

**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).

2024 IL App (4th) 240607-U

NO. 4-24-0607

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**  
July 10, 2024  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
COLIN S. SIMPSON,	)	No. 24CF295
Defendant-Appellant.	)	
	)	Honorable
	)	Scott Kording,
	)	Judge Presiding.

JUSTICE DOHERTY delivered the judgment of the court.  
Justices Zenoff and Vancil concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court did not abuse its discretion by detaining defendant and finding that no set of conditions could mitigate the threat he posed.

¶ 2 Defendant Colin S. Simpson appeals from the circuit court’s March 29, 2024, order denying his pretrial release pursuant to the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-1 *et seq.*) (West 2022)), as amended by Public Act 101-652 (eff. Jan. 1, 2023). On appeal, defendant argues that his detention order should be vacated because the State failed to show, and the court erred in concluding, that no set of conditions could mitigate any risk he posed.

¶ 3 We affirm.

¶ 4 I. BACKGROUND

¶ 5 On March 27, 2024, defendant was charged by indictment with nine counts arising out of a March 6, 2023, drive-by shooting in Normal, Illinois. The indictment charged defendant with attempted first degree murder (counts I and II) (720 ILCS 5/8-4, 9-1(a)(1) (West 2022)), aggravated battery—discharge of a firearm (counts III and IV) (*id.* § 12-3.05(e)(1)), and aggravated battery (counts VIII and IX) (*id.* § 12-3.05(a)(1)) as to victims Ryan Woods and Devan Fuller, and two additional counts relating to aggravated discharge of a firearm (counts V and VI) (*id.* § 24-1.2(a)(1), (2)) and aggravated unlawful use of a weapon (count VII) (*id.* § 24-1.6(a)(2)). Count V charged defendant with aggravated discharge of a firearm in the direction of M.D., a minor, as part of that same incident (*id.* § 24-1.2(a)(1)).

¶ 6 A. State’s Verified Petition to Deny Pretrial Release

¶ 7 On March 28, 2024, the State filed a verified petition to deny pretrial release, arguing that, based on the specific articulable facts of the case, defendant should be denied pretrial release because he posed a real and present threat to the safety of any person or persons or the community and had a high likelihood of willful flight to avoid prosecution. The latter ground for detention was abandoned at the subsequent hearing. The State amended its petition to request a no-contact order as to victims Woods, Fuller, and the minor, M.D.

¶ 8 B. Detention Hearing

¶ 9 On that same date, the circuit court conducted a hearing on defendant’s petition to deny pretrial release, at which time the State made its proffer. According to the State, on March 6, 2023, police responded to a reported shooting at an apartment on Orlando Street in Normal. According to the State’s proffer, the police found two victims who had been shot, Ryan Woods and Devan Fuller; a third person, the minor M.D., was shot at but not struck by any bullets. The three told police that they had come out of the apartment complex and noticed a dark-colored

vehicle drive by. The vehicle's rear window was open, and someone inside fired multiple shots. Police recovered nine 9-millimeter cartridge cases in the street and a bullet lodged in a nearby building. M.D. told police that he thought there were multiple shooters.

¶ 10 Police later identified the vehicle as a 2018 Chevy Malibu and obtained a search warrant to inspect it. Police found gunshot residue in the back seat of the car and were able to determine that someone associated with the name "Collo" had been in the car and accessed its Bluetooth system. Defendant went by the nickname of "Collo," and the number found on the car's Bluetooth system was defendant's phone number. M.D. identified defendant as one of the shooters. Global Positioning System (GPS) location data placed defendant's phone in the location of the shooting immediately beforehand. Woods also recognized the shooter as someone named "Collo." One of the victims also told police that defendant had yelled at M.D. from the car and told him not to run. Police utilized social media accounts to discover that defendant had some sort of disagreement or issue with M.D. and that just before the shooting, defendant asked M.D. where he was.

¶ 11 At the time of the 2023 shooting, defendant was on juvenile probation in McLean County case No. 21-JD-88 (conspiracy to commit residential burglary, a Class 1 felony). The State proffered that in 2021, defendant and a friend had tried to rob a drug dealer; defendant was shot during the attempt. The State further said that defendant had purportedly planned the robbery.

¶ 12 Defendant made a short proffer wherein he challenged the various identifications. However, because these issues are not relevant to this appeal, we do not provide any discussion of those points. The defense also called defendant's older sister Taylor Simpson as a witness, who testified, *inter alia*, that she did not know defendant to have possessed any weapon. Defendant

pointed out there was no evidence that he had committed any crimes in the period between the March 2023 shooting and his arrest.

¶ 13 C. Oral Pretrial Detention Ruling

¶ 14 At the conclusion of the March 29, 2024, detention hearing, the circuit court rendered its oral ruling, finding that the clear and convincing evidence showed that defendant had been charged with a detainable offense, that defendant is reasonably likely to have committed the offense, and that defendant posed a real and present risk to any person or persons or to the community.

¶ 15 On the issue of whether there were any conditions that might mitigate the risk or danger posed by defendant, the circuit court concluded that the State had met its burden. In reaching its conclusion, the court weighed heavily the fact that defendant was on probation for a Class 1 felony, pursuant to which he was ordered not to commit any new offenses. While on probation, defendant was allegedly involved in this shooting, which injured two individuals. The court considered numerous options, including ordering defendant to remain in Illinois, pretrial supervision, and home confinement, but it concluded that none of these conditions would adequately guard against defendant obtaining and using a firearm or committing another serious offense. The court noted that it had placed defendant on probation in his juvenile case with a condition that he commit no new offenses, and he apparently had violated that condition. This gave the court concern that any conditions imposed in the instant case would not be followed.

¶ 16 The circuit court also considered the utility of placing defendant on home confinement with electronic monitoring, but it felt that “under current law,” the court would not receive a notice of defendant leaving home confinement unless he were “outside the geolocated protected area for a period in excess of 48 hours.” The court felt that this would give defendant the

opportunity to gain access to firearms. Consequently, the court found by clear and convincing evidence that no conditions would mitigate the risk.

¶ 17 The circuit court’s oral ruling in open court, which was audio recorded but not transcribed, lasted roughly 23 minutes and involved a detailed review of all of the requirements of sections 110-5(a) (725 ILCS 5/110-5(a) (West 2022)) and 110-6.1(g) (*id.* § 110-6.1(g)).

¶ 18 D. Written Detention Order

¶ 19 The circuit court then entered a written order denying pretrial release and made the following findings as reasons for denial of pretrial release. First, the court concluded that defendant “is unlikely to comply with some or all release conditions that could be imposed in this case.” Second, and listed under “Other,” the court stated: “[Defendant] personally participated in drive-by shooting in which two people were struck with bullets, [and] [defendant] worked in concert [with] others, including at least one other shooter. [Defendant] taunted victim (M.D.) while shooting at him. [Defendant] admitted to orchestrating a prior drug-related robbery. Multiple eyewitnesses ID’d [defendant] as shooter.”

¶ 20 Second, concerning whether less restrictive conditions would be effective, the circuit court found that they “would not avoid a real and present threat to the safety of any person(s) or the community, or prevent Defendant’s willful flight,” adding as reasons: (1) community and/or individual safety cannot be meaningfully achieved with available conditions of release; (2) otherwise appropriate or available release conditions have been unsuccessful in defendant’s other matters; (3) “There is a high likelihood that Defendant will commit new criminal offenses if granted pretrial release”; (4) “Defendant has access to, and likely would attempt to use, a dangerous weapon against others if released”; (5) defendant has made statements indicating a desire and/or intention to harm certain persons if released; (6) defendant has a history of

disobeying court orders and thwarting or frustrating release and supervision conditions; and (7) defendant committed the instant serious and dangerous offense while on juvenile probation for a Class 1 felony and no available release condition would avoid a safety threat to the community or a future violation of the law. A no-contact order was also entered, prohibiting defendant from having any contact with Woods, Fuller, or the minor, M.D.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 Defendant argues that the State failed to meet its burden of proof by clear and convincing evidence that “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.” *Id.* § 110-6.1(e)(3). He further asserts that the circuit court erred by improperly rejecting home confinement as an adequate condition of release, contending that it misunderstood the law and facts by claiming that electronic monitoring violations required a defendant to be outside the restricted geographic area for at least 48 hours before it would be considered a violation.

¶ 24 On appeal, we review the circuit court’s detention decision under an abuse of discretion standard. *People v. Martin*, 2023 IL App (4th) 230826, ¶ 21. “An abuse of discretion occurs when the circuit court’s decision is arbitrary, fanciful or unreasonable, or where no reasonable person would agree with the position adopted by the trial court.” *Id.* (quoting *People v. Simmons*, 2019 IL App (1st) 191253, ¶ 9, quoting *People v. Becker*, 239 Ill. 2d 215, 234 (2010)).

¶ 25 To detain a defendant prior to trial,  
“the State has the burden of proving by clear and convincing evidence that  
(1) ‘proof is evident or the presumption great’ that the defendant committed a

detainable offense, (2) the defendant ‘poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case,’ and (3) no condition or combination thereof can mitigate the threat the defendant poses.” *People v. Thomas*, 2024 IL App (4th) 240248, ¶ 18 (quoting 725 ILCS 5/110-6.1(e)(1)-(3) (West 2022)).

