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2024 IL App (3d) 240072-U

Order filed May 8, 2024

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2024

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-24-0072
JOHN C. FOSTER, JR.,)	Circuit No. 23-CF-997
Defendant-Appellant.)	Honorable Carmen Goodman, Judge, Presiding.

JUSTICE HETTEL delivered the judgment of the court.
Justice Davenport concurred in the judgment.
Presiding Justice McDade dissented.

ORDER

¶ 1 *Held:* Trial court’s decision to deny pretrial release was not arbitrary or unreasonable.

¶ 2 Defendant, John C. Foster, Jr., was charged by indictment on June 20, 2023, with aggravated battery (Class X) (720 ILCS 5/12-3.05(e)(1), (h) (West 2022)), unlawful possession of a weapon by a felon (UPWF) (Class 2) (*id.* § 24-1.1(a), (e)), reckless discharge of a firearm (Class 4) (*id.* § 24-1.5(a), (c)), and aggravated unlawful use of a weapon (Class 4) (*id.* § 24-1.6(a)(1), (a)(3)(C)). His bail was set at \$500,000, but he remained in custody. On January 18,

2024, defendant filed a motion for review of pretrial release conditions, seeking pretrial release.¹ In response, the State filed a verified petition to deny pretrial release, alleging defendant was charged with a forcible felony, and his release posed a real and present threat to the safety of any person, persons, or the community under section 110-6.1(a)(1.5) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-6.1(a)(1.5) (West 2022)). The trial court granted the State’s petition, and we affirm.

¶ 3

I. BACKGROUND

¶ 4

The factual basis provided that on May 29, 2023, at approximately 2:19 a.m., police were dispatched to the Terrace Inn, regarding a disturbance. Dispatch advised the officers that the complainant called and was screaming “they are shooting at us.” Upon arrival, deputies observed defendant dancing at the entry of the parking area while people were leaving the area. Defendant was shouting at deputies that he was the shooter. Patrons also advised deputies that defendant was the shooter. The victim was transported via helicopter to Loyola Medical Center to receive further medical treatment. Deputies spoke with the Terrace Inn owner, who stated he was celebrating his birthday at the tavern and heard a gunshot towards the back of the room near the pool table. He went to speak with defendant, who he observed with a gun. He escorted defendant outside so he could speak with him. As defendant was being escorted outside, defendant continued to shoot towards the ground. Once near the bar, defendant continued to shoot the firearm, striking the victim in her left arm while she was on the floor. Another witness observed defendant shooting a gun in the bar. Defendant did not have a FOID card.

¹We note that the record states that defendant filed a motion entitled “Petition for Release from Detention” on September 25, 2023. It appears from the limited record before us that this was considered by the court as a motion for bond reduction and not a petition seeking pretrial release. According to the docket, the motion for bond reduction was denied, and there is no order in the record. The parties make no argument regarding this petition.

¶ 5 A pretrial risk assessment was conducted which indicated that defendant was a moderate high risk. The risk factors included that he was “[c]urrently under active community supervision,” had pending charges at the time of his arrest, had at least one misdemeanor or felony conviction, had two or more failures to appear, and had two or more violent convictions. Defendant had an extensive criminal history, which included resisting a peace officer, aggravated driving under the influence of alcohol causing bodily harm, battery, home invasion, and aggravated battery. He had active warrants in Will County for driving on a revoked license, Champaign County for UPWF, and in McNairy, Tennessee for manufacturing or delivery of a controlled substance and unlawful possession of a weapon.

¶ 6 A hearing was held on the petition on January 23, 2024. Defense counsel argued that defendant was on drugs at the time of the offense and did not know or intend to shoot the victim. Counsel argued that defendant was not a flight risk and asked that he be placed on electronic monitoring and obtain a drug and alcohol evaluation. The State provided the factual basis, argued that defendant was a real and present threat, and stated that it was not “an excusable reason the fact that he was under the influence of PCP and cocaine and a high amount of drugs with a weapon in his hands.” The State noted that defendant shot multiple times, did not have a FOID card, and had an extensive criminal history. Defense counsel further indicated that defendant did not mean “any ill will” toward the victim and needed some help. The court granted the State’s petition, finding that the State met its burden by clear and convincing evidence. The court mentioned that defendant was a convicted felon and knew he could not have a firearm.

¶ 7 II. ANALYSIS

¶ 8 On appeal, defendant argues that the State failed to meet its burden of proving by clear and convincing evidence that no conditions of release could mitigate the threat to the community

and the court failed to address the conditions of release.² We consider factual findings for the manifest weight of the evidence, but the ultimate decision to grant or deny the State’s petition to detain is considered for an abuse of discretion. *People v. Trotter*, 2023 IL App (2d) 230317,

¶ 13. Under either standard, we consider whether the court’s determination is arbitrary or unreasonable. *Id.*; see also *People v. Horne*, 2023 IL App (2d) 230382, ¶ 19.

¶ 9 Everyone charged with an offense is eligible for pretrial release, which may only be denied in certain situations. 725 ILCS 5/110-2(a), 110-6.1 (West 2022). The State must file a verified petition requesting the denial of pretrial release. *Id.* § 110-6.1. The State then has the burden of proving by clear and convincing evidence (1) the proof is evident or presumption great that defendant committed a detainable offense, (2) defendant poses a real and present threat to any person, persons, or the community or is a flight risk, and (3) no conditions could mitigate this threat or risk of flight. *Id.* § 110-6.1(a), (e). When determining a defendant’s dangerousness and the conditions of release, the statute includes a nonexhaustive list of factors the court can consider. *Id.* §§ 110-6.1(g), 110-5.

¶ 10 “Section 110-6.1(g) indicates that the court, when determining dangerousness, should consider evidence the State presented that applies to a certain set of factors. *Id.* § 110-6.1(g). Likewise, section 110-5(a) states that the court shall consider a set of factors when determining which conditions of pretrial release, if any, would ensure his appearance or mitigate his dangerousness. *Id.* § 110-5(a). The section specifically states that the court shall consider these factors based on the available information, thus indicating that the State shall present evidence supporting these factors. *Id.*” *People v. Mikolaitis*, 2024 IL App (3d) 230791, ¶ 11.

²The State filed a motion to dismiss this appeal, based on defendant’s notice of appeal, which only checked boxes and did not provide any further information. We took the motion with the case, and we now deny the State’s motion to dismiss.

¶ 11 Here, the State provided evidence related to the factors set forth in section 110-5. 725 ILCS 5/110-5 (West 2022). Defendant was intoxicated on a number of different drugs; carried a weapon into a bar, despite the fact that he was a felon; and shot the gun randomly, multiple times, hitting a woman in the process. He had three warrants out for his arrest at the time, including for two similar offenses of possessing a firearm, and he had a significant criminal history. The risk assessment found that he was a moderate high risk, indicating that defendant had failed to appear two or more times and had pending charges at the time of arrest. Considering the evidence presented, the court did not err in finding that defendant would not follow any conditions placed on him. Therefore, the court did not abuse its discretion in granting the petition.

¶ 12 III. CONCLUSION

¶ 13 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 14 Affirmed.

¶ 15 PRESIDING JUSTICE McDADE, dissenting:

¶ 16 I dissent from the majority’s decision to affirm the circuit court’s denial of pretrial release for this defendant.

¶ 17 As the majority recites, section 110-6.1(e) of the Code of Criminal Procedure of 1963 states that “[a]ll defendants shall be presumed eligible for pretrial release. . . .” 725 ILCS 5/110-6.1(e) (West 2022). To rebut this presumption, the State must prove the following three elements, by clear and convincing evidence: (1) that the proof is evident or the presumption great that the defendant has committed a detainable offense; (2) that the defendant poses a real and present threat to the safety of any person, persons, or the community; and (3) that no conditions can mitigate this threat. *Id.*

¶ 18 I agree with the majority's findings that the State satisfied the first and second of the above elements. However, as to the third element, the State's verified petition to deny pretrial release is devoid of any mention of mitigating conditions, or of the argument that no mitigating conditions exist. It does not even acknowledge that conditions form an element when setting out its burden of proof. Nor did the State mention or argue that no mitigating conditions exist, during the detention hearing. Under these circumstances, it cannot be said that the State met its burden of proof as to this third element. See Black's Law Dictionary 190 (7th ed. 1999) (explaining that a party's burden of proof includes the burden of persuasion, which is the duty to convince the factfinder to view the facts in a way favorable to that party). Consequently, I would reverse the circuit court's judgment as an abuse of discretion.