Affirmed and Opinion filed February 28, 2002.

In The

Fourteenth Court of Appeals

NOS. 14-01-00988-CR &
14-01-00989-CR

EX PARTE SADIE PROFFITT

On Appeal from the 23rd District Court
Brazoria County, Texas
Trial Court Cause Nos. 41,045 & 41,046

O P I N I O N

This is an appeal from the denial of habeas corpus relief. Appellant Sadie Proffitt is charged in two separate indictments with four counts of murder. Bond was set at $150,000.00 for each indictment, for a total of $300,000.00. Appellant filed a pretrial application for writ of habeas corpus asserting the bond was excessive and asking the trial court to reduce it and set a reasonable bond. Following an evidentiary hearing, the trial court denied the bond reduction and entered findings of fact and conclusions of law. On appeal, appellant contends the bond set by the trial court is oppressively high and violates her rights under the United States and Texas Constitutions. We affirm.

I. The Applicable Law

The primary purpose of an appearance bond is to secure the presence of the accused at trial on the offense charged. *Maldonado v. State*, 999 S.W.2d 91, 93 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd). Bail should be set high enough to give reasonable assurance that the defendant will appear at trial, but it should not operate as an instrument of oppression. *Id*. The burden is on the person seeking the reduction to demonstrate that bail is excessive. *Id*. The decision regarding a proper bail amount lies within the sound discretion of the trial court. *Id*. However, the trial court is required to consider certain criteria in making a bail determination. *Id*. Article 17.15 provides:

> The amount of bail to be required in any case is to be regulated by the court, judge, magistrate or officer taking the bail; they are to be governed in the exercise of this discretion by the Constitution and by the following rules:
>
> 1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.
> 2. The power to require bail is not to be so used as to make it an instrument of oppression.
> 3. The nature of the offense and the circumstances under which it was committed are to be considered.
> 4. The ability to make bail is to be regarded, and proof may be taken upon this point.
> 5. The future safety of a victim of the alleged offense and the community shall be considered.

TEX. CODE CRIM. PROC. ANN. art. 17.15. In addition to considering the factors in article 17.15, the courts have added seven other factors to be weighed in determining the amount of bond: (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.

Ex parte Rubac, 611 S.W.2d 848, 849-50 (Tex. Crim. App. [Panel Op.] 1981); *Maldonado*, 999 S.W.2d at 93. Though *Rubac* involved a post-conviction bond, several courts have applied the *Rubac* factors in reviewing cases involving pretrial bail. *See Maldonado*, 999 S.W.2d at 93.

II. The Evidence

During the hearing, the trial court received testimony from two witnesses–appellant and her adult son, Thomas Childers. The State did not call any witnesses.

Appellant testified that at the time of her arrest she was living in Lewisville, Texas, not in Brazoria County. She was working as a waitress/manager at a restaurant and earned approximately $400.00-$500.00 per week. She stated the most she has ever earned in a year is $17,000.00. She receives a monthly $519.00 pension from the Veteran's Administration as a result of her husband's death in October 2000.

As to other assets, appellant testified she has about $850.00 in her checking account, no stocks or bonds, no jewelry other than her wedding band, and no savings account. She admitted she owns a 1986 Buick Skylark automobile (for which she paid $2,000.00), which she had not sold because then she would have no way to "get around." She testified she has no way to raise the $30,000.00 required by a bondsman to post the $300,000.00 bond.

Appellant stated she has lived in Texas since September of 2000. Her sister lives in Lewisville, Texas and her son Thomas lives in Clute, Texas. She has three other adult children: a daughter in Ohio, a son in Tennessee, and a son in Georgia. Appellant admitted she has asked only one of her children (her son in Georgia) for help in raising money for bond, and that he has said he will help though he has not yet done so.

If released, appellant testified she would resume her waitress job in Lewisville, abide by all conditions of any bond, and return for all hearings.

On cross-examination, appellant, who is fifty-six years old, stated she lived in Florida

for twenty years before she moved to Texas in 2000. She lived in approximately six different locations during her residency in Florida. She also admitted living in Ohio, North Carolina, North Dakota, and West Virginia. At the time of the alleged offenses, she had only been in Texas for about six weeks, and since September of 2000, she had lived in Texas less than one year.

As to her property, appellant admitted she may own a one-half interest in approximately 3.4 acres of land; however, the property interest is the result of an inheritance and the estate is not yet settled. She also admitted she has applied for $30,000.00 in life insurance proceeds for the death of her husband, but the insurance company refuses to process the claim until this case resolved (as the charges are she set a fire to kill her husband to collect insurance proceeds).

Appellant admitted she had been under court supervision in Florida due to charges for theft by check. She further admitted that when she returned to Florida in 2000, there was an outstanding warrant for her arrest for a charge of theft by check. Appellant denied having violated the terms of her previous Florida supervision.

Appellant also called her son Thomas Childers to testify. Childers is married with three teenage children. He lives in Clute, Texas and is a self-employed carpenter. He has lived in Brazoria County for three years. He stated he made approximately $24,000.00 in 2000, and his wife earns approximately $20,000.00 a year as a drug store employee. He stated he has no money in the bank, no stocks or bonds, and no real estate. His family owns one vehicle, a 1993 Suzuki Swift. He claimed he has no money to raise bail for his mother and no ability to borrow the money.

III. Application of the Law to the Evidence

Keeping in mind that it is appellant's burden to demonstrate that bail is excessive, we now review the evidence in light of the *Rubac* factors and those listed in article 17.15.

