

2025 IL App (1st) 250048-U

No. 1-25-0048B

Order filed March 21, 2025

Fifth Division

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	Nos. 24 CR 492701
)	24 CR 492801
)	
MARTIN SEBASTIAN,)	Honorable
)	Geraldine D’Souza
Defendant-Appellant.)	Jerome Barrido
)	Judges Presiding.

JUSTICE NAVARRO delivered the judgment of the court.
Presiding Justice Mikva and Justice Mitchell concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the circuit court’s orders denying defendant pretrial release.

¶ 2 Defendant Martin Sebastian appeals from the circuit court 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 Act 101-652, § 10-255 (eff. Jan. 1, 2023), commonly known as the Pretrial Fairness Act, and denying his petition for relief under Illinois Supreme Court Rule

604(h) (eff. Apr. 15, 2024). On appeal, Sebastian contends that the State failed to prove that there was no condition, or combination of conditions, that could mitigate the real and present threat to the safety of any person or the community. For the following reasons, we affirm the court's detention orders.

¶ 3

I. BACKGROUND

¶ 4 On April 23, 2024, the State initially charged Sebastian by complaint with one count of predatory criminal sexual assault of a child, C.S., which occurred on or about August 4, 2008, to August 3, 2009. In a separate case, the State charged him with three counts of predatory criminal sexual assault of a child, Y.S., and two counts of aggravated criminal sexual abuse on Y.S., occurring on or about July 23, 2015, to July 22, 2022.

¶ 5 A public safety assessment performed by Pretrial Services on April 23, 2024, gave Sebastian scores of one out of six for risk of new criminal activity and risk of failing to appear, and a level three release recommendation.

¶ 6 On April 23, 2024, the State filed petitions for pretrial detention in both cases, and the circuit court held a detention hearing. The State proffered that between July 23, 2015, and July 22, 2023, when Y.S., who was Sebastian's daughter, was between the ages of 6 and 13, Sebastian put "his penis in her vagina, his fingers in her vagina, her hand on his penis, as well as sexually abusing her by placing his hand on her naked breasts and buttock all for the purpose of the defendant's sexual gratification or arousal." The State asserted that Sebastian "would force victim into these sex acts in exchange for extra toys and gifts."

¶ 7 The State further proffered that on March 7, 2024, Sebastian reported to the police that his family was missing when he returned home from work. Sebastian told the officers that before he left for work that day, there had been "somewhat of a disagreement," and that Y.S. had stated that

morning that she was uncomfortable with how he had touched her. Sebastian told the officers that he “really wasn’t clear on what he had done to cause the victim to be uncomfortable.” The State remarked that Sebastian’s wife informed the police that Y.S. had told her that Sebastian had been “touching her inappropriately for some years,” and that, after learning about this, Sebastian’s wife left the home with her children. His wife and family are currently living in a shelter.

¶ 8 The State further proffered that in forensic interviews with Sebastian’s other children E.S., who was 16 years old, I.S., who was 8 years old, and S.S., who was 5 years old, stated they received “excessive corporal punishment” from Sebastian and that 2 of them indicated they did not feel safe when residing in the same home as him. The State proffered that, in a forensic interview, I.S. stated that Sebastian would “whip her on her legs, her arms, and her buttock” and that when he did so it was because she “got in trouble.” She stated that Sebastian “would do all kinds of terrible things” and that the “whipping would leave marks and bruises.” In a forensic interview with S.S., she stated that she “used to get whippings” from Sebastian and she felt safe with both her mother and her father.

¶ 9 The State argued that a forensic interview conducted with E.S., who was Y.S.’s brother, corroborated Y.S.’s outcry. The State proffered that in the interview, E.S. stated that he was “aware of the victim getting extra toys as well as [Sebastian] visiting the victim in her bed” and he had seen Y.S. in Sebastian’s bedroom. The State asserted that E.S. stated that he would sometimes hear his dad whispering to Y.S. and that he would “look out from under his blanket” and “see his dad standing by his sister’s bed.” E.S. stated that his dad’s “hands were inside the bed covers” and he did not know if his dad’s hands “were over or under the blanket.” E.S. stated he thought his dad was talking to Y.S. about school and “being nice.” E.S. would sometimes “try to say hi” and felt “left out,” as his dad was paying more attention to his sister. When E.S. would say “hi” to his dad

