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In the Court of Criminal Appeals of Texas

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Nos. 01-20-00004-CR & No. 01-20-00005-CR
In the Court of Appeals for the First District of Texas at Houston
&
Trial Court Case No. 1657519 and 1657521
Before the 338th Judicial District Court of Harris County, Texas

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Ex parte

JOSEPH GOMEZ,
Appellant / Respondent

RESPONDENT'S BRIEF

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ORAL ARGUMENT REQUESTED

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TO THE HONORABLE COURT OF CRIMINAL APPEALS:

Joseph Gomez, Appellant to the Court of Appeals below and Respondent before this Court, submits this brief responding to the State's brief filed in this case.

STATEMENT OF THE CASE

Respondent does not dispute the statement of the case as set out in the State's brief.

STATEMENT REGARDING ORAL ARGUMENT

This Court has already indicated that oral argument will be permitted. As set out below, however, Respondent believes that this Court should find that discretionary review was improvidently granted and dismiss the State's petition for discretionary review.

STATEMENT OF FACTS / PROCEDURAL HISTORY

In its statement of facts section of its brief, the State intentionally omits critical facts in this case.[1] Instead, it quotes a portion of the record where a prosecutor reads a probable cause statement to the trial

[1] State's Brief at 8–9 (citing Reporter's Record [hereafter RR] Vol. 1 at 4).

court judge whose actions are at issue.[2] It was the same probable cause statement provided to a magistrate the day before who considered that, as well as other information, before setting the bail amounts in Respondent's cases.[3]

The record shows that on November 13, 2019, officers with the Deer Park Police Department arrested and charged Respondent by complaint with the felony offenses of burglary of a habitation and assault of a family member – impeding breathing.[4]

The undisputed facts are that, on November 14, 2019, at approximately 4:47 a.m., Respondent appeared before a Harris County hearing officer pursuant to Article 15.17, Texas Code of Criminal Procedure.[5]

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[2] *Id.*

[3] *See* Applicant's Exhibit 5 (a video recording of the proceedings before the magistrate; Respondent is called up at 18:25 into the video exhibit and his hearing concludes at 26:17) admitted at RR Vol. 2 at 9.

[4] *See* Applicant's Exhibit 1 (complaints for both cases), RR Vol. 4 at 2–5 (admitted at RR Vol. 2 at 8); Supplemental Clerk's Record (hereafter Supp. CR) at 4. There are separate reporter's records and clerk's records for each cause number assigned in the district court and each case number in this Court but they are identical to one another. Accordingly, for sake of brevity, within this brief, citation is only being made to one reporter's record or one clerk's record.

[5] *See* Applicant's Exhibit 2 (Statutory Warning by Magistrate – Probable Cause for Further Detention – PR Bond/Bail Orders for both cases), RR Vol. 4 at 6–11; Applicant's Exhibit 5. In Harris County, these hearing officers have limited, concurrent jurisdiction with the criminal district court. *See* TEX. GOV'T CODE § 54.851 – .861

The proceeding was video recorded and the recording was submitted to the trial court.[6]

The recording shows that the magistrate informed Respondent about the charges against him.[7] The magistrate then asked a prosecutor to give the probable cause for Respondent's arrest.[8] The prosecutor provided that summary of the evidence.[9] The magistrate found that probable cause existed for both cases to hold Respondent and then proceeded to consider bail.[10] In doing so, the magistrate considered a Public Safety Assessment[11] and bail amount requests by both the prosecutor and the

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(West 2020). More specifically, they are charged with, among other things, "determining probable cause for further detention of any person detained on a criminal complaint, information, or indictment filed in the district courts or county criminal courts at law," and, more pertinent to this case, "committing the defendant to jail, discharging the defendant from custody, or admitting the defendant to bail, as the law and facts of the case require." TEX. GOV'T CODE § 54.856 (West 2020). They are given the first opportunity to "determine the amount of bail and grant bail pursuant to Chapter 17, Code of Criminal Procedure, and as otherwise provided by law" to a defendant. TEX. GOV'T CODE § 54.858(b) (West 2020).

