

NOTICE
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2024 IL App (4th) 240131-U

NO. 4-24-0131

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 28, 2024
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	McDonough County
ELTON SIMMONS,)	No. 24CF4
Defendant-Appellant.)	
)	Honorable
)	Heidi A. Benson,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Lannerd and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court, by failing to make the findings necessary to overcome the presumption for pretrial release, abused its discretion in detaining defendant.

¶ 2 Defendant, Elton Simmons, appeals the circuit court’s order denying his pretrial release under section 110-6.1(a)(4) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-6.1(a)(4) (West 2022)), hereinafter as amended by Public Acts 101-652, § 10-255 and 102-1104, § 70 (eff. Jan. 1, 2023), commonly known as the Pretrial Fairness Act. We reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 On January 12, 2024, defendant was charged with committing domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2022)), unlawful restraint (*id.* § 10-3), and aggravated assault (*id.* § 12-2(a)) on January 11, 2024.

¶ 5 That same day, the State filed a verified petition to deny defendant pretrial release under section 110-6.1(a) of the Code (725 ILCS 5/110-6.1(a) (West 2022)). The State did so by checking boxes on a preprinted form, asserting defendant was charged with domestic battery and posed a real and present threat to the safety of any person or persons, the proof was evident and the presumption great defendant committed an offense listed in section 110-6.1(a), and no condition or combination of conditions could mitigate that threat.

¶ 6 The circuit court held a hearing on the State’s petition. Defendant was “Present via Zoom.” At the hearing, the court stated, “[T]he State’s Attorney is going to give me a factual basis.” The State provided the following:

“[L]ast night around 10:20 in the evening[,] Officer Sturlic of the Macomb Police Department was dispatched to the area near *** an apartment complex here in Macomb, McDonough County, in regards to what was described as a female running away outside from a male carrying a knife.

Upon her arrival, she made contact with the complainant who informed her—the complainant was [the victim] and she had re-entered her apartment ***. As the officer was walking towards that apartment, the daughter of the victim, [J.L.], opened the door and asked for police to come in.

As the officer walked in, she could hear [the victim] crying and breathing heavily. In speaking with them, they learned that she had been assaulted and battered by her boyfriend, who is the Defendant. ***

[The victim] said that she was [lying] in bed with the Defendant, and she informed him that she no longer wanted to pursue their relationship. They were in a relationship. She said this upset him immensely. He began punching her multiple times on the side of her head. She was unable to escape. She was trying to but he dragged her down to the ground and was pulling her by her sweatshirt and by her hair. She was trying to kick him in an effort to *** get away from him but was unable to do so. Her sweatshirt was even pulled off of her body as she was trying to escape.

At this point her daughter [J.L.] heard the commotion and entered the room. She tried to pull the defendant off of her mother and was able to briefly stop him. At that point [the victim] closed the bedroom door. The Defendant *** went to the kitchen and grabbed a kitchen knife which they described as being long, rigid, having a silver blade and a black handle. ***

[The victim] further said that when she was in her room she held a potted plant over her head in case he came in to hit her on the head because she was scared for her life. He did come in with the knife and her daughter got involved again, intervened, and was able to grab onto the Defendant which hindered his pursuit of [the victim] at which point she was able to escape out of the room and out of the apartment and fled down the stairs into the common area of the apartment complex. It's in a complex with several different

buildings, several different apartments.

She began banging on multiple doors, yelling for help, and called 9-1-1. One of the neighbors *** stated that she was—[the victim] is banging on her door stating someone with a knife is trying to kill her. In the 9-1-1 call, which was apparently recorded, she stated if it weren't for my daughter I'd be dead.

As this happened, *** the Defendant chased [the victim] with the knife throughout the parking lot and the common areas on the outside of the apartment complex.

*** [T]he Defendant took her car and began traveling on U.S. 67. ***

When deputies activated their emergency lights and sirens behind the vehicle, it was traveling over the posted speed limit, went into the City of Macomb at which point deputies terminated their lights and sirens for safety reasons. ***

At that point the officer, Ms. Sturlic, went back to the hospital *** to meet with [the victim]. She was wearing a neck brace and was bleeding from her head and had some other injuries. She appeared very frightened and said that she was afraid the Defendant was going to return and harm her and stated that she said the only place she could know where he would go would be one place in Galesburg. So they relayed that information to the [hospital].

After going back to the police station, [J.L.] called again *** [and] wanted to speak with the officer. She stated the Defendant had called twice. The first time he called her he demanded that she tell him where [the victim] was at which time she hung up the phone. He called again and she refused to answer.

At that point the officer called the number that was calling [J.L.] and a male answered the phone but stated he was not [defendant]. However, later she received a call from the same male stating it was [defendant] and he wanted to report a theft that [the victim] allegedly had committed ***.”

