

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. 23-CF-2067
)	
SOLOMON HERNANDEZ,)	Honorable
)	Salvatore LoPiccolo,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE MULLEN delivered the judgment of the court.
Presiding Justice McLaren and Justice Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in granting the State’s petition to deny defendant pretrial release.

¶ 2 Defendant, Solomon Hernandez, appeals the September 27, 2023, order of the circuit court of Kane County granting the State’s petition to deny him pretrial release pursuant to article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/art. 110 (West 2022)) and ordering him detained pending trial. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Following a report of a domestic disturbance, the Aurora Police Department arrested defendant. On September 27, 2023, the day after the arrest, defendant was charged by complaint in the circuit court of Kane County with two counts of domestic battery (720 ILCS 5/12-3.2(a)(1) (bodily harm to any family or household member), (a)(2) (physical contact of an insulting or provoking nature with any family or household member) (West 2022)), one count of trespass to a residence (720 ILCS 5/19-4(a)(2) (West 2022)), and one count of violation of conditions of pretrial release (720 ILCS 5/32-10(b) (West 2022)). The domestic-battery counts were later amended to add language that defendant had previously been convicted of five prior domestic batteries.

¶ 5 On the same day that defendant was charged, the State filed a “Verified Petition to Deny Defendant Pretrial Release” (Petition). The State urged the court to deny defendant pretrial release pursuant to section 110-6.1(a)(4) of the Code (725 ILCS 5/110-6.1(a)(4) (West 2022)) because (1) defendant was charged with domestic battery under section 12-3.2 of the Criminal Code of 2012 (720 ILCS 5/12-3.2 (West 2022)) and (2) defendant’s pretrial release would pose a real and present threat to the safety of any person or persons or the community. As additional grounds upon which defendant should be denied pretrial release, the State asserted that defendant had (1) prior convictions of domestic battery, theft, battery, aggravated battery to a police officer, and assault, (2) pending charges of assault and violation of bail bond, and (3) a pending charge of domestic battery in Kane County case No. 23-DV-758.

¶ 6 The State attached to its Petition a sworn synopsis (Synopsis) drafted by the arresting agency. The Synopsis provides in relevant part as follows. On September 26, 2023, Maricela Tovar-Cruz (Tovar-Cruz) called to report a disturbance involving defendant, Tovar-Cruz’s son. Tovar-Cruz told the dispatcher that defendant had come to her home at 510 Pennsylvania Avenue in Aurora (Pennsylvania Avenue residence), but he was barred from being there. During the call,

the dispatcher could hear Tovar-Cruz yell “[defendant] is here,” “[defendant] is fighting,” and “[g]rab his hands.” The dispatcher also heard male voices yelling in the background. One male voice shouted “[g]et the f*** out of here.” Tovar-Cruz then told the dispatcher “they are holding [defendant] down.” Officers were dispatched to the scene. Upon their arrival, the officers observed Tovar-Cruz separating defendant and his brother, Jonathon Hernandez (Jonathon). The officers obtained statements from Jonathon, Daniel Hernandez (Daniel), and Tovar-Cruz.

¶ 7 Jonathon told the officers that defendant is his brother, but defendant does not live at the Pennsylvania Avenue residence with the rest of the family. Jonathon reported that he was in his locked bedroom when defendant broke down the door. Defendant and Jonathon got into an altercation at the door during which defendant struck Jonathon about the body and head. Jonathon stated that he fears defendant will kill his mother (Tovar-Cruz) and his brother (Daniel) because defendant has frequently made statements that he would kill Jonathon and other family members. Jonathon also recounted that, earlier on the day of the altercation, defendant told Jonathon that he would stab him. The officers observed scratch-like marks on Jonathon’s neck. Jonathon confirmed that those marks were a result of the altercation with defendant.

¶ 8 Daniel told the officers that he observed defendant kick in Jonathon’s bedroom door and start a fight with Jonathon. Daniel provided the officers with a video of the altercation that he recorded on his cell phone. The Synopsis stated that the video recording supported the statements made by Daniel and Jonathon.

