Opinion issued December 29, 2016

In The

Court of Appeals

For The

First District of Texas

NO. 01-16-00315-CR

EX PARTE NADIA IRSAN, Appellant

On Appeal from the 184th District Court
Harris County, Texas
Trial Court Case No. 1501757

O P I N I O N

Appellant, Nadia Irsan, is charged with the third-degree felony offense of stalking.[1] After the trial court initially denied bail, appellant filed an application for a writ of habeas corpus and requested that a reasonable bond be set. After a hearing,

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[1] *See* TEX. PENAL CODE ANN. § 42.072 (West Supp. 2016).

the trial court set bail at $500,000. In one issue, appellant contends that the bail amount is excessive and violates the United States and Texas Constitutions and the Code of Criminal Procedure.

We reverse and remand.

Background

The State charged appellant with the offense of stalking her younger sister, Nesreen Irsan. Initially, the trial court denied appellant bail. Appellant filed an application for writ of habeas corpus, requesting that the trial court set a reasonable bond. The trial court held an evidentiary hearing to determine appellant's bond.

FBI Special Agent C. Acosta testified that in November 2012, the Harris County Sheriff's Office contacted him to assist with an investigation into the deaths of Gelareh Bagherzadeh and Coty Beavers. As a result of that investigation, the State ultimately obtained four indictments: a capital murder indictment against Ali Irsan, appellant's father; murder indictments against Shmou Al-Rawabdeh Irsan and Nasim Irsan, appellant's step-mother and half-brother, respectively; and a stalking indictment against appellant. This stalking indictment forms the basis of the underlying case against appellant.

Cory Beavers, Coty Beavers' twin brother, testified that he met appellant and Nesreen in class at Lone Star Community College, and they later attended school at University of Texas MD Anderson together. He stated that appellant was more

opinionated and had more authority over Nesreen. He testified that it was common knowledge among MD Anderson students that, in 1999, Ali Irsan had murdered the husband of one of appellant's and Nesreen's older sisters. Appellant was "nonchalant" about this information, and she was not embarrassed by it.

Cory introduced Nesreen to Coty, and they almost immediately began a romantic relationship. Appellant found this to be unacceptable, and she believed that her father would not approve of Nesreen's relationship. Appellant did not like Coty, and she began making threats to tell her father about the relationship. During an argument with Coty, appellant said, "I can't wait for my father to put a bullet in your head."

Late in the spring semester of 2011, appellant and Nesreen suddenly stopped attending classes. In June 2011, Nesreen appeared at the Beavers' house with "nothing but the clothes she was wearing," having run away from her father's house. Shirley McCormick, the twins' mother, allowed Nesreen to stay at their house. The following weekend, the Beavers family members began receiving calls from appellant, and they could "constantly" see cars driving slowly past their house, parking nearby for hours, and then driving away. At one point, Ali Irsan passed out flyers to the Beavers' neighbors with a picture of Coty, a request for information about him, and an offer of a reward. All of the Beavers family members began

having trouble with their vehicles, including flat tires and other mechanical problems.

In the fall of 2011, Cory Beavers began dating Gelareh Bagherzadeh. Gelareh and Nesreen then became close friends, and Gelareh started receiving phone calls from appellant and Ali Irsan. Weeks later, in January 2012, Gelareh was murdered in front of her parents' house in Houston. After her murder, Cory continued to see Ali Irsan frequently drive past his house, and this continued to happen for several months.

In early October 2012, Nesreen and Coty moved into an apartment together. Coty was murdered shortly thereafter in November 2012.

When asked whether he has any concerns for his safety should appellant be released on bond, Cory replied, "I am in fear of my life if she were to be released, yes." He further stated, "I would be afraid [for] not only myself, but anyone in the courtroom that has had anything to do with her incarceration."

Agent Acosta participated in the execution of a search warrant at Ali Irsan's residence on June 5, 2014. Officers discovered a Garmin navigation device hidden under an overhang of the roof. Officers also discovered an envelope with writing on it that referenced the Garmin, and Nesreen Irsan identified the handwriting as that of appellant. Forensic analysis of the Garmin uncovered the GPS coordinates stored in its history, and this data revealed regular trips to the Beavers' house in Spring, to

Nesreen and Coty's apartment, and to a parking garage in downtown Houston that corresponded to the address where Cory and Coty's mother, Shirley McCormick, worked. The last time that the Garmin showed a trip to Nesreen and Coty's apartment was the same day that Coty was killed at that address.

