

Order filed December 20, 2024

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2024

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois,
)	
v.)	Appellate No. 3-24-0570
)	Circuit No. 24-CF-1596
)	
BIBERCE PETROVIC,)	Honorable
)	Daniel D. Rippy,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE ANDERSON delivered the judgment of the court.
Justice Holdridge concurred in the judgment.
Presiding Justice McDade specially concurred.

ORDER

¶ 1 *Held:* Trial court did not err in denying defendant pretrial release.

¶ 2 Defendant, Biberce Petrovic, appeals from the circuit court of Will County’s order denying pretrial release, arguing the State failed to prove by clear and convincing evidence that no condition or combination of conditions could mitigate any threat he posed. We affirm.

3 I. BACKGROUND

¶ 4 On September 2, 2024, the State charged defendant, Biberce Petrovic, with three counts of residential burglary (720 ILCS 5/19-3(a) (West 2022)). Defendant was later indicted with the same charges. The State filed a petition to deny pretrial release, alleging defendant was charged with a detainable offense and he posed a real and present threat to the safety of any person, persons, or the community pursuant to section 110-6.1(a)(1.5) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-6.1(a)(1.5) (West 2022)).

¶ 5 The factual basis provided that, on August 31, 2024, at approximately 8:30 p.m., burglary task force officers learned of the movement of two vehicles it had under electronic monitoring—a GMC Acadia and a BMW. The vehicles had been involved in multiple residential burglaries and had consistent movement on that day. Defendant was seen driving the Acadia with his fiancée and codefendant, Biserka Petrov, in the passenger seat, while codefendant, Sinisa Muratovic, drove the BMW. Upon arriving in the area, officers observed Muratovic running with a duffel bag through a residential area in Plainfield, Illinois, and the Acadia turned back toward Muratovic. The front door to a home in the area from which Muratovic ran had been forced open. The Acadia fled from an attempted traffic stop, and Muratovic fled on foot. Muratovic was detained after a physical altercation with two officers where one officer was injured and taken to the hospital. Muratovic consented to a search of the BMW, and officers found jewelry, currency, and burglary tools. The homeowner identified the items found in the BMW as his. Thereafter, defendant and Petrov were located driving a Honda in Lincolnwood, Illinois. Petrov was in possession of notes regarding the homeowner that contained his address and the times for which he was attending a wedding and would not be home.

¶ 6 Defendant lived in Chicago, Illinois, and was 45 years old. He was self-employed in heating and air conditioning. His criminal history included residential burglary (2022) that

remained pending for which he was on pretrial release, burglary with damage (2018), theft (2019), theft (2018), theft (2016), residential burglary (2015), domestic battery with great bodily harm (2015), theft (2014), domestic battery (2013), manufacturing and delivery of a controlled substance (2006), residential burglary (2005), residential burglary (2000), attempted trespass to residence (2001), attempted residential burglary (1998), and burglary (1997). Defendant served numerous prison sentences. A pretrial risk assessment indicated defendant was a Level 4 risk, with Level 6 being the highest possible risk.

¶ 7 A hearing was held on September 2, 2024. The State provided the factual basis and defendant's criminal history, noting he was on pretrial release at the time of this offense. As enclosed in the petition, the State argued that defendant was unlikely to comply with electronic monitoring. Defendant contended there was nothing connecting him to the case, he was arrested in another vehicle 50 miles away, and there was no indication he had knowledge of the notes found on Petrov.

¶ 8 The circuit court granted the State's petition, finding by clear and convincing evidence that the presumption was great that defendant committed a detainable offense. The court noted defendant posed a threat to the safety of the homeowner and the community at large given his history of misconduct and affinity for committing residential burglaries. The court's written order noted no conditions could mitigate the risk of dangerousness based upon the nature and circumstances of the offense, defendant's prior history of violent behavior, the identity of those to whose safety defendant was believed to pose a threat, defendant having been known to possess or have access to weapons, and defendant's status of pretrial release during the time of this offense.

