2024 IL App (4th) 231385-U

NO. 4-23-1385

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 20, 2024
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Winnebago County
BILLY RAY ADAMS,	)	No. 22CF1854
Defendant-Appellant.	)	
	)	Honorable
	)	Philip J. Nicolosi,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Cavanagh and Lannerd concurred in the judgment.

ORDER

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

¶ 2 Defendant, Billy Ray Adams, appeals the trial court's order denying him pretrial release under section 110-6.1 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-6.1 (West 2022)), hereinafter 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 On August 1, 2022, the State charged defendant with eight counts after, on July 30, 2022, he was allegedly involved in a motor-vehicle accident that resulted in the death of Ronald Baker and serious injury to Linda Baker. The record reveals a second superseding bill of indictment was issued in January 2023. According to this indictment, defendant was charged with 17 counts related to the July 30, 2022, motor-vehicle collision. We need not summarize all

17 counts but list a few here. Count I asserts defendant committed the offense of aggravated leaving the scene of an accident involving death, a Class 1 felony (625 ILCS 5/11-401(b) (West 2022)). According to count I, "defendant failed to remain at the scene of the accident until he performed the duty to give information and render aid, and failed to report the accident *** within one-half hour after the accident." In count II, the State charged defendant with aggravated driving with an alcohol concentration of 0.08 or more in blood or breath resulting in death, a Class 2 felony (*id.* § 11-501(a)(1),(d)(1)(F)). Count III asserts defendant committed aggravated driving under the influence of alcohol (DUI) resulting in death (*id.* § 11-501(a)(2), (d)(1)(f)). Count IV charges aggravated DUI due to the combined influence of alcohol and drugs resulting in death (*id.* § 11-501(a)(5), (d)(1)(F)). Count V charges defendant with aggravated driving with a drug substance, specifically hydrocodone, or compound in breath, blood, bodily substance, or urine resulting in death (*id.* § 11-501(a)(6), (d)(1)(F)).

¶ 5 On September 28, 2023, defendant filed a motion for reconsideration of his pretrial release conditions. In his motion, defendant asserted he was in custody under certain pretrial release conditions, including a condition he would be released if he posted cash bail. Defendant asserted he had been charged with an offense listed under section 110-6.1(a) of the Code (725 ILCS 5/110-6.1(a) (West 2022)) and asked the trial court to reconsider the conditions of his release.

¶ 6 On November 17, 2023, the trial court held a hearing on defendant's motion. The State, which opposed defendant's motion and sought pretrial detention based on the flight-risk and dangerousness standards, asked the court to take judicial notice of the pretrial services report. The State then provided the following proffer:

"[O]n July 30th of 2022, at approximately 10:30 or 10:23 p.m.,

Deputy Jenkins and Jones of the sheriff's department responded to a two vehicle crash *** involving a 1997 Dodge Caravan and a 2010 Ford F-150. Deputy Jones observed the F-150 in the middle of the roadway, which was turned over on its roof, and the male occupant was seated on the ground by the vehicle. The male was identified as [defendant].

[Defendant] stated that the driver of—that—of the F-150 left on foot, and [defendant] stated he did not know the name of the driver. The white pickup truck was registered to the defendant. Deputy Jones observed the defendant's eyes were watery and bloodshot, and Deputy Jones could smell the odor of alcoholic beverage coming from the defendant's breath and his speech was slurred and he did not make sense.

Deputy Jones observed Bud Light beer tops were scattered throughout the ground outside of the pickup truck. Deputy Jenkins performed [horizontal gaze nystagmus] on the defendant, and both Deputy Jenkins and Jones observed the defendant lack smooth pursuit, had distinct and sustained nystagmus at maximum deviation, as well as nystagmus prior to 45 degrees.

The defendant told Deputy Jenkins he could not perform the walk and turn or one[-]legged stand because of chest and lower back—his lower back hurting. *** Deputy Jenkins asked the defendant if he would submit to a portable breath test and the

defendant refused. He was placed under arrest for DUI. At the hospital, the defendant reported that the driver of the F-150 was a Woody Wood from Chicago. Defendant said he picked up Woody in Freeport earlier in the day and did not know him or did not know him for three years.