Agent Acosta testified that he interviewed some of appellant's and Nesreen's classmates at MD Anderson, and these classmates told him that after Nesreen left her family's home and moved in with the Beavers, appellant approached them and asked about Nesreen's class schedule and whether she was still attending school. Agent Acosta also testified that, after Nesreen left home, appellant opened accounts on several Internet sites devoted to "people finding" and conducting records searches, and she searched for records related to Nesreen, Coty Beavers, Gelareh Bagherzadeh, and Gelareh's family members. The address that the search revealed for Gelareh corresponded to the address at which she was eventually murdered. Agent Acosta further testified that appellant ordered a mobile tracking device used for placement on vehicles and had that device shipped to Ali Irsan's house.

Ali Irsan is from Jordan, and he has dual Jordanian and American citizenship. Appellant's mother is American, and appellant was born in Houston. Appellant also has dual Jordanian and American citizenship, and she lived in Jordan for one year as a child and visited Jordan for a month in early 2014.

Agent Acosta and law enforcement personnel from several other agencies—including the Department of Homeland Security, Houston Police Department's Homicide Division, and the Montgomery County Sheriff's Office—interviewed appellant, who was returning from a trip to Jordan, at Bush Intercontinental Airport on March 20, 2014. Appellant confirmed that she had used a credit card issued in Nesreen's name to run a background check on Coty Beavers.[2] Appellant also told Agent Acosta that she had purchased two residences for $28,000 and $20,000 in cash and that she had received the funds for these properties from relatives living in Jordan. Appellant also told Agent Acosta that she had friends bring money into the United States in $5,000 and $6,000 denominations, and Acosta warned her that this conduct, generally used to avoid the reporting requirement when bringing more than $10,000 into the country, violated federal law. Appellant wrote down the names of each of the four officers interviewing her, and two months later, when Ali Irsan was arrested, he had in his possession a notebook with each of the officer's names, their agencies, and their contact information written inside. Agent Acosta testified that a person with dual Jordanian-American citizenship, such as appellant, could go to a Jordanian consulate and obtain a Jordanian passport. He also agreed that appellant

[2] Nesreen informed Agent Acosta that appellant had several fraudulent credit cards and that appellant used this particular credit card without Nesreen's approval.

has a federal conviction for Social Security fraud and that, as part of her sentence, she was placed on supervised release under the supervision of a federal judge.[3]

Katherine Prado, a forensic accountant with the FBI, testified that during the search of Ali Irsan's residence in 2014, authorities recovered 197 credit cards, in the names of various members of the Irsan family, from the house. Thirty-six of the credit cards were in appellant's name. Several of the cards were also active accounts in the name of appellant's deceased uncle.

Gary Dickens, a special agent with the Social Security Administration's Office of the Inspector General, testified that he became involved with an investigation into Ali Irsan, Shmou Al-Rawabdeh, and appellant in 2013. As a result of this investigation, members of the Irsan family were charged with conspiracy to defraud the federal government, aiding and abetting theft of public money, and aiding and abetting theft. During the investigation, officials determined that appellant assisted her family members in fraudulently obtaining Social Security and Medicare benefits by concealing their assets in her bank account. From 2006

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[3] The record reflects that appellant was arrested in May 2014. The record does not indicate when she was indicted for the underlying stalking offense, when she pleaded guilty to the federal offense, when she began serving her time in custody for the federal offense, or how long she served for that offense. Agent Acosta agreed that appellant was placed on two years' supervised release for the federal offense, but the record does not indicate when this period of supervision began. The record also does not indicate how long appellant spent out of custody and on supervised release before she was placed in custody for the underlying stalking offense.

through 2014, appellant made over $300,000 in gross deposits to the account, and $95,000 worth of these deposits were cash deposits. Over $115,000 in checks payable to Ali Irsan and Shmou Al-Rawabdeh, which were then endorsed to appellant, were deposited into her account. Dickens also learned that appellant deposited a $6,000 check made payable to her sister Nesreen, and Nesreen told him that she did not authorize appellant to deposit this check into her account. At the time of appellant's arrest in the federal case in May 2014, there was $91,000 in her bank account.