[6] *See* Applicant's Exhibit 5.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] Shortly after their arrest, defendants are interviewed by staff with the office of Pretrial Services who, based on that information and their own investigation, prepare a Public Safety Assessment report to present to the hearing officers to be used

assistant public defender appointed to represent Respondent solely at this proceeding.[12]

After considering the Public Safety Assessment and the oral evidence presented by both sides, in cause number 1653305 charging Respondent with burglary of a habitation, the magistrate set bail at $25,000.[13] In cause number 1653306 charging Respondent with assault of a family member – impeding breathing, the magistrate set bail at $15,000.[14] The magistrate also entered a magistrate's order for emergency protection to the benefit of the complainant.[15]

Immediately thereafter, Respondent's father, working with a bonding company, arranged to have surety bonds posted in the amounts

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in their determination of bail. *See* Zaveri, Mihir, "County Says Assessment Tool Will Help with Bail Decisions," HOUSTON CHRONICLE, July 25, 2017 <available at https://www.houstonchronicle.com/news/houston-texas/houston/article/County-says-assessment-tool-will-help-with-bail-11418689.php (last visited October 23, 2020). The reports are designed to determine whether a person is a low or high risk for re-offending, committing a violent crime, or failing to show up for court. *Id*.

[12] Applicant's Exhibit 5; *see also* Applicant's Exhibit 2 and 3 (Public Safety Assessment), RR Vol. 4 at 12 (admitted at RR Vol. 2 at 9).

[13] *See* Applicant's Exhibit 2 and 5.

[14] *See* Applicant's Exhibit 2 and 5.

[15] *See* Applicant's Exhibit 4, RR Vol. 4 at 13–17 (admitted at RR Vol. 2 at 9); Supp. CR at 5–10 (same); Applicant's Exhibit 5.

set for both cases.[16] Respondent was subsequently released from the Harris County Jail in the early morning hours of November 15, 2019.[17]

As directed on his bond paperwork, Respondent appeared that same morning at 9:30 a.m. in the 338th Judicial District Court of Harris County, Texas.[18] Respondent intended to ask the trial court to give him time to retain counsel to represent him.[19]

Respondent, however, was surprised when the trial court judge, without notice, called him up to the bench.[20] The trial court asked the attorney for the State to recite the probable cause for the arrest.[21] No record was made of this proceeding.[22] In addition to hearing probable

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[16] *See* Applicant's Exhibit 6 (Affidavit of Applicant's father), RR Vol. 4 at 18–20 (admitted at RR Vol. 2 at 10).

[17] *See* Applicant's Exhibit 7 (Bail bonds for both cases), RR Vol. 4 at 21–26 (admitted at RR Vol. 2 at 14).

[18] *See id.*; Applicant's Exhibit 8 (Unsworn declaration of Applicant), RR Vol. 4 at 27–28 (admitted at RR Vol. 2 at 15).

[19] *Id.*

[20] *Id.*

[21] *See* RR Vol. 1 at 11; RR Vol. 2 at 24.

[22] *See* RR Vol. 1 at 11. Although no order is reflected in the Clerk's file, the trial court stated that it *sua sponte* asked an attorney in the courtroom that handled appointed cases to stand in next to Applicant. *See* RR Vol. 1 at 4–5; RR Vol. 2 at 24; *see generally* Supp CR (showing no order or docket sheet entry reflecting the appointment of counsel). While the docket sheet in the Supplemental Clerk's Record reflects that Respondent appeared on November 15 with counsel "TABONE, SIER-

cause, the trial court also considered and granted the State's motion for an order that Respondent not have any contact with the complaining witness.[23] Without any request or motion from the State,[24] the trial court then *sua sponte* revoked the bonds just posted by Respondent, ordered that he be remanded back into the custody of the Harris County Sheriff, and raised the bail amounts to $75,000 in each case.[25]

The following Monday, November 18, 2019, undersigned counsel for Respondent (after making her initial appearance in the case) appeared in the trial court to object to the court's illegal revocation of Respondent's bond at the *sua sponte* hearing that took place on November 15, arguing that the trial court had no cause to justify revoking the

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RA", as the record from the hearing on November 18, reflected, that was not the case. *Cf.* Supp. CR at 155 and RR Vol. 1 at 4–5. Ms. Tabone did not make her appearance in the case until November 18. *See* RR Vol. 1 at 4–5.

The trial court's appointment of some still-unknown-to-this-day attorney was done despite Respondent having previously indicated that he did not want counsel appointed to represent him in the district court and having every intention of retaining undersigned counsel to represent him instead. *See* Applicant's Exhibits 2, 5 & 8. There were no discussions between Applicant and this unknown attorney regarding him or his cases. *See* Applicant's Exhibit 8.

