Illinois Official Reports

Appellate Court

People v. Bueno, 2024 IL App (2d) 240053

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. GONZALO BUENO, Defendant-Appellant.
District & No.	Second District No. 2-24-0053
Filed	March 22, 2024
Decision Under Review	Appeal from the Circuit Court of Kane County, No. 23-CF-2771; the Hon. Thomas C. Hull III, Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	James E. Chadd and Carolyn R. Klarquist, of State Appellate Defender's Office, of Chicago, for appellant. Patrick Delfino and David J. Robinson, of State's Attorneys Appellate Prosecutor's Office, of Springfield, for the People.
Panel	JUSTICE JORGENSEN delivered the judgment of the court, with opinion. Presiding Justice McLaren and Justice Mullen concurred in the judgment and opinion.

OPINION

¶ 1 In this interlocutory appeal under Illinois Supreme Court Rule 604(h) (eff. Oct. 19, 2023), defendant, Gonzalo Bueno, timely appeals the order of the circuit court of Kane County, granting the State's petition to detain him pursuant to Public Acts 101-652 and 102-1104 (eff. Jan. 1, 2023), commonly known as the Pretrial Fairness Act (Act).[1] We affirm.

¶ 2 I. BACKGROUND

¶ 3 On December 22, 2023, the State charged defendant with committing offenses on four separate dates. Specifically, the State charged defendant with committing, on February 9, 2023, and February 14, 2023, the offense of manufacture and delivery of more than 15 grams but less than 100 grams of cocaine (720 ILCS 570/401(a)(2)(A) (West 2022)) (Class X). Further, it charged defendant with committing, on April 13, 2023, the offense of delivery of more than one gram but less than 15 grams of cocaine (*id.* § 401(c)(2)) (Class 1). Finally, the State charged defendant with committing, on December 21, 2023, the offenses of possession with the intent to deliver more than 15 grams of a substance containing psilocybin (*id.* § 401(d)(i)) (Class 2); being a felon in possession of a weapon or ammunition, a second or subsequent offense (720 ILCS 5/24-1.1(a) (West 2022)) (Class 2); unlawful use or possession of a weapon by a felon (*id.*) (Class 3); and possession of a weapon without a Firearm Owner's Identification card (430 ILCS 65/2(a)(1) (West 2022)) (Class 3).

¶ 4 The State also filed a verified petition to deny defendant pretrial release pursuant to section 110-6.1(a)(1), (6) of the Code of Criminal Procedure of 1963 (Code), as amended by the Act. 725 ILCS 5/110-6.1(a)(1), (6) (West 2022). The State alleged that defendant was charged with nonprobationable offenses and, further, that pretrial release would pose a real and present threat to the safety of any person or the community.

¶ 5 On December 22, 2023, the court heard the State's motion. The State recounted defendant's criminal history, which includes serving a 12-year sentence for possession of a controlled substance with the intent to deliver and for which he remained subject to mandatory supervised release (MSR) at the time of his arrest in this case. Further, defendant previously served terms of 18 months' imprisonment for possession of a controlled substance and 3 years' imprisonment for unlawful use of a weapon by a felon. He had an additional conviction of possession of a controlled substance. The evidence proffered to the court concerning the present charges included, as summarized in a police synopsis, that defendant had performed at least three hand-to-hand drug deliveries to undercover police officers. A search warrant executed at defendant's residence on December 21, 2023, recovered in two bedrooms: $1400 in cash stored in a lockbox disguised as a library book, a scale, a loaded .38-caliber firearm, a 9-millimeter firearm, a .357-caliber revolver with a defaced serial number, approximately 217 rounds of ammunition, and psilocybin mushrooms. The synopsis also recounted that, in an interview, defendant admitted to selling drugs; he did not admit that the gun or ammunition were his, but he also stated to the arresting officers, "it[']s all mine." The State argued that, as a convicted felon, defendant was not supposed to have firearms and that his possession of them presented a danger to the public. Further, as noted in the synopsis and the State's petition to

[1]The Act has also been referred to as the Safety, Accountability, Fairness and Equity-Today (SAFE-T) Act. Neither name is official, as neither appears in the Illinois Compiled Statutes or public acts.

deny pretrial release, defendant was on MSR until December 12, 2023. Therefore, the State argued, defendant "did not seem to care that he was on parole" while engaging in the sale of narcotics.

¶ 6 Defense counsel noted that defendant had lived in Kane County his entire life and was presently employed by a retail financial company. Counsel argued that it was not clear that defendant was the person who sold cocaine to undercover officers. Further, counsel noted that someone else resided with defendant at the searched residence and that person might have possessed some or all of the recovered firearms and contraband. Finally, counsel argued that the charged offenses were not inherently dangerous, and he requested that defendant be released or released with conditions, which might include electronic home monitoring (EHM) and periodic inspections of defendant's home to ensure it remained free of drugs and firearms.

