2024 IL App (1st) 232020

No. 1-23-2020B

FIRST DISTRICT
SECOND DIVISION
January 22, 2024

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 23 DV 4034201
	)	
DAVID SAUCEDO,	)	Honorable
	)	Kristyna C. Ryan,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE HOWSE delivered the judgment of the court, with opinion.
Justice McBride concurred in the judgment, and opinion.
Justice Ellis specially concurred in the judgment, and opinion.

OPINION

¶ 1 Defendant, David Saucedo, appeals the judgment of the circuit court of Cook County granting the State's petition for pretrial detention. For the following reasons, we affirm the circuit court's judgment.

¶ 2 BACKGROUND

¶ 3 The State charged defendant with domestic battery causing bodily harm, resisting, or obstructing a peace officer, criminal damage to property under $500, aggravated battery in a public place, and unlawful restraint.

¶ 4 On October 14, 2023, the State filed a petition for detention hearing. The petition alleged 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 petition stated defendant caused bodily harm to a victim who was his cousin in that defendant struck the victim in the face 10 times and attempted to choke the victim. At the pretrial detention hearing on October 14,

2023, the State requested and was granted leave to file additional felony charges against defendant arising from the same incident. The State then proceeded by proffer of the following facts.

¶ 5 The victim of the domestic battery is defendant's cousin (victim 1). On the date at issue, the victim 1 and defendant were celebrating a birthday, and defendant became intoxicated and began hallucinating. The victim 1 escorted defendant outside and attempted to call defendant's mother. Outside the residence, defendant knocked the phone from the victim 1's hand, struck victim 1 in the face with a closed fist approximately 10 times, and attempted to choke him. Victim 1 broke free, and defendant picked up a rock. Victim 1 was able to remove the rock from defendant's hand before defendant could strike victim 1 with the rock. Defendant then fled.

¶ 6 Later, police were informed by a different victim (victim 2) that defendant had damaged victim 2's vehicle. According to victim 2, he was driving when defendant threw a rock at victim 2's vehicle causing damage. Victim 2 drove away. More police arrived and found several people holding defendant down. Police were informed defendant "had just beat up a lady walking down the street." Police took defendant, who appeared intoxicated, into custody. Defendant banged his head against the police officer's car window, police opened the door, and defendant tried to flee. Police had to hold defendant down before putting him back in their vehicle, whereupon defendant attempted to flee a second time as police were talking to him. The female victim (victim 3) informed police she was walking down the street when someone pushed her down causing her to hit her head on the sidewalk. Defendant got on top of her and began punching her across the back rib area. Defendant pulled victim 3's shirt and jacket over her head and began to turn her over. Defendant bit victim 3 in multiple places and told her "You taste delicious." Defendant called victim 3 a "whore." Someone pushed defendant off from victim 3, and that

person and defendant began to fight.

¶ 7 The State informed the trial court that victim 3 requested felony charges and that the felony review division of the state's attorney's office had approved two felony charges.

¶ 8 Defendant's attorney responded defendant's family was present and supported defendant. Defendant lives with his mother and has a five-year old daughter who he helps care for. The defense informed the trial court that defendant was trained as a carpenter and was then working for a construction company making concrete foundations. The defense argued defendant should not be detained but should be ordered from consuming alcohol or any illicit substances, which was the cause of defendant's behavior. Defendant's family would accept him on electronic monitoring and help prevent defendant from violating the court's order.

¶ 9 The State proffered defendant's criminal history background. The state told the trial court: "Year 2015, animal torture, two years IDOC, and a 2015 criminal sexual assault, two years' probation. These do not run concurrently. The criminal sexual assault did not resolve until 2018."

¶ 10 The trial court orally found that "The State had added these two additional felony charges here of aggravated battery and unlawful restraint. They are seeking to detain [defendant] pursuant to 725 ILCS 5/110-6.1(a)(4), a misdemeanor domestic battery that occurred with his cousin. It is a detainable offense." The court restated key facts from the State's proffer and found that the State had shown by clear and convincing evidence that defendant did commit domestic battery against his cousin and aggravated battery and unlawful restraint of victim 3, who was 23-years-old. The court found defendant was a danger to the community because "These are random innocent civilians who were just going about their business. One of them was attacked significantly by [defendant] during this incident, pinned down, sustained bites during this

interaction." The court also noted that the comments to victim 3 "appear to be of a sexual nature, and that is very, very concerning to this Court." The Court agreed defendant was intoxicated but did not believe that "even with the family support that he has, he's able to control his impulses and behavior."

¶ 11 The trial court stated that the fact that solidified its view that no less restrictive conditions or combination of conditions will ensure the safety of the community at this time was defendant's previous conviction. The court noted one was a crime of extreme violence and one was a sex offense. The court found that, in the light of defendant's conduct in this instance, his history, and that his history along with the new violent activity in this instance indicates that if defendant were to commit a new offense it would likely be a crime of violence, that the court did "not believe at this time that the family support is going to ensure the safety of the community." The court noted that victim 1 was defendant's cousin, and defendant assaulted him and attempted to assault him a second time with a rock. The court stated that no less restrictive conditions will ensure the safety of the community, and that the court was "specifically noting the previous criminal history, the comments of a sexual nature, the extended period of time for which this woman was pinned down on the sidewalk and attacked from behind and then sustained some significant injury, including being bitten several times."

¶ 12 At the conclusion of the October 14 hearing, the trial judge orally informed defendant: "So I will be detaining you at this time. You are to have no contact, whether in custody or out of custody, with either your cousin or the alleged victim of the unlawful restraint aggravated battery."

¶ 13 On October 14, the trial court entered a written order. The trial court's October 14, 2023, written order is internally inconsistent in several respects. The October 14 order "checks the

box" on the finding that the State's petition for pretrial detention is denied. Then, under the "checkbox" finding that the State had met its burden for pretrial detention (it reads "The State has shown, by clear and convincing evidence," the required elements for pretrial detention), the trial court wrote that the proof was evident or the presumption great that defendant has committed an eligible offense under section 110-6.1(a) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-6.1(a)(1)-(7) (West 2022)), which was recently amended by Public Act 101-652 (eff. Jan. 1, 2023), commonly referred to as the Pretrial Fairness Act, that being domestic battery where the victim was defendant's cousin and defendant "chocked him [and] struck [him with a] rock."

¶ 14 Next, the October 14 order states defendant poses a real and present threat to the safety of any person or persons of the community based on the specific articulable facts of the case, those being that the State filed additional charges of unlawful restraint and aggravated battery where defendant was under the influence of alcohol and attacked a random female on the street, hit victim 3, and held her down.

¶ 15 Finally, the October 14 order finds that no condition or combination of conditions in section 110-10(b) of the Code (*id.* § 110-10(b)) can mitigate the real and present threat to safety of any person or person or community and that less restrictive conditions would not avoid a real and present threat to the safety of any person or persons or the community. The trial court based that finding on the fact "[defendant] has previous crimes of violence, time spent in IDOC, [aggravated] cruelty to animals, [and] a sexual offense." Despite the foregoing, the October 14 order states that it ordered defendant released as provided in a separate order. The October 14 order also ordered that defendant have no contact with victim 1. A separate order entered on October 14 states that defendant is to remain in custody and "defendant detained," and a separate

handwritten order on a "Criminal Disposition Sheet" states the detention order is granted.

¶ 16 On October 17, 2020, the State filed a second petition for detention hearing. Both petitions alleged defendant committed the eligible offense under section 110-6.1(a)(4) of domestic battery. Whereas the October 14 petition alleged defendant posed a threat to the safety of a person or the community because defendant caused bodily harm to his cousin by striking him in the face and attempting to choke him, the October 17 petition made that allegation because defendant threw victim 3 to the ground and bit her on the body. On October 17 the parties appeared before the court on defendant's preliminary hearing and continuation of detention. The State informed the court "it will now be the defendant's motion to indicate to the Court why continued detention is not needed." Defendant's attorney did not respond. The defense informed the court it had new information that was not proffered at the October 14 hearing.

