

**THIS APPEAL INVOLVES A MATTER SUBJECT TO
EXPEDITED DISPOSITION UNDER RULE 604(h)**

No. 130866

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF	)	Appeal from the Appellate Court of
ILLINOIS,	)	Illinois, Fourth Judicial District,
	)	Nos. 4-24-0388 and 4-24-0389
People-Appellee,)	
	)	There on appeal from the Circuit
-vs-	)	Court of the Tenth Judicial Circuit,
	)	Peoria County, Illinois, Nos. 21 CF
	)	834 and 21 CF 835.
ANTONIO COUSINS JR.,)	
	)	Honorable
Defendant-Appellant.	)	John P. Vespa,
	)	Judge Presiding.

**BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT
IN SUPPORT OF RULE 604(h) APPEAL**

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E-FILED
9/13/2024 1:42 PM
CYNTHIA A. GRANT
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NATURE OF THE CASE

Antonio Cousins, Jr., Defendant-Appellant, appeals from the written order entered following a hearing held pursuant to the Pretrial Fairness Act. See Pub. Act 101-652, § 10-255; Pub. Act 102-1104, § 70. (C. 146). The appellate court reversed the trial court's decision and remanded for further proceedings. *People v. Cousins*, 2024 IL App (4th) 240388-U. No issue is raised on the pleadings.

ISSUE PRESENTED FOR REVIEW

The Pretrial Fairness Act requires the State to prove three elements to detain a defendant awaiting trial: (1) a great presumption of guilt; (2) a safety threat or flight risk; and (3) that no conditions of release could mitigate that threat. When a court of review finds that the State failed to meet its burden of proof as to one of these elements, must it remand for a hearing on conditions of release?

STATUTES AND RULES INVOLVED**725 ILCS 5/110-6.1(e)(1-3)**

(e) Eligibility: All defendants shall be presumed eligible for pretrial release, and the State shall bear the burden of proving by clear and convincing evidence that:

(1) the proof is evident or the presumption great that the defendant has committed an offense listed in subsection (a), and

(2) for offenses listed in paragraphs (1) through (7) of subsection (a), 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, by conduct which may include, but is not limited to, a forcible felony, the obstruction of justice, intimidation, injury, or abuse as defined by paragraph (1) of Section 103 of the Illinois Domestic Violence Act of 1986, 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, based on the specific articulable facts of the case, for offenses listed in paragraphs (1) through (7) of subsection (a), or (ii) the defendant's willful flight for offenses listed in paragraph (8)

STATEMENT OF FACTS

Antonio Cousins was charged on December 28, 2021, in Peoria County with aggravated discharge of a firearm and unlawful use of weapon by a felon in 21 CF 0834 and with unlawful use a weapon a felon and armed habitual criminal in 21 CF 0385. (C. 19); (C-0389. 13)¹. On December 19, 2023, Cousins filed a motion for pretrial release (C. 88-91). The State filed a verified petition to deny Cousins pretrial release, alleging dangerousness and willful fight. (C. 133). The court conducted the hearing on the parties' respective detention motions on February 27, 2024, and February 29, 2024, and granted the State's petition to deny pretrial release on the basis of dangerousness. (R. 95); (C. 146).

On appeal, Cousins argued that the State failed to prove that the proof was evident or presumption great that he committed the charged offenses, or that he posed a real and present threat to the safety of any person or the community that could not be mitigated with less restrictive conditions of release. (C. 149).

The Fourth District Appellate Court agreed, noting that the State did not make a proffer or argument on the matter of Cousins' detention. Nor did the State's petition assert that no condition or combination of conditions could mitigate the threat. Further, at no point was the issue of conditions raised by the State or addressed by the trial court. The court's lone mention of the factor was the checking of the box next to "Dangerousness Standard" on the preprinted form, under which is a finding that the conditions element was satisfied. *People v. Cousins*, 2024 IL App (4th) 240388, ¶ 18

¹Citation to the common law record (C.____) and report of proceedings (R.____) are taken from the electronic record prepared in 4-24-0388, unless otherwise indicated. Citation to the electronic record in consolidated appeal 4-24-0389 will be identified as (C-0389____) where necessary.

The Fourth District further concluded, that while the evidence may have been sufficient to find no condition or combination of conditions can mitigate the threat, “we cannot supply the missing conclusion.” *Cousins*, 2024 IL App (4th) 240388, ¶ 18, citing *People v. Martin*, 2023 IL App (4th) 230826, ¶ 24. Because the question of release conditions was a matter that must be provided by the State with clear and convincing evidence, the appellate court concluded that the trial court abused its discretion in detaining Cousins. *Id.* at ¶ 18, citing 725 ILCS 5/110-6.1(e)(3). The Court reversed the trial court’s detention order and remanded “for the trial court promptly to set a new detention hearing, at which the State may present evidence and the court can make the requisite findings.” *Id.* at ¶ 21.

Cousins filed a petition for rehearing, arguing that where the State failed to meet its burden of proof, the proper remedy was remand for a hearing on conditions of release, rather than a second detention hearing. The appellate court denied the petition for rehearing.

This Court granted leave to appeal on August 9, 2024.

ARGUMENT

When the State fails to meet its burden to overcome the presumption of release under the Pretrial Fairness Act, the only remedy that will effectuate the legislative intent of the Act must be a hearing on the least restrictive conditions of release.

The appellate court held that the State did not meet its burden to prove that Antonio Cousins should be in jail while awaiting trial. *People v. Cousins*, 2024 IL App (4th) 240388, ¶ 18. Yet Cousins remains in jail. Instead of reversing the detention order, the appellate court remanded the cause to allow the State another attempt to meet its burden of proof. The Pretrial Fairness Act forbids this, however. The Act presumes that defendants are to be released with conditions before trial. That presumption can be overcome only if the State meets its burden of proof. But the Act's presumption of release would be meaningless if the appellate court can keep a defendant detained, perpetually, despite the State's failure to prove that the defendant should be detained. Rather, if the State fails to prove that a defendant must be incarcerated, the detention order should be reversed, and the cause remanded for the parties to litigate the appropriate conditions of pretrial release.

The appellate court's remedy is contrary to the plain language of the Act. According to the plain language, pretrial release may only be denied after a hearing where the State meets its burden on the three elements. 725 ILCS 5/110-6.1(a)(1); 110-2(a). Further, the statute is to be liberally construed to effectuate the purpose of relying on pretrial release by non-monetary means. 725 ILCS 5/110-2(e). Further, the remedy ordered by the appellate court undermines the spirit and purpose of the Act by allowing the State to bypass its statutory burden with respect to initial detention hearings, and to have a second bite at the apple to try and justify

detention; all while Cousins remains perpetually and unlawfully detained.

When the legislature “dismantled and rebuilt Illinois’s statutory framework for the pretrial detention and release of criminal defendants,” the legislature imposed a new burden on the State to prove that a defendant could not be released pretrial. *Rowe v. Raoul*, 2023 IL 129248, ¶ 4. Under the Act, monetary bond was abolished and “[i]t is presumed that a defendant is entitled to release on personal recognizance” on conditions. 725 ILCS 5/110-1.5; *id.* 5/110-2(a). *Rowe*, 2023 IL 129248, ¶¶ 4-5, 52. The important difference between the old bail system and the Act is that defendants are not simply eligible for pretrial release, but are presumed to be released pending trial. 725 ILCS 5/110-2(a).

This Court must “give effect to the legislature’s intent,” which is “best indicated by the plain and ordinary meaning of the statutory language.” *People v. Palmer*, 2021 IL 125621, ¶ 53. Questions of statutory interpretation are reviewed *de novo*. *People v. Smith*, 2016 IL 119659, ¶ 15; *People v. White*, 2024 IL App (1st) 232245, ¶ 21.

After filing a timely petition to deny a defendant pretrial release, the State bears the burden to prove by clear and convincing evidence that: (1) “the proof is evident or presumption great” that the defendant committed a detainable offense; (2) “the defendant poses a real and present threat to the safety of any person or persons or the community” or a flight risk; and (3) “no condition or combination of conditions . . . can mitigate (I) the real and present threat to the safety of any person or persons or the community . . . or (ii) the defendant’s willful flight[.]” 725 ILCS 5/110-6.1(e). “If the State fails to carry its burden on any of these three facts, the presumption of release remains, and detention is unlawful.” *People v. Sorrentino*, 2024 IL App (1st) 232363, ¶ 32 citing 725 ILCS 5/110-6.1(e). Where,

as in this case, the reviewing court finds that the State failed to meet its burden of proof on any of these three elements, and thus fails to overcome the presumption of release, the proper remedy is a remand for a hearing on the least restrictive conditions of pretrial release, and not a second detention hearing.

