

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2006-22

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

CEATTA A. THOMAS,

Defendant-Respondent.

Argued March 31, 2023 – Decided April 5, 2023

Before Judges Geiger and Susswein.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Burlington County, Complaint No. W-2023-0046-0320.

Jennifer B. Paszkiewicz, Assistant Prosecutor, argued the cause for appellant (LaChia L. Bradshaw, Burlington County Prosecutor, attorney; Jennifer B. Paszkiewicz, of counsel and on the brief).

Brian McCauley argued the cause for respondent (The Law Offices of Jonathan F. Marshall, attorneys; Brian McCauley, on the brief).

PER CURIAM

By leave granted, the State appeals from a Law Division order denying its motion for pretrial detention pursuant to the Criminal Justice Reform Act (CJRA), N.J.S.A. 2A:162-15 to -26. After carefully reviewing the record in light of the governing legal principles, we reverse and remand for the trial court to reopen the detention hearing and make findings with respect to defendant's mental health issues after the results of a mental health evaluation have been received by the court and counsel.

I.

Defendant is charged by complaint-warrant with multiple offenses including bias crime with purpose to intimidate, N.J.S.A. 2C:16-1(a)(1), terroristic threats, N.J.S.A. 2C:12-3(b), possession of a firearm for an unlawful purpose, N.J.S.A. 2C:39-4(a)(1), unlawful possession of a firearm, N.J.S.A. 2C:39-5(b), aggravated assault by pointing a firearm at another, N.J.S.A. 2C:12-1(b)(4), simple assault, N.J.S.A. 2C:12-1(a)(1), and criminal mischief, N.J.S.A. 2C:17-3(a)(2). The trial court convened a detention hearing on February 3, 2023. We discern the following facts from the record—which includes a video surveillance recording of events that occurred in an apartment building hallway.¹

¹ We note that defendant has not been tried and is presumed innocent.

Defendant is a fifty-one-year-old female who has no criminal record. One of the victims, D.S.,² lives in an apartment across the hall from defendant.³ On January 24, 2023 at approximately 11:00 p.m., defendant engaged D.S. in a verbal altercation in the hallway as D.S. was leaving the building. Defendant yelled offensive slurs referring to D.S.'s transgender status, including "gay boy" and "faggot." When D.S. arrived back at the apartment, defendant renewed the altercation, this time grabbing D.S. by the shirt and striking them in the face. D.S. disengaged from defendant and retreated into the apartment. Defendant began repeatedly hitting D.S.'s door with a golf club, using sufficient force to break the head off the club. When D.S. opened the apartment door, another physical confrontation occurred. D.S. eventually left the scene.

Defendant later emerged from her apartment brandishing a handgun, pointing it at D.S.'s door and up and down the hallway while screaming and gesticulating. Defendant subsequently beat on D.S.'s door using her fists and also the grip portion of the revolver and then the barrel of the gun, striking the door with such force that bullets fell out of the weapon. Defendant can be

² We use initials to protect the privacy of the victims of this alleged gender identity bias crime.

³ We were advised at oral argument that defendant is no longer a tenant in that building.

observed on the surveillance video picking up the bullets before going back inside her apartment.

At approximately 12:09 a.m., D.S. returned accompanied by two friends, M.O. and B.W. Defendant emerged from her apartment and began yelling at M.O. and B.W. Defendant retrieved the handgun from her apartment and pointed it at M.O. and B.W. while screaming at them. M.O. called 911 after she and B.W. fled. D.S. remained at the end of the hallway while defendant continued to yell until police arrived and instructed D.S. to retreat to the stair hall. D.S. suffered a laceration above their left eye and an abrasion on their right arm as a result of the incident.

Defendant barricaded herself in her apartment. She called several law enforcement agencies to let them know she would not come out. She was eventually taken into custody later in the morning. Police obtained a warrant to search defendant's apartment. Defendant told police they would not find a firearm inside the residence, claiming she had only used a golf club during the incident. Officers executing the warrant found the handgun, loaded with two bullets, concealed in a faux drawer in a nightstand next to defendant's bed. Police also recovered the broken golf club shaft.

