

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-2805 |
| |) | |
| ETHAN J. DOMINGUEZ, |) | Honorable |
| |) | Salvatore LoPiccolo Jr., |
| Defendant-Appellant. |) | Judge, Presiding. |

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Birkett and Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence supported the trial court’s findings that defendant committed a detainable offense, that he posed a danger to the community, and that no set of conditions would mitigate the danger he posed. The trial court did not abuse its discretion in granting the State’s petition for pretrial detention.

¶ 2 On December 27, 2023, the defendant, Ethan Domiguez, was charged with possession of a firearm by a street gang member (720 ILCS 5/24-1.8(a)(1)), possession of a firearm while FOID card invalid or not eligible (430 ILCS 65/2 (a)(1)), aggravated use of a loaded weapon no FCCA or FOID (720 ILCS 5/24-1.6(a)(1)), and aggravated unlawful use of a weapon by a person under 21 years old (720 ILCS 5/24-1.6(a)(2)). The circuit court of Kane County granted the State’s

verified petition to deny defendant's pretrial release pursuant to section 110-6.1 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-6.1 (West 2022)). The defendant appeals. We affirm.

¶ 3 This appeal is brought pursuant to Public Act 101-652, § 10-255 (eff. Jan. 1, 2023), commonly known as the Safety, Accountability, Fairness and Equity-Today (SAFE-T) Act (Act).¹ 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 of Act as September 18, 2023). The Act abolished 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) (West 2022).

¶ 4 In Illinois, all persons charged with an offense are eligible for pretrial release. *Id.* §§ 110-2(a), 110-6.1(e). Pretrial release is governed by article 110 of the Code as amended by the Act. *Id.* § 110-1 *et seq.* Under the Code, as amended, a defendant's pretrial release may only be denied in certain statutorily limited situations. *Id.* §§ 110-2(a), 110-6.1(e).

¶ 5 Upon filing a verified petition requesting 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 (*id.* § 110-6.1(e)(1)), (2) the defendant's pretrial release poses a real and present threat to the safety of any person or persons or the community (*id.* § 110-6.1(e)(2)), and (3) no condition or combination of conditions can mitigate

¹The 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 Statute or the public act. *Rowe v. Raoul*, 2023 IL 129248, ¶ 4 n.1.

the real and present threat to the safety of any person or the community or prevent the defendant's willful flight from prosecution (*id.* § 110-6.1(e)(3)).

¶ 6 In his appeal, defendant contends that the State did not show, by clear and convincing evidence, that any of these three requirements was met. "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.

¶ 7 As to his first contention, defendant avers that the State's proffer of a written police synopsis was insufficient to prove by clear and convincing evidence that the proof was evident or the presumption great that he committed the detainable offenses of unlawful possession of a firearm by a street gang member and aggravated unlawful use of a weapon. The proffered police synopsis, prepared by Officer Hennings of the Aurora Police Department, read as follows:

"On 12/17/2023 at approximately 1347hrs, Inv. M. Cuevas-Escobedo #373 and I, Inv. B. Hennings #183, were patrolling the area of 999 W Illinois Ave (BP Gas Station). As we drove past the BP gas station, Inv. M. Cuevas-Escobedo and I observed Ethan J. Dominguez (a known Latin King street gang member) standing on the east side of the building with juvenile Geovanni Aguilar DOB 12/02/2009. Both Ethan and Geovanni were wearing hooded sweatshirts with their hoods covering their heads. As Inv. M. Cuevas-Escobedo and I entered the gas station parking lot, I observed Ethan running towards the rear of the gas station out of my view. As Inv. M. Cuevas-Escobedo and I drove towards the east side of the building, to make contact with Ethan and Geovanni, I observed Ethan was still standing next to Geovanni after initially seeing him running towards the rear of the building.

