



Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/art. 110 (West 2022)). For the following reasons, we affirm the circuit court’s detention order of December 13, 2023.<sup>2</sup>

¶ 3

### I. BACKGROUND

¶ 4 On December 11, 2023, after previously dismissing the same charges, the State charged defendant by information with one amended count of predatory criminal sexual assault of a child, a Class X felony, in violation of section 11-1.40(a)(1) of the Criminal Code of 2012 (720 ILCS 5/11-1.40(a)(1) (West 2022)), and one amended count of aggravated criminal sexual abuse, a Class 2 felony, in violation of section 11-1.60 of the Criminal Code of 2012 (*id.* § 11-1.60(b)). On December 13, 2023, the State filed a verified petition to deny defendant pretrial release. That same day, the circuit court held a hearing on the State’s petition. At the hearing, the State dismissed the count of aggravated criminal sexual abuse. The State called two witnesses to testify at the hearing: Chief of Police for the Assumption Police Department Brian Wade and the victim. Their testimonies adduced the following factual basis for the charges and the State’s petition to deny pretrial release.

¶ 5 Defendant had a relationship with the victim’s mother for several years to the point where the victim would refer to defendant as “Dad” or “David.” Defendant resided with the victim’s mother, the victim, and the mother’s other children. The victim testified that defendant touched her vagina and groin area multiple times in the fall of 2022. One such incident occurred when the victim was 12 years old and defendant picked her up from school. While in the school parking lot, defendant placed his fingers inside the victim’s vagina. On another occasion, defendant touched

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<sup>2</sup>Pursuant to Illinois Supreme Court Rule 604(h)(5) (eff. Dec. 7, 2023), our decision in this case was due on or before March 11, 2024, absent a finding of good cause for extending the deadline. Based on the high volume of appeals under the Act currently under the court’s consideration, as well as the complexity of issues and the lack of precedential authority, we find there to be good cause for extending the deadline.

the victim's groin area while in the car at a drive-through. Defendant also touched the victim inside the house while the victim's mother was away. In one incident, defendant touched the victim on the outside of her vagina and groin area. In another, separate incident, defendant digitally penetrated her vagina. In February 2023, the victim's mother became aware of the allegations and alerted the Christian County Sheriff's Office. An order of protection was entered and defendant moved out of the house. The order of protection ordered defendant out of the residence and prohibited all contact with the victim. According to a pretrial investigation report, defendant reported living with a cousin, her fiancé, her child, and the fiancé's father in Eddyville, Pope County, Illinois. The State pointed out that it was unable to verify defendant's residence or employment because of defendant's "inability or unwillingness to provide contact information for verification." The pretrial investigation report also listed defendant's prior criminal history as drug-paraphernalia possession in 2011, "conservation violations" in 2009, and "bad-check misdemeanors" in 2005. The report showed defendant scored a 2 out of 14 on a pretrial risk assessment. The State sought defendant's detention. Defense counsel sought defendant's release with GPS monitoring and a no-contact order as possible conditions of release. After considering the proffers, arguments, and testimonies, the circuit court granted the State's petition to deny pretrial release and ordered defendant detained. Defendant timely filed a notice of appeal on December 15, 2023.

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## II. ANALYSIS

¶ 7 As an initial matter, we note that defendant makes a wide variety of arguments in his notice of appeal. However, the Office of the State Appellate Defender (OSAD) was appointed to represent defendant and filed a memorandum on defendant's behalf. OSAD's memorandum focuses exclusively on the circuit court's finding that no condition or combination of conditions could mitigate the threat posed by defendant. Specifically, OSAD argues that "the State failed to disprove

that GPS monitoring was sufficiently mitigating.” OSAD’s memorandum does not address any of the other arguments raised in the notice of appeal. This court has stated that “if a memorandum is filed, it will be the controlling document for issues or claims on appeal and we will not reference the notice of appeal to seek out further arguments not raised in the memorandum, except in limited circumstances, *e.g.*, to determine jurisdiction.” *People v. Forthenberry*, 2024 IL App (5th) 231002, ¶ 42. See also *People v. Rollins*, 2024 IL App (2d) 230372, ¶ 22. It appears that OSAD elected not to include those additional arguments in the memorandum and, thus, has abandoned review of those issues on appeal. Therefore, we address only the one argument contained in the memorandum.

¶ 8 OSAD argues that the circuit court could order defendant to remain with his cousin in Eddyville, which is three hours south of the victim’s home. OSAD contends GPS monitoring would ensure defendant’s compliance with court orders and “should he go northbound, pretrial-services authorities would be alerted in minutes” and could stop defendant. OSAD further argues that his “post-accusation behavior shows low risk.” After the order of protection, defendant left the county and reportedly did not contact the victim in the months leading to his arrest and detention. Defendant scored 2 out of 14 score in his pretrial risk assessment. OSAD therefore argues defendant is a low risk for offending while on pretrial release, but that any other risk could be mitigated with GPS monitoring. OSAD further contends that the circuit court abused its discretion because its findings were not based on the articulable facts of the case. OSAD believes the court engaged in speculation, “addressed irrelevant matters,” and did not “undermine GPS monitoring as a release condition.” We disagree.