Here, defendant has only challenged the circuit court’s findings respecting the third prong regarding conditions of release.

¶ 26 Section 110-10(b) of the Code (725 ILCS 5/110-10(b) (West 2022)) authorizes a circuit court to impose a nonexhaustive list of conditions on a defendant’s pretrial release. As relevant here, possible conditions include that a defendant (1) “[n]ot depart this State without leave of the court,” (2) “[r]efrain from approaching or communicating with particular persons or classes of persons,” (3) “[r]efrain from going to certain described geographic areas or premises,” and (4) “[b]e placed under direct supervision of the Pretrial Services Agency, Probation Department or Court Services Department in a pretrial home supervision capacity with or without the use of an approved electronic monitoring device.” *Id.* §§ 110-10(b)(0.05), (3)-(5). Any conditions imposed must be the least restrictive means, “to ensure the defendant’s appearance in court, ensure the defendant does not commit any criminal offense, ensure the defendant complies with all conditions of pretrial release, prevent the defendant’s unlawful interference with the orderly administration of justice, or ensure compliance with the rules and procedures of problem solving courts.” *Id.* § 110-10(b).

¶ 27 Among the factors a circuit court shall consider when evaluating the propriety of conditions are:

“(1) the nature and circumstances of the offense charged;

(2) the weight of the evidence against the defendant, except that the court may consider the admissibility of any evidence sought to be excluded;

(3) the history and characteristics of the defendant, including:

(A) 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, history criminal history [*sic*], and record concerning appearance at court proceedings; and

(B) 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;

(4) 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; [and]

(5) 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[.]” *Id.* § 110-5(a)(1)-(5).

¶ 28 In each case, a circuit court must conduct an “individualized” assessment of the propriety of detaining the defendant versus releasing him or her with conditions. *Id.* ¶ 110-

6.1(f)(7); *People v. Morgan*, 2024 IL App (4th) 240103, ¶ 39. “[N]o single factor or standard may be used exclusively to order detention.” 725 ILCS 5/110-6.1(f)(7) (West 2022).

¶ 29

#### A. Conditions of Release

¶ 30

Defendant initially argues that the State failed to offer any evidence that conditions of release would be inadequate. Thus, defendant argues, the State failed to establish by clear and convincing evidence that no condition or combination of conditions could mitigate the danger he posed. “Of course, this court is not directly assessing the State’s evidence and making our own findings; we are assessing whether the record adequately shows that the trial court acted within its discretion in making the finding it did.” *Morgan*, 2024 IL App (4th) 240103, ¶ 37. This presents a single issue for us to review, not two.

¶ 31

According to defendant, the State failed to present any evidence that conditions would not mitigate the risk of release, and it was the circuit court that “came up with several other conditions of release and found them lacking.” In *Morgan*, we noted that, “[w]hile the Act provides that the State always has the burden of proving that no combination of conditions of release is adequate, there is no limit to the number or kind of reasonable conditions that the trial court can impose.” *Id.* ¶ 39. Thus, we explained, the State cannot be expected “to specifically raise and argue against every possible condition of release in every case; there must be some limiting principle.” *Id.* Indeed, “it is reasonable to anticipate that the State will address conditions insofar as they relate to the charged conduct, the defendant’s criminal history, the defendant’s risk assessment score, and any other relevant considerations about the defendant known to the State at the hearing.” *Id.*

¶ 32

Here, the State’s central argument against the sufficiency of conditions was defendant’s past misconduct, including violent misconduct occurring while defendant was on juvenile probation. In contrast, defendant’s focus was on his stated intention to follow the circuit





mean that electronic monitoring addresses every defendant’s potential dangerousness in every case. Electronic monitoring that is not linked to a geographic limitation provides extremely limited information: just the defendant’s location. When coupled with a geographic limitation such as home confinement, electronic monitoring can help alert pretrial officers to a potential violation of that geographic limitation. But any condition of release must be appropriately measured to meet the danger presented in each case. Knowing that electronic monitoring might detect a failure to comply with conditions of release does not diminish concerns that a particular defendant appears to present a greater risk of noncompliance, especially if the consequences of noncompliance may be grave.” (Emphasis omitted.) *Thomas*, 2024 IL App (4th) 240248, ¶ 26.

¶ 40 Electronic monitoring, regardless of the speed at which law enforcement can be notified of a violation, simply informs law enforcement that a defendant *violated* a home confinement restriction or—in the worst-case scenario—where he was at the time he violated some other condition or made good on his threat against Woods. It cannot, however, provide much in the way of *prevention* of such a violation or threat.

