2024 IL App (1st) 240615-U

No. 1-24-0615B

June 28, 2024

SIXTH DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 24 CR 1059
	)	
CHRISTOPHER MCFARLAND,	)	The Honorable
	)	Tiana Blakely,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE ODEN JOHNSON delivered the judgment of the court.
Justice C.A. Walker concurred.
Justice Tailor specially concurred.

O R D E R

¶ 1 *Held*: The trial court's oral findings are not against the manifest weight of the evidence; therefore, we affirm. However, we admonish the trial court to enter, in the future, written orders with written findings.

¶ 2 Defendant-appellant Christopher McFarland, by and through his attorney, brings this appeal under Illinois Supreme Court Rule 604(h) (eff. Apr. 15, 2024) challenging the circuit

court's order entered on March 6, 2024, pursuant to, what is commonly known as, the Pretrial Fairness Act.[1] The circuit court's order denied pretrial release after defendant was charged with six counts of aggravated kidnapping, one count of involuntary sexual servitude of a minor, six counts of aggravated criminal sexual assault of a minor, and three counts of aggravated criminal sexual abuse. While defendant filed a notice of appeal, he chose not to file an appellate brief and the trial court did not specify its findings in its written order. The written order stated only "Status; Defendant In Custody." For the following reasons, we affirm but admonish the trial court, in the future, to enter its findings in writing, as the statute requires.

¶ 3 BACKGROUND

¶ 4 At the pretrial detention hearing held on March 6, 2024, the trial court noted that it had in its possession a public safety assessment report for defendant, dated January 9, 2024, which indicated no new criminal activity, and a low risk of failure to appear, and a recommendation of release with no conditions.

¶ 5 At the hearing, the State began its remarks with a detailed six-page description of the offenses, which included multiple incidents of defendant inserting his penis into the 15-year old victim's vagina, anus and mouth over the course of several days. The State alleged that, on December 29, 2023, which was a Friday, the victim was out walking alone at 1:30 a.m., when defendant pulled up and offered her a ride which she declined. The State alleged that defendant told her he was 59 years old and she told him she was 15; that defendant told her that he was not going to leave her out in the cold; and that eventually the victim entered his

[1] In 2021, the General Assembly passed two separate acts that "dismantled and rebuilt Illinois's statutory framework for the pretrial release of criminal defendants." *Rowe v. Raoul*, 2023 IL 129248, ¶4 (discussing Pub. Act 101-652, § 10-255, 102-1104, § 70 (eff. Jan. 1, 2023) (amending 725 ILCS 5/art. 110) (the Pretrial Fairness Act) and Pub. Act 102-1104 (eff. Jan. 1, 2023) (the Follow-Up Act).

car. The State alleged that defendant drove the victim to his home where the sexual assaults occurred over the course of several days. The victim did not have a phone and, on Tuesday, January 2, 2024, she asked to call her grandfather. Defendant allowed her to call on his phone, after making his number private, and she was able to leave her grandfather a voicemail. The victim's parents had filed a missing person's report on December 29, the same day that she had been picked up by defendant. Police obtained a search warrant for cell phone records and were able to trace the voicemail message to defendant's residence, where they located the victim.

¶ 6 The State alleged that the police obtained mail at defendant's residence with defendant's name on it and that the mail included a notice from the Chicago Public Schools (CPS) notifying him that CPS was seeking to remove him from his tenured position at Christian Fenger Academy High School, due to his inappropriate conduct with students. Defendant was a special education teacher and a wrestling coach. CPS had investigated defendant for making inappropriate comments to high school students regarding their buttocks and breasts and for driving students in his personal car without obtaining permission from the principal, including driving female students to Six Flags on multiple occasions and driving female students to their homes after sporting events. Defendant was also under investigation for using social media to contact students and make comments about their bodies. Defendant had been removed from active duties at the school in June 2021.

¶ 7 The State argued that there was no condition or combination of conditions that would mitigate the risk that the defendant posed to the safety of persons in the community.

