Opinion issued May 6, 2010

In The

Court of Appeals

For The

First District of Texas

NO. 01-09-01040-CR

WALLACE C. LEDET, IV, Appellant

V.

STATE OF TEXAS, Appellee

On Appeal from the 239th District Court
Brazoria County, Texas
Trial Court Case No. 59374

MEMORANDUM OPINION

Appellant, Wallace C. Ledet, IV, challenges the trial court's order setting his bail at $250,000 pending his trial for the offense of aggravated kidnapping.[1] In his

[1] *See* TEXAS PENAL CODE ANN. § 20.04 (Vernon 2003).

sole point of error, appellant contends that the trial court abused its discretion in setting his bail at $250,000, and he asks this Court to set bail "in the amount of $75,000 or another amount not to exceed $100,000."

We affirm.

Background

A Brazoria County grand jury issued a true bill of indictment, accusing appellant of committing the offense of aggravated kidnapping. The complainant, Susana DeJesus, was abducted from a shopping center parking lot on February 2, 2009, in Pearland, Texas. The complainant was subsequently shot and killed. The indictment against appellant included allegations that he used or exhibited a deadly weapon during the commission of the offense. The trial court originally set appellant's bail at $500,000.

Appellant filed a motion to reduce his bail. At the hearing on his motion, Wallace Ledet Sr., appellant's father, testified that, prior to 2002, he, his wife, appellant, and appellant's younger sister lived in Louisiana and Ohio. In 2002, the family moved to Baytown, Texas, where appellant graduated from high school. In 2004, the family moved to Pearland, where the family lived at the time of the alleged offense. Ledet Sr. worked as a business manager and his wife worked as an insurance agent. Appellant had previously worked with Ledet Sr. as a maintenance helper but was not employed at the time of his arrest.

Ledet Sr. asked the trial court to release appellant on a lower bond to help his family and appellant "financially" because the family had "pretty much exhausted" their ability to assist appellant "in legal representation." Ledet Sr. wanted appellant to enter the workforce and "be responsible" until trial, and he agreed to supervise appellant and ensure that he made all court appearances and met all reporting requirements. Ledet Sr. noted that appellant was "always welcome" at the family's house, but agreed that appellant had been staying "at some friends' houses" at the time of the alleged offense. Ledet Sr. had originally called one bonding company, but he had not talked to anyone recently and could not assist appellant in posting a bond if bail was set in the amount of $500,000. Ledet Sr. listed his family's assets and liabilities, and he explained that appellant, who was twenty-five years old, had no money and had possibly been selling scrap metal and pawning personal possessions for money at the time of his arrest.

At the end of the hearing, the trial court admitted into evidence the probable cause affidavit of Brazoria County Sherriff's Deputy Rogers. In his affidavit, Rogers testified that on February 2, 2009, the Brazoria County Sherriff's Office was notified that the complainant had been abducted at gunpoint from a business in Pearland. On March 9, 2009, Nicholas Michael Edwin Jean was arrested in connection with the complainant's abduction, and Rogers was "directed to" appellant. During a subsequent non-custodial interview with another deputy,

appellant admitted to "participation" in the abduction and stated that on February 2, 2009, as he drove his truck with Jean as a passenger, Jean told him to pull into a parking lot near a black Cadillac and Jean produced a pistol from a bag. As two women walked through the parking lot, Jean exited the truck and approached the women. Appellant then heard Jean order one of the women (later identified as the complainant) into the Cadillac, and appellant "left the area."

The trial court also admitted into evidence a copy of the true bill of indictment, in which a Brazoria County grand jury accused Jean of the offense of capital murder of the complainant by shooting her with a firearm in the course of committing or attempting to commit the robbery and/or kidnapping of the complainant.

Following the hearing, appellant requested that bail be set in the amount of $75,000. The trial court reduced appellant's bail amount to $300,000.

Appellant subsequently filed an application for writ of habeas corpus, seeking a bail reduction and arguing that the $300,000 bail was excessive and oppressive. At the hearing on his application, appellant testified that he was twenty-six years old, he had been in custody for 250 days, and he had previously moved around Louisiana to Ohio to Texas between the ages of 16 and 20 due to his father's employment. Appellant had moved to Baytown when he was nineteen or twenty years old and graduated from high school in Baytown. He had worked for

his father's company in Baytown for nine months after graduation, attended two semesters at a local community college, worked catering at a local resort while he was going to school, and lived with his family in Pearland for five years.

