

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

No. 130866

**IN THE
SUPREME COURT OF ILLINOIS**

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ANTONIO COUSINS, JR., Defendant-Appellant.) Appeal from the Appellate Court) of Illinois, Fourth Judicial District,) Nos. 4-24-0388 & 4-24-0389 (cons.))) There on Appeal from the Circuit) Court for the Tenth Judicial) Circuit, Peoria County, Illinois,) Nos. 21-CF-834 & 21-CF-835)) The Honorable) John P. Vespa,) Judge Presiding.
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**BRIEF OF PLAINTIFF-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS**

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ORAL ARGUMENT REQUESTED

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NATURE OF THE CASE

Defendant is charged with multiple firearm offenses. After a hearing under the recently amended pretrial detention statute, the circuit court denied pretrial release. The appellate court reversed and remanded for a new detention hearing, holding that while “the evidence may have been sufficient to find” that detention was warranted, a new hearing was necessary because it was unclear from the record whether the circuit court had made the statutorily required findings. A10, ¶ 18.¹ Characterizing that decision as having held that the People failed to establish the statutory criteria for pretrial detention, defendant argues in this Court that the only appropriate remedy is to remand for the circuit court to release him. No question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether the appellate court concluded that the People failed to establish the statutory criteria for pretrial detention, notwithstanding the court’s express statement that “the evidence may have been sufficient to find” that detention was warranted.
2. Whether the pretrial detention statute entitles a defendant to automatic release, rather than a new detention hearing, when the appellate

¹ “Def. Br.” and “A” refer, respectively, to defendant’s brief and appendix. “C” and “R” refer, respectively, to the common law record and report of proceedings in appeal no. 4-24-0388. Where necessary, the largely overlapping common law record and report of proceedings in appeal no. 4-24-0389 are cited, respectively, as “89C” and “89R.”

court reverses the circuit court's pretrial detention order on the ground that the manner in which the circuit court conducted the detention hearing and the court's failure to explain the reasons for its order make it impossible to determine whether the court made the statutorily required findings.

JURISDICTION

This Court allowed defendant's petition for leave to appeal on August 9, 2024. Jurisdiction lies under Supreme Court Rules 315, 604(a)(2), 604(h), 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, "comprehensively overhaul[ing] many aspects of the state's criminal justice system," including the statutory scheme governing pretrial detention. *Rowe v. Raoul*, 2023 IL 129248, ¶ 4.

The Act's amendments to the pretrial detention statute, which became effective in September 2023, *see id.*, ¶ 52, eliminated "monetary bail" as a condition of release, 725 ILCS 5/110-1.5, and prohibit detention unless the circuit court finds clear and convincing evidence that (1) "the proof is evident or the presumption great" that the defendant committed an enumerated offense; (2) "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," 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, *id.* §§ 110-6.1(a)(8), (e).

The amended statute directs the circuit court to promptly hold a hearing upon the People’s filing of a petition to deny pretrial release, *id.* § 110-6.1(e)(2), at which hearing both parties may present evidence, including by proffer, *id.* §§ 110-6.1(f)(2), (3). If the court finds that the statutory criteria for pretrial detention have been established, it must “make a written finding summarizing [its] reasons for [so] concluding . . . , including why less restrictive conditions would not” mitigate the safety threat or flight risk posed by the defendant’s release, *id.* § 110-6.1(h)(1). A defendant may appeal an order denying pretrial release, *id.* § 110-6.1(j), and such appeals generally must be resolved within 100 days of the filing of the notice of appeal, *see* Ill. S. Ct. R. 604(h)(8).

II. Facts and Procedural History

In December 2021, defendant was charged with aggravated discharge of a firearm and unlawful possession of a weapon by a felon (UPWF) in case no. 21-CF-834, C12-13, and with armed habitual criminal and two counts of UPWF in case no. 21-CF-835, 89C13-15. At the time of these offenses, defendant was on pretrial release on a separate UPWF charge in case no. 20-CF-452. C16-17.