Inv. M. Cuevas-Escobedo and I exited our squad car and began talking with Ethan and Geovanni. While I was speaking with Ethan and Geovanni, Inv. M. Cuevas-Escobedo was checking the rear of the gas station. Inv. M. Cuevas-Escobedo emerged from the area of the dumpsters and indicated to put Ethan and Geovanni into handcuffs. After placing both Ethan and Geovanni into handcuffs, I walked over to the dumpsters located directly at the rear of the BP gas station. The dumpsters were along the rear of the building with a wooden fence sectioned off around them. I walked toward the dumpsters and observed a black 10mm Glock 20 (serial # BMHT181) laying between the wooden fence and the dumpsters with the pistol grip facing upwards. I grabbed the Glock and observed 14 10mm rounds in the magazine with nothing in the chamber.

A LEADS check of Ethan showed that he did not have a valid FOID card, and he is a documented street gang member (leads # T23A2183).”

The trial court found that the police synopsis provided clear and convincing evidence that the presumption was great and the proof was evident that defendant committed the detainable offenses of unlawful possession of a firearm by a street gang member and aggravated unlawful use of a weapon.

¶ 8 Under section 110-6.1(a)(1) and section 110-6.1(a)(6) of the Code, offenses qualifying for pretrial detention include unlawful possession of a firearm by a street gang member and aggravated unlawful use of a weapon. See 725 ILCS 5/110-6.1(a)(1), (6) (West 2022). Given the evidence that defendant is a documented Latin Kings street gang member and admitted to police that he was holding the Glock 20 handgun before running behind the gas station and throwing it away after police approached him, the State clearly and convincingly established that the defendant committed an offense that qualifies for pretrial detention.

¶ 9 Before moving to the next contention, we will briefly address defendant’s argument that evidence of his possession of the gun was the product of an unlawful search and will likely be suppressed prior to trial. Indeed, the Act states that “evidence that the proof of the charged crime may have been the result of an unlawful search or seizure *** is relevant in assessing the weight of the evidence of the defendant.” 725 ILCS 5/110-6.1(f)(6) (West 2022). However, the record does not support this argument. The police synopsis shows that the officers pulled into the gas station parking lot when they saw defendant and Geovanni, known Latin Kings gang members, standing there. Defendant ran to the back of the building and threw the handgun away. The officers placed him in custody after locating the handgun in the area defendant had run to. The State’s proffer shows that the officers had probable cause to arrest defendant, which resulted in his admission that he threw the gun where the officers found it. We cannot agree with defendant’s assertion that evidence of his possession of the gun will likely be suppressed.

¶ 10 Defendant next contends that the State failed to meet its burden of proving by clear and convincing evidence that he 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. Defendant avers that the State made no allegation that he used the weapon, planned to use the weapon, or had used the weapon at any point in the past. Thus, defendant argues, there is no person who would be considered a victim by his mere possession of the weapon.

¶ 11 In making a determination of a defendant’s dangerousness, a trial court may consider, among other things: (1) the nature and circumstances of any charged offense, including whether it is a crime of violence or a sex crime, or involved a weapon; (2) the defendant’s characteristics and history, including any criminal history indicative of violent, abusive, or assaultive behavior, and any psychological history indicative of a violent, abusive, or assaultive nature, and the lack of any

such history; (3) the identity of the person believed to be at risk from the defendant and the nature of the threat; (4) statements by the defendant and the circumstances of such statements; (5) the age and physical condition of the defendant; (6) the age and physical condition of any victim or complaining witness; (7) the defendant's access to any weapon; (8) whether the defendant was on probation, parole, or the like at the time of the charged offense or any other arrest or offense; and (9) any other factors that have a reasonable bearing on the defendant's propensity for violent, abusive, or assaultive behavior, or the lack of such behavior. *Id.* § 110-6.1(g).