¶ 9 Tovar-Cruz told the officers that defendant does not reside at the Pennsylvania Avenue residence. She noted that defendant was released on a September 11, 2023, domestic-battery charge involving the same parties and the same address. As a condition of release on that charge, defendant was prohibited from returning to the Pennsylvania Avenue residence. Nevertheless, on

September 26, 2023, at approximately 4 p.m., defendant entered the Pennsylvania Avenue residence by a back door that was unsecured due to a prior break in by defendant. At that time, Tovar-Cruz contacted the police. On the same day, at approximately 10:19 p.m., defendant returned to the Pennsylvania Avenue residence. Tovar-Cruz contacted the police a second time to report defendant's presence and the altercation.

¶ 10 The Synopsis further provided that defendant was uncooperative and refused to give a statement to the officers. The police arrested defendant and transported him to the police station for booking. A review of defendant's criminal record revealed that he had multiple prior convictions for domestic battery. Further, court documentation showed that defendant had been arrested on September 12, 2023, in Kane County case No. 23-DV-758, for domestic battery and was released with the conditions that, until further order of the court, he (1) not have contact (direct or indirect) with Jonathon and (2) stay away from the Pennsylvania Avenue residence.

¶ 11 On September 27, 2023, after defendant was informed of the charges against him, the trial court held a hearing on the State's Petition. At that hearing, the State tendered a copy of the Synopsis as a factual basis for the Petition. The State then informed the court that each of defendant's prior domestic battery cases involved a family member. In argument, the State contended that defendant's conduct was indicative of "a person who can't follow the conditions and puts the community at risk." The State asserted that electronic home monitoring would not suffice considering defendant's repetitive behavior and the failure of prior court orders. Significantly, the State pointed out that in Kane County case No. 23-DV-758, "there was a specific condition *** of no contact with Jonathan [*sic*] Hernandez, and that didn't work." Citing "the extreme violence involved, the fact that no court orders have worked, [and] no conditions have worked, [the State argued that] none of the conditions that [the court] would otherwise impose

would stop this individual from breaking down doors and beating family members,” and requested that defendant be detained pending trial.

¶ 12 Defense counsel asked the court to deny the State’s Petition. Initially, defense counsel “proffered in mitigation” that defendant resides in a homeless shelter and works odd jobs. She also stated that if defendant were to make a statement, he “would say that he has the deed to the [Pennsylvania Avenue residence] and is attempting to seek eviction.” Defense counsel then argued that the State failed to prove by clear and convincing evidence that defendant committed the offenses at issue or that he poses a real and present threat. In support of her position, defense counsel asserted that the Synopsis, standing alone, which she categorized as “hearsay written down,” was insufficient for the State to meet its burden of proof. Defense counsel maintained that the State could have presented other evidence, such as the video referenced in the Synopsis or photos of Jonathon’s injuries. Defense counsel also contended that there are conditions that could mitigate any perceived threat, such as “electronic monitoring and no contact.”

¶ 13 In reply, the State contended that electronic home monitoring “doesn’t stop individuals, [it] just monitors where they are.” The State argued that electronic home monitoring would not work in defendant’s case because he does not follow court orders and has repeatedly acted in a violent manner. In this regard, the State observed that defendant was not supposed to be at the Pennsylvania Avenue residence due to a prior court order, but “[h]e showed up. He broke a door, a locked door down, and beat his brother.” Beyond that, the State asserted that the Synopsis provided “clear and convincing evidence that there’s probable cause to believe this occurred.”

¶ 14 Following the parties’ arguments, the trial court granted the State’s Petition and ordered defendant detained pending trial. The court concluded that the State had proven by clear and convincing evidence that the proof was evident or the presumption great that defendant committed

the offense of domestic battery, a qualifying offense under section 110-6.1(a) of the Code (725 ILCS 5/110-6.1(a) (West 2022)).

