

**Affirmed in Part, Reversed and Remanded in Part, and Plurality and Concurring and Dissenting Opinions filed September 20, 2022.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-21-00023-CR**

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**EX PARTE JOSEPH ARIE BUKS**

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**On Appeal from the 458th District Court  
Fort Bend County, Texas  
Trial Court Cause No. 20-DCR-093359**

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**PLURALITY OPINION**

Appellant Joseph Arie Buks brings this appeal from the trial court's orders on his application for writ of habeas corpus, in association with setting multiple conditions of bond restricting his physical movements and computer usage. We conclude the trial court abused its discretion in imposition of Condition C3 and remand to the trial court for revision of that condition. We affirm the remainder of the trial court's order.

**BACKGROUND**

After his indictment for online solicitation of a minor, appellant was released

on bond with the following conditions placed on his release, which restricted his movements and internet access:

5. [Appellant] shall submit to passive satellite monitoring under the supervision of the Fort Bend County Community Supervision and Corrections Department Pre-Trial Release Division, at his/her expense.

6. [Appellant] shall not reside in a residence within 300 feet of any premises where children commonly gather; but otherwise shall remain at least 1000 feet from any premises where children commonly gather, including but not limited to parks, schools, community swimming pools, child oriented restaurants and other businesses specifically geared toward children.

C1. [Appellant] shall not use, own, operate or access any computer hardware or software or any device, which allows internet access.

This condition applies to and includes, but is not limited to computers at [appellant's] place of business, private homes, libraries, schools, cyber cafés, or other public/private locations; and includes, but is not limited to, satellite dishes, PDA's, electronic games, web-television, Internet appliances and cellular/digital telephones.

C2. If [appellant] desires Internet access while on bond, all devices to be accessed shall be approved in writing by the Pre-Trial Officer, and the following conditions shall apply.

C3. [Appellant] shall permit the Pre-Trial Officer or his/her representative to install on [appellant's] computer(s)/device(s), at [appellant's] expense, any hardware or software systems to monitor the computer(s)/device(s) use or prevent access to particular materials; and shall abide by all monitoring rules and shall not tamper with or attempt to disable, circumvent or change any aspect of the monitoring program.

C4. [Appellant] shall not possess an unauthorized computer/device in his/her residence or vehicle, or on his/her person.

C5. [Appellant] shall not use any software program, services or devices designed to hide, alter or delete recordings/logs of computer use, Internet activities or the files stored on [appellant's] assigned computer(s). This condition includes prohibition on the use of encryption, steganography and cache/cookie removal software.

C6. [Appellant] shall not have another individual access the Internet

on his/her behalf; and [appellant] shall not access any Internet Service Provider account or other online service using someone else's account, name, designation or alias.

C7. [Appellant] shall disclose all online accounts including usernames and passwords to the Pre-Trial Officer; and shall provide to the Pre-Trial Officer all original cell phone/telephone/Internet service provider billing records monthly, as well as proof of the disconnection or termination of such services if required by the Court.

C8. [Appellant] shall not view, access, possess, download, or upload any pornography, or any nude or obscene images involving minors or adults, including images depicting individuals created via the method of morphing or other image creation format.

C9. [Appellant] shall not access any chat room, email accounts, instant messaging services or other online environments that allows interaction with other users, unless pre-approved in writing and authorized by the Probation Department and the Pre-Trial Officer.

C10. [Appellant] shall permit and allow the Pre-Trial Officer or his/her representative or any law enforcement officer to conduct periodic, (unannounced), examinations of [appellant's] home or other designated premises that [appellant] regularly accesses, to search for and verify whether [appellant] possesses, or has access to, any unauthorized computer or device that is capable of Internet connection, email, or instant messaging services, predicated upon reasonable suspicion articulated in an affidavit upon which the Court thereafter issues an order to search said premises for said devices. Such examinations may include retrieval and copying of all memory from hardware/software and may also include removal of such device(s) and/or equipment for the purpose of a more thorough inspection by probation staff or by a forensic analyst to ensure compliance with these conditions.

Appellant signed a document entitled, "Conditions of Bond Online Solicitation of a Minor," agreeing to all bond conditions and specifically stating that he had "carefully read C10 above, and specifically" agreed to court-ordered searches of his residence and devices for enforcement of the conditions of release.