In addition to noting the pending UPWF charge in the -452 case, the pretrial services report (PSR) listed defendant’s earlier convictions for residential burglary in 2011 and UPWF in 2014 and 2016. C17. It also

stated that defendant had failed to appear for court hearings on three prior occasions. C16. The PSR concluded that defendant's "risk of pretrial misconduct" was "high" and recommended against pretrial release. *Id.*² The circuit court set bail at \$150,000 in each case, C14, 89C16, which defendant did not post, *see* A5, ¶ 4.

In December 2023, after having waived his right to counsel, *see* C38, defendant filed identical *pro se* motions for pretrial release in both cases under the recently amended pretrial detention statute, C88, 89CR104; *see* 725 ILCS 5/110-7.5(b). The People responded with identical petitions to deny pretrial release in both cases. C133, 89C122. On the standard-form petitions, the People checked boxes alleging that detention was warranted because defendant was charged with statutorily enumerated offenses and posed both a real and present threat to the safety of others and a high likelihood of willful flight to avoid prosecution. C133-36.

The circuit court held a combined hearing on the detention petitions and other pending motions in both cases. R1-97, 89R1-97. With respect to the detention issue, the hearing focused largely on the PSR's statement that defendant previously failed to appear for three court hearings, which defendant disputed. R68-73. The court eventually summoned a pretrial

² Without explaining the seeming inconsistency, the PSR also stated that defendant's scores on a risk-assessment instrument reflected a 93% probability that he would appear for all future court hearings and 90% probability that he would commit no new offense during the pendency of the present cases. C16.

services officer, who confirmed that defendant had a single prior failure to appear. R85.

The court asked the prosecutor about defendant's criminal history and the sentencing ranges for the pending charges. R66-67, 85-87. But it did not ask the prosecutor to make a proffer or present evidence about the factual bases for the charges. *See* R61-97. Nevertheless, when addressing other motions at the same hearing, the prosecutor explained that officers conducting a traffic stop observed defendant in one of the vehicle's passenger seats near a loaded gun, and that defendant's fingerprints were found on the gun's magazine. R30-31, 93.

The court granted the People's petitions to deny pretrial release. R95. When ruling from the bench, the court explained that defendant was a flight risk due to his earlier failure to appear and because a conviction on any of the pending charges would result in a mandatory prison sentence, giving him a "reason to flee." *Id.* The court also observed that given the seriousness of the charges and defendant's prior convictions, the public would think any judge who released defendant was an "idiot." *Id.*

The court entered written detention orders the same day. C146, 89C146. On each standard-form order, a box was checked indicating that the court found, by clear and convincing evidence, that the statutory criteria for detention under the "[d]angerousness [s]tandard" — which the form orders recited — had been established. *Id.* The forms included a section for the

court’s “written findings,” but the sections were left blank. *Id.* Boxes for indicating that the court found detention warranted under the “[w]illful [f]light [s]tandard” were not checked. *Id.*

On appeal, defendant challenged the circuit court’s detention orders on two grounds. First, he argued that “the State did not meet its burden” of establishing the statutory criteria for detention. A9, ¶ 16; *see* Memorandum for Defendant-Appellant in Support of Rule 604(h) Appeal, *People v. Cousins*, Nos. 4-24-0388 & 4-24-0389 (cons.) (“Def. Mem.”), at 5-10.³ Second, he “highlighted [that] the [circuit] court did not address,” or provide an “explanation for its determination” with respect to, the third criterion — that “no condition or combination of conditions could mitigate the threat” posed by defendant’s release. A9, ¶ 16; *see* Def. Mem. 10-12.

