2024 IL App (3d) 230568

Opinion filed January 16, 2024

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2024

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. TALLEN P. MULBRANDON CASEY, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of the 18th Judicial Circuit, Du Page County, Illinois, Appeal No. 3-23-0568 Circuit No. 23-CF-2069 Honorable Ann Celine O'Hallaren Walsh, Judge, Presiding.

JUSTICE PETERSON delivered the judgment of the court, with opinion.
Justice Holdridge concurred in the judgment and opinion.
Presiding Justice McDade dissented.

OPINION

¶ 1 Defendant, Tallen P. Mulbrandon Casey, appeals from the Du Page County circuit court's denial of his motion for pretrial release, arguing that the court abused its discretion in finding that his release posed a real and present threat to the safety of any person, persons, or the community. We affirm.

¶ 2 I. BACKGROUND

¶ 3 Defendant was charged on September 21, 2023, with threatening a public official (Class 3) (720 ILCS 5/12-9(a) (West 2022)). He was later indicted on the charge. On September 22, 2023,

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)).

¶ 4 The factual basis provided that, on September 21, 2023, at approximately 7:09 p.m., officers observed a vehicle parked in a no parking zone. Defendant was the driver and was passed out at the wheel. As soon as he exited the vehicle, he was argumentative and made vulgar sexual comments to the female officers. Defendant was arrested for driving under the influence of alcohol (DUI). Defendant was transported back to the police department. While he was read the DUI warnings, he appeared to mouth to an officer, "I'm going to fucking kill you" multiple times. He provided a breath sample of .178. Defendant continued to be uncooperative during the booking process. When given his court date and paperwork, he said to the officer, I'm going to find you." As the officer was explaining that his car was towed, defendant made multiple statements including, "Fuck you, you're a fucking bitch for that," "I'm gonna find you fucking bitch, I'm gonna smack you up," "I'm going to come here with a fucking pipe bomb," "Fuck you, fucking whore." Defendant lived approximately 1.7 miles from the police department.

¶ 5 An officer stated that they were investigating the incident, not trying to harm defendant. Defendant began walking towards the officer. When ordered to stop walking, defendant did not comply. Defendant stated, "I will fuck you up." Defendant clenched his fists and yelled, "Let's fucking go." Defendant began to move aggressively toward the officer. Defendant's criminal history included convictions for criminal damage to property, armed robbery, and aggravated assault of a peace officer, which he was on probation for at the time. A pretrial risk assessment indicated defendant was a low risk.

¶ 6 After a hearing, the court granted the State's petition. The written order stated that the court based its finding on the nature and circumstances of the offense, defendant's prior criminal history, that defendant was on probation at the time of the offense, and "[f]or the reasons stated on the record."[1] Defendant did not appeal.

¶ 7 On October 10, 2023, defendant filed a motion for pretrial release, arguing that his criminal history was a result of a struggle with substance abuse, he had left the sober living house a few days before the charged offense and relapsed, and he could return to the sober living house. Defendant stated that a condition that he stay at the sober living house and engage in any testing or monitoring was sufficient to mitigate any threat. Attached was a letter from the director of the sober living house and a notice indicating defendant had missed an orientation for the sheet metal workers' apprentice program.

¶ 8 A hearing was held on the motion on October 16, 2023. The court stated that it had reviewed the State's original petition and the court's order. Defense counsel stated that it was not proven that defendant posed a real and present threat especially when he immediately apologized and said, "he was just talking shit." Defense counsel stated as far as "what has changed since [his] first-appearance," there was room available for him to go back to the sober living facility, and he could also work in an apprenticeship with the sheet metal workers. The State said that "the only condition that's changed is the availability of a treatment facility" and noted that "he was in that treatment facility a couple of days before this happened and then almost as soon as he's out on his own he picks up this offense. And there was a DUI involved as well."

[1]The transcript of the hearing is not included in the record on appeal.

