

2024 IL App (1st) 240426-U

No. 1-24-0426B

Order filed June 28, 2024

Fifth Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 24 MC 1107802
)	
CORTEZ D. FLOWERS,)	Honorable
)	Susana Ortiz,
Defendant-Appellant.)	Judge presiding.

JUSTICE NAVARRO delivered the judgment of the court.
Justices Mikva and Lyle concurred in the judgment.

ORDER

¶ 1 *Held:* While the defendant did not appear for a pretrial detention hearing within 48 hours, reversal is not warranted because he was brought before the court without unnecessary delay. Affirmed.

¶ 2 I. BACKGROUND

¶ 3 Defendant Cortez D. Flowers was arrested on Friday, February 2, 2024, at 11:55 a.m. His charges for aggravated kidnapping and aggravated vehicular hijacking were approved on February 4, 2024, at 9:37 a.m. Flowers appeared before the court for his pretrial detention hearing at

approximately 12:40 p.m. on February 5, 2024. The record does not indicate what time Flowers was brought to the courthouse.

¶ 4 During the hearing, defense counsel argued that the State had a duty to bring Flowers to court “by noon on the 4th of February,” and that “he was not brought into a courthouse until today.”

Defense counsel continued:

“The court was in session yesterday, and the sheriff was accepting custody. The watch commander notes indicated that they attempted to find a duty judge to conduct a Gerstein hearing, but were unable to. In a letter sent to our office on September 8, 2023, by Timothy C. Evans, Chief Judge of the Circuit Court of Cook County, we were informed that Gerstein hearings would not be conducted – or would be conducted by the pretrial unit. The proper procedure then would have been to bring him to the custody of the sheriff and have him be in court by noon on the 4th of February. This was not done.”

¶ 5 Defense counsel requested that the court deny the State’s petition to detain Flowers on the grounds that it failed to bring Flowers to court within 48 hours of his arrest.

¶ 6 The State responded that the denial of its petition “is not an appropriate remedy for such a violation, if such violation occurred.” The State noted that Flowers’ charges were approved on February 4th, within 48 hours of his arrest, and that “he’s here in court on the next day after his charges were approved.”

¶ 7 The court stated that no court had yet found that “not allowing the State leave to file a petition is a proper or appropriate remedy.” It then stated:

“I will additionally note that this Court has knowledge of the – there’s a processing of detainees that happens every day throughout our courts here in the Pretrial Division. The hours for a law enforcement agency to bring someone to court here – because there’s a process. Everyone has to be checked in. We deal with high volumes each and every day, and the process for someone to be checked in occurs between 6:00 and 9:00 a.m., and then the term used is the bridge closes for receiving further prisoners. So he – charges were approved at 9:37 a.m. That was within 48 hours of the time of his arrest. And then the next available court appearance would have been today.”

¶ 8 The court denied defense counsel’s request to deny the State’s petition to detain Flowers.

¶ 9 The State then proffered evidence to support its petition to detain Flowers based on the charge of aggravated vehicular hijacking. The incident was captured on Chicago Transit Authority (CTA) bus surveillance footage on January 13, 2024, at approximately 11:40 p.m. Chicago police officers were dispatched to the area of Division and Cicero for a call of a person with a gun on a CTA bus.

¶ 10 The State noted that CTA surveillance footage depicts Flowers sitting directly behind the bus driver’s seat, with a tan firearm in his hand. Flowers then gets up from his seat and walks to the front of the bus and stands at the bus entrance. Footage captured Flowers pointing the firearm at the bus driver multiple times and directing him to drive the bus. The bus driver told police officers that he then drove the bus while Flowers stated, “be afraid.”

¶ 11 The encounter lasted from about 10:55 p.m. to 11:20 p.m. Flowers then fled the scene while the bus was stopped at Cicero and Division.

¶ 12 Officers put Flowers' face through facial recognition software, identifying Flowers as the offender. A photo array was conducted on January 26, 2024, and the bus driver identified Flowers as the offender. Flowers was taken into custody on February 2, 2024.