The appellate court rejected defendant’s first contention but agreed with his second. A9-10, ¶¶ 17-18. The appellate court began by observing that the detention hearing had “proceeded in a nontraditional manner.” A9, ¶ 17. It noted, for instance, that the People “did not make a proffer or argument on the matter of defendant’s detention” and that the hearing had instead consisted primarily of a colloquy between the circuit court and defendant. *Id.* The appellate court also noted that the People’s standard-form petitions “did not assert” that no release conditions could mitigate any

³ Certified copies of the memoranda filed in the appellate court have been transmitted to this Court. *See* Ill. S. Ct. R. 318(c).

threat that defendant posed, and neither the People nor the circuit court “addressed” that criterion at the hearing. A10, ¶ 17.

The appellate court held that, in these circumstances, the circuit court could not be deemed to have fulfilled the statutory requirement to “make a written finding summarizing the court’s reasons for concluding that the defendant should be denied pretrial release, including why less restrictive conditions would not avoid [the threat posed by the defendant].” *Id.*, ¶ 18 (quoting 725 ILCS 5/110-6.1(h)(1)). “[I]n certain circumstances,” the appellate court explained, “check[ing] [a] box on a preprinted form,” as the circuit court did here, “may be sufficient to prove [that] the [circuit] court considered” the relevant criteria, but it could not suffice where, as here, there had been “no mention of pretrial-release conditions” in the detention petitions or at the detention hearing. *Id.*

The appellate court emphasized that “the evidence may have been sufficient to find [that] no condition or combination of conditions [could] mitigate the threat” posed by defendant’s release. *Id.* But it held that a new hearing was necessary because the appellate court could not “supply [that] missing conclusion,” which must “be addressed by the [circuit] court” in the first instance. *Id.* (internal quotation marks omitted).

Accordingly, the appellate court reversed the orders denying pretrial release and remanded for the circuit court to promptly hold a new detention hearing, “at which the [People] may present evidence and the [circuit] court

can make the requisite findings.” A11, ¶ 21. The court subsequently denied defendant’s petition for rehearing, in which he argued (as he does here) that the circuit court should be limited on remand to imposing release conditions.

STANDARDS OF REVIEW

Whether, and under what circumstances, the pretrial detention statute permits the appellate court, after reversing a detention order, to remand for a new detention hearing — rather than directing the circuit court to release the defendant — is a legal question that is reviewed *de novo*. See *People v. Clark*, 2024 IL 130364, ¶¶ 14-15 (interpreting statute’s timing requirement *de novo*). This Court also determines *de novo* the basis on which the appellate court reversed the circuit court’s detention order. See *People v. Webster*, 2023 IL 128428, ¶ 16 (determining the basis on which the appellate court reversed a defendant’s sentence *de novo*).

ARGUMENT

Defendant’s view that he is entitled to automatic release based on the appellate court’s reversal of the circuit court’s pretrial detention orders rests on a misreading of the appellate court’s decision. The appellate court did not reverse the detention orders, as defendant asserts, on the ground that the People had failed to establish the statutory criteria for detention. To the contrary, the appellate court held that — “[w]hile the evidence *may have been sufficient*” to warrant detention, A10, ¶ 18 (emphasis added) — reversal was required because procedural irregularities at the detention hearing and the circuit court’s failure to adequately explain the reasons for its orders made it

impossible to determine whether the circuit court had made the statutorily required findings. The appropriate remedy for these procedural deficiencies is not to automatically release a defendant who may well pose a safety threat or flight risk that cannot be mitigated with release conditions, but instead to direct the circuit court to conduct a new detention hearing and, if it again finds detention to be warranted, enter appropriate detention orders. At the very least, given the circuit court's conflicting oral and written rulings with respect to the ground on which it found that detention was warranted, it would be appropriate to remand for the court to enter new detention orders clarifying the bases for its decision.

I. The Appellate Court Correctly Remanded for a New Detention Hearing.

It is a well-accepted principle that a remedy “should be tailored to the injury suffered . . . and should not unnecessarily infringe on competing interests.” *United States v. Morrison*, 449 U.S. 361, 364 (1981); see *People v. Patrick*, 2011 IL 111666, ¶ 35. That principle supports the appellate court's order directing the circuit court to hold a new detention hearing and counsels against defendant's preferred remedy of automatic release.

