

2024 IL App (2d) 230530-U
No. 2-23-0530
Order filed February 13, 2024

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)	Appeal from the Circuit Court
OF ILLINOIS,)	of De Kalb County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 23-CF-630
)	
THOMAS R. LENKER,)	Honorable
)	Marcy L. Buick,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Schostok and Mullen concurred in the judgment.

ORDER

¶ 1 *Held:* Where evidence at pretrial detention hearing was sufficient to show by clear and convincing evidence that (1) the proof was evident or the presumption great that defendant committed the charged offenses; (2) defendant poses a real and present threat to the safety of any person or person or the community, based on the specific articulable facts of the case; and (3) no condition or combination of conditions would mitigate the threat posed by defendant; the circuit court did not abuse its discretion in denying defendant's pretrial release. Affirmed.

¶ 2 On November 17, 2023, defendant Thomas R. Lenker was charged with four counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2022)), a Class X felony, one count of sexual exploitation of a child (720 ILCS 5/11-9.1(a)(2) (West 2022)), and

three counts of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(b)(1) (West 2022)). That same day, the State filed a verified petition to deny the defendant's pretrial release pursuant to section 110-6.1 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-6.1 (West 2022)), which was granted by the circuit court of De Kalb County. The defendant appeals.

¶ 3

I. BACKGROUND

¶ 4 On November 17, 2023, defendant was charged with several felony sex offenses that had allegedly occurred on April 7, 2023. The same day defendant was charged, the State filed a verified petition to deny the defendant's pretrial release pursuant to section 110-6.1 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-6.1 (West 2022)) and the matter proceeded to detention hearing.

¶ 5 At the detention hearing, the State proffered the sworn synopsis of the De Kalb Police Department and the Pretrial Services Bond Report. The synopsis provided that on November 6, 2023, Jessica Sky, mother of minor victim L.L., reported to De Kalb Police Department that L.L. was sexually assaulted by her father, defendant, on April 7, 2023, in De Kalb, Illinois, when he had visitation with her. L.L. was ten years old at the time of the alleged incident. On November 9, 2023, a victim sensitive interview was conducted with L.L. She reported that on April 7, 2023, defendant came into her room at night and had her put on pantyhose. Defendant then would rub her thighs with his hands and had her rub her feet up and down defendant's erect penis until he ejaculated. L.L. said that after that, defendant stopped and wiped "white stuff" off his penis with a towel and left the room. She also said that defendant took off her underwear and rubbed her bare vagina with his finger. L.L. said that this was the first time defendant had ever touched her vagina, though previously on several other occasions he had her wear pantyhose and run her pantyhose-

clad feet on his penis until he ejaculated. The first incident of this act occurred when she was six years old.

¶ 6 The synopsis also summarized a conversation between defendant and L.L.'s mother that was witnessed by De Kalb police officers. Defendant admitted that he would rub L.L.'s feet and legs with his hands and that he had L.L. put on pantyhose a "handful of times" and have her "massage" his lap. Defendant said that as a result of this, he would become erect, pre-cum would disperse, and L.L.'s feet would become wet as a result.

¶ 7 L.L.'s mother was also interviewed by De Kalb police officers. She informed officers that defendant has a pantyhose fetish.

¶ 8 The pretrial services bond report indicated that defendant lives in De Kalb with his wife and two children. He has no other family in the area. Defendant is unemployed, with no income. At the time of the charged offenses, defendant was on conditional discharge for possession of a controlled substance, a Class 4 felony (720 ILCS 570/402(c) (West 2022)). He has also had at least 10 prior failure to appear warrants or bond forfeitures issued against him. His criminal history outside of the aforementioned Class 4 felony included a criminal damage to property conviction from 2022, two out-of-state driving under the influence convictions from 2018 and 2013, three driving on a suspended license conviction, a domestic battery resulting in bodily harm conviction from 2016, and eight other offenses dating from 2001 to 2006 (due to the minor nature and age of these offenses, the specifics of the offenses have not been included). Defendant scored a 4 out of a possible score of 0-14 on the Revised Virginia Pretrial Risk Assessment Instrument (VPRAI – Revised).