Dickens also testified that appellant owns three properties in Conroe in her name. She purchased two properties in 2009 for over $20,000 and $24,000 in cash. Appellant and her step-mother jointly purchased another property in Conroe in 2012 for $38,000 in cash out of appellant's bank account. Appellant also purchased a car for $16,000 in cash. Dickens testified that all of these were cash purchases and that nothing was financed. Federal agents spoke with appellant about how she obtained these funds, and she responded that she received the money from an uncle. On cross-examination, Dickens acknowledged that appellant had been sentenced in the federal case, that she had served a portion of her sentence in custody, and that she was currently under supervised release. Dickens also acknowledged that, as of the bail hearing, her bank account had been closed.

Homeland Security Special Agent D. Eggland testified that he participated in the interview with appellant at Bush Intercontinental Airport. After initially denying that she or people she knew transported cash into the United States, she admitted that she had people transport cash into the country in a manner designed to avoid the federal reporting requirement. Appellant had $6,500 in cash and eleven credit cards in her possession on that day. She stated that she "had no other source of income except for family that brought money in, carrying money into the country." Appellant also had in her possession an iPod that had the contact information for seventeen people who lived in Jordan, the majority of whom were related to appellant's family by marriage. Agent Eggland agreed that appellant had surrendered her United States passport to federal authorities, but he also testified that this would not preclude her from leaving the country. Appellant, as a dual citizen of Jordan, would be able to obtain a Jordanian passport, and Homeland Security would not be notified if she did so. Agent Eggland testified that he had no "direct knowledge" of whether appellant has attempted to obtain a Jordanian passport.

During redirect examination of Agent Eggland, the State asked whether the investigation into appellant also involved individuals who had been murdered, and the State asked whether Coty Beavers and Gelareh Bagherzadeh were shot in the head. Defense counsel objected and the following exchange occurred:

> [Defense counsel]: Again, Your Honor, I object to relevance. Ms. Irsan is charged with a stalking charge.

She is not charged with the underlying murder cases. The conditions of her bond and issues associated with her bond are associated with the charge that she is facing, not the charges of other individuals.

Ali Irsan is being charged with the murders of those two individuals, and any mention of that in Ms. Irsan's case or any consideration of those factors would be improper under 17.15 in terms of setting of factors and the factors to be considered in setting her bond.

The Court: Thank you. That's overruled. But the cases are intertwining. This isn't your typical stalking case. Overruled.

One of appellant's half-brothers, Niles Irsan, testified on her behalf at the hearing. He testified that appellant owns two properties in the Conroe area, where she grew up, that she owns a partial interest in another property in Conroe, and that she purchased the properties outright using the inheritance that she received from her grandfather. Niles testified that he could make a $20,000 or $30,000 bond for appellant and still be able to comfortably support his family.[4] Niles stated that appellant has an associate's degree, that she had been a premed student, that she still

[4] Niles testified that he is the primary caregiver for two of his siblings and that he is attempting to gain custody of four other siblings, ranging in age from four to sixteen. He testified that if appellant makes bond, she would not be able to live with him due to CPS regulations, so she would live at one of her properties. Niles stated that he has eleven siblings and that appellant helped raise him and their other siblings.

wished to become a doctor, and that she intended to go back to school. He acknowledged that appellant has never been employed.

On cross-examination, Niles agreed that Ali Irsan has been indicted for capital murder. He also agreed that Ali has facilitated travel between the United States and Jordan for many of his children, that he arranged a marriage for one of his sons to a Jordanian citizen, and that the family has relatives currently living in Jordan. He agreed that appellant had access to many credit cards and that she had a federal conviction for fraud. Niles acknowledged that he himself is on probation for bringing drugs into a federal correction facility for his father. He was not aware that appellant had been kicked out of school at MD Anderson for falsifying a crime against Nesreen.

Niles testified that he owns a home remodeling company and that he makes about $1,500 per month before taxes. He stated that he rents out the properties that appellant owns and uses that rental income to fund his remodeling business. His business involves remodeling mobile homes and other properties and then renting those properties out.

