2025 IL App (2d) 250031-U
No. 2-25-0031
Order filed May 30, 2025

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DEMETRIOUS HOWARD, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of De Kalb County. No. 24-CF-679 Honorable Joseph C. Pedersen Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Jorgensen concurred in the judgment.
Justice McLaren specially concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in ordering defendant detained pretrial where the State proved by clear and convincing evidence that (1) the proof was evident and the presumption great that defendant committed the offenses as charged; (2) defendant's pretrial release would pose a threat to the community at large; and (3) no condition or combination of conditions would mitigate the threat posed by defendant. Affirmed.

¶ 2 At issue here is whether the trial court erred in granting the State's petition to deny defendant pretrial release pursuant to 725 ILCS 5/110-6.1 (West 2024) and subsequently denying

defendant's motion for relief under Illinois Supreme Court Rule 604(h)(2). Ill. Sup. Ct. R. 604(h)(2) (eff. Apr. 15, 2024). For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On December 10, 2024, the State charged defendant via complaint with one count of unlawful possession of weapons by a felon (720 ILCS 5/24-1.1(a) (West 2024)), a Class 2 felony; one count of unlawful possession of firearm ammunition by a felon (720 ILCS 5/24-1.1) (West 2024)), a Class 3 felony; two counts of possession of a firearm without a Firearm Owner's Identification (FOID) card (430 ILCS 65/2(a)(2) (West 2024)), a Class A misdemeanor; and one count of possession of an unserialized firearm (720 ILCS 5/24-5.1(d) (West 2024)), a Class A misdemeanor.

¶ 5 The same day, the State filed a verified petition to deny defendant pretrial release, alleging that (1) unlawful possession of weapons by a felon (720 ILCS 5/24-1.1(a) (West 2024)) constituted a detainable offense under 725 ILCS 5/110-6.1 (West 2024); (2) defendant posed a real and present threat to the safety of any person or persons or the community; and (3) no condition or combination of conditions could mitigate that threat. The matter proceeded to pretrial detention hearing.

¶ 6 The State proffered the sworn synopsis from the De Kalb County Sheriff's Office. The synopsis relayed that at approximately 1:16 A.M. on December 9, 2024, De Kalb County Sheriff's deputies responded to 238 McMillan Court in Cortland, Illinois, to a call regarding an individual who displayed a firearm during an argument. Upon arrival on scene, deputies spoke with complaining witnesses K.C. and J.R. They indicated that they were arguing with Heidi Shick, one of the occupants of apartment #103. During that verbal argument, a light-skinned black male with chin length dreadlocks exited apartment #103 with a firearm. The firearm had what was described

as an "extended barrel-type of magazine." When he exited, the male told K.C. and J.R. that "you are lucky you're a female, or it would have been different."

¶ 7 Deputies obtained a search warrant for apartment #103. Once inside, they discovered defendant was the light-skinned black male described by K.C. and J.R. They also found an unserialized firearm with an extended drum magazine in the bedroom closet of the room defendant shared with Madison Hintz. Underneath the bed, there was a box of Federal brand 9mm ammunition in a bookbag. The bookbag also contained defendant's ID card. Deputies spoke with Madison Hintz and Heidi Shick, the other two occupants of apartment #103. They both denied owning a firearm, though Madison Hintz possessed a valid FOID card.

¶ 8 Defendant was taken into custody. After being advised of his *Miranda* rights, he told deputies that he was present during the argument and had knowledge of the firearm being present in the apartment. He denied possessing the firearm or ammunition and advised officers that either Madison Hintz or Heidi Shick displayed the firearm during the argument.

¶ 9 The State also proffered that Defendant had been previously convicted of aggravated unlawful use of a weapon in Winnebago County case no. 22-CF-607001 and was on probation for that case when he committed the instant offense. Defendant also was found guilty of misdemeanor possession of a firearm without a valid FOID card in Winnebago County case no. 17-CF-2776. The State argued that this history shows that defendant has an ability to illegally obtain firearms and a willingness to disobey court orders which makes him an unmitigable threat to the safety of the community at large.

¶ 10 Defense counsel argued that the State failed to prove that the proof is evident or the presumption great that defendant committed the offenses as charged. Even though the firearm was found in the apartment, there were two other individuals who resided there. One of whom

possessed a FOID card. Additionally, although the firearm was found in what was purportedly defendant's bedroom, there was no information in the synopsis about how they knew the bedroom was defendant's. Defense counsel further argued that defendant does not pose an unmitigable threat, as he is gainfully employed, scored a 3 out of a possible 14 on the pretrial risk assessment, and has a place to stay in Rockford should the court impose a no-contact order as a condition of release.

