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IN THE
COURT OF APPEALS OF INDIANA

Sierra M. DeWees,

Appellant-Defendant,

v.

State of Indiana,

Appellee-Plaintiff.

February 15, 2021

Court of Appeals Case No.
20A-CR-1146

Appeal from the Clay Superior
Court

The Honorable Robert A. Pell,
Judge

Trial Court Cause No.
11D01-2003-F2-306

Tavitas, Judge.

Case Summary

- [1] Sierra M. DeWees appeals from the denial of her motion for bond reduction or conditional pre-trial release. Indiana Criminal Rule 26 warrants that, where a qualifying arrestee does not present a substantial risk of flight or danger to self or others, a trial court should release the arrestee without money bail or surety subject to such restrictions and conditions as determined by the court. Moreover, our Indiana Code provides that, in setting the amount of bail or

deciding whether to grant conditional pre-trial release, trial courts must consider all facts relevant to the risk of a defendant's failure to appear, including factors enumerated in Indiana Code Section 35-33-8-4(b). The Indiana Code further provides that, when the defendant presents additional evidence of substantial mitigating factors, based on Indiana Code Section 35-33-8-4(b), that reasonably suggests that the defendant recognizes the trial court's authority to bring the defendant to trial, the trial court may reduce bail or grant conditional pre-trial release, unless the court finds by clear and convincing evidence that, among other things, the defendant poses a risk to the physical safety of another person or the community. Because we find no support for the trial court's finding that DeWees posed a risk to the physical safety of the alleged victim, we reverse and remand.

Issue

- [2] The sole issue on appeal is whether the trial court abused its discretion in denying DeWees' motion for bond reduction or conditional pre-trial release.

Facts

- [3] The State alleges the following: on March 27, 2020, eighteen-year-old DeWees drove Weston Havey, Preston Hasler, and Blake Braun to the home of sixty-seven-year-old Irving Mullins in Brazil, Indiana.¹ The group intended to rob Mullins. At approximately 1:30 a.m., Havey, Hasler, and Braun burst into

¹ Brazil is located in Clay County, Indiana.

Mullins' residence. Havey had a shotgun. Someone shot at Mullins, who returned fire and struck Braun. Braun ran out of the residence, followed by Hasler and, eventually, Havey. The suspects fled in a silver or gray Honda.

[4] Brazil City Police Patrolman Joseph Young initiated a traffic stop of a vehicle that matched the description of the suspect vehicle with assistance from Clay County Sheriff's Deputy Patrick Duncan and Brazil City Police Detective Casey Harder. When the officers approached the stopped vehicle, DeWees was at the wheel, and Havey was the lone passenger. Detective Harder saw a bloodstain on the back seat of the vehicle, and Patrolman Young observed a shotgun next to the front passenger seat. After being read the *Miranda* advisements, Havey admitted that he participated in an attempted robbery and that his accomplices, Hasler and Braun, were hospital-bound in another vehicle, which Havey described to the police;² and DeWees admitted to her role as the trio's getaway driver. DeWees, Havey, Hasler, and Braun were arrested for criminal offenses related to the incident.³

[5] On March 30, 2020, the State charged DeWees with aiding, inducing, or causing burglary, a Level 2 felony. On April 1, 2020, the trial court conducted DeWees' initial hearing; set bond at "\$50,000.00 NO 10% CASH ONLY"; and,

² During the traffic stop, dispatch advised that a man, later identified as Braun, had recently presented himself to St. Vincent Clay Hospital with a gunshot wound. Hasler was subsequently apprehended in a running vehicle outside the hospital.

³ The record reveals that Braun was taken into police custody after he was released from medical treatment. Braun was subsequently deemed eligible for home detention, was assessed an IRAS-PAT score of 2, and was granted a conditional pre-trial release to reside with his father in Marion County.

among other things, prohibited DeWees from contacting Mullins pursuant to a no-contact order. DeWees’ App. Vol. II p. 28. On April 30, 2020, Clay County Community Corrections notified the trial court that DeWees was “pre-screened . . . and . . . eligible for Electronic Home Detention through Putnam County Community Corrections.”⁴ *Id.* at 32.

