**THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 604(h)**

No. 130626

IN THE
SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>KENDALL CECIL MORGAN,<br><br>Defendant-Appellant. | ) | Appeal from the Appellate Court of Illinois, Fourth Judicial District, No. 4-24-0103<br><br>There on Appeal from the Circuit Court for the Eleventh Judicial Circuit, McLean County, Illinois, No. 24 CF 3<br><br>The Honorable Amy L. McFarland, Judge Presiding. |

# BRIEF OF PLAINTIFF-APPELLEE PEOPLE OF THE STATE OF ILLINOIS

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## POINTS AND AUTHORITIES

## NATURE OF THE CASE

After defendant was charged with home invasion and domestic battery, the People petitioned to deny pretrial release under 725 ILCS 5/110-6.1. After a hearing, the circuit court granted the petition, finding by clear and convincing evidence that (1) the proof was evident or the presumption great that defendant committed the offenses, (2) defendant posed a real and present threat to the victim's safety, and (3) no conditions of release could mitigate that threat. The appellate court found no abuse of discretion and affirmed. In this Court, defendant argues that the appellate court should have reviewed the pretrial detention order *de novo*. No issue is raised on the pleadings.

## ISSUE PRESENTED FOR REVIEW

To deny a criminal defendant pretrial release under 725 ILCS 5/110-6.1, the circuit court must hold a hearing and find by clear and convincing evidence that (1) the proof is evident or the presumption great that the defendant committed a detainable offense, (2) the defendant poses a flight risk or threat to the safety of any person or the community, and (3) no conditions of release can mitigate those risks. The issue presented is:

Whether a circuit court's findings that these requirements have been established should be reviewed *de novo*, for abuse of discretion, or under the manifest-weight-of-the-evidence standard that generally governs appellate review of a circuit court's factual findings.

## JURISDICTION

This Court allowed defendant's petition for leave to appeal on June 11, 2024. Jurisdiction lies under Supreme Court Rules 315, 604(a)(2), 604(h)(1), and 612(b).

## STATEMENT OF FACTS

### I. Statutory Background

In 2021, the General Assembly enacted what is commonly called the Safety, Accountability, Fairness and Equity-Today Act. *See Rowe v. Raoul*, 2023 IL 129248, ¶ 4. Together with a follow-up bill passed the next year, the Act "comprehensively overhauled many aspects of the state's criminal justice system," including the "statutory framework for the pretrial release of criminal defendants." *Id.* These changes went into effect in September 2023. *Id.*, ¶ 52.

As amended by the Act, the pretrial detention statute provides that a defendant may be denied pretrial release only if the defendant is charged with an enumerated offense and the circuit court finds by clear and convincing evidence that (1) "the proof is evident or the presumption great" that the defendant committed the charged offense[1]; (2) "the defendant poses a

[1] The phrase "the proof is evident or the presumption great" can be traced to the 1682 colonial charter of Pennsylvania. *See In re White*, 463 P.3d 802, 809 (Cal. 2020). Its exact meaning is unclear, but it is often defined as something greater than probable cause but less than proof beyond a reasonable doubt. *See Commonwealth v. Talley*, 265 A.3d 485, 520 (Pa. 2021); *Fry v. State*, 990 N.E.2d 429, 445 (Ind. 2013); *Simpson v. Owens*, 85 P.3d 478, 488-89 (Ariz. Ct. App. 2004); *but see In re White*, 463 P.3d at 809 (adopting standard that asks

real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case," or "has a high likelihood of willful flight to avoid prosecution"; and (3) "no condition or combination of conditions [of release] can mitigate" those risks. 725 ILCS 5/110-6.1(a)(8), (e).

At the detention hearing, the "rules concerning the admissibility of evidence in criminal trials do not apply," 725 ILCS 5/110-6.1(f)(5), and both the People and the defendant "may present evidence" relating to the three criteria for detention through witness testimony or "by way of proffer based upon reliable information," 725 ILCS 5/110-6.1(f)(2), (3).

When assessing whether a defendant poses the requisite risk of harm or flight and that no release conditions can adequately mitigate that risk, the circuit court may consider "evidence or testimony concerning" a variety of factors, including the nature and circumstances of any charged offense; the weight of the evidence against the defendant; whether the defendant was on probation, parole, or other form of release at the time of the current offense or any other offense; the defendant's age, character, physical and mental condition, family and community ties, employment, financial resources,

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"whether the record, viewed in the light most favorable to the prosecution, contains enough evidence . . . to sustain a guilty verdict"). Because the issue here concerns only the standard under which an appellate court should review a circuit court's findings that the criteria for pretrial detention have been established, the Court need not decide what quantum of evidence is necessary to establish that the proof is evident or the presumption great that the defendant committed the charged offense.

history of substance abuse, and criminal, psychological, or psychiatric history indicative of violence; and any other factor "deemed by the court to have a reasonable bearing" on the defendant's propensity for violence. 725 ILCS 5/110-5(a), 725 ILCS 5/110-6.1(g). In addition, the court may consider the results of "an empirically validated, evidence-based screening instrument" (or "risk-assessment tool"), 725 ILCS 5/110-6.4, but may not rely on those results "as the sole basis to deny pretrial release," 725 ILCS 5/110-6.1(f)(7).

If, after considering the evidence, the circuit court orders pretrial detention, it must "make a written finding summarizing [its] reasons for concluding that the defendant should be denied pretrial release, including why less restrictive conditions would not" mitigate defendant's dangerousness or flight risk, 725 ILCS 5/110-6.1(h)(1), and it must revisit that decision at each subsequent appearance to determine whether pretrial detention remains necessary, 725 ILCS 5/110-6.1(i-5). Both parties may appeal an adverse order granting or denying pretrial release. 725 ILCS 5/110-6.1(j), (k).

## II. Factual and Procedural History

On January 2, 2024, defendant was charged with home invasion and domestic battery for breaking into V.W.'s home and punching her in the face. C6-7.[2] The People petitioned to deny pretrial release under 725 ILCS 5/110-

[2] "C," "SC," "R," "Def. Br.," and "A" refer to the common law record, secured common law record, audio-recorded report of proceedings, defendant's brief, and the appendix to defendant's brief, respectively.

6.1, alleging that defendant committed detainable offenses and posed a threat to the safety of others. C13.

At the detention hearing, the People proffered evidence in support of their petition. Relying on the verified statement of arrest, *see* C9, the People proffered that police were dispatched to V.W.'s home on December 29, 2023, in response to a 911 call, R2:02-2:18, 3:30-3:40. When the officers arrived, they found defendant on top of V.W. in the doorway of her apartment. R2:18-2:24. Following a brief struggle, the officers took defendant into custody. R2:24-2:46. After doing so, the officers saw that V.W.'s head was bloody and bruised, there was a bite mark on her hand, and a clump of hair appeared to have been pulled from her scalp. R3:45-4:00. V.W. told the officers that she had a child with defendant and was in the process of seeking an order of protection against him. R2:46-3:10. When defendant showed up that evening drunk and upset, V.W. refused to let him inside her apartment. R3:00-3:10. But defendant broke a window and kicked down the front door. R3:15-3:25. Once inside, he hit V.W. in the face and threw her into a mirror in front of their child and two other children. R3:25-3:45. The children ran to the home of a neighbor, who called 911. R3:35-3:40.

At the time of the attack, defendant was serving a 30-month term of probation imposed for a 2021 conviction for aggravated battery of a peace officer and faced pending charges of battery (for attacking V.W. two weeks earlier) and DUI. R4:18-6:20. Defendant's criminal history also included a

2007 armed robbery conviction for which he was sentenced to 14 years in prison. R4:10-4:18.