¶ 8 In response, defendant's attorney agreed that the allegations "sound damning," but noted that they were only allegations. Defendant claimed that the victim was wearing a

college jacket and had told him that she was 19 years old. Defendant further claimed that she went voluntarily to defendant's home and voluntarily stayed there. The defense did not dispute that the victim, who was found by police in his home, was, in fact, at defendant's home during the several days that her family had reported her missing; and the defense also did not dispute that sexual activity occurred.

¶ 9 Defendant's attorney argued that defendant had strong ties to the community as both a father and a son, and that he had served as a public school teacher for over 20 years. Defendant alleged that the victim told him that she had a fight with her mother and that was why she was on the street at 1:30 a.m. Defendant claimed that he encouraged her to call someone but that she would not, until she did eventually call her grandfather. Defense counsel noted that he had never been convicted of a crime.

¶ 10 After listening to arguments by counsel for the State and for defendant, the trial court found, first, that the State had shown by clear and convincing evidence that defendant had committed the crimes of aggravated kidnapping and aggravated criminal sexual assault. The trial court found, second, that defendant posed a threat to the safety of persons in the community, in light of the fact that the victim was 15 years old, that she said that she told defendant to stop and not to do these things to her but he continued, that he assaulted her for over four days, and that several complaints had been filed against him with CPS for inappropriate contact with girls. Lastly, the trial court found that no condition or combination of conditions could mitigate the real and present threat to the safety of the victim in this case and other minors in the community because "this offense occurred in his house." Further, the court found:

> "So if this Court were to release him on electronic monitoring, who's to say when he goes out on—on one of those mandatory statutory days for essential movement that

> he's not picking up someone else and that he—where he's in a trusted relationship picking up someone else at a gas station, someone else who maybe [is] vulnerable, for whatever reasons and assaulting that person, as well?"

¶ 11 After the court's ruling, defense counsel argued that the CPS allegations were "not allegations that he did anything inappropriate, but that there were certain comments that were made that could have been taken the wrong way." Counsel argued that defendant had "never been accused of doing anything or committing any inappropriate act with anyone."

¶ 12 The trial court responded that it understood the difference between an allegation and a conviction, and that it understood that the CPS allegations had been brought before a court. Before the hearing ended, the State noted that there was significant discovery outstanding, including a "body-worn cam" and the DNA results from the sexual assault kt.

¶ 13 On March 6, 2024, the trial court entered a written order indicating that the next court date was April 9, 2024, via Zoom and "Status: Defendant in Custody." On March 19, 2024, defendant filed a notice of appeal in which he alleged that the trial court had erred in its findings.

¶ 14 ANALYSIS

¶ 15 In his notice of appeal to this court, defendant argues, first, that the State failed to prove the offense by clear and convincing evidence, where he claims that the victim went voluntarily to his home, that she told him she was 19 years old, and that she wore a college jacket, and where he claims that the "State presented no evidence that she remained at [his] home against her will." Defendant argues, second, that the State failed to prove that he posed a threat, where he has no prior criminal record and where he claims that the facts presented at the detention hearing "showed that the victim was not harmed or threatened in any way." Defendant argues, lastly, that the State failed to prove that no condition or combination of

conditions can mitigate the threat posed to the safety of others, where defendant is a homeowner who lives alone and could be monitored.

¶ 16 Pretrial release is governed by Article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-1 *et seq* (West 2022)), and this article provides that a defendant's pretrial release may be denied only in certain statutorily limited situations. First, for pretrial release to be denied, the State must file a petition. 725 ILCS 5/110-2(a) (West 2022). Second, when a court considers the issue of release or detention, "[a]ll defendants shall be presumed eligible for pretrial release, and the State shall bear the burden of proving by clear and convincing evidence" that the following three propositions are true: (1) that the proof is evident or the presumption great that the defendant has committed a qualifying offense, (2) that the defendant's pretrial release poses a real and present threat to the safety of any person or the community, and (3) that less restrictive conditions would not avoid a real and present threat to the safety of any person or the community or prevent the defendant's willful flight from prosecution. 725 ILCS 5/110-2(e) (West 2022).

