

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jeremy Jamar Sutton,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 3, 2021

Court of Appeals Case No.
21A-CR-534

Appeal from the Marion Superior
Court

The Honorable Shatrese M.
Flowers, Judge

The Honorable James K. Snyder,
Magistrate

Trial Court Cause No.
49D28-2101-F3-2764

Crone, Judge.

Case Summary

- [1] Jeremy Jamar Sutton was arrested and charged with level 3 felony aggravated battery. During an initial hearing, the trial court set bail at \$60,000 surety or \$6,000 cash. Thereafter, Sutton filed a motion for bail review hearing. Following that hearing, the trial court denied Sutton's request to reduce the bail, and he now appeals that decision. We affirm.

Facts and Procedural History

- [2] According to the probable cause affidavit, on January 22, 2021, Indianapolis Metropolitan Police Department officers were dispatched to a home on North LaSalle Street to investigate a domestic disturbance. Officer Mitchell Hubner arrived at the scene and spoke to Sutton's mother, Debret, who stated that she had been asleep and was awakened to the sound of fighting in the next room. Debret and her daughter, Chasia, went to see what was happening, and they observed Sutton attacking his brother Isaiah. The women broke up the fight and moved Isaiah to the bathroom, where he locked the door behind him. An "extremely agitated" Sutton left the residence, and the women locked him outside. Appellant's App. Vol. 2 at 10. Sutton then fled the scene. When Isaiah finally exited the bathroom, Debret noticed that he had what appeared to be severe chemical burns on his face and chest. Officers at the scene observed that Isaiah had extensive burns to his face and shoulder area, and he was bleeding from the eyes and ears.

- [3] In the kitchen of the home, officers observed that there was residue on the stovetop as well as several bottles of household chemicals (including bleach and ammonia) that were reportedly less full than they had been when Debret used them previously. Officers also observed that there was a cast iron pan on the floor of Isaiah's bedroom, which appeared to have been used to boil the chemicals.
- [4] Detective Michael Leary responded to Eskenazi Hospital, where Isaiah had been taken, and spoke to him. Isaiah stated that he awoke to Sutton pouring a boiling liquid onto him. Sutton then struck Isaiah in the head with the cast iron pan and tried to wrestle and "choke him." *Id.* at 13. Isaiah fought back and was eventually able to get away after his mother and sister came to his aid. Isaiah stated that he had gone to the house to sleep at Debret's request to protect her and Chasia from Sutton due to "some chemical imbalance issues [Sutton] had been having." *Id.* Detective Leary observed burns to Isaiah's face, left chest, left shoulder, and both wrists. Isaiah felt like Sutton could have killed him.
- [5] Later that day, Debret alerted officers that Sutton was on his way to the hospital. Officers intercepted and arrested him. Shortly thereafter, Detective Leary spoke to Isaiah on the phone from the Eskenazi Hospital Burn Unit, where he was still being treated. Isaiah stated that he had just had surgery to "clean the 2nd and 3rd degree burns he has on his face and chest area." *Id.* "A patch of skin was removed during the surgery from his thigh and a skin graft was performed on an area of his chest in which the skin was severely

damaged.” *Id.* Isaiah noted that he has a long recovery process ahead but was “thankful he is not blind and is alive.” *Id.* Isaiah stated that he believes “his brother needs to be locked away from society as he is a danger to his family and others.” *Id.* at 15.

[6] On January 26, 2021, the State charged Sutton with one count of level 3 felony aggravated battery. Sutton appeared at an initial hearing on January 28, 2021. The trial court appointed indigent counsel at Sutton’s request and set bail at \$60,000 surety or \$6,000 cash. On March 12, 2021, Sutton filed a motion for a bail review hearing. On March 26, 2021, the State filed a notice of intent to seek a habitual offender enhancement. On that same date, the trial court held the bail review hearing. At the conclusion of the hearing, the trial court denied Sutton’s request to reduce bail. Specifically, based upon “the criminal history, the alleged facts of the case and also the evidence [the court] heard [at the hearing],” the trial court concluded that “the bond as set is appropriate under all of the circumstances.” Tr. Vol. 2 at 18. This appeal ensued.

Discussion and Decision

[7] Sutton contends that the trial court abused its discretion in denying his motion to reduce bail.¹ The setting of the amount of bail lies within the discretion of the trial court. *Lopez v. State*, 985 N.E.2d 358, 360 (Ind. Ct. App. 2013). We therefore review a trial court’s denial of a defendant’s motion to reduce bail for

¹ The denial of a motion to reduce bail is a final judgment appealable as of right. *State ex rel. Peak v. Marion Criminal Court, Div. One*, 246 Ind. 118, 121, 203 N.E.2d 301, 302 (1965).

an abuse of that discretion. *Sneed v. State*, 946 N.E.2d 1255, 1257 (Ind. Ct. App. 2011). “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.” *Id.*

- [8] 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.* In determining 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.” *DeWees v. State*, 163 N.E.3d 357, 362 (Ind. Ct. App. 2021) (citation omitted). Generally, bail 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.” *Id.* The inability to procure the amount necessary to make bond does not in and of itself render the amount unreasonable. *Mott v. State*, 490 N.E.2d 1125, 1128 (Ind. Ct. App. 1986).

