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

No. 130946

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. TYRELL COOPER, Defendant-Appellee.	))))))))))	Appeal from the Appellate Court of Illinois, Fourth District, No. 4-24-0589 There on Appeal from the Circuit Court of the Fourteenth Judicial Circuit, Rock Island County, Illinois, No. 2024 CF 244 The Honorable Frank R. Fuhr, Judge Presiding.

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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POINTS AND AUTHORITIES

NATURE OF THE CASE

Defendant was charged with aggravated battery with a firearm, aggravated discharge of a firearm, and unlawful possession of a weapon by a felon. At his first appearance on Saturday morning, the People filed a petition to deny pretrial release and were granted a continuance. The circuit court held the detention hearing on Monday afternoon and granted the petition. The appellate court reversed, holding that the circuit court failed to hold the hearing within 48 hours of defendant's first appearance, and remanded for the circuit court to order defendant's release. The People appeal from this judgment. No question is raised on the charging instrument.

ISSUES PRESENTED FOR REVIEW

1. Whether the circuit court correctly concluded that it held the detention hearing within 48 hours of defendant's first appearance, as required by 725 ILCS 5/110-6.1(c)(2).

2. Whether, even if the detention hearing was late, defendant is not entitled to release because the statutory timing requirement is directory rather than mandatory.

3. Whether defendant forfeited his challenge to the timeliness of the hearing by failing to object.

JURISDICTION

Appellate jurisdiction lies under Supreme Court Rules 315 and 612(b).

This Court granted leave to appeal on September 16, 2024.

STATUTES INVOLVED

725 ILCS 5/109-1 (Person arrested; release from law enforcement custody and court appearance; geographic constraints prevent in-person appearances).

(a) A person arrested with or without a warrant for an offense for which pretrial release may be denied under paragraphs (1) through (6) of Section 110-6.1 shall be taken without unnecessary delay before the nearest and most accessible judge in that county, except when such county is a participant in a regional jail authority, in which event such person may be taken to the nearest and most accessible judge, irrespective of the county where such judge presides, within 48 hours, and a charge shall be filed. . . .

* * *

(b) Upon initial appearance of a person before the court, the judge shall:

(1) inform the defendant of the charge against him and shall provide him with a copy of the charge;

(2) advise the defendant of his right to counsel and if indigent shall appoint a public defender or licensed attorney at law of this State to represent him in accordance with the provisions of Section 113-3 of this Code;

(3) schedule a preliminary hearing in appropriate cases;

(4) admit the defendant to pretrial release in accordance with the provisions of Article 110 of this Code, or upon verified petition of the State, proceed with the setting of a detention hearing as provided in Section 110-6.1; . . . .

* * *

725 ILCS 5/110-6.1 (Denial of pretrial release).

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(c) Timing of petition.

(1) A petition may be filed without prior notice to the defendant at the first appearance before a judge, or within the 21 calendar days, except as provided in Section 110-6, after arrest and release of the defendant upon reasonable notice to defendant; provided that while such petition is pending before the court, the defendant if previously released shall not be detained.

(2) Upon filing, 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.

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STATEMENT OF FACTS

A. At defendant's first appearance on Saturday morning, the circuit court continued his pretrial detention hearing to Monday afternoon.

Defendant is alleged to have committed one count each of aggravated battery with a firearm, a Class X felony; aggravated unlawful discharge of a firearm, a Class 1 felony; and unlawful possession of a weapon, a Class 3 felony. C5-7.[1] The offenses are alleged to have occurred on March 28, 2024, a

[1] "C_," "R_," and "A_" refer, respectively, to the common law record, report of proceedings, and appendix to this brief.

Thursday. *Id.* On Saturday, March 30, 3024, an information was filed, *id.*, and defendant made his first appearance in court, A11-16; *see* 725 ILCS 5/109-1(a) (requiring that arrested defendant be brought before judge for first appearance "without unnecessary delay"). The circuit court found probable cause to support the charges. C8-9.

At that same appearance, the People filed a petition to deny pretrial release, C13-14; *see* 725 ILCS 5/110-6.1(c)(1) (People may file detention petition "without prior notice to the defendant at the first appearance before a judge"), and requested a continuance to Monday, April 1, 2024, at 1:30 p.m., A14-15; *see* 725 ILCS 5/110-6.1(c)(2) ("the court shall immediately hold a hearing on the petition unless a continuance is requested"). The prosecutor explained, "We believe that would be within the time frame allowed by the statute," A15, which, in defendant's case, was 48 hours. *See* 725 ILCS 5/110-6.1(c)(2) ("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.").

The court asked defense counsel for his position, and counsel responded, "Your Honor, for the record, we'd ask for immediate [hearing], but did receive notice of the hearing for Monday." A15. The court granted the continuance, set the hearing for 1:30 p.m. on Monday, and adjourned at 11:01 a.m. A15-16.

B. At the hearing, the circuit court ordered defendant detained, noting that he shot the victim three days after he was released on another charge with instructions to not possess a firearm.

At the April 1, 2024 hearing, defense counsel moved to strike the detention petition, arguing that the hearing was being held late. A22. Counsel appeared to acknowledge that it was a practice of the circuit court to exclude weekends from the 48-hour time-period. *Id.* ("I know that it is the position of the Circuit Court that at this time, *People v. McCarthy-Nelson* opinion, does not apply" and referencing "weekends"); *see People v. McCarthy-Nelson*, 2024 IL App (4th) 231582-U, ¶ 11 (holding that weekends are not excluded from statute's 48-hour period).[2] But counsel sought to "make the record and make the argument[ ] . . . that detention petitions must be heard in this case within 48 hours of their filing, not within two days, give or take a few hours, not within two business days not excluding holidays or weekends," but according to a "strict 48-hour rule." A22. According to defense counsel, because the petition was filed on Saturday morning and the hearing was taking place on Monday afternoon, the 48-hour requirement was violated. A22-23. The court denied the motion to strike and proceeded with the hearing, A23, at the conclusion of which the court entered an order of detention, A31.

[2] Counsel appeared to be referencing other cases in which counsel had appeared before the circuit court, as the Circuit Court of the Fourteenth Judicial Circuit has no administrative order or local rule governing time calculations in pretrial detention cases.

The prosecutor summarized the evidence in the case. The prosecutor noted that defendant had been charged in a separate case with unlawful possession of a weapon by a felon and possession of a stolen firearm. A21. He was released from custody on that offense on March 25, 2024. *Id.* Three days later, at around 10:20 p.m., officers received a report that gunshots had been fired at the residence defendant shared with his girlfriend. A20. At the scene, they learned that Brianna Sindt had parked on the street because she hoped to sell a car. *Id.* While she and a passenger were sitting in the vehicle, defendant came out of his residence and began firing a gun. *Id.* A bullet struck Sindt in her foot, breaking a bone. A20-21. Five shell casings were recovered and were consistent with having been fired from a 9-millimeter firearm that was found at defendant's residence. A21. Defendant admitted firing the shots, but claimed that he thought the victims were going to shoot at him. *Id.*

The court found sufficient proof "that [defendant] committed a qualifying offense, the aggravated battery with a firearm." A28. It further found "that [defendant] pose[d] a real and present threat to the safety of persons and the community." *Id.* And, in answering "whether or not there are any conditions that could be imposed that would mitigate those dangers," the court emphasized that defendant had demonstrated that he would not comply with court-ordered conditions:

> The problem is when you were released on March 25th in 24 CF 222, a condition of that release is that you not possess any

> weapons. That was a court order, just like any court order I issued today would be a court order. That court order you disobeyed within days. . . . [I]ndiscriminately firing five 9 mm rounds in a densely populated urban community, after being ordered not to possess a firearm, shows that to me there are no conditions that I could place on you that would prevent an unreasonable risk to the community or specific individuals.

A28-29.

In its written order, the circuit court checked a box confirming that "[a]s per 725 ILCS 5/110-6.1(c)(2), the hearing was held . . . [w]ithin 48 hours after filing." A31.

Defendant filed a notice of appeal pursuant to Supreme Court Rule 604(h), which included, among other arguments, that the circuit court's findings were not supported by the evidence and that the detention hearing was untimely. A34-39.

C. The appellate court found the detention hearing was late and ordered defendant's release.

Defendant filed a memorandum in the appellate court, in which he abandoned his substantive challenges to the detention order and claimed only that the hearing was untimely. A40-45.

The appellate court agreed and reversed, holding that the circuit court violated the strict timing requirements for the pretrial detention hearing. The appellate court cited *McCarthy-Nelson*, which held that 725 ILCS 5/110-6.1(c)(2) "'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.'" A4, ¶ 12 (quoting *McCarthy-Nelson*, 2024 IL App (4th) 231582-U, ¶ 11). And it again relied on that case to conclude that "the appropriate remedy for a failure to comply with the timing requirements of section 110-6.1(c)(2) is to remand the case for a hearing to determine the least restrictive conditions of the defendant's pretrial release." A6-7, ¶ 17 (citing *McCarthy-Nelson*, 2024 IL App (4th) 231582-U, ¶ 18). Accordingly, the appellate court "vacate[d] the trial court's detention order and remand[ed] with directions that the court promptly set the case for a hearing" at which it would release defendant. A7, ¶ 19.

In dissent, Justice Doherty agreed with the majority's conclusion that "the statute was not strictly complied with," A7, ¶ 22 (Doherty, J., dissenting), but would have held that defendant was not entitled to a remedy because the time limit was "directory," rather than "mandatory," A10, ¶ 30. Justice Doherty reasoned that section 110-6.1(c)(2) must be presumed to be "directory because it dictates a procedural step the court must take." A8-9, ¶ 26 (citing *Lakewood Nursing & Rehab. Ctr. v. Dept. of Health*, 2019 IL 124019, ¶ 29). And, confirming this directory reading, the statute provides no specific consequence for noncompliance with the 48-hour requirement. A9, ¶ 27. Nor, Justice Doherty also reasoned, would the rights the statute was intended to protect "generally be injured by a directory reading." A9, ¶ 28 (internal quotation marks omitted). Defendant "suffered no loss in terms of [his] substantive rights on the issue of detention." *Id.* Moreover, "both the

rights of the accused and the rights of the community are at stake," and "a mandatory interpretation would defeat the community's expectation that public safety will be considered before a defendant is released." A10, ¶ 29. In sum, because section 110-6.1(c)(2) was directory rather than mandatory, "[h]olding a hearing early Monday afternoon instead of late Monday morning should not be fatal to the court's obligation to address the detention issues on their merits." A10, ¶ 31.