¶ 17 To determine whether the defendant poses a real and present threat to any person or the community, the court may consider this non-exhaustive list of factors: 1) the nature and circumstances of any offense charged, including whether the offense is a crime of violence involving a weapon or a sex offense; 2) the history and characteristics of the defendant; 3) the identity of any person to whom the defendant is believed to pose a threat and the nature of the threat; 4) any statements made by or attributed to the defendant, together with the circumstance surrounding the statements; 5) the age and physical condition of the defendant; 6) the age and physical condition of the victim or complaining witness; 7) whether the defendant is known to possess or have access to any weapons; 8) whether at the time of the

current offense or any other offense, the defendant was on probation, parole, or other form of supervised release from custody; and 9) any other factors, including those listed in section 110-5 of the Code (725 ILCS 5/110-5 (West 2022)). 725 ILCS 5/110-6.1(g) (West 2022).

¶ 18 Upon finding that the defendant poses a threat to the safety of any person or the community, the defendant's likely willful flight to avoid prosecution, and/or the defendant's failure to abide by previously issued conditions of pretrial release, the trial court must determine if pretrial release conditions will reasonably ensure the appearance of a defendant as required for the safety of any other person or the community and the likelihood of compliance with all the conditions of pretrial release.725 ILCS 5/110-5(a) (West 2022). The court must consider 1) the nature and circumstances of the offense charged; 2) the weight of the evidence against the defendant; 3) the history and characteristics of the defendant; 4) the nature and seriousness of the specific, real and present threat to any person that would be posed by the defendant's release; and 5) the nature and seriousness of the risk of obstructing or attempting to obstruct the criminal justice process. 725 ILCS 5/110-5(a) (West 2022).

¶ 19 The trial court's determination regarding the dangerousness and or conditions of release are reviewed for an abuse of discretion. *People v. Simmons*, 2019 IL App (1st) 191253, ¶¶ 9, 15. An abuse of discretion occurs when the decision of the trial court is arbitrary, fanciful, or unreasonable, or when no reasonable person would agree with the position adopted by the trial court. *Id.*

¶ 20 A trial court's finding that the State presented clear and convincing evidence that mandatory conditions of release would fail to protect any person or the community, and/or that the defendant had a high likelihood of willful flight to avoid prosecution, or that the defendant failed to comply with previous conditions of pretrial release thereby requiring a

modification or revocation of the previously issued conditions of pretrial release, will not be reversed unless those findings are against the manifest weight of the evidence. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *People v. Deleon*, 227 Ill.2d 322, 332 (2008). Under this standard, we give deference to the trial court as the finder of fact as it is in the best position to observe the conduct and demeanor of the witnesses." *Deleon*, 227 Ill. 2d at 332.

¶ 21 Based on our review of the record, the trial court's determination that defendant met the standard of dangerousness, posing a real and present threat to the safety of any person or persons in the community, is not against the manifest weight of the evidence. Specifically, the charge of involuntary sexual servitude of a minor, as well as other charged offenses, is a detainable qualifying offense under the Code (725 ILCS 5/110-6.1(a)(6)(M) (West 2022)) and the proof is evident and presumption great that the defendant committed said offenses given the State's proffer of the victim's age, the victim's statements, the parents' missing person's report, the police discovery of the victim at defendant's home after obtaining records for defendant's phone, and the lack of disputation by the defense at the detention hearing of either sexual activity with the minor or her presence in defendant's home during the alleged time.

¶ 22 It is further evident that no condition or combination of conditions can mitigate the real and present threat to the safety of any person or persons or the community, given the age of the victim and the position of trust that defendant occupied in the community, specifically among minors, for decades, and that the offenses took place in his home.

¶ 23 However section 110-6.1(h) of the Code requires that the trial "court shall, in any order for detention: (1) make a written finding summarizing the court's reasons for concluding that the defendant should be denied pretrial release, including why less restrictive conditions would not 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." 725 ILCS 5/110-6.1(h)(1) (West 2022). In the case at bar, the trial court's detention order did not recite findings in its written order. See *People v. Kimbereley*, 2024 IL App (1st) 232170-U, ¶¶ 32-36 (this court reversed and remanded in order to allow the trial court to enter a written order that complies with the Act).

¶ 24 In its brief to this court, the State attempts to limit the issues before us on appeal. The State argues that it filed a petition for pretrial detention on January 7, 2024; that the trial court made findings and granted this petition; that, as a result, in the hearing on March 6, 2024, the trial court had to find only that continued detention was warranted; and that the March 6 court did not have to make findings, and the State did not have to prove, the three propositions listed in section 110-6.1(e). namely, (1) defendant's commission of the offense, (2) defendant's threat to the safety of others, and (3) a lack of conditions to mitigate this threat. 725 ILCS 5/110-6.1(e) (West 2022).

¶ 25 First, neither the State's petition of January 7, 2024, nor the trial court's order granting it, are in the record. In this significant way, our case differs from the cases cited by the State, namely, *People v. Thomas*, 2024 IL App (1st) 240479, ¶ 4 (describing in detail the prior order entered by the trial court, which was both appealed and then affirmed on appeal) and *People v. Casey*, 2024 IL App (3d 230568, ¶¶ 4-5 (describing in detail the prior hearing and the resulting decision) (2-to-1 decision). See also *People v. Wynne*, 2024 IL App (1st)

240516-U, ¶ 5 (describing in detail the trial court's prior written order). In the case at bar, the common law record and the half-sheets in this case do not start until January 25, 2024, and the only report of proceedings is from the March 6 detention hearing. If this was an argument that the State wanted to make, it was its responsibility to supplement the record with the record needed to support it. While the appellant normally has the burden to provide a record sufficient to rule in its favor, the appellee has a burden to supplement the record with the evidence necessary to support its arguments. *In re M.M.*, 2022 IL App (1st) 211505, ¶ 29. Second, the trial court made all three findings at the hearing without objection by the State, thereby waiving any argument that these issues were not before it. *People v. Mezo*, 2024 IL App (3d) 230499, ¶ 12 (forfeiture applies equally to the State in pretrial detention cases).

¶ 26 Third, the Code says that at any subsequent "appearance," the trial court must find that continued detention is necessary. 725 ILCS 5/110-6.1 (i-5) (West 2022). However, what happened here was not simply an "appearance." This was a fully argued detention hearing,[2] held primarily to determine defendant's petition challenging detention. At the start of the hearing, the State informed the judge that the purpose of the hearing was for "detention review," after a prior judge had recused himself, and the court asked if "both sides" were "prepared to proceed" on the detention issue. The Code states that "any" detention order must state, in writing, the reasons for denying release (725 ILCS 5/110-6.1(h) (West 2022))

[2] The best indication of statutory intent is the specific words that the legislature chose to implement its purpose. *People v. Miles*, 2017 IL App (1st) 132719, ¶ 25 ("the best indication of their intent is the plain and ordinary meaning of the words they choose to use"). The word "appearance" is simply the presentation of oneself in court with an attorney, while the word "hearing" is the opportunity to be heard and present one's side of a case. See Merriam-webster.com/dictionary/appearance (the meaning for "law") and Merriam-webster.com/dictionary/hearing. Similarly, in Black's Law Dictionary, the word "appearance" is defined as a coming into court, while its opposite, "non-appearance" is the omission of a defendant to come to court. By contrast, a "hearing" is the hearing of the arguments of counsel. See Thelawdictionary.org/appearance/, Thelawdictionary.org/non-appearance/, and Thelawdictionary.org/?s=hearing.

and that such an order is entered "pursuant to subsection (e)" (725 ILCS 5/110-6.1(h) (West 2022))—the section which requires proof of the three propositions. 725 ILCS 5/110-6.1(e) (West 2022). The State would rewrite the statute to say "first" instead of "any" detention order, but the statute does not say "first." It says "any." This was a detention hearing, resulting in a detention order and, thus, the reasons needed to be both found and stated in the order—particularly when there is no prior order setting them forth in the record.

