

**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 (4th) 230855-U

NO. 4-23-0855

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

November 27, 2023

Carla Bender

4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Rock Island County
MATTHEW TOLENTINO,	)	No. 23CF510
Defendant-Appellee.	)	
	)	Honorable
	)	Peter W. Church,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.  
Presiding Justice DeArmond and Justice Turner concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court did not err in denying the State’s petition to deny pretrial release under the Pretrial Fairness Act.

¶ 2 The State appeals the circuit court’s order denying its petition to deny defendant pretrial release pursuant to article 110 of the Code of Criminal Procedure of 1963 (725 ILCS 5/art. 110 (West 2022)), as amended by Public Act 101-652, § 10-255 (eff. Jan. 1, 2023), commonly known as the Safety, Accountability, Fairness and Equity-Today Act (Act). See Pub. Act 102-1104, § 70 (eff. Jan. 1, 2023) (amending various provisions of the Act); *Rowe v. Raoul*, 2023 IL 129248, ¶ 52 (setting the Act’s effective date as September 18, 2023). . The State maintains the court abused its discretion in failing to find defendant posed a real and present threat to the safety of any person or the community and defendant had a high likelihood of willful flight to avoid prosecution. We affirm.

¶ 3

## I. BACKGROUND

¶ 4 On June 28, 2023, defendant was charged with two counts of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2022)) and one count of possession of a firearm without a valid Firearm Owner's Identification Card (430 ILCS 65/2(a)(1) (West 2022)). Specifically in count I, the State charged defendant with knowingly possessing a handgun after having previously been convicted in California of first degree burglary in December 2012. That count states the charge carries a mandatory sentence of 2 to 10 years' imprisonment. Count 2 alleges defendant knowingly possessed the same handgun after having committed a 2009 first degree burglary in another California county. Count II indicates the same prison term listed in count I.

¶ 5 That same day, the circuit court set defendant's bond at \$75,000. The record indicates this amount of bail applied to Rock Island County case No. 23-CF-510 and also to Rock Island County case No. 23-CF-514, in which defendant was charged with retail theft. Defendant remained incarcerated.

¶ 6 On September 11, 2023, defendant filed a motion for pretrial release under the Act. Two days later, the State filed a verified petition to deny defendant pretrial release. In its petition, the State alleged, in part, defendant was charged with a felony offense for which a sentence of imprisonment without probation is required by law upon conviction and his pretrial release posed a real and present threat to the safety of another (725 ILCS 5/110-6.1(a)(1) (West 2022)). The State further alleged defendant had an extensive criminal history in California and only recently moved. The State provided the following factual basis for its petition:

“On 6-27-23, at 13:49, deputies called to \*\*\* remove  
subject [from a residence.] [Lacaela] Williams says she wants

defendant out, he cannot live there any more. He has fled police, and they reach him on the phone. They ask him to come back and get his belongings (which she has put out on the lawn in garbage bags) while they are there to avoid a breach of the peace. He refuses. Fast forward to 18:22, deputies again called, this time, defendant is trying to break down the door to get in. He has a warrant out of Scott County Iowa for drugs (although Iowa Courts online shows that case was dismissed, maybe he pled to the Drug Tax Stamp Act.) Victim Williams says he had not battered her yet, was just breaking in, but has a gun in his belonging in one of the bags. Defendant denies, says she can keep his bags. She says she is going to throw bags in dumpster, at which point he says he will take his bags to jail. Deputies point out the bags will be searched an[d] inventoried at jail, at which point, defendant admits there is a gun in one of the bags. Says he just keeps it in the house, doesn't carry it on him. Defendant is a felon out of [California]. The gun comes back as stolen out of [California], but it was by his ex[-]wife, so not charging it as stolen. There is a second gun in the house, but he swears it belongs to Williams.”

¶ 7 On September 18, 2023, the circuit court held a detention hearing. The State proffered what evidence would be presented. This proffer was consistent with the factual basis for the State's verified petition. The State further informed the court defendant “has a hold from the state of Iowa” and had been a resident of the Quad Cities since February 2023. The State

asserted the least restrictive alternative would be to keep defendant incarcerated during trial.

