

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

No. 130364

IN THE  
SUPREME COURT OF ILLINOIS

---

PEOPLE OF THE STATE OF ILLINOIS,	)	On Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-23-1770-B
Plaintiff-Appellant,	)	
v.	)	There on Appeal from the Circuit Court of Cook County, Illinois, No. 23-MC2-00138301
CARLOS CLARK,	)	The Honorable Anthony Calabrese,
Defendant-Appellee.	)	Judge Presiding.

---

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

KWAME RAOUL  
Attorney General of Illinois

JANE ELINOR NOTZ  
Solicitor General

KATHERINE M. DOERSCH  
Criminal Appeals Division Chief

MITCHELL NESS  
Assistant Attorney General  
115 South LaSalle Street  
Chicago, Illinois 60603  
(773) 590-6934  
eserve.criminalappeals@ilag.gov

*Counsel for Plaintiff-Appellant  
People of the State of Illinois*

ORAL ARGUMENT REQUESTED

E-FILED  
3/1/2024 9:34 AM  
CYNTHIA A. GRANT  
SUPREME COURT CLERK

## TABLE OF CONTENTS

	Page(s)
NATURE OF THE ACTION .....	1
ISSUE PRESENTED FOR REVIEW .....	1
JURISDICTION .....	1
STATUTE INVOLVED .....	1
STATEMENT OF FACTS .....	2

## POINTS AND AUTHORITIES

STANDARD OF REVIEW .....	9
<i>People v. Smith</i> , 2016 IL 119659 .....	10
725 ILCS 5/110-6.1(c)(1) .....	9
ARGUMENT .....	10
725 ILCS 5/110-6.1(c)(1) .....	10
<b>I. The People’s Petition Was Timely Because It Was Filed at the Hearing Where Defendant First Appeared Before a Judge.....</b>	11
<i>Armstrong v. Squadrito</i> , 152 F.3d 564 (7th Cir. 1998) .....	14
<i>Corbett v. Cnty. of Lake</i> , 2017 IL 121536 .....	11
<i>Knolls Condo. Ass’n</i> , 202 Ill. 2d 450 (2002) .....	11
<i>People v. Boyce</i> , 2015 IL 117108 .....	11
<i>People v. Brown</i> , 2023 IL App (1st) 231890 .....	11
<i>People v. Garrett</i> , 179 Ill. 2d 239 (1997) .....	20
<i>People v. Gil</i> , 2019 IL App (1st) 192419 .....	17
<i>People v. Hayes</i> , 139 Ill. 2d 89 (1990) .....	20
<i>People v. Lindsey</i> , 201 Ill. 2d 45 (2002) .....	17

<i>People v. McCarty</i> , 223 Ill. 2d 109 (2006).....	11
<i>People v. Morales-Vargas</i> , 2023 IL App (2d) 230346-U .....	15
<i>People v. Nastasio</i> , 19 Ill. 2d 524 (1960).....	11
<i>People v. Parker</i> , 2024 IL App (1st) 232164 .....	19
<i>People v. Rios</i> , 2023 IL App (5th) 230724 .....	15
<i>People v. Rudd</i> , 2020 IL App (1st) 182037 .....	20
<i>People v. Smith</i> , 2016 IL 119659 .....	10
<i>People v. Smith</i> , 236 Ill. 2d 162 (2010).....	14
<i>People v. Wolgemuth</i> , 69 Ill. 2d 154 (1977) .....	20
<i>Rowe v. Raoul</i> , 2023 IL 129248 .....	12
725 ILCS 5/107-9.....	20
725 ILCS 5/109-1(a-5) .....	13
725 ILCS 5/110-4 (2020) .....	17
725 ILCS 5/110-5.....	19-20
725 ILCS 5/110-6.1(a) (2020) .....	17
725 ILCS 5/110-6.1(f) .....	13
725 ILCS 5/110-6.1(g) .....	18
<i>American Bar Association Standards for Criminal Justice Pretrial Release</i> (3d ed. 2007).....	14
<i>Illinois Supreme Court Commission on Pretrial Practices</i> <i>Final Report</i> (April 2020).....	15
<b>II. The Court Should Remand to the Appellate Court to Consider Defendant’s Unadjudicated Claim.</b> .....	21
<i>People v. Lowery</i> , 178 Ill. 2d 462 (1997) .....	22

**CONCLUSION ..... 23**

**CERTIFICATION**

**CERTIFICATE OF SERVICE**

**APPENDIX**

## NATURE OF THE ACTION

The circuit court granted the People’s petition seeking defendant’s pretrial detention under what is commonly known as the Pretrial Fairness Act (PFA), 725 ILCS 5/110-1 *et seq.* C25-26.<sup>1</sup> The appellate court reversed, A1-17 (*People v. Clark*, 2023 IL App (1st) 231770), and the People now appeal from the appellate court’s judgment. No question is raised on the pleadings.

## ISSUE PRESENTED FOR REVIEW

Whether the People’s petition to detain defendant was timely under 725 ILCS 5/110-6.1(c) because the People filed it at defendant’s first appearance in court.

## JURISDICTION

Jurisdiction lies under Supreme Court Rules 315, 604(a)(2), and 612(b). On February 14, 2024, this Court allowed the People’s petition for leave to appeal.

## STATUTE INVOLVED

### **§ 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,

---

<sup>1</sup> Citations to this brief’s appendix (which includes the report of proceedings) and the common law record appear as “A\_\_” and “C\_\_,” respectively. “Def. App. Ct. Br.” and “Peo. App. Ct. Br.” refer to the parties’ briefs in the appellate court. Certified copies of the appellate briefs will be submitted to this Court pursuant to Supreme Court Rule 318(c).

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 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.

725 ILCS 5/110-6.1.

### STATEMENT OF FACTS

On August 23, 2023, the People filed a felony complaint and sought a warrant for defendant's arrest, alleging that he committed aggravated vehicular hijacking on August 6, 2023, when he knowingly took a car by force

from a person who was at least 60 years old. C9. That same day, a judge signed the complaint and issued a warrant for defendant's arrest, which set bail at \$100,000. C10-11. Defendant was eventually arrested on September 16, 2023. C23-24.

On September 18, 2023, defendant appeared in court for the first time. A22-23, 25. The People amended the complaint to allege that defendant hijacked the car through the use or threat of force, C18,<sup>2</sup> and filed two new complaints alleging that defendant had committed two additional offenses on the day of the hijacking: aggravated fleeing, for failing to stop the car and increasing his speed in an attempt to evade police, C19; and unlawful restraint, for detaining a second victim without lawful authority, C22. A23-24. The circuit court appointed the public defender to represent defendant, A26, and informed defendant of the three charges against him, A29-30.

Following appointment of counsel, the People filed a petition seeking defendant's pretrial detention, asserting that defendant was eligible for pretrial detention because he was charged with the qualifying offense of aggravated vehicular hijacking, and he posed a real and present threat to the safety of the community. C27-28. The People tendered a copy of the petition to defense counsel, along with copies of the police reports, materials

---

<sup>2</sup> The complaints have since been replaced by a superseding indictment. As a result, defendant's case in the circuit court is now case number 23 CR 1088901.

regarding defendant's background, and a report prepared by Pretrial Services. A30-32.

Defendant objected, arguing that the conditions of his release had been set the month before when the judge issued the warrant for his arrest and set bail at \$100,000. A34-35. Defendant argued that the arrest warrant itself constituted an order for his release with pretrial conditions, and so the People were prohibited from petitioning for his detention by section 110-7.5 of the PFA, which he construed as authorizing a detention hearing only if requested by the defendant. *Id.*; see 725 ILCS 5/110-7.5(b) (providing that “[o]n 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.”).

The circuit court disagreed, explaining that defendant confused the \$100,000 bail set when the arrest warrant was issued with a condition of release, which is imposed following a detention hearing. A35-37. The court explained that the arrest warrant is simply a “mechanism by which the defendant is compelled to appear before a court.” A36. Only after that mechanism has secured the defendant's appearance in court can the court “review the case in its entirety” and conduct “an in-depth consideration of all the factors from both sides” to determine what would be “a fair bond” and what other conditions of pretrial release “might be relevant.” *Id.* Before the



defendant first appears, the court explained, “[t]here is no opportunity” for the parties to propose conditions of release or for the court to make “an assessment” as to what conditions would be “appropriate.” *Id.* Accordingly, the court concluded, the People’s petition for detention was proper because the People filed it at defendant’s first appearance and defendant had not previously been ordered released subject to bond. A36-37.

The circuit court then conducted a hearing on the People’s petition, considering the People’s proffer regarding the facts of the charged offenses, defendant’s criminal history, the Pretrial Services Public Safety Assessment, and defendant’s arguments in mitigation. A37-46. The People proffered that, on August 6, 2023, defendant left a beauty supply store in Northbrook, Illinois, carrying over \$500 of stolen cologne and perfume and got into the back seat of a car in the parking lot. A37-38. When the car’s owner — a 67-year-old woman — returned and opened the driver’s side door, defendant climbed into the front seat, grabbed the woman’s car keys, and attempted to grab her purse, telling her that he would shoot her if she did not let go. A38. After a struggle, defendant drove away in the woman’s car, leaving her behind. *Id.*

Defendant drove the victim’s car to a gas station in Chicago, where he told people that he had cologne and perfume for sale. A39. When a gas station employee expressed interest, defendant took the employee to the car,

ostensibly to show him the products. *Id.* But once they were both inside the car, defendant drove away at high speed with the employee inside. *Id.*

Illinois State Police troopers — who happened to be in the gas station parking lot at the time — gave chase. *Id.* During the pursuit, defendant committed several traffic violations at speeds exceeding 110 miles per hour. *Id.* When the gas station employee begged defendant to pull over and let him out, defendant threatened to kill him unless he was quiet. A39-40. After defendant drove through a red light and collided with oncoming traffic, he got out of the car and fled on foot. A40.

Defendant was arrested several days later, on August 9, 2023, when he was apprehended for retail theft. *Id.* His fingerprints were then matched to fingerprints recovered from inside the hijacked car. *Id.* In addition, an electronic monitor that defendant had been wearing at the time of the hijacking (due to a prior, unrelated car theft) placed him at the beauty supply store and the gas station when the first victim's car was hijacked and again when the second victim was unlawfully restrained. *Id.* After defendant's arrest, both victims, as well as an employee of the beauty supply store, positively identified defendant. *Id.*

By the time of the hearing on the People's petition, defendant had three other pending criminal cases: one for retail theft in McHenry County, another for retail theft in DuPage County, and a third for possession of a stolen car in Cook County. A41. His prior criminal history consisted of a

felony conviction for aggravated unlawful use of a weapon and juvenile convictions for aggravated battery, burglary, and another aggravated vehicular hijacking (which was amended to criminal trespass). A41-42.

A pretrial services officer testified regarding defendant's Pretrial Services Public Safety Assessment, completed and filed on the date of the detention hearing. A42-43; C29-31. The officer explained that defendant received the highest possible score on the criminal activity range (a six) and the second highest possible score on the failure-to-appear range (a five), and that defendant had seven other aggravating factors, including prior failures to appear. A42-43.

Defendant argued in mitigation that he was 19 years old; he had re-enrolled in high school the week before the hearing; and he lived with his grandmother, for whom he performed grocery shopping and other chores. A43-44. Defendant asked the court to set conditions of release that allowed him to continue his education and his familial responsibilities. *Id.*

The circuit court found that the People "ha[d] proven by clear and convincing evidence that the proof is evident and the presumption is great that the defendant committed the offense of aggravated vehicular hijacking," and had also proved the other allegations against defendant by clear and convincing evidence. A44. After considering each of the factors set forth in section 110-6.1(g) of the PFA — and making special note of its consideration of defendant's age and the age of the hijacking victim; defendant's threat of

violence against her; defendant's character, criminal history, and disregard of public safety; and the pretrial assessment — the court further found that defendant posed a real and present threat to the safety of the community. A44-45. Finally, the court found that no conditions of pretrial release less restrictive than detention would mitigate the real and present danger posed by defendant. A45. Accordingly, the court ordered defendant detained pending trial. *Id.*; C25.

