2024 IL App (1st) 240293-U

FIFTH DIVISION
April 26, 2024

No. 1-24-0293B

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. TAVEON DANIEL, Defendant-Appellant.	)))))))))))	Appeal from the Circuit Court of Cook County. No. 23 MC 1115014 Honorable Kelly McCarthy, Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court.
Justices Lyle and Navarro concurred in the judgment.

O R D E R

¶ 1 *Held*: The circuit court's order granting the State's petitions for pretrial detention is affirmed. It was not an abuse of discretion to conclude that no conditions would mitigate the real and present threat to the safety of individuals or the community that would result from defendant's pretrial release.

¶ 2 Defendant Taveon Daniel appeals from the circuit court's order granting the State's petition to deny him pretrial release under the dangerousness standard set out in section 110-6.1 of the Code of Criminal Procedure of 1963 (Code), as amended by Public Act 101-652, § 10-255,

and Public Act 102-1104, § 70 (eff. Jan. 1, 2023) (725 ILCS 5/110-6.1 (West 2022)), commonly known as the Pretrial Fairness Act. For the reasons that follow, we affirm the court's order of detention.

¶ 3 I. BACKGROUND

¶ 4 The State charged Mr. Daniel with one count of armed robbery with a firearm (720 ILCS 5/18-2(a)(2) (West 2022)), one count of aggravated unlawful restraint (720 ILCS 5/10-3.1 (West 2022)), and two counts of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1) (West 2022)). The State petitioned for Mr. Daniel to be detained until trial. It argued that (1) the proof was evident and the presumption great that Mr. Daniel committed the armed robbery with a firearm, a forcible felony eligible for detention under section 110-6.1(a)(1.5) of the Code; (2) Mr. Daniel satisfied the dangerousness standard of section 110-6.1(e)(2) because he posed "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 (3) no condition or combination of conditions set forth in section 110-10(b) of the Code could mitigate those risks.

¶ 5 The hearing on the State's petitions was held on December 11, 2023. Mr. Daniel was present and represented by counsel. The State, noting that it relied on a summary of the complaining witness's statement, the arrest report, and the case incident report, proffered the following facts in support of its petition.

¶ 6 On December 10, 2023, at approximately 3:10 P.M., a man walked by a 15-year-old boy who was waiting for the train at the 63rd street Red Line Chicago Transit Authority (CTA) station in Chicago. The boy was standing under the heated lights and was headed to a basketball game. The man approached, lowered a ski mask, and pointed a black firearm at the boy. The man then demanded that the boy hand over his phone and anything else in his possession. The man then took

the boy's iPhone and fled the platform.

¶ 7 The boy notified individuals in the area, and at around 3:13 P.M. a bystander called 911. Officers arrived within minutes and the victim told the officers the direction in which the perpetrator had fled.

¶ 8 According to the arrest report, a CTA surveillance camera recorded the incident. Also, a Police Observation Device (POD) camera recorded a black male wearing black clothing, a ski mask, and orange and black gym shoes running away from the platform.

¶ 9 The police canvassed the area and found Mr. Daniel "attempting to hide in a tall bush tree between buildings." Around 3:35 P.M., the officers placed Mr. Daniel into custody and conducted a protective pat down, recovering a nine-millimeter firearm from the front right area of Mr. Daniel's hoodie. The gun had one round that was chambered. A custodial search revealed Mr. Daniel had two cell phones, including an iPhone with a black case.

¶ 10 The police conducted a showup at the scene and the victim identified Mr. Daniel as the individual who had robbed him at gunpoint. Mr. Daniel did not have a valid Firearm Owner's Identification (FOID) card or a Conceal Carry License. A firearm check revealed that the gun had been reported stolen. The victim also identified the iPhone with the black case as his.

¶ 11 The State acknowledged that Mr. Daniel has no misdemeanor or felony convictions and "only three arrests." It then argued that Mr. Daniel posed a real and present threat to the safety of the community due to the facts of the case—noting that the incident occurred in a public area and was committed against an unsuspecting minor by an individual without a license to possess a firearm. Finally, the State argued that court-imposed conditions of release, including electronic monitoring (EM), could not mitigate against the risks posed because EM would afford freedom of movement and the offense, as the State again noted, occurred "in a public area towards an unknown

individual who did not initiate this contact in any way."

