2025 IL App (5th) 241245-U

NO. 5-24-1245

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Vermilion County.
	)	
v.	)	No. 24-CF-813
	)	
JESSICA CARLTON,	)	Honorable
	)	Mark S. Goodwin,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE VAUGHAN delivered the judgment of the court.
Justices Barberis and Boie concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's orders granting the State's verified petition to deny pretrial release and denying defendant's motion for relief are affirmed where the trial court's findings were not against the manifest weight of the evidence and its ultimate conclusions were not an abuse of discretion.

¶ 2 Defendant, Jessica Carlton, appeals the trial court's November 6, 2024, order denying her pretrial release. She further appeals the trial court's November 15, 2024, order denying her motion for relief. For the following reasons, we affirm the trial court's orders.

¶ 3 I. BACKGROUND

¶ 4 On November 5, 2024, defendant was charged, by information, with one count of aggravated driving under the influence (DUI), noting that defendant had a prior DUI and was also transporting a child at the time of the current offense (a Class 2 felony) in violation of section 11-

501 and 11-501(d)(1)(K) of the Illinois Vehicle Code (625 ILCS 5/11-501, 11-501(d)(1)(K) (West 2022)), one count of aggravated DUI—accident/great bodily harm (a Class 4 felony) in violation of section 11-501(d)(1)(C) and (d)(2)(F) of the Vehicle Code (*id.* § 11-501(d)(1)(C), (d)(2)(F)); one count of aggravated DUI—no insurance in violation of section 11-501(d)(1)(I) of the Vehicle Code (*id.* § 11-501(d)(1)(I)); and one count of endangering the life or health of a child (a Class A misdemeanor) in violation of section 12C-5(a)(1) of the Criminal Code of 2012 (720 ILCS 5/12C-5(a)(1) (West 2022)).

¶ 5 On the same day, the State filed a verified petition requesting denial of defendant's pretrial release and a pretrial investigation report was filed. The report revealed that defendant was 24 years old and had a seven-month-old child that was currently being cared for by defendant's mother. Defendant was employed with a monthly income of $1,200. Defendant's mother told the reporting officer that her daughter "loves her weed and loves to drink." She also thought defendant had postpartum depression. The report indicated that defendant had a prior offense of driving under the influence in 2022 for which she received 24 months of court supervision. Defendant also had a prior conviction for possession of cannabis in 2020 for which she received 12 months of court supervision. The Virginia Pretrial Risk Assessment classified defendant as a level 2 risk out of six for recidivism while on pretrial release.

¶ 6 A hearing on the State's petition was held on November 6, 2024. The State proffered that on November 3, 2024, officers were dispatched to an accident involving a pedestrian and a motor vehicle. Deputy O'Brien opened the car door and smelled cannabis. He knelt down and saw Ella Frerichs trapped under the vehicle. Ella was able to speak but her voice was faint, and her pulse was weak. EMS was expedited. Defendant was identified as the driver of the vehicle and she stated that she was "too fast when she pulled in" and "noticed it was a body, it was my best friend calling

my name." A second officer, Sergeant Wells, also spoke to defendant at the scene. Defendant told Sgt. Wells that she realized she ran over a body in the roadway and her seven-month-old child was with her at the time. Deputy O'Brien noted that defendant's breath smelled of alcohol and her speech was slurred. She admitted to having shots of Tito's earlier. When placed under arrest defendant said, "please, no, not again" and "yeah, I am intoxicated but not drunk." Defendant was transferred to the Public Safety Building where she refused field testing but submitted to a breathalyzer that revealed a blood alcohol content (BAC) of 0.139.

¶ 7 Investigator Vice arrived at the scene and noted the location of the impact, drag marks, a slipper, a medical boot, and suspected blood on the driveway. Investigator Vice believed that after Ella was struck, she was dragged approximately 304 feet and multiple cameras captured the incident. Investigator Vice also took pictures of defendant's vehicle while on a lift and photographed blood, skin, and fat hanging from a bolt and burned skin on the car's exhaust. Investigator Vice also spoke to Ella's father who was FaceTiming Ella when the incident occurred. Ella was in intensive care, on a ventilator with third-degree burns on her body, large lacerations on her chest, a laceration on her liver, and kidney failure. The State further noted that defendant was on court supervision for a DUI in case No. 22-DT-25 and provided the details of that arrest, including a failed sobriety test and a breathalyzer BAC value of 0.149. The State argued that defendant clearly had a serious drinking problem and no condition, or combination of conditions, would protect the public, noting that defendant was supposed to be doing follow-up treatment but was out drinking instead. The State argued that electronic monitoring would not help as alcohol could be brought to her or defendant could go out with friends and obtain alcohol. Based on the lack of conditions, and the life-threatening injuries to the victim, the State argued that defendant should be detained.

