

**IN THE
COURT OF CRIMINAL APPEALS
OF TEXAS**

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AP-77,097
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STATE OF TEXAS
V.
TIMOTHY SINGLETON

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**STATE'S RENEWED EMERGENCY MOTION FOR
INCREASED BAIL PENDING INDICTMENT UNDER
CODE OF CRIMINAL PROCEDURE ARTICLE 16.16**
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STATEMENT CONCERNING ORAL ARGUMENT

The State's *Renewed Emergency Motion* presents an important issue for resolution: can a generalized, extra-judicial concern about public health enter into an individualized bail determination. Oral argument will help develop the law on this timely matter.

STATEMENT OF THE CASE

Timothy Singleton is charged with Aggravated Assault—Deadly Weapon. He has felony convictions for Assault—Family Member, Retaliation, Robbery, Credit Card Abuse, and Delivery of a Controlled Substance. *Ex. 3, Judgments of Conviction*. Harris County Hearing Officer Jennifer Gaut and District Court Judge Chris Morton set bail at \$500. *Ex. 5, Recording of Probable Cause Hearing; Ex. 6, Surety Bond; Ex. 9, Conditions of Bond*. While on bond he was charged with Burglary of a Habitation; he is not in custody. *Ex. 10, Probable Cause Statement*.

STATEMENT OF PROCEDURAL HISTORY

Under TEX. CRIM. PROC. CODE ANN. art. 16.16 the State urged the Court of Criminal Appeals to raise Singleton's bail to \$50,000, a fee consistent with the Harris County District Court's felony bond schedule. *Ex. 1, Aff. Of Joshua A. Reiss*. The Court of Criminal Appeals denied the State's motion without prejudice and directed that it should first pursue increased bail in a

court of appeals with jurisdiction under art. 16.16. *State of Texas v. Timothy Singleton*, No. AP-77,097 (Tex. Crim. App. April 9, 2020) (order, not designated for publication). The First Court of Appeals denied the State’s emergency petition. *Ex. 11, First Court of Appeals Order.*¹

GROUND FOR REVIEW

The defendant is a true habitual with a history of violence and bond forfeitures. Probable cause was found that he committed Aggravated Assault—Deadly Weapon against a senior citizen. Bail was set at \$500 due to generalized, extra-judicial concerns over COVID-19 and social distancing in the Harris County Jail. The defendant presented no evidence at his probable cause hearing that he has an underlying comorbidity that places him at greater health risk.

Under art. 16.16 is the defendant’s bail “insufficient in amount . . . according to the nature of the case”?

¹ The First Court of Appeals incorrectly labeled the State’s petition a mandamus action. Article 16.16 authorizes an appellate court to enter an order raising bail without mandamus. *Infra.*

STATEMENT OF FACTS

Houston Police Department Officer Chris Stevens submitted the following sworn statement to the Harris County District Attorney's Office:

I, C. Stevens a certified peace officer employed with the Houston Police Department, have reason to believe and do believe that Singleton, Timothy a black male, born on December 12, 1988 committed the offense of aggravated assault with a deadly weapon, on March 31, 2020, in Harris County, Texas. I base my belief based upon the following facts: I was dispatched to a disturbance with a weapon on 03/31/2020 and spoke to Scott, Tommy, hereinafter the complainant at 5918 Schroeder Rd #34 located in Harris County, Houston, TX. The complainant told me that on March 31, 2020 he was assaulted by Singleton, Timothy who was identified by name, sight, date of birth, hereinafter the defendant. I arrived at 5918 Schroeder Rd #34 on March 31, 2020 at 0136 am. I met with the complainant who told me that the defendant came over to his apt unit and got in his face and told him that he needed to pay him back. The complainant stated that he did not owe the defendant any money and told the defendant that I don't owe you any money. The complainant stated that the defendant then pulled out a pistol and pointed it at his chest demanding the money that he supposedly owed him. The complainant then stated that he told the defendant did not have any money to give him at this time and that he will get paid on April 1st. The complainant then stated with the gun still in his chest the defendant told him that he better have his money by then or he will come back and "kill him". The complainant stated that he was afraid that the defendant was going to kill him and that was the reason he called the police. . . . The defendant gave officers a statement stating that he was over at his aunt's apt complex visiting with them when he saw the complainant outside and he approached him. He stated that the complainant owed him \$375 and that he has not seen the complainant in over 3 months and wanted to be repaid back. He stated that he asked when he was going to be paid back and the complainant told him that he will pay him back when he gets paid

