Affirmed and Memorandum Opinion filed December 21, 2017.

In The

Fourteenth Court of Appeals

NO. 14-17-00736-CR

EX PARTE CHARLES BOWMAN

On Appeal from the 180th District Court
Harris County, Texas
Trial Court Cause No. 1560431

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

In this appeal of the denial of an application for writ of habeas corpus, we consider whether the trial court abused its discretion in setting appellant's pretrial bail. We affirm the trial court's order.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant is charged with capital murder arising out of a home invasion. When appellant was first taken into custody, the hearing officer set bail at "no bond." Appellant filed a motion in the trial court for bond, which the trial court granted, setting the bail amount at $200,000. Appellant then filed an application for writ of

habeas corpus requesting the trial court to reduce the bail to a reasonable amount, which appellant contended would be $100,000. After conducting a hearing, the trial court denied appellant's application for writ of habeas corpus. Appellant filed this appeal.

The only witness to testify at the hearing on appellant's application was his mother, Angilee Licalda, who testified that appellant was born in Houston and all his family ties are in Harris County, including his five children ranging in age from six months to seven years old. Licalda learned that it would cost $20,000 to post a $200,000 bond through a bail bondsman. The bondsman would except an $8,000 down payment with the remainder paid in installments. Licalda has tried to gather money through appellant and through family members, but has been unsuccessful. Licalda believes that the family could post a $100,000 bond. Appellant does not have enough cash to post a bond, but has one vehicle with an approximate fair market value of $6,000. If appellant made bail he would live with his grandmother.

On cross-examination Licalda admitted that appellant had been convicted of possession of a controlled substance, evading arrest, unauthorized use of a motor vehicle, and multiple misdemeanor possession-of-controlled-substance offenses.

Appellant's counsel argued that appellant had not previously violated bond conditions and did not have prior convictions for violent offenses. Counsel further emphasized appellant's ties to Harris County, and noted that he would not flee because he had nowhere else to go. Appellant asked that bail be reduced to $100,000 with conditions to include home confinement and a GPS monitor.

The State emphasized the nature of the offense, which was described as a "home-invasion-style aggravated robbery that turned into a murder[.]"Appellant allegedly used a gun during the robbery and children allegedly were in the home at the time. The State noted that appellant had a history of fleeing from the police as

evidenced by his conviction for evading arrest.

The trial court took judicial notice of its file, which included the allegations of the offense. The trial court, noting that the "allegations in this case are particularly concerning," denied appellant's application for writ of habeas corpus, finding that the bond of $200,000 is an appropriate one.

STANDARD OF REVIEW

"Excessive 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) (applying Eighth Amendment prohibition of excessive bail to the states); *see also* Tex. Const. art. 1, § 11 ("All prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law."). We review bail determinations under an abuse-of-discretion standard. *See Ex parte Rubac*, 611 S.W.2d 848, 849–50 (Tex. Crim. App. 1981); *Ex parte Dupuy*, 498 S.W.3d 220, 230 (Tex. App.—Houston [14th Dist.] 2016, no pet.). A defendant carries the burden of proof to establish that bail is excessive. *Rubac*, 611 S.W.2d at 849. In reviewing a trial court's ruling for an abuse of discretion, an appellate court will not intercede as long as the trial court's ruling is at least within the zone of reasonable disagreement. *Ex parte Beard*, 92 S.W.3d 566, 573 (Tex. App.—Austin 2002, pet. ref'd).

The amount of bail required in any case is within the discretion of the trial court subject to the following rules:

> 1. The bail shall be sufficiently high to give reasonable assurance of compliance with the undertaking.
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> 2. The power to require bail is not to be used as an instrument of

> oppression.
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> 3. The nature of the offense and the circumstances under which it was committed are to be considered.
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> 4. The ability to make bail is to be regarded, and proof may be taken upon this point.
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> 5. The future safety of a victim of the alleged offense and the community shall be considered.

See Tex. Code Crim. Proc. Ann. art. 17.15 (West 2014).