¶ 8 Defense counsel argued that this was a "horrible tragedy," and that defendant and Ella were very close, if not best friends. Counsel argued that the factual basis proffered by the State failed to provide "the reason Ella was in the road." Counsel argued that the reason Ella was "lying in the road is she wanted to kill herself. She actually wanted to be run over." Defendant and Ella lived in the same apartment building and defendant ran Ella over while Ella was FaceTiming with her father who was unsuccessfully trying to talk Ella out of her depression. Defense counsel stated that defendant was "talked into going out drinking with Ella" because Ella was depressed lately, recently broke her foot, and argued that "[s]ober or not sober, there is no way [defendant] could have seen Ella in the roadway that night." Defense counsel stated that Ella shared some fault in this and had been expressing suicidal thoughts prior to the incident. Counsel recommended GPS with home and work confinement to allow defendant to continue to provide income for her daughter, stating this would adequately protect the public.

¶ 9 The court noted the location of defendant's employment and home and asked if defendant had a mode of transportation that would allow her to get to work. Defense counsel advised that defendant's mother and grandmother could transport defendant. The court stated it was "on the fence on this one." It noted the BAC was well over the statutory limit but did not believe defendant was so far into the stages of alcoholism that she could not refrain from drinking. It further noted that there was no indication that defendant's license was suspended or revoked at the time of the incident. It noted that consumption of alcohol did not violate defendant's court supervision, but violating a criminal statute did. The court expressed concern over the fact that defendant was on supervision and apparently consumed enough alcohol to be impaired. The court also noted confusion as to whether defendant was aware of Ella lying in the road prior to the incident and somehow contributed to it. It was clarified that defendant was at a tavern doing shots and then

drove home with her child. The court expressed concern with defendant's judgment. The court found that she committed a detainable offense, and there was a great presumption that she committed the qualifying offense.

¶ 10 The court found that defendant posed a real and present threat to the safety of the community based on the DUI while on supervision and that while under the influence she not only ran over her friend but endangered the safety of her child. It found that no condition, or combination of conditions, would alleviate this risk because defendant was already under an order not to violate any law when the incident occurred and any progress from the required alcohol education was not "sufficiently convincing" for defendant to correct her behavior. A written order was filed the same day finding that defendant should be denied pretrial release based on the nature and circumstances of the offense charged, the defendant's statements together with the circumstances surrounding them, and that defendant was under court supervision at the time of the incident.

¶ 11 On November 12, 2024, defendant filed a motion for relief alleging the court should not have detained her. In support, she argued that GPS could have been ordered, alcohol treatment could have been ordered, and citing *People v. Atterberry*, 2023 IL App (4th) 231028, ¶ 18, and *People v. Stock*, 2023 IL App (1st) 231753, ¶ 18, being charged with a detainable offense was insufficient to show that a defendant posed a risk to public safety.

¶ 12 A hearing on the motion was held on November 15, 2024. Defense counsel argued that the trial court erred in finding that no condition or combination of conditions would prevent defendant from committing further crimes or being a danger to the public. It reiterated the facts of the accident, including Ella lying in the roadway on the phone with her father expressing suicidal ideations stating,

"This case was a horrific accident, that whether or not [defendant] cannot be—it is my contention does not directly relate—direct—was direct cause of the accident. This was sometime after midnight when the alleged victim, Ella, was—a good friend of hers was lying—lying in a—lying on a roadway in the dark when she pulled into—this is a roadway that led to the—they both share, have apartments in the same building ***[.] And as—as [defendant] pulled in, Ella was on the phone, lying in the roadway on the phone with her father, apparently expressing suicidal—expressions of suicidal thought and was wanting to end it all."

