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2023 IL App (3d) 230489-U

Order filed December 22, 2023

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2023

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 18th Judicial Circuit, Du Page County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-23-0489
ZHANE TORESE BALL,)	Circuit No. 23-CF-803
Defendant-Appellant.)	Honorable Daniel P. Guerin, Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Holdridge and Justice Hettel concurred in the judgment.

ORDER

¶ 1 *Held:* The court abused its discretion in ordering pretrial detention.

¶ 2 Defendant, Zhane Torese Ball, appeals from the Du Page County circuit court's order granting the State's verified petition for pretrial detention, arguing, *inter alia*, the court erred in finding that she was a threat to the safety of any persons or the community. We reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 Defendant was arrested on April 14, 2023, and charged with burglary (Class 2) (720 ILCS 5/19-1(a) (West 2022)), retail theft exceeding \$300 (Class 3) (*id.* § 16-25(a)(1)), two counts of aggravated fleeing and eluding a peace officer (Class 4) (625 ILCS 5/11-204.1(a)(1), (4) (West 2022)), and five counts of misdemeanor endangering the life or health of a child (720 ILCS 5/12C-5(a)(1) (West 2022)). Defendant’s bail was initially set at \$200,000, but she remained in pretrial detention. On September 21, 2023, defense counsel filed a motion for pretrial release. In response, the State filed a verified petition to deny pretrial release, alleging defendant was charged with a felony offense which involved the threat of or infliction of great bodily harm or permanent disability or disfigurement, and her 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)).

¶ 5 The factual basis provided in the petition stated that officers were outside T.J. Maxx when they observed a vehicle that was registered to defendant. Defendant had an outstanding warrant for shoplifting and battery. They observed defendant enter the passenger side of the vehicle. The vehicle drove off and disobeyed a traffic signal. An officer activated his lights and sirens, but the vehicle fled at a high rate of speed in a residential neighborhood and disobeyed four stop signs. Throughout the chase, the vehicle traveled 70 to 80 miles per hour in a 40 or 45 mile per hour zone. Ultimately, the vehicle sideswiped a school bus, lost control, and rear-ended another vehicle, which caused the airbags to deploy and one occupant to go to the hospital. Officers arrested the driver, defendant, and a backseat passenger. Also inside the vehicle were five children ranging in age from 2 months to 10 years old. Officers searched the vehicle and found items belonging to T.J. Maxx. Security cameras at T.J. Maxx depicted defendant and a codefendant concealing over \$1700 worth of merchandise and exiting the store without paying.

¶ 6 Defendant’s criminal history report noted that she lived in Iowa City, Iowa. She had three active warrants for her arrest, including one in McLean County and two in Iowa. She had an extensive criminal history amassing five pages, including disorderly conduct for fighting or violent behavior in 2013 and 2022, assault causing bodily injury in 2013 and 2014, and a significant number of theft convictions.

¶ 7 A hearing was held on the petition on September 27, 2023. The State’s argument solely centered around the aggravated fleeing and eluding charge. It stated that the offense did result in injuries and provided a threat. As to whether defendant’s release posed a real and present threat to the safety of any persons or the community, the State noted that defendant had a lengthy criminal history, lived in Iowa without contacts in Illinois, and was a flight risk. When the court asked the State if they were alleging willful flight, the State said, “I didn’t check that box, but I would be additionally alleging willful flight.” Defense counsel argued that defendant was a passenger in the vehicle, and that it seemed “a stretch as to how she could even be found accountable for the actions of the driver in this type of circumstances.” Counsel stated that she did not know how the State was going to meet their burden as to the fleeing and eluding. Counsel further said that defendant “was pleading for [the driver] to stop.” As the State had not previously included willful flight in its petition, the court continued the hearing.

¶ 8 On October 5, 2023, the hearing on the State’s petition resumed. Defense counsel argued that defendant did not commit a detainable offense, was only a passenger of the vehicle, and tried to convince the driver to stop the vehicle. The court found that the State met its burden by clear and convincing evidence. It stated that the proof and presumption was great that defendant committed aggravated fleeing and eluding. It further found that defendant posed a real and present threat to the safety of any person, persons, or the community. In so holding, the court stated,

“I think driving—you know, being involved in a crime and charged with this in which the driving is the way I just read off posed a real and present threat to the people in the car, especially little children and especially after a school bus is sideswiped and you crash into somebody else. I mean, I don’t know how I find that that’s not a real and present threat to the safety of persons or the community.”

