2024 IL App (3d) 240130-U

Order filed July 10, 2024

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2024

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 18th Judicial Circuit,
	)	Du Page County, Illinois.
Plaintiff-Appellee,	)	
	)	Appeal No. 3-24-0130
v.	)	Circuit No. 24-CF-80
	)	
JUAN C. ONTIVEROS,	)	The Honorable
	)	Daniel P. Guerin,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE McDADE delivered the judgment of the court.
Justice Hettel concurred in the judgment.
Justice Holdridge dissented.

ORDER

¶ 1 *Held*: The defendant's appeal from the circuit court's order requiring continued pretrial detention is dismissed.

¶ 2 The defendant, Juan C. Ontiveros, was charged with armed robbery (720 ILCS 5/18-2(a)(2) (West 2022)). The State filed a verified petition to deny pretrial release, alleging in part that Ontiveros' 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)). Ontiveros filed a motion for pretrial release. After a hearing, the circuit court granted the State's petition. Thirty days later, Ontiveros filed a motion to reconsider and a second motion seeking pretrial release. The court held a hearing at which only the motion to reconsider was addressed. At the close of the hearing, the court denied "the defense motion for pretrial release." Ontiveros appealed, arguing that the court erred when it found that electronic home monitoring would not mitigate any safety threat he posed. We dismiss this appeal for lack of jurisdiction.

¶ 3 I. BACKGROUND

¶ 4 The State's verified petition provided the following factual basis in support of its argument requesting the denial of pretrial release. On January 16, 2023, officers were dispatched to investigate a reported robbery. Upon arrival, officers spoke with the six victims who indicated that they were in a musical band based in California and were staying at a short-term homestay (Airbnb). The band came to Chicago two to three times a year to perform around the Chicagoland area. On this particular night, the band members were returning to their Airbnb when four or five individuals wearing ski masks and dark clothing ordered them out of their rental car at gunpoint, moved them to the front of the vehicle, ordered them to empty their pockets, moved them to the backyard, and ordered them to get on their knees, threatening to shoot them if they moved. One of the offenders taped the legs of one victim together and asked where the backpack was. Another offender "pistol-whipped" one of the victims in the head after he had pressed the emergency button on his phone. The offenders stole the backpack, which contained $9,400 cash and a camera valued at $5,100. Detectives reviewed Ring Camera, red light camera, video surveillance, and license plate reader cameras from the route the victims took that night and observed two vehicles following them.

¶ 5 On May 18, 2023, detectives re-interviewed one of the victims who had reported that he wanted to share additional information. He advised that, in the past, the band had worked with Siquem Ascencio, a promoter who was typically paid by the number of tickets and amount of alcohol sold at the venue. Ascencio had booked the band for two performances the weekend of the incident, but the band had decided not to use him as their promoter. The victim stated that, days before the armed robbery, Ascencio had called and asked where the band was performing, how much money the band would be earning, and where they were staying. The band did not believe the call was suspicious at the time, but later thought Ascencio may have been upset.

¶ 6 Through the investigation, detectives located the vehicles that had been following the victims the night of the incident. One of the vehicles belonged at the residence of Kevin Aguilar. A search warrant of Aguilar's phone determined that on the night of the incident, Aguilar made phone calls to Ontiveros and Ascencio around the time of the robbery. Ontiveros and the rest of the suspects were taken into custody. Ontiveros admitted knowing Aguilar but stated that he had not spoken with him in "a while." He claimed it was merely a coincidence that his vehicle and Aguilar's vehicle were driving in tandem with each other on the night of the incident. Later, Ontiveros admitted that Aguilar had asked him to follow the band's vehicle. Ultimately, Ontiveros admitted that, on either January 14 or 15, 2023, he had received a call from Aguilar, who told Ontiveros that he had been hired to do a "job" and needed Ontiveros' help in following the band's vehicle. According to Ontiveros, Aguilar told him that the band was going to have $30,000 in cash and that he had been hired to rob them. Ontiveros admitted to following the band for two nights and, specifically, to following the band back to the Airbnb, where they were robbed. Per Ontiveros, he, Aguilar, and another man had followed the band. Ontiveros denied being paid for his participation in the armed robbery.

