2024 IL App (1st) 232481-U

SIXTH DIVISION
March 21, 2024

No. 1-23-2481B

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. STEVEN MONTANO, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County No. 23 CR 03527-01 The Honorable John F. Lyke, Jr., Judge Presiding.

JUSTICE TAILOR delivered the judgment of the court.
Justice C.A. Walker concurred in the judgment.
Presiding Justice Oden Johnson, specially concurred.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion when it denied pretrial release to the defendant.

¶ 2 I. BACKGROUND

¶ 3 Defendant Steven Montano appeals under Illinois Supreme Court Rule 604(h) (eff. Sept. 18, 2023) from the circuit court's order entered on November 29, 2023, which denied him pretrial release under Public Act 101-652 (eff. Jan. 1, 2023), commonly known as the Pretrial Fairness Act.

¶ 4 Montano was arrested on March 1, 2023, and charged with first-degree murder based on allegations that he shot and killed a Chicago police officer. A bond hearing was held on March 3, 2023, at which time Montano was denied pretrial release. After the Pretrial Fairness Act became effective, Montano filed a motion for pretrial release. In response, the State filed a petition for pretrial detention.

¶ 5 At a hearing on November 29, 2023, the State proffered the following facts. In the late afternoon of March 1, 2023, 18-year-old Montano got into an argument with his 37-year-old girlfriend at their shared home, which was located at 5358 S. Spalding Avenue in Chicago. During this argument, Montano charged at his girlfriend, who stepped out of the way to avoid being struck. When Montano threatened to get his gun, his girlfriend exited their home and called 911 to report that Montano had a gun. Montano followed his girlfriend outside, grabbed the phone from her hand, hung up on 911, and threw the phone to the ground. He and his girlfriend continued to argue, and this exchange was captured on video from a nearby building.

¶ 6 Two uniformed police officers responded to the 911 call and arrived on scene. When they approached the front door of Montano's residence, they heard a noise in the gangway. Montano had jumped out the window and fled towards the alley. One officer observed something in Montano's hand and believed it was a gun. Montano saw two neighbors standing in a garage off the alley, and he asked if he could hide his loaded gun there. When they indicated that he could not, Montano ran through the garage and into a nearby backyard, climbed over a car, and hopped the fence into the next yard. Police officers saw Montano jump the fence, and radioed that he was on Spaulding Avenue.

¶ 7 Montano fled north on Spaulding past Sawyer Elementary School. A third on-duty police officer, 32-year-old Andres Vasquez-Lasso, arrived on scene to assist the first responding officers.

As Officer Vasquez-Lasso and his partner were driving northbound on Spaulding, they observed Montano running. Officer Vasquez-Lasso, who was in full uniform, exited his squad car and gave chase to Montano on foot. Montano went through a gate and entered the school yard of Sawyer Elementary School as Officer Vasquez-Lasso continued to chase him.

¶ 8 Officer Vasquez-Lasso gave multiple verbal commands to Montano to stop running, but Montano went into a fenced yard containing a playground. Montano's back was to Officer Vasquez-Lasso and his hands were not visible.

¶ 9 When Officer Vasquez-Lasso was only a few feet away from Montano, Montano looked over his shoulder, turned towards Officer Vasquez-Lasso, racked the slide on his pistol and pointed his handgun at Officer Vasquez-Lasso. Officer Vasquez-Lasso and Montano both fired their guns. Montano fired five times and struck Officer Vasquez-Lasso in the head, arm, and leg. Officer Vasquez-Lasso fired two shots, one of which struck Montano in the mouth area. Montano's actions are captured on Officer Vasquez-Lasso's body-worn camera. Officer Vasquez-Lasso collapsed immediately after he was shot while Montano managed to stumble to a nearby school parking lot before he fell to the ground. His firearm fell to the ground next to him. At the time of the shooting, there were civilians in the area, including multiple children on the playground who took cover under a slide.

¶ 10 Officer Vasquez-Lasso's partner exited his squad car and approached Montano, but Montano refused to comply with his commands and tried to walk away even though he was shot in the face. Montano was tased and handcuffed, and officers then recovered the .45 caliber handgun that was used by Montano to shoot Officer Vasquez-Lasso. Although officers began emergency life-saving measures on Vasquez-Lasso, he was pronounced dead at Mount Sinai Hospital due to

multiple gunshot wounds. Officer Vasquez-Lasso had been shot once in the left temple, once in the left forearm, and once in the left calf.