STANDARDS OF REVIEW

Issues of statutory construction are reviewed de novo, *People v. Clark*, 2024 IL 130364, ¶ 15, including whether a statute is mandatory or directory, *People v. Geiler*, 2016 IL 119095, ¶ 17.

Whether defendant forfeited his claim presents a legal issue that is also reviewed de novo. *See People v. Brown*, 2020 IL 125203, ¶ 25.

ARGUMENT

I. The Circuit Court Correctly Determined That the Hearing Was Held Within the Requisite 48 Hours.

As an initial matter, the circuit court was correct that the detention hearing was held within the statutory time-period. The court believed that it had complied with the timing requirement. A31 (checking box confirming hearing was held "[w]ithin 48 hours after filing" of petition).

Although the People did not raise this argument in their appellate court memorandum or petition for leave to appeal, it is well established that "where the appellate court reverses the judgment of the trial court, and the

appellee in that court brings the case to this court as appellant, that party may raise any issues properly presented by the record to sustain the judgment of the trial court, even if the issues were not raised before the appellate court." *People v. Artis*, 232 Ill. 2d 156, 164 (2009). And parties cannot waive or forfeit the correct meaning of a statute, which does not vary from one case to the next. *See JPMorgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill. 2d 455, 462 (2010) ("To hold that canons of statutory construction are subject to forfeiture would mean that this court's construction of a particular statute could change from case to case depending on whether a party cited a particular [canon]."). This Court should consider the People's theory in the interest of maintaining a "sound and uniform body of precedent" on the proper interpretation of the pretrial detention statute. *People v. Jackson*, 2020 IL 124112, ¶ 118. Moreover, the omission of this issue from the PLA should not bar review, because the question of whether an error occurred is inextricably intertwined with the question presented in the PLA concerning what remedy is available for correcting that error. *See In re Rolandis G.*, 232 Ill. 2d 13, 37-38 (2008) (overlooking omission of argument from PLA because question of whether error was harmless was inextricably intertwined with question of whether error occurred at all).

Here, the circuit court correctly believed that the hearing was timely pursuant to section 110-6.1(c)(2). In construing that statute, this Court's "primary goal is to ascertain and give effect to the intent of the legislature."

People v. Grant, 2022 IL 126824, ¶ 24. The most reliable evidence of that intent "is the language of the statute itself, which must be given its plain and ordinary meaning." *Id.* It is a "fundamental rule of statutory interpretation that all the provisions of a statute must be viewed as a whole," and thus different provisions of a statute "will be considered with reference to one another to give them harmonious effect." *People v. McCarty*, 223 Ill. 2d 109, 133 (2006). Finally, statutory language must be construed to avoid absurd and unintended results. *People v. Davidson*, 2023 IL 127538, ¶ 18.

The statutory framework for pretrial detention requires that a first appearance be held within "48 hours" or "without unnecessary delay." 725 ILCS 5/109-1(a). At the first appearance, the court must either release defendant "or upon verified petition of the State, proceed with the setting of a detention hearing as provided in Section 110-6.1." *Id.* § 109-1(b)(4). "If a continuance [of the detention hearing] is requested and granted, the hearing shall be held *within 48 hours* of the defendant's first appearance" if a defendant is charged with serious felonies. *Id.* § 110-6.1(c)(2) (emphasis added).

This case turns on the meaning of the phrase "within 48 hours" in section 110-6.1(c)(2). Unlike the analogous federal detention statute, section 110-6.1(c)(2) provides no guidance as to how time is to be calculated, such as whether weekends and holidays should be excluded. *Compare* 18 U.S.C. § 3142(f)(2) (expressly excluding weekends and legal holidays from 72 hours

in which court must holding pretrial detention hearing after granting Government's motion for continuance), *with* 725 ILCS 5/110-6.1(c) (making no reference to weekends or holidays).

However, the Statute on Statutes instructs that "unless such construction would be inconsistent with the manifest intent of the General Assembly or repugnant to the context of the statute," 5 ILCS 70/1,

> 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.

Id. § 1.11. Because the pretrial detention statute does not expressly indicate how weekends and holidays are to be treated, applying the Statute on Statutes would not "be inconsistent with the manifest intent of the General Assembly or repugnant to the context of the statute," *id.* § 1, and its timing requirements therefore govern here.

Under those rules, the hearing was timely. Specifically, Saturday — as "the first day" — should be excluded from the calculation. *Id.* § 1.11. Starting the time-period on Sunday, as the Statute on Statutes requires, the pretrial detention hearing on Monday afternoon was held within 48 hours.

Because the period ended on Monday, and Monday was not a holiday, the additional provisions governing the exclusion of weekends and holidays

do not come into play.[3] But those additional provisions further illustrate why the general rules governing statutory timing requirements necessarily apply to hearings on petitions to deny pretrial detention. For example, if defendant's first appearance had instead been on Friday morning, and the court had been closed for the weekend, applying the Statute on Statutes would provide the only sensible result. In that scenario, a literal calculation of the 48-hour period would end on Sunday, when the court was closed. Indeed, if the first appearance had occurred late in the day on Friday, almost none of the 48-hour-period would have fallen during business hours, making it virtually impossible for circuit courts closed on weekends to comply with the timing requirements under some circumstances. But the Statute on Statutes makes clear that Sunday, like all days when court business is not being conducted (holidays and weekends), should be excluded, and the circuit court would have through the next business day to hold the detention hearing.

Not only does the appellate court's refusal to exclude holidays or weekends in calculating the 48 hours, *see McCarthy-Nelson*, 2024 IL App

[3] Even if the court were to conclude that the "first day" portion of the Statute on Statutes did not apply to pretrial detention hearings — though there is no basis to so hold — the portion of the Statute on Statutes that addresses weekends and holidays would apply here to render the hearing timely. Under that scenario, the "last day" of the 48-hour period would fall on Sunday, which would then be excluded. *See* 5 ILCS 70/1.11 (time period "include[es] the last" day "unless the last day is Saturday or Sunday or is a holiday, . . . and then it shall also be excluded").

(4th) 231582-U, ¶ 11, lead to the absurd results described above, but reading section 110-6.1(c) in this manner fails to consider the statutory scheme as a whole. When interpreting pretrial detention provisions, a court should consider the procedures in their entirety and not in isolation. *Clark*, 2024 IL 130364, ¶¶ 15-27 (relying on entirety of pretrial detention statute to ascertain when General Assembly intended People to file pretrial detention petitions). As the appellate court has already recognized, the other time periods set forth in the pretrial detention statute are not so strict. For example, the 48-hour timing requirement for a first appearance is not strictly enforced; the statute contemplates that a hearing may be timely if conducted "without unnecessary delay." *See, e.g.*, *People v. Flowers*, 2024 IL App (1st) 240426-U, ¶¶ 16-25 (recognizing that 48-hour period for first appearance is not rigid); *People v. Garduno*, 2024 IL App (1st) 240405-U, ¶¶ 11-17 (same); *People v. Williams*, 2024 IL App (1st) 232219-U, ¶¶ 28-30 (same). The appellate court has similarly concluded that the 72-hour requirement for hearings on petitions to revoke pretrial release need not be strictly enforced. *See People v. Green*, 2024 IL App (1st) 240211, ¶ 22 (technical violation of 72-hour requirement due to intervening court holiday and brief unavailability of judge did not require remedy because it did not "thwart the legislative intent to hold a prompt hearing before the judge most familiar with the matter"). It would be strange, indeed, for the General Assembly to allow reasonable leeway in setting both first appearances and hearings on petitions to revoke

pretrial release — such as by permitting delays due to court holidays — but permit no such leeway for continued hearings on petitions for pretrial detention.

Moreover, to read the section 110-6.1(c) as never excluding weekends or holidays would infringe on courts' authority to set their own schedules and violate the Illinois Constitution's separation-of-powers provision. The Illinois Constitution of 1970 sets forth the authority of the legislature and the judiciary in article IV and article VI, respectively. *People v. Mayfield*, 2023 IL 128092, ¶ 24. Questions arising from the overlapping exercise of legislative and judicial power are resolved according to the separation-of-powers provision, which provides: "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another." Ill. Const. 1970, art. II, § 1.

Article VI vests the Chief Judge of each circuit with "'general administrative authority over his court, including authority to provide for divisions, general or specialized, and for appropriate times and places of holding court.'" *Mayfield*, 2023 IL 128092, ¶ 28 (quoting Ill. Const. 1970, art. VI, § 7(c)). That authority is plainly implicated here, given that at least one circuit court, the Circuit Court of Champaign County, has provided by administrative order that "[i]f a detention hearing is continued from the initial appearance, up to 48 hours, the time frame shall exclude weekends and holidays pursuant to the Statute on Statutes as well as the Court's

authority to set hours and days of Court operation." A50 (Champaign Cnty. Circuit Court Admin. Order 2022-8, ¶ 7 (entered Dec. 29, 2022)). In instances like this, "'[w]here matters of judicial procedure are at issue,'" the legislature is limited to "'enact[ing] laws that complement the authority of the judiciary or that have only a peripheral effect on court administration.'" *Mayfield*, 2023 IL 128092, ¶ 30 (quoting *Kunkel v. Walton*, 179 Ill. 2d 519, 528 (1997)). And if a statute pertaining judicial procedure appears to conflict with a rule of the judiciary, this Court will seek to reconcile the legislation with the judicial rule, if reasonably possible. *Id*.

Here, it is reasonably possible to reconcile the legislation requiring a hearing within 48 hours with judicial rules excluding days on which the courts are not open for business (as exemplified by Champaign County's administrative order and as implicitly applied by the circuit court in this case) by applying the Statute on Statutes, which expressly provides that court actions need not be performed on weekends or holidays. And if such reconciliation were impossible, any judicial rule on scheduling would control over the statute. *See id.* ¶ 3 (statute must give way to judicial rule on matter of scheduling).

The appellate court's holding ignores this constitutional requirement. In *McCarthy-Nelson*, for example, the appellate court deemed the pretrial detention hearing untimely because the circuit court was closed on December 25 and 26 for the Christmas holiday. 2024 IL App (4th) 231582-U, ¶¶ 12-13.

It was error for the appellate court to read the statute to infringe on the circuit court's discretion to set times for holding court. It is reasonable to conclude that the General Assembly intended that pretrial detention hearings, like other court hearings, be held on the next available business day pursuant to the Statute on Statutes. Accordingly, this Court should adopt that construction of the section 110-6.1(c)(2), which avoids any violation of the separation-of-powers doctrine.

And because defendant's detention hearing was timely when section 110-6.1(c)(2) is interpreted consistently with the Statute on Statutes, the appellate court erred by reversing the circuit court's judgment.