¶ 9 The State argued that the proof was evident and the presumption great that defendant committed the detainable offenses he was charged with. The State went on to summarize the sworn

synopsis of the De Kalb Police Department, emphasizing the victim's age and the defendant's own incriminating statements. The State also argued that defendant poses a danger to the minor victim and that there are no conditions or combination of conditions that would mitigate the threat posed to the victim. Defense counsel responded that defendant is presumed innocent of all charges against him and asserted that the police synopsis alone is not sufficient evidence. Defense counsel also stated that there are conditions or combination of conditions that would mitigate the threat to the victim because he is self-employed, lives with his wife and two children in De Kalb, and would be able to make all future court appearances with the assistance of his wife and other family and friends. Defense counsel also emphasized defendant's low score on the VPRAI—revised and concluded by arguing that electric home monitoring and disallowing defendant contact with children would be appropriate conditions of release. The circuit court granted the State's petition, finding as follows:

“The Court has reviewed the detailed sworn synopsis that was filed in this case on November 17th. As I stated, it is a detailed sworn synopsis of the events that led to Thomas Lenker's arrest.

The Court can consider a sworn synopsis as reliable evidence in this type of a hearing. The Court does consider it to be reliable in making its findings.

At this time, I am finding that the proof is evident, the presumption is great that Thomas Lenker committed the offenses as alleged by the State and those are detainable offenses.

I'm also finding that defendant's pretrial release would pose a real and present threat to the safety of a person or persons in the community based on the specific articulable facts of the case which are contained in the sworn synopsis and that there are no

combination of conditions that would mitigate the real and present threat and safety to specifically the alleged victim in this case and also other people in the community based on the facts in this case.

I am making this conclusion as to why the defendant should be denied pretrial release, why less restrictive conditions would not avoid that real and present threat to the safety of the alleged victim, other persons or the community due to the nature and circumstances of the offenses that are charged in this case. Also the defendant does have a prior criminal history. One specifically is an abusive conviction, domestic battery 2016.

The Court would note that the defendant has a conviction and then there were several petitions to revoke filed. It is not clear that the defendant ever completed the terms of the sentence in that case. When this case was charged 23 CF 690, the defendant was and still is serving a sentence of conditional discharge for felony possession of a controlled substance.

The defendant is an adult male. The alleged victim is a minor child.

And those are the reasons the Court is making its finding in this case.

The defendant will be detained. The State's verified petition is granted."

¶ 10 The circuit court entered a form order indicating that the circuit court found by clear and convincing evidence that (a) the proof is evident or the presumption is great that defendant committed a detainable offense pursuant to paragraphs (1) through (7) of 725 ILCS 5/110-6.1(a); (b) the defendant's pretrial release 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 (c) no condition or combination of conditions can mitigate the real and present threat to the safety of any person or person or the community, based on the specific and articulable facts of the case. A separate section

of the form order provided a list of reasons that the circuit court concluded that the defendant should be denied pretrial release and why less restrictive conditions would not avoid a real and present threat to the safety of any person or persons or the community. The following items were checked: (1) the nature and circumstances of the offenses charges, (2) defendant's prior criminal history is indicative of violent, abusive, or assaultive behavior, (3) the age and physical condition of the Defendant, (4) the age and physical condition of any victim or complaining witness, and (5) at the time of current offense or arrest, Defendant was on probation, parole, aftercare release, mandatory supervised release or other release from custody pending trial, sentencing, appeal, or completion of sentence.

¶ 11 On November 28, 2023, defendant filed a timely notice of appeal.

¶ 12 **II. ANALYSIS**

¶ 13 Defendant argues that the trial court erred in denying his pretrial release for the following reasons: (1) the State failed to meet its burden of proving by clear and convincing evidence that the proof is evident or the presumption great that defendant committed the offenses charged; (2) 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; (3) the State failed to meet its burden of proving by clear and convincing evidence that no condition or combination of conditions can mitigate the 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 (4) the court erred in its determination that no condition or combination of conditions would reasonably ensure the appearance of defendant for later hearings or prevent defendant from being charged with a subsequent felony or Class A misdemeanor. We disagree with all four arguments.