Approximately one month later, appellant filed an application for writ of

habeas corpus seeking modification of certain bond conditions. In a memo accompanying appellant's application for writ of habeas corpus he specifically objected to bond conditions 2, 4, 5, 6, and C1-C14 as violating his rights of free speech and association and his right to be free from unreasonable searches and seizures. At the hearing on appellant's application a Houston Police Department officer testified that he posed as a thirteen-year-old girl and communicated with appellant via computer and mobile phone applications to make arrangements to have sex in Richmond, Texas. Appellant was arrested at the meeting site in Fort Bend County having traveled from his home in Montgomery County, approximately 70 miles away.

After hearing evidence and arguments of counsel, the trial court amended the bond conditions to allow appellant to be subject to "passive satellite monitoring," travel to Montgomery, Waller, and Grimes counties, and amended Condition 6 to allow appellant to "live or go" within 100 yards of places where children congregate. The trial court denied appellant's application in all other respects. This appeal followed.

## ANALYSIS

On appeal, appellant challenges conditions 5, 6, and C1 through C10, asserting:

The trial court abused its discretion in subjecting appellant to satellite monitoring, restricting where he may live or congregate, and restricting appellant's computer usage to devices that contain a monitoring device installed by the probation department.

### **I. Standard of Review**

We review a challenge to a pretrial bond condition for abuse of discretion. *See Ex parte Anunobi*, 278 S.W.3d 425, 428 (Tex. App.—San Antonio 2008, no pet.).

Under this standard, we may not disturb the trial court’s decision if it falls within the zone of reasonable disagreement. *See Ex parte Dupuy*, 498 S.W.3d 220, 230 (Tex. App.—Houston [14th Dist.] 2016, no pet.). That zone does not, however, include errors in properly applying or interpreting the law. *See In re B.R.H.*, 426 S.W.3d 163, 166 (Tex. App.—Houston [1st Dist.] 2012, no pet.). The appellant bears the burden to show the trial court abused its discretion in setting the amount of bail or imposing a specific condition. *Ex parte Rubac*, 611 S.W.2d 848, 849 (Tex. Crim. App. [Panel Op.] 1981). The appellate court may not simply substitute its judgment for that of the trial court; however, an abuse of discretion review requires more than simply deciding whether the trial court acted arbitrarily or capriciously. *Cooley v. State*, 232 S.W.3d 228, 234 (Tex. App.—Houston [1st Dist.] 2007, no pet.). In reviewing a trial court’s bond decision, the appellate court measures the trial court’s ruling against the same factors it used in ruling on bail in the first instance. *Id.*

Trial courts’ ability to set conditions of bond beyond bail amounts is guided by article 17.40 of the Code of Criminal Procedure, which authorizes magistrates, in order “[t]o secure a defendant’s attendance at trial, . . . impose any reasonable condition of bond related to the safety of a victim of the alleged offense or to the safety of the community.” Tex. Code Crim. Proc. art. 17.40(a). The Code of Criminal Procedure also authorizes magistrates to require specific conditions that may be reasonably included as a condition of a defendant’s bond, including “that the defendant submit to home curfew and electronic monitoring under the supervision of an agency designated by the magistrate,” *see id.* art. 17.43(a), and that the defendant “submit to[] . . . electronic monitoring under the supervision of an agency designated by the magistrate.” *see id.* art. 17.44(a)(1).

The primary purpose of pretrial bail is to secure the defendant’s attendance at trial, and the power to require bail, including the power to set conditions to bail,

should not be used as an instrument of oppression. *Anunobi*, 278 S.W.3d at 427 (citing *Ex parte Ivey*, 594 S.W.2d 98, 99 (Tex. Crim. App. [Panel Op.] 1980)). To secure a defendant's attendance at trial, a magistrate may impose any reasonable bond condition related to the safety of a victim of the alleged offense or to the safety of the community. Tex. Code Crim. Proc. art. 17.40(a). Bond conditions, however, must not unreasonably impinge on an individual's constitutional rights. *Ex parte Anderer*, 61 S.W.3d 398, 402 (Tex. Crim. App. 2001). Therefore, courts must be mindful that one of the purposes of release on bail pending trial is to prevent the infliction of punishment before conviction. *Id.* at 405. "The trial court's discretion to set the conditions of bail is not . . . unlimited. A condition of pretrial bail is judged by three criteria: it must be reasonable; it must be to secure the defendant's presence at trial; and it must be related to the safety of the alleged victim or the community." *Anunobi*, 278 S.W.3d at 427 (citing *Anderer*, 61 S.W.3d at 401–02).

