2023 IL App (4th) 230931-U

NOS. 4-23-0931, 4-23-0932, 4-23-0933 cons.

FILED
December 28, 2023
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. RONALD EVANS, Defendant-Appellant.	) Appeal from the) Circuit Court of) Winnebago County) No. 23CF140) 23CF158) 22TR12735)) Honorable) Brendan A. Maher) Judge Presiding.

JUSTICE LANNERD delivered the judgment of the court.
Justice Harris concurred in the judgment.
Presiding Justice DeArmond dissented.

ORDER

¶ 1 *Held*: The appellate court reversed and remanded, holding the trial court erred by holding a detention hearing where the State had not filed a verified petition to deny defendant pretrial release.

¶ 2 On September 28, 2023, the trial court entered an order detaining defendant, Ronald Evans, pursuant to section 110-6.1 of the Code of Criminal Procedure of 1963 (Procedure Code) as amended by Public Acts 101-652, § 10-255 and 102-1104, § 70 (eff. Jan. 1, 2023) (725 ILCS 5/110-6.1 (West 2022)), commonly known as the Pretrial Fairness Act (Act). Prior to the implementation of the Act, the court set defendant's bond at $250,000 in the aggregate. Defendant did not post bond and filed a motion for reconsideration of the conditions of his pretrial release

after the Act went into effect. The State did not file a verified petition for detention. Following a hearing, the court entered an order detaining defendant under the Act. We reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 In January 2023, the State charged defendant with indecent solicitation of a child (720 ILCS 5/11-6(a) (West 2022)), grooming (*id*. § 11-25(a)), and sexual exploitation of a child (*id*. § 11-9.1(a)(1)) in case No. 23-CF-140 and obstructing a peace officer (*id.* § 5/31-1(a-7)) in case No. 23-CF-158. The trial court set defendant's bond at $250,000 in the aggregate and ordered defendant to "have NO CONTACT directly or indirectly *** whether in or out of custody" with the victim A.R.V. or any other minors. Defendant did not post the required monetary bond and remained in custody. Defendant is also charged in case No. 22-TR-12735 with speeding 15-20 miles per hour over the limit (625 ILCS 5/11-601(b) (West 2022)) and operating a motor vehicle with suspended registration (*id.* § 5/3-708), and signed a promise to appear.

¶ 5 Defense counsel filed a motion in 23-CF-140 and 23-CF-158 requesting a bond reduction or recognizance bond on January 24, 2023. This motion stated defendant was "financially unable to post any amount of cash for bail." A review of the record indicates this motion was never heard or ruled upon by the trial court, due to a substitution of counsel which occurred in February 2023. A subsequent motion requesting a bond reduction was heard and denied on August 4, 2023.

¶ 6 On September 21, 2023, defense counsel filed a "motion for reconsideration of pretrial release conditions" pursuant to section 110-7.5(b) of the Procedure Code. This motion was filed only in case Nos. 23-CF-140 and 23-CF-158. The State did not file a verified petition for detention, pursuant to section 110-6.1(e) of the Procedure Code (*id*. § 110-6.1(e)), in response to defendant's motion.

¶ 7 The trial court held a hearing on defendant's motion on September 28, 2023. At the hearing, defendant presented testimony from Rebecca V., the mother of A.R.V., that defendant could reside in her home if he was released from custody. Rebecca noted A.R.V. and her other minor child no longer resided with her and now resided in Whiteside County. She also discussed a trip defendant took in December 2022, where he stayed in Florida for a week to help a friend move. On cross examination, Rebecca admitted the reason her minor children no longer reside with her was due to her relationship with defendant and "the text messages that the defendant was sending that [she was] aware about." Additionally, although her children no longer reside with her, they still come visit and she supports them financially.