¶ 15 The court further determined that the State proved by clear and convincing evidence that defendant “poses a real and present threat to the safety of any person or the community based upon specific articulable facts in the record.” The court explained that Jonathon “is a person whose safety has been threatened.” The court addressed and rejected defendant’s claim that the Synopsis was insufficient to support the State’s Petition. The court observed that, in addition to the statement from Jonathon, Daniel corroborated that defendant broke down Jonathon’s bedroom door and Tovar-Cruz indicated that defendant entered the residence without permission. Further, the police observed scratch marks on Jonathon’s neck, which supported his version of what occurred.

¶ 16 Finally, the court concluded that the State had proven by clear and convincing evidence that no condition or combination of conditions of pretrial release can mitigate the real and present threat posed by defendant and that no less restrictive conditions would avoid the real and present threat posed by defendant. The court based these findings on defendant’s prior history of violence, his multiple convictions of domestic battery, and the fact that defendant has a case pending (23-DV-758) in which he is alleged to have committed a domestic battery against Jonathon. Additionally, the court found that defendant “has demonstrated that he cannot follow the conditions of bond that were set literally less than two weeks ago” in Kane County case No. 23-DV-758, which prohibited him from having any contact with Jonathon and ordered him to stay away from the Pennsylvania Avenue residence. The court did not believe that electronic home monitoring would prevent defendant from going to the Pennsylvania Avenue residence. To the contrary, the court concluded that defense counsel’s claim that defendant has the deed to the house

and was seeking to evict “indicates *** that he is going to continue to go to that residence until he gets those people out of the house, even though he’s got an order not to go to that residence.”

¶ 17 The trial court entered a written order in accordance with its oral pronouncement. Defendant filed a timely notice of appeal, and the Office of the State Appellate Defender (OSAD) was appointed to represent defendant on appeal. OSAD elected not to file a memorandum under Illinois Supreme Court Rule 604(h)(2) (eff. Sept. 18, 2023) (providing that the appellant “may file, but is not required to file, a memorandum”). Thus, on appeal, we are limited to the arguments made in defendant’s notice of appeal.

¶ 18

II. ANALYSIS

¶ 19 This appeal is brought pursuant to the pretrial release provisions of Public Acts 101-652 and 102-1104 (see Pub. Act 101-652, § 10-255 (eff. Jan. 1, 2023) and Pub. Act 102-1104, § 70 (eff. Jan. 1, 2023)), commonly known as the Safety, Accountability, Fairness and Equity-Today (SAFE-T) Act (Act).¹ The Act is codified, as amended, in article 110 of the Code. 725 ILCS 5/art. 110 (West 2022). The Act became effective on September 18, 2023, after it was upheld as constitutional by the Illinois Supreme Court. *Rowe v. Raoul*, 2023 IL 129248, ¶ 52. This court has jurisdiction pursuant to article VI, section 6 of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rule 604(h) (eff. Sept. 18, 2023).

¶ 20 The Act amended the Code by abolishing traditional monetary bail in favor of pretrial release on personal recognizance or with conditions of release. 725 ILCS 5/110-1.5, 110-2(a)

¹ The Act has been referred to as the “SAFE-T Act” or the “Pretrial Fairness Act.” Neither of those names is official, as neither appears in the Illinois Compiled Statutes or the public acts. *Rowe*, 2023 IL 129248, ¶ 4 n.1.