[23] *See* RR Vol. 1 at 5; Supp. CR at 16 (no contact order).

[24] *See generally* Supp. CR (showing no motion to revoke bond filed by the State).

[25] *See* RR Vol. 2 at 24; Supp. CR at 13.

bonds.[26] Respondent requested the court to reinstate the bonds.[27] The trial court stated the following in response:

> [A]s you stated that the magistrate heard the case before I did. Once a case comes into this court, the sitting judge has the opportunity to hear probable cause, which I did. And, again, as I stated to you before and on the record, there was an attorney that was appointed for the limited purposes of a bond who also argued on behalf of the client at that time, as well as the State. The Court heard PC and followed the case law. That is not just the only consideration. There are many factors that a court has to weigh in making a determination of a bond.
>
> ***
>
> And let me make sure that I'm clear on the record also. The $15,000 that was essentially attached — that was ordered by the magistrate was on the assault impeding breathing case, and the burglary of habitation was $25,000. Motion denied.[28]

On November 21, 2019, Respondent filed applications for writs of habeas corpus seeking to vacate the illegal orders revoking his bonds in cause numbers 1653305 and 1653306.[29] The applications were assigned

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[26] *See* RR Vol. 1 at 5, 6–7.

[27] *See* RR Vol. 1 at 13.

[28] RR Vol. 1 at 10–11.

[29] CR at 4–57. There was a previous Application for Writ of Habeas Corpus Seeking Bond Reduction, filed by Applicant on November 18, 2019. CR at 58–63. The Application filed on November 21 superseded this previous application and this previous application was not raised nor discussed at the hearing on December 10, 2019.

their own cause numbers: 1657519 and 1657521, respectively for each case.[30]

At a hearing on the applications, Respondent presented the evidence set out above and also presented testimony from Respondent's father.[31] He testified that, while he had attempted to contact bonding companies to make new bonds in the higher amount set by the trial court, he nor anyone else associated with Respondent was able to come up with the money to post the bonds.[32] Respondent also admitted certified copies of the entire clerk's file in other cases pending before the trial court where the trial court had done nearly the identical thing in this case: *sua sponte* revoking defendants' bonds and raising the bail amount after hearing probable cause from the State in court a second time.[33]

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[30] CR at 4–57.

[31] *See* RR Vol. 2 at 7–17.

[32] RR Vol. 2 at 12–13.

[33] *See* Applicant's Exhibit 9, RR Vol. 3 at 29–326 (admitted RR Vol. 2 at 15–16). As pointed out on the record, these are the "entire clerk's files for other cases that are pending before" the trial court to show "that this is not an isolated incident" and that what the trial court did in these other cases is what the trial court "did in this particular case, which is to review the probable cause, find that the bond set by the magistrate was not -- was not appropriate, revoke and raise those bonds, and require the defendants to post other bonds." RR Vol. 2 at 15–16. The trial court took no issue with this representation and admitted the documents. *Id.*

After hearing arguments from both Respondent and the State, the trial court issued its ruling and made the following findings:

> The Court having heard the evidence and the arguments of the parties, the Court finds Code of Criminal Procedure, Article 17.09, Section 3 applicable in this matter.
>
> Article 17.09, Section 3 provides, among other things, that whenever -- and I stress the word "wherever." (sic) "Whenever, during the course of the action, the judge in whose court such action is pending finds the bond is insufficient -- bonds are insufficient in amount, such judge may order the accused to be rearrested, and require the accused to give another bond."
>
> The Court did just that on November 15, 2019, during a bail review hearing in which the Court appointed counsel to Mr. Joseph Gomez in the interest of justice.
>
> The Court heard the probable cause in this manner and deemed the original bond was insufficient, and the Court determined the proper amount of bail to be set in this matter at $75,000 per case.
>
> Case law clearly allows a court to impose a higher bond for reasons such as reevaluating the circumstances and the adequacy of a defendant's bond.
>
> It is clearly within the Court's discretion to increase the bail set in accordance with the rules for fixing the amount of bond -- of bail.

