NO. 10-22-00281-CR

IN THE COURT OF APPEALS
TENTH JUDICIAL DISTRICT
WACO, TEXAS

ALLEN LEE

v.

THE STATE OF TEXAS

ON APPEAL FROM THE 85TH JUDICIAL DISTRICT COURT
BRAZOS COUNTY, TEXAS
NO. 22-001433-CV-85

STATE'S BRIEF

JARVIS PARSONS
DISTRICT ATTORNEY
BRAZOS COUNTY, TEXAS

Philip McLemore
Assistant District Attorney
300 E. 26th Street, Suite 310
Bryan, Texas 77803
(979) 361-4320
(979) 361-4368 (Facsimile)
pmclemore@brazoscountytx.gov
State Bar No. 24071499

IDENTITY OF PARTIES AND COUNSEL

THE STATE OF TEXAS:	Jarvis Parsons District Attorney Brazos County, Texas
Trial Counsel:	Anjelica Harris Assistant District Attorney 300 E. 26th Street, Suite 310 Bryan, Texas 77803
Appellate Counsel:	Philip McLemore Assistant District Attorney 300 E. 26th Street, Suite 310 Bryan, Texas 77803
APPELLANT:	Allen Lee
Trial Counsel:	Craig Greening 1105 University Dr. E, Ste. 104 College Station, Texas 77840 *withdrew October 18, 2022* Craig Greaves 708 S. Bryan Ave. Bryan, Texas 77803 *appointed October 19, 2022*
Appellate Counsel:	Craig Greening 1105 University Dr. E, Ste. 104 College Station, Texas 77840
TRIAL COURT:	Hon. Kyle Hawthorne Presiding Judge

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

NO. 10-22-00281-CR

IN THE COURT OF APPEALS
TENTH JUDICIAL DISTRICT
WACO, TEXAS

ALLEN LEE

v.

THE STATE OF TEXAS

ON APPEAL FROM THE 85TH JUDICIAL DISTRICT COURT
BRAZOS COUNTY, TEXAS
NO. 22-001433-CV-85

STATE'S BRIEF

TO THE HONORABLE COURT OF APPEALS:

COMES NOW, the State of Texas, by and through its District Attorney, and files this brief in response to the point of error alleged by Appellant, and would respectfully show the following:

STATEMENT REGARDING ORAL ARGUMENT

The State believes that the facts and legal arguments are adequately presented in this brief and the record, and that the decisional process would not be significantly aided by oral argument. *See* TEX. R. APP. P. 39.1. However, the State will participate in oral argument if granted to Appellant. *See* TEX. R. APP. P. 39.7.

STATEMENT OF THE CASE

Appellant, Allen Lee, was arrested on June 4, 2022, on one count of Aggravated Sexual Assault of a Child and two counts of Sexual Assault of a Child. (C.R. 3-4). Bail amounts were set at $400,000 collectively.[1] (C.R. 3; 1 R.R. 10). Brad Cune was appointed to represent Appellant. (C.R. 6; 1 R.R. 12). Appellant thereafter retained Craig Greening and filed a Motion to Substitute Counsel requesting Mr. Greening be substituted, which the trial court granted on July 6, 2022. (C.R. 6-7; 1 R.R. 12).

On June 29, 2022, Appellant, through Mr. Greening, filed a Petition for Habeas Corpus - Pre-Indictment alleging that bail was excessive and requested a reduction to $15,000 total. (C.R. 3-4). The hearing on that petition was held on July 14, 2022. (1 R.R. 1). After receiving testimony, evidence, and the argument of the parties, the trial court denied Appellant's petition. (1 R.R. 28). The trial court signed the Order Denying Application for Writ of Habeas Corpus on that date. (C.R. 22).

On August 15, 2022, Appellant filed his Notice of Appeal from Order Denying Application for Writ of Habeas Corpus. (C.R. 23-24). The trial court

[1] The record does not contain a breakdown of the individual bail amounts.