The People also presented a Public Safety Assessment (PSA) prepared by the pretrial services department,[3] R4:25-4:45, which (on a scale of 1 to 6) measured defendant's risk of engaging in new criminal activity while on pretrial release as 5 and his risk of not appearing in court as 4, SC4. It also flagged defendant as presenting a risk of engaging in new violent criminal activity. *Id.*

In response, defense counsel proffered that defendant might raise an involuntary intoxication defense at trial based on his assertion that a "pain pill" given to him by a friend caused unexpected side effects that made him temporarily unable to conform his conduct to the law. R9:30-12:45. Defense counsel further proffered that defendant had been employed for the past seven weeks as a laborer; has two children whom he supports; has a cousin with whom he could live; and was recently diagnosed with bipolar disorder, for which he would seek treatment if released. R6:23-7:35. Defense counsel

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[3] "The PSA is a nationally recognized scientifically validated risk assessment instrument that courts in an increasing number of jurisdictions use as an aid, though never as the only factor, in making detention and release decisions." *State v. Groves*, 410 P.3d 193, 200 (N.M. 2018). It assesses a defendant's "level of risk for failure to appear and for new criminal activity on a scale of 1 to 6, with 6 being the highest, and may include a flag to denote new violent criminal activity." *State v. Robinson*, 160 A.3d 1, 11 (N.J. 2017); *see also* Zachary Vancil, *Elimination of Cash Bail in Illinois: Accessing Risk of Defendants Using Risk Assessment Tools*, 48 S. Ill. U.L.J. 157, 166 (2023) (explaining that PSA "uses nine risk factors" to assess a defendant's risk of "new criminal activity, new violent criminal activity, and failure to appear").

concluded by stating that defendant would comply with any release conditions imposed by the court, including electronic monitoring, travel restrictions, and prohibitions against contacting V.W. and using alcohol and nonprescription drugs. R16:20-17:05.

At the conclusion of the hearing, the circuit court granted the petition to deny pretrial release, finding by clear and convincing evidence that (1) the proof was evident or the presumption great that defendant committed the charged offenses, (2) defendant posed a real and present threat to V.W.'s safety, and (3) no conditions of release could mitigate that threat. R18:30-21:55; C16-17. In support of the latter two findings, the court emphasized defendant's history of violent crime and of abusive conduct against V.W., as well as the fact that he was on probation at the time of the charged offenses. R19:10-19:50, 20:55-21:50.

After the circuit court announced its decision, defendant addressed the court, stating that he had recently been diagnosed with bipolar disorder, "need[ed] help," and was "not a threat to society." R23:35-24:40. The court stated that the detention order would stand but explained that defendant could seek modification of the order in the future. R24:50-25:10.

On appeal, defendant argued that the People had not established by clear and convincing evidence that no conditions of release — in particular, mandated mental health treatment — could mitigate the threat he posed to

V.W.'s safety, and he urged the appellate court to review the circuit court's contrary conclusion *de novo*. A3, ¶ 11; A15, ¶ 37.[4]

The appellate court affirmed. A17, ¶ 54. To start, the appellate court rejected defendant's request for *de novo* review and held that a circuit court's pretrial detention order should instead be reviewed for an abuse of discretion. A4-14, ¶¶ 12-35. It explained that pretrial detention orders deserve "a degree of deference" because the pretrial detention statute tasks circuit courts with "predict[ing]" the risks posed by a defendant's release after "examin[ing] and balanc[ing]" numerous factors, which requires an "exercise[ ] of judgment." A6-8, ¶¶ 19-23.

The appellate court explained that both the manifest-weight standard — under which a circuit court's factual findings will stand unless they are "unreasonable, arbitrary, or not based on the evidence presented," *People v. Chatman*, 2024 IL 129133, ¶ 34 (cleaned up) — and the abuse-of-discretion standard — which affords deference to a circuit court's rulings so long as they are not "arbitrary, fanciful, or unreasonable," *People v. Bush*, 2023 IL 128747, ¶ 57 (cleaned up) — offered appropriate levels of deference. A8, ¶ 23. But it concluded that the abuse-of-discretion standard was a "better fit" when reviewing a pretrial detention order because such orders will often be based

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[4] Defendant did not dispute that home invasion and domestic battery are detainable offenses. *See* 725 ILCS 5/110-6.1(a)(1.5), (4). Nor did he challenge the circuit court's findings that the proof was evident or the presumption great that he committed those offenses and that he posed a real and present threat to V.W.'s safety.

on information presented by proffer and because an assessment of the danger posed by a defendant's release involves a "prediction" about "future conduct" rather than a "finding of historical fact." A6-8, ¶¶ 19-23.