¶ 11 The State noted that Montano had no criminal background prior to this incident. However, it argued that he "must be denied pre-trial release pursuant to 745 ILCS 5/110-6.1 because the proof is evident and the presumption is great that [Montano] is charged with a forcible felony" and that "based on the specific articulable facts of the case, [Montano's] pre-trial release poses a real and present threat to the safety of any person or persons or the community, and that no condition or set of conditions can mitigate the real and present threat to the safety of any *** person or persons of the community posed by [Montano]."

¶ 12 Defense counsel noted that Montano's PSA score was a 2 on the new criminal activity scale and a 1 on the failure to appear scale, and the violence flag was not indicated. Defense counsel also noted that prior to his arrest, Montano had no criminal background, had attended high school up until senior year, worked at Chick-fil-A, worked with New Life Church community center feeding the homeless, cleaning the church, and participating in a boxing program with kids, and had the support of his mother, father, and two sisters. Defense counsel noted that since his arrest, Montano had been attending classes to obtain his high school diploma and participating in a podcasting class, where participants could share their experiences with the community and at-risk youth.

¶ 13 Defense counsel argued that Montano did not pose a real and present threat to the community because this was a "one time situation that clearly got out of control." She argued that Montano was not a flight risk because his entire support system was here in Chicago, and because he had no passport or job. She argued that conditions, such as electronic home monitoring, could mitigate any possible risk of flight.

¶ 14 In response, the State argued that none of the evidence offered by defense counsel "mitigates the real and present threat that [Montano] poses to the community based on the facts of this case." The State emphasized that Montano shot an on-duty officer in the head "at near point blank range" while that officer was performing his official duties, and that Montano fired at the officer "while mere feet away from young children who were playing in a playground." The State argued that "whatever efforts the defendant might have made in the jail since his incarceration do not in any way mitigate the risk of harm and threat of the safety of the community that he poses upon release" and therefore asked that he be detained prior to trial.

¶ 15 After reviewing the facts of the case, the court noted defense counsel's argument that Montano was "not a flight risk and that there are conditions" that could mitigate any risk, including "plac[ing] him on house arrest to allow him to continue to participate in *** activities to better himself" and the State's response that "there are no conditions that [the court could] impose to ensure the safety of this community." The court noted that it could take into consideration the likelihood of conviction, the violent nature of the offense charged, and the danger to the community and stated, "If the State's proffer is true, I don't see how a person can be more dangerous. If you are a few feet from a police officer who you know is armed and other police officers are chasing you and nonetheless you fire a weapon, I can't see how you can be more dangerous."

¶ 16 It concluded that the "proof is evident and the presumption is great that [Montano] committed that offense," that Montano "poses a real and present threat to any person or persons and his entire community" and that there are "no conditions or combination of conditions that can hold to protect the community from this defendant." It therefore granted the State's petition to detain Montano.

¶ 17 In its written order, the court found that "the State has shown, by clear and convincing evidence, that the proof is evident or the presumption great that the defendant has committed an eligible offense." It added, "defendant on [body worn camera] shooting and killing [a] CPD police officer." After finding that "defendant 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," the court wrote "see above," referencing its earlier summary of the salient facts. The court did not articulate any specific reasons to support its finding that "no condition or combination of conditions set forth in 725 ILCS 5/110-10(b) can mitigate the 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 "[l]ess 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."

¶ 18 II. ANALYSIS

¶ 19 On appeal, Montano does not contest the trial court's finding that the proof was evident, or the presumption great, that he committed the charged offense, or the court's finding that he posed a real and present threat to the safety of a person, persons or the community. Instead, he argues that the State failed to prove by clear and convincing evidence that he posed a safety threat if released which no conditions could mitigate. He also contends that the court "failed to comply with the Act, which requires a court to enter a detention order to include a summary of its reasons for denying the defendant pretrial release, including why less restrictive conditions would not avoid a real and present threat to the safety of persons or the community," because its order "does not provide a reason, much less a summary of reasons for the Court's denial of pre-trial release with conditions."

