

IN THE SECOND JUDICIAL CIRCUIT COURT
IN AND FOR LEON COUNTY, FLORIDA

CASE NO. 23-CF-3226

STATE OF FLORIDA

Plaintiff,

v.

DONNA SUE ADELSON,

Defendant.

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**EMERGENCY MOTION TO ENJOIN
THE JAIL, FOR AN INDEPENDENT PSYCHOLOGICAL
EVALUATION, OR RELEASE TO HOUSE ARREST**

Donna Sue Adelson, pursuant to the United States Constitution, hereby moves this Court to enjoin the Leon County Jail from subjecting her to her current conditions of confinement and direct the Leon County Jail to place Donna in a unit where she can prepare for trial and speak to her family, or conduct an independent psychological evaluation in order to be placed in a different unit where she can properly prepare for trial and speak to her family; alternatively, she requests to be released on house arrest coupled with standard conditions of pretrial release, and in support thereof states as follows:

INTRODUCTION

Donna Adelson, a 73-year-old grandmother, was arrested in Miami, Florida on November 13, 2023, after her son, Charles Adelson, was convicted of murdering Dan Markel in an alleged murder-for-hire plot. The evidence against Donna is circumstantial at best.

While Donna has been charged with a crime, there is a presumption of innocence in this country. Donna is entitled to a fair trial, has a right to counsel, and has a right against cruel and unusual punishment. To date, all of Donna's rights have been violated despite the presumption of innocence in place.

Arrest and Time in Miami Dade County

On November 13, 2023, Donna was arrested and transported to TGK Jail in Miami Dade County. Upon arrival at TGK Jail, Donna was placed in a psychiatric unit because of the charges against her. She was placed in an isolation cell with a small sink, mattress on the floor, blanket, and a toilet. Donna did not have access to any clothes, cups, silverware, books, blankets, or toiletries and was only permitted to shower once. Although she had access to counsel, she was not permitted to use the phone to contact family members. Following two psychiatric evaluations, Donna was cleared within 96 hours of her arrest and placed in general population where she was able to contact her family and attorney. Donna's mental state has not changed since the determination by the psychiatrist at TGK Miami.

Transportation to Leon County Jail

On November 20, 2023, around noon, Donna was picked up from TKG Jail and transported to Leon County Jail. Her transporters placed her in the back of the transport vehicle with no water. Several hours into the journey, Donna tried to get the attention of the officers because she needed water and a restroom stop, but she was not able to get their attention. Approximately 4-5 hours into the trip, when the officers finally checked on her, Donna was shaking, dehydrated, and unable to stand up or move. As a result, the officers had to call paramedics to a rest stop.

Leon County Jail

Upon arrival at the Leon County Jail, officials put her in the infirmary under direct observation. She was then placed in a small solitary unit with a toilet, a sink, a mattress on the floor, and a dirty blanket. She has requested a book or Bible but has not been given anything and has been forced to eat her food with her hands.

The day after arriving at the Leon County Jail, one of the jail's mental health officials began questioning Donna about medications she was taking before she was arrested. Donna felt uncomfortable during this interaction because she could not see the official's face and wanted to verify that they were in fact a healthcare professional, but the official would not verify. When Donna made her concerns known, the official told Donna that Donna "is a fancy white lady who murdered her son and now thinks she has rights." The official joked with the other guards

about this outside of Donna's door. The official then said that Donna will "learn that fancy white lady murderers have no rights here" and told Donna, "Do you see where you are and do you see where I am? I am out here because I am not a murderer."

Since that interaction, some of the jail staff have treated Donna with cruelty. She is sometimes denied her necessary blood pressure medication, and she has been prevented from showering for days at a time. In the 15 days that Donna has been at Leon County Jail, she has only been permitted to call her husband once, on November 28, 2023, for approximately five minutes while guards stood watch. It was only with the help and intervention of the State that this call took place. Donna has not been permitted to call her counsel at all.

At one point, a psychiatrist working at the jail told Donna that she does not belong in the solitary unit and another jail official also told Donna the same thing. As a result of these cruel and inhumane conditions, Donna is becoming weaker and weaker every day, and because she does not have phone access, it has been impossible for her to contact her counsel or take part in her defense. Despite repeated attempts to call the jail, set up video visitation, and/or set up in person visitation, undersigned counsel has been unable to communicate with Donna since her transport to Leon County Jail. Both undersigned counsel and the State have tried to get help from the jail to no avail.