[6] On May 6, 2020, DeWees filed a motion for reduction of bond or conditional pre-trial release. On June 1, 2020, the trial court conducted a hearing on DeWees’ motion for reduction of bond or conditional pre-trial release. Eighteen-year-old DeWees, who has no prior criminal history, testified as follows. At the time of the offense, DeWees resided with her stepfather and mother, Melinda DeWees (“Melinda”), in Putnam County. Melinda and DeWees have resided in Putnam County since 2008. DeWees also has a close relationship with her father, who lives in Hamilton County. DeWees has never lived outside Indiana, traveled out of the country, and does not own a passport. Before her arrest, DeWees was a full-time high school student with plans to earn a nursing degree from one of two Indiana universities to which she had been accepted. DeWees worked regularly as a babysitter and as an employee of an inflatable bouncehouse rental business until her employment ceased abruptly due to the Covid-19 pandemic. DeWees had approximately \$200 in savings, and Melinda was actively saving to raise DeWees’ bond money. If released to home detention, DeWees intended to reside in Putnam County with Melinda

⁴ At the time of the offense, DeWees resided in Putnam County.

and DeWees' stepfather. DeWees stated that she would not defy the no-contact order in effect regarding Mullins.

[7] Defense counsel advised the trial court that: (1) Melinda was gainfully employed and intended to pay the costs associated with DeWees' bond and/or home detention; (2) Melinda's residence was pre-screened and approved as DeWees' home detention placement; and (3) Melinda would ensure that DeWees appeared for court proceedings and obeyed court-imposed conditions.

[8] Mullins testified that the trial court should deny DeWees' motion for bond reduction or conditional pre-trial release because, notwithstanding her testimony, DeWees was a willing participant in the offense, which had deeply frightened him. Mullins testified further that he and his daughter lived in fear that the suspects would return to his residence to do him harm. Mullins testified that he keeps two guns on or near his person as a result of the traumatic event.

[9] On June 4, 2020, the trial court denied the motion for bond reduction and conditional pre-trial release. On June 5, 2020, DeWees filed a motion to stay the order denying reduction of bond or conditional pre-trial release ("motion to stay") and sought her "release to pretrial services with the added condition of home detention pending the resolution of her appeal." *Id.* at 53. On June 12, 2020, DeWees filed her notice of appeal. The trial court denied DeWees' motion to stay on June 17, 2020. The trial court's order provided, in part:

[DeWees] is an eighteen-year-old senior at Greencastle High School. She has no criminal record. Her IRAS evaluation was “4”. She testified that she had been employed until recently but lost her job due to the COVID-19 situation. The court accepts the IRAS evaluation of “4”. [DeWees] lives with her mother in Fillmore, Putnam County[]. [DeWees]’ father lives in Carmel, Indiana. Putnam County adjoins Clay County. [DeWees] has been approved for Electronic Home Detention in Putnam County by Clay County Community Corrections. The State of Indiana has not agreed to pre-trial electronic home detention.

The alleged victim, Irving Mullins[,] testified that he is in fear from [DeWees] and her alleged accomplices [DeWees] was said to be the driver of one of the cars involved. [] Mullins formerly kept a pistol by his side. Now he keeps two pistols. [] Mullins was unsympathetic to [DeWees]’ testimony

Pursuant to [IC. 35-33-8-4](#), the court finds that [DeWees] is originally from Carmel, Indiana[,] but has lived in Fillmore for some years. The court takes judicial notice that Fillmore is about 25 miles from Brazil, Indiana and about 29 miles from [] Mullins’ home. Fillmore is not exactly “in the community”, but is not that far away either. [DeWees]’ employment status is unemployed, which she attempted to explain. She is, or was, still in high school. Her family ties appear strong, since she plans to stay with her mother. No evidence was presented of bad character other than being charged with this crime. She has no criminal record, and therefore no failures to appear. The nature and gravity of the offense charged is extremely serious and the court accepts the State’s concern that [DeWees] may live with her father and therefore be farther from the community, although Carmel is only about an hour and a half away from Brazil. However, [DeWees] has said her Home Detention would be at her mother’s home in Fillmore. [DeWees] has agreed to have no contact with [] Mullins. The source of funds for any bond would presumably be from [DeWees]’ family.

