

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).

2025 IL App (4th) 241464-U
NO. 4-24-1464
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
February 14, 2025
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Winnebago County
MAKINI N. ERVING,)	No. 24CF1036
Defendant-Appellant.)	
)	Honorable
)	Philip J. Nicolosi,
)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Knecht and Vancil concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, finding the trial court properly denied defendant’s pretrial release.

¶ 2 Defendant, Makini N. Erving, appeals the trial court’s order denying his motion for relief from pretrial detention pursuant to the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110 *et seq.*) (West 2022)), hereinafter as amended by Public Act 101-652, § 10-255 (eff. Jan. 1, 2023), commonly referred to as the Pretrial Fairness Act (Act). See Pub. Act 102-1104, § 70 (eff. Jan. 1, 2023) (amending various provisions of the Act). On appeal, defendant argues he was not charged with a detention-eligible offense. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In April 2024, defendant was charged by information with (1) attempt vehicular hijacking (720 ILCS 5/18-3(a), 5/8-4) (West 2022)) for attempting to enter another vehicle by

use of force or threatening the imminent use of force to escape police; (2) aggravated battery (*id.* 5/12-3.05(d)(4)) for biting deputy Xavier Rincon; (3) attempt to disarm a peace officer (*id.* 5/31-1a(b), 5/8-4)) for placing his hand on deputy Rincon's service weapon during a fight to disarm the officer; (4) criminal damage to property (*id.* 5/21-1(a)(1)) for damage to a garage; (5) resisting or obstructing a peace officer resulting in injury (*id.* 5/31-1(a-7)) for fighting with deputy Rincon and causing injury to him; (6) aggravated fleeing or attempting to elude a peace officer (625 ILCS 5/11-204.1(a)(3)); (7) leaving the scene of an accident (*id.* 5/110403(a)); and (8) driving while license revoked (*id.* 5/6-303(a)). Defendant was subsequently indicted by a grand jury on said charges. The State filed a petition to deny defendant's pretrial release. A hearing on the State's petition was held on September 10, 2024.

¶ 5 At the detention hearing, defendant initially contended the State had not charged him with a detainable offense as listed in section 6.1(a)(1.5) of the Code (725 ILCS 5/110-6.1(a)(1.5) (West 2022)). The trial court found the attempt vehicular hijacking and attempt to disarm a peace officer were detention eligible.

¶ 6 The State proffered the pretrial services report, and a factual summary filed with its petition for which the trial court took judicial notice. The factual summary stated on April 24, 2024, deputy Rincon conducted a traffic stop on a white 2011 Audi A5 because the temporary registration plate had expired. The vehicle pulled into a driveway at 1219 18th Street in Rockford, Illinois. When Rincon approached the vehicle, the driver ignored the officer's commands and attempted to drive away. The vehicle crashed into a neighboring unattached garage and the driver fled on foot. Rincon pursued the suspect. The suspect attempted to enter another vehicle occupied by two women. Rincon utilized his taser on the suspect but was unsuccessful in subduing him. The driver of the uninvolved vehicle screamed "no" and drove

away. At that point, a struggle ensued between the suspect and Rincon. The suspect bit Rincon on his chest and grabbed Rincon's service weapon attempting to disarm him. Following this encounter, Rincon was left with bruising and bleeding on his chest from the bite wound and various "scrapes, cuts and bruising on his forehead and legs." The suspect ultimately eluded arrest. During an inventory search of the abandoned vehicle, mail belonging to defendant was discovered. Rincon positively identified defendant as the driver of the abandoned vehicle. The registered owner of the vehicle also positively identified defendant as the individual to whom he had loaned the vehicle.

¶ 7 The trial court found the State had met its burden that the attempt vehicular hijacking and attempt to disarm a peace officer were qualifying detainable offenses, and the proof was evident or presumption great defendant had committed the said qualifying offenses. The court found the State had met its burden of proving defendant posed a real and present threat to the community based on the facts and noting that defendant was on pretrial release for matters in two different counties. The court noted defendant's criminal history and that he had scored "the highest possible risk level of 6 out of 6 on the pretrial services risk assessment." The court found (1) defendant's criminal history included a lack of compliance with probation and (2) his risk level from the pretrial services assessment demonstrated no conditions or combinations thereof would mitigate the threat he posed to the community. The court granted the State's petition denying defendant pretrial release.