¶ 11 The trial court granted the State's petition to detain. On December 19, 2024, defendant filed a motion for relief under Illinois Supreme Court Rule 604(h)(2). Ill. Sup. Ct. R. 604(h)(2) (eff. Apr. 15, 2024). The motion was set for hearing on January 2, 2025. On that date, the trial court indicated that the motion filed was not sufficient for meaningful appellate review and gave defendant time to amend the motion. In the meantime, the trial court found that defendant's continued detention was necessary to avoid a real and present threat to the safety of any person or persons or the community based on the specific and articulable facts of the case.

¶ 12 On January 8, 2025, defendant filed his amended motion for relief under Illinois Supreme Court Rule 604(h)(2). Ill. Sup. Ct. R. 604(h)(2) (eff. Apr. 15, 2024). It was denied after a hearing on January 9, 2025. Defendant filed a timely notice of appeal on January 22, 2025. On appeal, defendant did not file a supporting memorandum, despite being sent an overdue notice and given an additional seven days to file one. Under Illinois Supreme Court Rule 604(h)(8), our disposition was to be filed 100 days from that date, or May 2, 2025. Ill. S. Ct. R. 604(h)(8) (eff. Apr. 15, 2024). However, as the overdue notice sent to appellant gave an additional seven days to file a memorandum, this court has good cause in filing our disposition beyond the 100 days after the filing of the notice of appeal.

¶ 13 II. ANALYSIS

¶ 14 In his motion for relief, defendant argues that the State failed to prove by clear and convincing evidence that the proof was evident or the presumption great that he committed the offense as charged and that it failed to prove that he posed an unmitigable threat. In support of this, he contends that he categorically denies that he possessed a weapon at the time of the alleged crime and that if called as witnesses, Madison Hintz and Heidi Shick would testify that the statements recorded in the De Kalb County Sheriff's sworn synopsis were false and that defendant did not display a weapon. Further, if released, defendant would reside in Rockford, Illinois, with his mother and would comply with any conditions imposed by the trial court. Defendant also argues that the State failed to prove by clear and convincing evidence that he posed a risk of willful flight. However, the State did not proceed on that prong. As such, we will not address this argument.

¶ 15 The State responds by arguing that it did meet its burden, and that the trial court did not err in detaining defendant. For the following reasons, we affirm.

¶ 16 Where parties to a pretrial detention hearing proceed solely by proffer, a reviewing court is not bound by the trial court's findings and our review is *de novo*. *People v. Morgan*, 2025 IL 130626, ¶ 51. As parties here proceeded solely by proffer, and we as the reviewing court stand in the same position as the trial court, our review is accordingly *de novo*. In other words, we may "conduct [our] own independent review of the proffered evidence and evidence otherwise documentary in nature." *Id.* The purpose of this independent review is to determine whether the evidence identified in the parties' proffers is sufficient to meet the statutory factors set forth in 725 ILCS 5/110-6.1 (West 2024).

¶ 17 Under Article 110 of the Code of Criminal Procedure of 1963 (hereinafter, "Code"), all defendants are presumed to be entitled to pretrial release. 725 ILCS 5/110-2(a) (West 2024). Upon verified petition by the State, the trial court shall hold a hearing under 725 ILCS 5/110-6.1. In

order to be denied pretrial release, the State must 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 poses a real and present threat to the safety of any person or persons or the community; and (3) no condition or combination of conditions can mitigate the real and present threat to the safety of any person or persons or the community. 725 ILCS 5/110-6.1(e)(1)-(3) (West 2024). The State may present evidence at the hearing by way of proffer based upon reliable information in order to meet its burden of proof. 725 ILCS 5/110-6.1 (West 2024). The statute does not include any specific language outlining specifically what type of evidence the State must put forward. *Morgan*, 2025 IL 130626, ¶ 25. Rather, the State must proffer sufficient facts to prove each prong by clear and convincing evidence. *Id.* Here, the State has met its burden.