In this case, the State filed a verified petition to deny Antonio Cousins pretrial release, and a detention hearing was held pursuant to the timing requirements of the Act. *People v. Cousins*, 2024 IL App (4th) 240388-U, ¶ 5. In its verified petition to deny Cousins release and at that hearing, the State failed to allege or proffer any argument as to why conditions of pretrial release could not mitigate any potential threat. *Id.* at ¶¶ 5, 16. The court nonetheless ordered Cousins detained. *Id.*

On appeal, the Fourth District Appellate Court determined that the State failed to meet its burden to establish by clear and convincing evidence that no condition or combination of conditions can mitigate the real and present threat Cousins might pose to the safety of any person or persons. *Cousins*, 2024 IL App (4th) 240388-U, ¶¶ 16-17. The State did not address this element, and at no point was the issue of conditions raised by the State or addressed by the trial court at Cousins' detention hearing. *Id.* The appellate court reversed the detention order, and remanded for the trial court promptly to set a new detention hearing, "at which the State may present evidence and the court can make the requisite findings." *Id.* at ¶ 21.

The remedy ordered by the appellate court conflicts with the presumption of release and allows an unlawful detention to continue. Despite the State's failure to meet its burden under the Act to provide clear and convincing evidence rebutting the presumption of pretrial release, the remedy ordered by the appellate court

keeps Cousins perpetually detained while giving the State a second attempt to meet its burden of proof. *Cousins*, 2024 IL App (4th) 240388-U, ¶ 21. The appellate court failed to provide any rationale or authority for its chosen remedy of remand for a second detention hearing. This remedy finds no support in the plain language of the Act.

The First District Appellate Court's decision in *People v. White*, 2024 IL App (1st) 232245-U is instructive. In *White*, the Court vacated the trial court's detention order and remanded for a hearing on the defendant's release where, as here, the State failed to prove that less restrictive conditions would fail to mitigate any alleged threat by the defendant. 2024 IL App (1st) 232245, ¶¶ 25-29. The State's failure to meet its burden of proof required remand for a release hearing because the Act has a presumption of release. *Id.* at ¶ 26; see 725 ILCS 5/110-1.5 (“[i]t is presumed that a defendant is entitled to release on personal recognizance” on conditions).

The remedy in *White* is consistent the Act's plain language providing a presumption of pretrial release coupled with its failure to provide an alternative remedy. In drafting the law, the legislature was aware of the fundamental principle in criminal law that a party who fails to meet its burden of proof traditionally does not get a second opportunity to do so. See generally *People v. Weinstein*, 35 Ill. 2d 467, 469-70 (1966) (where State fails to introduce sufficient evidence to overcome the presumption of innocence, defendant must be acquitted). Had the legislature intended for the Act to provide the State a second opportunity to overcome the Act's presumption and meet its burden of proof – as the appellate court in this case ordered– it would have stated as such in the statute. Accordingly, the remedy in *White* is consistent with the language of the Act.

Also persuasive is *People v. McCarthy-Nelson*, where the appellate court found that the trial court's failure to hold a pretrial detention hearing within "the applicable 48-hour deadline" for the hearing on the State's initial petition required it to remand the case for a hearing to determine the least restrictive conditions of defendant's pretrial release. 2024 IL App (4th) 231582-U, ¶¶ 9-13. In doing so, the Court relied on *People v. Gil*, 2019 IL App (1st) 192419, holding:

[T]he appropriate remedy for the State's and trial court's failure to ensure the detention hearing was conducted in compliance with the timing requirements of Section 110-6.1(c)(2) of [the Act] is to remand the case to the trial court for the purpose of holding a hearing to determine the least restrictive conditions of defendant's pretrial release.

Id. at ¶ 18. The appellate court explained that it would not allow the State to seek pretrial detention on remand because, otherwise, the State "would have little incentive to comply with the timing requirements of the statute in other cases" and would effectively provide no remedy. *Id.*; see also *People v. Howard*, 2024, IL App (4th) 240398-U (same).

Here, the appellate court's remedy of remanding for a second detention hearing where the State failed to meet its substantive burden is even more egregious than the purely procedural errors at issue in *McCarthy-Nelson* and *Howard*. In this case, Cousins remains in jail despite a finding by the appellate court that the State failed to overcome the statutory presumption of his release. This is not a mere procedural matter; it is a substantive finding that the State failed to meet its burden of proof on the essential, central element of the Act. Further, ordering a second detention hearing on the State's "initial" petition more than five months after that petition was filed allows the State to disregard the 48-hour rule and renders the timing requirement irrelevant, a concern highlighted in *McCarthy-*

Nelson and Howard.

The practical consequence of the appellate court's remedy is that the State will have little incentive to comply with Act's requirement that it present clear and convincing evidence to rebut the presumption of pretrial release within the statutory timeframe. The Act makes clear that a second detention petition is only permitted where the State has discovered new facts relevant to the detention ruling that were unknown or not obtainable when the initial petition was filed. 725 ILCS 5/110-6.1(d)(2). However, if the State is nonetheless allowed a second attempt to meet its burden on the initial petition at a new detention hearing, all while the defendant remains held in pretrial custody, the Act's clear and convincing evidence requirement and its specific timing requirements will be rendered meaningless. Moreover, if the State again fails to meet its burden at a subsequent hearing, what would prevent the court from ordering a third hearing or a fourth?

The appropriate remedy when the State fails to meet its burden of proof at the detention hearing is remand for a hearing on conditions of release. See e.g., *McCarthy-Nelson*, 2024 IL App (4th) 231582-U, ¶ 19. Under the Act, when the State does not file a petition, the defendant is released pretrial subject to the conditions the trial court is required to impose pursuant to Sections 110-5(c) and 110-10(a) of the Code. 725 ILCS 5/110-5(c) ("The court shall impose any conditions that are mandatory under subsection (a) of Section 110-10."); *Id.*; Section 110-10(a)(1)-(6) (listing the mandatory conditions of pretrial release). Here, where the State did not meet its burden of proof, Cousins should be placed in the same position he would have been in if the State failed move to detain him.

In addition to the mandatory conditions of release, the court also has the discretion to impose additional conditions, so long as they are "the least restrictive

conditions necessary to reasonably ensure the appearance of the defendant or the safety of the community.” Section 110-5(c); Section 110-10(b)(0.05)-(9) (listing the discretionary conditions of release). Thus, at the release hearing on remand, the court will be required to impose the mandatory conditions listed in Section 110-10 and can impose additional conditions that it finds necessary to ensure Cousins’ appearance as required for the safety of the community. *Id.* This remedy is consistent with the Act’s presumption of release.

The Pretrial Fairness Act presumes defendants are entitled to release. Because the State’s evidence supporting Cousins’ detention was insufficient to rebut that presumption, Cousins is entitled to a hearing for release with conditions. *Cousins*, 2024 IL App (4th) 240388-U, ¶ 18; 725 ILCS 5/110-6.1(e). Yet Cousins remains in jail. Cousins’ perpetual detention despite the State’s failure to overcome the presumption of release is inconsistent with the intent and purpose of the Act. Accordingly, this Court should hold that where the State fails to meet its burden of proof to detain an individual on an initial petition under the Pretrial Fairness Act the detention order must be reversed and the matter remanded for a hearing on conditions of release.

CONCLUSION

For the foregoing reasons, Antonio Cousins, Defendant-Appellant, respectfully requests that this Court reverse the appellate court's order of a new detention hearing, and order for a hearing on conditions of release.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 12 pages.

/s/ Lauren A. Bauser
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APPENDIX TO THE BRIEF

Antonio Cousins No. 130866

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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).

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NOS. 4-24-0388, 4-24-0389 cons.

FILED
May 30, 2024
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Peoria County
ANTONIO COUSINS JR.,	)	Nos. 21CF834
Defendant-Appellant.	)	21CF835
)	
	)	Honorable
	)	John P. Vespa,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Zenoff and Vancil concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court abused its discretion in denying defendant pretrial release.

¶ 2 Defendant, Antonio Cousins Jr., appeals the trial court’s order denying his pretrial release under section 110-6.1 of the Code of Criminal Procedure of 1963, hereinafter as amended by Public Acts 101-652, § 10-255 and 102-1104, § 70 (eff. Jan. 1, 2023) (725 ILCS 5/110-6.1 (West 2022)), commonly known as the Pretrial Fairness Act. We reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 This appeal involves two cases consolidated for appeal. In Peoria County case No. 21-CF-834, the State charged defendant with aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2020)) and unlawful possession of a weapon by a felon (*id.* § 24-1.1(a)). In Peoria County case No. 21-CF-835, the State charged defendant with unlawful possession of a

weapon by a felon (*id.*), unlawful possession of firearm ammunition by a felon (*id.*), and armed habitual criminal (*id.* § 24-1.7(a)). His bond was set at \$150,000, at 10%. Defendant did not post bond.