¶ 8 Defense counsel disputed the State’s contention defendant was dangerous. According to defense counsel, he read no reports that indicated defendant was attempting to break down a door. The reports indicate Williams and defendant were attempting to speak peacefully about the relationship; the police were called after defendant became upset and erratic and demanded his property. Defendant then left on foot and returned; there was no “fleeing.” Defense counsel further reported Williams did not indicate the argument became physical and law enforcement observed no signs of injury. Defense counsel further emphasized any mention of a gun referred not to a weapon on defendant’s person, but to a gun in one of the bags, and defendant volunteered that information.

¶ 9 After the circuit court asked defense counsel where defendant would reside if he were released, defense counsel agreed defendant would reside in the Scott County jail if there was a hold. Defense counsel then stated he did not see “willful flight” as an issue, to which the court agreed: “I agree that we haven’t heard anything about willful flight, and that’s not the standard I’m addressing[.]”

¶ 10 The State countered defense counsel’s arguments by emphasizing the charges were for detainable weapons offenses, which provide mandatory prison terms. The State further highlighted defendant admitted one of the firearms was his. The State made no argument regarding “willful flight.”

¶ 11 The circuit court, addressing the State, made the following findings when granting defendant’s motion, in part, and denying the State’s verified petition:

“The Court acknowledges every last thing you’ve just said.

The Court points out that to the extent that we have tools for

detention that have been given to us by the state legislature under the [Act], those tools are extremely limited.

What you said about [defendant's] case could be said about every single case of this exact same nature. What I don't really have at this juncture in the Court's view are specific facts, other than just the fact that, yes, it's a gun charge; yes, it's mandatory prison, but is there something above and beyond that would indicate dangerousness?

The Court's going to make a finding in this case not that the State didn't try, didn't do its best, and, in fact, I feel that the State's just limited in how much it can actually accomplish in terms of these cases in detention, so I'm not going to enter an order for detention but I am going to enter an order that he reside in the county of Rock Island and that he be placed on an ankle bracelet and he's to be released with that condition and only until the bracelet has been fitted. So that's the Court's order on [defendant's case[.]”

The court clarified, if defendant is released from Scott County, he is to report to the Rock Island court services office to be fitted for a global positioning system (GPS) device.

¶ 12 After the circuit court entered written orders detailing the conditions of defendant's pretrial release, the State filed its notice of appeal under Illinois Supreme Court Rule 604(h)(1)(iv) (eff. Sept. 18, 2023).

¶ 13

## II. ANALYSIS

¶ 14 On appeal, the State contends the circuit court abused its discretion by not finding defendant dangerous, *i.e.*, he poses a real and present threat to the safety of any persons or the community, and by failing to find defendant had a high likelihood of willful flight to avoid prosecution. Initially, we note the State forfeited any argument defendant should be detained due to willful flight. The State did not argue the issue in the circuit court, despite that court’s express finding the State presented no evidence on that issue and it was not considering “willful flight” as a ground to deny defendant pretrial release. See *People v. Jackson*, 2022 IL 127256, ¶ 15, 211 N.E.3d 414 (noting, to preserve an issue for review on appeal, the matter must be brought to the circuit court’s attention); see also *People v. Sophanavong*, 2020 IL 124337, ¶ 21, 181 N.E.3d 154 (“[T]he doctrine of forfeiture applies to the State as well as to defendant.”). We will not consider that argument.

¶ 15 The Act creates a presumption “a defendant is entitled to release on personal recognizance on the condition that the defendant attend all required court proceedings and the defendant does not commit any criminal offense, and complies with all terms of pretrial release.” 725 ILCS 5/110-2(a) (West 2022). The Act places the burden on the State “to prove by clear and convincing evidence that any condition of release is necessary.” *Id.* § 110-2(b). When the State alleges pretrial release should be denied on the basis the defendant “presents a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case,” the State carries the burden of proving those allegations. *Id.* § 110-2(c).

