

**Ex parte Allen, No. 06-22-00133-CR (Tex. App.-Texarkana, Dec. 21, 2022)**  
**Attorneys.** Deric Walpole (appellate)(trial)

**Issue & Answer.** Can a trial court order a defendant to have no contact with his wife of 37 years because he peppered his daughter's viciously abusive boyfriend with a 12-gauge shotgun? **No.**

**Facts.** The State indicted the defendant and alleged he shot at a man's car with a 12-gauge shotgun in December 2021. Evidence showed that the complainant had been physically abusing the defendant's daughter with whom he had a relationship. The shooting occurred when the complainant showed up at the defendant's home two days after his most recent attack on the defendant's daughter and was intertwined with a history of vicious behavior by the complainant.

A magistrate ordered that the defendant have no contact with his daughter and wear a GPS monitor as conditions of bond. The defendant filed a writ of habeas corpus in district court seeking these terms modified. The defendant presented evidence at the hearing on his writ of habeas corpus that he was not generally violent, had no criminal history, and was cooperative and respectful with investigating officers. The district judge denied relief and actually made things worse for the defendant-she added the condition that the defendant also not have contact with his own wife of 37 years.

After a mistrial on the charge of aggravated assault the defendant again requested modification of his bond conditions in a pretrial writ of habeas corpus. In this hearing the defendant's wife provided details showing there to be absolutely no reason for the bond conditions. Because the trial court erroneously believed the defendant had previously violated the bond conditions, it withheld its modification seemingly as a form of punishment.

**Analysis.** Bail cannot be implemented as an instrument of oppression or as a form of punishment. "A condition of pre-trial bail is judged by three criteria: it must be reasonable; it must be to secure the defendant's presence at trial; and it must be related to the safety of the alleged victim or the community." The defendant's wife is not a victim in this case. They have been married for 37 years without incident. There is no legitimate purpose for the bond condition. It is just punishment for being accused of a crime.

**Comment.** Good! Unchecked and irrational bond conditions have become rampant in many jurisdictions. We need more appeals like this. Don't be afraid of the abuse-of-discretion standard on appeal.