The trial court set appellant's bail at $500,000. The trial court also required, if appellant were able to post bond, that she be monitored via GPS, that she may go no further from her house than the nearest grocery store, that she have no access to the Internet, that she have no contact with Cory Beavers, Shirley McCormick,

Nesreen, or her codefendants, that she not possess a tracker, and that she abide by a curfew. This appeal followed. *See* TEX. R. APP. P. 31.1 (allowing for appeal from order in bail proceeding).

Excessive Bail

In her sole issue on appeal, appellant contends that the trial court erred in setting her bond at $500,000 for a third-degree felony stalking offense because this amount is higher than necessary to reasonably assure her appearance at trial and violates the United States and Texas Constitutions, as well as the Code of Criminal Procedure.

A. Standard of Review

The right to be free from excessive bail is protected by both the United States and Texas Constitutions. *See* U.S. CONST. amend. VIII; TEX. CONST. art. I, §§ 11, 13. We review a trial court's decision concerning the setting of bail amounts for an abuse of discretion. *See Ex parte Rubac*, 611 S.W.2d 848, 849 (Tex. Crim. App. 1981); *Ex parte Tata*, 358 S.W.3d 392, 397 (Tex. App.—Houston [1st Dist.] 2011, pet. ref'd). The defendant bears the burden of proof to establish that bail is excessive. *Ex parte Castillo-Lorente*, 420 S.W.3d 884, 887 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (citing *Rubac*, 611 S.W.2d at 849). In reviewing the trial court's bail ruling, we will not disturb the ruling if it is "at least within the zone of

reasonable disagreement." *Id.* (citing *Ex parte Beard*, 92 S.W.3d 566, 573 (Tex. App.—Austin 2002, pet. ref'd)).

In exercising its discretion in setting a defendant's bail, the trial court should consider the following statutory 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 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 (West 2015); *Castillo-Lorente*, 420 S.W.3d at 887–88; *Tata*, 358 S.W.3d at 398. The primary purpose of setting bail is to secure the presence of the defendant at trial. *Tata*, 358 S.W.3d at 398 (citing *Montalvo v. State*, 315 S.W.3d 588, 593 (Tex. App.—Houston [1st Dist.] 2010, no pet.)). "Although a defendant's ability to make bail is a factor for consideration, inability to make bail, even to the point of indigence, does not control over the other factors." *Ex parte Davis*, 147 S.W.3d 546, 548 (Tex. App.—Waco 2004, no pet.). In addition to the statutory factors set out in article 17.15, courts also consider the defendant's work record, her family ties, her length of residency, her past criminal record, her

conformity with previous bond conditions, other outstanding bonds, and aggravating factors involved in the offense. *Tata*, 358 S.W.3d at 398 (citing *Golden v. State*, 288 S.W.3d 516, 519 (Tex. App.—Houston [1st Dist.] 2009, pet. ref'd)); *see Castillo-Lorente*, 420 S.W.3d at 888 (citing *Rubac*, 611 S.W.2d at 849–50).

B. Whether Appellant's Bond Amount Is Reasonable

1. Nature and Circumstances of the Offense

Courts have held that, in determining what constitutes a reasonable bail, the primary factors to be considered are the punishment that can be imposed and the nature of the offense. *In re Hulin*, 31 S.W.3d 754, 759 (Tex. App.—Houston [1st Dist.] 2000, orig. proceeding) (citing *Rubac*, 611 S.W.2d at 849); *see also Cooley v. State*, 232 S.W.3d 228, 234 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (stating that, in considering nature of offense, "it is proper to consider the possible punishment"). "When 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." *Castillo-Lorente*, 420 S.W.3d at 888. Defendants are entitled to a presumption of innocence on all charges, and when setting bail, the trial court must strike a balance between this presumption and the State's interest in assuring that the defendant will appear for trial. *See Ex parte Melartin*, 464 S.W.3d 789, 793 (Tex. App.—Houston [14th Dist.] 2015, no pet.).

Here, appellant has been charged with stalking, a third-degree felony. *See* TEX. PENAL CODE ANN. § 42.072 (West Supp. 2016). The statutory punishment range for this offense is confinement for two to ten years and up to a $10,000 fine. *See id.* § 12.34(a) (West 2011). As appellant points out, unlike several of her family members, she has not been charged, either as a principal or as a party, with the murders of Coty Beavers and Gelareh Bagherzadeh. Thus, the highest possible punishment that she faces for the underlying offense is ten years' confinement and a $10,000 fine.