With regard to C.R. 26, because of the above factors the court cannot say that [DeWees] is not a substantial flight risk nor that she is not a danger to others. [] This court finds *Yeager* not be controlling due to [DeWees] having a higher IRAS score, living a farther distance from the community, being charged with a more serious crime, and the testimony of the alleged victim who is the State's only eyewitness. There was no mention of victim testimony in *Yeager*. Primarily because of [] Mullins' testimony the court concludes that the State has proved by clear and convincing evidence that [DeWees] is a risk to the physical safety of [] Mullins.

Id. at 50.

[10] On June 23, 2020, DeWees filed an emergency motion to stay before this Court, which we granted on June 25, 2020. This Court ordered the trial court to release DeWees to pre-trial home detention pending resolution of the appeal.⁵ On June 26, 2020, the trial court entered its amended order on DeWees' motion for reduction of bond or conditional pre-trial release, wherein it ordered DeWees released to electronic home detention with GPS monitoring.⁶ DeWees now appeals from the denial of her motion for reduction of bond or conditional pre-trial release.

⁵ The State filed its opposition to DeWees' emergency motion to stay on June 26, 2020. This Court treated the State's opposition as a motion to reconsider and denied it on June 29, 2020.

⁶ Also on June 26, 2020, the State filed an emergency motion to reconsider before this Court; we denied the State's motion to reconsider on July 1, 2020. On July 2, 2020, the Clay County Sheriff released DeWees to Putnam County Community Corrections.

Analysis

- [11] Dewees argues that the trial court erred in denying her motion for reduction of bond and/or conditional pre-trial release. The amount of bond is within the discretion of the trial court and will be reversed on appeal only for an abuse of that discretion. *Lopez v. State*, 985 N.E.2d 358, 360 (Ind. Ct. App. 2013). “An abuse of discretion occurs when the trial court’s decision is clearly against the logic and effect of the facts and circumstances before it.” *Sneed v. State*, 946 N.E.2d 1255, 1257 (Ind. Ct. App. 2011).
- [12] The Indiana Constitution prohibits excessive bail. Ind. Const. art. 1, § 16. “The object of bail is not to effect punishment in advance of conviction.” *Samm v. State*, 893 N.E.2d 761, 766 (Ind. Ct. App. 2008). “Rather, it is to ensure the presence of the accused when required without the hardship of incarceration before guilt has been proved and while the presumption of innocence is to be given effect.” *Id.* To determine whether bail is excessive, a court must consider: “(1) the object of bail itself, and (2) the financial ability of the accused to provide the required amount of bail.” *Id.* (quotation omitted). Generally, bond is considered excessive if it is set at an amount higher than reasonably calculated to ensure the accused’s presence in court or to assure the physical safety of another person or the community, if the court finds by clear and convincing evidence that the accused poses a risk to the physical safety of another person or the community.” *See Lopez*, 985 N.E.2d at 360; *see* Ind. Crim. Rule 26.

[13] Indiana Criminal Rule 26, regarding pre-trial release, provides, in part:

(A) If an arrestee does not present a substantial risk of flight or danger to self or others, the court should release the arrestee without money bail or surety subject to such restrictions and conditions as determined by the court except when:

- (1) The arrestee is charged with murder or treason.
- (2) The arrestee is on pre-trial release not related to the incident that is the basis for the present arrest.
- (3) The arrestee is on probation, parole or other community supervision.

(B) In determining whether an arrestee presents a substantial risk of flight or danger to self or other persons or to the public, the court should utilize the results of an evidence-based risk assessment approved by the Indiana Office of Court Services, and such other information as the court finds relevant. The court is not required to administer an assessment prior to releasing an arrestee if administering the assessment will delay the arrestee's release. . . .

Crim. R. 26.

[14] Indiana Code Section 35-33-8-5, which grants defendants the opportunity to seek alteration or revocation of bail, provides, in part, as follows:

(a) Upon a showing of good cause, the state or the defendant may be granted an alteration or revocation of bail by application to the court before which the proceeding is pending

* * * * *

(c) When the defendant presents additional evidence of substantial mitigating factors, based on the factors set forth in

[Indiana Code Section 35-33-8-4(b)], which reasonably suggests that the defendant recognizes the court's authority to bring the defendant to trial, the court may reduce bail. However, the court may not reduce bail if the court finds by clear and convincing evidence that the factors described in [IC 35-40-6-6\(1\)\(A\)](#) and [IC 35-40-6-6\(1\)\(B\)](#)⁷ exist or that the defendant otherwise poses a risk to the physical safety of another person or the community.