¶ 8 Following Rebecca's testimony, the trial court heard arguments from the parties. Defense counsel began her argument by stating,

> "[Defendant] is charged in Count 1 with the offense of indecent solicitation of a child. That's an offense under paragraph 8 of the 725 ILCS 510-6.1, [*sic*] the Pretrial Release Statute. In order for [defendant] to be detained, the State has the burden of showing by clear and convincing evidence that the crime of indecent solicitation was committed by the defendant and by clear and convincing evidence that he would be a risk of willful flight if he were to be released from custody."

Counsel then noted the police investigation into defendant began in "October or November 2022" and defendant took a trip to Florida in December 2022. According to counsel, this trip was pertinent because defendant voluntarily returned to Illinois even though he knew the police were investigating him and thus "mitigates any argument that he is at risk of willful flight from these charges."

¶ 9 Before beginning its argument, the State asserted all three counts in 23-CF-140 were detainable offenses not just count I, as stated by defense counsel. It then discussed prior hearings in which the trial court heard not only the underlying facts of the cases, but also that defendant was attempting to have contact with A.R.V. through Rebecca, while in custody. Based on this, the State argued, "there has been clear and convincing evidence that the defendant—there's proof that the defendant has committed the three charged offenses and that he does pose a real and threat safety [*sic*] to the minors." The State requested defendant be detained pending trial.

¶ 10 After discussion between the parties and the trial court, defense counsel conceded all three offenses in 21-CF-140 were detainable under the Act. See 725 ILCS 5/110-6.1(a) (West 2022). However, defense counsel argued defendant did not pose a danger to the minors because none of the attempted communication was threatening and Rebecca's testimony established the minors resided in Whiteside County.

¶ 11 Following the parties' arguments, the trial court denied defendant's motion. The court began its ruling by noting, "all three of the charges in 23[-]CF[-]140 *** are all detainable pursuant to their respective statutory provisions." It then discussed the attempted communication between defendant and A.R.V. which occurred while defendant was in custody and knew there was a no contact order in place. The court summarized its findings as follows:

> "But I have no problem at all finding, first of all, that the proof is evident and presumption great that he has committed a qualifying offense. Second of all, that he poses a real and present threat to a person, in this case, A.R.V., namely because of the simple fact that he continues to try to communicate with her even when he's confined in a jail cell. And then no condition or combination of convictions set forth

in (b) could mitigate the real and present threat to the safety of any person or persons in the community based on the specific articulable facts of the case. Same thing."

The court signed a written order indicating "the defendant's bond motion to reconsider pre-trial risk is heard and denied." The order further states, "defendant is detained under PFA."

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 Defendant timely filed a notice of appeal pursuant to Illinois Supreme Court Rule 604(h) (eff. Sept. 18, 2023). In his notice, defendant checked the box stating, "The State failed to meet its burden of proving by clear and convincing evidence 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." Defendant elaborated on this contention, arguing the State failed to prove the proffered attempts by defendant to communicate with A.R.V. were in any way "threatening, violent, or sexual." For the reasons discussed below, we need not address defendant's argument, as we find the trial court and the parties failed to employ the proper procedure at the hearing on defendant's motion, pursuant to section 110-7.5(b) and 110-5(e) of the Procedure Code. (725 ILCS 5/110-5(e) (West 2022) and 725 ILCS 5/110-7.5(b) (West 2022)).

¶ 15 This court recently addressed a similar situation in *People v. White*, 2023 IL App (4th) 230858-U (unpublished order pursuant to Supreme Court Rule 23). In *White*, the defendant filed a motion for reconsideration of his pretrial release conditions and requested he be released pursuant to the Act. *Id.* ¶ 7. Although the State did not file a verified petition to deny the defendant pretrial release, the trial court proceeded at the hearing on defendant's motion as if the State had done so. *Id.* ¶ 10-11. After the hearing, the court ordered the defendant detained. *Id.* The defendant appealed, arguing the trial court abused its discretion "by denying him pretrial release after

conducting a detention hearing under section 110-6.1(e) of the Code [citation] rather than holding a hearing under section 110-5(e) [citation]." *Id*. ¶ 13. This court agreed and held,

> "As the State did not file a verified petition in the instant case, it was improper for the court to hold a detention hearing under section 110-6.1 rather than a hearing under 110-5(e) to determine what pretrial conditions would reasonably assure defendant's future appearance and the safety of the community." *Id*. ¶ 19.