To start, defendant's argument in support of automatic release rests on the mistaken premise that the appellate court found “that the State failed to meet its burden” of establishing the statutory criteria for detention. Def. Br. 7. Were that the case, defendant would be correct in arguing that remanding for a new detention hearing gave the People an improper “second bite at the

apple.” *Id.* at 5. But that was not the ground on which the appellate court reversed the circuit court’s detention orders.

In the appellate court, defendant attacked the circuit court’s detention orders on two grounds, arguing both that “the State did not meet its burden” of establishing the statutory criteria for detention, and that the circuit court erred by failing to “address” the third statutory criterion (that “no condition or combination of conditions could mitigate the threat” posed by defendant’s release) or provide an “explanation for its determination [that] this element was satisfied.” A9, ¶ 16; *see* Def. Mem. 5-12.

The appellate court agreed that reversal was warranted on the second ground. It noted that, when ordering pretrial detention, a circuit court must explain its “reasons for concluding” that detention is warranted, “including why less restrictive conditions would not” mitigate the safety threat or flight risk that the defendant posed. A10, ¶ 18 (quoting 725 ILCS 5/110-6.1(h)(1)). Yet here — because the circuit court conducted a “nontraditional” detention hearing consisting primarily of a colloquy with defendant and no proffer or argument from the People and then failed to adequately explain its findings — the appellate court was unable not only to discern the circuit court’s reasons for ordering detention, but also to determine whether the court had even “addressed” and “considered” the requisite factors. A9-10, ¶¶ 17-18.⁴

⁴ While the appellate court also appeared to fault the People for not alleging in the detention petitions that no conditions could mitigate the threats posed

But the appellate court did *not* hold, as defendant contends, “that the State failed to meet its burden to establish” the statutory criteria for detention. Def. Br. 7. To the contrary, the appellate court was careful to stress that “the evidence may have been sufficient” to support the detention orders, but that it could not “supply the [circuit court’s] missing conclusion.” A10, ¶ 18. That distinguishes this case from *People v. White*, 2024 IL App (1st) 232245, on which defendant relies, *see* Def. Br. 8, where the appellate court remanded for the circuit court to release the defendant after expressly “reject[ing] the State’s contention that its proffered facts were sufficient to justify the trial court’s denial of pretrial release,” 2024 IL App (1st) 232245, ¶ 23 (internal quotation marks omitted).

Given the appellate court’s narrower holding here, remanding for a new detention hearing was appropriate. That remedy, unlike the automatic release ordered in *White*, is “tailored to the injury [defendant] suffered,” *Morrison*, 449 U.S. at 364 — a procedurally irregular detention hearing and inadequate explanation by the circuit court of its reasons for ordering detention. Likewise, unlike automatic release, a new detention hearing will both protect defendant’s interest in pretrial release (if warranted by the evidence) *and* not unduly infringe other important interests served by the pretrial detention statute, including “the protection of [community] safety”

by defendant’s release, A10, ¶ 17, a detention petition need not include such an allegation, *see* 725 ILCS 5/110-6.1(d)(1).

and the integrity of “the criminal justice process,” 725 ILCS 5/110-2(e), in circumstances where there is clear and convincing evidence of a defendant’s dangerousness or flight risk.⁵

Defendant asserts that holding a new detention hearing would be inconsistent with the statutory presumption that all defendants are entitled to pretrial release. Def. Br. 5 (citing 725 ILCS 5/110-2(a)). But defendant will maintain the benefit of that statutory presumption at the new hearing, where he will be entitled to release unless the circuit court finds clear and convincing evidence of his guilt and that releasing him would create a flight risk or safety threat that no release conditions could mitigate. *See* 725 ILCS 5/110-6.1(e).

