Opinion issued March 22, 2022

In The

Court of Appeals

For The

First District of Texas

NO. 01-21-00450-CR

NO. 01-21-00451-CR

EX PARTE GEOVANNI WATKINS, Appellant

On Appeal from the 228th District Court
Harris County, Texas
Trial Court Case Nos. 1733557 & 1733561

MEMORANDUM OPINION

Appellant, Geovanni Watkins, challenges the trial court's orders in two separate trial court cases denying his pretrial applications for writ of habeas corpus.[1]

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1 *See* TEX. R. APP. P. 31.

In his sole issue, appellant contends that the trial court erred in denying him habeas relief.

We affirm.

Background

Appellant is charged with the felony offenses of aggravated robbery[2] and murder.[3]

Aggravated Robbery

In 2018, a Harris County Grand Jury issued a true bill of indictment, alleging that appellant, on or about June 19, 2018, "unlawfully, while in the course of committing theft of property owned by Zachary Long," complainant 1, "and with the intent to obtain and maintain control of the property, intentionally and knowingly threaten[ed] and place[d] [complainant 1] in fear of imminent bodily injury and death, and [appellant] did then and there use and exhibit a deadly weapon, namely a firearm."[4]

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2 *See* TEX. PENAL CODE ANN. § 29.03(a), (b); appellate court cause no. 01-21-00451-CR, trial court cause no. 1733557.

3 *See* TEX. PENAL CODE ANN. § 19.02(b), (c); appellate cause no. 01-21-00450-CR, trial court cause no. 1733561.

4 A copy of the indictment for the felony offense of aggravated robbery was admitted into evidence at the hearing on appellant's pretrial applications for writ of habeas corpus.

The trial court initially set appellant's bail at $40,000,[5] but later lowered it to $20,000.[6] Appellant posted bond[7] and was released from custody. The trial court placed appellant on pretrial community supervision and imposed conditions[8] on appellant's release on bond, including:

- Appellant "will be supervised by [the] Harris County Community Supervision and Corrections [Department] (HCCSCD)" and "will pay to and through HCCSCD a supervision fee of $60.00 per month and a $2.00 transaction fee for each payment";

- Appellant "shall personally appear in court, on time, every time th[e] case is set on the [trial] [c]ourt[']s docket";

- Appellant "shall commit no crime and shall not engage in any conduct that could result in his[] arrest";

- Appellant "must not use, possess, or consume marijuana or any controlled substance or dangerous drug unless obtained pursuant to a lawful prescription for [appellant] issued by a medical doctor. [Appellant] will provide a copy of all such prescriptions to his supervising officer in advance"; and

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5 A copy of the trial court's Bail Order setting appellant's bail at $40,000 for the felony offense of aggravated robbery was admitted into evidence at the hearing on appellant's pretrial applications for writ of habeas corpus.

6 A copy of the trial court's order lowering appellant's bail to $20,000 was admitted into evidence at the hearing on appellant's pretrial applications for writ of habeas corpus.

7 A copy of appellant's Bail Bond related to the aggravated robbery felony offense was admitted into evidence at the hearing on appellant's pretrial application for writ of habeas corpus.

8 A copy of the trial court's Order for Pretrial Supervision and Bond Conditions related to the aggravated robbery felony offense was admitted into evidence at the hearing on appellant's pretrial applications for writ of habeas corpus.

- Appellant shall "submit to DRUG AND ALCOHOL testing" and "pay [a] drug testing fee of $10.00 monthly."

The trial court also ordered that appellant wear a "GPS monitor."

Appellant signed the trial court's Order for Pretrial Supervision and Bond Conditions, which informed appellant that the "[f]ailure to abide by the[] bond conditions [could] result in [appellant's] bond being forfeited or revoked and [appellant being] arrested and confined." By signing the Order for Pretrial Supervision and Bond Conditions, appellant acknowledged that he "underst[ood] that the [trial] court [was] ordering [his] compliance with the [bond] conditions . . . as a requirement of [his] . . . release on bond." Appellant "agree[d] to the[] [bond] conditions" and represented that he "underst[ood] that [his] failure to comply with the[] [bond] conditions [could] result in the forfeiture or revocation of [his] bond and confinement."

Later, the State filed two Bond Condition Violation Reports. The State's first Bond Condition Violation Report stated that appellant had violated certain conditions of his release on bond by "using, possessing, or consuming a controlled substance, dangerous drug, marihuana, or alcohol" and failing to pay his required fees for "drug or alcohol testing" and supervision. The violation report stated that appellant tested positive for marijuana use on January 12, 2021 and appellant had "yet to make a payment" related to his required fees. After reviewing the Bond

Condition Violation Report, the trial court ordered that appellant could continue on pretrial community supervision.

The State's second Bond Condition Violation Report, filed about a month after its first, stated that appellant had violated the conditions of his release on bond by failing to pay his required fees for "drug or alcohol testing" and supervision, by being "charged with unlawful carry of weapon [and] possession of marijuana . . . in Walker County," and being charged with the felony offense of murder, which purportedly occurred on February 6, 2021 while appellant was on pretrial community supervision. (Emphasis omitted.) The trial court ordered appellant's bond revoked, terminated his pretrial community supervision, issued an alias capias for his arrest, and set appellant's bail at $100,000 for the aggravated robbery felony offense. Appellant remains in custody for that offense.

Murder

In 2021, a Harris County Grand Jury issued a true bill of indictment, alleging that appellant, on or about February 6, 2021, "unlawfully, intentionally and knowingly cause[d] the death of Derrick Harvey Jr.," complainant 2, "by shooting . . . complainant [2] with a deadly weapon, namely a firearm." The indictment also alleged that appellant, on or about February 6, 2021, "unlawfully intend[ed] to cause serious bodily injury to [complainant 2] . . . and did cause the death of . . . [c]omplainant [2] by intentionally and knowingly committing an act

clearly dangerous to human life, namely shooting . . . complainant [2] with a deadly weapon, namely a firearm."[9]

The trial court set appellant's bail at $500,000 for the felony offense of murder. Appellant remains in custody for that offense.

Pretrial Applications for Writ of Habeas Corpus

Appellant filed pretrial applications for writ of habeas corpus in his two trial court cases, arguing that his confinement and restraint were illegal because he was "entitled to a reasonable bond" and "[t]he bond amount . . . set . . . in the [a]ggravated [r]obbery case [was] $100,000[] and the bond amount . . . set . . . in the [m]urder case [was] $500,000[,] which effectively constitute[d] a 'no bond' situation . . . in light of . . . [appellant's] financial circumstances."[10] According to appellant, he was "not a continuing danger to society," he would "appear in court as scheduled," and he had "only minimal financial resources." Appellant asserted that he "could raise the funds required to post bond in the amount of" $150,000.

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9 A copy of the indictment for the felony offense of murder was admitted into evidence at the hearing on appellant's pretrial applications for writ of habeas corpus.

10 *See* TEX. CODE CRIM. PROC. ANN. art. 17.15; *see also id.* art. 1.08 ("The writ of habeas corpus is a writ of right and shall never be suspended."); *Ex parte Weise*, 55 S.W.3d 617, 619–20 (Tex. Crim. App. 2001) (when faced with excessive bail, defendant has right to assert his constitutional right to reasonable bail through use of application for pretrial writ of habeas corpus).

Hearing

The trial court held a hearing on appellant's pretrial applications for writ of habeas corpus. At the hearing, Tiana Watkins-Davis, appellant's mother, testified that appellant was twenty-two or twenty-three years old, a United States citizen, and had lived in Houston for his entire life. Watkins-Davis also lived in Houston, appellant's father lived in Houston, and both sides of appellant's family lived in Houston. Watkins-Davis rented a house and her mother, father, and husband as well as her husband's sister and brother lived with her. If appellant was released on bond, he could live with Watkins-Davis at her house, and she could "help him make his court dates" and "help him comply with any bond conditions." According to Watkins-Davis, when appellant initially posted bond and was released from custody related to the felony offense for aggravated robbery, he stayed with Watkins-Davis and she helped him "make his court dates" while on pretrial community supervision. He did not miss any court appearances. But appellant was charged with the felony offense of murder in 2021 while living with Watkins-Davis.[11]

Watkins-Davis also testified that appellant had his "GED" and was working at his father's auto mechanic body shop before he was taken into custody in 2021

[11] Appellant was also living with Watkins-Davis when he was charged with the felony offense of aggravated robbery in 2018.

when his pretrial community supervision was revoked. Appellant could return to working with his father if he was released on bond.

As to her finances, Watkins-Davis explained that she was disabled in 2019, and she received about $2,500 a month for "long term disabilities." But Watkins-Davis's attorney received "a portion of [her] check every month." Watkins-Davis paid about $1,875 each month for rent, and she had to "buy medication every month" and pay for doctors' visits and physical therapy appointments.

Watkins-Davis also noted that her husband worked and received about $3,500 to $4,000 in income a month. And Watkins-Davis's mother worked, so she helped out with expenses, but she was about retire. Neither Watkins-Davis nor her immediate family owned any investment properties, and they did not "have any investments, . . . stocks, bonds, [or] properties." Watkins-Davis did have five cars at her house—one belonged to appellant, another belonged to Watkins-Davis's daughter, another belonged to Watkins-Davis's mother, and another one belonged to Watkins-Davis's husband. Watkins-Davis's family paid about $625 in car payments each month. Watkins-Davis noted that her family had to pay bills and buy groceries each month. Watkins-Davis had a "401[k] account," which was "unavailable due to [her] disability status."

As to appellant's bond, Watkins-Davis stated that she could not afford to pay appellant's current bail amounts. When she had spoken to "bonding companies," she was told that she needed "to put down $17,000 to . . . $20,000" and "get six co-signors to co-sign for [appellant's] bond." And there would "be payments after that." She would have to pay "up to $50,000[] to keep [appellant] out."

Tracy Brown, a law enforcement officer and an investigator with the Harris County District Attorney's Office, testified that he was familiar with appellant's two cases. Related to the aggravated robbery felony offense, Brown explained that a group of individuals used a phone application ("an app") and "claim[ed] they were going to buy cell[ular] [tele]phones." When a person would "show-up" with his cellular telephone, "he [would be] robbed." A firearm was used in the commission of the aggravated robbery felony offense. According to Brown, appellant had confessed to committing the aggravated robbery felony offense with which he is charged.

Brown also explained that appellant's initial bail for the felony offense of aggravated robbery was set at $40,000. It was later reduced to $20,000, and as "part of [appellant's] bail[, he] was to have a GPS monitor." Appellant posted bond and was released from custody. The trial court imposed conditions on appellant's release on bond, including requiring that appellant "commit no crime" and "not engage in any conduct that could result in his . . . arrest." While appellant was released on

bond related to the aggravated robbery felony offense, he allegedly committed the felony offense of murder and was charged with that offense.

Related to the murder felony offense, Brown testified that on February 6, 2021, complainant 2, a twenty-two-year-old, was "shot multiple times" during the daytime at an apartment complex. Appellant was seen fleeing the scene with a firearm in his hand. While reviewing complainant 2's autopsy report, a copy of which the trial court admitted into evidence at the hearing on appellant's pretrial applications for writ of habeas corpus, Brown stated that complainant 2 suffered eleven gunshot wounds. The first gunshot wound was "to [complainant 2's] face," and there were five gunshot wounds "to [complainant 2's] back."

A copy of complainant 2's autopsy report, admitted into evidence at the hearing, lists the cause of death for complainant 2 as "[m]ultiple gunshot wounds" and the manner of death for complainant 2 as "[h]omicide." The autopsy report states that complainant 2 was pronounced "dead at the scene" at 1:37 p.m. on February 6, 2021. He was twenty-two years old at the time of his death.

As to complainant 2's injuries, the report lists twelve gunshot wounds. The first gunshot wound was to complainant 2's face; the second gunshot wound was to complainant 2's right ear[12]; the third gunshot wound was to complainant 2's neck

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[12] This gunshot wound injured complainant 2's "right mandible and tongue" and caused "avulsion of [complainant 2's] teeth." *See Williams v. State*, No. 06-10-00156-CR, 2011 WL 808957, at *2 n.5 (Tex. App.—Texarkana Mar. 9, 2011,

and head[13]; the fourth gunshot wound was to complainant 2's chest[14]; the fifth, sixth, seventh, eighth, and ninth gunshot wounds were to complainant 2's back,[15] with a "wound path" from back to front[16]; the tenth gunshot wound was to complainant 2's left upper extremity, with a "wound path" from back to front; the eleventh gunshot wound was to complainant 2's right forearm, with a "wound path" from back to front; and the twelfth gunshot wound was to complainant 2's back, with a "wound path" from back to front.

Houston Police Department Officer Lopez, a member of the crime suppression unit, testified that she investigated the aggravated robbery felony offense with which appellant is charged. The aggravated robbery offense committed by appellant was "part of [a] string of robberies." Most of the aggravated robberies took place in the same area of Houston, and there were about sixteen or seventeen aggravated robberies that were committed.

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no pet.) (mem. op., not designated for publication) ("Mandible refers to the lower jawbone.").

13 This gunshot wound injured complainant 2's skull and brain.

14 This gunshot wound injured complainant 2's heart.

15 The gunshot wounds to complainant 2's back injured, among other things, complainant 2's liver, heart, lungs, spleen, stomach, esophagus, and small intestine.

16 *See Hopkins-McGee v. State*, No. 01-19-00475-CR, 2020 WL 7251452, at *1 (Tex. App.—Houston [1st Dist.] Dec. 10, 2020, no pet.) (mem. op., not designated for publication) (medical examiner testified that seven gunshot wounds "had a back-to-front trajectory, indicating that they all came from behind").

Officer Lopez testified that appellant was involved with "a criminal street gang" known as "Blood Brothers For Life" and that gang committed the above-mentioned aggravated robberies. (Internal quotations omitted.) Gang members used an app to "post that they were selling a [cellular] [tele]phone or buying a [cellular] [tele]phone in order to set up the" people whose money or cellular telephones they were taking. Members of the gang also "boast[ed] about narcotics and marijuana."

After appellant posted bond related to the felony offense of aggravated robbery and was released from custody, Officer Lopez explained that appellant threatened and physically fought a "co-defendant[]" in his aggravated robbery case that had "entered [a] plea deal." Lopez, who arrived at the scene of the fight, saw "what appeared to be a [firearm] in [appellant's] hand." And law enforcement officers, after the altercation, found appellant to be in possession of marijuana and a "loaded magazine." Appellant admitted to fighting the co-defendant.

During the hearing, the trial court took judicial notice of the district clerk's file in appellant's aggravated robbery case,[17] including the State's two Bond Condition Violation Reports. The trial court noted that the Bond Condition Violation Reports stated, among other violations, that appellant had "violated his

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[17] *Cf. McDougal v. State*, 105 S.W.3d 119, 120–21 (Tex. App.—Fort Worth 2003, pet. ref'd) ("The contents of the clerk's record are not evidence unless the trial court takes judicial notice of them or they are offered into evidence.").

conditions of bond by submitting a urine sample that tested positive for THC, marijuana," by being "charged with unlawful carrying [of] a weapon and possession of marijuana [in] . . . Walker County" on March 31, 2021, and by being "charged with [the felony offense of] murder."

Trial Court's Ruling

After the hearing on appellant's pretrial applications for writ of habeas corpus, the trial court denied appellant's applications. Appellant's bail remained set at $100,000 for the felony offense of aggravated robbery and $500,000 for the felony offense of murder.

