2024 IL App (1st) 232272-U

No. 1-23-2272B

Order filed February 26, 2024

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	23 CR 1040101
	)	
STARISHA N. SNOWDEN,	)	Honorable
	)	Alfredo Maldonado,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE MARTIN delivered the judgment of the court.
Presiding Justice Rochford concurred in the judgment.
Justice Ocasio dissented.

ORDER

¶ 1 *Held*: Trial court's order denying Snowden's pretrial release affirmed where the court's findings that the State proved by clear and convincing evidence that Snowden posed a risk of harm to members of the community and that there were no conditions or combination of conditions of pretrial release that could mitigate the risk, were not against the manifest weight of the evidence.

¶ 2 Defendant Starisha N. Snowden timely appeals the trial court's order denying her petition for pretrial release pursuant to section 110-6.1 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-6.1 (West 2022)), as amended by Public Acts 101-652, § 10-255 and 102-1104,

§ 70 (eff. Jan. 1, 2023). This section of the statute is commonly referred to as the Safety, Accountability, Fairness and Equity-Today (SAFE-T) Act or Pretrial Fairness Act (Act).[1] For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Snowden was charged with two counts of first-degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2022)), for the stabbing death of Michael Roberts. She was arraigned and pleaded not guilty on October 4, 2023.

¶ 5 On November 15, 2023, the State filed a verified petition for pretrial detention pursuant to sections 110-2 and 110-6.1 of the Code. 725 ILCS 5/110-2, 110-6.1 (West 2022). On the same day, Snowden filed a petition for pretrial release.

¶ 6 The State proffered the following evidence at Snowden's pretrial detention hearing. Roberts was separated from his wife, Lanice Smith, and was living with Snowden in a romantic relationship. On August 31, 2023, the date of the incident, Snowden and Roberts were out together when they got into an argument and decided to go in separate directions.

¶ 7 Later that morning, Snowden began sending Roberts a series of angry text messages and phone calls. Around that same time, Roberts contacted Smith and told her that he was coming to see her at her apartment. Before Roberts arrived at the apartment building, the building's surveillance cameras recorded Snowden entering the building at 12:17 p.m.; she was wearing a T-shirt, jeans, and sunglasses, and was carrying a bag. Moments later, Smith heard banging on the front door of her apartment. When Smith responded to the banging, no one was there. Minutes later, there was more banging on the door. Smith opened the door and saw Snowden, whom she

[1]"Neither name is official, as neither appears in the Illinois Complied Statutes or public act." *Rowe v. Raoul*, 2023 IL 129248, ¶ 4 n. 1.

recognized as Roberts's girlfriend.

¶ 8 Snowden, who appeared angry, was holding a knife, and demanded to know where Roberts was. When Smith stated that Roberts was not in the apartment, Snowden made a movement as though she was trying to gain entry. Smith closed the door before Snowden could enter. Through the closed door, Smith could hear Snowden threaten to get her brothers to beat up Roberts.

¶ 9 Smith telephoned Roberts and told him Snowden had appeared at her apartment door with a knife, looking for him. Roberts responded that he was on his way to the apartment building and would deal with Snowden once he arrived. The building's surveillance cameras captured Roberts entering the building at 12:35 p.m. Several minutes later, surveillance cameras recorded Snowden exiting the rear of the apartment building. Snowden was no longer wearing her sunglasses and her T-shirt had a visible tear near the collar.

¶ 10 At about the same time, Smith heard Roberts screaming for help and pounding on her front door. When Smith opened the door, Roberts fell into her apartment. He was bleeding heavily from what proved to be a fatal knife wound to the neck above his right clavicle. There was a large amount of blood in the hallway, and Snowden's sunglasses were nearby. Smith identified Snowden in a photo array.

¶ 11 Snowden made post-*Miranda* statements that she drank alcohol that morning and had gotten into an argument with Roberts. She acknowledged going to Smith's apartment but did not admit to stabbing Roberts. However, she did admit to stabbing Roberts earlier in the year; a police report was generated regarding the incident, but no charges were filed.

¶ 12 In mitigation, defense counsel proffered that Snowden was 38 years old, a single parent of three young children, a lifelong resident of Chicago, and the daughter of a United States Army veteran. Snowden graduated from Hyde Park Academy High School and briefly attended Olive

Harvey College. She had been employed in the service and hospitality industries and had recently interviewed for a position at the University of Chicago department of utility and food services.

¶ 13 Defense counsel added that Snowden had no criminal background and no failures to appear. Accordingly, counsel contended that the trial court should consider less restrictive alternatives to pretrial detention, such as electronic monitoring or curfew, to allow Snowden the opportunity to adequately prepare a defense to the criminal charges and continue caring for her children.

