

DEFENDANT’S MOTION IN SUPPORT OF PRETRIAL RELEASE

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II. Proffer

Prosecutorial proffers are nothing more than a grand jury audience of one. A proffer is not nearly as useful as live testimony. Unfortunately, 725 ILCS 5/110-6.1(f)(2) allows the prosecutor to “present evidence at the hearing by way of proffer based upon reliable information.”

The reliable information the State will present will be Heard’s report, which in all candor will be self-serving. The ends of stopping Defendant for following too closely, extending the stop and searching his vehicle without permission will justify/outweigh the Constitutional protections in place.

There will be no evidence by proffer or otherwise that the firearm found in the vehicle was anything other than being legally owned by Defendant. Yet, because the State is able to charge as it desires, Defendant has been charged with armed violence in violation of 720 ILCS 550/5.1, and 720 ILCS 5/33A-2(a) respectively.

While not explicitly stated in the Safe-T Act, implicit is that part of the pretrial detention hearing involves the strength of the State’s case against Defendant, which of course includes whether or not the stop and search of Defendant’s vehicle was legal.

III. Flight Risk

Criminal defense attorneys joke that it is obvious the Government has a weak case when it charges a Defendant with a tax crime. It is slowly becoming obvious that when the State has a weak reason to deny release to a Defendant it relies on “risk of flight” which the State has done here.

The State wants to leapfrog over its requirements by proceeding with a proffer of the facts and then to glam onto flight risk due to the charges.

The law requires a slower and more detailed approach. Just because Defendant resides outside of Illinois, does not mean that he is a flight risk. The law requires the State to *prove* Defendant is a flight risk.

The State is relying on 725 ILCS 5/110-6.1(a)(8) which holds that pretrial release may be denied when the person is charged with an eligible offense and the person has a high likelihood of willful flight to avoid prosecution.

Here, the State's dilemma is that it can't prove willful flight. Willful flight is defined in 725 ILC 5/110-1(f) as:

“(f) "Willful flight" means intentional conduct with a purpose to thwart the judicial process to avoid prosecution. Isolated instances of nonappearance in court alone are not evidence of the risk of willful flight. Reoccurrence and patterns of intentional conduct to evade prosecution, along with any affirmative steps to communicate or remedy any such missed court date, may be considered as factors in assessing future intent to evade prosecution.”

725 ILC 5/110-2(e) directs this Honorable Court as to how to interpret “willful flight:”

(e) This Section shall be liberally construed to effectuate the purpose of relying on pretrial release by nonmonetary means to reasonably ensure an eligible person's appearance in court...

So, just because the State is able to charge Defendant with Armed Violence in Count 1 and Cannabis Trafficking in Count 2, thereby triggering its ability to detain Defendant doesn't mean that he is automatically detained.

This Honorable Court needs to liberally construe whether or not Defendant is a flight risk. Defendant is a 45 year old man with a stable life in California where he currently resides.

Exhibits A through H show someone who has a stable life with loans he has taken out and is currently paying. A flight risk is not someone who takes out loans, pays bills and is a responsible citizen.

Exhibits I through L show a family man who would not jeopardize his family situation by not appearing in Court as directed.

IV. Conclusion

This honestly should not be a close call. The State is relying on the flimsiest reason available in its arsenal to detain Defendant.

Defendant is requesting that this Honorable Court take into consideration the definition of “willful flight” as laid out in the Statute and to apply it liberally, as it is required by the Statute, and to allow Defendant to be released from custody.

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CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2023, a copy of the attached *Defendant's Motion For Pretrial Release* was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

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