

IN THE SUPREME COURT OF OHIO

SAMANTHA DAVIS,)	CASE NO.: 2022-0417
)	
Petitioner-Appellee,)	Appeal from First District Court
)	of Appeals, C-2200400
vs.)	
)	
SHERIFF CHARMAINE)	SAMANTHA DAVIS' RESPONSE
MCGUFFEY,)	TO RESPONDENT-APPELLEE'S
)	MERIT BRIEF
)	
Respondent-Appellant.)	

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Restated:

The court of appeals did not abuse its discretion when it granted Ms. Davis’ petition for writ of habeas corpus

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The court of appeals erred when it did not hold Davis to the burden of proving her entitlement to a writ

Restated:

The court of appeals did not abuse its discretion when it found Ms. Davis maintained her burden of proving her entitlement to a writ

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STATEMENT OF THE CASE¹

Following a 2016 car accident involving the death of two individuals, Ms. Davis was indicted on four counts of aggravated vehicular homicide and two counts of aggravated drug possession. At the arraignment, bond was set at \$250,000 straight. Roughly seven months later, the trial court reduced the bond to \$1,000 at ten percent (10%) with electronic monitoring. Ms. Davis posted bond on that same day. There is no evidence that Ms. Davis ever violated the conditions of bond over the next two years.

A jury trial was held in March 2019, and Ms. Davis was found guilty of two counts of aggravated vehicular homicide and two counts of drug possession. After the reading of the verdict, the state asked that Ms. Davis be immediately taken into custody, arguing that she posed a flight risk and a threat to the community. But the trial court denied the state's request and released Ms. Davis pending sentencing and lifted the electronic monitoring requirement. Ms. Davis returned for sentencing in May 2019 and received an eight year aggregate sentence. Ms. Davis appealed her convictions for two counts of aggravated vehicular homicide. On appeal, she raised an array of evidentiary issues, alleged prosecutorial misconduct, and claimed she was deprived of her right to effective assistance of counsel. Based on errors related to expert witness disclosure requirements under Crim.R. 16(K), the First District held Ms. Davis received

¹As set forth by the First District Appellate Court in the underlying decision from which the State appeals. *Davis v. McGuffey*, Case No. 2022-0417 (1st Dist.).

ineffective assistance of counsel, reversed the trial court's judgment and remanded the case for a new trial.

Immediately after the First District's Opinion in May 2021, Ms. Davis' counsel filed a motion for a bond hearing seeking the same bond she had received during her first trial, \$1,000 at ten percent (10%). After this matter was assigned to a new judge, new counsel was appointed, and the court convened a bond hearing in December 2021. Ms. Davis' newly appointed lawyer suggested \$50,000 at ten percent (10%). The State argued Ms. Davis was a flight risk because she had been to prison and would not want to go back. The newly appointed judge set bond at \$500,000 straight. Ms. Davis filed a motion to reduce bond shortly thereafter but withdrew it several days later. Ms. Davis then filed a Petition for a Writ of Habeas Corpus arguing her \$500,000 bond was unconstitutionally excessive and violated Crim.R. 46. The First District found Ms. Davis' Petition was properly before the court, agreed the \$500,000 bond was excessive and reduced Ms. Davis' bond to \$50,000 at ten percent (10%) with electronic monitoring. *Davis*, Case No. 2022-0417.

STATEMENT OF THE FACTS

Ms. Davis purchased a 1995 Dodge Ram pickup truck. from her brother-in-law for \$500 for the father of her children to use for work. (T.p. 1032-33) The boys' father drove the truck for a time, then bought himself a newer truck. (T.p. 1032-33) The vehicle registration in Ms. Davis' name was no longer current. (T.p. 1032) Ms. Davis decided to sell the truck shortly before the day in question. (T.p. 1033) She told

prospective buyers about the vehicle's problems, including a driver's side door that did not always latch properly. (T.p. 1034) Sometimes one needed to use a screwdriver to force the latch down so the door would close. One of the tires also had a slow leak. (T.p. 1033-34, 1054) The truck operated fine despite its age. (T.p. 1034, 1059, 1062)

On the morning in question, Ms. Davis put her boys in the truck and started off for their father's house. (T.p. 1038) At a nearby gas station, a good Samaritan put Fix-a-Flat in the tire with the slow leak. (T.p. 1034-35, 1053-54) The only warning the man gave was to drive for 20 minutes to perfect the seal. (T.p. 1053, 1057) Ms. Davis dropped the boys off with their father and continued on to work. (T.p. 1040) It was around 7:30 a.m. Ms. Davis traveled on Interstate 71 North to the Interstate 275 interchange. (T.p. 1042) The I-275 West entrance ramp loops around and crosses back over I-71. (State Ex. 4A) Ms. Davis was traveling at or below the speed limit when she heard a noise and, in an instant, found herself struggling to keep the steering wheel straight. (T.p. 452-53, 651, 655-56, 1043, 1070) It was as if the truck "had a mind of its own." (T.p. 1089)

The next thing Ms. Davis remembered, she was sitting on the pavement and one of her regular customers from the restaurant was asking her questions. (T.p. 1043-44) She did not remember being ejected from the truck. (T.p. 1044) Ms. Davis asked the customer what was going on and where her truck was. Witnesses testified the Dodge Ram struck the I-275 overpass wall at a sharp angle. (T.p. 637, 780-81) The truck then vaulted up and over the wall, turned over and landed on top of a Nissan Altima on I-

71 South below. (T.p. 448-49, 591-93, 606, 634, 780-71) Following impact, the truck came to rest underneath the overpass and the Altima skidded to a stop about 50 feet away. (T.p. 450, 458) The Altima's two occupants died on impact. (T.p. 444, 446, 450, 458-60)

ARGUMENTS IN OPPOSITION TO PROPOSITIONS OF LAW

“Whoever is unlawfully restrained of his liberty, or entitled to the custody of another, of which custody such person is unlawfully deprived, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment, restraint, or deprivation.” R.C. 2725.01. The writ of habeas corpus may be granted by the Ohio Supreme Court, Court of Appeals, Court of Common Pleas, Probate Court or by a judge of any such court. R.C. 2725.02. The Ohio Constitution specifically grants appellate courts original jurisdiction in habeas corpus. Article IV, section 3(8)(I)(c). When reviewing a decision by a court of appeals, the standard of review is abuse of discretion. *See, Ahmad v. Plummer*, 2010-Ohio-0448, 126 Ohio St.3d 262, at ¶ 17.

State's Proposition of Law No. 1:

The court of appeals erred when it granted Davis' petition for writ of habeas corpus because she had an adequate remedy at law

Restated:

The court of appeals did not abuse its discretion when it granted Ms. Davis' petition for writ of habeas corpus

The sole purpose of bail is to ensure a person's attendance in court. *DuBose v. McGuffey*, 2022-Ohio-8, ¶ 11; *State ex rel. Sylvester v. Neal*, 140 Ohio St.3d 47, 2014-Ohio-

2926, 14 N.E.3d 1024, ¶ 16. “Bail ensures appearance. Therefore, the conditions placed on it must relate to appearance and the reasons for forfeiture to nonappearance.” *Id.*; *State ex rel. Baker v. Troutman*, 50 Ohio St.3d 270, 272 (1990). This Court has consistently held a petition for writ of habeas corpus is a proper means to challenge an unconstitutional bail. *Dubose*, 2022-Ohio-8, ¶ 12; *Chari v. Vore*, 91 Ohio St. 3d 323 (Ohio 2001); *State ex rel. Smirnoff v. Greene*, 84 Ohio St.3d 165, 168 (1998); *In re DeFronzo*, 49 Ohio St. 2d 271 (Ohio 1977); *State v. Bevacqua*, 147 Ohio St. 20 (1946); *Bland v. Holden*, 21 Ohio St.2d 238 (1970); *Davenport v. Teban*, 24 Ohio St.2d 91 (1970). Not once has this Court limited the right to file a petition for writ of habeas corpus to only those who first filed a motion for reconsideration of or motion to reduce a previously set bond.

The motor vehicle accident that led to these criminal charges in this case occurred on August 6, 2016. A Hamilton County grand jury indicted Ms. Davis on criminal charges and a warrant was issued for her arrest on November 10, 2016. Ms. Davis voluntarily turned herself in as soon as she was made aware of the pending criminal charges. Ms. Davis was incarcerated on a \$250,000 bond from November 19, 2016 until June 15, 2017. At that time, Judge Marsh amended her bond to \$1,000 plus electronic home monitoring. Ms. Davis was released that same day and lived at her father’s home on electronic monitoring. For nearly two years Ms. Davis was on electronic monitoring with no violations.

