2021 and February 2022 to obtain prescription pills for an investor. Within a few days, C.L. procured hydrocodone pills from a dealer and was directed to leave the pills at house in Midway, Utah that Kouri owned and was flipping.
- b. Approximately two weeks later, Kouri contacted C.L. stating that the investor wanted something stronger, specifically "some of the Michael Jackson stuff." C.L. procured fentanyl pills, and Kouri collected the pills from C.L.'s home thereafter. Kouri paid C.L. \$900 for the pills.
- c. Around two weeks after February 14, 2022, Kouri contacted C.L. again for another \$900's worth of fentanyl pills. C.L. obtained the pills, and Kouri directed C.L. to leave the pills at the outdoor fire pit of the Midway house where cash was waiting for her. Approximately one week later, Eric died from a fentanyl overdose.



73. The State filed the First Amended Information on May 18, 2023. The First Amended Information is rife with inconsistencies as compared to the original Information, as set forth below:

- a. C.L. now believes that Kouri contacted her in early 2022 (not late 2021).
- b. Despite originally stating that Kouri contacted C.L. via text message, C.L. now states that she cannot remember whether the contact was a phone call or text message.
- c. While C.L. originally stated that Kouri contacted her for prescription pills, she now states that Kouri contacted her specifically for fentanyl.
- d. While C.L. originally stated that, in the first alleged transaction, Kouri asked C.L. to deliver the pills to a house Kouri was flipping, C.L. now claims Kouri obtained the pills in a hand-to-hand transaction at C.L.'s home.
- e. C.L. now states that Kouri did not just request stronger pills, but specifically, stronger fentanyl pills.
- f. While C.L. originally stated that there were **three** alleged pill transactions with Kouri that all took place **prior** to Eric's death, now C.L. states that there were only **two** transactions with one taking place **after** Eric's death.
  - i. The First Amended Information is confusing, and the controlled substances charges appear conflicting. Charge 2 alleges that Kouri knowingly and intentionally possessed a controlled substance with intent to distribute in or about January 2022. Charge 3 alleges that Kouri knowingly and intentionally possessed a controlled substance with intent to distribute on

February 11, 2022. However, the core of the Amended Information never alleges that Kouri received any illicit substance in January 2022. Instead, it alleges that she acquired fentanyl for the first time on February 11 or February 12, 2022. Thus, for purposes of this Motion, the State has provided zero evidence supporting Charge 2.

- g. While C.L. originally stated that she received \$900 for the fentanyl pills, C.L. now states that she received \$1,300 for the fentanyl pills.
- h. While C.L. originally stated that cash was left for her at the Midway house fire pit, C.L. now states that she was given a \$1,300 check.
- i. While C.L. originally stated that she left fentanyl pills at the Midway house fire pit a week prior to Eric's death, she now states that she left the pills there three weeks later, on either March 9, 2022, or March 10, 2022, and that the house was vacant and in the process of being sold by Kouri. However, Wasatch County records demonstrate that Kouri, through her business, sold the Midway house approximately one and a half months earlier, on January 26, 2022.

74. Such inconsistencies cast serious doubt on the credibility and reliability of the testimony provided by C.L.

75. In addition, the First Amended Information states that Eric's safe—the safe that was purchased on a joint credit card using funds from a joint checking account—contained between \$125,000 and \$165,000 in cash. However, in *Richins v. Richins-Benson*, Case No. 220500076, Katie submitted two separate declarations—both under penalty of perjury—that Eric

told her that the safe contained approximately \$200,000 in cash. Case No. 220500076, Dkt Nos. 288 (at ¶ 11) and 355 (at ¶ 13).

#### **LAW ENFORCEMENT STATEMENTS TO C.L.**

76. C.L. was interrogated and questioned by law enforcement on several occasions. It appears that the first time C.L. was questioned, the interrogation was not recorded by law enforcement. If such interrogation was recorded, counsel for Kouri has not been provided with that recording.

77. In the first recorded interrogation with C.L., law enforcement explained to C.L. that absent her cooperation in their investigation, she would be facing very serious criminal charges resulting in significant jail time.

