

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) 231378-U
NO. 4-23-1378
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
February 8, 2024
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the
Plaintiff-Appellee,) Circuit Court of
v.) McLean County
MOHAMMED ABDUL SALAM,) No. 23CF1142
Defendant-Appellant.)
) Honorable
) Scott Kording,
) Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Presiding Justice Turner and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held:* By finding, by clear and convincing evidence, that no condition or set of conditions would prevent defendant from repeating the Class A misdemeanor of violating a no-contact order and by revoking defendant’s pretrial release for that reason, the circuit court did not abuse its discretion.

¶ 2 Defendant, Mohammed Abdul Salam, appeals from an order of the McLean County circuit court revoking his pretrial release. Because we find no abuse of discretion in the revocation, we affirm the judgment.

¶ 3 **I. BACKGROUND**

¶ 4 On November 13, 2023, the State filed an information against defendant. The information had three counts. Count I charged him with attempt (aggravated arson) (see 720 ILCS 5/8-4, 20-1.1 (West 2022)) in that on November 9, 2023, he allegedly threw flammable liquid on the floor of 13 Brownstone Court, Bloomington, Illinois, and while brandishing a cigarette lighter,

threatened to set the house on fire. On the same alleged facts, count II charged him with attempt (residential arson) (*id.*). Count III charged him with domestic battery (see *id.* § 12-3.2(a)(2)) in that he threw some of the flammable liquid upon Sana Salam.

¶ 5 Defendant was taken into custody on these charges. Pursuant to article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/art. 110 (West 2022)), hereinafter as amended by Public Act 101-652 (eff. Jan. 1, 2023), commonly known as the Pretrial Fairness Act, the State petitioned for the denial of pretrial release. In the hearing on the petition, the evidence tended to show the following. Defendant and Sana Salam were married. On November 9, 2023, in the marital residence, defendant confronted her because she had been discussing their marital issues with her sister instead of with him. When Sana Salam refused to engage with him in an argument, he went to the garage and returned with a bottle filled with gasoline. He poured the gasoline onto the kitchen floor and splashed some of the gasoline on Sana Salam. Then, holding a cigarette lighter near the spilt gasoline, he demanded that she talk with him. The couple's four children, aged 15, 11, 5, and 4, were in the house. When the police entered the house, they smelled a strong odor of gasoline. Defendant explained to the police that he never intended to set the house on fire but that he merely wanted to get his wife's attention and compel her to talk with him. He admitted that, on a previous occasion, he struck her with a belt.

¶ 6 On November 13, 2023, the circuit court entered an order denying the State's petition to deny pretrial release. Nevertheless, the court imposed upon defendant some conditions of pretrial release. The mandatory conditions included appearing in court to answer the charges, submitting to the orders and process of the court, and refraining from violating any criminal statute. See 725 ILCS 5/110-10(a)(1), (2), (4) (West 2022). The discretionary conditions included refraining from having contact with Sana Salam and the children (except for telephonic

communication with Sana Salam), reporting immediately to the McLean County Court Services Office and complying with all reporting requirements imposed by that office, undergoing a mental health evaluation and following all resulting recommendations, and refraining from having any contact with the marital residence. See *id.* § 110-6(b). According to the order, however, defendant was “permitted to return to the [marital] residence one time in the presence of law enforcement to retrieve personal belongings (pre-arranged with law enforcement).”

¶ 7 On November 15, 2023, the State filed a petition to revoke pretrial release. In the hearing on this petition, the evidence tended to show the following. On November 13, 2023, at 9 p.m., without being accompanied by a police officer, defendant went to the marital residence, took possession of a car, and drove the car to a hotel. Defense counsel explained in the hearing that defendant needed the car and items in the car, namely, a work cell phone and a charger for his laptop, so that he could inform his manager that he needed time off. According to the circuit court’s remarks in the hearing, the evidence showed that defendant had attempted to go into the residence. (The record on appeal includes an audio recording of the hearing. The judge’s remarks in the hearing are clear and intelligible, but the attorneys’ remarks are garbled and hard to make out. Therefore, we are unable to confirm, from the prosecutor’s oral proffer of evidence, that defendant tried to go into the residence.) Defendant was charged with violation of pretrial release.

