

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2023 IL App (3d) 230440-U

Order filed December 12, 2023

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2023

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-23-0440
ARIN A. SCHUIT,)	Circuit No. 23-CF-1789
Defendant-Appellant.)	Honorable Donald W. DeWilkins, Judge, Presiding.

JUSTICE ALBRECHT delivered the judgment of the court.
Presiding Justice Holdridge and Justice McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* The court did not abuse its discretion in ordering pretrial detention.
- ¶ 2 Defendant, Arin A. Schuit, appeals from the Will County circuit court’s order granting the State’s verified petition for pretrial detention, arguing the court misunderstood the circumstances of the case and erroneously focused on generic factors. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was arrested on September 18, 2023, and charged with two counts of unlawful possession of a weapon by a felon (UPWF) (720 ILCS 5/24-1.1(a), (e) (West 2022)) and one count of obstructing a peace officer (*id.* § 31-1(a), (a-5)). The State filed a verified petition to deny pretrial release, alleging defendant was charged with a felony offense which required a sentence of imprisonment, and his release posed a real and present threat to the safety of any person, persons, or the community under section 110-6.1(a)(1) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-6.1(a)(1) (West 2022)).

¶ 5 The factual basis provided in the petition stated that officers were dispatched to 18805 South Wolf Road at 8:52 p.m. on September 18, 2023, for a report of gunshots. The officers spoke with a witness who heard gunshots two units down from his rental unit and provided them with surveillance footage on which the gunshots could be heard. The officers found two 9-millimeter shell casings outside a garage door next to unit 10 of the building. The officers knocked on the door, and defendant answered. Defendant stated that he did not hear gunshots and did not have any firearms. Defendant was standing in “a bladed stance[] with his right arm hidden behind the doorframe.” The officers asked defendant to step away from the doorframe, but he refused. Upon repositioning himself, an officer observed a gun in defendant’s hand. Defendant was arrested, and a Ruger 9-millimeter firearm was recovered with three rounds of ammunition in the magazine and one round in the chamber. The officers determined that the casings found by the garage door matched the ammunition found in the Ruger.

¶ 6 The pretrial risk report stated that defendant resided at “18805 S. Wolf Road, Apt 10” and noted that “[d]efendant reports his business is run out of the address. Defendant reports there is an apartment that he resides at on the property.” Defendant’s criminal history included: (1) domestic battery in 1997, (2) driving under the influence of alcohol (DUI) in 2001, (3) aggravated DUI in

2010, (4) aggravated battery of a peace officer in 2012, (5) driving on a revoked license in 2015, (6) driving on a revoked license in 2016, and (7) aggravated DUI in 2017. Defendant did not possess a Firearm Owner's Identification (FOID) card. He was placed at a "low moderate" risk level.

¶ 7 A hearing was held on the petition on September 20, 2023. The State argued that defendant opened the door with the gun ready, loaded, and concealed, and had a history of violent offenses. The State further noted that defendant initially tried to lie to the officers about his identity. Defense counsel argued that defendant did not pose a real and present threat and stated,

"What's somewhat interesting about the situation, Judge, the State mentioned that there was a call from somebody living two units down from [defendant]. However, for some odd reason or other, it appears from the discovery that, that call was not made by that individual until approximately a half hour after he allegedly heard the gun shots."

¶ 8 The court found that the State met its burden by clear and convincing evidence. It stated that the proof and presumption was great that defendant committed UPWF. It further found that defendant posed a real and present threat to the safety of any person, persons, or the community. In so holding, it noted that defendant fired shots and the cartridges were found. The court stated, "But one of the things that struck the Court is when the police went to the residence, the alleged stance that [defendant] was in and the fact that *** the gun in his hand at this time, which he's fired in an apartment complex." The court further noted that defendant was a convicted felon, did not have a FOID card, and hid the firearm from police. The court found there were no conditions to mitigate the threat.

