

NOTICE
Decision filed 02/21/25. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2025 IL App (5th) 241216-U

NO. 5-24-1216

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Jefferson County.
)	
v.)	No. 24-CF-339
)	
RODERICK BURNETT,)	Honorable
)	Jerry E. Crisel,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Moore and Barberis concurred in the judgment.

ORDER

- ¶ 1 *Held:* The circuit court’s orders granting the State’s verified petition to deny pretrial release and denying the defendant’s motion for relief are affirmed where the circuit court’s findings and ultimate decision were not against the manifest weight of the evidence.
- ¶ 2 The defendant, Roderick Burnett, appeals the November 7, 2024, denial of his motion for relief and immediate release and the October 24, 2024, order of the circuit court of Jefferson County that granted the State’s petition to deny him pretrial release. On October 23, 2024, the defendant was charged by information with unlawful possession of weapon by a felon, a Class 2 felony. The same day, the State filed a verified petition to deny the defendant pretrial release. The next day, the circuit court held a hearing on the State’s petition. After considering proffers and arguments from counsel, the circuit court entered an order detaining the defendant. The defendant

filed a motion for relief pursuant to Illinois Supreme Court Rule 604(h) (eff. Apr. 15, 2024) on October 25, 2024. The defendant argued that the State failed to meet its burden of proving, by clear and convincing evidence, (1) the proof was evident or the presumption great that the defendant committed a detainable offense; (2) the defendant posed 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 conditions or combination of conditions could mitigate the real and present threat to the safety of any person or persons. The motion for relief was denied on November 7, 2024, and the defendant filed a timely notice of appeal.¹

¶ 3 On appeal, the Office of the State Appellate Defender (OSAD) was appointed to represent the defendant. OSAD filed a notice in lieu of Rule 604(h)(7) memorandum. We acknowledge that the defendant is not required to file a memorandum, and the issues set forth in the motion for relief will represent the defendant’s argument on appeal.

¶ 4 Pretrial release—including the conditions related thereto—is governed by Public Act 101-652, § 10-255 (eff. Jan. 1, 2023). See Pub. Act 102-1104, § 70 (eff. Jan. 1, 2023) (amending various provisions of the Act); *Rowe v. Raoul*, 2023 IL 129248, ¶ 52 (lifting stay and setting effective date as September 18, 2023). A defendant’s pretrial release may be denied only in certain statutorily limited situations. 725 ILCS 5/110-6.1 (West 2022). Upon filing a timely, 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

¹Pursuant to Illinois Supreme Court Rule 604(h)(8) (eff. Apr. 15, 2024), our decision in this case was due on or before February 18, 2025, absent a finding of good cause for extending the deadline. Based on the high volume of SAFE-T Act appeals currently under the court’s consideration as well as the complexity of issues and the lack of precedential authority, we find there to be good cause for extending the deadline. Further, the defendant filed three motions for extension of time to file his memorandum due to an incomplete record, which were all granted. The State’s memorandum was filed on February 13, 2025.

committed a qualifying offense, that the defendant's pretrial release poses a real and present threat to the safety of any person or the community or a flight risk, and that 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. 725 ILCS 5/110-6.1(e), (f) (West 2022). The trial court may order a defendant detained pending trial if the defendant is charged with a qualifying offense, and the trial court concludes the defendant poses a real and present threat to the safety of any person or the community (725 ILCS 5/110-6.1(a)(1)-(7) (West 2022)) or there is a high likelihood of willful flight to avoid prosecution (725 ILCS 5/110-6.1(a)(8) (West 2022)).

¶ 5 To set appropriate conditions of pretrial release where the State has filed a petition to detain, the circuit court must determine, whether the State has met its burden by clear and convincing evidence, what pretrial release conditions, "if any, will reasonably ensure 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 pretrial release." 725 ILCS 5/110-5(a) (West 2022). In reaching its determination, the circuit court must consider (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the person; (3) the history and characteristics of the person;² (4) The nature and seriousness of the specific, real, and present threat to any person that would be posed by the person's release; and (5) the nature and seriousness of the risk of obstructing or attempting to obstruct the criminal justice process. 725

²The defendant's history and characteristics include: "the defendant's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past relating to drug or alcohol abuse, conduct, *** criminal history, and record concerning appearance at court proceedings," as well as "whether, at the time of the current offense or arrest, the defendant was on probation, parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal law, or the law of this or any other state." 725 ILCS 5/110-5(a)(3)(A), (B) (West 2022).

ILCS 5/110-5(a) (West 2022). The statute lists no singular factor as dispositive. See 725 ILCS 5/110-5(a) (West 2022).

¶ 6 Upon the filing of a motion for relief pursuant to Illinois Supreme Court Rule 604(h)(2), the burden is on the defendant to file a written motion requesting relief from pretrial detention and must allege the grounds for such relief as will be sought on appeal. The circuit court must “promptly hear and decide the motion for relief.” Ill. S. Ct. R. 604(h)(2) (eff. Apr. 15, 2024)

¶ 7 Our standard of review of pretrial release determinations is twofold. Where the circuit court is asked to consider the testimony of live witnesses, and make factual findings such as the State’s burden of presenting clear and convincing evidence that conditions of pretrial release would not protect any person or the community, the defendant has a high likelihood of willful flight to avoid prosecution, or the defendant failed to comply with previously ordered conditions of pretrial release, our standard of review is the manifest weight of the evidence. *People v. Trottier*, 2023 IL App (2d) 230317, ¶ 13. “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. Deleon*, 227 Ill. 2d 322, 332 (2008). Alternatively, where the parties to a pretrial detention hearing proceed solely by proffer or submission of documentary evidence, this court stands in the same position as the circuit court and may conduct its own independent review of the proffered evidence, thus reviewing the record *de novo*. *Addison Insurance Co. v. Fay*, 232 Ill. 2d 446, 453 (2009).