¶ 12 Defense counsel responded, arguing the proof was not evident nor the presumption great that Mr. Daniel committed the armed robbery. The showup occurred while the victim was traumatized, the victim's mother was not present, showups are inherently suggestive, and the iPhone recovered from Mr. Daniel's person was generic and it was therefore plausible that it was not the victim's.

¶ 13 Defense counsel next argued that Mr. Daniel was not a safety risk. He had no prior convictions and had "strong community ties." He had lived for the last seven years with his mother and was working two jobs—one as an unarmed security guard and one as a FedEx package handler. He also volunteered through his church at a food pantry. Finally, the defense argued that the court could mitigate against any potential safety risk with EM, which would prevent any interaction with the complaining witness.

¶ 14 The circuit court found that the proof was evident and the presumption great that Mr. Daniel committed the armed robbery with a firearm. The court did not credit the argument that the cell phone was generic, such that the victim could not positively identify his phone. The court cited the footage recorded by the POD camera, a CTA surveillance camera, and the fact that Mr. Daniel was found hiding in a bush with a gun and the proceeds of the robbery shortly after the robbery occurred. The court then stated that defense counsel's argument, that the showup was tainted by trauma was, at this stage, "speculation," although it could be the subject of an identification motion in the future. The court pointed out that the perpetrator also wore uniquely colored shoes that would have been identifiable.

¶ 15 The court next addressed the dangerousness standard, finding that the specific articulable facts of the case demonstrated that Mr. Daniel posed a real and present threat to the safety of a

person, persons, or the community. The perpetrator had approached an unsuspecting minor in a public area with a gun around 3:00 P.M., "when CTA trains are getting to capacity." In the court's words, the victim was "doing nothing other than taking a train ride to a basketball game." The perpetrator took an opportunity to "lower his ski mask and point a gun in [the boy's] face all for a cell phone," and in the court's view, "that ma[de] him a real and present danger to the safety of the community."

¶ 16 Finally, the court addressed whether there were any conditions or combination of conditions that could mitigate the threat to the community if Mr. Daniel was released pretrial. The court noted that pretrial services prepared an assessment of Mr. Daniel, which reported that he scored a two out of six on the "new criminal activity scale," and a one out of six on the "failure to appear" scale. The report itself stated that there were no flags for new violent criminal activity and recommended, "If Released, Maximum Conditions." The court then noted that the crime at issue here was a "crime of opportunity." In the court's words, the perpetrator went "to where people [were] standing, going to be standing just waiting for trains and [used] that as an opportunity to victimize them." The court then stated,

> "So the question is whether there are any conditions that I could put in place that would protect the community from acts like this by this defendant in the future. Electronic monitoring in a case like this is not full [*sic*] proof. Any defendant can walk away from electronic monitoring any time they choose. They can victimize people at their host site."

¶ 17 The court found there were no conditions it could impose that would sufficiently safeguard the community. It ordered that Mr. Daniel be detained.

¶ 18 Mr. Daniel now appeals.

¶ 19 II. JURISDICTION

¶ 20 The circuit court entered its order granting the State's petitions for pretrial detention on December 11, 2023, and Mr. Daniel filed a timely notice of appeal from that order on December 22, 2023. We have jurisdiction over this appeal under section 110-6.1(j) of the Code (725 ILCS 5/110-6.1(j) (West 2022)) and Illinois Supreme Court Rule 604(h) (eff. Oct. 19, 2023), governing appeals from orders denying the pretrial release of a criminal defendant.

¶ 21 III. ANALYSIS

¶ 22 Section 110-6.1(e) of the Code provides that "[a]ll defendants shall be presumed eligible for pretrial release" and that the State bears the burden of justifying pretrial detention by clear and convincing evidence. 725 ILCS 5/110-6.1(e) (West 2022). The State must prove that (1) "the proof is evident or the presumption great" that the defendant committed a qualifying offense; (2) the defendant "poses a real and present threat to the safety of any person or persons or the community" (the dangerousness standard); and (3) "no condition or combination of conditions" set forth in section 110-6.1(b) of the Code can mitigate either that safety risk or "the defendant's willful flight." *Id*. §§ 110-6.1(e)(1)-(3), 110-10(b).