¶ 20 Our legislature has mandated that all criminal defendants, even those accused of violent offense, are presumed eligible for pretrial release. 725 ILCS 5/110-6.1(e) (West 2022). "[I]t is the State who must justify their pretrial detention." *People v. Stock*, 2023 IL App (1st) 231753, ¶ 18. Bare allegations that defendant has committed a violent offense, standing alone, are insufficient to establish this element. *Id.* However, the court can also consider a variety of other factors, including (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the defendant; and (3) the nature and circumstances of the real and present threat to the safety of any person or persons in the community, based on the specific and articulable facts of the case. 725 ILCS 5/110-5 (West 2022); 725 ILCS 5/110-6.1(g) (West 2022).

¶ 21 We review the trial court's determination that there were no conditions of release that could mitigate the safety risk to the community for an abuse of discretion. *People v. Reed*, 2023 IL App (1st) 231834, ¶ 31 ("an abuse of discretion standard is [the] most appropriate" to review the trial court's determination that there "were no conditions of release that could mitigate the [defendant's] safety risk"). We will find an abuse of discretion only if the trial court's judgment was fanciful, arbitrary or unreasonable, or if no reasonable person would agree with its position. *People v. Vingara*, 2023 IL App (5th) 230698, ¶ 10.

¶ 22 Here, the State argued that "based on the specific articulable facts of the case, [Montano's] pre-trial release poses a real and present threat to the safety of any person or persons or the community, and that no condition or set of conditions can mitigate the real and present threat to the safety of any *** person or persons of the community posed by [Montano]." It emphasized that Montano shot an on-duty officer in the head "at near point blank range" while that officer was performing his official duties, and that Montano fired at the officer "while mere feet away from young children who were playing in a playground." Based on these facts, the State argued that

"whatever efforts [Montano] might have made in the jail since his incarceration do not in any way mitigate the risk of harm and threat of the safety of the community that he poses upon release" and therefore asked the court to detain him prior to trial.

¶ 23 Based on the record, we cannot say that the trial court abused its discretion when it found the State met its burden. After hearing the State's proffer, the court stated, "I don't see how a person can be more dangerous. If you are a few feet from a police officer who you know is armed and other police officers are chasing you and nonetheless you fire a weapon, I can't see how you can be more dangerous." Before reaching its conclusion that there are "no conditions or combination of conditions that can hold to protect the community from this defendant[,]" the court considered the mitigating evidence presented by Montano as well as defense counsel's argument that "there are conditions" that could mitigate any risk to the community, including home monitoring, but nevertheless decided to deny pretrial release based on the likelihood of conviction, the violent nature of the offense charged, and its beliefs about Montano's danger to the community based on the specific facts of the case. The trial court's ruling, read in context, shows that it adequately considered whether less restrictive conditions would avoid a real and present threat to the safety of any person or persons or the community before concluding that they would not based on the specific articulable facts of the case. See *People v. Whitmore,* 2023 IL App (1st) 231807, ¶ 24 (stating that "[b]ased on the proffered facts, the circuit court could within its discretion, conclude as it did—that [defendant] presented a real threat to the community that no conditions of pretrial release could mitigate").

¶ 24 We now turn to the sufficiency of the trial court's written findings in its detention order, which did not include the court's reasons for concluding that no conditions of release could avoid a real and present threat to the safety of any person or the community. Section 110-6.1(h)(1)