**II. Appellant did not waive his objections to bond conditions by signing the bond condition form.**

In his sole issue, appellant asserts the trial court abused its discretion in imposing pretrial bond conditions restricting where he may live or congregate (the subject of Condition 6), requiring passive satellite monitoring (the subject of Condition 5), and restricting his computer usage to devices containing monitoring software as well as imposing the monitoring itself (the subject of Conditions C1 through C10).

Initially, the State asserts appellant waived his objections to bond conditions because he failed to object to them when they were imposed and because a timely objection is required to preserve the objection for habeas review. *See Smith v. State*, 993 S.W.2d 408, 411 (Tex. App.—Houston [14th Dist.] 1993, pet. ref'd). We conclude appellant timely raised objections to his bond conditions because he filed

his application for writ of habeas corpus within one month of imposition of the bond conditions, thereby providing the trial court with an opportunity to rule on his request via a timely and specific objection that comported with his complaint on appeal. *See* Tex. R. App. P. 33.1(a); *Smith*, 993 S.W.2d at 410-11 (more than six months elapsed). We have found no Texas authority holding that 30 days constituted an undue delay for purposes of seeking habeas relief and we decline the State’s invitation to create such precedent under these facts.

Further, the record provides little detail about the document appellant signed purporting to acknowledge the bond conditions (particularly the circumstances under which appellant signed the form, as well as the date on which appellant signed that form). Appellant’s signature on the form is undated and the form states that appellant “acknowledge[es] receipt” by signing. There was no evidence that by signing this form appellant affirmatively waived his right to complain of the bond conditions in an application for writ of habeas corpus. Having determined appellant sufficiently preserved his objections for review, we turn to the merits of appellant’s objections to the bond conditions.

**III. Appellant has not met his burden to show the trial court abused its discretion in denying his challenge to Condition 5.**

Appellant argues Condition 5, which requires him to submit to passive satellite monitoring at his own expense, violates his right to due process, infringes a Fourth Amendment privacy interest in his location, is wrongfully aimed at attempting to detect crime before it occurs rather than to ensure his appearance at

trial, and further serves as punishment for unproven criminal acts.<sup>1</sup> Appellant's argument does not cite any cases in which imposing satellite or other location tracking against an arrestee was found constitutionally infirm.

Home confinement and electronic monitoring are expressly permitted conditions of pretrial bail in Texas. Tex. Code Crim. Proc. art. 17.44(a)(1). In this case, the trial court imposed Condition 5 after hearing evidence that appellant had connections in multiple Texas counties aside from Fort Bend County (where he has no connections aside from the circumstances underlying his arrest and alleged offense), and that appellant allegedly traveled approximately 70 miles in furtherance of an offense. *See United States v. Whyte*, No. 3:19-cr-64-1 (VLB), 2020 WL 1911187, at \*6 (D. Conn. Apr. 8, 2020) (holding a defendant's pretrial detention was partially supported by his "willingness to travel" and his "ties to other countries").

Appellant is alleged to have solicited a thirteen-year-old child for sex, and the record reflects that appellant had previously contacted a fifteen-year-old and proposed a sexual encounter. Appellant has failed to show that the trial court abused its discretion in imposing satellite monitoring because such restriction serves the purpose of protecting the community. *See United States v. Deppish*, 554 F. App'x 753, 755 (10th Cir. 2014) (per curiam) (noting that imposing electronic monitoring and curfew on a defendant pretrial was supported by "the seriousness of [the defendant's] alleged conduct and the associated threat to children in the community that his less restricted and unmonitored movement would pose").

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<sup>1</sup> While appellant's brief references article I, section 9 of the Texas constitution in asserting the trial court abused its discretion, appellant has not suggested that the Texas Constitution would confer greater protection than the United States Constitution. We therefore decline to address appellant's state constitutional argument. *See Rousseau v. State*, 171 S.W.3d 871, 881 (Tex. Crim. App. 2005).



**IV. Appellant has not met his burden to show the trial court abused its discretion in denying his challenge to Condition 6.**

As modified by the trial court, Condition 6 required:

[Appellant] shall not reside in a residence within 300 feet of any premises where children commonly gather; but otherwise shall remain at least 100 feet from any premises where children commonly gather, including but not limited to parks, schools, community swimming pools, child oriented restaurants and other businesses specifically geared toward children.

In the trial court, appellant asserted this condition violated his right to due process because it placed a restraint on his fundamental right to reside in certain locations and to travel with no link to the accused offense. At the habeas hearing appellant argued this restriction was “vague and overbroad” in that appellant could potentially violate the condition by driving through a “fast food drive through where there is a playground.”

