Affirmed and Memorandum Opinion filed April 22, 2010.

In The

Fourteenth Court of Appeals

NO. 14-09-00805-CR

EX PARTE JEREMY WRIGHT

On Appeal from the 178th District Court
Harris County, Texas
Trial Court Cause No. 1228107

M E M O R A N D U M   O P I N I O N

Appellant has been charged with five felony offenses: capital murder in cause number 1203978; aggravated robbery in cause numbers 1203979 and 1200684; and burglary of a habitation in cause numbers 1191005 and 1192481. The trial court initially did not set bond for the capital murder charge. Bond was set at $200,000 in each of the other cases. Appellant filed a pre-trial application for writ of habeas corpus. The trial court then set pre-trial bond at $750,000 in the capital murder case. After a writ hearing, the court denied appellant's request to reduce his bonds. This appeal followed.

The Writ Hearing

At the writ hearing, the parties stipulated to the facts surrounding the charged offenses.[1] According to the stipulation, evidence would establish that appellant and two other men robbed Randi Johnson in his home at gunpoint. Appellant fired his weapon four times, hitting Johnson once in the leg. Johnson later identified appellant from a photo array as the person who shot him. The group fled the home with a cellular phone. The suspects were later located through the stolen cell phone from this aggravated robbery.

Appellant and the other two men then followed four people into an apartment. While appellant held a gun on one victim, his co-defendant fired a gun, injuring one victim and killing another. Appellant hit one of the men inside the apartment with his weapon. Witnesses identified appellant as one of the gunmen. Eight days later, two men entered Mark Landers' apartment and robbed him at gunpoint. Landers identified appellant as one of the perpetrators who held him at gunpoint.

In the burglary cases, appellant was observed entering the victims' apartments and leaving with property. A fingerprint identified as belonging to appellant was found in one of the apartments. Appellant was in possession of one of the weapons used in the crimes, and he led the police to the other weapon. Appellant subsequently confessed to committing thirteen robberies.

Appellant testified that he was twenty-two at the time of the writ hearing. He was born in Memphis, Tennessee. He testified he moved to Harris County in 2005 and had been living at the same address until his arrest. His father also lives in Harris County, and he has some aunts and uncles who live in Texas. He testified that he did not have the ability to pay $150,000 to a bonding company and he has no real property, stocks, bonds or other assets to pledge as collateral. He testified that his father is in retail, but he does not know

[1] The writ hearing was brief; the docket indicates the hearing lasted thirty-five minutes. Appellant was the only witness to testify. Appellant acknowledged on the record that he had no objection to the stipulation of a narrative summary of the testimony that would have been provided by Detective Squire concerning his investigation of these crimes. The trial court also took judicial knowledge of the probable cause affidavits and other matters in the case files that are not a part of our record.

how much his father earns. He did not think his father could help him post bond. He acknowledged that he has family in Memphis who could help him, however.

Appellant's counsel argued that the bonds for the burglaries should be reduced to $10,000 and $20,000, the bond in the aggravated robberies should be reduced to $30,000 each, and bond in the capital case should be reduced to $500,000. The trial court denied the request.

Standard of Review

In his sole issue in this appeal, appellant contends that the trial court erred in denying his request to lower his bonds. He asserts that the bonds, which total over $1,500,000, are excessive and deny him his right to reasonable bail.[2]

We review a trial court's ruling on the setting of bond under an abuse of discretion standard of review. *See Ex parte Rubac*, 611 S.W.2d 848, 849, 850 (Tex. Crim. App. 1981). A defendant who seeks a reduction in the amount of bond has the burden of proof to demonstrate that the bond is excessive. *Maldonado v. State*, 999 S.W.2d 91, 93 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd).

The primary purpose of an appearance bond is to secure the accused's presence at trial on the charged offense. *Maldonado*, 999 S.W.2d at 93. Bail should be set high enough to give reasonable assurance that the defendant will appear at trial, but it should not operate as an instrument of oppression. *Id.* Bail set at an amount higher than reasonably calculated to fulfill this primary purpose is excessive under the Eighth Amendment. *In re Durst*, 148 S.W.3d 496, 498 (Tex. App.—Houston [14th Dist.] 2004, no pet.). While the decision regarding a proper bail amount lies within the sound discretion of the trial court, the court is required to consider criteria set forth in article 17 .15 of the Code of Criminal Procedure, which provides as follows:

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[2] We note that appellant's application for writ of habeas corpus addressed only the capital murder charge. At the writ hearing, appellant's counsel asked the court to consider the writ on all of appellant's cases and the court granted the request.

