

No. 1-26-0864B

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

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 25 CR 14253
	)	
TERRY AUSTIN,	)	Honorable
	)	Laura Ayala-Gonzalez,
Defendant-Appellant.	)	Judge, presiding.
	)	

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Lampkin and Martin concurred in the judgment.

ORDER

- ¶ 1 *Held:* We affirm the circuit court’s order continuing the electronic monitoring condition of defendant’s release.
- ¶ 2 Defendant-appellant, Terry Austin, was placed on electronic monitoring as a condition of his pretrial release pursuant to article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-1, *et. seq.* (West 2024)), commonly known as the Pretrial Fairness Act (Act).¹

¹ While commonly known by these names, neither the Illinois Compiled Statutes nor the forgoing public act refer to the Act as the “Safety, Accountability, Fairness and Equity-Today” Act, *i.e.*, SAFE-T Act, or the “Pretrial Fairness Act.” See *Rowe v. Raoul*, 2023 IL 129248, ¶ 4 n. 1. Certain provisions of the legislation in question were amended by Pub. Act 102-1104 (eff. Jan. 1, 2023). See *Rowe*, 2023 IL 129248, ¶ 4. The supreme court initially stayed the implementation of this legislation but vacated that stay

Defendant has appealed from the decision of the circuit court to continue the electronic monitoring condition after the denial of his motion for relief. We affirm.

¶ 3 Defendant was charged with armed robbery, aggravated robbery, robbery, two counts of aggravated battery, two counts of aggravated unlawful restraint, and two counts of unlawful restraint based on a November 20, 2025, incident.

¶ 4 On November 22, 2025, the State filed a petition to detain defendant pretrial under section 110-6.1(a) of the Code. The State alleged that the proof was evident or the presumption great that defendant had committed armed robbery, a forcible felony, which was eligible for detention and posed a real and present threat to the safety of any person or persons or community based on the specific articulable facts of the case and there were no combination of conditions which would mitigate the threat. The State also filed petitions to detain codefendants, Wendy Brown and Shakira Hobson.

¶ 5 The court held a hearing on the petitions to detain that day. Pretrial services reported to the court that although defendant was rated one (out of six) as to both new criminal activity and failure to appear, defendant was assessed as level three for supervision because of the armed robbery charge. Defendant has no prior convictions.

¶ 6 The State made a proffer as to defendant and codefendants. At about 4:08 a.m. on November 20, victim one and victim two (husband and wife), were driving home from “their food vending job.” They stopped at a gas station to purchase gas and the wife used the restroom. When the wife returned to their vehicle, she saw a phone on the ground next to the passenger door. She took the phone so that she could return it to the owner “if they called.” The victims drove home

effective September 18, 2023. *Id.* ¶ 52.

and parked in the alley. A gray Buick pulled up behind their vehicle. Defendant and codefendants exited the Buick and walked toward the victims' automobile while shouting at the victims. The wife told the husband that she believed they were looking for the phone. She handed the phone to Hobson through the passenger window. Hobson punched the wife, in the face and head, multiple times through the open window. Brown climbed into the backseat of the victims' vehicle and punched the wife in the head, pulled her hair and wrapped the seat belt around her neck. The husband exited the vehicle to help his wife. Defendant approached the husband and pulled a firearm out of his waistband. Defendant pointed the firearm at the husband's chest and took about \$300 in currency from the husband's two coat pockets. Hobson walked around the victims' automobile and punched the husband.

¶ 7 At this point, the court remarked that the arrest report stated that \$400 was taken and asked the State about the difference. The State explained that the victim's statement indicated that the husband had "\$300 in multiple denominations on his person." The State continued the proffer.

¶ 8 Defendant and codefendants returned to the Buick. Defendant drove the Buick away from the scene with Hobson in the front passenger seat and Brown in the backseat.

¶ 9 The wife called the police. After the police arrived, the Buick returned to the alley along with another automobile. The police ordered defendant and codefendants out of the Buick and conducted a show-up. The victims identified defendant and codefendants as the offenders.

¶ 10 Defendant and codefendants made statements to the police. Defendant said that he and codefendants were looking for the missing phone which was "pinging to the alley where the victims' vehicle was." He did not touch anyone and did not have a weapon. He "did pull his girl back." Defendant did not identify "his girl," but the State "assumed" he was referencing Hobson, who is his fiancé. Defendant stated he and his codefendants returned to the scene "so they could

use the bathroom.” Hobson told the police that she could not find her phone after using the restroom at the gas station. Defendant tracked the location of the phone to the alley. The wife threw the phone out of the window at Hobson and “Hobson then pushed [the wife’s] head forward by reaching into the vehicle.” Brown said the group called the victims “thieves” and were mad that the wife threw the phone. The husband did get out of the victims’ vehicle but no one took anything from the victims. Brown did not know why they returned to the alley.