¶ 9 To set appropriate conditions of pretrial release, the circuit court must determine, by clear and convincing evidence, what pretrial release conditions, “if any, will reasonably ensure the appearance of a defendant as required or the safety of any other person or the community and the

likelihood of compliance by the defendant with all the conditions of pretrial release.” 725 ILCS 5/110-5(a) (West 2022). In reaching its determination, the circuit court must consider (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the person; (3) the history and characteristics of the person;<sup>3</sup> (4) the nature and seriousness of the specific, real, and present threat to any person that would be posed by the person’s release; and (5) the nature and seriousness of the risk of obstructing or attempting to obstruct the criminal justice process. *Id.* The statute lists no singular factor as dispositive. See *id.*

¶ 10 Our standard of review of pretrial release determinations is twofold. The circuit court’s factual findings will be reviewed under the manifest weight of the evidence standard, such as the State’s burden of presenting clear and convincing evidence that conditions of pretrial release would not protect any person or the community, the defendant has a high likelihood of willful flight to avoid prosecution, or the defendant failed to comply with previously ordered conditions of pretrial release. *People v. Trotter*, 2023 IL App (2d) 230317, ¶ 13. “A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented.” *People v. Deleon*, 227 Ill. 2d 322, 332 (2008).

¶ 11 The circuit court’s ultimate determination regarding the denial of pretrial release is reviewed for an abuse of discretion. *Trotter*, 2023 IL App (2d) 230317, ¶ 13. “An abuse of discretion occurs where the circuit court’s decision is arbitrary, unreasonable, or fanciful or where

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<sup>3</sup>The defendant’s history and characteristics include: “the defendant’s character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past relating to drug or alcohol abuse, conduct, \*\*\*criminal history, and record concerning appearance at court proceedings,” as well as “whether, at the time of the current offense or arrest, the defendant was on probation, parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal law, or the law of this or any other state.” 725 ILCS 5/110-5(a)(3)(A), (B) (West 2022).

no reasonable person would have taken the position adopted by the circuit court.” *People v. Heineman*, 2023 IL 127854, ¶ 59.

¶ 12 In the present case, the circuit court made an individualized finding to deny pretrial release to defendant after considering the facts presented, the pretrial investigation report, arguments made by counsel, testimony by two witnesses—one being the victim herself—and the statutory factors. The court found that the proof was evident or presumption great that defendant committed the charged offenses and that such charged offenses were expressly listed in the Code as a detainable offense. 725 ILCS 5/110-6.1(a)(1.5) (West 2022). The court found that the State proved that defendant posed a real and present threat to the safety of the victim based on the specific articulable facts of defendant’s case. The court expressly went through the factors listed in the Code while making its dangerousness determination. *Id.* § 110-6.1(g). The court found the charged offense of predatory criminal sexual assault of a child is “extremely serious.” It noted defendant has no prior criminal history of violent or abusive behavior. The court found there was an identifiable victim and that a threat remained which was the possibility of further abuse, obstruction of a court process, or witness intimidation. The court noted the victim was 12 and 13 when the alleged acts occurred. The court acknowledged defendant’s lack of serious criminal history and low score on the pretrial risk assessment. The court then stated that defendant lacked substantial community ties and that defendant may, if not detained, try to “obstruct the criminal justice process by attempting to have contact with the alleged victim or her family.” Finally, the court noted that the conduct alleged was “not a one-time incident” but instead occurred multiple times over a span of several months. Based on these findings, the court found that defendant posed a real and present threat to the victim.

¶ 13 In rejecting defendant’s request for GPS monitoring, the circuit court stated it did not believe the evidence “in a case that’s as serious as this” was sufficient to show that such conditions

could mitigate the threat defendant posed. The court asserted that if “defendant wants to pose a threat to the alleged victim he can certainly do that with or without these conditions and I don’t think the Court is required to wait for that to occur.” The circuit court found that defendant posed a real and present threat to the victim and that no conditions or combination of conditions could mitigate that threat. We cannot say that the opposite conclusion is clearly evident or that the court’s decision is arbitrary, unreasonable, or fanciful.

¶ 14 Therefore, in light of our review of the record, we find that the circuit court’s factual findings were not against the manifest weight of the evidence and the circuit court’s ultimate determination to deny the defendant pretrial release was not an abuse of discretion.

¶ 15 Based on the foregoing, we find that the circuit court’s order denying pretrial release was not an abuse of discretion.

¶ 16 III. CONCLUSION

¶ 17 Accordingly, we affirm the December 13, 2023, detention order of the circuit court of Christian County.

¶ 18 Affirmed.