A magistrate may impose any reasonable condition of bond related to the safety of a victim of the alleged offense or to the safety of the community. Tex. Code Crim. Proc. art. 17.40; *Ex parte Victorick*, 453 S.W.3d 5, 11 (Tex. App.—Beaumont 2014, pet. ref’d). Given the nature of the allegations against appellant, involving evidence that he solicited someone he thought was thirteen years old and traveled with the intent to engage in sex with a thirteen-year-old, and that there was evidence he planned on another occasion to have sex with a fifteen-year-old, it was reasonable for the trial court to impose pretrial conditions designed to prevent appellant from being physically present in areas where children congregate.

Texas courts have consistently upheld similar conditions that restrict defendants’ geographical location regarding having children present with them in order to protect not just the alleged victims of offenses, but also the community more generally. *See, e.g., Burson v. State*, 202 S.W.3d 423, 427 (Tex. App.—Tyler 2006,

no pet.) (upholding a pretrial bond condition against a defendant, accused of child endangerment, which limited the defendant's visits with her child to supervised visits); *Ex parte Herrera*, No. 05-14-00598-CR, 2014 WL 4207153, at \*5–7 (Tex. App.—Dallas Aug. 26, 2014, no pet.) (not designated for publication) (upholding a pretrial bond condition that a church deacon not attend church services, after the deacon was charged with aggravated sexual assault of a child under age 14).

Appellant asserts Condition 6 violates his due process rights under the Fourteenth Amendment because it has no link to the alleged offense. He asserts that because there is no indication he is a flight risk or is a threat to the community or children in particular, Condition 6 does not actually serve a compelling state interest. To the contrary, the record contains evidence that supported the trial court's imposition of Condition 6 as a means of protecting children. *See Ex parte Odom*, 570 S.W.3d 900, 915 (Tex. App.—Houston [1st Dist.] 2018, pet. ref'd) (quoting *Packingham v. North Carolina*, 137 S. Ct. 1730, 1739–40 (2017) (Alito, J., concurring)) (agreeing protecting children from abuse is a compelling state interest that can support registration requirements for sex offenders). According to testimony provided by an HPD lieutenant at appellant's habeas hearing, appellant traveled to Richmond in an attempt to have sex with a person he thought was a thirteen-year-old girl. In addition, the lieutenant testified that appellant had chat messages on his phone in which he discussed a plan to have sex with a fifteen-year-old. Appellant has not met his burden to show a disconnect between the alleged offense and the purpose of the bond condition to protect the community.

Although Appellant cites to *United States v. Torres*, 566 F. Supp. 2d 591 (W.D. Tex. 2008), in support of his argument, this case is inapposite to appellant's position. The court in *Torres* analyzed the constitutionality of a federal statute requiring a release order that contained an electronic monitoring condition and a set

of specified conditions, including restrictions on places of housing and travel. *Id.* at 594–96. As the *Torres* court made clear, the statute “strip[ped] away any independent judicial evaluation by mandating that every arrestee be treated the same [regarding various restrictive conditions], regardless of the circumstances,” which the court concluded rendered the statute constitutionally deficient. *Id.* at 596. But the court also noted that the conditions made mandatory by the federal statute, even those implicating a defendant’s freedom of movement and the right to remain in a public place, could be appropriately imposed if “a judicial determination of the necessary conditions of release based upon the arrestee’s particular circumstances” indicated such restrictions were “warranted.” *Id.* at 597–98. In this case, by contrast, the trial court was presented with sufficient evidence, such as the circumstances of appellant’s arrest and chat messages from his phone, that he was a potential threat to children if he was released prior to trial, and accordingly imposed Condition 6 on appellant with threshold distances modified.

Appellant also contends Condition 6 is unconstitutionally vague because it does not provide him adequate notice of which locations are the sorts of premises that would trigger a violation of the condition. We disagree. Conditions that restrict defendants’ presence near places where children gather pass constitutional muster even if such conditions do not exhaustively list such places. *See Rickels v. State*, 108 S.W.3d 900, 901 (Tex. Crim. App. 2003) (noting that it would be “a difficult argument” to contend the phrase “premises where children 17 years or younger congregate or gather” was unconstitutionally vague, at least where the defendant convicted of a sexual offense against a child was accused of remaining near an elementary school while on probation); *Leach v. State*, 170 S.W.3d 669, 675 (Tex. App.—Fort Worth 2005, pet. ref’d) (holding a similarly phrased condition in a statute was not unconstitutionally vague as applied to a defendant convicted of

indecent with a child).

