

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4350-16T6

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

JULIAN SANDERS,

Defendant-Respondent.

Argued September 28, 2017 – Decided November 16, 2017

Before Judges Simonelli, Haas and Gooden
Brown.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Docket No. W-2017-
7415-0714.

Frank J. Ducoat, Special Deputy Attorney
General/Acting Assistant Prosecutor, argued
the cause for appellant (Robert D. Laurino,
Acting Essex County Prosecutor, attorney; Mr.
Ducoat, of counsel and on the brief).

Tamar Y. Lerer, Assistant Deputy Public
Defender, argued the cause for respondent
(Joseph E. Krakora, Public Defender, attorney;
Ms. Lerer, of counsel and on the brief).

PER CURIAM

Defendant Julian Sanders was charged with murder, N.J.S.A. 2C:11-3(a)(1), and related weapons charges stemming from the stabbing death of Kendal Anthony. In this appeal, we consider whether the trial court abused its discretion in finding defendant rebutted the presumption of pretrial detention pursuant to N.J.S.A. 2A:162-19(b) by a preponderance of the evidence.

I.

The affidavit of probable cause indicates that a witness identified defendant in a photo array and surveillance video captured the incident. The video, which has no sound, shows defendant approaching a liquor store in Newark where he encountered Anthony, and the two began arguing. During the argument, defendant removed a knife from his front pants pocket. When Anthony threw a punch at defendant, defendant stabbed him once in the chest, causing his death.

Pretrial Services generated a Public Safety Assessment (PSA), which reflected that defendant was forty-seven years old and charged with a violent offense. The PSA indicated defendant had no pending charge at the time of offense and no prior violent convictions or failure to appear pretrial in the past two years. The PSA also indicated defendant had three prior indictable convictions; sixteen prior disorderly persons convictions; prior

failure to appear pretrial older than two years; and prior sentence to incarceration. Pretrial Services rated defendant with a score of three for both failure to appear and new criminal activity. There was no new violent criminal activity flag. Pretrial Services recommended no release.

The State filed a motion for defendant's pretrial detention based on the presumption of detention for defendants charged with murder and on Pretrial Services' no release recommendation. The State argued defendant's release created a risk that he would not appear at future court proceedings and would present a danger to the community. The State provided the complaint-warrant, affidavit of probable cause, the PSA, the surveillance video, and defendant's videotaped statement to the police.

Defendant did not contest probable cause or that the presumption of detention applied. Rather, defense counsel argued defendant was not the aggressor, acted in self-defense, had a non-violent criminal history, and was not a danger to the community or at risk of not appearing in court. Defense counsel represented that defendant had strong family support and would reside with his mother and brother, who would guarantee his appearance in court. In addition, defendant attended elementary and high schools in Irvington, worked at a maintenance company in 2014 and 2015 cleaning offices and windows until he was injured on the job, was

very cooperative, and was remorseful despite claiming self-defense.

The State countered that the video showed defendant was the aggressor and Anthony threw the punch after defendant raised the knife up to Anthony's face. The State argued that defendant had a duty to retreat, could have walked away, and was "an extraordinary risk to the community," based on his lengthy criminal history and conduct in this case.

The court did not review defendant's videotaped statement to police. However, defense counsel represented that defendant said, "I should've just gone home," and expressed remorse. The State represented that defendant said he was high, came to the store to get a cigarette, and could and should have walked away, but "really wanted a cigarette."

The court viewed the surveillance video and disagreed with the State's description of the incident. The court noted that Anthony was much younger, bigger, and stronger than defendant, and appeared to be the aggressor throughout the argument. The court agreed with the defense that defendant was not the aggressor and it clearly appeared on the video that he was acting in self-defense when he stabbed Anthony.

The court recognized that the PSA recommended no release, but noted it had to consider a number of other factors. The court

assessed the nature and circumstances of the offense charged and weight of the evidence, and determined the State's case for murder was not very strong. The court also considered other factors, such as defendant's history and characteristics, and concluded that

under the circumstances, even with his prior criminal record, even with the PSA's recommendation of no release . . . this [c]ourt is satisfied that the [defendant] has rebutted the presumption in this case and that there are condition[s] or combination of conditions that would assure [his] appearance in court when required, as well as the protection of other persons in the community.

The court ordered defendant's release with the condition of twenty-four hour home supervision at his mother's residence and electronic monitoring. Defendant's release was stayed pending appeal.