Appellant's brief incorrectly claims that the bail amount is $500,000 and that the trial court *increased* his bail. (Appellant's Brief at 6, 10). The pages of Appellant's brief are unnumbered; page citations to Appellant's brief herein adopt the page numbering scheme used in Appellant's Table of Contents. *See* TEX. R. APP. P. 38.1(b).

signed Trial Court's Certification of Defendant's Right to Appeal on September 6, 2022. (Supp. C.R. 3).

The clerk's record was filed on August 26, 2022 and the supplemental clerk's record was filed on September 7, 2022, but the reporter's record was not filed until March 13, 2023 because no designation of the record had been filed nor had any payment arrangements been made with the court reporter.[2] Appellant's Brief was due on April 3, 2023. *See* TEX. R. APP. P. 38.6(a)(2).

Appellant was given notice of late brief on April 5, 2023. On May 4, 2023, the trial court held an Abatement Order Hearing after receiving notice from this Court on April 25, 2023 that an appeal had been perfected but no brief had been presented. (Supp. R.R. 2-3). Following that hearing, on May 9, 2023, the Court reinstated this appeal and Appellant's Brief was due May 15, 2023.

STATEMENT OF FACTS

Appellant began a relationship with Cassidy Wise in 2018 and they have a daughter together born in 2020. (*See* 1 R.R. 4-5). At the time of the hearing on his motion, Appellant and had three other children ages nine, eight, and four with two other women. (1 R.R. 6). His four-year-old child and that child's mother lived in Beaumont, Texas and his other two children lived with their mother in Woodville,

[2] *See* Letter from Paula Frederick, Official Court Reporter, 85th Judicial District Court, to Nita Whitener, Clerk of the Court, Tenth Court of Appeals (Sep. 15, 2022); TEX. R. APP. P. 35.3(b).

Texas. (1 R.R. 17). Prior to his arrest, Appellant lived with Wise, their daughter, and his 23-year-old disabled cousin, Dillon Lacey, in Webster, Texas. (C.R. 10; 1 R.R. 5, 16). He grew up in Beaumont, Texas, and Wise testified that Appellant had lived in the Houston area since approximately 2017. (1 R.R. 5-6). Prior to moving to Houston, Appellant lived in College Station, Texas while attending Blinn College. (1 R.R. 5). He does not have any family in Brazos County, Texas. (1 R.R. 17).

Appellant was arrested for Assault Family Violence in 2012 and 2015.[3] (1 R.R. 18). On October 22, 2019, Appellant was placed on deferred adjudication for a period of three years for the felony offense of Assault Family Violence Strangulation in Harris County, Texas; the victim in that case was not Wise or either mother of Appellant's other three children. (*See* 1 R.R. 15-17; 2 R.R. 10, 13). Conditions of his supervision included that he commit no new offense, remain within Harris County or any contiguous county and not travel outside of those counties without prior written permission of the court, and not possess a firearm. (2 R.R. 12-13). Appellant's term of supervision did not expire until October 21, 2022. (2 R.R. 16). At the time of the order of deferred adjudication, Appellant resided in Jefferson County. (*See* 2 R.R. 13). Appellant moved back to Harris County thereafter. (*See* 2 R.R. 15-16).

[3] The record does not contain the identity of the victim or victims in those cases.

Appellant, who was 27 years old at the time of his arrest, met Jane Doe #1 online in 2021; he stated she represented herself as being 19 years old. (2. R.R. 4). They had a three-month sexual relationship until Jane Doe #1 cut off contact with him in January 2022. (*Id.*). After communication with Jane Doe #1 ceased, Appellant learned she was only 15 years old. (*Id.*).

Appellant stated he had no contact with Jane Doe #1 again until June 2022 when she informed him that she was pregnant with his twins, which prompted him to want to see her in person to confirm the pregnancy and discuss next steps.[4] (*Id.* at 5). On June 3, 2022, he drove from his residence to a residential treatment center for victims of sexual abuse, sexual exploitation, and sex trafficking in Plantersville, Texas where he picked up Jane Doe #1 and Jane Doe #2, who Appellant stated represented herself as being 18 years old.[5] (*Id.* at 4-5). Appellant was skeptical about Jane Doe #2's age and suspicious when she claimed to not have identification. (*Id.* at 5). He also told the detective assigned to the case, Phillip Dorsett, that he asks for identification whenever he becomes involved with a teenager. (*Id.*).