Standard of Review

In a habeas proceeding for a claim of excessive bail, we review a trial court's decision about the amount of bail for an abuse of discretion. *See Ex parte Rubac*, 611 S.W.2d 848, 850 (Tex. Crim. App. 1981); *Montalvo v. State*, 315 S.W.3d 588, 592 (Tex. App.—Houston [1st Dist.] 2010, no pet.). A trial court abuses its discretion if it acts without reference to any guiding rules or principles. *Ex parte Hunt*, 138 S.W.3d 503, 505 (Tex. App.—Fort Worth 2004, pet. ref'd). A reviewing court will not disturb a decision of the trial court if that decision is within the zone of reasonable disagreement. *Ex parte Tata*, 358 S.W.3d 392, 397 (Tex. App.—Houston [1st Dist.] 2011, pet. dism'd). We acknowledge that an abuse-of-discretion review requires more of the appellate court than simply deciding that the trial court

did not rule arbitrarily or capriciously. *Montalvo*, 315 S.W.3d at 593. An appellate court must instead measure the trial court's ruling against the relevant criteria by which the ruling was made. *Id.* It is not an abuse of discretion for the trial court merely to decide a matter within its discretion in a different manner than the appellate court would under similar circumstances. *Ex parte Miller*, 442 S.W.3d 478, 481 (Tex. App.—Dallas 2013, no pet.).

Excessive Bail

In his sole issue, appellant argues that the trial court erred in denying him habeas relief because he is entitled to a "bail reduction."

Before conviction, every citizen accused of a criminal offense has a "strong interest in liberty." *United States v. Salerno*, 481 U.S. 739, 750 (1987). Thus, the Eighth Amendment to the United States Constitution provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. amend. VIII; *see also Schilb v. Kuebel*, 404 U.S. 357, 365 (1971) (Eighth Amendment's prohibition of excessive bail applies to states). The Texas Constitution also guarantees that "[a]ll prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident." TEX. CONST. art. I, § 11; *see also* TEX. CONST. art. I, § 13 ("Excessive bail shall not be required . . . ."); TEX. CODE CRIM. PROC. ANN. art. 1.07 ("Any person shall be

eligible for bail unless denial of bail is expressly permitted by the Texas Constitution or by other law.").

A defendant's right to pretrial bail, however, may be subordinated to the greater needs of society. *Salerno*, 481 U.S. at 750–51; *see also Ex parte Beard*, 92 S.W.3d 566, 573 (Tex. App.—Austin 2002, pet. ref'd) (noting "a balance must be struck between the defendant's presumption of innocence and the State's interest"). In balancing the liberty interest of a defendant and the safety interest of society, the Texas Legislature has adopted rules and guidelines for determining when a defendant should obtain pretrial release through the posting of adequate bail. *See* TEX. CODE CRIM. PROC. ANN. art. 17.01 ("'Bail' is the security given by the accused that he will appear and answer before the proper court the accusation brought against him . . . ."); *Ex parte Jefferson*, No. 07-20-00123-CR, 2020 WL 4249743, at *2 (Tex. App.—Amarillo July 23, 2020, no pet.) (mem. op., not designated for publication). The primary purpose of pretrial bail is to secure a defendant's appearance at trial on the offenses with which he is charged. *See* TEX. CODE CRIM. PROC. ANN. art. 17.01; *Ex parte Rodriguez*, 595 S.W.2d 549, 550 (Tex. Crim. App. [Panel Op.] 1980); *Ex parte Vasquez*, 558 S.W.2d 477, 479 (Tex. Crim. App. 1977).

In exercising its discretion in setting the dollar amount of bail and any conditions of bail, a trial court must consider the following statutory factors:

1. Bail shall be sufficiently high to give reasonable assurance that a criminal defendant will appear at trial and comply with other court orders and conditions of the bond;

2. The power to require bail is not to be used as an instrument of oppression;

3. The nature of the offenses and the circumstances of their commission;

4. The ability to make bail is to be regarded, and proof may be taken on this point; and

5. The future safety of a victim of the alleged offenses and the community.

See TEX. CODE CRIM. PROC. ANN. art. 17.15; *see also Ludwig v. State*, 812 S.W.2d 323, 324 (Tex. Crim. App. 1991); *Golden v. State*, 288 S.W.3d 516, 518 (Tex. App.—Houston [1st Dist.] 2009, pet. ref'd). In determining an appropriate amount of bail, the trial court may also consider a defendant's work record, his family and community ties, his residency, his prior criminal record, his conformity with previous bond conditions, and the aggravating factors alleged to have been involved in the charged offenses. *See Ex parte Rubac*, 611 S.W.2d at 849–50; *Montalvo*, 315 S.W.3d at 593. The burden of proof is on the defendant who claims that his bail is excessive. *See Ex parte Rubac*, 611 S.W.2d at 849; *Montalvo*, 315 S.W.3d at 592.

The trial court has set appellant's bail at $100,000 for the aggravated robbery felony offense and $500,000 for the murder felony offense. We review the factors used by the trial court to set the amounts of appellant's bail to determine whether bail is excessive.

A. Sufficiency of Bail

The primary purpose of pretrial bail is to secure a defendant's appearance at trial on the offenses with which he is charged. *See* TEX. CODE CRIM. PROC. ANN. art. 17.01; *Ex parte Rodriguez*, 595 S.W.2d at 550; *Ex parte Vasquez*, 558 S.W.2d at 479. Yet, the trial court, in setting the amounts of appellant's bail, was entitled to consider appellant's history of violating his bond conditions. *See* TEX. CODE CRIM. PROC. ANN. art. 17.15(1); *Golden*, 288 S.W.3d at 518–19 (bail shall be sufficiently high to give reasonable assurance that criminal defendant will appear at trial and comply with other court orders and conditions of his bond).

In 2018, appellant was arrested and charged with the felony offense of aggravated robbery. The trial court initially set appellant's bail at $40,000 but later lowered it to $20,000. Appellant posted bond and was released from custody. The trial court placed appellant on pretrial community supervision and imposed conditions on appellant's release on bond. Appellant signed an Order for Pretrial Supervision and Bond Conditions related to the aggravated robbery felony offense, in which he affirmed that he "agree[d] to the[] [bond] conditions" and he "under[stood] that the [trial] court [was] ordering [his] compliance with the [bond] conditions . . . as a requirement of [his] . . . release on bond." Appellant acknowledged that he "underst[ood] that [his] failure to comply with the[] [bond]

conditions [could] result in the forfeiture or revocation of [his] bond and confinement."

While appellant was released on bond, the State filed its first Bond Condition Violation Report stating that appellant had violated the conditions of his release on bond by "using, possessing, or consuming a controlled substance, dangerous drug, marihuana, or alcohol" and failing to pay his required fees for "drug or alcohol testing" and supervision. The violation report explained that appellant tested positive for marijuana use on January 12, 2021 and appellant had "yet to make a payment" related to his required fees. At the hearing on appellant's pretrial applications for writ of habeas corpus, the trial court took judicial notice of the State's first Bond Condition Violation Report.

About a month after filing its first Bond Condition Violation Report, the State filed its second Bond Condition Violation Report stating that appellant had violated the conditions of his release on bond by failing to pay his required fees for "drug or alcohol testing" and supervision, by being "charged with unlawful carry of weapon [and] possession of marijuana . . . in Walker County," and by being charged with the felony offense of murder, which purportedly occurred on February 6, 2021 while appellant was on pretrial community supervision. (Emphasis omitted.) The trial court revoked appellant's bond, terminated his pretrial community supervision, issued an alias capias for his arrest, and set appellant's bail at $100,000 for the

aggravated robbery felony offense. The trial court took judicial notice of the State's second Bond Condition Violation Report at the hearing on appellant's pretrial applications for writ of habeas corpus.

