MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jordan Cunningham,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

July 31, 2023

Court of Appeals Case No. 23A-CR-862

Appeal from the Clark Circuit Court

The Honorable Nicholas A. Karaffa, Judge

Trial Court Cause No. 10C01-2302-F1-5

Memorandum Decision by Judge Weissmann
Judges Riley and Bradford concur.

Weissmann, Judge.

[1] Facing five felony charges for allegedly shooting his wife and battering her, Jordan Cunningham failed to convince the trial court to modify his cash-only $250,000 bond. He argues his bail is excessive to ensure his appearance and not commensurate with the danger he poses to the victim and the wider community. Cunningham also contends the trial court ignored less restrictive alternatives to bail. Finding no abuse of discretion in the trial court's order declining to modify Cunningham's bail, we affirm.

Facts

[2] Cunningham, and his wife, S.C., began fighting after a medical appointment. Later, S.C. looked up and saw Cunningham standing behind her holding a gun in his hand. Cunningham allegedly fired the weapon, shooting S.C. in the chest. He then called 911 to report the shooting.

[3] The State charged Cunningham with Level 1 felony attempted murder, Level 3 felony aggravated battery, Level 5 felony domestic battery, Level 6 felony criminal recklessness, and Level 6 felony pointing a firearm. A few days later, in a separate proceeding stemming from an unrelated incident, a different county filed felony charges against Cunningham.

[4] At Cunningham's arraignment, the State requested that the trial court set a cash only bond of $250,000. The State argued that Cunningham presented a danger to S.C. and her family, as well as the community in general. Moreover, "due to the serious nature of the charges he is facing, including an Attempted Murder

charge, which is a Level 1 Felony," the State argued that Cunningham "poses a flight risk" Tr. Vol. II, p. 5. The Court also took judicial notice that Cunningham faced other felony charges in a separate case. At the hearing's end, the trial court set a cash only bond at the State's recommended amount. Cunningham quickly moved for bond modification and a new hearing.

[5] Cunningham presented witnesses who generally testified about his work history, closeness with his family, lack of prior involvement with law enforcement, and involvement in various civic organizations. The testimony showed that Cunningham had lived in Indiana his entire life and that his family resided in the state, while his grandparents had a home in Florida. During the hearing, it was noted that Cunningham had not yet participated in Indiana's Risk Assessment System ("IRAS"), which determines whether a particular defendant is at a low, moderate, or high risk of nonappearance.

[6] In response, the State elicited testimony from S.C.'s father stating that Cunningham owned two guns and had experience using them. S.C.'s father also testified that Cunningham was familiar with his in-laws' various home security systems, knew the passcodes to enter their homes, and had even provided his fingerprint for the security system used at the home belonging to S.C.'s sister. Although the family had "done its best to make changes" to the security systems, S.C.'s father still feared for the safety of S.C. and his broader family. *Id.* at 55–56. It also came to light that Cunningham's parents own a second home in Florida.

[7] The trial court denied Cunningham's request to reduce his bond by written order. The order specified that the court found that "Defendant poses a risk to the physical safety of another person and the community" App. Vol. II, p. 66. The court also found that "Defendant is a flight risk due to the nature and gravity of the offense and the potential penalty faced" *Id.*

[8] Cunningham moved to correct error. Cunningham presented an amended IRAS report, now showing a low risk of non-appearance, and argued that the no-contact order issued two days after the last hearing demonstrated that he is not a safety risk to S.C. or her family. Following a hearing at which this evidence was admitted, the court denied Cunningham's motion to correct error. Cunningham now appeals.

Discussion and Decision

[9] We review a trial court's bail decision for an abuse of discretion. *Becker v. State*, 992 N.E.2d 697, 700 (Ind. 2013) "A trial court abuses its discretion if its 'decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.'" *DeWees v. State*, 180 N.E.3d 261, 264 (Ind. 2022) (quoting *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007)). In making this determination, appellate courts do not reweigh the evidence and consider only the evidence favorable to the judgment. *Medina v. State*, 188 N.E.3d 897, 901 (Ind. Ct. App. 2022).

I. Bail Modification

[10] Cunningham makes three arguments for how the trial court erred: (1) the court discounted his low risk of nonappearance; (2) the court erred in concluding that he presented a danger to the victim and the community at large; and (3) the court ignored alternative dispositions to bail. His claims are unpersuasive.

[11] Indiana Criminal Rule 26 lays out the general considerations a trial court must consider in setting bail:

> (A) If an arrestee does not present a substantial risk of flight or danger to themselves 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.
>
> (C) If the court determines that an arrestee is to be held subject to money bail, the court is authorized to determine the amount of such bail and whether such bail may be satisfied by surety bond and/or cash deposit....

