

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).

2024 IL App (4th) 231167-U

NO. 4-23-1167

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
January 16, 2024
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Adams County
BRIAN BARNES,)	No. 23CF627
Defendant-Appellant.)	
)	Honorable
)	Mark Vincent,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Turner and Justice Harris concurred in the judgment.

ORDER

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

¶ 2 Defendant, Brian Barnes, appeals the trial court’s order denying his pretrial release under section 110-6.1 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-6.1 (West 2022)), as amended by Public Acts 101-652, § 10-255 and 102-1104, § 70 (eff. Jan. 1, 2023), commonly known as the Pretrial Fairness Act. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In October 2023, defendant was charged with three counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2022)) and three counts of aggravated criminal sexual abuse (720 ILCS 5/11/1.60(f) (West 2022)). According to the charges, defendant committed these offenses against the same victim, a child under the age of 13, between February 20, 2022, through April 30, 2023.

¶ 5 Shortly after his arrest, the State petitioned for the denial of defendant’s pretrial release. The State asserted defendant’s pretrial release posed a real and present threat to the safety of any person or persons or the community.

¶ 6 On October 19, 2023, a hearing was held on the State’s petition, at which the State referred the trial court to the reports attached to its petition. The State also asked the court to take judicial notice of Adams County case No. 23-OP-176. According to the reports, the alleged victim is defendant’s daughter, H.B. The earliest report states the authoring officer was dispatched to the residence of Katie K., defendant’s ex-wife. Katie advised her daughter reported, while at defendant’s residence on April 15 and 16, 2023, she was touched inappropriately by defendant. H.B. reported defendant put his hand under her shirt and onto her chest. He also put his hand down her pants.. The officer spoke to Katie’s boyfriend, Ronald B. (We note in other reports, he is referred to as “Dylan” and “Dillon.” Katie’s handwritten notes refer to him as “Dylan.”) Dylan reported H.B. told his niece defendant was touching her inappropriately during visits at his residence.

¶ 7 A second report indicates Katie took H.B. to the child advocacy center for an interview with a forensic investigator. H.B. reported when she was at defendant’s residence, they slept in the same bed. H.B. reported the sexual abuse occurred “most every time” she was at defendant’s house. According to H.B., the abuse began when she was 9 or 10 years old. When the investigator asked her about the first time the abuse occurred, H.B. reported defendant touched her bare breast and her vulva and digitally penetrated her. The contact stopped after H.B. pretended to be asleep. When asked about the second incident, H.B. could not remember. When asked about the most recent incident, H.B. said defendant was “ ‘digging into [her] private area’ ” and penetrated her. This occurred in her grandfather’s old room. H.B. said that it hurts,

after which defendant stopped. Defendant did eventually get on top of H.B. He did the same again. When asked if defendant ever touched her with other parts of his body, H.B. said “she felt something warm, and he touched his private part on her private part.” At that time, she was facing away from him. H.B. also told the investigator about a time defendant removed her clothes. H.B. reported his private was by her “ ‘bum.’ ” H.B. said she did not tell her mother for quite some time “because there was a lot of pressure.”

¶ 8 An investigator from the Illinois Department of Children and Family Services (DCFS), Julie Jones, and a police officer later interviewed Katie. Katie’s relationship with defendant started in 2011, when she was 15 and defendant was 19. The relationship ended three years after H.B. was born. Katie had heard defendant had a criminal history for a sex crime in Arkansas. Defendant had visitation with H.B. every other weekend and, during the summer, every other week.

¶ 9 A police officer testified to having interviewed defendant’s father, Robert. Robert said he believed Katie was coaching H.B. on what to say.

¶ 10 At an interview with DCFS investigator Jones and the police, defendant stated he had problems with Katie since they quit dating. Defendant was aware of the allegations against him. He denied touching H.B.’s crotch area. Defendant said he only tickled her thighs. Defendant said H.B. would lie because Katie and Dylan wanted defendant out of the picture. After the officer played the video of part of H.B.’s interview, at the point H.B. described the digital penetration, defendant said “he knew exactly what [the officer] was talking about, and he was just tickling her.” After the officer said H.B. made no mention of being tickled, defendant “said that he was tickling her, and she said it hurt.” Defendant reported H.B. had her own bed at his residence, but she “slept with him a couple times the last weekend that he had her and she

was in his bed.” Defendant admitted Katie was 16 and he was 20 when she became pregnant with H.B. Jones told defendant H.B. did not appear to have been coached.