¶ 23 Either side "may present evidence *** by way of proffer based upon reliable evidence." *Id.* § 110-6.1(f)(2). The court's ultimate decisions "regarding release, conditions of release, and detention prior to trial must be individualized, and no single factor or standard may be used exclusively to order detention." *Id.* § 110-6.1(f)(7).

¶ 24 Section 110-6.1 of the Code does not establish a standard of review for orders granting, denying, or setting conditions of pretrial release. We have held that we will review the circuit court's factual findings under the manifest weight of the evidence standard. *People v. Reed*, 2023 IL App (1st) 231834, ¶ 24. This is the standard we apply to the court's findings that the proof was

evident and the presumption great that Mr. Daniel committed the alleged offense and that he posed a danger to the safety of a person or persons or the community. A judgment is against the manifest weight of the evidence, so as to warrant reversal on appeal, only when the opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence. *People v. Colquitt*, 2013 IL App (1st) 121138, ¶ 28 (quoting *Bazydlo v. Volant*, 164 Ill. 2d 207, 215 (1995)).

¶ 25 We have held that we will apply an abuse of discretion standard to determine whether the trial court erred in finding that no conditions of release could mitigate the safety risk. *Reed*, 2023 IL App (1st) 231834, ¶ 31. "An abuse of discretion occurs when the circuit court's decision is 'arbitrary, fanciful or unreasonable,' or where 'no reasonable person would agree with the position adopted by the [circuit] court.' " *People v. Simmons*, 2019 IL App (1st) 191253, ¶ 9 (quoting *People v. Becker*, 239 Ill. 2d 215, 234 (2010)).

¶ 26 Mr. Daniel relies on arguments made in his notice of appeal, the arguments attached to that notice, and a separate notice that he filed in lieu of a Rule 604(h) memorandum. Mr. Daniel makes the following five arguments: (1) the State failed to meet its burden of demonstrating that "the proof is evident or the presumption great" that he committed the armed robbery; (2) the State failed to meet the dangerousness standard; (3) the State failed to demonstrate that the court could not mitigate any alleged risk to the community by imposing a condition or combination of conditions such as EM; (4) the court erred in its determination that no condition or combination of conditions could ensure his appearance at later hearings; and (5) the State failed to tender a full statement made by the complaining witness to defense counsel prior to the pretrial detention hearing.

¶ 27 As a preliminary matter, we address Mr. Daniel's fifth argument. The State was not required to tender the full statement made by the complaining witness. Section 110-6.1(f)(1)

requires that, prior to the hearing, the State must "tender to the defendant copies of the defendant's criminal history available, any written or recorded statements, and the substance of any oral statements made by any person, *if relied upon by the State in its petition* ***." (Emphasis added.) 725 ILCS 5/110-6.1(f)(1) (West 2022). The record demonstrates that the State relied only on the summary of the complaining witness's statement and not on the statement itself. The State was therefore not required to tender the full statement.

¶ 28 We turn to Mr. Daniel's first argument. The circuit court's finding, that the State met its burden of demonstrating that the proof was evident and the presumption great that Mr. Daniel committed the armed robbery, was not against the manifest weight of the evidence. The showup identification occurred minutes after the incident, the arrest report indicates that the victim was able to identify both the perpetrator and his phone, and the police found Mr. Daniel hiding in a bush with a gun that matched the description of the gun used in the robbery. Also, the robbery was caught on video, and the perpetrator was wearing distinctive shoes, as recorded by a POD camera.

¶ 29 Defense counsel cites three specific flaws in the State' evidence. First, that the State's proffer did not provide "specific information about how clear the [video] footage [was], what angle the camera captured the footage from, or whether the officers that viewed the footage had seen Mr. Daniel before." Second, the court should not credit the identification because showups are inherently suggestive, the victim was traumatized at the time, and the victim's mother was not present. Finally, defense counsel suggested that it was possible that Mr. Daniel was not carrying the victim's phone, but a different generic iPhone in addition to his own phone.

¶ 30 None of these arguments provide any answer to the fact that Mr. Daniel was found hiding in a bush and carrying a gun matching the description of the gun used on the victim just minutes after the incident. Nor do any of these arguments convince us that the circuit court's conclusion

that there was sufficient evidence that Mr. Daniel had committed a detainable crime was against the manifest weight of the evidence.

