

1 STATE OF ILLINOIS)
2) SS.
2 COUNTY OF COOK)

3 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
4 COUNTY DEPARTMENT - CRIMINAL DIVISION

5 THE PEOPLE OF THE STATE OF)
6 ILLINOIS,)
7)
8 Plaintiff,)
9)
10 vs.) No. 19 CR 11745-01
11)
12 VONDELL WILBOURN,)
13)
14 Defendant.)

15 REPORT OF PROCEEDINGS had of the
16 above-entitled cause, before the HONORABLE PEGGY
17 CHIAMPAS, one of the judges of said court, on the
18 8th day of March, 2023.

14 APPEARANCES:

15 HON. KIMBERLY M. FOXX,
16 State's Attorney of Cook County, by:
17 MR. MICHAEL DINARD,
18 Assistant State's Attorney,
19 appeared on behalf of the People;

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23 MR. KENNETH FLAXMAN,
24 appeared on behalf of the defendant.

22
23 ANGELA K. VILLARREAL
24 Official Court Reporter
 Criminal Division
 CSR: #084-004877

1 THE COURT: Vondell Wilbourn. Ma'am, if you're
2 here, you can come on the inside of the door. Is that
3 his wife?

4 MR. FLAXMAN: Yes.

5 THE COURT: Okay. On the inside of the door,
6 please, and don't block it. There you go. Thank you.
7 Good morning. This is Mr. Vondell Wilbourn. Good
8 morning, Mr. Flaxman.

9 MR. FLAXMAN: Good morning, your Honor. Kenneth
10 Flaxman, F L A X M A N, for Mr. Wilbourn.

11 THE COURT: All right. Mr. Dinard, your name for
12 the record, please.

13 MR. DINARD: Assistant State's Attorney Michael
14 Dinard, your Honor.

15 THE COURT: All right. The defendant,
16 Mr. Wilbourn, was on electronic monitoring through the
17 sheriff's office. Go ahead, Mr. Flaxman.

18 MR. FLAXMAN: We have a written motion to review
19 bond, which is --

20 THE COURT: Okay. If you have a copy, give it to
21 the State on that.

22 MR. FLAXMAN: I e-mailed it to the State.

23 MR. DINARD: I acknowledge receipt, Judge.

24 THE COURT: Okay. You're ready, Mr. --

1 MR. DINARD: Yes, your Honor.

2 THE COURT: Okay. Go ahead, Mr. Flaxman.

3 MR. FLAXMAN: Thank you. Mr. Wilbourn was placed
4 on EM by the Court. Thereafter, the Court granted EM
5 movement to take his children to and from school.

6 THE COURT: Right. How many of those movements
7 have I granted, Mr. Flaxman? Have you counted them?
8 Because I have.

9 MR. FLAXMAN: Whenever I ask for them you grant
10 them.

11 THE COURT: Right. Exactly, and I'm going go
12 through each and every one of them.

13 MR. FLAXMAN: Well, all right. The sheriff --
14 there's a petition for violation of bail bond, which is
15 not supported by the affidavit, which alleges a search
16 that Mr. Wilbourn violated his EM movement on four
17 occasions. They're all less than half an hour of
18 deviations, and they are -- not the kind of violations
19 that should warrant the violation -- or a revocation of
20 EM. The sheriff seems to be operating under the
21 assumption that he's entitled to revoke someone who --

22 THE COURT: Does not comply with the terms and
23 conditions of the sheriff's electronic monitoring
24 program?

1 MR. FLAXMAN: Well, that's --

2 THE COURT: That's their program, Mr. Flaxman.

3 MR. FLAXMAN: Well, actually, he was on -- the
4 precise language -- let me take my mask off so I can do
5 this better, if I could just have one second.

6 THE COURT: Sure. Take as much time as you need.

7 MR. FLAXMAN: The sheriff -- when movement is
8 granted by the sheriff, the condition of movement is
9 that the defendant will go from his home -- will go to
10 and from the place where movement is authorized. In
11 this case, movement was not granted by sheriff,
12 movement was granted by the Court. The Court did not
13 include that permission in the order, perhaps your
14 Honor meant to include it or thought it was being
15 included, but when an order is entered that a violation
16 of which results in the deprivation of a person's
17 freedom, it should be specific and make it clear that
18 there is -- that the extent to which the movement has
19 been granted. The four allegations of noncompliance or
20 deviations from -- from the movement granted by the
21 Court are, as I said, minor. They're all related to
22 the time he takes his children to school. If we had a
23 contested hearing, which I submit there should have
24 been before your Honor revoked bond rather than

1 revoking the bond on an unsworn petition for violation
2 that had not yet been filed, I believe we would --

3 THE COURT: It's not unsworn. I have an affiant
4 right in my hand here, Mr. Wilbourn -- Mr. Flaxman.

5 MR. FLAXMAN: It's not sworn by someone with
6 personal knowledge of --

7 THE COURT: It is the Assistant State's Attorney
8 who swears to that, so I'm correcting -- I'm indicating
9 that so that the record is correct.

10 MR. FLAXMAN: So that the record is correct --

11 THE COURT: Right.

12 MR. FLAXMAN: -- it should be based on an affidavit
13 or sworn declaration by someone with personal knowledge
14 of the alleged wrongdoing. That should happen before
15 there's a deprivation of freedom. In this case,
16 Mr. Wilbourn was taken from his home in the morning of
17 Friday, conveniently before the next court date, which
18 was a Tuesday because of the intervening weekend and
19 the holiday, and that's -- if there's an interesting
20 constitutional question whether the sheriff's act
21 lawfully when they do that without first presenting the
22 petition to the Court and getting a court order to take
23 him into custody. Putting that aside, Mr. Wilbourn has
24 been on electronic monitoring for three years. Almost

1 three, since September 27th, 2019.

2 THE COURT: Actually before. That's how long this
3 case has been going, quite frankly.

4 MR. FLAXMAN: He's been on for three and a half
5 years.

6 THE COURT: Yes, right. Yes, he has. Go ahead.

7 MR. FLAXMAN: In that lengthy period, the only
8 violations of electronic monitoring that are set out in
9 the petition are four minor instances. If your Honor
10 felt that those warranted -- amounted to a violation,
11 the appropriate response, I submit, would have been to
12 admonish Mr. Wilbourn that when he is on movement, he
13 should be going directly to and from his children's
14 school and he shouldn't do it again and that's --

15 THE COURT: Don't do it again. Go ahead.

16 MR. FLAXMAN: We're asking that you --

17 THE COURT: Right.

18 MR. FLAXMAN: -- that you let Mr. Wilbourn back
19 home. We set it on the petition, but this is stressful
20 to his family. Mr. Wilbourn was taking the children to
21 and from school while his wife, who's here in court
22 today, would work --

23 THE COURT: And who was here with the two children
24 yesterday, I might add.

1 MR. FLAXMAN: That's correct.

2 THE COURT: Correct, right. Right. Okay. Go
3 ahead, State. I've heard enough. Go ahead.

4 MR. DINARD: Your Honor, the State obviously is
5 asking your Honor to deny the defendant's motion to
6 reduce bond. Judge, Defense Counsel's argument runs
7 both ways. If the defendant has been on EM for all
8 that time, then he knows precisely the conditions
9 regarding that electronic monitoring, and there's
10 absolutely no excuse that now the defendant has
11 violated four separate times.

12 THE COURT: I want -- what's each one and what were
13 the violations?

14 MR. DINARD: Yes, Judge.

15 THE COURT: First one, I have 1/31/23.

16 MR. DINARD: That's correct, your Honor, it's a
17 Thursday. The defendant deviated from his
18 child-related movement before his essential -- allotted
19 essential movement time. He was traced traveling
20 outside of his placement from 7:32 a.m. to 7:54 a.m.,
21 he returned to his residence at 7:55 a.m. The second
22 allegation is on February 8th of 2022. The defendant
23 was traced traveling near the Mission South Chicago
24 Dispensary at 8552 South Commercial Avenue from 7:42

1 a.m. to 8:04 a.m. He was traced back to his residence
2 at 8:06 a.m. On February 15 of --

3 THE COURT: I'm sorry. What's it called, near
4 what? Mission what?

5 MR. DINARD: Mission South Chicago Dispensary.

6 THE COURT: Okay.

7 MR. DINARD: The remaining -- your Honor, the
8 remaining violation are near that same location,
9 Judge.

10 THE COURT: The Mission South Dispensary?

11 MR. DINARD: Correct, your Honor.

12 THE COURT: What times?

13 MR. DINARD: 2/15 of 2023 7:52 a.m. to 8:06 a.m.
14 He returned to his residence at 8:08, and then on
15 February 23rd of 2023, the deviation is from 7:32 a.m.
16 to 8:00 a.m., your Honor. Those are the specific four
17 violations.

18 THE COURT: And what were those areas? Does it
19 indicate?

20 MR. DINARD: The last three were near -- on 2/8
21 2/15, it was 8552 South --

22 THE COURT: I'm sorry. 2/8/23 and 2/15?

23 MR. DINARD: Both of those were near 8552 South
24 Commercial Avenue.

1 THE COURT: Near 8552 South Commercial Avenue. And
2 the other ones were where?

3 MR. DINARD: And then the 1/31/23 was at 880
4 South -- South Chicago Avenue.

5 THE COURT: Okay.

6 MR. DINARD: And 1650 East 95th Street.

7 THE COURT: Is the -- is the second one?

8 MR. DINARD: That's the first one, your Honor.

9 THE COURT: The first one is 880 South Chicago, and
10 what's the other one?

11 MR. DINARD: Well, we can leave it at that, your
12 Honor. It's an intersection. I just had another
13 address there --

14 THE COURT: Oh, okay. All right. And the fourth
15 one?

16 MR. DINARD: The fourth one, your Honor, is at 9148
17 South Commercial Avenue, and that's -- and that is, if
18 it's on a map, near that same Mission South Dispensary,
19 Judge.