¶ 17 The defense proceeded to inform the trial court that defendant's family informed him of facts they did not tell the attorney at the prior hearing. Those facts were that defendant had been found guilty of a felony in 2017 and was placed on electronic home monitoring. For the first year defendant could not leave the house and was subject to parole checks and home searches. In the second year, defendant could leave the home for school and work. During that period defendant did not return to the Illinois Department of Corrections. The defense argues this shows "that [defendant] can succeed while he's on electronic monitoring. He can stay out of trouble. He can go to school. He can maintain a job." The family agreed defendant is addicted to alcohol, "and that's where a lot of these cases have stemmed from." The family stated, "they will do their absolute best to get him into treatment."

¶ 18 The trial court and the parties then noticed the inconsistency in the October 14 order.

After some discussion, the parties and the court agreed to proceed to a detention hearing to resolve the inconsistency. The State proceeded by proffer and offered primarily the same evidence as the October 14 hearing. However, additional evidence included that victim 3 saw defendant sitting on a curb as she was walking along the street. Defendant told victim 3 not to look at him, and victim 3 continued to walk past him. Defendant then got up, ran toward victim 3, and threw her to the ground by the shoulders whereupon she landed on her stomach. Defendant then pinned victim 3's leg while striking her with a closed fist about the back multiple times. Additionally, one of the bites to victim 3 broke the skin, causing her to bleed. One of the bites was to her breast area.

¶ 19 Victim 3 attempted to fight off defendant for approximately seven minutes before other persons intervened. Defendant also caused injuries to the arresting officers as defendant resisted efforts to take him into custody. Victim 3 positively identified defendant on the scene as her attacker and was transported to the hospital for treatment of her injuries.

¶ 20 The defense noted that the only detainable offense in this case was the misdemeanor domestic battery to defendant's cousin. The defense argued the only evidence defendant committed that offense is statement by the victim 1, and victim 1 provided inconsistent statements (a second statement saying defendant was armed with a knife). There were no injuries or medical treatment. The defense argued the State failed to meet its burden to show by clear and convincing evidence that defendant committed the detainable offense because they only have the victims' statements, and those statements are inconsistent. The defense argued the State did not meet its burden to show a public safety risk because of defendant's prior success with electronic home monitoring. The defense also noted defendant has not previously received treatment for his alcohol addiction and that his family was "more than willing to help him get treatment," and the

defense noted that victim 3 was "a random woman" and defendant had no reason to speak to her.

¶ 21 The State disagreed that the domestic battery was the only detainable offense and stated that the unlawful restraint was also a detainable offense. The State also informed the trial court that defendant "had a criminal sexual assault that was amended down to an aggravated battery in 2019 to which he did two years of probation." A conviction for animal torture occurred in 2015. The State argued there is a detainable offense and it had made a clear and convincing showing that defendant is a danger to victim 3 and the officers he encountered and became combative with.

¶ 22 The defense stated aggravated unlawful restraint is detainable but unlawful restraint is not. The defense agreed the domestic battery is a detainable offense.

¶ 23 The trial court orally ruled that the State had shown by clear and convincing evidence that the proof is evident and the presumption great that defendant committed the detainable offense of domestic battery. The court stated it was "going to discount the other one for now." The court found defendant posed a threat to the safety of a person or the community based on both the domestic battery and "what happened after that." The court noted the additional charges may not be detainable, "[b]ut not only do we have the first misdemeanor offense of domestic battery, there is aggravated battery to a random person on the street and unlawful restraint." The court found less restrictive conditions would not avoid a real and present threat to safety "based on the facts of this case and because of [defendant's] previous crimes of violence including aggravated cruelty to animals and criminal sexual assault." The court ordered defendant detained.

¶ 24 On October 17, 2023, the trial court ordered pretrial detention. The trial court's October 17 order mirrors the October 14 order except the trial judge did not "check the box" indicating

the petition was denied. The trial court entered a separate handwritten order on October 17 stating that after a "new detention hearing" the petition for detention hearing is granted and the defendant is ordered detained. Another October 17 order states defendant is to remain in custody.

¶ 25 On October 27, defendant filed a notice of appeal in the trial court. The notice of appeal states defendant is appealing the orders entered on October 17, 2023. The notice of appeal does not list the October 14, 2023, order but it does list the dates of hearing on pretrial release as "October 15 [*sic*] and October 17." On November 1, 2023, defendant filed his notice of appeal in this court. On December 28, 2023, defendant's attorney filed a notice in this court that defendant would not file an Illinois Supreme Court Rule 604(h) memorandum. Ill. S. Ct. R. 604(h)(2) (eff. Oct. 19, 2023) ("The appellant may file, *but is not required to file*, a memorandum not exceeding 4500 words, within 21 days of filing of the Rule 328 supporting record." (Emphasis added.)). Defendant's attorney stated defendant would instead "stand on the notice of appeal, Common Law Record, Report of Proceedings, and Supplemental Report of Proceedings."

¶ 26 ANALYSIS

¶ 27 This is an appeal from an order granting the State's petition pursuant to section 110-6.1(a)(4) of the Code (725 ILCS 5/110-6.1(a)(4) (West 2022)) to detain defendant prior to trial. Pursuant to section 110-6.1(a)(4), the State may file a petition, and the circuit court shall conduct a hearing, to deny a defendant pretrial release only if "the defendant is charged with domestic battery under section 12-3.2 or 12-3.3 of the Criminal Code of 2012 [(720 ILCS 5/12-3.2, 12-3.3 (West 2022))] and it is alleged that the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case." 725 ILCS 5/110-6.1(a)(4) (West 2022). The State has the burden to prove, by clear and convincing evidence, the following relevant propositions:

"(1) the proof is evident or the presumption great that the defendant has committed an offense listed in subsection (a), 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, by conduct which may include, but is not limited to, a forcible felony, the obstruction of justice, intimidation, injury, *** and

(3) no condition or combination of conditions set forth in subsection (b) of Section 110-10 of this Article can mitigate (i) the real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case[.]" *Id.* § 110-6.1(e).

¶ 28 In making a determination that a defendant poses a real and present threat to the safety of any person or the community, the court may, but is not required, to consider, the following relevant factors:

"(1) The nature and circumstances of *any* offense charged, including whether the offense is a crime of violence, involving a weapon, or a sex offense.

(2) The history and characteristics of the defendant including:

(A) Any evidence of *the defendant's prior criminal history indicative of violent, abusive or assaultive behavior*, or lack of such behavior. ***

(B) Any evidence of the defendant's psychological, psychiatric or *other similar social history* which tends to indicate a violent, abusive, or assaultive nature, or lack of any such history.

(3) The identity of any person or persons to whose safety the defendant is believed to pose a threat, and the nature of the threat.

* * *

(8) Whether, at the time of the current offense or any other offense or arrest, the defendant was on probation, parole, aftercare release, mandatory supervised release or other release from custody pending trial, sentencing, appeal or completion of sentence for an offense under federal or state law.

(9) Any other factors, including those listed in Section 110-5 of this Article deemed by the court to have *a reasonable bearing upon the defendant's propensity or reputation for violent, abusive, or assaultive behavior*, or lack of such behavior." (Emphases added.) *Id.* § 110-6.1(g).

¶ 29 Section 110-6.1(d)(2) of the Code also provides that "[i]f the State seeks to file a second or subsequent petition under this Section, the State shall be required to present a verified application setting forth in detail any new facts not known or obtainable at the time of the filing of the previous petition." *Id.* § 110-6.1(d)(2).

¶ 30 Standard of Review

¶ 31 Review of the decision to grant or deny a detention petition under section 110-6.1 of the Code requires a mixed standard of review. The trial court's decision involves three propositions. The first two, whether it is evidence or is the presumption raised that the defendant committed a detainable offense and whether the defendant poses a threat to a person or the community, are questions of fact that require a certain quantum of evidence: clear and convincing. The factors the court may consider to determine that a defendant poses a threat to the safety of a person or the community are similarly matters of historical fact—those factors are either present in the defendant's background or they are not. For the first two determinations the court must make, the trial court is primarily called upon to determine the facts. For example, do the facts admissible

for purposes of the Code make it evident, or raise the presumption, that the defendant committed the offense, or does the defendant pose a threat to the safety of the community. The trial court makes those determinations based on the facts deemed admissible by the Code.

¶ 32 On review, this court will examine the record to determine whether it contains facts to support those determinations by clear and convincing evidence or does not. This court applies the manifest weight of the evidence standard of review in cases involving questions of fact. *People v. Finlaw*, 2023 IL App (4th) 220797, ¶ 55. " 'A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented.' " *People v. Stock*, 2023 IL App (1st) 231753, ¶ 12.

¶ 33 In *Finlaw*, this court found:

> "A trial court's decision on fitness is not a matter of discretion; it is a matter of *evidence.* Once a *bona fide* doubt as to fitness is raised, the State bears the burden of proving fitness by a preponderance of the evidence. [Citation.] 'Typically, the manifest error standard is appropriate to review findings of fact made by a trial judge.' " *Finlaw*, 2023 IL App (4th) 220797, ¶ 55.

¶ 34 In *People v. Reed*, 2023 IL App (1st) 231834, ¶ 23, another division of this court most recently found that:

> "Section 110-6.1 of the Code does not establish a standard of review for orders granting, denying, or setting conditions of pretrial release. *** [W]e typically review factual findings to see if they are against the manifest weight of the evidence."

¶ 35 Because the first two propositions involve factual findings, we will review those two

determinations under the manifest weight of the evidence standard of review.

¶ 36 The final proposition the trial court must determine, however, involves a trial judge's reasoning and opinion. The trial court must exercise a degree of discretion to determine whether any less restrictive means will mitigate the threat a defendant poses to a person or the community. "Courts are 'endowed with considerable discretion' where, as here, they are called upon to weigh and balance a multitude of factors and arrive at a decision that promotes not only 'principles of fundamental fairness' but 'sensible and effective judicial administration.' " *Id*. ¶ 30. Thus, "[o]n the circuit court's determination that there were no conditions of release that could mitigate the safety risk, we agree *** that an abuse of discretion standard is most appropriate." *Id.* "An abuse of discretion occurs when the circuit court's decision is arbitrary, fanciful or unreasonable, or where no reasonable person would agree with the position adopted by the [circuit] court." (Internal quotation marks omitted.) *Id.*

¶ 37 Presumption Defendant Committed Offense

¶ 38 In the notice of appeal, defendant first contended that the State failed to meet its burden of proving that the proof is evident or the presumption great that defendant committed the offenses charged for the following reason:

> "[Defendant's] only detainable offense is a misdemeanor domestic battery charge. To that charge, the complaining witness was intoxicated at the time of the alleged battery and gave inconsistent statements to officers. The State could not present any evidence other than the statements of the complaining witness."

¶ 39 Section 110-6.1(f) of the Code provides as follows:

> "(1) Prior to the hearing, the State shall tender to the defendant copies of the defendant's criminal history available, *any written or recorded statements*, and *the*

substance of any oral statements made by any person, if relied upon by the State in its petition, and any police reports in the prosecutor's possession at the time of the hearing.

(2) The State or defendant may present evidence at the hearing by way of proffer based upon reliable information." 725 ILCS 5/110-6.1(f) (West 2024).

¶ 40 The Code requires the State to tender statements to the defendant and provides that the State may proceed by way of proffer based on "reliable information," which we construe to include the same statements it is required to tender. It would be very anomalous to make such specific provisions for witness statements and then find that such statements were insufficient evidence of the defendant's likely commission of the offense charged. The rule is well settled that "[t]he primary goal of statutory construction is to ascertain and give effect to the legislature's intent. [Citation.] The best indication of the legislature's intent is the plain language of the statute." *People v. Brown*, 2023 IL App (1st) 231890, ¶ 11. In this case, contrary to the notice of appeal, based on the plain language of the statute, we believe it was the legislature's intent that such statements would be sufficient proof that it was evident or the presumption great that the defendant committed the charged offense.

¶ 41 Moreover, the statements in this case do, at minimum, raise a great presumption defendant committed the offenses charged. One statement is by defendant's cousin, and the discrepancy noted in the record goes to defendant's conduct but not his identity. We find that the trial court's judgment that the State met its burden to prove by clear and convincing evidence that it is evident or the presumption is great that defendant committed the detainable offense charged is not against the manifest weight of the evidence.

¶ 42 Defendant Poses a Threat to Safety

¶ 43 Next, defendant contends the State failed to meet its burden of proving 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 for the following reason:

> "The evidence in this case is insufficient to show that [defendant] poses a risk to anyone. Additionally, defense counsel proffered that this incident was exacerbated by alcohol use and that [defendant's] family would seek treatment for him if released."

¶ 44 We find the evidence is clear and convincing that defendant poses a real and present threat to the safety of a person and the community. The evidence establishes that defendant became intoxicated and at least three times assaulted a close family relative—by punching him, by choking him, and by trying to hit him with a rock. Defendant poses a real and present threat to his cousin. Defendant also poses a real and present threat to the community. The evidence is that defendant, while intoxicated, was sitting on a street and, unprovoked, brutally attacked a passerby. From the evidence the trial court could have concluded that, although uncharged, defendant did or was well on his way to committing a violent sex crime but for the intervention of members of the public. Conceding that this was an alcohol-fueled event, defendant may still become intoxicated while released, regardless of any restrictions placed on him. Treatment may come too late, and his family admits defendant's prior problems also arose from alcohol consumption, yet there was no treatment. Thus, the assurances of treatment in the future ring hollow.

¶ 45 Additionally, applying section 110-6.1(g) (listing factors to be considered in making a determination of dangerousness), the detainable and other offenses in this case are crimes of violence, defendant's criminal history is indicative of violent behavior—specifically cruelty to animals, defendant is admittedly addicted to alcohol tending to indicate a violent nature, and

defendant resisted and continued to resist police efforts to arrest him. See 725 ILCS 5/110-6.1(g)(1), (g)(2)(A), (g)(2)(B), (g)(9) (West 2022). Given the multitude of factors present in this case, the evidence is clear and convincing that, based on the specific facts of this case, the finding that defendant poses a real and present threat to the safety of a person and the community is not against the manifest weight of the evidence.

¶ 46 No Conditions Will Mitigate the Threat

¶ 47 Next, defendant contends the State failed to meet its burden of proving that no conditions can mitigate the real and present threat to the safety of any person or persons or the community, based on the facts of the case or defendant's willful flight, for the following reason:

> "[Defendant] was on electronic monitoring for two years while on parole from the Illinois Department of Corrections. During those two years, he was successful in re-entering the community, avoiding re-incarceration through a parole violation. [Defendant] has shown that he is successful in the community while on electronic monitoring and does not pose a threat to any person or persons or the community while on electronic monitoring. The [trial] Court also incorrectly considered one of [defendant's] previous convictions as a 'crim sex assault' when in reality he was convicted of aggravated domestic battery in that case."

¶ 48 The trial court did not commit an abuse of discretion on this issue. We reject the argument the trial court erroneously relied on a previous conviction as a criminal sexual assault when it was actually a conviction for domestic battery. The trial court is not limited to only a consideration of the actual offenses for which defendant was convicted. Section 110-5 provides the matters the trial court is to take into account in determining which conditions of pretrial

release will reasonably ensure the safety of any other person or the community. *Id.* § 110-5. Those matters go beyond the defendant's prior conviction.