Defendant stated they were hanging around his house, getting ready to go to a barbecue, and they wanted to go to Rockford to party. Defendant stated that Woody wanted to drive his truck because it looks so nice. The defendant never admitted to driving the F-150 involved in the crash to police.

* * *

The pill bottle on the hydrocodone had a controlled substance—was a controlled substance. And the driver of the 1997 Dodge Caravan was a Ronald Baker. He was pronounced deceased at the scene. The front seat passenger, Linda Baker, *** was airlifted to Javon Bea Hospital where she received treatment for a broken leg."

¶ 7 The State further provided the driver's side airbag of the F-150 was deployed but the front passenger's seat airbag was not. The "[event data recorder] of the F-150" did not indicate a passenger was in the front passenger seat at the time of the crash. Defendant's DNA was found on the airbag. Defendant committed three DUI offenses. The most recent, on March 30, 2021, was a pending case (Winnebago County case No. 21-CF-182). Defendant's blood alcohol tested at 0.17 and hydrocodone was detected in his urine. According to the pretrial

services report, defendant was convicted of DUI in 2001 (Winnebago County case No. 01-DT-133) and in 2003 (Winnebago County case No. 03-DT-242).

¶ 8 The State, pointing to the pretrial services report, emphasized defendant's criminal history. Defendant served two sentences in the Illinois Department of Corrections: one for burglary in 1979 and one for resisting a peace officer in 1985. According to that report, defendant was convicted in 2017 for an April 2017 criminal trespass to a residence and for a June 2017 "Domestic battery/Bodily harm." Other convictions included a 1983 criminal damage to property, a 1986 criminal damage to property, a 1997 unlawful possession of a weapon by a felon and DUI, a 1998 Pennsylvania conviction for terroristic threats, a 2000 violation of an order of protection, a 2006 disorderly conduct, and a 2015 "Battery/Bodily Harm, Disorderly Conduct."

¶ 9 In contrast, defense counsel noted defendant had been held on bond that required him to post $50,000 for his release. According to defense counsel, defendant remained at the scene of the accident and denied culpability. A neighbor near the scene, who went outside shortly after hearing the accident, heard noises behind one of her barns that sounded like they came from a person. The State's proffer regarding the passenger side airbag not deploying presumed the sensor for the 20-year-old vehicle worked and there was no evidence to show that was true. As to the allegation defendant's DNA was found on the truck's driver's side airbag, defense counsel stated the following:

> "I'd ask the Court to also keep in mind that their proffer indicated that this vehicle had come to rest upside down. And, in fact, the only exit from that vehicle was to crawl out through the passenger window. So whether you're in the passenger seat or the driver's

seat, if the airbag is deployed, you are most certainly going to have contact with it exiting that vehicle."

Defense counsel further emphasized defendant's last DUI conviction occurred almost 20 years before, and the last time he drove without a valid license was almost 25 years earlier. Defense counsel argued defendant could be fitted with a secure continuous remote alcohol monitoring (SCRAM) device to guarantee he did not consume alcohol and a GPS monitor andhe was willing to agree to home confinement.

¶ 10 Before denying defendant's motion and ordering him detained, the trial court emphasized not only the proffer but also the probable-cause statement:

"[T]he male was sitting next to the upside down white Ford. There was also then a red minivan on the other side of the ditch. ***

The defendant was spoken to by the officer about what had happened. And among other things, the defendant said that he had admitted to drinking alcohol. And I'm just reading from the probable cause statement. [Defendant] admitted to drinking alcohol earlier in the day to the Rockton paramedics. [Defendant] said he was coming from his house in Freeport and traveling east, heading to Rockford and the red vehicle came out of nowhere like a bat out of hell. [Defendant] said the vehicle came over the middle line.

He had advised the police *** he wasn't the driver. Although when asked who the person was and what that person looked like, he said, I don't know. He's just a friend. And no other person was found near that truck or the other vehicle or in that

> immediate vicinity. Multiple persons on the scene explained that no one had left the scene."

The court also summarized the events of the charged offenses and defendant's criminal history. The court noted defendant stated he received substance-abuse treatment in 1997 and 2001.