20 THE COURT: Okay. And what date was that?

21 MR. DINARD: 2/23.

22 THE COURT: All right. And where is that in
23 relation, State, to -- he's got --

24 MR. DINARD: I have a host site of 8450 South

1 Colfax.

2 THE COURT: Correct. And my last order -- well,
3 there's so many of them. Hang on. Last one I have is
4 November 30th, 2022, it is ordered that the movement
5 previously authorized to pick up a minor child at John
6 L. Marsh Elementary School is hereby amended to
7 authorize movement from 2:00 p.m. to 3:30 p.m. each
8 school day. That's the last one I have. What's the
9 address of John March Elementary School, Mr. Flaxman?

10 MR. FLAXMAN: 9822 South Exchange.

11 THE COURT: South Exchange. Okay.

12 MR. DINARD: And your Honor, just for context,
13 between the placement, -- the host site and the
14 dispensary location is approximately one mile, Judge.

15 THE COURT: One mile. All right. Anything else,
16 Mr. Flaxman?

17 MR. FLAXMAN: Yeah, the first -- the earlier order
18 which allowed movement in the morning was
19 August 24th of 2022.

20 THE COURT: Yeah, yeah, I have that one, too.

21 MR. FLAXMAN: Right. That one says he has movement
22 from 7:15 a.m. to 11:00 a.m. to take his kids to
23 school.

24 THE COURT: Right. To take the kids -- his kids to

1 school, right, which at that point was Cole Language
2 Academy at 8441 South Yates Boulevard in Chicago for
3 minor child and to and from home and preschool for
4 minor child at John L Marsh Elementary School located
5 at 9822 South Exchange. Right. I'm looking at it
6 right here. Okay.

7 MR. FLAXMAN: The State asserted that the time when
8 Mr. Wilbourn allegedly left his home without permission
9 was 7:32 a.m., 7:42 a.m., 7:52 a.m., and 7:32 a.m.
10 Each of those times is after 7:15 a.m. That's allowed
11 in --

12 THE COURT: Mr. Dinard.

13 MR. DINARD: Your Honor, there's a reason that the
14 State is being very specific regarding the violations
15 that has to do with the facts of this case, your Honor.
16 The officers approached a parked vehicle, saw this
17 defendant drinking a beer. Upon approach, they
18 observed the defendant throw a loaded revolver into the
19 rear of a minivan. That's the basis of this charge,
20 Judge, and also the basis is because of this
21 defendant's criminal history, your Honor, which
22 warrants explanation. In 2008, this defendant was
23 convicted of an aggravated battery to a peace officer,
24 which included an unlawful use of a weapon charge where

1 he served ten years in the Illinois Department of
2 Corrections. He has two drug related felonies, an '05
3 and '04. Your Honor, in 1994, the defendant was
4 convicted of attempt murder with a firearm where he
5 served 16 years in the Illinois Department of
6 Corrections, which was consecutive to, your Honor,
7 another PCS, where he was -- where he also served --
8 I'm sorry, was concurrent to 16 years Illinois
9 Department of Corrections on a felony delivery of a
10 controlled substance. And your Honor, in '94, right
11 before you -- before he was convicted of the attempted
12 murder, he was sentenced to 30 months probation on a
13 burglary. So your Honor, that criminal history also
14 informs the State's Attorney's Office, your Honor, and
15 our position that the defendant -- the -- is --
16 warrants a -- warrants a strict monitoring on
17 electronic monitoring, your Honor, and the fact that
18 the defendant has been on electronic monitoring for an
19 extended period of time and is now violating is
20 concerning for the State's Attorney's Office, Judge.