¶ 49 The matters listed in sections 110-5 and 110-6.1 are similar in nature. Compare *id.* with *id.* § 110-6.1(g). We note that when determining whether a determination that no less restrictive means will mitigate the real and present threat to a person or the community, this court has examined that decision in light of the same factors in section 110-6.1 that the trial court uses to make the initial determination that the defendant poses a real and present threat. See *People v. Jones*, 2023 IL App (4th) 230837, ¶ 32; *Reed*, 2023 IL App (1st) 231834, ¶ 31 (finding no abuse of discretion where "[t]he court's finding that there were no conditions that could mitigate the risk were based on the same concerns it cited in its finding that Mr. Reed presented a threat to the community").

¶ 50 In *Jones*, the court wrote that "[u]nder the Code, the circuit court must consider the various factors listed in sections 110-6.1(g) and 110-6.1(a)(1)-(8) before concluding whether detention to be appropriate." *Jones*, 2023 IL App (4th) 230837, ¶ 31. In reviewing both the trial court's decision in that case that the defendant posed a danger and that no less restrictive means would mitigate that danger, the court noted that the trial court had "relied on 'the nature of the alleged offenses as charged,' the presence of a specific named alleged victim in the case, and allegations that *** the victim suffered bodily harm during the commission of the alleged offense." *Id.* ¶ 32. In that case the *Jones* court applied an abuse of discretion standard and concluded the trial court had not, "[a]fter considering the relevant factors under section 110-6.1 of the Code," abused its discretion in finding that less restrictive conditions would not avoid the threat that the defendant posed a real and present threat to the safety of persons or the community. *Id.*; accord *People v. Chapman*, 2024 IL App (1st) 231879-U, ¶ 32 ("Section 110-5

outlines factors for the court to consider in determining the conditions of release. These factors include the nature and circumstances of the offense charged, the weight of the evidence against the defendant, and whether the defendant was on parole at the time of the offense.").

¶ 51 With regard to the relevant factors under section 110-6.1, in making the initial determination of dangerousness and the determination of whether less restrictive means will mitigate that danger, the court may not only consider the actual record of conviction, but also the "nature and circumstances of any offense *charged*," "*[a]ny* evidence of defendant's *** history which tends to indicate a violent *** nature," and "[a]ny other factors *** deemed by the court to have a reasonable bearing upon the defendant's propensity or reputation for violent, abusive, or assaultive behavior." (Emphases added.) 725 ILCS 5/110-6.1(g)(1), (g)(2)(B), (g)(9) (West 2022). The court may also consider factors listed in section 110-5. *Id.* § 110-6.1(g)(9). Section 110-5 expressly provides in a domestic battery case for consideration of "the severity of the alleged incident that is the basis of the alleged offense, including, but not limited to, the duration of the current incident, and whether the alleged incident involved the use of a weapon [or] physical injury." *Id.* § 110-5(a)(6)(H).

¶ 52 In this case, the State candidly informed the trial court that defendant "had a criminal sexual assault that was amended down to an aggravated battery." The trial court was aware that defendant was not actually convicted of criminal sexual assault. Nonetheless, that was an offense charged to defendant at one point, it is evidence of defendant's nature, and the fact defendant was previously charged with criminal sexual assault in a prior case, then engaged in dangerous conduct of a sexual nature (by biting victim 3's breast) in this case, is another factor having "a reasonable bearing upon the defendant's propensity or reputation for violent, abusive, or assaultive behavior." See *id.* § 110-6.1(g)(9). The battery against defendant's cousin caused

physical injury, involved a weapon (a rock), and was ongoing in that defendant first punched him several times, then tried to choke him, then later tried to hit him with a rock. *Id*. §110-5(6)(H). The trial court properly considered all of the evidence before it. We cannot say no reasonable person would agree with the trial court's finding that no less restrictive means would mitigate the danger posed by defendant.

¶ 53 Therefore, we find no abuse of discretion because the trial court's determination is not arbitrary or unreasonable under the facts of this case.

¶ 54 We also reject the claim that defendant's alleged prior success on probation is sufficient evidence that less restrictive means will mitigate the real and present threat defendant poses to a person and the community in this case. Defendant (through counsel) and defendant's family acknowledged that defendant is addicted to alcohol and that alcohol intoxication fuels defendant's violent behavior. Accepting that defendant did not engage in such behavior while previously on parole, the evidence is that defendant knew this propensity of his existed and did not go away when his probation ended (because he never received any treatment). Knowing this about himself, defendant chose to continue to engage in such behavior, endangering the people nearest to him and the community. Defendant made that conscious choice at least once. No less restrictive means would mitigate the danger defendant would make that choice again. The evidence is that defendant knew the danger of becoming intoxicated and ignored it. The fact that defendant may know the additional dangers in violating any conditions of pretrial release notwithstanding, he may choose to ignore those, too. Defendant knew his triggers and ignored them, causing him to engage in extremely violent behavior, and defendant directed that behavior at both a close family member and an innocent bystander. Based on this record the trial court's judgment that no less restrictive means will mitigate the real danger defendant poses to a person

and the community is not arbitrary or unreasonable, and we cannot say no reasonable person would take the same view. The trial court did not abuse its discretion.

¶ 55 Defendant Received a Fair Hearing

¶ 56 Finally, defendant contended that he was denied an opportunity for a fair hearing prior to the entry of the order denying him pretrial release. Whether a party received a fair hearing is a question of law we review *de novo*. See *Girot v. Keith*, 212 Ill. 2d 372, 379 (2004).

¶ 57 Specifically, defendant contended as follows:

> "[Defendant] originally has a detention hearing on 10/15/23. The order from that date shows that the [trial] Court denied the State's petition to detain [defendant.] Nonetheless, the Court on 10/17/23 allowed the State to re-file a petition for detention. 725 ILCS 5/110-6.1(c)(2) requires the State to present any new facts not known or obtainable at the time of the filing of the previous petition. On 10/17/23, the State did not present any new facts. Further, the Court's order on 10/17/23 was written almost verbatim from the order entered by a different judge on 10/15/23. The Court's order shows the hearing was merely perfunctory and that the Court did not properly consider the weight of the evidence against [defendant] or what conditions could mitigate any threat he posed to anyone."

¶ 58 We reject his argument. On October 17, 2023, the State did present new facts. *Supra* ¶¶ 19-20. The fact the October 17 order and the October 14 order are so similar is that it is evident from the record that a primary purpose for conducting the detention hearing again was a scrivener's error in the initial petition. Regardless, the October 17 hearing was not perfunctory. The parties discussed the issues extensively and had disagreements about an issue. The State

disagreed with the defense that the domestic battery was the only detainable offense and stated that the unlawful restraint was also a detainable offense.

¶ 59 The trial court provided a detailed explanation for its ruling granting pretrial detention that demonstrates the court considered the weight of the evidence and what conditions might mitigate threat (and that there were none). The trial court orally ruled that the State had shown by clear and convincing evidence that the proof is evident and the presumption great that defendant committed the detainable offense of domestic battery. The court stated it was "going to discount the other one for now." The court found defendant posed a threat to the safety of a person or the community based on both the domestic battery and "what happened after that." The court noted the additional charges may not be detainable, "[b]ut not only do we have the first misdemeanor offense of domestic battery, there is aggravated battery to a random person on the street and unlawful restraint." The court found less restrictive conditions would not avoid a real and present threat to safety "based on the facts of this case and because of [defendant's] previous crimes of violence including aggravated cruelty to animals and criminal sexual assault." The court ordered defendant detained. *Supra* ¶ 24.

¶ 60 Defendant received a second full and fair pretrial detention hearing on October 17, 2023. Based on this record, defendant's argument to the contrary fails.

¶ 61 CONCLUSION

¶ 62 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 63 Affirmed.

¶ 64 ELLIS, J., specially concurring.

