

NOTICE
Decision filed 04/19/24. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2024 IL App (5th) 240154-U

NO. 5-24-0154

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Vermilion County.
)	
v.)	No. 24-CF-48
)	
AUSTIN KING,)	Honorable
)	Derek J. Girton,
Defendant-Appellee.)	Judge, presiding.

JUSTICE SHOLAR delivered the judgment of the court.
Justices Welch and McHaney concurred in the judgment.

ORDER

¶ 1 *Held:* Where the circuit court erred by finding that possession of a stun gun did not meet the detainable offense requirements of unlawful possession of a weapon by a felon, and where the court failed to consider defendant’s possession of ammunition, we reverse the circuit court’s order granting defendant pretrial release and remand the matter to the court for further proceedings.

¶ 2 The State appeals the January 25, 2024, order of the circuit court of Vermilion County denying the State’s petition for pretrial detention and granting defendant, Austin King, pretrial release with conditions. Pretrial release is governed by Public Act 101-652 (eff. Jan. 1, 2023), commonly known as the Safety, Accountability, Fairness and Equity-Today (SAFE-T) Act (Act),¹ as codified in article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/art. 110

¹“The Act has also sometimes been referred to in the press as the Pretrial Fairness Act. Neither name is official, as neither appears in the Illinois Compiled Statutes or public act.” *Rowe v. Raoul*, 2023 IL 129248, ¶ 4 n.1.

(West 2022)). See Pub. Act 102-1104, § 70 (eff. Jan. 1, 2023) (amending various provisions of the Code); *Rowe v. Raoul*, 2023 IL 129248, ¶ 52 (lifting stay and setting effective date as September 18, 2023). On appeal, the State argues that the circuit court abused its discretion by denying the State’s verified petition, requests the circuit court’s January 25, 2024, order be reversed, and requests that defendant be detained pending trial. For the following reasons, we reverse the circuit court’s order granting defendant pretrial release and remand the matter for further proceedings.

¶ 3 I. Background

¶ 4 On January 24, 2024, the State charged defendant by information with two counts of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2022)) related to defendant possessing stun guns and a .22-caliber round of ammunition, after being convicted of a felony. The State additionally charged defendant with eight counts of burglary to a motor vehicle (*id.* § 19-1(a)) related to a string of burglaries occurring between approximately December 24, 2023, through January 22, 2024.

¶ 5 The same day, the State filed a petition to deny defendant pretrial release. The State’s petition alleged that defendant was charged with an offense under section 110-6.1(a)(1), (1.5), or (3) through (7) of the Pretrial Fairness Act, that defendant posed a real and present threat to the safety of any person or persons or the community, and that no condition or combination of conditions would suffice to mitigate that threat.

¶ 6 On January 25, 2024, the circuit court held a hearing on the State’s petition to deny pretrial release. After hearing the State’s proffer and the arguments of counsel, the court denied the State’s petition to deny pretrial release. The court noted:

“To find that he be detained I have to find, one, that he poses a real and present threat to the safety of a specific person or the community. Safety not being the safety of

your property, but actually he is a threat specifically to someone's physical safety or the community's physical safety. Certainly burglarizing vehicles is not going to fall into that category."

¶ 7 The court continued:

"There also needs to be clear and convincing evidence and the proof evident that he has committed a qualifying offense. Car burglaries are not a qualifying offense. The only qualifying offense potentially is the possession of the stun guns, which I agree with [defense counsel], there's a real question as to whether they meet the qualifications for the statute. In fact, I'm pretty sure he is 100 percent correct that they do not meet the qualifications of the statute.

Therefore, I do not believe the State can show by clear and convincing evidence that the defendant has committed a qualifying offense or that he poses a real and present threat to the safety."

¶ 8 The State filed a timely notice of appeal of the circuit court's granting of pretrial release. In the notice of appeal, the State argues that (1) the court erred in its determination that 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;² (2) the court erred in its determination that the State failed to meet its burden of proving by clear and convincing evidence that the proof is evident or presumption great that defendant committed the offenses charged;³ (3) the court erred in its determination that the State failed to meet its burden of proving

²In the portion of the form where the State can further explain its argument, the State notes that the court did not sufficiently consider count II, regarding defendant being a felon and in possession of ammunition.

³In the portion of the form where the State can further explain its argument, the State again notes that the court did not consider defendant being a felon in possession of ammunition.

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;⁴ and (4) the court erred in its determination that 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, persons, or the community, based on the specific, articulable facts of the case or defendant's willful flight.⁵

¶ 9

II. Analysis

¶ 10 On appeal, the State requests that this court order defendant detained. In the alternative, the State requests that this court order Global Positioning System (GPS) monitoring if defendant is not detained. Although we decline to order defendant detained or to impose conditions of pretrial release on defendant, for the reasons that follow, we agree with the State, reverse the circuit court's order, and remand for a new detention hearing.

¶ 11 Pretrial release, including any conditions related thereto, is governed by the Act as codified in article 110 of the Code (725 ILCS 5/art. 110 (West 2022)). Under the Code, as amended by the Act, a defendant's pretrial release may only be denied in certain statutorily limited situations. *Id.* § 110-6.1. In Illinois, we presume all defendants are entitled to pretrial release. *Id.* §§ 110-2(a), 110-6.1(e).

¶ 12 Upon filing a timely verified petition requesting denial of pretrial release, the State has the burden to prove by clear and convincing evidence that the proof is evident or the presumption great that (1) the defendant committed a qualifying offense, (2) the defendant's pretrial release poses a real and present threat to the safety of any person or the community or a flight risk, and (3) less

⁴In the portion of the form where the State can further explain its argument, the State notes that the court erred by adding the "qualifier" of "physical" in front of safety regarding individuals or community.

⁵In the portion of the form where the State can further explain its argument, the State states "see above" regarding "physical safety."

restrictive conditions would not avoid a real and present threat to the safety of any person or the community and/or prevent the defendant's willful flight from prosecution. *Id.* § 110-6.1(e), (f). If the circuit court finds that the State proved a valid threat to the safety of any person or the community and/or the defendant's likely willful flight to avoid prosecution, or the defendant's failure to abide by previously issued conditions of pretrial release, the court must determine which pretrial release conditions, "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." *Id.* § 110-5(a).

¶ 13 Our standard of review of pretrial release determinations is twofold. The circuit court's factual findings will be reviewed under the manifest weight of the evidence standard. *People v. Trottier*, 2023 IL App (2d) 230317, ¶ 13. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *People v. Deleon*, 227 Ill. 2d 322, 332 (2008). The circuit court's ultimate determination regarding pretrial release will not be reversed absent an abuse of discretion. *People v. Swan*, 2023 IL App (5th) 230766, ¶ 11. An abuse of discretion occurs when the decision of the circuit court is arbitrary, fanciful, or unreasonable, or when no reasonable person would agree with the position adopted by the circuit court. *Id.*

¶ 14 First, the State argues that defendant was charged with a qualifying offense. The State notes that there is some confusion in the record as to whether the circuit court believed defendant was charged with a qualifying offense when defendant possessed stun guns and ammunition. Such confusion is evident from the court's oral pronouncement. However, the circuit court's written order checks a box indicating that defendant was indeed charged with a detention-eligible offense, but that the court denied the State's petition to deny pretrial release following the detention hearing.

The court's written pretrial release order conflicts with the court's oral ruling at the hearing. It is well settled that "[w]hen the oral pronouncement of the court and the written order conflict, the oral pronouncement of the court controls." *People v. Roberson*, 401 Ill. App. 3d 758, 774 (2010) (citing *People v. Smith*, 242 Ill. App. 3d 399, 402 (1993)). With this in mind, we consider the State's argument on appeal.

¶ 15 In this case, the State charged defendant with unlawful possession of a weapon by a felon for possessing a stun gun. 720 ILCS 5/24-1.1(a) (West 2022). Under section 24-1.1(a), "[i]t is unlawful for a person to knowingly possess on or about his person or on his land or in his abode or fixed place of business any weapon prohibited under section 24-1 of this Act or any firearm or any firearm ammunition if the person has been convicted of a felony under the laws of this State or any other jurisdiction." *Id.* Section 24-1 states that a person commits the offense of unlawful use of weapons when they knowingly carry or possess in any vehicle or in any vehicle or concealed on or about their person, except when on their land or in their "abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, *stun gun* or taser or other firearm," except in certain situations not applicable here. (Emphasis added.) *Id.* § 24-1(a)(4). Therefore, a stun gun is a "weapon" for purposes of the unlawful possession of a weapon statute. As such, defendant was clearly charged with a detainable offense under count I.

¶ 16 Turning to count II, the State argues that the circuit court failed to consider the charges related to unlawful possession of a weapon by a felon as to defendant's possession of a .22-caliber round of ammunition. The circuit court's oral pronouncement indicated that the "only qualifying offense potentially is the possession of the stun guns" yet the court makes no mention whatsoever of defendant's possession of ammunition. A circuit court's "ruling on a matter requiring the

exercise of discretion must be reversed on appeal where it palpably fails to exercise that discretion.” *People v. Partee*, 268 Ill. App. 3d 857, 869 (1st Dist. 1994); see also *People v. Walker*, 232 Ill. 2d 113, 126 (2009) (the exercise of discretion requires “thoughtful consideration of the specific facts and circumstances” presented to the court). In the case before us, the court fails to exercise any discretion whatsoever, where it fails to consider the ammunition charge. There is no question that ammunition for a firearm falls within the scope of the unlawful possession of a weapon by a felon statute (720 ILCS 5/24-1.1(a) (West 2022)). Therefore, count II is also a detainable offense. As such, we remand where the circuit court did not make a determination on count II.

¶ 17 As such, we agree with the State that the circuit court was legally incorrect in its conclusion that defendant’s possession of stun guns was not within the scope of the unlawful possession of a weapon by a felon statute. We also agree that the court erred by failing to consider count II related to defendant’s possession of ammunition. As such, we reverse the circuit court’s order granting defendant pretrial release. Because we find the issues related to counts I and II dispositive, we need not consider the State’s remaining arguments on appeal.

¶ 18 III. Conclusion

¶ 19 For these reasons, we reverse the circuit court’s January 25, 2024, order granting defendant pretrial release and remand the matter to the court for further proceedings consistent with this order.

¶ 20 Reversed and remanded.