A. Sufficient Bail to Assure Appearance and Bail As Instrument of Oppression

The evidence indicates little that would keep appellant in Texas if her bond were significantly reduced. She has moved frequently, living in many different states, and moved to Texas only very recently. Her last residence before her arrest was in Lewisville, Texas, about 250 miles from Brazoria County. Although her forty-year-old son has lived in Brazoria County for three years, and her sister lives in Lewisville, she has other children in Ohio, Georgia, and Tennessee. She owns no real estate here and was employed as a waitress. Appellant has virtually no ties to the community where she will stand trial. Given this evidence, we find nothing oppressive about the trial court's decision to set a significant bond in a four-count murder case.

B. Nature of the Offense

The amount of bail must also be based on the nature of the offense and the circumstances under which it was alleged to have been committed. TEX. CODE CRIM. PROC. ANN. art. 17.15(3); *Maldonado,* 999 S.W.2d at 95. In considering the nature of the offense, it is proper to consider the possible punishment. *Maldonado,* 999 S.W.2d at 95

Appellant is charged with four counts of felony-murder. It is alleged she attempted to commit the felony offense of theft of insurance proceeds by killing her husband, and in furtherance of the theft, set fire to an apartment complex, killing four people. These offenses are obviously serious, and the circumstances alleged indicate a lack of concern for the lives of others in the community. If appellant is convicted on both indictments, she faces two life sentences.

Appellant relies on *Ludwig v. State,* 812 S.W.2d 323 (Tex. Crim. App. 1991), a capital murder case, in which the Court of Criminal Appeals found a $1,000,000.00 bond excessive and reduced it to $50,000.00. *Id.* at 325. But there, the defendant: (1) was a long-time resident of Texas (2) owned real property in the State; (3) held a license to practice veterinary medicine in Texas and had such a practice in the Katy, Texas; (4) had several close relatives,

also long-time Texas citizens, willing to sign an appearance bond; (5) was currently involved in a child custody proceeding in Harris County that would require his presence; and (6) had his assets frozen by a temporary court order issued in connection with his divorce. *Id.* at 324.

Similarly, in *Smithwick v. State*, the appellate court reduced the appellant's bond from $500,000.00 to $100,000.00. 880 S.W.2d 510, 512 (Tex. App.—San Antonio 1994, no pet.). But (1) the appellant and her husband owned a home in Texas; (2) her son suffered from kidney failure and relied upon her for assistance in his medical care; and (3) the sheriff testified that when the appellant left the State during the investigation, she called him upon her return. *Id.* Further, the court of appeals placed great emphasis on the State's failure to develop the facts surrounding the offense at the hearing. *Id.* at 511.

Finally, in *Ex parte McDonald*, the appellate court reduced the appellant's bond from $1,000,000.00 to $75,000.00 in a capital murder case. 852 S.W.2d 730, 736 (Tex. App.—San Antonio 1993, no pet.). But in that case, the appellant (1) voluntarily turned himself in to police before they knew an offense had been committed; (2) had been a resident of the community for fifty years; (3) lived with his mother, who was in poor health and relied on him to care for her; and (4) worked two jobs and owned a used book and record store in the community. *Id.* As in *Smithwick*, the court of appeals also noted the State's failure to develop the circumstances surrounding the offense at the hearing. *Id.* at 736.

Clearly, the facts relied on by the courts in these cases are distinguishable from those presented here, which do not support the same assurances of appearance.

C. Ability to Make Bail

We agree the evidence presented makes it unlikely appellant will be able to meet the bond set by the trial court. But her probable inability does not automatically render the bail excessive. *Maldonado*, 999 S.W.2d at 96. If the ability to make bond in a specified amount controlled, the role of the trial court in setting bond would be unnecessary and the accused would be able to set her own bond. *Maldonado*, 999 S.W.2d at 96. In light of the other

factors in this case, we do not find this factor should be given decisive weight.

D. Future Safety of the Community

There was no evidence presented concerning any physical threat appellant might pose to any particular individual or to the community. However, appellant is accused of a very serious crime that resulted in the deaths of four innocent members of the community. Again, we do not think this factor should be given decisive weight.

E. The Remaining *Rubac* Factors

The evidence presented by appellant shows no established work record. She did not testify how long she had worked as a waitress/manager at the International House of Pancakes in Lewisville, nor did she provide any information concerning other employment in the past. There was no evidence she ever held a job in Brazoria County.

Appellant's prior criminal record weighs against her. By her own admission, appellant was previously charged with multiple theft by check offenses in Florida. When she returned to Florida in 2000, she had an outstanding warrant for her arrest on the same charge.

Finally, we must look at the aggravating circumstances alleged to have been involved in the charged offense. In this case, the aggravating circumstance is the nature of the crime itself. Appellant allegedly set fire to an occupied apartment complex and four people were killed. According to the indictment, appellant is accused of setting the fire to kill her husband in order to obtain life insurance proceeds.

IV. Conclusion

Based on the evidence in the record, we find appellant has failed to demonstrate that the pretrial bail fixed by the trial court is oppressively high and violates her rights under the state and federal constitutions. When we consider the evidence relevant to the factors set out in article 17.15 and in *Rubac*, we hold the trial court did not abuse its discretion in setting bail in the amount of $300,000.00 and refusing to reduce it. We affirm the trial court's order

denying appellant's request to reduce her bond.

/s/ Scott Brister
Chief Justice

Judgment rendered and Opinion filed February 28, 2002.

Panel consists of Chief Justice Brister and Justices Anderson and Frost.

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