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

No. 130618

IN THE
SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>DAMARCO WATKINS-ROMAINE,<br><br>Defendant-Appellee. | ) Appeal from the Appellate Court<br>) of Illinois, First Judicial District,<br>) No. 1-23-2479B<br>)<br>) There on Appeal from the<br>) Circuit Court of Cook County,<br>) Illinois, No. 23 CR 10584-01<br>)<br>) The Honorable<br>) Mary Margaret Brosnahan,<br>) Judge Presiding |

# BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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**ORAL ARGUMENT REQUESTED**

E-FILED
7/9/2024 10:56 AM
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SUPREME COURT CLERK

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## NATURE OF THE ACTION

The circuit court granted the People's petition seeking defendant's continued pretrial detention under article 110 of the Code of Criminal Procedure (Code), 725 ILCS 5/110-1 *et seq*. C14-15.[1] The appellate court reversed, A17, and the People now appeal from the appellate court's judgment. The question raised on the pleadings is whether the People's petition is properly construed as a responsive petition to defendant's petition requesting removal of the financial condition of his release.

## ISSUES PRESENTED FOR REVIEW

1. Whether the People may seek defendant's continued pretrial detention, when defendant was taken into custody before the Act's effective date, was granted conditional release subject to payment of monetary bail, remained in custody for failure to satisfy the bail condition, and, following the Act's effective date, filed a petition requesting removal of that condition under subsections 110-5(e) and 110-7.5(b) of the Act.

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[1] In 2021, the General Assembly enacted Public Act 101-652 (eff. Jan. 1, 2023), commonly known as the Safety, Accountability, Fairness and Equity-Today (SAFE-T) Act. *Rowe v. Raoul*, 2023 IL 129248, ¶ 4. The SAFE-T Act abolished monetary bail. *Id*. ¶ 5. In December 2022, the General Assembly enacted Public Act 102-1104 (eff. Jan. 1, 2023), known as the Follow-Up Act, which amended various provisions of the SAFE-T Act. *Id.* ¶¶ 4, 10. The SAFE-T Act, as amended by the Follow-Up Act, revised the provisions of article 110 of the Code of Criminal Procedure with respect to pretrial release. *Id*. ¶¶ 4-6. For clarity, this brief refers to the SAFE-T Act and the Follow-Up Act together as the "Act." *See generally id*.



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2. Whether, if the People's petition for defendant's continued detention under such circumstances is untimely under subsection 110-6.1(c) of the Act, such untimeliness does not constitute second-prong plain error.

## JURISDICTION

Jurisdiction lies under Supreme Court Rules 315, 604(a)(2), 604(h), and 612(b). On June 18, 2024, this Court allowed the People's petition for leave to appeal.

## STATUTORY PROVISIONS INVOLVED

**§ 110-5. Determining the amount of bail and conditions of release.**

> (e) If a person remains in pretrial detention 48 hours after having been ordered released with pretrial conditions, the court shall hold a hearing to determine the reason for continued detention. If the reason for continued detention is due to the unavailability or the defendant's ineligibility for one or more pretrial conditions previously ordered by the court or directed by a pretrial services agency, the court shall reopen the conditions of release hearing to determine what available pretrial conditions exist that will reasonably ensure the appearance of a defendant as required, the safety of any other person, and the likelihood of compliance by the defendant with all the conditions of pretrial release. The inability of the defendant to pay for a condition of release or any other ineligibility for a condition of pretrial release shall not be used as a justification for the pretrial detention of that defendant.

725 ILCS 5/110-5(e).

**§ 110-6. Revocation of pretrial release, modification of conditions of pretrial release, and sanctions for violations of conditions of pretrial release.**

> (g) The court may, at any time, after motion by either party or on its own motion, remove previously set conditions of pretrial release, subject to the provisions in this subsection. The court



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may only add or increase conditions of pretrial release at a hearing under this Section.

* * *

(i) Nothing in this Section shall be construed to limit the State's ability to file a verified petition seeking denial of pretrial release under subsection (a) of Section 110-6.1 or subdivision (d)(2) of Section 110-6.1.

725 ILCS 5/110-6(g), (i).

**§ 110-6.1. Denial of pretrial release.**

(a) Upon verified petition by the State, the court shall hold a hearing and may deny a defendant pretrial release only if:

* * *

(1.5) 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;

* * *

(c) Timing of petition.

(1) A petition may be filed without prior notice to the defendant at the first appearance before a judge, or within the 21 calendar days, except as provided in Section 110-6, after arrest and release of the defendant upon reasonable notice to defendant; provided that while such



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petition is pending before the court, the defendant if previously released shall not be detained.

(2) Upon filing, the court shall immediately hold a hearing on the petition unless a continuance is requested. If a continuance is requested and granted, the hearing shall be held within 48 hours of the defendant's first appearance if the defendant is charged with first degree murder or a Class X, Class 1, Class 2, or Class 3 felony, and within 24 hours if the defendant is charged with a Class 4 or misdemeanor offense. The Court may deny or grant the request for continuance. If the court decides to grant the continuance, the Court retains the discretion to detain or release the defendant in the time between the filing of the petition and the hearing.

* * *

(d) Contents of petition.

* * *

(2) If the State seeks to file a second or subsequent petition under this Section, the State shall be required to present a verified application setting forth in detail any new facts not known or obtainable at the time of the filing of the previous petition.

(e) Eligibility: All defendants shall be presumed eligible for pretrial release, and the State shall bear the burden of proving by clear and convincing evidence that:

(1) the proof is evident or the presumption great that the defendant has committed an offense listed in subsection (a), and

(2) for offenses listed in paragraphs (1) through (7) of subsection (a), 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, by conduct which may include, but is not limited to, a forcible felony, the obstruction of justice, intimidation, injury, or abuse as defined by paragraph (1) of Section 103 of the Illinois Domestic Violence Act of 1986, and



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> (3) 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, based on the specific articulable facts of the case, for offenses listed in paragraphs (1) through (7) of subsection (a), or (ii) the defendant's willful flight for offenses listed in paragraph (8) of subsection (a) . . .

725 ILCS 5/110-6.1.

**§ 110-7.5. Previously deposited bail security.**

> (a) On or after January 1, 2023, any person having been previously released pretrial on the condition of the deposit of security shall be allowed to remain on pretrial release under the terms of their original bail bond. This Section shall not limit the State's Attorney's ability to file a verified petition for detention under Section 110-6.1 or a petition for revocation or sanctions under Section 110-6.
>
> (b) On or after January 1, 2023, any person who remains in pretrial detention after having been ordered released with pretrial conditions, including the condition of depositing security, shall be entitled to a hearing under subsection (e) of Section 110-5.

725 ILCS 5/110-7.5.

## STATEMENT OF FACTS

The People charged defendant with attempted first degree murder, aggravated battery, discharge of a firearm, and aggravated discharge of a firearm to an occupied vehicle. *See* SR5.[2] The charges generally alleged that on November 23, 2022, defendant followed the victim's car on Interstate 57 and shot at her car 15 times, hitting her 5 times. SR5-8. Nine months later,

[2] Citations to the supplement to the report of proceedings appear as "SR__," to the report of proceedings as "R__," to the common law record as "C__," and to the appendix as "A__."



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on August 31, 2023, defendant surrendered to police. *See* C10. On September 1, 2023, the People filed a petition to detain defendant pending trial, arguing that he was required to be held without bail under 725 ILCS 5/110-4(A),[3] and the circuit court held a bond hearing that same day. SR4-6, 13.

At the bond hearing, the People proffered that the victim's boyfriend said that defendant had targeted him starting in the summer of 2022. SR6. On November 23, 2022, the victim left her boyfriend's house and was driving her car near 99th Street in Chicago when she saw a white SUV driven by a black male, which followed her as she turned onto 99th Street and then merged onto I-57. SR6-7. As the victim merged onto the highway, she heard gunshots and saw one of her car windows shatter. SR7. The victim was shot 5 times, and 18 bullets were recovered from her car. SR8.

A license plate reader identified a white SUV, registered to defendant's girlfriend, driving the same path that the victim drove on the night of the shooting, and police video footage showed the white SUV cutting off other drivers and following the victim's car. SR9-10. Officers executed a search warrant on the white SUV and found 9 mm ammunition, which was the same brand and caliber as ammunition recovered from the scene of the shooting.

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[3] 725 ILCS 5/110-4 was subsequently repealed by the Act, which, pursuant to the decision of this Court in *Rowe* vacating the Court's December 31, 2022, order staying the Act's pretrial release provisions, took effect on September 18, 2023. *See Rowe*, 2023 IL 129248, ¶ 52.



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SR11. The SUV tested positive for defendant's DNA and for gunshot residue, and defendant had purchased two boxes of ammunition of the same brand and caliber as that found at the scene and in the SUV. SR13.

Officers also executed a search warrant on defendant's phone, which showed that his phone was near the scene of the shooting when the victim was shot. SR11-12. Text messages recovered from defendant's phone, dating to August 2022, reference a home on 99th Street and state that defendant would "fuck that block up everyday." SR12. The victim's boyfriend's home is located at the intersection of 99th Street and Lowe Avenue. R6. On November 20, 2023, three days before the shooting, defendant sent messages referencing Thanksgiving and taking revenge, including one message in which defendant said, "I done got to a point where I'm saving bond money just to do what I want to do." SR12.

In opposing pretrial detention, defendant argued the weakness of the People's evidence and that he had children and was gainfully employed. SR15-16. The defense requested that the court set a "reasonable bond." SR16. Arguing for detention without bail, the People emphasized that the victim was shot five times and that defendant's DNA and ammunition matching ammunition recovered at the scene were obtained from the white SUV, as well as that defendant had made statements via text message and social media about shooting up a block on 99th Street. SR17-18.



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The circuit court found that there was compelling circumstantial evidence that defendant was the shooter and that "a substantial bond" was necessary "to assure the safety of the public in light of these allegations." SR21-22. Accordingly, the court set bond at $350,000 and ordered that defendant surrender his FOID card and any firearms in his possession. SR22-23. The court further ordered that if bond were posted, defendant would be subject to electronic monitoring. SR23. Defendant did not post bond.

On September 18, 2023, this Court's December 31, 2022, order staying the Act's pretrial release provisions was vacated, and those statutory provisions took effect. *See Rowe*, 2023 IL 129248, ¶ 52. On December 7, 2023, defendant filed a "Petition for Release from Detention," citing the Act. C3-11. Defendant's petition argued that the evidence against him was weak and that it was unjust to continue his detention because he could not afford to post the $350,000 bail that the circuit court had previously set. C6-8. The petition asserted that defendant was not a real or present threat to the safety of any person or persons and that there were conditions or a combination of conditions, including electronic monitoring, that could mitigate any real and present threat that defendant posed. C10-11.

Less than a week later, on December 13, 2023, the People filed a response, titled "Petition for Pretrial Detention Hearing." C13. The People's petition cited 725 ILCS 5/110-6.1 and requested a detention hearing. *Id*. It



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alleged that clear and convincing evidence showed that defendant had committed a forcible felony under 725 ILCS 5/110-6.1(a)(1.5), and 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. C13.

At the detention hearing — conducted the same day that the People filed their petition, R2 — the court confirmed that bond had been set at $350,000, with defendant also subject to electronic monitoring, before the Act took effect, R4. The court observed that "[t]he filing of [defendant's] motion to have the case reviewed under the [Act] has then triggered the State to file a petition for detention," and defendant acknowledged receipt of the People's petition. *Id.*

The People proffered the victim's account of the shooting, R6-7, and the incriminating messages recovered from defendant's phone, R9-10, 23-24. Additionally, the People's proffer included the DNA evidence, gunshot residue, and evidence that the ammunition recovered from the scene of the shooting was the same as the ammunition that was found in the white SUV and that defendant had purchased. R7-10, 24. Based on those specific articulable facts, the People alleged, defendant posed a real and present threat to the safety of any person or persons or the community, and no condition or combination of conditions set forth in 725 ILCS 5/110-10(b) could



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mitigate that risk. R10. Defendant did not object to the timing of the People's petition.

Defendant argued the People had not shown by clear and convincing evidence that the proof was evident or the presumption great that he committed the charged offenses. R11. As he had at the bond hearing, defendant asserted that the DNA evidence was not probative because his girlfriend owned the white SUV, and he emphasized that no firearm was recovered from the scene of the shooting. R12-13. Defendant further argued that the cell phone geolocation evidence was unreliable and that the text messages and social media posts were vague. R14-15. In mitigation, defendant emphasized that he was gainfully employed, was an active father and caregiver, and had no prior felony convictions. R17-20. Without objection from the parties, the court entered the transcript of the previous bond hearing into evidence and considered that transcript alongside the evidence presented at the detention hearing. R26.

The circuit court expressly stated at the hearing that the People showed by clear and convincing evidence that defendant was the shooter, R29-31, and the court's written order further specified that defendant posed a real and present threat to the safety of any persons or persons or the community, based on the specific articulable facts of the case, and that no condition or combination of conditions could mitigate the real and present



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threat, C14-15. Accordingly, the court ordered defendant detained and denied his motion for pretrial release. R31; C14-15.

Defendant filed a notice of appeal under Supreme Court Rule 604(h). C17-34. That notice of appeal identified defendant's arguments in favor of reversal: the People had not shown by clear and convincing that the proof was evident or the presumption great that defendant had committed the charged offenses, that he posed a real and present threat to the safety of any person or persons or the community, or that no condition or combination of conditions could mitigate the real and present threat. C19-20. The notice of appeal raised no issue related to the timeliness of the People's petition. *See* C17-22.

The appellate court reversed, holding that the People's petition for defendant's continued detention was untimely under 725 ILCS 5/110-6.1(c) because it was neither filed at defendant's first appearance before a judge nor within 21 days after defendant's arrest and release. A9, ¶ 34. Recognizing that by failing to object to the petition or raise the issue in his notice of appeal, defendant had forfeited the claim that the People's petition was untimely, the appellate court concluded that it could reach the issue of timeliness because "a misapplication of the law that affects a defendant's fundamental right to liberty constitutes plain error." A7, ¶ 27.

The People filed a petition for leave to appeal, which this Court allowed on June 18, 2024.



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## STANDARDS OF REVIEW

Issues of statutory construction are reviewed de novo, *People v. Davidson*, 2023 IL 127538, ¶ 13, and whether defendant's forfeiture is excusable as second-prong plain error is likewise a question of law that this Court reviews de novo, *People v. Jackson*, 2022 IL 127256, ¶ 25.

## ARGUMENT

The appellate court's judgment must be reversed for two independent reasons. First, the People's petition seeking defendant's continued pretrial detention was timely, either as a responsive petition under section 110-6 of the Act, as a detention petition under section 110-6.1 at defendant's first appearance before a judge following the Act's effective date, or both. Second, defendant's undisputed forfeiture of the claim that the People's petition was untimely is not reviewable as second-prong plain error because the alleged error is neither clear or obvious nor the rare type of structural error that satisfies the plain-error rule's second prong.

### I. The People's Petition for Defendant's Continued Detention was Timely.

The People's petition for defendant's continued detention, filed after defendant petitioned the circuit court to remove the financial condition on his pretrial release, was timely. Because defendant's filing sought to reopen the conditions of his release under subsections 110-5(e) and 110-7.5(b) of the Act, the People were authorized to file a responsive petition seeking to "add or increase conditions of pretrial release," 725 ILCS 5/110-6(g), up to and



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including the denial of pretrial release, *id.* § 110-6(i). Even setting section 110-6 aside, the Act's plain text permits the People to file a timely petition under subsection 110-6.1(c) to continue the detention of a defendant who was previously granted conditional release on bond. Pursuant to that subsection, the People have 21 days from the date of the defendant's first appearance before a judge *after* the Act's effective date to file such a petition, and here, the People's petition was filed within that timeframe. It would produce absurd results and undermine the clear intent of the General Assembly, as expressed through the Act's plain language, to prohibit the People from responding to a detained defendant's petition for pretrial release without conditions. Accordingly, this Court should reverse the judgment of the appellate court.

### A. The People's filing is a responsive pleading to defendant's petition for pretrial release and therefore authorized under the act.

The People filed a timely response to defendant's petition for pretrial release, which is authorized by the plain, unambiguous language of the Act. This Court's "primary goal is to ascertain and give effect to the intent of the legislature." *People v. Grant*, 2022 IL 126824, ¶ 24. The most reliable evidence of that intent "is the language of the statute itself, which must be given its plain and ordinary meaning." *Id.* Additionally, it is a "fundamental rule of statutory interpretation that all the provisions of a statute must be viewed as a whole," and thus different provisions of a statute "will be considered with reference to one another to give them harmonious effect."



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*People v. McCarty*, 223 Ill. 2d 109, 133 (2006). Finally, statutory language must be construed to avoid absurd and unintended results. *People v. Hanna*, 207 Ill. 2d 486, 498 (2003); *Davidson*, 2023 IL 127538, ¶ 18.

The Act's plain language provides that the People may file a petition seeking the defendant's continued pretrial detention when, as here, a defendant who was granted conditional release prior to the Act's effective date files a petition seeking to remove the previously imposed conditions of release and obtain release from pretrial custody. In cases such as this one, the defendant seeks reconsideration of the terms of his conditional release under subsections 110-5(e) and 110-7.5(b), and the People's responsive filing is authorized under subsections 110-6(g) and 110-6(i).

This is evident when the operative subsections are viewed in the context of the Act's overall scope and purpose. The Act replaced monetary bail with a presumption that all defendants are eligible for pretrial release, subject to the conditions of release that the circuit court deems appropriate. *See* 725 ILCS 5/110-1 *et seq.*; *Rowe*, 2023 IL 129248, ¶ 5. Under subsection 110-5(e), when a defendant remains in custody 48 hours after he is ordered released subject to conditions, the circuit court shall hold a hearing to determine the reason for the continued detention, and "shall reopen the conditions of release hearing to determine what available pretrial conditions exist that will reasonably ensure the appearance of a defendant as required, the safety of any other person, and the likelihood of compliance by the



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defendant with all the conditions of pretrial release." 725 ILCS 5/110-5(e). In addition, subsection 110-7.5(b) specifies that "any person who remains in pretrial detention after having been ordered released with pretrial conditions, including the condition of depositing security," is entitled to a hearing under subsection 110-5(e). *Id*. § 110-7.5(b). And subsection 110-7.5(a) permits any defendant who was ordered released on bond before the Act's effective date to remain released on the original terms of that bond, but expressly does not "limit the State's Attorney's ability to file a verified petition for detention under Section 110-6.1 or a petition for revocation or sanctions under Section 110-6." *Id*. § 110-7.5(a).

Section 110-6 addresses the revocation of pretrial release that has previously been granted. *Id*. § 110-6. Pursuant to subsection 110-6(g), the circuit court "may only add or increase conditions of pretrial release at a hearing under this Section." *Id*. § 110-6(g). Further, subsection 110-6(i) provides that "[n]othing in this Section shall be construed to limit the State's ability to file a verified petition seeking denial of pretrial release under subsection (a) of Section 110-6.1 or subdivision (d)(2) of Section 110-6.1." *Id*. § 110-6(i).

Within the context of this statutory framework, section 110-6's procedures for seeking revocation of pretrial release permit the People to file a responsive petition seeking a defendant's continued detention after the defendant seeks release and the removal of previously imposed conditions of



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release. Put differently, once a defendant has sought a hearing to reopen the conditions of his release, *id.* § 110-5(e), the People may seek to "add or increase conditions of pretrial release," *id.* § 110-6(g), up to and including the denial of pretrial release, *id.* § 110-6(i). When a defendant requests that the circuit court reconsider previously imposed conditions of release, "the matter returns to the proverbial square one, where the defendant may argue for the most lenient pretrial release conditions, and the State may make competing arguments." *People v. Robinson*, 2024 IL App (5th) 231099, ¶ 24 (cleaned up).

This statutory scheme operates with equal effect in a case such as this one, where the defendant was detained on bond prior to the effective date of the Act. In such cases, the defendant's filing seeking removal of the monetary condition of his release "trigger[s] consideration of defendant's pretrial release conditions under the Code, *as amended by the Act*, under which, on the State's petition, the court could deny defendant's release altogether." *People v. Davidson*, 2023 IL App (2d) 230344, ¶ 18; *accord People v. Jones*, 2023 IL App (4th) 230837, ¶ 17 (Code, as amended by Act, "allows the State to seek to modify pretrial release conditions, which includes filing a responding petition where the defendant moves for pretrial release"); *People v. Gray*, 2023 IL App (3d) 230435, ¶ 15 ("[T]he State is permitted to file a responding petition in situations such as this, where a defendant (1) was arrested and detained prior to the implementation of the Act, (2) remained in



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detention after monetary bail was set, and (3) filed a motion seeking to modify pretrial release conditions.").

Here, the appellate court ignored how sections 110-5 and 110-6 operate. While it acknowledged that the procedure available under the Act for a detained defendant in these circumstances was a hearing to reopen the conditions of release under subsection 110-5(e), the court concluded that the People were barred from seeking defendant's continued detention and the circuit court could not consider whether defendant was "eligible for release." A11-12, ¶ 39; *see also People v. Brown*, 2023 IL App (1st) 231890, ¶ 20 (reaching the same conclusion); *People v. Vingara*, 2023 IL App (5th) 230698, ¶ 22 (same). That was error for two related reasons.

First, at a hearing to reopen the conditions of release under subsection 110-5(e), the circuit court must "determine what available pretrial conditions exist that will reasonably ensure the appearance of a defendant as required, the safety of any other person, and the likelihood of compliance by the defendant with all the conditions of pretrial release." 725 ILCS 5/110-5(e). Nothing in subsection 110-5(e) precludes the circuit court from determining, once the previously imposed conditions of release have been reopened at the defendant's request, that *no* available pretrial conditions exist that will satisfy those standards. Because the circuit court is entitled to so conclude and to therefore deny pretrial release altogether, the People are necessarily permitted to file a responding petition seeking the denial of pretrial release.



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*See Davidson*, 2023 IL App (2d) 230344, ¶ 18; *Jones*, 2023 IL App (4th) 230837, ¶ 17. Second, the appellate court failed to give effect to the language of subsection 110-6(g), which explicitly allows a circuit court to "add or increase" previously imposed conditions of pretrial release at a hearing. As discussed, when a defendant remains detained and seeks to remove the conditions of previously granted pretrial release, the People's motion to continue the defendant's detention "operates as a motion to increase the pretrial release conditions to the furthest extent" pursuant to the circuit court's authority under subsection 110-6(g). *Jones*, 2023 IL App (4th) 230837, ¶ 17.[4]

Even if there were an ambiguity as to whether subsection 110-6(g)'s reference to "add[ing] or increas[ing] conditions of pretrial release"

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[4] "Increase" means "to make greater," including in terms of "size, amount, number, or intensity." *See* Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/increase (accessed July 8, 2024). Given that the circuit court may consider under subsection 110-6(g) whether to add as many conditions of a defendant's pretrial release as it deems necessary — and may make those conditions infinitely more demanding — it follows that the circuit court may alter those conditions to the point that as a practical matter, a defendant cannot satisfy them. To conclude that the circuit court may not deny pretrial release altogether when pretrial release, conditional on the payment of monetary bond, has previously been granted, as the appellate court did, is to disregard the broad authority that the Act affords to circuit courts and to encourage circuit courts to achieve the same objective by other means. Yet one of the Act's purposes was to eliminate precisely that sort of sleight of hand, which commonly prevailed before the Act took effect. *See* A1, ¶ 1. On this point, the circuit court's observation that the Act eliminated the previous system, by which trial courts often imposed monetary bail requirements as *de facto* detention orders, is instructive. *See* R30 ("If it is a detention, it should be a detention. Call it what it is . . . That is what the [Act] requires us to do.").



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encompasses the People's petition to deny pretrial release altogether, subsection 110-6(i) resolves it. That subsection specifies that "[n]othing in [section 110-6] shall be construed to limit the State's ability to file a verified petition seeking denial of pretrial release," 725 ILCS 5/110-6(i), which demonstrates the General Assembly's intent to ensure that the People may answer — by filing responsive petitions to deny pretrial release — the petitions of defendants who remain detained after being granted conditional release before the Act's effective date. *See Robinson*, 2024 IL App (5th) 231099, ¶ 25 (subsection 110-6(i) permits People to file petition to deny pretrial release in response to defendant's request to reopen previously imposed conditions of release).

Subsection 110-7.5(a) — which delineates the Act's effect on individuals such as defendant who were previously ordered conditionally released, subject to payment of monetary bail, before the Act's effective date — provides further support for the conclusion that the People's filing is a timely responsive petition. Indeed, subsection 110-7.5(a) expressly does not "limit the State's Attorney's ability to file a . . . petition for revocation . . . under Section 110-6." 725 ILCS 5/110-7.5(a). To give that plain language effect, the People must be permitted to file a responsive petition that seeks to deny pretrial release under circumstances such as those present in this case. *See People v. Whitmore*, 2023 IL App (1st) 231807, ¶ 11 (subsection 110-7.5(a) "would be rendered superfluous if . . . subsection 110-6.1(c)'s timing



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requirements strictly apply to petitions to detain defendants arrested prior to the Act's effective date"). The appellate court's contrary conclusion thwarted the General Assembly's intent as expressed by the plain language of the Act.

### B. Subsection 110-6.1(c)'s timing requirement permits the People to seek the continued detention of defendants previously granted conditional release, subject to payment of monetary bond, prior to the Act's effective date.

The plain language of the Act also allows the People to petition for pretrial detention under certain circumstances — such as when the defendant is charged with a forcible felony and his 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," 725 ILCS 5/110-6.1(a)(1.5) — including when that defendant was ordered released on bond prior to the Act's effective date. The People may file such a petition either "without prior notice to the defendant at the first appearance before a judge, or within the 21 calendar days . . . after arrest and release of the defendant upon reasonable notice to defendant." *Id.* § 110-6.1(c)(1).

As to the narrow class of defendants who were granted conditional release, subject to payment of monetary bail, before the Act's effective date and who later seek relief under the Act, principles of statutory interpretation[5] and the Act's plain text prescribe a reading of subsection 110-

[5] *See, e.g.*, *Grant*, 2022 IL 126824, ¶ 24 (statutes must be construed to ascertain and give effect to the legislature's intent); *McCarty*, 223 Ill. 2d at 133 (different statutory provisions are interpreted with reference to one



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6.1(c) that permits the People to file a petition to deny pretrial release at the defendant's "first appearance before a judge" following the Act's effective date. 725 ILCS 5/110-6.1(c).

Indeed, just as section 110-7.5 of the Act, which addresses defendants who were previously granted pretrial release conditioned on the payment of monetary bail, does not limit the People's authority under section 110-6, *supra* section I(A), it similarly does "not limit the State's Attorney's ability to file a verified petition for detention under Section 110-6.1." 725 ILCS 5/110-7.5(a). Accordingly, the Act "contemplates section 110-6.1 being used by the State to seek the detention of defendants who had been granted pretrial release with cash bail prior to the Act becoming effective." *Whitmore*, 2023 IL App (1st) 231807, ¶ 11.

Nor does it matter that many defendants who are subject to section 110-7.5's provisions had their first appearances before the circuit court weeks, months, or even years before the Act took effect. Indeed, this Court stayed the Act's implementation, including the effective date of Supreme Court Rules that specify the mechanism by which the People may seek pretrial detention under the Act, for nearly nine months. *See* Order Granting Motion for Supervisory Order, *In re: People ex rel. Berlin v. Raoul*, No. 129249 (Ill. Dec. 31, 2022); *Jones*, 2023 IL App (4th) 230837, ¶ 17. It would have

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another to give them harmonious effect); *Hanna*, 207 Ill. 2d at 498 (statutes are construed to avoid absurd and unintended results).



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been impossible in many cases for the People to file petitions to detain defendants under section 110-6.1 within 21 days of the defendant's first appearance before a judge because the Act had not yet taken effect. Accordingly, the appellate court's interpretation of subsection 110-6.1(c)'s timing requirement leads to absurd results by "unfairly punish[ing] the State for allegedly failing to comply with the Act's amendments to the Code before the Act took effect." *Jones*, 2023 IL App (4th) 230837, ¶ 21. Instead, to "give meaning to all the provisions in the Code," subsection 110-6.1(c)'s timing requirement "must be read to allow the State to petition to detain defendants who were ordered to be released on bond prior to the Act's effective date." *Whitmore*, 2023 IL App (1st) 231807, ¶ 15.

### C. To avoid absurd results, the People must have an opportunity to respond to a detained defendant's petition for pretrial release.

Indeed, this Court must conclude that the People's detention petition was timely under at least one of the rationales discussed, *supra* section I(A)-(B), lest it thwart the legislature's clear intent by producing absurd and unintended results, *see Hanna*, 207 Ill. 2d at 498 (statutes are interpreted to avoid absurd and unintended results); *Davidson*, 2023 IL 127538, ¶ 18 (same).

The appellate court's determination that "the prescribed procedure for individuals in defendant's position is a hearing only to determine the reasons for the continued detention" and that at such a hearing, the circuit court could not consider the People's petition for the defendant's continued



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detention, A11, ¶ 39, is erroneous because it deprives the People of *any* opportunity to respond to the defendant's motion seeking to remove a significant condition of pretrial release and bring about the defendant's release from custody. Nothing in the Act suggests that the General Assembly intended such an absurd result. *Cf. Hanna*, 207 Ill. 2d at 498-501 (tracing foundations of canon against absurd results and rejecting interpretation that would require attributing "nonsensical intentions" to state agency). Rather, principles of due process dictate that the People must be permitted an opportunity to respond in opposition to a detained defendant's motion for pretrial release. *See Gray*, 2023 IL App (3d) 230435, ¶ 15; *Jones*, 2023 IL App (4th) 230837, ¶ 17.

In many cases, including this one, the monetary-bail condition of release had the effect of ensuring the defendant's continued detention. Indeed, the appellate court below observed that the circuit court's imposition of a $350,000 bond functioned "as a de facto 'no bail' order." A16, ¶ 51; *see also* R30 (circuit court likewise characterized defendant's bond as *de facto* no-bail order). Thus, the appellate court's reading of subsection 110-6.1(c) would prohibit the People from filing any response in opposition to the pretrial release of a defendant who was effectively denied such release under the prior version of the Code.

Just as "basic notions of fairness dictate that a petitioner be afforded . . . a meaningful opportunity to respond to[ ] any motion or



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responsive pleading by the State," *People v. Stoecker*, 2020 IL 124807, ¶ 20 (collecting cases), there likewise exists a strong presumption that the People may respond to a motion filed by the defendant, particularly when that motion is dispositive as to whether a defendant is released from custody. *Cf. People v. Shellstrom*, 345 Ill. App. 3d 175, 179 (2d Dist. 2003) ("[A] trial court's failure to give a nonmovant notice and an opportunity to respond to a dispositive motion is inherently prejudicial."). Disregarding that presumption by prohibiting the People from responding in any way to a detained defendant's petition for pretrial release invites absurd results and should therefore be rejected.

In sum, section 110-6 permits the People to file a responsive petition seeking the continued pretrial detention of a defendant who was granted conditional release prior to the Act's effective date and later files a petition seeking to remove the previously imposed conditions of release and obtain release from pretrial custody. Additionally, subsection 110-6.1(c) permits the People to file a petition to deny pretrial release at the defendant's "first appearance before a judge" following the Act's effective date. This Court should reject the appellate court's conclusion that the People's petition was untimely under both rationales, or otherwise invite absurd results by barring the People from filing any response in opposition to a detained defendant's petition for pretrial release.



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## II. Defendant's Forfeited Claim that the People's Petition to Continue His Detention was Untimely is Not Reviewable as Second-Prong Plain Error.

### A. Defendant forfeited his claim that the People's petition to continue his detention was untimely.

It is uncontested that defendant's claim that the People's petition to continue his detention was untimely under subsection 110-6.1(c) is doubly forfeited, both because defendant did not raise any objection in the circuit court and because defendant did not include the timeliness issue in his notice of appeal.

First, as the appellate court observed, A7, ¶ 27, defendant raised no objection before the circuit court regarding the timeliness of the People's petition to continue his pretrial detention, which failure alone results in forfeiture. *See* Ill. S. Ct. R. 604(h)(2) (party appealing pretrial release order must first present issue to trial court in written motion, and any issue not so presented is "deemed waived" on appeal). Consistent application of the forfeiture rule is necessary because raising an issue for the first time on appeal wastes time and judicial resources by depriving the circuit court of an opportunity to correct the error. *Jackson*, 2022 IL 127256, ¶ 15. Moreover, defendants should not be rewarded for "sitting idly by and knowingly allowing an irregular proceeding to go forward only to seek reversal due to the error when the outcome of the proceeding is not favorable." *Id*. By not objecting to the People's petition to continue his detention or raising the issue



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of timeliness before the circuit court, defendant forfeited this issue on appeal. *Robinson*, 2024 IL App (5th) 231099, ¶ 21; Ill. S. Ct. R. 604(h)(2).

Second, defendant compounded his forfeiture by failing to raise the timeliness of the detention petition in his notice of appeal, as required in appeals from pretrial detention orders. *See* Ill. S. Ct. R. 604(h). In appeals of pretrial detention orders under Rule 604(h), "issues not 'fairly raised through a liberal construction of defendant's notice of appeal are forfeited.'" *People v. Andres*, 2024 IL App (4th) 240250, ¶ 13 (quoting *People v. Gatlin*, 2024 IL App (4th) 231199, ¶ 13). Defendant's notice of appeal did not reference the timeliness of the People's petition seeking his continued detention. *See* C17-22. Accordingly, defendant forfeited his argument that the People's petition was untimely, as he conceded before the appellate court. A6, ¶ 24.

### B. Defendant's forfeited claim is not reviewable as second-prong plain error.

Defendant's forfeiture cannot be excused as plain error because the alleged error is not the equivalent of structural error, as required to satisfy this Court's second-prong plain error standard. Review of a forfeited error under the plain-error rule is proper only in rare circumstances: if the error was "clear or obvious," *Jackson*, 2022 IL 127256, ¶ 21, and either (1) "the evidence was so closely balanced the error alone severely threatened to tip the scales of justice," or (2) "the error was so serious it affected the fairness of the trial and challenged the integrity of the judicial process," *People v. Moon*, 2022 IL 125959, ¶¶ 23-24 (citations omitted). Second-prong plain errors are



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structural, meaning they are fundamental constitutional errors that defy harmless error analysis. *See id.* ¶ 28; *Jackson*, 2022 IL 127256, ¶¶ 28-29, 49.

None of the plain-error rule's requirements for excusing forfeiture applies here. The circuit court's consideration of the People's petition is consistent with numerous appellate court decisions interpreting subsection 110-6.1(c)'s timing requirements and thus does not constitute clear or obvious error, even if this Court were to ultimately interpret the statute differently. Moreover, the asserted error — consideration of the People's responsive pleading under subsection 110-6.1(c) instead of under subsection 110-5(e) — is not structural error.

**1. The circuit court's resolution of a question of statutory interpretation on which the appellate courts are split is not a clear or obvious error.**

Given that the appellate court is divided on questions of statutory interpretation related to the timeliness of a section 110-6.1 detention petition under the circumstances presented here, the circuit court did not commit clear or obvious error by taking a position consistent with one side of that divide. This is true even if this Court ultimately holds in favor of the other side of the split in authority. An error is clear or obvious only when it "just about leap[s] off the pages of the record." *People v. Manskey*, 2016 IL App (4th) 140440, ¶ 82 ("Arguable error is not enough. Mere error is not enough."); *see also United States v. Christian*, 673 F.3d 702, 708 (7th Cir. 2012) (error is clear or obvious "when it is so obvious that the trial judge and prosecutor were derelict in countenancing it, even absent the defendant's



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timely assistance in detecting it") (internal quotation marks omitted). In other words, an error is not clear or obvious "if the law was unclear at the time of trial but becomes clear on appeal because the applicable law has been clarified." *In re M.W.*, 232 Ill. 2d 408, 431 (2009) (cleaned up).

It is not clear or obvious that a petition to detain a defendant is untimely when a defendant has requested a hearing to reopen the conditions of his release detention under subsections 110-5(e) and 110-7.5(b). Numerous appellate decisions reaching the opposite conclusion to the appellate court in this case demonstrate that the law concerning timeliness of a section 110-6.1 detention petition was unclear at the time the circuit court considered the People's detention petition. Accordingly, even if the circuit court's consideration of the petition was error — and it was not — the error was not clear or obvious. *See In re M.W.*, 232 Ill. 2d at 431. Indeed, if this Court were to reach an opposite conclusion on this question of statutory interpretation, the error would only become clear or obvious once the "applicable law [were] clarified," *id.*, which would not have been the case at the time the circuit court rendered its decision.

Courts around the country have recognized that when there is no contrary authority from the state high court, and the appellate courts are split on a question of law, a circuit court does not commit plain error by taking one side of that split. *See, e.g.*, *State v. Barnes*, 759 N.E.2d 1240, 1248 (Ohio 2002) ("The lack of a definitive pronouncement from this court and the



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disagreement among the lower courts preclude us from finding plain error."); *accord United States v. Hosseini*, 679 F.3d 544, 548 (7th Cir. 2012) ("[T]he unsettled state of the law means that the claimed error is not plain."); *United States v. Obiora*, 910 F.3d 555, 564 (1st Cir. 2018) ("With respect to matters of law, an error will not be clear or obvious where the challenged issue of law is unsettled.") (citation omitted); *see also United States v. Alli-Balogun*, 72 F.3d 9, 12 (2d Cir. 1995) ("[W]e do not see how an error can be plain error when the Supreme Court and this court have not spoken on the subject, and the authority in other circuit courts is split."); *United States v. Marshall*, 307 F.3d 1267, 1270 (10th Cir. 2002) (same); *United States v. Thompson*, 82 F.3d 849, 856 (9th Cir. 1996) (same). That principle applies with particular force here, where the issue that has divided the appellate districts in the months since the Act took effect involves a complex question of statutory interpretation.

As discussed, *supra* section I, numerous appellate court decisions have agreed with the People that a detention petition is timely under the circumstances presented here, generally adopting at least one of two overlapping rationales. *Compare, e.g., Davidson*, 2023 IL App (2d) 230344, ¶ 18 (Act authorizes People to file responsive petition seeking detention after defendant files petition for release); *Gray*, 2023 IL App (3d) 230435, ¶ 15 (same); *People v. McDonald*, 2024 IL App (1st) 232414, ¶ 28 (same); *People v. Thomas*, 2024 IL App (1st) 232418-U, ¶ 18 (same) *with Whitmore*, 2023 IL



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App (1st) 231807, ¶¶ 15-16 (subsection 110-6.1(c)'s timing requirement allows People to petition for detention of a defendant ordered released on bond prior to Act's effective date and who later seeks relief under Act); *People v. Haisley*, 2024 IL App (1st) 232163, ¶¶ 20-22 (same); *People v. Stone*, 2024 IL App (1st) 232359-U, ¶¶ 20-21 (same). By treating the People's petition to detain as timely, the circuit court reasonably could have adopted either or both rationales.[6] Given the number of appellate court decisions to have adopted one or both of these rationales, it was certainly not clear or obvious error for the circuit court to do so as well. In sum, the circuit court's resolution of an unsettled question of statutory interpretation by adopting a rationale that several appellate court panels have also endorsed does not constitute clear or obvious error.

**2. A circuit court's consideration of a detention petition under section 110-6.1, rather than subsection 110-5(e), is not a structural error reviewable as second-prong plain error.**

Not only did defendant fail to demonstrate a clear or obvious error, but the appellate court erroneously invoked the second prong of the plain-error rule to excuse defendant's forfeiture of the claim that the circuit court erred by reviewing the People's petition for pretrial detention under section 110-

[6] The circuit court's observation that "[t]he filing of [defendant's] motion to have the case reviewed under the [Act] has then triggered the State to file a petition for detention," C4, suggests that the court viewed the People's petition as a responding petition, but it does not foreclose the possibility that the court also considered the petition as timely under section 110-6.1. *See, e.g., Jones*, 2023 IL App (4th) 230837, ¶¶ 17, 20-24 (adopting both rationales).



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6.1, rather than as part of a hearing to determine the reasons for continued detention under subsections 110-5(e) and 110-7.5(b). A7, ¶ 27. The appellate court's analysis is wrong for several reasons. For starters, defendant never alleged, and the appellate court did not find, an error of constitutional dimension, as is necessary to find second-prong plain error. Nor does the asserted error undermine the integrity of the judicial process. Finally, unlike structural errors, a circuit court's consideration of a detention petition under section 110-6.1 rather than under subsections 110-5(e) and 110-7.5(b) is amenable to harmless error analysis.

**a. Defendant's claim that the circuit court considered whether to continue his detention under the wrong statutory subsection does not allege a constitutional error that undermines the integrity of the judicial process.**

The appellate court's conclusion that defendant's forfeiture is excusable as second-prong plain error, A7, ¶ 27, fails at the threshold because the asserted error is not of constitutional dimension. Nor does it undermine the integrity of the judicial process. Because a continued-detention hearing under subsections 110-5(e) and 110-7.5(b) addresses the same issues as a detention hearing under section 110-6.1, the circuit court at most committed a "mere error[] in the trial process itself," *Jackson*, 2022 IL 127256, ¶ 29, rather than a structural error of the type that may be reviewed under the plain-error rule's second prong.



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The appellate court concluded that by considering the detention petition under section 110-6.1, the circuit court misapplied the law in a way that affected defendant's "fundamental right to liberty," which constituted plain error sufficient to excuse defendant's forfeiture. A7, ¶ 27 (citing *Brown*, 2023 IL App (1st) 231890, ¶ 27). But the appellate court's plain-error analysis misses the mark because it fails to apply this Court's precedents equating second-prong plain error with structural error.

As an initial matter, the circuit court's asserted error in interpreting the Act to allow the People to proceed under section 110-6.1, rather than subsections 110-5(e) and 110-7.5(b), is not a "fundamental constitutional error," which is the threshold requirement for structural error. *United States v. Davila*, 569 U.S. 597, 611 (2013); *see Jackson*, 2022 IL 127256, ¶¶ 53, 67 (no structural error where asserted violation did not relate to fundamental constitutional right). Indeed, even the appellate court below did not hold that the circuit court's error was of constitutional dimension.

Nor would there be any basis to support such a conclusion. The Illinois Constitution establishes a limited right to pretrial release, which does not apply when "the proof is evident or the presumption great" that the defendant has committed certain felony offenses, and "when the court, after a hearing, determines that release of the offender would pose a real and present threat to the physical safety of any person." Ill. Const. 1970, art. I, § 9; *see also Rowe*, 2023 IL 129248, ¶ 25. Thus, the only constitutional right



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at issue is the defendant's right to a hearing to determine whether those standards are satisfied. *People v. Presley*, 2023 IL App (5th) 230970, ¶¶ 41-42; Ill. Const. 1970, art. I, § 9.

Here, there is no dispute that defendant received such a hearing (at which the circuit court found that the standards for denying pretrial release were satisfied, C14-15). *See Presley*, 2023 IL App (5th) 230970, ¶ 42 (a defendant's constitutional rights in this context "only require a hearing — which occurred here"). Regardless of whether that hearing was characterized as a hearing on a petition for pretrial detention under section 110-6.1, or as a hearing to reopen the conditions of release under subsections 110-5(e) and 110-7.5(b), defendant indisputably received the full constitutional process to which he was entitled. So, the alleged error did not infringe on any constitutionally secured right.

Moreover, even if the circuit court's consideration of the People's petition for detention under section 110-6.1 of the Act, rather than under subsections 110-5(e) and 110-7.5(b), could be considered a "fundamental constitutional error," it would not be a structural error because it does not undermine the integrity of the judicial process. The plain-error rule's second prong permits review of certain unpreserved errors, regardless of the error's effect on the outcome of proceedings, because "when a trial error is of such gravity that it threatens the integrity of the judicial process, the courts must act to correct the error so that the fairness and the reputation of the process



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are preserved and protected." *Moon*, 2022 IL 125959, ¶ 27; *see also id*. ¶¶ 20, 24.

That is not the case here. The question of whether a hearing on the People's petition to continue a defendant's detention is characterized as a hearing on a petition to deny pretrial release under section 110-6.1, or as a hearing to reopen the conditions of release under subsections 5(e) and 110-7.5(b), does not undermine the integrity of the judicial process. Under either statutory provision, the circuit court is tasked with determining whether the People have shown by clear and convincing evidence that (1) "the proof is evident or the presumption great" that the defendant has committed the charged detainable offense, (2) the defendant's pretrial release "would pose a real and present threat to the physical safety of any person," and (3) "no condition or combination of conditions" can mitigate that threat. 725 ILCS 5/110-6.1(e); *see also Presley*, 2023 IL App (5th) 230970, ¶¶ 41-42; Ill. Const. 1970, art. I, § 9.

Put differently, in the context of pretrial detention proceedings, the primary mechanism for protecting a defendant's limited right to pretrial release is a hearing, at which the circuit court determines whether pretrial detention is proper under the standards delineated by the Act and Article I, section 9 of the Illinois Constitution. *Presley*, 2023 IL App (5th) 230970, ¶¶ 41-42; *see generally* 725 ILCS 5/110-6.1; *id*. § 5/110-5(e). When the circuit court conducts such a hearing and applies the substantively correct



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standards for assessing pretrial detention, the defendant's detention proceedings are "fundamentally fair even though an error in [characterizing the hearing under section 110-6.1 instead of under subsections 110-5(e) and 110-7.5(b)] occurred." *Jackson*, 2022 IL 127256, ¶ 49.

Thus, the circuit court's consideration of the detention petition under section 110-6.1 rather than subsections 110-5(e) and 110-7.5(b) did not substantively alter the judicial proceedings at all, much less constitute the rare type of error that requires a reviewing court to excuse a defendant's forfeiture and act to preserve and protect the judicial system's reputation. *See Moon*, 2022 IL 125959, ¶ 27.

**b. A claim that the circuit court considered whether to continue a defendant's detention under an inapplicable statutory subsection is subject to harmless error analysis and therefore cannot be structural error.**

Defendant's forfeited claim is not reviewable as second-prong plain error for the additional reason that it is amenable to harmless error analysis. "An error that is amenable to harmless error analysis is not a structural error" and may not be noticed as second-prong plain error. *People v. Logan*, 2024 IL 129054, ¶ 80; *see also Jackson*, 2022 IL 127256, ¶ 37; *id.* ¶ 49 ("[S]econd-prong plain error can be invoked only for structural errors that are not subject to harmless error analysis."). And because a claim that the circuit court considered a petition to detain a defendant under section 110-6.1 rather than subsections 110-5(e) and 110-7.5(b) is amenable to harmless error



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analysis, defendant's claim does not allege a structural error, and his forfeiture may not be excused as second-prong plain error.

Where, as here, the reviewing court "can conclude, by evaluating the record, whether the [challenged proceeding] was fundamentally fair even though [the error] occurred," the error is subject to harmless error analysis. *Jackson*, 2022 IL 127256, ¶ 49. Whether the error is viewed as one error of constitutional dimension or not, this Court can determine whether any error was harmless. *Compare, e.g., People v. Nevitt*, 135 Ill. 2d 423, 447 (1990) (nonconstitutional error is harmless "where there is no *reasonable probability*" of a different outcome absent the error (emphasis added)), *with Chapman v. California*, 386 U.S. 18, 24 (1967) ("before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless *beyond a reasonable doubt*" (emphasis added)).

Under either standard, the Court can determine that the alleged error was harmless because the standards for denying pretrial release are identical under either statutory subsection. *See Davidson*, 2023 IL App (2d) 230344, ¶ 18 (explaining that defendant's subsection 110-5(e) motion "triggered consideration of defendant's pretrial release conditions under the Code *as amended by the Act*, under which, on the State's petition, the court could deny defendant's release altogether") (emphasis in original). In other words, the Court can say not only that there was no reasonable probability of a different outcome, but also that the alleged error was harmless beyond a reasonable



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doubt, because proceedings and the applicable standards would have been *exactly the same* had the circuit court treated them as proceedings under subsections 110-5(e) and 110-7.5(b), rather than under section 110-6.1.

Any error in characterizing a hearing that occurs in this procedural posture as arising under section 110-6.1 is therefore subject to harmless error analysis — and, indeed, is presumptively harmless — and thus is not a structural error reviewable as second-prong plain error.

## CONCLUSION

For these reasons, the People of the State of Illinois respectfully request that this Court reverse the judgment of the appellate court.

July 9, 2024

Respectfully submitted,

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**RULE 341(c) CERTIFICATE OF COMPLIANCE**

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, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 37 pages.

/s/ Jeremy M. Sawyer
JEREMY M. SAWYER
Assistant Attorney General

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# APPENDIX

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**Document**



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2024 IL App (1st) 232479

No. 1-23-2479B

Opinion filed March 18, 2024

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

| | | |
|---|---|---|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 23 CR 10584 |
| | ) | |
| DAMARCO WATKINS-ROMAINE, | ) | Honorable |
| | ) | Mary Margaret Brosnahan, |
| Defendant-Appellant. | ) | Judge, presiding. |

JUSTICE LAMPKIN delivered the judgment of the court, with opinion.
Justices D.B. Walker and R. Van Tine concurred in the judgment and opinion.

**OPINION**

¶ 1 In the proceedings below, the trial court observed that even relatively low monetary bail requirements frequently operated as *de facto* "no bail" orders for those without financial means under our previous system of bail. When the General Assembly used Public Act 101-652 (eff. Jan. 1, 2023), commonly known as the Pretrial Fairness Act, to amend article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/art. 110 (West 2022)), it enacted sweeping bail reform. See *Rowe v. Raoul*, 2023 IL 129248, ¶ 4 & n.1 (noting neither "(SAFE-T) Act" nor "Pretrial Fairness Act" are "official" names but common shorthand for sequence of public acts).



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One such change was the complete abolition of monetary bail. 725 ILCS 5/110-1.5 (West 2022). This meant that pretrial detention or release would be based on the unique circumstances of the case and the defendant, and never on the defendant's financial means. See, *e.g.*, *id.* §§ 110-5, 110-6.1. The legislature also implemented a mechanism to address those defendants who were ordered released pursuant to conditions but who nevertheless remained in custody after these bail reforms went into effect. See *id.* § 110-7.5.

¶ 2 Defendant Damarco Watkins-Romaine appeals the trial court's order denying him pretrial release pursuant to section 110-6.1 of the Code. *Id.* § 110-6.1. At issue in this appeal is the scope of the State's power to petition for the pretrial detention of defendants who were previously ordered released prior to the Code's amendment but remained in custody through no fault of their own.

¶ 3 For the reasons that follow, we reverse the judgment of the trial court and remand.

¶ 4 I. BACKGROUND

¶ 5 The State charged defendant with five counts of attempted first degree murder, one count of aggravated battery with a firearm, and one count of aggravated discharge of a firearm, all stemming from an incident that took place on November 23, 2022.[1] At an initial bond hearing on September 1, 2023, the State requested a "no bail" order. Citing the highly circumstantial nature of the evidence, the trial court rejected the State's request, finding that the State had not demonstrated that the proof was evident or the presumption was great that defendant committed the charged offenses. However, the trial court imposed a bond of $350,000-D and ordered

[1]The record does not contain the charging documents, so we have recited the allegations as they are listed throughout various pleadings in the record and the memoranda filed with this court.



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defendant to surrender his Firearm Owner's Identification (FOID) card and any firearms. The trial court also ordered electronic monitoring until further order of court. As far as the record indicates, defendant was never released.

¶ 6 Shortly after the trial court's ruling, the General Assembly's amendments to article 110 of the Code went into effect on September 18, 2023. *Rowe*, 2023 IL 129248, ¶ 52.

¶ 7 On December 7, 2023, defendant filed a petition for release from detention, citing sections 110-5 and 110-7.5(b) of the Code. Even though defendant was in custody, the State filed a petition for pretrial detention. At a hearing on December 13, 2023, both parties provided factual proffers.

¶ 8 The State's Proffer[2]

¶ 9 According to the State, the victim left her boyfriend's house at 10:18 p.m. on November 23, 2022, after assisting with preparations for Thanksgiving dinner. She got into her car and noticed a white SUV parked next to her. As she drove, the white SUV followed her through multiple turns and, at one point, even cut through a gas station. The victim merged onto Interstate 57 (I-57), and the SUV continued to follow her. As she was driving in the rightmost lane, gunfire shattered one of her windows, and she saw a black male with short hair and facial hair firing at her from the SUV. She pulled over and called 911, and an officer found her alongside the road in a pool of blood inside the vehicle. The victim sustained two gunshot wounds to each leg, as well as one to the stomach. A number of 9-millimeter cartridge cases were located on the expressway.

¶ 10 The white SUV was ultimately identified as belonging to defendant's girlfriend, who told investigating officers that she had not driven the vehicle in some time because she lost the keys. She later told officers that she allowed her cousin to borrow the vehicle and he returned it around

[2]Although the proffer was not identical to the one made on September 1, 2023, there was no new information or new incidents to differentiate the two.



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10 p.m. on the night in question. A search of the SUV yielded ammunition consistent with the "make and model" of the spent casings recovered from I-57. The vehicle was also swabbed for DNA, some of which matched defendant's.

¶ 11 Defendant's phone was seized when he was taken into custody on an unrelated matter, and it was discovered that defendant's phone was in the vicinity of the shooting at the relevant time. Messages on defendant's phone, as summarized by the State, referenced "Thanksgiving and taking revenge" and that defendant had a "prior beef, for lack of a better term, with the victim's boyfriend." The home the victim left just prior to the shooting was that of her boyfriend. Another message stated, "I have done got to a point where I'm saving bond money just to do what I want to do." A Facebook post also referenced "shooting up" the victim's boyfriend's house.

¶ 12 Finally, defendant possessed a FOID card and had previously purchased multiple firearms, as well as ammunition that was the same caliber and brand as the casings recovered at the scene and the live rounds found in the SUV.

¶ 13 The State made conclusory statements that defendant poses a real and present threat to the community and that no condition or combination of conditions could mitigate that threat and asked that the trial court detain defendant.

¶ 14 Defendant's Proffer

¶ 15 According to defense counsel, the victim was unable to identify defendant and described the shooter as a light-skinned black male, while defendant is a dark-skinned black male. The victim also told police that she believed it was probably her ex-boyfriend, a different individual from defendant, who shot her.

¶ 16 The DNA profiles of four unidentified people, in addition to defendant's DNA, were found inside the SUV. The unidentified DNA was found on the steering wheel, the gear shift lever, and



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some cigarette butts. Fingerprints found on the SUV's rearview mirror also did not match defendant's fingerprints.

¶ 17 Differing from the State's proffer, defense counsel asserted that defendant's girlfriend claimed her cousin borrowed the SUV and returned it "between 10:00 and 11:00 that evening." The cousin was killed in a homicide two days later.

¶ 18 None of the shell casings recovered could be verified to contain defendant's DNA, as none of the samples were suitable for testing, and defense counsel disputed the relevancy of the cell tower data, claiming that cell phones use the tower that provides the best signal and not necessarily the closest one. Defense counsel also pointed out that there was no proof defendant was the one who authored the text messages or Facebook post and that they made no reference to any particular person.

¶ 19 Finally, defense counsel stated that defendant was 29 years old, his family lived in the Cook County area, he owned his own catering business, and he served as the primary financial provider for his girlfriend and their two children. Defendant had no prior felony convictions, no history of violence, and no instances of bond forfeitures, and he was not on parole or probation at the time he was arrested for the instant offense.

¶ 20 At no time did defendant object to the State's filing of a petition for detention.

¶ 21 The Trial Court's Ruling

¶ 22 The trial court granted the State's petition for detention, and it found that the State proved by clear and convincing evidence that the proof was evident or the presumption was great that defendant committed the charged offenses. Its oral pronouncement did not address whether the State met its burden as to the dangerousness element or whether any combination of conditions could mitigate the threat posed by defendant. Regarding these second and third elements, the trial



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court's written order recited the facts that defendant shot the victim five times, that defendant made Facebook posts and sent text messages threatening to "shoot up" the victim's boyfriend's house, and that he was saving up bond money.

¶ 23 During its discussion of its ruling, the trial court referenced defendant's prior bond amount, stating:

> "In this case it was $350,000-D, which operated as a no-bail in this case and did in many, many cases. In fact, I think that was one of the arguments for reform because the reality was for many people without financial means, even a $20,000-D bond in any case could operate as a no-bail. That is one of the main arguments for bond court reform which this Court is in agreement with.
>
> If it is a detention, it should be a detention. Call it what it is. Versus saying a $1,000,000 D-bond on a person who is not working. That is a no-bail. So call it what it is. That is what the new statute requires us to do."

¶ 24 Defendant timely appealed the detention order (Ill. S. Ct. R. 604(h)(2) (eff. Oct. 19, 2023)), and both parties filed a memorandum. On appeal, defendant argues that the State failed to meet its burden of proof on every element. Defendant also argues that the State's petition for detention was untimely, though he acknowledges that this issue was not properly preserved.

¶ 25 II. ANALYSIS

¶ 26 The central question before us is whether the Code, outside of the specific timing requirements of section 110-6.1(c), permits the State to seek the pretrial detention of an individual who is already in custody because he was granted bail under the previous statutory scheme but who nevertheless could not satisfy one of the conditions of his release.



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¶ 27 Defendant did not object to the State's petition for pretrial detention, nor was this issue raised in defendant's Rule 604(h) notice of appeal. However, we may still reach this issue because a misapplication of the law that affects a defendant's fundamental right to liberty constitutes plain error. *People v. Brown*, 2023 IL App (1st) 231890, ¶ 12 (citing *People v. Smith*, 2016 IL App (1st) 140496, ¶ 15). "Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967).

¶ 28 The question of whether the State's petition for detention was timely is one of statutory construction, which we review *de novo*. *People v. Taylor*, 2023 IL 128316, ¶ 45. A court's fundamental objective in addressing issues of statutory construction is to ascertain and give effect to the legislature's intent. *Id.* The plain language of a statute is the most reliable indication of the legislature's objectives in enacting that particular law. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). In determining the legislature's intent, a court " 'may consider the reason and necessity for the law, the evils it was intended to remedy, and its ultimate aims.' " *Taylor*, 2023 IL 128316, ¶ 45 (quoting *People v. Pullen*, 192 Ill. 2d 36, 42 (2000)). In addition, we presume that, in enacting the statute, the legislature did not intend to produce absurd, inconvenient, or unjust results. *Id.*

¶ 29 Where the statutory language is clear and unambiguous, we will enforce it as written and will not read into it exceptions, conditions, or limitations that the legislature did not express. *Sigcho-Lopez v. Illinois State Board of Elections*, 2022 IL 127253, ¶ 27. The terms in a statute are also not to be considered in a vacuum. *Corbett v. County of Lake*, 2017 IL 121536, ¶ 27. Rather, the words and phrases in a statute must be construed in light of the statute as a whole, with each provision construed in connection with every other section. *Id.* Furthermore, the statute should be



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read so that no term is rendered superfluous or meaningless. *JPMorgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill. 2d 455, 461 (2010).

¶ 30 Section 110-6.1(c) of the Code sets out specific time limitations that dictate when the State may file a petition for pretrial detention. Such a petition may be filed either (1) at the defendant's first appearance before a judge without notice to the defendant or (2) within 21 calendar days after the defendant was arrested *and* released, with reasonable notice to the defendant. 725 ILCS 5/110-6.1(c)(1) (West 2022).

¶ 31 Section 110-7.5 of the Code specifically addresses individuals like defendant who were arrested prior to the amended Code's effective date. In relevant part, section 110-7.5 provides:

> "(a) On or after January 1, 2023, any person having been previously released pretrial on the condition of the deposit of security shall be allowed to remain on pretrial release under the terms of their original bond. This Section shall not limit the State's Attorney's ability to file a verified petition for detention under Section 110-6.1 or a petition for revocation or sanctions under Section 110-6.
>
> (b) On or after January 1, 2023, any person who remains in pretrial detention after having been ordered released with pretrial conditions, including the condition of depositing security, shall be entitled to a hearing under subsection (e) of Section 110-5." *Id.* § 110-7.5(a), (b).

¶ 32 Section 110-5(e) provides detail on the hearing to which a defendant is entitled:

> "If a person remains in pretrial detention 48 hours after having been ordered released with pretrial conditions, the court shall hold a hearing to determine the reason for continued detention. If the reason for continued detention is due to the unavailability or the



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> defendant's ineligibility for one or more pretrial conditions previously ordered by the court or directed by a pretrial services agency, the court shall reopen the conditions of release hearing to determine what available pretrial conditions exist that will reasonably ensure the appearance of a defendant as required, the safety of any other person, and the likelihood of compliance by the defendant with all the conditions of pretrial release. The inability of a defendant to pay for a condition of release or any other ineligibility for a condition of pretrial release shall not be used as a justification for the pretrial detention of that defendant." *Id.* § 110-5(e).

¶ 33 *Brown* confronted a similar issue where the defendant was granted release with electronic monitoring under the prior system of bail on June 24, 2023. *Brown*, 2023 IL App (1st) 231890, ¶ 3. As of September 26, 2023, when the defendant filed a petition to modify the conditions of his release and the State filed a petition for detention, the defendant remained in custody and had not been released. *Id.* ¶ 5. Even though the defendant had been previously ordered released, the trial court granted the State's petition for pretrial detention. *Id.* ¶ 8. We reversed, finding that the State's petition was not timely because it was not filed for three months after the defendant's first appearance before a judge. *Id.* ¶ 13.

¶ 34 Defendant's circumstances in the case at bar are not meaningfully different. An initial bond hearing was held on September 1, 2023, at which time the State requested that the trial court enter a "no bail" order. The State did not file its petition for detention until December 7, 2023, which was not at defendant's first appearance. Nor did the State file its petition within 21 days of defendant's arrest and release—it could not have been because defendant was never released. *Id.* § 110-6.1(c)(1). Thus, like in *Brown*, the State's petition here was untimely.



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¶ 35 We acknowledge that other courts have interpreted these timeliness requirements differently. In *Whitmore*, for example, this court held that "for individuals detained prior to the effective date of the Act who elect to seek relief under the amended Code—and only for such individuals—the State may file a petition for the denial of pretrial release 'at the first appearance before a judge' after the effective date of the Act." *People v. Whitmore*, 2023 IL App (1st) 231807, ¶ 15 (quoting 725 ILCS 5/110-6.1(c) (West 2022)). This conclusion was based upon the fact that section 110-7.5(a) of the Code states that " '[t]his Section shall not limit the State's Attorney's ability to file a verified petition for detention.' " *Id.* ¶ 11 (quoting 725 ILCS 5/110-7.5(a) (West 2022)).

¶ 36 The Fourth District in *Jones* resolved this timeliness issue by noting that section 110-6 of the Code allows the trial court, after motion by either party or on its own motion, to modify conditions of release at any time. *People v. Jones*, 2023 IL App (4th) 230837, ¶ 16; 725 ILCS 5/110-6 (West 2022). Therefore, *Jones* concluded, a petition for detention "operates as a motion to increase the pretrial release conditions to the furthest extent." *Jones*, 2023 IL App (4th) 230837, ¶ 17. *Jones* also reasoned that, once a defendant seeks to have his pretrial release conditions reviewed, "the matter returns to proverbial square one." *Id.* ¶ 23. Several other courts have adopted *Jones*'s reasoning. See, *e.g.*, *People v. Gray*, 2023 IL App (3d) 230435, ¶¶ 14-15 (where the defendant was arrested and detained prior to the implementation of the amended Code, remained in detention, and filed a motion to modify conditions of pretrial release, the State may file a petition for pretrial detention); *People v. Robinson*, 2024 IL App (5th) 231099, ¶ 24.

¶ 37 As in *Brown*, we reject these interpretations. *Brown*, 2023 IL App (1st) 231890, ¶ 20. *Whitmore*'s holding that the Code permits the State to file a petition at the defendant's first



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appearance "after the effective date of the Act" requires a reading of the Code that its plain language cannot bear. (Internal quotation marks omitted.) *Whitmore,* 2023 IL App (1st) 231807, ¶ 15. Nowhere does the Code provide that the State may file a petition on defendant's first court date after the amended Code went into effect. *Whitmore*'s flawed conclusion rested on the clause from section 110-7.5(a) that states "This Section shall not limit the State's Attorney's ability to file a verified petition for detention under Section 110-6.1 or a petition for revocation or sanctions under Section 110-6." 725 ILCS 5/110-7.5(a) (West 2022). But that clause does not permit us to read additional, more lenient timing requirements into the statute or to do away with timing requirements altogether.

¶ 38 The Code provides that the State may file a petition for detention at the first appearance or within 21 days of the defendant's arrest and release. *Id.* § 110-6.1(c)(1). Even assuming that the aforementioned clause in section 110-7.5(a) applies to those in defendant's position and not just those already released, the fact that it places no limits on the State's ability to file a petition does not mean there are *no limits*. *Whitmore*'s holding amounts to claiming that the legislature did not mean what it said when it created section 110-6.1(c)(1)'s timing requirements. *Id.* §110-6.1(c)(1).

¶ 39 The fact that the Code's timing requirements do not account for a defendant's first appearance after the amendment's effective date should not and cannot be seen as an oversight. The existence of section 110-7.5 of the Code demonstrates that the legislature foresaw the need to account for pending cases with preexisting bail rulings when the amended Code went into effect. Thus, it is telling that the prescribed procedure for individuals in defendant's position is a hearing only to determine the reasons for the continued detention. *Id.* §§ 110-7.5(b), 110-5(e). If the legislature wanted the hearing triggered by section 110-7.5(b) to include reconsideration of



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whether a defendant is eligible for release or if it wanted to give the State the ability to file a petition for detention against defendants who had already been ordered released but remained in custody after the effective date of the amended Code, it would have said so.

¶ 40 Likewise, the conclusion in *Jones* that a petition for detention "operates as a motion to increase the pretrial release conditions to the furthest extent" is equally flawed. *Jones*, 2023 IL App (4th) 230837, ¶ 17. This can be seen in the fact that the question of detention and the questions of the conditions of release to be imposed or revocation are separate mechanisms found in different sections of the Code. Compare 725 ILCS 5/110-6.1 (West 2022), with *id.* §§ 110-5, 110-6. Section 110-6 permits the State to file a petition for revocation of pretrial release or a petition for sanctions, neither of which is what the State filed in this case. *Id.* § 110-6(a), (d).

¶ 41 Petitions for revocation or sanctions may only be filed in narrow, specific circumstances. For defendants granted pretrial release for a felony or Class A misdemeanor, pretrial release can only be revoked if the defendant is charged with another felony or Class A misdemeanor that is alleged to have occurred during the defendant's pretrial release. *Id.* § 110-6(a). The State may also only file a petition for sanctions in limited circumstances that do not apply to defendant's case, such as when a defendant violates a condition of pretrial release. *Id.* § 110-6(c), (d), 110-3. In fact, the conclusion in *Jones* makes little sense because section 110-6 does not contemplate the State's ability to request additional conditions or increase the severity of conditions of release outside the aforementioned triggering events for revocation or sanctions.

¶ 42 Indeed, the fact that the legislature prescribed these two avenues of relief for the State, revocation or sanctions, specifically demonstrates that petitions for pretrial detention are not intended to function the way the State has utilized them here. See *People v. Roberts*, 214 Ill. 2d



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106, 117 (2005) (the maxim *expressio unius est exclusio alterius* means "the expression of one thing is the exclusion of another" (internal quotation marks omitted)). The legislature set out clear procedures to address the need for revocation or adjustment of conditions of release for those individuals released prior to trial, and petitions for detention are not one of them. 725 ILCS 5/110-6 (West 2022). *Jones*'s interpretation of the Code would seem to permit an end-run around the clearly defined, limited circumstances where the State may take action against a defendant who has been released pretrial.

¶ 43 Finally, *Jones*'s conclusion that the "matter returns to proverbial square one" any time a defendant requests to review the conditions of release has no basis in the plain language of the Code. *Jones*, 2023 IL App (4th) 230837, ¶ 23. Not only did *Jones* make that assertion without even a perfunctory citation of any language of the Code or other authority, but it is squarely at odds with the language that is in the Code. *Id.*

¶ 44 The Code requires the trial court, at every subsequent appearance of the defendant, to find that the current conditions "are necessary to reasonably ensure the appearance of the defendant as required, the safety of any other person, and the compliance of the defendant with all the conditions of pretrial release." 725 ILCS 5/110-5(f-5) (West 2022). Notably, the trial court need not be presented with new information or a change in circumstances to remove a pretrial condition. *Id.* Furthermore, "the court may, at any time, after motion by either party or on its own motion, remove previously set conditions of pretrial release, subject to the provisions in this subsection." *Id.* § 110-6(g). But as mentioned above, modifications in the form of sanctions or in lieu of revocation can only occur in specific circumstances.



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¶ 45 If the State were permitted to file a petition for detention whenever the conditions of pretrial release are put at issue, it would mean the State could do so every court date because the defendant's conditions of release are statutorily required to be put at issue every time the defendant appears. *Id.* § 110-5(f-5). *Jones*'s holding creates an absurd result, which is one of the outcomes we are commanded to avoid when performing statutory construction. *Taylor*, 2023 IL 128316, ¶ 45. Take defendant's own case as an example: he was originally granted release contingent upon satisfying a $350,000 "D-bond" and he subsequently sought modification of his pretrial release conditions to "the least restrictive conditions necessary." It would, of course, be fair to permit the State to argue in favor of particular conditions that it believes are necessary or against their removal. But where would the sense be in returning the matter to "proverbial square one" and allowing the State to seek pretrial detention when the trial court already found defendant eligible for release on September 1, 2023? This is particularly true when there was no evidence that defendant's circumstances had changed or that defendant had taken any action that, for example, might otherwise warrant a petition to revoke or a petition for sanctions.

¶ 46 The legislature accounted for those who were ordered released under the prior bail system but could not be released due to some circumstance beyond their control. 725 ILCS 5/110-7.5(b), 110-5 (West 2022). It would be immensely unfair to permit the State to have a second bite at the detention apple simply because defendant exercised his statutory right to try to find a way to fulfill the trial court's preexisting order that he could be released.

¶ 47 Accordingly, neither *Whitmore* nor *Jones* nor cases that rely on them can be followed, because they are inconsistent with the plain language of the amended Code. Since *Brown* was decided, however, this court also decided *Haisley*, which the State urges us to follow. There we



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held that the State's petition for detention against the defendant, who had not been released from custody, was not untimely because the 21-day time limit in which to file a petition for detention never began to run. *People v. Haisley*, 2024 IL App (1st) 232163, ¶ 22.

¶ 48 This interpretation, too, strains the plain language of the amended Code. Section 110-6.1(c) does not give the State the authority to file a petition for detention at the defendant's first appearance, or at any time while defendant is in custody, or within 21 days after his arrest and release. 725 ILCS 5/110-6.1(c) (West 2022). The timing requirements are clear and unambiguous. The State may file such a petition at the first appearance or within 21 days *after* defendant's arrest *and* release. *Id. Haisley*, like *Whitmore*, is reading additional language into the statute that simply does not exist.

¶ 49 A commonsense reading of the timing requirements in subsection 110-6.1(c) is not that, if a defendant is never released from custody, the State's window to file a petition for detention never closes. The structure of the Code and the various remedies available to the State clearly indicate the legislature's intent. Petitions for detention are the mechanism the State may use to detain defendants at the start of the case, at either the first appearance or within 21 days of their arrest and release. *Id.* § 110-6.1(c).[3]

¶ 50 If those petitions are unsuccessful, or the State chooses not to file one, and defendants are granted pretrial release, the State then has petitions to revoke pretrial release or petitions for sanctions available to it. *Id.* § 110-6. But for individuals who were granted release under the prior

[3] Indeed, the 21-day time limit appears to presume that defendant was arrested and released without ever being brought before a judge. If it did not, and the 21-day time limit encompassed time after the trial court granted a defendant pretrial release, that would create a conflicting overlap with petitions to revoke during that time period.



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bail system yet remained in custody through no fault of their own, section 110-6.1 of the Code is silent and provides no remedy for the State. The reason why is readily apparent. A petition for detention would be redundant, because the defendant is already in custody, and misplaced, because the trial court already determined the defendant was eligible to be released.

¶ 51 The question lying at the heart of this issue, which has repeatedly gone unaddressed, is thus: why should the State get another attempt at detention because the legislature changed the law? In defendant's case, the State already unsuccessfully sought a "no bail" order under a standard that is meaningfully indistinguishable from the first element the State must now prove to justify pretrial detention. Compare *id.* § 110-4(a) with *id.* § 110-6.1(e)(1). The monetary bond requirement was undoubtedly an impediment to defendant's release here. But nothing in the amended Code indicates that the State should get a do-over now that defendant's monetary bond requirement no longer functions, as the trial court observed, as a *de facto* "no bail" order.

¶ 52 As we have discussed, the legislature anticipated the issues that might arise from defendants with preexisting release orders as we transitioned from the prior bail system to the new one. *Id.* § 110-7.5. If the legislature wanted the enactment of the amended Code to wipe the slate clean, so to speak, and allow the State to file petitions for detention as if cases were starting from zero, it surely could have done so. Yet, the timing requirements for filing petitions for detention are profoundly simple and straightforward. We cannot agree with *Haisley*'s attempt to read additional language into the statute that does not exist, which is contrary to our well-established canons of statutory construction. *Sigcho-Lopez,* 2022 IL 127253, ¶ 27.

¶ 53 For all these reasons, we believe that the legislature did not intend to allow the State to file a petition for pretrial detention under the circumstances of defendant's case and that the State's



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petition for detention was untimely. Defendant was previously ordered released on electronic monitoring, subject to the deposit of a monetary bond. The only action contemplated by the Code in this situation is the hearing required by sections 110-7.5(b) and 110-5(e). Defendant is entitled to that hearing to determine why he remained in custody for nearly three months after the amended Code went into effect and eliminated the requirement of posting a monetary bond. Upon remand, defendant should receive the hearing to which he is entitled to determine if there are conditions available that will reasonably ensure the appearance of defendant, the safety of any other person, and the likelihood of compliance by defendant with all the conditions of pretrial release. 725 ILCS 5/110-5(e) (West 2022).

¶ 54 Because we resolve this appeal on procedural grounds, we need not address defendant's argument that the State failed to meet its burden of proof at the hearing on its petition for pretrial detention. Accordingly, we reverse the trial court's December 13, 2023, order and remand this matter for further proceedings consistent with this opinion.

¶ 55 III. CONCLUSION

¶ 56 For the foregoing reasons, we reverse the trial court's grant of the State's petition for pretrial detention and remand for further proceedings.

¶ 57 Reversed and remanded.



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*People v. Watkins-Romaine,* **2024 IL App (1st) 232479**

| | |
|---|---|
| **Decision Under Review:** | Appeal from the Circuit Court of Cook County, No. 23-CR-10584; the Hon. Mary Margaret Brosnahan, Judge, presiding. |
| **Attorneys for Appellant:** | James F. DiQuattro, of Chicago, for appellant. |
| **Attorneys for Appellee:** | Kimberly M. Foxx, State's Attorney, of Chicago (Sara McGann, Assistant State's Attorney, of counsel), for the People. |



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**Order After Pretrial Detention Hearing** (9/18/23) CCG 0153 A

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**

_____ **DEPARTMENT,** _____ **DIVISION/DISTRICT**

**People of the State of Illinois**
v.
DAMARCO WATKINS-BUMAINE Defendant

Case No.: 23 CR 10584
Charge: ATT First Degree Murder
IR No: 1936104
(or ○ SID ○ FBI No): _____

## ORDER AFTER PRETRIAL DETENTION HEARING

725 ILCS 5/110-2, 110-6.1

Defendant appeared (CR1821) ☒ in person (CR1822) ○ virtually.

**Upon hearing the State's Petition to Deny Pretrial Release, the Court finds that:**

(CR1825) ☐ The State's petition for pretrial detention denied.

(CR1824) ☒ The State has shown, by clear and convincing evidence, that:

1. The proof is evident or the presumption great that the defendant has committed an eligible offense listed in 725 ILCS 5/110-6.1(a)(1)-(7): ATT FIRST DEGREE MURDER

**and,**

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. To wit: D shot at victim while both cars were on I-57. victim hit 5x, including GSW to stomach. Defendant had EXTENDED POSS / TEX

**and,**

3. No condition or combination of conditions set forth in 725 ILCS 5/110-10(b) can mitigate the real and present threat to the safety of any person or persons or community based on the specific articulable facts of the case. Less restrictive conditions would not 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, because: threatening to shoot up victims Boyfriends house on Thanksgiving + stated he was already shooting

**and,**

Bond money



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Case No.: _____

**Order After Pretrial Detention Hearing** **(9/18/23) CCG 0153 B**

4. For offenses under subsection (b) of Section 407 of the Illinois Controlled Substances Act that are subject to 725 ILCS 5/110-6.1(a)(1), the defendant also poses a serious risk to not appear in court as required.

(CR1823) ☒ The State has shown, by clear and convincing evidence, that:

1. The proof is evident or the presumption great that the defendant has committed an eligible offense listed in 725 ILCS 5/110-6.1(a)(8); **and**,

2. No condition or combination of conditions set forth in 725 ILCS 5/110-10(b) can mitigate the defendant's willful flight. Less restrictive conditions would not prevent the defendant's willful flight from prosecution because: _____

see (2) (3) ABOVE

**IT IS HEREBY ORDERED** that:

☐ The defendant is released as provided in a separate order. (See Conditions of Pretrial Release Order.)

(CR0948) ☒ The defendant shall be detained and remanded to the custody of the Cook County sheriff pending trial and be brought to all court proceedings as required. The defendant shall be given a reasonable opportunity for private consultation with counsel and for communication with others by visitation, mail and telephone.

☒ Until further order of the court, the defendant shall have no direct or indirect contact of any kind with the following person(s), regardless of whether the defendant is in custody:

complaining witness

**See and comply with the terms and conditions of the following orders:**

☐ DV Order of Protection No. ☐ Civil No Contact Order No.

☐ Stalking No Contact Order No. ☐ Workplace Protection Restraining Order No.

☐ Firearm Restraining Order No.

**ENTERED:** Dated: 12-13-23 /s/ _____ _____
Judge Judge's No.



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12/7/2023 3:11 PM
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COOK COUNTY, IL
23CR1058401
Brosnahan, Mary Margaret
25509718

FILED DATE: 12/7/2023 3:11 PM 23CR1058401

IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL DIVISION

| | | |
|---|---|---|
| PEOPLE OF THE STATE OF ILLINOIS, | ) | |
| | ) | No. 23CR1058401 |
| vs. | ) | |
| | ) | |
| DAMARCO WATKINS-ROMAINE | ) | |

PETITION FOR RELEASE FROM DETENTION UNDER 725 ILCS 5/110-1 ET SEQ

NOW COMES DEFENDANT DAMARCO WATKINS-ROMAINE (WATKINS-ROMAINE), by and through his Attorneys, Law Offices of James F. DiQuattro, and moves this Honorable Court, pursuant to 725 ILCS 5/110-1 et seq, to order immediate release of WATKINS-ROMAINE, and in support of said Motion states the following:

1. Defendant, DaMarco Watkins-Romaine is charged with the following:
    a. Five (5) Counts of Attempt First Degree Murder (720 ILCS 5/8-4(a) (720-5/9-1(a)(1))
    b. One (1) Count of Aggravated Battery with a Firearm (720 ILCS 5/12-3.05(e)(1))
    c. One (1) Count of Aggravated Discharge of a Firearm (720 ILCS 5/24-1.2(a)(2))
2. It is alleged in this case that WATKINS-ROMAINE shot at the complaining witness while both were driving their vehicles on I-57 expressway where she was struck 5 times by said gunfire.
3. WATKINS-ROMAINE is currently in custody at Cook County Jail.

Relevant Legal Authority

4. 725 ILCS 5/110-1.5.Abolition of monetary bail. On and after January 1, 2023, the requirement of posting monetary bail is abolished, except as provided in the Uniform Criminal Extradition Act, the Driver License Compact, or the Nonresident Violator Compact which are compacts that have been entered into between this State and its sister states. (Source: P.A. 101-652, eff. 1-1-23.).





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5. JAMES R. ROWE, v. KWAME RAOUL, 2023 IL 129248, July 18, 2023, held that this statute was constitutional, but rolled the effective date to September 18, 2023.

6. 725 ILCS 5/110-5. Determining the amount of bail and conditions of release.

(a) In determining which conditions of pretrial release, 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, the court shall, on the basis of available information, take into account such matters as:

a. the nature and circumstances of the offense charged;

b. the weight of the evidence against the defendant, except that the court may consider the admissibility of any evidence sought to be excluded;

c. the history and characteristics of the defendant, including:

i. 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; and

ii. 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;

iii. the nature and seriousness of 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, that would be posed by the defendant's release, if applicable, as required under paragraph (7.5) of Section 4 of the Rights of Crime Victims and Witnesses Act;



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iv. the nature and seriousness of the risk of obstructing or attempting to obstruct the criminal justice process that would be posed by the defendant's release, if applicable;

7. (725 ILCS 5/110-7.5 (b)) On or after January 1, 2023, any person who remains in pretrial detention after having been ordered released with pretrial conditions, including the condition of depositing security, shall be entitled to a hearing under subsection (e) of Section 110-5. On or after January 1, 2023, any person, not subject to subsection (b), who remains in pretrial detention and is eligible for detention under Section 110-6.1 shall be entitled to a hearing according to the following schedule:

(1) For persons charged with offenses under paragraphs (1) through (7) of subsection (a) of Section 110-6.1, the hearing shall be held within 90 days of the person's motion for reconsideration of pretrial release conditions.

(2) For persons charged with offenses under paragraph (8) of subsection (a) of Section 110-6.1, the hearing shall be held within 60 days of the person's motion for reconsideration of pretrial release conditions.

(3) For persons charged with all other offenses not listed in subsection (a) of Section 110-6.1, the hearing shall be held within 7 days of the person's motion for reconsideration of pretrial release conditions.

8. (725 ILCS 5/110-5 (c) The court shall impose any conditions that are mandatory under subsection (a) of Section 110-10. The court may impose any conditions that are permissible under subsection (b) of Section 110-10. The conditions of release imposed shall be the least restrictive conditions or combination of conditions necessary to reasonably ensure the appearance of the defendant as required or the safety of any other person or persons or the community.



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9. （725 ILCS 5/110-5(f-5) At each subsequent appearance of the defendant before the court, the judge must find that the current conditions imposed are necessary to reasonably ensure the appearance of the defendant as required, the safety of any other person, and the compliance of the defendant with all the conditions of pretrial release. The court is not required to be presented with new information or a change in circumstance to remove pretrial conditions.
10. (725 ILCS 5/110-5)(i-5) At each subsequent appearance of the defendant before the court, the judge 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 the defendant's willful flight from prosecution.

Argument

11. On September 1, 2023, WATKINS-ROMAINE appeared in Branch 66 for an initial bond hearing before the Honorable Judge Maryam Ahmed, in person. WATKINS-ROMAINE was represented by different counsel at the initial bond hearing.
12. This bond hearing took place prior to the effective date of the Pretrial Fairness Act (PFA) which now governs these proceedings involving WATKINS-ROMAINE's pretrial custody status.
13. It is notable that the weight of the evidence is weak in this case. The complaining witness in this case was unable to identify WATKINS-ROMAINE as the driver of the vehicle or the shooter at the time of the incident. The vehicle was not registered to WATKINS-ROMAINE. While the vehicle is said to have been registered to WATKINS-ROMAINE'S girlfriend, that is not enough to establish that he was the individual in the vehicle on the date of the incident. Additionally, while it is said WATKINS-ROMAINE'S DNA was found in the vehicle, that is not enough to establish that he was the individual that was driving the vehicle that shot at the complaining witness. As WATKINS-ROMAINE and his girlfriend are said to be in an intimate relationship and share two children together, all the DNA shows is that he may have been in the



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vehicle on a prior date and does not place him in vehicle on the date of the alleged incident. Based on information and belief, several other individuals had access to the vehicle. There was no firearm recovered in connection with this incident. There is no known direct relationship or connection between WATKINS-ROMAINE and the complaining witness in this case. There is no discernible motive to the shooting. There was no weapon recovered. Nor is there any ballistics evidence that connects to an ascertainable weapon. WATKINS-ROMAINE did not make any incriminating or inculpatory statements.

14. It is also notable that the State filed a petition for mandatory no bail at WATKINS-ROMAINE'S original bond hearing. The petition was denied which establishes that the State was unable to meet the requirements of mandatory no bail. This was because that State failed to meet the standard that the proof was evident or the presumption was great that WATKINS-ROMAINE committed the charged offenses.
15. Specifically, Judge Ahmad found that while there was a lot of circumstantial evidence, she further found that the circumstantial evidence proffered by the State failed to meet the standard that the proof is evident or the presumption is great to support mandatory no bail due to the fact that there was a lack of an identification of WATKINS-ROMAINE as the individual in the vehicle who allegedly shot at the complaining witness in this case on November 22, 2022. The court also alluded that the evidence presented was not clear and convincing.
16. Judge Ahmed set WATKIN-ROMAINE'S bond at $350,000.00-D and ordered the condition of electronic monitoring along with other standard and special conditions.
17. WATKINS-ROMAINE is unable to post the bond currently set.
18. Given the significant weaknesses of the evidence and the circumstances surrounding this case, it is unjust to continue to hold WATKINS-ROMAINE simply because he is unable to afford to post the bond set. WATKINS-ROMAINE requests to remove the condition of posting financial



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security and to allow his release from Cook County Jail.

19. WATKINS-ROMAINE is 29 years old and was born on March 7, 1994.
20. WATKINS-ROMAINE graduated with his high school diploma from Sullivan House High School in 2013.
21. WATKINS-ROMAINE completed 1 year of college at Kennedy King College.
22. WATKINS-ROMAINE has been an Illinois resident for his entire life.
23. WATKINS-ROMAINE immediate and extended family live in Cook County and the Chicagoland area.
24. WATKINS-ROMAINE was previously living with his grandmother at 6225 South Drexel Avenue, Chicago, IL 60637. His grandmother unfortunately just recently passed away and he hopes to be able to attend her funeral on pretrial release.
25. WATKINS-ROMAINE owns his own catering business under the name Marco's Catering.
26. WATKINS-ROMAINE also worked as a security officer with AASI Security. His assigned site was a DCFS building.
27. He was also set to start a position with the Chicago Transit Authority (CTA) at the time he was arrested and charged in the instant case.
28. WATKINS-ROMAINE also previously worked at Amazon, Chicago Event Security, and several restaurant jobs since he was 17 years old.
29. WATKINS-ROMAINE had a valid FOID card at the time of his arrest.
30. WATKINS-ROMAINE reports that he has an employment position available to him if he is released from Cook County Jail. He would he working as a customer service phone representative through Discover Credit Card Company. WATKINS-ROMAINE reports this would be a remote position that he will be able to work from home.
31. WATKINS-ROMAINE and his fiancée have two children together. He is an active father in



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both of his children's lives and also the primary financial provider for both his fiancée and children. He and his fiancée are also expecting their third child who is expected to be born early next year.

32. Both of his children have serious medical conditions which require constant care and supervision. WATKINS-ROMAINE and his fiancée were primarily the ones being present with their children to ensure consistent care and management of the children's medical conditions.

33. WATKINS-ROMAINE also played an integral role in caring for his father who is currently suffering from end stage liver disease. His father significantly depends on WATKINS-ROMAINE'S assistance.

34. WATKINS-ROMAINE was also in a car accident shortly before being charged in this case. He suffered from four fractured ribs and a dislocated shoulder. He continues to suffer from hip pain and experiences significant difficulty in walking. He requires continuing treatment and physical therapy through his medical care provider. He is unfortunately not receiving any physical therapy or medical treatment in Cook County Jail. He also experiences seizures and requires medication to manage this condition.

35. If released, WATKINS-ROMAINE would stay with his father or cousin who live in Chicago and Cook County.

36. Since being incarcerated, WATKINS-ROMAINE has attained approximately 65 certificates through various programs at the Cook County Jail as of this writing.

37. WATKINS-ROMAINE has no known history of alcohol or drug abuse.

38. WATKINS ROMAINE has no prior felony convictions.

39. WATKINS ROMAINE does not have a history of violence that establishes a pattern of violent conduct.

40. WATKINS-ROMAINE does not have any significant bond forfeitures or instances of bail



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jumping in his background.

41. WATKINS-ROMAINE was not on probation, parole, or on any other release pending trial, sentencing, appeal, or completion of a sentence under federal law of any other State.

42. WATKINS-ROMAINE is not a real or present threat to the safety of any person or persons in the community posed by WATKINS-ROMAINE'S release.

43. There is no risk of obstructing or attempting to obstruct the criminal justice process that would be posed by WATKINS-ROMAINE'S release.

44. There is no evidence that WATKINS-ROMAINE is a flight risk. Based upon the definition of willful flight, WATKINS-ROMAINE is not a flight risk as there is no evidence or indication of intentional conduct with the purpose of thwarting the judicial process to avoid prosecution. There is no evidence of patterns or reoccurrence of intentional conduct to evade prosecution.

45. In fact, it is notable that WATKINS-ROMAINE surrendered to the Chicago Police Department in relation to the case. WATKINS-ROMAINE was first arrested on January 31, 2023 by Illinois State Police (ISP) and was not charged in connection with this alleged incident at that time. On August 31, 2023, WATKINS-ROMAINE surrendered to Chicago Police Department, Area 2, on this case where he was subsequently charged. The fact that WATKINS-ROMAINE turned himself in to police on August 31, 2023 after initially being arrested on January 31, 2023 clearly shows that he is not a flight risk and the State will be unable to establish willful flight.

46. There are in fact conditions or a combination of conditions that can mitigate the real and present safety to persons of any person or persons of the community standard, the current charges and any concern of WATKINS-ROMAINE's willful flight. As previously ordered by Judge Ahmad, WATKINS-ROMAINE can be placed on Sheriff's Electronic Monitoring. Additionally, WATKINS-ROMAINE has no prior felony convictions or a history of violence that establishes a pattern of violent conduct. The allegations themselves are an isolated incident which



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WATKINS-ROMAINE denies being the offender who committed said crime. Which supports that WATKINS-ROMAINE is not a risk for willful flight or a danger to the community. It is notable that pretrial services scored WATKINS ROMAINE at a 2 on the new criminal activity scale and 2 on failure to appear on the Public Safety Assessment. This supports that WATKINS-ROMAINE is not a risk for willful flight or a danger to the community.

47. The Defendant has substantial contacts with the community which demonstrate a low likelihood of flight should the Defendant be released and placed on electronic monitoring.

48. In light of the Defendant's overwhelming mitigating information, and the significant weaknesses and circumstances of the case, and the fact that bond was previously set at $350,000.00-D, and that WATKINS-ROMAINE is financially unable to afford said bond, the further detention of WATKINS-ROMAINE is oppressive, and unnecessary.

WHEREFORE, the Defendant moves this Honorable Court to release Defendant, DAMARCO WATKINS-ROMAINE under such conditions as may be the least restrictive conditions necessary. Should the court require electronic monitoring, as an alternative, the Defendant respectfully requests movement for employment, medical reasons, educational reasons, and matters relating to the care of his children and elderly father.

Respectfully Submitted,

/s/James F. DiQuattro
Law Offices of James F. DiQuattro
Attorney for Defendant

Law Offices of James F. DiQuattro, #58682
Attorneys for Defendant, DAMARCO WATKINS-ROMAINE
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**PETITION FOR PRETRIAL DETENTION HEARING** 09/01/23

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**

CRIMINAL **DEPARTMENT,** CRIMINAL **DIVISION/DISTRICT**

**People of the State of Illinois**
**v.**
**Defendant:** DaMarco Watkins-Romaine

**Case Number:** 23CR10584
**Charge:** Att Murder; Agg Batt FA; Agg Discharge
**IR Number:** 1936104
**(or SID/FBI# (circle one)):** 11834641

## PETITION FOR PRETRIAL DETENTION HEARING

725 ILCS 5/110-2, 110-6.1

☑ **Original CR1814** ☐ **Subsequent** (see attached for new facts not known or obtainable at the time of the filing of the previous petition) **CR1815**

The State is filing this verified petition for pretrial detention because the defendant is charged with a detainable offense under 725 ILCS 5/110-6.1(a). The State is requesting a detention hearing where it will show by clear and convincing evidence, that:

1. The proof is evident or the presumption great that the defendant has committed an eligible offense listed in 725 ILCS 5/110-6.1 Section ☑ (a)(1) non-probationable felony based on charge/background ☑ (a)(1.5) forcible felony ☐ (a)(2) stalking ☐ (a)(3) violation of a protective order ☐ (a)(4) domestic battery/aggravated domestic battery ☐ (a)(5) sex offense ☑ (a)(6)-(a)(6.5) other qualifying offense ☐ (a)(7) attempt of (a)(1)-(6.5) ☐ (a)(8) willful flight
   To wit: Attempt Murder; Agg Battery/FA; and Aggravated Discharge FA
   , **and**

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 **CR1816**
   - ☐ for offenses under subsection (b) of Section 407 of the Illinois Controlled Substances Act that are subject to 725 ILCS 5/110-6.1(a)(1), 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 also poses a serious risk to not appear in court as required **CR1817**
   - ☐ has a high likelihood of willful flight to avoid prosecution **CR1818**

   To wit: On 11/23/22, Defendant followed Victim's vehicle onto I-57 and shot at her and her vehicle approximately 15 times. Victim sustained 5 gunshot wounds. 2 to her left leg, 2 to her right leg, and 1 to her stomach. V was transported via ambulance to the hospital. The vehicle Defendant drove while chasing victim is registered to his girlfriend, was captured on license plate readers and video surveillance cameras chasing victim's vehicle. Defendant's cell phone was at location of the shooting at the time of the shooting. A live round matching the brand and caliber as casings were recovered from the floorboad or the vehicle Defendant drove. Vehicle tested positive for gunshot residue and D's DNA.
   , **and**

3. No condition or combination of conditions set forth in 725 ILCS 5/110-10(b) can mitigate that risk.

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 above are true and correct, except as to matters stated to be on information and belief and as to such matters the undersigned verily believes the same to be true.

**FILED:** Date: 12-13-23 Assistant State's Attorney Signature:

FILED
DEC 13 2023
IRIS Y. MARTINEZ
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL



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IN THE CIRCUIT COURT OF Cook ☑ COUNTY
1st JUDICIAL CIRCUIT

PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff-Appellee,

-vs-

No. 23CR1058401

DaMarco Watkins-Romaine,
Defendant-Appellant.

FILED
2023 DEC 19 PM 2:45
IRIS Y. MARTINEZ
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY

**NOTICE OF APPEAL FROM ORDER UNDER PRETRIAL FAIRNESS ACT PURSUANT TO ILLINOIS SUPREME COURT RULE 604(h)**
**(Defendant as Appellant)**

**Court from which appeal is taken:**

Circuit Court of Cook ☑ County.

The Judge(s) who entered the order(s) being appealed:
Judge Mary Margaret Brosnahan

**Date(s) of Order(s) Appealed:** December 13, 2023

**Date(s) of Hearing(s) Regarding Pretrial Release:** December 13, 2023

**Court to which appeal is taken:**

Appellate Court of Illinois, 1st Judicial District

**Name of Defendant and address to which notices shall be sent (if Defendant has no attorney):**

Defendant's Name:
Defendant's Address:
Defendant's E-mail:
Defendant's Phone:

ENTERED
DEC 19 2023
IRIS Y. MARTINEZ
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL



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**If Defendant is indigent and has no attorney, do they want one appointed? (If Cook County, the Cook County Public Defender will be appointed, in all other Counties, then OSAD will be appointed).**

☐ Yes ☑ No

**Name of Defendant's attorney on appeal (if any):**

Attorney's Name: James F. DiQuattro
Attorney's Address: 900 West Jackson Blvd, 5E,Chicago, IL 60607
Attorney's E-mail: james@diquattrolawoffices.com
Attorney's Phone: 312-627-9482

**Name of Defendant's trial attorney (if any):**

Attorney's Name: James F. DiQuattro
Attorney's Address: 900 West Jackson Blvd, Suite 5E, Chicago, IL 60607
Attorney's E-mail: james@diquattrolawoffices.com
Attorney's Phone: 312-627-9482
Is the trial attorney a public defender? ☐ Yes ☑ No

**Nature of Order Appealed** (check all that apply):

☑ Denying pretrial release
☐ Revoking pretrial release
☐ Imposing conditions of pretrial release

**Are there currently pending any other appeals in this matter under the Pretrial Fairness Act?** ☐ Yes* ☑ No

***If Yes, list appeal number(s):** _____

**Rule 328 Supporting Record*** (check all that are attached):

☑ Copy of the order appealed from
☑ Supporting documents or matters of record (please list)
PETITION FOR RELEASE FROM DETENTION UNDER 725 ILCS 5/110-1 ET SEQ
PETITION FOR PRETRIAL DETENTION HEARING

☐ Affidavit of attorney or party (in lieu of clerk certificate of authentication)

***You may attach a supporting record to this notice of appeal. A full supporting record must be filed with the appellate court within 30 days after filing this notice of appeal.**



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**Relief Requested:** To reverse the Court's ruling that Defendant is to be detained pretrial.

**Grounds for Relief** (check all that apply and describe in detail):

**Denial or Revocation of Pretrial Release**

☐ Defendant was not charged with an offense qualifying for denial or revocation of pretrial release or with a violation of a protective order qualifying for revocation of pretrial release.

☑ The State failed to meet its burden of proving by clear and convincing evidence that the proof is evident or the presumption great that defendant committed the offense(s) charged.

The State failed to meet it's burden by proving by clear and convicing evidence that the proof is evident or the presumption is great that Defendant committed the charged offenses. This case is based on weak circumstantial evidence. The complaining witness in this case was unable to identify Defendant as the occupant of the vehicle that shot at her. The DNA found in the car was insufficient to show that Defendant was the driver or shooter on the day in question. The celltower data is not sufficient or definitive to establish that Defendant was in the area at the time of the shooting, the alleged text messages and facebook posts fail to connect to this incident and are vague and contextually insufficient. Defendant made no incriminating or inculpatory statements. Any other proferred evidence was insufficient for detention.

☑ 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.

The State failed to show that the Defendant poses a real and present threat to the safety of any person or persons or the community. The State failed to establish that the Defendant poses a real and present threat nor did they show this by clear and convincing evidence. Defendant has no prior felony convictions or a history of violence that establishes a pattern of violent conduct. Defendant only



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had non-violent misdemeanor convictions that were over 10 years old. This is an isolated incident where Defendant denies being the offender.

☑ The 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.

The State failed to show by clear and convincing evidence that no condition or combination of conditions can mitigate the real and present threat standard. The State failed to make arguments supporting this. Defendant can be placed on Sheriffs Electronic Monitoring or Pretrial Services Monitoring. Defendant is also not a risk for willful flight as he has no prior bond forfeitures, failures to appear or any instances of bail jumping in his background. Defendant also voluntarily surrendered to Chicago Police Department on this case on August 31, 2023 after he arrested and released on this case back on January 31, 2023. Defendant's original conditions of bond prior to this hearing ordered electronic monitoring.

☑ The court erred in its determination that no condition or combination of conditions would reasonably ensure the appearance of defendant for later hearings or prevent defendant from being charged with a subsequent felony or Class A misdemeanor.

The was no evidence presented to show that no conditions or combination of conditions would reasonably ensure the appearance of defendant as he has no prior felony criminal convictions nor any history of missing court appearances.

☐ Defendant was denied an opportunity for a fair hearing prior to the entry of the order denying or revoking pretrial release.



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☑ Other (explain).

The Court abused its discretion by ordering that Defendant be detained which was contrary to the original bond court Judge who ordered Defendant released on a $350,000.00-D bond. The bond court Judge found that the State failed to meet their burden during the original hearing. It is the defense position that State failed to meet that burden during the PFA hearing as their burden was higher under the this new act as opposed the mandatory no bail which was a lower burden that they failed to meet in the original bond hearing. The court focused on primarily on text messages and facebook posts that the defense contends were vague and contextually did not connect to this case without taking into account the other significant weaknesses in the evidence and mitigation presented.

## Imposing Conditions of Pretrial Release

The State failed to meet its burden of proving by clear and convincing evidence that conditions of pretrial release are necessary.

In determining the conditions of pretrial release, the court failed to take into account the factors set forth in 725 ILCS 5/110-5(a). Specifically, the court failed to consider the following factors (list all that apply):



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☐ The conditions of release are not necessary to ensure defendant's appearance in court, ensure that the defendant does not commit any criminal offense, ensure that defendant complies with all conditions of pretrial release, prevent defendant's unlawful interference with the orderly administration of justice, or ensure compliance with the rules and procedures of problem-solving courts.

☐ Other (explain).

**I certify that everything in this NOTICE OF APPEAL FROM ORDER UNDER PRETRIAL FAIRNESS ACT PURSUANT TO ILLINOIS SUPREME COURT RULE 604(h) is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.**

/s/James F. DiQuattro
*Your Signature*

James F. DiQuattro
*Printed Name*

58682
*Attorney # (if any)*



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## Index to the Record on Appeal

***People v. Watkins Romaine,* No. 23 CR 10854 (Cir. Ct. Cook Cnty.)**

### I. Common Law Record (cited as "C__")



### II. Report of Proceedings (cited as "R__")





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**III. Supplement to Report of Proceedings (cited as "SR__")**





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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 July 9, 2024, the foregoing **Brief and Appendix of Plaintiff-Appellant 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 to the following:

James DiQuattro
Law Offices of James F. DiQuattro
900 West Jackson Boulevard, Suite 5-East
Chicago, IL 60607
james@diquattrolawoffices.com

*Counsel for Defendant-Appellee*

/s/ Jeremy M. Sawyer
JEREMY M. SAWYER
Assistant Attorney General