Appellant's last argument, that Condition 6 is unconstitutionally overbroad insofar as it encompasses a vast array of lawful locations unrelated to the alleged offense, is unpersuasive. By its terms, Condition 6 focuses solely on "premises where children commonly gather" and locations within 100 yards of them, and since appellant is accused of soliciting a minor for sex, the condition reasonably encompasses locations related to the alleged offense. *Cf. United States v. Peterson*, 248 F.3d 79, 82, 86 (2d Cir. 2001) (per curiam) (remanding for clarification of a probation condition prohibiting a defendant from being on any "school grounds, . . . park, recreational facility or any area in which children are likely to congregate," as the condition's phrasing might unjustifiably "forbid the defendant from being at parks and educational or recreational facilities where children do not congregate").

We conclude appellant did not meet his burden to show the trial court abused its discretion in restricting appellant from being within 100 yards of premises where children commonly gather.

**V. Appellant has not met his burden to show the trial court abused its discretion in denying his challenges to Conditions C1, C2, and C4-C10.**

Appellant's final arguments contest the computer monitoring conditions imposed by Conditions C1 through C10, which essentially prohibit him from using or having an Internet-accessing device unless he permits those devices to be monitored, discloses his online accounts, refrains from viewing pornographic images, declines to use communications services such as email accounts without approval, and further consents to periodic, unannounced searches for unauthorized devices upon reasonable suspicion. Because Condition C3 could impact appellant's communication with his attorney we address it separately below.

Appellant first asserts that by conditioning his release on the monitoring of his devices and requiring searches related to them, the trial court subjected him to unreasonable searches and seizures. Regarding the computer monitoring in general, this court sees no constitutional infirmity. Courts have consistently upheld similar conditions for monitoring internet usage, or even prohibiting internet usage altogether, for defendants in prosecutions for electronic sex crimes. *See, e.g., United States v. Lee*, 972 F. Supp. 2d 403, 404 n.3 (E.D.N.Y. 2013); *Edvalson v. State*, 783 S.E.2d 606 (Ga. 2016); *see also United States v. Pool*, 645 F. Supp. 2d 903, 909 (E.D. Cal. 2009) (assessing general restrictions on pretrial arrestees and noting that in pornography cases, defendants frequently “cannot access the internet or possess a computer at [their] residence without prior approval”); *Ex parte Bentley*, No. 10-15-00301-CR, 2015 WL 9592456, at \*3 n.1 (Tex. App.—Waco Dec. 31, 2015, no pet.) (not designated for publication) (lowering the bail of a defendant accused of a child pornography crime while acknowledging that safety related concerns could be alleviated with such measures as “restriction of internet access through one computer with key-stroke recording software”).

Under the circumstances, keeping track of certain types of equipment, preventing the use of technology designed to thwart surveillance, disclosing accounts, and preventing a defendant charged with this particular offense from accessing pornography furthers a legitimate state interest in the safety of the community. *See* Tex. Code Crim. Proc. art. 17.40(a). Such conditions have the reasonable goal of ensuring that pretrial defendants in sex crimes cases, particularly those involving electronic communications such as those appellant is alleged to have committed, do not engage in such communications before being tried. *See United States v. Pako*, No. 21-14021-CR-CANNON, 2021 WL 2603759 at \*5 (S.D. Fla. June 24, 2021) (noting that Internet use restrictions “adequately mitigated” “the risk

of [a defendant accused of child pornography and solicitation offenses] communicating with minors over the Internet”); *United States v. Parmer*, — F. Supp. 3d —, 2020 WL 2213467, at \*3 (N.D. Cal. 2020) (noting that Internet use restrictions imposed on a child pornography defendant “greatly reduce[] his likelihood of again engaging in the charged conduct while on release”).

Appellant also asserts that, by requiring monitoring of his computers and disclosure to the State of his usernames and passwords, the conditions violate his right to anonymous speech under the First Amendment. We disagree. There is no evidence in the record that the data and information appellant would provide to the State (whether directly through disclosures or indirectly through monitoring) via Conditions C1 through C10 would be revealed to anyone aside from the State and those agents of the State made privy to such details, rather than the public at large. Appellant would still be able to speak electronically with anonymity to his intended audiences, and he would remain anonymous to them. Moreover, appellant has not provided evidence of speech he hopes to keep anonymous, leaving it impossible for this court to find any sort of associated infringement of appellant’s rights. *Cf. In re Grand Jury Subpoena, No. 16-03-217*, 875 F.3d 1179, 1185 (9th Cir. 2017) (quoting *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 342 (1995)) (observing that the degree of scrutiny applied to alleged infringements of the right to anonymous speech “varies depending on the circumstances and the type of speech at issue”).