Appellant drove both children to College Station where he rented a room at Knights Inn in the early morning hours of June 4, 2022 and engaged in vaginal

[4] The only evidence presented during the hearing about Jane Doe #1's claim of pregnancy was through Appellant's statement in the probable cause statements. (C.R. 5, 7, 9). However, defense counsel stated during argument that Jane Doe #1 was not pregnant. (1 R.R. 21).
[5] Jane Doe #2 was 12 years old at the time of these offenses. (2 R.R. 4).

intercourse with both and oral sex with Jane Doe #1. (*Id*. at 5). He again had vaginal intercourse with both children and oral sex with Jane Doe #1 a few hours later. (*Id.*).

Later that morning, the Grimes County Sheriff's Office contacted the College Station Police Department (CSPD) to request assistance locating Jane Doe #1 and Jane Doe #2. (*Id.* at 4). CSPD responded to Knights Inn and located Appellant and both children at that location. (*Id.*). Det. Dorsett observed that both children had a youthful appearance and that neither appeared to be an adult. (*Id.*).

SUMMARY OF THE STATE'S ARGUMENT

Appellant claims in his sole point of error that the trial court abused its discretion by denying his application for writ of habeas corpus requesting a bail reduction.[6] Specifically, he complains that the collective bail amount of $400,000 is excessive. The burden of proof is on Appellant to prove that bail is excessive. Application of the facts of this case to Article 17.15 of the Texas Code of Criminal Procedure and the other factors to be considered demonstrates that the trial court acted with reference to guiding rules and principles and that its action was neither arbitrary nor unreasonable.

[6] The Issue Presented section of Appellant's Brief states that the only issue presented on appeal is whether the trial court erred in denying the motion for bail reduction. (Appellant's Brief at 7). However, the Argument section includes an additional sub-ground that the trial court erred by setting an excessive bond. (*Id.* at 9-11). The State's Brief addresses Appellant's arguments as a single issue. *See* TEX. R. APP. P. 38.1(f).

STATE'S RESPONSE TO APPELLANT'S POINT OF ERROR

The trial court did not abuse its discretion by denying Appellant's requested bail reduction because the evidence demonstrated that the bail amounts were reasonably related to securing his presence at trial and Appellant failed to prove that the amounts were excessive.

Standard of Review

A trial court's denial of a writ of habeas corpus is reviewed under an abuse of discretion standard. *Ex parte Rubac*, 611 S.W.2d 848, 849-50 (Tex. Crim. App. 1981); *Ex parte Davis*, 147 S.W.3d 546, 548 (Tex. App.—Waco 2004, no pet.). The test for abuse of discretion is whether the trial court acted without reference to any guiding principles and rules; or whether it acted arbitrarily or unreasonably. *Montgomery v. State*, 810 S.W.2d 372, 380 (Tex. Crim. App. 1990). The denial will be affirmed if the trial court followed the appropriate analysis and balancing factors, and the mere fact that a trial judge decided a matter within his discretionary authority differently than an appellate judge in a similar circumstance does not demonstrate that an abuse of discretion occurred. *Id.*

Applicable Law

The primary purpose or object of bail is to secure the presence of a defendant in court for the trial of the offense charged. TEX. CODE CRIM. PROC. art. 17.01; *see Ex parte Rodriguez*, 595 S.W.2d 549, 550 (Tex. Crim. App. 1980). A defendant's liberty is a secondary objective and his right to pretrial bail may be subordinated to

the greater needs of society. *United States v. Salerno*, 481 U.S. 739, 750-51 (1987). The burden is on the person seeking a bail reduction that the bail set is excessive. *Ex parte Rodriguez*, 595 S.W.2d at 550.

Article 17.15 provides seven rules to govern bail amounts: (1) bail and any conditions shall be sufficient 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, including whether the offense involved Sexual Assault of a Child or Aggravated Sexual Assault of a Child; (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 defendant's criminal history including any acts of family violence; and (7) the defendant's citizenship. TEX. CODE CRIM. PROC. art. 17.15(a); *see* TEX. CODE CRIM. PROC. art. 17.03(b-3). Other pertinent factors include family and community ties, work history, length of residence in the county, and conformity with prior conditions. *Ex parte Davis*, 147 S.W.3d at 548.