¶ 7 A pretrial risk assessment indicated that Ontiveros was a low risk. He was employed full-time and rented the basement apartment of his father's home. He denied having substance abuse or mental health issues. Further, he had no criminal history.

¶ 8 Ontiveros filed a motion for pretrial release, and the circuit court held a hearing on the pretrial-release issue on January 12, 2024. The State provided a factual basis consistent with the one it attached to its petition to deny pretrial release. After it finished, the State asked, in part, for the court to find that no condition or combination of conditions could mitigate the safety threat that Ontiveros posed. The request was conclusory; the State provided no argument regarding its request.

¶ 9 Defense counsel argued that Ontiveros "was just a fall guy, a tool, somebody they used to do this." Counsel emphasized that Ontiveros did not have a firearm, did not rob anyone, did not hit anyone or tie anyone up, was not at the scene of the robbery, and was not a getaway driver. Counsel also argued that Ontiveros might have some cognitive impairment and had no criminal history. Counsel also presented certificates he had received in 2015 when he was in high school, and noted Ontiveros was employed and had significant contacts with the community. Counsel requested the court to place Ontiveros on electronic monitoring.

¶ 10 The circuit court found, among other things, that Ontiveros was "not only a danger to those persons that were victimized in this case, but also a danger to the community and anyone in the community that the defendant may become aware of that has a large amount of cash on them." The court also found that "the fact that [Ontiveros] and his co-defendants chose a residential neighborhood as the setting for this crime poses a particular danger not only to those persons that were victimized, but the community." After finding the applicable statutory

elements proven by clear and convincing evidence, the court granted the State's petition to deny pretrial release.

¶ 11 Approximately two weeks after the hearing, Ontiveros and three co-defendants were charged by superseding indictment with 12 counts of armed robbery, 6 counts of aggravated robbery (720 ILCS 5/18-1(b)(1), (c) (West 2022)), 12 counts of aggravated kidnapping (*id.* § 10-2(a)(4), (a)(6), (b)), 4 counts of aggravated battery (*id.* § 12-3.05(f)(1), (f)(2), (h)), and 6 counts of aggravated unlawful restraint (*id.* § 10-3.1(a), (b)).

¶ 12 On February 13, Ontiveros filed two motions: a motion to reconsider the initial pretrial-detention order and a second motion for pretrial release. The circuit court held a hearing on the motions on February 16. At the outset of the hearing, the court noted that defense counsel had filed a motion to reconsider, which it had reviewed. The parties then proceeded on that motion. Defense counsel essentially repeated the arguments he made at the initial detention hearing. The State discussed the factual basis and added that the only change in circumstances that had occurred since the initial hearing was that, due to the superseding indictment, Ontiveros was now facing 40 counts instead of just one.

¶ 13 In issuing its oral ruling, the circuit court cited to *People v. Casey*, 2024 IL App (3d) 230568, and stated that it was only required to make a finding as to whether it was necessary to order Ontiveros' continued detention. After reviewing the findings from the initial hearing, which was heard by a different judge, the court concluded that "[the co-defendants] wouldn't have been able to do the crime as easily if the defendant hadn't surveyed the victims for two days and gotten them to where they had to get to." The court then stated:

"I think a reasonable inference is he did know what was going to happen. And I think the transcript indicates, as I read earlier, that in an interview with the detectives he did admit that they knew, that he knew they were going to rob these people.

So I understand different degrees of responsibility and certain acts. But right now if I am looking at it at [*sic*] a subsequent hearing is continued detention necessary to avoid a real and present threat to the safety of any person or persons or the community based on the specific articulable facts of this case. I think that it is, and I make that finding. And I, respectfully, deny the defense motion for pretrial release."

The circuit court's written order stated, in relevant part, that "Defendant's motion for pretrial release is denied for the reasons stated on the record."

¶ 14 Ontiveros filed a notice of appeal in which he stated that he was appealing both the January 12 and February 16 orders. The notice of appeal also stated that the January 12 hearing was the initial hearing and the February 16 hearing was on Ontiveros' motion to reconsider.

¶ 15 II. ANALYSIS

¶ 16 On appeal, Ontiveros' overarching claim is that the circuit court erred when it found that electronic home monitoring would not mitigate any safety threat he posed. Throughout his argument, however, Ontiveros claims both that the court erred when it granted the State's petition to deny pretrial release on January 12 and when it ruled on February 16 that his continued detention was necessary.

¶ 17 Due to the multifaceted nature of Ontiveros' argument, we must initially determine what, if anything, is properly before us in this appeal. "A reviewing court must ascertain its jurisdiction before proceeding in a cause of action, regardless of whether either party has raised the issue." *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009).

¶ 18 Notably, on February 13, 2024, defense counsel filed both a second motion seeking pretrial release and a motion to reconsider the circuit court's initial detention order. However, the transcript of the hearing shows that defense counsel proceeded only on the motion to reconsider. We note that while the court stated at the conclusion of its oral ruling that it was "deny[ing] the defense motion for pretrial release" and in its written order that "Defendant's motion for pretrial release is denied," it is clear from the transcript that both parties, and the court, addressed only the motion to reconsider. We further note that in his notice of appeal, Ontiveros stated that he was appealing from both the January 12 "initial" hearing and the February 16 "hearing on motion to reconsider."

¶ 19 Illinois law is well settled that "a movant has a responsibility to obtain a ruling on his motion if he wishes to raise a question pertaining thereto on appeal." *People v. Schmitt*, 131 Ill. 2d 128, 137 (1989). Because Ontiveros proceeded only on the motion to reconsider at the February 16 hearing and clearly stated in his notice of appeal that he was appealing from the initial detention order and the order denying his motion to reconsider, he effectively abandoned his second motion seeking pretrial release and therefore cannot raise any arguments related to that motion. See *id.*

¶ 20 We next address the motion to reconsider the January 12 order. A motion to reconsider is not required to perfect an appeal from an interlocutory order entered pursuant to sections 110-5, 110-6, or 110-6.1 of the Code. 725 ILCS 5/110-5, 6, 6.1 (West 2022); Ill. S. Ct. Rs. 604(h), 606(a) (eff. Dec. 7, 2023 to Apr. 14, 2024). However, nothing prohibits the filing of a motion to reconsider in those cases, either. Moreover, a circuit court possesses the inherent authority to reconsider its rulings, regardless of whether the ruling was interlocutory or final. *People v. Mink*, 141 Ill. 2d 163, 171 (1990). Accordingly, it was not improper for defense counsel to file a

motion to reconsider the court's order that granted the State's petition to deny pretrial release. But whether the motion to reconsider was timely filed presents a different question.

¶ 21 Supreme Court Rule 606(b) generally controls the timing of criminal appeals, which includes the effect motions directed against the judgment have on that timing. Ill. S. Ct. R. 606(b) (eff. Apr. 15, 2024). However, Rule 606(b) also provides that certain interlocutory appeals are controlled by Rule 604(h). *Id.* At the time of the appeal in this case, interlocutory orders entered pursuant to sections 110-5, 110-6, and 110-6.1 of the Code were subject to a reduced appeal time-limit of 14 days. Ill. S. Ct. R. 604(h)(1), (2) (eff. Dec. 7, 2023 to Apr. 14, 2024). Thus, a motion directed at the order in such cases, including a motion to reconsider, must have been brought within 14 days of the order's issuance. *Id.* R. 604(h)(2).

¶ 22 Here, defense counsel did not file his motion to reconsider until February 13, 2024. Because the motion to reconsider was not filed within 14 days of the initial detention order, which was entered on January 12, it was untimely. Accordingly, we lack jurisdiction in this appeal to consider anything related to the initial detention order in which the circuit court granted the State's petition to deny pretrial release, which includes Ontiveros' motion to reconsider. See *People v. Hongo*, 2024 IL App (1st) 232482, ¶ 28.