> The Applicant's notice (sic) is denied for Writ of Habeas Corpus.[34]

REPLY TO STATE'S GROUND FOR REVIEW

The State's entire argument to this Court is based on a blatant misstatement and misinterpretation of the Court of Appeals' decision and undermines basic principles of fairness and due process that are reflected in the trial court's illegal revocation of bonds without cause or notice. The Court of Appeals' decision is a fact-driven opinion that applied well-established legal precedent.

A. The State's Misrepresentation of the Court of Appeals' Opinion Requires this Court to Find that Discretionary Review was Improvidently Granted and Dismiss the State's Petition

Throughout its brief, the State misrepresents the Court of Appeals' opinion claiming that the court "reversed on an argument not raised in the trial court or argued by the parties," by holding that "when a defendant makes bail, the bond is always sufficient in amount."[35] An elementary reading of the Court of Appeals' decision shows that is not

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[34] RR Vol. 2 at 23–24.

[35] *See e.g.* State's Brief at 15–20.

the holding of the case and that the Court of Appeals' decision was well-founded and based on the law and established principles.

The Court of Appeals started its discussion by recognizing some of the general principles of law applying to bail and then turned to the statute at issue here, Article 17.09 of the Texas Code of Criminal Procedure.[36]

In subsection C of its opinion, the Court of Appeals recited Article 17.09.[37] Pretty simple. Nothing too complicated. Proof that the court of appeals understood the statute at issue.

In section III of its opinion, it then identified the dispute between Respondent and the State and correctly set out the arguments of both, including recognizing the State's argument that the trial court was authorized to "find that the bail bond was 'insufficient in amount' and that no 'good cause' finding is required."[38]

The Court of Appeals then resolved the dispute:

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[36] *Ex parte Gomez*, Nos. 01-20-00004-CR & No. 01-20-00005-CR, slip op. at 9–13 (Tex. App.—Houston [1st Dist.] Aug. 7, 2020, pet. granted)(mem. op., not designated for publication); *see* TEX. CODE CRIM. PROC. art. 17.09 (West Supp. 2019).

[37] *Gomez*, slip op. at 13.

[38] *Id*. at 14.

> In revoking the bond set by the magistrate judge and increasing the amount of bail, the trial court was required by law to make a finding based on governing legal principles and evidence that one of the conditions in article 17.09, § 3 was satisfied. It made no such finding. Nor could it have done so under the circumstances in this case, as none of the evidence before it at the November 15 and 18, 2019 bond hearings supported revoking the original bond, rearresting [Respondent], and increasing the amount of bail under the factors that both the trial court and this court are required to consider.[39]

The State apparently disregarded this statement.

The Court of Appeals recognized the Article 17.09, Section 3 exceptions which allow a trial court to revoke a bond under one of the conditions stated therein . . . because it mentioned them in the first sentence.[40] Thus, the Court of Appeals recognized, contrary to the State's assertion in its brief, that a trial court has the authority to revoke a bond if it finds it to be "insufficient in amount."

The Court of Appeals concluded that the trial court could not revoke the bond for any of the reasons provided under Section 3 (although not stated explicitly) given the "circumstances in this case" and "the factors that both the trial court and [the Court of Appeals] are required to

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[39] *Id.* at 14.

[40] *See id.*

consider."[41] By using the word "factor<u>s</u>," the Court of Appeals recognized that it was considering all the grounds for revoking a bond set out in Section 3, including a finding that the original bonds are "insufficient in amount."

Then, the Court of Appeals explained its rationale for reversing the trial court. The Court of Appeals discussed each section of Article 17.09.[42] First, in regard to Section 1, the Court of Appeals noted,

> There is no dispute that bail was given in the amount of $40,000 on the two cases. Because it is undisputed that the bonds were not "insufficient in amount" to satisfy the amount of bail that was ordered, the trial court could not have properly revoked Gomez's bonds and increased the amount of bail *under section 1 of article 17.09*.[43]

This is where presumably the State "loses it" and starts thinking that the Court of Appeals is saying something it is not. Indeed, bail was set at a total amount of $40,000. Indeed, Respondent arranged to have bonds given in the amount of $40,000. Indeed, there was no dispute that the *bonds* posted were not "insufficient in amount" to meet the amount

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[41] *Id.*

[42] *Id.* at 14–15.