¶ 13 The State noted that Flowers had five other past felony convictions. Based on the evidence presented, the court found that the State showed by clear and convincing evidence that Flowers "did commit the offense as charged" and that he "constitutes a clear and present danger to the community at large." The court found there were no less restrictive conditions that could avoid the real and present danger that Flowers presented to the community and granted the State's petition to detain Flowers. Flowers timely appealed.

¶ 14 **II. ANALYSIS**

¶ 15 On appeal, Flowers does not challenge the court's decision to detain him based upon the evidence presented at his detention hearing. Instead, he argues that because his pretrial detention hearing was held more than 48 hours after his arrest, in violation of Section 109-1(a) of Public Act 101-652 (eff. Jan. 1, 2023), commonly known as the Pretrial Fairness Act (Act), we should reverse the trial court's decision and remand so that the trial court can impose conditions of release.

¶ 16 Section 109-1(a) of the Act states:

"[a] person arrested with or without a warrant for an offense for which pretrial release may be denied under paragraphs (1) through (6) of Section 110-6.1 shall be taken without unnecessary delay before the nearest and most accessible judge in that county, except when such county is a participant in a regional jail authority, in which event such person may be taken to the nearest and most accessible judge,

irrespective of the county where such judge presides, within 48 hours, and a charge shall be filed.” 725 ILCS 5/109-1(a) (eff. Jan. 1, 2023).

¶ 17 Two cases have recently discussed the issue of whether pretrial release is required when a defendant is not brought before the court for a pretrial detention hearing within 48 hours of his arrest. See *People v. Williams*, 2024 IL App (1st) 232219-U, and *People v. Garduno*, 2024 IL App (1st) 240405-U.

¶ 18 In *Williams*, the defendant was arrested at 2:14 p.m. on November 8, 2023. 2024 IL App (1st) 232219-U, ¶ 3. Charges were approved at 4:30 p.m. on November 9, 2023. *Id.* The defendant was brought before the court for his pretrial detention hearing at 3:41 p.m. on November 10, 2023. *Id.* ¶ 5. Even though the defendant appeared in court an hour and a half after the statutory deadline, the trial court granted the State’s petition and found that the defendant should be detained pretrial. *Id.* ¶ 13. Defendant appealed, arguing that the trial court’s denial of his pretrial release should be reversed because he was not brought before a judge “without unnecessary delay” within 48 hours of his arrest. *Id.* ¶ 19.

¶ 19 This court disagreed, finding that because the defendant was “brought to a courthouse within 48 hours of his arrest to appear before a judge,” the requirement that he “shall be taken without unnecessary delay to the nearest and most accessible judge *** within 48 hours” was met. *Id.* ¶ 23. The court noted that because the charges were approved against the defendant at 4:30 p.m. on November 9, 2023, “it was impossible for the defendant to be transported to a courthouse for appearance before a judge on November 9, 2023.” *Id.* ¶ 27.

¶ 20 In reaching its conclusion, the *Williams* court relied in part on our supreme court’s decision in *People v. Ballard*, 206 Ill. 2d 151, 177 (2002), which interpreted a previous version of section

109-1 of the Act. The previous version of the statute did not contain the 48-hour timeframe for presenting defendants to the trial court, but instead merely required that a “person arrested with or without a warrant” be “taken without unnecessary delay before the nearest and most accessible judge.” In *Ballard*, our supreme court held that “some latitude is allowed” in determining whether a defendant was presented to the judge “without unnecessary delay” and that presentment to a judge “need be performed only with such reasonable promptness as the circumstances permit.” *Ballard*, 206 Ill. 2d at 177.