78. C.L. is currently on probation pursuant to a plea in abeyance agreement in two separate cases wherein she plead to four (4) first-degree felony charges, one third-degree felony and several misdemeanor charges. A search warrant executed at the time of her arrest revealed that C.L. had a firearm in her bedroom.

79. Specifically, law enforcement demanded that C.L. give good enough details “that will ensure that [Kouri] gets convicted of murder.” Further, law enforcement explained to C.L. that her life was “screwed at this point for a minute or for a few years if there’s not cooperation.” Law enforcement told C.L. that if she gave them what they wanted, it would constitute her “get out of jail free card.” In addition, after interrogating C.L. for more than hour, law enforcement told her that they “need[ed] a stronger witness” because the purported details that she had given them so far were not good enough to be “present[ed] to a court.”

80. After such statements—and other similar statements—C.L.’s testimony evolved to conform with law enforcement’s theory of this case.

81. C.L. was released from jail thereafter.

82. C.L. had, from time to time over the years, provided housekeeping services for Kouri and was paid by check for doing so.

## ARGUMENT

### **I. Kouri is Eligible for Bail Because There is No Substantial Evidence to Support the Charges.**

Utah Code Section 77-20-201<sup>8</sup> (the “Bail Statute”) states in relevant part that:

An individual charged with, or arrested for, a criminal offense shall be admitted to bail as a matter of right, except if the individual is charged with:

- (a) a capital felony when there is substantial evidence to support the charge;

[ . . . ]

- (c) a felony when there is substantial evidence to support the charge and the court finds, by clear and convincing evidence, that:
  - (i) the individual would constitute a substantial danger to any other individual or to the community after considering available conditions of release that the court may impose if the individual is released on bail; or
  - (ii) the individual is likely to flee the jurisdiction of the court if the individual is released on bail . . . .

The Bail Statute further provides that “any arrest or charge for . . . aggravated murder, is a capital felony unless: (a) the prosecuting attorney files a notice of intent to not seek the death penalty; or

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<sup>8</sup> The Utah Constitution mirrors this language. *See* Utah Const. art. I, § 8.

(b) the time for filing a notice to seek the death penalty has expired and the prosecuting attorney has not filed a notice to seek the death penalty.” Utah Code Ann. § 77-20-201(3).

The Utah Supreme Court has articulated that “substantial evidence exists when the evidence presented provides a reasonable basis for a guilty jury verdict.” *Randolph v. State*, 2022 UT 34, ¶ 73, 515 P.3d 444. “The substantial evidence standard is met when the prosecution presents evidence capable of supporting a jury finding that the defendant is guilty beyond a reasonable doubt.” *Id.* In addition, given that “the purpose of the probable cause standard is to ferret out groundless and improvident prosecutions, the purpose of the substantial evidence standard is to ensure that the quantum of evidence presented by the State sufficiently justifies the denial of the defendant’s right to freedom from pretrial incarceration.” *Id.* at ¶ 74 (citation and internal quotation marks omitted). In analyzing whether the State has met the substantial evidence standard

a district court may make a series of credibility assessments. It may observe and assess witness demeanor and appearance. And unlike a magistrate making a bindover determination, a district court making a bail determination does not view the evidence in a light most favorable to any party—instead, it may evaluate the strength of the evidence presented by both sides in an effort to determine if the State’s evidence, “notwithstanding contradiction . . . by defense proof, . . . furnish[es] a reasonable basis for a [conviction].” In other words, when evaluating whether bail should be denied, the district court may weigh conflicting pieces of evidence and ultimately decide that, in light of the conflict, there is not a basis on which a reasonable jury could reach a guilty verdict.

*Id.* at ¶ 74 (citation omitted).

#### **A. The State Lacks Substantial Evidence to Support the Charges.**

Here, the State has filed no notice of intent to not seek the death penalty, nor has the time for filing a notice to seek the death penalty expired. Thus, the first charge against Kouri constitutes a capital felony, and the State must demonstrate substantial evidence to support the charge. The

State has failed to do so. Law enforcement never identified or seized any fentanyl or other illicit drugs from the Family Home. Rather, the State relies heavily on the testimony of C.L.—a known criminal with a long list of drug-related charges who, absent providing convenient testimony to law enforcement, would be facing a multi-year prison sentence. Not only does the ever-changing nature of C.L.’s story undermine her credibility, but she also had every incentive to provide law enforcement with a narrative necessary to satisfy their requests and earn her “get out of jail free card.” Moreover, C.L. does not testify that Kouri allegedly procured fentanyl with the intent to give it to Eric. Indeed, the State lacks any credible and admissible evidence on this critical issue.