II. Even If the Appellate Court Correctly Found That the Hearing Was Late, Defendant Was Not Entitled to Release Because the Timing Requirement Is Directory Rather Than Mandatory.

Even if the appellate court were correct to conclude that the hearing was held outside of the requisite 48-hour window, the consequence of such an error should not have been defendant's release because the rule is directory in nature. "Once a violation [of a timing requirement] has been established, the court must determine the consequence of the violation." *People v. Ziobro*, 242 Ill. 2d 34, 43 (2011). The answer turns on whether the rule is "mandatory" or "directory." *Id.* A rule is mandatory if the underlying intent "dictates a particular consequence for failure to comply with the provision." *People v. Delvillar*, 235 Ill. 2d 507, 514 (2009). Conversely, it is directory if "no specific consequence is triggered by the failure to comply." *Id.* at 515. If

the rule is directory, then no remedy is "automatic"; instead, a defendant must show that the rule violation resulted in prejudice. *Ziobro*, 242 Ill. 2d at 45-46.

Notwithstanding this Court's clear precedent, the appellate court majority did not consider the People's argument that the 48-hour rule is directory. *See* A48. Instead, the majority relied on *McCarthy-Nelson*, A6-7, ¶ 17, which similarly had not addressed whether the 48-hour rule is mandatory or directory. *See McCarthy-Nelson*, 2024 IL App (4th) 231582-U, ¶¶ 14-18 (citing in support of its remedy only *People v. Gil*, 2019 IL App (1st) 192419, which required defendant's release on bond where People wholly failed to comply with procedures for revoking bail). Because the timing requirement is plainly directory, the appellate court's unreasoned remedy — vacating the circuit court's detention order and ordering defendant's release — was erroneous.

As the dissenting justice correctly explained, A8-9, ¶ 26 (Doherty, J., dissenting), procedural commands to governmental entities are presumed to be directory. *Delvillar*, 235 Ill. 2d at 517. This presumption is overcome only if (1) "there is negative language prohibiting further action in the case of noncompliance," or (2) "when the right the provision is designed to protect would generally be injured under a directory reading." *Id.*

Here, the pretrial detention statute provides no consequence for failure to comply with the 48-hour requirement, confirming that its command is

intended to be directory, rather than mandatory. A9, ¶ 27 (Doherty, J., dissenting). The statute states only that a hearing "shall" be held within 48 hours. 725 ILCS 5/110-6.1(c)(2). It does not specify that the failure to comply with the timing requirement requires dismissal of the People's petition, defendant's release, or any other consequence, as would render the rule mandatory. *See, e.g., In re M.I.*, 2013 IL 113776, ¶ 20 (deeming 60-day requirement for holding hearing on extended juvenile jurisdiction directory where statute did not prohibit late hearing or compel dismissal of motion if time limit breached).

Indeed, as explained, *supra* p. 14, the appellate court has correctly held that a similarly worded 72-hour requirement for hearings on petitions to revoke pretrial release, *see* 725 ILCS 5/110-6(a), is directory, observing that this related statute "lacks any negative language prohibiting further action in the event the hearing is not held within 72 hours of the filing of the State's petition" and reasoning that "[h]ad the legislature intended a mandatory reading, it could have written, for example, that any detention order imposed is void if the hearing was held more than 72 hours after the filing of the State's motion." *Green*, 2024 IL App (1st) 240211, ¶ 20. Here, too, the General Assembly could have used express language to require that defendants be released if a timely hearing is not held, as it has done with respect to juveniles. *See* 705 ILCS 405/5-415 (setting 40-hour limit for initial detention hearing and specifying that "[t]he minor must be released from

custody at the expiration of the 40 hour period specified by this Section if not brought before a judicial officer within that period"). The absence of any such language here demonstrates that the 48-hour time limit is intended to be directory.

Nor is a "mandatory" reading of the rule required on the principle that any violation of the rule would injure the rights the rule is designed to protect. A9, ¶ 28 (Doherty, J., dissenting). As the appellate court observed in *Green*, the pretrial detention statute is "designed to protect victims and the community" from dangerous individuals while also providing for "prompt hearings." 2024 IL App (1st) 240211, ¶ 21. "[A] strict mandatory construction" of section 110-6.1(c)(2)'s timing requirements — which provide for mandatory release of dangerous felons without regard to public safety even for minor delays — would not "achieve the purpose of the statute." *Id.* Rather, reading section 110-6.1(c)(2) as directory would properly balance the dual purposes of the pretrial detention statute, encouraging "prompt hearings" while protecting victims and the community from the release of defendants whom the People can prove should be subject to detention.

The contrary result would be absurd. In *United States v. Montalvo-Murillo*, 495 U.S. 711 (1990), the United States Supreme Court declined to grant any remedy after a federal court had similarly failed to conduct a detention hearing within the time limits set forth in the relevant federal statute, *id.* at 716. The Supreme Court observed that "[t]here is no

presumption or general rule that for every duty imposed upon the court or the Government and its prosecutors there must exist some corollary punitive sanction for departures or omissions, even if negligent." *Id.* at 717. And "[a]n order of release in the face of the Government's ability to prove at once that detention is required by the law has neither causal nor proportional relation to any harm caused by the delay in holding the hearing." *Id.* at 721; *see also State v. Heredia*, 81 A.3d 1163, 1175-76 (Conn. 2013) (violation of Connecticut rule requiring probable cause hearing within 48 hours did not require release, especially given that this remedy "may place the community at large in jeopardy").

Reading the 48-hour provision as mandatory would create the further absurdity of treating delays in complying with this section of the pretrial detention statute more seriously than delays in first appearances for judicial determinations of probable cause. *See* 725 ILCS 5/109-1(a). This provision, of course, safeguards the Fourth Amendment right to a prompt probable cause determination, *see Gerstein v. Pugh*, 420 U.S. 103, 126 (1975), and prevents law enforcement from subjecting detainees to lengthy custodial questioning, *see People v. Williams*, 230 Ill. App. 3d 761, 779 (1st Dist. 1992). However, a violation of 725 ILCS 5/109-1(a) provides no automatic remedy. *See People v. Soloman*, 116 Ill. App. 3d 481, 485 (5th Dist. 1983). For example, it does "does not, by itself, obviate a confession or render an otherwise voluntary confession inadmissible at trial." *People v. Ballard*, 206

Ill. 2d 151, 176 (2002). If a violation of the statutory provision intended to protect Fourth Amendment rights does not compel an automatic remedy, then a violation of a provision that is *not* grounded in a constitutional right should not require such an extreme remedy.

In sum, this Court should construe the 48-hour requirement as directory rather than mandatory because the plain language of section 110-6.1(c)(2) reflects a directory intent, and a directory construction avoids absurd results.[4]

III. Defendant Forfeited Any Claim That He Is Entitled to Release Based on the Timing of the Hearing Because He Failed to Make a Contemporaneous Objection.

Even if the appellate court were correct that the consequence of failing to set a hearing within 48 hours should be release without regard to a defendant's dangerousness, this Court should still reverse because defendant forfeited any claim of error when he failed to object that the hearing fell outside of the required time limit.[5] To hold otherwise would "open a new

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[4] If there is any doubt as to section 110-6.1(c)(2)'s directory nature, such a construction offers another reasonable way to reconcile section 110-6.1(c)(2) with potentially conflicting judicial rules regarding scheduling. *Mayfield*, 2023 IL 128092, ¶ 30.

[5] The People raised this issue in their PLA but did not include it in their appellate court memorandum. This Court should address the issue because "where the appellate court reverses the judgment of the trial court, and the appellee in that court brings the case to this court as appellant, that party may raise any issues properly presented by the record to sustain the judgment of the trial court, even if the issues were not raised before the appellate court." *Artis*, 232 Ill. 2d at 164. The circuit court did not address

procedural loophole which defense counsel could unconscionably use to obstruct the ends of justice." *People v. Gooden*, 189 Ill. 2d 209, 221 (2000) (internal quotation marks omitted).

Under the appellate court's reading of section 110-6.1(c)(2), the 48-hour time limit would be analogous to the Speedy Trial Act, which sets an absolute number of days for holding trial and specifies that the remedy for a violation is discharge from custody. *See* 725 ILCS 5/103-5. As this Court has repeatedly stressed, a defendant cannot sit idly by if a court sets trial outside of the mandatory time, allow the court to proceed, and then use the unobjected-to timing error to obtain a discharge from custody. *See People v. Cordell*, 223 Ill. 2d 380, 390-91 (2006); *Gooden*, 189 Ill. 2d at 221. In other words, a defendant may invoke the Speedy Trial Act "as a shield against any attempt to place his trial date outside the 120-day period." *Cordell*, 223 Ill. 2d at 390. But a defendant cannot use the Speedy Trial Act "as a sword after the fact, to defeat" an otherwise valid conviction. *Id.* Accordingly, a "defendant [is] obligated to object" when the trial court proposes to schedule trial for a date that falls outside of 120 days. *Id.*

The same should be true with respect to pretrial detention hearings. At defendant's first appearance on Saturday, the People requested that the detention hearing be continued. A14-15. Defendant objected to *any*

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forfeiture, but it presents a purely legal issue for this Court's review. *Brown*, 2020 IL 125203, ¶ 25.

continuance and requested an immediate hearing under section 110-6.1(c)(2), but he did not object that setting the hearing for Monday at 1:30 p.m., as the People had requested, would run afoul of the 48-hour requirement and deprive the court of power to detain him. *See* A15. In other words, once it became apparent that the hearing would be continued for some period of time, defendant failed to use the 48-hour requirement as a shield to ensure a prompt hearing; he may not now use it as a sword to obtain release even though he meets the substantive criteria for detention. *See* A28-29, A31-33 (finding defendant satisfied substantive criteria for detention); *see also* A40-45 (defendant's appellate memorandum making no argument detention criteria were not met). Indeed, when defendant shot the victim in this case, he had just been released on another charge three days prior, with instructions not to possess a gun. A28-29.

In sum, it would undermine the purposes of the pretrial detention statute to release defendant when the detention hearing was held, at most, two-and-a-half hours late, defendant never alerted the circuit court that it was required to set the hearing earlier in the day, and defendant does not even dispute that he is substantively subject to detention. Accordingly, his forfeiture should bar relief.

CONCLUSION

This Court should reverse the appellate court's judgment and affirm the circuit court's judgment denying pretrial release.

November 18, 2024

Respectfully submitted,

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RULE 341(c) CERTIFICATE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing 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, and the certificate of service, is 25 pages.

