IN THE CIRCUIT COURT OF THE FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.:16-2010-CF-8579-AXXX-MA
DIVISION: CR-G

STATE OF FLORIDA

vs.

MARISSA ALEXANDER,
Defendant

STATE'S REPLY REGARDING MOTION TO MODIFY OR REVOKE BOND

Having been given yet another chance by this Court, Defendant now is attempting to argue that the Court's imposed restrictions are optional, so long as she can induce a different person to "approve" her excursions. Further, she apparently takes issue with her conduct being brought to the attention of the Court by the State.

Defendant was released by this Court on bond in the instant case, with the Court noting that it was "not this court's customary practice to allow continued pretrial release for defendants who commit a crime while they are out on bond awaiting trial" (as Defendant had done). Defendant was given a series of special conditions, which the court called "stringent," including the provision that Defendant (paragraph #4) "remain on home detention.... ***and*** ***will not be allowed to leave her residence*** except for court appearances, medical ***emergencies***, and to satisfy any ***requirements***" of her pretrial services programs. The Court's requirement that Defendant be monitored by a pretrial services program was ***in addition to, NOT in lieu of or a replacement for***, the clear and specific restrictions on Defendant's movements contained within the Court's Order. Defendant has asserted that each of her willful (and apparently admitted) violations of the above conditions was "approved by the agency charged with the

responsibility of supervising" her. In fact, the ***Court*** is the "agency" which determines whether Defendant's actions—"approved" or not—comply with its Orders, and the Court gave no such approval.

Defendant's "Response," in keeping with her actions to date, carries forth the theme that Defendant behaves as she desires, not as the law requires. No individual of common sense-- let alone a person whose bond had been revoked before-- would think it permissible to seek "approval" from anyone other than the Court to knowingly violate a Court's direct and explicit order. Under the theory espoused in Defendant's Response, had Defendant asked a counselor if Defendant could purchase a firearm and carry it, and the counselor agreed, Defendant would be "exonerated" from any alleged violation of the Court's Order (Paragraph 9).

By imposing an additional pretrial services condition, however, the Court does not abdicate its authority over Defendant nor absolve Defendant from compliance with the other provisions of the Court's orders. Courts do not, and indeed the law says they should not, so delegate that authority. By way of example:

> In *Larson v. State,* 572 So.2d 1368, 1371 (Fla.1991), the Florida Supreme Court explained that a trial court cannot delegate to a probation officer the sole authority to revoke a defendant's probation as that is a purely judicial function. . . reasonable delegations of incidental discretion are permissible if sufficiently circumscribed by the trial court. . . . [but] This is far more than mere supervision or direction of a judicially-imposed condition of probation. It is a broad, rather than circumscribed delegation of judicial authority to the probation officer to effectively impose conditions of probation and as such is improper under the standard enunciated in *Larson.*

Carter v. State, 975 So. 2d 1199, 1200-01 (Fla. 5th DCA 2008).

The counselor from whom Defendant sought her "permission" is not a law enforcement officer, not an attorney, and most importantly, not a Circuit Judge. Rather, she is a civilian charged with ensuring Defendant complies ***with the rules of the pretrial services program***. Further, nothing about the requirements of pretrial services conditions mandated that Defendant drive herself around, select and obtain new clothing, chauffer individuals to and from various locations, or any of the other actions in

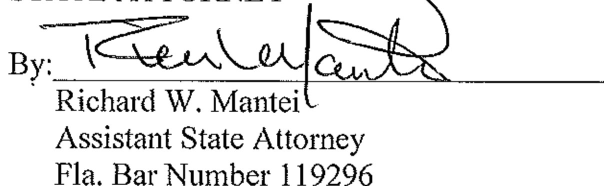
which Defendant ***chose*** to engage. Defendant's seeking approval only from her civilian monitor evinces a deliberate attempt to prevent her actions from being discovered by others. Indeed, had Defendant believed legitimately that the Court would in fact permit such behavior, she would not have ***ceased such activity once inquiries about it began to be made***. Had Defendant truly believed she had valid permission, this would not be the case.

The State has elected to bring the matter before the Court so that the Court may determine whether to accept a patently absurd "approved conduct defense" and continue its largesse, which the Court indicated is "not this court's customary practice." While Defendant may have preferred her behavior to remain undisclosed, it should not remain unsanctioned. The citizens of this community (including the victims in this case) have the right to know whether, when a court explicitly orders a criminal defendant confined to one location, it means what it says—or whether they should nonetheless be on guard against randomly encountering that defendant at their middle school, hair salon, airport, shopping mall, or relative's home. That is no "frivolity."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing motion has been furnished to Bruce Zimet, Esq., Attorney for Defendant, this 8th day of January, 2014.

Respectfully submitted,
ANGELA B. COREY
STATE ATTORNEY



By: ______________________
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