¶ 7 After the State concluded the factual basis, the circuit court said the following: “The Court would find probable cause. The Court has the [Ontario Domestic Assault Risk Assessment (ODARA)] and the Pretrial Bond Report. What is the State’s recommendation for bond? Or what is the State’s position with regard to detention?” The State responded defendant needed to be detained.

¶ 8 The circuit court asked defense counsel, who was appointed to represent defendant, for her argument in response to the State’s petition. Defense counsel responded by informing the court she spoke with defendant at the jail. At that meeting, defendant asked counsel to perform a task outside of her duty as a public defender. After counsel said she could not assist him with that matter, defendant said he did not want her assistance. The court asked defendant if he wanted a public defender. He said he did. The court then appointed the same counsel and asked her for her argument in response to the State’s petition. Because defendant refused to assist her, counsel requested a continuance.

¶ 9 The circuit court granted the State’s petition. The court stated only the following before ordering defendant detained:

“Well, at this point I’m going to order him to be detained. I do believe that the ODARA is one of the highest ODARAs I’ve ever seen. And the entire incident is pretty concerning, including the alleged trying then to contact or find the victim after she was at the hospital.”

¶ 10 The circuit court entered a written order by completing a form entitled, “Order for Detention and/or Pretrial Conditions.” The court first checked a box indicating it found defendant “is charged with a felony offense and the Court has determined there is probable cause the defendant has committed an offense.” The next box checked indicates a finding “defendant is charged with domestic battery or aggravated domestic battery, and it is alleged that the defendant’s release 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.” The last box checked before the court’s order detaining defendant is “Pretrial detention is necessary and cannot be avoided because:” after which the court wrote, “Defendant’s actions and his attempts to return to the victim show that no set of conditions can keep the victim or other people in the community safe.” The court further ordered defendant have no contact with the victim or J.L.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 This court reviews a circuit court’s decision regarding pretrial release for an abuse of discretion. *People v. Inman*, 2023 IL App (4th) 230864, ¶ 11. We will find an abuse of discretion has occurred when a circuit court’s decision is unreasonable, arbitrary, or fanciful or

when we find no reasonable person would agree with that decision. *Id.* ¶ 10. An abuse of discretion will also be found when a circuit court, while weighing the facts, fails to apply the proper criteria. *People v. Jones*, 2023 IL App (4th) 230837, ¶ 30.

¶ 14 Section 110-6.1(e) plainly provides all criminal defendants are presumed eligible for pretrial release and such release may be denied when the State proves “by clear and convincing evidence” factors listed under that same subsection. 725 ILCS 5/110-6.1(e) (West 2022). The State has alleged defendant, who is charged with domestic battery, should be detained under the dangerousness standard. Among the factors relevant to defendant’s circumstances, the State must prove by clear and convincing evidence “the proof is evident or the presumption great that the defendant has committed an offense listed in subsection (a)” (*id.* § 110-6.1(e)(1)), “defendant poses a real and present threat to the safety of any persons or persons ore the community” (*id.* § 110-6.1(e)(2)), and no condition or combination of conditions can mitigate that threat (*id.* § 110-6.1(e)(3)).

¶ 15 Section 110-6.1(h) sets forth requisites for written orders denying pretrial release. *Id.* § 110-6.1(h). Under this section, a detention order must contain a summary of “the court’s reasons for concluding that the defendant should be denied pretrial release.” *Id.* § 110-6.1(h)(1).

¶ 16 Neither the circuit court’s oral ruling at the detention hearing nor the written order show the court made the requisite findings before ordering defendant detained. We are mindful of the presumption circuit courts know, follow, and apply the law (see *Inman*, 2023 IL App (4th) 230864, ¶ 14). However, the court’s written findings here, and the absence of any oral findings establishing otherwise, render the presumption inapplicable. In its written order, the court found only “probable cause” for the charged offense, checking a box to indicate the finding. There were no boxes for the consideration or finding the State proved by clear and convincing evidence

“the proof is evident or the presumption great that the defendant has committed an offense listed in subsection (a)” (725 ILCS 5/110-6.1(e)(1) (West 2022)). While the State checked such a box alleging this factor in its verified petition, it was not mentioned at the hearing. Nor was the State’s burden to prove that factor. Moreover, the preprinted order contains no finding the State clearly and convincingly proved defendant was a threat to a person or persons or the community (see *id.* § 110-6.1(e)(2)). At best, the form indicates only the defendant was charged “with domestic battery ***”, and *it is alleged* that the defendant’s release 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.” (Emphasis added.) Again, no oral finding was made at the detention hearing.

¶ 17 As the record gives no support to the conclusion the circuit court considered the proper criteria, specifically section 110-6.1(e), before ordering defendant detained, we find the circuit court abused its discretion. We thus reverse and remand for proceedings consistent with section 110-6.1 and this order.

¶ 18 III. CONCLUSION

¶ 19 We reverse the circuit court’s judgment.

¶ 20 Reversed.