¶ 8 We have thoroughly reviewed the record on appeal in this matter. The circuit court, at the hearing on the State’s petition to detain, heard a proffer from the State that included, *inter alia*, that on October 22, 2024, Jerria Smith, the mother of the defendant’s child, and Krystal Smith, Jerria’s mother, drove to the defendant’s residence to allow the defendant to visit with his child.

When Jarria and Krystal arrived at the defendant's house, the defendant met the two women at the car. During the encounter at the car, the defendant became upset and returned to the residence. Soon after, the defendant exited the residence and walked towards the vehicle as he pulled a silver and black handgun from his waistband. In response, Jerria and Krystal fled in the car and notified police of the interaction.

¶ 9 Officer Joshua Clark of the Mt. Vernon Police Department was assigned to investigate the report. After obtaining statements from Jerria and Krystal, Officer Clark contacted Casey Junior High School and obtained security footage that captured the event. The footage corroborated the statements provided by Jerria and Krystal, although it was difficult to identify the object in the man's hand. Subsequently, officers spoke with the defendant at his residence. During their conversation, officers observed a BB gun on the kitchen table. The defendant acknowledged the BB gun and stated that it had been there for some time. Based on the statements from Jerria and Krystal, the officers obtained a search warrant for the residence.

¶ 10 When officers executed the search warrant, they located a room that they suspected belonged to the defendant. Inside the room, officers discovered a metal lockbox that contained the defendant's ID, live rounds of .22-caliber ammunition, and an empty 9-millimeter magazine on the floor. In the adjacent bathroom, officers found 9-millimeter live rounds of ammunition and shards of glass in the toilet. In another room, adjacent to the bathroom, officers observed a window, which they believed to be recently broken. Outside the broken window, officers retrieved a black and silver 9-millimeter Taurus handgun, which was missing a magazine. The 9-millimeter magazine found inside the residence was a perfect match for the handgun. The handgun also matched the physical description provided by Jerria.

¶ 11 The State also informed the circuit court that the defendant had a prior criminal history that included a conviction for aggravated discharge of a firearm, a Class 1 felony. The defendant also had multiple juvenile adjudications that included: a home invasion with a firearm, a Class X felony, aggravated robbery, a Class 1 felony, and robbery, a Class 2 felony. The State argued that the defendant's criminal history was exclusively violent and firearm related. The State also argued that the defendant's pretrial detention was necessary to protect Jerria and Krystal. In response, defense counsel argued that the defendant had significant ties to Jefferson County, he was employed by General Tire, and he was not on probation or parole at the time of his arrest. The circuit court made an individualized finding to deny pretrial release to the defendant after considering the evidence presented, the pretrial investigation report, arguments made by counsel, and the statutory factors.

¶ 12 Subsequent to the petition to detain, on October 31, 2024, the circuit court held a hearing on the defendant's motion for relief. Defense counsel introduced an email from Jerria, which expressed her remorse for how the events transpired on October 22, 2024, and stated that she was waiting for him to come home. In addition, defense counsel informed the circuit court that another person would claim the gun at issue. Defense counsel argued that the circuit court did not properly weigh the defendant's ties to the community, including his ties to his daughter, the defendant's employment, and the defendant's willingness to abide by any terms of pretrial release. The State called Jerria to testify. Jerria testified that on October 22, 2024, she and the defendant had a disagreement, but that the defendant never displayed a handgun. Jerria also denied that she told officers where the defendant may have kept the gun. Considering Jerria's testimony, which repudiated her statement to the police, the circuit court indicated that it would like to hear from the

officer who made the report. The circuit court reset the matter for November 7, 2024, and adjourned the hearing.

¶ 13 On November 7, 2024, the circuit court resumed the hearing on the defendant's motion for relief. The State introduced three exhibits, which included records of the "chirps" or text messages between the defendant and Jerria, audio recordings of three calls between the defendant and Jerria, and the body camera footage of Jerria when she provided her statement to police. Defense counsel reiterated his argument from the previous motion for relief hearing. The State reiterated its previous arguments and pointed out that the exhibits presented contradicted Jerria's sworn testimony at the last hearing. The State argued that Jerria had lied during her testimony because she loved the defendant and wanted him to be present during their child's life. Following the arguments from counsel, the circuit court called Jerria to testify. The circuit court inquired whether Jerria wanted to change her previous testimony in any way. Jerria replied, "I might as well. You guys already know I'm lying, so the truth is already out." During the State questioning of Jerria, she further admitted that her testimony on October 31, 2024, was untruthful and she knew at the time it was untruthful.

¶ 14 The circuit court considered the proffers, arguments, and evidence presented by counsel. The circuit court also considered Jerria's testimony, which "was full of lies." Ultimately, the circuit court found that the State had met its burden of proving, by clear and convincing evidence, that the defendant had committed a detainable offense. The circuit court then found the defendant posed a real and present threat to the safety of Jerria and to the community. Based on these facts, along with the other matters already of record, the circuit court found that no condition or combination of conditions could reasonably mitigate against the danger posed by the defendant and denied the defendant's motion for relief.

¶ 15 We have independently reviewed the circuit court's findings and conclude that the granting of the State's petition to detain was not error. Further, the circuit court's ultimate determination to deny the defendant pretrial release on the defendant's motion for relief was not against the manifest weight of the evidence. Accordingly, we affirm the circuit court's orders of October 24, 2024, and November 7, 2024.

¶ 16 Affirmed.