¶ 8 In October 2024, defendant filed a motion for relief and argued, relevant to this appeal, the State had failed to charge him with a qualifying offense to support his continued detention. A hearing on defendant's motion was held on November 6, 2024.

¶ 9 At the hearing, defendant argued his attempt vehicular hijacking charge was not an enumerated offense eligible for detention per the Code. See 725 ILCS 11/6.1(a)(1.5) (West 2022). Defendant noted the Code listed vehicular invasion but not vehicular hijacking. Additionally, defendant argued attempt vehicular hijacking was a probation-eligible offense which did not require proof of the threat of or infliction of great bodily harm or permanent disability or disfigurement. As such, defendant claims he was ineligible for pretrial detention. The trial court denied defendant’s motion.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, defendant argues he had not been charged with a detention-eligible offense. Because this claim involves a matter of statutory construction—a question of law, we will apply a *de novo* review. *People v. Minssen*, 2024 IL App (4th) 231198, ¶ 17. Our primary goal when construing a statute “is to ascertain and give effect to the legislative intent as evidence by the plain and ordinary meaning of the statutory language.” *People v. Washington*, 2023 IL 127952, ¶ 27.

¶ 13 Section 6.1(a)(1.5) of the Code provides, upon the State’s petition and after a hearing, a trial court may deny pretrial release if:

“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, and the defendant is charged with a forcible felony, which as used in this Section, means treason, first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, armed robbery,

aggravated robbery, robbery, burglary where there is use of force against another person, residential burglary, home invasion, vehicular invasion, aggravated arson, arson, aggravated kidnaping, kidnaping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement *or any other felony which involves the threat of or infliction of great bodily harm or permanent disability or disfigurement.*” (Emphasis added.) 725 ILCS 110-6.1(a)(1.5) (West 2022).

¶ 14 Defendant argues the trial court erred when denying his motion for relief because the State did not charge him with one of the enumerated detainable offenses in section 6.1(a)(1.5). Therefore, the State was required to show defendant either (1) committed an aggravated battery resulting in great bodily harm or permanent disability or disfigurement, or (2), citing the residual clause of section 6.1(a)(1.5), committed “any other felony which involves the threat of or infliction of great bodily harm or permanent disability or disfigurement.” *Id.* Defendant contends the charges and facts presented by the State established neither.

¶ 15 Defendant cites *People v. Belk*, 203 Ill. 2d 187 (2003) for the proposition that none of defendant’s charges satisfy the residual clause. In *Belk*, the defendant, who was intoxicated, broke into and stole a vehicle and then proceeded to flee from police. *Id.* at 190. The defendant eventually crashed into another vehicle causing the death of its occupants. *Id.* The defendant had been convicted at trial of felony murder and aggravated possession of a stolen motor vehicle. *Id.* at 191. The question before the *Belk* court was whether the particular facts of that case supported the defendant had committed a forcible felony by “contemplate[ing] that escape might involve the use of force or violence against an individual.” *Id.* at 195. The court concluded it was foreseeable that the defendant’s conduct was likely to cause death or great

bodily harm, but did not support an inference the defendant “contemplated that the use of force or violence against an individual might be *necessary* in order for him to accomplish his escape.”

Id.

¶ 16 From *Belk*, defendant argues none of his charges support an inference he contemplated the use of force or violence was necessary when he fled from deputy Rincon.

¶ 17 The State argues the residual clause does not have an intent requirement such that we can affirm the trial court without determining whether the facts show defendant intended to threaten or otherwise inflict great bodily harm. See *People v. Delaney*, 2024 IL App (5th) 240231, ¶ 19 (stating the residual clause does “not include an intent element, a limitation that the threat be against a specific individual, or that [the] defendant contemplated the threat of great bodily harm. We therefore cannot read those conditions into the statute.”). The State also contends *Belk* is inapplicable because it analyzed a different section of the Code and more recent case law specifically dealing with the residual clause is more applicable.

¶ 18 The residual clause merely states “any other felony,” which refers to a felony other than what is already listed that additionally “involves the threat of or infliction of great bodily harm or permanent disability or disfigurement.” 725 ILCS 110-6.1(a)(1.5) (West 2022). The use of “any other felony” in section 6.1(a)(1.5) where it specifically lists forcible felonies suggests to this court the legislature simply intended the residual clause to include any other felony meeting the threat of or infliction of great bodily harm threshold regardless of whether the felony was forcible or not. See *People v. Brooks*, 2024 IL App (4th) 240503, ¶ 21.

