

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO.: 48-2007-CF-001796-O
DIVISION: 20

STATE OF FLORIDA,

Plaintiff,

vs.

LISA MARIE NOWAK,

Defendant.

**ORDER GRANTING MOTION FOR MODIFICATION
OF PRE-TRIAL RELEASE**

THIS CAUSE came to be heard on August 24, 2007, upon the Defendant's Motion for Modification of Pre-Trial Release filed August 13, 2007, pursuant to Rule 3.131(d), Florida Rules of Criminal Procedure. Based upon a review of the Defendant's motion, the official Court file, evidence received, testimony heard, argument of counsel and being otherwise fully advised in the premises, this Court finds and determines as follows:

On February 5, 2007, the Defendant was arrested on charges of Attempted Kidnapping, Attempted Vehicle Burglary with a Battery, Destruction of Evidence and Battery. At her first appearance hearing on February 6, 2007, bond was set totaling \$15,500.00 (\$5,000.00 for Attempted Kidnapping; \$10,000.00 for Attempted Vehicle Burglary with a Battery; \$500.00 for Battery)¹. Additionally, the court required as a condition of pretrial release that the Defendant wear an electronic monitoring GPS device; that she have no contact directly or indirectly with the victim; and that she not go east of Orange County, Florida. Later that day, the Defendant was arrested on the

¹ The court did not find probable cause to detain the Defendant on the charge of Destruction of Evidence and she was released on her own recognizance as to this charge.

additional charge of Attempted First Degree Murder with a Weapon. Bond was set at \$10,000.00 for this offense and the court again required that the Defendant wear an electronic monitoring GPS device and that she have no contact directly or indirectly with the victim. After posting a surety bond on each offense in the amount set by the court and having an electronic monitoring GPS device placed around her ankle, the Defendant was released from custody on February 6, 2007. On March 2, 2007, the Defendant was charged by information with Burglary of a Conveyance with an Assault or a Battery (with a Weapon) (Count 1); Attempted Kidnapping with Intent to Inflict Bodily Harm or Terrorize (with a Weapon) (Count 2); and Battery (Count 3).

The Defendant now requests that the conditions of pretrial release be modified to exclude the requirement of electronic monitoring for the following reasons:

1. It costs the Defendant \$105.00 per week for the privilege of using the monitoring services;
2. The president of the manufacturer of the electronic monitoring GPS device has capitalized on the fact that the Defendant is wearing the device by inviting the media to his office and sharing what the device reveals about the Defendant thereby violating the Defendant's right to privacy;
3. The device is heavy, uncomfortable and obtrusive;
4. The device can be a safety hazard;
5. The device's low battery buzz and siren interfere with the Defendant going to public places to eat or shop;
6. The device interferes with the Defendant's ability to reasonably travel on a public aircraft;
7. The device interferes with the Defendant's ability to exercise properly as she cannot run or swim for aerobic activity; and

8. The Defendant has scrupulously followed all instruction connected with the electronic monitoring GPS device since it was placed on her ankle on February 6, 2007.

Pursuant to section 903.046, Florida Statutes, the purpose of bail in a criminal proceeding is to ensure the appearance of the defendant at subsequent proceedings and to protect the community against unreasonable danger from the defendant. Rule 3.131(b)(1), Florida Rules of Criminal Procedure, provides a list of conditions, from the least restrictive to the most restrictive, that a judicial officer may impose and mandates that the judicial officer shall impose the first of those listed conditions of release that will reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process; or if no single condition gives that assurance, shall impose any combination of the listed conditions.

Although this Court does not find that reasons one through seven, as set forth above, are persuasive grounds for the removal of the electronic monitoring GPS device, this Court finds that removal of the electronic monitoring GPS device is warranted. The Defendant has been subjected to the electronic monitoring GPS device for the past seven months without any violations. She has no prior criminal history. She is currently released from custody on a monetary bond and her bondsman has testified that he will remain on her bond, even if she was released from the requirement of the electronic monitoring GPS device. The Defendant is permitted to travel anywhere in the country, other than Brevard County, Florida. The alleged victim, Colleen Shipman, testified that although she is afraid of the Defendant, she chose to travel to the Defendant's hometown of Houston, Texas on three or four occasions since February 6, 2007 to visit her boyfriend. During these trips by Ms. Shipman to Houston, the electronic monitoring

GPS device afforded no protection or benefit to Ms. Shipman, as the Defendant could freely move about Houston with no fear of violating any condition of the electronic monitoring GPS device. Under these circumstances, it is clear to this Court that the electronic monitoring GPS device does not fulfill its intended purpose of protecting Ms. Shipman.

Further, the Defendant is a Captain in the United States Navy and after proper notice being given to the State and the defense, this Court was notified by Captain David Grimland, the Defendant's commanding officer, that he will issue a formal military order incorporating this Order, including any and all pretrial restrictions set forth herein, thereby subjecting the Defendant to discipline under the Uniform Code of Military Justice, as well as this Court. Thus, should the Defendant violate any conditions of pretrial release, she will not only be subjected to the imposition of sanctions by this Court, including the revocation of bond, but she will also be exposed to the imposition of additional military sanctions. Finally, the Defendant has no need to travel to the State of Florida, other than to appear in court, to consult with her attorneys, or to perform her official military duties, nor does she have any need to travel to the State of Virginia, the current residence of Ms. Shipman's boyfriend. Based on the foregoing, this Court concludes that the electronic monitoring GPS device is an unnecessary condition of the Defendant's pretrial release.

Therefore, it is ORDERED that:

1. The Defendant's Motion for Modification of Pre-Trial Release is GRANTED and the requirement of electronic monitoring is removed as a condition of pretrial release.
2. The Defendant shall comply with the following conditions of pretrial release:

- a. She is to have no contact directly or indirectly with Colleen Shipman, other than through counsel.
 - b. She is to have no contact directly or indirectly with William Oefelein, other than through counsel.
 - c. She may not travel to Virginia, Washington, D.C., Maryland, or Delaware without the prior approval of this Court.
 - d. She may not travel to Florida for any reason other than to make court appearances, to meet with counsel or to perform official military duties, without the prior approval of this Court and under no circumstances, shall she travel to Brevard County, Florida. Further, no less than seven days prior to traveling to Florida, Defendant's counsel must notify Kepler B. Funk, Esq., Keith F. Szachacz, Esq. or Alan S. Diamond, Esq., attorneys for Ms. Shipman, of the dates that the Defendant will be in Florida and the county or counties in which the Defendant will be present.
3. The Clerk of the Court is directed to provide a certified copy of this Order to Chief of Naval Air Training, 250 Lexington Boulevard, Suite 102, Corpus Christi, Texas 78419, Attn: Captain David Grimland.

DONE AND ORDERED in chambers at Orlando, Orange County, Florida, this 30 day of August 2007.

10/ MARC L. LUBET

MARC L. LUBET
Circuit Court Judge

Certificate of Service

I HERBY CERTIFY that a true and correct copy of the foregoing Order has been provided by U.S. Mail or hand delivery to Donald A. Lykkebak, Esq., Counsel for the Defendant, 390 N. Orange Avenue, Suite 2100, Orlando, FL 32801-1642, and Pam Davis, Assistant State Attorney, 415 N. Orange Avenue, Orlando, FL 32801, this 30 day of August 2007.

/s/ KRISTIN R. BINE

Judicial Assistant