Ind. Code § 35-33-8-5.

[15] The [Indiana Code Section 35-33-8-4\(b\)](#) factors follow:

- (1) the length and character of the defendant's residence in the community;
- (2) the defendant's employment status and history and his ability to give bail;
- (3) the defendant's family ties and relationships;
- (4) the defendant's character, reputation, habits, and mental condition;
- (5) the defendant's criminal or juvenile record . . . ;
- (6) the defendant's previous record in not responding to court appearances when required or with respect to flight to avoid criminal prosecution;
- (7) the nature and gravity of the offense and the potential penalty faced, insofar as these factors are relevant to the risk of nonappearance;

⁷ Neither Indiana Code Section 35-40-6-6(1)(A) nor Indiana Code Section 35-40-6-6(1)(B) is applicable here.

(8) the source of funds or property to be used to post bail or to pay a premium, insofar as it affects the risk of nonappearance;

(9) that the defendant is a foreign national who is unlawfully present in the United States under federal immigration law; and

(10) any other factors, including any evidence of instability and a disdain for authority, which might indicate that the defendant might not recognize and adhere to the authority of the court to bring him to trial.

[16] In support of her claim, DeWees relies upon *Yeager v. State*, 148 N.E.3d 1025 (Ind. Ct. App. 2020), and maintains that DeWees and Yeager “are nearly similarly situated and should be treated the same.” DeWees’ Br. p. 16. In *Yeager*, after Yeager’s arrest for multiple felonies relating to child battery, the trial court set a \$250,000.00 cash bail. Yeager filed a motion to reduce bail, which was denied despite a county official’s recommendation that Yeager presented no flight risk and was eligible for placement on electronic monitoring. The trial court denied the motion notwithstanding Yeager’s: (1) nominal criminal history, comprised only of a charge of underage drinking fifteen years earlier; (2) steady, long-term housing, employment, familial ties, and relationships in the community; (3) willingness to pay for electronic monitoring; and (4) pledge to honor the no-contact order regarding the victim. The trial court also overlooked Yeager’s parents’ assurances that they would ensure that Yeager would appear in court. In reversing on appeal, this Court found that the trial court abused its discretion in denying the motion to reduce bail because Yeager presented evidence of substantial mitigating factors that showed his

recognition of the court’s authority to bring him to trial; and the State presented no valid evidence that Yeager posed a risk to the victim or the community.

[17] Here, the trial court found: (1) “primarily because of Mullins’ testimony[,]” that the State had proved, by clear and convincing evidence, that DeWees posed a risk to Mullins’ physical safety; and (2) *Yeager* was not controlling “due to [DeWees] having a higher IRAS score, living a farther distance from the community, [and] being charged with a more serious crime. . . .” *See* DeWees’ App. Vol. II pp. 50, 51; *see* I.C. § 35-38-8-5(c). We cannot agree and are perplexed by the discordance between the trial court’s order and the relevant facts.

I. Indiana Risk Assessment System – Pretrial Assessment Tool

[18] As an initial matter, we observe that Indiana Criminal Rule 26(B) requires a trial court to use the pre-trial IRAS risk assessment (“IRAS-PAT”) “and such other information as the court finds relevant” in determining whether an arrestee “presents a substantial risk of flight or danger to self or other persons or to the public.” The pre-trial IRAS-PAT scale rates persons earning a score of zero to two points as having, among other things, a “low” risk of failure to appear. A score of three to five points reflects a “moderate” risk of failure to appear; and a score of six or more reflects a “high” risk of failure to appear.

DeWees' App. Vol. II pp. 18, 19. Here, DeWees was assessed an IRAS-PAT score of four.⁸

[19] We take issue with the assessment of two points to DeWees for her unemployed status. Taking at face value DeWees' testimony that: (1) she was a full-time high school student at the time of her arrest; and (2) she was technically employed at the time of her arrest, but that her babysitting and bouncehouse rental jobs fizzled due to the ongoing coronavirus pandemic, we find the assessment of two points for DeWees' unemployed status to be unreasonable and deem an "adjusted" IRAS-PAT score of two points to be more appropriate here.