during these encounters, his dad would get mad at him. E.S. also stated that Y.S. told him that sometimes when she was on her phone, she would see her dad “creeping on her” and it scared her. The State asserted that E.S. also stated that one time when he walked into his dad’s room, his dad was lying on the bed with his head up and without a shirt and Y.S. was standing next to the bed. E.S. could see Y.S.’s “shirt was pulled up a little bit.” The State highlighted that E.S. stated that one time his dad tried to stab him with a fork, after which his mom and siblings “fled” to Minnesota and lived in a shelter. When they were at a store, Sebastian, his cousin, and grandma showed up “out of nowhere” and E.S. did not know how Sebastian “found him.” E.S. stated that he did not feel safe living with his dad and that his dad would “threaten and beat them” and “often tell them stop crying while holding a belt.” He stated that his dad “hit him and his siblings with the belt on their butts, their legs, and their arms, and that he would often see marks on himself and his siblings.”

¶ 10 The State also asserted that Y.S. told her mother that “her father had been doing these things to her for years” because Y.S. saw her father take her sister, S.S., “upstairs, sit down next to her and begin to massage her shoulders and lifted up her shirt.” Y.S. was concerned that her father would start doing “the things that he did to her to her little sister.” The State noted that in a forensic interview with S.S., she denied ever being touched inappropriately by anyone, and that Sebastian’s other children denied being touched inappropriately.

¶ 11 For the other case, the State argued that in April 2024, C.S. disclosed to her mother that between August 4, 2008, and August 3, 2009, when she was five years old and at her grandparents’ home, Sebastian, who was her paternal uncle, “inserted his penis in her vagina.” The State proffered that C.S. stated in an electronically recorded interview that when C.S. was five years old, she was playing with her cousin at her grandparents’ home when Sebastian grabbed her and took

her to his bedroom. C.S. stated that Sebastian “put her on the bed and told her to be quiet by making a hand gesture,” after which he took off her underwear and “put his penis in her vagina.” The State stated that C.S. remembered that she held her toy and, due to stress, did not know what happened after that. The State noted that C.S. indicated that she stopped wanting to visit her grandparents’ house.

¶ 12 The State asserted that a witness “corroborated [the] time frame and recalled [the] victim stopped wanting to visit paternal grandparent’s home around the time of the incident.” The State proffered that C.S.’s mother stated in an electronically recorded interview that she remembered C.S. not wanting to visit her paternal grandparents.

¶ 13 The State argued that C.S. made the allegation in 2024 after she heard that her cousin, Y.S., had disclosed that she had been sexually assaulted by Sebastian. The State asserted that C.S. learned that family members did not believe her cousin, so she made the disclosure to get Sebastian to stop his behavior. The State remarked that one family member told C.S. that “he couldn’t believe what victim Y.S. has said” and that C.S. stated in an interview that she did believe it “because it had happened to her as well.” The State asserted that C.S. did not have contact with Sebastian for “some years” and she disclosed the incidents “because she fears that [his] conduct would continue.”

¶ 14 The State noted that in an interview with Sebastian, he denied “any type of sexual encounter with Y.S. or C.S.” The State asserted that Sebastian admitted that the “family left him previously and although he denies that he ever stabbed anyone with a fork, he does admit to recalling it having something to do with a fork” and that he also admitted “he did follow the family and that the family then returned to him.” The State remarked that Sebastian’s “unpredictable and manipulative behavior” made him a danger to his wife, his children, and other children. The State further stated

that Sebastian was “grooming these young girls offering them favors and gifts in exchange for sexual acts and silence and the outcries don’t come until there’s fear that [he] is going to be recruiting a new victim.”

¶ 15 The State argued that no condition or combination of conditions could protect the family “short of detention.” The State noted that the victim’s mother had taken the children out of the home to live in a shelter and that she was seeking an order of protection and a no-contact order against Sebastian. The State argued that there was no residence that he could be ordered to stay away from because his family “vacated their home and they don’t have a residence at this point which speaks to the length that this individual will go to escape” Sebastian. The State argued that Sebastian could remove an electronic home monitoring, or GPS, bracelet and that an order of protection was “simply a piece of paper” in which the court would admonish him. The State asserted that there was “no real monitoring of what will happen when [Sebastian] leaves” and if he removed the GPS band, Sebastian could be gone before the time police arrived. The State further noted if he “leaves the GPS ban[d] on and he goes and harasses the victim or the witnesses, the police will immediately respond, but he’ll have already been there.” The State argued that there were no sufficient deterrents to protect the victims and the witnesses, all of whom are children and the most vulnerable members of society.