ARGUMENT

I. Donna’s detention conditions violate her Sixth Amendment right to counsel.

The Sixth Amendment to the United States Constitution guarantees the right to *effective* assistance of counsel. *McMann v. Richardson*, 397 U.S. 759, 771, n. 14 (1970); *Strickland v. Washington*, 466 U.S. 668, 685-86 (1984). That right attaches as soon as an individual is arrested and held to answer criminal charges. *See United States v. Gouveia*, 467 U.S. 180, 185-86 (1984); *see also Fed. Defs. Of N.Y. v. Fed. Bureau of Prisons*, 954 F.3d 118, 134 (2d Cir. 2020) (“The right to consult with legal counsel about being released on bond, entering a plea, negotiating and accepting a plea agreement, going to trial, testifying at trial, locating trial witnesses, and other decisions confronting the detained suspect, whose innocence is presumed, is a right inextricably linked to the legitimacy of our criminal justice system.”).

It is crucial that Donna be able to participate in her defense. Donna is charged with very serious offenses, and this case involves years of investigation and enormous amounts of discovery. The State has already disclosed a witness list including hundreds of witnesses, as well as hundreds of pages of extensive financial records, photographs, recordings and wiretaps, call records, cell phone and email account extractions, iCloud extractions, toll records, interview

recordings, deposition documents, letters, police reports, jail calls, and other documents. Donna must participate in her defense by reviewing and discussing the evidence in this case with her attorney, which is impossible when she is refused communication with her attorney and left in a solitary cell while her health rapidly declines. Donna therefore respectfully requests this Court grant the requested relief in order to preserve her Sixth Amendment rights.

II. Donna’s detention conditions are unconstitutionally punitive.

The United States Supreme Court has made clear that the purpose of pretrial detention is regulatory, and not punitive. *United States v. Salerno*, 481 U.S. 739, 755 (1987) (“In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception”). The Supreme Court has explained that a court must decide whether the condition “is imposed for the purpose of punishment or whether it is but an incident of some other legitimate governmental purpose.” *Bell v. Wolfish*, 441 U.S. 520, 538 (1979). “Absent a showing of an expressed intent to punish on the part of detention facility officials, that determination generally will turn on ‘whether an alternative purpose to which [the restriction] may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned [to it].’” *Id.* (quoting *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963)). If a condition of detention is “not reasonably related to a legitimate goal—if it is arbitrary or

purposeless—a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees.” *Bell*, 441 U.S. at 539.

Here, some jail officials are intentionally punishing Donna, even though she has not been convicted of any crime, in violation of her Fifth and Fourteenth Amendment rights to due process. Instead of providing her actual medical care, the jail has shown deliberate indifference to Donna’s medical needs by denying Donna her necessary blood pressure medication, not allowing her to shower, and letting her become weaker and weaker as she sits in her cell naked all day with nothing but a mattress on the floor.¹

Such conditions do not further any legitimate goal and do not serve any regulatory purpose. Some officials at the jail do not believe that Donna belongs in the direct observation unit. Moreover, officials at TGK Miami confirmed that Donna did not need to be in a direct observation unit. There is no reason, medical or otherwise, why she should not be in a normal part of the jail where she would have access to counsel and the ability to speak to her family.

¹ Even if this fact pattern occurred at the post-conviction stage, such treatment would constitute violation of Mrs. Adelson’s Eighth Amendment rights, as “deliberate indifference to serious medical needs of prisoners constitutes the ‘unnecessary and wanton infliction of pain’ [] proscribed by the Eighth Amendment.” *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (internal citations omitted); *see also Davis v. Bay County Jail*, 155 So. 3d 1173 (Fla. 1st DCA 2014).

Given the highly publicized nature of this case, the years of publicity on social media and national television, and especially the reporting in Tallahassee, which is a small community, the tensions are high, and the community has taken a position contrary to Donna, which has affected her constitutional right to effective counsel and her right against cruel and unusual punishment. This is not fair. It is not up to any particular person at the jail to decide whether Donna is guilty or not guilty – that will be decided by a jury at trial. It is unconstitutional to punish her before her case is put before a jury.

REQUESTED RELIEF

In order to prevent further constitutional violations, Donna respectfully requests this Court enjoin the Leon County Jail from subjecting her to her current conditions of confinement and direct the Leon County Jail to place Donna in unit where she can prepare for trial and speak to her family, or conduct an independent psychological evaluation in order to be placed in a different unit of the jail where she can properly prepare for trial and speak to her family; alternatively, she requests to be released on house arrest coupled with standard conditions of pretrial release.

CERTIFICATE OF CONFERRAL

Undersigned counsel has conferred with ASA Georgia Cappleman. ASA Cappleman advised that the State defers to this Court regarding enjoining the Leon

County Jail from subjecting her to her current conditions of confinement and directing the Leon County Jail to place Donna in unit where she can prepare for trial and speak to her family; the State does not oppose an independent psychological evaluation; the State opposes Donna's release from pretrial detention.

Dated: December 5, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that on December 5, 2023, the foregoing document was filed via the Florida E-Filing Portal which will serve all counsel of record.

/s/ Marissel Descalzo
Marissel Descalzo, Esq.