Brown, a law enforcement officer and an investigator with the Harris County District Attorney's Office, testified, at the hearing on appellant's pretrial applications for writ of habeas corpus, that he was familiar with appellant's two cases The trial court initially set appellant's bail for the aggravated robbery felony offense at $40,000, but later reduced bail to $20,000. Appellant posted bond and was released from custody, but the trial court imposed conditions on appellant's release, including requiring that appellant "commit no crime" and "not engage in any conduct that could result in his . . . arrest." While appellant was released on bond related to the aggravated robbery felony offense, he allegedly committed the felony offense of murder on February 6, 2021 and was charged with that offense.

Officer Lopez, at the hearing on appellant's pretrial applications for writ of habeas corpus, testified that appellant, after posting bond related to the felony offense of aggravated robbery, was released from custody. While out on bond, appellant threatened and physically fought a "co-defendant[]" from his aggravated robbery case. At the time of the fight, Lopez saw "what appeared to be a [firearm] in [appellant's] hand," and law enforcement officers, after the altercation, found

appellant to be in possession of marijuana and a "loaded magazine." Appellant admitted to fighting the co-defendant.

Appellant's history of non-compliance with his bond conditions weighs against a determination that the bail amounts set by the trial court in appellant's two cases were excessive. *See, e.g.*, *Ex parte Anderson*, Nos. 01-20-00572-CR to 01-20-00574-CR, 2021 WL 499080, at *10–12 (Tex. App.—Houston [1st Dist.] Feb. 11, 2021, no pet.) (mem. op., not designated for publication) (explaining defendant's history of non-compliance with his bond conditions weighed against determination that bail amounts set by trial court in his three cases were excessive); *Ex parte Davila*, Nos. 04-19-00276-CR to 04-19-00279-CR, 2019 WL 4280067, at *1–3 (Tex. App.—San Antonio Sept. 11, 2019, no pet.) (mem. op., not designated for publication) (considering defendant's history of non-compliance with his bond conditions in determining trial court did not err in setting bail amounts); *Ex parte Payten*, No. 02-13-00447-CR, 2013 WL 5968449, at *4 (Tex. App.—Fort Worth Nov. 7, 2013, no pet.) (mem. op., not designated for publication) (noting defendant's failure to comply with his bond conditions "several times in the past"); *Ex parte Owens*, Nos. 05-96-01540-CR, 05-96-01541-CR, 1997 WL 145170, at *4 (Tex. App.—Dallas Apr. 1, 1997, no pet.) (not designated for publication) ("In light of the evidence that [defendant] did not comply with the conditions of his bonds and was

charged with a new felony offense while out on bond, we cannot conclude that the [bail amounts set by the trial court were] excessive.").

B. Nature and Circumstances of the Offenses

The trial court must consider the nature and surrounding circumstances of the charges against appellant in setting his bail amounts. *See* TEX. CODE CRIM. PROC. ANN. art. 17.15(3); *Golden*, 288 S.W.3d at 518; *see also Ex parte Sells*, No. 02-20-00143-CR, 2020 WL 7639574, at *3 (Tex. App.—Fort Worth Dec. 23, 2020, no pet.) (mem. op., not designated for publication) (noting "bail is not set in a vacuum" and courts "must consider the nature and surrounding circumstances of the charges against" defendant); *Ex parte Nimnicht*, 467 S.W.3d 64, 67 (Tex. App.—San Antonio 2015, no pet.) ("When determining reasonable bail, a trial court shall give the most weight to the nature of the offense and the length of the possible sentence.").

Appellant is charged with the felony offense of aggravated robbery and the felony offense of murder. *See* TEX. PENAL CODE ANN. §§ 19.02(b), (c), 29.03(a), (b). Each offense constitutes a first-degree felony offense. *See id.* §§ 19.02(c), 29.03(b).

The indictment in appellant's aggravated robbery case alleges that appellant, on or about June 19, 2018, "unlawfully, while in the course of committing theft of property owned by" complainant 1 "and with the intent to obtain and maintain

control of the property, intentionally and knowingly threaten[ed] and place[d] [complainant 1] in fear of imminent bodily injury and death, and [appellant] did then and there use and exhibit a deadly weapon, namely a firearm." As to the aggravated robbery felony offense, Brown, a law enforcement officer and an investigator with the Harris County District Attorney's Office, testified, at the hearing on appellant's pretrial applications for writ of habeas corpus, that appellant had confessed to committing the aggravated robbery felony offense with which he is charged. And, as to the circumstances of the aggravated robbery, Brown explained that a group of individuals used an app and "claim[ed] they were going to buy cell[ular] [tele]phones." When a person would "show-up" with his cellular telephone, "he [would be] robbed." A firearm was used in the commission of the aggravated robbery felony offense.

Officer Lopez, who investigated the aggravated robbery felony offense with which appellant is charged, explained that the aggravated robbery offense that appellant committed was "part of [a] string of robberies"—about sixteen or seventeen aggravated robberies—that took place in the same area of Houston. "[A] crime street gang" known as "Blood Brothers for Life" committed the aggravated robberies and appellant was a member of the gang. According to Lopez, the gang members used an app to "post that they were selling a [cellular] [tele]phone or

buying a [cellular] [tele]phone in order to set up the" people whose money or cellular telephones they were taking.

The indictment in appellant's murder case alleges that appellant, on or about February 6, 2021, "unlawfully, intentionally and knowingly cause[d] the death of" complainant 2 "by shooting . . . complainant [2] with a deadly weapon, namely a firearm" and appellant, on or about February 6, 2021, "unlawfully intend[ed] to cause serious bodily injury to [complainant 2] . . . and did cause the death of . . . [c]omplainant [2] by intentionally and knowingly committing an act clearly dangerous to human life, namely shooting . . . complainant [2] with a deadly weapon, namely a firearm." As to the murder offense, Brown testified that complainant 2, a twenty-two-year-old, was "shot multiple times" during the daytime at an apartment complex. Appellant was seen fleeing the scene with a firearm in his hand. According to Brown, complainant 2 was shot eleven times with a firearm. The first gunshot wound was "to [complainant 2's] face," and there were five gunshot wounds "to [complainant 2's] back."

The copy of complainant 2's autopsy report, which the trial court admitted into evidence at the hearing on appellant's pretrial applications for writ of habeas corpus, lists the cause of death for complainant 2 as "[m]ultiple gunshot wounds" and the manner of death for complainant 2 as "[h]omicide." The autopsy report

states that complainant 2 was pronounced "dead at the scene" at 1:37 p.m. on February 6, 2021. He was twenty-two years old at the time of his death.

As to complainant 2's injuries, the report lists twelve gunshot wounds. The first gunshot wound was to complainant 2's face; the second gunshot wound was to complainant 2's right ear[18]; the third gunshot wound was to complainant 2's neck and head[19]; the fourth gunshot wound was to complainant 2's chest[20]; the fifth, sixth, seventh, eighth, and ninth gunshot wounds were to complainant 2's back,[21] with a "wound path" from back to front[22]; the tenth gunshot wound was to complainant 2's left upper extremity, with a "wound path" from back to front; the eleventh gunshot wound was to complainant 2's right forearm, with a "wound path" from back to front; and the twelfth gunshot wound was to complainant 2's back, with a "wound path" from back to front.

The felony offenses with which appellant is charged are both serious and violent in nature. *See Ex parte Berry*, Nos. 09-14-00519-CR, 09-14-00520-CR,

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18 This gunshot wound injured complainant 2's "right mandible and tongue" and caused "avulsion of [complainant 2's] teeth." *See Williams*, 2011 WL 808957, at *2 n.5 ("Mandible refers to the lower jawbone.").

19 This gunshot wound injured complainant 2's skull and brain.

20 This gunshot wound injured complainant 2's heart.

21 The gunshot wounds to complainant's back injured, among other things, complainant 2's liver, heart, lungs, spleen, stomach, esophagus, and small intestine.

22 *See Hopkins-McGee*, 2020 WL 7251452, at *1 (medical examiner testified that seven gunshot wounds "had a back-to-front trajectory, indicating that they all came from behind").