¶ 31 The circuit court's finding that the State met its burden as to dangerousness was also not against the manifest weight of the evidence. Section 110-6.1(g) sets out the factors the court may consider when making a determination as to dangerousness. 725 ILCS 5/110-6.1(g) (West 2022). These include "[t]he nature and circumstances of any offense charged, including whether the offense [was] a crime of violence" (*id.* § 110-6.1(g)(1)), the defendant's history and characteristics including prior criminal history (*id.* § 110-6.1(g)(2)(A)), and "[a]ny other factors, including those listed in Section 110-5 [a section on pretrial release conditions] deemed by the court to have a reasonable bearing upon the defendant's propensity or reputation for violent, abusive, or assaultive behavior" (*id.* § 110-6.1(g)(9)).

¶ 32 The circuit court relied primarily on the nature of the offense and attendant circumstances. As the court pointed out, the crime was perpetrated on an unsuspecting and unknown member of the public, a minor, in a busy area of public transportation, and a gun was used. Defense counsel argues that the court should have given stronger consideration to the relevant mitigating factors in section 110-6.1(g), including that Mr. Daniel has no previous criminal convictions and is connected to a stable community. While we agree that these are also relevant, we do not think the court's finding that Mr. Daniel posed a danger to the community given the nature of the crime and his access to guns was against the manifest weight of the evidence.

¶ 33 The final issue is whether some combination of the conditions in section 110-10(b), including EM, can mitigate the real and present threat to safety the court found Mr. Daniel's release would pose. In making its determination, the court must weigh the factors listed in section 110-5(a). These include the nature and circumstances of the offense charged, the weight of the evidence

against the defendant, the defendant's history and characteristics (including family ties, employment, financial resources, etc.,), the nature and seriousness of the threat to the safety of the community, and the risk of obstructing or attempting to obstruct the criminal justice process if the defendant is released. 725 ILCS 5/110-5(a)(1-5) (West 2022).

¶ 34 In ruling that the State met its burden of showing that there were no such conditions, the court first noted the pretrial services score, which was a total score of three with a recommendation for "Maximum Conditions" if released. The court then recapped the violent nature of the offense and the weight of evidence against Mr. Daniel, including that the gun and proceeds were recovered from his person. It lastly repeated its earlier point that the timing and location of the offense aggravated the level of dangerousness involved. It added, "Electronic monitoring in a case like this is not full [*sic*] proof."

¶ 35 Mr. Daniel counters by arguing both that his pretrial services assessment score was relatively low and that the State failed to proffer specific reasons that EM could not mitigate against any alleged risk.

¶ 36 We cannot find that the detention decision here was an abuse of discretion. This would require us to find that " 'no reasonable person would agree with the position adopted by the [circuit] court.' " *Simmons*, 2019 IL App (1st) 191253, ¶ 9. The evidence that Mr. Daniel had access, with no FOID card, to a loaded and stolen gun that he used to rob a teenager at gun point in mid-day in a public place could reasonably support a decision that EM would be insufficient to reduce the safety risk to the public in case of his release. As the trial court noted, this was a crime of opportunity, and Mr. Daniel could walk away from electronic monitoring and could also victimize people at his host site.

¶ 37 We do note, however, that section 110-6.1(e)(3) does not require that the conditions of

release be "foolproof." Rather, the statute requires the court to consider whether any of the conditions or combination of conditions listed in section 110-10 can "*mitigate*" the real and present threat "to the safety of any person or persons or the community[.]" (Emphasis added.) 725 ILCS 5/110-6.1(e)(3) (West 2022). However, we do not find that the trial court's reference to the fact that EM is not foolproof suggests that the court misunderstood the statute or failed to apply the right criteria.

¶ 38 Mr. Daniel's final argument is that the court erred in determining that no condition or combination of conditions would reasonably ensure his appearance at later court hearings. Neither the State's petition nor the trial court's findings were based on an allegation that Mr. Daniel would not appear in court. Thus, this argument appears to be misplaced here.

¶ 39 VI. CONCLUSION

¶ 40 For the above reasons, we affirm the circuit court's orders granting the State's petitions for pretrial detention.

¶ 41 Affirmed.