¶ 13 Defense counsel continued stating, "The night did not start out that way." It noted that both women were at a bar and had drinks. Ella was dropped off and when defendant returned to the apartment, Ella was in the road and defendant ran her over. Counsel argued that Ella was dragged approximately 300 feet but defendant "had no idea that there was a person under" her car. Defense counsel stated that defendant was willing to wear an alcohol monitor as well as GPS monitoring. She was willing to seek treatment, and her family told counsel that an evaluation was scheduled for Friday. Counsel argued that defendant had "terror and guilt" from the incident, and it was extremely unlikely to happen again. Counsel further argued that defendant had a daughter and a job and no extensive criminal history. Counsel further advised that Ella was recovering and talking to people while hospitalized.

¶ 14 The State took offense with any argument that Ella was suicidal because it was not relevant or appropriate, stating that defendant's concerns were solely for herself and well-being, not the victim. When she was arrested, she said, "Please, no, not again. I can't be charged with DUI again," and began to drop to her knees and began screaming, "I don't care. I am getting a second DUI. I don't care. This is going to mess up my life." Thereafter, she admitted being intoxicated, but not

drunk. The State noted that the "issue is not simply as far as proximate cause for the accident in general, the issue is also that the victim was dragged several hundred feet under the defendant's car." The State argued that defendant was also on DUI court supervision and clearly disregarded that and had no intention of following the rules. The State again argued that defendant's concern was for herself, not for her friend or her seven-month-old daughter.

¶ 15 Following the hearing, the court denied defendant's motion for relief, noting the prior judge found no condition "could protect people from her behavior *** [and] I'm not seeing it either." "[W]e are still confronted with an individual that, you know, uses a vehicle regardless of condition" or "the jeopardy of all who are around her, *** and that isn't controllable by any conditions." Defendant timely appealed.

¶ 16 II. ANALYSIS

¶ 17 Pretrial release—including the conditions related thereto—is governed by statute. See Pub. Act 102-1104, § 70 (eff. Jan. 1, 2023). A defendant's pretrial release may be denied only in certain statutorily limited situations. 725 ILCS 5/110-6.1 (West 2022). In order to detain a defendant, the State has the burden to prove by clear and convincing evidence that (1) the proof is evident or the presumption great that the defendant has committed a qualifying offense, (2) the defendant's pretrial release poses a real and present threat to the safety of any person or the community or a flight risk, and (3) less restrictive conditions would not avoid a real and present threat to the safety of any person or the community and/or prevent the defendant's willful flight from prosecution. *Id.* § 110-6.1(e).

¶ 18 In considering whether the defendant poses a real and present threat to the safety of any person or the community, *i.e.*, making a determination of "dangerousness," the trial court may consider evidence or testimony concerning factors that include, but are not limited to (1) the nature

and circumstances of any offense charged, including whether the offense is a crime of violence involving a weapon or a sex offense; (2) the history and characteristics of the defendant; (3) the identity of any person to whom the defendant is believed to pose a threat and the nature of the threat; (4) any statements made by or attributed to the defendant, together with the circumstances surrounding the statements; (5) the age and physical condition of the defendant; (6) the age and physical condition of the victim or complaining witness; (7) whether the defendant is known to possess or have access to a weapon; (8) whether at the time of the current offense or any other offense, the defendant was on probation, parole, or supervised release from custody; and (9) any other factors including those listed in section 110-5 of the Code of Criminal Procedure of 1963 (*id.* § 110-5). *Id.* § 110-6.1(g).

¶ 19 To set appropriate conditions of pretrial release, the trial court must determine, by clear and convincing evidence, what pretrial release conditions, "if any, will reasonably ensure the appearance of a defendant as required or the safety of any other person or the community and the likelihood of compliance by the defendant with all the conditions of pretrial release." *Id.* § 110-5(a). In reaching its determination, the trial court must consider (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the person; (3) the history and characteristics of the person; (4) the nature and seriousness of the specific, real, and present threat to any person that would be posed by the person's release; and (5) the nature and seriousness of the risk of obstructing or attempting to obstruct the criminal justice process. *Id.* The statute lists no singular factor as dispositive. See *id.*

¶ 20 Our standard of review of pretrial release determinations is twofold. The trial court's factual findings are reviewed under the manifest weight of the evidence standard. *People v. Swan*, 2023 IL App (5th) 230766, ¶ 12. " 'A finding is against the manifest weight of the evidence only

if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented.' " *Id.* (quoting *People v. Deleon*, 227 Ill. 2d 322, 332 (2008)). We review the trial court's ultimate determination regarding the denial of pretrial release for an abuse of discretion. *Id.* ¶ 11. "An abuse of discretion occurs when the decision of the circuit court is arbitrary, fanciful, or unreasonable, or when no reasonable person would agree with the position adopted by the trial court." *Id.*; see also *People v. Heineman*, 2023 IL 127854, ¶ 59. "[I]n reviewing the circuit court's ruling for an abuse of discretion, we will not substitute our judgment for that of the circuit court, 'merely because we would have balanced the appropriate factors differently.' " *People v. Simmons*, 2019 IL App (1st) 191253, ¶ 15 (quoting *People v. Cox*, 82 Ill. 2d 268, 280 (1980)).