2015 WL 4760187, at *6, *9 (Tex. App.—Beaumont Aug. 12, 2015, no pet.) (mem. op., not designated publication) (upholding trial court's setting of $500,000 bail on aggravated robbery felony offense and noting trial court could have reasonably considered serious and violent nature of offense in setting bail); *Ex parte Payten*, 2013 WL 5968449, at *3–4 (considering nature and circumstances of offense to be violent where complainant was "shot in the face"); *Narvez v. State*, No. 01-08-00331-CR, 2009 WL 40263, at *3 (Tex. App.—Houston [1st Dist.] Jan. 8, 2009, no pet.) (mem. op., not designated for publication) (shooting of complainant in neck with firearm constituted violent offense); *Hughes v. State*, 843 S.W.2d 236, 237 (Tex. App.—Houston [14th Dist.] 1992, no pet.) (first-degree felony offense of murder constitutes "a violent crime"); *see also Ex parte Garza*, No. 04-02-00803-CR, 2003 WL 21750013, at *1–2 (Tex. App.—San Antonio July 30, 2003, no pet.) (mem. op., not designated for publication) (murder of "unarmed victim who was repeatedly shot [in the back] as he tried to flee" was "brutal" offense); *Ex parte Saldana*, Nos. 13-01-360-CR, 13-01-361-CR, 2002 WL 91331, at *4 (Tex. App.—Corpus Christi–Edinburg Jan. 24, 2002, no pet.) (not designated for publication) (considering murder of complainants who "received two shots to the head" to be "brutal" offense).

We also note that appellant allegedly committed the felony offense of murder while he was on pretrial community supervision after the trial court had set

appellant's bail related to the aggravated robbery felony offense at $20,000.[23] *See, e.g.*, *Ex parte Anderson*, 2021 WL 499080, at *12–14 (in considering nature and circumstances of offense, noting defendant committed two new felony offenses while on pretrial community supervision for another pending felony offense); *Ex parte Miller*, 442 S.W.3d at 481–83 (holding trial court's setting of bail amount at $200,000 on one charge and $50,000 on other was reasonable when defendant "was already on bond for a pending third-degree felony offense at the time he was charged with the[] new [felony] offenses"). The gravity of the allegations against appellant for the first-degree felony offenses with which he is charged weighs against a determination that the bail amounts set by the trial court in appellant's two cases were excessive. *See Ex parte Anderson*, 2021 WL 499080, at *12–14; *Ex parte Sells*, 2020 WL 7639574, at *3.

"[W]hen considering the nature of the offense[s] [charged] in setting [a defendant's] bail" amounts, the trial court may also consider "the punishment permitted by law" for the offenses with which the defendant is charged. *See Ex parte Vasquez*, 558 S.W.2d at 480; *see also Ex parte Ivey*, 594 S.W.2d 98, 99 (Tex. Crim. App. [Panel Op.] 1980) (considering punishment permitted by law for offense of aggravated robbery was "up to 99 years or life"); *Ex parte Nimnicht*, 467 S.W.3d at

[23] Initially, for aggravated robbery felony offense, the trial court set appellant's bail at $40,000. It later reduced appellant's bail to $20,000, and appellant posted bond and was released from custody.

67 ("When determining reasonable bail, a trial court shall give the most weight to the nature of the offense and the length of the possible sentence."). As noted, appellant is charged with two first-degree felony offenses. *See* TEX. PENAL CODE ANN. §§ 19.02(c), 29.03(b). Each first-degree felony offense has a range of punishment of confinement for life or for any term not less than five years, but no more than ninety-nine years and a fine not to exceed $10,000. *See id.* § 12.32 ("First Degree Felony Punishment"); *see also Ex parte Anderson*, 2021 WL 499080, at *13–14 (considering defendant "could ultimately face confinement for thirty years" in concluding "potential sentences [defendant] face[d] . . . weigh[ed] against a determination that the bail amounts set by the trial court . . . were excessive"); *O'Brien v. State*, No. 02-12-00176-CR, 2012 WL 2922545, at *5 (Tex. App.—Houston [1st Dist.] July 5, 2012, no pet.) (mem. op., not designated for publication) (possibility of substantial sentence supported setting of high bail amount). If convicted of the felony offense of aggravated robbery or the felony offense of murder, appellant would not be "eligible for release on parole until [his] actual calendar time served, without consideration of good conduct time, equals one-half of [his] sentences or 30 calendar years, whichever is less, but in no event [would appellant be] eligible for release on parole in less than two calendar years." TEX. GOV'T CODE ANN. § 508.145(d); *see Olsen v. State*, No. 07-18-00175-CR, 2019 WL 3952833, at *8 (Tex. App.—Amarillo Aug. 21, 2019, pet. ref'd) (mem. op., not

designated for publication) (defendant convicted of aggravated robbery felony offense was "not eligible for release on parole from his life sentence until his actual calendar time served, without consideration of good conduct time, equal[ed] one-half of his sentence or 30 calendar years, whichever [was] less"); *Rau v. State*, No. 02-15-00208-CR, 2017 WL 1289351, at *24 (Tex. App.—Fort Worth Apr. 6, 2017, pet. ref'd) (mem. op., not designated for publication) (noting defendant convicted of felony offense of murder "not eligible for release on parole until his actual calendar time served equal[ed] one-half of the sentence or thirty calendar years, whichever [was] less"); *see also Ex parte Estrada*, Nos. 14-20-00758-CR to 14-20-00760-CR, --- S.W.3d ---, 2021 WL 3672845, at *4 (Tex. App.—Houston [14th Dist.] Aug. 19, 2021, pet. ref'd) (considering defendant's parole eligibility when concluding, "in light of the substantial punishments for which [defendant] is eligible if convicted, [the nature and circumstances of the offenses] indicate[d] the trial court acted within its discretion in setting the bail amount[s] it did").

Additionally, if appellant is found guilty of the aggravated robbery felony offense and the murder felony offense, the trial court has the discretion to order appellant's sentences to run consecutively. *See* TEX. CODE CRIM. PROC. ANN. art. 42.08(a) (trial court vested with discretion to order two or more sentences to run either concurrently or consecutively); *Beedy v. State*, 250 S.W.3d 107, 110 (Tex. Crim. App. 2008); *see also DeLeon v. State*, 294 S.W.3d 742, 745 (Tex. App.—

Amarillo 2009, pet. ref'd) ("Generally, a defendant has no right to serve sentences imposed for different offenses concurrently . . . .").

The potential sentences appellant faces related to the two first-degree felony offenses with which he is charged weigh against a determination that the bail amounts set by the trial court in appellant's two cases were excessive. *See Ex parte Williams*, Nos. 12-18-00174-CR, 12-18-00175-CR, 2018 WL 5961309 at *2 (Tex. App.—Tyler Nov. 14, 2018, no pet.) (mem. op., not designated for publication) ("The . . . severe punishment ranges to which [defendant] may be subjected weigh[] in favor of the trial court's decision [to deny defendant's habeas application and] not . . . reduce the amount of his bonds.").

C. Future Safety of the Community

The trial court must also consider the future safety of the community in setting appellant's bail amounts. *See* TEX. CODE CRIM. PROC. ANN. art. 17.15(5); *Golden*, 288 S.W.3d at 518. We first note the seriousness of the first-degree felony offenses with which appellant is charged. *See Ex parte Berry*, 2015 WL 4760187, at *8 (trial court could have reasonably concluded that defendant presented "a risk to the safety of the community," "[g]iven the seriousness of the [aggravated robbery] offenses with which [defendant was] charged, as well as the alleged acts of violence that they involved"); *Milner v. State*, 263 S.W.3d 146, 151 (Tex. App.—Houston [1st Dist.] Dec. 14, 2006, no pet.) ("[T]he gravity and nature of the charges against [defendant]

indicate that he presents a risk to the safety of the community."); *see also Priel v. State*, No. 07-09-0349-CR, 2010 WL 445287, at *1–3 (Tex. App.—Amarillo Feb. 9, 2010, no pet.) (mem. op., not designated for publication) (given "the severity of the crime involved," appellate court could not conclude "that the trial court erred in refusing to reduce [defendant's] bail").

