

2025 IL App (2d) 240786-U
No. 2-24-0786
Order filed March 14, 2025

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

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 24-CF-2533
)	
)	Honorable
ELIJAH N. CERVANTES,)	Sandra T. Parga and
)	David P. Kliment,
Defendant-Appellant.)	Judges, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Presiding Justice Kennedy and Justice Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court properly denied defendant’s pretrial release.

¶ 2 Defendant, Elijah N. Cervantes, appeals from orders of the circuit court of Kane County granting the State’s verified petition to deny his pretrial release under article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/art. 110 (West 2022)), as amended by Public Act 101-652 (eff. Jan. 1, 2023), informally known as the Pretrial Fairness Act (Act), and denying his motion for relief pursuant to Illinois Supreme Court Rule 604(h)(2) (eff. Apr. 15, 2024). Defendant contends that the State failed to prove by clear and convincing evidence that: (1) the

proof is evident or the presumption great that he committed a detainable offense; (2) he poses a real and present threat to the safety of any person based on the specific articulable facts of the case; and (3) no condition or combination of conditions could mitigate that risk. We affirm.

¶ 3

I. BACKGROUND

¶ 4 On December 7, 2024, defendant was arrested in connection with an incident that occurred on November 22, 2024, at the home of his friend, Jonathan Franco. Defendant was charged with four counts: home invasion causing intentional injury (720 ILCS 5/19-6(a)(2) (West 2022)) (class X felony), possession of a firearm while being ineligible for a firearm owner's identification (FOID) card (430 ILCS 65/2(a)(1) (West 2022)) (class 3 felony), unlawful possession of a firearm (720 ILCS 5/24-3.1(a)(2) (West 2022)) (class 4 felony), and criminal damage to property not exceeding \$500 (720 ILCS 5/21-1(a)(1) (West 2022)) (class A misdemeanor).

¶ 5 The State filed a verified petition to deny defendant pretrial release, and, on December 8, 2024, the circuit court held a hearing on the petition. At the hearing, the State explained that it was seeking detention on the counts of home invasion and possession of a firearm while being ineligible for a FOID card. Relying on an Aurora police synopsis, the State proffered that on the afternoon of November 22, 2024, Officer Laughlin was dispatched to a home on Jefferson Street in Aurora regarding a home invasion and aggravated unlawful use of a weapon. Upon arrival, she spoke with Jonathan's mother, Anadelia Solano-Rodriguez, and his sister, Michelle Franco. They reported that defendant was holding a firearm in Jonathan's bedroom, and that he ran across the hallway and hid the gun in the bedroom of Jonathan's younger brother, Alex Franco-Solano. Officer Laughlin questioned defendant at the scene, who denied bringing a gun into the home and denied possessing a FOID card or a license to carry a concealed firearm. Defendant "left the residence when told he needed to leave and Alex came home."

¶ 6 After the police left the residence, Alex located a 9mm pistol “in a void in the wall of his bedroom, behind a small door.” The weapon was loaded with 12 rounds. Approximately one hour after Alex found the pistol, defendant “barged into” the home, demanded to know where the gun was, and caused a disturbance. Anadelia told defendant to leave and that they were going to call the police. Defendant initially refused, but he left the residence after Alex stated he was on the phone with the police. At that moment, defendant ran toward a second-story window, punched Anadelia in her back with a closed fist “shoving her out of the way,” jumped out of the second story window, and fled the residence. Defendant reportedly broke a Christmas tree valued at \$60 while fleeing. Anadelia complained of back pain but refused medical assistance, and police observed a red area on the center of her back, which they photographed. Officer Laughlin also reviewed security footage showing defendant fleeing the residence. She ran defendant’s information through LEADS, which “showed him to not possess a FOID or CCL.”

¶ 7 The State also proffered defendant’s criminal history. Specifically, defendant had pleaded guilty on December 12, 2023, to possession of a firearm without a FOID card and received 30 months’ probation. The State emphasized that, “as a condition of that probation, as in all cases, he was ordered not to possess any firearms and not to commit any new criminal offenses.” Additionally, in 2023, defendant was adjudicated delinquent of domestic battery. The State also asserted that defendant was recently charged with an unrelated misdemeanor battery for an incident that occurred on October 20, 2024, one month before the instant offenses. Defendant was granted pretrial release in that case on December 5, 2024, which the State observed was “just a couple of days ago.”

¶ 8 Defendant proffered that he was 18 years old and a high school student. He participated in school remotely, and he was only four credits away from earning his diploma, which he expected

to receive in January 2025, provided “he stays on track.” He lived in Aurora with his mother and grandmother. In addition to caring for his grandmother, who has mobility challenges, he had two part-time jobs which he used to help support the household. Concerning the instant offenses, defendant proffered that Jonathan, defendant’s “good friend,” was home when defendant “came to visit the house the first time and the second time,” and that Jonathan allowed defendant to enter the residence both times. Defendant further proffered that, when defendant returned to the house the second time, “he was coming to check on Jonathan, who *** allowed him in.”