However, as the State points out, the trial court had evidence before it that appellant's alleged stalking of her sister Nesreen, the complainant in the underlying offense, did not occur in isolation and was instead related to the murders of two individuals close to Nesreen. *See Tata*, 358 S.W.3d at 398 (noting that courts may consider any aggravating factors involved in offense). Cory Beavers testified that he met appellant and Nesreen in a class at Lone Star Community College and that the three of them had also attended school at MD Anderson together. He testified that appellant appeared to exert authority over Nesreen. Appellant was immediately opposed to Nesreen's romantic relationship with Coty Beavers and believed that her father would find the relationship unacceptable. Appellant made threats to Coty, and Cory overheard her say to Coty, "I can't wait for my father to put a bullet in your head." According to Cory, it was "common knowledge" among people who

knew the Irsans that Ali Irsan, appellant's and Nesreen's father, had murdered a son-in-law in Montgomery County in 1999.

After Nesreen ran away from her father's house in June 2011 and moved in with the Beavers, the Beavers began receiving calls from appellant concerning Nesreen's whereabouts. Cars began slowly driving past the Beavers' home, as well as parking near the Beavers' home for long periods of time, and the Beavers began having mechanical difficulties with their vehicles, including flat tires. During the fall of 2011, Cory began dating Gelareh Bagherzadeh, who became close friends with Nesreen. Gelareh then started receiving phone calls from appellant and Ali Irsan.

The State introduced evidence that appellant created accounts at several "people finder" websites and conducted records searches and background checks for Nesreen, Coty Beavers, Gelareh, and Gelareh's family members. Among other things, these searches listed Gelareh's address. A search of Ali Irsan's house revealed a hidden Garmin navigational device, along with an envelope with writing referencing the Garmin, which Nesreen identified as appellant's handwriting. Authorities conducted a forensic analysis of the Garmin, and its history included multiple trips to the Beavers' home, to an apartment leased by Nesreen and Coty, and to a parking garage in downtown Houston near where Shirley McCormick, Cory and Coty's mother, worked. Both Gelareh and Coty were found murdered at their

respective homes, and the Garmin's history revealed that the last day a trip was made to Nesreen and Coty's address was the date Coty was murdered. Ali Irsan has been charged with capital murder relating to these deaths, and appellant's step-mother and brother have been charged with murder.

As appellant argues, although the underlying actions of appellant and her family allegedly occurred in 2011 and 2012, more than four years ago, the State has not charged her with murder. Instead, she has been charged only with the alleged stalking of Nesreen. However, we do not agree with appellant that the murders are entirely irrelevant to the trial court's bail determination. The State has presented evidence that, in the course of allegedly stalking Nesreen, appellant also allegedly threatened Coty, made harassing phone calls to the Beavers and Gelareh, and discovered information concerning the whereabouts of Coty and Gelareh, which possibly facilitated their murders. Thus, although the maximum punishment that appellant faces in the underlying offense is ten years' confinement, there are aggravating factors involved with this offense—specifically, serious related offenses allegedly committed by members of appellant's family—that the trial court could properly consider when setting appellant's bail. *See id.* This factor, therefore, weighs in favor of a bail amount higher than usual for a single third-degree felony charge.

2. Sufficient Bail to Assure Appearance But Not Oppress

"[B]ail should be set high enough to give reasonable assurance that the defendant will appear at trial." *Davis*, 147 S.W.3d at 548 (quoting *Ex parte McCullough*, 993 S.W.2d 836, 837 (Tex. App.—Waco 1999, no pet.)). In considering this factor, we also consider the defendant's ties to the community, her work history, and her compliance with the conditions of any previous bonds. *Id.* A particular amount of bail becomes "oppressive" when "it is 'based on the assumption that [the accused cannot] afford bail in that amount and for the express purpose of forcing [the accused] to remain incarcerated pending [trial].'" *Id.* at 549; *see Ex parte Harris*, 733 S.W.2d 712, 714 (Tex. App.—Austin 1987, no pet.) (holding that trial court used bail as instrument of oppression when court stated on record, "I'd rather see him in jail than to see someone's life taken . . . ."). This record contains no indication that the trial court set the bail amount for the sole purpose of ensuring that appellant remains incarcerated pending trial. *See Tata*, 358 S.W.3d at 400.