On appeal, defendant argued that the People could not petition for detention because he had already been released subject to pretrial conditions pursuant to the arrest warrant. Def. App. Ct. Br. 4-6. Alternatively, defendant asserted that the People's detention petition was untimely because it was not filed at "the first appearance before a judge," as required under 725 ILCS 5/110-6.1(c)(1). *Id.* at 6-8.

In a divided opinion, the appellate court reversed, reasoning that the People's detention petition was untimely under subsection 110-6.1(c)(1) because it was not filed at the "first appearance." A7, ¶ 20. The appellate majority held that the "first appearance" in this case was "the *ex parte* appearance by the State" on August 23, 2023, when the People filed the criminal complaint and sought the arrest warrant, A6, ¶ 17, because "the legislature envisioned a process where the State and trial court need not wait for a defendant's appearance" before deciding whether to deny him pretrial release, *id.*, ¶ 16.

The dissent would have held that the People’s petition was timely because “the most reasonable construction of the ‘first appearance before a judge’ language in section (c)(1) is that it means the first appearance before a judge at which the defendant is present.” A14, ¶ 35 (Tailor, J., dissenting). The dissent noted that the People could not have filed a detention petition under the PFA when it sought the warrant because the statute was not yet in effect. A14-15, ¶ 36. Moreover, the dissent explained, the *ex parte* proceeding to obtain an arrest warrant bore none “of the hallmarks of a detention hearing because, among other reasons, [defendant] was not present and was not given the opportunity to testify, present witnesses, or offer information by proffer or otherwise.” A15, ¶ 37. Indeed, the circuit court could not have ruled on a petition had the People filed one at that hearing because the court would have lacked the “necessary information to engage in the fulsome analysis that a detention hearing demands.” *Id.* Accordingly, the dissent rejected the majority’s reading of the statute as requiring *ex parte* hearings on petitions to deny defendants pretrial release, reasoning that “the legislature did not intend to create this absurd result.” *Id.*, ¶ 36.

### **STANDARD OF REVIEW**

Whether a detention petition filed at defendant’s first appearance before the circuit court was timely because that appearance constituted “the first appearance before a judge” under 725 ILCS 5/110-6.1(c)(1) presents a

question of statutory interpretation that this Court reviews de novo. *People v. Smith*, 2016 IL 119659, ¶ 15.

### ARGUMENT

The People’s petition to detain defendant pending trial, filed at defendant’s first appearance before the circuit court, was timely under subsection 110-6.1(c) of the PFA, which provides that such petitions “may be filed without prior notice to the defendant at the first appearance before a judge.” 725 ILCS 5/110-6.1(c)(1). The appellate court’s contrary holding — that the “first appearance before a judge” instead refers to the *People’s* first appearance before a judge, such that the People were required to file their petition when they appeared at an *ex parte* hearing to obtain a warrant for defendant’s arrest — is inconsistent with not only the plain language of the statute, but with the remainder of the PFA’s comprehensive statutory scheme governing pretrial release. The PFA provides numerous procedural protections for defendants at detention hearings — including the right to be present, the right to counsel, the right to receive certain discovery from the People, and the right to present evidence in opposition to the petition — none of which can be given effect if detention hearings must be held *ex parte* before a defendant has been taken into custody. Accordingly, this Court should reverse the judgment of the appellate court and remand for consideration of defendant’s remaining, unadjudicated challenge to his pretrial detention.

**I. The People’s Petition Was Timely Because It Was Filed at the Hearing Where Defendant First Appeared Before a Judge.**

When interpreting the timing requirements of subsection 110-6.1(c)(1), this Court’s “primary objective” is “to ascertain and give effect to the intent of the legislature.” *People v. Boyce*, 2015 IL 117108, ¶ 15. “The most reliable indicator of legislative intent is the language of the statute, given its plain and ordinary meaning,” which the Court construes in light of “the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another.” *Id.* In addition, “all the provisions of a statute must be viewed as a whole,” *People v. McCarty*, 223 Ill. 2d 109, 133 (2006), and “[s]tatutes relating to the same subject must be compared and construed with reference to each other so that effect may be given to all of the provisions of each if possible,” *Knolls Condo. Ass’n*, 202 Ill. 2d 450, 459 (2002). Finally, the Court “presume[s] that the legislature did not intend absurdity, inconvenience, or injustice,” *Corbett v. Cnty. of Lake*, 2017 IL 121536, ¶ 35, and so “avoid[s], if possible, a construction that would raise doubts as to [a statute’s] validity,” *People v. Nastasio*, 19 Ill. 2d 524, 529 (1960).

Under the plain language of subsection 110-6.1(c)(1), construed in the context of the PFA’s comprehensive statutory scheme governing pretrial detention hearings and the purpose of that scheme, the People must file a pre-release detention petition at the first hearing at which defendant is

present, not at an *ex parte* proceeding before the defendant has been taken into custody.

The PFA changed pretrial release procedures by abolishing monetary bail in favor of a presumption that all defendants are eligible for pretrial release, subject to such conditions of release as the circuit court deems appropriate. *See Rowe v. Raoul*, 2023 IL 129248, ¶ 5; 725 ILCS 5/110-1 *et seq.* However, the People may petition for pretrial detention under certain circumstances. *Id.*; *see* 725 ILCS 5/110-6.1(a)(1)-(7). For example, as relevant here, the People may petition for a defendant to be detained pending trial if he 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.” 725 ILCS 5/110-6.1(a)(1.5).

Section 110-6.1 governs detention petitions and proceedings on such petitions. *See* 725 ILCS 5/110-6.1. Under subsection 110-6.1(c)(1), the People may file a petition for pretrial detention 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). Once a petition has been filed, the circuit court “shall immediately hold a hearing on the petition unless a continuance is requested,” and if the continuance is granted the hearing must be held within either 24 or 48 hours “of defendant’s first appearance,” depending on the class of offense charged. *Id.* § 110-6.1(c)(2).



At the hearing, the defendant has a variety of rights that ensure a meaningful opportunity to defend against the petition. *See id.* § 110-6.1(f). These include the right to be present at the hearing “in person (and not by way of two-way audio visual communication) unless [the defendant] waives the right to be physically present in court,” *id.* § 110-6.1(f)(3.5); the right to counsel and an “adequate opportunity” to confer with counsel before the hearing begins, *id.* § 110-6.1(f)(3); *see id.* § 109-1(a-5) (providing that “[a] person charged with an offense shall be allowed counsel at the hearing at which pretrial release is determined under the provisions of Section 110 of this Code”); the right to certain discovery from the People, *see id.* § 110-6.1(f)(1); the right to present evidence “by way of proffer,” *id.* § 110-6.1(f)(2); and the right “to testify, to present witnesses on his or her own behalf, and to cross-examine any witnesses that are called by the State,” *id.* § 110-6.1(f)(3).

Read in the context of this statutory scheme, subsection 110-6.1(c)(1)’s requirement that a petition be filed “at the first appearance before a judge” clearly refers to a *defendant’s* first appearance in court. First, the plain meaning of “first appearance” in the context of a criminal proceeding is the defendant’s first appearance in court. The common meaning of “appearance” in this context is “the act or proceeding by which a party proceeded against places himself before the court and submits to its jurisdiction.” *Webster’s Third New International Dictionary* 103 (2021). *Black’s Law Dictionary* similarly defines “appearance” as “[a] coming into court as a party or

interested person, or as a lawyer on behalf of a party or interested person; esp., a defendant's act of taking part in a lawsuit." *Black's Law Dictionary* 122 (11th ed. 2019). Further, although Black's includes no definition of "first appearance," it defines the substantially identical phrase "initial appearance" as "[a] criminal defendant's first appearance in court to hear the charges read." *Id.*; see *Webster's Third New International Dictionary* 1163 (providing "first" as synonym for "initial").

Indeed, this Court and others have historically understood the phrase "first appearance" to mean the first time a defendant appears in court. See, e.g., *People v. Smith*, 236 Ill. 2d 162, 168 (2010) (referring to hearing when "an arrested person is taken before a judge" as "the first appearance"); *Armstrong v. Squadrito*, 152 F.3d 564, 572 (7th Cir. 1998) ("In general terms, the first appearance marks the formal beginning of the criminal prosecution at which a judge or magistrate makes sure that the defendant is the person named in the complaint and that the defendant knows the charges contained in the complaint."). And this same common meaning of "first appearance" is employed by the American Bar Association in its Standards on Pretrial Release, upon which this Court's Commission on Pretrial Practices relied when recommending the revisions reflected in the PFA. See, e.g., *American Bar Association Standards for Criminal Justice Pretrial Release* 10-14, 23, 61, 75, 77-78, 83-87, 90-93, 95-99, 103, 123, 125, 127, 129 (3d ed. 2007) (using "first appearance" and "defendant's first appearance" interchangeably); see

*also Illinois Supreme Court Commission on Pretrial Practices Final Report* 10, 16, 24, 27-29, 35, 38, 41, 59 (Apr. 2020), *available at* <http://tinyurl.com/vncweyhd> (last visited March 1, 2024) (citing *American Bar Association Standards for Criminal Justice*). Accordingly, the appellate court has — with the exception of the decision below — understood “first appearance” in subsection 110-6.1(c)(1) to refer to the hearing at which defendant first appears. *See, e.g., People v. Rios*, 2023 IL App (5th) 230724, ¶ 10 (“The State may file a petition to detain at the time of the defendant’s first appearance before a judge”); *People v. Brown*, 2023 IL App (1st) 231890, ¶ 13 (same); *People v. Morales-Vargas*, 2023 IL App (2d) 230346-U, ¶ 17 (same).

In addition to comports with the common meaning of the term, construing subsection 110-6.1(c)(1) to allow the People to file a detention petition at the first hearing at which defendant is present is the only reading consistent with the other provisions of both subsection 110-6.1(c) and the rest of the statutory scheme governing pretrial release. Subsection 110-6.1(c)(2) requires that a hearing be held “immediately” upon the petition’s filing, unless a continuance is requested and granted, in which case the hearing must be held within either 24 or 48 hours “of the defendant’s first appearance,” depending on the class of offense. 725 ILCS 5/110-6.1(c)(2). If the People were required to file detention petitions when they first appear before a judge to seek an arrest warrant — days or even weeks before a

defendant is taken into custody — then a defendant might be excluded from the detention hearing entirely, for the hearing would have to be held immediately unless the People, as the only party present, requested a continuance and the circuit court granted it. But that was plainly not the legislature’s intent. Subsection 110-6.1(c)(2)’s requirement that a detention hearing occur — at the latest — within 48 hours of “the defendant’s first appearance” reflects the legislature’s intent that the People file the petition when the defendant first appears, and that the defendant then have the opportunity to seek a continuance if he needs additional time to prepare his opposition. Only by reading subsection 110-6.1(c)(1) as requiring a petition to be filed at the defendant’s first appearance can that provision be harmonized with subsection 110-6.1(c)(2).

Such a reading is also the only reading that gives effect to the other provisions intended to provide defendants a meaningful opportunity to defend against detention petitions. If a petition must be filed before a defendant is arrested and brought into court, as the appellate court held, then the detention hearing would be held that same day unless the People requested and obtained a continuance. *See* 725 ILCS 5/110-6.1(c)(2). Had that procedure been followed here, defendant would not have been able to participate at all, much less exercise his statutory rights to receive discovery, consult with counsel, and subject the People’s case for detention to adversarial testing, because he had not yet been apprehended when the

People sought the arrest warrant. Yet the appellate court’s reading of “first appearance before a judge,” if adopted, would lead to just such *ex parte* detention hearings.

The appellate majority acknowledged that its reading of subsection 110-6.1(c)(1) would lead to *ex parte* hearings but believed that “the legislature envisioned a process where the State and trial court need not wait for a defendant’s appearance before considering whether to detain that person.” A5, ¶ 16.<sup>3</sup> Setting aside any potential constitutional concerns with holding detention hearings *ex parte*, see *People v. Lindsey*, 201 Ill. 2d 45, 55 (2002) (federal and Illinois constitutions “afford criminal defendants the general right to be present, not only at trial, but at all critical stages of the proceedings”); see also *Nastasio*, 19 Ill. 2d at 529 (this Court must interpret statutes “to avoid, if possible, a construction that would raise doubts as to its validity”), the appellate majority’s interpretation is plainly inconsistent with

---

<sup>3</sup> The appellate majority likened this *ex parte* detention hearing to “the longstanding practice of seeking a ‘no bond arrest warrant’ for certain defendants,” citing the prior version of 725 ILCS 5/110-4 (2020). A5, ¶ 16. But that statute simply listed the offenses for which the People could petition to restrict bail. Under prior subsection 6.1(a), a defendant still could not be detained pretrial unless a petition was filed “at the first appearance before a judge” and a hearing held “immediately upon the defendant’s first appearance.” 725 ILCS 5/110-6.1(a) (2020); *People v. Gil*, 2019 IL App (1st) 192419, ¶ 11 (noting that the “bail statute . . . requires the State to file a verified petition before bail can be denied.”). Defendants under the previous scheme also had rights to allow them to contest detention without bail, including the right to counsel and the right to present evidence. 725 ILCS 5/110-6.1(c)(1)(A) (2020). Those rights could not be exercised by a defendant not yet in custody.

the legislative intent to provide defendants a meaningful opportunity to defend against the People's detention petition.

Indeed, the appellate majority's interpretation would defeat not only the legislature's intent that the defendant be an active participant in the detention proceedings but would also defeat the legislature's intent that the circuit court make a fully informed detention determination. Requiring that a hearing be held before a defendant is apprehended would limit the evidence available to a court. To grant the People's detention petition, the court must find that: (1) the proof is evident or the presumption great that the defendant has committed a qualifying offense; (2) the defendant's pretrial release poses a real and present threat to the safety of the community; and (3) no condition or combination of conditions can mitigate that threat. 725 ILCS 5/110-6.1(e); *see also Rowe*, 2023 IL 129248, ¶ 5 (citing 725 ILCS 5/110-6.1(a)).

In making this determination, the court should consider, among other things, "[t]he nature and circumstances of any offense charged," "[a]ny statements made by, or attributed to the defendant, together with the circumstances surrounding them," "[w]hether the defendant is known to possess or have access to any weapon or weapons," 725 ILCS 5/110-6.1(g)(1), (4), (7), and a "regularly validated risk assessment tool," *id.* § 110-5. Yet information regarding each of these factors would be, at best, incomplete while the defendant is still at large. For example, as here, the People may

file additional charges after a defendant is arrested, which may be relevant to the court's detention determination. And a defendant's statements made during and after arrest can only be discovered after arrest. Likewise, the defendant's *conduct* during and after arrest remains unknown when the complaint is filed yet would undoubtedly be an important factor for the court to consider. *See, e.g., People v. Parker*, 2024 IL App (1st) 232164, ¶ 68 (trial court considered "the nature and circumstances of the arrest," defendant's "attempts to leave the scene," and that he was "ultimately found in possession of a weapon"). Further, as here, C29-30, the "regularly validated risk assessment tool" contemplated by the PFA is only completed and submitted to the court after the defendant is arrested and would therefore be unavailable to the court at a pre-arrest hearing. Simply put, a detention hearing that occurs before the defendant's arrest would not provide the full hearing envisioned by the PFA.

Finally, requiring that the People petition to detain a defendant when the complaint for a warrant is filed would fundamentally alter the nature of the warrant application process. The purpose of a warrant is "to interpose, prior to an arrest, a neutral magistrate's review of the factual justification for the charges" so that arresting officers do not make an arrest in a home or other private place based solely on their own determination of probable cause. *People v. Wolgemuth*, 69 Ill. 2d 154, 161 (1977). Accordingly, the complaint submitted for the purpose of obtaining a warrant is not intended to

prove a defendant's dangerousness, but instead "to provide grounds for a judicial determination of probable cause to issue an arrest warrant," *People v. Rudd*, 2020 IL App (1st) 182037, ¶ 70, and generally contains only that information necessary to establish probable cause to believe the defendant committed an offense, *see* 725 ILCS 5/107-9(b) (complaint must identify accused and the time, place, and nature of offense committed); *id.* § 107-9(c) (warrant may be issued "if it appears from the contents of the complaint and the examination of the complainant . . . that the person against whom the complaint was made has committed an offense"). As a result, complaints are regularly filed by police officers without any involvement by the State's Attorney. *See, e.g., People v. Garrett*, 179 Ill. 2d 239, 248-50 (1997) (complaint was filed by detective "without the assistance of the State's Attorney"); *People v. Hayes*, 139 Ill. 2d 89, 126 (1990) ("The complaint for preliminary examination was presented in an *ex parte* proceeding by a police officer, rather than an assistant State's Attorney."). Indeed, as this Court has repeatedly recognized, the filing of a complaint does not "constitute[] a formal commitment by the State to prosecute defendant so as to attach defendant's sixth amendment right to counsel," *Garrett*, 179 Ill. 2d at 249-50 (citing *People v. Thompkins*, 121 Ill. 2d 401, 433 (1997)); instead, felony prosecutions are commenced by information or indictment, 725 ILCS 5/111-2(a). Further, because warrant application proceedings do not mark the beginning of adversarial proceedings, they are not required to be transcribed.



*See People v. Ross*, 132 Ill. App. 3d 553, 557 (1st Dist. 1985). Accordingly, contrary to the appellate court's conclusion, a detention hearing at the "first appearance" is not equivalent to an *ex parte* arrest warrant proceeding, and requiring that a detention petition be filed at the warrant application stage would deprive defendants of the adversarial hearings intended by the legislature.

In sum, the People timely filed the petition for pretrial detention when they filed it at hearing where defendant first appeared because that was "the first appearance before a judge" under subsection 110-6.1(c)(1). The appellate court's contrary construction misconstrues the plain statutory language in a manner that undermines the legislature's clearly stated intent and leads to absurd results.

## **II. The Court Should Remand to the Appellate Court to Consider Defendant's Unadjudicated Claim.**

As noted, *supra* p. 8, defendant argued in the appellate court both that the People's petition was untimely and that the People had no authority to petition to detain him in the first place because he had already been granted pretrial release when the warrant was issued. *See* Def. App. Ct. Br. 4-6. The appellate court resolved only the timeliness issue, reversing the trial court's detention order based on the purported untimeliness of the People's petition and remanding for further proceedings, including a new detention petition filed within 21 days of defendant's release. A6, ¶ 21 ("We express no opinion on the merits to detain [defendant] if the State properly raises it.").

Consequently, if this Court reverses the appellate court's judgment, the Court should remand to the appellate court for consideration of defendant's unadjudicated claim that the arrest warrant constituted an order that he be released subject to conditions. *See People v. Lowery*, 178 Ill. 2d 462, 473 (1997) ("where trial errors were raised but not ruled upon in the appellate court, it is appropriate for this [C]ourt to remand the cause to the appellate court for resolution of those remaining issues").

### CONCLUSION

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

March 1, 2024

Respectfully submitted,

KWAME RAOUL  
Attorney General of Illinois

JANE ELINOR NOTZ  
Solicitor General

KATHERINE M. DOERSCH  
Criminal Appeals Division Chief

MITCHELL NESS  
Assistant Attorney General  
115 South LaSalle Street  
Chicago, Illinois 60603  
(773) 590-6934  
eserve.criminalappeals@ilag.gov

*Counsel for Plaintiff-Appellant  
People of the State of Illinois*

**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 5,467 words.

/s/ Mitchell Ness  
MITCHELL NESS  
Assistant Attorney General

**APPENDIX**

**TABLE OF CONTENTS TO APPENDIX**

<i>People v. Clark</i> , 2023 IL App (1st) 231770.....	A1-17
Order Denying Pretrial Release, <i>People v. Clark</i> , No. 23-MC2-00138301 (Cir. Ct. Cook Cty.).....	A18
People’s Petition for Pretrial Detention, <i>People v. Clark</i> , No. 23-MC2-00138301 (Cir. Ct. Cook Cty.).....	A19-20
Hearing on the People’s Petition for Pretrial Detention, <i>People v. Clark</i> , No. 23-MC2-00138301 (Cir. Ct. Cook Cty.).....	A21-48
Notice of Appeal, <i>People v. Clark</i> , No. 23-MC2-00138301 (Cir. Ct. Cook Cty.).....	A49-54
Index to the Record on Appeal.....	A55

2023 IL App (1st) 231770  
No. 1-23-1770B  
Opinion filed December 12, 2023

Sixth Division

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

---

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the Circuit Court
Plaintiff-Appellee,	)	of Cook County.
	)	
v.	)	No. 2023200138301
	)	
CARLOS CLARK,	)	The Honorable
	)	Anthony Calabrese,
Defendant-Appellant.	)	Judge, presiding.

---

JUSTICE HYMAN delivered the judgment of the court, with opinion.  
Justice C.A. Walker concurred in the judgement and opinion.  
Justice Tailor dissented, with opinion.

**OPINION**

¶ 1 Timing is everything in life and law. The State timed the filing of its petition to detain Carlos Clark to coincide with the effective date of article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/art. 110 (West 2022)), as amended by Public Act 101-652 (eff. Jan. 1, 2023), commonly known as the Pretrial Fairness Act. But the Code strictly limits the timing of these petitions, notably when the State already agreed that the trial court should set bail.

No. 1-23-1770B

¶ 2 At the first appearance, the State secured an *ex parte* order permitting Clark's possible release by setting a bail amount. This earlier choice rendered its later petition to detain too late. We reverse the trial court's order detaining Clark and remand for the trial court to reinstate its prior conditions of release. We express no opinion on a future ruling by the trial court if properly presented under the Code on whether to detain Clark.

¶ 3 Background

¶ 4 At the State's behest, about a month before the Pretrial Fairness Act became effective, the trial court signed an order permitting Carlos Clark's arrest and fixing his bail at \$100,000 D. See *Rowe v. Raoul*, 2023 IL 129248, ¶ 4 n.1 (noting neither "Safety, Accountability, Fairness and Equity-Today (SAFE-T) Act" nor "Pretrial Fairness Act" are "official" names but common shorthand for the sequence of public acts). The trial court had acted in response to the State filing a felony complaint that day charging Clark with aggravated vehicular hijacking (720 ILCS 5/18-4(a)(1)) (West 2022).

¶ 5 The name of an assistant state's attorney appears on the felony complaint, as does the signature of the judge who found probable cause to arrest Clark. Although not legible, a prosecutor's signature also appears alongside the trial court's signature on the order permitting Clark's arrest and setting bail. The felony minute sheet, filed the same day as the complaint and trial court order, additionally laid out the alleged facts of three more possible offenses, unlawful restraint, aggravated fleeing, and retail theft. (The dissent overlooks this portion of the record when asserting "we do not know what evidence was presented" to the trial court. *Infra* ¶ 37.) The felony minute sheet also noted Clark's then-current custody in McHenry County.

No. 1-23-1770B

¶ 6 About three weeks later, the State executed the Cook County arrest warrant. Two days after that, on the Act's effective date, the State petitioned to detain Clark. The trial court held a hearing that day, with Clark appearing for the first time.

¶ 7 Clark objected to the hearing. In his view, the Code did not permit the State to petition to detain him. He contended the Code permitted him, and only him, to seek review of the set conditions of release and offered no grounds for the State to now petition for his detention. In response, the State objected to having "no opportunity to file any conditions on this case[.]" The State contended that the Code permitted it to move to detain Clark during Clark's first appearance before the trial judge, so its petition was proper.

¶ 8 The trial court, the second judge to preside over this case, found:

I don't know what was or was not said to [the first judge] at the time of the issuance of the warrant. A warrant was issued for defendant's arrest in the amount of \$100,000 D. I can't speak to what happened then. I believe that the issuance of the warrant is a mechanism by which the defendant is compelled to appear before a court.

Typically, what happens is once those warrants are executed and defendants appear in front of me, I then make a determination as to whether probable cause exists. I listen and review the case in its entirety for purposes of setting a fair bond that includes setting any conditions that might be relevant, any concern, and it includes an in-depth consideration of all the factors from both sides, then I'll be able to have an opportunity to make an appropriate decision in this case.



No. 1-23-1770B

Before today's date no hearing has been held. This is the first time the defendant is appearing. There is no opportunity for conditions to be filed and for an assessment to be able to be made as to what is or isn't an appropriate condition of release for the defendant.

I believe the State is well within their right given these unique circumstances on the first appearance after the issuance of a warrant and appearance off that warrant to be able to go forward with the [] Act and have a determination made as to whether or not the defendant should be detained, so over the Defense's objection, I am going to allow the detention hearing.

¶ 9 The trial court held the detention hearing, denied pretrial release, and issued a written order.

¶ 10 Analysis

¶ 11 Clark contends the Code, as amended by the Pretrial Fairness Act, offers the State no grounds for petitioning to detain those like him, whom the trial court ordered released at the start of the prosecution and before the Act's effective date. The State responds that the Code permitted what it did: petition to detain Clark during his first appearance before trial court.

¶ 12 The parties' dispute requires us to interpret a statute, presenting legal questions that we review *de novo*. *People v. Ramirez*, 2023 IL 128123, ¶ 13. We read the statute in full, not piecemeal. *Ramirez*, 2023 IL 128123, ¶ 13. We determine the statute's meaning by discerning the plain and ordinary meaning of its words. *Id.* And we do not add exceptions, limitations, or conditions that would contradict the legislature's intent. *Id.*

¶ 13 The parties agree their dispute turns, in part, on section 110-6.1(c), which controls the timing for filing petitions to detain. 725 ILCS 5/110-6.1(c) (West 2022). The parties focus on the meaning of the phrase "the first appearance before a judge," as that phrase appears in subsection

No. 1-23-1770B

110-6.1(c)(1) (West 2022). Clark contends that phrase includes *ex parte* hearings at which the State initiates the prosecution and seeks bail. The State argues that phrase excludes hearings at which only the State appears and thus requires the defendant to appear as well.

¶ 14 We begin with the full text of section 110-6.1(c), which contains two subsections, and italicize its use of the word *appearance*. Under subsection (c)(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 petition is pending before the court, the defendant if previously released shall not be detained.

The State reads this section as “at the [defendant’s] first appearance before a judge.” Under subsection (c)(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 [certain class offenses], and within 24 hours if the defendant is charged with [other class offenses]. 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.

Read together, section 110-6.1(c) uses two different phrases, suggesting a distinction between the terms “the first appearance before a judge” (subsection (c)(1)) and “the defendant’s first appearance” (subsection (c)(2)).

No. 1-23-1770B

¶ 15 The State rejects any distinction, contending it properly petitioned to detain Clark under subsection (c)(1) because “first appearance \* \* \* refers to the first time a *defendant* appears before a judge[.]” (Emphasis in original.) The State argues this court has “recently and repeatedly held” “ the plain language of this subsection [permits it to] file a petition to detain at the time of the defendant’s first appearance before a judge.” (Internal quotation omitted.) (citing *People v. Vingara*, 2023 IL App (5th) 230698, ¶ 16 and *People v. Rios*, 2023 IL App (5th) 230724, ¶ 10). We disagree.

¶ 16 The State’s reading limits subsection (c)(1)’s reach by adding the word “defendant’s” to the phrase “the first appearance before a judge.” We may not add terms that contravene legislative intent. *Ramirez*, 2023 IL 128123, ¶ 13. Here, the legislature envisioned a process where the State and trial court need not wait for a defendant’s appearance before considering whether to detain that person without setting bail. 725 ILCS 5/110-6.1(c)(1) (West 2022). This process may occur “without prior notice to the defendant[.]” 725 ILCS 5/110-6.1(c)(1) (West 2022). As Clark suggests, this process tracks the longstanding practice of seeking a “no bond arrest warrant” for certain defendants. See 725 ILCS 5/110-4 (superseded by Act).

¶ 17 Under subsection (c)(1), “the first appearance before a judge” includes, as here, an *ex parte* appearance by the State to begin the prosecution by filing a felony complaint and then seek an order setting bail. Generally, “appearances” include parties to the litigation. See APPEARANCE, Black’s Law Dictionary (11th ed. 2019) (defining “appearance” as “coming into court as a party or interested person, or as a lawyer on behalf of a party or interested person”). The State points to nothing in the text of the Code supporting an interpretation of “appearance” that excludes the State’s actual appearance before a trial judge to begin the prosecution and seek bail.

No. 1-23-1770B

¶ 18 Nor do the State’s citations to *Vingara* and *Rios* persuade us otherwise. Contrary to the State’s assertions, neither *Vingara* nor *Rios* “held” that the State’s reading of the Code was correct. Both defendants in *Vingara* and *Rios* personally appeared when the trial courts set their bails (*People v. Vingara*, 2023 IL App (5th) 230698, ¶ 3; *People v. Rios*, 2023 IL App (5th) 230724, ¶ 3). Moreover, neither opinion analyzed subsection (c)(1)’s application to *ex parte* bail hearings at the beginning of the prosecution.

¶ 19 Indeed, in *dicta*, the panels in *Vingara* and *Rios* asserted without analysis that subsection(c)(1)’s text, “the first appearance before a judge,” meant the *defendant’s* first appearance before a judge. *People v. Vingara*, 2023 IL App (5th) 230698, ¶ 16 (“Under the plain language of this subsection, the State may file a petition to detain at the time of the defendant’s first appearance before a judge; no prior notice to the defendant is required.”); *People v. Rios*, 2023 IL App (5th) 230724, ¶ 10 (“The plain language of this section sets forth the deadline for the State to file a petition to detain. The State may file a petition to detain at the time of the defendant’s first appearance before a judge; no prior notice to the defendant is required.”). For the reasons we gave, we reject the idea that the “plain language” of subsection (c)(1) further excludes *ex parte* hearings where the State begins the prosecution and seeks bail.

¶ 20 The State’s petition to detain was untimely under section 110-6.1(c) for two reasons. First, as noted, the State did not seek to detain Clark when it began this prosecution at the first appearance. The State instead sought bail of \$100,000 D. Second, the State could not avail itself of the Code’s 21-day extension, having failed to provide “reasonable notice” of its intent to detain. The State petitioned to detain Clark the same day he first appeared, and the court immediately overruled Clark’s objection to proceeding. 725 ILCS 5/110-6.1(c)(1) (West 2022). Even more

No. 1-23-1770B

essential, Clark has remained in custody since his arrest. Thus, no “arrest and release” has triggered the 21-day extension. 725 ILCS 5/110-6.1(c) (1) (West 2022).

¶ 21 As this matter stands, the State improperly petitioned to detain Clark, and he remains entitled to the conditions of bail the trial court set when the State began this prosecution. We express no opinion on the merits to detain Clark if the State properly raises it (see 725 ILCS 5/110-6.1(c)(1) (West 2022) (permitting State 21-day extension to file petition to detain)), or the trial court properly considers it, (725 ILCS 5/110-7.5(b), 5(e) (West 2022) (permitting trial court to “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”)). These other opportunities, which the dissent overlooks to assert this opinion will leave the State “powerless” (*Infra* ¶¶ 36-37), could result in Clark’s pretrial detention.

¶ 22 Reversed and remanded.

¶ 23 JUSTICE TAILOR, dissenting:

¶ 24 The majority holds that because the trial court set bond when it issued an arrest warrant for Clark on the State’s *ex parte* application three weeks before the Pretrial Fairness Act became effective, the State was precluded from seeking Clark’s detention when he appeared in court on the warrant for the first time on September 18, 2023, the day the change to the Code went into effect. I respectfully disagree.

¶ 25 On August 23, 2023, a felony complaint was filed in this case alleging that Clark committed the offense of aggravated vehicular hijacking (720 ILCS 5/18-4(a)(1) (West 2022) on August 6, 2023, when he “knowingly took a motor vehicle, a 2009 Honda CRV \* \* \* from the person of

No. 1-23-1770B

[victim 1], a person 60 years of age or over, by the use of force. All occurred in the State of Illinois, County of Cook, Village of Northbrook.” The complaint was signed and sworn to by Detective Ochab, and was also signed by Judge Gemskie, who found probable cause to arrest. On the same day, Judge Gemskie issued a warrant for Clark’s arrest and set bond at \$100,000 D. The felony minute sheet states that the sole charge against Clark is aggravated vehicular hijacking and recites a narrative of the incident. The half sheet from that day also shows the only charge against Clark was aggravated vehicular hijacking and includes the notation, “FPC (G). WTI \$100,000D.” Presumably, the acronym “FPC” stands for “finding of probable cause,” “(G)” stands for “granted,” and the acronym “WTI” stands for “warrant to issue.”

¶ 26 Clark had been arrested by the Crystal Lake police department on August 9, 2023, and was being held in McHenry County on an unrelated offense. Clark was arrested in this case on September 16, 2023. On September 17, 2023, the day before Clark appeared in court on this case, two additional complaints were sworn to by Illinois State police Trooper Sanchez, one for aggravated fleeing, (625 ILCS 5/11-204.1 (West 2022)), and the other for unlawful restraint (720 ILCS 5/10-3-A (West 2022)). One complaint alleged that Clark committed the offense of aggravated fleeing on August 6, 2023, when he was “the driver or operator of a vehicle, who have [sic] been given a visual or audible signal by a peace officer, to wit: ISP, directing him to bring his vehicle to a stop, failed to obey such direction[,] increased his speed or otherwise attempted to elude the officer” in violation of section 5/11-204.1 of the Illinois Vehicle Code (625 ILCS 5/11-204.1 (West 2022)). The other complaint alleged that on August 6, 2023, Clark committed the offense of unlawful restraint in that he “knowingly and without legal justification detained [victim

No. 1-23-1770B

2]” in violation of section 5/10-3-A of the Criminal Code of 1961 (720 ILCS 5/10-3-A (West 2022)).

¶ 27 On September 18, 2022, when Clark appeared in court, the public defender was appointed to represent him. The two additional complaints sworn to by ISP Trooper Sanchez were filed with the court. The State also moved to amend the complaint for aggravated vehicular hijacking. Clark waived “re-swearing and re-verification of the complaints as amended.” The court then informed Clark of the allegations in the complaint filed against him for aggravated vehicular hijacking on August 23, 2023, and the complaints for aggravated fleeing and unlawful restraint filed on September 18, 2023. Clark indicated that he understood.

¶ 28 The State then filed a petition for pretrial detention. Defense counsel objected to the petition and argued that Judge Gemskie already set bond at \$100,000 when she issued the warrant on August 23, 2023. According to Clark, the Pretrial Fairness Act did not allow the State to seek review of the previously imposed conditions of release—the \$100,000 D bond—which was set when the warrant was issued on August 23, 2023, on the State’s complaint for aggravated vehicular hijacking. The State argued that the Pretrial Fairness Act allowed it to move to detain Clark during his first appearance in court without prior notice and that the bond set in conjunction with the warrant was solely to secure Clark’s first appearance in court to answer the charges against him.

¶ 29 The court rejected Clark’s argument and allowed the hearing to proceed “given the unique circumstances on the first appearance after the issuance of a warrant.” The court reasoned that, “[b]efore today’s date no hearing has been held. This is the first time the defendant is appearing. There is no opportunity for conditions to be filed and for an assessment to be able to be made as to what is or isn’t an appropriate condition of release for the defendant.” The State then asked the

No. 1-23-1770B

court for Clark to be detained and for pretrial conditions and read a proffer containing the following specific facts of each alleged offense into the record.

“At approximately 6:25 p.m. on August 6th, Victim 1 who is a 67-year-old female parked her silver Honda CRV in the shared parking lot outside of CVS located at 936 Willow Road. Victim 1 locked her car, but left her window slightly ajar before entering the store. When Victim 1 returned, she noticed something in the back seat of the Honda. As she unlocked the vehicle and opened the driver’s side door, the Defendant Carlos Clark moved from the back seat to the front seat and grabbed Victim 1’s car key from her hand. The Defendant then attempted to grab Victim 1’s purse as well. The Defendant told Victim 1 that he would shoot her if she did not give him her purse. Victim 1 continued to fight back and the defendant eventually gave up, reentered Victim 1’s vehicle without the purse and drove away.

Victim 1 immediately returned to the CVS and notified the cashier what happened and called the police.

\* \* \*

At approximately 8:08 p.m. on August 6th, the Defendant entered the back of a BP gas station located at 43rd and Wentworth in Chicago, Cook County, Illinois, in Victim 1’s silver Honda CRV. The defendant started speaking to individuals about selling them cologne and perfume. Victim 2 works at the BP gas station and walked over to the Defendant to ask about the colognes he was selling.



No. 1-23-1770B

The Defendant told Victim 2 that he had additional products in his vehicle and invited Victim 2 to look. Victim 2 entered the vehicle and closed the door. The Defendant then entered the driver's seat and sped away with Victim 2 in the vehicle.

There were ISP squad cars in the parking lot when the Defendant pulled away.

These events are recorded on surveillance video.

The Defendant proceeded onto the highway while violating numerous traffic control devices while being pursued by ISP troopers including a right turn on red without stopping at the intersection of 43rd and Wentworth, two lane violations over solid white lines, speeding upwards of 110 miles per hour in a marked 55 miles per hour zone. Victim 2 repeatedly begged the defendant to pull over and let him out, but the Defendant refused telling Victim 2 to be quiet or he would kill him while gesturing towards his waistband.

The Defendant ran a red light at 71st Street and Lafayette which caused an accident where the vehicle was struck by oncoming traffic.

The Defendant exited the vehicle and ran off on foot making good on his escape. A critical search was done based on surveillance which revealed that the defendant was on Electronic Monitoring for a possession of stolen motor vehicle out of the District 5. The Electric Home Monitoring GPS placed the Defendant at the ULTA, CVS, and BP gas station at this [sic] times reported.

The Defendant was arrested by Crystal Lake PD on August 9th, 2023, for a retail theft. Fingerprints were taken from the stolen motor vehicle and the boxes of perfume which came back to the defendant.

Photo lineups were provided to Victim 1 and Victim 2 on August 15th, 2023.

No. 1-23-1770B

Both Victim 1 and Victim 2 identified the defendant.”

¶ 30 The court then heard from a pretrial services representative who went over their assessments and informed the court that Clark was a “six” on a scale of one to six for new criminal activity. On the failure to appear scale of one to six, Clark was a “five.” The court noted the assessment showed seven aggravating factors including Clark’s age, prior failures to appear in court, prior felony convictions, and pending charges at the time of these offenses.

¶ 31 The majority concludes that the detention hearing was improper. It finds that when the State filed a criminal complaint and obtained a warrant for Clark’s arrest that set a bond on August 23, 2023, an *ex parte* detention hearing was held, effectively releasing Clark “at the start of the prosecution and before the Act’s effective date.” *Supra*, ¶11. Based on this finding, the majority has determined that the State improperly petitioned to detain Clark on September 18, 2023, because the petition was untimely under section 5/110-6.1(c).

¶ 32 Section 5/110-6.1(c)(1), which went into effect on September 18, 2023, the day Clark first appeared in court in this case, states in relevant part: “A petition may be filed without prior notice to the defendant at the first appearance before a judge \*\*\*.” (emphasis added). 725 ILCS 5/110-6.1(c)(1) (West 2022). Subsection (c)(2) then states that, “[u]pon 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 \*\*\*.” (emphasis added). *Id.* 110-6.1(c)(2) (West 2022).

¶ 33 Drawing on the difference in the “appearance” language in subsections (c)(1) and (c)(2), the majority concludes that the “first appearance before a judge” language in subsection (c)(1) encompasses the State’s initial *ex parte* appearance before the court to obtain a warrant for Clark’s

No. 1-23-1770B

arrest, where the court also set bond at \$100,000D. Therefore, according to the majority, the State could not petition the court under subsection (c)(1) to detain him when Clark first appeared in court on the warrant on September 18, 2023.

¶ 34 Two principals of statutory construction inform the resolution of this appeal. First, when interpreting a statute, courts should consider a statute in its entirety, keeping in mind the subject it addresses and the legislature's apparent objective in enacting it. *People v. Davis*, 199 Ill. 2d 130, 135 (2002). Second, the primary objective in construing a statute is to give effect to the legislature's intent, presuming the legislature did not intend to create absurd, inconvenient or unjust results. *In re Madison H.*, 215 Ill. 2d 364, 372 (2005).

¶ 35 When subsection (c)(1) is read in conjunction with subsection (c)(2), the most reasonable construction of the "first appearance before a judge" language in subsection (c)(1) is that it means the first appearance before a judge at which the defendant is present. See *People v. Vingara*, 2023 IL App (5th) 230698, ¶ 16 ("Under the plain language of this subsection [5/110-6.19(c)(1)], the State may file a petition to detain at the time of the defendant's first appearance before a judge; no prior notice to the defendant is required"); *People v. Rios*, 2023 IL App (5th) 230724, ¶ 10 ("The State may file a petition to detain at the time of the defendant's first appearance before a judge; no prior notice to the defendant is required"). Prior to Clark's arrest on the warrant, there would have been no reason for the State to file a petition to detain him. Thus, subsection (c)(1) authorized the State to petition the Court to detain Clark on his first appearance after his arrest without providing him with notice of the petition.

¶ 36 Moreover, when the State applied for a warrant for Clark's arrest, it obviously did not file a petition under subsection (c)(1) to detain him because the change to the Code had not yet gone

No. 1-23-1770B

into effect. *Cf. People v. Houts*, 2023 IL App (5th) 230715-U, ¶ 13 (The State’s petition to detain pursuant to section 110-6.1 after the Act went into effect was untimely because the State did not file the petition to detain at defendant’s first appearance four months earlier when the defendant was present and bond was set). Therefore, the majority’s conclusion that the State exhausted its one opportunity under subsection (c)(1) to detain Clark without notice when it obtained *ex parte* a warrant for his arrest that set a bond is flawed. I would presume that the legislature did not intend to create this absurd result and therefore would find that the State’s petition to detain was not untimely under section 5/110-6.1(c)(1).

¶ 37 Even assuming that the majority’s interpretation of section 5/110-6.1(c)(1) is correct, the untimeliness of the petition to detain is not grounds for reversal in this case. Under the majority’s interpretation, the State would be powerless to seek detention on a defendant’s first appearance in court when a warrant had been previously issued and bond been set, in this case or any other, regardless of what occurred between the time the court issued the arrest warrant and set bond and the defendant first appeared in court. The trial court correctly recognized that we do not know what evidence was presented to Judge Gemskie or how she arrived at the \$100,000 D bond set in the warrant. We do not know whether Judge Gemskie was equipped with the necessary information to engage in the fulsome analysis that a detention hearing demands. Presumably Judge Gemskie did not have before her a representative from pretrial services and did not know that Clark scored a “six” on a scale of one to six for assessment of new criminal activity and a “five” out of six for assessment of failure to appear. What we do know is the only felony complaint before her at the time was for aggravated vehicular hijacking, which was subsequently amended on September 18, 2023, the day Clark appeared in court after being arrested on the warrant. The additional felony

No. 1-23-1770B

complaints for aggravated fleeing and unlawful restraint were sworn to on September 17, 2023, and filed in the circuit court the following day. The unlawful restraint complaint involved a different alleged victim. We know that Judge Gemskie did not consider these charges when she set bond on August 23, 2023. We also know that the hearing on August 23, 2023, had none of the hallmarks of a detention hearing because, among other reasons, Clark was not present and was not given the opportunity to testify, present witnesses, or offer information by proffer or otherwise. See *American Bar Association*, Standard 10-5.10 (prescribing detailed procedures for pretrial detention hearings, judicial orders for detention, and appellate review). Under the majority's view, the State could not seek Clark's detention when he first appeared in court even though no detention hearing had previously been held and Clark had been charged with new offenses that were not considered by the court on August 23, 2023, when the warrant was issued and bail was set on the aggravated vehicular hijacking complaint.

¶ 38 For the foregoing reasons, I would affirm the trial court. Therefore, I respectfully dissent.

No. 1-23-1770B

---

*People v. Clark, 2023 IL App (1st) 231770*

---

**Decision Under Review:** Appeal from the Circuit Court of Cook County, No. 23200138301; the Hon. Anthony Calabrese, Judge, presiding.

---

**Attorneys for Appellant:** Sharone R. Mitchell Jr., Public Defender, of Chicago (Rebecca Cohen, Assistant Public Defender, of counsel), for appellant.

---

**Attorneys for Appellee:** Kimberly M. Foxx, State's Attorney, of Chicago (Jessica R. Ball, Assistant State's Attorney, of counsel), for the People.

---

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

DEPARTMENT, \_\_\_\_\_

DIVISION/DISTRICT \_\_\_\_\_

People of the State of Illinois

Case Number: 13200188901 23200138301

Defendant: CARLOS V. CLARK

Charge: Agg Vehicular Hijacking

IR Number: 23102520  
(or SID/FBI# (circle one)):

ORDER AFTER PRETRIAL DETENTION HEARING

725 ILCS 5/110-2, 110-6.1

Defendant appeared  in person  virtually.

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

The State's petition for pretrial detention denied.

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); 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: THREAT OF HARM TO VICTIM,

ACC OF VICTIM 67 / NO CONDUCT OF THE  
DISREGARD OF PUBLIC SAFETY

; 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 the 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: DS CRIMINAL

BACKGROUND, PREVIOUS ACC UVV CONVICTION, ACC OF VICTIM

; and,

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.

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.

ENTERED  
SEP 18 2023  
IRIS Y. MARTINEZ  
CLERK OF THE CIRCUIT COURT  
OF COOK COUNTY, IL

IT IS HEREBY ORDERED that:

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

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: \_\_\_\_\_

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

DV Order of Protection # \_\_\_\_\_  Civil No Contact Order # \_\_\_\_\_  Stalking No Contact Order # \_\_\_\_\_

ENTERED: Date: 9-18-23 Judge's Signature: \_\_\_\_\_ Judge's Number: 1947

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

DEPARTMENT, DIVISION/DISTRICT

People of the State of Illinois

Case Number: 23200138301

v.

Charge: Agg vehicular Hijacking

Defendant: Carlos Clark

IR Number: 2362520

(or SID/FBI# (circle one)):

PETITION FOR PRETRIAL DETENTION HEARING

725 ILCS 5/110-2, 110-6.1

[X] Original CR1814

[ ] Subsequent (see attached for new facts not known or CR1815 obtainable at the time of the filing of the previous petition)

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 [X](a)(1) non-probationable felony based on charge/background [X](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: Agg vehicular Hijacking, and

2. The defendant:

- [X] 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: see attached addendum

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: 9/18/23 Assistant State's Attorney Signature: Ceana Martin



## Addendum

- The Defendant is a persistent and recalcitrant recidivist.
- The defendant was on EHM for a pending PSMV when he committed this crime.
- The defendant threatened the life of two different victims during the course of these crimes.
- The defendant committed a vehicular hijacking in plain daylight immediately after committing a retail theft.
- The defendant drove away with a victim in his vehicle in order to escape the police and further endangered the victim's life by running a red light and getting into an accident.
- The defendant fled the scene of the crash to avoid apprehension.
- The defendant went on to commit another retail theft days later on August 9<sup>th</sup> in McHenry county.
- Video Surveillance captures parts of the incident.
- The defendant's fingerprints are recovered from the stolen vehicle.
- The defendant is ID'd by both victims.

APPEAL TO THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT  
COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

Plaintiff/Petitioner

Reviewing Court No: 1-23-1770

Circuit Court/Agency No: 2023200138301

v.

Trial Judge/Hearing Officer: ANTHONY CALABRESE

CARLOS CLARK-PFA APPEAL-1-23-1770B

Defendant/Respondent

E-FILED

Transaction ID: 1-23-1770B

File Date: 10/17/2023 11:50 AM

Thomas D. Palella

Clerk of the Appellate Court

APPELLATE COURT 1ST DISTRICT

**REPORT OF PROCEEDINGS - TABLE OF CONTENTS**

Page 1 of 1

Date of

Proceeding

Title/Description

Page No.

09/18/2023

PFA-HEARING 0

R 2-R 28 (Volume 1)



1 THE COURT: Ms. Masterson, are you in a position to  
2 call Carlos Clark?

3 MS. MASTERSON: Yes, Judge. I think I may be asking  
4 for 24 hours.

5 THE COURT: We are in a position to go forward with a  
6 detention hearing potentially regarding Carlos Clark,  
7 C-l-a-r-k.

8 He has two separate case numbers 23-MC2-001888 and  
9 23-MC2-001889.

10 It looks like there has been quite a few hands  
11 through the files which I can understand. Regarding the  
12 889, the allegation is aggravated fleeing and eluding and  
13 unlawful restraint.

14 MS. MALKIN: There is also an aggravated vehicular  
15 hijacking being charged.

16 THE COURT: Under the 889?

17 MS. MALKIN: This is a third charge.

18 THE COURT: It is not in that file.

19 MS. MALKIN: We can do it as a third case, but I would  
20 have to amend the petition with the case number.

21 THE COURT: All I can tell you is what the criminal  
22 complaints alleged against the defendant are under case 889.  
23 Looking both at the only complaints in the file, and the  
24 criminal disposition sheet generated off the filed documents

1 on the case, there is an aggravated fleeing, and then an  
2 unlawful restraint are the two felony allegations contained  
3 under that case number.

4 THE CLERK: I have an aggravated vehicular highjacking  
5 on this case number and I have a warrant.

6 MS. MASTERSON: Something else is happening. I was  
7 told something is happening. Can I see file?

8 THE COURT: I am tendering court files to the lawyers,  
9 and there is an additional complaint with a different case  
10 number.

11 What I am being told now that has happened is that  
12 under the case number I read into the record those are the  
13 two allegations contained therein.

14 There is a case number that has a complaint on it  
15 for aggravated vehicular hijacking, that is 23-MC2-001382,  
16 but it looks like that was a warrant issued?

17 THE CLERK: By Judge Gemskie.

18 THE COURT: So there was a warrant issued for the  
19 defendant's arrest under that case number.

20 Is there an outstanding warrant for the defendant  
21 under these allegations, under this case number or not? Do  
22 we know?

23 MS. MALKIN: Based on what I have been informed --

24 THE COURT: I am asking them whether --

1 MS. MALKIN: It is the State's position that it should  
2 be under one case. I am happy to go to the clerk's office.

3 THE COURT: Let's take a look. All right. I will  
4 leave it up to you. Do you need some time to do it?  
5 Because the date of the offense appears to be the same, but  
6 there are two different case numbers, and this does not  
7 under the 888, doesn't indicate any warrant, but there is a  
8 warrant apparently under this number.

9 I will pass the case.

10 (Whereupon, the above-entitled cause was  
11 passed and later recalled.)

12 THE COURT: Back on the record in regards to these  
13 cases. There has been some ongoing, an attempt on all  
14 parties to be able to get an understanding as to what is  
15 going on with last Defendant, Mr. Carlos Clark.

16 Can we get Mr. Clark back out here?

17 THE SHERIFF: Yes, sir.

18 THE COURT: All right. Again, we have Mr. Carlos  
19 Clark. Good afternoon.

20 THE DEFENDANT: How are you doing, your Honor.

21 THE COURT: Fine. Thank you, sir.

22 Mr. Clark, you are in court today without any  
23 lawyer appearing on your behalf. I am going to appoint the  
24 Office of the Public Defender who will look out for you on

1 all the cases that you have.

2 THE DEFENDANT: Yes. Thank you, your Honor.

3 THE COURT: Public Defender appointed. Leave to file  
4 appearance is granted.

5 I'm going to start with the easiest of the cases  
6 as is my nature. It looks like there was a bond forfeiture  
7 warrant issued for the defendant's arrest out of Bridgeview.

8 Was it a failure to appear warrant, State?

9 MS. MALKIN: Yes.

10 THE COURT: That is in regards case number  
11 23-500240701. There is a no bail warrant outstanding for  
12 the defendant's arrest for failure to appear in court.  
13 Warrant X. Bond to stand. Motion State transfer 9-19-23 at  
14 9:00 a.m. Bridgeview.

15 Do you want the defendant to appear in person on  
16 that occasion?

17 MS. MASTERSON: Virtually is fine.

18 THE COURT: Defendant to appear on Zoom.

19 Mr. Clark, you are all right with appearing on  
20 Zoom if you are in custody -- well, you will be in custody  
21 tomorrow appearing in Bridgeview on Zoom, sir, is that  
22 right?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: All right. I have two case numbers that

1 appear here. There is 23-MC2-001888 and that is an  
2 allegation of felony retail theft, State?

3 MS. MALKIN: Yes, your Honor.

4 THE COURT: Public Defender is appointed. Leave to  
5 file appearance is granted for Ms. Masterson.

6 Mr. Clark, in regards to this offense there is an  
7 amendment to the complaint in terms some of the verbiage and  
8 also in terms of venue.

9 Are you waiving re-swearing and re-verification,  
10 Ms. Masterson?

11 MS. MASTERSON: Yes, Judge.

12 THE COURT: So the allegation alleged against you and  
13 that is a single count of felony retail theft. They say  
14 this event happened on August 6<sup>th</sup> 2023, at the location of  
15 936 Willow Road at the ULTA store in Northbrook, Cook  
16 County.

17 That say that you committed the offense of felony  
18 retail theft in that you knowingly took possession of five  
19 items having a total value of more than \$300 at a retail  
20 mercantile establishment with the intention of depriving the  
21 merchant permanently without paying the full retail value of  
22 such merchandise all occurring in the State of Illinois,  
23 County of Cook, Village of Northbrook.

24 Do you understand that charge against you?



1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: In regards to that felony theft is the  
3 State's Attorneys Office going to be seeking a petition to  
4 detain the defendant for any reason on that offense?

5 MS. MALKIN: Yes, your Honor.

6 THE COURT: The felony theft as it stands is  
7 non-detainable.

8 MS. MASTERSON: Yes.

9 MS. MALKIN: I'm sorry, your Honor.

10 THE COURT: From your position it's non-detainable?

11 MS. MALKIN: Yes.

12 THE COURT: As far as both parties are concerned, are  
13 we doing these discussions at the same time with both cases  
14 together?

15 MS. MALKIN: Yes.

16 MS. MASTERSON: Yes.

17 THE COURT: All right. We also then have 23-MC2-001383  
18 under that case number, there are a variety of complaints  
19 some three in number.

20 There are some amendments to the body of the  
21 complaint.

22 Ms. Masterson, are you waiving re-swearing and  
23 re-verification of the complaints as amended? And by the  
24 way, the Public Defender is appointed on this case. Leave

1 to file an appearance is granted.

2 MS. MASTERSON: Thank you, Judge, and yes.

3 THE COURT: Where are the three complaints,  
4 particularly, that you are going on? The aggravated  
5 vehicular highjacking, the aggravated fleeing --

6 MS. MALKIN: There is also unlawful restraint, but we  
7 are moving -- the petition is based on the aggravated  
8 vehicular hijacking.

9 THE COURT: But those are the three charges alleged  
10 against the defendant?

11 MS. MALKIN: Yes.

12 THE COURT: I am informing you of the allegations  
13 alleged against you, sir. They are saying each of these  
14 events happened on August 6<sup>th</sup>, 2023. They are saying the  
15 offenses took place, the aggravated vehicular highjacking at  
16 936 Willow Road, CVS Northbrook, Cook County, Illinois, on  
17 that occasion.

18 They are saying the aggravated fleeing and eluding  
19 happened on August 6<sup>th</sup>, 2023, at 4248 South Wentworth  
20 Avenue, in Chicago, Cook County, Illinois, and then the  
21 unlawful restraint that happened on August 6, 2022, at 4248  
22 South Wentworth Avenue in Chicago.

23 In regards to the aggravated highjacking, they say  
24 you knowingly took a motor vehicle, a 2009 Honda CRV from

1 the immediate presence of Olga Golan, O-L-G-A, last name  
2 G-O-L-A-N, by the use of force or by threatening the  
3 imminent use of force and Olga Golan was a person 60 years  
4 of age or older.

5 With regards to the aggravated fleeing, they now  
6 say that you were the driver or operating a vehicle who had  
7 been given a visual or audible signal by a peace officer to  
8 wit: Illinois State Police directing to bring his vehicle  
9 to a stop, failed to obey such direction, increased his  
10 speed or otherwise attempted to evade the officer.

11 Then the felony offense of unlawful restraint that  
12 you knowing without legal justification detained Muhammad  
13 Ibad Yaseen, M-u-h-a-m-m-a-d, I-b-a-d, Y-a-s-e-e-n.

14 Do you understand the charges as alleged against  
15 you?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: You have had an opportunity to, Mr. Clark,  
18 to speak to your lawyer throughout the course of the  
19 afternoon?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Ms. Masterson, it looks like The State's  
22 Attorneys Office is filing a petition for Pretrial  
23 Detention.

24 You have been given a copy of that?

1 MS. MASTERSON: Yes, Judge.

2 THE COURT: All right.

3 State attorneys, what discovery have you tendered  
4 to the defendant in connection with your petition?

5 MS. MALKIN: Your Honor, we have tendered all police  
6 reports that we have in our possession as well as the  
7 defendant's background. That is what we have at this time  
8 for ourselves as well.