¶ 9

II. ANALYSIS

¶ 10 On appeal, defendant contends that the court abused its discretion in granting the petition to detain where it misunderstood the circumstances of the offense and focused on generic factors. At the outset, the State argues that defendant cannot raise these issues because he did not specifically identify them in his notice of appeal nor raise them in the circuit court.¹ First, we note that “[t]he purpose of the notice of appeal is to inform the prevailing party that the other party seeks review of the trial court’s decision.” *People v. Lewis*, 234 Ill. 2d 32, 37 (2009). We construe the notice of appeal liberally. *Id.* The notice is sufficient to confer jurisdiction where “it fairly and adequately identifies the complained-of judgment.” *Id.* Here, the notice of appeal identifies the date of the pretrial detention hearing defendant is appealing as well as the basic issue raised on appeal. Liberally construed, this is enough to inform the State of what defendant sought to review, and we find that we have jurisdiction. Second, to the extent the State is arguing that defendant forfeited his arguments, forfeiture is a limitation on the parties, not the reviewing court, and we will overlook forfeiture where necessary. *People v. Peterson*, 2022 IL App (3d) 220206, ¶ 19. Because the Act, along with the procedures and requirements therefrom, is still in its infancy, we choose not to invoke forfeiture in this case.

¶ 11 Questions regarding whether the trial court properly considered one or more of the statutory factors in determining dangerousness are reviewed for an abuse of discretion. *People v. Inman*, 2023 IL App (4th) 230864, ¶ 10. We will not substitute our judgment for that of the circuit court regarding the weight of the factors or the evidence. *People v. Simmons*, 2019 IL App (1st) 191253, ¶¶ 9,15. An abuse of discretion occurs when the circuit court’s decision is arbitrary, fanciful,

¹Defendant filed a motion to file a reply brief *instanter* to respond to the State’s arguments on this issue. Based on our resolution, defendant’s brief is unnecessary. We, therefore, deny the motion.

unreasonable, or no reasonable person would agree with the decision. *Inman*, 2023 IL App (4th) 230864, ¶ 10-11.

¶ 12 Everyone charged with an offense is eligible for pretrial release, which may only be denied in certain situations. 725 ILCS 5/110-2(a), 110-6.1 (West 2022). The State must file a verified petition requesting the denial of pretrial release. *Id.* § 110-6.1. The State then has the burden of proving by clear and convincing evidence (1) the proof is evident or presumption great that defendant committed a detainable offense, (2) defendant poses a real and present threat to any person, persons, or the community or is a flight risk, and (3) no conditions could mitigate this threat or risk of flight. *Id.* § 110-6.1(e). Defendant does not dispute that he was charged with a detainable offense. When determining a defendant's dangerousness and the conditions of release, the statute includes a nonexhaustive list of factors the court can consider. *Id.* §§ 110-6.1(g), 110-5.

¶ 13 Here, the information before the court showed that defendant had a criminal history, including violent offenses. Defendant had a loaded weapon, which he concealed from officers and which the evidence suggested he had fired twice that evening. Defendant did not have a FOID card and was not supposed to possess a firearm as a felon. The record shows the court considered all the evidence before it in reaching its decision and adhered to the edicts of the statute.

¶ 14 We note that, in reaching its decision, the court mentioned the gun was fired in an apartment complex. While this was actually an industrial complex, we do not believe the location changes the analysis or makes the court's decision erroneous. Defendant did reside in the building, and there were clearly other people in the area. We do not find defendant's actions any less indicative

of dangerousness because they occurred in an industrial neighborhood instead of a residential one.² Moreover, we reject defendant's contention that the court's decision was not individualized. The court considered the specific circumstances of the case when reaching its decision. We cannot find that the decision was arbitrary, fanciful, or unreasonable or that no reasonable person would take the view adopted by the court, therefore, the court did not abuse its discretion in granting the State's petition to detain.

¶ 15

III. CONCLUSION

¶ 16

The judgment of the circuit court of Will County is affirmed.

¶ 17

Affirmed.

²Defendant further argues that counsel was ineffective for failing to present evidence that this was an industrial complex. However, since we find that the location would not change the analysis or decision, defendant cannot show that there is a reasonable probability that the outcome of the hearing would have been different. See *People v. Johnson*, 2021 IL 126291, ¶¶ 52-55.