¶ 11 A detective also met with Dylan’s niece, H.V. H.V. reported H.B. told her about the abuse. The conversation occurred on the bus before Christmas break 2022. H.B. said defendant had been “digging in her pants” and she liked to fake sleep: “her dad came into her room and thought she was sleeping and started digging in her pants.” Another conversation about the abuse happened at recess “a couple months ago before school let out for the summer 2023.” H.V. asked H.B. if her father was still doing that to her, and H.B. said he was. H.V. said H.B. loves her father but knew what he was doing was wrong. H.V. asked H.B. why she did not tell her parents, and H.B. said she did not want to lose her dog. H.B. had known Dylan since H.B. was five years old. The record contains notes showing defendant has a dog named Angel.

¶ 12 A supplemental police report indicates a detective and DCFS Investigator Jones met with Katie again in May 2023. When asked how this issue came to Katie’s attention, she explained a situation at school resulted in Jones contacting her. H.B. had been on the bus, making moaning noises while saying she was washing, like she had seen in a video game. Jones talked to H.B. about the moaning and H.B. said “she was just being silly.” Katie and Dylan then had a conversation with H.B. about appropriate and inappropriate behavior. Shortly thereafter, H.B. had the conversation with H.V., who then told her mother. H.V.’s mother contacted Dylan.

¶ 13 In Adams County case No. 23-OP-176, Katie, on September 6, 2023, obtained an order of protection against defendant. She sought protection for her and H.B.

¶ 14 The pretrial services report indicates defendant is single with three children, who reside with their mothers. Defendant worked as a fry cook, working 30 hours per week. His criminal history includes 2016 convictions for possession of cannabis and drug paraphernalia, a

2020 conviction for cannabis transportation in a vehicle, and an April 2022 violation of an order of protection for which he was sentenced to 12 months' "withhold judgment/supervision." The order of protection "[t]erminated satisfied on June 6, 2022." The report mentions the criminal history may not be complete. Defendant completed the Revised Virginia Pretrial Risk Assessment Instrument, which estimated a 96% probability defendant would appear for all future hearings and no new offenses will occur during the pendency of the case. The report concluded by recommending defendant be placed on pretrial supervision.

¶ 15 The State argued other children are not protected from defendant and defendant's criminal history includes a violation of the order of protection.

¶ 16 In response, defense counsel argued the order of protection in this case was a civil proceeding and whether the court in that case found the order of protection should be granted should not be the basis for the decision on pretrial detention. Defense counsel emphasized defendant is not accused of going into the community to seek out potential victims, asserting "[t]his is an incredibly insulated fact pattern" that had not been previously charged against him. Defense counsel asserted there is no reason defendant would enter a school, daycare, or other play area for children. According to defense counsel, defendant said he lived by himself, worked, and was willing to not have contact with his other daughters. While acknowledging he had a violation of an order of protection in 2022, that was a conflict with an ex-girlfriend, "a completely different set of circumstances of sort of an address confusion thing," which was terminated as satisfied. Defense counsel emphasized there is no history showing defendant to be a danger to the community.

¶ 17 In granting the State's petition to deny pretrial release, the trial court first noted Katie's statement that indicated "there could have been criminal sexual abuse or assault

committed” in Arkansas. The court found the following:

“So I think that—and that was part in the material that was presented to the Court—that, in addition to the seriousness and nature of the facts in this particular case I think warrants detention. I don’t think there is any flight issues; but with the seriousness of these charges, the fact of how long they have taken place, the nature of the victim, the possibility that there has been other similar offenses committed by the defendant, however slight they may be, but I think it deems further investigation, but I’m at this point going to deny pre-trial released based on—for those reasons.”

¶ 18 After addressing other matters in the same case, the trial court clarified it found clear and convincing evidence the proof is evident or presumption great defendant committed the charged offenses and defendant poses a real and present threat to the safety of any person or persons or the community. The court further found it had not seen any evidence or conditions that would mitigate the real and present threat to the safety of others “based on the nature and circumstances of the offense charged, the identity of the person whose safety you believe to pose a threat to, being her age and relationship and the physical condition and the other comments that I made on the record.” In its written order, the court highlighted the statutory factors it relied upon in reaching its decision: (1) the nature and circumstances of the offenses charged, (2) the identity of any person or persons to whose safety defendant is believed to pose a threat and the nature of that threat, and (3) the age of the victim.

¶ 19 This appeal followed.

