

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).

2024 IL App (4th) 240073-U

NO. 4-24-0073

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 29, 2024
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Logan County
KYLE L. HURLEY,)	No. 24CF1
Defendant-Appellant.)	
)	Honorable
)	Jonathan C. Wright,
)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Harris and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, finding the circuit court did not abuse its discretion in denying defendant pretrial release.

¶ 2 Defendant, Kyle L. Hurley, appeals the circuit court’s order denying him pretrial release pursuant to article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/art. 110 (West 2022)), hereinafter as amended by Public Act 101-652, § 10-255 (eff. Jan. 1, 2023), commonly known as the Pretrial Fairness Act (Act). See Pub. Act 102-1104, § 70 (eff. Jan. 1, 2023) (amending various provisions of the Act); *Rowe v. Raoul*, 2023 IL 129248, ¶ 52, 223 N.E.3d 1010 (setting the Act’s effective date as September 18, 2023).

¶ 3 On appeal, defendant argues this court should overturn the circuit court’s decision because “[t]he State failed to clearly and convincingly prove that [he] posed a real and present threat to the community, or if he was a threat, no condition of release could mitigate it.”

¶ 4 I. BACKGROUND

¶ 5 On January 2, 2024, the State charged defendant with six counts stemming from a December 2023 incident in Logan County, Illinois. Counts I and II alleged unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a), (e) (West 2022)), Class 3 felonies. Counts III and IV charged aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1), (a)(3)(B-5) (West 2022)), Class 4 felonies. Count V and VI charged Class A misdemeanor offenses of resisting a peace officer (720 ILCS 5/31-1(a)(1) (West 2022)) and retail theft (720 ILCS 5/16-25(a)(1) (West 2022)).

¶ 6 The State simultaneously filed a verified petition to deny defendant pretrial release under section 110-6.1 of the Code (725 ILCS 5/110-6.1 (West 2022)), as amended by the Act. The State alleged defendant was charged with qualifying offenses and defendant’s pretrial release posed a real and present threat to the safety of persons or the community. The qualifying detainable offenses included nonprobationable offenses under the Criminal Code of 2012 (720 ILCS 5/1-1 *et seq.* (West 2022)), specifically unlawful possession of weapons by a felon and aggravated unlawful use of a weapon. 725 ILCS 5/110-6.1(a)(6) (West 2022). The State’s petition outlined the pending charges and alleged the following:

“On December 29, 2023, at approximately 11:52am,
Lincoln Police were dispatched to Ace Hardware, located at 521 N.
Kickapoo Street, Lincoln, Illinois, in reference to a retail theft in
progress. In the 400 block of S. Kickapoo Street, law enforcement

located a person matching the suspect's description. The person was identified as [defendant].

[Defendant] admitted to taking a bicycle inner tube from Ace Hardware without paying for it. [Defendant] removed his backpack and reached inside, grabbing a large machete style knife and tossing it to the ground. [Defendant] began reaching back inside the backpack and ignored police commands to stop reaching inside the backpack.

Law enforcement grabbed [defendant] by the arm. [Defendant] struggled with officers in an attempt to prevent arrest. [Defendant] refused to place his hands behind his back and attempted to pull away from officers.

Once handcuffed, [defendant] stated he had a gun in his backpack. Officers located a 9mm Walther P38 pistol inside the backpack. Officers also located a magazine for the pistol that was loaded with three 9mm rounds.

[Defendant] has previously been convicted of a felony in Logan County case number 2018-CF-77.”

¶ 7 At the detention hearing later that same day, the circuit court appointed defendant counsel and confirmed counsel received the State's petition, the police reports, the body camera videos, and the pretrial investigation report. The court then ensured counsel had an adequate opportunity to confer with defendant. The State's proffer largely quoted the petition's factual allegations. The State noted “defendant has previously been convicted of felonies that are

outlined in the pretrial investigation report,” and it asked the court to consider the report.

Defense counsel declined any proffers but conceded the proof was evident and the presumption great that defendant committed the alleged detainable offenses.

¶ 8 During the parties’ arguments to the circuit court, the State maintained “there is clear and convincing evidence here that this defendant is a danger to the public and there are no [conditions] or combination of conditions that can mitigate that, that risk.” The State referenced defendant’s criminal history and his time in the Illinois Department of Corrections. It noted defendant previously violated an order of protection, “which goes to show that he is not going to follow court orders.” It explained defendant was a sex offender and his felony convictions were “for basically not following court orders and failing to register when he’s supposed to.”

Describing this case as “very dangerous,” the State outlined the facts, alleging defendant resisted law enforcement and possessed a machete, gun, and ammunition in his backpack. The State contended defendant was trying to get the gun and load it when he kept reaching into his backpack and ignored police commands to stop. The State urged there was no reason for defendant, “a convicted felon 3 times over,” to have a machete, firearm, and ammunition while shoplifting unless he planned to use it if apprehended. The State claimed defendant posed a real and present threat to the community and there was no way to mitigate that risk. Specifically, the State argued home confinement would not be appropriate in this case, given defendant’s history.

¶ 9 Defense counsel argued defendant should be presumed eligible for pretrial release. Pointing to the fact that “[t]he ammo was not locked and loaded into the gun,” counsel maintained defendant did not pose a real and present danger to the community. Counsel disagreed with the State’s explanation that defendant was trying to locate and load the firearm while he reached into his bag, calling it “a radical interpretation” of the body camera videos.

Counsel suggested defendant was trying to show the officers items he purchased and other items he had in the backpack. Counsel argued, “I would say that this is rank speculation that he’s going to shoot these officers, that’s why he’s reaching into it.” Defense counsel noted defendant’s criminal history was not violent and his sex offender status stemmed from a juvenile misdemeanor offense. Counsel stated defendant held a job and had recently been compliant with sex offender registration. His risk assessment score was a “five to six,” so “that’s arguably on the lower end of those SIX categories.” Counsel urged for an “individualized approach” and asked the circuit court to reject a “simplistic” finding that just because a felon possessed a weapon, then he must be dangerous and must be detained. Counsel suggested electronic monitoring could strictly limit defendant’s movement “with regard to geography, with regard to time.” Believing defendant’s “criminal record doesn’t cry out danger,” the defense asked “for pretrial release, with any restrictive conditions the court wants imposed.”

¶ 10 After a brief recess, the defense moved to reopen proffers, which the circuit court allowed. Defense counsel stated defendant’s mother, Shannon Davis, lived in the community, along with her mother, defendant’s grandmother. Both women indicated they would do whatever it took to help defendant comply with the conditions of his release. The State offered no rebuttal to this additional proffer.

¶ 11 In determining whether defendant should be granted pretrial release, the circuit court found the State met its burden for pretrial detention. Finding defendant posed a real and present threat to the community, the court considered the statutory factors, specifically the nature and circumstances of the offense and defendant’s history and characteristics. It noted defendant ignored police commands to stop reaching into his backpack and resisted being handcuffed. It also noted defendant possessed a large machete-style knife, a firearm, and a magazine loaded

with three 9-millimeter rounds. The court opined it “doesn’t find it to be an exaggerated statement to say that [possessing those weapons] poses a danger to society.” It found the State proved defendant posed a real and present threat to the community by clear and convincing evidence. Considering less restrictive conditions, the court reviewed defendant’s criminal history, including twice failing to register as a sex offender and once violating an order of protection. It found “[t]hese show a history of not complying with either *** statutes or with court commands.” The court then found defendant’s access to weapons could not be mitigated by a less restrictive condition like electronic monitoring. It opined defendant having access to a weapon would “be a threat to the community.” The court, therefore, found the State proved by clear and convincing evidence that no condition or combination of conditions could mitigate the threat defendant posed to society. It admonished defendant as to his appellate rights.

¶ 12 The circuit court then entered a written order summarizing its reasons for denying pretrial release and expressly finding the State made all requisite showings by clear and convincing evidence. The court found less restrictive conditions would not assure the safety of the community because “the defendant’s prior criminal history of non-compliance with court orders and conditions cannot prevent defendant’s access to weapons.” Overall, the court’s reasons for concluding defendant should be denied pretrial release included: “the nature and circumstances of the offense, defendant’s access to weapons, and defendant’s prior criminal history.”

¶ 13 On January 10, 2024, defendant filed his notice of appeal under Illinois Supreme Court Rule 604(h)(2) (eff. Dec. 7, 2023).

¶ 14

II. ANALYSIS

¶ 15 Defendant’s notice of appeal is a completed form from the Article VI Forms Appendix to the Illinois Supreme Court Rules (see Ill. S. Ct. R. 606(d) (eff. Dec. 7, 2023)), by which defendant requests pretrial release with conditions. The form lists several possible grounds for appellate relief and directs appellants to “check all that apply and describe in detail.” Defendant checked two grounds for relief and wrote sentences on the preprinted lines to support both claims.

¶ 16 The first ground for relief defendant checked alleged the following: “The State failed to meet its burden of proving by clear and convincing evidence that defendant 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 explained:

“[He] never used any force or made any threats or displayed, referenced or used the seized gun in any way during his alleged theft of the \$8.99 bicycle inner tube. The Defendant never attempted to run when approached, nor did he attempt to access the unloaded gun in his back pack which had no round in the chamber and no magazine in the gun. The separated magazine had 3 rounds in it. Although the Defendant pulled away when being cuffed, he did alert the police that there was a gun in the backpack. The Defendant’s predicate felony conviction is for a 6 year old non-violent regulatory offense of [Sexual Offender Registry (SOR)] failure to register as are his 2015 and 2016 felony convictions. He has no violent convictions, his sex offense is as a juvenile, he was SOR compliant when arrested and he scored VPRAI-R 6.”

¶ 17 The second ground for relief defendant checked alleged the following: “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, or defendant’s willful flight.” Defendant explained:

“For all of the reasons noted above, and for the additional reasons that the Defendant has no prior gun or weapons convictions, he had a Lincoln residence with family, and additional family support from his mother and grandmother. At the time of his arrest he was employed and would have that job. In detaining the Defendant under the facts of this case and the background of the Defendant, the Court essentially adopted a prohibited, non-individualized stance of detaining any felon with an unloaded gun. With the gun seized by the police, with a local residence, with a job, with family support, with no priors for violence or weapons, with no use of threats of use of the weapon, with being in SOR compliant, with [electronic monitoring] and curfew conditions available the Court decision to detain was an abuse of discretion.”

¶ 18 The Office of the State Appellate Defender, defendant’s appointed counsel on appeal, filed a Rule 604(h) memorandum expounding upon the above two reasons for reversing the circuit court’s detention order.

¶ 19 Before denying pretrial release, the State must prove by clear and convincing evidence (1) “the proof is evident or the presumption great that the defendant has committed an

offense listed in subsection (a)”; (2) “the defendant 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”; and (3) “no condition or combination of conditions set forth in subsection (b) of Section 110-10 of this Article can mitigate (i) the real and present threat to the safety of any person or persons or the community.” 725 ILCS 5/110-6.1(e)(1), (2), (3)(i) (West 2022). Section 110-6.1(g) of the Code instructs the circuit court to consider “the specific articulable facts of the case” and provides nine factors the court may consider when assessing the real and present threat allegation. See 725 ILCS 5/110-6.1(g) (West 2022). Likewise, section 110-5(a) of the Code guides courts in considering what, if any, conditions of pretrial release “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” and provides several factors to consider. 725 ILCS 5/110-5(a) (West 2022).

¶ 20 If the circuit court determines the defendant should be denied pretrial release, the court must make written findings summarizing the reasons for denying pretrial release, including why less restrictive conditions would not avoid the danger posed by defendant to any person or the community. 725 ILCS 5/110-6.1(h)(1) (West 2022). In determining compliance with the directives of the statute, the court’s oral findings may be considered in conjunction with the written order. See *People v. Hodge*, 2024 IL App (3d) 230543, ¶ 11 (holding that, considering both the transcript of the hearing and the court’s written order, the court’s reasons for its detention findings were adequately stated to allow the appellate court to fully consider its decision); see also *In re Madison H.*, 215 Ill. 2d 364, 374-75, 830 N.E.2d 498, 505 (2005) (holding that an oral finding on the record may satisfy the statutory requirement that the court put

the factual basis for its finding of dispositional unfitness in writing if the oral finding is explicit and advises the parties of the basis for the court's decision).

¶ 21 The determination of whether pretrial release should be granted or denied is reviewed under an abuse-of-discretion standard. See *People v. Jones*, 2023 IL App (4th) 230837, ¶¶ 27, 30. “An abuse of discretion occurs when the circuit court’s decision is arbitrary, fanciful or unreasonable or where no reasonable person would agree with the position adopted by the [circuit] court.” (Internal quotation marks omitted.) *People v. Simmons*, 2019 IL App (1st) 191253, ¶ 9, 143 N.E.3d 833. Under this standard, a reviewing court will not substitute its own judgment for that of the circuit court simply because it would have analyzed the proper factors differently. *People v. Inman*, 2023 IL App (4th) 230864, ¶ 11. Likewise, “we will not substitute our own judgment for the trier of fact on issues regarding the weight of the evidence or the credibility of witnesses.” *People v. Vega*, 2018 IL App (1st) 160619, ¶ 44, 123 N.E.3d 393.

¶ 22 Here, defendant has not shown how the circuit court abused its discretion in finding defendant posed a real and present threat to the community based on the specific, articulable facts of the case. Defendant notes his “alleged offenses did not involve threats or violence” and “there was no allegation that this theft involved more than pocketing a bicycle inner tube.” Defendant argues “there was no evidence showing that [he] was going to commit acts of weapon-fueled violence were he to be caught stealing a nine dollar bicycle part.” Like defense counsel did at the hearing, he labels the State’s argument that he might have used the weapons on police as “ ‘rank speculation.’ ” Indeed, much of defendant’s argument on appeal repeats his argument to the court below. The circuit court heard those arguments and, considering the State’s proffer *vis-à-vis* section 110-6.1 of the Code (725 ILCS 5/110-6.1 (West 2022)), determined defendant posed a real and present threat to the community.

¶ 23 The circuit court expressly considered the Code’s section 110-6.1(g) factors for determining dangerousness. 725 ILCS 5/110-6.1(g) (West 2022). It recounted the nature and circumstances of the charged offenses, noting defendant failed to obey commands when approached by police officers who suspected him of retail theft. It further noted that when police confronted him, defendant reached into his backpack, pulled out a machete, and threw it to the ground. Defendant resisted police and continued ignoring commands but did admit having a gun in his backpack. The court opined defendant would be a danger based on this behavior. The court also considered defendant’s history and characteristics, namely his “prior criminal history of felonies and misdemeanors.” It is not unreasonable for the court to determine a person poses a danger to the community when he, a felon barred from possessing weapons, carries two weapons on his person whilst shoplifting from a store. Moreover, it is not arbitrary or fanciful to deem someone a danger to society who refuses to comply with law enforcement requests to stop reaching into a backpack and instead pulls out a machete—especially when that person has displayed noncompliance in the past. See *Simmons*, 2019 IL App (1st) 191253, ¶ 9. Though defendant offers valid arguments against detention, both here and in the court below, we will not substitute our judgment for that of the circuit court’s on this issue. *Inman*, 2023 IL App (4th) 230864, ¶ 11. Because we cannot say no reasonable person would agree with the circuit court’s conclusion that defendant posed a danger to the community based on the specific, articulable facts of this case, we cannot conclude the court abused its discretion. *Simmons*, 2019 IL App (1st) 191253, ¶ 9.

¶ 24 Defendant has also not shown the circuit court abused its discretion in finding that no condition or combination of conditions could mitigate the real and present threat defendant posed to the community, based on the specific and articulable facts of the case. As with the

dangerousness argument, he reiterates the points he made to the court below. For example, he again emphasizes that his prior offenses were not violent and did not involve weapons. He notes that although he was subject to sex offender registration, he was not on release for a different crime when these alleged offenses occurred. As before, defendant again argues his employment, family support, and stable housing would help him comply with any conditions imposed upon him. He maintains less restrictive conditions, like surrendering his weapons, abiding by a curfew, and imposing GPS monitoring, could be used to mitigate the danger he poses to society.

¶ 25 The circuit court rejected those arguments, too, and we conclude it was not unreasonable, arbitrary, or fanciful for it to do so. In compliance with section 110-5(a) of the Code (725 ILCS 5/110-5(a) (West 2022)), the court noted defendant's history of noncompliance cautioned against pretrial release. Not only did defendant not comply with law enforcement during this case, he has a history of not complying with court orders, including sex offender registration and orders of protection. The court also noted electronic monitoring could not reduce defendant's access to weapons. He was not supposed to have weapons when this offense occurred and still had them. He demonstrated court orders and supervision would not curb his access to weapons. To now argue he should be released because *this time*, he says, he will comply rings hollow and should be recognized for what it is. We cannot conclude no reasonable person would agree with the court's determination that no condition or combination of conditions could lessen the threat defendant posed to the community. *Simmons*, 2019 IL App (1st) 191253, ¶ 9. Consequently, we cannot conclude the court abused its discretion. *Simmons*, 2019 IL App (1st) 191253, ¶ 9.

¶ 26 Overall, the record supports the circuit court's determination the State showed by clear and convincing evidence that defendant posed a real and present threat to the community

based upon the specific, articulable facts of the case and no condition or combination of conditions could be imposed to mitigate that threat. Likewise, the record here confirms the court followed and applied the Code when deciding to detain defendant. Therefore, the decision is not arbitrary, fanciful, or unreasonable. There was no abuse of discretion. *Inman*, 2023 IL App (4th) 230864, ¶ 10.

¶ 27

III. CONCLUSION

¶ 28

For all these reasons, we affirm the circuit court's judgment.

¶ 29

Affirmed.