/s/ Erin M. O'Connell
ERIN M. O'CONNELL
Assistant Attorney General

APPENDIX

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2024 IL App (4th) 240589-U

NO. 4-24-0589

FILED
July 9, 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.	)	Rock Island County
TYRELL DERRIOUS COOPER,	)	No. 24CF244
Defendant-Appellant.	)	
	)	Honorable
	)	Frank R. Fuhr,
	)	Judge Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justice Harris concurred in the judgment.
Justice Doherty dissented.

ORDER

¶ 1 *Held*: The trial court's pretrial detention order was vacated, and the cause was remanded for a new hearing to determine the least restrictive conditions for defendant's pretrial release, where defendant's detention hearing was not held within 48 hours of his initial appearance.

¶ 2 Defendant, Tyrell Derrious Cooper, appeals an order denying him pretrial release pursuant to article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/art. 110 (West 2022)), hereinafter as amended by Public Act 101-652 (eff. Jan. 1, 2023), commonly known as the Pretrial Fairness Act. On appeal, defendant argues that the trial court erred in denying him pretrial release because it failed to hold a detention hearing on the State's petition within 48 hours

of his initial appearance. For the following reasons, we vacate the detention order and remand for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 On Saturday, March 30, 2024, the State charged defendant with aggravated battery (720 ILCS 5/12-3.05(e)(1) (West 2022)), aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2022)), and unlawful possession of a weapon by a felon (720 ILCS 5/24-1.2(a)(2) (West 2022)). The State also filed a petition to deny defendant pretrial release pursuant to section 110-6.1 of the Code (725 ILCS 5/110-6.1 (West 2022)). In its petition, the State alleged that defendant's pretrial release posed a real and present threat to the safety of any person or persons or the community.

¶ 5 Also on March 30, 2024, defendant made his first appearance in court at 10:58 a.m. The prosecutor noted that he had filed a petition to detain defendant and asked, "that the hearing be set for Monday at 1:30." The prosecutor added, "We believe that would be within the time frame allowed by statute." Defendant's counsel responded, "we'd ask for immediate, but did receive notice of the hearing for Monday." The trial court set the hearing for Monday, April 1, 2024.

¶ 6 The pretrial detention hearing proceeded as scheduled on April 1, 2024. We discuss only those facts relevant to the issue on appeal. During the hearing, defendant's counsel moved to strike the State's petition to deny defendant pretrial release because, pursuant to *People v. McCarthy-Nelson*, 2024 IL App (4th) 231582-U, the detention hearing was untimely. Counsel acknowledged the trial court's belief that *McCarthy-Nelson* did "not apply to periods, including holidays and weekends," but argued that "detention petitions must be heard in this case within 48 hours of their filing [*sic*]." Counsel explained that defendant was charged with offenses that were

"Class 3 or higher" and that section 110-6.1(c)(2) of the Code (725 ILCS 5/110-6.1(c)(2) (West 2022)) imposed a "strict 48-hour rule." Accordingly, since the petition was filed "in the morning of Saturday, March 30th," and the detention hearing was taking place on "April 1st in the afternoon," the hearing was untimely. The court denied defendant's motion to strike the State's petition and proceeded with a detention hearing. At the conclusion of the hearing, the court granted the State's petition and ordered defendant's detention.

¶ 7 Defendant filed a timely notice of appeal. Thereafter, defendant and the State filed memoranda detailing their arguments.

¶ 8 II. ANALYSIS

¶ 9 On appeal, defendant argues in his memorandum that the trial court erred in granting the State's petition to deny him pretrial release because the detention hearing was not held in accordance with the timing requirements of section 110-6.1(c)(2) of the Code. In response, the State contends that defendant suffered no prejudice, as the hearing took place only "shortly after the 48-hour timeframe passed." We note that defendant raises other grounds for relief in his notice of appeal, challenging the court's findings with respect to the merits of the State's detention petition. However, the issue defendant raises in his memorandum is dispositive of this appeal.

¶ 10 When interpreting a statute, our goal is to ascertain and give effect to the intent of the legislature, which is best determined by the language of the statute, given its plain and ordinary meaning. *People v. Dyer*, 2024 IL App (4th) 231524, ¶ 19. We review issues of statutory interpretation *de novo*. *Dyer*, 2024 IL App (4th) 231524 ¶ 19.

¶ 11 Section 110-6.1(c)(2) provides, in relevant part, that upon the filing of a petition to deny a defendant pretrial release, the trial 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." 725 ILCS 5/110-6.1(c)(2) (West 2022).

¶ 12 In *McCarthy-Nelson*, we determined that the language of section 110-6.1(c)(2) was "clear and unambiguous, and we must interpret it according to its terms." *McCarthy-Nelson*, 2024 IL App (4th) 231582-U, ¶ 11. Accordingly, we explained that the statute "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." *McCarthy-Nelson*, 2024 IL App (4th) 231582-U, ¶ 11. As such, we held that the trial court failed to comply with section 110-6.1(c)(2) where, following the defendant's initial appearance on December 24, 2023, the court, upon granting a continuance, did not hold a detention hearing until December 27, 2023—after the 48-hour deadline. *McCarthy-Nelson*, 2024 IL App (4th) 231582-U, ¶¶ 12-13.

¶ 13 Here, defendant was charged with aggravated battery, a Class X felony; aggravated discharge of a firearm, a Class 1 felony; and unlawful possession of a weapon by a felon, a Class 3 felony. Based upon the clear language of section 110-6.1(c)(2), the trial court was required to hold a hearing on the State's petition to deny release either "immediately," if no continuance was requested, or "within 48 hours of the defendant's first appearance" if a continuance was requested. 725 ILCS 5/110-6.1(c)(2) (West 2022). Defendant's initial appearance occurred in the morning on March 30, 2024. After continuing the matter at the prosecutor's request, the court did not hold a

detention hearing until the afternoon of April 1, 2024, outside the 48-hour time frame. Accordingly, the court failed to comply with the timing requirements in section 110-6.1(c)(2).

¶ 14 The State argues defendant's reliance on *McCarthy-Nelson* is misguided. Instead, the State argues we should apply such cases as *People v. Garduno*, 2024 IL App (1st) 240405-U, *People v. Green*, 2024 IL App (1st) 240211, and *People v. Williams*, 2024 IL App (1st) 232219-U, and find that any delay following the expiration of the 48-hour period was so minor that defendant suffered no prejudice. However, these cases are distinguishable. None of them applied section 110-6.1(c)(2); instead, they involved different statutory timing provisions that included additional language not contained in section 110-6.1(c)(2). Specifically, *Garduno* and *Williams* concerned whether section 109-1(a) of the Code (725 ILCS 5/109-1(a) (West 2022)) had been violated where the defendants were not brought before a judge within 48 hours of their arrests. *Williams*, 2024 IL App (1st) 232219-U, ¶ 19; *Garduno*, 2024 IL App (1st) 240405-U, ¶ 10. That section provides, in part, that a person who is arrested "shall be taken without unnecessary delay before the nearest and most accessible judge in that county *** within 48 hours, and a charge shall be filed." 725 ILCS 5/109-1(a) (West 2022). In both cases, the courts determined that the inclusion of the language "without unnecessary delay" in section 109-1(a) allowed some latitude in fulfilling the 48-hour deadline, such that the statute was not violated. *Williams*, 2024 IL App (1st) 232219-U, ¶ 30; *Garduno*, 2024 IL App (1st) 240405-U, ¶ 13.

¶ 15 Similarly, *Green* concerned whether section 110-6(a) of the Code (725 ILCS 5/110-6(a) (West 2022)) was violated where the defendant's detention hearing was not held within 72 hours of the State filing a petition to revoke pretrial release. *Green*, 2024 IL App (1st) 240211, ¶ 10. Section 110-6(a) provides, in part, that upon the State's petition to revoke a defendant's pretrial release, "[t]he defendant shall be transferred to the court before which the previous matter

is pending without unnecessary delay, and the revocation hearing shall occur within 72 hours of the filing of the State's petition." 725 ILCS 5/110-6(a) (West 2022). The court rejected "a strict mandatory construction of the 72-hour requirement," finding that a "one-day delay does not thwart the legislative intent to hold a prompt hearing before the judge most familiar with the matter." *Green*, 2024 IL App (1st) 240211, ¶¶ 21-22. The court determined that the statute was "directory only," as it contained no negative language prohibiting further action if a hearing is not held within 72 hours of the filing of the State's petition, and therefore, "no consequence is warranted *** under the particular facts of this case." *Green*, 2024 IL App (1st) 240211, ¶¶ 20, 23.

¶ 16 Unlike *Garduno*, *Green*, and *Williams*, this case involves section 110-6.1(c)(2), which does not contain the additional language "without unnecessary delay" present in the statutes at issue in those cases. Indeed, *Garduno* undercuts the State's argument, as that case explicitly referenced section 110-6.1(c)(2) and determined it was "mandatory" and "includes no exceptions" to the 48-hour period. *Garduno*, 2024 IL App (1st) 240405-U, ¶ 16. Additionally, beyond noting the holding in *Green* that the court found section 110-6(a) to be directory only, the State develops no argument as to whether the command of section 110-6.1(c)(2) is mandatory or directory. Given the foregoing, the State provides no convincing argument for why we should depart from our reasoning in *McCarthy-Nelson*, and thus, we decline to do so. See *People v. Howard*, 2024 IL App (4th) 240398-U, ¶¶ 14, 21 (applying *McCarthy-Nelson*'s reasoning and concluding that the defendant's detention hearing was not held within the 48-hour time frame imposed by section 110-6.1(c)(2)).

¶ 17 Accordingly, we conclude that the trial court erred in failing to hold a detention hearing within 48 hours of defendant's first appearance. In *McCarthy-Nelson*, we determined that the appropriate remedy for a failure to comply with the timing requirements of section 110-

6.1(c)(2) is to remand the case for a hearing to determine the least restrictive conditions of the defendant's pretrial release. *McCarthy-Nelson*, 2024 IL App (4th) 231582-U, ¶ 18. Thus, we choose to apply that remedy here. On remand, the court will be required to impose the mandatory conditions listed in section 110-10 (725 ILCS 5/110-10 (West 2022)), and it may impose any additional appropriate conditions consistent with that section that will ensure that defendant appears in court, does not commit any criminal offense, and complies with all conditions of pretrial release.

¶ 18 III. CONCLUSION

¶ 19 For the reasons stated, we vacate the trial court's detention order 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.

¶ 20 Vacated and remanded with directions.

¶ 21 JUSTICE DOHERTY, dissenting:

¶ 22 This case is fundamentally about the proper interpretation of these 13 words in the statute at issue: "the hearing shall be held within 48 hours of the defendant's first appearance." 725 ILCS 5/110-6.1(c)(2) (West 2022). I agree with defendant, the majority, and *McCarthy-Nelson* that weekends and holidays are not deducted from the computation of this time period. Here, the hearing at issue occurred (or, at least, was scheduled to occur) approximately 90 minutes after the expiration of the 48-hour period, so the statute was not strictly complied with.

¶ 23 For his part, defendant assumes that the *relief* to which he is entitled as a result of this delay is reversal of the order for his detention and a remand for purposes of effecting his release on conditions. The State, on the other hand, argues that defendant's hearing was "fair and proper" and that, because he was not prejudiced by the short delay, he is not entitled to release.

The State relies on several cases interpreting analogous statutory provisions under the detention statute; each of these cases considers whether actions being taken after expiration of the applicable time limit addressed in those cases requires the defendant to be released, rather than detained.

¶ 24 Of the decisions relied on by the State, the only published decision is *Green*, where a petition to revoke the defendant's pretrial release was conducted outside of the specified 72-hour time limit set forth in the statutory provision. The statute in question provides as follows: "The defendant shall be transferred to the court before which the previous matter is pending without unnecessary delay, and the revocation hearing shall occur within 72 hours of the filing of the State's petition or the court's motion for revocation." 725 ILCS 5/110-6(a) (West 2022). The court in *Green* concluded that a one-day delay past the deadline for conducting the revocation hearing did not entitle the defendant to his release. *Green*, 2024 IL App (1st) 240211, ¶ 23. As noted here by the State, the *Green* court specifically considered whether the statute was "mandatory" or "directory," *i.e.*, whether the failure to comply with a particular procedural step will, or will not, have the effect of invalidating the government action to which the requirement relates. *Id.* ¶ 17 (citing *People v. Robinson*, 217 Ill. 2d 43, 51-52 (2005)).

¶ 25 *Green* noted that the mandatory-directory dichotomy "presents a question of statutory construction," which is addressed *de novo* on appeal. *Id.* As noted in *Green*, it is presumed that "a procedural command to a government official indicates an intent that the statute is directory." *Id.* ¶ 18. The presumption is overcome when either of two conditions is present: (1) where the statute prohibits further action in the case of noncompliance or (2) where the right the provision is designed to protect "would generally be injured under a directory reading." *Id.*

¶ 26 I believe that the approach articulated in *Green* reflects the application of well-established principles of statutory construction which are equally applicable here. First, the proper

analysis begins with the presumption that the statute, which here is directed toward a government official (*i.e.*, the trial court), is directory because it dictates a procedural step the court must take. See *Lakewood Nursing & Rehabilitation Center, LLC, v. Department of Public Health*, 2019 IL 124019, ¶ 29 (examining a statutory requirement that the Department of Public Health must hold a discharge hearing within 10 days).

¶ 27 The next step in the analysis is to consider the two factors noted above. First, the statute contains no "language prohibiting further action, nor does it provide a specific consequence for noncompliance with its time limits." See *id.* ¶ 35. "Had the legislature intended a mandatory reading," it could have specified a consequence for exceeding the 48-hour requirement. See *Green*, 2024 IL App (1st) 240211, ¶ 20. The lack of a specified consequence under this factor does not rebut the presumption that the statutory command is directory.

¶ 28 The second factor to be examined is whether the rights protected by the 48-hour requirement "would generally be injured by a directory reading." *Lakewood Nursing*, 2019 IL 124019, ¶ 38. Here, a trial court's *general* compliance with the 48-hour requirement will inure to the benefit of those in the class to which defendant belongs: defendants looking to have the question of detention settled promptly. In the case of a *specific* defendant whose detention hearing is delayed beyond 48 hours, however, there is no loss in terms of the defendant's substantive rights on the issue of detention; the only issue is the delay—in this case a very short one—in having those rights addressed.

¶ 29 Moreover, while the statute provides for a presumption in favor of the pretrial release of accused defendants (725 ILCS 5/110-6.1(e) (West 2022)), a trial court's detention decision also requires it to address concerns about whether release would pose "a real and present threat to the safety of any person or persons or the community." *Id.* § 110-6.1(1.5). In other words,

both the rights of the accused and the rights of the community are at stake. A directory interpretation of the 48-hour requirement would not defeat defendant's rights, but a mandatory interpretation would defeat the community's expectation that public safety will be considered before a defendant is released. I conclude that this factor also does not weigh against the normal presumption that the 48-hour time requirement is directory. Accord *United States v. Montalvo-Murillo*, 495 U.S. 711, 720 (1990) ("The end of exacting compliance with the letter of [the Bail Reform Act of 1984 (18 U.S.C. § 3142(f))] cannot justify the means of exposing the public to an increased likelihood of violent crime by persons on bail, an evil the statute aims to prevent.").

¶ 30 Because neither of the two relevant factors weighs against the presumption that the 48-hour time limit is directory, I conclude that the statutory requirement of a 48-hour time limit is directory, not mandatory. In other words, I do not assume, as defendant and the majority do, that the automatic remedy for exceeding the 48-hour period is defendant's release. Based on the short delay at issue in this case, I would affirm the trial court's detention order.

¶ 31 In closing, I note that I am "not discouraging the timely disposition of hearings under" section 6.1(c)(2). See *Green*, 2024 IL App (1st) 240211, ¶ 23. Courts should endeavor to hold all such hearings within the prescribed 48 hours. It is also foreseeable, however, that in some situations—such as the one here, where the 48-hour period following a Saturday morning first appearance lapsed just before noon on Monday—strict adherence to the time limit will present a logistical challenge to trial courts. Holding a hearing early Monday afternoon instead of late Monday morning should not be fatal to the court's obligation to address the detention issues on their merits. The statute compels no such result.

FILED
5/28/2024 11:05 AM
TAMMY WEIKERT, CIRCUIT CLERK
ROCK ISLAND COUNTY, IL

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
ROCK ISLAND COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff,	)	
v.	)	No. 2024-CF-244
TYRELL DERRIOUS COOPER,	)	
Defendant.	)	

FIRST APPEARANCE

REPORT OF PROCEEDINGS of the electronic recording of the hearing before the HONORABLE MICHELLE S. FITZSIMMONS, on the 30th day of March, 2024, at the Rock Island County Justice Center, Rock Island, Illinois.

APPEARANCES:

MR. STEVEN CICHON
Assistant State's Attorney
On Behalf of the People

MR. MICHAEL WASSELL
Assistant Public Defender
On Behalf of the Defendant

Prepared By:
Rebecca S. Todd
Official Court Reporter

SUP R 7

(The proceedings commenced at 10:58 a.m.)

THE COURT: Good morning, sir. Can I have your name, please.

THE DEFENDANT: Tyrell Cooper.

THE COURT: All right.

All right. Mr. Cooper, I'm going to go through the charges that have been brought against you and the rights that you have. Okay?

THE DEFENDANT: Okay.

THE COURT: All right. This is 24-CF-244. Mr. Cooper is appearing in custody of the Rock Island County Sheriff's Department. He's appearing by closed-circuit television. The State by Mr. Cichon.

Sir, the State has filed a three-count information against you.

Count 1 provides that on or about the 28th day of March 2024, at and within the county of Rock Island in the state of Illinois, the aforesaid committed the offense of aggravated battery, a Class X felony, in that said defendant, in committing a battery, discharged a firearm, other than a machine gun or a firearm equipped with a silencer, and caused an -- any injury to Brianna Stindt, in that he shot her in the foot.

Count 2 provides that on or about the 28th day of March 2024, at and within the county of Rock Island in the state of Illinois, the aforesaid committed the offense of aggravated discharge of a firearm, a Class 1 felony, in that said defendant knowingly discharged a firearm in the direction of another person or in the direction of a vehicle he knows or reasonably should know to be occupied by a person, in that he fired multiple shots at a vehicle being driven by Brianna Stindt.

Count 3 provides on or about the 28th day of March 2024, at and within the county of Rock Island in the state of Illinois, the aforesaid committed the offense of unlawful possession of a weapon by a felon, a Class 3 felony, in that said defendant, a person or person who has been convicted of a felony under the law of Illinois in Rock Island County Case Number 16-CF-512, knowingly possessed a Taurus 9 millimeter handgun with serial number TJU03216.

Sir, you are presumed innocent of these charges.

You do have the right to have a trial by a judge or a jury where the State has the burden of proving you guilty beyond a reasonable doubt. At that

trial, you may cross-examine witnesses brought against you, bring witnesses on your own behalf, and you cannot be forced to testify against yourself.

You also have the right to counsel. If you can't afford an attorney, I would appoint one for you; however, that is not necessarily a free attorney. If it's later determined that you can pay some or all of those fees, you could be ordered to do so.

Do you understand your rights, sir?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right.

MR. WASSELL: Your Honor, we were already appointed on his previous 24 case.

THE COURT: All right. So, sir, since you already have the public defender for your other case, I'm going to appoint them for you on this case as well.

THE DEFENDANT: Okay.

THE COURT: Mr. Cichon.

MR. CICHON: Judge, we -- Judge, we did file a petition to detain on the new offense. Mr. Cooper was also out on pretrial release on 24-CF-222, a nonprobationable offense.

The public defender, I believe, has been served with our petition to detain and the police

report. We'd ask that the hearing be set for Monday at 1:30. We believe that would be within the time frame allowed by the statute.

THE COURT: Mr. Wassell.

MR. WASSELL: And, again, Your Honor, for the record, we'd ask for immediate, but did receive notice of the hearing for Monday.

THE COURT: Okay. All right. So the State has filed a petition to detain. We're going to hear that on Monday at --

At what? 8:30?

MR. CICHON: 1:30, Your Honor.

THE COURT: -- 1:30.

So, sir, you will get that paperwork with that court date on it. You're going to be detained until then. They'll bring you over.

If you are released on that date, even with conditions, make sure you do show up to all future hearings. If you do not, you'd be waiving your right to be present and the proceedings could go forward in your absence, or you could end up with another warrant.

Do you understand that, sir?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right.

MR. CICHON: And, Your Honor, his other case that he had was set for preliminary hearing on April 9th. So we're just going to ask that this case -- the new case be set for prelim at the same time.

THE COURT: All right. So, sir, the preliminary hearing will be set on the 9th to run with your other case, but your detention hearing will be on Monday.

THE DEFENDANT: Okay.

THE COURT: All right. Thank you, sir.

(The proceedings adjourned at 11:01 a.m.)

IN THE CIRCUIT COURT FOR THE FOURTEENTH JUDICIAL CIRCUIT
ROCK ISLAND COUNTY, ILLINOIS
GENERAL DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff,	)	
vs.	)	No. 2024 CF 244
TYRELL DERRIOUS COOPER,	)	
Defendant.	)	

DETENTION HEARING

REPORT OF PROCEEDINGS of the hearing before the Honorable FRANK R. FUHR on April 1, 2024.

APPEARANCES:

MR. SEAN WILLIAMS,
Assistant State's Attorney
of Rock Island County,
for the People of the State of Illinois;

MS. SHAY MEREDITH,
Assistant Public Defender
of Rock Island County,
for the Defendant.

Defendant, TYRELL DERRIOUS COOPER, in person.

Michele Lofgren, CSR
Certified Shorthand Reporter
License No. 084-004168
Rock Island County Courthouse
Rock Island, Illinois

I N D E X

THE COURT: What's your name, sir?
THE DEFENDANT: Tyrell Cooper.
THE COURT: 24 CF 244, 24 CF 222, People versus Tyrell Cooper. Mr. Cooper is present in court on video. His attorney, Ms. Meredith, is present in court. Mr. Williams is here for the State.
I'm filing with the Clerk a copy of the Administrative Order that gives us authority to conduct these hearings on a remote basis.
Are both sides ready to proceed?
MR. WILLIAMS: State's ready, Your Honor.
THE COURT: Would you like a chance to talk to him?
MS. MEREDITH: Yes, actually, may I briefly speak with -- this is his partner, Karie Iverson.
THE COURT: Sure. You want me to turn off the mic?
MS. MEREDITH: Yes, please. I'm just going to quickly ask --
(Ms. Meredith speaks to her client off the record.)
THE COURT: Mr. Williams.
MR. WILLIAMS: Thank you, Your Honor.
THE COURT: You can hear us; right?

THE DEFENDANT: Yes.

THE COURT: Okay.

MR. WILLIAMS: Okay. Judge, the State has filed a petition to deny pretrial release in this case, 24 CF 244. In this matter the defendant, Mr. Cooper, is charged with three counts, including agg battery with a firearm, agg discharge of a firearm to a vehicle, and possession of a firearm by a felon.

In this matter, if the State -- or I guess to clarify that these -- Count I, in particular, would be a detainable offense under 110-6.1.

If the State were to call witnesses today, Rock Island Police Department officers would testify that on March 28th, at about 10:20 p.m., officers did get a call regarding gunshots at 1505-3rd Street in Rock Island. At this place the -- this is where the defendant resides with his girlfriend, Ms. Iverson. There were two individuals who had arrived at the residence, one victim, Brianna Sindt, was driving her vehicle, and stopped in the street near the residence and were in the area reportedly to sell a vehicle. While they were there in the street, this defendant, Mr. Cooper, exited the residence and began firing shots at the vehicle and the occupants therein. One of the

shots did fire Ms. Sindt -- did strike Ms. Sindt in her right foot, causing a broken bone. She was able to drive away. RIPD investigation located five shell casings. The firearm used was a Taurus 9mm bearing serial number TJU03216, that was located at the residence. Post-Miranda, this defendant did admit to firing the gun claiming that he thought the women were going to shoot first. However, video surveillance from the defendant's own residence showing him exiting the residence and shooting at the individuals without them --

THE COURT: What time was it? What time of day was it?

MR. WILLIAMS: The officers responded, let's see here, I have 10:22, 10:00 p.m., 10:22 p.m.

THE COURT: Okay.

MR. WILLIAMS: Is when the incident occurred. And then additionally, Your Honor, the State would ask the Court to take into account that Mr. Cooper is currently pending another CF case, 24 CF 222, which is a possession of a weapon by a felon and possession of a stolen firearm. He was just released on that matter on March 25, 2024. That is also a non-probationable offense. It is very apparent that there are no

conditions that would be sufficient to prevent Mr. Cooper from continuing to use firearms in an improper fashion. Based on this information, we would ask the Court to detain Mr. Cooper pending the resolution of this matter.

THE COURT: Ms. Meredith?

MS. MEREDITH: Thank you, Your Honor. Prior to proceeding on argument on this petition, I would move to strike the petition based on two grounds. The first, although I know that it is the position of the Circuit Court that at this time, ***People v. McCarthy-Nelson*** opinion, does not apply to periods, including holidays and weekends, but we would still make the record and make the argument, however, that detention petitions must be heard in this case within 48 hours of their filing, based on the nature of these charges, the fact that they are Class 3 or higher. A petition must be heard within 48 hours of their filing, not within two days, give or take a few hours, not within two business days not excluding holidays or weekends. We would argue that it is a strict 48-hour rule. This petition was filed at around -- or in the morning of Saturday, March 30th. We are now at April 1st in the afternoon. The 48-hour period has passed

without -- for that reason, we would ask this petition be stricken.

THE COURT: Thank you for making the record. Motion denied.

MS. MEREDITH: Oh, of course. Thank you, Your Honor.

Your Honor, additionally, it's my understanding -- oh, never mind, actually. So, Your Honor, that's actually the only basis on which I would ask to strike the petition.

So, Your Honor, proceeding on to argument on this petition the State has checked the boxes alleging that Mr. Cooper is charged with a detainable offense and poses a real and present threat to any person, persons or the community.

Your Honor, we do not contest that he's charged with a detainable offense. However, we would contest and we would argue that the State cannot meet their burden, that he poses an unmitigable real and present threat to the community or any persons within the community.

Your Honor, it's the State's burden by clear and convincing evidence to prove this. I would just note also Mr. Cooper's long-term partner, Karie

Iverson, who is in the courtroom today, indicated to me that the alleged victim in this matter has been threatening Karie for quite some time. She's indicated that the alleged victim came to the residence that night in order to cause a problem and was levying threats towards them prior to her arrival at the residence. So, Your Honor, there is no apparent dangerousness so long as the alleged victim does not come to Ms. Iverson's address to cause a problem.

However, we would go even further to ensure the alleged victim's safety, should the Court deem it necessary and offer the option of home confinement or a GPS monitor to ensure that Mr. Cooper and the alleged victim do not come into contact with one another.

Your Honor, at this time I would call Ms. Karie Iverson to testify as to some conditions.

THE COURT: Can you come up here? And before you sit down, raise your right hand.

Do you solemnly swear to tell the truth, the whole truth and nothing but the truth?

THE WITNESS: Yes, Your Honor.

THE COURT: Have a seat right there.

MS. MEREDITH: Thank you, Your Honor.

KARIE IVERSON,

called as a witness on behalf of the People, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. MEREDITH:

Q Ms. Iverson, could you please state your name and spell your last name for the record?

A It's Karie Iverson and it's I-v, as in Victor, e-r-s-o-n.

Q Thank you so much. So, Ms. Iverson, how do you know Mr. Tyrell Cooper?

A He's been my boyfriend for about six years.

Q And do you live with him?

A Yes, ma'am.

Q Do you currently have any firearms in your home?

A No, ma'am.

Q If Mr. Cooper were placed on home confinement, will you ensure that no firearms are present in your home at any time?

A Yes, ma'am, I told you I was willing to give my FOID card back so I couldn't purchase anymore firearms.

Q And if Mr. Cooper were put on home confinement, would you ensure that he does not have to

leave the residence to get food, medication, or anything of that sort?

A Yes, ma'am. And our cameras still work so we would have actual recorded footage to show he does not leave the home at all.

MS. MEREDITH: Excellent. Thank you. That's all the questions that I have. Thank you, Ms. Iverson.

THE WITNESS: Okay.

THE COURT: Hang on a second. Do you have any questions?

MR. WILLIAMS: No, nothing based on that.

THE COURT: Okay. Thank you, ma'am.

THE WITNESS: Thank you.

MS. MEREDITH: Your Honor, a few final points. As Ms. Iverson stated, she would be willing to even give up her FOID card in order to guarantee to this Court that Mr. Cooper, if placed on home confinement, has no access to weapons whatsoever.

Your Honor, there is no threat of him using a firearm if there are none left in the home and he does not leave the home.

So, Judge, some more mitigation information for this Court to consider, Mr. Cooper is a stay-at-home father. So Ms. Iverson has also indicated

that Mr. Cooper, aside from being a stay-at-home father, does not leave the home. He simply cares for their children while she works and provides for them. She's also indicated to me that they are facing eviction at the moment, which will be made much more difficult if Mr. Cooper is incarcerated because then she would have nobody to watch her children. She's indicated to me that she does not have a local support system aside from Mr. Cooper. She has no one to watch her children while she works, so she would have to quit her job in order to support them if he is incarcerated.

Mr. Cooper has also indicated to me that he would personally be willing to comply with any and all conditions this Court might deem necessary to protect the community from any alleged dangerousness.

So, Your Honor, for all the foregoing reasons, we respectfully request that this Court deny the State's petition to deny pretrial release and impose any necessary sanctions upon him. Thank you.

THE COURT: Anything else, Mr. Williams?

MR. WILLIAMS: Just briefly, Your Honor. The, you know, this newest incident occurred while Mr. Cooper was at home. You know, we've got one pending case of possession of a stolen firearm. We've got a new one of

discharge of a firearm. Being on home confinement is barely a mitigation to either his conduct in use of the firearms or in his ability to get one. We'd ask the Court to consider that in its decision.

THE COURT: Okay. Well, Mr. Cooper.

THE DEFENDANT: Yes, sir.

THE COURT: I do find that the proof is evident and the presumption is great that you committed a qualifying offense, the aggravated battery with a firearm.

I do find that you pose a real and present threat to the safety of persons and the community.

Now, the question comes down to whether or not there are any conditions that could be imposed that would mitigate those dangers. The problem is when you were released on March 25th in 24 CF 222, a condition of that release is that you not possess any weapons. That was a court order, just like any court order I issued today would be a court order. That court order you disobeyed within days. Your -- the facts as alleged in the State's petition show a complete disregard for the safety of the community. Whether or not you had some reasonable or unreasonable concern about being under threat from this woman who was shot,

indiscriminately firing five 9 mm rounds in a densely populated urban community, after being ordered not to possess a firearm, shows that to me there are no conditions that I could place on you that would prevent an unreasonable risk to the community or specific individuals. So the petition to detain is granted.

MS. MEREDITH: Thank you, Your Honor. I have spoken with Mr. Cooper and we do intend to appeal. Thank you.

THE COURT: And so you've got -- as of now, you've got up to 14 days to file a notice of appeal. It would have to be in writing and Ms. Meredith can talk to you about that.

THE DEFENDANT: Yeah.

MR. WILLIAMS: And, Judge, if I may, Mr. Cooper would have been arraigned on this newest case on Saturday?

THE CLERK: Yes.

MR. WILLIAMS: So was he given the April 16th --

THE CLERK: He was given April 9th.

MR. WILLIAMS: April 9th. Okay. Thank you.

THE CLERK: Uh-huh.

THE COURT: Is that other one set for April 9th, too?

THE CLERK: Yes.

THE COURT: And just for the record, your -- your detention petition -- your detention status will be reviewed at every subsequent court hearing.

MS. MEREDITH: Thank you, Judge.

MR. WILLIAMS: Thank you.

WHICH WAS ALL OF THE EVIDENCE OFFERED AND RECEIVED AND ALL OTHER PROCEEDINGS HAD IN THE HEARING OF THE ABOVE CAUSE.

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
ROCK ISLAND COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff,
vs
Tyrell Cooper,
Defendant.

FILED in the CIRCUIT COURT of ROCK ISLAND COUNTY CRIMINAL DIVISION
APR 01 2024
Tammy Reinhart
Clerk of the Circuit Court

No: 24 CF 244

ORDER FOR DETENTION

The Court held a detention hearing on the State's Petition to Detain on April 1, 2024.

As per 725 ILCS 5/110-6.1(c)(2), the hearing was held (*check one*):
_____ Immediately upon filing of the State's Petition to Detain
__X__ Within 48 hours after filing (if felony Class M, X, 1, 2, or 3)
_____ Within 24 hours after filing (if misdemeanor or felony Class 4)

NEXT COURT DATE: April 9, 2024 at 8:30 AM/PM

THE COURT FINDS that:

(Select one or both)

[X] **Dangerousness Standard (725 ILCS 5/110-6.1(a)(1)-(6))**

The Court finds by clear and convincing evidence that:
- the proof is evident or the presumption great that the defendant has committed a qualifying offense listed in paragraphs (1) through (7) of 725 ILCS 5/110-6.1(a), **and**
- 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 or, in the case of stalking or aggravated stalking, of a victim of the alleged offense, **and**
- no condition or combination of conditions can mitigate the real and present threat to the safety of any person or persons.

As required under 725 ILCS 5/110-6.1(h)(1), the Court finds that less restrictive conditions would not assure safety of any person or persons or the community based on the following:

defendants prior criminal history
fact that defendant was released on
pretrial condition of no possession of
firearms on March 25 and this occurred
March 28, @ firing 9mm handgun in
dense populated residential neighborhood

As required under 725 ILCS 5/110-6.1(h)(1), the Court's reasons for concluding that the defendant should be denied pretrial release are as follows:

see above
no condition could ensure safety of community

☐ **Willful Flight Standard (725 ILCS 5/110-6.1(a)(8))**

The Court finds by clear and convincing evidence that:

- the proof is evident or the presumption great that the defendant has committed a qualifying offense listed in paragraph (8) of 725 ILCS 5/110-6.1(a), **and**
- the defendant poses a real and present threat of willful flight, **and**
- no condition or combination of conditions can mitigate the real and present threat of the defendant's willful flight.

As required under 725 ILCS 5/110-2(h(1)), the Court finds that less restrictive conditions would not assure the defendant's appearance in court based on the following:

As required under 725 ILCS 5/110-6.1(h)(1), the Court's reasons for concluding that the defendant should be denied pretrial release are as follows:

_____

_____

_____

_____

_____

_____

_____

_____

IT IS HEREBY ORDERED AS FOLLOWS:

1. The defendant is committed to the custody of the county jail for confinement in the county jail pending trial.
2. The defendant shall be given a reasonable opportunity for private consultation with counsel, and for communication with others of their choice by visitation, mail and telephone.
3. The sheriff shall deliver the defendant as required for appearances in connection with court proceedings.
4. The Court shall, as required under 725 ILCS 5/110-6.1(i-5), review the defendant's detention at each subsequent appearance by the defendant and address whether the defendant's continued detention is necessary to avoid the real, specific, and present threat to any person or persons or the community, or of willful flight from prosecution.
5. The defendant has been read their appeal rights.
6. _____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Entered: Date: 04.1.24 Signature: _____
Judge

Form SAO23-01A

Rev. 10/05/2023
C 21

IN THE CIRCUIT COURT OF Rock Island COUNTY
Fourteenth JUDICIAL CIRCUIT

PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff-Appellee,

-vs-

Tyrell Cooper,
Defendant-Appellant.

No. 24CF244

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

Court from which appeal is taken:

Circuit Court of Rock Island County.

The Judge(s) who entered the order(s) being appealed: Judge Fuhr

Date(s) of Order(s) Appealed: 4/1/2024

Date(s) of Hearing(s) Regarding Pretrial Release: 4/1/2024

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: Tyrell Cooper
Defendant's Address:
Defendant's E-mail:
Defendant's Phone:

If Defendant is indigent and has no attorney, do they want one appointed? (If Cook County, the Cook County Public Defender will be appointed, in all other Counties, then OSAD will be appointed).

☒ Yes ☐ No

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

Attorney's Name: _____

Attorney's Address: _____

Attorney's E-mail: _____

Attorney's Phone: _____

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

Attorney's Name: Shay Meredith

Attorney's Address: _____

Attorney's E-mail: _____

Attorney's Phone: _____

Is the trial attorney a public defender? ☒ Yes ☐ No

Nature of Order Appealed (check all that apply):

☒ 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):** _____

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

☐ Copy of the order appealed from

☐ Supporting documents or matters of record (please list)

_____

_____

_____

☐ Affidavit of attorney or party (in lieu of clerk certificate of authentication)

***You may attach a supporting record to this notice of appeal. A full supporting record must be filed with the appellate court within 30 days after filing this notice of appeal.**

Relief Requested: Reversal + remand for leaving on conditions

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.

☒ The State failed to meet its burden of proving by clear and convincing evidence that defendant poses a real and present threat to the safety of any person or persons or the community, based on the specific, articulable facts of the case.

X 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.

Failed to consider the impact that a home confinement order would have on Mr. Cooper, in that it would be a much more stringent condition than what was placed upon him before.

X 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.

Failed to consider the change in circumstances between first case's release conditions as opposed to the effect that a home confinement condition would have in the instant case.

X Defendant was denied an opportunity for a fair hearing prior to the entry of the order denying or revoking pretrial release.

Court did not comply with timing requirements of PFA. Hearing was not held within 48 hours of filing.

☐ Other (explain).

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 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):

☐ 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.

Your Signature

Shay Meredith

Printed Name

Attorney # (if any)

E-FILED
Transaction ID: 4-24-0589
File Date: 5/29/2024 2:18 PM
Carla Bender, Clerk of the Court
APPELLATE COURT 4TH DISTRICT

No. 4-24-0589

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- TYRELL DERRIOUS COOPER, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of the Fourteenth Judicial Circuit, Rock Island County, Illinois No. 24 CF 244 Honorable Frank R. Fuhr, Judge Presiding.

MEMORANDUM FOR DEFENDANT-APPELLANT IN SUPPORT OF RULE 604(h) APPEAL

JAMES E. CHADD
State Appellate Defender

CAROLYN R. KLARQUIST
Director of Pretrial Fairness Unit

JONATHAN KRIEGER
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COUNSEL FOR DEFENDANT-APPELLANT

NATURE OF THE CASE AND JURISDICTION

Tyrell Derrious Cooper appeals from an order denying him pretrial release. The detention order was entered on April 1, 2024. (C. 19–21.) Notice of appeal was timely filed the same day. (C. 24–29.) Jurisdiction thus lies in this Court under article VI, section 6, of the Illinois Constitution, and Supreme Court Rule 604(h).

STATEMENT OF FACTS

On March 30, 2024, Tyrell Cooper was charged in Rock Island County with aggravated battery, aggravated discharge of a firearm, and unlawful possession of a weapon by a felon. (C. 5–6.) The same day, the State filed a petition to deny pretrial release, alleging that Cooper posed a safety threat. (C. 13–14.)

Also on March 30, at 10:58 a.m., the first appearance was held. (Sup R. 8.) The judge read the charges to Cooper and appointed defense counsel. (Sup R. 8–10.) Counsel requested an immediate hearing but the court set a hearing at 1:30 pm. on April 1. (See Sup R. 10–11.) The proceedings adjourned at 11:01 a.m. (Sup R. 12.)

At the detention hearing on April 1, the defense argued that the petition should be struck since the hearing was held over 48 hours from filing of the petition, and was thus untimely. (R. 7–8.) Counsel indicated that the detention hearing was occurring in the afternoon. (R. 7.) Counsel noted the circuit court's position that *People v. McCarthy-Nelson*, 2024 IL App (4th)

231582-U, does not apply to weekends and holidays. (R. 7.) The court denied the motion to strike. (R. 8.) After holding a hearing, the court ordered Cooper detained.(R. 13–14.)

Cooper's notice of appeal argue, *inter alia*, that the hearing was untimely. (C. 27.)

ARGUMENT

The trial court violated 725 ILCS 5/6.1(c)(2) when it failed to hold a hearing on the State's petition to deny pretrial release within 48 hours of Tyrell Cooper's first appearance.

Under section 6.1(c)(2) of the pretrial release statute, the trial court was required to hold a hearing on the State's petition to deny pretrial release within 48 hours of the first appearance. Since the hearing in Tyrell Cooper's case was not held within 48 hours of the first appearance, Cooper should be released from custody.

Questions of statutory interpretation are reviewed *de novo*. See *People v. Ramirez*, 2023 IL 128123, ¶ 13. "The primary objective of statutory interpretation is to ascertain and give effect to the intent of our legislature." *Id.* "When the statutory language is clear, [courts] must apply the statute as written without resort to other tools of construction." *Jackson v. Board of Election Commissioners*, 2012 IL 111928, ¶ 48.

Section 110-6.1(c)(2) provides the deadlines for hearings on State petitions to deny pretrial release, which depend on the severity of the charge

or charges:

> Upon filing [of a petition to detain], 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.

725 ILCS 5/110-6.1(c)(2) (West 2022).

In this case, the court held a hearing outside the requisite 48-hour window. Cooper was charged with offenses that were Class 3 or higher, which triggered a 48-hour deadline. (See C. 5–6); 720 ILCS 5/12-3.05(e)(1), (h); 720 ILCS 5/24-1.2(a)(2), (b); 720 ILCS 5/24-1.1(a), (e). At the first appearance, on the morning of March 30, defense counsel requested an immediate hearing, but the court granted the State's request for a continuance until April 1. (Sup R. 11; C. 3.) The hearing was then held on the afternoon of April 1. (See R. 7; C. 3.) At the detention hearing, trial counsel argued that the delayed hearing violated this Court's unpublished decision in *People v. McCarthy-Nelson*, 2024 IL App (4th) 231582-U, but the court refused to strike the State's petition. (R. 7–8.)