The court further looked to defendant’s criminal history and stated,

“[I]t looks to me like the Defendant commits these offenses one after the other, very short time periods in between. She’s convicted and arrested on the next one; she’s convicted and arrested on the next one. Like I said before, I think there’s 18 theft-related convictions running from 2014 through 2022. The reason I point this out and then the three outstanding warrants from Iowa, I just don’t feel that there’s a condition or a combination of conditions that would assure me—based on the facts of this case, that would mitigate enough to convince me not to detain her.”

However, the court found that the State did not prove by clear and convincing evidence that defendant had a high likelihood of willful flight.

¶ 9

II. ANALYSIS

¶ 10

On appeal, defendant contends that the court abused its discretion in granting the petition to detain where, *inter alia*, the State did not prove that defendant was a threat to the safety of any persons or the community. Questions regarding whether the circuit court properly considered the statutory factors in determining dangerousness are reviewed for an abuse of discretion. *People v. Inman*, 2023 IL App (4th) 230864, ¶ 10. We will not substitute our judgment for that of the circuit court regarding the weight of the factors or the evidence. *People v. Simmons*, 2019 IL App (1st) 191253, ¶¶ 9, 15. An abuse of discretion occurs when the circuit court’s decision is arbitrary,

fanciful, unreasonable, or no reasonable person would agree with the decision. *Inman*, 2023 IL App (4th) 230864, ¶¶ 10-11.

¶ 11 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). Section 110-6.1(g) states,

“Factors to be considered in making a determination of dangerousness. The court may, in determining whether 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, consider, but shall not be limited to, evidence or testimony concerning:

(1) The nature and circumstances of any offense charged, including whether the offense is a crime of violence, involving a weapon, or a sex offense.

(2) The history and characteristics of the defendant including:

(A) Any evidence of the defendant’s prior criminal history indicative of violent, abusive or assaultive behavior, or lack of such behavior. Such evidence may include testimony or documents received in juvenile proceedings, criminal, quasi-criminal, civil commitment, domestic relations, or other proceedings.

(B) Any evidence of the defendant's psychological, psychiatric or other similar social history which tends to indicate a violent, abusive, or assaultive nature, or lack of any such history.

(3) The identity of any person or persons to whose safety the defendant is believed to pose a threat, and the nature of the threat.

(4) Any statements made by, or attributed to the defendant, together with the circumstances surrounding them.

(5) The age and physical condition of the defendant.

(6) The age and physical condition of any victim or complaining witness.

(7) Whether the defendant is known to possess or have access to any weapon or weapons.

(8) Whether, at the time of the current offense or any other offense or arrest, the defendant was on probation, parole, aftercare release, mandatory supervised release or other release from custody pending trial, sentencing, appeal or completion of sentence for an offense under federal or state law.

(9) Any other factors, including those listed in Section 110-5 of this Article deemed by the court to have a reasonable bearing upon the defendant's propensity or reputation for violent, abusive, or assaultive behavior, or lack of such behavior."

Id. § 110-6.1(g).

¶ 12 Here, there was little to no indication that defendant was dangerous or a safety threat to any persons or the community. The predicate offense for the finding of dangerousness was aggravated fleeing and eluding, which is not a *per se* dangerous offense. See *id.* § 110-6.1(a). The circumstances of the offense did not show *defendant* acted dangerously or was a safety threat.

Defendant was a passenger in the vehicle who, according to the information presented at the hearing, repeatedly told the driver to stop during the chase. The majority of defendant's past criminal history related to theft charges, where she did not use a weapon. When considering the court's decision, it appears the finding of dangerousness was based entirely on the offense itself, without considering defendant's part in the offense or her individual threat to the safety of persons or the community. Taking the evidence before us, we find the court erred in finding defendant a safety threat to any persons or the community. Therefore, the court abused its discretion in granting the State's petition to detain. We, thus, remand for the circuit court to determine any conditions of defendant's release. See *id.* § 110-10. Considering our resolution of this issue, we need not consider defendant's alternative arguments.

¶ 13 In coming to this conclusion, we note that this resolution has no bearing on defendant's ability to be held accountable for the driver's action in this case. The question of accountability is separate from the question of an individual defendant's dangerousness for purposes of pretrial detention.

¶ 14 III. CONCLUSION

¶ 15 The judgment of the circuit court of Du Page County is reversed and remanded.

¶ 16 Reversed and remanded.