¶ 16 In response, defense counsel stated that Sebastian, who was 44 years old, had been married to his wife for 15 years and had 7 children with her. Counsel remarked that, within the last six months, C.S. had stayed at Sebastian’s residence for the weekend, hugged him, and “[e]verything was as if nothing had ever happened.” Counsel also asserted that S.S. had denied allegations of abuse, and she had no reason to lie. As for E.S.’s statement about seeing Sebastian in Y.S.’s bedroom, counsel noted that Y.S. had been dealing with bullying at school and Sebastian

comforted her and encouraged her to see a counselor and someone at school. Counsel also highlighted that it had been over 15 years since the alleged incident with C.S. occurred and that, as for Y.S.'s allegations, they had occurred over the past 11 years in a single-family home with 11 people residing in it, including Sebastian's parents, his wife, and their children. Counsel argued that there was "no way to get away from all of those people in such a small area and of which anybody would have heard or seen or there would have been any corroboration with any of the other children in his family."

¶ 17 Defense counsel also highlighted that Sebastian was a mechanic, and his family relied on his employment to support them financially, noting that he was the sole financial supporter for his family, including his parents who had been living with him for over 15 years. Counsel requested the court release Sebastian with conditions, which would include an order of protection and GPS monitoring. Counsel stated that Sebastian could live with a friend, who was also a co-worker, noting that this would help him stay employed and financially support his family.

¶ 18 Following the parties' arguments, Judge Jerome Barrido concluded that the proof was evident, or the presumption great, that Sebastian committed detention eligible offenses in both cases, namely predatory criminal sexual assault of C.S. and Y.S., as well as aggravated criminal sexual abuse of Y.S.

¶ 19 The court also found that the State proved by clear and convincing evidence that Sebastian posed a real and present threat to the safety of any person, or the community, based on the specific articulable facts of the case and that no condition or combination of conditions could mitigate the real and present threat to the safety of any person, or the community. The court entered written orders consistent with its oral findings.

¶ 20 On May 21, 2024, the State charged Sebastian by indictment with nine counts of predatory criminal sexual assault of a child, Y.S., under the age of 13 (720 ILCS 5/11-1.40(a)(1) (West 2014)), one count of criminal sexual assault of a family member, Y.S., under the age of 18 (*id.* § 11-1.20(a)(3)), three counts of aggravated criminal sexual abuse of a family member, Y.S., under the age of 18 (*id.* § 11-1.60(b)) and three counts of aggravated criminal sexual abuse of Y.S., who was under the age of 13 (*id.* § 11-1.60(c)(1)(i)). The State also charged Sebastian by indictment with one count of predatory criminal sexual assault of C.S., who was under the age of 13. 720 ILCS 5/12-14.1(a)(1) (West 2008) (renumbered as § 11-1.40 by P.A. 96-1551, § 5 (eff. July 1, 2011)).

¶ 21 On September 16, 2024, the circuit court, with Judge Geraldine D’Souza presiding, heard Sebastian’s request to review his pretrial detention. At the hearing, defense counsel argued that Sebastian did not pose a risk or threat to any person or the community, noting that both cases involved delayed outcries. Counsel highlighted that before his arrest, Sebastian was employed as a mechanic technician, had been married for 16 years with his wife, and had complied with court orders ordering him not to contact the victims.

¶ 22 Following arguments, the court ordered Sebastian to remain in pretrial detention. In doing so, the court found that continued detention was “necessary to avoid a real and present threat to the safety to any person or persons or the community based on the specific articulable facts.”

¶ 23 On October 21, 2024, Sebastian filed a petition for relief from the denial of pretrial release, in which he alleged he did not pose a threat to the safety of any person, or the community, based on the specific facts of this case. He asserted he did not have a criminal history or history of disobeying court orders, and the allegations were based on delayed outcries of 15 and 3 years. Sebastian stated that, “[w]hile the offenses alleged do clearly pose a threat to the alleged victims,”

there was no evidence that he “recently committed any such acts with any minors.” Sebastian argued that the court’s conclusion in its April 23, 2024, detention order, that he posed a safety risk was in part based on the reasoning that his “predatory actions allegedly continue” with his five-year-old daughter, S.S., which was unsupported by the State’s evidence and unsubstantiated by S.S. Sebastian also argued that the court’s conclusion in its initial detention order that Sebastian violently punished witnesses with excessive corporal punishment was unsupported by the evidence.

