In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-11-00473-CR

EX PARTE RYAN LEE SUMSTAD

On Appeal from the 359th District Court
Montgomery County, Texas
Trial Cause No. 11-06-06792-CR

MEMORANDUM OPINION

Appellant, Ryan Lee Sumstad, appeals the trial court's order setting bail at $500,000. In a single issue, Sumstad argues that his bail is excessive under article 17.15 of the Texas Code of Criminal Procedure. *See* Tex. Code Crim. Proc. Ann. art. 17.15 (West 2005). We affirm the trial court's judgment.

Appellant was charged with murdering his wife, Christie Sumstad, and was arrested for the offense on June 21, 2011. *See* Tex. Penal Code Ann. § 19.02 (West 2011). The court fixed appellant's bond at $500,000. On June 28, 2011, appellant filed an application for habeas relief seeking bail reduction to $75,000. Following the habeas

hearing, the trial court denied the requested relief. Appellant timely filed notice of appeal.

Appellant argues that his bail is excessive and that the trial court erred in denying his request for a bond reduction. The burden of proof is on the defendant who claims bail is excessive. *Ex parte Rodriguez*, 595 S.W.2d 549, 550 (Tex. Crim. App. 1980). The primary purpose for setting an appearance bond is to secure the presence of the defendant in court for trial. *Ex parte Vasquez*, 558 S.W.2d 477, 479 (Tex. Crim. App. 1977). The trial court should set the bail sufficiently high to give reasonable assurance that the accused will comply with the undertaking, but not set it so high as to be an instrument of oppression. *Id*.; *see also Ex parte Bufkin*, 553 S.W.2d 116, 118 (Tex. Crim. App. 1977). An appellate court reviews a trial court's decision in setting the amount of a bond under an abuse of discretion standard. *See Ex parte Rubac*, 611 S.W.2d 848, 850 (Tex. Crim. App. 1981).

Excessive bail is prohibited by both the United States and Texas Constitutions. U.S. CONST. amends. VIII, XIV; Tex. Const. art. I, §§ 11, 13. Article 17.15 provides rules for the court to follow in fixing bail amounts. Tex. Code Crim. Proc. Ann. art. 17.15. In exercising its discretion in setting a bail amount, the trial court must consider: (1) whether the bail is sufficiently high to give a reasonable assurance that defendant will attend trial; (2) that the bail amount cannot be used as an instrument of oppression; (3) the nature of the offense and the circumstances under which it was committed; (4) the

defendant's ability to make bail; and (5) the future safety of a victim of the alleged offense and the community. *Id*. The court may consider other factors and circumstances in determining the amount of bail including: family and community ties, length of residency, aggravating factors involved in the offense, the defendant's work history, prior criminal record, and conformity with previous outstanding bonds, if any. *Rubac*, 611 S.W.2d at 849-50; *see also Ex parte Wood*, 308 S.W.3d 550, 552 (Tex. App.—Beaumont 2010, no pet.).

Nature of the Offense

Appellant was charged with intentionally or knowingly causing the death of his wife by strangulation, a first degree felony. *See* Tex. Penal Code Ann. § 19.02 (b)(1), (c). The offense carries a sentence of 5 to 99 years or life and a fine not to exceed $10,000. *Id*. § 12.32 (a), (b) (West 2011).

Here, the nature of the offense reflects that appellant allegedly strangled and killed his wife, while his biological children and stepchild were present in the home. Based on the serious nature of the crime and the possibility of a substantial penalty if convicted, the trial court could have reasonably concluded that the nature of the offense did not favor a bail reduction.

Sufficient Bail to Assure Appearance But Not Oppress

The court conducted a hearing on appellant's application for writ of habeas corpus. During the hearing, appellant testified that he moved from Hayward, California to

Texas approximately ten years ago. At the time of appellant's arrest, he was employed with a local company as an IT Manager. He testified that he believed that if he were released on bond he would be able to return to his position.

He testified that his mother, Cheryl Sumstad, also lives in the Spring, Texas area. She testified that she moved to Texas three years ago to be closer to her children and grandchildren. Appellant's father lives in Pflugerville, Texas. He also recently moved to Texas from California. Appellant testified that he currently has family and friends that reside in California, including his sister, aunts, uncles, and cousins. He also has family in New England.

Appellant testified that he last left Texas in May 2011, and he traveled outside the United States in 2009. Appellant explained that he travels outside of Texas on business on average five days a month. Appellant and his children have passports.

Appellant testified that he recently considered moving to Utah to obtain employment with a friend that has a company in Utah. Appellant also testified that he recently converted to Mormonism, and is dating a woman that resides in Utah. Appellant testified that he has known this woman for approximately 24 years. Appellant had planned to bring his children to his girlfriend's house to stay with her and her family for two weeks in July.

Prior to his arrest for the charges in this case, appellant was already contemplating moving due to his employer's consideration of shutting down his department in its Texas

office in 2012. Other than being near his two children and his mother, appellant has little reason to remain in Montgomery County if released on bail. Appellant's only property is burdened with debt and of no value to him. Appellant has additional family members in California and New England. Further, appellant has a girlfriend in Utah and a potential job opportunity. Finally, the record contains no evidence indicating that the trial court rendered its decision for the purpose of forcing appellant to remain incarcerated pending trial. *Compare Ex parte Harris*, 733 S.W.2d 712, 714 (Tex. App.—Austin 1987, no pet.) (trial judge stated, "I'd rather see him in jail than to see someone's life taken[.]").