¶ 9 On September 16, 2024, defense counsel filed a motion for relief from denial of pretrial release, arguing the court erred in finding that (1) the proof was evident or the presumption great that defendant committed an offense, (2) defendant was a current threat to any specific person or the community, and (3) no conditions could mitigate said threat. Following a hearing, the court denied the motion. Defendant appeals.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant argues the court erred in finding the proof was evident or presumption great that he committed the charged offenses and GPS monitoring would be insufficient to deter future residential burglaries. We consider factual findings for the manifest weight of the evidence, but the ultimate decision to grant or deny the State’s petition to detain is considered for an abuse of discretion. *People v. Mikolaitis*, 2024 IL App (3d) 230791, ¶ 9. “Under either standard, we consider whether the court’s determination is arbitrary or unreasonable.” *Id.*

¶ 12 Everyone charged with an offense is eligible for pretrial release, which may only be denied in certain situations. 725 ILCS 5/110-2(a), 110-6.1 (West 2022). The State must file a verified petition requesting the denial of pretrial release. *Id.* § 110-6.1. The State then has the burden of proving by clear and convincing evidence (1) the proof is evident or presumption great that the defendant committed a detainable offense, (2) the defendant poses a real and present threat to any person, persons, or the community or is a flight risk, and (3) no conditions could mitigate this threat or risk of flight. *Id.* § 110-6.1(a), (e). When determining a defendant’s dangerousness and the conditions of release, the statute includes a nonexhaustive list of factors the court can consider. *Id.* §§ 110-6.1(g), 110-5; *People v. Mikolaitis*, 2024 IL 130693, ¶ 21.

¶ 13 Here, we find the court did not abuse its discretion by detaining defendant. First, the proof was evident defendant committed a detainable offense where the evidence demonstrated defendant was seen driving the Acadia in the area of the residential burglary. The Acadia was being tracked via electronic monitoring by a burglary task force. Petrov, who was later found with notes on the homeowner including his address and the times he would not be home, was a passenger in the Acadia. The Acadia was seen with a BMW driven by Muratovic, which was also being monitored by the burglary task force. The Acadia evaded the police when they initiated a traffic stop. Muratovic fled on foot, and the BMW was found to contain stolen currency, jewelry, and burglary tools.

¶ 14 Second, the State presented evidence that there were no conditions available to mitigate the threat defendant posed. The statute provides factors the court can consider when considering the conditions of release, and the State presented evidence of such factors, including the nature and circumstances of the offense and the history and characteristics of defendant. 725 ILCS 5/110-5 (West 2022). Further, defendant was on pretrial release for another case at the time the current offense was committed, thus demonstrating he may not follow edicts of the court. Finally, the court did not err by finding that GPS monitoring would not prevent similar offenses from occurring but would only indicate when a violation occurred.

¶ 15 Accordingly, it was not against the manifest weight of the evidence for the court to find that no conditions would prevent defendant from continuing to pose a threat. Taking the evidence before us, we cannot say the court's decision to detain defendant was an abuse of discretion.

¶ 16 III. CONCLUSION

¶ 17 The judgment of the circuit court of Will County is affirmed.

¶ 18 Affirmed.

¶ 19 PRESIDING JUSTICE McDADE, specially concurring:

¶ 20 I concur with the majority decision because that result is compelled by the supreme court's opinion in *People v. Mikolaitis*, 2024 IL 130693. I write separately to take one final opportunity to state why I believe that decision is wrong.

¶ 21 We are the courts; we are not the legislature. The General Assembly enacted a law in which they established a *presumption* that persons alleged to have committed crimes are entitled to pretrial release. 725 ILCS 5/110-2(a) (West 2022). It then made that presumption rebuttable upon the State meeting a burden of proving the defendant was too dangerous to be released into the public. *Id.* § 110-6.1(e) (West 2022). *Only when the State has met that burden* has the legislature authorized the circuit court to use its discretion to determine whether the defendant is held or released pending trial.

¶ 22 In our review of the resulting decisions, we have *actually written* the circuit court's discretionary standard (*id.* § 110-5) into our consideration of whether the State has met its burden under section 110-6.1(e), thereby collapsing what the legislature enacted as a two-part procedure into a truncated process. This is, in my opinion, a violation of the separation of powers as we have rewritten the statute rather than enforcing it as enacted.