¶ 24 Sebastian argued that even if the court believed his release would pose a safety risk to any person or the community, any safety risk could be mitigated by conditions of electronic home monitoring, pretrial services, GPS monitoring, and no contact with any minors. Sebastian asserted that he could live with his brother where no children resided. Sebastian argued that he did not have a history of disobeying court orders or electronic monitoring devices and the “additional condition of no contact with any minors would directly address the alleged activity.” He noted that GPS monitoring would be appropriate because the two victims are identified. Sebastian also argued that in the court’s April 23, 2024, detention order, the court’s statement that he allegedly committed these actions “at the risk of destroying his relationship with his brother” was not relevant to whether any pretrial conditions could mitigate any risks presented by release.

¶ 25 At the hearing on Sebastian’s petition for relief, defense counsel stated it was resting on the argument in the written petition. Counsel also stated that she wanted to “reiterate that part of the reason” it appeared that Judge Barrido found Sebastian posed a safety risk because his “predatory actions allegedly continued” with S.S., but that the evidence the State has tendered shows that S.S. denied the abuse. Counsel also continued to assert that the outcries were delayed, there was no substantiated recent abuse, and the discovery did not show excessive corporal

punishment or that it was connected to the alleged abuse of the victims. Counsel again noted that Sebastian could live with his brother on electronic monitoring, where no children are present.

¶ 26 In response, the State noted that Sebastian did not have a criminal history but stated that “there was no indication from any other factor that he was capable of this, and he does it not once, but twice.” The State asserted that the incidents took place in his home so “electronic monitoring in his home where there’s no way to predict whether he will come into contact with any minors is not going to sufficiently protect the public” from him. The State also noted that the abuse occurred over a period of years. The State highlighted that the forensic interviews indicated excessive corporal punishment and that there was at least one additional witness to corroborate Sebastian’s actions with these minors.

¶ 27 Following the hearing, Judge D’Souza denied Sebastian’s petition for relief and ordered his continued pretrial detention.

¶ 28 This appeal followed.

¶ 29 **II. ANALYSIS**

¶ 30 Sebastian contends that the State failed to prove by clear and convincing evidence that there was no condition, or combination of conditions, such as electronic monitoring and no-contact orders, that could mitigate the real and present threat to the safety of any person or the community. He contends that his lack of criminal history and low scores on the new criminal activity and failure to appear scales show that he is very likely to comply with the conditions of release. Sebastian also asserts that the allegations took place 15 years before the charge in one case and at least 9 months before his arrest in the other and that none of his other children made similar allegations against him. He asserts that, if released, he would live in a home without children and there is no evidence

that he would have contact with any of his children, as his wife removed the children from the shared home and their location was not disclosed.

¶ 31 Under the Code, “[a]ll defendants shall be presumed eligible for pretrial release ***.” 725 ILCS 5/110-6.1(e) (West 2022). It is the State’s burden “to overcome this presumption by providing clear and convincing evidence that the defendant should not be released.” *People v. Carpenter*, 2024 IL App (1st) 240037, ¶ 9 (citing 725 ILCS 5/110-6.1(e) (West 2022)). For the State to meet this burden, it must prove three propositions. *Id.* First, the State must prove that “the proof is evident or the presumption great” that the defendant committed an eligible offense. 725 ILCS 5/110-6.1(a), (e)(1) (West 2022)). Second, the State must prove that “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 ***.” *Id.* § 110-6.1(e)(2). Third, the State must demonstrate that no condition or combination of conditions could mitigate (i) “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” or (ii) the defendant’s willful flight. *Id.* § 110-6.1(e)(3). At the detention hearing, “the parties can proceed by way of proffer to present the anticipated evidence of the case.” *People v. Johnson*, 2024 IL App (1st) 240154, ¶ 14.

¶ 32 Here, Sebastian only challenges the circuit court’s findings with respect to the third element, namely whether the State proved that no condition, or combination of conditions, of pretrial release could mitigate the real and present threat to the safety of any person or the community.