Applying that standard, the appellate court concluded that the circuit court did not abuse its discretion in finding that no conditions of release could mitigate the threat that defendant posed to V.W.'s safety. A15-17, ¶¶ 37-42. With respect to defendant's contention that V.W.'s safety could be protected by requiring him to receive treatment for bipolar disorder, the appellate court noted that "defendant gave the [circuit] court only the most cursory reference to his 'recently diagnosed' condition, did not explain how the condition related to the alleged offenses, and had only a vague plan to seek treatment in the future." A17, ¶ 42. Without more information about defendant's mental health condition and available treatment options, the appellate court explained, the circuit court reasonably gave greater weight to defendant's "past misconduct, including violent misconduct occurring when defendant was on probation," which is "highly relevant" when assessing whether defendant was likely to comply with release conditions imposed by the court. A16-17, ¶¶ 41-42.

This Court allowed defendant's petition for leave to appeal (PLA), in which he argued that pretrial detention orders should be reviewed *de novo* and that, under that standard, the appellate court should have concluded that the evidence did not clearly and convincingly establish that no release

conditions could mitigate the threat he posed to V.W.'s safety. PLA at 9-18. While the PLA was pending, defendant pleaded guilty to the home invasion charge and was sentenced to 15 years in prison. *See* Def. Br. 4; Ill. Dept. of Corr., Inmate Status, https://www.idoc.state.il.us/subsections/search/inms_print.asp?idoc=B87047 (last visited Aug. 12, 2024).[5]

## STANDARD OF REVIEW

Determining the proper standard of review is a legal question that is considered *de novo*. *Beggs v. Bd. of Educ. of Murphysboro Cmty. Unit Sch. Dist. No. 186*, 2016 IL 120236, ¶ 52.

## ARGUMENT

To deny a defendant pretrial release, a circuit court must find by clear and convincing evidence that (1) the proof is evident or the presumption great that the defendant committed a detainable offense, (2) the defendant poses a risk of flight or danger to the safety of others, and (3) no release conditions can mitigate those risks. 725 ILCS 5/110-6.1(a), (e). To determine whether those elements have been established, the court must weigh the evidence presented at the detention hearing and make three quintessentially factual findings — that there is (or is not) strong evidence of the defendant's guilt; that the defendant is (or is not) likely to flee or threaten the safety of others; and that there are (or are not) conditions of release that could mitigate those

[5] This Court "may take judicial notice of Department of Corrections records because they are public documents." *Cordrey v. Prisoner Review Bd.*, 2014 IL 117155, ¶ 12 n.3.

risks. The appellate court correctly recognized that a circuit court's findings with respect to these elements are entitled to deference on appeal and erred only in selecting the abuse-of-discretion standard rather than the manifest-weight standard as the appropriate means of employing that deference.

Defendant, on the other hand, urges this Court to jettison appellate deference entirely, on the grounds that pretrial detention decisions implicate liberty interests and will often be made based on evidentiary proffers rather than live testimony. But the appropriate standard of review turns not on the type of evidence presented or the interests involved, but on the nature of the issue under review. Moreover, even when the parties at a pretrial detention hearing proceed exclusively via proffer, the circuit court's ability to observe and interact with the defendant will put it in a far better position than the appellate court to assess the risks posed by the defendant's release and the likelihood that the defendant will comply with release conditions the court may impose.

Accordingly, there is no sound reason, in the pretrial detention context, to upend the well-established principle that appellate courts should defer to a circuit court's reasonable resolution of factual questions.

## I. This Court Should Decide the Now-Moot Standard-of-Review Question Under the Public-Interest Exception.

As defendant notes, Def. Br. 31-34, his challenge to the circuit court's pretrial detention order has been rendered moot by his conviction. Because defendant is now detained pursuant to that judgment rather than the earlier

pretrial detention order, it would be "impossible" for this Court to "grant [him] effectual relief" by reversing the pretrial detention order, making this appeal challenging that order "moot." *In re Andrea F.*, 208 Ill. 2d 148, 156 (2003).

