

**NOTICE:** This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 23 CR 0501901
	)	
Michael Harris,	)	Honorable
	)	Diana L. Kenworthy
Defendant-Appellant.	)	Judge Presiding

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JUSTICE TAILOR delivered the judgment of the court.  
Presiding Justice Oden Johnson concurred in the judgment.  
Justice Hyman, specially concurred.

**ORDER**

¶ 1 *Held:* The circuit court did not err in denying pretrial release based on its finding that no condition or combination of conditions can mitigate the real and present risk to safety posed by the defendant.

¶ 2 I. BACKGROUND

¶ 3 Defendant-Appellant Michael Harris appeals under Illinois Supreme Court Rule 604(h) (eff. Sept. 18, 2023) from the circuit court's order entered on February 5, 2024, denying him pretrial release under Public Act 101-652 (eff. Jan. 1, 2023), commonly known as the Pretrial Fairness Act.

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¶ 4 On May 3, 2023, Harris was charged with one count of armed robbery/no firearm (720 ILCS 5/18-2(a)(1) (West 2022)), one count of armed robbery/indicate arm (720 ILCS 5/18-1(b)(1) (West 2022)), and one count of aggravated unlawful restraint (720 ILCS 5/10-3.1(a) (West 2022)).

¶ 5 On January 16, 2024, after the Pretrial Fairness Act went into effect, Harris, who was already in custody, filed a petition for pretrial release. On January 29, 2024, the State filed a petition for pretrial detention. The circuit court held a hearing on both petitions that same day. According to the State's proffer, on February 11, 2023, Harris exited a Chicago Transit Authority (CTA) train, left the station, and walked to a nearby Walgreens store. As he approached Walgreens, he started to cover his face with something and by the time he entered the store his whole face was covered other than his eyes and "upper head". He waited in line. When the customer in front of Harris had issues with his payment, Harris jumped over to the other side of the counter. Once on the other side of the counter, Harris displayed a knife, held it to the victim-employee's body, and demanded that the employee open the cash register. The employee, who was frightened, was unable to open the register. Harris then moved to the other side of the employee and held the knife to her throat and continued to demand that the employee open the cash register. When the employee could not open the cash register, Harris took several packages of cigarettes, placed them in a trash bin, and fled the scene with the bin.

¶ 6 Chicago Police Departments (CPD) officers investigating the incident recovered video footage of Harris on the CTA train without any face covering. They were then able to track Harris leaving the station and walking to Walgreens. Officers created and distributed a bulletin and a CPD officer recognized Harris. Officers created a photo array that included Harris's photo. The Walgreens' employee did not recognize Harris from the photo array but another witness to the incident identified him.

¶ 7 Harris was in IDOC custody when CPD officers spoke to him. Officers showed Harris a photo depicting him in the CTA train before he covered his face. Harris identified himself. Officers then showed Harris a photo of him with his face covered, at which point Harris declined to speak with the officers any further.

¶ 8 The State proffered that Harris was previously convicted of four felonies and several misdemeanors. Harris was convicted of felony theft in 2008. He was sentenced to two years of probation, which was terminated unsatisfactorily. Also in 2008, Harris was convicted of possession of a stolen motor vehicle. He was sentenced to five years' imprisonment. In 2013, Harris was convicted of burglary for which he was sentenced to three years' imprisonment. Finally, in 2015, he was convicted of aggravated robbery and burglary for which he was sentenced to thirteen years' imprisonment. He was on parole for the 2015 conviction at the time of the instant incident. Additionally, Harris was convicted of several misdemeanors including battery and criminal damage to government property.

¶ 9 In mitigation, counsel for Harris informed the court that Harris was employed, volunteered at a homeless shelter and food pantry, and could live with family if placed on electronic monitoring. Counsel relayed that Harris's struggles were related to substance abuse. Counsel requested electronic monitoring and drug rehabilitation for Harris, indicating that Harris was willing to submit toxicology screens through pre-trial services.

¶ 10 The circuit court granted the State's petition for pretrial detention. It recognized that substance abuse was likely a factor in the instant incident and prior incidents but also considered the safety of the community. It noted Harris's previous opportunities to receive and complete substance abuse treatment, as well as his failure to complete probation. The circuit court additionally noted the premeditated and violent nature of the incident where Harris covered his head and face before entering the Walgreens and the fact that Harris held a knife to the employee's

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body and throat. The circuit court found that the proof was evident and presumption great that Harris committed the offenses alleged, that he posed a real and present threat to the safety of not only Walgreens' employees but to the community at large based on the articulable facts of the case, and that there was no condition or combination of conditions that could mitigate the real and present danger. The circuit court was specifically concerned that Harris was on parole at the time of the incident and that, considering his criminal history, he appeared to be escalating his criminal activity. In its written order, under the facts supporting the finding that Harris posed a real and present danger, the circuit court noted the fact that Harris held a knife to the employee's throat when she could not open the cash register. In finding that no condition or combination of conditions could mitigate the real and present threat posed by Harris, the circuit court reasoned: "[Harris] was on parole for an aggravated robbery when he is alleged to have committed an armed robbery. He has a lengthy criminal background, and the manner of his thefts seem to be escalating." Harris timely appealed.