We hold that appellant has not met his burden to show the trial court abused its discretion in imposing conditions C1, C2, and C4-C10.<sup>2</sup>

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<sup>2</sup> While I share my colleague’s concern with the proliferation of Internet-connected devices in most individual’s homes, in this case, appellant did not challenge as overbroad the conditions prohibiting use of devices, such as coffeemakers, that allow internet access. I therefore decline to address the bond conditions on those grounds.

**VI. Appellant presented sufficient evidence to show the trial court abused its discretion in denying his challenge to Condition C3 to the extent Condition C3 could interfere with appellant's ability to communicate with his attorney.**

At the habeas hearing, appellant's mother testified that appellant was unable to directly communicate with his attorney and had been communicating through her. To communicate with her son, appellant's mother bought a mobile phone that does not access the internet. Neither appellant, nor his mother, own a landline phone. Appellant's mother testified that attempting to communicate with the attorney without the ability to send documents electronically was challenging. Appellant had no way to receive emails, participate in video conferences, or send and receive documents electronically to his attorney.

Appellant's attorney testified that appellant's bond conditions interfered with his ability to represent appellant. Appellant's attorney is a solo practitioner with only an administrative assistant to coordinate his schedule and communication. Appellant's attorney has no ability to share an offense report or other documents with appellant by electronic means. For appellant to meet with his attorney, it must be done face-to-face, which, at the time of the hearing, December 15, 2020, was before the availability of COVID-19 vaccines, placing both parties' health at risk. Appellant's attorney had engaged an expert who, at the time, conducted interviews only remotely via Zoom. The bail conditions prevented appellant from being interviewed by the expert.

Before the State called any witnesses, the prosecutor opined that the monitoring software could be programmed to allow privileged communications to be flagged and not reviewed. Appellant's attorney objected and requested that someone with knowledge of the software testify to its capabilities. The prosecutor stated that she did not have a witness to testify about the software but could provide additional briefing at a later date on that issue. The record does not contain any such

additional briefing. The State's only witness was the undercover officer who testified about communicating with appellant while posing as a thirteen-year-old. The communications were all electronic.

In closing argument, the prosecutor invited the trial court to amend the bond conditions to allow appellant unmonitored electronic communication with his attorney, which would "address[] the defendant's concern, while at the same time keeping the community safe." The trial court declined the State's invitation and instructed appellant's attorney that he could use a "flip phone," fax machine, or have appellant come to his office.

On appeal appellant challenges Condition C3 as written because it allows communication with his attorney to be monitored by the State.

The Sixth Amendment guarantees criminal defendants the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Gideon v. Wainwright*, 372 U.S. 335, 340–41 (1963). That right includes the defendant's ability to communicate with his lawyer. *See Deck v. Missouri*, 544 U.S. 622, 631 (2005) (holding that use of physical restraints diminishes right of communication).

Here, Condition C3 enables the State to monitor appellant's electronic communications with his attorney. To be sure, the trial court noted that appellant could communicate via landline telephone, which appellant does not own, fax machine, or face-to-face. The record reflects, however, that appellant's attorney does not generally conduct business in that manner.

To require appellant to communicate with his attorney without using electronic means does not meet the purpose for pretrial bail conditions, i.e., ensuring appearance at trial or protecting the community. It cannot be argued that requiring appellant's communications with his attorney to be so limited serves either the purpose of ensuring appellant's appearance at trial or protecting the community. *See*



*Anunobi*, 278 S.W.3d at 427. We sustain appellant’s issue to the extent he challenges Condition C3 as permitting the State to monitor attorney-client communications.

### CONCLUSION

We reverse the trial court’s imposition of Condition C3 and remand for amendment of that condition to permit unmonitored attorney-client communication. The trial court may hear evidence, if necessary, concerning the software’s capabilities to carve out such communications. We affirm the remainder of the trial court’s order.

/s/ Jerry Zimmerer  
Justice

Panel consists of Chief Justice Christopher and Justices Zimmerer and Hassan. (Zimmer, J., plurality) (Christopher, C.J., concurring and dissenting) (Hassan, J., concurring and dissenting).

Publish — Tex. R. App. P. 47.2(b).