¶ 8 On November 15, 2023, the circuit court granted the petition to revoke pretrial release.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 As applicable here, section 110-6(a) of the Code provides that “pretrial release may be revoked only if the defendant is charged with a felony or Class A misdemeanor that is alleged

to have occurred during the defendant's pretrial release." *Id.* § 110-6(a). Thus, a precondition of revoking pretrial release is that a charge has been filed against the defendant for a felony or a Class A misdemeanor that the defendant allegedly committed during his pretrial release. That condition appears to exist in the present case. In the revocation hearing, the prosecutor informed the circuit court that because of the events of November 13, 2023, the State had charged defendant with violating a condition of pretrial release. It appears that this new charge would be a Class A misdemeanor. See 720 ILCS 5/32-10(b) (West 2022). Thus, defendant "is charged with a felony or Class A misdemeanor that is alleged to have occurred during [his] pretrial release." 725 ILCS 5/110-6(a) (West 2022).

¶ 12 A defendant's being charged with a new Class A misdemeanor or felony is not enough to justify the revocation of pretrial release. The State also must carry its burden of proof under section 110-6(a), which provides as follows:

"The court before which the previous felony matter or Class A misdemeanor is pending may revoke the defendant's pretrial release after a hearing. During the hearing for revocation, the defendant shall be represented by counsel and have an opportunity to be heard regarding the violation and evidence in mitigation. The court shall consider all relevant circumstances, including, but not limited to, the nature and seriousness of the violation or criminal act alleged. The State shall bear the burden of proving, by clear and convincing evidence, that no condition or combination of conditions of release would reasonably ensure the appearance of the defendant for later hearings or prevent the defendant from being charged with a subsequent felony or Class A misdemeanor." *Id.*

So, in the hearing on the petition for the revocation of pretrial release, the State must prove, by clear or convincing evidence, either of two propositions: (1) no condition or combination of conditions of pretrial release would reasonably ensure the defendant's appearance at later hearings or (2) no condition or combination of conditions would prevent the defendant from being charged with yet another Class A misdemeanor or felony.

¶ 13 Because we review pretrial detention orders for an abuse of discretion, the question for us is whether a finding, by clear or convincing evidence, of either (1) or (2) is reasonably defensible. See *People v. Inman*, 2023 IL App (4th) 230864, ¶¶ 10-11. No claim was made that defendant was apt to skip hearings, so this case comes down to (2)—which we do not decide anew. It is important to understand that our standard of review is deferential. Our mere disagreement with a circuit court's decision to put a defendant in pretrial detention would not justify our calling the decision an abuse of discretion. See *id.* ¶ 11. Instead, the decision is an abuse of discretion only if the decision is “arbitrary, fanciful[,] or unreasonable” or only if “no reasonable person would agree with the position adopted by the [circuit] court.” (Internal quotation marks omitted.) *Id.* ¶ 10. If, given the evidence, the decision has some arguable logic that a reasonable mind *could* accept, we should defer to the decision, debatable though it might be.

¶ 14 Defendant maintains that, for two reasons, the circuit court's revocation of his pretrial release is not reasonably defensible.

¶ 15 First, defendant points out that, under section 110-6(a), the circuit court must consider “the nature and seriousness of the violation or criminal act alleged.” 725 ILCS 5/110-6(a) (West 2022). In the legislative classification of seriousness, violating a condition of pretrial release is a misdemeanor instead of a felony. The violation charged in this case involved no violence, no weapon, and no threat. Instead, as defendant explains, he “was attempting to secure his vehicle

and his belongings in order to contact his work manager, and to ensure further compliance with all pretrial release conditions, such as attending pretrial services, mental health evaluations, and all future hearings.” Without transportation, not only would he fall afoul of the circuit court, but he might lose his job and his ability to support his wife and their four children.

¶ 16 Defendant makes some valid points here—which, however, the release conditions order anticipated by providing that he could return to the marital residence to pick up his belongings if he were accompanied by a police officer. Defendant offers no excuse for failing to arrange for a police escort when he went to the marital residence to accomplish the apparently necessary tasks of picking up the car, his work cell phone, and his charger. Granted, this violation of not prearranging for the presence of the police might seem rather trivial compared with a felony. Even so, section 110-6(a) required the circuit court to consider not only “the nature and seriousness of the violation” but also “all relevant circumstances.” *Id.* Arguably, a relevant circumstance was the attempted arson that preceded the violation of the pretrial release condition. Although defendant assured the police he had no intention of setting the house on fire (with his wife and their children in it), the court could have decided, understandably, that it would be unwise not to take defendant’s deeds seriously, particularly his dumping gasoline on the kitchen floor and menacingly holding a cigarette lighter over the puddle of gasoline. In finding that, despite this alarming conduct, a real and present danger to Sana Salam and the children was unproven by clear and convincing evidence (see *id.* § 110-6.1(e)(2)), the court could have reasoned that a no-contact order would alleviate the danger and that, so far, there was no objective basis for supposing that defendant would violate such an order. The latest incident, in which defendant did just that—disobeyed the no-contact order—destroyed this critical presupposition, thereby changing the calculus.

