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2023 IL App (3d) 230464-U

Order filed December 27, 2023

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2023

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. 3-23-0464
)	Circuit No. 23-CF-1804
ERIC W. HAMILTON,)	Honorable
Defendant-Appellant.)	Arkadiusz Z. Smigielski, Judge, Presiding.

JUSTICE PETERSON delivered the judgment of the court.
Justice Albrecht concurred in the judgment.
Justice McDade dissented.

ORDER

¶ 1 *Held:* The State satisfied its burden of proof that no conditions of bond could mitigate the defendant's threat of dangerousness and thus the court did not abuse its discretion by denying pretrial release.

¶ 2 Defendant, Eric W. Hamilton, was charged on September 24, 2023, with aggravated battery (Class 2) (720 ILCS 5/12-3.05 (West 2022)), aggravated assault (Class 4) (*id.* § 12-2), criminal damage to government supported property (Class 4) (*id.* § 21-1.01(a)(1), (c)), resisting a peace officer (*id.* § 31-1(a), (a-5)), and two counts of domestic battery (*id.* § 12-3.2(a)(1), (2), (b)).

On September 25, 2023, the State filed a verified petition to deny pretrial release, alleging defendant was charged with domestic battery, 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)(4) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-6.1(a)(4) (West 2022)).

¶ 3 The factual basis provided in the petition stated that officers were dispatched to a domestic battery. Upon arrival, they met with defendant's stepfather, who indicated that he and defendant had a verbal argument. Defendant ultimately charged at his stepfather, causing him to fall and injure his thumb. Defendant had stated that he intended to burn the house down with family members inside when he returned. Defendant was apprehended approximately one hour later and was transported to the Crest Hill Police Department. When they arrived, defendant began kicking the squad car door. "Defendant then began making suicidal statements and was acting out and hitting his head on a steel bench." Officers tried to calm defendant down when he took the handset of the phone, slammed it down, and then stood up and pulled the phone and cord from the wall, which nearly struck an officer. Defendant then made a fist with his right hand and pulled back as if he was going to punch the officer. Officers attempted to restrain defendant, but he resisted. Based on the suicidal statements, defendant was transported to the hospital. He claimed he was HIV positive and had hepatitis. He later spit on a hospital security guard's face. Defendant was on parole at the time of the offense. Defendant also had a criminal history, which included multiple offenses for domestic battery. A risk assessment listed him at a moderate-high risk level.

¶ 4 A hearing was held on the petition on September 25, 2023. The State discussed defendant's extensive criminal history. Defense counsel stated that defendant would have no problem eliminating contact with his stepfather and would not be a flight risk. The court granted the State's petition finding the State met its burden by clear and convincing evidence. It stated that the proof

and presumption was great that defendant committed the offenses. It also found that defendant was dangerous and had a high likelihood of willful flight, and there were no conditions that would mitigate this. The court noted that defendant spit on an employee at the hospital that sought to help him and had a history of similar conduct as it relates both to law enforcement and family members. Regarding whether there were any conditions that could mitigate the risk if defendant were placed on pretrial release, the court also noted:

“I do not believe that there are conditions that can mitigate the defendant’s conduct. I believe the State has shown by clear and convincing evidence he was effectively in custody and was still both able to make a threat and make actions to try and impose or fulfill the threats he was making. So, no, while in custody, he’s still causing or attempting to cause harm to people.”

¶ 5 On appeal, defendant solely contends that the State failed to prove that no conditions could mitigate his threat of dangerousness. We consider factual findings for the manifest weight of the evidence (*People v. \$280,020 in United States Currency*, 2013 IL App (1st) 111820, ¶ 18), but the ultimate decision to grant the State’s petition to detain is considered for an abuse of discretion (*People v. Inman*, 2023 IL App (4th) 230864, ¶ 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(e).

¶ 6 We find the court did not err in granting the petition. As the court found, defendant was a danger to all around him, including employees at the hospital who sought to help him. He had an extensive history of violent behavior toward his family and police officers. Additionally, the court noted defendant continued making threats and attempting to harm others while in police presence. Considering the evidence before it, we cannot say that the court erred in finding defendant’s dangerousness could not be mitigated by any conditions.

¶ 7 In coming to this conclusion, we reject defendant’s contention that the court did not consider any alternative conditions. There is no requirement that the court explicitly state and reject each potential condition on the record; however, the court must still provide an explanation why less restrictive conditions would not mitigate the risk of flight or the threat to the safety of any person or the community. 725 ILCS 5/110-6.1(h)(1) (West 2022); *People v. Stock*, 2023 IL App (1st) 231753, ¶20. This explanation did occur here, when the court found that being in police custody the night of his arrest still could not mitigate the risk of defendant continuing to be a threat to the community.

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

¶ 9 Affirmed.

¶ 10 JUSTICE McDADE, dissenting:

¶ 11 I dissent from the finding of the majority that defendant has been proven by the State to merit denial of release in this case.

¶ 12 The default position of this new legislation in Illinois is that persons charged with crime should be released pending trial. If the State believes that a different result is necessary, it has an affirmative obligation to plead and prove three things by clear and convincing evidence: (1) that defendant committed the charged crime, (2) that defendant either (a) posed a danger to himself or

others *or* (b) was a significant flight risk, and (3) that there are no conditions that the court could impose that would mitigate defendant's threat of harm or likelihood to flee and escape justice.

725 ILCS 5/110-6.1 (West 2022).

¶ 13 At issue in this case is defendant's claim that the State failed to meet its burden of proving there were no conditions which would allow him to be released. While the State presented clear and convincing evidence that he exhibited multiple instances of danger to persons around him, thereby addressing its second statutory obligation, that showing neither addresses nor carries its burden on its third obligation. The State advanced only a conclusory assertion—which is not evidence—and the court found, without evidence, that it had proven that defendant could not be released. While I do not believe the statute requires the State to cover every possible condition, it does contemplate the presentation of evidence on typical and/or relevant conditions that apply to a given defendant's circumstances.

¶ 14 Further, the majority, in effect, shifts that burden to the court and finds it satisfied even without presentation of requisite evidence by the State. Significantly, that process also thwarts this court's ability to properly review the decision because it gives us nothing to determine what evidence, if any, was presented by the State in satisfaction of its third statutory obligation, what the trial court considered, and whether the manifest weight of that evidence clearly and convincingly supported its conclusion.

¶ 15 The legislation's approach to pretrial release is new and the 14-day window imposed on us by the General Assembly for resolving these appeals is challenging. It is, therefore, incumbent on us to ensure from the outset that the duties of the State and the trial courts are clear so that on appeal we can assess compliance with the statutory goal with an appropriate record and in a timely manner.