Appellant's brother, Niles Irsan, testified that appellant was born in Houston and has lived in the greater-Houston area, specifically Conroe, for most of her life. Appellant's immediate family lives in Conroe. Appellant herself owns two properties in Conroe and also owns, along with her step-mother, a third property in Conroe. Appellant paid cash for each of these properties and therefore owns them outright with no encumbrances attached.

Niles acknowledged that appellant has never been gainfully employed, although he testified that she has helped raise their numerous younger siblings. The State presented evidence that despite her lack of an employment record, appellant has gained access to considerable sums of money from relatives and friends in Jordan, including friends who bring cash into the United States in such a manner as to deliberately avoid the federal reporting requirements, from numerous credit cards issued in her name and the names of family members, including a deceased uncle, and from assisting her father and step-mother in a scheme to defraud the federal government of Medicare and Social Security benefits. The investigation into her family's finances revealed that over $300,000 in fraudulently-obtained benefits had been deposited into a checking account controlled by appellant. Appellant admitted her involvement in this scheme. Testimony at the bail hearing indicated that appellant spent some amount of time in custody for this federal offense and that she is currently on supervised release under the supervision of a federal judge.[5]

Appellant's father, Ali, is a dual citizen of Jordan and the United States, and her mother is American. Appellant herself is also a dual citizen of Jordan and the United States, she lived in Jordan for a year as a child, she has extended family and contacts in Jordan, and she traveled to Jordan for a month in early 2014. The State also presented evidence that although appellant has surrendered her United States

[5] The record reflects that appellant was not placed on bond for the federal offense.

passport as a result of her federal offense, as a citizen of Jordan, she would be able to obtain a Jordanian passport by visiting the Jordanian consulate, and American authorities would not be notified of this new passport.

The State presented evidence that appellant has no employment history, that appellant is a citizen of another country and has significant ties, including both family and financial ties, to that country, and that appellant has previously been able to access large sums of money. This is evidence that appellant presents a flight risk, which weighs in favor of a higher bond amount to ensure her appearance for trial.

However, appellant has presented evidence of family and community ties to the Houston area, which weighs in favor of a lower bond amount. Critically, she has also presented evidence that she is currently on supervised release for her federal offense. As part of her supervised release, she has surrendered her United States passport. There is no evidence that she has, or has attempted to obtain, a Jordanian passport. The fact that appellant is currently on supervised release under the supervision of a federal judge and that she has surrendered her passport as a condition of her release reduces the flight risk that she poses. Moreover, the trial court here imposed a number of conditions on appellant, should she make bail, designed to restrict her movement and limit her ability to flee, such as wearing an ankle monitor, limiting her travel to a radius including the nearest grocery store to her house, and imposing a daily curfew. Thus, although appellant has family and

financial ties to another country, the facts that she is already on supervised release and the trial court here has imposed conditions limiting her movement mitigate the risk that she will flee. An extremely high bond amount is therefore less necessary to ensure her appearance for trial. *See id.* at 398 (stating that primary purpose of setting bail is to secure presence of defendant at trial).

3. Ability to Make Bail

A defendant's ability to make bail is a factor to be considered in determining the reasonableness of the bail amount, but "ability alone, even indigency, does not control the amount of bail." *Hulin*, 31 S.W.3d at 761. "If the ability to make bond in a specified amount controlled, the role of the trial court in setting bond would be completely eliminated and the accused would be in the position to determine what [her] bond should be." *Milner v. State*, 263 S.W.3d 146, 150 (Tex. App.—Houston [1st Dist.] 2006, no pet.). To show that she is unable to make bail, "a defendant generally must establish that [her] funds and [her] family's funds have been exhausted." *See Castillo-Lorente*, 420 S.W.3d at 889. Unless she has shown that her funds and those of her family have been exhausted, a defendant must usually show that she made an unsuccessful attempt to furnish bail before bail can be determined to be excessive. *Milner*, 263 S.W.3d at 149. This factor does not favor bond reduction "when the defendant makes vague references to inability to make

bond without detailing [her] specific assets and financial resources." *See Cooley*, 232 S.W.3d at 236.