[43] *Id.* at 15 (emphasis added).

of *bail* set by the magistrate. As obvious and rhetorical as it may seem, the amount of the bond was equal to the bail amount set. So, obviously, the bond could not be revoked under section 1. But, more importantly, that is all the Court of Appeals said in that one paragraph: bond could not be revoked under *section 1 of article 17.09*. There is no mention at this point of the trial court's ability to find the bond "insufficient in amount" under *section 3 of article 17.09*.

That is what came next.

In the remainder of the opinion, the Court of Appeals explained why none of the factors enumerated in section 3 of article 17.09 — including whether the bond is "insufficient in amount" or not — permitted the trial court to revoke and raise Respondent's bonds.[44]

The Court of Appeals correctly stated the facts in this case — facts which the State cannot dispute:

> There is also no showing of any circumstances that changed in the roughly 30 hours that passed between the time the magistrate set the amount of bail and the time the trial court increased the amount of bail from $40,000, combined, to $150,000, combined. No new evidence became available, and the indictments were not returned until Monday, No-

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[44] *See id.* at 15–18.

> vember 18, 2019. The only new information was that [Respondent] had given bail and appeared in court. There was no information on which the court could find a change in the balance of the State's interest in assuring [Respondent]'s presence at trial as compared with the interest in preserving the presumption of innocence.
>
> We conclude that no 'other good or sufficient cause' for revoking [Respondent's] bond, rearresting him, and ordering that he give bail in a higher amount is presented by the record in this appeal.[45]

Although including the language "other good and sufficient cause" implied that the court only considered that portion of section 3, it does not indicate that the Court of Appeals ignored the remainder of the statute in reaching its decision — including whether the bond is "insufficient in amount" — especially when considering the remainder of the opinion.

The Court of Appeals relied on established precedent from two other courts of appeals which held that there was no abuse of discretion by the trial court revoking bonds which were insufficient in amount. In discussing the Tyler Court of Appeals' decision in *Liles v. State*,[46] the Court of Appeals recognized that court's holding that the trial court did

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[45] *Id.* at 15.

[46] *Id.* at 16–17 (citing *Liles v. State*, 550 S.W.3d 668 (Tex. App.—Tyler 2017, no pet.)).

not abuse its discretion under article 17.09 "because it was 'entirely reasonable for the trial judge to believe that a $20,000 personal bond might be *insufficient* to assure" the defendant's appearance at trial."[47] In discussing the Austin Court of Appeals' decision in *Hernandez v. State*,[48] the Court of Appeals here recognized that court's holding that a trial court could find that a bond to be insufficient in amount for reasons "such as reevaluation of the circumstances and adequacy of a defendant's bond."[49] In both cases, there were changed circumstances which justified the revocation of the existing bonds. In *Liles*, the court noted that the defendant there, subsequent to being released on the first bond, had been indicted for a more serious charge which carried a greater range of punishment.[50] In *Hernandez*, the defendant there, subsequent to being released on the first bond, had been indicted and addi-

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[47] *Id.* (quoting *Liles*, 550 S.W.3d at 671) (emphasis added).

[48] *Id.* at 17–18 (citing *Hernandez v. State*, 465 S.W.3d 324 (Tex. App.—Austin 2015, pet. ref'd)).

[49] *Id.* (quoting *Hernandez*, 465 S.W.3d at 326–27).

[50] *Liles*, 550 S.W.3d at 671.

tional physical evidence became available that linked the defendant to the crime.[51]

The Court of Appeals determined that, based on the facts presented here, there were no similar circumstances like in *Liles* or *Hernandez* to find, like the courts did there, that Respondent's bonds were insufficient in amount and could be revoked under Section 3.[52]

From its petition for discretionary review to its brief, the State has been operating in its own world of disbelief basing its argument on a flawed interpretation of the Court of Appeals decision. The State mistakenly suggests that the Court of Appeals interpreted Article 17.09 so that the only thing a trial court can consider in whether assessing whether a bond is 'insufficient in amount' is whether it met the required amount" when a simple reading of the court's opinion indicates the exact opposite.[53]

This Court granted review on a false premise: that the Court of Appeals held that "a trial court cannot find a bond is 'insufficient in

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[51] *Hernandez*, 465 S.W.2d at 327.

[52] *Gomez*, slip op. at 18.