Although "the general rule is that Illinois courts will not decide moot questions," this Court has recognized a "public interest exception" to that rule. *In re Shelby R.*, 2013 IL 114994, ¶ 15. Under that exception, this Court may address a moot question when "(1) the question presented is of a public nature; (2) an authoritative determination of the question is desirable for the future guidance of public officers; and (3) the question is likely to recur." *Id.*, ¶ 16.

Each of these criteria is satisfied here. The appropriate standard for reviewing pretrial detention orders is undoubtedly of a public nature. And given the "staggering" number of appeals that are brought from such orders under the new amendments to the pretrial detention statute, Report and Recommendations of the Illinois Supreme Court's Pretrial Release Appeals Task Force ("Task Force Report") (Mar. 1, 2024) at 2-3, the question will no doubt recur frequently. Finally, considering the split that has arisen in the appellate court, *see People v. Pitts*, 2024 IL App (1st) 232336, ¶ 14 (collecting cases), an authoritative determination of the issue by this Court is not only desirable but also necessary.

For these reasons, the People agree that this Court should resolve the issue presented here under the public-interest exception.

## II. A Circuit Court's Findings That the Requirements for Pretrial Detention Have Been Established Should Be Reviewed Under the Manifest-Weight Standard.

Because "a standard of review applies to an individual issue, not to an entire appeal," *Redmond v. Socha*, 216 Ill. 2d 622, 633 (2005), the standard governing appellate review of a pretrial detention order turns on the nature of the contested issue. If the contested issue presents a purely legal question — such as, for example, whether the defendant is charged with a statutorily detainable offense — it is reviewed *de novo*. *See People v. Torres*, 2024 IL 129289, ¶ 31. If the contested issue concerns a matter entrusted to a circuit court's discretion — such as whether to compel a complaining witness to testify at the detention hearing, *see* 725 ILCS 5/110-6.1(f)(4) — it is reviewed for an abuse of discretion. *See In re D.T.*, 212 Ill. 2d 347, 356 (2004). And if the contested issue is the correctness of the circuit court's factual findings — like (as here) whether there is strong evidence of the defendant's guilt, whether the defendant is likely to flee or harm others if released pending trial, and whether there are conditions of release that can mitigate those risks — those findings are reviewed under the manifest-weight-of-the-evidence standard. *See Best v. Best*, 223 Ill. 2d 342, 349 (2006) (application of manifest-weight standard is "self-evident" when reviewing "an issue of fact").

### A. Because the elements that must be established to deny pretrial release present questions of fact, review under the manifest-weight standard is appropriate.

When deciding whether to detain a defendant pending trial, the circuit court must answer three questions: Is there strong (or evident) proof of the defendant's guilt, is the defendant likely to flee or harm others if released, and are there conditions of release that can mitigate those risks. 725 ILCS 5/110-6.1(e). These are factual questions that the circuit court must resolve based on its assessment of the evidence presented at the detention hearing. And as such, the circuit court's resolution of those questions should be reviewed on appeal under the manifest-weight standard, *see Best*, 223 Ill. 2d at 349, which affords deference to a circuit court's factual findings unless they are "against the manifest weight of the evidence," meaning that they are "unreasonable, arbitrary, or not based on the evidence presented," *People v. Chatman*, 2024 IL 129133, ¶ 34 (cleaned up).[6]

The appellate court agreed that deference was due when reviewing a circuit court's conclusion that the requirements for pretrial detention have been established, but it believed that the abuse-of-discretion standard was better suited to the inquiry than the manifest-weight standard. A6-8, ¶¶ 19-

[6] Defendant asserts that the findings required under 725 ILCS 5/110-6.1(e) "involve mixed questions of law and fact." Def. Br. 7. But he offers no support for that proposition and makes no attempt to explain what legal issues are implicated when a circuit court assesses whether there is strong proof of a defendant's guilt and whether the defendant poses a flight risk or threat to the safety of others that no conditions of release can mitigate.

23. The distinction between the two standards seems to carry little practical significance in this context, since both standards permit an appellate court to reject only arbitrary, unreasonable, or clearly erroneous determinations by a circuit court. *Compare Chatman*, 2024 IL 129133, ¶ 34 ("A finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented.") (cleaned up), *with People v. Bush*, 2023 IL 128747, ¶ 57 ("An abuse of discretion occurs only where the trial court's decision is arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it.") (cleaned up); *but see In re D.T.*, 212 Ill. 2d at 356 (describing abuse-of-discretion standard as "the most deferential standard of review").