¶ 65 I concur in the judgment, but I respectfully disagree regarding the standard of review. Much of the recent case law has coalesced around a standard of reviewing detention orders for an

abuse of discretion. See, *e.g.*, *People v. Whitmore*, 2023 IL App (1st) 231807, ¶ 18; *People v. Bradford*, 2023 IL App (1st) 231785, ¶ 33; *People v. Inman*, 2023 IL App (4th) 230864, ¶¶ 10-11. Some cases have adopted the manifest-weight standard. See, *e.g.*, *People v. Rodriquez*, 2023 IL App (3d) 230450, ¶ 8; *People v. Stock*, 2023 IL App (1st) 231753, ¶ 12.

¶ 66 The majority here adopts a hybrid of both, arguing that a review of the first two findings (sufficiency of proof of crime and whether the accused poses a danger) is under the manifest-weight standard, but the third prong (whether sufficient conditions exist to mitigate the danger) is reviewed for an abuse of discretion. I do not believe that either standard is appropriate, but I particularly disagree with the abuse-of-discretion standard.

¶ 67 I believe that the appropriate standard of review for a detention order should be *de novo*, for several reasons: (1) the abuse-of-discretion standard is inappropriate to a review of factual findings subject to a standard of proof; (2) it is incorrect to state, as some decisions have, that we have historically reviewed detention orders under the abuse-of-discretion standard; (3) findings of fact, though typically reviewed under the manifest-weight standard, are reviewed *de novo* when the court hears no live testimony and makes findings solely on documentary evidence and oral presentation by counsel; (4) *de novo* review is appropriate, in any event, given the gravity of the detention decision and the constitutional right at stake.

¶ 68 I

¶ 69 Before explaining the impropriety of an abuse-of-discretion standard of review, it is important to be clear about what, precisely, we are reviewing in a detention order. In relevant part here, the statute provides that "[a]ll defendants shall be presumed eligible for pretrial release, and the State shall bear the burden of proving by clear and convincing evidence that:

(1) the proof is evident or the presumption great that the defendant has committed an

offense listed in subsection (a), and

(2) *** the defendant poses a real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case ***; and

(3) no condition or combination of conditions *** can mitigate (i) the real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case ***." 725 ILCS 5/110-6.1(e) (West 2022).

¶ 70 In reviewing these judgments, we are reviewing findings of fact. The burden of proof lies with the State; the standard of proof is clear and convincing evidence. *Id*. That, alone, should put an end to any notion that the three findings made here by the trial court are discretionary in nature, subject to an abuse-of-discretion standard of review, for " '[s]ound discretion' is simply not a standard of proof." *In re D.T.*, 212 Ill. 2d 347, 355 (2004).

¶ 71 "Standards of proof are concerned with the quantum and quality of proof that must be presented in order to prevail on an issue." (Internal quotation marks omitted.) *Id*. Said differently, the standard of proof " ' "instruct[s] the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication." ' " *Id*. (quoting *Addington v. Texas,* 441 U.S. 418, 423 (1979), quoting *In re Winship,* 397 U.S. 358, 370 (1970) (Harlan, J., concurring)).

¶ 72 "Sound discretion," on the other hand, "says nothing about the degree of confidence the trial judge must have in the correctness of his or her factual conclusions" and thus "does not identify a standard of proof." *Id*. at 355-56. All of which is to say that if, as here, a statute sets a particular standard of proof of certain facts, it is calling on the court to make a finding of fact: Did the State, or did it not, prove a certain fact by a specified quantum of proof? It does not call for the exercise of the court's discretion.

¶ 73 Nor is there any basis for inferring some sort of discretionary determination laid atop these factual findings. The process begins with the defendant being presumptively eligible for release. 725 ILCS 5/110-6.1(e) (West 2022). If the State fails to carry its burden of proving, by clear and convincing evidence, one or more of these required findings for detention, the court does not retain the "discretion" to detain the defendant, anyway; the presumption of pretrial release stands, and the defendant must be released (with or without conditions). *Id*. To read the statute any other way and judicially implant some freestanding "discretion" over and above the required three findings would be a rewrite of the statute and counter to its obvious purpose.

¶ 74 Simply put, there is nothing discretionary about making a finding as to whether the State has met its standard of proof of a particular fact. And those factual determinations are the only guide to the ultimate outcome—whether the defendant will be retained or released. Because the judgment under review is not "purely discretionary, it makes little sense to *** apply an abuse of discretion standard on review." *People v. Vincent*, 226 Ill. 2d 1, 17 (2007); see also *id.* n.5 ("The abuse of discretion standard is not tied to any quantum of proof.").

¶ 75 Some courts have suggested that the finding of dangerousness is discretionary because subsection (g) of the statute lists multiple factors to be considered in determining dangerousness. See, *e.g.*, *People v. Gibbs*, 2023 IL App (5th) 230700-U, ¶ 5; 725 ILCS 5/110-6.1(g) (West 2022). But the presence of various factors does not convert a finding of fact into a standardless discretionary determination. A multi-faceted question of fact is no more discretionary than a one-dimensional question of fact; it is just more complex.

¶ 76 Our supreme court said as much in *D.T.*, 212 Ill. 2d at 354. The State argued that the best-interests determination was discretionary, in large part because it involved "weighing and balancing" multiple statutory factors in making the best-interests determination for the child. The

supreme court rejected this argument, recognizing that fact-finding is not a discretionary exercise. See *id.* at 356. Likewise, in *People v. Crane*, 195 Ill. 2d 42, 49 (2001), the State argued that the standard of review for (constitutional) speedy-trial claims should be abuse of discretion, because the trial court must "balance" the four *Barker* factors (see *Barker v. Wingo*, 407 U.S. 514 (1972)), and in so doing, it necessarily "exercises discretion." *Crane*, 195 Ill. 2d at 49. The supreme court flatly rejected this argument on the ground that the mere balancing of factors does not necessarily raise the trial court's judgment to the level of deference afforded by abuse-of-discretion review. *Id.* at 51-52. To the contrary, "[t]he trial court is in no better position than the reviewing court to balance the competing concerns." *Id.* at 52. The court thus settled on a standard of review where the trial court's findings of fact were subject to manifest-weight review, but "the ultimate determination of whether a defendant's constitutional speedy-trial right has been violated is subject to *de novo* review." *Id.*

¶ 77 Likewise, here, the fact that a trial court may take into consideration many different release conditions, when determining whether sufficient conditions exist to mitigate the accused's threat to safety (or flight risk), does not convert that finding into a discretionary one. The State has the burden of proving by clear and convincing evidence that no combination of such conditions exists; the trial court simply determines whether the State has satisfied that standard of proof. That is not, and never has been, a discretionary exercise.

¶ 78 Because a court's determination of whether the State met its standard of proving a fact does not involve the exercise of discretion, an abuse-of-discretion standard of review is fundamentally incompatible with a statutory scheme that prescribes a standard of proof.

¶ 79 II

¶ 80 The logic of the decisions employing an abuse-of-discretion standard for detention orders

proceeds as follows. First, as the court said in *Whitmore*, 2023 IL App (1st) 231807, ¶ 24, "[w]eighing the factors implicated in setting the conditions of pretrial release has always been entrusted to the discretion of the trial judge." Second, because that decision is discretionary, we have always reviewed it for an abuse of discretion. *Id.* ¶ 18. Or as *Inman*, 2023 IL App (4th) 230864, ¶ 10, put it, we have "historically reviewed bail appeals" under that standard. And third, "absent a legislative mandate intended to disrupt this precedent, abuse of discretion remains the proper standard of review." *Whitmore*, 2023 IL App (1st) 231807, ¶ 18, n.1.

¶ 81 First, the legislature cannot dictate to reviewing courts their standard of review. The one time (of which we are aware) that the legislature tried to so dictate, our supreme court struck it down as a separation-of-powers violation. See *People v. Cox*, 82 Ill. 2d 268, 274-76 (1980) (statutory amendment that "modif[ied] the standard of review of sentencing" was "unauthorized legislative intrusion upon the manner in which cases are decided").

¶ 82 In any event, it is time to put to rest the notion that detention orders have historically been reviewed for an abuse of discretion. The genesis of this myth is the failure to distinguish between two things that have long been the subject of legislative distinction: (1) a pretrial *detention* order—that is, the complete denial of any release conditions; and (2) a pretrial *release* order with conditions, the most notable of which was monetary bail (even if the bail was set at an amount the accused could not afford, thus resulting in *de facto* detention). An accused who was "released" with a "condition" of a posting a high monetary bond that he could not afford was not considered "detained"—he was released with a "condition" he could not satisfy. A *de facto* detention though it may have been, legally that defendant was given the opportunity for release.

¶ 83 Illinois has long made this distinction between the complete denial of release conditions and release on bail and other conditions—at least since 1987, when Illinois amended its pretrial

detention and bail statutes, presumably following the lead of federal bail-reform legislation that had recently passed.

¶ 84 There is not a single published decision that has ever discussed the standard of review for *detention orders* under the previous version of the Illinois detention statute. Though many recent cases have cited a 2019 decision, *People v. Simmons*, 2019 IL App (1st) 191253, as proof of this supposed historical fact, that decision did not analyze our previous detention statute; it reviewed the previous version of the statute *governing the setting of bail and other conditions of release*.

¶ 85 Long before the PFA was enacted, the Code of Criminal Procedure already distinguished between release-with-conditions orders and detention orders; it codified this distinction in the statutory division of labor between sections 110-5 (pretrial release conditions) and 110-6.1 (detention) that is still with us today. Before the PFA, section 110-6.1 was entitled "Denial of bail in non-probationable felony offenses," and it first took effect in 1987. See Pub. Act 85-892, § 1 (eff. Nov. 4, 1987). That statutory provision did not look as different from the current version as some decisions would have one believe; in most material respects, it was the same.

¶ 86 For example, to detain an individual—that is, to deny him bail of any amount—the court was required to make the same findings of fact: "The court may deny bail to the defendant where, after the hearing, it is determined that: (1) the proof is evident or the presumption great that the defendant has committed [a qualifying offense]; (2) the defendant poses a real and present threat to the physical safety of any person or persons ***; and (3) the court finds that no condition or combination of conditions *** can reasonably assure the physical safety of any other person or persons." Ill. Rev. Stat. 1987, ch. 38, ¶ 110-6.1(b).

¶ 87 And while no burden of proof or standard of proof governed prongs (1) or (3), the legislature did assign a burden of proof and standard of proof regarding the defendant's

dangerousness: "The facts relied upon by the court to support a finding that the defendant poses a real and present threat to the physical safety of any person or persons shall be supported by *clear and convincing evidence presented by the State*." (Emphasis added.) *Id.* ¶ 110-6.1(c)(2).

¶ 88 This statute, the only provision governing the pretrial detention of an individual, received virtually no attention from the reviewing courts—not one published decision discussing the standard of review. Certainly not *Simmons*, 2019 IL App (1st) 191253, which never so much as mentioned this statute. The only published decision that even addressed the previous version of the detention statute, *People v. Gil*, 2019 IL App (1st) 192419, ¶ 16, held only that the court was required to follow the procedures in the detention statute before holding a defendant without bail. That court had no occasion to review the order itself, much less discuss a standard of review.

¶ 89 What little appellate case law exists on the standard of review for "bail appeals" (*Inman*, 2023 IL App (4th) 230864, ¶ 10) reviewed the previous version of the Illinois statute governing the setting of conditions of pretrial release, including monetary bail. That provision, section 110-5, then as now, was entitled "Determining the amount of bail and conditions of release." Ill. Rev. Stat. 1988, ch. 38, ¶ 110-5; compare 725 ILCS 5/110-5 (West 2022) (current version).

¶ 90 Section 110-5's basic structure was similar to what it is now: it enumerated possible release conditions and set forth a list of considerations that should inform the circuit court's choice of conditions upon granting release. See Ill. Rev. Stat. 1988, ch. 38, ¶ 110-5(a) ("In determining the amount of monetary bail or conditions of release, if any, which will reasonably assure the appearance of a defendant as required or the safety of any other person or the community and the likelihood of compliance by the defendant with all the conditions of bail, the court shall, on the basis of available information, take into account such matters as" nature of charged crime, alleged use of violence or deadly weapons, any alleged harm to public officials or

vulnerable citizens, etc.).

¶ 91 The general restrictions on the amount of monetary bail were that the bond be "(1) Sufficient to assure compliance with the conditions set forth in the bail bond; (2) Not oppressive;" and "(3) Considerate of the financial ability of the accused." *Id.* ¶ 110-5(b). But there was no standard of proof; indeed, the statute did not even place the burden of proof on the State. See generally *id.*

¶ 92 Given the absence of a standard of proof (or even a burden of proof) in the previous version of section 110-5, it is hardly surprising that courts employed an abuse-of-discretion standard when it came to reviewing the setting of bail orders. That was the conclusion in *Simmons*, 2019 IL App (1st) 191253, ¶¶ 12-13, which reviewed section 110-5 (not the detention statute, section 110-6.1) and noted that "appeals of bail orders are exceedingly rare" (*id.* ¶ 1) before concluding that the two previous decisions concerning the setting of bail "at least indirectly reviewed bail or bond rulings for an abuse of discretion." *Id.* ¶ 9. And indeed, *Simmons* was correct that the two previous decisions also concerned the setting of bail, not detention. See *People v. Saunders*, 122 Ill. App. 3d 922, 929 (1984) (court's increase of bond from $200,000 back to its original $500,000 was not error; "no hint of the arbitrariness or caprice which signals judicial abuse of discretion is evident."); *People v. Edwards*, 105 Ill. App. 3d 822, 830 (1982) (it was "not an abuse of discretion" for trial court to continue requiring posting of bond on appeal).

¶ 93 (I would note that the defendant in *Simmons* was held without bail, so it would appear that his detention should have been reviewed under the detention statute, section 110-6.1. That statute, as we held the same year as *Simmons* in *Gil*, 2019 IL App (1st) 192419, ¶ 16, was the statute that must be followed if a defendant was denied bail altogether. But whether *Simmons* was correct is beside the point; the point here is that, right or wrong, *Simmons* reviewed section

110-5, regarding the imposition of bail and other release conditions, not the detention statute.)

¶ 94 The long and short is that no court ever held, under the previous system of pretrial release, that an order detaining a defendant—that is, denying him release under any condition whatsoever, not even a high monetary bail—was reviewed for an abuse of discretion. So to the extent that our appellate decisions have relied on history as a guide, that reliance is misplaced.

¶ 95 III

¶ 96 Because the three required findings a court must make before detaining an individual under current law are findings of fact, we would ordinarily review those findings of fact under a manifest-weight-of-the-evidence standard. See, *e.g.*, *People v. Salamon*, 2022 IL 125722, ¶ 75 ("Factual findings by the trial court will be reversed only if they are against the manifest weight of the evidence"); *People v. Sneed*, 2023 IL 127968, ¶ 61 (same); *In re C.N.*, 196 Ill. 2d 181, 208 (2001) (manifest-weight standard applied to State's requirement of proving parental unfitness by clear and convincing evidence). Indeed, some recent decisions have used the manifest-weight standard in reviewing detention decisions. See, *e.g.*, *People v. Rodriquez*, 2023 IL App (3d) 230450, ¶ 8; *People v. Stock*, 2023 IL App (1st) 231753, ¶ 12.

¶ 97 The manifest-weight standard is a deferential one, grounded in the notion that the trial court is in a superior position to determine the weight and credibility of witness testimony, observe witnesses' demeanor, and resolve conflicts in the evidence. *D.F.*, 201 Ill. 2d at 498-99; *People v. Richardson*, 234 Ill. 2d 233, 251 (2009); *People v. Deleon*, 227 Ill. 2d 322, 332 (2008). Put differently, the subtleties of a witness's tone, inflection, and body language—which the trial court can see and measure—do not make it to the cold record before the reviewing court. *People v. Radojcic*, 2013 IL 114197, ¶ 34.