[12] To modify bail, the defendant must make a showing of good cause that "based on the factors set forth in [Indiana Code Section 35-33-8-4(b)]," there is a reasonable possibility "that the defendant recognizes the court's authority to bring the defendant to trial." Indiana Code § 35-33-8-5. "However, the court may not reduce bail if the court finds by clear and convincing evidence . . . that the defendant otherwise poses a risk to the physical safety of another person or the community." *Id.*

[13] The statutory factors specified in Indiana Code § 35-33-8-4(b) are:

> (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 insofar as it demonstrates instability and a disdain for the court's authority to bring the defendant to trial;
>
> (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;
>
> (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.

Indiana Code § 35-33-8-4(b). The court need not state its reasons when denying a request to reduce or modify a defendant's bail. *Sneed v. State*, 946 N.E.2d 1255, 1259 (Ind. Ct. App. 2011).

Risk of Nonappearance

[14] When a trial court decides to set bail, the court must consider the defendant's IRAS report "'and other relevant factors,' along with 'all facts relevant to the risk of nonappearance.'" *DeWees*, 180 N.E.3d at 267 (quoting Ind. Code § 35-33-8-4(b)). At the hearing to modify his bail, Cunningham presented the results of an IRAS report showing him to be a low risk for nonappearance. App. Vol. II, p. 152. This case is also Cunningham's first run-in with Indiana's criminal system. Yet neither the favorable IRAS report nor his lack of criminal history requires bail modification. "While Indiana Code section 35-33-8-3.8 mandates a trial court to "consider the results" of an IRAS (if available), there's nothing in the statute that compels the defendant's release or that requires the court to rely on the results of the IRAS assessment when setting bail." *DeWees*, 180 N.E.3d at 268. The trial court maintains its discretion to impose bail so long as other facts demonstrate the defendant's risk of nonappearance. *Id.* Such facts exist here.

[15] One of the "primary fact[s] to be considered in determining an amount which would assure the accused's presence in court" is the possible penalty if the defendant is convicted. Here, Cunningham allegedly shot his wife in the chest, resulting in five felony charges with serious consequences. Ind. Code § 35-50-2-4(b) (establishing a 40-year maximum for a Level 1 felony); Ind. Code § 35-50-2-5(b) (16-year maximum for a Level 3 felony); Ind. Code § 35-50-2-6 (6-year maximum for a Level 5 felony); Ind. Code § 35-50-2-7(b) (2½-year maximum for a Level 6 felony). And Cunningham's potential sentence may increase with the separate felony charges he faces in Floyd County. These facts serve as clear and convincing evidence justifying the trial court's decision not to modify Cunningham's bond "due to the nature and gravity of the offense and the potential penalty faced." App. Vol. II, p. 15.

[16] Accordingly, the trial court did not abuse its discretion to modify Cunningham's bail based on his risk of nonappearance.

Danger to the Victim and to the Community

[17] We also find no abuse of the trial court's discretion in its conclusion that Cunningham represents a danger to the victim and her family. "[T]he court may not reduce bail if the court finds by clear and convincing evidence . . . that the defendant otherwise poses a risk to the physical safety of another person or the community." Ind. Code § 35-33-8-5(c).

[18] Cunningham argues that little to no evidence exists justifying these concerns. To be sure, "a victim's statement of fear, standing alone, falls short of the clear-

and-convincing standard for the evidence necessary to support a finding that [the defendant] posed a risk of physical dangers to others." *DeWees*, 180 N.E.3d at 269. Yet the concerns highlighted here are sufficiently developed in the record to justify the trial court declining to modify Cunningham's bond.

[19] Cunningham stands accused of attempting to murder his wife by shooting her in the chest at point blank range. This act coincides with multiple allegations of domestic violence and other deadly weapon offenses. A different county has also brought forward felony charges against Cunningham. *See DeWees*, 180 N.E.3d at 270 (robbery committed with a deadly weapon justified the victim possessing "a reasonable fear for his physical safety"). Cunningham also knows the access codes and inner workings of S.C.'s family's home security systems and possesses multiple firearms. These facts justify a reasonable fear for S.C. and her family's safety.

[20] The record alleges a pattern of serious domestic violence escalating to multiple felony charges over two counties—ending with a shooting incident alleged to amount to attempted murder. Thus, we find the combined weight of the alleged offenses against Cunningham, and the details underlying them, amply supports the trial court's conclusion that he presents a danger to the victim's safety and the broader community.

Less Restrictive Alternatives

[21] Lastly, we conclude that the trial court had no duty to consider less restrictive alternatives to cash bail. While it is true Indiana's bail system "strong[ly]

encourages" alternative solutions to bail "for many accused individuals awaiting trial," trial courts do not have to do so when the defendant either poses a flight risk or a danger to public safety. *DeWees*, 180 N.E.3d at 268. Indeed, "when a person poses a risk of flight or a risk to public safety, [Indiana's bail system] in no way hinders a trial court's ability to set bond in an amount sufficient to curtail such risks." *Id.* Accordingly, based on the above analysis, Cunningham's protestation that the trial court failed to adequately consider alternative dispositions falls flat.

[22] Finding no abuse of the trial court's discretion in its refusal to modify Cunningham's bail, we affirm.

Riley, J., and Bradford, J., concur.