- [9] Motions to reduce bail are provided for by Indiana Code Section 35-33-8-5(c), which states:

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 defendant otherwise poses a risk to the physical safety of another person or the community.”

(Emphases added.) The factors enumerated in Indiana Code Section 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 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.

While this statute implicitly places the burden on the defendant to establish that the trial court's setting of bail was excessive, a defendant need not show changed circumstances in order for the trial court to reduce bail. *Sneed*, 946 N.E.2d at 1258. Rather, the trial court considers the same statutory factors relevant to the initial setting of bail in exercising its discretion to grant or deny a motion to reduce bail. *Id.*

[10] Sutton points to the statutory factors and argues that ample evidence was presented at the bail review hearing that reasonably suggests that he recognizes the court's authority to bring him to trial, and thus the trial court abused its discretion in declining to reduce bail. For example, as to factors 1 through 3, he points to his longtime residence in Marion County, his claimed self-employment, and his family ties in the area as indicative that he is not a flight risk. However, regarding factor 4, Sutton conceded that he has a history of drug abuse as well as mental instability which weighs against the motion to reduce. Moreover, as to factor 5, he admitted that he has an extensive criminal

history, including twelve arrests and seven prior felony convictions, although he now emphasizes that he has never before “failed to appear in court or attempted to flee to avoid prosecution” as contemplated by factor 6. Appellant’s Br. at 17. Factor 8, regarding the source of funds or property to be used to post bail is a neutral factor because Sutton indicated that, although he is currently without the personal funds to post bail, he believed that his father might be willing to help him.

[11] While we acknowledge that some of the aforementioned statutory factors arguably favor Sutton’s request to reduce bail, we are not convinced that a balancing of all the relevant factors would weigh in favor of Sutton’s request such that we could say that the trial court abused its discretion. Significantly, we have little difficulty concluding that factor 7, the nature and gravity of the offense and the potential penalty faced by Sutton, supports the trial court’s denial of his motion to reduce bond. Indeed, prior to the enactment of Indiana Code Section 35-33-8-4, our supreme court stated that “the primary fact to be considered in determining an amount [of bail] which would assure the accused’s presence in court is the possible penalty which might be imposed by reason of the offense charged.” *Sneed*, 946 N.E.2d at 1258 (quoting *Hobbs v. Lindsey*, 240 Ind. 74, 79, 162 N.E.2d 85, 88 (1959)). Here, Sutton was charged not only with a level 3 felony, carrying with it a sentence of up to sixteen years, but also with being a habitual offender, which could result in a sentence enhancement between six and twenty years. *See* Ind. Code §§ 35-50-2-5, -8. Thus, Sutton faces an aggregate sentence of up to thirty-six years. This fact

greatly increases the risk that he will fail to appear for trial and thereby cuts against his argument that the trial court abused its discretion by not reducing his \$60,000 bail.²

[12] We further note that the State emphasized that the facts alleged in the probable cause affidavit indicate that the victim suffered serious bodily injury due to Sutton's actions, and that the victim stated to police officers that he and his family are frightened of Sutton and believe that he currently poses a risk to their safety. This is clear and convincing evidence that Sutton poses a risk to the physical safety of another person or the community. Under the circumstances, Sutton has not demonstrated that the trial court's denial of his request to reduce bail is clearly against the logic and effect of the facts and circumstances before it. We find no abuse of discretion.³

[13] Affirmed.

Bailey, J., and Pyle, J., concur.

² As noted by the State, Sutton's bail was set substantially lower than the presumptive \$160,000 bail provided by the Marion Superior Court Bail Schedule. State's Br. at 17; Tr. Vol. 2 at 18.

³ Sutton briefly suggests that the trial court abused its discretion by not making findings regarding each of the statutory factors. However, due to our presumption that the trial court knows and follows the applicable law, *Leggs v. State*, 966 N.E.2d 204, 208 (Ind. Ct. App. 2012), we decline to infer from the lack of specific findings that the trial court failed to consider the relevant evidence and statutory factors. As we stated in *Sneed*, "Indiana Code sections 35-33-8-4 and 35-33-8-5 require the trial court to consider the relevant factors but do not by their terms require the trial court to explain its reasoning for setting or failing to reduce bail." 946 N.E.2d at 1259.