II. Indiana Code Section 35-33-8-4(b) factors

[20] Next, we will consider the pertinent⁹ Indiana Code Section 35-33-8-4(b) factors in turn. Regarding the first factor, "the length and character of [DeWees'] residence in the community[,]" DeWees is a longtime resident of Putnam County, which shares a border with Clay County, where the charged offense occurred. Since 2008, DeWees has resided in Putnam County with her mother. This factor weighs in DeWees' favor.

⁸ DeWees' four-point score was comprised of: (1) one point for being under age thirty-three at the time of her first arrest; (2) one point for illegal drug use in the six months preceding her arrest; and (3) two points for being unemployed at the time of her arrest, for a total of four points.

⁹The sixth and ninth factors are inapplicable here.

- [21] The second factor, DeWees' employment status and history and her ability to give bail, is somewhat of a nullity. At the time of DeWees' arrest, she was a high school senior, who worked as a babysitter and at an inflatable bouncehouse rental business. As DeWees testified, "I was employed but not working because of Covid-19." Tr. Vol. II p. 7. This factor favors neither party.
- [22] Regarding the third factor, DeWees' "family ties and relationships," the record reveals DeWees' ties to her mother and stepfather, with whom DeWees resided in Putnam County, and DeWees' relationship with her father, whom she visited in Hamilton County "every other weekend if not every weekend." *Id.* at 11. Although, on its face, this factor reflects DeWees' ties to other counties, it also establishes that her core relationships are moored in Putnam and Hamilton Counties, which are geographically close to Clay County. In our view, the proximity of these counties makes it less likely that DeWees will fail to appear.
- [23] The fourth and fifth factors, "the defendant's character, reputation, habits, and mental condition" and "the defendant's criminal or juvenile record[,]" respectively, yielded evidence that: (1) DeWees smoked marijuana in the six-month period before her arrest; and (2) the instant offense was DeWees' first contact with the criminal justice system. In tandem, these factors reflect DeWees' nominal criminal history, which inures to DeWees' benefit.
- [24] Regarding the seventh factor, "the nature and gravity of the offense and the potential penalty faced[,]" DeWees is charged with aiding, inducing, or causing burglary, a Level 2 felony. The charged offense is significant and is punishable

by ten to thirty years imprisonment, with an advisory sentence of seventeen and one-half years. [I.C. § 35-50-2-4.5](#). This factor weighs in favor of the State.

[25] With respect to the eighth factor, “the source of funds or property to be used to post bail[,]” the record reveals that: (1) DeWees’ mother, Melinda DeWees (“Melinda”), “[has] been saving” in order to post DeWees’ bond; and (2):

[Melinda] advised [defense counsel] that she will make sure that [DeWees] is at every single court appearance and that [DeWees] complies with all of the conditions of [] release if [DeWees] is released, plus any conditions of Community Corrections and that [Melinda] will be able to assist with the fees for Community Corrections for [DeWees].

Tr. Vol. II pp. 10, 12. This factor inures to DeWees’ benefit.

[26] Regarding the tenth and final relevant factor, encompassing “any other factors, including any evidence of instability and a disdain for authority, which might indicate that [DeWees] might not recognize and adhere to the authority of the court to bring h[er] to trial[,]” we find no support in the record for this factor and find that this factor inures to DeWees’ benefit.

[27] The circumstances here are starkly similar to those in *Yeager*. After Putnam County pre-approved DeWees for home detention with electronic home monitoring, the trial court denied DeWees’ motion for bond reduction or conditional pre-trial release notwithstanding: (1) DeWees’ lack of any criminal history; (2) DeWees’ long-term residency, familial ties, and relationships near Clay County; (3) Melinda’s willingness to pay for electronic monitoring; (4)

DeWees' pledge to honor the no-contact order in effect as to Mullins; and (5) Melinda's commitment to ensure that DeWees would appear and abide by all court-ordered conditions. As in *Yeager*, our review of the record leads us to conclude that DeWees presented additional evidence of substantial mitigating factors, based on Indiana Code Section 35-33-8-4(b) factors, that reasonably suggested that DeWees recognized the trial court's authority to bring her to trial; nonetheless, the trial court denied her motion for reduction of bond or conditional pre-trial release, citing the risk that DeWees posed to Mullins.