¶ 9 The circuit court granted the State’s petition and ordered that defendant be detained pending trial. The court noted that defendant was charged with two detainable offenses—home invasion and unlawful possession of a firearm without a FOID card—and that the State had proved by clear and convincing evidence that the proof was evident and the presumption great that defendant committed both offenses. The court recounted the State’s proffer and the police synopsis, which related that Anadelia and Michelle reported defendant possessed a firearm in Jonathan’s bedroom, and that defendant ran across the hallway into Alex’s bedroom, where defendant hid the gun. The court also emphasized defendant’s return to the home, when defendant demanded to know where the gun was and refused Anadelia’s instruction to leave until Alex told defendant that he was on the phone with the police. The court also found that defendant posed a real and present threat to the community based on his prior criminal history, failure to comply with probation conditions, and his pending new charges. It noted that defendant was already on juvenile probation for a gun-related offense, which the court found particularly relevant in assessing his risk to the public. Despite being monitored and previously admonished, he failed to follow the rules of his probation, which required him to refrain from possessing firearms, weapons, or ammunition, and to avoid committing new offenses. It also noted that defendant had a pending

misdemeanor charge for battery in an unrelated case and, although presumed innocent, he nevertheless faced a new detainable charge, which further demonstrated that he was a danger to the community. In addressing whether less restrictive conditions could mitigate the threat that defendant's pretrial release would pose to the community, the court emphasized that defendant was on juvenile probation at the time of the instant offense, and yet "he has not followed the rules of his juvenile probation or his release that he not commit any new offenses." It therefore concluded that defendant's history showed he was either "unable or unwilling to follow court orders regarding conditions of release."

¶ 10 On December 10, 2024, defendant filed a motion for relief pursuant to Rule 604(h)(2), which the circuit court denied after a hearing on December 18, 2024.

¶ 11 Defendant appeals.

¶ 12 II. ANALYSIS

¶ 13 All individuals charged with a criminal offense in Illinois are eligible for pretrial release, which is governed by article 110 of the Code, as amended by the Act. 725 ILCS 5/110-1.5, 110-2(a) (West 2022). To overcome the presumption of pretrial release, the State must prove by clear and convincing evidence that: (1) the proof is evident or the presumption great that the defendant has committed an offense that qualifies for pretrial detention; (2) the defendant poses a real and present threat to the safety of any person or the community based on the specific articulable facts of the case; and (3) no condition or combination of conditions could mitigate the real and present threat based on the specific articulable facts of the case. *Id.* § 110-6.1(e).

¶ 14 Where, as here, the parties proceed by proffer at the detention hearing, and no live testimony is presented, a reviewing court is not bound by the trial court's findings, and we review the court's factual findings and its ultimate detention decision under the *de novo* standard of

review. *People v. Morgan*, 2025 IL 130626, ¶¶ 51, 54. Under *de novo* review, a reviewing court performs the same analysis that the trial court would perform using the proper standards. *People v. Ruhl*, 2021 IL App (2d) 200402, ¶ 69.

¶ 15 Defendant raises three arguments on appeal. First, he contends that the State failed to prove by clear and convincing evidence that the proof is evident or the presumption great that he committed a detainable offense—here, home invasion and possession of a firearm while being ineligible for a FOID card. Second, defendant argues that the State failed to prove by clear and convincing evidence that he poses a real and present threat to the complainants in this matter or to the general community. Third, he contends that the State failed to prove by clear and convincing evidence that no release conditions could mitigate that risk.

¶ 16 Defendant first argues that the State failed to prove, by clear and convincing evidence, that the proof is evident or the presumption great that he possessed a firearm while being ineligible for a FOID card. Defendant asserts that the State’s evidence does not establish that anyone actually saw him with a firearm. He points out that the officer who prepared the synopsis merely reported that Anadelia and Michelle stated defendant “was holding a firearm in Jonathan’s bedroom,” but no witness, including the police, reported personally observing him with the weapon. Additionally, he surmises that no one witnessed him hiding the gun in Alex’s bedroom, because if they had, the weapon would have been immediately recovered and given to the police during their initial visit to the residence. Defendant suggests that perhaps Jonathan placed the gun there, because it is “far more likely that a family member would have known about the ‘void’ than one of Jonathan’s friends.” Defendant also highlights the lack of forensic evidence, such as fingerprints linking him to the weapon.