¶ 5 On December 19, 2023, defendant filed a *pro se* motion for pretrial release, to which the State responded with a verified petition to deny defendant pretrial release. In its petition, the State asserted, by checking boxes on a preprinted form, defendant was charged with detainable offenses and his release poses a real and present threat to the safety of any person or persons or the community. The State further asserted defendant should be detained under the willful-flight standard. On the form petition, no box provides the State with the option to allege no condition or combination of conditions can mitigate the threat defendant's release poses. The State did not add that allegation.

¶ 6 The detention hearing began on February 27, 2024, and was continued until February 29, 2024, to resolve a question of the number of defendant's failures to appear. We note the pretrial services report lists three failures to appear but the parties ultimately agreed defendant had only one. At the hearing, defendant appeared *pro se*. The State began by listing the charges against defendant and the potential sentences for each charge. The State did not provide a factual summary of those charges. The trial court asked for the pretrial services report. The report was completed on December 28, 2021. Defendant earned his GED while in the Peoria County jail in 2014. He was unemployed and resided with his girlfriend. The Revised Virginia Pretrial Risk Assessment Instrument identified defendant's risk of pretrial misconduct as a 9, in the range of 0-14. Defendant had a 93% probability to appear for all future court hearings and a 90% probability of no new offenses. We note these percentages appear in the same report that lists defendant with the incorrect number of failures to appear.

¶ 7 Defendant stated he wanted to be released so that he could go to school to be an accountant and an auto mechanic. He wanted to get employed and start anew. When he asked the trial court to give him “a second chance,” the court stated the following:

“Well, there is that phrase ‘second chance.’ Someone with three priors should be asking at a minimum for a fourth chance. Nobody asks for fourth chances. When have you ever heard anybody—I’m asking anybody in this whole courtroom, when have you ever heard of someone asking for a fourth chance? I bet you all would say zero because that doesn’t sound very good. Second chance, oh, come on, everybody deserves a second chance. Well, your second chance was three chances ago, which doesn’t mean you get denied. I haven’t gotten to that part yet.”

The court then questioned defendant regarding the pretrial services report.

¶ 8 The trial court then summarized defendant had three pending cases, the two involved in this appeal and unlawful possession of a weapon by a felon in Peoria County case No. 20-CF-452. The court noted defendant was facing “a lot of weapons charges” and had three prior felonies, as well as one failure to appear. The court asked the State for defendant’s criminal history. The State explained defendant was convicted of residential burglary in Peoria County case No. 10-CF-917, for which he was sentenced to 54 months’ imprisonment. Defendant had a 2014 conviction for unlawful possession of a weapon by a felon, for which he received a three-year sentence. Defendant also had a 2016 conviction for unlawful possession of a weapon by a felon. For that conviction, he was sentenced to seven and a half years’ imprisonment.

¶ 9 After hearing the State’s summary of defendant’s criminal history, the trial court

informed defendant it did not sound like he was a good risk:

“You don’t sound like a good risk. You have these weapon offenses prior convictions and you got current weapons offense charges. So much so that you’re being labeled an armed habitual criminal.

If I let you out, some people would say, what? You let him out? A lot of people would say that. Fend them off for me.”

Defendant explained he was employed when he was arrested and had his GED. Defendant stated, if the court would give him the opportunity to improve himself, he would appear for the court dates. He explained his lone failure to appear occurred 14 years earlier, when he was 17. The court responded, in part, “Fourteen years ago you didn’t have any felony prior convictions. Since then you have three. You’re going downhill [the State] says. What do you say to that?”

¶ 10 The trial court asked the State for an explanation as to why the cases remained pending. During that discussion, the State mentioned a motion to obtain fingerprint samples. The State wanted fingerprints to lay the foundation to identify defendant’s latent print on the magazine found near defendant. The court granted the State’s motion.

¶ 11 The trial court then returned to the issue of defendant’s detention. The court stated the following before granting the State’s petition:

“You’ve got three prior felony convictions. If you get convicted on any of these, you go to prison. Probation is not an option. You have reason to flee.

Now you’ve got two unlawful possession of a weapon priors, excuse me, unlawful possession of a weapon by a felon prior convictions and that is part of the current charges. Included in

the current charges are a claim that you're an armed habitual criminal. And a claim of unlawful discharge of a firearm. These are explosive—and no pun intended. These are explosive charges where like I said ten minutes ago if you get out people are gonna say who is the idiot judge who let him out with all those circumstances being there? Of course, he is a flight risk. Probation not being an option, and, with his past and with his current charges pretty much matching his past convictions.

Now he has failed to appear in court before. Now—

*** You are charged with the offenses that qualify for pre-trial detention. In other words, these are detainable offenses. I'm granting the State's verified petition to deny defendant pre-trial release.”

¶ 12 The trial court, on February 29, 2024, issued a written order detaining defendant. The order is a preprinted form. The court checked the box next to “Dangerousness Standard,” by which the court found “the proof is evident or the presumption great that the defendant has committed a qualifying offense,” “defendant poses a real and present threat to the safety of any person or persons or the community,” and “no condition or combination of conditions can mitigate the real and present threat to the safety of any person or persons.” The preprinted form does not contain options for an explanation for the finding no condition or combination of conditions can mitigate the threat.

¶ 13 This appeal followed.

A-8

¶ 14

II. ANALYSIS

¶ 15 On March 4, 2024, defendant filed a notice of appeal challenging the order denying him pretrial release, and on April 15, he filed a memorandum under Illinois Supreme Court Rule 604(h)(7) (eff. Apr. 15, 2024). 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 he asks this court to overturn the order denying his pretrial release. The form lists several possible grounds for appellate relief and directs appellants to "check all that apply and describe in detail." Defendant checked multiple grounds for relief and provided argument under each. Under one of the preprinted claims, defendant wrote, "[T]he defendant is eligible for all the condition or combinations of conditions of PreTrial Release and the court didn't consider the factors of GPS Monitoring, Electronic Monitoring, or home confinement for his current charges." Defendant further asserted the State did not meet its burden of proving no condition or combination of conditions could mitigate the threat.

¶ 16 In his supporting memorandum, defendant argued, in part, the State did not meet its burden of proving no condition or combination of conditions could mitigate the threat. Defendant highlighted the trial court did not address this element either, and, therefore, there is no explanation for its determination this element was satisfied. In its appellee's brief, the State did not directly address defendant's assertion the conditions element was not proved or sufficiently found but contended the decision to detain was supported by the record.

¶ 17 We agree with defendant. Perhaps due, in part, to defendant's *pro se* status, the detention hearing proceeded in a nontraditional manner. The court questioned defendant as he proceeded, disputing defendant's contentions. The State did not make a proffer or argument on the matter of defendant's detention. Instead, the court, in between questions to defendant, asked

the State for information on defendant's criminal history and on the history of the case. In addition, the court, mid-detention hearing, granted the State's motion for fingerprint testing. As no argument was made by the State, we are left with the State's petition, in which the State also did not assert no condition or combination of conditions can mitigate the threat. At no point was this issue of conditions raised by the State or addressed by the trial court. The court's lone mention of the factor is the checking of the box next to "Dangerousness Standard" on the preprinted form, under which is a finding the conditions element was satisfied.

¶ 18 While the evidence may have been sufficient to find no condition or combination of conditions can mitigate the threat, "we cannot supply the missing conclusion." *People v. Martin*, 2023 IL App (4th) 230826, ¶ 24. The question of release conditions is a matter that must be provided by the State with clear and convincing evidence. 725 ILCS 5/110-6.1(e)(3) (West 2022). It must also be addressed by the trial court. *Martin*, 2023 IL App (4th) 230826, ¶ 24; see also 725 ILCS 5/110-6.1(h)(1) (West 2022) (directing trial courts to "make a written finding summarizing the court's reasons for concluding that the defendant should be denied pretrial release, including why less restrictive conditions would not avoid a real and present threat to the safety of any person or persons"). While, in certain circumstances, a checked box on a preprinted form may be sufficient to prove the trial court considered this factor, it is not sufficient here, as no mention of pretrial-release conditions was made in the verified petition or at the hearing. Moreover, the checked box was one for the entire "Dangerousness Standard" generally and not for the conditions element specifically. As a result, the trial court abused its discretion in detaining defendant. See *People v. Inman*, 2023 IL App (4th) 230864, ¶¶ 10-11 (setting for the abuse-of-discretion standard as the applicable standard of review for pretrial-release findings).

¶ 19 Because we find a new hearing is required, we need not consider defendant's

remaining challenges to the detention order.

¶ 20

III. CONCLUSION

¶ 21

We reverse the order denying defendant pretrial release and remand for the trial court promptly to set a new detention hearing, at which the State may present evidence and the court can make the requisite findings.

¶ 22

Reversed and remanded with directions.

IN THE CIRCUIT COURT OF PEORIA COUNTY
TENTH JUDICIAL CIRCUIT

Carla Bender, Clerk of the Court
APPELLATE COURT 4TH DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff/Appellee,

Case No:
21-CF-00834-1; 21-CF-00835-1

VS.

ANTONIO COUSINS, JR,
Defendant/Appellant,

FILED
ROBERT M. SPEARS
MAR 04 2024
CLERK OF THE CIRCUIT COURT
PEORIA COUNTY, ILLINOIS

NOTICE OF APPEAL FROM ORDER UNDER PRETRIAL FAIRNESS ACT
PURSUANT TO ILLINOIS SUPREME COURT RULE 604(h)

Court from which appeal is taken:

Circuit Court of Peoria County.

The Judge(s) who entered the order(s) being appealed: Honorable JUDGE JOHN P. YESPA

Date(s) of Order(s) Appealed: 2/29/2024

Date(s) of Hearing(s) Regarding Pretrial Release: 2/27/2024 Argued 2/29/2024 Argued

Court to which appeal is taken:

Appellate Court of Illinois, Fourth Judicial District

Name of Defendant and address to which notices shall be sent (if Defendant has no attorney):

Defendant's Name: ANTONIO COUSINS JR

Defendant's Address: 301 N Maxwell Road Peoria, Illinois 61604

Defendant's E-mail: _____

Defendant's Phone: _____

IN THE CIRCUIT COURT OF PEORIA COUNTY
TENTH JUDICIAL CIRCUIT

If Defendant is indigent ~~and~~ has no attorney, does he want one appointed? Yes No

Name of Defendant's attorney on appeal (if any):

Attorney's Name: N/A

Attorney's Address: N/A

Attorney's E-mail: N/A

Attorney's Phone: N/A

Name of Defendant's trial attorney (if any):

Attorney's Name: ANTONIO COUSINS JR Pro'se

Attorney's Address: 301 No Maxwell Road Peoria, Illinois 61604

Attorney's E-mail: N/A

Attorney's Phone: N/A

Is the trial attorney a public defender? Yes No

~~Nature of Order Appealed~~ (check only one):

- Denying pretrial release
- Revoking pretrial release
- Imposing conditions of pretrial release

Are there currently pending any other appeals in this matter under the Pretrial Fairness Act? Yes* No

*If Yes, list appeal number(s): _____

IN THE CIRCUIT COURT OF PEORIA COUNTY
TENTH JUDICIAL CIRCUIT

Rule 328 Supporting Record* (check all that are attached):

- Copy of the order appealed from
- Supporting documents or matters of record (please list)
PRETRIAL Release Transcripts From Dates: 2/27/2024 & 2/29/2024
- Affidavit of attorney or party (in lieu of clerk certificate of authentication)

*You may either (1) attach a supporting record to this notice of appeal or (2) file a supporting record with the appellate court within 30 days after filing this notice of appeal.

Relief Requested: TO OVERTURN JOHN P VESPA DENIAL OF MY PRETRIAL Release For Case Numbers 21 CF-834 & 21 CF 835.

Grounds for Relief (check all that apply and describe in detail):

Denial or Revocation of Pretrial Release

Defendant was not charged with an offense qualifying for denial or revocation of pretrial release or with a violation of a protective order qualifying for revocation of pretrial release.

The State failed to meet its burden of proving by clear and convincing evidence that the proof is evident or the presumption great that defendant committed the offense(s) charged. FOR AGGRAVATED DISCHARGE OF A FIRE-ARM, Zachary L. Cowan (P1151) Police Report States that Deputy Bohm announced he had observed males firing a firearm and fleeing in the listed Ford SUV. But the defendant in this case was not one of the males in the listed Ford SUV. So Deputy Bohm observation of this crime exonerates the defendant, thereby proving that he is actually innocent of the crime.

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 life. Because the defendant was NEVER convicted of no violent crime in his life. For the charge of AGGRAVATED DISCHARGE OF A FIRE-ARM according to Officer Nicolas D Russell Police reports case number 21 CF-835 states "At approximately 08:00 hours, United States Marshal Fugitive Task Force received information that Lobdell could be located at 2211 W Marquette and immediately conducted surveillance at 2211 W. Marquette. At 10:15 on 12-27-2021 they observed the defendant leaving the residence to enter a vehicle. Officer Zachary L. Cowan Police report states Case Number 21 CF 834 shot spotter time 0856-2900 area 2400 Black W Starr St Peoria Illinois Deputy Bohm observed males firing a firearm &

IN THE CIRCUIT COURT OF PEORIA COUNTY
TENTH JUDICIAL CIRCUIT

person or persons or the community, based on the specific, articulable facts of the case. *fleeing in a FORD SUV. So at the time of the shooting and the area where the shooting occurred the defendant was at 2211 W Maquette prior 7:00:00 hrs. So he could not be at 2 places at one time. As they seen him exit the house at 10:15 hrs. So it's obvious that he was in the house and not at the crime scene. As the police stated in his report.*

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.

The state used a failure to appear from a misdemeanor case from 14 years ago and that case was dismissed 5/10/2011. They assumed that I'm a flight risk based off one failure to appear on my behalf. The defendant was never convicted of any violent acts to present threat to the safety of any person or

The 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. *Community.*

Because the defendant is eligible for all the condition or combinations of conditions of Pre Trial Release and the court didn't consider the factors of GPS Monitoring, Electronic Monitoring, or home confinement for his current charges of 1. ARMED HABITUAL CRIMINAL, AGGRAVATED DISCHARGE OF FIREARM and UNLAWFUL POSSESSION OF A WEAPON BY A FELON

Defendant was denied an opportunity for a fair hearing prior to the entry of the order denying or revoking pretrial release. *Based off that the defendant was never convicted of any acts of violence. Therefore the state failed to PROVE that the defendant was a threat to any person or persons in society.*

Other (explain). *Also, all the evidence for case numbers 21 CF 834 & 21-CF 835 doesn't prove that im guilty of all the charges im currently charged with.*

Imposing Conditions of Pretrial Release

The State failed to meet its burden of proving by clear and convincing evidence that conditions of pretrial release are necessary.

IN THE CIRCUIT COURT OF PEORIA COUNTY
TENTH JUDICIAL CIRCUIT

In determining the conditions of pretrial release, the court failed to take into account the factors set forth in 725 ILCS 5/110-5(a). Specifically, the court failed to consider the following factors (list all that apply):

(2) the weight of the evidence against the defendant, (9) Electronic monitoring, GPS monitoring, or home confinement can only be imposed as a condition of pretrial release if a no less restrictive condition of release or combination of less restrictive condition of release would reasonably ensure the appearance of the defendant for later hearings or protect an identifiable person or persons from imminent threat of serious physical harm.

The conditions of release are not necessary to ensure defendant's appearance in court, ensure that the defendant does not commit any criminal offense, ensure that defendant complies with all conditions of pretrial release, prevent defendant's unlawful interference with the orderly administration of justice, or ensure compliance with the rules and procedures of problem-solving courts.

Other (explain).

I certify that everything in this NOTICE OF APPEAL FROM ORDER UNDER PRETRIAL FAIRNESS ACT PURSUANT TO ILLINOIS SUPREME COURT RULE 604(h) is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

Antonio Cousins Jr
Your Signature

Antonio Cousins Jr
Printed Name

Pro'se
Attorney # (if any)

IN THE CIRCUIT COURT OF PEORIA COUNTY
TENTH JUDICIAL CIRCUIT

Carla Bender, Clerk of the Court
APPELLATE COURT 4TH DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff/Appellee,

Case No:
21-CF-00834-1; 21-CF-00835-1

VS.

ANTONIO COUSINS, JR,
Defendant/Appellant,

FILED
ROBERT M. SPEARS

MAR 04 2024

CLERK OF THE CIRCUIT COURT
PEORIA COUNTY, ILLINOIS

NOTICE OF APPEAL FROM ORDER UNDER PRETRIAL FAIRNESS ACT
PURSUANT TO ILLINOIS SUPREME COURT RULE 604(h)

Court from which appeal is taken:

Circuit Court of Peoria County.

The Judge(s) who entered the order(s) being appealed: HONORABLE JUDGE JOHN P. YESPA

Date(s) of Order(s) Appealed: 2/29/2024

Date(s) of Hearing(s) Regarding Pretrial Release: 2/27/2024 Argued 2/29/2024 Argued

Court to which appeal is taken:

Appellate Court of Illinois, Fourth Judicial District

Name of Defendant and address to which notices shall be sent (if Defendant has no attorney):

Defendant's Name: ANTONIO COUSINS JR

Defendant's Address: 301 No Maxwell Road Peoria, Illinois 61604

Defendant's E-mail: _____

Defendant's Phone: _____

IN THE CIRCUIT COURT OF PEORIA COUNTY
TENTH JUDICIAL CIRCUIT

If Defendant is indigent and has no attorney, does he want one appointed? Yes No

Name of Defendant's attorney on appeal (if any):

Attorney's Name: N/A

Attorney's Address: N/A

Attorney's E-mail: N/A

Attorney's Phone: N/A

Name of Defendant's trial attorney (if any):

Attorney's Name: ANTONIO COUSINS JR Pro'se

Attorney's Address: 301 No Maxwell Road Peoria, Illinois 61604

Attorney's E-mail: N/A

Attorney's Phone: N/A

Is the trial attorney a public defender? Yes No

Nature of Order Appealed (check only one):

- Denying pretrial release
- Revoking pretrial release
- Imposing conditions of pretrial release

Are there currently pending any other appeals in this matter under the Pretrial Fairness Act? Yes* No

*If Yes, list appeal number(s): _____

IN THE CIRCUIT COURT OF PEORIA COUNTY
TENTH JUDICIAL CIRCUIT

Rule 328 Supporting Record* (check all that are attached):

- Copy of the order appealed from
- Supporting documents or matters of record (please list)
PRETRIAL Release Transcripts From Dates: 2/27/2024 & 2/29/2024
- Affidavit of attorney or party (in lieu of clerk certificate of authentication)

*You may either (1) attach a supporting record to this notice of appeal or (2) file a supporting record with the appellate court within 30 days after filing this notice of appeal.

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Grounds for Relief (check all that apply and describe in detail):

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The State failed to meet its burden of proving by clear and convincing evidence that the proof is evident or the presumption great that defendant committed the offense(s) charged. FOR AGGRAVATED DISCHARGE OF A FIRE-ARM, Zachary L. Cowan (PP1151) Police Report States that Deputy Bohm announced he had observed males firing a firearm and fleeing in the listed Ford SUV. But the defendant in this case was not one of the males in the listed Ford SUV. So Deputy Bohm observation of this crime exonerates the defendant, thereby proving that he is actually innocent of the crime.

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 life. Because the defendant was NEVER convicted of no violent crime in his life. For the charge of AGGRAVATED DISCHARGE OF A FIRE-ARM according to Officer Nicolas D Russell Police reports case number 21 CF-835 states "At approximately 08:00 hours, United States Marshal Fugitive Task Force received information that Lobdell could be located at 2211 W Marquette and immediately conducted surveillance at 2211 W. Marquette. At 10:15 on 12-27-2021 they observed the defendant leaving the residence to enter a vehicle. Officer Zachary L. Cowan Police Report states Case number 21 CF 834 shot spotter time 0856-5900 area 2400 Black W Start St Peoria Illinois Deputy Bohm observed males firing a firearm &

IN THE CIRCUIT COURT OF PEORIA COUNTY
TENTH JUDICIAL CIRCUIT

person or persons or the community, based on the specific, articulable facts of the case. *fleeing in a FORD SUV. So at the time of the shooting and the area where the shooting occurred the defendant was at 2211 W Inouette prior to 08:00 hrs. So he could not be at 2 places at one time. As they seen him exit the house at 10:15 hrs. So it's obvious that he was in the house and not at the crime scene. As the police stated in his report.*

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.

The state used a failure to appear from a misdemeanor case from 14 years ago and that case was dismissed 5/10/2011. They assumed that I'm a flight risk based off one failure to appear on my behalf. The defendant was never convicted of any violent acts to present threat to the safety of any person or

The court erred in its determination that no condition or combination of person in the conditions would reasonably ensure the appearance of defendant for later *Community,* hearings or prevent defendant from being charged with a subsequent felony or Class A misdemeanor. *Because the defendant is eligible for all the*

condition or combinations of conditions of Pre Trial Release and the court didn't consider the factors of GPS Monitoring, Electronic Monitoring, or home confinement for his current charges of 1. ARMED Habitual Criminal, AGGRAVATED DISCHARGE OF FIREARM and UNLAWFUL POSSESSION OF A WEAPON BY A FELON

Defendant was denied an opportunity for a fair hearing prior to the entry of the order denying or revoking pretrial release. *Based off that the defendant was never convicted of any acts of violence. Therefore, the state failed to prove that the defendant was a threat to any person or persons in society.*

Other (explain). *Also, all the evidence for case numbers 21 CF 834 & 21-CF 835 doesn't prove that im guilty of all the charges im currently charged with.*

Imposing Conditions of Pretrial Release

The State failed to meet its burden of proving by clear and convincing evidence that conditions of pretrial release are necessary.

IN THE CIRCUIT COURT OF PEORIA COUNTY
TENTH JUDICIAL CIRCUIT

In determining the conditions of pretrial release, the court failed to take into account the factors set forth in 725 ILSC 5/110-5(a). Specifically, the court failed to consider the following factors (list all that apply):

(2) the weight of the evidence against the defendant, (9) Electronic monitoring, GPS monitoring, or home confinement can only be imposed as a condition of pre-trial release if a no less restrictive condition of release or combination of less restrictive condition of release would reasonably ensure the appearance of the defendant for later hearings or protect an identifiable person or persons from imminent threat of serious physical harm.

The conditions of release are not necessary to ensure defendant's appearance in court, ensure that the defendant does not commit any criminal offense, ensure that defendant complies with all conditions of pretrial release, prevent defendant's unlawful interference with the orderly administration of justice, or ensure compliance with the rules and procedures of problem-solving courts.

Other (explain).

I certify that everything in this NOTICE OF APPEAL FROM ORDER UNDER PRETRIAL FAIRNESS ACT PURSUANT TO ILLINOIS SUPREME COURT RULE 604(h) is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

Antonio Cousins Jr
Your Signature

Antonio Cousins Jr
Printed Name

Pro'se
Attorney # (if any)

APPENDIX

People v. Nicholas McCarthy-Nelson

Rule 23

No. 4-23-1582

People v. Terrance Terrell Howard

Rule 23

Nos. 4-24-0398, 4-24-0399 & 4-24-0400 cons.

2024 IL App (4th) 231582-U

UNPUBLISHED OPINION. CHECK COURT
RULES BEFORE CITING.

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).
Appellate Court of Illinois, Fourth District.

The PEOPLE of the State of
Illinois, Plaintiff-Appellee,
v.
Nicholas MCCARTHY-
NELSON, Defendant-Appellant.

NO. 4-23-1582

|

Filed March 20, 2024

Appeal from the Circuit Court of Rock Island
County, No. 23CF953, Honorable Norma
Kauzlarich, Judge Presiding.

ORDER

JUSTICE HARRIS delivered the judgment of
the court.

*1 ¶ 1 *Held*: The trial court erred in granting
the State's petition to deny defendant pretrial
release where the court failed to comply with
the procedural requirements of section 110-6.1
of the Code of Criminal Procedure of 1963 (725
ILCS 5/110-6.1 (West 2022)).

¶ 2 Defendant, Nicholas McCarthy-Nelson,
appeals the trial court's judgment granting
the State's petition, filed pursuant to section

110-6.1 of the Code of Criminal Procedure
of 1963 (Code) 725 ILCS 5/110-6.1 (West
2022), to deny him pretrial release. On appeal,
defendant argues, (1) the court erred in denying
him pretrial release where it failed to hold a
hearing on the State's petition within 48 hours
of his initial appearance, (2) the court erred
in holding a hearing on the State's petition
without ensuring defendant's physical presence
in court, and (3) the State failed to prove by
clear and convincing evidence that (a) the proof
was evident or presumption great he committed
the charged offenses, (b) he posed a threat to
the safety of any person or the community, and
(c) no combination of conditions could mitigate
any potential threat he posed. We agree with
defendant's first argument, vacate the detention
order on that basis, and remand for further
proceedings.

¶ 3 I. BACKGROUND

¶ 4 On December 24, 2023, defendant was
arrested and charged with armed violence (720
ILCS 5/33A-2(a) (West 2022)), possession of
a defaced firearm (*id.* § 24-5(b)), unlawful
possession of a weapon by a felon (*id.*
§ 24-1.1(a)), and unlawful possession of
methamphetamine (720 ILCS 646/60(a), (b)(2)
(West 2022)). That same day, defendant made
his initial appearance in court. At the hearing,
the trial court heard testimony from a police
officer and found probable cause to believe
defendant committed the charged offenses.

¶ 5 Also on December 24, 2023, the State filed
a verified petition pursuant to section 110-6.1
of the Code (725 ILCS 5/110-6.1 (West 2022))
seeking to deny defendant pretrial release. Over

defendant's objection, the trial court granted the State's motion to continue the proceedings to December 27, 2023, for a hearing on its petition.

¶ 6 On December 27, 2023, the trial court conducted a hearing on the State's petition to deny defendant pretrial release. We discuss only the facts relevant to the dispositive issue raised on appeal. Defendant argued the court erred in continuing the hearing to December 27 because section 110-6.1(c)(2) (*id.* § 110-6.1(c)(2)) mandated that, under the circumstances, the hearing was to be conducted within 48 hours of his initial appearance in court on December 24. In rejecting defendant's argument, the court stated the following:

“THE COURT: As to your first argument about an immediate hearing, I will note for the record that December 24th is a Sunday, so it's a weekend, and then December 25th and 26th were holidays. So as to the—your argument on that basis, the Court believes that the hearing is being timely heard, as today's the first day—workday back from the weekend and the holiday.”