¶ 11

## II. ANALYSIS

¶ 12 All defendants are presumed eligible for pretrial release under the Pretrial Fairness Act and the State bears the burden of justifying pretrial detention with clear and convincing evidence. 725 ILCS 5/110-6.1 (e) (West 2022). Specifically, to justify pretrial detention, the State has the burden to prove that:

“(1) the proof is evident or the presumption great that the defendant has committed an offense listed in subsection (a);

(2) \*\*\* 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, by conduct which may include, but is not limited to, a forcible felony, the obstruction of justice, intimidation, injury, \*\*\*;

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(3) no condition or combination of conditions set forth in subsection (b) of Section 110-10 of this Article can mitigate (i) 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[.]” *Id.*

¶ 13 Harris’s sole argument on appeal is that the State failed to prove that there were no conditions or combination of conditions that could mitigate the real and present threat to the safety of persons and the community. We review this finding for abuse of discretion. *People v. Saucedo*, 2024 IL App (1st) 232020, ¶ 36. We only find an abuse of discretion if the circuit court’s decision is arbitrary, fanciful or unreasonable, or where no reasonable person would agree with the position adopted. *Id.*

¶ 14 The basis of Harris’s argument is set forth in his notice of appeal, which states in full:

“Defendant was gainfully employed prior to his incarceration. He was living with family and volunteered his time in the community. Defendant has family that he can live with while on electronic home monitoring through the Cook County Sheriff or on home confinement with the Cook County Adult Probation Pretrial Services Division. Defendant also maintains that he is seeking substance abuse treatment and is willing to attend court order[ed] programs and submit to random drug testing while on pretrial release.”

¶ 15 In determining which conditions of release, if any, will reasonably ensure the safety of any other person or the community, the circuit court must consider, in relevant part:

“(1) the nature and circumstances of the offense charged;

(2) the weight of the evidence against the defendant \*\*\*;

(3) the history and characteristics of the defendant, including:

(A) the defendant’s character, physical and mental condition, family ties, employment, financial resources, length of residence in the community,

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community ties, past relating to drug or alcohol abuse, conduct, criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest, the defendant was on \*\*\* parole \*\*\*;

(4) the nature and seriousness of 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, that would be posed by the defendant's release \*\*\*." 725 ILCS 5/110-5(a).

¶ 16 We find that the State met its burden to prove that no condition or combination of conditions could mitigate the real and present threat to the safety of persons or the community, and that the circuit court did not abuse its discretion in so finding. The State proffered that Harris entered a Walgreens with a face covering concealing his face, placed a knife on the throat of an employee working the cash register, and after failing to obtain any cash, fled with cigarette packages in a trash bin. The events leading up to the incident and part of the incident were captured on video footage. Furthermore, the State proffered that Harris has a lengthy criminal background and was on parole for an aggravated robbery and burglary at the time of the instant incident. The circuit court's finding that no condition or combination of conditions could mitigate the real and present threat to the safety of persons and the community is supported by the State's proffer. The circuit court considered Harris's substance abuse but nevertheless concluded that because he was on parole at the time of the incident, he had a lengthy criminal history, and he appeared to be escalating his criminal activity, no condition or combination of conditions could mitigate the threat to safety of persons or the community. The circuit court's finding was not arbitrary, fanciful or unreasonable, and we cannot say that no reasonable person would agree with the circuit court's decision.

¶ 17 We previously found that when a defendant commits a crime while on parole for a previous conviction, the State met its burden to prove that no conditions would mitigate the real and present risk to safety posed by the defendant. See *People v. Lee*, 2024 IL App (1st) 232137, ¶ 33 (“Where, as here, defendant has a demonstrated history of refusing to abide by conditions of release, we find that that the State met its burden of showing clear and convincing evidence that no less restrictive conditions would reasonably ensure the safety of a person, persons, or the community, and that the trial court did not err in so finding.”). Here, Harris not only committed the instant offense while on parole but also has previously failed to satisfactorily complete probation for a separate conviction, showing that he has “demonstrated history of refusing the abide by conditions of release[.]” *Id.* Thus, the circuit court’s conclusion is supported by the record.

¶ 18 III. CONCLUSION

¶ 19 For the foregoing reasons, we affirm the circuit court’s grant of the State’s petition for pretrial detention.

¶ 20 Affirmed.

¶ 21 HYMAN, J., specially concurring:

¶ 22 I write separately to note the existence of a split, within and across appellate districts, about whether the State may petition to detain those like Harris, whom the circuit court ordered released well before the Pretrial Fairness Act took effect. *People v. Watson*, 2024 IL App (1st) 240207-U, ¶ 17 (collecting cases).

¶ 23 Two panel members have argued in favor of the State’s ability to petition for detention. See, for instance, *Watson*, 2024 IL App (1st) 240207-U, ¶ 41 (Tailor, J., dissenting); *People v. McDonald*, 2024 IL App (1st) 232414, ¶ 28 (opinion by Presiding Justice Oden Johnson). In contrast, I have recently articulated my view and the reasons why I disagree. *Watson*, 2024 IL App (1st) 240207-U, ¶¶ 12-18.

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¶ 24 I write in the subjunctive mode here, noting that I would concur with the result if the majority were correct about the threshold issue. See *In re James W.*, 2014 IL 114483, ¶ 65 (Burke, J., specially concurring) (“As a general matter, there is nothing wrong with ruling, as the court does here, “in the subjunctive mode, i.e., ‘were this to be the law, we would still rule as we do.’ ””). Generally, “the appellate court’s judicial authority exists when two judges, a quorum, concur, and \*\*\* the required participation of all three judges is not equated with that authority[.]” *Cirro Wrecking Co. v. Roppolo*, 153 Ill. 2d 6, 18-19 (1992). Thus, I share my separate view that the circuit court properly detained Harris, given the law on timeliness as a majority perceives it.

¶ 25 But I reiterate that either the passage of time, the intervention of the General Assembly, or guidance from our supreme court will bring about a resolution of this threshold debate.