Niles Irsan testified that appellant owns two properties in Conroe and an interest, along with her step-mother, in a third property. Appellant purchased these properties with cash and thus the properties are unencumbered by a mortgage. The State presented evidence that appellant paid $28,000, $20,000, and $38,000 in cash for these properties. Niles stated that he has power of attorney over appellant's finances and that he has contacted bond companies on her behalf. Most companies require a premium of ten percent of the bail amount and two cosigners. Niles stated that he was aware that bail had been set at $500,000 prior to the hearing and that he was not able to make that bond. Niles testified that he runs a home remodeling business and that he makes approximately $1,500 per month from this business before taxes. He stated that he rents out the properties owned by appellant and uses the rental income in his business. He estimated that he could make a $20,000 or $30,000 bond and still be able to comfortably support his family. In a colloquy with the trial court, Niles stated that appellant does not have any liquid assets and that "[s]he is now going off of what [he] earn[s]."

During his testimony, Niles mentioned an older brother and another sister of his by name, as well as an uncle who lives in Jordan, among other family members in Jordan. Although he testified that he could probably only make a $20,000 or

$30,000 bond for appellant, he provided no testimony as to the financial resources of his and appellant's other family members.

The State presented evidence that appellant has a history of making large purchases in cash, including purchasing three properties worth a total of around $75,000 and a $16,000 car. The State also presented evidence that appellant's bank account had a balance of $91,000 at the time of her arrest in 2014 on federal fraud charges, but Gary Dickens testified that that account had been closed by the time of appellant's bail hearing.

Appellant presented some evidence that she does not currently have the financial resources to make a high bond amount. Her brother Niles testified that he could probably make a $20,000 or $30,000 bond, but aside from stating that his monthly income is around $1,500 before taxes, he presented no evidence of his specific financial resources. His testimony also indicated that he and appellant have a large extended family, but appellant made no attempt to present evidence concerning their financial resources or their willingness and ability to contribute to a bond. The trial court also heard evidence that appellant owns two properties in her name and an interest in a third property that could potentially be encumbered or used as collateral for a bond. Based on this evidence, the trial court reasonably could have determined that the evidence supports a high bail amount. *See Castillo-Lorente*, 420 S.W.3d at 889; *Cooley*, 232 S.W.3d at 236. We note, however, that

even if appellant had demonstrated that both she and her family lack the financial resources to obtain a bond, "this element would not control over all other considerations." *See Tata*, 358 S.W.3d at 401 (quoting *Milner*, 263 S.W.3d at 150).

4. Safety of the Victim and Community

Article 17.15 also requires that we consider "[t]he future safety of a victim of the alleged offenses and the community" when reviewing a trial court's bail determination. TEX. CODE CRIM. PROC. ANN. art. 17.15(5); *Tata*, 358 S.W.3d at 401. Nesreen, the only named complainant for the underlying stalking charge, did not testify at appellant's bail hearing.

Cory Beavers testified at the bail hearing concerning appellant's conduct directed toward Nesreen and his family after Nesreen began dating his brother Coty. He testified that appellant threatened Coty, telling him, "I can't wait for my father to put a bullet in your head." After Nesreen ran away from home and moved in with the Beavers, appellant began repeatedly calling the Beavers family members, as well as Gelareh, Cory's girlfriend and Nesreen's friend. Gelareh and Coty both were ultimately murdered, allegedly by appellant's father. Cory testified, "I am in fear of my life if she were to be released, yes." He additionally stated that he was afraid for

the safety of anyone connected to appellant's case, including the prosecutors and other courtroom personnel.[6]

Agent Acosta testified that, in the course of allegedly stalking Nesreen, appellant also conducted online records searches and background checks for Coty, Gelareh, and Gelareh's family members. The history for the Garmin navigational device recovered during a search of Ali Irsan's home and connected to appellant revealed numerous trips to the Beavers' house, Nesreen and Coty's apartment, and a parking garage in downtown Houston where Cory and Coty's mother worked. Agent Acosta also testified that during his interview with her at Bush Intercontinental Airport in March 2014, appellant wrote down the names of each of the four officers meeting with her and their respective agencies. When authorities later arrested Ali Irsan, he had in his possession a notebook that listed each of these officers, their agencies, and their contact information.

