

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-1855-22

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

MICHAEL A. WESTBROOK,

Defendant-Respondent.

Argued March 7, 2023 – Decided March 20, 2023

Before Judges Geiger, Susswein and Berdote Byrne.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Monmouth County, Complaint No. W-2022-000050-1338.

Alecia Woodard, Assistant Prosecutor, argued the cause for appellant (Raymond S. Santiago, Monmouth County Prosecutor, attorney; Alecia Woodard, of counsel and on the brief).

Mark A. Bailey argued the cause for respondent.

PER CURIAM

We granted the State's motion for leave to appeal from a Law Division order denying pretrial detention of defendant Michael A. Westbrook, who is charged with first-degree murder, N.J.S.A. 2C:11-3(a)(1); second-degree possession of a handgun for an unlawful purpose, N.J.S.A. 2C:39-4(a)(1); and third-degree hindering apprehension of oneself, N.J.S.A. 2C:29-3(b)(1). We affirm the denial of pretrial detention.

On December 30, 2022, defendant was on a date with Tamika Trimble. After having dinner, they returned to Trimble's apartment in Oceanport. Defendant backed his pickup truck into a parking spot at the apartment complex. Shortly thereafter, Trimble's former boyfriend, Ahmad Jones, drove up and parked directly in front of defendant's pickup, blocking it from leaving. Jones exited his vehicle and walked over to the driver's side door of defendant's pickup.

When defendant lowered his window, Jones asked him what he was doing there, then punched defendant in the face at least three times while defendant was still sitting in the driver's seat. Trimble fled the truck. Defendant grabbed his 9mm handgun from under the seat and shot Jones once in the chest, killing him. Immediately thereafter, defendant fled on foot and discarded the handgun, which has not been recovered.

Defendant called his sister and mother and told them that he had shot someone. Defendant's mother picked him up and attempted to transport him to the Oceanport Police Department but was unable to locate it. She then drove him to the Neptune Police Department, where he turned himself in. While at police headquarters, defendant waived his Miranda¹ rights and gave a statement to police describing the facts and admitting he had fired the gun at Jones, who he did not personally know, but knew him to be Trimble's ex-boyfriend. Defendant also admitted he fled the scene and discarded the gun but did not tell police where it was discarded.

When officers asked how he got to Neptune, defendant stated he was picked up by an Uber, which transported him to another location. Then his family picked him up from that location. Officers later claimed this information was false.

The Public Safety Assessment (PSA) scored defendant a 1/6 for both risk of failure to appear and new criminal activity. It did not raise a flag for new violent criminal activity but recommended no release because the charges included murder. The State moved for pretrial detention. The State relied on

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

the severity of the murder charge, that defendant had fled the scene, and that he discarded the gun.

The court conducted a detention hearing on January 18, 2023. At the hearing, the State proffered the complaint-warrant, affidavit of probable cause, photograph of defendant's face after his arrest, and two police incident reports. Defendant submitted several letters attesting to his ties to Monmouth County, including his family that lived locally, gainful employment, participation in church activities, and raising his three children. The court also reviewed Trimble's statement that indicated Jones was the aggressor, that she fled while Jones repeatedly punched defendant in the face while he was seated in his pickup, and that defendant was in a state of shock after being assaulted. Thirteen people, including defendant's pastor and members of defendant's family, appeared on his behalf. Defendant contended he acted in self-defense.

The court found probable cause for the charges. The State argued that pretrial detention was warranted as defendant posed a risk of obstruction and to the safety of the community. Defendant argued for release claiming the facts of the incident and his background rebutted the presumption of detention.

The court considered the PSA, which stated defendant, who is thirty-five years old, had no prior indictable or disorderly persons offense convictions, no

other pending charges, had never failed to appear in court, and had a permit for a handgun. The court noted defendant also had a firearms purchaser identification card since 2018. The State does not argue otherwise.

The court recounted the facts and found there was a potentially viable defense of self-defense, and that defendant had an unblemished record, was employed, and had strong ties to the community. The court rejected any notion that defendant may have used a gun other than the one that was registered to him. It also considered that defendant fled the scene on foot and discarded the handgun.

The court found defendant rebutted the presumption of detention by a preponderance of the evidence, denied pretrial detention, and released defendant on pretrial monitoring level III, subject to stated conditions. The State did not immediately appeal the decision or ask the court to stay its ruling. Instead, the State took no immediate action and twenty days later filed a motion for leave to appeal, which this court granted.

On appeal, the State argues the trial court erred in denying its motion for pretrial detention. We are unpersuaded.

The standard of review for a pretrial detention order is "whether 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). A reviewing court should not disturb a decision on whether to detain a defendant before trial unless "the trial court fails to take into consideration all relevant factors and when its decision reflects a clear error in judgment." Id. at 515 (quoting State v. C.W., 449 N.J. Super. 231, 255 (App. Div. 2017)). The Criminal Justice Reform Act, N.J.S.A. 2A:162-15 to -26, "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, 47 (2017).

When a defendant is charged with murder, there is a presumption of pretrial detention, N.J.S.A. 2A:162-19(b)(1), which can be rebutted by a preponderance of the evidence, State v. Mercedes, 233 N.J. 152, 163 (2018); N.J.S.A. 2A:162-19(e)(2). If a defendant charged with murder "successfully rebuts the presumption of detention, N.J.S.A. 2A:162-19(e)(2), the State must then present clear and convincing evidence that detention is warranted, N.J.S.A. 2A:162-19(e)(3)." State v. Hyppolite, 236 N.J. 154, 164 (2018).

If 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, danger, or obstruction." Mercedes, 233 N.J. at 163. The court should consider:

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 to any other person or the community that would be posed by the eligible defendant's release;" "[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).]

The court should also 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 (Mar. 2018)], though, do not replace judicial discretion. Trial judges make the ultimate decision on release after they consider other relevant details." Id. at 165 (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). 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).

Regarding appearance at future court dates, "[a]ssuming there is probable cause to believe a defendant committed the offense, if the weight of the evidence is weak, then the defendant may be more willing to put the State to the test of a trial, reducing the risk of a failure to appear." State v. Carroll, 456 N.J. Super. 520, 533-34 (App. Div. 2018). Here, defendant asserts he acted in self-defense. At trial, a claim of self-defense "requires a jury (1) to discern whether the defendant had a subjective belief at the time that deadly force was necessary and then (2) to determine whether that subjective belief was objectively reasonable." State v. Handy, 215 N.J. 334, 356 (2013) (quoting State v. Jenewicz, 193 N.J. 440, 450 (2008)). When self-defense is raised, the State must "disprove it beyond a reasonable doubt." Ibid.

Applying these principles, we discern no abuse of discretion. The trial court applied the statutory factors to the facts disclosed by the record, made sufficient findings, and explained its ruling. Aside from the seriousness of the murder charge, fleeing from the scene on foot, and discarding of the gun, the factors militated strongly in favor of pretrial release. Defendant's ties to the community and his family, stable employment, blemish-free record, the fact that he turned himself in to police and gave a statement, and did not abscond or commit another offense after being released by the trial court, coupled with his potentially viable defense of self-defense, amply supported the trial court's finding that defendant rebutted the presumption of pretrial detention by a preponderance of the evidence.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION