

No. 1-24-0506B

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 23CR1152601
)	
KEVAUN HOLLIDAY,)	Honorable
)	Patrick K. Coughlin,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justice Martin concurred in the judgment.
Justice Ocasio specially concurred.

ORDER

¶ 1 *Held:* We affirmed the decision of the circuit court that defendant should continue to be detained prior to trial.

¶ 2 Defendant, Kevaun Holliday, appeals from a determination that he should remain in custody pending trial pursuant to article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-1 *et seq.* (West 2022)), as amended by Public Act 101-652 (eff. Jan. 1, 2023), commonly known as the Pretrial Fairness Act (Act).¹ For the following reasons, we affirm.

¹ While commonly known by these names, neither the Illinois Compiled Statutes nor the forgoing public act refer to the Act as the “Safety, Accountability, Fairness and Equity-Today” Act, *i.e.*, SAFE-T Act, or the “Pretrial Fairness Act.” See *Rowe v. Raoul*, 2023 IL 129248, ¶ 4 n. 1. Certain provisions of the legislation in question were amended by Pub. Act 102-1104 (eff. Jan. 1, 2023). See *Rowe*, 2023 IL

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¶ 3 Defendant was arrested on October 3, 2023 and later charged, by indictment, with the offenses of aggravated discharge of a firearm, four counts of unlawful use of a weapon by a felon (UUWF), aggravated unlawful use of a weapon, and reckless discharge of a firearm.

¶ 4 On October 5, 2023, the State filed a verified petition to deny defendant pretrial release, pursuant to sections 5/110-2, and 6.1(a)(1) of the Code. 725 ILCS 5/110-2, 6.1(a)(1.5) (West 2022). Therein, the State generally alleged that defendant is charged with a detainable offense—UUWF—and that defendant’s pretrial release would pose 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 that no less restrictive conditions would avoid that threat. More specifically, the State alleged that defendant, a convicted felon, possessed a firearm and discharged that firearm and shots fired by defendant struck a restaurant occupied by multiple individuals.

¶ 5 On that same day, the circuit court held a detention hearing.

¶ 6 The State proffered that on October 1, 2023 at approximately 6:36 a.m., officers were dispatched to a call of shots fired at Denvers Restaurant in Posen, Cook County, Illinois (restaurant). When the officers arrived, they learned that the offender fled the shooting in a “white Dodge” (Dodge), “saw evidence of shots being fired at that location,” and made contact with eight witnesses.

¶ 7 After interviewing witnesses and reviewing video surveillance, the officers learned that defendant entered the restaurant at approximately 6:30 a.m. and placed a take-out order. After placing his order, defendant returned to the Dodge that was parked in a lot outside of the restaurant to wait for his food. Another vehicle, possibly a black sedan, entered the parking lot. “Gun fire

129248, ¶ 4. The supreme court initially stayed the implementation of this legislation but vacated that stay effective September 18, 2023. *Id.* ¶ 52.

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started to [ring] out,” with the other individual firing first at defendant. The black sedan fled from the parking lot, and defendant was outside of the Dodge discharging a firearm in the direction of the black sedan. Defendant, instead, struck the windows of the restaurant, which was occupied by eight individuals. Two bullets, likely from defendant’s gun, shattered the windows.

¶ 8 The occupants informed police that they feared for their safety and took cover to avoid injury. According to the State, “those eight individuals were—sorry, seven individuals” were ordered to remain in the restaurant while police secured the scene. A witness from a neighboring business provided police with a description of defendant and his flight from the scene. Defendant did not report the shooting to authorities.

¶ 9 The Dodge was registered to defendant at the address of 319 East 147th Place in Harvey, Cook County, Illinois (residence). Officers went to the residence and learned that defendant was being treated at a hospital for gunshot wounds.

¶ 10 On October 3, 2023, officers executed a warrant and searched the residence and the Dodge. In one of the bedrooms (defendant’s bedroom), officers discovered mail, a utility bill, a citation, and a birth certificate, all in defendant’s name. The address listed on the mail was the same address as the residence. Also located in defendant’s bedroom was a “live 45 auto Winchester round of ammunition,” the same shell casing that was recovered from the crime scene at the restaurant. In the common areas of the residence, officers found several live rounds of ammunition and three additional firearms. Officers also recovered more firearms from the roommate’s bedroom. A total of 154 rounds of ammunition were recovered throughout the residence. Defendant and his roommate were placed in custody. In the Dodge, officers found a “large caliber firearm magazine loaded that would fit a 45 caliber firearm.”

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¶ 11 As to defendant's background, the State proffered that defendant was convicted in Wisconsin of the offense of possession with the intent to deliver cannabis in 2010. Defendant does not possess a valid firearms identification card or a concealed carry license.

¶ 12 The State maintained that defendant posed a threat to safety and that no condition or combination of conditions would mitigate that threat. The actions of defendant placed the occupants of the restaurant, members of the community, in fear of their lives and put them in harm's way. Defendant fired a gun which was illegally in his possession. He was living in a residence with another convicted felon with at least five firearms at his disposal, some of which matched the caliber of the shell casings that were recovered from the restaurant.

¶ 13 An individual from pretrial services testified as to the pretrial services assessment: defendant scored a 3 on new criminal activity and a 2 on failure to appear, which "coincides with monitoring."

¶ 14 Defense counsel proffered that defendant, 30 years old, resides in Harvey with a roommate (which was consistent with the State's proffer), graduated high school, completed "some college," and has a job. As to the facts of the case, defense counsel reminded the court that defendant was at a restaurant ordering breakfast when someone started shooting at him. Defendant was acting in self-defense and did not intentionally or deliberately endanger the public. He left the scene to obtain medical treatment for bullet wounds. The court then made a record that defendant had a cast and a sling on his left arm. Defense counsel requested least restrictive conditions.

¶ 15 The court orally found that the State proved by clear and convincing evidence that the proof is evident and the presumption is great that defendant committed UUWF. As it appeared defendant was alone in the Dodge, the court concluded there were no issue as to identification and no basis to believe that someone else had the firearm and handed it to defendant.

¶ 16 The court next found that defendant posed 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 court recognized that defendant did not fire first but reasoned that defendant as a convicted felon should not have had a firearm. In returning fire, he shot toward the restaurant and endangered the occupants.

¶ 17 The court further found that no condition or combination of conditions could mitigate the threat that defendant poses. Defendant, a convicted felon, had access to multiple firearms and a large supply of ammunition. Four to five guns were found in the residence, where there was proof that defendant lived there. Further, shell casings from the crime scene potentially matched a firearm that was found at the residence.

¶ 18 The court ordered that defendant be detained and remanded to the custody of the Cook County Sheriff pending trial and entered a written order reflecting its oral findings. Defendant did not appeal from this order.

¶ 19 On February 15, 2024, defendant filed a “petition to grant pretrial release under new law” (the petition). The petition cited 725 ILCS 5/110-6.1(i-5) which requires a court to review defendant’s detention at each subsequent appearance. However, the petition also set forth the findings which a court must make relating to an initial detention hearing and claimed that those findings were not made in this case.

¶ 20 The post-detention court held a hearing on the petition on February 27, 2024. The post-detention court sought clarification as to the petition, and defense counsel confirmed that defendant was seeking a review of the initial detention order.

¶ 21 Defense counsel proffered that the shooting would not have occurred if the other individual had not first fired at defendant. Defendant was merely waiting in his car in the parking lot of the restaurant where he had ordered his breakfast.

¶ 22 The post-detention court then asked the State whether it wished to speak as to whether defendant should remain in detention. In response, the State maintained that defendant should stay in custody “because he will be a danger to the community.” The State proffered that security footage from the incident showed defendant going into and exiting the restaurant and returning to the Dodge. A black sedan pulled up next to defendant’s car. An individual exited that car and began talking to defendant. One minute later, the individual reacted to something, backed away from defendant, and began firing a handgun toward defendant. Defendant then began discharging his firearm. At the same time, windows in the restaurant began shattering. Defendant fled from the scene.

¶ 23 Officers recovered “17 spent .40 caliber casings” in two different locations, on the sidewalk and on the street. There were two “spent .45 caliber casings” where defendant had been parked. Two bullets were recovered from inside the restaurant. The restaurant was occupied by “six individuals, employees and customers.” Defendant went to the hospital and was treated for gunshot wounds, in his left arm and hand. He could not remember anything at that time.

¶ 24 In response to the post-detention court’s questions as to the subsequent search of the residence, the State explained that officers “recovered 25 rounds of ammunition, a magazine totaling five rounds, 380 ammunition, a loaded magazine holding 30 rounds, .45 caliber magazine as well as a revolver, and other ammunition as well.”

¶ 25 Having heard the proffers, the post-detention court denied the petition and stated:

“I have reviewed the defense request for pretrial release, however, I do agree in this case with the findings made by Judge Barrido on 10-5-23. I concur with the findings in his written order. I find that the presumption is great, the proof is evident, the presumption is great that the [S]tate has met by clear and convincing evidence that the defendant committed a detainable offense, that the allegations that he was firing and wound up firing in the direction of a restaurant that was occupied in what could best be described as an exchange of gunfire between him and another individual, he does pose a real and present threat to the safety of the community.

I further find that the allegations that the defendant armed himself with a firearm, even though he may have fired, the defense is arguing a self-defense, he was not entitled to possess the firearm. The fact he was in in [*sic*] possession of a firearm despite not being allowed to have one under the law; additionally, given all the additional firearm ammunition purportedly found at his residence, I don't find electronic home monitoring would mitigate the safety posed to the public if he should be released on that or some other combination of conditions especially given the fact that the defendant would be not monitored under the current Cook County EHM program for two days out of seven.

Additionally, while I could impose the EHM on the detention hearing date, EHM has to be reviewed every 60 days and that could only be maintained on subsequent court dates if there's a danger to a specific individual. I'm finding the defendant poses a threat to the community. EHM would not be an available option after 60 days.

For all those reasons, the petition to grant pretrial release will be denied. You need to be detained. I will review that should there be any new motion. I will review it on all future court dates.”

¶ 26 The post-detention court then entered two written orders, one stating, “pet[ition] for pretrial release—denied” and one stating, “remain in custody.”

¶ 27 Defendant timely appealed under Illinois Supreme Court Rule 604(h) (eff. December 7, 2023) using a form notice of appeal approved under that rule. Defendant, in his notice of appeal, seeks reversal of the trial court’s February 27, 2024 “order denying pretrial release” and requesting that he “be released with pretrial conditions.” In his notice of appeal, defendant contends that “[t]he State failed to meet its burden of proving by clear and convincing evidence that 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 “[t]he State failed to meet its burden of proving by clear and convincing evidence that no condition or combination of conditions can mitigate the 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 defendant’s willful flight.”

¶ 28 Defendant has filed a supporting record and report of proceedings; defendant and the State have each filed a memorandum. Defendant, in his memorandum, argues that the State failed to meet its burden under the “safety standard by CCE.” More specifically, defendant argues that the State never settled on the exact number of witnesses to the incident, failed to provide additional evidence as to his Wisconsin conviction, and only provided speculative evidence as to defendant’s connection to the firearms found in the residence. Defendant further argues that the post-detention court erred in considering whether the evidence showed that defendant committed the offense and the “conditions prong,” when it should have considered only the “safety standard.”

¶ 29 Pretrial release is governed by article 110 of the Code (725 ILCS 5/110 (West 2022)), as amended by the Act. Under the Code, the requirement of posting monetary bail has been abolished in Illinois as of September 18, 2023 in favor of pretrial release on personal recognizance or with

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conditions of release. See 725 ILCS 5/110-1.5 (West 2022); *Rowe*, 2023 IL 129248, ¶ 52. For qualifying offenses, upon filing a verified petition requesting the denial of pretrial release, the State has the burden to prove by clear and convincing evidence that: (1) the proof is evident or the presumption great that the defendant has committed a qualifying offense, (2) the defendant's pretrial release poses a real and present threat to the safety of any person or the community, and (3) less restrictive conditions would not avoid a real and present threat to the safety of any person or the community and/or prevent the defendant's willful flight from prosecution. 725 ILCS 5/110-2(a), 110-6.1 (West 2022).

¶ 30 If the defendant is detained pretrial, the “statute also imposes a continuing obligation for the court to assess whether continued detention is necessary.” *People v. Hongo*, 2024 IL App (1st) 232482, ¶ 21. At each subsequent hearing, the statute provides that, the circuit court must find “that continued detention is necessary to avoid 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 to prevent defendant's willful flight from prosecution.” *Id.* (citing 725 ILCS 5/110-6.1(i-5) (West 2022); *People v. Long*, 2023 IL App (5th) 230881, ¶ 15; *People v. Stokes*, 2024 IL App (1st) 232022-U, ¶ 36). The statute “does not require the court to again make specific findings that the State proved the three propositions by clear and convincing evidence as required by the initial hearing.” *Hongo*, 2024 IL App (1st) 232482, ¶ 21 (citing *People v. Casey*, 2024 IL App (3d) 230568, ¶ 13). The finding required by section 110-6.1(i-5) is subject to a less demanding standard than that required at the detention hearing. *People v. Thomas*, 2024 IL App (1st) 240479, ¶ 14 (“when the trial court found that the State presented clear and convincing evidence on all three elements required by section 110.6-1(e), that finding necessarily encompassed the continued detention finding required by section 110-6.1(i-5)”).

¶ 31 There is some debate among the appellate districts concerning the appropriate standard of review with respect to appeals from initial detention hearings under Rule 604(h). See *People v. Herrera*, 2023 IL App (1st) 231801, ¶¶ 22-24 (observing split between districts regarding abuse of discretion and manifest weight of the evidence standard under the Act); *People v. Morgan*, 2024 IL App (4th) 240103, ¶¶ 18-35 (discussing manifest weight of the evidence, abuse of discretion, and *de novo* standards of review and concluding abuse of discretion is the proper standard). We have used a two-tiered analysis and reviewed a circuit court’s determination as to the first two propositions—whether a defendant committed a detainable offense and poses a threat—under the manifest weight standard (*People v. Rodriquez*, 2023 IL App (3d) 230450, ¶ 8; *People v. Stock*, 2023 IL App (1st) 231753, ¶ 12) and the trial court’s determination that no condition or combination of conditions can mitigate the real and present threat posed by defendant under an abuse of discretion standard. See *People v. Saucedo*, 2024 IL App (1st) 232020, ¶ 36 (explaining that the circuit court “must exercise a degree of discretion to determine whether any less restrictive means will mitigate the threat”); *People v. Reed*, 2023 IL (1st) 231834, ¶ 31 (explaining that the circuit court in coming to its determination is “called upon to weigh and balance a multitude of factors”); but see *People v. Whitaker*, 2024 IL App (1st) 232009, ¶¶ 138 (Ellis, J. concurring) (explaining that *de novo* is the proper standard of review where the vast majority of detention hearings do not include live testimony and are based solely on documents and oral presentations by counsel).

¶ 32 A similar dispute exists regarding whether the circuit court’s decision on continued detention should be reviewed under the manifest weight or abuse of discretion standard. *People v. McCaleb*, 2024 IL App (1st) 240514-U, ¶ 20 (comparing *People v. Alcantara*, 2024 IL App (5th) 240195-U, ¶ 33 (manifest weight); with *People v. Casey*, 2024 IL App (3d) 230568, ¶¶ 11-13

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(abuse of discretion)). We conclude that consistent with the two-tiered approach for initial detention orders, a circuit court's decision on continued detention is subject to an abuse of discretion standard. *McCaleb*, 2024 IL App (1st) 240514-U, ¶ 20 (citing *Casey*, 2024 IL App (3d) 230568, ¶¶ 13). However, we would affirm the decision of the post-detention court under either the abuse of discretion or the manifest weight standard.

¶ 33 An abuse of discretion occurs where the court's judgment is fanciful, arbitrary, or unreasonable, or where no reasonable person would agree with the court's position. *Simmons*, 2019 IL App (1st) 191253, ¶ 9. In conducting this review, we will not substitute the circuit court's factual and credibility findings with our own. *Inman*, 2023 IL App (4th) 230864, ¶ 11. "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).

¶ 34 As an initial matter, we find defendant's claims in his notice of appeal, that the State failed to meet its burden of proving by clear and convincing evidence that 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 that no condition or combination of conditions can mitigate the 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 defendant's willful flight, and his arguments in his memorandum that relate to the State's failures to meet that burden lack merit as to his appeal from the post-detention court's denial of the petition. These arguments fail because they are based on the faulty premise that at the February 27, 2024 hearing, the State had the burden to establish the three factual findings listed in section 110-6.1(e) of the Code (725 ILCS5/110-6.1(e)(1)-(3) (West 2022)) by clear and convincing evidence. The State had that burden only at the initial pretrial

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detention hearing. *People v. Harris*, 2024 IL App (2d) 240070, ¶ 37 (“subsequent determinations are not subject to every statutory requirement that applies to initial detention hearings”); *Casey*, 2024 IL App (3d) 230568, ¶ 13.

¶ 35 In the petition, defendant argued that the court, at the initial hearing, did not make the three findings pursuant to section 110-6.1(e) and therefore he was entitled to review of that detention order. However, after defendant’s initial detention hearing, which was conducted pursuant to the Code, the court made the necessary findings under section 110-6.1(e) and ordered defendant detained pending trial. See *supra* ¶¶ 14-16. Defendant did not appeal that order and has therefore forfeited any claim of error in the initial detention order. *People v. Long*, 2023 IL App (5th) 230881, ¶ 17; *Hongo*, 2024 IL App (1st) 232482, ¶¶ 24-31; *Casey*, 2024 IL App 3d 230568, ¶¶ 11-13.

¶ 36 In his memorandum, defendant also argues that the post-detention court erred in considering whether he committed UUWF and the “conditions prong” and should have only considered the “safety standard.” We acknowledge that the post-detention court did state that he agreed with the findings from the initial detention hearing and did not explicitly state that defendant’s “continued detention was necessary to protect against a real and present threat” as required by section 110-6.1(i-5) the Code (see 725 5/110-6.1(i-5) (West 2022)). However, we do not find it necessary to remand for a new proceeding as the record shows that the post-detention court understood that the petition sought review of the initial detention order and the oral ruling shows that the post-detention court believed defendant’s continued detention was necessary to protect against a real and present threat.

¶ 37 The post-detention court based its decision that defendant should continue to be detained on the proffer and the findings from the initial detention hearing and the proffer and arguments at

the February 27, 2024 hearing. Defendant illegally possessed a firearm which he used in an exchange of gunfire in a restaurant parking lot. The restaurant was occupied at the time and the occupants were placed in danger and feared for their safety. Bullets, likely from defendant's gun, went through the windows of the restaurant. Although defendant may not have fired first, the gunfight began after some interaction between the second individual and defendant and according to the State's proffer at the initial retention hearing, defendant continued to fire at the black sedan as it left the parking lot. Additionally, based on the search of the residence and the Dodge, defendant had ready access to other firearms and a large stash of ammunition. The post-detention court concluded that electronic home monitoring would not mitigate defendant's safety threat.

¶ 38 The record supports a finding, based on the specific articulable facts of his case, that defendant's continued detention was necessary because he posed a danger—he is alleged to have committed a violent offense that put innocent individuals from the community at risk of harm while he was involved in a shooting with another individual. Further defendant, a convicted felon, possessed a firearm on the day of the incident and had access to a large amount of ammunition and other firearms in the residence.

¶ 39 Therefore, the post-detention court's decision to deny defendant's petition for release and order that he remain in custody pretrial was supported by the manifest weight of the evidence and did not constitute an abuse of discretion.

¶ 40 For the foregoing reasons, we affirm the decision that defendant continue to be detained pretrial.

¶ 41 Affirmed.

¶ 42 JUSTICE OCASIO, specially concurring:

¶ 43 I concur in the judgment. I write separately to note that I would review the court's order for continued detention *de novo* (see *People v. Whitaker*, 2024 IL App (1st) 232009, ¶¶ 79-138 (Ellis, J. concurring)) and to make two points about the trial court's obligations when entering orders for continued detention.

¶ 44 First, the trial court's finding that continued detention was necessary referred to the initial order denying pretrial release, which was entered by a different judge:

“I have reviewed the defense request for pretrial release, however, I do agree in this case with the findings made by Judge Barrido on 10-5-23. I concur with the findings in his written order.

It is not improper to reference a different judge's findings as to detention. It would, however, be improper to *rely* on those findings. In my view, a determination that continued detention is necessary must be “an independent finding based on the specific articulable facts off the case.” *People v. Shaw*, 2024 IL App (1st) 232021-U, ¶ 25. The court cannot order continued detention based solely on “a previous judge's interpretation of the specific articulable facts.” *Id.* It must first acquire “knowledge of the specific articulable facts” before it can determine whether continued detention is necessary. *Id.* Here, rather than relying on the previous judge's findings, the court stated that it “agree[d]” and “concur[red] with” those findings. Hence, no error appears on this record.

¶ 45 Second, the appellate memorandum filed on Holliday's behalf asserts that the court has no obligation to review release conditions when determining whether continued detention is necessary. To the contrary, any evaluation of the continued need for detention “necessarily entails consideration of the threat or flight risk posed by the defendant and the *potential mitigation of such threat or flight risk by conditions of release.*” (Emphasis added.) *People v. Casey* 2024 IL App

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(3d) 230568 ¶ 13. If circumstances change such that a particular defendant's threat to safety or risk of flight can be mitigated by conditions of release, ordering continued detention would violate both the text and the spirit of the Pretrial Fairness Act (see ¶ 2, *supra*). The trial court's consideration of potential release conditions was mandatory, not gratuitous.