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[6] On appeal, appellant argues that Cory Beavers is not a "victim" under article 17.15(5) and that the Court of Criminal Appeals has previously stated that is "not inclined to read 'victim' in this provision . . . to cover anyone not actually a complainant in the charged offense." *See Ludwig v. State*, 812 S.W.2d 323, 325 (Tex. Crim. App. 1991). As appellant acknowledges, however, at the time of *Ludwig*, article 17.15(5) provided that in setting bail amounts, courts may consider "[t]he future safety of a victim of the alleged offense." This statute was subsequently amended to provide that courts shall consider "[t]he future safety of a victim of the alleged offense *and the community*." *See* Act of May 22, 1993, 73rd Leg., R.S., ch. 396, § 1, 1993 Tex. Gen. Laws 1694, 1695 (codified at TEX. CODE CRIM. PROC. ANN. art. 17.15(5)) (emphasis added). Cory's testimony that he fears for his safety and the safety of others connected to appellant's case if appellant is released on bail is therefore a relevant consideration.

The trial court could have credited Cory's and Agent Acosta's testimony and determined that anyone connected with appellant's case, including Nesreen, Cory, the officers who have met with her, prosecutors, and courtroom personnel could potentially be in danger from appellant or her family connections. This factor therefore also weighs in favor of a high bond.

5. Other Factors

Appellant points to several facts tending to secure her presence for trial: after her federal fraud conviction, she was placed on supervised release for two years; as a condition of her release, she has surrendered her United States passport to the federal court; she has indicated her desire to go back to school and finish her education; she has family ties to the Houston area; she does not have sufficient liquid assets to flee the area; and the trial court imposed several conditions if she makes bail—including wearing an ankle monitor, remaining within a certain radius of her house, weekly reporting to pretrial services, and a nightly curfew—that would curtail her ability to flee.

The State, however, presented evidence that although appellant has had access to a large amount of funds, she has no employment history. Instead, she received funds from friends and relatives overseas and from her participation in a years-long scheme with her father and step-mother to fraudulently obtain over $300,000 in Medicare and Social Security benefits. Appellant admitted her role in this scheme,

and she has been convicted on federal fraud charges. Appellant also admitted to having friends bring cash into the United States in denominations smaller than $10,000 in an effort to deliberately avoid complying with federal reporting requirements. Appellant has thus repeatedly violated federal laws. Although she has surrendered her Unites States passport, the trial court heard testimony that, as a dual citizen of Jordan, appellant would easily be able to obtain a Jordanian passport, which would be issued without notifying American authorities.

Although we agree with the State that several factors present in this case justify a bail amount that is higher than usual for a typical third-degree felony offense, we do not agree that the facts warrant setting bail at $500,000 for a single count of stalking. The State has cited no authority upholding such an amount for one count of a charged third-degree felony offense. *See, e.g.*, *Werner v. State*, 445 S.W.3d 301 (Tex. App.—Houston [1st Dist.] 2013, order) (setting bail after reversing conviction on appeal at $100,000 for first stalking offense and $200,000 for second stalking offense and taking into consideration bail amounts originally set by trial court before defendant's trial); *see also Ex parte Dupuy*, 498 S.W.3d 220, 232 (Tex. App.—Houston [14th Dist.] 2016, no pet.) (holding that trial court did not abuse its discretion in refusing to reduce bail from $200,000 set for each of two third-degree felony charges of online impersonation).

We conclude that $500,000 is an excessive bail amount for the sole charged offense of stalking in this case. We remand the case to the trial court to set a reasonable bail, to determine what conditions, if any, to impose on appellant, and to allow both parties the opportunity to present any further evidence relevant to the amount of bail. *See Ex parte Brooks*, 376 S.W.3d 222, 224 (Tex. App.—Fort Worth 2012, pet. ref'd) (holding that $750,000 bail for charge of aggravated assault on public servant was excessive and remanding to trial court to set reasonable bail).

We sustain appellant's sole issue.

Conclusion

We reverse the trial court's judgment setting bail at $500,000 and remand this case to the trial court to set a reasonable bail.

Evelyn V. Keyes
Justice

Panel consists of Justices Jennings, Keyes, and Brown.

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