¶ 14 A trial court's decision to detain a defendant is reviewed using a two-part standard of review. The manifest-weight standard applies to the trial court's factual determinations, including whether any conditions of release could adequately mitigate the risk a defendant's release would present to the community. *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 to the trial court's is clearly apparent. *In re Jose A.*, 2018 IL App (2d) 180170, ¶ 17. The ultimate decision of whether a defendant should be detained is reviewed for an abuse of discretion. *Trottier*, 2023 IL App (2d) 230317, ¶ 13. An abuse of discretion occurs only if no reasonable person could agree with the trial court. *People v. Williams*, 2022 IL App (2d) 200455, ¶ 52.

¶ 15 Without more ado, we summarily reject defendant's first argument. Defendant's claim that the sworn synopsis was insufficient evidence is contrary to statutory authority and existing case law. 725 ILCS 5/110-6.1(f)(2) (West 2022); *People v. Horne*, 2023 IL App (2d) 230382, ¶ 24. The sworn synopsis proffered by the State was found to be reliable and defendant has offered no argument or cited to any legal authority indicating why additional evidence would be necessary. We therefore reject defendant's first argument.

¶ 16 We turn now to defendant's second argument, that the State failed to prove that defendant posed a real and present threat to the safety of any person. In determining whether a 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 court may consider the following factors: (1) the nature and circumstances of any offense charges, including whether the offense is *** a sex offense; (2) the history and characteristics of the defendant; (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 current offense or any other offense or arrest, the defendant was on probation, parole, aftercare release, mandatory supervised release or other release from custody pending trial, sentencing, appeal or completion of sentence for an offense under federal or state law; and (9) any other factors. 725 ILCS 5/110-6.1(g)(1)-(9) (West 2022).

¶ 17 Here, the State recounted the nature and circumstances of the sex offenses charged in great detail, with focus especially on the nature of the relationship between defendant and the minor victim—he, as her father and as someone much older than the victim, was in a position of influence and power over the minor victim. The State also pointed out defendant’s criminal history emphasizing that defendant was on conditional discharge for a felony offense at the time of the alleged offense. Finally, the State referenced the statements made by defendant, showing that defendant admitted to wrongdoing and is a danger to his minor daughter, L.L. In light of the foregoing, the trial court’s finding of defendant’s dangerousness was not against the manifest weight of the evidence.

¶ 18 Defendant’s third and fourth arguments address conditions of pretrial release. In order to detain a defendant, the State must prove, based on the specific, articulable facts of a case, that no conditions of release would mitigate the risk of his or her release. 720 ILCS 5/110-6.1(e)(3) (West 2022). We review a circuit court’s decision regarding conditions of pretrial release under the manifest-weight standard. *Trottier*, 2023 IL App (2d) 230317, ¶ 13. In doing so, we review the result reached by the circuit court rather than its reasoning. *People v. Andino-Acosta*, 2024 IL App (2d) 230463, ¶ 24 (citing *People v. Johnson*, 208 Ill. 2d 118, 128 (2003)).

¶ 19 In support of its finding that no condition or combination of conditions would mitigate the risk of harm defendant presented, the circuit court referenced the specific nature and circumstances of the offenses charged, namely the fact that defendant was an adult male and the alleged victim was a minor child. Additionally, defendant had a prior violent criminal history, with a domestic battery conviction from 2016. The circuit court also noted that at the time of the alleged offense, defendant was serving a sentence of conditional discharge for felony possession of a controlled substance. All of these factors, the court found, contributed to its finding that no condition or combination of conditions would mitigate the risk of harm presented by defendant.

¶ 20 Further, the record supports the notion that no condition or combination of conditions would mitigate the risk of harm to any individual or the community. Defendant lives at home with his wife and, notably, two of his five children. Given that the alleged offenses involved another one of his children, this is especially concerning. Defendant is unemployed, so presumably, he is unable to obtain alternative housing for the duration of these proceedings and would be residing at home with his children. This obviously poses a risk of harm to his children, that no condition or combination of conditions (including electronic home monitoring) would mitigate.

¶ 21 Given the above, we cannot find that the circuit court's finding that no conditions or combination of conditions would mitigate the risk of harm to any individual or the community was against the manifest weight of the evidence. Accordingly, the circuit court's denial of defendant's pretrial release was not an abuse of discretion.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we affirm the judgment of the circuit court of De Kalb County.

¶ 24 Affirmed.