requires the court to "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, or prevent the defendant's willful flight from prosecution." 725 ILCS 5/110-6.1(h)(1) (West 2022). In *People v. Andino-Acosta*, 2024 IL App (2d) 230463, ¶ 13, a division of this court addressed whether a similarly deficient written detention order complied with section 110-6.1(h)(1). There, the defendant argued that the trial court "did not make adequate written findings as required by the statute" and therefore asked that the detention order be reversed and remanded for a new hearing. *Id.* ¶ 11. The court admitted that the trial court's written findings were "conclusory," noting that it merely "relied on the preprinted findings '[t]hat no condition or combination of conditions can mitigate the real and present threat to the safety of any person' " and that "less restrictive conditions would not assure safety to the community." *Id.* ¶ 13. However, after observing that several courts have "contemplated a trial court's written findings being supplemented by its oral pronouncements" under the Pretrial Fairness Act, it found that "an explicit and individualized oral ruling may satisfy section 110-6.1(h)," and held that when assessing the sufficiency of a trial court's findings, "its written findings must be read in conjunction with its oral pronouncements." *Id.* ¶¶ 15, 19. Ultimately, the court concluded that the trial court's oral findings "satisfied the standard" because they "displayed an analysis of the factors concerning the determination of dangerousness, in accord with section 110-6.1(g) of the Act, and articulated [the] reasons why less restrictive conditions would not avoid the threat to safety." *Id*. ¶ 20. The court found that the trial court's "oral ruling was explicit and individualized and, read together with its written findings, was sufficient to apprise the defendant of the reasons for its ruling and to accommodate review under the Act." *Id.* ¶ 22. It reasoned that "[r]emanding this cause so that the

trial court could transcribe its oral findings into a written order would not serve the interests of justice." *Id.*

¶ 25 Here, the trial court's written order was similarly conclusory. In addition to the preprinted language, where the court found that "the proof is evident or the presumption great that the defendant has committed an eligible offense," the court added only "defendant on [body worn camera] shooting and killing [a] CPD police officer." After its finding that "defendant 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[,]" the court added only "see above," referencing its earlier comment. The court added no specific reasons after finding that "no condition or combination of conditions set forth in 725 ILCS 5/110-10(b) can mitigate the 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 "[l]ess 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." However, when the trial court's written order is read in connection with its oral ruling, we find it was "sufficient to apprise the defendant of the reasons for its ruling and to accommodate review under the Act." *Andino-Acosta*, 2024 IL App (2d) 230463, ¶ 22; see also *People v. Castillo*, 2024 IL App (1st) 232315, ¶¶ 30-31 (agreeing that the trial court's written findings must be read in conjunction with its oral statements). The transcript reflects that the court considered the alternatives to detention proposed by defense counsel but dismissed them based on its belief that no conditions could avoid a threat to the public. After hearing the specific facts of the case, which indicated that Montano shot a uniformed police officer "at near point blank range" while he was "mere feet away from young children who were playing in a playground[,]" the court stated, "[i]f you are a few feet from a police officer who you know is armed and other police officers are chasing you and nonetheless

you fire a weapon, *I can't see how you can be more dangerous*." (emphasis added). A fair reading of the trial court's oral pronouncement is that no alternative to detention existed that would avoid a threat to the public given the specific facts alleged, to wit: Montano shot five times at point-blank range and killed a police officer enforcing the law in the middle of a school playground with elementary school children present mere feet away. We find that the court's oral comments, when read in connection with its written findings, sufficiently articulated "its reasons why less restrictive conditions would not avoid the threat to safety." Cf. *Andino-Acosta*, 2024 IL App (2d) 230463, ¶ 20. Compare with *People v. Martin*, 2023 IL App (4th) 230826, ¶¶ 23-24 (determining that the court's findings "f[ell] short of complying with the 'clear legislative directive' to address less restrictive conditions of release" where the court stated only that "[defendant] needs to be detained" and provided no further detail in its detention order regarding less restrictive conditions of release); *People v. Dallefeld*, 2023 IL App (4th) 230925-U, ¶ 18 ("The court's oral and written rulings fall short of complying with this legislative requirement of addressing less restrictive conditions of release."); *People v. Peralta*, 2023 IL App (1st) 231897-U, ¶ 13 (reversing and remanding where "there is no indication in the court's verbal ruling or written order that it considered less restrictive conditions, let alone an explanation of why less restrictive conditions would not mitigate the threat.")

¶ 26 III. CONCLUSION

¶ 27 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 28 Affirmed.

¶ 29 Presiding Justice Oden Johnson, specially concurring:

¶ 30 This is an unusual case where a defendant allegedly shot an officer in the face. As my colleagues note, the plain language of the statute requires written findings. The statute states: "The

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[.]" (Emphasis added.) 725 ILCS 5/110-6.1(h)(1) (West 2022). I contend, especially in unusually difficult cases such as this, it is imperative that our judiciary specify its findings in writing, to the fullest extent.