The State has provided no evidence that there was fentanyl found in the home. Nor have they provided any evidence that Kouri gave Eric the fentanyl at issue. The State has alluded to a cocktail that was prepared by Kouri in an attempt to insinuate this is the only way he could have consumed the lethal dose. However, no glass was ever tested even though law enforcement and EMS were told upon arrival that she had mixed him a drink. The State and law enforcement never investigated an alternative theory that perhaps Eric’s alcohol and drug use had escalated. Instead, the Eric’s family has pushed the narrative from the day following Eric’s death that the only plausible explanation was that Kouri had “poisoned” him. Law enforcement simply accepted that narrative and worked backward in an effort to support it, spending approximately 14 months investigating, finding no evidence, according to what has been provided to the defense, to support their theory until C.L.

In addition, the financial allegations in the First Amended Information are speculative at best. The State has no evidence to establish that Kouri allegedly killed Eric for pecuniary gain. Specifically, contrary to the State’s allegations, Kouri owed Eric no money; it is unclear how the

State calculated Kouri' alleged outstanding state and federal tax liability (it is inaccurate); and while Kouri owed money to a hard money lender, she was current on those obligations and not in default.<sup>9</sup> Thus, the financial allegations do not establish substantial evidence to support the aggravated murder charge. Furthermore, each of the facts set forth in the Factual Background section above undermine the State's claim of substantial evidence supporting the aggravated murder charge.

The same is true for the drug-related charges. As for Charge 2, the First Amended Information is devoid of any allegations or purported supporting facts that, in January 2022, Kouri obtained an illicit substance with the intent to distribute the same. And with respect to Charges 3 and 4, the State lacks substantial evidence to support these charges for the reasons identified above. Namely, law enforcement has never located fentanyl or any other illicit substance at the Family Home, on Kouri' person, or otherwise. Instead, the State relies almost exclusively on the testimony of C.L.—a witness lacking all reliability or credibility and with every incentive to fabricate testimony to ensure her own freedom. For these reasons, and the reasons identified in the Factual Background section above, the State has failed to demonstrate substantial evidence to support the charges in the First Amended Information.

**B. The State Cannot Demonstrate that Kouri is a Substantial Danger to the Community or a Flight Risk by Clear and Convincing Evidence.**

Whether there is clear and convincing evidence that a defendant is a substantial danger or likely to flee if released on bail is a mixed question of law and fact. *Randolph* 2022 UT 34 ¶ 45.

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<sup>9</sup> Simply stating the amount owed under a loan does not demonstrate financial strain. Otherwise, the State could simply highlight the fact that an individual has a mortgage—even if the individual is current on the mortgage—to try and show financial distress.

The clear and convincing standard “implies something more than the . . . preponderance, or greater weight, of the evidence; and something less than proof beyond a reasonable doubt.” *Essential Botanical Farms, LC v. Kay*, 2011 UT 71, ¶ 24, 270 P.3d 430 (citation omitted). It “demands the introduction of evidence that makes ‘the existence of the disputed facts . . . very highly probable.’” *State ex rel. K.T.*, 2017 UT 44, ¶ 9 n.3, 424 P.3d 91 (alteration in original) (citation omitted).

Even if the State could prove that there is substantial evidence to support the pending charges (it cannot), with respect to Charges 2-4, it cannot demonstrate that Kouri is a substantial danger to any other individual or that she is likely to flee the jurisdiction.<sup>10</sup>

First, the facts and circumstances in this case, up to this point, overwhelmingly demonstrate that Kouri is not a substantial danger. Kouri has been actively engaged with the community well before and after Eric’s passing. She has participated in a local church group, assisted as a boy scout’s leader in a local scout troop, participated in events at her children’s school, and attended myriad local sporting events. In other words, at all relevant times, Kouri has actively contributed to society, and she is not a substantial danger to any other individual. Most importantly, this case was investigated for over 18 months. Kouri knew there was an investigation on-going, she retained counsel, counsel attempted with no-avail, due to the actions of the State, to cooperate in the investigation, she raised her kids, maintained her business and mourned the loss of her husband. This mere fact alone, undermines any claim the State can make with regard to either being a danger to society or being a flight risk.