¶ 33 At the pretrial detention hearing, the State proceeded by proffer, and the parties did not present testimony of live witnesses. We will therefore review the circuit court’s orders denying Sebastian pretrial release *de novo*. *People v. Morgan*, 2025 IL 130626, ¶ 51 (“when parties to a

pretrial detention hearing proceed solely by proffer, the reviewing court stands in the same position as the circuit court and may therefore conduct its own independent review of the proffered evidence and evidence otherwise documentary in nature”). Under *de novo* review, we perform the “same analysis that the trial court would perform.” *People v. McDonald*, 2016 IL 118882, ¶ 32.

¶ 34 Under the Code, to determine which conditions of release, if any, will reasonably ensure the safety of any person or the community and the defendant’s likelihood of compliance with all the conditions of pretrial release, the court must examine, in part:

“(1) the nature and circumstances of the offense charged;

(2) the weight of the evidence against the defendant ***;

(3) the history and characteristics of the defendant, including:

(A) the defendant’s character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past relating to drug or alcohol abuse, conduct, criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest, the defendant was on probation, parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal law, or the law of this or any other state;

(4) the nature and seriousness of 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, that would be posed by the defendant’s release ***.” 725 ILCS 5/110-5(a) (West 2022); see *People v. Harris*, 2024 IL App (1st) 240310-U, ¶ 15.

Further, the “proof as to the danger presented by a defendant’s pretrial release will frequently overlap with the evidence supporting a conclusion that less restrictive conditions cannot mitigate the threat” and “that proof may overlap again with the elements of the crime charged, but that does not render those facts any less compelling.” *Carpenter*, 2024 IL App (1st) 240037, ¶ 17.

¶ 35 Here, the court did not err in determining that no condition, or combination of conditions, of pretrial release could mitigate the threat Sebastian posed to any person or the community.

¶ 36 The State proffered that Sebastian had committed predatory criminal sexual assault on his two young family members, his niece and daughter, and that it occurred over a number of years. The State proffered that he committed the assault on his five-year-old niece in 2008 to 2009 and his six-year-old daughter from 2015 to 2022, a period of about seven years. Further, the State proffered that Sebastian’s family had previously fled from him after he had attempted to stab his child, E.S., with a fork and that Sebastian then followed his family to another state. According to the State’s proffer, E.S. stated in a forensic interview that his family fled to Minnesota after Sebastian tried to stab him with a fork and that, when they were at the store, Sebastian, his cousin, and grandma showed up “out of nowhere.” The State also proffered that in an interview with Sebastian he denied stabbing anyone with a fork but admitted he followed his family, as he stated he “did follow the family and that the family then returned to him.” Accordingly, the State’s proffered facts show that Sebastian has demonstrated that he will follow his wife and children across distances, even after they attempted to flee from him. While on electronic monitoring, a person has the opportunity for two days of free movement. *People v. Simpson*, 2024 IL App (4th) 240607-U, ¶¶ 41-42 (“ ‘At a minimum, any person ordered to pretrial home confinement with or without electronic monitoring must be provided with movement spread out over no fewer than two days per week, to participate in basic activities ***.’ ”) (quoting 730 ILCS 5/5-8A-4(A-1) (West

2022)). Further, electronic monitoring does not prohibit a defendant from leaving the monitored area. It only notifies authorities if he were to leave. Accordingly, there would be no way to prevent Sebastian from having contact with the minor children even when he is on electronic monitoring. Where the State's proffered facts show that Sebastian has demonstrated that he will follow his family and locate them, electronic monitoring or GPS would not mitigate any threat he posed to his children. The State's proffered facts show that no combination or combination of conditions would mitigate any threat he posed to the safety of the victims, his children, or the community.

¶ 37 We note that Sebastian asserts that given his lack of criminal history and scores of one on the new criminal activity and failure to appear scales, he is very likely to comply with the conditions of release. However, "[t]he presumption in favor of pretrial release under the Act does not obligate a trial court to release such a defendant in the hopes that his otherwise spotless record will negate the real and present threat he poses to the safety of the community as shown by the State's evidence." *People v. Romine*, 2024 IL App (4th) 240321, ¶ 20. Further, Sebastian's criminal history is contained within the allegations in the cases here, which took place over a period of years. Accordingly, the court's orders denying Sebastian pretrial release were proper.

¶ 38

III. CONCLUSION

¶ 39 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 40 Affirmed.