¶ 23 III. CONCLUSION

¶ 24 This appeal from an order of the circuit court of Du Page County is dismissed.

¶ 25 Appeal dismissed.

¶ 26 JUSTICE HOLDRIDGE, dissenting:

¶ 27 I respectfully dissent from the majority's decision. Instead, I would find that this court has jurisdiction to consider this appeal as the hearing before the trial court amounted to a

subsequent detention hearing. Moreover, I would find that the court did not abuse its discretion in finding that detention was necessary.

¶ 28 Initially, I believe the majority's finding that the court could only rule on the defendant's "motion to reconsider" elevates form over substance. Despite the filing of the defendant's motion, the statute indicates that, "At each subsequent appearance of the defendant before the court, the judge must find that continued detention is necessary to avoid 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, or to prevent the defendant's willful flight from prosecution." 725 ILCS 5/110-6.1(i-5) (West 2022). Thus, whether or not the defendant filed a motion to reconsider the initial detention order, the court was still required to find that continued detention was necessary upon the defendant's appearance in court.

¶ 29 Moreover, the court treated the hearing as a subsequent detention hearing. The record indicates that the case was continued "for hearing on defendant's motion regarding pretrial release," and the court's written order stated,

> "the court finds that the defendant's detention is necessary to avoid 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.
>
> Defendant's motion for pretrial release is denied for the reasons stated on the record."

On the record, the court noted that this was a subsequent detention hearing, citing this court's decision in *People v. Casey*, 2024 IL App (3d) 230568, and stated that it "den[ied] the defense motion for pretrial release." As the court made the findings necessary at a subsequent detention

hearing (which must be held at each appearance), I would find that we have jurisdiction to review the hearing and order.

¶ 30 Turning to the merits, I would find that the court did not err in detaining the defendant. We consider factual findings for the manifest weight of the evidence, but the ultimate decision to grant or deny the State's petition to detain is considered 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. 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). When determining a defendant's dangerousness and the conditions of release, the statute includes a nonexhaustive list of factors the court can consider. *Id.* §§ 110-6.1(g), 110-5.

¶ 31 The majority points out that, at the time of the appeal in this case, interlocutory detention orders were subject to a 14-day appeal time frame. Ill. S. Ct. R. 604(h) (eff. Dec. 7, 2023). However, subsequently the rule was changed to allow an appeal "at any time prior to conviction." Ill. S. Ct. R. 604(h)(3) (eff. Apr. 15, 2024). Assuming *arguendo* that the defendant can appeal his initial detention order, I will consider the proof as to the three propositions stated above.

¶ 32 First, defendant was charged with a detainable offense, and the proof was evident that he committed the offense where the defendant was an integral part of facilitating the robbery. Second, the victims stated that four or five men robbed them and four men, including the defendant, were charged with the robbery. The defendant changed his story multiple times to the police. The court noted that this was a serious offense, the defendant had a FOID card and a concealed carry license (which the court believed meant that he had access to weapons), the offense took place in a residential neighborhood, and the defendant watched the victims for two days before the robbery took place. It was not against the manifest weight of the evidence for the court to find that the defendant posed a real and present threat to the community. Third, the State provided evidence and argument as to the factors listed in the statute, including the nature and circumstance of the offense and the weight of the evidence against the defendant. 725 ILCS 5/110-5 (West 2022). Though the defendant argues that the court erred in finding that continued detention was necessary because electronic monitoring would mitigate any threat the defendant posed, the court specifically found that electronic monitoring would not prevent the defendant from committing the acts in this case. Such a conclusion was not against the manifest weight of the evidence. Taking the evidence as presented, the court's decision to detain the defendant was not an abuse of discretion.

¶ 33 Based on the foregoing, I would affirm the court's detention order.