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<sup>10</sup> As noted above, the Bail Statute draws a distinction between capital felonies and other felonies. *See* Utah Code Ann. § 77-20-201(1)(a), (c). Thus, while relevant, the clear and convincing evidence inquiry is dispositive of Charges 2-4, but not Charge 1.



Second, Kouri is not a flight risk. As stated above, she has resided in the State of Utah for more than twenty years, her children live in Utah, much of her family lives in Utah, her business is located in Utah, and most of her closest friends reside in Utah. Moreover, law enforcement executed its first search warrant in this case more than a year prior to Kouri's incarceration. Despite this clear indication that law enforcement was investigating Kouri, she continued to reside in Utah. Simply put, Kouri is not a flight risk.

Accordingly, the State cannot show substantial evidence supporting the charges of the First Amended Information, nor can it demonstrate that Kouri is a substantial danger or a flight risk. Consequently, the Court should permit Kouri to post bail, and she should be released with pretrial conditions set by the Court.

**II. The Court Should Release Kouri and Designate a Set of Conditions to Be Imposed Upon Her Release While She Awaits Trial or Other Resolution of The Pending Charges.**

Utah Code Section 77-20-205 allows the Court to release a defendant on her "own recognizance during the time the individual awaits trial or other resolution of criminal charges." It further permits the Court to designate "a condition or combination of conditions, to be imposed upon the individual's release during the time the individual awaits trial or other resolution of the criminal charges." Utah Code Ann. § 77-20-205(2)(a)(i)-(ii). In making a determination under Subsection (2)(a), the magistrate or judge may not give any deference to a magistrate's decision in a temporary pretrial status order.

Moreover, in making a determination regarding a defendant's pretrial release, the Court must only impose conditions that are "reasonably available and necessary to reasonably ensure:"

- (a) the individual's appearance in court when required;

- (b) the safety of any witnesses or victims of the offense allegedly committed by the individual;
- (c) the safety and welfare of the public; and
- (d) that the individual will not obstruct, or attempt to obstruct, the criminal justice process.

Utah Code Ann. § 77-20-205(3)(a)-(d). In light of the fact that Kouri has been living in the community without issue since before and after Eric's passing, the absence of other criminal allegations or record<sup>11</sup>, and Kouri's clear compliance and cooperation throughout the pre-file investigation, the Court should order Kouri's pretrial release with conditions such that the Court could ensure that Kouri would still appear in Court, would not pose a danger to any other individual, and would not take any action to obstruct the criminal justice process.

The Court has several combinations of conditions that it can impose to ensure these objectives. Namely, it could impose conditions requiring Kouri to:

- (a) not commit a federal, state, or local offense during the period of pretrial release;
- (b) avoid contact with a victim of the alleged offense;
- (c) avoid contact with a witness who:
  - (i) may testify concerning the alleged offense; and
  - (ii) is named in the pretrial status order;
- (d) not consume alcohol or any narcotic drug or other controlled substance unless prescribed by a licensed medical practitioner;
- (e) submit to drug or alcohol testing;
- (f) complete a substance abuse evaluation and comply with any recommended treatment or release program;
- (g) submit to electronic monitoring or location device tracking;
- (h) participate in inpatient or outpatient medical, behavioral, psychological, or psychiatric treatment;
- (i) maintain employment or actively seek employment if unemployed;
- (j) maintain or commence an education program;
- (k) comply with limitations on where the individual is allowed to be located or the times that the individual shall be, or may not be, at a specified location;

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<sup>11</sup> As noted in the First Amended Information, Kouri was charged as a result of an altercation with Amy days after Eric's passing. Specifically, that altercation resulted from Amy refusing to leave the Family Home and threatening to kick Kouri out of the Family Home a mere two-three days after Eric died.

