2023 IL App (2d) 230371-U
No. 2-23-0371
Order filed December 22, 2023

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

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of McHenry County.
Plaintiff-Appellee,	)	
v.	)	No. 23-CF-727
JEREMIAH EDWARD BORGERT,	)	Honorable Tiffany E. Davis,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE MULLEN delivered the judgment of the court.
Presiding Justice McLaren and Justice Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Where defendant remained in pretrial custody after having been previously ordered released on conditions that included a cash bond, State was authorized to file a motion to detain under section 110-6.1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-6.1 (West 2022)) where defendant also filed a motion seeking pretrial release (see 725 ILCS 5/110-7.5(b) (West 2022); see also 725 ILCS 5/110-5(e) (West 2022)); trial court's determinations that defendant constituted a threat to any persons or the community and that no less restrictive conditions would mitigate that risk are not contrary to the manifest weight of the evidence.

¶ 2 I. INTRODUCTION

¶ 3 Defendant, Jeremiah Edward Borgert, appeals an order of the circuit court of McHenry County denying his motion for pretrial release brought pursuant to section 110-7.5(b) of the Code

of Criminal Procedure of 1963 (725 ILCS 5/110-7.5(b) (West 2022) (we will refer to article 110 of the Code as the "Pretrial Fairness Act" or "Act")).[1] For the reasons that follow, we affirm.

¶ 4 II. BACKGROUND

¶ 5 On August 3, 2023, defendant was arrested for aggravated criminal sexual abuse of a family member under the age of 18 (720 ILCS 5/11-1.60(b) (West 2016)). Cash bond was set at $60,000. Defendant did not post bond.

¶ 6 Defendant filed a motion seeking pretrial release on September 29, 2023. See 725 ILCS 5/110-7.5(b) (West 2022); see also 725 ILCS 5/110-5(e) (West 2022). The State filed a motion to detain defendant in accordance with section 110-6.1 of the Act (725 ILCS 5/110-6.1(a) (West 2022)) on October 2, 2023. A hearing was held on the motions on October 5, 2023.

¶ 7 At the hearing, the following transpired. The parties first agreed that they were proceeding on the State's motion for detention. They also agreed that defendant was charged with a detainable offense. The State indicated that it was alleging that defendant was a danger to persons in the community and that it was not alleging he was likely to flee. The State proceeded by proffer, representing that Detective Doug Meyer of the Crystal Lake Police Department had been notified by the Department of Children and Family Services (DCFS) that "a child in Crystal Lake by the initials of KB who is 14 years old had disclosed to DCFS agent specialist Sharon Rademacher *** that she had been sexually abused by her biological father Jeremiah Borgert." Meyer arranged a further interview. KB told the interviewer that "when she was seven or eight years old she was in bed one night on her phone when her father came into her room." She thought defendant was

[1]The Act has been referred to as the "Pretrial Fairness Act" and the "SAFE-T Act"; however, neither title is official. *Rowe v. Raoul*, 2023 IL 129248, ¶ 4 n.1.

intoxicated. KB continued that "he climbed into bed with her and began touching her over her clothes and at one point rubbed her vaginal area over her pajama bottoms."

¶ 8 Meyer spoke with KB's mother, MB. MB related that KB told her a similar account of what had transpired with defendant. MB also told Meyer that defendant had been involved in a relationship with JF, a girl who was 15 or 16 years old. Meyer spoke with JF, who told him that defendant was her baseball coach and she would allow him to touch and kiss her in exchange for alcohol and cigarettes. Meyer then interviewed defendant. Defendant stated that "KB had made the allegations for attention." He added that "[i]f anyone was going to make allegations against him, it would be his younger child because she was more physically affectionate with him." The allegations concerning JF would have occurred "around 2017." Defendant was alleged to have abused KB between November 2016 and February 2017. The State further represented that defendant lives in close proximity to KB and MB. MB and defendant were not married, do not live together, and do not have contact with each other.

¶ 9 The State also pointed to defendant's criminal history, which involved a number of other offenses. Some involved substance abuse, such as driving under the influence. There is a current retail theft charge pending as well.

¶ 10 During argument, defense counsel emphasized that defendant maintained his innocence. Counsel represented that JF is now 22 years old and that she and defendant have no contact. Defendant and MB have been separated for seven years. Defendant does not communicate with MB or his children. He lives alone, and he works.

¶ 11 The trial court granted the State's motion to detain and denied defendant's motion for pretrial release. It first noted that while the charge in this case occurred in 2016 and concerns a child who was 7 or 8 years old at the time, that child is now 14 or 15 years old, which is about the

same age as JF was when defendant was touching and kissing her in exchange for cigarettes and alcohol.

¶ 12 The trial court also noted that "there are substance abuse concerns." It took judicial notice of defendant's pretrial bond services report, which documented defendant's criminal history, including possession of a controlled substance in 1996; a DUI and a drug paraphernalia charge in 1997; a DUI in 1999 that was *nolle prossed*; driving while suspended in 2001; a 2002 arrest for criminal damage to property, which the trial court noted was "stricken on leave"; driving with a suspended license in 2002; domestic battery in 2003, also stricken on leave; a DUI and driving while his license was revoked in 2004; a 2007 arrest for driving while suspended (stricken on leave); a 2007 battery that was amended to disorderly conduct; in 2015, a deceptive practice charge was *nolle prossed*; and a DUI was *nolle prossed* in 2018. The trial court observed that it did not appear that any of these violations had been committed while defendant was on probation or parole.