¶ 21 This court in *Williams* noted that while “the statute has been amended to include a 48-hour deadline, we believe that the continued inclusion of the ‘without unnecessary delay’ language signals the legislature’s intent to permit for ‘some latitude’ in fulfilling that deadline.” *Williams*, 2024 IL App (1st) 232219-U, ¶ 30 (quoting *Ballard*, 206 Ill. 2d at 177). The *Williams* court then found that the defendant’s presentment to the judge was performed with all reasonable promptness permitted under the circumstances, and that there was no violation of the statute. *Id.*

¶ 22 In *Garduno*, the defendant was arrested on February 6, 2024, at 4:50 a.m. 2024 IL App (1st) 240405-U, ¶ 13. He appeared before the court for his pretrial detention hearing at 12:40 p.m. on February 8, 2024. However, because the State and Chicago Police Department did not finalize their charging decisions until 6:30 p.m. on February 7, 2024, it was impossible for the defendant to be transported to a courthouse for the appearance before a judge that day. *Id.* The court stated that the earliest he could have appeared before the court was on February 8, 2024, which he did. *Id.* This court found that because the defendant’s presentment to the judge was performed with all reasonable promptness, there was no violation of the statute. *Id.*

¶ 23 Similarly here, Flowers was arrested on Friday, February 2, 2024, at 11:55 a.m., and charges were not approved until February 4, 2024, at 9:37 a.m. The trial court noted charges were approved within 48 hours, but that there is a process by which detainees are brought before the court. Namely, detainees are received between 6 a.m. and 9 a.m., after which no further detainees are accepted for that day's hearings. The earliest Flowers was able to be checked-in, therefore, was the next morning, on February 5, 2024, which is when Flowers was brought to court. Accordingly, because Flowers' presentment to the judge was performed with all reasonable promptness as the circumstances permitted, we find that that there was no violation of the statute.

¶ 24 Moreover, as we noted in *Garduno*, "if we were to conclude that section 5/109-1(a) was violated here, that does not necessarily mean that pretrial release is required," as the statute does not prescribe a remedy for a violation of the 48-hour rule. 2024 IL App (1st) 240405-U, ¶ 14. This court in *People v. Green*, 2024 IL App (1st) 240211, interpreted a section of the Act with similar language. See *Garduno*, 2024 IL App (1st) 240405-U, ¶ 14. Section 110-6(a), which addresses revocation of pretrial release, states that a defendant "shall be transferred to the court before which the revocation hearing shall occur within 72 hours of the filing of the State's petition." 725 ILCS 5/110-6(a) (eff. Jan. 1, 2023). Because the statute lists "specific consequences *** for the court's failure to hold a hearing within the specified time frame," the court found that the language was directory, not mandatory. *Green*, 2024 IL App (1st) 240211, ¶¶ 18, 20. The court ultimately found that although the defendant's revocation hearing took place after the 72-hour period specified in the statute, "no consequence [wa]s warranted." *Id.* ¶ 23.

¶ 25 Flowers nevertheless maintains, relying on *People v. McCarthy-Nelson*, 2024 IL App (4th) 231582-U, that the appropriate remedy is "a reversal of the court's decision to retain and a remand

with instructions to release [] Flowers and to promptly hold a hearing to determine the least restrictive conditions of release.” However, this court in *Garduno* recently found *McCarthy-Nelson* distinguishable “because it involves section 110-6.1(c)(2) of the Act, which states that a pretrial detention hearing ‘shall be held within 48 hours of the defendant’s first appearance ***.’” *Garduno*, 2024 IL App (1st) 240405-U (quoting 725 ILCS 5/110-6.1(c) (eff. Jan. 1, 2023)). This court noted that section 5-109(1)(a), “by contrast, states that the defendant ‘shall be taken *without unnecessary delay* before the nearest and most accessible judge in that county *** within 48 hours.’ (Emphasis added).” *Id.* (quoting 725 ILCS 5/109-1(a) (eff. Jan. 1, 2023)). Like the *Williams* court, the *Garduno* court found that the continued inclusion of the “without unnecessary delay” language in section 5-109(1)(a) of the Act, indicates the legislature’s intent to allow for “some latitude” in fulfilling that deadline. *Garduno*, 2024 IL App (1st) 240405-U, ¶ 16; *Williams*, 2024 IL App (1st) 232219-U, ¶ 30 (citing *Ballard*, 206 Ill. 2d at 177). We agree and find that reversal of the trial court’s detention order is not warranted.

¶ 26

III. CONCLUSION

¶ 27 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 28 Affirmed.