¶ 11 The trial court found the State proved by clear and convincing evidence defendant poses a real and present threat to persons or the community and the State showed by clear and convincing evidence no condition or combination of conditions of release would reasonably avoid this threat to the public on the roadways. The court rejected SCRAM as it is not always 100% accurate and defendant was not just charged with DUI with alcohol, but also with drugs. The court further found, based on defendant's age (64 years old), his history, and the charges against him, as well as the potential sentences for someone of his age, he presented a danger of willful flight. The court found the proof was evident or the presumption great defendant committed the offenses charged.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 Before we begin our analysis, we are concerned with the procedure used by the parties and trial court in this case. Defendant filed a "Motion for Reconsideration of Pretrial Conditions" asserting "[t]hat the offense alleged is an offense under paragraphs (1) through (7) of subsection (a) of 725 ILCS 5/110-6.1. Defendant is entitled to a hearing on this motion within 90 days of this filing." While defendant's motion provides no statutory citation for this assertion, it appears he is referencing section 110-7.5(b) of the Code, which states:

> "On or after January 1, 2023, any person, not subject to subsection (b), who remains in pretrial detention and is eligible for

> detention under Section 110-6.1 shall be entitled to a hearing according to the following schedule: (1) For persons charged with offenses under paragraphs (1) through (7) of subsection (a) of Section 110-6.1, the hearing shall be held within 90 days of the person's motion for reconsideration of pretrial release conditions." 725 ILCS 5/110-7.5(b) (West 2022).

¶ 15 However, defendant's reference to this section is misplaced. Section 110-7.5(b) of the Code, in the immediately preceding paragraph, states: "On or after January 1, 2023, any person who remains in pretrial detention after having been ordered released with pretrial conditions, including the condition of depositing security, shall be entitled to a hearing under subsection (e) of Section 110-5." *Id.* In this case, defendant was previously ordered released, pending the posting of a monetary bond. Therefore, defendant would fall into the category of persons subject to subsection (b) and, as such, was entitled to a hearing under section 110-5(e) of the Code (*id.* § 110-5(e)). A 110-5(e) hearing requires the trial court to determine the reasons for the defendant's continued detention. *Id.* § 110-5(e).

¶ 16 However, rather than conducting a hearing under section 110-5(e) of the Code, a hearing under section 110-6.1 (*id.* § 110-6.1) appears to have been conducted. Under that section, the trial court is to hold a hearing "*upon verified petition by the State*" (emphasis added) (*id.* § 110-6.1(a)) as a condition precedent to the denial of a defendant's pretrial release. However, the State never filed a verified petition to detain defendant in this case. Even though the State did not file a verified petition to detain pursuant to 110-6.1 in response to defendant's motion, the parties and the court proceeded as if the State had filed one and a hearing under 110-6.1 (*id.* § 110-6.1) was held.

¶ 17 As this court noted in *People v. Martin*, 2023 IL App (4th) 230826, ¶ 25, "[w]e are mindful that the Act imposes significant obligations on trial courts, many of which are new." However, the procedure used in this case is erroneous. See, *e.g.*, *People v. Evans*, 2023 IL App (4th) 230931-U (unpublished order pursuant to Illinois Supreme Court Rule 23); *People v. White*, 2023 IL App (4th) 230858-U (unpublished order pursuant to Illinois Supreme Court Rule 23). There is no authorization contained in section 110-5(e) or section 110-7.5(b) of the Code (*id.* §§ 110-5(e), 110-7.5(b)) for the trial court to *sua sponte* hold a detention hearing in response to a defendant's section 110-7.5(b) motion. Further, while a defendant may be detained pursuant to section 110-6.1 of the Code after a hearing, section 110-6.1 requires the State to file a verified petition. 725 ILCS 5/110-2(a), (e); 110-6.1 (West 2022). Despite the parties' and the trial court's acquiescence to the procedure employed, we caution the parties against conducting proceedings in this manner in the future. The State must file a verified petition for detention under section 110-6.1 to proceed with a detention hearing under that statutory section, whether it is to initiate a proceeding to detain or it is filed in response to a motion to reopen conditions of pretrial release.