In addition to considering the factors in article 17.15 of the Texas Code of Criminal Procedure, the courts have added seven other factors to be weighed in determining the appropriate amount of bail: (1) the accused's work record; (2) the accused's family and community ties; (3) the accused's length of residency; (4) the accused's prior criminal record; (5) the accused's conformity with previous bond conditions; (6) the existence of other outstanding bonds, if any; and (7) aggravating circumstances alleged to have been involved in the charged offense. *Rubac*, 611 S.W.2d at 849–50. The trial court also may consider the fact that the accused is not a United States citizen. *Ex parte Rodriguez*, 595 S.W.2d 549, 550 (Tex. Crim. App. 1980).

ANALYSIS

Appellant contends the trial court abused its discretion in denying habeas relief. He contends that considering his life-long ties to Harris County, his family's finances, and the lack of a violent criminal history, the $200,000 bail amount is excessive and oppressive.

Nature of the Offense and Circumstances Under Which it is Alleged to Have Been Committed

The indicted offense is capital murder. The offense is punishable by

imprisonment for life without parole. Tex. Penal Code Ann. § 12.31(a).[1] The defendant's potential sentence and the nature of the crime are significant factors. *Ex parte Hunt*, 138 S.W.3d 503, 506 (Tex. App.—Fort Worth 2004, pet ref'd). *See also Montalvo v. State*, 315 S.W.3d 588, 593 (Tex. App.—Houston [1st Dist.] 2010, no pet.) (noting that consideration of nature and circumstances of offense requires us to consider range of punishment in event of conviction). 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. *See Ex parte Hulin*, 31 S.W.3d 754, 761 (Tex. App.—Houston [1st Dist.] 2000, no pet.). Because of the seriousness of the charged offense and a potential life without parole sentence, appellant may have a strong incentive to flee the jurisdiction, and a high bail amount is reasonable.

Bail Sufficient to Assure Appearance but not Oppressive

From the record, the trial court reasonably could have concluded that appellant did not carry his burden to establish that $200,000 was an unreasonable amount to assure appellant's appearance at trial or that bail set in this amount was being used as an instrument of oppression. The evidence indicates that other than being near his family, appellant has no reason to remain in Harris County. Appellant has a conviction for evading arrest, which indicates a history of fleeing from police. Appellant faces a sentence of life imprisonment without possibility of parole. The record contains no evidence that appellant is working or has any employment or similar ties to Harris County. The record does not indicate that the trial court rendered its decision for the purpose of forcing appellant to remain incarcerated pending trial. *Cf. Ex parte Harris*, 733 S.W.3d 712, 714 (Tex. App.—Austin 1987,

[1] The State is not seeking the death penalty.

no pet.) (trial judge stated, "I'd rather see him in jail than to see someone's life taken").

We evaluate each case based on the individualized facts and circumstances presented, and consider recent decisions instructive. *See Beard*, 92 S.W.3d at 571. Bail of similar amounts for serious charges has been upheld. *See Ex parte Ragston*, 422 S.W.3d 904, 909 (Tex. App.—Houston [14th Dist.] 2014, no pet) (finding error in holding defendant on no bond in capital-murder charge and setting bail at $250,000); *Milner v. State*, 263 S.W.3d 146, 151 (Tex. App.—Houston [1st Dist.] 2006, no pet.) ($500,000 bail not excessive in first-degree murder charge); *Ex parte Jackson*, 257 S.W.3d 520, 522–23 (Tex. App.—Texarkana 2008, no pet.) (affirming denial of reduction of $750,000 bail for defendant charged with murder during a robbery after considering potential punishment and another offense); *Cooley v. State*, 232 S.W.3d 228, 238 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (affirming refusal to reduce $750,000 bail on three solicitation-of-capital-murder charges after considering seriousness of charges); *Ex parte Chavfull*, 945 S.W.2d 183, 186–87 (Tex. App.—San Antonio 1997, no pet.) (affirming refusal to lower $750,000 capital murder bond after considering seriousness of crime and safety of victim and the community).