We review the trial court's decision on a motion for pretrial detention for abuse of discretion. State v. C.W., 449 N.J. Super. 231, 256 (App. Div. 2017). An abuse of discretion may be found "when a decision 'rest[s] on an impermissible basis' or was 'based upon a consideration of irrelevant or inappropriate factors.'" Id. at 255 (alteration in original) (quoting State v. Steele, 430 N.J. Super. 24, 34-35 (App. Div. 2013), certif. improvidently granted, 223 N.J. 284 (2014)). An abuse of discretion may also be found "when the trial court fails to take into consideration

all relevant factors [or] when its decision reflects a clear error in judgment." Ibid.

Here, the court's decision rested on its view of the surveillance video. "When more than one reasonable inference can be drawn from the review of a video recording, . . . a trial court's factual conclusions reached by drawing permissible inferences cannot be clearly mistaken, and the mere substitution of an appellate court's judgment for that of the trial court's advances no greater good." State v. S.S., 229 N.J. 360, 380 (2017). However, "[a]ppellate courts have an important role to play in taking corrective action when factual findings are so clearly mistaken -- so wide of the mark -- that the interests of justice demand intervention." Id. at 381. "Deference ends when a trial court's factual findings are not supported by sufficient credible evidence in the record." Ibid.

The State concedes that S.S. precludes us from applying a de novo review of a trial court's findings based on video evidence. However, the State argues the court's decision was not supported by sufficient credible evidence because the surveillance video did not implicate self-defense. The State posits that, similar to the standard applied for a motion to dismiss an indictment, the evidence should be viewed in a light most favorable to the State at this early stage of the case. Citing State v. Robinson, 229

N.J. 44, 68 (2017) to support its argument that a pretrial detention hearing "should not turn into a mini-trial," the State contends it was not required to disprove every possible affirmative defense. The State insists that the surveillance video provides strong evidence for a jury to find defendant guilty of murder, and the court was clearly mistaken in concluding otherwise.

The State argues that the court abused its discretion by putting controlling weight on the surveillance video and rendering its own verdict of self-defense when the following factors set forth in N.J.S.A. 2A:162-20 weighed in favor of detention: (1) defendant is charged with murder and faces a minimum sentence of thirty years without parole; (2) the weight of the evidence is strong and includes the surveillance video, eyewitness identification, and defendant's inculpatory statement to the police; (3) defendant committed the crime while residing with his mother; and (4) defendant's criminal history bespeaks reoffending.

The State also argues that Pretrial Services' no release recommendation, coupled with the statutory presumption for defendants charged with murder, is strong evidence supporting defendant's pre-trial detention. The State posits that under Rule 3:4A(b)(5), a recommendation against release is prima facie evidence sufficient to overcome the presumption of release, and where there is a presumption of detention, the recommendation

should be even more difficult to overcome. Lastly, the State argues that when a presumption of detention is triggered, release should be the uncommon exception. The State maintains this result necessarily follows from our statement in C.W., supra, 449 N.J. Super. at 257, that where the presumption is not triggered, detention is "the appropriate result for only a limited group of the most serious cases."

Defendant counters that if the presumption of detention cannot be rebutted by the court's finding of a viable self-defense claim, it would effectively mean there is no murder case in which the presumption could be rebutted, as long as there is probable cause the defendant committed the crime. Defendant maintains that the court properly considered all of the relevant factors in N.J.S.A. 2A:162-20, and self-defense related to two of those factors: the nature and circumstances of the offense charged and the weight of the evidence.

II.

The focus of the Criminal Justice Reform Act (CJRA), N.J.S.A. 2A:162-15 to -26, is to "rely[] upon pretrial release by non-monetary means" to achieve the goals of "reasonably assur[ing] an eligible defendant's appearance in court when required, the protection of the safety of any other person or the community, [and] that the eligible defendant will not obstruct or attempt to

obstruct the criminal justice process." N.J.S.A. 2A:162-15. However, a prosecutor may file a motion for pretrial detention when a defendant is charged with certain crimes, including murder. N.J.S.A. 2A:162-19(a).

When a prosecutor seeks pretrial detention, in most cases there is a "rebuttable presumption that some amount of monetary bail, non-monetary conditions of pretrial release or combination of monetary bail and conditions" would satisfy the three goals of the CJRA. N.J.S.A. 2A:162-18(b). When a prosecutor seeks pretrial detention of a defendant who has not yet been indicted, such as defendant here, the court must first determine whether there is probable cause that the defendant committed the charged offense. N.J.S.A. 2A:162-19(e)(2). Defendant conceded there was probable cause, so this requirement was satisfied.