Appellant stated that he had no savings, money, or credit cards, but he did have a truck on which he owed $8,000. Appellant admitted to having received deferred adjudication for two separate misdemeanor offenses of possession of marijuana, but he noted that he had successfully completed community supervision for the offenses, posted bond in both cases, and attended all court hearings and not forfeited the bonds. Appellant agreed that he was not employed at the time of his arrest for aggravated kidnapping and had been unemployed for two months. Appellant had instructed his attorney to call two bonding companies, and had learned through these communications that he could not post the $300,000 bond.

On cross-examination, appellant discussed his parents' assets, and his testimony was generally consistent with the testimony provided by his father at the previous hearing. Appellant stated he had not spoken with his father about whether he had contacted a bondsman. Appellant also stated that he believed posting a bond should be his responsibility and he wanted the trial court to consider his financial situation, not his parents', in setting a bail amount. During the hearing, the trial court admitted into evidence the record and exhibits from the

prior bail reduction hearing. At the end of the hearing, the trial court granted appellant's application and reduced his bond to $250,000 with certain conditions.

Amount of Bail

In his sole point of error, appellant argues that the trial court abused its discretion in setting bail at $250,000 because a $75,000 bond is "more than adequate to secure his presence at trial, he had successfully complied with bond requirements before, and the State did not present a prima facie case that he committed a crime. He asks this Court to set bail "in the amount of $75,000 or another amount not to exceed $100,000."

We review a trial court's setting of bail for an abuse of discretion. *See Ex parte Rubac*, 611 S.W.2d 848, 850 (Tex. Crim. App. 1981); *Ex parte Ruiz*, 129 S.W.3d 751, 753 (Tex. App.—Houston [1st Dist.] 2004, no pet.). A trial court should consider the following factors in setting a defendant's bail:

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 so used 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).

The primary purpose for setting bail is to secure the presence of the defendant in court at his trial. *Ex parte Vasquez*, 558 S.W.2d 477, 479 (Tex. Crim. App. 1977); *Cooley v. State*, 232 S.W.3d 228, 234 (Tex. App.—Houston [1st Dist.] 2007, no pet). The amount of bail should be set sufficiently high to give reasonable assurance that the accused will comply with the undertaking, but should not be set so high as to be an instrument of oppression. *Ex parte Bufkin*, 553 S.W.2d 116, 118 (Tex. Crim. App. 1977); *Cooley*, 232 S.W.3d at 234. Courts should also consider the defendant's work record, family and community ties, length of residency, and past criminal record. *See Rubac*, 611 S.W.2d at 849; *see also Cooley*, 232 S.W.3d at 234 ("Courts should also consider the defendant's work record, family ties, residency, criminal record, conformity with previous bond conditions and aggravating factors involved in the offense."). The ability to make bail, alone, does not control the amount of bail. *Ex parte Charlesworth*, 600 S.W.2d 316, 317 (Tex. Crim. App. 1980); *see also Milner v. State*, 263 S.W.3d 146, 149–50 (Tex. App.—Houston [1st Dist.] 2006, no pet.). A defendant has the burden to demonstrate that bail is excessive. *See Rubac*, 611 S.W.2d at 849.

With these general principles in mind, we address the pertinent factors.

Nature of the Offense

The primary factors to be considered in determining what constitutes reasonable bail are the punishment that can be imposed and the nature of the offense. *Rubac*, 611 S.W.2d at 849. "Where the nature of the offense is serious and involves aggravating factors, the likelihood of a lengthy prison sentence following trial is great." *In re Hulin*, 31 S.W.3d 754, 760 (Tex. App.—Houston [1st Dist.] 2000, no pet.). Bond in such cases should be set sufficiently high to secure the defendant's presence at trial because his "reaction to the prospect of a lengthy prison sentence might be not to appear." *Id*. at 761; *see also Ex parte Scott*, 122 S.W.3d 866, 869–70 (Tex. App.—Fort Worth 2003, no pet.).

Appellant stands accused of committing the offense of aggravated kidnapping, a first degree felony punishable by a term of imprisonment for life or for any term of not more than 99 years or less than 5 years and a fine not to exceed $10,000. *See* TEXAS PENAL CODE ANN. § 12.32 (Vernon Supp. 2009), § 20.04 (Vernon 2003). Appellant asserts that the "record development . . . does not even establish an offense by appellant." Appellant suggests that the record merely shows that "appellant fled the area in an attempt to get away from any crime taking place."

However, Deputy Rogers, in his probable cause affidavit, which was admitted into evidence during both the hearing on appellant's motion for bail

reduction and the hearing on appellant's application for writ of habeas corpus, testified that appellant, during a noncustodial interview, admitted to "participation" in the complainant's abduction. During this interview, appellant explained that he drove Jean into a parking lot near a black Cadillac and Jean produced a pistol from a bag, exited appellant's truck, approached a woman later identified as the complainant, and ordered her into the Cadillac. In a true bill of indictment, which was also introduced into evidence, a Brazoria County grand jury accused Jean of subsequently murdering the complainant by shooting her with a firearm.

Given the serious nature of the offense of aggravated kidnapping, the allegation of the use and exhibition of a deadly weapon, and the potential for a lengthy sentence, the trial court could have reasonably concluded that bail of $250,000 is appropriate. *See Ex parte Scott*, 122 S.W.3d at 869–70 (noting "serious nature of aggravated kidnapping" and affirming $100,000 bond); *see also Milner*, 263 S.W.3d at 149–50 (noting serious nature of crimes of murder and attempted murder and substantial penalty if convicted, and affirming bond of $500,000); *Cooley*, 232 S.W.3d at 234 (noting that charged offenses of solicitation of capital murder were "serious, carrying substantial penalties," and affirming bond of $750,000 for three solicitation charges).

Ability to Make Bond

We note that an accused's ability to make bond is "merely one factor to be considered in determining the appropriate amount of bond." *Ex parte Scott*, 122 S.W.3d at 870 (citing TEX. CODE CRIM. PROC. ANN. art. 17.15(4)). Thus, even accepting that appellant established that he would not be able to post bond, such a showing would not control over the other factors. *Id*.

Community Ties

Appellant testified that he had moved to Texas when he was nineteen or twenty years old and graduated from high school in Baytown after attending there for one year. Appellant's only testimony about his work history was that, after graduation, he had worked for his father's company in Baytown for nine months and had subsequently worked catering at a local resort while he went to community college for two semesters. He admitted that he was unemployed at the time of his arrest and had been unemployed for two months. Also, the trial court could have reasonably concluded, based upon appellant's testimony, that he had been unemployed for significant periods of time since his graduation. Although appellant stated that he had lived with his family in Pearland for five years, he did not address his father's testimony that he had been living with unidentified friends at the time of the alleged aggravated kidnapping, and he provided no testimony concerning any other community ties. Appellant presented no testimony other than

his own. There is also no evidence that, at the time of the hearing, appellant would still be allowed to live with his parents or that appellant had any means or resources to obtain shelter on his own.

At the hearing on appellant's motion for bail reduction, Ledet Sr. testified that appellant was "welcome" at his house, but also stated that appellant had been staying at the houses of unidentified friends. Ledet Sr. did not elaborate or explain the amount of time appellant had actually been spending at home at the time of allegedly committing the offense. Ledet Sr. did not identify appellant's friends with whom appellant had been staying or where these friends lived. Appellant admitted that he had no financial resources, and Ledet Sr. stated that appellant had been pawning his possessions for money at the time of his arrest. Thus, the trial court could have reasonably concluded that appellant lacked any significant community ties to assure his appearance at trial. *See id*.

Other Considerations

Appellant presented evidence that he had previously complied with the conditions of bail in his two possession of marijuana cases, he had appeared in court at all required times in these cases, and he had successfully completed community supervision. Appellant notes that these conditions are "generally more stringent than bond conditions." Such evidence could weigh in favor of bail reduction. However, the offense of aggravated kidnapping carries a much more

significant punishment than that for misdemeanor marijuana possession. Moreover, as discussed above, an "accused's reaction to the prospect of a lengthy prison sentence might be not to appear." *Ex Parte Scott*, 122 S.W.3d at 869.

In regard to the safety of the victim and the community, the record before us establishes that the complainant was killed after the alleged kidnapping, and there is no evidence that any other specific victim is still at risk. Here, however, the trial court was allowed to consider the violence alleged in the instant case when taking into consideration the safety of the community.

Finally, the record shows that, prior to the instant case, appellant had committed two prior criminal offenses. Although appellant emphasizes his criminal history is non-violent, the trial court was still permitted to take this history into consideration. *See Rubac*, 611 S.W.2d at 849 (listing criminal history as one factor to consider).

In sum, considering all of the pertinent factors, including the violent nature of the alleged offense, the potential for significant punishment, the lack of any significant community ties, and the associated flight risk, we hold that the trial court did not abuse its discretion in setting appellant's bail at $250,000.

We overrule appellant's sole point of error.

Conclusion

We affirm the order of the trial court.

Terry Jennings
Justice

Panel consists of Justices Jennings, Hanks, and Bland.

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