¶ 27 The overall purpose of the statute was to provide defendants with more protections, not less. The point of requiring courts to reaffirm detention at every appearance was to protect defendants. It would be ironic if this provision was then used by courts as a sword to reduce protections at detention hearings.

¶ 28 Lastly, even if we were to accept the State's premise that this was merely another appearance, rather than a designated detention hearing, the Code still requires at "each" appearance that the court "must find" (1) that "continued detention is necessary," which necessarily means finding that other conditions would not suffice, and (2) that defendant poses a threat to safety or risk of flight—namely, two of the three propositions in subsection (e). 725 ILCS 5/110-6.1(i-5) (West 2022). In the case at bar, the threat stems, in large part, from the nature of the alleged crimes, thus implicating the State's showing that the proof is evident and the presumption great that defendant committed them, which is the third proposition. 725 ILCS 5/110-6.1(e) (West 2022). See also 725 ILCS 5/110-2(b) (with regard to pretrial release conditions, the State bears the burden of clear and convincing proof "[a]t all pretrial hearings"). As a result, all three propositions and findings were substantively before the trial court in this particular case and, thus, also before us, whether the proceeding

below is deemed an "appearance" or a detention hearing. For all these reasons, we do not find persuasive the State's attempt to limit the issues before us on appeal.[3]

¶ 29 Other courts would rewrite the statute to say that, if a defendant does not appeal at the first opportunity, he or she forfeits his or her rights, forever, to appeal the most important issues. However, the statute does not say that. The statute is largely silent regarding appeals, other than expansively granting both the State and defendants the right to appeal "any" order with almost no limit. 725 ILCS 5/110-6.1(j), (k) (West 2022).

¶ 30 CONCLUSION

¶ 31 For the foregoing reasons, we find that the trial court's verbal order was not an abuse of discretion. However, the purpose of the statute in requiring a written order with findings "in any order for detention" was ultimately to streamline the review process for appellate courts and all participants, and this requirement of the Code should not be overlooked. 725 ILCS 5/110-6.1(h) (West 2022). To ensure that it is not, we admonish the trial court to enter, in the future, written orders with its written findings.

¶ 32 Affirmed, with admonishment.

¶ 33 JUSTICE TAILOR, specially concurring:

¶ 34 Although I agree with the majority's decision to affirm the trial court's order, I write separately because I disagree with its rationale. The majority finds that the State improperly tried to "limit the issues before us on appeal" and concludes that the trial court was required to make findings regarding "(1) defendant's commission of the offense, (2) defendant's

[3] For these reasons, we also do not find persuasive the case cited by the State, *Casey*, 2024 IL App (3d) 230568, ¶ 13, where another district found that a defendant who fails to appeal after the initial hearing waives these issues in any subsequent hearing. Waiver at the very start makes little sense, in light of ongoing discovery and investigation, and often subsequent arrangements for representation. The last thing we want to do is encourage premature appeals. The *Casey* case is further inapposite due to the State's waiver and failure to provide a record supporting its argument, as discussed above.

threat to the safety of others, and (3) a lack of conditions to mitigate this threat" at McFarland's March 6, 2024, detention hearing. I disagree because the Code "prescribes a different standard once the trial court has held a pretrial detention hearing and ordered the detention of a defendant." *People v. Thomas*, 2024 IL App (1st) 240479, ¶ 13.

¶ 35 At subsequent detention hearings, a trial court need only make a finding 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* 110-6.1(i-5) (West 2022). See *Thomas,* 2024 IL App (1st) 240479, ¶ 14 ("[T]he finding required by section 110-6.1(i-5) is *** a less demanding standard than what is required at [an initial] detention hearing, though both are concerned with fundamentally the same question.")