¶ 14 In response, the State argued that Snowden admitted stabbing Roberts in February 2023. Snowden's mother had informed responding officers that Snowden and Roberts were drinking and arguing, and that Snowden stabbed Roberts in the neck. Roberts was transported to the hospital where he received treatment for the stab wound; however, both Roberts and Snowden were uncooperative with the police and no charges were filed.

¶ 15 After counsels' proffers and argument, the trial court found that the State had proven by clear and convincing evidence that the proof was evident or the presumption great that Snowden committed the offense of first-degree murder. The trial court found that Snowden posed a risk of harm to members of the community and that there were no conditions or combination of conditions of pretrial release which could mitigate the risk. The trial court remanded Snowden to the custody of the Cook County Sheriff pending trial.

¶ 16 Snowden filed timely notices of appeal on November 21 and 28, 2023, in compliance with Illinois Supreme Court Rule 604(h)(2) (eff. Sept. 18, 2023). We have jurisdiction over this appeal pursuant to Illinois Supreme Court Rule 604(h)(1)(iii) (eff. Sept. 18, 2023), which permits a defendant to appeal from an order denying pretrial release.

¶ 17 II. ANALYSIS

¶ 18 A. Standard of Review

¶ 19 Snowden argues that this case involves a matter of statutory interpretation and therefore, the appropriate standard of review is *de novo*. In the alternative, she asks this court to review the trial court's pretrial detention decisions, applying a "mixed question of law and fact" standard.

¶ 20 "Pretrial release is governed by section 110 of the Code as amended by the Act." *People v. Morales*, 2023 IL App (2d) 230334, ¶ 4 (citing 725 ILCS 5/110-1 *et seq*. (West 2022)). Under the Code, all persons charged with an offense are eligible for pretrial release before conviction. 725 ILCS 5/110-2(a) (West 2022).

¶ 21 Pursuant to the Code, as amended, a defendant's pretrial release may be denied only in certain statutorily limited situations. *Rowe v. Raoul*, 2023 IL 129248, ¶¶ 5-6. The Code provides that pretrial release may be denied if a defendant is charged with a forcible felony and "poses 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." (725 ILCS 5/110-6.1(a) (1.5) (West 2022)).

¶ 22 The State has the burden of proving, by clear and convincing evidence: (1) that the proof is evident or the presumption great that the defendant committed a qualifying offense; (2) that the defendant poses 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; and (3) that no condition or combination of conditions can mitigate the 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 prevent the defendant's willful flight from prosecution. 725 ILCS 5/110-2(b); 5/110-6.1(e)(1)-(3) (West 2022).[2]

¶ 23 Our courts have consistently attached a manifest weight of the evidence standard of review

[2]"The clear and convincing standard requires proof greater than a preponderance, but not quite approaching the criminal standard of beyond a reasonable doubt." *In re D.T.*, 212 Ill. 2d 347, 362 (2004).

to factual findings made by the trial court where the State's burden of proof is clear and convincing. See *People v. Pitts*, 2024 IL App (1st) 232336, ¶¶ 21-29 (citing cases where courts have applied the manifest weight of the evidence standard in various contexts). "Accordingly, we believe the appropriate standard of review for whether the State provided clear and convincing evidence as to the three elements necessary to justify pretrial detention is whether the trial court's [findings were] against the manifest weight of the evidence." *Id.* ¶ 29. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *People v. Deleon*, 227 Ill. 2d 322, 332 (2008).

¶ 24 B. Denial of Pretrial Release

¶ 25 1. Dangerousness

¶ 26 Turning to the merits, Snowden contends the trial court erred in finding that the State met its burden of proving by clear and convincing evidence that she posed "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." 725 ILCS 5/110-6.1(e)(2) (West 2022). In her notice of appeal, Snowden asserted that the State offered no facts or evidence indicating that she posed a risk to any person or the community, with the exception of the purported victim, who was deceased.

¶ 27 In making a determination of "dangerousness," *i.e.*, that a defendant poses a real and present threat to any person or the community, a trial court may consider factors which include: the nature and circumstances of the charged offense and whether it was a crime of violence involving a weapon; the defendant's history and characteristics; and any evidence of the defendant's prior violent, abusive, or assaultive behavior. 725 ILCS 5/110-6.1(g) (West 2022).

¶ 28 Snowden was charged with two counts of first-degree murder (720 ILCS 5/9-1(a)(1), (a)(2)

(West 2022)), for the stabbing death of Roberts. In finding that the State proved by clear and convincing evidence that Snowden posed a real and present threat to the safety of the community, the trial court heard evidence that Snowden had stabbed Roberts in the neck just months before she allegedly stabbed him to death in the apartment building.

¶ 29 The alleged offense involved a deadly weapon, a knife, and Snowden's history and characteristics demonstrated her dangerousness. In this regard, the trial court stated, "I do find that the fact that there is this other stabbing that's alleged, that does cause some concern for this Court that [Snowden] perhaps does pose a risk of harm to other folks."