There is, however, a significant *doctrinal* distinction between the two standards. The abuse-of-discretion standard is "traditionally reserved for decisions made by a trial judge in overseeing his or her courtroom or in maintaining the progress of a trial." *In re D.T.*, 212 Ill. 2d at 356. Decisions, in other words, that "require[ ] the trial court to exercise discretion" or "make a judgment call." *People v. Peterson*, 2017 IL 120331, ¶ 39. The manifest-weight standard, in contrast, applies when reviewing a determination that was "not dependent on a judgment call by the trial court," but that instead required the trial court to "find[ ]" the existence of a fact. *Id.* The decision to deny a defendant pretrial release falls into the latter category: It is not one

over which the circuit court exercises discretion, but rather depends on the circuit court having found the existence of the three factual requirements for pretrial detention set out in 725 ILCS 5/110-6.1(e). Appellate review of those findings should thus proceed under the manifest-weight standard rather than the abuse-of-discretion standard.

The appellate court reasoned that the manifest-weight standard was inappropriate for reviewing a circuit court's findings concerning a defendant's dangerousness and flight risk, in particular, because those findings involve "prediction[s]" about the defendant's "future conduct," based on consideration of various statutory factors, rather than matters of "historical fact." A7, ¶ 20. But the question whether a defendant poses a risk of flight or harm to others is no less a question of fact because it is forward- rather than backward-looking. Indeed, courts regularly "treat[ ] predictions about the likelihood of future events as factual findings," *Zhou Hua Zhu v. U.S. Atty. Gen.*, 703 F.3d 1303, 1310 (11th Cir. 2013), including when (as here) those predictions are guided by a balancing of statutory factors, *see In re D.T.*, 212 Ill. 2d at 354-56.

At bottom, the appellate court correctly recognized that deference is owed to a circuit court's conclusions that the statutory criteria for pretrial detention have been established. But because those criteria require the circuit court to make factual findings rather than exercise discretion, the proper deferential standard is the manifest-weight standard.

### B. The manifest-weight standard is appropriate regardless of the manner in which evidence was presented at the detention hearing.

The appellate court also reasoned, and defendant argues (although on a different basis), that review under the manifest-weight standard is inappropriate where (as here) the evidence at the pretrial detention hearing was presented via proffer rather than live testimony. Neither the appellate court's nor defendant's view is persuasive.

The appellate court reasoned that the manifest-weight standard is ill-suited to reviewing a circuit court's findings based on evidentiary proffers because courts supposedly cannot "weigh[ ]" and assess the "credibility" of such evidence. A6, ¶ 19. But that is simply not the case, in the pretrial detention context or generally. Indeed, the pretrial detention statute recognizes both proffers and live testimony as *forms* or *methods of presenting* evidence. *See* 725 ILCS 5/110-6.1(f)(2) (the parties "may present evidence at the hearing by way of proffer based upon reliable information"); 725 ILCS 5/110-6.1(f)(3) (the defendant has the right to call witnesses and cross-examine witnesses called by the People). It also expressly contemplates that circuit courts will assess the "reliab[ility]" of evidence presented "by way of proffer." 725 ILCS 5/110-6.1(f)(2). Moreover, when weighing evidence at a pretrial detention hearing or in any other context, a circuit court does more than merely assess the credibility of each piece of evidence in isolation. It must also draw inferences from the evidence, resolve conflicts in the evidence, and consider the evidentiary picture as a whole. A circuit court is no less able

to perform these tasks when evidence is presented via proffer rather than live testimony.