Ability to Make Bail

Although not controlling, the defendant's ability or inability to make bail is also relevant. *Ex parte Charlesworth*, 600 S.W.2d 316, 317 (Tex. Crim. App. 1980). For a defendant to show that he is unable to make bail, he must generally show that his funds and his family's funds have been exhausted. *Ex parte Willman*, 695 S.W.2d 752, 754 (Tex. App.—Houston [1st Dist.] 1985, no pet.) (citing *Ex parte Dueitt*, 529 S.W.2d 531, 532 (Tex. Crim. App. 1975)). Unless a defendant has shown that his funds have been exhausted, he must usually show that he made an unsuccessful effort to furnish bail before bail can be determined excessive. *Id*. If the defendant indicates his financial inability to procure a surety bond, the court will not require him to do something useless. *Dueitt*, 529 S.W.2d at 532.

At the time of appellant's arrest, he earned $100,000 to $150,000 a year. He netted approximately $8,000 a month. He testified he also receives a lump sum annual bonus at the end of each January. He received $24,000 from his last bonus in January 2011. He testified that his employer has paid all of his earned wages to date, and no one owes him money that he could collect to pay his bond. He contacted a bail bond company and was informed that he would be required to pay $50,000 for his current bond. He testified that neither he, nor his family has $50,000 to pay the bail bond company.

Appellant testified that he does not have anything to put up as collateral for the half million-dollar bond. At the time of the hearing, appellant had $2,000 in the bank. To explain his lack of funds, appellant testified that he has a large amount of debt and lives paycheck to paycheck. He testified he could obtain approximately $1,500 if he liquidated all of his assets. He has two mortgages on his home, and has no equity in the home. Appellant owns two vehicles. Assuming he would be able to sell both for their value, he estimates he could gain $500 for one, and $3,000 for the other vehicle.

While appellant testified that his mother could help raise some funds for his bond, she testified that she was unwilling to provide appellant any financial assistance toward his bond. She explained that while she has two certificates of deposit, worth about $85,000 each, she could not cash those in and loan appellant money from them because she needs the funds to live since she is retired and has serious health issues with

substantial medical bills. She receives $4,000 a month in retirement. Further, appellant testified that his father is on social security disability and would not be able to help him meet his bond. Appellant's mother testified that appellant's sister does not have the financial means to help appellant with his bond because she is an unemployed college professor.

Appellant borrowed $25,000 from a friend to retain his attorney in this case. He secured this loan with the second mortgage on his home and his tax return for $14,000, which he has since received and remitted to his friend in partial payment. This friend is unable to loan him additional funds without security.

Appellant further testified that he has been the CEO of twelve companies. Some of those companies have bank accounts, but to appellant's knowledge, there is no money in those accounts. Appellant testified that at some point he had an account at UBS while trying to help some friends with a transaction. He testified that the funds in the account were not his, but were part of a business transaction between two other individuals. Appellant no longer has contact with these friends and the account is closed.

Appellant has a college ring that he testified was worth a couple of hundred dollars. However, Detective David Eason, of the Montgomery County Sheriff's office, testified that through his investigation he learned that this ring contained a diamond valued at $1,800, and that appellant at one time went to a local jewelry store and inquired about replacing the stone with another he possessed, valued at $112,000. Detective

Eason further testified that after conducting his investigation of appellant's financial situation, he believes that appellant can meet the $50,000 bond requirement.

While appellant testified that he lives paycheck to paycheck and has no way to come up with the necessary funds, the trial court could have disbelieved this testimony. Further, the trial court could have determined that appellant could obtain a bond based on his family's resources. Moreover, even had appellant established that he could not make bail, this element would not control over all other considerations. *See Charlesworth*, 600 S.W.2d at 317.

Future Safety of Victim and Community and Other Factors

The gravity and nature of the charge against appellant indicates that he presents a risk to the safety of the community. Further, the CPS chief prosecutor from Montgomery County appeared at the hearing and testified that CPS has filed a petition to terminate the parental rights of appellant. She further testified that CPS was concerned that appellant would attempt to contact the children or flee with them. Detective Eason testified that his investigation revealed that appellant's two biological children and his stepchild were home when their mother was killed, and were home the next morning when her body was discovered. The fact that the children were in the home when the death occurred also concerned CPS for the children's safety if appellant was released on bail.

Appellant testified that he does not have a prior criminal record, and has never been arrested or placed on probation. If released on bond, appellant testified that he planned to return to his home and continue with his current employer.

The trial judge explained that she had considered the statutory factors in determining whether to lower appellant's bail amount. Given the evidence of appellant's extensive out of state ties, the violent nature of the alleged crime, appellant's potential as a flight risk, and the safety of his minor children and the community, we conclude that the trial court did not abuse its discretion in refusing to reduce bail. We overrule appellant's sole issue and affirm the trial court's order.

AFFIRMED.

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CHARLES KREGER
Justice

Submitted on November 8, 2011
Opinion Delivered November 16, 2011
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Before McKeithen, C.J., Gaultney and Kreger, JJ.