IN THE CRIMINAL COURTS OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS
DIVISION VI

STATE OF TENNESSEE

No. 17-04050

VS.

REBECCA PRITCHETT

ORDER ON MOTION FOR BAIL BOND REDUCTION

This cause came on to be heard on a Motion for Bail Bond Reduction filed by Petitioner, through her counsel, Alex Lynch, Assistant Public Defender, on May 15, 2017, asking this Court to review the bond amount set by the lower court and release the defendant on her own recognizance; a hearing on the Motion conducted on September 8, 2017; and upon the entire record of this cause. T.C.A. § 40-11-144(b) requires that review of bonds set in General Sessions court be through a Writ of Certiorari and not a Motion for Bond Review. This Court will review the bond as if the defendant proceeded under the Writ. After consideration of the arguments of counsel, a review of the pre-trial report, the Jericho Community Linkage Plan, and consideration of the factors contained in T.C.A. § 40-11-115 and § 40-11-118, this Court is of the opinion that the bond set in this matter is not unreasonable and will deny the Motion of the defendant**.**

STATEMENT OF THE CASE

The defendant is charged with the offense of Especially Aggravated Kidnapping, a Class "A" no parole felony. The affidavit of complaint alleges that the defendant assisted in the armed kidnapping of the victim from his house with her co-defendant and forcing the victim in to a car at gunpoint and driving off. While driving, the victim and the co-defendant began fighting over the gun and the gun discharged and struck the co-defendant causing the car to crash. The victim

held the defendants at gunpoint until the police arrived and the defendant was arrested. The affidavit indicates that the defendant gave a statement of admission. The Defendant was held to State on June 5, 2017. A $30,000 bond was set by the General Sessions Judge.

On September 8, 2017, the matter was set for hearing. The defendant called no witnesses and offered no proof other than the bond report, prepared by Shelby County Pretrial Services, that was introduced as an exhibit and a report from Project Jericho.[1] Both Defense Counsel and the Prosecutor made statements as to the nature of the charges pending against the Defendant.

At the hearing Defense Counsel discussed the factors set forth in T.C.A. § 40-11-115 and argued that the Defendant should be released on her own recognizance subject to the Jericho Project Community Linkage Plan as a condition of release.[2] To summarize the defense position, regardless of the various factors set forth in the bail statutes that a court should consider in setting a bail amount, the overwhelming factor is the ability of the defendant to make the bail.

APPLICABLE LAW

Because T.C.A. § 40-11-144 authorizes the appeal of bail decisions from an inferior court to a trial court by way of writ of certiorari, this reference must be to the statutory writ, T.C.A. § 27-8-102, which mandates a *de novo* review in the trial court. See State v. Lane, 254 S.W.3d 349, 354 n. 4 (Tenn. 2008) (distinguishing between the common law writ and the statutory writ and the various standards to be applied in the trial court on review); State ex rel. Jefferson v. State, 222 Tenn. 413, 436 S.W.2d 437 (1969) (appeal from general sessions on bail matter is by statutory writ of certiorari).

A bail hearing is an informal proceeding. Neither the Tennessee Legislature nor the Tennessee appellate courts have established formal rules of procedure to be followed by judges in bail proceedings. The judge should be guided by the Tennessee Rules of Evidence, but those rules are not strictly applicable in bail proceedings. W. Mark Ward, TENNESSEE CRIMINAL TRIAL

[1] The Public Defender filed a Motion to Supplement the Record and asked that the Jericho Community Linkage Plan be added to the record as an exhibit. This has been granted.

[2] The Linkage Plan does not involve the defendant being place in a secure facility. It is the Court's experience that the defendant could cease to cooperate and walk away.

PRACTICE, ' 9:4 (Thomson Reuters 2016-2017) (citations omitted).

In determining the amount of bail, a trial court must strike a balance between the defendant=s presumption of innocence and the state's interests in assuring the defendant's appearance at trial. Ex Parte Brooks, 376 S.W.3d 222 (Tex. App. 2017). While a pre-trial detainee is cloaked with the presumption of innocence and this is an important trial right, if taken to the extreme in the determination of the *amount* of bail, it would mean that no bail amount could ever be set. Accordingly, the presumption of innocence does not constitute a major factor in bail settings. See Bell v. Wolfish, 441 U.S. 520, 533, 99 S.Ct. 1861, 1870, 60 L.Ed.2d 447 (1979) (presumption of innocence has no application to determine right of pretrial detention); United States v. Dillard, 214 F.3d 88, 102 (2nd Cir. 2000) (the presumption of innocence is important for trial but not for bond motions).