The two primary factors are the potential punishment that can be imposed and the nature of the offense.[7] *Ex parte Temple*, 595 S.W.3d 825, 829 (Tex. App.—

[7] Appellant acknowledges in his Memorandum of Law in Support of Defendant's Application for Writ of Habeas Corpus that these factors must be given the most weight. (C.R. 13).

Houston [14th Dist.] 2019, pet. ref'd). Although the ability to make bail is to be considered, ability alone, even indigency, does not control over the other factors. *Ex parte Charlesworth*, 600 S.W.2d 316, 317 (Tex. Crim. App. 1980).

Where a trial court does not make explicit fact findings and neither party requests findings and conclusions, the appellate court implies the necessary fact findings that would support the trial court's ruling if the evidence, viewed in the light most favorable to that ruling, supports those implied fact findings.[8] *State v. Kelly*,

[8] Neither party requested findings and conclusions. However, the trial court's order denying the writ reflects that it determined custody of Appellant was based on probable cause, that the bail previously set by the magistrate was not excessive, and that the conditions of bail previously set by the magistrate were reasonably related to assuring Appellant's presence at trial. (C.R. 22).

Appellant only cites three published cases in support of his argument and represents to this Court that they stand for the propositions that a trial court must provide an explanation for its decision and it is an abuse of discretion when the trial court does not do so. (Appellant's Brief at 9-12). However, none of those cases exist:

1. *Ex parte Vasquez*, 248 S.W.3d 454 (Tex. Crim. App. 2008) cites to the tenth page of *In re Rodriguez*, 248 S.W.3d 444 (Tex. App.—Dallas 2008, no pet.), a mandamus case arising in the context of a divorce proceeding. (Appellant's Brief at 9). The Texas Court of Criminal Appeals has not published an opinion with that caption since 1986, which was an application for writ of habeas corpus alleging applicant's sentences were illegally cumulated. *See Ex parte Vasquez*, 712 S.W.2d 754 (Tex. Crim. App. 1986).

2. *Ex parte Clayton*, 592 S.W.2d 494 (Tex. Crim. App. 1979) cites to the seventh page of *M.H. Siegfried Real Estate, Inc. v. Renfrow*, 592 S.W.2d 488 (Mo. App. 1979), an appeal from a Missouri trial court's denial of an injunction and damages related to a real property dispute. (Applicant's Brief at 9). The Texas Court of Criminal Appeals did not publish an opinion in 1979 captioned *Ex parte Clayton* and has only published two cases with that caption. *See Ex parte Clayton*, 350 S.W.2d 926 (Tex. Crim. App. 1961); *Ex parte Clayton*, 103 S.W. 630 (Tex. Crim. App. 1907).

3. *Ex parte Martinez*, 340 S.W.3d 642 (Tex. Crim. App. 2011) cites to the fifth page of *Cochran v. Cochran*, 340 S.W.3d 638 (Mo. App. 2011), an appeal from a Missouri circuit court's judgment dissolving a marriage. (Appellant's Brief at 10, 11). *Ex parte Martinez*, 330 S.W.3d 891 (Tex. Crim. App. 2011) is the only published opinion from the

204 S.W.3d 808, 818-19 (Tex. Crim. App. 2006); *see also Ex parte Treviño*, 648 S.W.3d 435, 439 (Tex. App.—San Antonio 2021, no pet.); *Ex parte Lee*, 617 S.W.3d 154, 160 (Tex. App.—Houston [1st Dist.] 2020, pet. ref'd); *Ex parte Shires*, 508 S.W.3d 856, 860 (Tex. App.—Fort Worth 2016, no pet.); *Ex parte Flores*, 483 S.W.3d 632, 638 (Tex. App.—Houston [14th Dist.] 2015, pet. ref'd).

Discussion

Article 17.15 Rules

Appellant is charged with one first degree and two second degree felony offenses and is facing up to life in prison. *See* TEX. PEN. CODE 22.011(a)(2)(A), (f); 22.021(a)(2)(B), (e). Regarding the felony offense of Aggravated Sexual Assault of a Child, if convicted, Appellant will not be probation eligible from either a judge or a jury and must serve one-half of the sentence imposed or 30 years, whichever is less. TEX. CODE CRIM. PROC. art. 42A.054(a)(9); 42A.056(4); *see* 37.07 §4(a). Any sentences on those three charges can be ordered to run consecutively. TEX. PEN.

Texas Court of Criminal Appeals in 2011 with that caption and is an application for writ of habeas corpus claiming ineffective assistance in applicant's trial for capital murder.

In addition to Appellant's inappropriate citations to authorities, his brief does not contain a separate Statement of the Case; does not state concisely and without argument the facts pertinent to the issue presented; does not contain a succinct, clear, and accurate statement of the arguments made in the body of the brief; and is devoid of any citations to the record. *See* TEX. R. APP. P. 38.1(d), (g), (h), (i); *see also* TEX. R. APP. P. 38.9(a) and (b); Letter from Nita Whitener, Clerk of the Court, Tenth Court of Appeals, to Jarvis J. Parsons and Craig Alan Greening (Mar. 13, 2023) ("**Briefs not in substantial compliance with these rules will be stricken.**") (emphasis in original).

CODE 3.03(b)(2)(A). The trial court could reasonably conclude that there is a possibility that he would not appear for trial and that collective bail in the amount of $400,000 is sufficiently high to give reasonable assurance that Appellant will appear at trial without being excessive. *See Ex parte Nimnicht*, 467 S.W.3d 64, 67-68 (Tex. App.—San Antonio 2015, no pet.) (noting that the trial court could have reasonably concluded that a possibility existed that appellant would not appear for trial where he was facing a significant potential sentence of between two and ten years).

The evidence before the court was that the money that would be used to put up the bail money for Appellant would come from his family and friends. (1 R.R. 7-8). Appellant would have little or no incentive to appear because it would be others' assets that were at risk rather than his own. *See Ex parte Cardenas*, 557 S.W.3d 722, 731 (Tex. Crim. App.—Corpus Christi 2018, no pet.); *Ex parte Brown*, 959 S.W.2d 369, 373 (Tex. Crim. App.—Fort Worth 1998, no pet.).

The bail amount in this case is comparable to bail amounts in similar cases involving sex offenses committed against children. *See, e.g., Clemons v. State*, 220 S.W.3d 176, 179 (Tex. App.—Eastland 2007, no pet.) (per curiam) (approving total bail set at $600,000 in case involving two indictments for aggravated sexual assault of child and two indictments for indecency with child); *see also Ex parte Lewis*, 2013 Tex. App. LEXIS 11637, at *1, 14 (Tex. App.—Fort Worth Sep. 12, 2013, no pet.) (mem. op., not designated for publication) (approving bail set at total of

$3,000,000 for three counts of aggravated sexual assault of a child, one count of attempted aggravated sexual assault of a child, and one count of indecency with a child); *Ex parte Bennett*, Tex. App. LEXIS 8292, at *1, 12 (Tex. App.—Fort Worth Oct. 18, 2007, no pet.) (mem. op., not designated for publication) (approving bail set at total of $600,000 for three counts of aggravated sexual assault of child); *Billings v. State*, 2007 Tex. App. LEXIS 6340, at *1, 8 (Tex. App.—Eastland Aug. 9, 2007, no pet.) (mem. op., not designated for publication) (approving bail set at $500,000 for offense of aggravated sexual assault of child); *Ex parte Bratcher*, 2005 Tex. App. LEXIS 5418, at *1, 14 (Tex. App.—Dallas July 13, 2005, no pet.) (mem. op., not designated for publication) (approving bail set at $500,000 each for two cases involving offense of aggravated sexual assault of child); *Ex parte Ochoa*, 2004 Tex. App. LEXIS 5817, at *1, 9-10 (Tex. App.—Houston [1st Dist.] July 1, 2004, pet. ref'd) (mem. op., not designated for publication) (approving bail set at total of $300,000 for three cases involving offense of indecency with child).

Bail becomes an instrument of oppression when a court sets an amount for the express purpose of forcing a defendant to remain incarcerated. *See Ex parte Harris*, 733 S.W.2d 712, 714 (Tex. App.—Austin 1987, no writ). The record contains nothing to indicate the trial court rendered its decision based on the assumption that Appellant could not afford bail in the amount of $400,000 and for the express purpose of forcing him to remain in jail pending trial. *See Ex parte Davis*, 147

S.W.3d at 549; *cf. Ex parte Harris*, 733 S.W.2d at 714 (determining that the trial court continued bail on the obvious assumption that appellant could not afford bail in that amount and for the express purpose of forcing him to remain incarcerated).

The trial court considering, as it must, the nature and circumstances of these offenses, that they were offenses involving violence, and the future safety of the victims and the community could reasonably conclude that the bail amounts were not excessive. Appellant admitted to Det. Dorsett that he sexually assaulted a child, Jane Doe #1, for approximately three months. (2 R.R. 4). Appellant admitted that he resumed sexually assaulting Jane Doe #1 even after learning that she was 15 years old. (*Id.* at 5).

Not only did Appellant admit that he renewed his victimization of Jane Doe #1, but he also admitted that he aggravatedly sexually assaulted an additional victim, Jane Doe #2. (*Id.*). Importantly, Appellant admitted that he sexually assaulted Jane Doe #2 despite his skepticism that she was an adult. (*Id.*).

Appellant travelled from Harris County to Grimes County to pick up both children from a treatment center for victims of sexual exploitation, drove them to Brazos County, and repeatedly sexually assaulted both. (*Id.*). This 27-year-old Appellant also tacitly admitted that these two children did not constitute the extent of his sexual proclivities with potentially underage females. (*See id.*) ("[Appellant] also said he asks for identification any time he gets involved with a teenager.").

The trial court also had uncontested evidence that, at the time of these offenses, Appellant was on deferred adjudication for a felony involving family violence, which included conditions that he not travel outside of Harris or any contiguous county without permission and not possess a firearm, and that he had been twice arrested for acts of family violence prior to that felony offense. (2 R.R. 10-16; 1 R.R. 18). There is no evidence that Appellant had permission to travel to non-contiguous Brazos County, and Wise testified that he possessed a firearm. (1 R.R. 14). The trial court could reasonably conclude that the bail amount was not excessive considering Appellant's criminal history, which included family violence, and his noncompliance with existing conditions of community supervision.

Other Factors

As to the other pertinent factors, none weighs in favor of reduced bail. Appellant erroneously claims that he has "strong ties to the community." (Appellant's Brief at 10). The record demonstrates the opposite—Appellant grew up in Beaumont, moved to Brazos County at an unspecified date to attend junior college,[9] moved from Brazos County in 2017, and has lived in Jefferson and Harris counties ever since.[10] (1 R.R. 5-6). He has no family in Brazos County. (*Id*. at 17).

[9] Appellant's date of birth is October 15, 1994. (2 R.R. 4). Assuming he graduated high school on time and enrolled at Blinn College immediately thereafter, the earliest Appellant would have moved to Brazos County was 2013.

[10] Wise's testimony that Appellant had lived in the Houston area since 2017 was contradicted by the Harris County felony criminal case paperwork indicating that he lived in Jefferson County when he pled guilty and that he later moved back to Harris County. (*See* 2 R.R. 13, 15).

Appellant's argument at the hearing relied heavily on his family ties. (*See* 1 R.R. 4-7; C.R. 8-10). However, on appeal, he only mentions in passing that he has a family. (Appellant's Brief at 10). The evidence available to the trial court indicated that Appellant's familial ties did little if anything to deter his criminal behavior. Appellant was arrested for Assault Family Violence after the birth of his two oldest children. (*See* 1 R.R. 6, 18). While in a dating relationship with Wise, Appellant strangled someone with whom he had or previously had a dating relationship. (*See* 1 R.R. 15; 2 R.R. 10). He connected with a child on a dating app who he then sexually assaulted over multiple months while still in a relationship with Wise and after the birth of his daughter. (2 R.R. 4). He then sexually assaulted another child who was only three years older than his oldest child. (2 R.R. 5; *see* 1 R.R. 6; C.R. 10).