¶ 41 We also note that, at most, the circuit court’s remark concerning the current state of the law in this area may be a misconstruction of the statute concerning electronic monitoring, which does not involve a 48-hour lag in reporting but which does allow electronically monitored defendants two days per week of unrestricted movement: “At a minimum, any person ordered to pretrial home confinement with or without electronic monitoring must be provided with movement spread out over no fewer than two days per week, to participate in basic activities such as those

listed in paragraph (A).” 730 ILCS 5/5-8A-4(A-1) (West 2022). According to paragraph (A), approved absences from the home include, but are not limited to, the following:

“(1) working or employment approved by the court or traveling to or from approved employment;

(2) unemployed and seeking employment approved for the participant by the court;

(3) undergoing medical, psychiatric, mental health treatment, counseling, or other treatment programs approved for the participant by the court;

(4) attending an educational institution or a program approved for the participant by the court;

(5) attending a regularly scheduled religious service at a place of worship;

(6) participating in community work release or community service programs approved for the participant by the supervising authority;

(7) for another compelling reason consistent with the public interest, as approved by the supervising authority; or

(8) purchasing groceries, food, or other basic necessities.” *Id.* § 5-8A-4(A)(1)-(8).

¶ 42 While the foregoing mandatory periods of free movement are not the same as a 48-hour delay in reporting, the circuit court’s underlying concern about the latter is equally applicable to the former. When reviewing the circuit court’s oral ruling in the context of its entire statement, it is clear the court rejected electronic monitoring as an option because it did not believe defendant would comply and did not believe that the condition provided sufficient protection against further offenses, especially given the nature of the instant drive-by shooting that caused severe and nearly

lethal harm to two individuals. The court was specifically concerned about gaps in monitoring that would permit defendant to seek access to firearms. The statute noted above would, in fact, give defendant the opportunity for periods of free movement, even while on electronic monitoring. Therefore, we do not believe that the circuit court abused its discretion in rejecting the sufficiency of electronic monitoring to guard against the potential danger posed in this case.

¶ 43 Although defendant cites our decision in *Atterberry* in support of reversal, we find that case to be factually distinguishable. First, the circuit court in *Atterberry* “failed to, and refused to, consider and apply the proper statutory criteria in finding that no conditions could mitigate the threat defendant pose[d].” *Atterberry*, 2023 IL App (4th) 231028, ¶ 16. Second, “without any evidentiary basis in the record, the trial court determined that available resources in Livingston County [were] inadequate to protect minors from defendant, should he be released pending trial.” *Id.* ¶ 17. In essence, the court failed to make the detention decision “individualized,” and instead based its decision on its general understanding of monitoring resources in Livingston County and on “the ‘nature and circumstances of the probable cause statement’ that the prosecutor offered at the detention hearing.” *Id.* ¶¶ 18-19. For these reasons, rather than a considered review of the statutory factors, the circuit court concluded that the defendant was “‘unlikely to comply with some or all of the pretrial conditions.’” *Id.* ¶ 19. In vacating the circuit court’s detention order and remanding the case, we concluded that there was “no indication that the court reached this conclusion by considering defendant’s individual case and circumstances.” *Id.*

¶ 44 In this case, in light of the statutory factors outlined in sections 110-5(a) and 110-6.1, the circuit court considered the full record, including the nature of the offense; the perceived threat made by defendant against Woods; defendant’s prior criminal activity, including his violation of his prior probation order; and the feasibility of home confinement and electronic

monitoring as a means to mitigate the risk of defendant being released. Again, defendant is alleged to have committed a serious, potentially lethal crime at a time when he was already forbidden under his probation conditions from committing any offenses.

¶ 45           Considering the entire record before the court, we do not find an abuse of discretion. The facts presented to the circuit court provided substantial justification to be concerned that defendant presented a risk of lethal violence: prior weapons violations, threats aimed at a specific individual, the discharge of weapons in a drive-by shooting, and violation of a court order to not commit further offenses. In other words, it would be extraordinarily difficult to predict defendant's compliance with any conditions of release.

¶ 46                                   C. Remaining Issues Regarding Conditions

¶ 47           Finally, as to defendant's two additional arguments—that there was no evidence that he had access to weapons or had committed any crimes since the March 2023 shooting—we conclude that both points were weighed as part of the circuit court's conditions of release analysis. The court noted that defendant, despite obligating himself to not commit any offenses while on probation, nevertheless obtained a handgun and used it during the March 2023 shooting; he could do so again. Moreover, the court specifically commented on the lack of evidence showing that defendant had committed any subsequent offenses after the March 2023 shooting, ultimately concluding that there remained a real risk that defendant would engage in further criminal activity, perhaps involving a weapon. We find nothing suggesting the circuit court abused its discretion on either point.

¶ 48                                   III. CONCLUSION

¶ 49           For the reasons stated, we affirm the circuit court's order of detention.

¶ 50           Affirmed.