For his part, defendant argues that *de novo* review is warranted when the evidence at a pretrial detention hearing is presented via proffer because, in those circumstances, an appellate court will supposedly be equally able to weigh the evidence and make factual findings. *See* Def. Br. 7-12. To be sure, this Court has held that when a circuit court does not hear live testimony, *de novo* review of its factual findings is appropriate because "the trial court was in no superior position than any reviewing court to make findings." *Addison Ins. Co. v. Fay*, 232 Ill. 2d 446, 453 (2009). But that rule overlooks an equally important justification for deferring to a circuit court's factual findings: the circuit courts' primary responsibility for factfinding in our legal system and concomitant "experience" and "expertise" at the task. *Anderson v. Bessemer City*, 470 U.S. 564, 574 (1985).[7]

Reviewing the circuit court's factual findings *de novo* when the circuit court did not hear live testimony gives short shrift to the circuit court's primary role as the finder of fact and ignores the extent to which different factfinders may reasonably draw different inferences from the same evidence or assign different weight to particular pieces of evidence. Indeed, allowing an appellate court to simply substitute its judgment on these matters for that

[7] The People also advance this argument in *People v. Ward*, No. 129627 (Ill.) (oral argument heard May 15, 2024).

of the circuit court would turn circuit court proceedings into little more than exercises in record-making. *See id.* ("the trial on the merits should be the 'main event' rather than a 'tryout on the road'") (cleaned up).

If a circuit court's factual findings are reasonable, it would "advance[ ] no greater good" to permit a reviewing court to substitute its own assessment of the evidence. *State v. S.S.*, 162 A.3d 1058, 1070 (N.J. 2017). Worse, while *de novo* review "would very likely contribute only negligibly to the accuracy of fact determination," the "[d]uplication" of effort involved would exact "a huge cost in diversion of judicial resources." *Anderson*, 470 U.S. at 574-75. Those costs would be especially acute in the pretrial detention context, where the appellate court already faces an "unsustainable" burden from the number of appeals under the pretrial detention statute. Task Force Report at 18.

In any event, while this Court should eventually reconsider *Addison*'s rule that a circuit court's factual findings are reviewed *de novo* when the circuit court did not hear live testimony, it need not do so here to hold that factual findings made by a circuit court after a pretrial detention hearing are always reviewed deferentially. That is so because, in the pretrial detention context, the assumption at the heart of *Addison* — that circuit and appellate courts are equally suited to make factual findings when no live testimony is presented — does not hold.

Rather, even when a pretrial detention hearing proceeds entirely via proffer, the circuit court retains a factfinding advantage based on its direct

access to relevant information unavailable to the appellate court: its observations of, and interactions with, the defendant. In particular, the information that a circuit court can glean from a defendant's demeanor and attitude at the detention hearing will often be relevant in assessing "the likelihood of compliance by the defendant" with any release conditions the court may impose, which is in turn relevant to assessing whether there *are* conditions that could effectively mitigate the risks posed by his release. 725 ILCS 5/110-5(a). That is information that simply will not be available to an appellate court from a transcript or even an audio-recording of the detention hearing. Accordingly, even when the parties proceed entirely by proffer, the appellate court should apply the traditional manifest-weight standard when reviewing the circuit court's findings as to whether the evidence established the statutory criteria for pretrial detention.

### C. Defendant's additional arguments for *de novo* review are unpersuasive.

Defendant makes several other arguments for *de novo* review, but none is persuasive.[8]

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[8] Defendant relies largely on the views expressed by Justice Ellis in two concurring opinions, *see People v. Saucedo*, 2024 IL App (1st) 232020, ¶¶ 64-123 (Ellis, J., specially concurring); *People v. Whitaker*, 2024 IL App (1st) 232009, ¶¶ 79-138 (Ellis, J., specially concurring), and endorsed by Justice Ocasio in a dissenting opinion, *see People v. Snowden*, 2024 IL App (1st) 232272-U, ¶ 41 (Ocasio, J., dissenting). The People's research has not found any majority opinion that has adopted Justice Ellis's position that *de novo* review of a circuit court's factual determinations under 725 ILCS 5/110-6.1(e) is appropriate. Rather, it appears that all panels to have considered the issue have applied some form of deferential review, either under the abuse-of-

First, defendant asserts that a circuit court's ability to observe and interact with a defendant in open court places the circuit court in a *worse* position than an appellate court to make factual findings about the risks posed by the defendant's release because of the possibility that the circuit court's assessment of a defendant's "appearance or demeanor" will lead it to be influenced by "implicit bias." Def. Br. 16. But as this Court has explained, a factfinder's ability to observe a witness's demeanor *supports* — rather than undermines — the rationale for deferring to its factual findings. *See People v. Deleon*, 227 Ill. 2d 322, 332 (2008) ("we give deference to the trial court as the finder of fact because it is in the best position to observe the conduct and demeanor of the parties and witnesses"); *People v. Leger*, 149 Ill. 2d 355, 390 (1992) ("the jury was in a superior position to observe the demeanor of the witnesses and judge their credibility").