On this record, we conclude the trial court reasonably could conclude that bail of $200,000 is not higher than necessary to give reasonable assurance of compliance with the undertaking and that bail is not oppressive.

Accused's Ability to Make Bail

To show that he is unable to make bail, a defendant generally must establish that his funds and his family's funds have been exhausted. *Milner v. State*, 263 S.W.3d at 149. The accused's ability to make bail is merely one factor to be considered in determining the appropriate amount of bail. Tex. Code Crim. Proc.

Ann. art. 17.15(4); *Ex parte Scott*, 122 S.W.3d 866, 870 (Tex. App.—Fort Worth 2003, no pet.). Appellant's evidence of his alleged inability to make bail consisted of his mother's testimony that the only bail amount the family could afford was $100,000, and her testimony that appellant owned a vehicle worth approximately $6,000. Appellant presented no documentary evidence of his assets and financial resources. *See Ex parte Ruiz*, 129 S.W.3d 751, 754 (Tex. App.—Houston [1st Dist.] 2004, no pet.) (concluding that bail bondsman's testimony of "largest bond" defendant could make did not carry burden to establish inability to make bail); *see also Dupuy*, 498 S.W.3d at 235 (considering appellant's failure to offer documentary evidence of assets and financial resources in holding the trial court did not abuse its discretion in declining to reduce appellant's bail).

Because appellant has offered very little evidence supporting his claimed inability to make bail, the trial court properly could have concluded that the amount of bail was reasonable under the circumstances. *See Scott*, 122 S.W.3d at 870 (in affirming trial court's refusal to lower bail, court cited as a factor absence of evidence regarding defendant's ability to make bail when defendant's evidence consisted of his testimony that he and his family lacked sufficient assets or financial resources to post the bond, but he did not detail either his or his family's specific assets and financial resources or his efforts to furnish bond).

Safety of Victims and the Community

The safety of both the community and the victims of the alleged offense are to be considered in determining the appropriate amount of bond. Tex. Code Crim. Proc. Ann. art 17.15(5). The record reflects that appellant is alleged to have committed a home-invasion-style aggravated robbery in which an individual was killed. It is further alleged that a deadly weapon was used and there were children in the home at the time of the robbery and murder. The violent nature of the offense

demonstrates a potential risk to the community. On this record, the trial court could find that appellant posed a potential danger to members of the community. *See* Tex. Code Crim. Proc. Ann. art. 17.15(5). This factor weighs in favor of setting bail at $200,000. *See Dupuy*, 498 S.W.3d at 232.

Other Factors

The trial court also may consider the defendant's work record; family and community ties; length of residency; and his prior criminal record. *See Ex parte Castellanos*, 420 S.W.3d 878, 882 (Tex. App.—Houston [14th Dist.] 2014, no pet.). The record contains no evidence of appellant's work record. Appellant's mother testified that appellant lived his entire life in Harris County and had five children in Harris County. Appellant had prior convictions involving possession of illegal drugs, evading arrest, and unauthorized use of a motor vehicle. The only factors that weigh in favor of reducing the bail amount are appellant's family ties to the community and his length of residency in Harris County. The trial court may have concluded that appellant's family ties and length of residency do not overcome the lack of employment or other community ties, the violent nature of the offense, and appellant's criminal history. Based on the evidence before the trial court, we conclude the trial judge reasonably could have concluded the bail set was justified by the circumstances presented. The trial court reasonably could have concluded bail in the amount of $200,000 was necessary to deter appellant from fleeing the jurisdiction and to ensure his presence at trial.

CONCLUSION

Based on our consideration of the above factors and the record evidence, we conclude that the trial court did not abuse its discretion in setting appellant's bail at $200,000 and in concluding that appellant did not demonstrate that bail in this amount is excessive. Accordingly, we overrule appellant's issue and affirm the trial

court's order.

PER CURIAM

Panel consists of Chief Justice Frost and Justices Busby and Wise.

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