In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-22-00048-CR

EX PARTE JOSHUA WALKER, APPELLANT

On Appeal from the 364th District Court
Lubbock County, Texas
Trial Court No. DC-2022-MC-0009, Honorable William R. Eichman II, Presiding

June 16, 2022

MEMORANDUM OPINION

Before QUINN, CJ., and PARKER and DOSS, JJ.

Before us is an appeal challenging the trial court's decision to reduce the bond of appellant, Joshua Walker, from $500,000 to $400,000. In January 2021, he was indicted for the first-degree felony offense of murder.[1] The amount of bond was set at $500,000. It was subsequently reduced to the aforesaid amount on motion of appellant and an ensuing hearing. Via a single issue in this appeal, appellant contends the trial court abused its discretion in failing to reduce the amount to his requested amount of $150,000. We affirm.

[1] TEX. PENAL CODE ANN. § 19.02.

Background

Per indictment, appellant was accused of "on or about December 26, 2021 . . . intentionally and knowingly caus[ing] the death of an individual, namely ALBERTO GARZA SR, by shooting him." At the hearing to reduce bond, he requested that it be set to $150,000, a sum he claimed was affordable. In support of the request, he presented the testimony of three witnesses and offered one exhibit setting forth the bond amounts for individuals charged with murder and incarcerated in Lubbock County.

The first witness was a man who was appellant's boss from 2009 to 2019. He testified that appellant worked in medical support and characterized him as responsible and dependable.

The second witness was a mechanic who had known appellant for seven or eight years and with whom he had worked part time for about six months. The individual testified that he would not only provide appellant a job if released but also afford him time to comply with any conditions of his bond. The two were friends and he wanted to help appellant.

The third witness was appellant's twenty-seven-year-old daughter. She described the purportedly nominal assets and income of the family, appellant's positive relationship with her children, and her desire to further that relationship should he be released from jail. Other testimony from her included information about appellant having periodic bouts of sadness, bickering with his wife, and owning firearms.

The record also contains appellant's exhibit purporting to itemize the bond amounts set for other individuals jailed in Lubbock County and accused of murder. While many of the sums were less than $400,000, a number were $500,000 and higher.

The State called no live witnesses. Its evidence consisted of tendering as an exhibit the probable cause affidavit summarizing the offense. So too did it request the trial court to judicially notice the indictment. The trial court agreed.

During argument, the State asserted that it had evidence of the crime. It allegedly illustrated that appellant killed a seventy-year-old man by shooting him at close range with a handgun. During the incident, a bystander also was shot. Moreover, appellant told the police after the shooting that he "may have been too drunk to know if" he shot the victim. Some family members were told by appellant that he was "f*cked up." The State purportedly had other evidence, including efforts by his wife to help hide appellant's vehicle, appellant's fingerprint on the doorbell of the decedent's abode, and appellant acting in retaliation for a familial dispute.

Law and Application

The primary purpose of pretrial bail is to secure the appearance of the accused at trial on the offense charged. *See Ex parte Rodriguez*, 595 S.W.2d 549, 550 (Tex. Crim. App. [Panel Op.] 1980); *Ex parte Herrera*, No. 04-18-00020-CR, 2018 Tex. App. LEXIS 2553, at *6–7 (Tex. App.—San Antonio Apr. 11, 2018, no pet.) (mem. op., not designated for publication). In a proceeding seeking a reduction in the amount of pretrial bail, the burden lies with the party seeking reduction to show that the amount set is excessive. *Ex parte Vasquez*, 558 S.W.2d 477, 479 (Tex. Crim. App. 1977); *Ex parte Herrera*, 2018 Tex. App. LEXIS 2553, at *6.

Article 17.15 of the Texas Code of Criminal Procedure sets forth rules for fixing the amount of bail required. The dollar amount of that bail and any conditions of bail are matters within the sound discretion of the trial court, governed by the Texas Constitution and the rules stated in article 17.15:

1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.

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

3. The nature of the offense and the circumstances under which it was committed are to be considered, including whether the offense:

(A) is an offense involving violence as defined by Article 17.03;[2] or

(B) involves violence directed against a peace officer.

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

5. The future safety of a victim of the alleged offense and the community shall be considered.

6. The criminal history record information for the defendant, including information obtained through the statewide telecommunications system maintained by the Department of Public Safety and through the public safety report system developed under Article 17.021, shall be considered, including any acts of family violence, other pending criminal charges, and any instances in which the defendant failed to appear in court following release on bail.

7. The citizenship status of the defendant shall be considered.

TEX. CODE CRIM. PROC. ANN. art. 17.15(a).

In determining an appropriate amount of bail, the trial court may also consider factors such as (1) the defendant's work record, (2) family and community ties, (3) length of residency, (4) prior criminal record, (5) conformity with previous bond conditions, (6) the existence of any other bonds outstanding, and (7) aggravating circumstances alleged to have been involved in the charged offense. *Ex parte Rubac*, 611 S.W.2d 848, 849

[2] Murder under § 19.02 of the Texas Penal Code is one such offense. TEX. CODE CRIM. PROC. ANN. art. 17.03.