on April 1st and that was the end of the interaction and him and his family went back inside to go to sleep for the night. The defendant stated he never had a gun nor does he own one and that several family members were outside at the time and saw the whole interaction. In my training and experience I believe a handgun can be used as a deadly weapon.

Ex. 2, DIMS Report (cleaned up).

The Harris County District Attorney's Office accepted charges for Aggravated Assault—Deadly Weapon and recommended to Harris County Hearing Officer Jennifer Gaut that Singleton be denied bail under Tex. Const. art. I, § 11a based on the facts of the case, the defendant's extensive and violent criminal history, and well-founded concerns for public safety. *Ex. 5, Recording of Probable Cause Hearing.* Singleton has felony convictions for Assault—Family Member, Retaliation, Robbery, Credit Card Abuse, and Delivery of a Controlled Substance. *Ex. 3, Judgments of Conviction.*

Hearing Officer Gaut set Singleton's bail at \$500 with no contact and curfew conditions. *Ex. 5 @ 1:07:44 — 1:30:00.* The Harris County District Court felony bond schedule called for \$50,000 bail. *Ex. 4, Harris County District Court Felony Bond Schedule.* Video of the probable cause hearing reflects Gaut shuffling paperwork and apparently ignoring the State's recitation of Singleton's extensive criminal history. *Ex. 5 @ 1:27:00 — 1:30:00.* Hearing Officer Gaut makes clear that his minuscule bail would help

empty the Harris County Jail. *Id.* Her comments also reflect animus towards the State to whom she unfairly ascribes a callous desire to “fill the jail up”:

When we have as mentioned a pandemic going on in which we have had someone test positive in the Harris County Jail it becomes very problematic to arbitrarily say that anyone who has a prior conviction for violence or a prior conviction for threat of violence, or is currently charged with violence or threat of violence can’t get a personal bond. So you are just trying to fill the jail up which is the exact opposite of what should be happening right now.

Id. Singleton paid a fee to the bondsman, made his bail, and was discharged from custody. *Ex. 6, Surety Bond.*

In the interests of public safety, the State sought to raise Singleton’s bail to \$50,000 when Singleton made his initial appearance in the 230th District Court. *Ex. 8, Aff. Of Evan R. Myers.* The State urged Judge Chris Morton to raise Singleton’s bail given the nature of the offense, prior violent criminal offenses, and history of bond forfeitures. *Id.* Singleton’s bond forfeiture history includes his failure to appear for a jury trial. *Ex. 7, Bond Forfeiture History.* Unmoved, Judge Morton kept the \$500 bail with conditions in place. *Ex. 8; Ex. 9, Conditions of Bond.*

ARGUMENT

COVID-19 has upended our lives and the requirements of public health demand our collective attention to flatten the curve. That said, concerns about public safety and the law remain as valid today as they did before COVID-19.

To unburden the Harris County Jail during the pandemic, a hearing officer and a judge determined that \$500 bail was appropriate in the Aggravated Assault—Deadly Weapon case of *State of Texas v. Timothy Singleton*. Singleton is a true habitual with multiple violent felony convictions. His bail is 99% lower than called for by the Harris County District Court felony bond schedule.

Simply put, Singleton’s bail is insufficient given the facts of the case and his history of violence. This Court should exercise its authority under TEX. CRIM. PROC. CODE ANN. art. 16.16 to require sufficient and appropriate bond in the interests of public safety.

I. ARTICLE 16.16 IS A VEHICLE TO REOPEN BAIL PROCEEDINGS TO ENSURE THAT PUBLIC SAFETY IS CONSIDERED AND ART. 17.15 FOLLOWED.

TEX. CRIM. PROC. CODE ANN. art. 16.16 permits the State to petition the Court of Criminal Appeals to raise a defendant’s bail when it is “insufficient in amount . . . according to the nature of the case”:

Where it is made to appear by affidavit to a judge of the Court of Criminal Appeals, a justice of a court of appeals, or to a judge of

the district or county court, that the bail taken in any case is insufficient in amount, or that the sureties are not good for the amount, or that the bond is for any reason defective or insufficient, such judge shall issue a warrant of arrest, and require of the defendant sufficient bond and security, according to the nature of the case.

The amount of bail required in any case is within the discretion of the court subject to rules set forth in TEX. CRIM. PROC. CODE ANN. art. 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 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.

Along with the art. 17.15 rules, case law has added seven individualized factors for permissible consideration: (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. 1981).

II. SINGLETON’S BAIL IS INSUFFICIENT AND SHOULD BE INCREASED TO \$50,000.

Article 16.16 authorizes this Court to raise a defendant’s bail when it is “insufficient in amount . . . according to the nature of the case.” Singleton has prior felony convictions for Assault—Family Member, Retaliation, Robbery, Credit Card Abuse, and Delivery of a Controlled Substance. His \$500 bail is thus unsettling and unsafe given his resume of violence and deceit which now includes an alleged Burglary of a Habitation while on bond for the instant offense. The situation demands this Court’s attention to remedy the situation.

Jurisprudence and practitioner commentary recognizes art. 16.16 as a vehicle to reopen bail proceedings in special circumstances. See *Ex parte Selfin*, 618 S.W.2d 766, 768 (Tex. Crim. App. 1981) (“There is no indication in the record that the State moved for a new bond after Williams’ bond was reduced . . . or that affidavits to reopen the bond proceedings were filed with the court pursuant to Arts. 16.16 or 23.11); 29 Thomas S. Morgan & Harold C. Gaither, Jr., TEXAS PRACTICE, JUVENILE LAW AND PRACTICE § 33:32 (3d ed.) (2019) (“If the prosecutor believes the bail is set too low, the prosecutor can file, upon affidavit, a motion to increase bail, stating why the bail is insufficient.”); see also *Shipp v. State*, 21 S.W. 2d 297 (Tex. Crim. App. 1929) (per curiam) (holding that a bail increase was appropriate after the district attorney filed an affidavit arguing that bond was insufficient under

facts of the offense); but see *Jenkins v. State*, 77 S.W. 224 (Tex. Crim. App. 1903) (“The article in question is found in the chapter on procedure in preliminary or examining trials, and, in our opinion, is applicable alone to such trials, and does not apply after indictment”).² Singleton’s case is such a circumstance.

A generalized concern over COVID-19, and an extra-judicial desire to not “fill the jail up”, entered into Singleton’s bail determination. This was improper.

Article 17.15 lacks a “catch-all” to permit consideration of public health matters, nor does any existing case law. In addition, nothing in the Court of Criminal Appeals’ *First Emergency Order Regarding the COVID-19 State of Disaster*, Misc. Docket No. 20-007, permits a court to circumvent art. 17.15.³

Singleton presented no evidence at his probable cause hearing that he has an underlying comorbidity placing him at greater risk.

² *Jenkins* and *Shipp* examine Code of Criminal Procedure art. 295, the predecessor to art. 16.16. *Jenkins* is distinguishable because, unlike Singleton, Jenkins was indicted when the State sought to raise his bail by affidavit. *Shipp* is closer to the present situation. Shipp’s bail was set by the “examining magistrate” and he was unindicted when the State petitioned through affidavit to raise his bail due to the violent facts of the alleged Robbery.

³ The *First Emergency Order* instructs “Subject only to constitutional limitations, all courts in Texas may in any case . . . and must to avoid risk to . . . the public . . . Modify or suspend any and all . . . procedures, whether prescribed by statute, rule, or order, for a stated period ending no later than 30 days after the Governor’s state of disaster has been lifted.” The Court of Criminal Appeals is encouraged to clarify that the *First Emergency Order* focuses on court administrative matters, not bail proceedings. Misinterpretation of this language may be giving license to judges and hearing officers to bypass art. 17.15.

Unfortunately Singleton's low bail mirrors similarly situated cases. Concern over COVID-19 and social distancing in the Harris County Jail has led some Harris County judges and hearing officers to set dangerously low bail for several violent offenders including one instance of a \$1 bond for a defendant charged with Aggravated Assault on a Peace Officer. *Bonds as low as \$10 given to inmates, including some with violent crimes*, abc13.com, available at [https://abc13.com/society/bonds-as-low-as-\\$10-given-to-some-charged-with-violent-crimes/6070050/](https://abc13.com/society/bonds-as-low-as-$10-given-to-some-charged-with-violent-crimes/6070050/) (last visited April 6, 2020).

Responding to these other low bail cases (including Singleton), Harris County Sheriff Ed Gonzalez, who oversees the Harris County Jail, said, "At this critical juncture, we need sensible decisions that keep the community at large in mind. . . . These bond decisions are outside the norm of what we see on a typical day. Why now? Let's not put our public and first responders at unnecessary risk." Ed Gonzalez (@ SheriffEd_HCSO) Twitter (April 2, 2020) https://twitter.com/SheriffEd_HCSO/status/1245743237178015744 (last visited April 5, 2020).

The situation is rapidly devolving and requires immediate attention. *Ex 1, Aff. Of Joshua A. Reiss*. Bail proceedings like Singleton's are being

improperly transformed into a public health vehicle. Though well intentioned, this strays from normal decision making and the law.⁴

PRAYER

The State's emergency motion will no doubt become the subject of intense scrutiny and, likely, misrepresentation. So it is important to make clear that the Harris County District Attorney's Office recognizes that COVID-19 is a public health emergency, and that the general rule favors the allowance of bail. The Harris County District Attorney's Office also has no desire to "fill the jail up" as Hearing Officer Gaut unfairly alleged. But the requirements of, and our commitment to, public safety remain as real and pressing today as they did before the pandemic.

Singleton has proved a long history of violence and non-compliance with court appearances. Probable cause exists that he allegedly threatened a

⁴ Though in the context of release from federal pretrial detention, U.S. Magistrate Judge Steve Kim eloquently identified the problems created when judges stray from normal decision making and the law because of COVID-19:

Judges cannot responsibly—much less legally—make what would essentially be momentous public health decisions for prisons under the pretense of individual pretrial release determinations. Defendants' unbounded argument for pretrial release because of the COVID-19 pandemic, if accepted and extended to its logical conclusion, would mean the release—en masse—of all federal pretrial detainees. So it is up to Congress, not the courts, to legislate in the current crisis a comprehensive solution for the federal prison system at large.

United States v. Joel Antonio Villegas, No. 2:19-cr-568-AB, 2020 WL 1649520, *3 (C.D. Cal. April 3, 2020) (order denying application to reconsider detention).

senior citizen with a firearm. His resume of violence now also includes an alleged Burglary of a Habitation while on \$500 bond for the instant offense.

The “nature of the case” demands a concern for public safety. This Court should exercise its authority under art. 16.16 and raise Singleton’s bail to \$50,000.

CERTIFICATE OF SERVICE

Service has been accomplished by sending a copy of the accompanying instrument to the defendant through certified mail at the following address:
Timothy Singleton, 8003 Gambrel Way, Rosharon, Texas 77583.

SIGNED this 16th of April, 2020.

Respectfully submitted.

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