To be sure, judges (like all people) may be subject to implicit biases. But defendant offers no persuasive reason to think that the risk of such bias infecting pretrial detention decisions, in particular, warrants a departure from the traditional scope of appellate review. Nor is there reason to think that the traditional manifest-weight standard — which permits appellate courts to disregard findings that are "unreasonable, arbitrary, or not based on the evidence presented," *Chatman*, 2024 IL 129133, ¶ 34 (cleaned up) —

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discretion standard, the manifest-weight standard, or a combination of those standards. *See People v. Pitts*, 2024 IL App (1st) 232336, ¶ 14 (collecting cases).

will be inadequate to ensure that pretrial detention decisions are based on appropriate considerations rather than implicit bias.

Next, defendant argues that *de novo* review is justified by the liberty interests implicated in pretrial detention decisions. Def. Br. 12-16. But as explained, *see supra* p. 13, the standard of review turns on the *nature* of an issue, not its relative importance, as evidenced by the many circumstances in which appellate courts review factual findings affecting substantial interests under the manifest-weight standard, *see In re C.N.*, 196 Ill. 2d 181, 208 (2001) (finding of unfitness to terminate parental rights); *People v. Hall*, 2017 IL App (3d) 160541, ¶ 45 (finding that sexually dangerous person's detention is warranted based on substantial probability of re-offense); *In re Hannah E.*, 376 Ill. App. 3d 648, 661 (1st Dist. 2007) (finding that person with mental illness poses danger warranting civil commitment); *cf. People v. Webster*, 2023 IL 128428, ¶ 32 (sentencing decisions reviewed for abuse of discretion). And, in fact, *de novo* review would not even necessarily provide greater protection for important interests, as it would allow appellate courts freer rein to reverse not only decisions burdening the interest, but also those advancing it.

Finally, as defendant notes, *see* Def. Br. 23, the pretrial detention statute accounts for the importance of the interests at stake by requiring circuit courts to find that the criteria for detention were established by clear and convincing evidence, *see* 725 ILCS 5/110-6.1(e). By "instruct[ing] the factfinder concerning the degree of confidence our society thinks [it] should

have in the correctness of [its] factual conclusions," the clear-and-convincing-evidence standard imparts society's view that "the interests at stake are . . . substantial." *In re D.T.*, 212 Ill. 2d at 355, 362 (cleaned up). But even when the importance of the interests at stake justifies a heightened burden of proof, the manifest-weight standard continues to govern appellate review. *See In re C.N.*, 196 Ill. 2d at 208 ("In order to reverse a trial court's finding that there was clear and convincing evidence of parental unfitness, the reviewing court must conclude that the trial court's finding was against the manifest weight of the evidence.").

* * *

While the Act "dramatically changed" many aspects of "the statutory framework for pretrial release of criminal defendants," *Rowe v. Raoul*, 2023 IL 129248, ¶ 1, it did not exempt pretrial detention orders from the usual standards of appellate review. Because the criteria that must be established to deny pretrial release under 720 ILCS 5/110-6.1(e) present questions of fact, a circuit court's findings that those requirements have been established should be reviewed under the manifest-weight-of-the-evidence standard that generally governs appellate review of a circuit court's factual findings.

## CONCLUSION

This Court should affirm the judgment of the appellate court but hold that the circuit court's findings that the requirements for pretrial detention have been established are reviewed under the manifest-weight standard.

August 13, 2024

Respectfully submitted,

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**RULE 341(c) CERTIFICATE OF COMPLIANCE**

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 24 pages.

/s/ Eric M. Levin
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## CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On August 13, 2024, the **Brief of Plaintiff-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided service of such filing to the email addresses of the persons named below:

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