[53] *See* State's Brief at 18

amount' once a defendant has posted bond."[54] That is not what the Court of Appeals held or even accepted as true. Instead, the Court of Appeals correctly recognized and followed established precedent that, prior to the trial court's *sua sponte* act in revoking Respondent's bonds, no facts were present showing a change in circumstances to justify the trial court's determination that the bonds posted by Respondent were insufficient in amount and no "good or sufficient cause was shown for revoking [Respondent's] bail."[55] The Court of Appeals based its decision on all the facts presented to the trial court, as well as the facts presented to the magistrate.

Respondent believes that this Court should find that discretionary review was improvidently granted and dismiss the State's petition for discretionary review.

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[54] *Id.* at 16.

[55] *Gomez*, slip op. at 18.

B. In the Alternative, the Court of Appeals Correctly Applied the Law as Interpreted by this Court in Holding the Trial Court Abused its Discretion by Revoking Respondent's Bonds Without Good and Sufficient Cause

In the alternative, Respondent submits that the Court of Appeals correctly held that the trial court abused its discretion by revoking the bonds posted by Respondent and raising the bail amount without good and sufficient cause.

"The primary purpose of pretrial bail is to secure the defendant's attendance at trial, and the power to require bail should not be used as an instrument of oppression."[56] Article 17.09, Section 2 of the Texas Code of Criminal Procedure is one of the mechanisms in place to serve this purpose and protect against bail being used as an instrument of oppression.[57] It states, "When a defendant has once given bail for his appearance in answer to a criminal charge, he shall not be required to give another bond in the course of the same criminal action except as

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[56] *Ex parte Allen–Pieroni*, 524 S.W.3d 252, 254 (Tex. App.—Waco 2016, no pet.).

[57] *See* TEX. CODE CRIM. PROC. art. 17.09, Sec. 2 (West Supp. 2019).

herein provided."[58] Section 3, as discussed *supra*, sets out the exceptions to that one-bond rule.[59]

Although one court of appeals has recognized that "[n]o precise standard exists for determining what constitutes 'good and sufficient cause' under Article 17.09" and that "each case must be reviewed on a fact-by-fact basis,"[60] no appellate decision or other law has ever authorized the trial court to act in the manner and fashion that it did so here in revoking Respondent's bonds. There was no "good or sufficient cause" justifying its action or anything else to suggest that the bonds were "insufficient in amount." Respondent appeared in court exactly as was his obligation within hours of his release from custody. He did everything that was expected of him and nothing that he was expected not to do. Once there, the trial court simply heard the probable cause from the attorney for the State — just as the magistrate had heard the probable cause from the attorney for State the day before — and, unsatisfied

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[58] *Id.*

[59] TEX. CODE CRIM. PROC. art. 17.09, Sec. 3 (West Supp. 2019).

[60] *Miller v. State*, 855 S.W.2d 92, 93–94 (Tex. App. [14th Dist.] 1993, pet. ref'd).

with the bond amounts set by the magistrate, revoked and raised those bonds.

This Court has only once considered Article 17.09, Section 3 and the circumstances under which a trial court can revoke and raise a bond.[61] In *Ex parte King*, the trial court revoked a $10,000 bond a defendant posted to secure his release and raised the bail amount to $100,000 when the defendant's counsel moved for a continuance on the basis that one of the defendant's counsel was a member of the legislature in attendance of a session of the legislature.[62] This Court noted, there was "no evidence in this record to explain the action of the trial judge revoking the posted bail bond and increasing bail, other than his apparent displeasure with counsel's filing the motion for continuance and he having to grant same under law."[63] Accordingly, this Court held, there was no "good and sufficient cause to revoke the bail posted by [the defendant] or to increase the amount of bail."[64]

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[61] *Ex parte King*, 613 S.W.2d 503 (Tex. Crim. App. 1981).

[62] *Id.* at 504.

[63] *Id.* at 504–05.

[64] *Id.* at 505.

Multiple courts of appeals have likewise held under varying circumstances that no "good and sufficient cause" existed under Article 17.09 for revoking a defendant's bond.[65] What is unique about this case is that there were no facts presented by the State to justify the trial court's action. There were no changed circumstances that occurred from the setting of bail, the posting of bonds, and the revocations of the bonds. The probable cause allegations presented to the magistrate and the trial court were the same. Respondent appeared in court as directed. The bond did exactly what it was supposed to do: ensure that Respondent appeared in court which he in fact did.