¶ 19 The State points to two of defendant’s felony charges: attempt vehicular hijacking and attempt to disarm a peace officer to support its position that defendant was charged with a

detention-eligible offense. Accordingly, we will review whether either of these charges implicate the residual clause.

¶ 20 Both attempt vehicular hijacking and attempt to disarm a peace officer are Class 2 felonies. See 725 ILCS 5/18-3(b) (West 2022) (stating vehicular hijacking is a Class 1 felony) and *id.* 5/8-4(c)(3) (stating “the sentence for attempt to commit a Class 1 felony is the sentence for a Class 2 felony”); see also *id.* 5/31-1a(b) (stating attempt to disarm a peace officer is a Class 2 felony). Additionally, attempt to commit a qualifying detainable offense pursuant to the Code is detention eligible. 725 ILCS 110-6.1(7) (West 2022). Given that both offenses are felonies and are not one of the specifically listed felonies in section 6.1(a)(1.5), they sufficiently meet the plain language of the residual clause’s requirement of “any other felony.”

¶ 21 The State also argues while defendant challenged the trial court’s interpretation of the law, he did not, on appeal, challenge whether the court properly applied the facts to the law and has, thus, forfeited any argument on this issue. We disagree and find defendant sufficiently challenged the court’s application of the facts to the law and has not forfeited this issue on appeal.

¶ 22 The State emphasizes defendant, while fleeing from Rincon, attempted to enter a passing car occupied by two women who screamed and drove away. The circumstantial evidence suggests the women felt threatened by defendant’s conduct and drove away screaming to avoid any danger he posed. Defendant, while fighting and resisting Rincon, then attempted to take Rincon’s service weapon. The State contends the mere act of attempting to take Rincon’s firearm should be viewed as a threat of great bodily harm because the only reasonable conclusion is defendant intended to use the firearm had he been successful in taking it. The fact that defendant had bitten Rincon and caused various injuries to Rincon’s forehead and legs, coupled with

defendant's attempt to take Rincon's firearm, should reinforce the implication defendant's conduct threatened great bodily harm to Rincon.

¶ 23 Our review of the trial court's ultimate decision to deny defendant pretrial release is as follows:

“(1) when live witness testimony is presented at a pretrial detention hearing, the circuit court's ultimate detention decision under section 110-6.1, in addition to any underlying factual findings supporting the decision, will not be disturbed on review unless found to be contrary to the manifest weight of the evidence and (2) when the parties to a pretrial detention hearing proceed solely by proffer, the reviewing court is not bound by the circuit court's factual findings and may therefore conduct its own independent *de novo* review of the proffered evidence and evidence otherwise documentary in nature.” *People v. Morgan*, 2025 IL 130626, ¶ 54.

In this case, no live testimony was presented; therefore, we apply a *de novo* standard of review.

¶ 24 This court, in *People v. Minssen*, 2024 IL App (4th) 231198, ¶ 23 stated “the specific facts and details of the charged offense matter when determining whether a defendant's conduct implicates the residual clause of section 110-6.1(a)(1.5).” Therefore, we must review whether any of defendant's detention-eligible offenses involve the threat of or infliction of great bodily harm or permanent disability or disfigurement.

¶ 25 Our review of the specific articulable facts of this case shows defendant relentlessly evaded arrest. Upon the initiation of the traffic stop, defendant drove a vehicle off the roadway and crashed into a garage. Defendant then abandoned the vehicle and the damage he

caused and fled on foot. He ignored Rincon's commands and attempted to enter the vehicle of an innocent bystander. The occupants of the vehicle screamed in horror and drove away. Rincon attempted to tase defendant who only continued to resist. During an ensuing struggle with Rincon, defendant bit the arresting officer and attempted to take his firearm. We agree with the State such conduct by defendant leaves little to the imagination. Defendant, had he been successful in taking Rincon's firearm, would have presented a far more dire set of circumstances. Therefore, defendant's efforts to take Rincon's firearm can reasonably be inferred to threaten great bodily harm to Rincon and, for that matter, any bystander. Accordingly, we find the trial court's decision to deny defendant pretrial release was proper.

¶ 26

III. CONCLUSION

¶ 27

For the reasons stated, we affirm the trial court's judgment.

¶ 28

Affirmed.