¶ 11 The police did not recover a firearm or cash. The police observed visible injuries to the wife’s forehead and she was taken to the hospital.

¶ 12 In seeking defendant’s detention, the State argued that defendant and codefendants were identified by the victims and together had participated in an armed robbery. Hobson and Brown had physically abused the wife and defendant took money from the husband while armed with what the husband believed was a firearm. Defendant and codefendants came back to the scene with another vehicle. Defendant and codefendants know where the victims live, showed an inclination to reengage with the victims after first leaving the scene, and pose a threat to the safety of the victims. The State informed the court that defendant had no “publishable” background.

¶ 13 The court asked the State “what does it say on the general offense report” as to the time between the occurrence and the arrest. The State answered “it occurred at 4:08 a.m. Officers arrived at 4:10 a.m.”

¶ 14 Counsel for codefendants argued against detention and the arguments were adopted by defendant’s counsel. Hobson’s counsel pointed out that police did not recover a firearm or fruits of the crime. Hobson told the police that she had called her missing phone and there was no answer. Hobson admitted that she “pushed” the wife but only after the wife threw the phone at her. Brown’s counsel emphasized that Brown told the police that she did not see a firearm. Counsel for defendant

added as mitigation that defendant had only one prior arrest. He lives with his fiancé and has three children. He currently works for DoorDash. Defendant's counsel said that defendant had a place to stay for electronic monitoring purposes but asked for the least restrictive conditions given the "holes" in the State's proffer and pretrial services had not "flagged" him as a threat or a flight risk.

¶ 15 In rebuttal, the State argued that defendant and codefendants had the opportunity to discard the firearm before they returned to the alley. Additionally, the firearm does not have to be recovered in order to sustain an armed robbery charge.

¶ 16 At the end of the hearing, the court found that as to "all three defendants" the State did not meet its burden of establishing that the evidence or presumption was great that they committed armed robbery in light of the proffer that no gun or proceeds were recovered. The court "did not buy" that the firearm and cash could have been discarded in the two minutes before defendant and codefendants returned to the alley. The court also noted the arrest report differed from the proffer as to the amount of money which was taken. The court believed that the proffer established the commission of aggravated battery, an offense which was not eligible for detention. The court concluded that defendant (and codefendants) should be released on mandatory conditions, pretrial supervision level three and electronic monitoring with curfews. Defendant's daily curfew required that he be confined to his home from 7 p.m. to 7 a.m.

¶ 17 The court entered written orders which denied the petition to detain and directed that defendant be released under the specified conditions.

¶ 18 On January 6, 2026, the court changed defendant's daily curfew to between 6 p.m. and 6 a.m. The change was meant to help defendant in a job search.

¶ 19 On March 3, 2026, defendant filed a motion for relief (March 3 motion) and asked for review of the November 22, 2025, conditions of release decision. As to the curfew condition,

defendant asserted that he had been accepted to participate in an apprentice program which would allow him to obtain a certificate for the operation of a forklift. The program was to begin on March 13, 2026, and run from 8:30 a.m. to 4 p.m. The current curfew condition would not allow defendant to both participate in the program and look for work. As to the electronic monitoring condition, under section 110-5(i) of the Code, the court was required to review this condition every 60 days and determine if there are less restrictive conditions of release which would ensure defendant's appearance and protect an identifiable person or persons from imminent threat. Defendant maintained that the electronic monitoring and curfew conditions of his release are not necessary and there are less restrictive conditions which could be imposed.

¶ 20 The court held a hearing on the March 3 motion on March 11, 2026. Defense counsel argued that defendant had no violations of the electronic monitoring and curfew conditions. Because of financial difficulties he had moved to his mother's home. Defendant is not a danger. His prior arrests were for a minor traffic offense and domestic battery (in 2018) where the charges were nol prossed. Defendant maintains that during the incident on November 20, 2025, he did not have a firearm but had his phone. Defense counsel asked that the electronic monitoring and curfew conditions be removed as unnecessary. The State reiterated the proffer from the initial detention hearing and objected to the removal of the conditions.

¶ 21 The court informed the parties that it had reviewed the March 3 motion and the prior orders and noted that defendant had been compliant with the conditions of his release "notwithstanding the fact that he is charged with a very serious offense," armed robbery, a Class X felony. The court thought that defendant's release after the initial detention hearing was "generous understanding the facts of the case" and it denied defendant's motion for relief "to step him down off of curfew."

¶ 22 Defendant, on April 3, 2026, filed a motion for relief (April 3 motion) directed only to the March 11, 2026, order which denied the March 3 motion. In the April 3 motion, defendant stated that the March 3 motion was mislabeled as a motion for relief but had been intended as a motion to review the electronic monitoring condition under section 110-5(i) of the Code. That section requires the court to review an electronic monitoring condition every 60 days and determine whether less restrictive conditions would ensure the continued appearance of defendant or protect an identifiable person or persons from an imminent threat of serious physical harm.

¶ 23 Defendant further maintained that in denying the March 3 motion, the circuit court observed that defendant was compliant with the curfew and electronic monitoring conditions but kept the conditions in place based on the charge of armed robbery. The court did not consider whether there were lesser conditions of release that would ensure defendant's appearance or protect an identifiable person or persons from imminent threat of serious physical harm. Defendant requested that the court remove the electronic monitoring and curfew conditions.

¶ 24 On April 8, 2026, the court held a hearing on the April 3 motion. Pretrial services filed a written report of defendant's non-compliance with conditions of pretrial release. The report indicated that there had been an alert of a curfew violation on March 6, 2026, at 6:01 p.m., which was cleared at 6:28 p.m.; on March 7, 2026, at 6 p.m., which was cleared at 6:18 p.m.; and on March 9, 2026, at 6 p.m., which was cleared at 6:19 p.m. At the hearing, pretrial services explained that defendant had informed them that the violations were due to him "running late" from work. Defense counsel stated that defendant was delayed because of construction on the roadway.

¶ 25 As to the motion for relief, counsel argued that after "138 days," electronic monitoring was no longer necessary based on the nature and circumstances of the case. According to counsel, the victims' credibility is questionable. Police reviewed surveillance video from the gas station which

showed Hobson entering the restroom carrying her phone; the wife is not seen picking up any item from the ground. The victims did not answer calls to the phone after they left the gas station. Defendant stated that he approached the husband while holding only his phone. The police did not recover a firearm or money from defendant and codefendants. Defendant's characteristics and history do not require that he be on electronic monitoring. The State responded that nothing had changed since the prior detention hearings and that the electronic monitoring should stay in place.

¶ 26 The trial court orally denied the motion for relief. In explaining its ruling, the trial court said that it had reviewed the April 3 motion, the prior detention orders, and the report of curfew violations. The court's reasoning reflected a consideration of the relevant factors including the nature of the charges, defendant's lack of criminal history, the threat posed by defendant to the public and the victims, and whether there were less restrictive conditions which would address the threat. The court observed that the proffers may raise questions as to the proof of armed robbery and the victims' credibility but those issues will be determined at trial. The multiple charges against defendant include allegations of violence against the victims which occurred in a public place. The court concluded that "reducing [defendant] to just pretrial reporting" was not merited in light of the seriousness of the charges and the report of defendant's violations of curfew while on electronic monitoring. The court stated:

"You are allowed to work. You are allowed to go to school. So you are allowed your freedom even though it is restricted, and I feel that that is the least condition that I can impose upon you based on the nature of the facts and based on the factors that I believe would cause a threat to the public and a threat to specifically the people that were allegedly threatened by you and allegedly robbed by you on this particular incident."

¶ 27 Defendant appealed under Illinois Supreme Court Rule 604(h) (eff. Apr. 15, 2024).

¶ 28 Defendant filed a notice in lieu of memorandum and a supporting record. The State has filed a memorandum in response. The issues on appeal are limited to those which were raised in defendant's April 3 motion, which he designated as his motion for relief under Rule 604(h). That motion challenged only the order denying the March 3 motion and continuing the electronic monitoring condition. For purposes of this appeal, defendant has forfeited all other issues including any challenge to the initial detention hearing and original order imposing electronic monitoring as a condition of his release. Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020).

¶ 29 Pretrial release is governed by article 110 of the Code (725 ILCS 5/110-1 *et seq.* (West 2024)), as amended by the Act. Under the Code, the requirement of posting monetary bail was abolished in Illinois as of September 18, 2023, in favor of pretrial release on personal recognizance or with conditions of release. See *Id.* § 110-1.5; *Rowe v. Raoul*, 2023 IL 129248, ¶ 52. A defendant is presumed to be eligible for pretrial release. 725 ILCS 5/110-2(a) (West 2024). For qualifying offenses, upon filing a verified petition requesting the denial of pretrial release, the State has the burden to prove by clear and convincing evidence 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 any person or the community, and (3) less restrictive conditions would not avoid a real and present threat to the safety of any person or the community and/or prevent the defendant's willful flight from prosecution. *Id.* §§ 110-2(a), 110-6.1. When "the State fails to carry its burden of proof, the presumption of pretrial release stands, and pretrial detention is unlawful." *People v. Morgan*, 2025 IL 130626, ¶ 26 (citing 725 ILCS 5/110-2(a), 110-6.1(a) (West 2024)).

¶ 30 Section 110-10(a) sets forth several mandatory conditions of a defendant's release, including that he submit himself to the orders and process of the court and not commit any criminal

violations. 725 ILCS 5/110-10(a) (West 2024). Section 110-10(b) provides that “additional conditions of release” shall only be set when the court finds that they are necessary to ensure defendant’s appearance in court or his compliance with all conditions of pretrial release or with the rules of the court, or are needed to ensure that he not commit any criminal offense or unduly interfere with the orderly administration of justice. *Id.* § 110-10(b). In determining the appropriateness of conditions of release, a court must consider such factors as the nature and circumstances of the offense, the weight of the evidence against the defendant, the history and characteristics of the defendant, and the nature and seriousness of the real and present threat to the safety of any person or persons or the community. *Id.* § 110-5(a). The list of factors in the statute is not exhaustive. *People v King*, 2024 IL App (1st) 240494-U, ¶ 18 (cited for its persuasive authority under Illinois Supreme Court Rule 23(e)(1) (eff. June 3, 2025)). “The level of violence in a particular case is surely a matter the trial court can consider in determining what condition or set of conditions will reasonably ensure the safety of another person or the community.” *Id.*

¶ 31 A court may impose electronic monitoring as a condition of release “if a no less restrictive condition of release or combination of less restrictive condition of release would reasonably ensure the appearance of the defendant for later hearings or protect an identifiable person or persons from imminent threat of serious physical harm.” 725 ILCS § 5/110-5(g) (West 2024). When the condition of electronic monitoring is imposed, “the court shall determine every 60 days if no less restrictive condition of release or combination of less restrictive conditions of release would reasonably ensure the appearance, or continued appearance, of the defendant for later hearings or protect an identifiable person or persons from imminent threat of serious physical harm.” *Id.* § 110-5(i). The court is to order the removal of the condition if it finds that there are less restrictive conditions of release. *Id.*

¶ 32 As to the standard of review, we have held that a trial court's imposition of conditions of release is reviewed under an abuse of discretion standard. *King*, 2024 IL App (1st) 240494-U, ¶ 15. In *Morgan*, 2025 IL 130626, ¶ 54, our supreme court subsequently held that a *de novo* standard of review applies to initial detention decisions where the parties proceeded solely by proffer. Under either standard, we would reach the same conclusion as to the issues here.

¶ 33 Defendant, in the April 3 motion, the motion for relief, argued that the trial court erred in denying the March 3 motion which sought review of the electronic monitoring condition as is required every 60 days under section 110-5(i) of the Code. Defendant argued that he was not a danger and the condition of electronic monitoring should be removed.

¶ 34 In denying the April 3 motion, the court recognized that the State's proffer at the initial detention hearing raised issues as to the armed robbery charge which led to the denial of the State's petition to detain but the evidentiary issues and the credibility of the victims must be ultimately determined at a trial. The armed robbery charge, a Class X felony, and the other charges (aggravated battery, aggravated robbery, robbery, aggravated unlawful restraint and unlawful restraint) were violent in nature and were directed at the two victims and occurred in a public place.

¶ 35 The proffer showed that defendant and codefendants acted together and chose to seek the return of the missing phone on their own without seeking police assistance. With defendant driving the Buick, they tracked the phone to the alley behind the victims' residence. All three defendants exited the Buick and approached the victims' vehicle while yelling and calling them thieves. After the phone was returned, defendants did not leave but instead one codefendant punched the wife multiple times through the open window of the victims' automobile. The other codefendant entered the victims' automobile, punched the wife and pulled her hair and wrapped the seat belt around her neck. Defendant approached the husband when he exited his automobile and robbed him of

cash. A codefendant then struck the husband. The husband stated that defendant was armed with a firearm. Police observed visible injuries to the wife, who was transported to the hospital. After the interactions with the victims, defendant drove the Buick away but he and his codefendants returned to the alley behind the victims' home a short time later with another vehicle.

¶ 36 Defendant and his codefendants are aware of the identities and the location of the residence of the victims. After tracking the phone, they showed no qualms in approaching the victims, committing crimes, leaving the scene and then returning with another vehicle. The condition of electronic monitoring is necessary to protect the victims from the harm posed by defendant. There was nothing to suggest that defendant would no longer be a threat to the victims' well-being. Instead, there was evidence that defendant had three violations of electronic monitoring where he disregarded the curfew. The violations along with the circumstances surrounding the offenses demonstrate that there was no lesser condition that could be imposed to ensure the victims' safety. The trial court did not err in refusing to lift the condition of electronic monitoring.

¶ 37 For all the foregoing reasons, we affirm the circuit court.

¶ 38 Affirmed.