21 THE COURT: Anything else, Mr. Flaxman?

22 MR. FLAXMAN: Yes, your Honor.

23 THE COURT: Yeah.

24 MR. FLAXMAN: The two drug convictions in 2004 and

1 2005 were vacated, set aside, and Mr. Wilbourn received
2 Certificates of Innocence for those two. I think the
3 State should not be using those for any reason because
4 they know that they don't exist. The -- this is a
5 question of notice. Did Mr. Wilbourn have notice from
6 the Court that he could not deviate at all --

7 THE COURT: He absolutely most certainly did. Your
8 motion to reduce bond is denied on the violation of
9 bail bond, and I will make a record. I have made it
10 perfectly clear each and every time, and I have given
11 Mr. Wilbourn the benefit of the doubt every single
12 time. The location of the -- what's it called,
13 mission something --

14 MR. DINARD: Mission South.

15 THE COURT: Yeah. At 8552 South Commercial Avenue
16 is not in the area where this Court has -- I'm not
17 concerned about a couple minutes here and there.
18 That's not my concern. Okay? On October -- my concern
19 is, is that when this Court goes above and beyond to
20 accommodate not just Mr. Wilbourn, but other
21 individuals because this Court understands that there
22 are childcare issues, everybody gets the benefit of the
23 doubt, I have given him that, and I -- and to say that
24 this Court has not given notice to Mr. Wilbourn that

1 he's confined to those areas while there are orders
2 here, I've said that repeatedly on October 15th, 2019,
3 you asked for movement, I granted it. All these were
4 over State's objection, I might add. Okay? Then on
5 November 14th, State's request to amend indictment was
6 granted. There wasn't an issue then. He has been on
7 EM. This has been continued. April 15th, Defense
8 request for EM address change granted. I have written
9 orders on each one. July 12th, 2021, Defense request
10 for EM movement is granted. 9/14/21, it was continued
11 to 9/14. On August 27th, it was advanced. Defense
12 granted leave to file motion for movement. That was
13 granted. Written orders on each one. On
14 September 14th, 2021, Defense for -- motion for
15 movement requested, granted again. All these over
16 State's objection. State tendered an offer
17 November 15th. He rejected that, which is his right,
18 we set it down for trial. Again, on December 16th,
19 2021, Defense motion to advance from 2/22 to 12/16 was
20 granted. Once again, motion for EM movement granted,
21 drafted an order, was set down for jury trial on
22 March 8th, 2022. On January 21st, 2022, once again,
23 Defense files motion to advance for -- to review EM.
24 That was denied by this Court at that time, set for

1 trial on March 8th. On January 27th, Court clarified
2 order for -- regarding the Court to clarify an order
3 for motion to remove electronic monitoring, that was
4 denied. Set for jury on March 8th. On March 8th, the
5 State tendered an offer. It was motion Defendant to
6 4/11/22 for possible disposition, taken off the jury
7 call. On April 11th, again, EM, Mr. Wilbourn was here,
8 motion Defendant 4/20/22 for Defense status and to set
9 in person, and then today's court date. Okay. This is
10 back on -- go ahead, Mr. Flaxman.

11 MR. FLAXMAN: Could we pass it briefly so I can
12 confer with Mr. Wilbourn?

13 THE COURT: Sure.

14 MR. FLAXMAN: Thank you.

15 (Whereupon, the case was passed and later
16 recalled.)

17 THE COURT: Wilbourn.

18 MR. FLAXMAN: Mr. Wilbourn is approaching the
19 bench. I'm Kenneth Flaxman on behalf of Mr. Wilbourn.

20 THE COURT: All right. You asked to pass this
21 case, Mr. Flaxman.

22 MR. FLAXMAN: Yes, we conferred, and we'll keep it
23 April 10th by agreement.

24 THE COURT: And that's for motion -- is that for

1 trial; is that correct?

2 MR. FLAXMAN: It's for motion, Judge.

3 THE COURT: Yes, I'm sorry. Okay. By agreement
4 4/10.

5 MR. FLAXMAN: 4/10.

6 MS. CHAMBERLAIN: And that's for motion to suppress
7 statement?

8 THE COURT: Suppress evidence, I believe.

9 THE COURT: No, I believe -- let's just double
10 check. I think it's --

11 MR. FLAXMAN: Motion to suppress --

12 MS. CHAMBERLAIN: It's not statement, Judge it's
13 just --

14 THE COURT: I think it's just to quash, right?

15 MS. CHAMBERLAIN: Yes.

16 THE COURT: With for motion to quash arrest and
17 suppress. Okay. We'll see you then, sir.

18 (The above-entitled cause was continued to
19 April 10th, 2023.)

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1 STATE OF ILLINOIS)
2 COUNTY OF COOK) SS.
3

4 I, ANGELA K. VILLARREAL, an Official Court
5 Reporter within and for the Circuit Court of Cook
6 County, Criminal Division, do hereby certify that I
7 have reported in shorthand in the report of proceedings
8 had in the above-entitled cause; that I thereafter
9 caused the foregoing to be transcribed into
10 typewriting, which I hereby certify is a true and
11 accurate transcript of the proceedings had before the
12 Honorable PEGGY CHIAMPAS, Judge of said court.
13
14
15

16 ANGELA K. VILLARREAL
17 Official Shorthand Reporter
18 Circuit Court of Cook County
19 County Department - Criminal
20 Division
21 Certification No. 084-004877
22

22 Dated this 8th day of
23 March, 2023.
24