The State argued at the detention hearing that defendant's conduct is exacerbated by mental health issues and that she poses an extreme danger to the victims and to the community. The prosecutor stressed that defendant and D.S. live across the hall from each other. Defense counsel acknowledged there were mental health issues. During the hearing, defense counsel called defendant's mother and then advised the court that defendant could reside with her mother if released.

In rendering its decision, the trial court acknowledged that the Public Safety Assessment (PSA) recommended "no release" based upon the Graves Act⁴ charges. The court noted the PSA scores were two for failure to appear and one for new criminal activity on the pretrial risk scale. The court also commented that the present charges are not domestic violence related, but acknowledged that defendant has a domestic violence history which the court deemed to be "somewhat remote." The court stressed that defendant has no pending charges and was not on probation, parole, or pretrial monitoring.

The court found that the weight of the evidence against defendant is "extremely strong," citing the surveillance video recording. Importantly, the

⁴ The Graves Act, N.J.S.A. 2C:43-6(c), refers to certain gun crimes that carry a mandatory minimum term of imprisonment.

court concluded that the risk of danger both to the present victims and to others is high, noting that defendant "pointed a gun at several individuals." The court also noted that "there is a mental health component that [it] has to consider, as well."

Despite finding defendant posed a high risk of danger, the court concluded that the State failed to establish by clear and convincing evidence that defendant should be detained pending trial. The court acknowledged it was deviating from the PSA recommendation, relying on the low PSA scores, lack of a new violent criminal activity flag, and lack of pending charges at the time of the incident. The court ordered defendant released on pretrial monitoring level III (weekly reporting) with "strict home detention," albeit not supported by electronic monitoring. The court ordered defendant to reside with her mother, who lives in a different town, to ensure that defendant would not be in the same building as D.S. The court further ordered defendant to have no contact with the victims, prohibited her from possessing firearms or other dangerous or destructive devices, and ordered her to undergo a mental health evaluation within twenty-

one days of release.⁵ The court granted the State's request to stay defendant's release pending this appeal.

II.

The scope of our review of a pretrial detention decision is limited. A reviewing court should not disturb a decision on whether to detain a defendant before trial unless "the trial court abused its discretion by relying on an impermissible basis, by relying upon irrelevant or inappropriate factors, by failing to consider all relevant factors, or by making a clear error in judgment." State v. S.N., 231 N.J. 497, 500 (2018).

The CJRA "requires both some proof about the crime—sufficient to establish probable cause—and proof relating to the risk of flight, danger, or obstruction." State v. Robinson, 229 N.J. 44, 67 (2017). Once the State has established probable cause that the defendant committed the charged offenses, the court must "determine whether detention is warranted—that is, whether any combination of conditions will reasonably protect against the risk of flight,

⁵ We note the transcript of the detention hearing indicates the trial court stated, "I'm also going to order a mental health evaluation within 21 days." The order denying pretrial detention, however, reads "specifically: MENTAL HEALTH EVALUATION W/IN 14 DAYS".

danger, or obstruction." State v. Mercedes, 233 N.J. 152, 163 (2018). Our Supreme Court has further explained that:

At the hearing, the court "may take into account" various factors, including "[t]he nature and circumstances of the [charged] offense"; the weight of the evidence proffered against the defendant; characteristics of the defendant as he or she stands before the court, including his or her employment status, familial ties, and length of residence in the community; "[t]he nature and seriousness of the danger" that would be posed to other persons or the community if the defendant were released; the risk that the defendant will obstruct the criminal justice process; and the PSA recommendation.

[S.N., 231 N.J. at 511 (alterations in original) (quoting N.J.S.A. 2A:162-20).]

In Mercedes, our Supreme Court explained that the trial court should consider "[t]he release recommendation of the pretrial services program obtained using a risk assessment instrument." Mercedes, 233 N.J. at 163 (alteration in original) (quoting N.J.S.A. 2A:162-20(f)). "Recommendations based on the PSA and the [Pretrial Release Recommendation Decision Making Framework], though, do not replace judicial discretion." Id. at 165. "Trial judges make the ultimate decision on release after they consider other relevant details." Ibid. (citing Robinson, 229 N.J. at 62). "When a court does not follow

a recommendation, it must provide an explanation." Ibid. (citing N.J.S.A. 2A:162-23(a)(2)).

The statutory factors are "only considered for [their] impact on the risk of a defendant posing a danger to the community, obstructing justice or failing to appear in court." State v. Williams, 452 N.J. Super. 16, 18 (App. Div. 2017) (citing N.J.S.A. 2A:162-20). Importantly, the trial court must also consider "the efficacy of . . . possible conditions" to mitigate the claimed risks. State v. Molchor, 464 N.J. Super. 274, 297 (App. Div. 2020), aff'd, 245 N.J. 596 (2021).

Applying these general principles, we conclude the trial court failed to adequately take into account an important relevant factor—defendant's mental health—before ordering defendant's release, constituting an abuse of discretion. See S.N., 231 N.J. at 500, 515. A remand is therefore necessary for further consideration and findings with respect to defendant's mental health. We emphasize that the trial court aptly found defendant posed a high risk not only to the present victims but also to the community-at-large. The court acted within its discretion in mitigating the risk to the present victims by ordering defendant to be confined to her mother's house in another town. See Molchor, 464 N.J. Super. at 297. Home confinement, especially when not monitored

electronically, does not, however, address the risk that defendant poses to the community.

The record shows that defendant displayed uncontrollable rage, allegedly based on D.S.'s transgender status. While defendant has no history of violating court orders, given the clear indication of mental health issues, she might not be able to comply with a home detention condition should she experience another fit of sustained and unrelenting rage. We add the record does not show whether defendant's mother would be able or willing to enforce home confinement and advise proper authorities should defendant leave the home without authorization or experience another violent episode. Nor does the record reflect whether defendant's mother keeps a firearm or other deadly weapons in her home that might be accessible to defendant.

The trial court ordered defendant to undergo a mental health evaluation within twenty-one days of release. See supra note 5. We believe that release condition put the cart before the proverbial horse. In view of the clear evidence of defendant's uncontrolled rage, we believe a mental health examination was needed as part of the pretrial detention decision-making process to determine whether and under what conditions she could be safely released into the community.

Given its well-supported finding that defendant poses a high risk to others, the court was required in these circumstances to determine the "efficacy of . . . possible conditions" to mitigate the risk of re-offense. See Molchor, 464 N.J. Super. at 297. Any such release conditions, in other words, must be tailored to address defendant's present mental health condition. This presupposes the trial court is meaningfully apprised of that condition.

Especially considering that defendant's violent outburst included the brandishing, pointing, and reckless misuse of a loaded firearm as a battering instrument, it was not enough that both the prosecutor and defense counsel acknowledged at the hearing that defendant suffers from some unspecified form of mental illness. Rather, the trial court in these circumstances could not reliably fashion release conditions that would reasonably assure the protection of the community without more information about the nature and severity of defendant's mental health issues.

We also draw attention to that portion of the written detention order that reads, "[t]he court . . . finds probable cause that the defendant committed offenses that create the presumption that the defendant shall be detained pending trial." Relatedly, the order states that "defendant rebutted, by a preponderance of the evidence, the presumption that the defendant shall be detained pending

trial." However, there was, in this case, a presumption of release, not a presumption of detention. The latter presumption applies only when a defendant is charged with murder or is facing the possibility of a life sentence. See N.J.S.A. 2A:162-19(b).

We reverse and remand for the trial court to reopen the detention hearing to focus on defendant's mental health issues and the impact of her mental health condition on the likelihood that she would have another violent outburst if released that would endanger the safety of any other person or the community. The court shall direct defendant to undergo a mental health examination as soon as practicable.⁶ The reopened detention hearing shall be conducted expeditiously after the results of the mental health evaluation are received by the court and counsel. Defendant shall remain detained pending the new hearing.

Nothing in this opinion should be construed to preclude the court on remand from ordering pretrial release on conditions that adequately mitigate the risks, accounting for defendant's mental health issues and other relevant circumstances, including but not limited to her access to firearms or other deadly

⁶ We note that at oral argument before us, defense counsel acknowledged that conducting a mental health examination as a prerequisite to release would be "very prudent."

weapons. Nor do we preclude the court on remand from ordering defendant to be detained pending trial if the court determines, considering all relevant circumstances, that the State has established by clear and convincing evidence that no release condition or combination of conditions would reasonably assure the safety of any other person or the community.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION