

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 22 CR 0293801
)	
XAVIER GATEWOOD,)	Honorable
)	Michele Pitman,
Defendant-Appellant.)	Judge, Presiding.
)	

JUSTICE C.A. WALKER delivered the judgment of the court.
Presiding Justice Oden Johnson and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not abuse its discretion in denying Appellant’s pretrial release under the Pretrial Fairness Act.

¶ 2 Defendant Xavier Gatewood appeals the circuit court's order continuing his pretrial detention pursuant to article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110 *et al.* (West 2022)), as amended by Public Act 101-652, § 10-255 (eff. Jan. 1, 2023), and Public Act 102-1104, § 70 (eff. Jan 1, 2023) (commonly referred to as the “Safety, Accountability, Fairness and Equity-Today (SAFE-T) Act” (Act)). On appeal, Gatewood argues that the State failed to demonstrate through clear and convincing evidence that (1) the proof is evident or the

presumption is great that the defendant committed the offenses charged; (2) he poses a real and present threat to the safety of any person(s) or the community; and (3) no condition or combination of conditions can mitigate the real and present threat to the safety of any person(s) or the community posed by his release. Gatewood also argues that the court erred in finding no condition or combination of conditions would reasonably ensure his appearance for later hearings or prevent him from being charged with a subsequent felony or Class A misdemeanor. For the following reasons, we affirm the circuit court's judgment.

¶ 3

I. BACKGROUND

¶ 4 Gatewood was charged with multiple counts of first-degree murder, attempted first-degree murder, aggravated battery, and aggravated discharge of a firearm. The circuit court ordered Gatewood held in custody without bail. On October 11, 2023, Gatewood filed a petition for pretrial release given Illinois no longer authorized the imposition of monetary bail pursuant to the Act and the State did not file a petition seeking to deny his pretrial release. The State filed a petition alleging pretrial detention was warranted where (1) Gatewood committed offenses qualifying for denial of pretrial release, (2) he poses a real and present threat to the safety of any person(s) or the community, and (3) no condition or combination of conditions can mitigate the risk to safety posed by his release.

¶ 5 At the hearing on the petition on January 3, 2024, the State proffered the following allegations. On the evening of February 17, 2022, Gatewood went to a residence located at the 3000 block of Halsted Street in Steger, Illinois. He drove a red Honda Civic with an Indiana license plate registered to him. A witness observed Gatewood arrive in the Honda Civic and noted a partial license plate number. Gatewood walked up to the Halsted residence and knocked on the back door. Anthony Perez opened the door, and Gatewood immediately fired several gunshots. One of the shots struck Anthony in the back of the head resulting in his death. Anthony's mother, Maria Perez,

pushed Anthony out of the way and was shot in her groin area. Gatewood then ran back to the Honda Civic and drove away. Police responded to the incident and discovered Anthony lying face down between the kitchen and the utility room, and he was pronounced dead on the scene. Maria suffered two gunshot wounds to her upper thigh leg area. Police also discovered that one of the family dogs had been shot in the neck. Several individuals were also present including Anthony's brother; his girlfriend, Brianna; and a friend of the family. Brianna was also Gatewood's ex-girlfriend.

¶ 6 A witness was in the neighborhood when he saw a man dressed in black exit a red car and walk toward the Halsted residence. The witness then heard a pop and saw the man return to the red car and drive away from the residence. Gas station surveillance and red light cameras captured Gatewood's Honda Civic go to a gas station after the shooting. Anthony's brother identified Gatewood as the person who came to the residence the day before the shooting. That day, Gatewood arrived in the Honda Civic and asked to speak with Anthony. A friend of the family identified Gatewood as the shooter. Brianna identified Gatewood as someone who picked her up from the Halsted residence in a red car on prior occasions. Maria identified Gatewood as the shooter and someone who had been to the Halsted residence to pick up Brianna.

¶ 7 Cell site analysis revealed that Gatewood's cell phone was pinging on and around Steger at the time of the shooting. The police issued an arrest warrant for Gatewood on February 2, 2022, and located a red Honda Civic in front of Gatewood's residence in Hobert, Indiana. The police observed Gatewood exit his residence, enter the Honda Civic, and drive away. A brief pursuit occurred between Gatewood and the police. Once police executed a stop, several officers tried to get Gatewood out of the car. As Gatewood attempted to flee, he pushed the car into gear and crashed it. Gatewood continued to fight with the officers despite their demands to stop resisting. The officers eventually placed Gatewood into custody.

¶ 8 The State proffered that Gatewood was charged with felony resisting after his arrest. Defense counsel stated Gatewood “didn’t get charged with anything in Indiana as a result of this stop.” The State informed the court that the LEADS system showed Gatewood had a “felony resisting arrest for this offense on the date of February 24, 2022, out of the Hobart Police Department in Indiana.”

¶ 9 The State further proffered that the police executed a search warrant of Gatewood’s home and recovered a Radical Rifle that was reported stolen, a black Glock 43, firearm ammunition, a Glock magazine, rifle rounds, and “numerous types of ballistic evidence.” Forensic testing revealed that the fired cartridge casings found after the shooting matched the firearm that was recovered inside the master bedroom of Gatewood’s home. The State proffered that Gatewood has no prior criminal history, but Gatewood has failures to appear for traffic offenses in his background.

¶ 10 The State argued that the proffered allegations showed that the proof is evident or the presumption is great that Gatewood committed first-degree murder of Anthony and attempted first-degree murder of Maria and that Gatewood posed a real and present threat to the safety of any person(s) or the community.

¶ 11 In mitigation, Defense counsel stated Gatewood was 31 years old and has no criminal background. He graduated from high school, attended college for one year, and then enlisted in the Army. While in the Army, Gatewood took college equivalent communications classes. He was released from the Army with an honorable discharge. Gatewood financially supports his three children and is responsible for their day-to-day activities. Aside from his first job as a bus monitor with Positive Connection, Gatewood has been self-employed. He has an agricultural consulting firm and published a book about growing cannabis. His knowledge about agricultural issues includes cannabis, brewing beer, and growing strawberries and blueberries. While in custody,

Gatewood received several program certificates for his participation in a podcast and in religion, black history studies, business, a 12-step program, aggression replacement theory, PTSD for vets, career exploration, second opportunity program, Mexican cooking, parenting classes, parenting while incarcerated, stress and anger management, social studies, legal studies, mathematics, Spanish, creative writing, and photography.

¶ 12 Several people wrote letters of recommendations on behalf of Gatewood. Joshua Kivo, Gatewood's lifelong friend and business associate, expressed an intent to hire Gatewood if he was released. Gatewood would do website and social media management for Joshua's tattoo and piercing business. The other letters stated Gatewood was a good father in difficult circumstances. One of his children has special needs, and it is a lot of work for Gatewood. He is responsible for his children's everyday needs. Gatewood has good moral character and a positive attitude.

¶ 13 Regarding the shooting incident, defense counsel reiterated that Gatewood had no criminal background and was a military veteran. Gatewood had a firearm carry permit from Indiana and had been to the Halsted residence on multiple occasions because he was concerned about Brianna's well-being as her friend. Gatewood never intended for Maria to get shot and called 911 after he left the incident. No one told Gatewood to go anywhere or stay at his location. He also contacted his attorney, who went to the police station and learned that there was no warrant for Gatewood. On his attorney's advice, Gatewood went home. Counsel informed the court that he would be filing a self-defense answer.

¶ 14 Counsel stated that the police stop was not a pursuit. Gatewood was driving his five-year-old son to school when the police initiated the stop. During the stop, Gatewood's foot came off the brake when the police set a K-9 on him and discharged a firearm causing the car to roll and crash. Countering the State's proffer regarding the firearms found at Gatewood's residence, counsel explained that he legally owned all the firearms. Gatewood co-owned a firearm with a former

girlfriend who later reported stolen. Gatewood was never charged with having possession of a stolen weapon.

¶ 15 At the conclusion of the proffers, the court denied pretrial release. In making its ruling, the court considered the nature of the charged offenses, Gatewood’s history and characteristics, his numerous letters and certificates, the safety of the individuals involved in the case, “whether [Gatewood] is known to possess or to have access to weapons,” and several factors in evaluating Gatewood’s dangerousness. While it recognized the “positive things” referenced by defense counsel, including Gatewood’s military history, his lack of criminal history, and the various mitigation evidence, the court noted Gatewood was charged and identified by several witnesses as the person who entered the Halsted residence and shot two people.

¶ 16 The court found the State proved by clear and convincing evidence that (1) the proof is evident and the presumption is great that Gatewood committed first-degree murder, attempted murder, and aggravated discharge of a firearm; (2) he poses a real and present threat to the safety of any person(s) or the community; and (3) no condition or combination of conditions can mitigate the real and present threat to the safety of any person(s) or the community. This ruling was based on the witnesses’ identification of Gatewood as the shooter and his red Honda Civic at the scene of the shooting along with the firearms recovered at his residence and the forensic evidence. Relying on the fact that Gatewood tried to flee the police and was charged with felony resisting in Indiana as well as the safety of Maria, the court found no less restrictive conditions would not avoid a real and present threat to the safety of any person(s) or the community. This appeal follows.

¶ 17

II. JURISDICTION

¶ 18 The circuit court denied Gatewood pretrial release on January 2, 2024. Gatewood appealed on January 11, 2024. We have jurisdiction to review the court’s order pursuant to article VI, section

6 of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rule 604(h) (eff. Dec. 7, 2023).

¶ 19

III. ANALYSIS

¶ 20 On appeal from a denial of pretrial release, Gatewood argues the State failed to prove by clear and convincing evidence that: (1) the proof is evident or the presumption is great that he committed the offenses charged; (2) he poses a real and present threat to the safety of any person(s) or the community; and (3) no condition or combination of conditions can mitigate the threat to the safety of any person(s) or the community posed by his release. Gatewood also argues that the circuit court erred in finding that no condition or combination of conditions would reasonably ensure his appearance for later hearings or prevent him from being charged with a subsequent felony or Class A misdemeanor.

¶ 21 Pretrial release is governed by article 110 of the Code. 725 ILCS 5/110-1 *et seq.* (West 2022). Under the Code, all persons charged with an offense are eligible for pretrial release before conviction. 725 ILCS 5/110-2(a) (West 2022). At the hearing, the State bears the burden of proving by clear and convincing evidence that (1) the defendant committed a detainable offense listed in the statute; (2) the defendant poses a real and present threat to the safety of any person, persons, or the community, based on the specific, articulable facts of the case; and (3) no condition or combination of conditions can mitigate the real and present threat or the defendant's willful flight. *Id.* § 6.1(e). Clear and convincing evidence is “ ‘that quantum of proof that leaves no reasonable doubt in the mind of the fact finder about the truth of the proposition in question.’ ” *People v. Castillo*, 2024 IL App (1st) 232315, ¶ 23.

¶ 22 If the circuit court determines that the defendant should be denied pretrial release, the court is required to make a written finding summarizing the reasons for denying pretrial release, including why less restrictive conditions would not avoid a real and present threat to the safety of

any person or persons or the community. *Id.* § 6.1(h)(1). The circuit court's factual findings regarding whether the State presented clear and convincing evidence that mandatory conditions of release would fail to protect any person(s) or the community or the defendant has a high likelihood of willful flight to avoid prosecution is reviewed under the manifest weight of the evidence standard. *Id.* A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented. *People v. Krisik*, 2018 IL App (1st) 161265, ¶ 53 (citing *People v. Deleon*, 227 Ill. 2d 322, 332 (2008)).

¶ 23 The circuit court's ultimate determination regarding pretrial release is reviewed under the abuse of discretion standard. *People v. Trottier*, 2023 IL App (2d) 230317, ¶ 13. An abuse of discretion occurs where the circuit court's decision is arbitrary, unreasonable, or fanciful or where no reasonable person would have taken the position adopted by the circuit court. *People v. Heineman*, 2023 IL 127854, ¶ 59.

¶ 24 A. Clear and Convincing Evidence of Charged Offenses

¶ 25 Gatewood argues the State failed to prove by clear and convincing evidence that the proof is evident or the presumption is great that he committed the offenses charged. He also claims that the court made "adverse inferences" from the fact that he alleged self-defense and called the police after the incident. Gatewood contends that his self-defense claim constitutes a presumption of innocence.

¶ 26 We find the evidence clearly and convincingly showed that the proof is evident or the presumption is great that Gatewood committed the offenses charged. Gatewood was charged with first-degree murder, attempted first-degree murder, aggravated battery, and aggravated discharge of a firearm. The State proffered that a witness saw Gatewood arrive at the Halsted residence in a red Honda Civic on the evening of February 17, 2022. Gatewood walked up to the Halsted

residence and knocked on the back door. Anthony opened the door, and Gatewood immediately fired several gunshots. Anthony was shot in the back of the head resulting in his death. Maria was shot in her groin area as she went to aid Anthony. Gatewood then ran back to the Honda Civic and drove away. Two witnesses identified Gatewood as the shooter, and two other witnesses had previously observed Gatewood at the Halsted residence on prior occasions. Cell site analysis revealed that Gatewood's cell phone was pinging on and around Steger at the time of the shooting. Forensic testing revealed that the fired cartridge casings found after the shooting matched the firearm that was recovered inside the master bedroom of Gatewood's home. Given the multiple witness identifications and the forensic evidence, we find the State's proffered allegations sufficiently met the element.

¶ 27 Gatewood's self-defense claim does not negate this finding. The State only needs to show by clear and convincing evidence the proof is evident or the presumption is great that Gatewood committed the charged offenses. In raising a claim of self-defense, Gatewood "presupposes that the accused committed the act and invokes the defense as a justification." (Internal quotation marks omitted.) *People v. Lewis*, 2015 IL App (1st) 122411, ¶ 59. Whether Gatewood was legally justified in committing the offenses is of no consequence to the State's burden on the element. Therefore, the circuit court's finding that the State met its burden on the element was not against the manifest weight of the evidence.

¶ 28 B. Clear and Convincing Evidence of Real and Present Threat to Safety

¶ 29 Gatewood asserts the State failed to prove by clear and convincing evidence that Gatewood poses a real and present threat to the safety of any person(s) or the community because he proffered that he acted in self-defense and he called the police after the incident. Gatewood also claims that the circuit court improperly relied on the fact that he possessed firearms in his home where he proffered that he was a legal firearm owner.

¶ 30 In determining whether a defendant poses a real and present threat to any person(s) or the community, the circuit court may consider several factors including: (1) the nature and circumstances of the charged offense and whether it was a crime of violence involving a weapon; (2) the defendant's history and characteristics; (3) the identity of any person or persons to whose safety the defendant is believed to pose a threat; and (4) whether the defendant is known to possess or have access to any weapons or weapons. 725 ILCS 5/110-6.1(g) (West 2022).

¶ 31 We find the State's proffered allegations clearly and convincingly showed Gatewood poses a real and present threat to the safety of any person(s) or the community. The State proffered allegations regarding the nature of the offense, including information from witnesses that Gatewood went to the Halsted residence and immediately fired shots striking and killing Anthony and striking Maria multiple times. The State also proffered allegations regarding the events surrounding Gatewood's arrest and the weapons found at his home, including a firearm that was linked to cartridge cases that police recovered after the shooting. The circuit court found that Gatewood poses a real and present threat to the safety of person(s) or the community based on the witnesses who identified Gatewood as the shooter and his Honda Civic at the scene of the shooting, along with the firearms recovered at Gatewood's residence. Based on these proffered allegations, the State met its burden on the element.

¶ 32 Gatewood's proffered allegations do not refute this finding. The court could reasonably conclude that Gatewood's claim of self-defense and 911 call after the shooting did not sufficiently undermine the State's proffered evidence. The court also could reasonably find that Gatewood's use of a firearm that resulted in the death of one victim and bodily injuries to another victim demonstrated that his firearm possession posed a real and present threat to the safety of and person(s) and the community, regardless of his legal ownership status. As such, the circuit court's

finding that the State met its burden on this element was not against the manifest weight of the evidence.

¶ 33 C. Conditions or Combination of Conditions to Mitigate the Real and Present Threat of Safety

¶ 34 Gatewood asserts that the State failed to prove by clear and convincing evidence that no condition or combination of conditions can mitigate the real and present threat of safety to any person(s) or the community. Gatewood claims that the court's reliance on the facts pertaining to his arrest were improper because the proffered evidence showed he did not flee from the police and was not charged with resisting arrest.

¶ 35 The conditions referenced in this element pertain to the pretrial release conditions under Section 110-10 of the Code. Section 110-10(a) lists several mandatory conditions that must be imposed for pretrial release. 725 ILCS 5/110-10(a) (West 2022). Section 110-10(b) lists several discretionary conditions that the trial court may impose, which include but are not limited to (1) restrictions on leaving Illinois without leave of court, (2) prohibitions on possessing firearms or other dangerous weapons, and (3) prohibition on communicating with particular persons or classes of persons. 725 ILCS 110-10(b)(0.05), (2), (3) (West 2022).

¶ 36 Gatewood claims that *People v. Stock*, 2023 IL App (1st) 231753, is persuasive. At a hearing on a challenge to pretrial detention, the State proffered the nature of the charge, the complaining witness's self-transportation to the hospital, and the defendant's lack of criminal background. *Id.* ¶¶ 5, 17. Based on the proffered allegations, the circuit court denied pretrial release. *Id.* ¶ 8. On appeal, the defendant argued that the State failed to prove that no condition or conditions could mitigate the real and present threat to the safety of any person(s) or the community. *Id.* ¶ 9. This court agreed, finding that the State failed to present any evidence on the element despite its proffered allegations on the facts of the case. *Id.* ¶¶ 17, 19. The court held that

“bare allegations that defendant has committed a violent offense are not sufficient to establish this element.” *Id.* ¶ 18. The court explained that more evidence is required to justify that no conditions can mitigate the threat. *Id.*

¶ 37 Here, the State’s proffered allegations provide the additional evidence lacking in *Stock* to overcome its burden of proof on the element. In determining the State met the element, the circuit court relied on the State’s proffered evidence that Gatewood tried to flee his arrest and was subsequently charged with felony resisting.¹ These allegations exhibit Gatewood’s noncompliance with authority and, in turn, inability to comply with conditions set forth in section 110-10(b). See *People v. Reed*, 2023 IL App (1st) 231834, ¶ 32 (determining court’s finding that no conditions could mitigate the real and present threat proper where the finding was based on, *inter alia*, how the defendant conducted himself with police and the things he said to police prior to his arrest).

¶ 38 Gatewood’s proffered allegations fail to undermine this finding. The circuit court’s finding that Gatewood tried to flee from the police was proper where it was based on the State’s proffer that a brief pursuit occurred between Gatewood and the police and several officers tried to get Gatewood out of the car while he attempted to flee and place the car into gear. While Gatewood’s proffer contradicts these allegations, the court had discretion to weigh the controverted evidence, and we cannot say the court’s decision to favorably weigh and rely on the State’s proffered evidence in its ruling was unreasonable, particularly where such finding is not against the manifest weight of the evidence. Under the manifest weight of the evidence standard, “ [a] reviewing court will not substitute its judgment for that of the trial court regarding the credibility of witnesses, the

¹ The court also found that Gatewood would be a threat to the safety of the surviving victim, Maria Perez, upon release in its oral pronouncement. See *People v. Andino-Acosta*, 2024 IL App (2d) 230463, ¶ 19 (finding the circuit court’s written findings must be read in conjunction with its oral statements).

weight to be given to the evidence, or the inferences to be drawn.’ ” *In re Parentage of W.J.B.*, 2016 IL App (2d) 140361, ¶ 25 (quoting *Best v. Best*, 223 Ill. 2d 342, 350-51 (2006)).

¶ 39 Furthermore, we find the proffered evidence surrounding the events of Gatewood’s arrest sufficiently established this element despite the confusion surrounding Gatewood’s alleged felony resisting charge. Gatewood claims that he was never charged with felony resisting. The record shows, during the defense’s proffer, counsel stated Gatewood “didn’t get charged with anything in Indiana as a result of this stop.” The State informed the court that the LEADS system showed Gatewood had a “felony resisting *arrest* for this offense on the date of February 24, 2022, out of the Hobart Police Department in Indiana.” Defense counsel then stated that he did not realize Gatewood had been charged with felony resisting. The trial court subsequently relied on Gatewood being charged with felony resisting in finding no conditions or combination of conditions could mitigate the real and present threat to safety. While the record is unclear as to whether Gatewood was arrested or charged with felony resisting, either fact supports the State’s proffered version of events and demonstrates Gatewood’s noncompliance with authority sufficient to satisfy the element. Hence, the circuit court’s finding that the State met its burden on the element was not against the manifest weight of the evidence.

¶ 40 D. Conditions or Combination of Conditions to Reasonably Ensure Defendant’s Appearance or Prevent Defendant From Being Charged With Subsequent Offense

¶ 41 Lastly, Gatewood argues that the circuit court erred in determining no condition or combination of conditions would reasonably ensure his appearance for later hearings or prevent him from being charged with a subsequent felony or Class A misdemeanor. This element applies in situations where the defendant’s pretrial release is revoked, which is not the issue before us. See 725 ILCS 5/110-6(a), (j) (West 2022). As such, we need not address this issue. In light of our ruling that the circuit court’s findings on the elements under section 110-6.1(1)-(3) was not against

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the manifest weight of the evidence, the circuit court's decision denying pretrial release was not an abuse of discretion.

¶ 42

IV. CONCLUSION

¶ 43 We hold that the circuit court's findings that the State proved by clear and convincing evidence the elements under section 110-6.1(e)(1)-(3) were not against the manifest weight of the evidence, and the court's decision to deny pretrial release was not an abuse of discretion. Accordingly, we affirm the circuit court's judgment.

¶ 44 Affirmed.