Defendant also argues that remanding for a new detention hearing in these circumstances will result in his “perpetual[]” pretrial detention. Def. Br. 6. But given the appellate court’s direction to the circuit court to “promptly” hold a new hearing on remand, A11, ¶ 21, and this Court’s rule

⁵ Defendant cites *People v. McCarthy-Nelson*, 2024 IL App (4th) 231582-U, ¶ 18; *see* Def. Br. 9, which mandates automatic release when a circuit court fails to timely hold a detention hearing. The same issue is pending before this Court in *People v. Cooper*, No. 130946. As the People argue there, *McCarthy-Nelson* was wrongly decided for several reasons, including (as relevant here) because automatic release is disproportionate to any injury caused by a violation of the pretrial detention statute’s timing requirements and gives short shrift to the statutory purpose of protecting the public and the court system from defendants who pose a clear safety threat or flight risk. *See United States v. Montalvo-Murillo*, 495 U.S. 711, 721 (1990) (“An order of release in the face of the Government’s ability to prove . . . that detention is required by the law has neither causal nor proportional relation to any harm caused by the delay in holding the hearing.”).

requiring expedited resolution of any subsequent appeal, *see* Ill. S. Ct. R. 604(h)(8), the concern is unfounded.

Defendant next contends that remanding for a new detention hearing in these circumstances will “incentiv[ize]” prosecutors to present inadequate evidence at an initial hearing. Def. Br. 10. Not so. While it may be true that such incentives would follow from a rule permitting a new detention hearing after a reviewing court concludes that the People failed to meet their burden of proof at an initial hearing, that was not the ground on which the appellate court ordered a new detention hearing here. Instead, as discussed, *see supra* pp. 9-11, the appellate court directed a new detention hearing because it could not determine whether the circuit court had made the findings required to support its detention orders, given the “nontraditional manner” in which the court conducted the detention hearing and the court’s failure to supplement its standard-form orders with an oral or written explanation of the reasons for its decision, A9-10, ¶¶ 17-18. Because the prosecutor was not responsible for those deficiencies, remedying them with a new detention hearing will not undermine prosecutors’ incentives to make their strongest case at the outset.

Finally, defendant asserts that ordering the circuit court to conduct a new detention hearing on remand will violate the statutory directive to hold the detention hearing “within 48 hours of the defendant’s first appearance.” 725 ILCS 5/110-6.1(c)(2); *see* Def. Br. 9. But when a circuit court conducts a

hearing in “compli[ance] with [a] statutory time period,” as the circuit court did here, “there is simply no impediment to remanding the cause for a [new] hearing” if the appellate court finds reversible error. *People v. Somers*, 2013 IL 114054, ¶ 18.

In sum, after reversing the circuit court’s pretrial detention orders, the appellate court properly directed the circuit court to conduct a new detention hearing on remand, and this Court should affirm that judgment.

II. Alternatively, a Remand for the Circuit Court to Enter New Detention Orders Is Appropriate.

Even if this Court were to conclude that the present circumstances do not warrant a new detention hearing, it should nonetheless reject defendant’s request for automatic release.

Although not mentioned by the appellate court, the circuit court’s oral ruling and written orders invoke conflicting grounds for its detention decision. When ruling from the bench, the circuit court found that defendant posed a flight risk warranting detention but did not expressly address whether it also found defendant to pose a threat to public safety that warranted detention. R95. In contrast, the court’s written order indicated that it found detention warranted under the “[d]angerousness [s]tandard” but did not indicate that detention was also warranted under the “[w]illful [f]light [s]tandard.” C146.

Given that conflict, it is appropriate, at the very least, to remand for the circuit court to clarify the grounds on which it found detention to be

warranted and allow the appellate court to then determine whether the evidence at the detention hearing — including defendant’s criminal history and the PSR’s assessment of his risk of pretrial misconduct — was sufficient to support detention.

CONCLUSION

This Court should affirm the appellate court’s judgment reversing the circuit court’s detention orders and remanding for a new detention hearing. In the alternative, this Court should modify the appellate court’s judgment to direct the circuit court on remand to enter new detention orders explaining its reasons for concluding that detention is warranted.

November 21, 2024

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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 15 pages.

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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 November 21, 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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