Since the hearing in Cooper's case was untimely, the court erred in denying the defense's motion to strike. The hearing was undisputedly held more than 48 hours after Cooper's first appearance. (Sup R. 8–12; C. 3; R. 7.) In *McCarthy-Nelson*, this Court found the statute violated when a hearing was held more than 48 hours after the first appearance. 2024 IL App (4th) 231582-U, ¶ 12 (copy in Appendix). The remedy was for the defendant to be

released on conditions. *Id*., ¶ 18. Any other remedy "would render nugatory the statute's timing requirement." *Id*. Cooper's case is on point. As noted, the hearing in his case was held outside the 48-hour window. Based on the compelling analysis in *McCarthy-Nelson,* the detention order in Cooper's case should be vacated and the case remanded for the court to determine the least restrictive conditions of pretrial release.

The trial court did not give a reason for not following *McCarthy-Nelson* but defense counsel noted the lower court's position that the case "does not apply to periods, including holidays and weekends." (R. 7.) Such a position is plainly contrary to *McCarthy-Nelson*, where part of the 48-hour period included Christmas, a holiday. *McCarthy-Nelson*, 2024 IL App (4th) 231582-U, ¶¶ 5–6, 16. The statute does not exclude holidays or weekends from calculation. *Id*., ¶ 11; 725 ILCS 5/110-6.1(c)(2).

This issue is preserved since it was raised at the hearing and in the notice of appeal. (R. 7–8; C. 27.) Although counsel counted the 48 hours from the petition's filing, not the first appearance, counsel correctly pointed the court to *McCarthy-Nelson* as persuasive authority. (R. 7.) Given the plain statutory violation that occurred below, this case should be remanded for a hearing on conditions of release. Cooper respectfully requests this relief.

CONCLUSION

For the above reasons, Tyrell Cooper respectfully requests that this Court vacate the detention order and remand for a hearing to determine the least restrictive conditions of Cooper's pretrial release.

Respectfully submitted,

CAROLYN R. KLARQUIST
Director of Pretrial Fairness Unit

JONATHAN KRIEGER
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COUNSEL FOR DEFENDANT-APPELLANT

E-FILED
Transaction ID: 4-24-0589
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Carla Bender, Clerk of the Court
APPELLATE COURT 4TH DISTRICT

No. 4-24-0589

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS	)	Appeal from the Circuit Court
	)	of the Fourteenth Judicial Circuit
	)	Rock Island County, Illinois
Plaintiff-Appellee,	)	
	)	
-vs-	)	No. 2024CF244
	)	
Tyrell Cooper,	)	
	)	Honorable Frank R. Fuhr,
Defendant-Appellant.	)	Judge Presiding.

APPELLEE'S MEMORANDUM

Now comes Plaintiff-Appellee, the PEOPLE OF THE STATE OF ILLINOIS, by David J. Robinson, Chief Deputy Director, State's Attorneys Appellate Prosecutor, and in response to defendant's appeal of the trial court's pretrial detention order, states the following:

Facts and Background

On March 30, 2024, Defendant was charged with Aggravated Battery (Class X Felony), Aggravated Discharge of a Firearm (Class 1 Felony), Unlawful Possession of a Weapon by a Felon (Class 3 Felony). (C. 5-6). The same day, the State filed a petition to deny pretrial release, alleging that defendant posed a safety threat. (C. 13-14).

Also on March 30, at 10:58 a.m., the first appearance was held (Sup R. 8). The judge read the charges to defendant and appointed defense counsel. (Sup R. 8-10). Counsel requested an

immediate hearing but the court set a hearing at 1:30 p.m. on April 1. (Sup R. 10-11). The proceedings adjourned at 11:01 a.m. (Sup R. 12).

At the detention hearing on April 1, the defense argued that the petition should be struck since the hearing was held over 48 hours from filing of the petition and was thus untimely. (R. 7-8). Counsel indicated the hearing was occurring in the afternoon, however, counsel did not provide a specific time. (R. 7). Counsel noted the circuit court's position that *People v. McCarthy-Nelson,* 2024 IL App (4th) 231582-U, does not apply to weekends and holidays. (R. 7). The court denied the motion to strike. (R. 8) After holding a hearing, the court ordered defendant detained. (R. 13-14).

On appeal, defendant does not challenge the court's decision to detain him based on the evidence presented at his detention hearing. Instead, he argues that he should be released because his pretrial detention hearing was held more than 48 hours in violation of 725 ILCS 5/110-6.1(c)(2). This argument is flawed and the decision to detain should stand.

ARGUMENT

The trial court's detention order should be affirmed because the hearing, which took place shortly after the 48-hour timeline passed, was fair and proper under the Act.

Defendant's first appearance was on Saturday, March 30, 2024, at approximately 11:00 am, and his hearing took place on Monday, April 1, 2024. (R. 8). Although the exact time of the hearing on April 1st is not evident from the record, it appears the hearing occurred just after the 48-hour timeframe expired.

Defendant's reliance on the unpublished opinion in *People v. McCarthy-Nelson,* is misguided and the trial correctly refused to apply it to this case. Defendant argues that *McCarthy-Nelson,* requires this court to apply a strict 48-hour timeline including weekends and holidays. The trial court entertained this argument and rejected it. Other courts have done the same. In *People*

v. Garduno, the First District explained that the Act was "designed to protect victims and the community form defendants who are alleged to have committed felonies," so "a strict mandatory construction of the [48] hour requirement does not achieve the purpose of the statute." *Garduno,* 2024 IL App. (1st) 240405-U, ¶ 17. Like defendant, the detention hearing was admittedly held a short time after the 48 hours timeline had expired. *Id.* The *Garduno* court acknowledged the hearing took place several hours after the 48-hour window but found that such a minor delay did not prejudice the defendant or the outcome of the pretrial detention hearing. *Id.*

Likewise, in *People v. Green,* the court refused to apply a hardline rule when addressing the 72-hour rule that applies to a felony or Class A misdemeanor pursuant to 725 ILCS 5/110-6(a). *Green,* 2024 IL App (1st) 240211. In *Green,* the court rejected the hardline 72-hour rule finding the timeline was "directory" and not "mandatory." *Id.* The court explained the timing sections lacked any negative language prohibiting further action in the event the hearing was not held within the timeframe, nor did it contain other specific consequences prescribed by the court's failure to hold a hearing within the specified time frame. *Id.,* ¶ 18-20. In *Green,* the State filed its petition on Friday, January 12, 2024. Monday, January 15 was a court holiday, and the trial judge who had previously ordered pretrial release was unavailable Tuesday, January 16. *Id.* ¶ 22. Accordingly, the hearing occurred at the first possible opportunity – on Wednesday January 17, 2024. *Id.* ¶ 22. Nonetheless, the court specifically held "this one-day delay does not thwart the legislative intent to hold a prompt hearing before the judge most familiar with the matter." *Id.*

Likewise, in *People v. Williams,* the court refused to apply a hardline 48-hour timeframe, stating, "[w]hile we recognize that since the passage of the Pretrial Fairness Act the statute has been amended to include a 48-hour deadline, we believe the continued inclusion of the "without unnecessary delay" language signals the legislature's intent to permit for "some latitude" in

fulfilling that deadline. *Williams*, 2024 IL App (1st) 232219-U; citing *People v. Ballard*, 206 Ill. 2d 151, 177 (2002).

In this case, the trial court's order denying defendant's pretrial release should be affirmed, because the hearing took place shortly after the 48-hour timeframe passed and defendant was not prejudiced in anyway. Thus, the hearing should be considered timely. He was also awarded a fair hearing where he was represented by counsel and had the opportunity to argue for his release. Like *Green, Williams,* and *Garduno,* defendant should not be released on a mere technicality. If he was, it would fly in the face of the purpose of the Act – the protection of the community and victims.

In conclusion, this Court should affirm the trial court's order denying defendant's pretrial release.

Respectfully submitted,

THE PEOPLE OF THE STATE OF ILLINOIS

BY: _/s/ David J. Robinson_____

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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

COUNTY ADMINISTRATIVE ORDER 2022-8

SUBJECT: IMPLEMENTATION OF SAFE-T ACT

WHEREAS the SAFE T Act and related Acts (Acts) were adopted by the Illinois General Assembly, a prominent feature of which is the elimination of cash bail;

WHEREAS the Acts do not provide all necessary details as to some aspects of its implementation:

THEREFORE:

1. Any prior Administrative Order which is inconsistent with the Acts is hereby rescinded.
2. The Champaign County Public Defender is appointed to represent all persons, for purposes of the Acts, including but not limited to initial appearances and detention hearings, unless 1) other counsel has entered the case, 2) other counsel has been appointed by the Court, or 3) Defendant has chosen, after proper admonition, to proceed self-represented.
3. Court Services is authorized to share information with the Office of State Pretrial Services (OSPS) as it pertains to OSPS preparing detention reports and for supervision of defendants on pretrial release.
4. All reports prepared by OSPS shall be impounded; Court Services is authorized to have access to the reports as it pertains to preparing pre-sentence investigation reports and for supervision of defendants.
5. On weekends and holidays, the Court will conduct a *Gerstein* hearing within 48 hours of arrest. If probable cause is found and the State seeks detention, the matter may be set over for initial appearance on the next available Court business day (generally Monday).
6. Defendants shall appear remotely for all initial appearances. A Defendant may waive the right to be present for a detention hearing.
7. If a detention hearing is continued from the initial appearance, up to 48 hours, the time frame shall exclude weekends and holidays pursuant to the Statute on Statutes and well as the Court's authority to establish hours and days of Court operation.
8. Petitions to Revoke Release and Motions for Sanctions for violating conditions of release shall be assigned to the Arraignment Court judge for disposition due to the short time frame and other obligations by the trial court assigned to the matter.
9. Motions to Reconsider bail status/detention under the Acts shall be referred to the Arraignment Court judge for disposition due to the short time frame and other obligations by the trial court assigned to the matter.

This Order is effective January 1, 2023 unless the Illinois Supreme Court stays the implementation of the Acts at which point this Order takes effect upon Supreme Court Order.

Date: 12-29-22

Presiding Judge Randall B Rosenbaum

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Common Law Record

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CERTIFICATE OF FILING AND SERVICE

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 November 18, 2024, the foregoing **Brief of Plaintiff-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which automatically served notice on counsel at the following e-mail address:

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