(West 2022). In Illinois, all persons charged with an offense are eligible for pretrial release. 725 ILCS 5/110-2(a), 110-6.1(e) (West 2022). Under the Code, as amended, a defendant's pretrial release may only be denied in certain statutorily limited situations (qualifying offenses). 725 ILCS 5/110-2(a), 110-6.1 (West 2022). For most of the qualifying offenses, upon filing a verified petition requesting denial of pretrial release, the State has the burden to prove by clear and convincing evidence that the proof is evident or the presumption great that the defendant has committed a qualifying offense (725 ILCS 5/110-6.1(e)(1) (West 2022)), that the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community (725 ILCS 5/110-6.1(a)(1)-(7), (e)(2) (West 2022)) or a high likelihood of willful flight to avoid prosecution (725 ILCS 5/110-6.1(a)(8), (e)(3) (West 2022)), and that no condition or combination of conditions can mitigate the real and present threat to the safety of any person or the community or the risk of defendant's willful flight from prosecution (725 ILCS 5/110-6.1(e)(3) (West 2022)). "Evidence is clear and convincing if it leaves no reasonable doubt in the mind of the trier of fact as to the truth of the proposition in question." *Chaudhary v. Department of Human Services*, 2023 IL 127712, ¶ 74.

¶ 21 Our standard of review is twofold. We review under the manifest-weight-of-the-evidence standard the trial court's factual findings regarding whether the State presented clear and convincing evidence that a qualifying offense has been committed, that mandatory conditions of release would fail to protect any person or the community, that the defendant has a high likelihood of willful flight to avoid prosecution, or that no condition or combination of conditions can mitigate the real and present threat to the safety of any person or the community or the defendant's willful flight from prosecution. See *In re C.N.*, 196 Ill. 2d 181, 208 (2001) (applying a similar standard of review for the requirement of clear and convincing evidence by the State in termination-of-

parental-rights proceeding). A finding is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent or if the finding is unreasonable, arbitrary, or not based on the evidence presented. *In re Jose A.*, 2018 IL App (2d) 180170, ¶ 17. We review the trial court's ultimate determination regarding pretrial release for an abuse of discretion. See *People v. Simmons*, 2019 IL App (1st) 191253, ¶ 9 (applying abuse-of-discretion standard in reviewing ruling denying the defendant's motion for bail pending trial under Illinois Supreme Court Rule 604(c)(1) (eff. July 1, 2017)). An abuse of discretion occurs only when the trial court's decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court. *People v. Williams*, 2022 IL App (2d) 200455, ¶ 52.

¶ 22 On appeal, defendant raises three arguments. First, he argues that the State failed to meet its burden of proving by clear and convincing evidence that the proof is evident or the presumption great that he committed the offenses charged. Second, defendant argues that the State failed to meet its burden of proving by clear and convincing evidence that no condition or combination of conditions can mitigate the real and present threat to the safety of any person or persons or the community, based on the specific, articulable facts of the case. Lastly, defendant argues that the trial court erred in its determination that no condition or combination of conditions would reasonably ensure the appearance of defendant for later hearings or prevent defendant from being charged with a subsequent felony or class A misdemeanor. We do not find persuasive any of defendant's arguments.

¶ 23 Regarding defendant's first argument, he asserts in his notice of appeal that the only evidence presented by the State that he committed a qualifying offense was the Synopsis, "which is insufficient for clear and convincing evidence." While we acknowledge that Rule 604(h)(2) (eff. Sept. 18, 2023) does not require the appellant to file a supporting memorandum, it does require

the notice of appeal to “describe the relief requested *and the grounds for the relief requested.*” (Emphasis added.) Moreover, the long-held principles in Illinois Supreme Court Rule 341 (eff. Oct. 1, 2020) and related case law regarding appeals in Illinois have not been eradicated and still apply. See *People v. Inman*, 2023 IL App (4th) 230864, ¶ 12 (noting that as a matter of practicality, the briefing requirements of Rule 341 cannot govern the parties’ filings in an appeal under the Act, but a court should not ignore the principles underlying Rule 341, namely, coherent argument and analysis supported by proper record citations and legal authorities). In support of the arguments defendant makes here, he does not cite any evidence presented at the detention hearing or any legal authority. Thus, defendant has failed to comply with Rule 604(h)(2) and has forfeited this argument. See *Inman*, 2023 IL App (4th) 230864, ¶ 12 (noting that a defendant challenging a pretrial detention order who stands on his or her notice of appeal must include “some form of argument *** along with justification for claiming entitlement to relief—like references to the record, the evidence presented, or, if possible, legal authority”); see also *People v. Gray*, 2023 IL App (3d) 230435, ¶ 16 (providing that the failure to present argument on issue results in forfeiture); Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) (“Points not argued are forfeited.”).