¶ 98 But when the parties do not offer live testimony, instead relying on documentary

evidence and oral presentation of counsel, the trial court is no longer in a superior position to evaluate the evidence. *Id*. ¶ 34. There is no longer any reason to defer to its findings. *Id*. ¶¶ 32, 35. The supreme court has recognized this principle for over a century; if the circuit court has "no better means of judging the relative candor, fairness, and credibility of the respective witnesses than we have," the parties are "substantially presenting the case to us for a hearing *de novo* upon the same evidence." *State Bank v. Clinton v. Barnett*, 250 Ill. 312, 315 (1911).

¶ 99 And the supreme court has applied this reasoning in many settings, holding that factual determinations, when made solely on documents and oral argument, are reviewed *de novo*. See, *e.g.*, *Cleeton v. SIU Healthcare, Inc.*, 2023 IL 128651, ¶ 26 ("A trial court is entitled to deference in its ruling when converting a respondent in discovery to a defendant only where the court heard testimony and made determinations about conflicting evidence. *** However, where the circuit court only considered documentary evidence (depositions, transcripts, etc.), *de novo* review applies."); *Riso v. Bayer Corporation*, 2020 IL 125020, ¶ 16 ("when, as here, the circuit court determined that plaintiffs met their burden [of making *prima facie* case of personal jurisdiction] based solely on documentary evidence, our review is *de novo*"); *Aspen American Insurance Company v. Interstate Warehousing, Inc.*, 2017 IL 121281, ¶ 12 (same); *Russell v. SNFA*, 2013 IL 113909, ¶ 28 (same); *Radojcic*, 2013 IL 114197, ¶ 34 (*de novo* review of factual findings where "the State offered no live testimony, only transcripts from the grand jury proceedings. Thus, the trial court did not occupy a position superior to the appellate court or this court in evaluating the evidence offered by the State in support of the crime-fraud exception."); *Dowling v. Chicago Options Associates, Inc.*, 226 Ill. 2d 277, 285 (2007) (factual circumstances surrounding payment of $50,000 to law firm reviewed *de novo*, as "[n]o written agreement accompanied this payment" and "the circuit court did not conduct an evidentiary hearing, nor did

the court make any findings of fact. The court apparently relied on the parties' oral argument and the record.").

¶ 100 As our supreme court said in *Addison Insurance Co. v. Fay*, 232 Ill. 2d 446, 453 (2009), in determining that the factual findings surrounding an accident involving two boys was subject to *de novo* review:

> "In this case, the trial court heard no live testimony. Both parties acknowledged at oral argument that all testimony was submitted by admitting discovery depositions into evidence. The trial court was not required to gauge the demeanor and credibility of witnesses. [Citation.] Instead, the trial court made factual findings based upon the exact record presented to both the appellate court and to this court. Without having heard live testimony, the trial court was in no superior position than any reviewing court to make findings, and so a more deferential standard of review is not warranted. Thus, although this court has not done so recently, *we reiterate that where the evidence before a trial court consists of depositions, transcripts, or evidence otherwise documentary in nature, a reviewing court is not bound by the trial court's findings and may review the record de novo.*" (Emphasis added.)

¶ 101 At defendant's pretrial detention hearing here, both the State and the parties elected to proffer evidence to the court; there was no live testimony. See 725 ILCS 5/110-6.1(f)(2) (West 2022) (allowing parties to present evidence by proffer). And as far as we have understood the new PFA appeals to date, the vast majority, if not all of them, consist solely of proffers—documents such as police reports and criminal histories and oral presentation by counsel, proffering their best and most persuasive descriptions of the facts of the case. Few, if any, in other words, involved live witness testimony where credibility determinations are at issue.

¶ 102 When, as here, the trial court considers only documentary evidence and oral presentation of counsel, appellate review of those factual findings should be *de novo*, as it traditionally has been, as the reviewing court sits in the same position as the trial judge.

¶ 103 IV

¶ 104 There is another reason, independent of those above, why *de novo* review should be the appropriate standard of review for detention orders. Simply put, it is the gravity of the question involved. We cannot lose sight of the fact that a decision to detain an individual, to deprive someone of his or her freedom indefinitely before they have been convicted of anything and remain presumptively innocent, is a momentous one.

¶ 105 A pretrial detention order is fundamentally different from an order that grants release with conditions, no matter how restrictive. Detention is an unconditional deprivation of the accused's "strong interest in [pretrial] liberty." *United States v. Salerno*, 481 U.S. 739, 750 (1987). And while the right to pretrial liberty, and thus release, is not absolute, make no mistake: the "traditional right to freedom before conviction" is a constitutional right, grounded in the constitutional presumption of innocence. *Stack v. Boyle*, 342 U.S. 1, 4 (1951); see *Salerno*, 481 U.S. at 755 ("In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."); *United States v. O'Brien*, 895 F.2d 810, 814 (1st Cir. 1990) (in determining pretrial release, " '[a] crucial liberty interest is at stake.' " (quoting *United States v. Delker*, 757 F.2d 1390, 1399 (3d Cir. 1985)).

¶ 106 Among other things, pretrial liberty "permits the unhampered preparation of a defense[] and serves to prevent the infliction of punishment prior to conviction." *Stack*, 342 U.S. at 4. Not to mention that pretrial detention, no different than postconviction incarceration, deprives children of their parents, men and women of their spouses, families of their caregivers and

financial support; it abruptly interrupts employment and educational pursuits.

¶ 107 The point here is twofold: (1) the highly deferential abuse-of-discretion standard is inappropriate for a decision of this magnitude; and (2) both our supreme court and the United States Supreme Court have embraced independent *de novo* review in other fact-intensive contexts where the importance of the constitutional rights at stake so warranted.

¶ 108 First, our supreme court has previously rejected the abuse-of-discretion standard when deciding issues of constitutional magnitude. In the decision of *In re D.T.*, 212 Ill. 2d at 356-57, the supreme court reviewed a best-interests determination by the trial court. The best-interests statute contained no standard of proof and presented the trial court with eleven statutory factors to consider in determining the best interests of the child. *Id.* at 354; see 705 ILCS 405/1-3(4.05) (West 2000). The State argued that the absence of a standard of proof, coupled with the list of factors the court had to weigh, meant that the court's best-interests decision was a discretionary one, and thus on appeal the standard of review was abuse of discretion.

¶ 109 Our supreme court, however, refused to view the best-interests determination as one of discretion, because the resulting standard of review—abuse of discretion—was inappropriate for a decision of this magnitude:

> "We also find the State's sound discretion standard difficult to reconcile with the nature of the trial court's ruling. When a trial court finds that the best interests of the child warrants termination of parental rights and enters an order to that effect, the parent-child relationship is permanently and completely severed. [Citations.] If this ruling is a matter of judicial discretion, as the State and the GAL argue, then it is reviewable only for an abuse of that discretion. [Citation.]
>
> 'Abuse of discretion' is the most deferential standard of review—next to no

> review at all—and is therefore traditionally reserved for decisions made by a trial judge in overseeing his or her courtroom or in maintaining the progress of a trial. [Citation.] For example, a trial judge's decision whether to allow or exclude evidence is reviewed for an abuse of discretion [citation], as is his or her decision to limit discovery [citation], impose a sanction for a discovery violation [citation], disqualify counsel [citation], accept or reject a negotiated plea [citation], and deny a *forum non conveniens* motion [citation]. *** *[A] trial judge's ruling on the ultimate issue at a best-interests hearing—whether the parent-child relationship should be permanently and completely severed—is plainly not the type of ruling to which the highly deferential abuse of discretion review traditionally applies*." (Emphasis added.) *Id*. at 356-57.

¶ 110 If the important decision on the best interests of a child is "plainly not the type of ruling to which the highly deferential abuse of discretion review traditionally applies" (*id*. at 357), what about the decision to deprive an individual of their freedom for months if not years, while they remain presumptively innocent, awaiting trial? If we do not leave the former decision to the standardless discretion of a trial judge, it is hard to fathom that we would leave the latter decision to that standardless discretion, either, subject only to "the most deferential standard of review—next to no review at all." *Id*. at 356.

¶ 111 Take another example: In considering fourth amendment suppression questions on the search or seizure of an individual, courts review the findings of historical fact for manifest error but reserve the ultimate question of whether a search or seizure violated the fourth amendment for *de novo* review. See *People v. Oliver*, 236 Ill. 2d 448, 455 (2010); *People v. Luedemann*, 222 Ill. 2d 530, 542-43 (2006). Among other reasons for employing an ultimate *de novo* review of such fact-intensive questions is the need to provide a uniform body of law concerning the

protection of constitutional rights. See *In re G.O.*, 191 Ill. 2d 37, 47 (2000); *Ornelas v. United States*, 517 U.S. 690, 697, 699 (1996).

¶ 112 The analogy is by no means perfect, but consider the incongruity: the question of whether an individual was impermissibly "seized"—that is, detained by the government—for no more than minutes or hours receives ultimate *de novo* review from our courts, but the question of whether someone can be detained by the government for *months or years* while presumed innocent receives no more than abuse-of-discretion review, the most deferential standard known to the law? That cannot be.

¶ 113 These are not novel thoughts. The majority of the federal courts of appeals, with a head start on us, employ *de novo* review of the questions concerning pretrial detention, such as an accused's threat to safety and whether sufficient conditions can mitigate those risks.

¶ 114 In enacting the Bail Reform Act of 1984 (18 U.S.C. § 3141 *et seq.* (1985)), Congress required findings of fact on a defendant's flight risk and threat to the safety of a person or the community, as well as whether sufficient conditions could mitigate those risks, as a prerequisite to detention. See 18 U.S.C. § 3142(e) (2022). The government must prove defendant's threat to the safety of a person or the community by clear and convincing evidence. *Id.* § 3142(f)(2)(B).

¶ 115 The federal circuit courts of appeals had to immediately grapple with the appropriate standard of review for detention decisions. But not a single one adopted or, for that matter, seriously considered abuse-of-discretion as that standard. The only choice worth discussing was between (1) "independent review," meaning *de novo* review of the ultimate decision to detain, with deference afforded to the trial court's factual findings along the way, like the review of a suppression ruling; and (2) "clear error," the federal-court equivalent of our manifest-weight review. See, *e.g.*, *United States v. Portes*, 786 F.2d 758, 761-63 (7th Cir. 1985); *United States v.*

Hurtado, 779 F.2d 1467, 1470-72 (11th Cir. 1985) (collecting circuit precedents).

¶ 116 The majority of the circuit courts of appeals, including the Seventh Circuit, have adopted "independent" or *de novo* review of the ultimate questions regarding detention, with due regard to the trial court's purely factual findings. *Portes*, 786 F.2d at 762 ("We join the majority of the circuits in adopting the so-called 'independent review' standard."); see also *United States v. Maull*, 773 F.2d 1479, 1487 (8th Cir. 1985) ("the clearly erroneous standard should be applied to factual findings made by the district court. *** However, conclusions and reasoning relating to the ultimate questions flowing from such factual considerations—issues such as *** the determination of the conditions that will reasonably assure the appearance of the defendant—should be the subject of independent review."); *United States v. Motamedi*, 767 F.2d 1403, 1406 (9th Cir. 1985) ("We hold that the applicable standard of review for pretrial detention orders is one of deference to the district court's factual findings, absent a showing that they are clearly erroneous, coupled with our right of independent examination of the facts, the findings, and the record to determine whether an order of pretrial detention may be upheld."); *O'Brien*, 895 F.2d at 814 (" '[a]n independent determination by the appellate court would seem appropriate in light of the nature of the question to be determined. A crucial liberty interest is at stake.' " (quoting *Delker*, 757 F.2d at 1399)); *United States v. Wilks*, 15 F.4th 842, 847 (7th Cir. 2021) (noting that Seventh Circuit still follows this standard of review, the "majority rule").

¶ 117 In addition to emphasizing the importance of the liberty interest at stake, courts have also noted that, while purely factual determinations such as the credibility of a witness should receive deference, "[i]n a release determination *** the conclusion based on those factual findings presents a mixed question of fact and law. The inquiry transcends the facts presented and requires both the consideration of legal principles and the exercise of sound judgment about the

values which underly those principles." *Motamedi,* 767 F.2d at 1405.

¶ 118 Thus, "[i]n reviewing a district court's order denying pretrial release, we must ensure not only that the factual findings support the conclusion reached, but also that the person's constitutional and statutory rights have been respected. [Citations.] Accordingly, we may make an independent examination of the facts, the findings, and the record to determine whether the pretrial detention order is consistent with those constitutional and statutory rights." *Id.*; see *United States v. Stone,* 608 F.3d 939, 945 (6th Cir. 2010) ("We review the district court's factual findings for clear error, but we consider mixed questions of law and fact—including the ultimate question whether detention is warranted—*de novo*."); *United States v. Cisneros,* 328 F.3d 610, 613 (10th Cir. 2003) ("We apply *de novo* review to mixed questions of law and fact concerning the detention or release decision, but we accept the district court's findings of historical fact which support that decision unless they are clearly erroneous.").

¶ 119 These federal circuits thus reserve for *de novo* review the ultimate statutory questions the trial court must answer in deciding whether to detain an individual—such as the finding "that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community." 18 U.S.C. § 3142(e) (2022); see *United States v. Maheshwari,* 358 Fed. Appx. 765, 767 (8th Cir. 2010) (independently reviewing and affirming detention of accused based on flight risk); *Maull,* 773 F.2d at 1487.

¶ 120 I am aware of no federal decision that ever seriously considered applying an abuse-of-discretion standard to the critical inquiries regarding detention. See *Hurtado,* 779 F.2d at 1471 (noting that " 'an "abuse of discretion" standard does not make sense' " and " 'only a more rigorous review can provide the kind of protection of both the defendant's liberty interests and the public interest in crime prevention and punishment which Congress felt was necessary in this

area.' " (quoting *United States v. Bayko*, 774 F.2d 516, 519-20 (1st Cir.1985)).

¶ 121 We are obviously not bound by federal law, the analogy to the federal bail statutes is not perfect, and not all federal circuits employ this independent review. But an ultimate *de novo* review of the statutory questions presented is appropriate to respect the gravity of the decision to indefinitely detain an individual, and it will allow the reviewing courts to create a body of law to protect an important constitutional right, just as reviewing courts do in decisions governing the protection of fourth and fifth amendment rights.

¶ 122 Independent *de novo* review is thus appropriate in determining the three required findings that (1) the proof is evident and presumption great that the defendant committed the charged offense; (2) the defendant poses a threat to an individual or the community (or is a flight risk); and (3) no set of conditions can mitigate the defendant's threat (or flight risk). 725 ILCS 5/110-6.1(e) (West 2022). While any findings of historical fact would be entitled to deference—should any live testimony be admitted—the ultimate rulings on these three prongs should be subject to independent *de novo* review.

¶ 123 Given that the vast majority of Illinois detention hearings will not include live testimony, anyway, but will be based solely on documents and oral presentations by counsel, *de novo* review would be the proper standard of review, in any event, as discussed above. But in no event should the abuse-of-discretion standard play any role in the review of detention orders.

***People v. Saucedo*, 2024 IL App (1st) 232020**

Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 23-DV-40342(01); the Hon. Kristyna C. Ryan, Judge, presiding.
Attorneys for Appellant:	Sharone R. Mitchell Jr., Public Defender, of Chicago (Abir Ahmed, Assistant Public Defender, of counsel), for appellant.
Attorneys for Appellee:	Kimberly M. Foxx, State's Attorney, of Chicago (_____, Assistant State's Attorney, of counsel), for the People.