¶ 18 At the pretrial detention hearing, the State proffered the De Kalb County Sheriff's sworn synopsis, which indicated that, according to two witnesses, defendant exited his apartment holding a weapon. Further, after deputies searched his apartment pursuant to a search warrant, they found a firearm in his bedroom closet and a box of ammunition under his bed in a backpack that also contained his ID card. The two other occupants of the apartment denied ownership of the firearm. The State also proffered defendant's criminal history, which included at least one prior felony conviction. See *supra* ¶ 9. Defendant denies possessing a firearm and argues that if called to testify, Madison Hintz and Heidi Shick would testify that the statements recorded in the De Kalb County Sheriff's sworn synopsis were false and that defendant did not display a weapon. However, "a fact finder need not accept the defendant's version of events as among competing versions." *People v. Ortiz*, 196 Ill. 2d 236, 267. Defendant's denial was rebutted by two witnesses who gave statements to officers on the scene, as well as the fact that deputies found the firearm and ammunition in defendant's bedroom. At this stage, this is sufficient to prove by clear and convincing evidence

that the proof is evident or the presumption great that the defendant committed the offense of unlawful possession of weapons by a felon (720 ILCS 5/24-1.1(a) (West 2024)).

¶ 19 In determining dangerousness, the trial court may consider the following factors: (1) the nature and circumstances of the offense or offenses charged; (2) the history and characteristic of the defendant; (3) the identity of any person or persons to whose safety the defendant is believed to pose a threat; (4) any statements made by defendant, together with the circumstances surrounding them; (5) the age and physical condition of the defendant; (6) the age and physical condition of any victim or complaining witness; (7) whether the defendant is known to possess or have access to any weapon or weapons; (8) whether, at the time of the current offense, the defendant was on probation; and (9) any other factors deemed by the court to have a reasonable bearing upon defendant's propensity or reputation for violent, abusive, or assaultive behavior, or lack of such behavior. 725 ILCS 5/110-6.1(g)(1)-(9) (West 2024).

¶ 20 Here, the State also proved by clear and convincing evidence that the defendant poses a real and present threat to the safety of any person or persons or the community. In looking at the nature and circumstances of the offenses charged, possessing a firearm when legally barred from doing so is a serious, dangerous offense. See *People v. Parker*, 2024 IL App (1st) 232164, ¶ 74-77. He also committed the instant offense while on probation for another firearm offense. Defendant's history with misusing firearms shows that he is a danger to the community, as it shows that he has the ability to illegally obtain firearms and a willingness to disobey court orders. See *supra* ¶ 9. Accordingly, the State proved that defendant poses a real and present threat.

¶ 21 Finally, in determining which conditions of pretrial release, if any, will ensure the safety of any person or persons or the community, the trial court may consider the following: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the

evidence; (3) the history and characteristics of the defendant; (4) the nature and seriousness of the real and present threat that would be posed by defendant's release; (5) the nature and seriousness of the risk of obstructing or attempting to obstruct the criminal justice process that would be posed by the defendant's release. 725 ILCS 5/110-5(a)(1)-(5) (West 2024). No one factor is dispositive. *People v. Trottier*, 2023 IL App (2d) 230317, ¶ 12.

¶ 22 Regarding conditions, the State proved by clear and convincing that no condition or combination of conditions can mitigate the real and present threat that defendant poses to the safety of any person or persons or the community. In supporting his argument that the State failed to meet their burden, defendant merely asserts that he would comply with conditions of pretrial release. However, as discussed above, defendant is charged with a serious firearm offense and has a history of serious firearm offenses, which shows he has a willingness to defy court orders. Defendant's bare assertion that he would comply with conditions of pretrial release is not persuasive under these facts.

¶ 23 Additionally, the trial court, being in a better position to know available conditions of pretrial release in its county, thoroughly considered electronic home monitoring (EHM), as well as an order requiring defendant to surrender firearms and prohibiting him from possessing weapons. It found that no conditions available would be able to mitigate the threat posed by defendant as he has shown a willingness and ability to obtain firearms illegally. He is therefore not likely to comply with a court order imposing conditions. Further, the EHM bracelet can be removed, and defendant would be able to move freely, possibly to illegally obtain firearms. In our *de novo* review of all the statutory factors, the State met its burden in showing that no conditions or combination of conditions could mitigate the threat posed by defendant.

¶ 24 As a final note, the special concurrence indicates that we have made findings of fact based upon controverted proffers from the parties. We disagree with this framing. The State proffered the sworn synopsis. Defendant then proffered that if called to testify, Madison Hintz and Heidi Shick, the two individuals that defendant lived with, would indicate that they did not believe that defendant posed a danger to them or any other person. These two proffers are not controverted. Though defendant does *argue* that the synopsis shows that he made statements indicating that he did not commit the offense, this was not an opposing proffer made by the defendant. As the reviewing court, we are permitted to review the totality of the evidence proffered. Here, although defendant denied possessing and displaying the firearm, there were other facts proffered that rebut this. See *supra* ¶ 18.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we affirm the judgment of the trial court of De Kalb County.