(Tex. Crim. App. [Panel Op.] 1981); *Ex parte Emery*, 970 S.W.2d 144, 145 (Tex. App.—Waco 1998, no pet.). We further observe that simply because an accused cannot meet the amount of bail set by the trial court does not automatically render that amount excessive. *Ex parte Vance*, 608 S.W.2d 681, 683 (Tex. Crim. App. [Panel Op.] 1980); *Ex parte Scott*, 122 S.W.3d 866, 870 (Tex. App.—Fort Worth 2003, no pet.).

Next, the trial court's decision is reviewed under the standard of abused discretion. *Ex parte Rubac*, 611 S.W.2d at 850; *Ex parte Davis*, 147 S.W.3d 546, 548 (Tex. App.—Waco 2004, no pet.). Discretion is not abused so long as the decision falls within the zone of reasonable disagreement, given the applicable law and particular facts. *Clemons v. State*, 220 S.W.3d 176, 178 (Tex. App.—Eastland 2007, no pet.).

To reiterate, evidence of the purportedly nominal financial means of the family lay before the trial court and the inability to afford a bond exceeding $150,000. Yet, "[i]f the ability to make bond in a specified amount controlled, the role of the trial court in setting bond would be completely eliminated and the accused would be in the position to determine what his bond should be." *Milner v. State*, 263 S.W.3d 146, 150 (Tex. App.—Houston [1st Dist.] 2006, no pet.).

Nor is appellant's exhibit showing bond amounts for other Lubbock County detainees charged with murder particularly persuasive. First, bond amounts are to be determined on a case-by-case, fact-intensive basis. *See Esquivel v. State*, 922 S.W.2d 601, 604 (Tex. App.—San Antonio 1996, no pet.). Second, the bonds for a number of the listed inmates equal and exceed $500,000. Third, the circumstances underlying and reasons for the bonds lower than $400,000 appear nowhere in the record. Comparing apples to apples may be informative so long as proponent compares the same type of apples; we do not know if appellant does so here. Fourth, while appellant cites to older

authority wherein bond was reduced to lesser sums, recent authority also states that "[w]hile a $1,000,000 bond may be high, it is within the range of bail amounts that have been upheld for first-degree felony offenses including murder and capital murder." *See Ex parte Lee*, No. 13-20-00021-CR, 2020 Tex. App. LEXIS 4211, at *11 (Tex. App.—Corpus Christi June 4, 2020, no pet.) (mem. op., not designated for publication), and cases cited therein.

One cannot dispute that evidence of appellant having ties to family and community was before the trial court. The same is true of evidence suggesting he was a good employee and grandfather who has the support of others. Yet, the nature of the crime and aggravating factors related thereto were also before the trial court. The State charged appellant with intentionally and knowingly shooting an elderly person at close range. "Murder is unquestionably a serious offense." *Ex parte Harber*, No. 04-10-00643-CR, 2010 Tex. App. LEXIS 9871, at *5 (Tex. App.—San Antonio Dec. 15, 2010, no pet.) (mem. op., not designated for publication). So too was a bystander shot, according to the State. While appellant has yet to be charged with the latter crime, it nonetheless remains that his conduct allegedly caused two others to suffer injury and death. The probable cause affidavit also reveals that he told police he was too drunk to "remember what he did" and admitted to owning firearms of the same caliber as that located at the scene as well as a white box truck seen by a witness. Other averments in the document included reference to appellant telling his nephew he (appellant) may have killed someone and appellant and his wife endeavoring to hide the white box van after the shooting.

Next, the potential sentence is also a significant factor in assessing the reasonableness of a bail amount. *Ex parte Castellanos*, 420 S.W.3d 878, 883 (Tex. App.—Houston [14th Dist.] 2014, no pet.). Indeed, "[w]hen 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." *Id.* at 882–83. This is true because a person's reaction to "the prospect of a lengthy prison sentence might be not to appear." *Ex parte Harber*, 2010 Tex. App. LEXIS 9871, at *6. Again, the State classifies the charge against appellant as a felony of the first degree. Punishment for same ranges from five years to life or 99 years' imprisonment, plus a $10,000 fine. TEX. PENAL CODE ANN. § 12.32.

An accused must recognize that in appeals of this nature, this Court does not set bond in the first instance. Instead, we assess whether the trial court abused its discretion in selecting the sum it did. It matters not whether we would have chosen a lesser sum under the circumstances had we been the trial court. Nor can we simply substitute our views for those of the trial court. The law affords it, not us, the discretion to act. And, given the totality of the circumstances, we cannot say the trial court abused that discretion. The decision fell within the zone of reasonable disagreement, especially in view of other courts noting that a $1,000,000 bond lies within the range of acceptable bail for those charged with first-degree murder. Overruling appellant's sole issue, we affirm the trial court's order.

Brian Quinn
Chief Justice

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