*2 The court ultimately entered a written order granting the State's petition to deny defendant pretrial release.

¶ 7 Defendant filed a timely notice of appeal utilizing the notice of appeal form in the Article VI Forms Appendix to the Illinois Supreme Court Rules. See Ill. S. Ct. R. 606(d) (eff. Dec. 7, 2023). On the form notice, he checked the box labeled “Other” and asserted he “was denied right [*sic*] to immediate hearing and right [*sic*] to hearing within 48 hours upon granting of State's motion to continue.”

Defendant also filed a memorandum in support of his notice of appeal, in which he raised, in relevant part, the same argument as above. The State requested and obtained leave to file a late memorandum in opposition to defendant's claims of error.

¶ 8 II. ANALYSIS

¶ 9 On appeal, defendant argues, in pertinent part, that the trial court erred in granting the State's petition to deny him pretrial release by failing to comply with the timing requirements of section 110-6.1(c)(2) of the Code. 725 ILCS 5/110-6.1(c)(2) (West 2022). He asserts the plain language of the statute contains no exceptions for holidays or weekends for purposes of computing the applicable 48-hour deadline. Defendant further contends the appropriate remedy is for this court to “reverse the trial court's detention order and order that [he] be released from custody.” Resolution of defendant's claim requires us to interpret the language of the relevant statute. Although it filed a memorandum in opposition, the State failed to address defendant's untimeliness argument, and so we are left without the benefit of its advocacy on this issue.

¶ 10 “The cardinal rule of statutory interpretation *** is to ascertain and give effect to the intent of the legislature.” *People v. Maggette*, 195 Ill. 2d 336, 348 (2001). “The most reliable indicator of legislative intent is the language of the statute, given its plain and ordinary meaning.” *Evans v. Cook County State's Attorney*, 2021 IL 125513, ¶ 27. “If the statutory language at issue is clear and unambiguous, a reviewing court must interpret

the statute according to its terms without resorting to aids of statutory construction.” *City of Countryside v. City of Countryside Police Pension Board of Trustees*, 2018 IL App (1st) 171029, ¶ 35. “It is an elementary principle of statutory interpretation that no statute should be construed in a manner which will lead to consequences which are absurd, inconvenient, or unjust.” *People v. Partee*, 125 Ill. 2d 24, 30-31 (1988). “[A] court should avoid an interpretation of a statute that would render any portion thereof meaningless or superfluous.” *People v. Wunderlich*, 2019 IL App (3d) 180360, ¶ 16. “Issues requiring statutory interpretation are questions of law subject to *de novo* review.” *Evans*, 2021 IL 125513, ¶ 27.

¶ 11 Section 110-6.1 of the Code provides, in pertinent part, that the trial court shall, upon the filing of the State's verified petition, “immediately hold a hearing on the petition unless a continuance is requested. If a continuance is requested and granted, the hearing shall be held within 48 hours of the defendant's first appearance if the defendant is charged with *** a Class X, Class 1, Class 2, or Class 3 felony.” 725 ILCS 5/110-6.1(c)(2) (West 2022). The statutory language at issue is clear and unambiguous, and we must interpret it according to its terms. See *City of Countryside*, 2018 IL App (1st) 171029, ¶ 35. It clearly requires trial courts to conduct a hearing on the State's petition to deny a defendant pretrial release within 48 hours of the defendant's initial appearance; it does not exclude weekends or holidays when computing time deadlines. See 725 ILCS 5/110-6.1(c)(2) (West 2022).

*3 ¶ 12 Here, on December 24, 2023, defendant was arrested and charged with a Class X felony, a Class 2 felony, and two Class 3 felonies. That same day, defendant made his initial appearance in court and the State filed a verified petition to deny him pretrial release. At the initial hearing, the court, over defendant's objection, granted the State's request for a continuance to December 27, 2023, for the detention hearing. At the December 27, 2023, detention hearing, defendant argued the court erred in continuing the matter beyond the 48-hour window set forth in section 110-6.1(c)(2) of the Code. The court rejected defendant's argument, finding the hearing was timely held because December 25 and 26 were holidays, making December 27 “the first day—workday back from the weekend and the holiday.”

¶ 13 We agree with defendant that the trial court failed to comply with the timing requirements of section 110-6.1(c)(2). We note defendant's memorandum makes no mention of section 1.11 of the Statute on Statutes. See 5 ILCS 70/1.11 (West 2022) (“The time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is Saturday or Sunday or is a holiday as defined or fixed in any statute *** in this State, and then it shall also be excluded.”). In our research, we have found no authority that disposes of the question whether the method for calculating deadlines set forth in the Statute on Statutes should apply in these circumstances. Nonetheless, even if we were to assume, *arguendo*, the Statute on Statutes did apply here, we would still find the court erred, as December 26, 2023, was not “a holiday as defined or

fixed in any statute *** in this State.” *Id.*; see <https://www.illinois.gov/content/dam/soi/en/web/irb/documents/state-holidays.pdf> (last visited on Mar. 15, 2024) (listing December 25, 2023, on the State Holiday Calendar for 2022 and 2023 but not December 26, 2023). Thus, regardless of whether the Statute on Statutes applies under the circumstances, the court was required to conduct a hearing on the State's petition by December 26, 2023. Because it did not do so, it failed to comply with the procedural requirements of the statute.

¶ 14 Having found the trial court failed to comply with the procedural requirements of the Code, we must next determine the appropriate remedy. In his memorandum, defendant, relying on *People v. Gatlin*, 2024 IL App (4th) 231199, ¶¶ 20-23, asserts we “should reverse the trial court's detention order and order that [he] be released from custody.” In *Gatlin*, we found the trial court committed second-prong plain error by holding a detention hearing without the defendant being physically present in court, in violation of section 110-6.1(f)(3.5) of the Code (725 ILCS 5/110-6.1(f)(3.5) (West 2022)). *Gatlin*, 2024 IL App (4th) 231199, ¶ 23. We remanded “the matter for the court to conduct a new detention hearing compliant with the Code.” *Id.* Defendant's reliance on *Gatlin* is misplaced. First, in *Gatlin*, we did not order that the defendant be released from custody, but instead remanded for a new hearing compliant with the Code, meaning a hearing at which the defendant would be physically present. *Id.* Second, even if we were to assume defendant was asking for the same remedy in *Gatlin*, *i.e.*, granting a new hearing in compliance with the Code, we could not effectively grant him

relief because the prior violation of the statute's timing requirements makes it impossible to now have a timely hearing. Nonetheless, we must still determine the appropriate relief to grant defendant.

¶ 15 This court, like defendant, has been unable to identify any case discussing the appropriate remedy when a trial court fails to conduct a timely detention hearing in accordance with section 110-6.1(c)(2). The most analogous case our research uncovered was *People v. Gil*, 2019 IL App (1st) 192419, which involved the previous version of section 110-6.1 of the Code (725 ILCS 5/110-6.1 (West 2016)) and an interlocutory appeal filed pursuant to Illinois Supreme Court Rule 604(c) (eff. July 1, 2017).

*4 ¶ 16 In *Gil*, the defendant was arrested in February 2019 and charged with sexual offenses involving a minor. *Gil*, 2019 IL App (1st) 192419, ¶ 4. On February 12, 2019, the trial court conducted a hearing, at which it found probable cause existed to detain the defendant pretrial and ordered him to be held without bail. *Id.* ¶ 5. At no point did the State file a verified petition seeking to deny the defendant bail. *Id.* The defendant filed an interlocutory appeal pursuant to Rule 604(c), arguing the court erred in detaining him without bail because section 110-6.1 authorized trial courts to deny bail only upon verified petition by the State. *Id.* ¶ 15. The *Gil* court agreed, finding the trial court erred in entering a no-bail order where the State never filed a verified petition as required by section 110-6.1. *Id.* ¶ 16. The *Gil* court acknowledged the trial court's authority to deny bail, but only “provided the proper procedures are followed and the necessary findings are made.” *Id.* ¶ 17. “[I]t

is clear that the procedural and substantive requirements of section 110-6.1 must be and were not followed.” *Id.* ¶ 18. Having found the trial court failed to follow the procedural requirements of section 110-6.1, the *Gil* court determined the appropriate remedy was to “reverse the order of the circuit court denying [the defendant] release on bail and remand to the circuit court for the purpose of setting the amount of bail and other conditions of his release.” *Id.* ¶ 2.