T.C.A. §§ 40-11-115; 40-11-116; 40-11-117; and 40-11-118 set forth the statutory factors to be considered in assessing release on recognizance and in determining the amount of bail. More specifically. T.C.A. § 40-11-118(b) sets forth the factors to determine the amount of bail when it is determined that a monetary bail amount is necessary and that release on recognizance is not proper. Significantly, in 1996 this statute was amended to provide that bond should be set as Areasonably necessary to reasonably assure the appearance of the defendant *while at the same time protecting the safety of the public*....

T.C.A.§40-11-118(b) states:

> (b) In determining the amount of bail necessary to reasonably assure the appearance of the defendant while at the same time protecting the safety of the public, the magistrate shall consider the following:
>
> (1) The defendant=s length of residence in the community;
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> (2) The defendant=s employment status and history and financial condition;
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> (3) The defendant=s family ties and relationships;
>
> (4) The defendant=s reputation, character and mental condition;
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> (5) The defendant=s prior criminal record, record of appearance at court proceedings, record of flight to avoid prosecution or failure to appear at court proceedings;

(6) The nature of the offense and the apparent probability of conviction and the likely sentence;

(7) The defendant=s prior criminal record and the likelihood that because of that record the defendant will pose a risk of danger to the community;

(8) The identity of responsible members of the community who will vouch for the defendant=s reliability; however, no member of the community may vouch for more than two (2) defendants at any time while charges are still pending or a forfeiture is outstanding; and

(9) Any other factors indicating the defendant=s ties to the community or bearing on the risk of the defendant=s willful failure to appear.

With the requirement in mind that the Court shall make a *de novo* review of the facts and circumstances involving the bond in this case and factors as set out in T.C.A. §40-11-118(b), the Court makes the following determinations. As to consideration (1) ,the defendant's length of residence in the community, the Court must rely on the bond report that says that she has lived with a friend at 3164 Mountain Terrace in Memphis for 10 years. Counsel stated that the defendant is a lifelong Memphian but there was no testimony to this statement. As to factor (2), the defendant's employment history and status, the bond report indicates the defendant is disabled and has not worked for 15 years. As to factor (3) the defendant's family ties and relationships, there was no evidence submitted to the Court by the defendant on this subject. As to factor (4), the defendant's character, health and mental condition, the only information submitted was a reference in the Jericho report that the defendant suffers from a mental illness and a reference in the bond report that the defendant is receiving disability payments. As to factor (5), the defendant's prior criminal history, and failures to appear, the pre-trial report shows that the defendant has been convicted of 2 prior misdemeanors and has had no prior forfeitures.

As to factor (6), the nature of the offense and apparent probability of conviction, the affidavit of complaint indicates that the proof against the defendant is strong and that the defendant gave a statement of admission. As to factor (7), the defendant's prior criminal record and the likelihood that because of that record, the defendant poses a risk to the community, the Court finds that the defendant has no felony history or crimes of violence. As to factor (8), persons in the community that are willing to vouch for the defendant's reliability to appear, there has been no proof submitted by the defendant as to this factor. As to Factor (9), any other factors indicating the defendant's ties to the community or bearing on the risk of the defendant's failure to appear, the Jericho report indicates that without the defendant's adherence to the proposed plan, the defendant would be unable to reliably make her court appearances.

First of all, this Court takes the position that the economic status of the defendant is a proper for consideration under factor (2).[3] However, this Court disagrees with the position of defense counsel that this is the controlling factor.[4] Defense counsel argues that the defendant is unable to post the bond set and argues that the defendant cannot post any bond at all. The Court notes that there was no proof submitted establishing the defendant's financial situation. This Court examined all of the factors set forth in the statutes and has concluded release on recognizance is not appropriate and that the $30,000 bond amount previously set, is not unreasonable under the circumstances and should not be reduced. Based on what has been

[3]See Ex Parte Dupuy, 498 S.W.3d 220 (Tex. App. 2016) (ability to make bail is only one factor; not controlling factor; the primary factors are the nature of the offense and the punishment that may be imposed).

[4]See State v. Pratt, 2017 WL 894414 (Vt. March 10, 2017) (although state and federal constitutions require the court to consider the defendant=s financial resources, neither require courts to set bail at an amount the defendant is able to make).

submitted to this Court for consideration, this defendant allegedly suffers from some kind of mental illness that would prevent the defendant from reliably appearing in court. The pending charges for which the defendant is charged is a no-parole offense and has a minimum punishment of 15 years at the Tennessee Department of Correction. The proof against the defendant is particularly strong. The Court finds that the defendant does pose a substantial risk to not appearing in court and that a bond of $30,000 is not excessive and will ensure that the defendant will appear. There is no evidence that the $30,000 bond was set just to hold the defendant in jail. The Court is of the opinion that if the defendant posts the $30,000 bond that has been set, the Jericho plan should be adopted as a bond condition to assure the defendant's appearance.