> The amount of bail to be required in any case is to be regulated by the court, judge, magistrate or officer taking the bail; they are to be governed in the exercise of this discretion by the Constitution and by the following rules:
>
> 1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.
>
> 2. The power to require bail is not to be used so as to make it an instrument of oppression.
>
> 3. The nature of the offense and the circumstances under which it was committed are to be considered.
>
> 4. The ability to make bail is to be regarded, and proof may be taken upon this point.
>
> 5. The future safety of a victim of the alleged offense and the community shall be considered.

Tex. Code Crim. Proc. Ann. art. 17.15 (Vernon 2005); *see Ludwig v. State*, 812 S.W.2d 323, 324 (Tex. Crim. App.1991) (noting that the court is to be guided by the article 17.15 factors). We measure the trial court's ruling against these criteria. *Ex parte Beard,* 92 S.W.3d 566, 573 (Tex. App.—Austin 2002, pet. ref'd).

In addition to these criteria, the following factors in determining bail may be considered: (1) the accused's work record; (2) the accused's family and community ties; (3) the accused's length of residency; (4) the accused's prior criminal record; (5) the accused's conformity with previous bond conditions, if any; (6) the existence of any other outstanding bonds; and (7) aggravating circumstances alleged to have been involved in the charged offense. *Maldonado*, 999 S.W.2d at 93.

The Nature and Circumstances of the Offenses

The nature of the offense and circumstances surrounding the crime are primary factors in determining what constitutes reasonable bail. *See Ex parte Davila*, 623 S.W.2d 408, 410 (Tex. Crim. App. 1981); *Ex parte Hunt*, 138 S.W.3d 503, 506 (Tex. App.—Fort Worth 2004, pet. ref'd). In considering the nature of the offense, it is also proper to consider the possible punishment. *Maldonado*, 999 S.W.2d at 95; *Wright v. State*, 976 S.W.2d 815, 820 (Tex. App.—Houston [1st Dist.] 1998, no pet.). When the nature of the

offense is serious and involves aggravating factors that may result in a lengthy prison sentence, bail must be set sufficiently high to secure the defendant's presence at trial. *In re Hulin*, 31 S.W.3d 754, 760 (Tex. App.—Houston [1st Dist.] 2000, no pet.).

The record reflects that appellant has been charged with five felonies. He first was charged with two counts of burglary of a habitation. The stipulated evidence shows that appellant then committed aggravated robbery, where he followed victims into their homes and threatened them with a gun. In cause number 1203979, appellant shot at the robbery victim four times, striking him in the leg. Shortly after this crime, in another robbery, a co-defendant shot and killed a victim while appellant struck another victim with his weapon. These offenses are serious and increasingly violent in nature.

This last felony resulted in appellant being charged with capital murder in cause number 1203978. *See* Tex. Penal Code Ann. § 19.03(a)(2) (Vernon Supp. 2009). The punishment for capital murder is life in prison or death. *Id.* § 12.31 (Vernon Supp. 2009). Appellant would not be eligible for parole. *See* Tex. Gov't Code Ann. § 508.149(b) (Vernon Supp. 2009). Because appellant faces life without parole or the death penalty, the motivation to flee is a factor warranting a high bond. The trial court may have concluded that the bond set was reasonable based on the seriousness of the offenses and the severity of the potential punishment.

While each case should be evaluated based on the individualized facts and circumstances presented, a review of decisions in recent years may be instructive. *See Ex parte Beard,* 92 S.W.3d at 571. Bonds of similar amounts for serious charges are often upheld. *See Ex parte Jackson*, 257 S.W.3d 520, 522-23 (Tex. App.—Texarkana 2008, no pet.) (affirming denial of reduction of $750,000 bail for defendant charged with murder during a robbery after considering potential punishment and another offense); *Cooley v. State,* 232 S.W.3d 228, (Tex. App.—Houston [1st Dist.] 2007, no pet.) (affirming refusal to reduce $750,000 bail on three solicitation of capital murder charges after considering seriousness of charges); *Ex parte Chavfull*, 945 S.W.2d 183, 186-87 (Tex. App.—San

Antonio 1997, no pet.) (affirming refusal to lower $750,000 capital murder bond after considering seriousness of crime and safety of victim and the community).[3]

Ability to Make Bond

The accused's ability to make bond is merely one factor to be considered in determining the appropriate amount of bail. Tex. Code Crim. Proc. Ann. art. 17.15(4); *Ex parte Brown*, 959 S.W.2d 369, 372 (Tex. App.—Fort Worth 1998, no pet.). A defendant's inability to secure bond for the bail set by the trial court does not automatically render the bail excessive. *Id.* To show that he is unable to make bail, a defendant generally must show that his funds have been exhausted. *See Ex parte Willman,* 695 S.W.2d 752, 754 (Tex. App.—Houston [1st Dist.] 1985, no pet.). Unless he has shown that his funds have been exhausted, a defendant must usually show that he made an unsuccessful effort to furnish bail before bail can be determined to be excessive. *Id.*