¶ 13 More recently, in August 2022, defendant was charged with a DUI with no disposition at the time of the hearing. In September 2022, defendant was charged with aggravated DUI and illegal possession of ammunition. In November 2022, defendant was arrested for driving with a suspended license, and, in April 2023, he was arrested for driving while revoked. Defendant was arrested for retail theft on June 28, 2023, and for DUI with a child passenger the next day. The trial court recognized that not all of these incidents resulted in a conviction.

¶ 14 The trial court then found that the State had sustained its burden of establishing that the "proof is evident or the presumption great" that defendant committed the charged offense in this case. It further found "that the defendant's pretrial release poses a real and present threat to the safety of any persons or the community based on specific articulable facts of the case and that no condition or combination of conditions can mitigate the real and present threat to the safety of any

person or the community." The court further pointed out that defendant was on probation when he was arrested for DUI in June 2023. Defendant now appeals.

¶ 15 III. ANALYSIS

¶ 16 On appeal, defendant raises the following issues, First, defendant argues that the State was not entitled to file a motion seeking his detention under the provisions of the Act (in a related argument, he contends that counsel was ineffective for failing to move to strike the State's motion). Second, defendant contends that the State failed to prove he presented a real and present threat to any person or the community or that no less restrictive conditions would mitigate that threat. We disagree.

¶ 17 A. The State's Authority To Move to Detain Defendant

¶ 18 Defendant first argues that the Act does not permit the State to file a motion where he remained in pretrial custody after having been previously ordered released on conditions that included a cash bond. See 720 ILCS 5/110-7.5(b) (West 2022). As this issue concerns a matter of statutory construction, review is *de novo*. *People v. Rios*, 2023 IL App (5th) 230724, ¶ 8. The State counters that this argument has been forfeited because it was not included as a ground for relief in his notice of appeal as required by Illinois Supreme Court Rule 604(h) (eff. Sep. 18, 2023). Defendant answers that this issue should be reviewed as plain error, or, alternatively, in the context of a claim of ineffective assistance of counsel.

¶ 19 Here, defendant's filing of his own motion for pretrial release put the question of his detention before the court. In *Rios*, 2023 IL App (5th) 230724, ¶ 17, the court explained that a defendant remaining in pretrial detention after having been ordered released with conditions (including posting monetary bond) who elects to file a motion for pretrial release, "might be detained without any possibility of pretrial release." Further, in *People v. Wetzel-Connor*, 2023 IL

App (2d) 230348-U, ¶ 27, this court noted the overlapping nature of the factors to consider raised in a motion by the State for pretrial detention and a motion by a defendant for pretrial release. In that case, the court rejected a claim that counsel was ineffective for failing to move to strike a motion by the State to detain defendant because the defendant had filed a motion for pretrial release and the proceedings would have been essentially the same regardless of whether the State had filed their motion. *Id.* Similarly here, regardless of whether the State ever filed its motion to detain, the proceedings on defendant's motion for pretrial release would have been meaningfully the same. Indeed, the trial court expressly addressed and denied defendant's motion for pretrial release when it ruled at the end of the hearing on pretrial release.

¶ 20 B. Whether The State Proved Defendant Should Be Denied Pretrial Release

¶ 21 Defendant next contends that the State failed to prove: (1) hat he was a threat to any person or the community and (2) that no less restrictive conditions would fail to protect any person or the community. Under the Act, a trial court may deny a defendant pretrial release if the State proves by clear and convincing evidence, that (1) the proof is evident or the presumption great that a defendant has committed a qualifying offense (this condition is not in dispute in this appeal); (2) the defendant constitutes a real and present threat to the safety of any person or the community (or, not pertinent here, a flight risk); and (3) no less restrictive conditions would mitigate that risk. 720 ILCS 5/110-6.1(e) (West 2022). Decisions on such matters "must be individualized, and no single factor or standard may be used exclusively to order detention." 725 ILCS 5/110-6.1(f)(7) (West 2022). We review the trial court's factual findings—including whether the defendant poses a threat and whether any conditions would mitigate that threat—using the manifest-weight standard of review. *People v. Trottier*, 2023 IL App (2d) 230317, ¶ 13. A finding is contrary to the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *In re Marriage*

of Kavchak, 2018 IL App (2d) 170853, ¶ 65. The ultimate question of whether a defendant should be detained is reviewed for an abuse of discretion; thus, we will reverse only if no reasonable person could agree with the trial court. *Trottier*, 2023 IL App (2d) 230317, ¶ 13. Moreover, it is well established that we review the result at which the trial court arrived rather than its reasoning and may affirm on any basis apparent in the record. *People v. Johnson*, 208 Ill. 2d 118, 128 (2003); *People v. Munz*, 2021 IL App (2d) 180873, ¶ 27.