¶ 21 On appeal, defendant's appointed counsel, the Office of State Appellate Defender (OSAD), filed an Illinois Supreme Court Rule 604(h)(7) (eff. Apr. 15, 2024) memorandum. Therein, defendant argues that the State failed to show that Ella's injuries were foreseeable when the court found that this "kind of thing" could happen to any driver, regardless of impairment, and therefore the State failed to sufficiently prove defendant committed a detainable offense. While admitting the argument was not contained in defense counsel's written motion for relief, it argues that the argument was made when counsel argued that defendant was not the direct cause of the accident where Ella was lying down and "could not be seen" by anyone. It further noted that the State argued that the issue was not "proximate cause for the accident in general," because the "victim was dragged" for 300 feet. On this basis, appellate counsel contends the issue was not forfeited and argues the State's claim at the hearing, *i.e.*, proximate cause for the accident in general, is "precisely the issue, and the question is whether Ella's injuries were foreseeable." It argues that the State failed to show that defendant committed a detainable offense, and the court should

remand the case for a hearing on conditions of release so defendant could return to her job and infant daughter.

¶ 22 Appellate counsel also argues that the State failed to meet its burden of proving that defendant posed a real and present danger and that no conditions of release would mitigate the threat she posed. Counsel claims the State's argument that defendant had a drinking problem was not supported by the evidence. It further argues, pursuant to *Atterberry*, 2023 IL App (4th) 231028, ¶ 18, that the fact that defendant was charged with a detainable offense was insufficient to order detention. It argues that this "could have happened to any driver, impaired or not," and failed to show that defendant posed "sufficient danger to keep her away from her job and baby." Counsel argues that defendant's violation of her "supervision one time does not mean that she poses an unacceptable risk to the public." Counsel argues that the court could have released defendant with orders not to consume alcohol, require an alcohol-monitoring device, required she be evaluated for alcohol treatment, ordered her not to drive, ordered home confinement or GPS monitoring, all of which would have mitigated defendant's alleged dangerousness.

¶ 23 In response, the State argues, citing *People v. Smith*, 2024 IL App (2d) 240168, ¶ 21, that the issue of proximate cause and foreseeability may be upheld if the State's evidence was sufficient. It further argues, citing *Smith* (*id.*), that defendant's arguments regarding proximate cause, although they may be successful at the trial, were not dispositive at a pretrial release hearing. It then addressed the trial court's findings in the detention order, including the nature and circumstances of the offense, the identity of person believed to pose a threat, the nature of the threat, any statements made by or attributed to the defendant, together with the circumstances surrounding those statements, and whether defendant was on probation, parole, or supervised release when the current offense occurred. It provided additional support for the trial court's

findings and further argued that the trial court did not abuse its discretion in finding that no condition, or combination of conditions, would mitigate defendant's dangerousness.

¶ 24 Before we consider the merits of defendant's argument, we must first consider whether defendant's argument regarding whether the State failed to prove she committed a detainable offense was properly preserved for appeal. To make this determination, we review Illinois Supreme Court Rule 604(h)(2), which states,

> "As a prerequisite to appeal, the party taking the appeal shall first present to the trial court a written motion requesting the same relief to be sought on appeal and the grounds for such relief. The trial court shall promptly hear and decide the motion for relief. Upon appeal, any issue not raised in the motion for relief, other than errors occurring for the first time at the hearing on the motion for relief, shall be deemed waived." Ill. S. Ct. R. 604(h)(2) (eff. Apr. 15, 2024).