Appellant testified at the writ hearing that he was not employed before his arrest except that he sometimes worked "off the books" for his father and he was paid in cash. He testified that he does not have $150,000, or any other assets, to pay a bail bondsman. His father works in retail, but appellant does not know how much money he makes. Appellant does not believe his father could pay $150,000, but he acknowledged that he has other relatives in Memphis who could help him. No other witnesses testified. There is no other evidence of appellant's financial capacity or attempts to obtain bond. Specifically, there are no bank statements or any other documents demonstrating

[3] Other murder cases have held that a $1,000,000 bond is not excessive under certain circumstances. *See Ex parte Brown*, No. 05-00-00655-CR, 2000 WL 964673 (Tex. App.—Dallas July 13, 2000, no pet.) (not designated for publication) (holding that $1,000,000 bail not excessive for murder when defendant did not present testimony relating to factors in article 17.15); *Ex parte Pulte*, No. 2-03-202-CR, 2003 WL 22674734 (Tex. App.—-Fort Worth Nov.13, 2003, no pet.) (not designated for publication) (holding that $1,000,000 bail not excessive for solicitation of murder when record showed that defendant had assets, had not shown evidence of bond he could make, and committed offense while on bond for related offense); *Ex parte Saldana*, No. 13-01-00360-CR, 2002 WL 91331 (Tex. App.—-Corpus Christi Jan.24, 2002, no pet.) (not designated for publication) (holding that $1,000,000 bail for capital murder not excessive in light of violent nature of offense, defendant's family's ability post a $500,000 bond previously, defendant's membership in violent gang, and other evidence suggesting defendant posed flight risk and danger to community).

appellant's financial status. This unsupported, conclusory testimony does not justify a reduction in the bonds. *See Ex parte Scott*, 122 S.W.3d 866, 870 (Tex. App.—Fort Worth 2003, no pet.) (considering the absence of specific evidence regarding defendant's ability to make bond in affirming trial court's refusal to lower bond); *Ex parte Chavfull,* 945 S.W.2d at 186-87 (affirming refusal to lower bond based on defendant's mother's testimony that defendant had no money and family could only raise $1000); *Balawajder v. State*, 759 S.W.2d 504, 506 (Tex. App.—Fort Worth 1988, pet. ref'd) (noting that vague references to inability to make bond do not justify a reduction in the amount set); *Ex parte Miller*, 631 S.W.2d 825, 827 (Tex. App.—Fort Worth 1982, pet. ref'd) (recognizing that it is incumbent on the accused to show that he has made an effort to obtain a bond in the amount set).

Because appellant provided little evidence supporting his claimed inability to make bail and no evidence of his efforts to secure bond, the trial court could have properly concluded that the amount of bail was reasonable under the circumstances. *See Ex parte Scott*, 122 S.W.3d at 870.

Safety of the Victim and the Community

The future safety of both the community and the victim of the alleged offense are to be considered in determining the appropriate amount of bond. Tex. Crim. Proc. Ann. art 17.15(5) (Vernon 2005). The repeated and unprovoked acts of violence in these cases pose a significant risk to the community. The trial court may have concluded that the number of offenses, together with the escalating pattern of violence, warranted a bail sufficient to ensure the safety of the community as a whole and of the individual victims and witnesses who may testify at trial. *See Chavfull*, 945 S.W.2d at 187 (considering defendant's potential danger to the community as a factor in denying reduction of bond).

Other Factors

The trial court may also consider the defendant's work record; family and community ties; length of residency; and his prior criminal record. *Maldonado*, 999

S.W.2d at 93. There is no mention in the record of appellant's prior arrests or other criminal history, if any. Apart from his testimony that his father lives in Harris County, appellant offered no evidence of ties to the community. Appellant had only lived in the area approximately four years before his arrest. The only testimony about his work history is that he was unemployed but that he sometimes worked for his father "off the books." None of these factors weigh in favor of a reduction in the bonds. The trial court may have concluded that appellant's ties to the community were insufficient to assure his appearance at trial. *See, e.g., Ex parte Brown*, 959 S.W.2d at 373.

Conclusion

Appellant has not met his burden to establish that the bonds in these cases are excessive. We hold that the trial court did not abuse its discretion in denying appellant's request to lower the bonds.

Accordingly, we overrule appellant's sole issue and affirm the trial court's order.

PER CURIAM

Panel consists of Chief Justice Hedges and Justices Yates and Boyce.
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