- (l) comply with specified restrictions on personal associations, place of residence, or travel;
- (m) report to a law enforcement agency, pretrial services program, or other designated agency at a specified frequency or on specified dates;
- (n) comply with a specified curfew;
- (o) forfeit or refrain from possession of a firearm or other dangerous weapon;
- (p) if the individual is charged with an offense against a child, limit or prohibit access to any location or occupation where children are located, including any residence where children are on the premises, activities where children are involved, locations where children congregate, or where a reasonable person would know that children congregate;
- (q) comply with requirements for house arrest;
- (r) return to custody for a specified period of time following release for employment, schooling, or other limited purposes;
- (s) remain in custody of one or more designated individuals who agree to:
  - (i) supervise and report on the behavior and activities of the individual; and
  - (ii) encourage compliance with all court orders and attendance at all required court proceedings;
- (t) comply with a financial condition; or
- (u) comply with any other condition that is reasonably available and necessary to ensure compliance with Subsection (3).

Utah Code Ann. § 77-20-205(5)(a)-(u). In other words, in light of the circumstances, the Court has the capability of imposing multiple pretrial conditions that would ensure that Kouri *continues* to comply. The Court can fashion a set of pretrial conditions including any of the foregoing enumerated factor to impose upon Kouri, and Kouri would unwaveringly comply. At the heart of the above conditions is the goal to maintain the safety of the community and the integrity of the judicial process. Kouri has demonstrated that neither of these objectives will be threatened.

Furthermore, in making a decision regarding pretrial release, the Court may consider several items, including:

- (i) the indictment or information;
- (ii) any sworn or probable cause statement or other information provided by law enforcement;
- (iii) a pretrial risk assessment;
- (iv) an affidavit of indigency described in Section 78B-22-201.5;
- (v) witness statements or testimony; or

- (vi) any other reliable record or source, including proffered evidence;

*See Utah Code Ann. § 77-20-205(7).* The Court has wide discretion to consider several factors in assessing pretrial release. The Court should consider Kouri' pretrial release and impose conditions for such release in light of the issues raised above and in the Factual Background section. On these grounds alone, the Court should set conditions on Kouri for her release. The Court may also consider the following:

- (i) the nature and circumstances of the offense, or offenses, that the individual was arrested for, or charged with, including:
  - (A) whether the offense is a violent offense; and
  - (B) the vulnerability of a witness or alleged victim;
- (ii) the nature and circumstances of the individual, including the individual's:
  - (A) character;
  - (B) physical and mental health;
  - (C) family and community ties;
  - (D) employment status or history;
  - (E) financial resources;
  - (F) past criminal conduct;
  - (G) history of drug or alcohol abuse; and
  - (H) history of timely appearances at required court proceedings;
- (iii) the potential danger to another individual, or individuals, posed by the release of the individual;
- (iv) whether the individual was on probation, parole, or release pending an upcoming court proceeding at the time the individual allegedly committed the offense or offenses;
- (v) the availability of:
  - (A) other individuals who agree to assist the individual in attending court when required; or
  - (B) supervision of the individual in the individual's community;
- (vi) the eligibility and willingness of the individual to participate in various treatment programs, including drug treatment; or
- (vii) other evidence relevant to the individual's likelihood of fleeing or violating the law if released.

*See id.* Consideration of the foregoing factors demonstrates that Kouri will easily be manageable and support granting her pretrial release.

Finally, Kouri is not a potential danger to any individuals or to the community, she was not on probation or parole during the time of the alleged conduct, and there is no indication that she would flee the jurisdiction. The overwhelming weight of the evidence currently before the Court suggests that Kouri would comply fully with any and all conditions set for her release. Accordingly, the Court should release Kouri and designate a set of conditions to be imposed while she awaits trial or further resolution of the charges.

### **CONCLUSION**

For the foregoing reasons, Kouri respectfully requests that her motion be granted.

DATED this 9<sup>th</sup> day of June, 2023.

RAY QUINNEY & NEBEKER P.C.

*/s/ Skye E. Lazaro* \_\_\_\_\_  
Skye E. Lazaro  
*Attorney for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 9<sup>th</sup> day of June, 2023, I electronically filed the foregoing **MOTION TO SET CONDITIONS FOR RELEASE** with the Clerk of the Court using the Utah ECF system, which sent notice of electronic filing to the District Attorney's Office via the court's electronic filing system.

/s/ Lisa Bonnell

1638118

**EXHIBITS FILED  
UNDERSEAL**