¶ 30 Further, the nature and circumstances of the alleged offense demonstrated planning and deliberation on the part of Snowden. The State proffered evidence that prior to fatally stabbing Roberts, Snowden attempted to enter Smith's apartment while brandishing a knife and threating violence. Smith closed the door before Snowden could gain entry. After failing to gain entry into Smith's apartment, Snowden lay in wait for Roberts before fatally stabbing him.

¶ 31 The State also proffered evidence indicating that Snowden tended to be violent when drinking. Snowden's mother had informed officers that Snowden had been drinking before she stabbed Roberts during the February incident, causing nonfatal wounds. And after Snowden was taken into custody for Roberts's murder, she made post-*Miranda* statements that she drank alcohol the morning of the incident.

¶ 32 Considering Snowden's history and the nature and circumstances of the alleged offense, we find nothing arbitrary, fanciful, or unreasonable in the trial court's finding that Snowden posed a risk of harm to members of the community. The trial court relied on specific, articulable facts in making its finding of dangerousness.

¶ 33 2. Conditions of Pretrial Release

¶ 34 From this same evidence, the trial court could reasonably find that the State proved by clear and convincing evidence that there were no conditions or combination of conditions of pretrial release that could mitigate the real and present threat posed by Snowden. Section 110-5 of the Code outlines the factors trial courts should consider in determining conditions of pretrial release. 725 ILCS 5/110-5 (West 2022). These factors include the nature and circumstances of the offense charged; the weight of the evidence against the defendant; and the history and characteristics of the defendant. *Id*. 110-5(a)(1)-(3) (West 2022).

¶ 35 Here, the trial court stated: " the fact that [Snowden] is accused of committing the offense of first degree murder is a large factor to consider. *** On balance, I think the major circumstance of the allegations against Ms. Snowden weighs very heavily in the Court's determination that I don't find that electronic monitoring or curfew or any other pretrial regime would mitigate the risk of harm that is alleged to exist."

¶ 36 The record reflects that in making its decision, the trial court properly considered the nature, seriousness, and circumstances of the offense charged. In light of the statutory factors and the State's proffered evidence, we cannot find that the trial court's determination that the State proved by clear and convincing evidence that there were no conditions or combination of conditions of pretrial release that could mitigate the real and present threat posed by Snowden, was arbitrary, fanciful, or unreasonable.

¶ 37 III. CONCLUSION

¶ 38 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 39 Affirmed.

¶ 40 JUSTICE OCASIO, dissenting:

¶ 41 I respectfully dissent from the decision to affirm the trial court's order denying Starisha N.

Snowden pretrial release. For the reasons persuasively articulated by Justice David Ellis in a recent concurrence, I believe that, when they do not depend on findings of historical fact, detention orders should be reviewed de novo. See *People v. Whitaker*, 2024 IL App (1st) 232009, ¶¶ 79-138 (Ellis, J. concurring). In this case, though, I do not believe the standard of review makes a difference, because the trial court's finding that the State had proven the facts necessary to deny pretrial release was against the manifest weight of the evidence.

¶ 42 When it overhauled the pretrial-release provisions of the Code of Criminal Procedure via the amendments collectively known as the Pretrial Fairness Act (see *supra* ¶ 2 & n.1), the General Assembly expressly and unambiguously provided that "[a]ll defendants"—including those, like Snowden, who are accused of committing heinous crimes—"shall be presumed eligible for pretrial release." 725 ILCS 5/110-6.1(e) (West 2022). That presumption can only be overcome if three things are true:

> "(1) the proof is evident or the presumption great that the defendant has committed [a detainable offense], ***
>
> (2) *** the defendant poses 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, *** and
>
> (3) no condition or combination of conditions [of pretrial release] can mitigate [that threat]." *Id.*

The standard of proof, moreover, is not a preponderance of the evidence. Instead, the State "bear[s] the burden of proving" each of these propositions "by clear and convincing evidence." *Id*. That heightened standard of proof requires evidence that "leaves no reasonable doubt in the mind of the trier of fact as to the truth of the proposition in question." *Chaudhary v. Department of Human Services*, 2023 IL 127712, ¶ 74. The point of requiring clear and convincing evidence is to err on the side of caution when unusually significant interests are at stake. See *In re D.T.*, 212 Ill. 2d 347,

362 (2004) (explaining that the burdened party "shoulders a greater share of the risk of an erroneous determination" under the clear-and-convincing standard of proof). The express requirement of clear and convincing evidence is an unmistakable signal from the legislature that pretrial release should only be denied based on proven threats, not speculative ones, and only when nothing short of imprisonment can mitigate that threat. The information proffered by the State simply did not permit the trial court to reasonably conclude that the State had met its high burden.