¶ 9 The court stated,

> "I've had an opportunity to review [the pretrial detention] order, the facts and circumstances surrounding this case, as I indicated, that motion that's presented before the Court. There's now been a probable cause determination by way of an indictment because a true bill was returned for the offense of threatening a public official. I also take judicial notice and into consideration the Defendant is before this Court on probation *** for the offense of aggravated assault, which was to a police officer; and it is alleged the Defendant had committed these offenses while on probation on that particular offense. I would also note that Defendant in that particular case, as a condition of his sentence, was not allowed to *** consume any alcohol or controlled substance and be subject to random testing."

Therefore, the court denied the motion. The written order stated that the court found that continued detention was necessary to avoid a real and present threat to the safety of any person, persons, or the community, based on the specific articulable facts of the case.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant contends that the court abused its discretion in denying his motion for release. Specifically, he argues, the State failed to prove by clear and convincing evidence that (1) he proved a real and present threat to any person, persons, or the public and (2) there were no conditions that could mitigate any threat he posed. 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. Trottier*, 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.

¶ 12 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(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.

¶ 13 At the outset, we note that defendant had the option to appeal from the court's initial order granting the State's petition for denial of pretrial release (see *id.* § 110-6.1(j)) but chose not to do so. The requirement that the State prove by clear and convincing evidence each of the three above-mentioned propositions and that the court make a finding as to each, applies to this initial hearing. See *id.* § 110-6.1. For subsequent hearings, as the one at issue here, the statute only requires the court to find that "continued detention is necessary to avoid a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, or to prevent the defendant's willful flight from prosecution." *Id.* § 110-6.1(i-5). Although this determination necessarily entails consideration of the threat or flight risk posed by a defendant and the potential mitigation of such threat or flight risk by conditions of release, the Code does not require the court to again make specific findings that the State proved the three propositions by clear and convincing evidence as required at the initial hearing. As defendant did not appeal from the court's granting of the State's petition for denial of pretrial release, the questions relating to whether the State proved each of the three propositions by clear and convincing evidence during

that initial hearing are not before us. Instead, the only question we consider is whether the court abused its discretion in finding that continued detention was necessary.

¶ 14 Here, the evidence established that defendant was continuously aggressive with the officers, making multiple threats, the worst of which was threatening to bring a pipe bomb to the police department. He also moved aggressively towards an officer with clenched fists. Defendant lived close to the police station, giving him the means to carry out his threat. He was on probation for aggravated assault of a peace officer at the time. The court noted that his probation required him to refrain from consuming alcohol, which he had failed to do. Moreover, while defense counsel argued that defendant could go back to the sober living facility, defendant had just left there days before the DUI and instant offense occurred. Based on the foregoing, we cannot say that the court's decision to deny defendant's motion and continue to detain defendant was an abuse of discretion.

¶ 15 In coming to this conclusion, we reject defendant's contention that his threat to bring a pipe bomb to the police department is not the sort of threat encompassed by the statute. A verbal threat can be considered as well as the other facts of the case in determining whether a defendant is a threat to any person, persons, or the community.

¶ 16 III. CONCLUSION

¶ 17 The judgment of the circuit court of Du Page County is affirmed.

¶ 18 Affirmed.

¶ 19 JUSTICE McDADE, dissenting:

¶ 20 I dissent from the decision of the majority affirming the circuit court's denial of pretrial release for this defendant.

¶ 21 For Casey to remain in pretrial detention, the circuit court had to conclude that "continued detention [was] necessary to avoid a real and present threat to the safety of any person or persons

or the community, based on the specific articulable facts of the case, or to prevent the defendant's willful flight from prosecution." 725 ILCS 5/110-6.1(i-5) (West 2022). The charges in this case stemmed from threatening words uttered by Casey while he was intoxicated. The pretrial investigation report noted that Casey was administered the Ohio Risk Assessment Pretrial Tool, which is "[d]esigned to be predictive of both a defendant's failure-to-appear and risk of violating pretrial probation with a new offense" (University of Cincinnati Corrections Institute, Ohio Risk Assessment System, https://cech.uc.edu/content/dam/refresh/cech-62/ucci/overviews/oras-overview.pdf). Casey scored in the low-risk category. Even with his criminal history, I do not believe the evidence supports the court's conclusion that Casey posed the requisite threat to safety under section 6.1(i-5). Accordingly, I would hold that the circuit court abused its discretion when it ordered Casey's continued detention.