¶ 20

II. ANALYSIS

¶ 21 On October 31, 2023, defendant filed a notice of appeal but no memorandum under Illinois Supreme Court Rule 604(h) (eff. Oct. 19, 2023). Defendant’s notice of appeal is a completed form from the Article VI Forms Appendix to the Illinois Supreme Court Rules (see Ill. S. Ct. R. 606(d) (eff. Oct. 19, 2023)), by which he asks this court to reverse the order denying pretrial release and remand for the setting of pretrial release conditions. The form lists several possible grounds for appellate relief and directs appellants to “check all that apply and describe in detail.” Defendant checked one ground for relief: the State failed to meet its burden of proving by clear and convincing evidence no condition or combination of conditions can mitigate the real and present threat to the safety of any person or persons or the community. Under the preprinted text, defendant wrote the following:

“[Defendant] has just one prior misdemeanor conviction, for which he completed court supervision successfully. He has never been convicted of any crimes of this nature before. The trial court erred when it considered vague allegations in the police report that he had some sort of juvenile charges out of Alabama, which were not contained in his criminal history and were never proven by the State. [Defendant] has not had contact with the alleged victim since an order of protection was entered in early September, showing that he was not a real and present threat to her, and there was no reason to believe that he was a threat to the greater community, given that he did not work with or interact with children.”

¶ 22 Under the Code, we presume each “defendant is entitled to release on personal recognizance on the condition that the defendant attend all required court proceedings and the defendant does not commit any criminal offense[] and complies with all terms of pretrial release.” 725 ILCS 5/110-2(a) (West Supp. 2023). To deny defendant pretrial release under section 110-6.1(e)(2)-(3)(i) of the Code (*id.* § 110-6.1(e)(2)-(3)(i)), as the State sought here, the State must prove by clear and convincing evidence “the 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” and “no condition or combination of conditions set forth in subsection (b) of Section 110-10 of this Article can mitigate (i) the real and present threat to the safety of any person or persons or the community.” Factors to be considered by a court in determining whether defendant poses a real and present threat, include the following:

“(1) The nature and circumstances of any offense charged, including whether the offense is a crime of violence, involving a weapon, or a sex offense.

(2) The history and characteristics of the defendant including:

(A) Any evidence of the defendant’s prior criminal history indicative of violent, abusive or assaultive behavior, or lack of such behavior. ***

(B) Any evidence of the defendant’s psychological, psychiatric or other similar social history which tends to indicate a violent, abusive, or assaultive nature, or lack of any such history.

(3) The identity of any person or persons to whose safety

the defendant is believed to pose a threat, and the nature of the threat.

(4) Any statements made by, or attributed to the defendant, together with the circumstances surrounding them.

(5) The age and physical condition of the defendant.

(6) The age and physical condition of any victim or complaining witness.

(7) Whether the defendant is known to possess or have access to any weapon or weapons.

(8) Whether, at the time of the offense or any other offense or arrest, the defendant was on probation, parole, aftercare release, mandatory supervised release or other release ***.

(9) Any other factors *** deemed by the court to have a reasonable bearing upon the defendant's propensity or reputation for violent, abusive, or assaultive behavior, or lack of such behavior." *Id.* § 110-6.1(g).

¶ 23 Our review of a denial of pretrial release is under the abuse-of-discretion standard. See *People v. Inman*, 2023 IL App (4th) 230864, ¶¶ 10-11. Under this standard, we will find an abuse of discretion when we find the determination regarding pretrial release is unreasonable, arbitrary, or fanciful or when we find no reasonable person would agree with the trial court's decision. *Id.* ¶ 10. We will not substitute our own judgment for the judgment of the trial court simply because we would have analyzed the proper factors differently. *Id.* ¶ 11.

¶ 24 We find no abuse of discretion in the trial court's decision. The court considered

the proffers, the nature of the offense, and the arguments of counsel. The court weighed the statutory factors and found defendant to present an ongoing threat. The court then found no conditions of pretrial release could mitigate defendant's dangerousness. Given the age and vulnerability of potential victims, the charged offenses occurred in defendant's home, and defendant had violated an order of protection, as well as the fact the court complied with the requirements of the Code and made all necessary findings, we find the court's decision was not "arbitrary, fanciful, or unreasonable." (Internal quotation marks omitted.) See *Id.* ¶ 10.

¶ 25

III. CONCLUSION

¶ 26

For the reasons stated, we affirm the trial court's judgment.

¶ 27

Affirmed.