9 MS. MASTERSON: I have received that. I do understand  
10 that the State may proffer -- I believe the State is going  
11 to proffer from some written materials, and I have not  
12 received copies of those.

13 MS. MALKIN: I wrote my own proffer based on the  
14 information I received from the police department.

15 MS. MASTERSON: My understanding is whatever the State  
16 is going to use, I am entitled to a copy of before the  
17 hearing, and I have not received that.

18 THE COURT: Well, I will listen to the State's  
19 response.

20 You are certainly able to have written or recorded  
21 statements made by witnesses regarding a case. I don't  
22 believe that applies to anything written by the State's  
23 Attorneys as to how she's presenting her case. I don't  
24 think she has an obligation to tender that and certainly to

1 tender any documents that you are relying on in order to  
2 make the proffer.

3 MS. MALKIN: Your Honor, I have tendered everything and  
4 everything else is a State's Attorney work product.

5 THE COURT: Okay. I appreciate that.

6 MS. MASTERSON: I understand your position, Judge. I  
7 object to the State reading from anything that hasn't been  
8 tendered for the record.

9 THE COURT: We all understand our position, but there  
10 is nothing you are reading that hasn't been tendered to them  
11 in some form of report.

12 MS. MALKIN: Yes. Everything I have is from the police  
13 report.

14 THE COURT: All right. There was a Pretrial Services  
15 that was done in this case. Has that been tendered to  
16 Ms. Masterson?

17 MS. MASTERSON: Judge, that has not been tendered.

18 MS. MALKIN: I have my copy, but I can give her my  
19 copy.

20 MS. MASTERSON: I'm in receipt of one now.

21 THE COURT: State, perhaps you can lend me yours for a  
22 moment.

23 MS. MALKIN: Yes.

24 THE COURT: Thank you.

1 State's Attorney, I am going to ask you, have you  
2 signed off on the petition, or am I swearing you straight to  
3 the petition.

4 MS. MALKIN: I believe I gave you the petition. I have  
5 not signed it.

6 THE COURT: Ask you to raise your right hand.

7 (Assistant State's Attorney sworn.)

8 MS. MALKIN: I swear.

9 THE COURT: All right. State's ready for hearing  
10 regarding this matter today?

11 MS. MALKIN: Yes.

12 THE COURT: Is the Defense ready?

13 MS. MASTERSON: Judge, I believe that whatever the  
14 State has filed is improper, Judge. I believe the Act  
15 allows my client to decide whether or not he wants to be  
16 under the former provision or current provision.

17 I believe the Act sets that out in 725 ILCS  
18 5/110-7.5 outlines that my client is allowed to remain under  
19 the prior Act. I believe that the statute says that on or  
20 after January 1st, 2023, any person who remains in Pretrial  
21 Detention after having been ordered release with Pretrial  
22 conditions including the condition of depositing security is  
23 entitled to a hearing.

24 He is not asking for a hearing. He is asking for

1 his bond to stand. A warrant was set on August 23, 2023, by  
2 Judge Michelle Gemskie.

3 Judge, I believe, that on that day she had an  
4 opportunity to the review all of the police reports. I  
5 believe she spoke with the detectives and/or officers  
6 seeking the warrant.

7 I believe there was a sworn affidavit, and, Judge,  
8 I believe, that she gave that value of the case of \$100,000  
9 that is a bond warrant with a \$100,000 bond. The bond has  
10 been set, and, Judge, I think that you should deny the  
11 petition that the State is the seeking leave to file  
12 outright.

13 THE COURT: All right. Just as an aside, what makes  
14 you think that is specifically what happened when the  
15 officer appeared for a warrant before Judge Gemskie?

16 MS. MASTERSON: I don't know exactly what happened, but  
17 those are all of the things that ordinarily happen when an  
18 officer seeks a warrant.

19 THE COURT: Okay.

20 State, what is your response?

21 MS. MALKIN: Your Honor, first, the Defendant has not  
22 deposited security at this time. He was arrested on the  
23 warrant. The warrant doesn't necessarily set the  
24 conditions. It's not a hearing with attorneys present.

1           The State has had no opportunity to file any  
2 conditions on this case, and the warrant's purpose is to  
3 bring the defendant to court for a first appearance hearing.

4           The statute states that at the first appearance  
5 before a judge or within 21 calendar days we have the  
6 ability to the file a petition for detention.

7           We have not had that ability at this time, and  
8 based on what the Public Defender is stating it seems that  
9 there would be no opportunity on any warrant for the State  
10 to file any pretrial detention hearing petition.

11          MS. MASTERSON: See, the State misunderstands, and  
12 anything that happened before today and after January 1st,  
13 2023, if that is true, then we would have some ex post facto  
14 concern.

15           I think that is why the legislature set it out as  
16 they did, but from today going forward I could not make that  
17 argument, but between January 1st, 2023, and today's date, I  
18 do believe that that is what the legislature has set up is  
19 that my client gets to chose whether to be under the Act  
20 that he was in when this bond was set.

21          THE COURT: All right. Anything else regarding that  
22 issue from the prosecution?

23          MS. MALKIN: No.

24          THE COURT: I don't know what was or was not said to



1 Judge Gemskie at the time of the issuance of the warrant. A  
2 warrant was issued for defendant's arrest in the amount of  
3 \$100,000 D. I can't speak to what happened then. I believe  
4 that the issuance of the warrant is a mechanism by which the  
5 defendant is compelled to appear before a court.

6 Typically, what happens is once those warrants are  
7 executed and defendants appear in front of me, I then make a  
8 determination as to whether probable cause exists. I listen  
9 and review the case in its entirety for purposes of setting  
10 a fair bond that includes setting any conditions that might  
11 be relevant, any concern, and it includes an in-depth  
12 consideration of all the factors from both sides, then I'll  
13 be able to have an opportunity to make an appropriate  
14 decision in this case.

15 Before today's date no hearing has been held.  
16 This is the first time the defendant is appearing. There is  
17 no opportunity for conditions to be filed and for an  
18 assessment to be able to be made as to what is or isn't an  
19 appropriate condition of release for the defendant.

20 I believe the State is well within their right  
21 given these unique circumstances on the first appearance  
22 after the issuance of a warrant and appearance off that  
23 warrant to be able to go forward with the Pretrial Fairness  
24 Act and have a determination made as to whether or not the

1 defendant should be detained, so over the Defense's  
2 objection, I am going to allow the detention hearing.

3 MS. MASTERSON: Judge, I just want to point out one  
4 thing.

5 THE COURT: Sure.

6 MS. MASTERSON: Conditions have been set. The  
7 condition is a \$100,000 bond.

8 THE COURT: Okay. I appreciate your position. Your  
9 position is noted for the record, and I am not in agreement  
10 with your position.

11 All right. State, I am going to have you make a  
12 proffer, I suppose, regarding each of the cases, of all  
13 three cases.

14 MS. MALKIN: I have one proffer that will encompass all  
15 cases.

16 THE COURT: Okay.

17 MS. MALKIN: On August 6th, 2023 at approximately 5:15  
18 p.m. the Defendant Carlos Clark entered the ULTA store  
19 located at 936 Willow Road in Northbrook, Cook County,  
20 Illinois. At approximately 5:40 p.m. the Defendant walked  
21 out of the ULTA store past the last point of sale with  
22 various perfumes and cologne that were displayed for sale  
23 inside ULTA all which totaled approximately \$572 and which  
24 the defendant did not pay for. ULTA is a retail mercantile

1 establishment licensed to business in the state of Illinois.  
2 ULTA and CVS share a parking lot at that address. There is  
3 video footage from the retail theft that was recovered by  
4 the police and shows the defendant.

5 At approximately 6:25 p.m. on August 6th, Victim 1  
6 who is a 67-year-old female parked her silver Honda CRV in  
7 the shared parking lot outside of CVS located at 936 Willow  
8 Road. Victim 1 locked her car, but left her window slightly  
9 ajar before entering the store. When Victim 1 returned, she  
10 noticed something in the back seat of the Honda. As she  
11 unlocked the vehicle and opened the driver's side door, the  
12 Defendant Carlos Clark moved from the back seat to the front  
13 seat and grabbed Victim 1's car key from her hand. The  
14 Defendant then attempted to grab Victim 1's purse as well.  
15 The Defendant told Victim 1 that he would shoot her if she  
16 did not give him her purse. Victim 1 continued to fight  
17 back and the defendant eventually gave up, reentered Victim  
18 1's vehicle without the purse and drove away.

19 Victim 1 immediately returned to the CVS and  
20 notified the cashier what happened and called the police.

21 When police arrived on scene, an ULTA employee  
22 came outside and informed officers that her store was just  
23 the victim of a retail theft. The ULTA employee provided a  
24 description of the offender which matched Victim 1's

1 description from the vehicular hijacking.

2           At approximately 8:08 p.m. on August 6th, the  
3 Defendant entered the back of a BP gas station located at  
4 43<sup>rd</sup> and Wentworth in Chicago, Cook County, Illinois, in  
5 Victim 1's silver Honda CRV. The defendant started speaking  
6 to individuals about selling them cologne and perfume.  
7 Victim 2 works at the BP gas station and walked over to the  
8 Defendant to ask about the colognes he was selling.

9           The Defendant told Victim 2 that he had additional  
10 products in his vehicle and invited Victim 2 to look.  
11 Victim 2 entered the vehicle and closed the door. The  
12 Defendant then entered the driver's seat and sped away with  
13 Victim 2 in the vehicle.

14           There were ISP squad cars in the parking lot when  
15 the Defendant pulled away.

16           These events are recorded on surveillance video.

17           The Defendant proceeded onto the highway while  
18 violating numerous traffic control devices while being  
19 pursued by ISP troopers including a right turn on red  
20 without stopping at the intersection of 43<sup>rd</sup> and  
21 Wentworth, two lane violations over solid white lines,  
22 speeding upwards of 110 miles per hour in a marked 55 miles  
23 per hour zone. Victim 2 repeatedly begged the defendant to  
24 pull over and let him out, but the Defendant refused telling

1 Victim 2 to be quiet or he would kill him while gesturing  
2 towards his waistband.

3 The Defendant ran a red light at 71st Street and  
4 Lafayette which caused an accident where the vehicle was  
5 struck by oncoming traffic.

6 The Defendant exited the vehicle and ran off on  
7 foot making good on his escape. A critical search was done  
8 based on surveillance which revealed that the defendant was  
9 on Electronic Monitoring for a possession of stolen motor  
10 vehicle out of the District 5. The Electric Home Monitoring  
11 GPS placed the Defendant at the ULTA, CVS, and BP gas  
12 station at this times reported.

13 The Defendant was arrested by Crystal Lake PD on  
14 August 9th, 2023, for a retail theft. Fingerprints were  
15 taken from the stolen motor vehicle and the boxes of perfume  
16 which came back to the defendant.

17 Photo lineups were provided to Victim 1 and Victim  
18 2 on August 15th, 2023.

19 Both Victim 1 and Victim 2 identified the  
20 defendant.

21 On August 22<sup>nd</sup>, 2023, the ULTA employee  
22 participated in a photo lineup and also identified the  
23 defendant.

24 The State is asking for the defendant to be

1 detained on the case ending in 1383 and for Pretrial  
2 conditions. On the case ending 888, we are asking for  
3 conditions of Pretrial Release including no contact with the  
4 ULTA store?

5 THE COURT: All right. The primary review of the  
6 petition is not signed. I am going to ask you to sign it.  
7 I have sworn you to you it. It will swear you to it again  
8 with your signature.

9 (Witness duly sworn.)

