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2024 IL App (3d) 230526-U

Order filed January 8, 2024

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2024

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-23-0526
LEROY DEVINE III,)	Circuit No. 23-CF-1872
Defendant-Appellant.)	Honorable Joan Meyers, Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justice Brennan concurred in the judgment.
Presiding Justice McDade dissented.

ORDER

¶ 1 *Held:* The court did not abuse its discretion in denying pretrial release.

¶ 2 The defendant, Leroy Devine III, appeals from the Will County circuit court granting the State's petition to deny pretrial release.

¶ 3 I. BACKGROUND

¶ 4 On October 7, 2023, the defendant, Leroy Devine III, was charged with two counts of unlawful possession of a weapon by a felon (UPWF) (Class 2) (720 ILCS 5/24-1.1(a), (e) (West

2022)), being an armed habitual criminal (Class X) (*id.* § 24-1.7(a)(3), (b)), and aggravated unlawful use of a weapon (Class 4) (*id.* § 24-1.6(a)(1), (a)(3)(A-5), (a)(3)(C)). The State filed a verified petition to deny pretrial release, alleging the defendant was charged with being an armed habitual criminal and UPWF and his release posed a real and present threat to the safety of any person, persons, or the community under section 110-6.1(a)(6) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-6.1(a)(6) (West 2022)). The petition also alleged that the defendant was a flight risk.

¶ 5 The factual basis provided in the petition stated that an officer was in the area of the Lois Place Apartments. The apartment complex had a trespass agreement with the Joliet Police Department that authorized officers to determine whether persons on the property resided there. The officer saw a Toyota Corolla with a fleet plate not registered to the apartment complex. There were multiple occupants inside. The officer activated his emergency police lights. The rear door opened, and the defendant took off running through the parking lot. The officer pursued him. The defendant was holding his waistband as he ran. The defendant tripped over a curb and dropped a nine-millimeter handgun. The officer caught up to the defendant and “performed a take down.” The defendant tensed up his hands and arms to prevent being handcuffed. Officers were eventually able to take the defendant into custody. The handgun contained 18 rounds of live ammunition and had a live round in the chamber. The defendant did not have a valid Firearm Owner’s Identification Card. He was a convicted felon with previous felony drug convictions. The defendant indicated that he only had the handgun for protection for him and his family. The defendant became unresponsive at one point and had to be transported to the hospital as he had used phencyclidine (PCP) and cocaine.

¶ 6 A hearing was held on the petition on October 7, 2023. The State provided the factual basis and presented the defendant’s criminal history. The State also noted that the defendant ran from the police, did not obey commands to stop, resisted handcuffing, used drugs, and had a loaded firearm. The State also noted that the defendant had a prior conviction for fleeing the police and had a pending charge for aggravated fleeing and eluding. The defendant also had an order of protection against him. Based on those facts, the State argued that his confinement was necessary and that no conditions would suffice. Defense counsel argued that the defendant did not use the firearm, was not a flight risk, and would comply with any conditions. The court granted the State’s petition. In doing so, the court noted that there were “many facts that concern[ed]” the court, including that he was in possession of a loaded firearm, disobeyed police commands, ran from the police, had an order of protection against him, and had a pending aggravated fleeing and eluding charge. The court found both that the defendant was a danger and that he had a high likelihood of willful flight.

¶ 7 II. ANALYSIS

¶ 8 On appeal, the defendant contends that the court abused its discretion in granting the petition to detain. He challenges each of the court’s findings. 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 the defendant committed a detainable offense, (2) the 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(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.

¶ 9 We find the court did not err in granting the petition. First, the proof was evident that the defendant committed a qualifying offense. The defendant was a felon and was found possessing a loaded firearm. Second, the State proved that the defendant was dangerous and was a flight risk. The defendant possessed a loaded firearm, had an order of protection against him, ran from the police, had past convictions for fleeing, and disobeyed police commands. Moreover, while he possessed a loaded firearm, he was under the influence of both PCP and cocaine. Third, we cannot say the court erred in finding there were no conditions that would mitigate this. The defendant had an order of protection against him, and he also had a pending charge for aggravated fleeing and eluding. Therefore, the court did not abuse its discretion in granting the State’s petition.

¶ 10 III. CONCLUSION

¶ 11 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 12 Affirmed.

¶ 13 PRESIDING JUSTICE McDADE, dissenting:

¶ 14 I dissent from the decision of the majority affirming the trial court’s denial of pretrial release for this defendant.

¶ 15 As acknowledged by the majority, the legislature has imposed a three-part burden of proof on the State. I find nothing in the record before us to show that either the State or the trial court

complied with the third requirement. They have approached this case as though satisfaction of the State's obligation on the second factor fully suffices for the third. That is simply not the case.

¶ 16 First, if that were the case, the legislature would have had no need to include the third factor at all. Second, the questions are different. Element two has been addressed in this case by assertions that (1) defendant fled to avoid being arrested by the police at the scene, (2) defendant is charged with being a habitual criminal, (3) he has a criminal history of drug offenses, and (4) there is an outstanding Order of Protection against him. However, to satisfy the third element, the State would need to make some showing that he was a flight risk in the sense that, unless he is detained, he will not appear for his trial or other proceedings in this case. Or that he has violated the pending Order of Protection and poses an actual and continuing threat to another. And that there are no available conditions that would mitigate any of the identified risks.

¶ 17 Finally, I would note that we are a court of review and we have been presented with nothing addressed by either the State or the court relative to the third element that we can review. The State has not advanced and rejected any possible conditions; the court has not considered anything about the State's conditions or arguments because there is nothing, and we have nothing on the record with which to agree or disagree.

¶ 18 Unless we are prepared to step out of our proper role and rewrite the statute to relieve the State of its obligations to take a position on the third element and to prove that position by clear and convincing evidence, we must reverse this decision and remand either for compliant procedures or for defendant's pretrial release.