

Juvenile charged with capital felony is “per se bailable.” [Ex Parte Ragston](14-2-2B)

Trial court erred by denying bond on juvenile’s (17) charges for capital murder and murder in the first degree because juvenile charged with capital felony is “per se bailable” and should have had bail set. As a result, appellate court found \$250,000 not excessive and set bail at said amount.

¶ 14-2-2B. **Ex Parte Ragston**, No. 14-13-00584, 2014 WL 486606 [Tex.App.—Houston (14th Dist.), 2/6/14].

Facts: This is an appeal from the denial of a pretrial writ of habeas corpus. We consider the following three issues: (1) whether the prosecution established that it was ready for trial within the time allotted by the Code of Criminal Procedure; (2) whether the trial court abused its discretion by refusing to set bail on two of appellant’s three charged offenses; and (3) whether the trial court set an excessive amount of bail on appellant’s third remaining charge. We reform the trial court’s order and set bail for all three charges at \$250,000. As reformed, we affirm the trial court’s order denying habeas relief.

BACKGROUND

On June 22, 2012, appellant was arrested for the homicide of a liquor store owner in Navasota, Texas. A grand jury returned an indictment on August 16, 2012, charging appellant with capital murder, murder in the first degree, and aggravated robbery. All three offenses are alleged to have arisen out of the same set of facts.

Initially, the trial court ordered that appellant be held without bond on the capital murder charge, and that bond be set at \$500,000 for each of the two remaining charges. Appellant filed a motion for bond reduction, claiming that his bail was excessive and punitive. Appellant also filed a separate application for writ of habeas corpus, claiming that his status as a juvenile precluded the State from prosecuting him. Appellant’s habeas petition relied specifically on *Miller v. Alabama*, a recent decision in which the United States Supreme Court held that juveniles could not be sentenced to a mandatory punishment of life without parole. 132 S.Ct. 2455, 2469 (2012). Appellant contended that Texas’s capital sentencing statute ran afoul of *Miller* as applied to him because, if convicted, he similarly faced an automatic sentence of life without parole. Appellant accordingly argued that he could not be tried, and that he should therefore be released.

The trial court denied appellant’s habeas petition but granted partial relief on the bond motion. The court reduced appellant’s bail to \$250,000 on the charge of aggravated robbery. As for the charges of capital murder and murder in the first degree, the court ordered that appellant be held without bond.

Appellant challenged all aspects of the trial court’s judgment in a previous appeal before a different panel of this court. In that previous appeal, we construed appellant’s habeas complaint as an “as-applied” challenge to the constitutionality of the capital sentencing statute. See *Ex parte Ragston*, 402 S.W.3d 472, 475–76 (Tex.App.-Houston [14th Dist.] 2013), *aff’d*, No. PD–

0824–13, 2014 WL 440964, — S.W.3d —, slip op. at 5 (Tex.Crim. App. Feb. 5, 2014). Because “as-applied” challenges are not cognizable for purposes of pretrial habeas, we affirmed the trial court’s order denying habeas relief. Id. at 477. Appellant’s remaining complaints challenged the trial court’s ruling on his separate motion for bond reduction. We dismissed these complaints on jurisdictional grounds, concluding that “no interlocutory appeal lies from the trial court’s order on a pretrial motion for bond reduction.” Id. at 478.

During the pendency of this previous appeal, appellant filed a second application for writ of habeas corpus. In the application, appellant reasserted the same arguments that had previously been raised in his separate motion for bond reduction—i.e., that his bail was excessive and punitive. Appellant also asserted a modified argument with regards to his juvenile status. Claiming again that he could not be sentenced if convicted of capital murder, appellant argued that there was no possible way for the State to announce ready for trial within ninety days of the commencement of his detention. Appellant accordingly contended that, under article 17.151 of the Code of Criminal Procedure, he was entitled to release on his own recognizance.

The trial court conducted a hearing on June 10, 2013, exactly one day before our opinion issued in appellant’s first appeal. After considering all of the evidence presented at the hearing, the court denied the application, found that the State had been ready for trial, and left its previous bond order intact. Appellant brings this, his second appeal, challenging the trial court’s most recent ruling on his application for writ of habeas corpus.