¶ 24 Forfeiture notwithstanding, the trial court found that the Synopsis was sufficient to establish by clear and convincing evidence that the proof is evident or the presumption great that defendant committed a qualifying offense. Based on our review of the record, we cannot say that the trial court’s factual finding on this point is against the manifest weight of the evidence. Significantly, section 110-6.1(f)(2) of the Code (725 ILCS 5/110-6.1(f)(2) (West 2022)) permits the parties to a detention hearing to present evidence by way of proffer based on reliable information. Moreover, under section 110-6.1(a)(4) of the Code (725 ILCS 5/110-6.1(a)(4) (West 2022)), one of the qualifying offenses for pretrial detention is domestic battery under section 12-

3.2 of the Criminal Code of 2012 (720 ILCS 5/12-3.2 (West 2022)). Here, defendant was so charged. Further, the evidence indicated that, despite a previous court order requiring defendant to stay away from the Pennsylvania Avenue residence and to have no contact with Jonathon (defendant's brother), defendant entered the residence without permission, broke down a locked door, and struck Jonathon about the body and head. According to the Synopsis, Jonathon's account of these events was corroborated by Daniel and a cell phone video. The officers who responded to the report of the altercation observed scratch-like marks on Jonathon's neck. Jonathon confirmed that those marks were a result of the altercation with defendant. Given this evidence, the trial court could reasonably conclude that the State had clearly and convincingly established that the proof is evident or the presumption great that defendant committed domestic battery as defined in section 12-3.2 of the Criminal Code of 2012 (720 ILCS 5/12-3.2 (West 2022)), an offense that qualifies for pretrial detention.

¶ 25 Defendant next argues that the State failed to meet its burden of proving by clear and convincing evidence that no condition or combination of conditions can mitigate the real and present threat to the safety of any person or persons or the community, based on the specific, articulable facts of the case. According to defendant, “[v]arious conditions, such as electronic home monitoring, were not considered” and the State “did not present any evidence as to why it could not mitigate the threat.” Defendant is mistaken. The State offered reasons why electronic home monitoring would not work in this case, specifically citing defendant's history of violence and his failure to follow prior court ordered conditions. Likewise, the State proffered a reason why the threat could not be mitigated—defendant was previously subject to court-ordered conditions and he failed to obey them. The trial court considered these reasons in concluding that the State proved by clear and convincing evidence that no condition or combination of conditions can

mitigate the real and present threat to the safety of any person or persons or the community, based on the specific, articulable facts of the case. After reviewing the record, we cannot say that the trial court's factual finding was against the manifest weight of the evidence.

¶ 26 Finally, defendant argues that the trial court erred in “its determination that no condition or combination of conditions would reasonably ensure the appearance of defendant for later hearings or prevent defendant from being charged with a subsequent felony or class A misdemeanor.” The trial court, however, made no such determination in this case. And while such a finding is required under section 110-6 of the Code (725 ILCS 5/110-6 (West 2022)), that section does not apply here because the State did not file a petition to revoke pretrial release or modify the conditions of pretrial release. Rather, the State filed a petition to deny pretrial release under section 110-6.1 of the Code (725 ILCS 5/110-6.1 (West 2022)) on new charges. Consequently, we reject defendant's position on this point.

¶ 27 In short, based on the trial court's factual findings, we conclude that its order denying defendant pretrial release did not constitute an abuse of discretion.

¶ 28 **III. CONCLUSION**

¶ 29 For the reasons set forth above, we affirm the judgment of the circuit court of Kane County.

¶ 30 Affirmed.