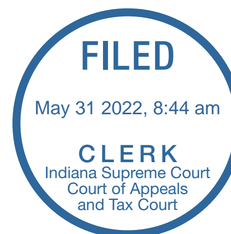
MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEYS FOR APPELLANT

Valerie K. Boots
Joshua Vincent
Marion County Public Defender Agency
Appellate Division
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Catherine E. Brizzi
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Nikki Matlock,
Appellant,

v.

State of Indiana,
Appellee.

May 31, 2022

Court of Appeals Case No. 21A-CR-2900

Appeal from the Marion Superior Court

The Honorable Elizabeth Christ, Judge

Trial Court Cause No. 49D24-2103-F6-9046

Brown, Judge.

[1] Nikki Matlock appeals the trial court's December 27, 2021 order setting the terms of her bond. We affirm.

Facts and Procedural History

[2] On March 25, 2021, the State charged Matlock with resisting law enforcement as a level 6 felony and driving while suspended as a class A misdemeanor. On March 29, 2021, the court held an initial hearing at which it released Matlock on her own recognizance.

[3] On December 12, 2021, the State filed a Petition to Revoke Bond alleging that Matlock was arrested on or about December 11, 2021, and charged on December 12, 2021, with three counts of intimidation as level 6 felonies, criminal trespass as a class A misdemeanor, and disorderly conduct as a class B misdemeanor under cause number 49D24-2112-F6-37545 ("Cause No. 45"), that she violated the terms of her bond by not maintaining good and lawful behavior, and that probable cause had been found that she had committed a new offense while on bond and her actions showed disdain for the court's authority.[1] The following day, the court granted the State's request and ordered

---

[1] The probable cause affidavit filed in Cause No. 45 stated that, on December 11, 2021, officers were dispatched to the Methodist Hospital emergency room and informed that Matlock had been a patient, had been dismissed, would not leave, and Matlock started yelling. It stated that she was escorted to the parking lot and told to leave the property and the officers ultimately placed her under arrest. The affidavit further stated:

> Ms. Matlock said she was tired of being here and was going to come back to the hospital when she was released and burn the hospital down and blow it up. She continued to yell making multiple threats to kill me as well as the other officers that were arresting her. Ms. Matlock said she couldn't wait until she was released so she could come back and put a bullet in all three of our heads.

that Matlock be held without bond. On December 16, 2021, Matlock filed a Motion to Reconsider Court's Revocation of Bond.

[4] On December 27, 2021, the trial court held a hearing. The court stated "[a]t the Initial Hearing on March 29th, 2021 she was OR'd," "I assigned a Jury date or defendant requested a Jury at a hearing [] in September," "[w]e assigned a Jury and a Final Pretrial for a Jury," "[t]here was a failure to appear for that [] Final Pretrial conference," and "I held it over to the afternoon just to make sure to give her a chance to appear." Transcript Volume II at 42-43. Matlock's counsel stated "she had called into that session on the 17th I believe, Judge but in the p.m. instead of the uh . . . ." *Id*. at 43. The court stated "I'm just trying to make a record from . . . of what's . . . what I'm considering during this [] argument," "[s]o, in order to do that I am looking at both the [] case the . . . the newer case I looked at the Probable Cause Affidavit and the dates involved . . . the date she was released on the newer case by the Initial Hearing Court and then the actions my Court is taking on the older case," "when [] the final was set in the morning the Court did hold it over in the . . . to the p.m. So, we rescheduled the Jury when she appeared remotely." *Id*.

[5] Matlock's counsel argued "clear and convincing is the evidentiary standard that the State must reach . . . which is different from Probable Cause and is indeed a higher standard." *Id*. at 45. He argued "I don't think that there is anything that

---

Probable Cause Affidavit, Cause No. 45.

has been suggested as to why the . . . State should be able to use hearsay especially when these are professional witnesses." *Id*. at 46. He argued that "as to the protection of the community as a whole standard I believe that is taken into account at some extent in the fact that she was released as to the new charge," "[s]he has a Stay Away Order which she accepts . . . to abide by," and "that is from that hospital." *Id*. at 47-48. He argued "[t]here is nothing that suggests that there is a violent capacity or disrespect for Court's authority." *Id*. at 48. He also argued "we do have a strong presumption of innocence [] that defendant's [sic] are entitled to and so merely picking up Probable Cause for a new arrest is not the same as clear and convincing evidence that a Felony or Misdemeanor would show that instability or like of disdain for the Court's authority." *Id*. at 51. The prosecutor argued "as to the hearsay argument made by Defense we just ask that . . . the Court take . . . judicial notice that it is the Probable Cause Affidavit is a sworn . . . is a[n] affidavit sworn," "[t]his is a Probable Cause that has been affirmed by an officer of the peace," and "I would argue that the hearsay included in the Probable Cause Affidavit are reliable and so therefore . . . it would not be necessary for them to come in and testify on that matter." *Id*. at 53.