Held: Trial court’s order reformed and bail for all three charges at \$250,000.

Opinion: We now consider appellant’s final two complaints, which focus on the denial and excessiveness of bail. We have jurisdiction to address these complaints because they are presented to us by way of habeas corpus. See *Ex parte Gray*, 564 S.W.2d 713, 714 (Tex.Crim.App. [Panel Op.] 1978) (“The proper method for challenging the denial or excessiveness of bail, whether prior to trial or after conviction, is by habeas corpus.”); see also *Ragston*, 402 S.W.2d at 477–79 (concluding that reviewing court lacks jurisdiction to consider these issues when raised in a separate motion for bond reduction).

Appellant contends that the trial court erred by denying bond on his charges for capital murder and murder in the first degree. The State agrees with appellant that bail should have been set on both charges. See *Beck v. State*, 648 S.W.2d 7, 9 (Tex.Crim.App.1983) (concluding that a juvenile charged with a capital felony is “per se bailable”). The State has requested that we reform the trial court’s order and set bail for all three charges at \$250,000. Appellant opposed this amount at oral argument, contending that it would still be excessive. Based on the record as a whole, we conclude that the amount is not excessive.

The amount of bail in any case must adhere to these 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. art. 17.15.

Courts may also consider the following set of factors when assessing whether the amount of bail is reasonable: (1) the defendant's work record; (2) the defendant's family and community ties; (3) the defendant's length of residency; (4) the defendant's prior criminal record; (5) the defendant's conformity with previous bond conditions; (6) the existence of other outstanding bonds, if any; and (7) the aggravating circumstances alleged to have been involved in the charged offense. See *Ex parte Rubac*, 611 S.W.2d 848, 849–50 (Tex.Crim.App. [Panel Op.] 1981); *Ex parte Castellanos*, Nos. 14–13–00538–C R, 14–13–00539–CR, & 14–13–00540–CR, — S.W.3d —, 2014 WL 258559, at *2 (Tex.App.-Houston [14th Dist.] Jan. 23, 2014, no pet. h.).

Appellant contends that \$250,000 is excessive because he is indigent and unable to post any bond. While the ability to make bail is to be regarded, a defendant's financial situation is not a determinative factor. See *Ex parte Charlesworth*, 600 S.W.2d 316, 317 (Tex.Crim.App. [Panel Op.] 1980). The nature and circumstances of the alleged offense must also be considered. See Tex.Code Crim. Proc. art. 17.15. The record reflects that appellant robbed the liquor store with a co-defendant, and together, they allegedly killed the complainant in a violent and callous manner. Appellant and his co-defendant allegedly targeted the liquor store on a day when the complainant was known to have extra cash on hand. They allegedly shot the complainant multiple times with a shotgun at point blank range, then made off with several thousand dollars. The incident occurred in July of 2009, and they remained on the run for several years.

The violent nature of the offense demonstrates a potential risk to the community if appellant were released on bond. Indeed, at the time of his arrest, appellant was already facing robbery charges in another county. Based on all of these factors, we conclude that a bail of \$250,000 is not excessive. Cf. *Ex parte Guerra*, 383 S.W.3d 229, 234 (Tex.App.-San Antonio 2012, no pet.) (bail of \$950,000 was not excessive for indigent defendant charged with capital murder, aggravated robbery, and unauthorized use of a vehicle). Accordingly, we reform the trial court's order and fix appellant's bail at \$250,000 for all three charged offenses. See *Ludwig v. State*, 812 S.W.2d 323, 324–25 (Tex.Crim.App.1991) (per curiam) (reviewing court may reduce an excessive amount of bail without remanding to the trial court); *Ex parte Ivey*, 594 S.W.2d 98, 100 (Tex.Crim.App. [Panel Op.] 1980) (same).

Conclusion: The trial court did err by holding appellant without bond on his charges of capital murder and murder in the first degree. We reform the trial court's order and fix bail at \$250,000

for all three of appellant's charged offenses. As reformed, we affirm the trial court's order denying habeas relief.