¶ 17 The facts now before us are somewhat analogous to those in *Gil*, and, because we find the reasoning in that case sound, we conclude a similar remedy is appropriate in the instant case. Here, as in *Gil*, the trial court erred in denying pretrial release by failing to follow the procedural requirements of section 110-6.1 of the Code. In this case, the court failed to follow the timing requirements of section 110-6.1(c)(2). In *Gil*, the trial court considered the State's failure to follow the pleading requirements of section 110-6.1(a). See *Gil*, 2019 IL App (1st) 192419, ¶¶ 15-20. Because both cases involve the trial court's failure to comply with the procedural requirements of section 110-6.1, we find it is appropriate to provide defendant with a remedy analogous to that provided to the defendant in *Gil*. It is important to note that the remedy ordered by the appellate court in *Gil* deprived the State of an opportunity on remand to file a verified petition asking the trial court to deny the defendant bail. *Id.* ¶¶ 2, 19, 21. Instead, the remedy mandated the trial court to conduct a hearing on remand “for the purpose of setting the amount of bail and other conditions of his release.” *Id.* ¶ 2. In other words, the trial court lacked the authority on remand to enter an order detaining the

defendant without bail; the defendant's pretrial release on bail, albeit with the imposition of appropriate conditions of release, was a necessary condition of the remedy awarded by the *Gil* court. *Id.* ¶¶ 2, 19, 21.

¶ 18 Here, we hold the appropriate remedy for the State's and trial court's failure to ensure the detention hearing was conducted in compliance with the timing requirements of section 110-6.1(c)(2) of the Code (725 ILCS 5/110-6.1(c)(2) (West 2022)) is to remand the case to the trial court for the purpose of promptly holding a hearing to determine the least restrictive conditions of defendant's pretrial release. See *Gil*, 2019 IL App (1st) 192419, ¶¶ 2, 19, 21. In so holding, we note that if we were to allow the State to again petition the court to deny defendant pretrial release on remand, it would have little incentive to comply with the timing requirements of the statute in other cases. There would be no consequence for its failure to comply with the unambiguous language of the statute, and thus would render nugatory the statute's timing requirement. See, e.g., *Wunderlich*, 2019 IL App (3d) 180360, ¶ 16 (“[A] court should avoid an interpretation of a statute that would render any portion thereof meaningless or superfluous.”).

¶ 19 We further find the remedy set forth above to be appropriate because it places defendant in the same position he would have been in had the State not filed a petition to deny him pretrial release. Under the statutory scheme, when the State does not file a petition, the defendant is released pretrial subject to the conditions the trial court is required to impose pursuant to sections 110-5(c) and 110-10(a) of the Code. 725 ILCS 5/110-5(c) (West 2022)

(“The court shall impose any conditions that are mandatory under subsection (a) of Section 110-10.”); *Id.* § 110-10(a)(1)-(6) (listing the mandatory conditions of pretrial release). In addition to the mandatory conditions, the court also has the discretion to impose a number of additional conditions, so long as they are “the least restrictive conditions or combination of conditions necessary to reasonably ensure the appearance of the defendant as required or the safety of any other person or persons or the community.” *Id.* § 110-5(c); see *id.* § 110-10(b)(0.05)-(9) (listing the discretionary conditions of release). Thus, at the hearing on remand, the court will be required to impose the mandatory conditions listed in section 110-10 and it will have the discretion to impose additional conditions that it finds necessary to ensure defendant's appearance as required for the safety of the community.

¶ 20 III. CONCLUSION

*5 ¶ 21 For the reasons stated, we reverse the trial court's judgment and remand with directions that the court promptly set the case for a hearing to determine the least restrictive conditions of defendant's pretrial release.

¶ 22 Reversed and remanded with directions.

Justices Zenoff and DeArmond concurred in the judgment.

All Citations

Not Reported in N.E. Rptr., 2024 IL App (4th) 231582-U, 2024 WL 1193089

2024 IL App (4th) 240398-U

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

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). Appellate Court of Illinois, Fourth District.

The PEOPLE of the State of Illinois, Plaintiff-Appellee,

v.

Terrance Terrell HOWARD,
Defendant-Appellant.

NOS. 4-24-0398,
4-24-0399, 4-24-0400 cons.

|

Filed June 11, 2024

Appeal from the Circuit Court of Winnebago County, Nos. 24CF561, 24CF563, 24DV30, Honorable Scott Paccagnini, Judge Presiding.

ORDER

JUSTICE VANCIL delivered the judgment of the court.

*1 ¶ 1 *Held*: The trial court erred in granting the State's petition to deny defendant pretrial release where the court failed to comply with the procedural requirements of section 110-6.1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-6.1 (West 2022)).

¶ 2 On a Saturday in March 2024, defendant, Terrance Terrell Howard, was charged with

two counts of aggravated unlawful use of a weapon. He was arrested on those charges and other previously filed charges, and he appeared before the trial court in Winnebago County that same day. Pursuant to section 110-6.1 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-6.1 (West 2022)), the State petitioned the court to deny defendant pretrial release. The court, on its own motion, continued the hearing to the following Monday. At that hearing, defense counsel argued that over 48 hours had passed since defendant's first appearance, so he should be released. The court disagreed and denied defendant pretrial release. Defendant appealed.

¶ 3 We agree with defendant that the trial court failed to comply with the Code. We vacate the order denying pretrial release and remand for further proceedings.

¶ 4 I. BACKGROUND

¶ 5 In January 2024, the State charged defendant with two counts of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2022)). Later, the State further charged defendant with aggravated battery (*id.* § 12-3.05(e)(1)), aggravated discharge of a firearm (*id.* § 24-1.2(a)(2)), possession of a firearm without a firearm owner's identification card (430 ILCS 65/2(a)(1) (West 2022)), and aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(2) (West 2022)). Finally, on Saturday, March 2, 2024, the State charged defendant with two counts of aggravated unlawful use of a weapon (*id.* § 24-1.6(a)(2)(D)). Defendant was arrested that day.

¶ 6 Also on Saturday, March 2, the State petitioned to deny defendant pretrial release. Defense counsel would later say the State filed its petition at approximately 1:40 p.m., although the record does not otherwise specify the time of filing. Defendant appeared before the trial court, and although the court's docket states this first appearance was scheduled for March 2 at 1 p.m., the record does not confirm what time the court appearance began. The court, on its own motion, continued the hearing on the State's petition to deny pretrial release. Neither party had requested the continuance. The court's docket indicates that the hearing on the State's petition was scheduled for March 4 at 1:30 p.m.

¶ 7 The trial court conducted a hearing on the State's petition on Monday, March 4, 2024. Defense counsel observed that the hearing started “a little before 4:00.” He argued that the Code requires hearings on pretrial release to be held within 48 hours of the defendant's first appearance. Defense counsel claimed that because the State filed its petition to deny release around 1:40 p.m. on Saturday, the hearing was untimely, so defendant should be released. The State argued that the Code's 48-hour deadline does not include Saturdays and Sundays, so the hearing was timely. The State also insisted that it had not asked for a continuance, it was prepared on Saturday, and the court continued the matter on its own motion

*2 ¶ 8 The trial court agreed with the State. It cited the Statute on Statutes (5 ILCS 70/1 *et seq.* (West 2022)), which tolls statutory deadlines in certain circumstances. Defense counsel objected that the Statute on Statutes

only tolls weekends if the deadline “falls upon those days,” but here, the 48-hour deadline fell on a Monday. The court overruled the defense's objection.

¶ 9 The trial court heard the State and defense counsel's arguments over whether defendant qualified for pretrial detention. It concluded that the State had shown by clear and convincing evidence that defendant committed a qualifying offense, that he posed a real and present threat to the community, and that no condition or conditions would ensure the safety of the alleged victim and the community, so it granted the State's petition to deny defendant pretrial release.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, defendant argues that section 110-6.1 of the Code required the trial court to conduct a pretrial release hearing within 48 hours of his first appearance, but the court failed to do so. Defendant contends that the court did not comply with the Code's procedural requirement, so his detention is unlawful. He asks us to reverse the trial court's detention order and remand for further proceedings to determine the least restrictive conditions for his release.

¶ 13 Defendant's argument focuses on the text of section 110-6.1 of the Code. We review questions of statutory interpretation *de novo*. *People v. Ramirez*, 2023 IL 128123, ¶ 13. “Our primary objective when construing a statute is to ascertain the intent of the legislature

and give effect to that intent.” *Id.* “The most reliable indicator of legislative intent is the language of the statute, given its plain and ordinary meaning.” *Evans v. Cook County State's Attorney*, 2021 IL 125513, ¶ 27. “It is an elementary principle of statutory interpretation that no statute should be construed in a manner which will lead to consequences which are absurd, inconvenient, or unjust.” *People v. Partee*, 125 Ill. 2d 24, 30-31 (1988).

¶ 14 Section 110-6.1(c)(2) of the Code states that when the State petitions the trial court to deny a defendant pretrial release,

“the court shall immediately hold a hearing on the petition unless a continuance is requested. If a continuance is requested and granted, the hearing shall be held within 48 hours of the defendant's first appearance if the defendant is charged with first degree murder or a Class X, Class 1, Class 2, or Class 3 felony, and within 24 hours if the defendant is charged with a Class 4 or misdemeanor offense. The Court may deny or grant the request for continuance. If the court decides to grant the continuance, the Court retains the discretion to detain or release the defendant in the time between the filing of the petition and the hearing.” 725 ILCS 5/110-6.1(c)(2) (West 2022).