CONSTITUTIONAL ARGUMENT

There are two state constitutional provisions that address bail. Article I, Sec. 15 provides that [A]ll prisoners shall be bailable by sufficient sureties.... Article I, Sec. 16 provides that excessive bail shall not be required.... No constitutional provision, state or federal provides a right to pretrial release. Under the excessive bail provisions of both the federal and state constitutions, it has been repeatedly held that the inability to make the bail amount set does not render the bail amount excessive.[5] Further, Article I. Sec. 15 specifically contemplates that a prisoner is bailable by "sufficient sureties". The inclusion of the word "sufficient" in the constitution envisions that the court officer setting the bail has some discretion in determining

[5]See State v. Melson, 638 S.W.2d 342, 358 (Tenn. 1982) (mere fact that bail is set at an amount the defendant is unable to make does not render the bail excessive, so long as the intent is not to deny his freedom.

what sureties are sufficient.[6] The inclusion of the word "sureties" in the constitution indicates that it is not improper to require some form of surety before release.[7] The inclusion of the word "bailable" [an adjective, not a noun] indicates the possibility of release, not the actual release. The Tennessee Constitution provides that every prisoner is to be given a bail amount as determined by the magistrate as to provide sufficient surety. This amount cannot be excessive, but the mere fact that the defendant cannot make the bail amount does not render the amount set unconstitutional. In *State v. Burgins*, 464 S.W.3d 298 (Tenn. 2015) the Tennessee Supreme Court held:

> The United States and Tennessee Constitutions provide for bail. The Eighth Amendment to the United States Constitution prohibits imposing "[e]xcessive bail@ or Aexcessive fines@ and inflicting Acruel and unusual punishments." **U.S. Const. amend. VIII**. Although this provision does not create a right to bail, ***United States v. Salerno*, 481 U.S. 739, 754B55, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987)**, it mandates that when pretrial bail is set for a criminal defendant, the amount shall not be excessive, *see* ***Sellers v. United States*, 89 S.Ct. 36, 38, 21 L.Ed.2d 64 (Black, Circuit Justice, 1968)**. In contrast, the Tennessee Constitution guarantees that Aall prisoners shall be bailable by sufficient sureties, unless for capital offen [s]es, when the proof is evident, or the presumption great.@ **Tenn. Const. art. I, ' 15**. This constitutional provision grants a defendant the right to pretrial release on bail pending adjudication of criminal charges. ***Swain v. State*, 527 S.W.2d 119, 120 (Tenn. 1975)** (citing ***State ex rel. Brown v. Newell*, 216 Tenn. 284, 391 S.W.2d 667 (1965)**; ***Goins v. State*, 192 Tenn. 32, 237 S.W.2d 8 (1950)**; ***Hicks v. State*, 179 Tenn. 601, 168 S.W.2d 781 (1943)**; ***Butt v. State*, 131 Tenn. 415, 175 S.W. 529 (1914)**).[8]

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[6]Saunders v. Hornecker, 344 P.3d 771 (Why 2015); State v. Gutierrez, 140 P.2d 1106 (New Mex App. 2006); Fragoso v. Fell, 111 P.3d 1027 (Ariz. App. 2005); State v. Briggs, 666 N.W.2d 573 (Iowa 2003). All stating that the framers, by including the word "sufficient" must have intended to confer a measure of discretion on the person setting the bail.

[7]At the time our Constitution was first enacted, the word "surety" could not have referred to the professional bail bondsman practice as it had not yet developed.

[8]*State v. Burgins*, 646 S.W.3d at page 304.

The determination of an appropriate amount of bail should be made on a case-by-case basis depending on a consideration of multiple factors. The financial status of the defendant is a legitimate consideration, but is not necessarily a controlling factor. Like many things in the criminal justice system the financial status of the defendant could have multiple effects on the amount of bail. A rich man may require a higher bail in order to assure his appearance. On the other hand, when a defendant has no financial assets: no job, no property, no money, he has less ties to the community which would incline him to appear for the applicable court date, i.e. he has no possible significant financial loss.

While there are, no doubt, some cases where an application of all factors applicable in setting bail amounts, including the defendant's ability to make a bond, would require the setting of non-monetary bond conditions or a recognizance release, this is not one of those cases. Applying all factors, including defendant's financial condition, this Court finds the bail amount of $30,000 set in General Sessions Court is appropriate with the addition of the Jericho plan as a condition of bond. The Motion of the Defendant is hereby **DENIED**.

Entered this the 4th day of October, 2017.

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JUDGE