Appellant possessed a gun, which Wise was aware of, in violation of his conditions of supervision. (*See* 1 R.R. 14). He travelled outside the area where he was required to remain leaving behind his two-year-old daughter and disabled cousin in the sole care of Wise, who herself had a full-time job. (*See* 1 R.R. 7, 16; 2 R.R. 5, 12;). Appellant committed those sexual assaults and the other violations of his conditions of supervision fully aware that any one of those acts subjected him to imprisonment. (*See* 2 R.R. 14). Based on the evidence that family ties were inconsequential to Appellant, the trial court could reasonably conclude that his

family would not be able to control Appellant or ensure his appearance in court. *See Cardenas*, 557 S.W.3d at 731.

Appellant misleadingly claims that he has a job and a history of employment. (Appellant's Brief at 10-11). At the hearing, Appellant presented evidence that he was *not* employed, was a full-time stay-at-home dad, and acted as a full-time caregiver for Lacey; but that he was paid money by his mother, who was Lacey's guardian, from his cousin's disability payments.[11] (1 R.R. 8-9; C.R. 10-11). However, there was no explanation for how he was able to obtain a studio with musical equipment and speakers, an iMac, jewelry, a 1911 handgun, a second vehicle, and pay for a motel room with such a dearth of money.[12] (*See* 1 R.R. 13-14). Nor was there any explanation for how he was able to abandon his role as full-time caretaker for both his daughter and disabled cousin to travel overnight two counties away to have sex with children. Based on the inconsistent evidence about his specific assets and financial resources, the trial court could reasonably conclude that there was insufficient evidence regarding what Appellant could afford to justify a bail reduction. *See Ex parte Scott*, 122 S.W.3d 866, 870 (Tex. App.—Fort Worth 2003, no pet.).

[11] According to the Memorandum of Law in Support of Defendant's Application for Writ of Habeas Corpus, Appellant received $800 per month from his Lacey's Social Security income, which was needed to provide for Lacey. (C.R. 19).

[12] None of these assets were mentioned during direct examination nor did Appellant attempt to detail or clarify his specific assets or financial resources after they were brought to the trial court's attention.

Conclusion

The record in this case establishes that Appellant admitted to committing the multiple felony offenses involving sexual violence against children with which he was charged, is facing a potential aggravated life sentence with no possibility of probation, renewed his victimization of one of the children after learning her actual age, victimized the other child despite his admitted skepticism that she was an adult, has felony criminal history involving family violence, and provided inconsistent information about his ability to make bail. The record further establishes that Appellant's family ties do not inhibit his criminal behavior in any meaningful way; and that he has no community ties to Brazos County, has not lived in Brazos County since 2017, has no employment history, and was noncompliant with existing conditions of supervision.

Applying the Article 17.15 rules and other pertinent factors to the facts in this case, the trial court cannot be said to have acted without reference to guiding rules and principles or to have acted arbitrarily or unreasonably. Accordingly, Appellant has failed to prove that the bail amounts are excessive and thus that the trial court abused its discretion by denying his request for a bail reduction.

PRAYER

Wherefore, premises considered, the State of Texas respectfully prays that Appellant's point of error be overruled, and that the denial of the bail reduction be in all things affirmed.

Respectfully submitted,

JARVIS PARSONS
DISTRICT ATTORNEY
BRAZOS COUNTY, TEXAS

Philip McLemore
Assistant District Attorney
State Bar No. 24071499
pmclemore@brazoscountytx.gov

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing State's Brief was served via electronic filing to Craig Greening, appellate counsel for Appellant, on the 26th day of May, 2023.

Philip McLemore

CERTIFICATE OF COMPLIANCE WITH TEX. R. APP. P. 9.4

I do hereby certify that the foregoing State's Brief has a word count of 3,991 based on the word count program in Word 365.

Philip McLemore