[6] Matlock testified that she had been living at her current residence for over two years, she had a job working security prior to her incarceration, and her employer "said if I can bring [] documentation stating that it wasn't like a drug related charge or anything, I can get my job back." *Id*. at 62. When asked "we're not going to go into the facts of the case but, there are allegations that

you had made threats at . . . a hospital," she replied affirmatively, and when asked "you have a stay away order from that hospital," she answered "[y]es." *Id*. When asked "you'd be able to abide by that," she replied affirmatively, and when asked "if the Court had concerns about returning there would you be able to maintain a GPS monitor," she answered "[y]es, I would." *Id*. at 63. The trial court stated: "The Court will lift the no bond hold. . . . I revoked the release on your own recognizance. I am setting a bond. It's a five thousand ($5000) surety bond and a hold for a GPS monitor." *Id*. at 66-67.

Discussion

[7] Matlock asserts the State did not present any evidence to support its request for revocation. She argues the trial court did not take judicial notice of any fact or record. The State maintains the court did not abuse its discretion. It argues that it had requested the court to take judicial notice of the probable cause affidavit and that, according to the affidavit, Matlock stated that she would blow up the hospital and threatened to kill officers. It argues the record shows the trial court considered this evidence and noted Matlock had failed to appear for a pretrial conference.

[8] The amount of bail is within the sound discretion of the trial court. *Perry v. State*, 541 N.E.2d 913, 919 (Ind. 1989). Ind. Code § 35-33-8-4(b) provides:

> Bail may not be set higher than that amount reasonably required to assure the defendant's appearance 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 defendant poses a risk to the physical safety of another person or the community.

[9] In setting an amount of bail, the judicial officer shall take into account all facts relevant to the risk of nonappearance including:

> (1) the length and character of the defendant's residence in the community;
>
> (2) the defendant's employment status and history and the defendant's 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 the defendant to trial.

Ind. Code § 35-33-8-4(b).

[10] Ind. Code § 35-33-8-5, titled "Alteration or revocation of bail," provides:

> (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. In reviewing a motion for alteration or revocation of bail, credible hearsay evidence is admissible to establish good cause.
>
> * * * * *
>
> (d) The court may revoke bail or an order for release on personal recognizance upon clear and convincing proof by the state that:
>
> (1) while admitted to bail the defendant:
>
> (A) or the defendant's agent threatened or intimidated a victim, prospective witnesses, or jurors concerning the pending criminal proceeding or any other matter;
>
> (B) or the defendant's agent attempted to conceal or destroy evidence relating to the pending criminal proceeding;
>
> (C) violated any condition of the defendant's current release order;
>
> (D) failed to appear before the court as ordered at any critical stage of the proceedings; or
>
> (E) committed a felony or a Class A misdemeanor that demonstrates instability and a disdain for the court's authority to bring the defendant to trial;
>
> (2) the factors described in IC 35-40-6-6(1)(A) and IC 35-40-6-6(1)(B) exist or that the defendant otherwise poses

a risk to the physical safety of another person or the community;[2] or

(3) a combination of the factors described in subdivisions (1) and (2) exists.

[11] The record reveals that, in March 2021, the State charged Matlock with resisting law enforcement and driving while suspended, and the court released her on her own recognizance. On December 12, 2021, the State filed charges against Matlock in Cause No. 45 related to her conduct at Methodist Hospital. At the December 27, 2021 hearing, the court indicated that it was looking at and considering the probable cause affidavit in Cause No. 45, which stated that officers were dispatched to Methodist Hospital and informed that Matlock would not leave, she was escorted to the parking lot and told to leave the property, the officers ultimately placed her under arrest, and Matlock said she "was going to come back to the hospital when she was released and burn the hospital down and blow it up," "continued to yell making multiple threats to kill me as well as the other officers that were arresting her," and "said she couldn't wait until she was released so she could come back and put a bullet in all three of our heads." Probable Cause Affidavit, Cause No. 45. The trial court stated it "will lift the no bond hold" and "I am setting a bond. It's a five

---

[2] Ind. Code § 35-40-6-6(1)(A) and (B) provide:

> (A) that an act or threat of physical violence or intimidation has been made against the victim or the immediate family of the victim; and
>
> (B) that the act or threat described in clause (A) has been made by the defendant or at the direction of the defendant . . . .

thousand ($5000) surety bond and a hold for a GPS monitor." Transcript Volume II at 66-67. Based upon the record, we cannot conclude the trial court abused its discretion.

[12] For the foregoing reasons, we affirm the trial court's December 27, 2021 order.

[13] Affirmed.

Mathias, J., and Molter, J., concur.