Once the court has found probable cause that the defendant committed murder or any crime for which the defendant would be subject to an ordinary or extended term of life imprisonment,

there shall be a rebuttable presumption that the eligible defendant shall be detained pending trial because no amount of monetary bail, non-monetary condition or combination of monetary bail and conditions would reasonably assure the eligible defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process[.]

[N.J.S.A. 2A:162-19(b).]

The presumption of pretrial detention may be rebutted by a preponderance of the proof "provided by the eligible defendant, the prosecutor, or from other material submitted to the court."

N.J.S.A. 2A:162-19(e)(2). "If the presumption is rebutted by sufficient proof, the prosecutor shall have the opportunity to establish that the grounds for pretrial detention exist[.]" Ibid.

To establish the grounds for pretrial detention, the prosecutor must show by clear and convincing evidence

that no amount of monetary bail, non-monetary conditions or combination of monetary bail and conditions will reasonably assure the eligible defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process[.]

[N.J.S.A. 2A:162-19(e)(3).]

The State did not argue that defendant would obstruct or attempt to obstruct the criminal justice process. Thus, the question is whether defendant rebutted the presumption of pretrial detention. If so, the second question is whether the State proved detention is warranted by clear and convincing evidence.

N.J.S.A. 2A:162-20 sets forth factors the court may consider in determining whether monetary bail, pretrial release conditions

or a combination of the two, can achieve the goals of the CJRA.

Specifically,

the court may take into account information concerning:

a. The nature and circumstances of the offense charged;

b. The weight of the evidence against the eligible defendant, except that the court may consider the admissibility of any evidence sought to be excluded;

c. The history and characteristics of the eligible defendant, including:

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

(2) whether, at the time of the current offense or arrest, the eligible 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;

d. The nature and seriousness of the danger to any other person or the community that would be posed by the eligible defendant's release, if applicable;

e. The nature and seriousness of the risk of obstructing or attempting to obstruct the criminal justice process that would be posed by the eligible defendant's release, if applicable; and

f. The release recommendation of the pretrial services program[.]

[N.J.S.A. 2A:162-20.]

The court here recognized that it must consider the factors set forth in N.J.S.A. 2A:162-20 to reach its decision. Contrary to the State's position, it was proper for the court to consider evidence of defenses to the charged offense that were relevant to the court's pretrial detention determination. Certainly, if defendant has a viable claim of self-defense, that information would be relevant to whether defendant poses a danger to the community or a risk of flight. The liberal construction to be afforded the CJRA, see N.J.S.A. 2A:162-15, would seem to embrace consideration of any relevant evidence regarding the nature and circumstances of the offense and weight of the evidence against the defendant in reaching a pretrial detention decision.

The State's argument that requiring it to disprove an affirmative defense would turn the detention hearing into a mini-trial is unpersuasive. Both parties relied on the surveillance video to establish their competing claims of murder and self-defense. We discern no reason why it would be improper for the court, when viewing the video, to consider the arguments of both parties in analyzing the nature and circumstances of the offense and the weight of the evidence. The court could properly draw

inferences from the video to determine whether defendant poses a danger to the community or a risk of flight. S.S., supra, 229 N.J. at 380.

Further, we reject the State's argument that the evidence should be viewed in the light most favorable to it. Detaining a defendant pretrial is fundamentally different than returning an indictment, as the detention directly and immediately impacts the defendant's liberty interests. United States v. Salerno, 481 U.S. 739, 746-50, 107 S. Ct. 2095, 2101-03, 95 L. Ed. 2d 697, 708-11 (1987); Robinson, supra, 229 N.J. at 68. As our Supreme Court noted, the CJRA is to be "'liberally construed' to effect its purpose [of] rely[ing] primarily on 'pretrial release by non-monetary means to reasonably assure'" that the three goals of the CJRA are achieved. Robinson, supra, 229 N.J. at 55 (quoting N.J.S.A. 2A:162-15). Moreover, "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." Salerno, supra, 481 U.S. at 755, 107 S. Ct. at 2105, 95 L. Ed. 2d at 714. Thus, even where there is a presumption of detention, it would seem incompatible with the liberal construction of the CJRA and a defendant's fundamental interest in liberty to view evidence at a pretrial detention hearing in the light most favorable to the State.

The State contends that Pretrial Services' no release recommendation combined with the statutory presumption strongly weighs in favor of detention. However, during oral argument before the Court in State v. S.N., No. A-079320, amicus American Civil Liberties Union of New Jersey (ACLU) argued that under the Judiciary's approved Decision Making Framework (DMF), when a defendant is charged with certain crimes, the Pretrial Services recommendation is always no release irrespective of the ratings on the PSA.¹ See C.W., supra, 449 N.J. Super. at 241 n.11 (noting the defendant and ACLU argued that the DMF automatically produced a no release recommendation for certain offenses, including murder). Thus, the presumption and the recommendation are apparently based solely on the offense charged and one should, therefore, not enhance the weight of the other.