As proof that there was nothing unique about Respondent's case — and further proof that the trial court engages in this similar *sua sponte* action of revoking and raising bonds upon reviewing the probable cause — Respondent admitted certified copies of the entire clerk's files for other cases pending before this trial court where the same has oc-

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[65] *See Meador v. State*, 780 S.W.2d 836, 837 (Tex. App.—Houston [14th Dist.] 1989, no pet.); *Queen v. State*, 842 S.W.2d 708, 712 (Tex. App.—Houston [1st Dist.] 1992, no pet.) (both holding trial court abused its discretion revoking defendants' bonds).

curred.[66] The trial court took no issue with this. As its ruling reflected, the trial court believed (mistakenly) that "(c)ase law clearly allows a court to impose a higher bond for reasons such as reevaluating the circumstances and the adequacy of a defendant's bond."[67]

A fair system of justice should not allow a trial court to *sua sponte* revoke a bond and raise the amount of bail required whenever it deems that bond to be "insufficient" without limitation and especially without any justifiable reason for doing so. The law must require a factual, lawfully justifiable basis for the trial court's decision, something this Court found did not exist in *King*.[68] Otherwise, allowing a trial court unfettered discretion to revoke a defendant's bond allows bail to be used as an instrument as oppression, something that our system of justice has always prohibited. A trial court could say, "I find that the bond is insufficient because the defendant's hair is too long," or "I find that the bond is insufficient because the defendant lives in a bad part of town," or "I find that the bond is insufficient because the defendant went to a cer-

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[66] *See* Applicant's Exhibit 9, RR Vol. 4 at 29–326.

[67] RR Vol. 2 at 24.

[68] *See King*, 613 S.W.2d at 505.

tain school," and therefore, be authorized to have a defendant rearrested and required to give a new, higher bond. The list is endless.

The court of appeals correctly applied the law to the facts presented in this case in holding that the trial court abused its discretion revoking Respondent's bonds. This Court should affirm that holding.

POSTLUDE AND PRAYER

Joseph Gomez was locked up for 269 days after the trial court revoked his bonds and increased his bail to an amount he could not afford. After the Court of Appeals found that the trial court abused its discretion and ordered that his bonds be reinstated, Joseph walked out of the Harris County Jail on August 8, 2020. He did not go out and commit a new offense. He did not violate his conditions of bond. He went home to be with his family, take care of his father who contracted COVID-19, and await his next, scheduled court appearance.

After this Court ordered the Court of Appeals to stay the mandate on August 24, and the Court of Appeals acted accordingly, the trial court ordered Joseph to appear in court on August 31. Because he had been in contact with a person known to have COVID-19, he was unable to enter the Harris County Criminal Justice Center where the trial

court is located, but nevertheless appeared by videoconference before the trial court from the steps outside of the courthouse. He listened as his undersigned counsel pleaded for him to stay released on a reasonable bail pending the appeal in this case and listened to the trial court deny that request. Undersigned counsel subsequently requested permission from the trial court for Joseph to surrender himself at the Harris County Jail, a request that the court granted. Later that afternoon, Joseph's mother dropped him off and watched him walk through the doors into the Harris County Inmate Processing Center where he is being held to this day. Bond or not, Joseph gave his word and he abided by it. And there has never been a reason to believe that Joseph would do differently if he were to be released on bond again.

He prays that this Court abide by the law and not treat his bond as an instrument of oppression. He respectfully requests this Court to dismiss the State's petition for discretionary review as improvidently granted or, in the alternative, affirm the decision of the Court of Appeals, reversing the trial court's ruling on his application for writ of habeas corpus and ordering his original bonds to be reinstated.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing instrument has been served on to the attorney for the State, Clint Morgan, Harris County District Attorney's Office, as well as Stacey Soule, State Prosecuting Attorney, pursuant to Texas Rule of Appellate Procedure 9.5 (b)(1), through Appellant's counsel's electronic filing manager on October 27, 2020.

/s/ T. Brent Mayr
T. Brent Mayr
ATTORNEY FOR JOSEPH GOMEZ

CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rules of Appellate Procedure 9.4(i)(2)(B) and 9.4(i)(3), undersigned counsel hereby certifies that this computer-generated document contains 5,370 words as calculated by the word count feature contained within the program used to prepare said document, namely, Microsoft Word for Office 365.

/s/ T. Brent Mayr
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ATTORNEY FOR JOSEPH GOMEZ

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