¶ 22 1. Whether Defendant Is A Threat

¶ 23 Defendant first assails the trial court's determination that the State proved by clear and convincing evidence that he is a threat to the safety of any person or the community. 725 ILCS 5/110-6.1(e)(2) (West 2022). The Act sets forth the following nonexclusive list of factor to consider in making this determination: (1) the nature and circumstances of the charged offenses, including whether they were violent crimes, sex offenses, or involved a weapon; (2) defendant's history and characteristics, including criminal history and "psychological, psychiatric or other similar social history"; (3) the identity of anyone whose safety is threatened and the nature of the threat; (4) any statements made by defendant; (5) defendant's age and physical condition; (6) the physical condition and age of the victim or complaining witness; (7) whether defendant possesses any weapons; (8) whether at the time of the commission of the charged offense defendant was on probation, parole, mandatory supervised release or any similar release from custody; and (9) any other relevant considerations. 720 ILCS 5/110-6.1(g) (West 2022).

¶ 24 Here, the trial court found that the State had shown that defendant constituted a threat based on a number of considerations. It first observed that KB, the victim in this case, is now the same age as JF, with whom defendant exchanged cigarettes and alcohol for touches and kisses. It noted defendant's history of substance abuse. The trial court also judicially noticed defendant's pretrial

bond services report, which documented his criminal history. Those offenses showed a significant history of substance abuse, including DUIs and charges stemming from possession of a controlled substance and paraphernalia. Defendant's history also included crimes of violence, such as battery and domestic battery and a charge involving possession of ammunition. In addition, defendant was involved in multiple instances of driving while suspended or revoked, from which the trial court could infer an unwillingness to comply with a judicially imposed restriction. The court observed that defendant was on probation when he was arrested for DUI in June 2023. Finally, the trial court cited defendant's statement that "his younger child was actually more physical with him than the complainant family member."

¶ 25 Defendant contends that the trial court's decision that he constitutes a threat is contrary to the manifest weight of the evidence, first claiming that there was no evidence that he used a weapon in the charged offense and that his criminal history was "non-violent and mostly limited to driving while intoxicated." It is true defendant's history involved numerous instances of DUI; however, it also involved a battery amended to disorderly conduct, a domestic battery, and a charge of illegal possession of ammunition. Thus, contrary to defendant's assertion, his criminal history cannot be characterized as "non-violent." Defendant argues that no evidence indicates that the actions alleged in this case would continue; we disagree to the extent that defendant's criminal history shows a high level of recidivism, albeit for offenses related to substance abuse (particularly DUI and related offenses), and an unwillingness to comply with revocations and suspensions of his drivers' license. He further contends that there was no evidence that he would be a "threat to KB or the community in any other ways"; however, he was arrested for DUI with a child in the vehicle in June 2023. It is true, as defendant points out, that the offense at issue here happened at least six years ago and there are no allegations that such conduct has recurred. It is also true that he does not live with the

victim. While these last two considerations do weigh in defendant's favor, we cannot say they outweigh defendant's long history of criminal conduct and substance abuse such that the trial court's finding is against the manifest weight of the evidence.

¶ 26 2. Whether Less Restrictive Conditions Could Mitigate the Threat

¶ 27 Defendant next contends that the State failed to prove by clear and convincing evidence that less restrictive conditions could mitigate the threat that the trial court found he posed. See 725 ILCS 5/110-6.1(e)(3) (West 2022); 720 ILCS 5/110-10(b) (West 2022). Section 110-10(b) sets forth the following conditions of pretrial release that may be imposed: (1) to remain in the state; (2) to report in person to a person or agency; (3) to refrain from possessing a firearm or weapon. (4) to refrain from approaching or communicating with any person or class of persons; (5) to refrain from going to certain places; (6) to be supervised by pretrial services, the probation department, or court services with or without an electronic device; (7) to comply with an order of protection; (8) to advise the court of any change of address; and (9) to comply with any other reasonable condition that conforms to the requirements of the Act. 720 ILCS 5/110-10(b) (West 2022). In finding that no conditions would mitigate this risk, the trial court cited defendant's criminal history, substance abuse issues, his recent arrest while on probation, and the fact that he lived near the victim.

¶ 28 Defendant now argues that the trial court's finding is against the manifest weight of the evidence. He recites the conditions that may be imposed pursuant to section 110-10(b), but he does not explain how they would mitigate the risk he poses. How, for example, ordering defendant to stay in the state would mitigate this risk is unclear to us. Ordering defendant to refrain from approaching the victim or children has obvious relevance, but the issue remains as to whether defendant would comply with such an order. Given defendant's concerning history of violence,

substance abuse, disregarding suspensions and revocations of his drivers' license, committing an offense while on probation, we cannot say that an opposite conclusion to the trial court's that such conditions would not adequately mitigate the risk is clearly apparent.

¶ 29 IV. CONCLUSION

¶ 30 In light of the foregoing, the order of the circuit court of McHenry County denying defendant's motion for pretrial release is affirmed.

¶ 31 Affirmed.