¶ 12 The trial court made the following findings regarding defendant's dangerousness:

“[T]he defendant is *** 19 years old which is under the age of 21. He is not allowed to have a firearm as a 21-year-old. *** The only way he can have a Firearm Owners Identification card is if he has parental permission, and he does not have a Firearm Owners Identification card at the time he's in possession of this firearm. And as a condition of [defendant's] juvenile probation, he is not to possess a firearm.

In addition, the fact that he is hooded, that is also indicative of an attempt to hide his identity at the time he is possessing a firearm. So, again, that causes the Court to pause and be concerned that he is a threat to the community because he is in possession of a weapon at a time where he's hooded, and he's on probation and he's not allowed to have a firearm based on his age and the fact that he's on probation and the fact that he does not have a Firearm Owners Identification card. So that, combined with the officer's knowledge that he is a Latin King gang member, poses a real and present threat to the community.”

¶ 13 We review whether the trial court's findings were against the manifest weight of the evidence. *People v. Trottier*, 2023 IL App (2d) 230317, ¶ 13; *People v. Vingara*, 2023 IL App (5th) 230698, ¶ 10. A finding is against the manifest weight of the evidence when it is

unreasonable. *People v. Sims*, 2022 IL App (2d) 200391, ¶ 72. We review the trial court’s ultimate decision regarding pretrial release for an abuse of discretion. *Trottier*, 2023 IL App (2d) 230317, ¶ 13.

¶ 14 The evidence supports a finding of defendant’s dangerousness to the community under multiple factors enumerated in section 110-6.1(g). See 725 ILCS 5/110-6.1(g) (West 2022). Defendant is a 19-year-old known gang member that was on juvenile probation at the time of the charged offense; an offense that involved a weapon that he admitted to discarding behind the gas station upon seeing the police. The trial court’s determination was not against the manifest weight of the evidence.

¶ 15 The defendant’s final contention on appeal is that the trial court failed to adequately consider alternatives to pretrial detention that could have mitigated the risk of further violence. Under section 110-6.1(g)(3) of the Code, an order for pretrial detention must be based on, among other things, clear and convincing evidence that “no condition or combination of conditions” of pretrial release can mitigate the real and present threat to safety posed by the defendant. *Id.* §110-6.1(g). If the trial court finds that the State proved a valid threat to someone’s safety or the community’s safety, it must then determine 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 ***.” *Id.* § 110-5(a). In making this determination, the trial court should consider: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the defendant; (3) the history and characteristics of the defendant; (4) the nature and seriousness of the specific, real and present threat to any person that would be posed by the defendant’s release; and (5) the risk that the defendant will obstruct or attempt to obstruct the criminal justice process. *Id.* No single factor is dispositive. *Id.* As with the finding of dangerousness, we review the trial court’s

finding that regarding whether the imposition of conditions on a defendant's pretrial release would mitigate the safety risk posed by the defendant under the manifest weight of the evidence standard. *Trottier*, 2023 IL App (2d) 230317, ¶ 13.

¶ 16 Here, the trial court considered the nature of the charged offenses, the strength of the evidence that the defendant committed those offenses, and the defendant's criminal history before finding that the threat to safety posed by the defendant could not be mitigated by any combination of pretrial release conditions. The defendant argues that "there are conditions that the court could have imposed, including having no street gang contact, not to possess any firearms or dangerous weapons, complying with the terms of probation for 22JD116 and 22JD152, electronic home monitoring with a set curfew and restricted movement to allow him to go to school, work, and doctor's appointments only." However, as has been noted, the record shows that the trial court considered that defendant was on probation at the time of the charged offenses, and at that time was not to possess a firearm or commit any further criminal offenses. Defendant was unable to adhere to those conditions, bringing upon the circumstances before us in this appeal. Therefore, we cannot conclude that the trial court's determination that no pretrial release conditions could adequately protect the community's safety was against the manifest weight of the evidence.

¶ 17 For all of these reasons, the trial court did not abuse its discretion by granting the State's motion for pretrial detention. The judgment of the circuit court of Kane County is affirmed.

¶ 18 Affirmed.