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2024 IL App (3d) 240139-U

Order filed June 25, 2024

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2024

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-24-0139
JUAN J. BASURTO,)	Circuit No. 24-CF-118
Defendant-Appellant.)	Honorable David J. Carlson, Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justice Davenport concurred in the judgment.
Justice Hettel dissented.

ORDER

¶ 1 *Held:* The trial court’s decision to detain defendant was not an abuse of discretion.

¶ 2 The defendant, Juan J. Basurto, appeals from his pretrial detention, arguing the State failed to meet its burden of proving that defendant was dangerous and that no conditions could mitigate the risk he posed.

¶ 3 I. BACKGROUND

¶ 4 The defendant was indicted on January 25, 2024, with aggravated battery causing great bodily harm (Class X) (720 ILCS 5/12-3.05(e)(1), (h) (West 2022)), aggravated discharge of a firearm (Class 1) (id. 24-1.2(a)(2), (b)), aggravated unlawful use of a weapon (Class 4) (id. 24-1.6(a)(1), (a)(3)(A), (a)(3)(C)), and reckless discharge of a firearm (Class 4) (id. 24-1.5(a), (c)). The State filed a verified petition to detain alleging the defendant was charged with enumerated felonies, 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)(6) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-6.1(a)(6) (West 2022)).

¶ 5 The factual basis provided that on August 3, 2023, the 17-year-old victim was outside with some friends, when he saw an SUV circle his home. Jeremiah Martin approached and seemed to be baiting the victim into a fight. Then an individual in the SUV, later determined to be the defendant, shot the victim in the back. The victim was taken to the hospital and made a full recovery. At the hospital the victim told police officers to “fuck off” and said he would not be able to identify anyone. Multiple witnesses identified the defendant as the shooter. Martin stated that the victim pulled a gun. One witness stated that the victim may have gone inside to retrieve a firearm, but she did not see him with a gun and no one else present saw the victim with a firearm. A pretrial risk assessment indicated that the defendant was a Level 2 risk, with Level 6 being the highest possible risk. He was 18 years old and had a juvenile offense from 2022 for possession of a handgun for which he was on probation at the time of the offense. He was also on court supervision for driving without a license.

¶ 6 A hearing was held on February 8, 2024. The State provided the factual basis and argued the defendant was a danger to the community and had the ability to access firearms. Defense counsel argued that the defendant acted in self-defense and the injury to the victim was not life-

threatening. Counsel stated the defendant had a daughter after the incident occurred, after which he “disassociated himself with many of the people that he was hanging out with before.” Counsel asked that the defendant be placed on electronic monitoring.

¶ 7

The court granted the State’s petition. In doing so, it stated,

“I can tell you this, I take a lot of issue with the idea that the State comes in and tells me that there is some sort of real and present threat when it takes them six months to charge a case when there’s identification, when there’s all sorts of things that go along with it.

I also understand the process to a certain extent. And quite frankly, the alleged victim in this matter should probably be in front of me as well.

That being said, solely on the basis that he—that [the defendant] quite frankly, and the victim as well, both of them present threats to the community at large.

I am not going to find that [the defendant] presents a threat to the alleged victim, because I think there is something to be said about that, *** but it’s also my responsibility to protect the community.

So what I’m going to show is that by clear and convincing evidence, it’s a detainable offense, and that the facts presented at least established to this Court that there is a real and present threat to the community by the actions of someone who has already had a previous gun case shouldn’t be carrying a gun to begin with. What his actions are, that’s for another day and another time, okay.”

The court’s written order indicates that it found the defendant dangerous and that no less restrictive conditions would avoid a real and present threat to the safety of the community based on (1) the

nature and circumstances of the offenses, (2) the defendant’s prior criminal history, (3) the nature of the threat, (4) the defendant was known to possess or have access to weapons, and (5) the defendant was on probation at the time of the offense.

¶ 8

II. ANALYSIS

¶ 9

On appeal, the defendant argues that the State failed to meet its burden of proving that defendant was dangerous and that no conditions could mitigate the risk he posed. The defendant further challenges the court’s findings. We consider whether factual findings are against the manifest weight of the evidence, but the ultimate decision to grant or deny the State’s petition to detain is reviewed 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.

¶ 10

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(a), (e). Sections 110-5(a) and 110-6.1(g) set forth factors for the court to consider when determining dangerousness and any conditions. *Id.* §§ 110-5(a), 110-6.1(g).

¶ 11

Here, the evidence presented indicated that the defendant shot the victim in the back, with multiple other people around. He also had a previous offense for possessing a firearm. Based on this, we cannot say that it was against the manifest weight of the evidence to find the defendant

was dangerous. Moreover, the State presented argument and evidence as to some of the factors in section 110-5(a), including the nature and circumstances of the offense, the nature and seriousness of the real and present threat, and the fact that the defendant had access to firearms. The court specifically noted that the defendant had a previous case for possessing a firearm. The written order further indicated the factors the court considered in making its decision, including that the defendant was on court supervision and probation at the time of the offense and had access to firearms. Considering that the defendant had conditions already placed on him by his sentences to court supervision and probation but failed to follow them, the court could have determined that he was unlikely to comply with any further conditions. This was not against the manifest weight of the evidence. Therefore, the court did not abuse its discretion by detaining the defendant.

¶ 12 The judgment of the circuit court of Will County is affirmed.

¶ 13 Affirmed.

¶ 14 JUSTICE HETTEL, dissenting

¶ 15 I respectfully dissent from the majority's conclusion in this case because the circuit court failed to address whether less restrictive conditions of release would mitigate defendant's threat to the victim and community.

¶ 16 Here, the evidence presented by the State at the pretrial detention hearing established that defendant committed a forcible felony and was a danger to the victim and others in the community. Defense counsel argued that electronic monitoring and home detention were reasonable alternatives to pretrial detention. The State did not respond to that contention, and the circuit court did not address it in its ruling.

¶ 17 When a trial court enters a pretrial detention order, it must explain why less restrictive conditions would not mitigate the defendant's threat to the victim or the community. See *Castillo*,

2024 IL App (1st) 232315, ¶ 33. Here, not only did the circuit court fail to explain why less restrictive conditions would not mitigate defendant's threat to the victim or community, the trial court failed to mention that it even considered alternatives to pretrial detention. Thus, I would vacate the court's detention order and remand this matter to the circuit court, instructing it to consider alternatives to detention and explain why those alternatives will or will not mitigate defendant's threat to the victim and community. See *id.*