¶ 25 The rule further states,

> "The motion for relief will serve as the argument of the appellant on appeal. *** Issues raised in the motion for relief are before the appellate court regardless of whether the optional memorandum is filed. If a memorandum is filed, it must identify which issues from the motion for relief are being advanced on appeal. Whether made in the motion for relief alone or as supplemented by the memorandum, the form of the appellant's arguments must contain sufficient detail to enable meaningful appellate review, including the contentions of the appellant and the reasons therefore and citations of the record and any relevant authorities." Ill. S. Ct. R. 604(h)(7) (eff. Apr. 15, 2024).

¶ 26 These provisions were previously interpreted by this court. See *People v. Drew*, 2024 IL App (5th) 240697, ¶¶ 39-44; *People v. Williams*, 2024 IL App (5th) 240949-U, ¶ 25 (Moore, J.,

specially concurring) ("The motion for relief establishes the arguments that may be presented on appeal."). The Rule 604(h)(2) requirement, that any argument intended to be raised on appeal must be included in the motion for relief, is equally enforced by the other districts as well. *People v. Thomas*, 2024 IL App (1st) 241846-U, ¶¶ 28-29; *People v. Nettles*, 2024 IL App (4th) 240962, ¶ 20; *People v. Jackson*, 2024 IL App (3d) 240479-U, ¶¶ 11-12.

¶ 27 Although no objection to defendant's argument was raised by the State, the Illinois Supreme Court rules "have the force of law and are not aspirational." (Internal quotation marks omitted.) *People v. Shunick*, 2024 IL 129244, ¶ 22. Rule 604(h)(2) limits the issues that may be raised on appeal to those set forth in the motion for relief. See *Drew*, 2024 IL App (5th) 240697, ¶ 41; *Williams*, 2024 IL App (5th) 240949-U, ¶ 25 (Moore, J., specially concurring); *Thomas*, 2024 IL App (1st) 241846-U, ¶ 29; *Nettles*, 2024 IL App (4th) 240962, ¶ 20; *Jackson*, 2024 IL App (3d) 240479-U, ¶ 12. Here, defendant's motion for relief provided no argument contending that defendant's offense was not detainable. Similarly, at the hearing on the motion for relief, defense counsel clarified that the "main argument" was that the court erred "in ruling that no condition or combination of conditions could prevent [defendant] from committing further crimes or be a danger to the public." Thereafter, counsel launched into a garbled argument that included his contention that defendant was not the direct cause of the accident due to Ella's suicidal ideations. While such statement was made, at no time did defense counsel argue that such contention undermined the State's allegation that defendant committed a detainable offense. Nor was the State's responsive argument geared toward whether defendant committed a detainable offense. Accordingly, we hold that defendant's detainable defense argument was waived.

¶ 28 Defendant's remaining arguments contend that the State failed to prove that defendant presented a real and present danger and further failed to prove that no condition, or combination

of conditions, would mitigate her dangerousness. Typically, when considering the sufficiency of the evidence, "the reviewing court must view the evidence 'in the light most favorable to the prosecution' " *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In this case, the question becomes, " 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found' " (emphasis in original) (*id.* at 278 (quoting *Jackson*, 443 U.S. at 319)) that the State did not prove by clear and convincing evidence that defendant presented a real and present danger and no condition, or combination of conditions, would mitigate defendant's dangerousness. 725 ILCS 110-6(a) (West 2022). The clear and convincing standard is "more than a preponderance of the evidence and not quite approaching the beyond-a-reasonable-doubt standard necessary to convict a person of a criminal offense." *People v. Craig*, 403 Ill. App. 3d 762, 768 (2010).

¶ 29 Here, the trial court found that defendant should be denied pretrial release based on the nature and circumstances of the offenses charged, statements made by the defendant, and the fact that defendant was under court supervision at the time of the incident. While the underlying circumstances of the accident were unusual, it was undisputed that defendant was under the influence of alcohol when her vehicle dragged Ella over 300 feet before stopping. Further, it was undisputed that defendant's concerns following the incident were solely for her own well-being, not that of her alleged friend Ella, or her child in the car. Additionally, it was also undisputed that defendant's prior DUI conviction which included alcohol counseling and prohibitions of violating any other criminal statutes failed to persuade defendant not to drive while under the influence. Given these undisputed facts, we cannot find that the State's evidence was insufficient to support the trial court's findings or ultimate conclusions. Accordingly, we affirm the court's orders

granting the State's petition to deny defendant pretrial release and denying defendant's motion for relief.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated herein, we affirm the trial court's order granting the State's petition to deny release.

¶ 32 Affirmed.