This section is clear and unambiguous. *People v. McCarthy-Nelson*, 2024 IL App (4th) 231582-U, ¶ 11. It requires the trial court to hold a hearing on the State's petition “immediately” if no continuance is requested, or, if a continuance is requested, “within 48 hours of the defendant's first appearance” when the defendant is charged with a Class X,

Class 1, Class 2, or Class 3 felony. 725 ILCS 5/110-6.1(c)(2) (West 2022).

¶ 15 Here, defendant's charges included the following: aggravated battery, a Class X felony; aggravated discharge of a firearm, a Class 1 felony; possession of a firearm without a firearm owner's identification card, a Class 3 felony; two counts of domestic battery, a misdemeanor; and three counts of aggravated unlawful use of a weapon, a Class 4 felony. Based on the Class X, Class 1, and Class 3 felonies, the text of Section 110-6.1 required the trial court to hold a hearing on the State's petition to deny release either “immediately,” if no continuance was requested, or, if a continuance was requested, “within 48 hours of the defendant's first appearance.” *Id.*

*3 ¶ 16 Defendant's first appearance occurred on Saturday, March 2, and the hearing on the State's petition to deny pretrial release occurred on Monday, March 4, but we note that the record does not clearly indicate the exact time of each court appearance. The trial court's docket entries show that the first appearance was scheduled for 1 p.m. on Saturday, March 2, and the pretrial release hearing was scheduled for 1:30 p.m. on March 4. At the hearing on the State's petition, defense counsel represented that the State had filed its petition to deny pretrial release at 1:40 p.m. on Saturday and the hearing was occurring “a little before 4:00” on the following Monday. Neither the State nor the court denied that 48 hours had passed since defendant's first appearance. Now, on appeal, the State still does not deny that the hearing on its petition occurred more than 48 hours after the first appearance. We will

accept this framing, although the record itself is indeterminate.

¶ 17 The trial court relied on the Statute on Statutes, which provides as follows:

“The time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is Saturday or Sunday or is a holiday as defined or fixed in any statute now or hereafter in force in this State, and then it shall also be excluded. If the day succeeding such Saturday, Sunday or holiday is also a holiday or a Saturday or Sunday then such succeeding day shall also be excluded.” 5 ILCS 70/1.11 (West 2022).

The court found that this provision excludes Saturdays and Sundays from the 48-hour period in section 110-6.1 of the Code, so the hearing in this case on Monday, March 4, was timely.

¶ 18 The trial court misinterpreted the Statute on Statutes. Because we reject this reading of the Statute, we need not decide whether it applies to the Code's 48-hour deadline. See *McCarthy-Nelson*, 2024 IL App (4th) 231582-U, ¶ 13 (finding “no authority that disposes of the question whether the method for calculating deadlines set forth in the Statute on Statutes should apply” to section 110-6.1 of the Code). Assuming *arguendo* that the Statute on Statutes applies here, it still does not exclude all Saturdays and Sundays anytime a statute designates a time limit. Instead, the Statute on Statutes tolls the last day of a deadline if “the last day is Saturday or Sunday or is a holiday as defined or fixed” by statute. 5 ILCS 70/1.11 (West 2022). Here, if the 48-hour period began with defendant's first appearance on Saturday,

sometime around 1 p.m. or 1:40 p.m., then it ended at the same time on Monday. That Monday was not a “Saturday or Sunday” or a “holiday as defined or fixed in any statute,” so the Statute on Statutes does not exclude that Monday from the calculation. *Id.* The Code required the court to conduct a hearing on the State's petition by around 1:40 p.m. on Monday, but the hearing did not begin until nearly 4 p.m. on Monday. The hearing was late, so the court failed to comply with the Code's procedural requirements.

¶ 19 Instead of relying on the Statute on Statutes, the State asks us to be flexible in our application of the Code and to “defer to the trial court's findings.” Defendant's first appearance occurred on a Saturday. The State and defense counsel were both ready to proceed with the hearing immediately after the State filed its petition, and the trial court continued the matter on its own motion. Trial courts have busy dockets and cannot always conduct hearings at precisely the specified time. If the hearing on pretrial release here was untimely, it was at most a few hours late. The State asks that we not impose a “draconian interpretation” on section 110-6.1(c)(2) of the Code.

¶ 20 We recognize that the Code's short deadline creates practical difficulties for trial courts and attorneys, but those difficulties do not alter the clear and unambiguous language of section 110-6.1. We cannot “defer” to the trial court on matters of statutory interpretation, which we review *de novo*. *Ramirez*, 2023 IL 128123, ¶ 13. Our interpretation also does not lead to any “absurd” result. *Partee*, 125 Ill. 2d at 30-31. Here the trial court conducted the first appearance on Saturday, March 2. When

the trial court already operates on a Saturday and both parties are prepared to proceed on the petition for pretrial release, any practical difficulties with scheduling appear to be less burdensome.

*4 ¶ 21 Having concluded that the hearing on the State's petition to deny pretrial release did not comply with the Code's procedural requirements, our next step is to determine the proper remedy. Defendant asks us to reverse the trial court's order and remand with instructions that it determine the least restrictive conditions for his release. That is, defendant asks us to effectively prohibit the trial court from continuing his detention.

¶ 22 We granted this relief in *McCarthy-Nelson*, 2024 IL App (4th) 231582-U, ¶ 18. There, the State had petitioned to deny a defendant pretrial release on December 24 but moved to continue the hearing on the petition. The trial court granted the continuance and held the hearing on December 27. We found that the hearing took place after the Code's 48-hour deadline, which expired on December 26. Just as in this case, we found that the final day of the 48-hour period did not fall on a Saturday, Sunday, or holiday, so the Statute on Statutes, even if it applied in section 110-6.1 cases, did not change the result. *Id.* ¶ 13.

¶ 23 We then considered possible remedies. We reasoned that simply ordering the trial court to conduct a new detention hearing would provide no relief, because the new hearing would still be untimely. *Id.* ¶ 14. Instead, we compared the case to *People v. Gil*, 2019 IL App (1st) 192419, in which a trial court had denied a defendant bail under the previous bail system

even though the State had not petitioned to deny bail. The appellate court found that this was an error, and it determined that the proper remedy was to reverse the order denying the defendant bail and to remand “for the purpose of setting the amount of bail and other conditions of his release.” *Id.* ¶ 2.

¶ 24 The *McCarthy-Nelson* court applied the same reasoning and held, on remand, the trial court lacked the authority to detain the defendant. We explained:

“[I]f we were to allow the State to again petition the court to deny defendant pretrial release on remand, it would have little incentive to comply with the timing requirements of the statute in other cases. There would be no consequence for its failure to comply with the unambiguous language of the statute, and thus would render nugatory the statute's timing requirement.” *McCarthy-Nelson*, 2024 IL App (4th) 231582-U, ¶ 18.

¶ 25 Here, unlike in *McCarthy-Nelson*, the State did not ask for the continuance that resulted in the untimely hearing. The trial court continued the hearing on its own motion, even though both parties were prepared for the hearing at defendant's first appearance. This is notably different from *McCarthy-Nelson*, where we imposed serious consequences on the State's noncompliance with the explicit goal of incentivizing the State to adhere to the procedural requirements of section 110-6.1.

¶ 26 However, the State has proposed no other remedies for the Code violation. As we observed in *McCarthy-Nelson*, simply remanding for a new hearing on pretrial release

would not provide any remedy because the new hearing would still be untimely. *Id.* ¶ 14. If we must choose between effectively granting no remedy and remanding with instructions that the trial court release defendant and set conditions for his release, we choose the latter, primarily to incentivize the trial court to comply with the Code's deadline. *Id.* ¶ 18 (granting this remedy “for the State's *and trial court's* failure to ensure the detention hearing was conducted in compliance with the timing requirements of section 110-6.1(c) (2)” (emphasis added)).

¶ 27 III. CONCLUSION

*5 ¶ 28 For the reasons stated, we reverse the trial court's judgment and remand with directions that the court promptly set the case for a hearing to determine the least restrictive conditions of defendant's pretrial release.

¶ 29 Reversed and remanded with directions.

Presiding Justice Cavanagh and Justice Harris concurred in the judgment.

All Citations

Not Reported in N.E. Rptr., 2024 IL App (4th) 240398-U, 2024 WL 2954065

No. 130866

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, Fourth Judicial District, Nos. 4-24-0388 and 4-24-0389
People-Appellee,)	
-vs-	)	There on appeal from the Circuit Court of the Tenth Judicial Circuit, Peoria County, Illinois, Nos. 21 CF 834 and 21 CF 835.
ANTONIO COUSINS JR.,)	
Defendant-Appellant.)	Honorable John P. Vespa, Judge Presiding.

NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On September 13, 2024, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/Christopher Moy-Lopez

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