¶ 7 After hearing argument, the court granted the State's petition to deny pretrial release. As relevant on appeal, the court found that the State had established by clear and convincing evidence that no condition or combination of conditions could mitigate the real and present threat to the community at large. The court elaborated, in part,

> "I do believe that he poses a real and present threat to the community at large and that he's been charged with delivering cocaine on multiple occasions. He is a convicted felon. He was on [MSR]. One of those conditions of any [MSR] is they not engage in any criminal activity for which the court has found there is evidence that he did.
>
> In addition to the drugs, again, as I have noted, [d]efendant was found pursuant to the search warrant to be in possession of weapons and firearm ammunition despite that—despite the fact that he could not possess those. That also then helps the court make the finding that no less restrictive alternative conditions would assure the safety of the community because what [d]efendant has shown is that despite being ordered not to commit any new offenses and not to engage in criminal activity, he did just that. So I am going to again find and incorporate all the findings of the above to all three."

¶ 8 Further, in its written order, the court found, in part, that less restrictive conditions would not assure community safety because defendant was already on MSR, and he violated the terms of that release when he committed the current offenses.

¶ 9 On January 9, 2024, defendant filed a notice of appeal, and, on February 23, 2024, he filed a Rule 604(h) memorandum. On March 11, 2024, the State submitted its memorandum opposing defendant's appeal.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant argues that, where the State merely recounted the charges, his prior convictions, and his MSR status at the time of these alleged offenses, the State failed to meet its burden of proving by clear and convincing evidence that no condition or combination of conditions could mitigate the risk defendant posed to the community. Defendant asserts that the State presented only conclusory statements, not specific evidence, as to why no conditions could mitigate the threat. He requests that we reverse his detention order and remand for a new hearing. We disagree.

¶ 12 We review defendant's arguments under a bifurcated standard of review: the court's factual determinations are reviewed to determine whether they are against the manifest weight of the evidence, and the court's ultimate determination regarding denial of pretrial release is reviewed

for an abuse of discretion. *People v. Trottier*, 2023 IL App (2d) 230317, ¶ 13. An abuse of discretion occurs when the court's decision is unreasonable. *People v. Williams*, 2022 IL App (2d) 200455, ¶ 52. Likewise, a decision is against the manifest weight of the evidence where the court's determination is unreasonable. *People v. Deleon*, 227 Ill. 2d 322, 332 (2008).

¶ 13 We disagree that the court erred in determining that the State met its burden of proving by clear and convincing evidence that no condition or combination of conditions could mitigate the risk defendant posed to the community. Defendant notes that he was not charged with inherently violent crimes in this case and, thus, he contends, it was incumbent on the State to prove that less restrictive conditions would not suffice. However, defendant has not challenged the court's dangerousness finding. Once the court found that the State met its burden of establishing dangerousness, it was required to consider several factors in determining whether conditions short of detention could mitigate the danger, including, but not limited to, (1) the nature and circumstances of the offense charged, (2) the weight of the evidence against defendant, (3) defendant's history and characteristics, including whether, at the time of the current offense or arrest, defendant was on probation, parole, or other release, and (4) 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). Section 110-5(a) refers to a defendant's history and whether he or she was on parole, probation, or other release at the time of the current offense, and section 110-2(a) notes that pretrial release is generally presumed, but only on certain conditions, including that "the defendant ***_complies_* with all terms of pretrial release" (emphasis added) (*id.* § 110-2(a)). Thus, it is clear that the court is tasked with considering not just whether conditions short of detention exist, but also whether a defendant is likely to *comply* with them.

¶ 14 Here, the evidence reflecting defendant's failure to comply with conditions imposed in other cases sufficed to satisfy the State's burden of establishing that no conditions less than detention could mitigate the risk to the community. Indeed, having recently completed a 12-year term of imprisonment, defendant, while on MSR for that offense, allegedly violated the terms of that release and committed several new crimes. Defendant points to the permissive and mandatory release conditions that the court *could* have imposed under section 110-10 (*id.* § 110-10), noting that none of them were discussed at the detention hearing and the State offered no evidence or explanation as to why those conditions would be insufficient. However, the essence of the State's argument was that defendant would not comply with any conditions of release because, when he committed the charged crimes, he did so in direct violation of conditions posed in other cases and he had not "cared" that he was on MSR at the time. The evidence supporting the State's petition—by its recitation of defendant's criminal history and the police synopsis, the accuracy of which defendant does not dispute—satisfied its burden. See *People v. Lee*, 2024 IL App (1st) 232137, ¶ 33 (where the defendant was on parole from a gun case and failed to comply with the conditions placed upon him, this "demonstrated history of refusing to abide by conditions of release" satisfied the State's burden of showing no less restrictive conditions were appropriate and the trial court did not err in so finding); *People v. Davis*, 2023 IL App (1st) 231856, ¶¶ 31-32 (State satisfied burden of showing that no less restrictive conditions were appropriate where the defendant's history, including a prior conviction of escape from law enforcement, demonstrated an unwillingness to follow rules and the unlikelihood that he would follow the court's order, rendering futile a release with conditions). Defense counsel suggested EHM and periodic home inspections and, although the

court did not expressly reference those conditions in ruling, it implicitly rejected them as insufficient, given defendant's history. Finally, although defendant contends that the court was required to explain why it believed that defendant would not comply with any conditions of release, it in fact did so here, both orally and in writing. In sum, it was not unreasonable for the court to find that defendant was not likely to obey any conditions short of detention.

¶ 15 III. CONCLUSION

¶ 16 For the foregoing reasons, we affirm the judgment of the circuit court of Kane County.

¶ 17 Affirmed.