10 MS. MALKIN: I swear.

11 THE COURT: In terms of background for the defendant,  
12 what the can you tell me about his background?

13 MS. MALKIN: Yes, your Honor, three pending cases: A  
14 retail theft out of McHenry County. The date of arrest is  
15 August 9th of 2023. Has a possession of stolen motor  
16 vehicle out of the Bridgeview courthouse. The date of  
17 arrest is July 17<sup>th</sup>, 2023, and he has a pending retail  
18 theft and burglary out of DuPage County which was filed on  
19 February 3<sup>rd</sup>, 2023.

20 He has one felony conviction for an aggravated  
21 unlawful use of weapon where the defendant did two years in  
22 IDOC that was in 2022, and then he has a juvenile record  
23 starting in 2019 with the an aggravated battery where the  
24 defendant received probation terminated unsatisfactorily.

1 He has a 2020 burglary with two-years' probation terminated  
2 unsatisfactory, and a 2021 aggravated vehicular highjacking  
3 amended to the criminal trespass to vehicle that was given  
4 time considered served in 2022.

5 THE COURT: All right. Officer Moody, in regards to  
6 Pretrial Services Public Safety Assessment, I am examining  
7 the document presented by your office.

8 It looks like you activated a new violent criminal  
9 activity flag for the defendant?

10 THE PRETRIAL REPRESENTATIVE: That's correct, your  
11 Honor.

12 THE COURT: With new criminal activity range one  
13 through six, six being the worst from the perspective of the  
14 defendant. He comes in at a six.

15 THE PRETRIAL REPRESENTATIVE: Yes, your Honor.

16 THE COURT: Failure to appear scale one through six,  
17 six being the worst from the perspective of the defendant.  
18 He comes in at a five.

19 THE PRETRIAL REPRESENTATIVE: Yes.

20 THE COURT: I see some one, two, three, four, five,  
21 six, seven aggravating factors. Is his age at the time of  
22 the arrest an aggravating factor?

23 THE PRETRIAL REPRESENTATIVE: It is, your Honor.

24 THE COURT: And he has had a prior since incarceration,

1 prior failures to appear, prior felony convictions, and  
2 pending charges at the time of the offense.

3 THE PRETRIAL REPRESENTATIVE: That's correct.

4 THE COURT: You are also considering that it's a  
5 current violent offense?

6 THE PRETRIAL REPRESENTATIVE: Yes, your Honor, we are.

7 MS. MASTERSON: Judge, if I may, it's important to my  
8 client that you know he did not mean to miss any court  
9 dates. He was by no means thumbing his nose at the court.  
10 On that date he missed court, he was detained elsewhere.

11 THE COURT: Okay. That is important to know quite  
12 honestly, Ms. Masterson. Thank you.

13 I will listen to any proffers that you wish to  
14 present, Ms. Masterson, on behalf of the Defendant.

15 MS. MASTERSON: I'd like you to know my client is 20  
16 years old. Last week he enrolled at Innovations High School  
17 as a senior. He did go to Hyde Park Academy up until and  
18 into some of his senior year. He did leave. Before he  
19 left, he had been a part of their Robotics Team and he  
20 participated through competitions with that Robotics Team.

21 My client is the youngest of six. He is living  
22 with his grandmother. His grandmother is not in the best  
23 shape. He does grocery shopping, laundry, errands for the  
24 grandmother. She is not mobile. Because the grandmother



1 relies on my client, I am asking you, and because of his age  
2 and because he has the potential to finish his senior year  
3 in high school, I am asking you to the consider not  
4 detaining my client and setting conditions that would make  
5 it so that he can be out taking care of his grandmother and  
6 moving forward with his high school education.

7 THE COURT: Thank you.

8 MS. MASTERSON: My client corrected me. He is 19 years  
9 old.

10 THE COURT: I am considering the verified petition, the  
11 proffered evidence by both sides that includes the  
12 information presented by Ms. Masterson in mitigation.

13 There is a finding of probable cause to detain in  
14 the case, and I have considered the factors in determining  
15 the dangerousness of the defendant as well.

16 I believe that the State has proven by clear and  
17 convincing evidence that the proof is evident and the  
18 presumption is great that the defendant committed the  
19 offense of aggravated vehicular hijacking as listed in the  
20 complaints against the defendant as well other allegations  
21 alleged against the defendant.

22 I have considered the factors in determining the  
23 dangerousness set forth in 725 ILCS 5/110 6.1G. I have gone  
24 through each of those factors, and I am making that

1 determination based on a review of those factors.

2 I do believe that the defendant poses a real and  
3 present threat to the safety of any person of the community  
4 based on the specific articulable facts in this record, and  
5 I am not limiting the facts to the things I am stating, but,  
6 certainly, the factors as expressed by the State some of  
7 which I am going to make of record which is age of the  
8 victim, 67-years of age, threat of violence, the nature of  
9 the threat that he would shoot her, the history and  
10 character of the defendant as explained by the allegations  
11 alleged against the defendant as well as the criminal  
12 history of the defendant which includes an aggravated  
13 unlawful use of a weapon offense as well as due  
14 consideration of Pretrial Services, documentation as well.

15 I find there are no conditions or combinations of  
16 conditions of pretrial release that can mitigate the real  
17 and present danger posed by the defendant, that there are no  
18 less restrictive conditions that would avoid the real and  
19 present danger or threat posed by the defendant, so I am  
20 ordering that the defendant is going to be remanded to the  
21 custody of the Cook County Sheriff confinement in the Cook  
22 County Department of Corrections pending trial and that was  
23 under the case number ending in m83.

24 In regards to the case ending in 88, I am

1 considering the suggestions presented and the proffer in  
2 their entirety. I do believe that an appropriate condition  
3 of bond in that case in addition to the actual statutory  
4 conditions that are mandatory is a special condition of bond  
5 to have no contact with the store. That's on the 88 case.

6 Then in regards to the 83 case as well, both of  
7 these cases you have right, sir, to appeal any orders of  
8 detention entered by this court. If you couldn't afford it,  
9 you would be given a free transcript from today's date, and  
10 a lawyer to assist you without charge.

11 You must file a Notice of Appeal within 14 days  
12 after the order has been entered.

13 Do you understand you have the right to file an  
14 appeal?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Anything else, State?

17 MS. MALKIN: No.

18 THE COURT: That will be the order of the court. We  
19 will give it a future date. What date are you asking for?

20 MS. MALKIN: I am asking for motion State October 5th  
21 for return on indictment.

22 THE COURT: Motion State 10-5-23 at 9:00 a.m.

23 Is that both cases to that date?

24 MS. MALKIN: Yes, your Honor.

1 THE COURT: For grand injury return?

2 MS. MALKIN: Yes.

3 THE COURT: Ms. Masterson, demanding trial?

4 MS. MASTERSON: Yes, Judge.

5 THE COURT: DDT.

6 MS. MASTERSON: Written demand to come.

7 THE COURT: Thank you. Good luck.

8 (Which were all of the proceedings had  
9 in the above-entitled cause.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

1 STATE OF ILLINOIS )  
 ) SS:  
2 COUNT OF C O O K )

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS,  
MUNICIPAL DEPARTMENT-SECOND MUNICIPAL DISTRICT

I, GINA M. LYNCH, Official Court Reporter of the  
Circuit Court of Cook County, do hereby certify that I  
reported in shorthand the proceedings had on the hearing in  
the aforementioned cause; that I thereafter caused the  
foregoing to be transcribed into typewriting, which I hereby  
certify to be a true and accurate transcript of the Report  
of Proceedings had before the Honorable Anthony Calabrese,  
Judge of said court.

*Gina M. Lynch*  
\_\_\_\_\_  
GINA M. LYNCH, C.S.R.  
C.S.R.#084-003445

Dated this 26th day of September, 2023.

IN THE CIRCUIT COURT OF Cook COUNTY

Second JUDICIAL CIRCUIT

**FILED**  
SEP 29 2023  
IRIS Y. MARTINEZ  
CLERK OF THE CIRCUIT COURT  
OF COOK COUNTY, IL

PEOPLE OF THE STATE OF ILLINOIS, )  
Plaintiff-Appellee, )

-vs-

No. 23200138301

Carlos Clark

Defendant-Appellant. )

**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 Anthony Calabrese

Date(s) of Order(s) Appealed: September 18, 2023

Date(s) of Hearing(s) Regarding Pretrial Release: \_\_\_\_\_

September 18, 2023

Court to which appeal is taken:

Appellate Court of Illinois, Second Judicial District

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

Defendant's Name: Carlos Clark

Defendant's Address: \_\_\_\_\_

Defendant's E-mail: \_\_\_\_\_

Defendant's Phone: \_\_\_\_\_

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: Michaelea Masterson  
Attorney's Address: 5600 Old Orchard Road, Skokie, Illinois 60077  
Attorney's E-mail: michaelea.masterson@cookcountyil.gov  
Attorney's Phone: 847-470-7400

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

Attorney's Name: \_\_\_\_\_  
Attorney's Address: \_\_\_\_\_  
Attorney's E-mail: \_\_\_\_\_  
Attorney's Phone: \_\_\_\_\_

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)  
Transcript  
\_\_\_\_\_  
\_\_\_\_\_

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.**

**Relief Requested:** Reinstate Carlos Clark's Cash Bond

**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 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 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 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.

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

Other (explain).

1.) Carlos Clark did not want to avail himself under the Pre-Trial Fairness Statute and wished to post the previously set bond.

2.) The Court did not sufficiently articulate the correct factors in ordering detention and the court failed to make adequate findings under the statute.

**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):

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/ Michaellea Masterson*

*Your Signature*

Michaellea Masterson

*Printed Name*

30295

*Attorney # (if any)*

APPEAL TO THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT  
COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

Plaintiff/Petitioner

Reviewing Court No: 1-23-1770

Circuit Court/Agency No: 2023200138301

v.

Trial Judge/Hearing Officer: ANTHONY CALABRESE

CARLOS CLARK-PFA APPEAL-1-23-1770B

Defendant/Respondent

**COMMON LAW RECORD - TABLE OF CONTENTS**

Page 1 of 1

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No.</u>
	<u>2023200138301-CARLOS CLARK-CASE</u>	C 3-C 4 (Volume 1)
	<u>SUMMARY</u>	
08/23/2023	<u>COMPLAINT</u>	C 5-C 11 (Volume 1)
08/23/2023	<u>COURTSHEET</u>	C 12-C 13 (Volume 1)
08/23/2023	<u>FELONY COMPLAINT</u>	C 14-C 16 (Volume 1)
09/18/2023	<u>COURTSHEET</u>	C 17 (Volume 1)
09/18/2023	<u>FELONY COMPLAINT</u>	C 18-C 24 (Volume 1)
09/18/2023	<u>ORDER AFTER PRETRIAL DETENTION HEARING</u>	C 25-C 27 (Volume 1)
09/18/2023	<u>ORDER</u>	C 28 (Volume 1)
09/18/2023	<u>PRETRIAL</u>	C 29-C 30 (Volume 1)
09/18/2023	<u>WARRANT EXECUTE</u>	C 31 (Volume 1)
09/19/2023	<u>WARRANT EXECUTE</u>	C 32 (Volume 1)
09/29/2023	<u>NOA PFA APPEAL</u>	C 33-C 38 (Volume 1)
10/03/2023	<u>NONOA MAILED</u>	C 39-C 47 (Volume 1)
10/03/2023	<u>NOTICE OF APPEAL TRANSMITAL</u>	C 48 (Volume 1)

**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 March 1, 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:

Rebecca A. Cohen  
Assistant Public Defender  
Cook County Public Defender  
rebecca.cohen@cookcountyil.gov

*Counsel for Defendant-Appellee*

/s/ Mitchell Ness  
Mitchell Ness  
Assistant Attorney General