¶ 43 Here, the State proffered a series of specific facts tending to show that, following an argument with Roberts (her romantic partner of two years), Snowden armed herself with a knife and went looking for him at an apartment where his wife (who was separated from him) lived, pounded on the door, demanded to know where he was, tried to push her way into the apartment to find him, threatened to have her brothers locate him and "beat his ass," and then fatally stabbed him in the neck about fifteen minutes later when he showed up at the apartment building after his wife called him and asked him to take care of the situation. The only other information proffered by the State was that, in a separate incident that took place about six months earlier, Snowden stabbed Roberts in the neck after an argument. This information appears to justify the trial court's unchallenged conclusion that there was "evident" proof or a "great" presumption that Snowden murdered Roberts. But it does not explain how Snowden "poses a real and present threat to the safety of any person or persons or the community" or how that supposed threat could not be mitigated by any possible set of conditions that would accompany pretrial release.

¶ 44 First, the trial court found that Snowden "pose[d] a risk of harm" to the community. To be clear, although the majority deems that finding sufficient (*supra* ¶ 32), section 110-6.1 does not authorize detention based on a mere "risk of harm." Were that the standard, detention would be a foregone conclusion. There is always at least some general risk that a person charged with a violent

offense will engage in harmful behavior while on pretrial release. Undoubtedly aware that pretrial release always entails some degree of risk, the legislature specified which types of risks can justify detention: "real and present threat[s] to *** safety" that are "based on the specific articulable facts of the case." 725 ILCS 5/110-6.1(e)(1) (West 2022). Here, the specific facts of the case do not disclose that Snowden posed a real or present threat to anyone's safety. Every instance of criminal conduct, dangerous actions, or threatening behavior disclosed by the State's proffer was motivated by animosity that was specific to Roberts, who is now dead. The only time she put another person's safety at risk was when she tried to shove her way into Smith's apartment for the purpose of getting to Roberts. Her threat of violence was expressly targeted at Roberts, not at Smith. There is no evidence that she harmed Smith or that she harbored (or harbors) ill-will toward Smith. Indeed, there is no evidence that Snowden has ever harmed or tried to harm anybody other than Roberts or that she intends to do so now or in the future. It is entirely rational, of course, to worry that an accused murderer might hurt somebody else. But that speculative concern is generally applicable to any case involving a murder charge. It is not "a real and present threat *** based on the specific articulable facts of the case." 725 ILCS 5/110-6.1(e)(2) (West 2022). Had Roberts survived, the State's proffer would have justified a finding that she posed a threat to his safety. But he did not, and the State's proffer did not provide a basis for finding, by clear and convincing evidence, that she poses a similar threat to anybody else.

¶ 45 But there is no need to dwell on the question of dangerousness. Even assuming Snowden poses a real and present threat to anybody else, the State proffered not even a scintilla of evidence showing that the threat could not be mitigated by appropriate pretrial conditions. The majority certainly never identifies any such evidence, relying instead on the trial court's statements that "a large factor" was that Snowden had been charged with murder and that a "major circumstance"

was that "the allegations against [her] weigh[ed] very heavily" in its decision. The fact that Snowden has been charged with the serious offense of first-degree murder is obviously not good enough to show that no conditions of release could mitigate an alleged threat. "If the base allegations that make up the *sine qua non* of a violent offense were sufficient on their own to establish this element, then the legislature would have simply deemed those accused of violent offenses ineligible for release." *People v. Stock*, 2023 IL App (1st) 231753, ¶ 18. That does not mean that the facts of the offense cannot be relevant; they often will be. *Id.* But none of the facts proffered by the State spoke to the efficacy of potential release conditions. For instance, home confinement would seem to vitiate any threat Snowden might pose to the community at large. See 725 ILCS 5/110-10(b)(5) (West 2022). An order to not possess dangerous weapons might adequately mitigate the threat. *Id*. § 110-10(b)(2). The majority's concern that Snowden gets violent when drinking (see *supra* ¶ 32) could be addressed by ordering her not to possess or consume alcoholic beverages. See 725 ILCS 5/110-10(b)(9) (West 2022) (authorizing the court to fashion "other reasonable conditions" on a case-by-case basis). The State's proffer included nothing showing that these (or other) conditions would not effectively mitigate any threat to another's safety she might pose. It included nothing showing that she would not obey any condition of release that might be imposed. In short, "the analysis of whether the State met its burden of proof on this issue is a simple one because the State presented no evidence on this element." *Stock*, 2023 IL App (1st) 231753, ¶ 17. To affirm despite the patent failure of proof on this element is to reduce the manifest-weight standard to a mere "rubber stamp." *People v. Anderson*, 303 Ill. App. 3d 1050, 1057 (1999).

¶ 46 For the foregoing reasons, I would reverse the detention order and remand for the trial court to determine the appropriate conditions of pretrial release.