¶ 16 Here, the State sought to prove defendant’s pretrial release should have been denied under section 110-6.1(a)(1) of the Act *id.* § 110-6.1(a)(1)). Under that section, the circuit court may deny a defendant pretrial release only if the following applies:

“[T]he defendant is charged with a felony offense other than a

forcible felony for which, based on the charge or the defendant's criminal history, a sentence of imprisonment, without probation, periodic imprisonment or conditional discharge, is required by law upon conviction, and it is alleged that the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case[.]” *Id.*

Before pretrial release may be denied under this section, the State must prove by clear and convincing evidence “the defendant poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case,” and “no condition or combination of conditions set forth in subsection (b) of Section 110-10 of this Article can mitigate (i) the real and present threat to the safety of any person or persons or the community.” *Id.* § 6.1(e)(2), (3)(i). Factors that are to be considered by a court in determining dangerousness include the following:

“(1) The nature and circumstances of any offense charged, including whether the offense is a crime of violence, involving a weapon, or a sex offense.

(2) The history and characteristics of the defendant including:

(A) Any evidence of the defendant's prior criminal history indicative of violent, abusive or assaultive behavior, or lack of such behavior. \*\*\*

(B) Any evidence of the defendant's psychological,

psychiatric or other similar social history which tends to indicate a violent, abusive, or assaultive nature, or lack of any such history.

(3) The identity of any person or persons to whose safety the defendant is believed to pose a threat, and the nature of the threat.

(4) Any statements made by, or attributed to the defendant, together with the circumstances surrounding them.

(5) The age and physical condition of the defendant.

(6) The age and physical condition of any victim or complaining witness.

(7) Whether the defendant is known to possess or have access to any weapon or weapons.

(8) Whether, at the time of the offense or any other offense or arrest, the defendant was on probation, parole, aftercare release, mandatory supervised release or other release \*\*\*.

(9) Any other factors \*\*\* deemed by the court to have a reasonable bearing upon the defendant's propensity or reputation for violent, abusive, or assaultive behavior, or lack of such behavior." *Id.* § 110-6.1(g).

¶ 17 The determination of whether pretrial release should be granted or denied is reviewed under an abuse-of-discretion standard. See *People v. Inman*, 2023 IL App (4th) 230864, ¶¶ 10-11. Under this standard, we will find an abuse of discretion occurred when we find the determination regarding pretrial release is unreasonable, arbitrary, or fanciful, or when



we find no reasonable person would agree with the circuit court's decision. *Id.* ¶ 10. This court will not substitute our own judgment for the judgment of the circuit court simply because we would have analyzed the proper factors differently. *Id.* ¶ 11.

¶ 18 The facts the State relies upon to argue the circuit court abused its discretion in not finding defendant to be a real and present danger are largely those included in the State's verified petition. The State points to information from the pretrial services interview conducted by a Rock Island probation officer that shows defendant was on "HOLD" in Iowa and he was serving 12 month's unsupervised probation for "Possession of a Controlled Substance, Marijuana, 1st Offense." This report further establishes defendant's criminal record in California included convictions for burglary, hit and run, driving under the influence, and reckless driving, and defendant had moved to Rock Island, Illinois, where he resided with his ex-girlfriend, in February 2023. According to the report, the probation officer found defendant to be a "MODERATE HIGH RISK" of failing to appear. The State maintains these facts establish the State met its burden and negate the presumption defendant was entitled to pretrial release.

¶ 19 We find no abuse of discretion in the circuit court's decision. The court plainly found convincing defense counsel's interpretation of the facts presented in the State's verified petition and found no articulable facts to support denying defendant pretrial release under the condition of GPS monitoring. Defense counsel's interpretation of the events was based, in part, on police reports of the events. These reports do not appear to be in the record and thus cannot undermine that interpretation. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958, 959 (1984) ("[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a

sufficient factual basis.”). There were no domestic-abuse charges filed against defendant. There was no evidence defendant touched or threatened Williams during the incident. Defense counsel argued the police reports did not indicate defendant attempted to break down Williams’s door, and there is nothing in the record to contradict that interpretation. The evidence established, while there was a firearm in defendant’s belongings, defendant refused to retrieve those belongings and defendant was not with the firearm when the events occurred. Under these circumstances, we cannot find an abuse of discretion occurred when the circuit court granted defendant’s request for pretrial release and denied the State’s verified petition.

¶ 20

### III. CONCLUSION

¶ 21

We affirm the circuit court’s judgment.

¶ 22

Affirmed.