Based on this, the matter was reversed and remanded for a hearing in accordance with section 110-5(e) of the Procedure Code.

¶ 16 Admittedly, in this case, defendant failed to raise the issue of the trial court improperly conducting a hearing under section 110-6.1(e) of the Procedure Code instead of section 110-5(e). However, we exercise our discretion and overlook defendant's forfeiture. "[F]orfeiture is a limitation on the parties, not the court, and we may exercise our discretion to review an otherwise forfeited issue." *People v. Curry*, 2018 IL App (1st) 152616, ¶ 36. Furthermore, this court has specifically determined a party's forfeiture of an issue may be overlooked " 'when necessary to obtain a just result.' " *People v. Raney*, 2014 IL App (4th) 130551, ¶ 33 (quoting *Curtis v. Lofy*, 394 Ill. App. 3d 170, 188 (2009)).

¶ 17 We find this case analogous to the situation in *White*. In both cases, the trial court proceeded as if the State had filed a verified petition to deny pretrial release in response to defendant's motion, even though the State failed to do so. In this case, a review of the record indicates the parties were proceeding as if the State had filed a verified petition to deny pretrial release. Defense counsel specifically noted in her argument the burden was on the State to prove by clear and convincing evidence defendant committed the charged offenses and was a risk of willful flight. These are criteria set forth in section 110-6.1(e). See 725 ILCS 5/110-6.1(e) (West

2022). The State responded to defense counsel's argument by asserting all the offenses charged in 21-CF-140 were detainable offenses and requested defendant be detained.

¶ 18 Although the trial court in this case did not specify in its ruling it was proceeding as if the State had filed a petition for detention, unlike the court in *White*, it is clear from its ruling it did so. When providing its ruling, the court discussed the criteria set forth in section 110-6.1(e), namely, (1) proof is evident defendant committed a qualifying offense, (2) defendant poses a threat to a person or persons in the community, and (3) no condition or combination of conditions could mitigate the threat defendant poses to the safety of said person or persons. *Id*. Moreover, there was no discussion by the court of "what available pretrial conditions exist that will reasonably ensure the appearance of a defendant as required, the safety of any other person, and the likelihood of compliance by the defendant with all the conditions of pretrial release" as required in section 110-5(e). See *id*. § 5/110-5(e).

¶ 19 III. CONCLUSION

¶ 20 Therefore, following our decision in *White*, we reverse the circuit court's judgment and remand the matter for a hearing under section 110-5(e) of the Procedure Code (725 ILCS 5/110-5(e) (West 2022)).

¶ 21 As this cause is being remanded, we note the trial court's written order, contained case number 22-TR-12735. Defendant has likewise included said case number in his notice of appeal. Although this traffic case number was included on the court's written order for detention, it was not included in the defendant's motion requesting pretrial release and was not discussed at the hearing. Furthermore, there is nothing in the written order clarifying if said traffic case was subject to the court's ruling that defendant was detained "under the PFA." From a review of the record, it appears the traffic case may be merely "tracking" alongside defendant's two felony cases.

While we understand it is commonplace for less serious offenses to "track" alongside more serious cases as a matter of convenience, it is imperative the court specify the particular cases in which defendant is detained.

¶ 22 Reversed and remanded.

¶ 23 PRESIDING JUSTICE DeARMOND, dissenting:

¶ 24 I respectfully dissent. The issue raised *sue sponte* by the majority was not an issue to defendant or any of the parties to the proceeding. I would find the issue forfeited, and because defendant will again address the same question at his next court hearing, as required under the Act (725 ILCS 5/110-6.1(h)(i-5) (West 2022)), where the same issues raised in this proceeding will be subject to reconsideration, I find no substantial prejudice sufficient to warrant ignoring forfeiture.