As to the aggravated robbery felony offense, at the hearing on appellant's pretrial applications for writ of habeas corpus, Brown, a law enforcement officer and an investigator with the Harris County District Attorney's Office, testified that a group of individuals, that included appellant, used an app and "claim[ed] they were going to buy cell[ular] [tele]phones." When a person would "show-up" with his cellular telephone, "he [would be] robbed." A firearm was used in the commission of the aggravated robbery felony offense. Appellant admitted to committing the aggravated robbery felony offense with which he is charged.

Officer Lopez, who investigated the aggravated robbery felony offense with which appellant is charged, explained that the aggravated robbery offense that appellant committed was "part of [a] string of robberies"—about sixteen or seventeen aggravated robberies—that took place in the same area of Houston. "[A] crime street gang" known as "Blood Brothers for Life" committed the aggravated robberies, and appellant was a member of the gang. *See Ex parte Garza*, 2003 WL 21750013, at *1–2 (in discussing "concern about the future safety of the community

if [defendant was] released on bond," noting he was "a gang member" who "admitted to carrying guns at all times"); *Ex parte Simpson*, 77 S.W.3d 894, 897 (Tex. App.—Tyler 2002, no pet.) (holding trial court did not err in setting defendant's bail amount at $600,000 where trial court considered evidence defendant was member of gang in determining future safety of community); *Ex parte Saldana*, 2002 WL 91331, at *5 (defendant posed danger to community where he was a gang member). According to Lopez, the gang members used an app to "post that they were selling a [cellular] [tele]phone or buying a [cellular] [tele]phone in order to set up the" people whose money or cellular telephones they were taking.

As to the murder felony offense, Brown testified that complainant 2, a twenty-two-year-old, was "shot multiple times" during the daytime at an apartment complex. Appellant was seen fleeing the scene with a firearm in his hand. *See Ex parte Flores*, Nos. 14-15-00619-CR, 14-15-00620-CR, 2015 WL 9241455, at *3 (Tex. App.—Houston [14th Dist.] Dec. 15, 2015, no pet.) (mem. op., not designated for publication) (allegation defendant "possessed a weapon warranted a bond sufficient to ensure the safety of the community as a whole"). According to Brown, complainant 2 was shot eleven times with a firearm. The first gunshot wound was "to [complainant 2's] face," and there were five gunshot wounds "to [complainant 2's] back."

The copy of complainant 2's autopsy report, which the trial court admitted into evidence at the hearing on appellant's pretrial applications for writ of habeas corpus, lists the cause of death for complainant 2 as "[m]ultiple gunshot wounds" and the manner of death for complainant 2 as "[h]omicide." The autopsy report states that complainant 2 was pronounced "dead at the scene" at 1:37 p.m. on February 6, 2021. He was twenty-two years old at the time of his death.

As to complainant 2's injuries, the report lists twelve gunshot wounds. The first gunshot wound was to complainant 2's face; the second gunshot wound was to complainant 2's right ear[24]; the third gunshot wound was to complainant 2's neck and head[25]; the fourth gunshot wound was to complainant 2's chest[26]; the fifth, sixth, seventh, eighth, and ninth gunshot wounds were to complainant 2's back,[27] with a "wound path" from back to front[28]; the tenth gunshot wound was to complainant 2's left upper extremity, with a "wound path" from back to front; the eleventh gunshot wound was to complainant 2's right forearm, with a "wound path" from back to

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24 This gunshot wound injured complainant 2's "right mandible and tongue" and caused "avulsion of [complainant 2's] teeth." *See Williams*, 2011 WL 808957, at *2 n.5 ("Mandible refers to the lower jawbone.").

25 This gunshot wound injured complainant 2's skull and brain.

26 This gunshot wound injured complainant 2's heart.

27 The gunshot wounds to complainant 2's back injured, among other things, complainant 2's liver, heart, lungs, spleen, stomach, esophagus, and small intestine.

28 *See Hopkins-McGee*, 2020 WL 7251452, at *1 (medical examiner testified that seven gunshot wounds "had a back-to-front trajectory, indicating that they all came from behind").

front; and the twelfth gunshot wound was to complainant 2's back, with a "wound path" from back to front. *See Ex parte Ragston*, 422 S.W.3d 904, 908 (Tex. App.—Houston [14th Dist.] 2014, no pet.) ("The violent nature of the offense demonstrates a potential risk to the community."); *see also Ex parte Bowman*, No. 14-17-00736-CR, 2017 WL 6545099, at *3 (Tex. App.—Houston [14th Dist.] Dec. 21, 2017, no pet.) (mem. op., not designated for publication) (same).

Further, we note that appellant was charged with the felony offense of murder, while he was on pretrial community supervision after posting bond related to his aggravated robbery felony offense. *See Ex parte Anderson*, 2021 WL 499080, at *14–15 (considering defendant committed two new third-degree felony offenses "[w]hile on pretrial community supervision after posting bond" when addressing future safety of community); *Ex parte Brossett*, 524 S.W.3d 273, 276 (Tex. App.—Waco 2016, pet. ref'd) ("[T]he defendant's commission of crimes while released on bail warrants a bail sufficient to ensure the safety of the community . . . ."); *Wilson v. State*, No. 01-13-00048-CR, 2013 WL 655263, at *6 (Tex. App.—Houston [1st Dist.] Feb. 21, 2013, no pet.) (mem. op., not designated for publication) ("The trial court may consider that the defendant continued to commit crimes while released on bail as a continuing danger to the public.").

Additionally, while on pretrial community supervision after posting bond related to his aggravated robbery felony offense, appellant threatened and physically

fought a "co-defendant[]" in his aggravated robbery case that had "entered [a] plea deal." Officer Lopez, who arrived at the scene of the fight, testified that she saw "what appeared to be a [firearm] in [appellant's] hand," and law enforcement officers, after the altercation, found appellant to be in possession of marijuana and a "loaded magazine." Appellant admitted to fighting his co-defendant. *See Ex parte Flores*, 2015 WL 9241455, at *3 (defendant's "possession of a weapon . . . weigh[ed] against reduction of his bonds"); *Ex parte Jackson*, Nos. 14-10-00979-CR to 14-10-00983-CR, 2011 WL 166933, at *5 (Tex. App.—Houston [14th Dist.] Jan. 13, 2011, no pet.) (mem. op., not designated for publication) (same); *see also Ex parte Hopkins*, Nos. 03-19-00695-CR, 03-19-00715-CR, 2020 WL 4929775, at *3 (Tex. App.—Austin Aug. 20, 2020, no pet.) (mem. op., not designated for publication) ("[T]he trial court could have reasonably inferred that [defendant's] access to a [deadly weapon] while out on bond could pose at least some risk to the safety of the community.").

Here, the trial court could have reasonably found that appellant posed a danger to the community and the potential danger that appellant posed to the community weighs against a determination that the bail amounts set by the trial court in appellant's two cases were excessive. *See Salerno*, 481 U.S. at 750–51 (defendant's right to pretrial bail may be subordinated to greater needs of society).

D. Ability to Make Bail

Although the ability or inability to make bail does not control the amounts of bail set, it is a factor that the trial court must consider in setting a defendant's bail amounts. *See* TEX. CODE CRIM. PROC. ANN. art. 17.15(4); *Ex parte Rodriguez*, 595 S.W.2d at 550; *Golden*, 288 S.W.3d at 518–20. That said, a defendant's inability to pay the bail amounts set by the trial court does not automatically render the amounts excessive. *See Ex parte Vance*, 608 S.W.2d 681, 683 (Tex. Crim. App. 1980); *Ex parte Scott*, 122 S.W.3d 866, 870 (Tex. App.—Fort Worth 2003, no pet.). If the defendant's ability to make bail controlled the amount that the defendant paid, then the trial court's role in setting the bail amounts would be eliminated and the defendant would be in the position to determine the amounts of bail. *Milner*, 263 S.W.3d at 150.