¶ 27 Affirmed.

¶ 28 JUSTICE McLAREN, specially concurring:

¶ 29 I concur to affirm but not pursuant to *de novo* review. The majority have made findings of facts based upon controverted proffers from the parties. As such, I find it difficult, if not impossible, to make findings of fact when there are material issues of fact regarding eligibility and dangerousness. Under *de novo* review I would determine that there are material issues of fact and vacate and remand the cause for further proofs.

¶ 30 However, I opine that we are not required per *Morgan* to utilize a proceeding that fails to bring finality and functions as a second weighing of the proffers by the parties. We are a court of review, not a secondary trier of fact. I would therefore not entertain *de novo* review and follow the standards of review set forth in *People v. Trottier*:

> "Our standard of review is twofold. We review under the manifest-weight-of-the-evidence standard the trial court's factual findings regarding whether the State presented clear and convincing evidence that mandatory conditions of release would fail to protect any person or the community, the defendant has a high likelihood of willful flight to avoid prosecution, or the defendant failed to comply with previously issued conditions of pretrial release thereby requiring a modification or revocation of the previously issued conditions of pretrial release. See *In re C.N.*, 196 Ill. 2d 181, 208, (2001) (applying a similar standard of review for the requirement of clear and convincing evidence by the State in termination-of-parental-rights proceeding). A finding is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent or if the finding is unreasonable, arbitrary, or not based on the evidence presented. *In re Jose A.*, 2018 IL App (2d) 180170, ¶ 17. We review for an abuse of discretion the trial court's ultimate determination regarding pretrial release. See *People v. Simmons*, 2019 IL App (1st) 191253, ¶ 9, (applying abuse-of-discretion standard in reviewing ruling denying the defendant's motion for bail pending trial under Illinois Supreme Court Rule 604(c)(1) (eff. July 1, 2017)). An abuse of discretion occurs only when the trial court's decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court. *People v. Williams*, 2022 IL App (2d) 200455, ¶ 52." *People v. Trottier*, 2023 IL App (2d) 230317, ¶ 13.

¶ 31 I believe the majority analysis establishes that the findings of fact made by the trial court are not against the manifest weight of the evidence and considering the factors relating to the trial

court's exercise of discretion, there was no abuse of discretion in denying release. I therefore agree to affirm the judgment of denial.

¶ 32 However, I note the majority's comments:

> "As a final note, the special concurrence indicates that we have made findings of fact based upon controverted proffers from the parties. We disagree with this framing. The State proffered the sworn synopsis. Defendant then proffered that if called to testify, Madison Hintz and Heidi Shick, the two individuals that defendant lived with, would indicate that they did not believe that defendant posed a danger to them or any other person. These two proffers are not controverted. Though defendant does argue that the synopsis shows that he made statements indicating that he did not commit the offense, this was not an opposing proffer made by the defendant. As the reviewing court, we are permitted to review the totality of the evidence proffered. Here, although defendant denied possessing and displaying the firearm, there were other facts proffered that rebut this." See supra ¶ 24.

¶ 33 The majority contends that the material facts are *rebutted*, not controverted, without mentioning what this weightier evidence is. Perhaps some documentary evidence is more weighty than others? I submit that they are controverted and rebut means "[t]o refute, especially by offering opposing evidence or arguments, as in a legal case." The American Heritage Dictionary, https://www.ahdictionary.com/word/search.html?q=rebut (last visited May 20, 2025). Essentially, the majority claims that if evidence is presented to refute a material fact, then it is not controverted if the trier of fact finds other evidence to counter the fact. But if it is not controverted, then there must not be any evidence to refute it. The majority has unwittingly addressed the conundrum created by attempting to make findings of fact and determinations when the only evidence is

documentary. If one considers the presumption that every criminal defendant is eligible for release, one realizes that to choose such controverted facts in favor of one party over the other is as much an enigma in the higher court as it is in the lower court.

¶ 34 So, it would seem that no matter how many levels of review, the standard on review will always be *de novo* with no deference given to any lower court's disposition of the case. I am looking forward to learning how to ascribe greater weight to different claims contained in documentary evidence. The same problem extant in the trial court will arise in further review by higher courts, a paradigm of kicking the can down the road.