

**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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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 23111457301
	)	
CADARROW PATTEN WHITE,	)	Honorable
	)	Maryam Ahmad,
Defendant-Appellant.	)	Judge presiding.

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JUSTICE PUCINSKI delivered the judgment of the court.  
Presiding Justice Fitzgerald Smith and Justice Lavin concurred in the judgment.

**ORDER**

**Held:** We affirm the pretrial detention order under the Pretrial Fairness Act. The trial court reasonably found the State met its burden to show that the “proof is evident or the presumption great” that defendant committed a detainable offense, that defendant presented a threat to the community, and that the threat could not be mitigated by other conditions.

¶ 1 Defendant-appellant Cadarrow Patten White has filed a Pretrial Fairness Act Appeal under Illinois Supreme Court Rule 604(h) (eff. Sept. 18, 2023), from the circuit court’s order entered on November 30, 2023, granting the State’s petition for pretrial detention. For the following reasons, we affirm.

¶ 2

## BACKGROUND

¶ 3

After police found firearms and narcotics in defendant's vehicle after a traffic stop, defendant was charged with several offenses. A felony complaint filed November 30, 2023, charged him with "unlawful use of a weapon by felon," citing section 24-1.1(a) of the Criminal Code of 2012. See 720 ILCS 5/24-1.1(a) (West 2022) (making it unlawful for a person to knowingly possess a firearm if the person has been convicted of a felony under the laws of this State or any other jurisdiction). That complaint alleged that "he knowingly possessed on his person upon a public street a loaded pistol, Glock \*\* that was uncased, loaded and immediately accessible at the time of the offense while within the corporate limits of the city of Chicago."<sup>1</sup>

¶ 4

On the same date, defendant was also charged with a number of narcotics-related offenses: possession with intent to deliver or manufacture more than 500 grams but no more than 2000 grams of cannabis; possession with intent to manufacture or deliver between 5 and 15 grams of a substance containing ecstasy or an analog thereof; and possession of less than 15 grams of a controlled substance containing cocaine. Defendant was also charged with several vehicle code violations.

¶ 5

On November 30, 2023, the State filed a petition for pretrial detention. Notably, whereas the felony complaint stated the firearm offense was unlawful use of a weapon by a felon (UUWF), the State's petition indicated that the qualifying detainable offense was "Agg UUW/prev conviction (Cl. 2)." Elsewhere, the State alleged in its petition that defendant posed

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<sup>1</sup> Notably, this language from the felony complaint appears to mirror a subsection of the statute for aggravated unlawful use of a weapon (AUUW) that has been held unconstitutional. Specifically, section 24-1.6(a)(2), (a)(3)(a) of the AUUW statute provided that the offense was committed if a person "carries or possesses on or about his or her person" a firearm "upon any public street" and it was "uncased, loaded, and immediately accessible at the time of the offense." 720 ILCS 5/24-1.6(a)(2), (a)(3)(a). However, our supreme court has held that specific AUUW provision unconstitutional under the second amendment to the United States Constitution. *People v. Mosley*, 2015 IL 115872, ¶ 25.

a real and present threat to the safety of any person or persons or the community. The petition noted defendant had a prior conviction in Indiana for reckless homicide.

¶ 6 On November 30, 2023, the court held a hearing on the State’s petition. At the outset of the hearing, the court informed defendant he was charged with “unlawful use of a weapon by a felon.” Shortly thereafter, when the court instructed the State to proceed, the State’s attorney remarked: “I would note that the People are pursuing the charge of aggravated unlawful use of a weapon previous conviction Class 2 felony.” The court replied: “Got it. Thank you.” Defense counsel raised no objection, and the record reflects that the parties and court proceeded with the understanding that the detainable offense at issue was aggravated unlawful use of a weapon (AUUW).

¶ 7 The State proceeded to proffer that on November 29, 2023, defendant was driving a vehicle curbed by Chicago police for a traffic violation. A codefendant (who was not named) was sitting in the front passenger’s seat. Defendant consented to a search of the vehicle “after admitting to smoking cannabis.” Police found a loaded Glock 9mm handgun under the driver’s seat. Officers also found a loaded .45-caliber handgun beneath the passenger’s seat occupied by the codefendant. The State indicated that the gun under the passenger’s seat, which was “not attributed to the defendant,” was reported stolen.

¶ 8 Police also found defendant was in possession of crack cocaine, MDMA, and a bulk amount of cannabis. Specifically, they found a “Ziploc bag containing two hits of suspect crack cocaine” from a pocket in the driver’s door; the defendant “related that it was Molly,” a street term for MDMA or ecstasy. In the back seat of the car, police found a backpack with a “bulk amount of cannabis” in Ziploc baggies, totaling approximately 568 grams. Police also found a

scale with “suspect various narcotics residue” as well as a “bulk amount of clear plastic bags.” Police also recovered \$1,876 in cash.

¶ 9 Regarding criminal background, the State proffered that in 2015, defendant was charged with murder and reckless homicide in Lake County, Indiana. He eventually pleaded guilty to reckless homicide in 2022, after spending six years in jail pretrial. The State explained that, under the Indiana plea deal, the “the murder was nolleed by Lake County prosecutors” and defendant “got six years credit time served as a sentence for reckless homicide.” Separately, the State reported that defendant had two convictions in 2013 (outside of Illinois) for possession of a stolen motor vehicle and possession of a controlled substance.

¶ 10 In requesting pretrial detention, the State argued: “He is clearly a danger to this community \*\*\* and the fact that he is willing to arm himself so quickly after a reckless homicide conviction which was originally charged also as a murder indicates there are no conditions that this Court can impose short of detention today to mitigate the risk he poses.”

¶ 11 Defense counsel pointed out that the “agg uuw” offense was “the only charge that is detainable,” and argued that the State failed to show that the proof was evident or the presumption great that defendant committed that offense. Counsel noted that defendant complied with police, was never seen holding the firearm, and made no statements indicating he knew the gun was present. Counsel urged it would be “very difficult” to show defendant was connected to the gun since there was another passenger in the vehicle.

¶ 12 Defense counsel also argued defendant did not pose a threat to any person or to the community. Defense counsel noted that despite his 2022 conviction, the underlying incident happened a “significant time ago” and his prior criminal offenses occurred in his late teen or early twenties. Counsel indicated that defendant was now 29 years old and the father of a three-

week old child with his girlfriend. Defendant's counsel further stated that he ran a business with his girlfriend, he was in the process of earning an "electrical degree" at a technical institute, and he attended church. Defense counsel requested that defendant be released with conditions, such as electronic monitoring.

¶ 13 In response, the State acknowledged that the offense underlying the 2022 reckless homicide conviction occurred when he was "approximately 22" years old but pointed out he was in jail for six years afterward, so he "didn't have the opportunity" to commit more crimes for that period. The State argued that "within approximately a year of being released, after six years credit time served for his reckless homicide \*\*\* he immediately went and armed himself." The State also urged that defendant's dangerousness was "exacerbated" because he was "trying to transact a whole lot of illegal business as well."

¶ 14 The court was separately informed that the pretrial "Public Safety Assessment" indicated that defendant was assessed a three out of six on the "new criminal activity scale", a two out of six on the "failure to appear scale." His "PSA score coincides with pretrial monitoring."<sup>2</sup>

¶ 15 In making its ruling, the court asked whether defendant was the registered owner of the vehicle that was stopped. The State answered affirmatively.

¶ 16 The court proceeded to find the State met its burden as to whether defendant committed the offense of AUUW. The court discussed the fact that illegal substances were found in the car, as well as bulk plastics bags, a scale, and a large amount of money. The court remarked that these were "indicia of narcotics sales and transactions" and commented that in its experience, "where there is narcotics at this level, a firearm generally is not too far behind."

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<sup>2</sup> The record includes the "Public Safety Assessment" report to the court. That report states that the "Release Recommendation" was "Release with Pretrial Monitoring."

The court also pointed out that defendant was the registered owner of the vehicle, and the firearm was under his driver's seat. The court found that the State met its burden to show that defendant was "in knowing possession of the firearm."

¶ 17 Turning to whether the defendant posed a threat to the community, the court relied on "the totality of the facts" and again referenced the "indicia of narcotics sales and transfer", including the controlled substances and cash found in the car. The court found that these facts, along with the firearm, showed a "real and present threat to the community."

¶ 18 As to whether conditions could mitigate the risk to the community, the court emphasized that defendant had "not been out of custody for a long period of time" but was already "back before this court facing a very serious offense." The court expressed concern about his "inability to comply" with the law, particularly with a serious offense in his background and "the presence of a loaded firearm." Under these circumstances, the court stated it was "unwilling to take any further risk in term of the community." The court thus granted the State's petition for pretrial detention and entered a corresponding written order on November 30, 2023. The written order noted that the court was "concerned about the short amount of time between his release [from custody in Indiana] and re-arrest."

¶ 19 On December 13 2023, defendant filed a notice of appeal pursuant to Rule 604(h).

¶ 20 Defendant has filed a brief, in which he seeks reversal on the grounds that: (1) the State failed to prove by clear and convincing evidence that the proof is evident or the presumption great that defendant committed the offense of AAUW; (2) the State failed to prove that defendant posed a real and present threat to the safety of any person or to the community; and (3) the State failed to meet its burden to prove that no condition or combination of conditions could mitigate the threat posed by defendant or a risk of defendant's willful flight. Finally, he

asserts the court erred in determining that no condition or combination of conditions would reasonably ensure defendant's appearance "for later hearing or prevent [him] from being charged with a subsequent felony or Class A misdemeanor."

¶ 21 The State has filed a response brief. For the following reasons, we reject defendant's contentions and affirm.

¶ 22 ANALYSIS

¶ 23 Pretrial release is governed by article 110 of the Code of Criminal Procedure of 1963 (Code), as recently amended by Public Act 101-652 (eff. Jan. 1, 2023), sometimes referred to as the "Safety, Accountability, Fairness and Equity-Today (SAFE-T) Act" or the "Pretrial Fairness Act."<sup>3</sup> Under article 110 of the Code, a defendant's pretrial release may only be denied in certain limited situations. See 725 ILCS 5/110-2(a), 110-6.1 (West 2022).

¶ 24 "Section 110-6.1(e) of the Code presumes that all defendants are eligible for pretrial release and places the burden of justifying pretrial detention by clear and convincing evidence on the State." *People v. Stock*, 2023 IL (1st) 231753, ¶ 11; 725 ILCS 5/110-6.1(e) (West 2022). If the State files a petition requesting denial of pretrial release, "the State has the burden to prove by clear and convincing evidence that the proof is evident or the presumption great that a defendant has committed a qualifying offense, that the defendant's pretrial release poses a real and present threat to the safety of another person or the community or a flight risk, and that less restrictive conditions would not avoid a real and present threat to the safety of any person or the community and/or prevent the defendant's willful flight from prosecution." *People v. Vingara*, 2023 IL App (5th) 230968, ¶ 7; 725 ILCS 5/110-6.1(e), (f) (West 2022).

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<sup>3</sup> Our supreme court has recognized that "[n]either name is official, as neither appears in the Illinois Compiled Statutes or public acts." *Rowe v. Raoul*, 2023 IL 129248, ¶ 4 n. 1.

¶ 25 Appellate decisions conflict as to the precise standard of review to be applied to the trial court's determination that the State proved the threshold requirements by "clear and convincing evidence" pursuant to section 110-6.1(e). Certain decisions (including at least one from the First District) have held that an abuse of discretion standard of review applies to these findings. See *People v. Whitmore*, 2023 IL App (1st) 231807, ¶ 18 (holding that the abuse of discretion standard applies to review of the trial court's findings that State proved by clear and convincing evidence that defendant posed a real and present threat that could not be mitigated by other conditions); *People v. Inman*, 2023 IL App (4th) 230864, ¶ 11 (when a defendant claims the State failed to fulfill its burden under the Act by "clear and convincing evidence," "we are reviewing the circuit court's evaluation of that evidence for an abuse of discretion.").

¶ 26 Other appellate decisions have applied the "manifest weight of the evidence" standard of review to the trial court's findings as to whether the State proved the threshold requirements of section 110-6.1(e) by clear and convincing evidence. See, e.g., *People v. Pitts*, 2024 IL App (1st) 232336, ¶ 15 (recognizing some courts have used abuse of discretion standard but "We think the most appropriate standard by which to review this sufficiency question is whether the trial court's findings were against the manifest weight of the evidence."); *Stock*, 2023 IL App (1st) 231753, ¶¶ 12-14 (applying manifest weight standard to court's findings that "proof was evident or the presumption was great" that defendant committed offense and that defendant posed a real and present threat).

¶ 27 Some courts have specified that the standard of review is "twofold", meaning the trial court's factual findings are reviewed under the manifest weight standard but its ultimate detention decision is reviewed for an abuse of discretion. See, e.g., *People v. Trotter*, 2023 IL App (2d) 230317, ¶ 13 (applying manifest weight standard to trial court's factual findings that



the State presented clear and convincing evidence that mandatory conditions of release would fail to protect any person or the community or that defendant has a high likelihood of willful flight.)

¶ 28 We find the twofold approach is well-reasoned. The governing Code provision requires the State to prove by “clear and convincing evidence” that “the proof is evident or the presumption great” that the defendant committed a qualifying offense, that defendant “poses a real and present threat” and that no condition or combination of conditions can mitigate the threat. 725 ILCS 5/110-6.1(e) (West 2022). Thus, we think it is proper to review factual findings under the manifest weight of the evidence standard. However, “we review for an abuse of discretion the trial court’s ultimate determination regarding pretrial release.” *Trottier*, 2023 IL App (2d) 230317, ¶ 13 (describing “twofold” standard of review.)

¶ 29 In any event, we would reach the same result under either the manifest weight or abuse of discretion standard. “A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding is unreasonable, arbitrary, or not based on the evidence presented.” *People v. Deleon*, 227 Ill. 2d 322, 332 (2008). An abuse of discretion occurs when the decision is arbitrary, fanciful or unreasonable, or where no reasonable person would agree with the position adopted by the trial court. *People v. Simmons*, 2019 IL App (1st) 191253, ¶ 9.

¶ 30 Before we address the substance of defendant’s claims, we point out an inconsistency in the record. The common law record reflects that the only firearm-related offense defendant was charged with was UUWF, but the State’s petition indicated he was charged with “Agg UUW/prev conviction.” During the hearing, the State informed the court that it sought

detention on the basis of AUUW (not UUWF); this was acknowledged by the court and by defense counsel without objection.

¶ 31 We find it peculiar that the common law record does not contain a charging instrument showing that defendant was, in fact, charged with AUUW. Nonetheless, we do not find it fatal to the petition. We note that both UUWF and AUUW are identified as detainable offenses under the Pretrial Fairness Act. 725 ILCS 5/110-6.1(a)(6)(O) (West 2022). Further, defense counsel raised no objection at the hearing when the State indicated that it was “pursuing the charge of aggravated unlawful use of a weapon previous conviction Class 2 felony.” Defense counsel elsewhere acknowledged during argument that the State sought detention for “agg uuw.” And on appeal, defendant raises no claim of error pertaining to the inconsistency. Rather, defendant’s brief acknowledges that the detainable offense at issue is “aggravated unlawful use of a weapon.” We thus proceed to defendant’s claims.

¶ 32 Defendant’s primary claim of error is that the State did not meet its burden to prove by “clear and convincing evidence” that the “proof is evident or the presumption great” that the defendant committed the offense of AUUW. 725 ILCS 5/110-6.1(e)(2) (West 2022). He points out that there was another passenger in the vehicle; defendant denied that there were firearms in the vehicle, and he consented to the police search. He avers the State cannot prove that defendant “owned any alleged” firearm, and that none of defendant’s behaviors “indicate that he had knowledge of the weapon” or that it belonged to him, rather than his passenger.

¶ 33 Defendant’s argument on this point is unavailing. First, we note the State did not need to establish that defendant “owned” the firearm. Where a defendant is not found in actual possession of a firearm, the State must prove constructive possession to establish AUUW. See *People v. Wright*, 2013 IL App (1st) 111803, ¶ 25. Constructive possession of a firearm may

be shown where the person has knowledge of the presence of the weapon and exercised immediate and exclusive control over the area where the firearm is found. *People v. Wise*, 2021 IL 125392, ¶ 25. Knowledge may be proven by defendant’s acts, declarations or conduct from which it can be inferred he knew the contraband existed in the place where it was found. *People v. Faulkner*, 2017 IL App (1st) 132884, ¶ 39. “Evidence of constructive possession is often entirely circumstantial.” (Internal quotation marks omitted.) *Id.*

¶ 34 A defendant’s mere presence in a car where a weapon is found is not sufficient to establish knowledge of a weapon. See *People v. Nesbit*, 398 Ill. App. 3d 200, 209 (2010). However, defendant’s proximity to the weapon is a relevant factor when determining constructive possession. *Wise*, 2021 IL 125392, ¶ 29. Further, “[t]he defendant’s control over the location where weapons are found gives rise to an inference that he possessed the weapons.” *Spencer*, 2012 IL App 102094, ¶ 17. “In deciding whether constructive possession has been shown, the trier of fact is entitled to rely on reasonable inferences of knowledge and possession, absent other factors that might create a reasonable doubt as to the defendant’s guilt.” *Spencer*, 2012 IL App 102094, ¶ 17.

¶ 35 Here, the facts and circumstances proffered by the State were such that the trial court could reasonably conclude the State had met its burden to show “proof is evident or the presumption great” that defendant constructively possessed the Glock firearm in question. 725 ILCS 5/110-6.1(e)(2) (West 2022). The firearm was found beneath the driver’s seat after defendant was pulled over. There is no doubt the gun was in close proximity to and immediately accessible to the defendant, who was driving the vehicle. Moreover, the State proffered that defendant was the vehicle’s owner. These facts allowed the court to infer that defendant had control over the area where the gun was found, notwithstanding that another person was in vehicle. Further,

the trial court was entitled to draw reasonable inferences from other proffered facts that police also discovered a large amount of controlled substances, cash, plastic bags, and a scale. We cannot say the trial court was unreasonable in inferring that these items suggested defendant was involved in narcotics transactions, which are often tied to the presence of firearms. In turn, we cannot say it was against the manifest weight of the evidence for the court to find the State met its burden to show the “proof was evident or the presumption great” that defendant committed the AUUW offense at issue. 725 ILCS 5/ 110-6.1(e)(1) (West 2022).

¶ 36 We turn to defendant’s contention that the court erred in finding the State met its burden to show he posed a threat that warranted pretrial detention. See 725 ILCS 5/110-6.1(e)(2). (State shall bear the burden of proving by clear and convincing evidence that “defendant poses a real and present threat to the safety of any person or person or the community, based on the specific articulable facts of the case.”) In making this “determination of dangerousness,” the court may consider various enumerated factors, including but not limited to “the nature and circumstances of any offense charged” the “history and characteristics of the defendant,” and, “[w]hether the defendant is known to possess or have access to any weapon or weapons.” 725 ILCS 5/110-6.1(g) (West 2022).

¶ 37 Defendant suggests the court erred in its assessment of dangerousness, because defendant was not charged with an act of violence. He points out he did not brandish or use a weapon during the incident and did not harm anyone. He also notes his “limited” criminal background and that fact that he scored “only a three out of six on the new criminal activity scale,” according to the pretrial assessment. He also points out that since his release in 2022, he has worked toward earning a degree, helped his girlfriend run a business, and has helped care for

their newborn baby. He urges the State could not show, based on the fact of this case, that he poses a danger to the community.

¶ 38 We disagree. We recognize that defendant was not accused of harming anyone in this specific instance. Nevertheless, in deciding whether a defendant poses a real and present threat, the trial court may consider “the nature and circumstances of any offense charged,” as well as defendant’s history, and “[w]hether the defendant is known to possess or have access to any weapon or weapons.” *Id.* Here, the State’s proffer indicated that defendant was driving with a firearm under his seat with a number of controlled substances and items suggesting that he was engaged in the sale of illegal narcotics. Moreover, this occurred relatively soon after his 2022 release from prison after reckless homicide conviction. Given these surrounding circumstances, the trial court could reasonably conclude the State met its burden to show by clear and convincing evidence that defendant presented a real threat to the community, notwithstanding the mitigating circumstances presented by defense counsel. In other words, the court’s finding of dangerousness was not against the manifest weight of the evidence.

¶ 39 We also reject defendant’s third claim—that the court erred in finding that no combination of conditions other than pretrial detention could mitigate the “threat to safety” or the risk of his “willful flight.” Notably, the corresponding portion of defendant’s brief focuses on the State’s failure to show that he was a flight risk. However, as the State’s response points out, the applicable provision of the Pretrial Fairness Act did not require the State to prove that he was a flight risk. See 725 ILCS 5/110-6.1(e)(3) (the State must prove “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 \*\*\* for offenses listed in paragraph (1) through (7) of subsection (a), or (ii) the defendant’s willful flight for offenses listed in paragraph (8) of subsection (a).”)

Moreover, given the State’s proffer about the firearms and indicia of narcotics sales found in the car, we cannot say the court was unreasonable in finding that no other conditions could mitigate the threat posed to the community. Thus, this finding was not against the manifest weight of the evidence.

¶ 40 Defendant’s final claim— that the court erred in determining there were “no conditions that could ensure [his] appearance” at future hearings or prevent him “from being charged with a subsequent felony or Class A misdemeanor”—largely repeats his prior argument as to why he is not a flight risk. He urges that he should not be detained because home supervision or electronic monitoring would suffice to ensure his appearance at future court dates. As discussed, however, the State’s petition for pretrial detention was based on a finding of defendant’s dangerousness to the community, regardless of whether he was a flight risk. The trial court’s findings in that regard were not against the manifest weight of the evidence. Accordingly, we conclude that the detention order was not an abuse of discretion.

¶ 41 CONCLUSION

¶ 42 For the foregoing reasons, we affirm the circuit court’s November 30, 2023 pretrial detention order.

¶ 43 Affirmed.