At the hearing on appellant's pretrial applications for writ of habeas corpus, Watkins-Davis, appellant's mother, testified that she could not afford to pay appellant's current bail amounts. She had spoken to "bonding companies," and she was told that she needed "to put down $17,000 to . . . $20,000" and "get six co-signors to co-sign for [appellant's] bond." And there would "be payments after that." She would have to pay "up to $50,000[] to keep [appellant] out."

According to Watkins-Davis, she was disabled in 2019, and she received about $2,500 a month for "long term disabilities." But her attorney received "a

portion of [her] check every month." She paid about $1,875 a month for rent, and she had to "buy medication every month" and pay for doctors' visits and physical therapy appointments.

Watkins-Davis's husband worked and received about $3,500 to $4,000 in income a month. And Watkins-Davis's mother worked, so she helped out with expenses, but she was about retire. Neither Watkins-Davis nor her immediate family owned any investment properties, and they did not "have any investments, . . . stocks, bonds, [or] properties." Watkins-Davis did have five cars at her house—one belonged to appellant, another belonged to Watkins-Davis's daughter, another belonged to Watkins-Davis's mother, and another one belonged to Watkins-Davis's husband. Watkins-Davis's family paid about $625 in car payments each month. Watkins-Davis also noted that her family had to pay bills and buy groceries each month. Watkins-Davis had a "401[k] account," which was "unavailable due to [her] disability status."

Related to appellant, Watkins-Davis testified that appellant had his "GED" and was working at his father's auto mechanic body shop before he was taken into custody in 2021 when his pretrial community supervision as revoked. *See, e.g.*, *Lawhon v. State*, Nos. 03-15-00265-CR, 03-15-00277-CR, 03-15-00288-CR, 2015 WL 7424763, at *3 (Tex. App.—Austin Nov. 20, 2015, no pet.) (mem. op., not designated for publication) (noting defendant's mother's testimony that defendant

was employed before being arrested provided some evidence that defendant "had at least some income"); *see also Ex parte Anderson*, 2021 WL 499080, at *15–16.

Neither Watkins-Davis nor appellant provided evidence at the hearing on appellant's pretrial applications for writ of habeas corpus about appellant's specific assets or financial resources, nor did either of them explain what efforts, if any, were made by appellant to furnish bail in the amounts set by the trial court. *See Ex parte Anderson*, 2021 WL 499080, at *15–16; *Ex parte Goodson*, No. 01-15-00288-CR, 2015 WL 1868771, at *4 (Tex. App.—Houston [1st Dist.] Apr. 21, 2015, no pet.) (mem. op., not designated for publication) (defendant did not present any documentary evidence of his assets or financial resources and because of "the dearth of evidence presented by [defendant] regarding his finances," trial court could have concluded that bail amount was reasonable); *Milner*, 263 S.W.3d at 149 (to show his inability to make bail, defendant generally must establish that his funds or his family's funds have been exhausted); *Ex parte Scott*, 122 S.W. 3d at 870 (defendant did not detail his or his family's specific assets or financial resources); *Ex parte Miller*, 631 S.W.2d 825, 827 (Tex. App.—Fort Worth 1982, pet. ref'd) ("[I]t [is] incumbent on the accused . . . to show that he . . . made an effort to furnish bail in the amount set."). General references to appellant's inability to make bail do not render the bail amounts set by the trial court excessive or justify a reduction of the bail amounts. *See Balawajder v. State*, 759 S.W.2d 504, 506 (Tex. App.—Fort

Worth 1988, pet. ref'd); *see also Ex parte Mitchell*, Nos. 07-20-00298-CR, 07-20-00299-CR, 2021 WL 865343, at *5 (Tex. App.—Amarillo Mar. 8, 2021, no pet.) (mem. op., not designated for publication) ("A defendant's inability to make bail is generally shown by establishing exhaustion of individual and family funds. Vague references will ordinarily not suffice; rather the defendant should detail his specific assets and financial resources." (internal citations omitted)).

Further, even if appellant is unable pay the bail amounts set by the trial court in his two trial court cases, this does not by itself render the bail amounts excessive, and given the lack of detail in the evidence presented about appellant's claimed inability to make bail, the trial court could have concluded that the amounts of bail set by it were reasonable. *See Ex parte Anderson*, 2021 WL 499080, at *16; *Awadalla v. State*, No. 02-18-00513-CR, 2019 WL 984860, at *4 (Tex. App.—Fort Worth Feb. 28, 2019, pet. ref'd) (mem. op., not designated for publication) ("Although worth considering, inability to make bail does not control over the other factors."); *Ex parte Castillo-Lorente*, 420 S.W.3d 884, 889 (Tex. App.—Houston [14th Dist.] 2014, no pet.); *see also Ex parte Scott*, 122 S.W.3d at 870–71 (affirming trial court's denial of habeas application and citing, as factor, absence of evidence on defendant's ability to make bond when defendant's evidence consisted of his testimony that he and his family lacked sufficient assets or financial resources to post bond, but he did not detail either his or his family's specific assets and financial

resources nor his efforts to furnish bond). The lack of evidence about appellant's purported inability to make bail weighs against a determination that the bail amounts set by the trial court in appellant's two cases were excessive.

E. Whether Bail is Being Used as an Instrument of Oppression

Bail needs to be sufficiently high to give reasonable assurance that a defendant will appear at trial for the offenses charged. *See Ex parte Dupuy*, 498 S.W.3d 220, 232 (Tex. App.—Houston [14th Dist.] 2016, no pet.). Yet, when bail is set so high that a person cannot realistically pay for it, the trial court essentially "displaces the presumption of innocence and replaces it with a guaranteed trial appearance." *Id.* at 233 (internal quotations omitted). Bail may not be used as an instrument of oppression. *See Ex parte Guerra*, 383 S.W.3d 229, 233–34 (Tex. App.—San Antonio 2012, no pet.); *see also* TEX. CODE CRIM. PROC. ANN. art. 17.15(2). Bail set in a particular amount becomes oppressive when it assumes that the defendant cannot afford bail in that amount and when it is set for the express purpose of forcing the defendant to remain incarcerated. *See Ex parte Nimnicht*, 467 S.W.3d at 70; *Ex parte Durst*, 148 S.W.3d 496, 499 (Tex. App.—Houston [14th Dist.] 2004, no pet.) (where bail amount set "solely to prevent [defendant] from getting out of jail," "bail [was] being used as an instrument of oppression"). Here, there is no evidence that the trial court set appellant's bail amounts at $100,000 for the aggravated robbery felony offense and $500,000 for the murder felony offense to keep appellant

incarcerated. *See Ex parte Anderson*, 2021 WL 499080, at *16–17; *Ex parte Dupuy*, 498 S.W.3d at 233; *Ex parte Nimnicht*, 467 S.W.3d at 70; *cf. Ex parte Harris*, 733 S.W.2d 712, 714 (Tex. App.—Austin 1987, no pet.) (trial court stated, "I'd rather see him in jail than to see someone's life taken").

Additionally, a trial court may increase the amount of bail for an offense when a defendant commits a new offense while on bond. *See Miller v. State*, 855 S.W.2d 92, 93–94 (Tex. App.—Houston [14th Dist.] 1993, pet. ref'd); *see also Ex parte Anderson*, 2021 WL 499080, at *17; *Ex parte Ochoa*, Nos. 01-04-00238-CR to 01-05-00240-CR, 2004 WL 1470999, at *3 (Tex. App.—Houston [1st Dist.] July 1, 2004, pet. ref'd) (mem. op., not designated for publication). Here, the trial court initially set appellant's bail for the aggravated robbery felony offense at $40,000. The trial court then reduced it to $20,000, and appellant posted bond, was released from custody, and was placed on pretrial community supervision. While appellant was on pretrial community supervision, the State filed its first Bond Condition Violation Report[29] stating that appellant had violated certain conditions of his release on bond by "using, possessing, or consuming a controlled substance, dangerous drug, marihuana, or alcohol" and failing to pay his required fees for "drug or alcohol testing" and supervision. The violation report stated that appellant tested positive

[29] At the hearing on appellant's pretrial applications for writ of habeas corpus, the trial court took judicial notice of the State's first Bond Condition Violation Report.

for marijuana use on January 12, 2021 and appellant had "yet to make a payment" related to his required fees. After reviewing the Bond Condition Violation Report, the trial court ordered that appellant could continue on pretrial community supervision.

