[J-56-2021] [MO: Wecht, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 14 MAP 2021
Appellee	:	Appeal from the Order of the Superior Court at No. 2627 EDA 2018 dated July 17, 2020, reconsideration denied September 23, 2020, Affirming the Judgment of Sentence of the Montgomery County Court of Common Pleas, Criminal Division, dated August 24, 2018 at No. CP-46-CR-0005241-2017.
v.	:	
DANIEL GEORGE TALLEY,	:	
Appellant	:	ARGUED: September 22, 2021

CONCURRING OPINION

JUSTICE MUNDY **DECIDED: December 22, 2021**

While I concur with the ultimate outcome affirming the Superior Court's decision, I disagree with the conclusions reached in Part II of the Majority Opinion regarding the standard of proof applicable to deny bail.[1] In my view, the Majority's rationale does not support its conclusion that the phrase "proof is evident or presumption great" in Article I, Section 14 of the Pennsylvania Constitution requires a showing that it is "substantially more likely than not" that the accused is nonbailable. I believe the Majority inappropriately heightens the Commonwealth's burden of proof for denying bail, as its newly-minted standard is contrary to our precedent and the underlying purpose of Article I, Section 14.

Our Court has already defined the phrase at issue. In *Commonwealth ex rel. Alberti v. Boyle*, 195 A.2d 97, 98 (Pa. 1963), we held that, "the words in Section 14 'when

[1] I join Part III of the Majority Opinion regarding the best evidence rule in full.

the proof is evident or presumption great' mean that if the Commonwealth's evidence which is presented at the bail hearing, together with all reasonable inferences therefrom, is sufficient in law to sustain a verdict of murder in the first degree, bail should be refused." At the time *Alberti* was decided, Article I, Section 14 of our Commonwealth's Constitution read: "All prisoners shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or presumption great[.]" *Id.* In 1998, Pennsylvania voters approved a constitutional amendment expanding the category of nonbailable prisoners, such that Article I, Section 14 now reads:

> All prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great . . . .

PA. CONST. art I, § 14. This amendment could have required a different standard to be applied to the two new categories of nonbailable prisoners; but it specifically did not. Instead, it emphasized that there are limits to the constitutional right to bail, and that right does not extend to prisoners who are a serious flight risk or pose a danger to the safety of any person and the community. Because the 1998 amendment expanded the category of nonbailable prisoners but specifically did not alter the standard under which bail should be denied, it is my view that our Court's interpretation in *Alberti* applies equally to all three categories of nonbailable prisoners. [2]

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[2] To this point, the holdings of the Majority and Concurrence exclusively apply to the third category of prisoners. *See* Majority Opinion at 44 ("accordingly we hold that when the Commonwealth seeks to deny bail due to the alleged safety risk…"). However, I cannot see how "proof is evident or presumption great" can have a different meaning for those accused of a capital offense and those who present a danger to any person and the community unless incarcerated. I also have concerns that the effect of the Majority's "**substantially** more likely than not" standard will be the release of prisoners who likely

Under a straightforward application of our precedent in *Alberti* to the third category of prisoners at issue here, the Commonwealth satisfies its burden so long as its evidence, together with all reasonable inferences therefrom, is sufficient to establish that no condition or combination of conditions other than imprisonment would reasonably assure the safety of any person and the community. This does not, as the Majority suggests, require evidence "to sustain a guilty verdict for a crime that has yet to be committed" (Majority Opinion at 36), but merely calls for an assessment of whether the safety of any person and the community can be reasonably assured by any condition other than imprisonment. Given the trial court's findings of fact, that burden was satisfied in this case. Accordingly, I would affirm the Superior Court's judgment because the trial court correctly denied bail. [3]

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committed first-degree murder when there is no way to prove during very early-stage proceedings that it is substantially more likely than not that bail needs to be denied. That consequence is antithetical to the historical underpinnings and purpose of this Constitutional section, which was created to ensure that a prisoner will not evade trial when they are accused of a capital offense and face a probable danger of conviction. *See* Majority Opinion at 29 n.18. Rather than heighten the standard above what this phrase has historically required, I believe that we should recognize that by amending Section 14 in 1998, voters decided that bail should be denied not only when a prisoner is likely to evade trial, but also when it is likely that only incarceration will assure the safety of the community.

[3] Although I disagree with the heightened standards adopted by the Majority Opinion and Chief Justice Baer's Concurring Opinion, I would agree with Chief Justice Baer that regardless of the standard, Appellant was not entitled to bail.