¶ 17 In the petition to deny pretrial release, the State sought to detain defendant based on the

charge of “Possession of a Firearm—Ineligible for FOID.” Count 2 charged defendant with violating section 2(a)(1) of the Firearm Owners Identification Card Act, which prohibits any person from “acquir[ing] or possess[ing] any firearm, stun gun, or taser within this State without having in his or her possession a [FOID] Card previously issued in his or her name by the Department of State Police under the provisions of this [FOID Card] Act.” 430 ILCS 65/2(a)(1) (West 2022). The State charged the offense as a class 3 felony because defendant has no FOID card and is not eligible to obtain one. 430 ILCS 65/14(c)(3) (West 2022). Here, defendant was ineligible to receive a FOID card due both to his young age and because, at the time of the instant offense, he was on probation in juvenile court for the same offense—class 3 possession of a firearm without a FOID card—and he was ordered to not possess any firearms. The offense is therefore detainable, as defendant concedes. See 725 ILCS 5/110-6.1(a)(1) (West 2022).

¶ 18 We determine that the proffered evidence was sufficient to prove, by clear and convincing evidence, that the proof was evident or the presumption great that defendant committed the class 3 felony offense of possession of a firearm while being ineligible for a FOID card. The State proffered that several witnesses, namely Anadelia and Michelle, observed defendant holding a firearm in Jonathan’s bedroom. He then ran across the hall and into Alex’s bedroom, where he hid the weapon. Indeed, a loaded 9mm pistol was later recovered from “a void in the wall of [Alex’s] bedroom, behind a small door,” which suggests that the firearm was deliberately concealed in that location. Multiple witnesses observed defendant later return to the home and demand to know its location, further establishing that he had possessed the firearm while visiting the home. Anadelia then told defendant to leave and threatened to call the police. Defendant refused initially to leave, and left only after Alex told him that he was on the phone with the police. Once defendant was made aware that Alex was speaking to police on the phone, defendant

immediately ran toward a second story window, punched Anadelia in her back with a closed fist, jumped out the window, and fled the residence.

¶ 19 Defendant's argument fails because it relies on speculation, ignores corroborating evidence, and mischaracterizes the State's burden at this stage of the proceedings. Foremost, defendant relies on a tortured interpretation of the police synopsis to conclude that no witness "had ever actually seen him with a gun." Defendant makes this claim even though Anadelia and Michelle explicitly reported to Officer Laughlin that defendant was holding a firearm in Jonathan's bedroom before running across the hallway. It was unnecessary for these witnesses to state specifically, in so many words, that they personally observed defendant holding the gun, because their report to the police already infers firsthand observation. Moreover, the absence of "forensic evidence to tie the gun to [defendant]," such as fingerprints, does not negate the testimony of the witnesses who observed defendant hold the gun and run into Alex's bedroom to hide it. Again, the State's burden of proof at this stage of the proceedings is clear and convincing evidence and, even under the more stringent standard of proof beyond a reasonable doubt, physical evidence is not required. See *People v. Williams*, 182 Ill. 2d 171, 192 (1998) ("Proof of physical evidence connecting a defendant to a crime has never been required to establish guilt"); *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009) (testimony of a single witness, if positive and credible, is sufficient to convict). Additionally, defendant's assertion that Jonathan may have hidden the weapon is speculative. The fact that Alex later found the firearm in an obscure "void" does not contradict the witness statements placing the weapon in defendant's hand, but rather, it aligns with the reasonable inference that defendant sought to hide it. Defendant's later reappearance at the home, during which he forcefully demanded to know the location of the gun and his subsequent fleeing from the home once the police were called, further bolsters the State's position. In short,

the State proved by clear and convincing evidence that the proof is evident or the presumption great that defendant possessed a firearm while being ineligible for a FOID card, which is a detainable offense. Because the State satisfied its burden of persuasion regarding this detainable offense, we need not consider whether the State likewise satisfied its burden of persuasion regarding the charge of home invasion.

¶ 20 Defendant next contends that the State failed to prove, by clear and convincing evidence, that his pretrial release would pose a real and present threat to the safety of any person, including Jonathan’s family, or the general community, based on the specific articulable facts of the case. He asserts that, even if he did possess a firearm that day, the State failed to present any evidence that he threatened anyone with it or that “he planned to use it for anything but protection.” He notes that if illegal possession of a firearm were sufficient to establish dangerousness, then the Act would not presume that defendants charged with firearms offenses should be released pending trial. See 725 ILCS 5/110-6.1(e) (West 2022) (“All defendants shall be presumed eligible for pretrial release,” and the State bears the burden of proving otherwise under the Act). Defendant also minimizes his criminal history, arguing that his pending misdemeanor battery for an incident that occurred on October 20, 2024, did not show he was a danger because he “merely pushed someone, ‘causing him to fall and scratch his leg.’ ” He also asserts that, in this case, his alleged striking of Anadelia “was in service of reaching the window and jumping out to escape from a second police interaction,” rather than “violence for the sake of violence.” He contends that there was “no evidence that he intentionally targeted her.”

¶ 21 These arguments fail. Section 110-6.1(g) of the Act delineates several factors for trial courts to consider in determining whether a defendant poses a real and present threat to any person or the community. They include, among others: (1) the nature and circumstances of the charged

offense, including whether the offense is a crime of violence or involved a weapon; (2) the history and characteristics of defendant, including his prior criminal history indicative of violent, abusive, or assaultive behavior, including evidence received in juvenile proceedings; (3) whether defendant is known to possess or have access to any weapons; and (4) whether, at the time of the offense, defendant was on probation, parole, or other release pending trial. *Id.*

¶ 22 As emphasized by the trial court in its finding of dangerousness, the instant offense involves a weapon, namely a 9mm loaded pistol, that defendant is alleged to have illegally possessed. At the time of this offense, defendant was already on juvenile probation for unlawful possession of a firearm and was prohibited from possessing a firearm. Nevertheless, he was seen holding a loaded firearm, containing 12 rounds of ammunition, in someone else’s home. When confronted, he ran across a hallway and hid the weapon. The inherent danger of firearms—especially when possessed by individuals legally prohibited from doing so—has been well recognized. *People v. Lee*, 2024 IL App (1st) 232137, ¶ 27.

¶ 23 After his first encounter with police that day, defendant returned to the home, “barged” in, caused a disturbance, and demanded to know the location of the gun. According to the State’s proffer, Anadelia instructed him to leave, but he refused. It was only after Alex informed defendant that he was on the phone with the police that he finally left. Even then, defendant did not leave peacefully. He acted violently and erratically, striking Anadelia in the back with a closed fist and injuring her before climbing through and jumping from a second-story window. Defendant’s assertion that this violence was merely in service of his attempt to avoid another encounter with police does not negate his alleged use of violence toward Anadelia. His readiness to use violence demonstrates his dangerousness, regardless of his motivation.

¶ 24 Furthermore, defendant’s record establishes a pattern of escalating criminal behavior,

including a prior adjudication of illegal gun possession, a domestic battery adjudication, a pending charge for misdemeanor battery and now, in the instant matter, home invasion and possession of a firearm by someone ineligible for a FOID card. Contrary to defendant's argument, the trial court ordered him held not because of his mere possession of a firearm, but because of the totality of the circumstances, including his prior adjudications, current pending charges, and his erratic conduct in this case, which included handling, hiding, and later demanding the return of a loaded 9mm pistol within someone else's home and injuring her, causing a disturbance, and jumping from a second story window. The State's evidence demonstrated by clear and convincing evidence that defendant's pretrial release would pose a real and present threat, not only to Jonathan's family, but also to the general community.

¶ 25 Defendant last argues that the State failed to prove by clear and convincing evidence that no conditions could mitigate the risk that his pretrial release would pose. Once a trial court finds that the State proved a valid threat to any person or the community, it must determine which pretrial release conditions, "if any, will reasonably ensure *** the safety of any other person or the community and the likelihood of compliance by the defendant with all the conditions of pretrial release." 725 ILCS 5/110-5(a) (West 2022). Just as in the initial detention hearing, defendant asserts on appeal that he could have been placed "on maximum conditions or electronic home monitoring" as alternatives to detention.

¶ 26 This argument is unpersuasive. The trial court explained that lesser restrictions would not mitigate the risk that defendant's pretrial release would pose, particularly given his history of non-compliance with court-imposed conditions of release. In announcing its ruling, the court observed that defendant "is on pretrial conditions and he has not followed the rules of his juvenile probation or his release that he not commit any new offenses." We agree with the trial court's analysis. As

noted, defendant's conduct indicates an escalating pattern of criminal behavior. In December 2023, he was adjudicated delinquent of possession of a firearm without a FOID card, resulting in a 30-month sentence of probation. Additionally, he had a prior adjudication for domestic battery in 2023. As conditions of his probation, defendant was ordered not to possess any firearms and to refrain from committing further crimes. Despite these conditions, within one year, defendant allegedly committed the offenses at issue in this case, including another firearm-related offense, home invasion, and an unrelated misdemeanor battery that remains pending. Defendant's proposal of "maximum conditions" or home confinement fails to address the core issue—his demonstrated noncompliance with probation requirements and release conditions, particularly those prohibiting him from possessing a firearm and committing additional offenses. The trial court aptly noted that such measures would not prevent defendant from accessing additional firearms, thereby inadequately safeguarding the community.

¶ 27 In addition to the above, and given the fact that defendant is alleged to have committed the instant offenses while already under court supervision, we determine that the State proved by clear and convincing evidence that no conditions would mitigate the threat that defendant's pretrial release would pose.

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we affirm the order of the circuit court of Kane County granting the State's petition to detain.

¶ 30 Affirmed.