About a month after the State filed its first Bond Condition Violation Report, the State filed its second Bond Condition Violation Report[30] stating that appellant had violated the conditions of his release on bond by failing to pay his required fees for "drug or alcohol testing" and supervision, by being "charged with unlawful carry of weapon [and] possession of marijuana . . . in Walker County," and by being charged with the felony offense of murder, which purportedly occurred on February 6, 2021 while appellant was on pretrial community supervision. (Emphasis omitted.) At that point, the trial court ordered appellant's bond revoked, terminated his pretrial community supervision, and issued an alias capias for his arrest. The trial court set appellant's bail at $100,000 for the aggravated robbery felony offense and $500,00 for the murder felony offense. *See Miller*, 855 S.W.2d at 93–94 ("It is within the trial court's discretion to increase the bail set."); *see also Ex parte Anderson*, 2021 WL 499080, at *17 (trial court increased bail amount when defendant was arrested

[30] At the hearing on appellant's pretrial applications for writ of habeas corpus, the trial court took judicial notice of the State's second Bond Condition Violation Report.

for additional felony offense while on pretrial community supervision after initially posting bond).

We note that the bail amounts set by the trial court are akin to other cases involving a defendant charged with multiple felony offenses or a defendant charged with a first-degree felony offense. *See Ex parte Dupuy*, 498 S.W.3d at 233–34 (review of bail set in other cases may be instructive); *see, e.g.*, *Ex parte Hernandez*, Nos. 14-18-00955-CR, 14-18-00957-CR, 14-18-00958-CR, 14-18-00959-CR, 14-18-00960-CR, 14-18-00961-CR, 14-18-00962-CR, 2019 WL 1388640, at *7 (Tex. App.—Houston [14th Dist.] Mar. 28, 2019, no pet.) (mem. op., not designated for publication) (setting defendant's bail amount at $150,000 for aggravated robbery felony offense); *Ex parte Simpson*, 77 S.W.3d at 897 (trial court did not err in setting bail amount at $600,000 given violent nature of murder); *see also Ex parte Mitchell*, 2021 WL 865343, at *1–6 (trial court did not err in refusing to reduce amounts of defendant's bail which were set at $100,000 for state-jail felony offense and $500,000 for first-degree felony offense); *Ex parte Hanson*, No. 03-18-00795-CR, 2019 WL 1065897, at *4 n.5 (Tex. App.—Austin Mar. 7, 2019, no pet.) (mem. op., not designated for publication) (noting "appellate courts have upheld the following bail amounts: $200,000 for aggravated robbery; $500,000 for aggravated assault; $250,000 for aggravated assault on a public servant; $750,000 for aggravated assault

with a deadly weapon; $750,000 for aggravated robbery; and $1.9 million for aggravated robbery").

The lack of evidence showing that the trial court used bail as an instrument of oppression weighs against a determination that the bail amounts set by the trial court in appellant's two cases were excessive. *See Montalvo*, 315 S.W.3d at 596 ("[T]he habeas corpus record . . . does not suggest that the trial court deliberately set bail at an excessively high level solely to prevent [defendant] from posting bail.").

F. Other Factors

Along with considering the factors set out in Texas Code of Criminal Procedure article 17.15, the trial court, when setting the bail amounts, can also consider a defendant's work record, his family and community ties, his residency, his prior criminal record, his conformity with previous bond conditions, and the aggravating factors alleged to have been involved in the charged offenses. *See Ex parte Rubac*, 611 S.W.2d at 849–50; *Montalvo*, 315 S.W.3d at 593. We have already discussed the nature and circumstances of the two serious and violent first-degree felony offenses with which appellant is charged and his failure to adhere to the bond conditions imposed by the trial court while on pretrial community supervision related to the aggravated robbery felony offense. Thus, we turn to the remaining factors that the trial court could have considered in setting the bail amounts in appellant's two cases.

A defendant's ties to the community in which he lives can be an assurance that he will appear at trial for the offenses charged. *See Ex parte Nimnicht*, 467 S.W.3d at 68 (noting court's review of defendant's ties to community includes assessment of defendant's residence history, family ties to community, and work history). Watkins-Davis, appellant's mother, testified, at the hearing on appellant's pretrial applications for writ of habeas corpus, that appellant was twenty-two or twenty-three years old, a United States citizen, and had lived in Houston for his entire life. Appellant had his "GED" and was working at his father's auto mechanic body shop before he was taken into custody in 2021 when his pretrial community supervision was revoked. Watkins-Davis testified that appellant could return to working with his father if he was released on bond.

Watkins-Davis also noted that she lived in Houston, appellant's father lived in Houston, and both sides of appellant's family lived in Houston. Watkins-Davis rented a house, and her mother, father, and husband as well as her husband's sister and brother lived with her. If appellant was released on bond, he could live with Watkins-Davis at her house.

According to Watkins-Davis, she could "help [appellant] make his court dates" and "help him comply with any bond conditions." And when appellant was on pretrial community supervision related to the felony offense for aggravated robbery, he stayed with Watkins-Davis and she helped him "make his court dates."

Appellant did not miss any court appearances while on pretrial community supervision. But he was charged with the felony offense of murder in 2021 while living with Watkins-Davis.[31]

Although appellant presented some evidence of his ties to the Houston community, the trial court, as the fact finder, is in the best position to judge a witness's credibility, and it was free to doubt Watkins-Davis's testimony. *See Powell v. State*, 479 S.W.2d 685, 687 (Tex. Crim. App. 1972); *see also Ex parte Sells*, 2020 WL 7639574, at *4. And the other relevant factors, including appellant's inability to conform to previous bond conditions and the aggravating factors alleged to have been involved in the charged offenses, weigh against a determination that the bail amounts set by the trial court in appellant's two cases were excessive. *See Ex parte Davila*, 2019 WL 4280067, at *2–3 (evidence of defendant's inability to afford bail and his family ties to community were not enough to establish bail amount set by trial court was excessive); *see also Ex parte Anderson*, 2021 WL 499080, at *17–18 (other factors, such as defendant's "inability to conform to previous bond conditions" and "aggravating factors alleged to have been involved in the charged offenses" weighed against determination that bail amounts set by trial court were excessive).

[31] Appellant was also living with Watkins-Davis when he was charged with the felony offense of aggravated robbery in 2018.

Appellant had the burden to show that the bail amounts set by the trial court in his two cases were excessive. *See Ex parte Rubac*, 611 S.W.2d at 849; *Montalvo*, 315 S.W.3d at 592. Given the balance of all the relevant factors discussed above,[32] we cannot conclude that the trial court erred by setting appellant's bail at $100,000 for the aggravated robbery felony offense and $500,000 for the murder felony offense. We hold that the trial court did not err in denying appellant's pretrial applications for writ of habeas corpus.

We overrule appellant's sole issue.

Conclusion

We affirm the orders of the trial court.

Julie Countiss
Justice

Panel consists of Chief Justice Radack and Justices Countiss and Farris.

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[32] *See* TEX. CODE CRIM. PROC. ANN. art. 17.15; *Ex parte Rubac*, 611 S.W.2d 848, 849–50 (Tex. Crim. App. 1981); *Montalvo v. State*, 315 S.W.3d 588, 592–93 (Tex. App.—Houston [1st Dist.] 2010, no pet.).