¶ 36 Here, it is undisputed that "[an initial pretrial] detention hearing was held on or about January 7, 2024, at which time [McFarland] was denied pretrial release after the filing of a verified petition by the State." McFarland did not appeal the trial court's detention order. Then, on March 5, 2024, McFarland filed a "Petition to Grant Pretrial Release," in which he requested a hearing on his petition and argued that the court "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." A hearing on McFarland's petition was held the next day. The trial court's comments indicate that it erroneously believed the hearing was on the State's petition to deny pretrial release instead of McFarland's petition for pretrial release. It stated,

> "upon hearing the State's petition to deny pretrial release, the Court finds that the State has shown by clear and convincing evidence that the defendant committed the

> crime … that defendant, in fact, 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 … and that … [no] condition or combination of conditions set forth in 725 ILCS 5/110-10(B) mitigates a real and present threat to the -- to the safety of the victim in this case, nor any other minors in the community."

¶ 37 Although the trial court made findings on the three elements above at the March 6, 2024, hearing, it was not required to do so, because this was not McFarland's initial detention hearing. See *People v. Casey*, 2024 IL App (3d) 230568, ¶ 13 (stating that "the questions relating to whether the State proved each of the three propositions by clear and convincing evidence during th[e] initial [detention] hearing are not before us" and that "the only question we consider [at a subsequent detention hearing] is whether the court abused its discretion in finding that continued detention was necessary"). Unlike section 110-6.1(e) of the Code (725 ILCS 5/110-6.1(e)(1-3) (West 2022)), section 110-6.1(i-5) does not require the court to find "that proof is evident or the presumption great that defendant committed a detainable offense." *Thomas*, 2024 IL App (1st) 240479, ¶ 14 (reasoning that "[i]t would make little sense to require this after the State proved it at the hearing to initially justify defendant's detention.") Section 110-6.1(i-5) does not require the court to consider whether pretrial conditions can mitigate the threat posed by a defendant either, because the detention review hearing "starts from the premise that detention was necessary to guard against that threat and asks whether anything has changed such that a defendant's detention is no longer warranted." *Id.* See also *Casey*, 2024 IL App (3d) 230568, ¶ 13 (although a trial court's determination of whether continued detention is warranted "necessarily entails consideration of the threat or flight risk posed by a defendant and the potential mitigation of such threat or flight risk by conditions of release, the Code does not require the court to again make specific findings that

the State proved the three propositions by clear and convincing evidence as required at the initial hearing").

¶ 38 Under the statute, the court was only required to determine whether "continued detention [wa]s 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" at McFarland's March 6, 2024, detention hearing. 725 ILCS 5/110-6.1(i-5) (West 2022); *People v. Harris*, 2024 IL App (2d) 240070, ¶ 37 (although a "court ordering continued pretrial detention must make certain findings based on specific, articulable facts, just as at an initial detention hearing" its "subsequent determinations are not subject to every statutory requirement that applies to initial detention hearings"); *People v. McCaleb*, 2024 IL App (1st) 240514-U, ¶ 18 ("At a subsequent appearance, the State need not make the factual showings required at the initial pretrial detention hearing[.]")

¶ 39 Because the facts support the trial court's determination that continued detention was warranted here, I join the majority's decision to affirm the trial court's order. See *Thomas*, 2024 IL App (1st) 240479, ¶ 14 (reasoning that "when the trial court found that the State presented clear and convincing evidence on all three elements required by section 110-6.1(e), that finding necessarily encompassed the continued detention finding required by section 110-6.1(i-5)"); *McCaleb*, 2024 IL App (1st) 240514-U, ¶ 22 (finding remand for a new proceeding unnecessary even though the court erroneously conducted a subsequent detention hearing as if it were an initial pretrial detention hearing and failed to make the "continued detention" finding required by the Code because it was "sufficiently clear from the record

that the court believed [defendant's] detention was necessary to protect against a real and present threat").