¶ 18 We acknowledge none of the parties, in their arguments on appeal, raised the issue of the procedure used in this case. Accordingly, those arguments are forfeited. Ill. S. Ct. R. 604(h)(2) (eff. Sept. 18, 2023) ("The Notice of Appeal shall describe the relief requested and the grounds for the relief requested."); see *Martin*, 2023 IL App (4th) 230826, ¶¶ 18-19. While forfeiture is not a limitation on this court's discretionary ability to review an otherwise forfeited issue (*People v. Curry*, 2018 IL App (1st) 152616, ¶ 36), the parties have not requested this court to exercise such discretion, and we decline to do so *sua sponte* in this particular case.

¶ 19 On November 28, 2023, defendant filed a notice of appeal, challenging the order denying him pretrial release under Illinois Supreme Court Rule 604(h) (eff. Oct. 19, 2023).

Defendant did not file a supporting memorandum. 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 allow his release subject to reasonable conditions. The form lists several possible grounds for appellate relief and directs appellants to "check all that apply and describe in detail." Defendant checked four grounds for relief and provided additional support on the lines beneath the preprinted text of those grounds.

¶ 20 The first ground for relief checked by defendant in his notice of appeal is the State failed to prove by clear and convincing evidence the proof is evident or the presumption great he committed the offenses charged. In support, defendant wrote the following:

> "At hearing the court heard that the Defendant repeatedly denied being the driver of the vehicle, but that the Defendant's DNA was on the airbag of the vehicle. In response, the defense pointed out that the vehicle in question came to rest on it's [*sic*] roof, and the only egress was through the driver's window, thus both the driver and the passenger would have been required to exit through the broken driver window, inevitably having contact with the driver's airbag. Further, the defense proffered that the police reports show that a witness, who's [*sic*] home was located very near the accident in rural area, heard noises coming from the area behind one of her barns very shortly after the accident consistent with someone fleeing the accident scene across her property. The charges in the indictment notwithstanding, it is uncontroverted that the Defendant never left the scene of the accident."

¶ 21 Under the Code, all criminal defendants are eligible for pretrial release. 725 ILCS 5/110-6.1(e) (West 2022). Before the State may overcome that presumption and secure pretrial detention of a criminal defendant under section 110-6.1(a) (*id.* § 110-6.1(a)), the State must prove multiple factors. One is to prove by clear and convincing evidence "the proof is evident or the presumption great that the defendant has committed" an offense described in section 110-6.1(a) (*id.* § 110-6.1(e)(1)). Here, defendant is charged with multiple counts of aggravated DUI (625 ILCS 5/11-501(d)(1)(F) (West 2022)), an offense listed in section 110-6.1(a)(6.5)(E) (725 ILCS 5/110-6.1(a)(6.5)(E) (West 2022)).

¶ 22 We review whether a criminal defendant is properly denied pretrial release for an abuse of discretion. See *People v. Inman*, 2023 IL App (4th) 230864, ¶¶ 10-11. An abuse of discretion will be found when we find the decision unreasonable, arbitrary, or fanciful or when we find no reasonable person would agree with the trial court's decision. *Id.* ¶ 10.

¶ 23 The trial court did not abuse its discretion in finding the proof was evident defendant committed an offense listed in section 110-6.1(a). Defendant was charged with aggravated DUI resulting in death. Even if we accept defendant's version of the facts as true, it was not unreasonable, arbitrary, or fanciful for the court to have found this prerequisite satisfied by clear and convincing evidence. The record supports the court's findings. Defendant admitted to paramedics he had consumed alcohol. Defendant's blood alcohol level tested at 0.17. Defendant was found next to the crashed vehicle registered in his name with an airbag deployed on the driver's side only. Individuals at the scene saw no one leave the site of the accident. A victim died as a result of the crash.

¶ 24 We note the charges for aggravated DUI resulting in death, including counts II through V, are offenses sufficient to meet the requirement for a detainable offense under section

110-6(a). These counts do not require proof defendant fled the scene of the accident. Therefore, defendant's last contention under this ground, he never left the scene, is irrelevant.

¶ 25 The next checked box on defendant's notice of appeal is the State did not prove by clear and convincing evidence he poses a real and present threat to the safety of any persons or persons or the community. In support, defendant wrote the following:

> "The only evidence offered by the State on this issue was that the Defendant stood accused in this matter, and that he had a DUI pending in a different county when he was charged in this matter. No proffer was made specifying the allegations of the out of county offense or the strength of those allegations. The Defense pointed out that the Defendant's last DUI disposition was 20 years ago, and his sole disposition for driving after suspension was 25 years ago."

¶ 26 To deny a defendant pretrial release under section 110-6.1(e)(2)-(3) of the Code (725 ILCS 5/110-6.1(e)(2)-(3) (West 2022)), as the State sought here, the State must also 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." The Code gives the trial court broad discretion in choosing what factors to consider in making this determination. See *id.* § 110-6.1(g) (setting forth factors a trial court may consider when considering dangerousness). These factors include the nature and circumstances of the charged offense and defendant's history and characteristics. *Id.*

¶ 27 Here, when finding the State sufficiently proved defendant poses a threat, the trial court specified he poses a threat to the public on the roadway. This determination is not fanciful,

arbitrary, or unreasonable. The evidence shows defendant had multiple DUI convictions on his record, including a charge from 2021. While the circumstances of the pending DUI charge were not provided at the detention hearing, the fact a charge was pending against defendant when the charged offenses were allegedly committed shows he will not stop drinking and driving even when facing a trial for that same conduct and after at least two rounds of substance-abuse treatment. The court did not abuse its discretion in finding defendant's release poses a threat to the community.

¶ 28 The third ground defendant checked in his notice of appeal is the State did not prove by clear and convincing evidence no condition or combination of conditions can mitigate the real and present threat to the safety of the community or his willful flight. In support, defendant wrote the following:

> "No evidence of any kind was presented regarding flight other than the hypothetical possibility that the sentencing range for the offenses charged could motivate any defendant to flee. The State had no response to the Defendant's offer to be placed home detention monitored by a GPS device and [a SCRAM device] at his own expense, other than to say, without support, that those conditions weren't good enough."

¶ 29 To secure an accused's pretrial detention under the dangerousness standard, the State must also prove by clear and convincing evidence no condition or combination of conditions can mitigate the real and present threat defendant's release poses to the safety of any person or persons or the community. See *id.* § 110-6.1(e)(3)(i). We find no abuse of discretion in the trial court's conclusion no condition or combination of conditions could mitigate defendant's

threat. The State presented sufficient evidence to support the court's conclusion. Defendant had a lengthy criminal history, including multiple DUI offenses, spanning over 40 years. Defendant had at least two attempts at substance-abuse treatment. Defendant had yet another pending DUI case when he was involved in the collision that resulted in Ronald's death and severe injury to Linda. The court noted its concerns with a SCRAM device, including the fact it would not detect the use of certain drugs and the fact defendant's urine tested positive for hydrocodone. There is no error on this ground.

¶ 30 The last argument defendant asserts in his notice of appeal is no condition or combination of conditions would reasonably ensure his appearance for later hearings or prevent him from being charged with a subsequent felony or Class A misdemeanor. Under this argument, defendant wrote the following:

> "Without any annunciated [*sic*] reasoning, the court simply dismissed the voluntary offer to submit to SCRAM monitoring and GPS enforced home detention as insufficient. It would be impossible to re-violate the law as it relates to the conduct alleged without detection and law enforcement response, yet the trial court clearly gave no meaningful consideration to the validity of those conditions as a viable option."

¶ 31 This argument is irrelevant and, therefore, meritless. This box on the preprinted form for a notice of appeal is relevant to appeals from petitions to *revoke* pretrial release filed under section 110-6(a) of the Code (*id.* § 110-6(a)). There is no requirement within section 110-6.1(e)(2)-(3) of the Code (see *id.* § 110-6.1(a), (e)(2)-(3)), by which the State objected to defendant's pretrial release, for the State prove to this factor before seeking to *deny* defendant's

pretrial release.

¶ 32 We further note defendant has challenged the finding of willful flight. A defendant may be detained under not only the dangerousness standard but also the willful-flight standard. See *People v. Robles*, 2024 IL App (4th) 231168-U, ¶ 14. As we have found the trial court did not err in detaining defendant under the dangerousness standard, we need not address his argument regarding willful flight.

¶ 33 III. CONCLUSION

¶ 34 We affirm the trial court's judgment.

¶ 35 Affirmed.