III. Risk to Physical Safety

[28] With respect to the trial court's finding that DeWees posed a risk to Mullins' physical safety, we have scoured the record for evidentiary support but have been left wanting. The record reveals only that: (1) the trial court "t[ook] judicial notice that Fillmore is about 25 miles from Brazil, Indiana[,] and about 29 miles from [] Mullins' home[,]” *see* DeWees' App. Vol. II p. 50; and (2) Mullins testified that the attempted robbery frightened and disturbed him. *See* Tr. Vol. II p. 15 (Mullins' testimony that “[he is] 67 years old. [He] sleep[s] with two guns, one on each side of [him]. [He's] [w]orried about someone trying to break in again.”).

[29] Although we are sympathetic to Mullins' distress, Mullins' testimony that he remains in a fearful state cannot, standing alone, sustain the the trial court's finding that DeWees poses a risk to Mullins' physical safety. We decline to find, as the trial court did, that Mullins' testimony sufficed to establish, by clear and convincing evidence, that DeWees posed a risk to Mullins' physical safety.

Moreover, we regard the trial court’s elevation of Mullins’ testimony over the Indiana Code Section 35-33-8-4(b) factors, and its reliance “primarily” thereon in denying DeWees conditional pre-trial release, as impermissibly punitive. DeWees’ App. Vol. II p. 50; *see Samm*, 893 N.E.2d at 766 (“The object of bail is not to effect punishment in advance of conviction.”) (citation omitted).

[30] We do not reach this conclusion lightly, but are compelled to do so based on discrete facts within the record. First, the record is clear that Mullins was already in the habit of sleeping with a gun on or near his person before the incident. This fact moderates the weight we afford to Mullins’ testimony that fear prompted him to sleep with two guns following the incident. Next, it is undisputed that, of the four participants in the attempted robbery, only DeWees remained outside Mullins’ residence. Mullins, thus, had no interaction whatsoever with DeWees. Additionally, we find, as a whole, that Mullins’ hearing testimony illustrates his understandable anger and desire for justice more than it reflects that Mullins perceives a genuine threat to his physical safety from DeWees. Lastly, the record on appeal reveals that the State granted conditional pretrial release on home detention to Braun, *who actually breached Mullins’ residence, possibly wielding a firearm, and was shot by Mullins.*¹⁰ Braun was granted latitude in the form of a home detention placement in Marion County.

¹⁰ We acknowledge Mullins’ testimony that the State did not consult or notify him regarding the grant of conditional pretrial release to Braun.

[31] In light of our consideration of the Indiana Code Section 35-33-8-4(b) factors, DeWees' adjusted pre-trial IRAS-PAT score, the trial court's inordinate reliance on Mullins' testimony, and the dearth of evidence indicating that DeWees posed a substantial risk to Mullins' physical safety, we find that the trial court's denial of DeWees' motion for reduction of bond or conditional pre-trial release is against the logic and effect of the facts and circumstances before the trial court. Thus, we conclude that the trial court abused its discretion. Accordingly, we reverse and remand with instructions to the trial court to order DeWees to remain¹¹ released to home detention with GPS monitoring, subject to additional conditions as determined by the trial court that comport with our decision.

[32] In light of our opinion, and notwithstanding [Indiana Appellate Rule 65\(E\)](#), this opinion is effective immediately; the trial court need not await a certification of this opinion by the Clerk of Courts before ordering that DeWees should remain released to pretrial supervision on home detention with electronic monitoring. *See Ind. Appellate Rule 1* ("The Court may, upon the motion of a party or the Court's own motion, permit deviation from these Rules."); *see also Town of Ellettsville v. Despirito*, 87 N.E.3d 9, 12 (Ind. 2017) (making opinion effective immediately notwithstanding [Appellate Rule 65](#)).

¹¹ As noted above, this Court granted DeWees' motion to stay and already DeWees released to home detention, pending the resolution of this appeal.

Conclusion

[33] The trial court abused its discretion in denying DeWees' motion for bond reduction or conditional pre-trial release. We reverse and remand.

[34] Reversed and remanded with instructions.

Bailey, J., and Robb, J., concur.