Following sentencing, Ms. Davis appealed her convictions. The First District reversed her convictions and remanded the case for a new trial on May 17, 2021. *State*

v. Davis, 2021-Ohio-4015 (1st Dist.). Upon remand, Ms. Davis was assigned a new judge, Judge Leslie Ghiz, who set the case for a bond hearing on December 16, 2021. Ms. Davis argued for \$50,000 at ten percent (10%). Ms. Davis advised Judge Ghiz of the bond history in the first case and her compliance spanning two years. Despite the foregoing, as well as the fact the jury had acquitted Ms. Davis of the most serious charge, the newly assigned trial judge set bail at \$500,000 straight, twice that originally set in the first trial.

The State argues Ms. Davis' Petition for Writ of Habeas Corpus was premature; that she was required to file a motion to reduce bond, essentially a motion for reconsideration, to establish she had no "remedy at law" prior to filing her Petition. The cases upon which the State relies in support of this claim, however, do not stand for that proposition of law. In *Schneider*, the defendant had bail motions pending at the time he filed his petition.²In *Billiter*, *Fortson* and *In re Habeas Corpus*, the cases were all post-trial and involved issues that should have been addressed on appeal.³ In *Smith*, this Court simply mentioned the petitioner had filed a motion to reduce bond which had been denied.⁴ In the absence of a direct mandate from this Court that a petitioner must file a motion to reduce bond prior to filing a petition for writ of habeas corpus, the State's claim must fail.

²*Schneider v. Clipper*, 128 Ohio St.3d 299, 2011-Ohio-6.

³*Billiter v. Banks*, 135 Ohio St.3d 426, 2013-Ohio-1719; *State ex rel. Fortson v. Kelly*, 102 Ohio St.3d 77, 2004-Ohio-1799; *Simmons v. Black*, ___ Ohio St.3d ___, 2022-Ohio-352.

⁴*Smith v. Leis*, 106 Ohio St.3d 309, 2005-Ohio-5125.

Even if such a mandate exists, the failure to exhaust remedies of law applies only if the remedy at law is actually “adequate”. Although a remedy at law may technically exist, it may nevertheless be so ineffective as to be deemed “inadequate”. Where, despite knowledge of Ms. Davis’ history of compliance with the conditions of her bond and the First District’s October 27, 2021 decision in *DuBose*, the new trial judge issued a \$500,000 straight bond. Under such circumstances, requiring Ms. Davis so file a motion to reduce bond would serve no practicable purpose, and therefore, should not be a required step prior to her filing a petition for writ of habeas corpus.

State’s Proposition of Law No. 2:

The court of appeals erred when it did not hold Davis to the burden of proving her entitlement to a writ

Restated:

The court of appeals did not abuse its discretion when it found Ms. Davis sustained her burden of proving her entitlement to a writ

In an original habeas action, a court of appeals may receive new evidence and independently weigh the evidence to make its own bail determination. *Mohamed v. Eckelberry*, 162 Ohio St.3d 583, 2020-Ohio-4585, ¶ 5. As with any action for habeas relief, the burden is on the petitioner to establish his right to release, *Chari*, 91 Ohio St.3d at 325. There is no indication the First District Court of Appeals strayed from that requirement. The mere mention of the State’s evidence or lack thereof does not in and of itself establish the reviewing court shifted the burden of proof.

State's Proposition of Law No. 3:

Davis did not satisfy her burden to show the bail was excessive

Revised:

Ms. Davis satisfied her burden to show the bail was excessive

Criminal Rule 46 provides the relevant information a court must consider in determining what is a reasonable bond. Crim.R. 46(C). Contrary to the State's claim, Ms. Davis offered evidence addressing every factor set forth in Rule 46(C). To find otherwise would call into question the First District's ability to review and analyze the evidence submitted in reaching its decision in this matter.

Pre-2016

Ms. Davis, now 31, was born and raised in the greater Cincinnati area. Her mother, father, and two siblings still reside in the area. Her fiancé and two young sons are also located in Hamilton County. Ms. Davis was consistently employed, primarily in the restaurant industry, from the age of 15 to the time of her incarceration. Ms. Davis has never had a mental health diagnosis or been on prescribed medication for a mental disorder. Ms. Davis has no felony charges or convictions prior to this incident. Her only prior involvement with the criminal system was well over a decade ago when she received a ticket for possession of marijuana and a disorderly conduct adjudication as a juvenile. Ms. Davis has no history of use or possession of weapons, and the current charges do not include any allegations of weapons. At the time of this accident, Ms. Davis was not under any form of court supervision.

Pretrial Bond

During the original case, Ms. Davis was incarcerated on a \$250,000 bond from November 19, 2016 until June 15, 2017. At that time, Judge Marsh amended her bond to \$1,000 plus electronic home monitoring. That same day, Ms. Davis' father posted her bond and invited her to live with him. While on pretrial bail for over two years, Ms. Davis was not accused of committing any crimes and posed no risk to the community. She attended every court hearing and made no attempt to leave the jurisdiction.

Post-Conviction Bond

A jury trial was held in March 2019. After multiple days of testimony, the jury found Ms. Davis guilty of two counts of vehicular homicide for recklessly causing the deaths and two counts of drug possession. The jury found Ms. Davis not guilty on the two most serious charges related to vehicular homicide, specifically finding her not guilty of driving while impaired. Immediately following the verdict, the State asked the court to take Ms. Davis into custody. "She's facing a penitentiary sentence and I think for the safety of the community and as far as a flight risk, that we ask that she be held without bond from this point on." Judge Marsh disagreed, stating,

I'm not going to take you into custody at this time. In fact, I'm going to take the EMD bracelet off of you at this particular point in time. I'm going to release you from it. There is good reason why. I need for you to make arrangements and take care of your children ... I want you to be well aware ... there is penitentiary time connected with this particular charge.

(Tt.p. 1272) Ms. Davis returned for sentencing and received an eight year aggregate term.

During Ms. Davis' incarceration with the Ohio Department of Corrections, she received no citations for any violations. She resided in the honor dorm and participated in many different self-improvement groups. Ms. Davis was accepted to the dog training program run by the Department of Corrections. Over a period of more than two years she trained over 10 dogs to be emotional support animals. Many of her dogs are now employed at local elementary schools. Ms. Davis applied for multiple higher education opportunities but was placed on the wait-list due to the length of her sentence.

Bond Hearing on Remand

Ms. Davis' attorney from the first case filed a Motion for Bond, arguing for release on same conditions she had before trial. On December 16, 2021 Judge Ghiz held a hearing to set bond. Ms. Davis' newly appointed lawyer suggested \$50,000 at ten percent (10%). The State argued Ms. Davis was a flight risk because she had been to prison and would not want to go back. The State further argued that although Judge Marsh had sentenced Ms. Davis to 8 years, the State would ask for 16. The State presented no evidence in support of its claim Ms. Davis was a flight risk. Further, it falsely stated Ms. Davis had pending charges of driving while impaired.

The Court: What's the basic overview?

Mr. Tieger: Ms. Davis was under suspension and driving a vehicle that was basically unroadworthy. She was using some type of pills or controlled substances. ...

The Court: Okay. Is this – so basically she was impaired. That is – am I right about that?

Mr. Tieger: Yes.

(See Transcript of December 16, 2021 Bond Hearing, attached as Exhibit “A” to Petitioner’s Response to Respondent’s Response, filed February 11, 2022.)

Present Day

Ms. Davis and her two young sons currently live with her father. She has no savings. Her father, Tom Davis’ affidavit showed he has limited resources and was able to post only a modest bond. Ms. Davis is engaged to be married.

CONCLUSION

In her first trial, Ms. Davis faced four charges of aggravated vehicular homicide: The jury acquitted her of the two charges for causing the deaths while operating her vehicle while under the influence, felonies of the first degree. Unlike her first trial, Ms. Davis now faces only second degree felony charges. She has limited access to money. A \$500,000 straight bond serves no other purpose than to keep Ms. Davis incarcerated pretrial without regard to her ability to pay. This is both statutorily and constitutionally unlawful. While the allegations against Ms. Davis are serious, the nature and circumstances of the offenses do not support a \$500,000 straight bond given the record at hand. *See, Davis v McGuffey*, Case No. C-220040 (1st Dist. 2022). Based upon the foregoing, this Court should find the First District Court of Appeals did not abuse its discretion in determining Ms. Davis’ bail was excessive and affirm its decision vacating the \$500,000 straight bail and imposing a \$50,000 bail at ten percent (10%) with electronic monitoring.

Respectfully submitted,

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