In arguing that Pretrial Services' recommendation should make the presumption of detention even more difficult to overcome, the State relies on the provision in Rule 3:4A(b)(5) stating that Pretrial Services' no release recommendation is "prima facie evidence sufficient to overcome the presumption of release[.]" Rule 3:4A(b)(5) was the focus of much discussion during oral argument in S.N. The justices questioned how a recommendation

¹ S.N. was argued before the Court on September 11, 2017. An opinion is pending.

could constitute evidence of flight risk or danger to the community, particularly where it was based only on the crime charged. The justices entertained suggestions from the parties as to whether and how the rule should be revised.

In light of the concerns the justices raised about the weight afforded to a no release recommendation and the fact that the recommendation, like the presumption of detention, is apparently based only on the offense charged, we conclude the recommendation cannot increase the burden on a defendant to overcome the presumption of detention. When the Legislature established the burden of proof to overcome a presumption as a preponderance of the evidence, it presumably understood that the recommendation from Pretrial Services for all defendants charged with murder would be no release.

The State's reliance on C.W. for its contention that where the presumption of detention is triggered, release should be the "uncommon exception," is also misplaced. In C.W., supra, 449 N.J. Super. at 257, while discussing the clear and convincing burden of proof to overcome the presumption of release, we commented the drafters of the CJRA "presumably chose that high bar to make detention the appropriate result for only a limited group of the most serious cases[.]" However, it does not necessarily follow

that where the presumption of detention is triggered, release should be an uncommon exception.

Defendants can rebut the presumption of detention by a preponderance of the evidence, which does not pose the same high bar as a clear and convincing standard. Further, nothing in the CJRA suggests any intent to limit a defendant's ability to rebut the presumption beyond his or her ability to convince a court by a preponderance of the evidence that he or she will not flee, obstruct justice, or pose a danger to the community. Once the presumption of detention is rebutted, the same high bar of clear and convincing evidence applies as when there is a presumption of release. Thus, rather than supporting an argument for more expansive detention, our observations in C.W. that the intent of the CJRA is to limit detention to the most serious cases applies equally where there is a presumption of detention.

The remaining question is whether the court abused its discretion in finding defendant rebutted the presumption of detention and that there were conditions of release that would reasonably assure his appearance in court when required and the safety of any other person or the community.

As to risk of flight, defendant proffered evidence that he was a long-time resident of Irvington, had strong family ties in the area, and was currently on disability after working for a

maintenance company. Further, defendant's criminal history showed only one failure to appear in 1998.

The State provided no evidence, let alone clear and convincing evidence, that defendant was a flight risk. The State cannot rely on the likelihood that defendant may be facing a lengthy sentence to establish a flight risk; otherwise, no defendant could ever overcome a presumption of detention.

As to the risk of danger to any other person and the community, the court found defendant was not the aggressor throughout the incident and it appeared on the video he was acting in self-defense. The court gave significant weight to these findings, which go to the nature and circumstances of the offense and the weight of the evidence, two factors the court properly considered under N.J.S.A. 2A:162-20. While the State faults the court for relying on its "own verdict of self-defense," we find it was appropriate for the court to assess the risk defendant posed to the community based on his behavior captured in the video.

The court's observation that it appeared defendant was acting in self-defense was relevant to assessing his risk of danger to the community, regardless of whether defendant could ultimately prove the elements of self-defense. The purpose of the pretrial detention hearing is not to decide whether or not defendant acted in self-defense. The only relevance of defendant's behavior is

whether it tends to show that no conditions of release would reasonably assure the safety of any other person or the community. Under the abuse of discretion standard, defendant's behavior on the video does not establish there were no conditions of release that could reasonably assure the safety of any person and the community.

Defendant's criminal history was the only other evidence the State relied on that was relevant to this issue. While the court mentioned defendant's criminal history, it made no findings as to whether it weighed in favor or against detention. The court noted that sixteen convictions were for disorderly persons offenses, but defendant also had a few convictions for indictable offenses, such as drug possession and hindering arrest. However, none of defendant's past offenses were for violent crimes.

We conclude the court did not abuse its discretion in finding defendant rebutted the presumption of pretrial detention and that home detention with electronic monitoring would reasonably assure defendant's appearance in court when required and the safety of any other person or the community. The court considered all relevant factors and its decision did not reflect an abuse of discretion.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION