

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).

2026 IL App (4th) 260676-U

NO. 4-26-0676

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 17, 2026

Carla Bender

4th District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

DEMOND J. DUNCAN,

Defendant-Appellant.

)

)

)

)

)

)

)

)

Appeal from the

Circuit Court of

Livingston County

No. 26CF51

Honorable

Randy A Yedinak,

Judge Presiding.

JUSTICE GRISCHOW delivered the judgment of the court.

Justices Doherty and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's order denying defendant pretrial release, concluding the State proved by clear and convincing evidence the proof was evident or the presumption great that defendant committed a detainable offense, defendant posed a real and present threat, and there were no less-restrictive means other than pretrial detention to mitigate that threat.

¶ 2 Defendant, Demond J. Duncan, appeals an order denying his motion for relief after the trial court granted the State's petition to deny him pretrial release pursuant to article 110 of the Code of Criminal Procedure of 1963 (Procedure Code) (725 ILCS 5/art. 110 (West 2024)), commonly known as the Pretrial Fairness Act. In accordance with Illinois Supreme Court Rule 604(h)(7) (eff. Apr. 15, 2024), defendant relies upon his motion for relief filed in the trial court as his argument on appeal. In his motion, defendant argues the State failed to meet its burden of proving by clear and convincing evidence that no condition or combination of conditions could mitigate any threat he posed to the safety of any person, persons, or the community. We affirm.

¶ 3

I. BACKGROUND

¶ 4 On February 26, 2026, defendant was charged by information with two counts of delivery of a controlled substance. The first count alleged defendant knowingly delivered more than 1 gram but less than 15 grams of a substance containing cocaine to a confidential source, a Class 1 felony (720 ILCS 570/401(c)(2) (West 2024)). The second count alleged defendant knowingly delivered a substance containing cocaine to a confidential source, a Class 2 felony (*id.* § 401(d)(i)).

¶ 5 On the same date, the State filed a verified petition to detain defendant. The petition alleged pretrial release should be denied because the proof was evident and the presumption great that defendant committed a nonprobationable offense listed in section 110-6.1(a) of the Procedure Code (725 ILCS 5/110-6.1(a) (West 2024)) and posed a real and present threat to the safety of any person or persons or the community. The petition also alleged pretrial release should be denied under section 110-6.1(e)(4) of the Procedure Code (*id.* § 110-6.1(e)(4)), but the State later withdrew that allegation. A probable cause hearing and a hearing on the motion to detain were held that day.

¶ 6 The State proffered that on January 22, 2026, defendant approached a confidential source and advised the source he had crack cocaine for sale, and the sale could occur during defendant's break at his place of employment. The source met with police officers prior to the sale, where police officers confirmed the source had no contraband. The source was given cash to purchase the crack cocaine. The source then proceeded to meet defendant in the parking lot of defendant's place of employment. The source entered defendant's vehicle with the cash and exited the vehicle with 1.9 grams of a substance that field tested positive for cocaine. On January 29, 2026, defendant again contacted the source with an offer to sell crack cocaine, and the source

again contacted police officers, who provided him with cash and confirmed the source had no contraband. This time, the source met defendant in the parking lot of a Dunkin' Donuts. The source entered defendant's vehicle with the cash and exited defendant's vehicle with 0.8 grams of a substance that field tested positive for cocaine. The source reported that the 0.8 grams of cocaine were removed from a bag containing a larger amount of cocaine. Defendant was subsequently arrested on February 25, 2026, at his place of employment. The trial court found probable cause to support the crimes charged in the information and proceeded to a hearing on the State's verified petition to detain.

¶ 7 A pretrial investigation report was filed with the trial court. It revealed that defendant was 31 years old and resided in Streator, Illinois, with his girlfriend. Defendant was employed full time and was the sole provider for his girlfriend and their children, including defendant's eight-year-old child. Defendant acknowledged a history of drug abuse and prior treatment for drug abuse. Defendant's prior criminal history included convictions for unlawful possession of a weapon by a felon and delivery of a controlled substance, also cocaine. Defendant scored a 7 out of a possible 14 on the Virginia Pretrial Risk Assessment Instrument-Revised (VPRAI-R), which placed him at a risk level of 4 on a scale of 1 to 6. The State further proffered a document entitled "[Office of Statewide Pretrial Services (OSPS)] Proffer Outline," which outlined the duties and roles of the Livingston County pretrial services office. In response, defense counsel proffered that defendant denied the charges against him, but he would abide by any conditions of release imposed by the court.

¶ 8 The State argued the facts established defendant was charged with a nonprobationable offense, delivery of a controlled substance. Defendant initiated the sale of cocaine to the confidential source, and one of the sales took place at defendant's place of

employment. Defendant had a prior criminal history that included a prior conviction for the delivery of a controlled substance, making defendant now eligible for an extended-term sentence. The State argued defendant's act of making sales of cocaine from his place of employment, and the fact he had a larger quantity of cocaine to sell, posed a real and present threat to the safety of people in the community. Considering defendant's prior criminal history, defendant had shown little regard for obeying the law and was likely to continue in his criminal behavior, so the State argued there were no conditions to mitigate the threat he posed to the community.

¶ 9 Defense counsel argued the proof was not evident or the presumption great that defendant committed the offenses, but even if it was, the State failed to show by clear and convincing evidence that he posed a real and present threat to any person in the community. Defendant had a job, and his earnings supported his girlfriend and his child. He scored a 7 on the VPRAI-R, which was in the middle of the scoring range. Defendant had no prior failures to appear and no prior petitions to revoke probation. Defense counsel believed conditions such as drug testing and a drug and alcohol evaluation with any recommended treatment would alleviate any threat defendant posed to persons in the community.

¶ 10 The trial court granted the State's petition to detain. The court determined the proof was evident or the presumption great that defendant committed a qualifying offense, noting the evidence against defendant was strong because the sales were made to a confidential source as part of a controlled buy. The court cited defendant's criminal history, particularly his history of selling illegal drugs, and his VPRAI-R score which placed defendant at a risk level of 4. The court noted the statutory factors and determined defendant posed a real and present threat to the safety of people in the community and there were no conditions that would mitigate this threat. Defendant's actions were dangerous, particularly because defendant was using his work

environment to sell a substantial amount of illegal drugs to people in the community. The court rejected imposing the conditions of reporting to OSPS and electronic monitoring, concluding that defendant was highly likely to commit new criminal offenses if granted pretrial release, and neither would be effective to prevent defendant from committing such offenses.

¶ 11 After defendant was detained, defense counsel filed a motion to have defendant conditionally released from detention in the county jail to attend an inpatient residential treatment program. The motion specified defendant would return to the jail following completion of the treatment program. After a hearing, the trial court granted the motion, entering an order granting defendant a furlough and conditional release for the inpatient residential treatment program. Upon discharge from the program, defendant was ordered to immediately return to the jail.

¶ 12 While defendant was in the residential treatment program, defense counsel filed a motion for relief from the detention order, contending the State failed to prove by clear and convincing evidence there was no condition or combination of conditions that would mitigate any threat defendant posed to the safety of any person, persons, or the community.

¶ 13 Thereafter, before the motion for relief was considered by the trial court, defendant filed a motion to extend his furlough and conditional release, seeking to be placed in a recovery home environment following the completion of his inpatient residential treatment program. The court denied the motion, finding that although the recovery home environment was a structured setting, it was not a secure setting and did not mitigate the risk defendant posed to the safety of persons in the community.

¶ 14 After defendant returned to the jail following his conditional release, the trial court held a hearing on defendant's motion for relief. The court acknowledged defendant's

completion of the inpatient residential treatment program, but it denied the motion for relief, finding continued detention was necessary.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 Under the Procedure Code, it is presumed all criminal defendants are entitled to pretrial release on personal recognizance, subject to certain conditions. 725 ILCS 5/110-2(a) (West 2024). The State may petition to overcome this presumption if the defendant is charged with a detainable offense as enumerated in the Procedure Code and, after a hearing, the trial court finds the defendant's release would pose "a real and present threat to the safety of any person or person or the community, based on the specific articulable facts of the case." *Id.* § 110-6.1(a)(1).

¶ 18 To prevail on its petition to detain in this case, the State needed to prove by clear and convincing evidence (1) "the proof is evident or the presumption great that the defendant committed [a detainable offense]"; (2) the defendant's release would pose "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"; and (3) no condition or combination of conditions would mitigate that safety threat. See *id.* §§ 110-2(b), 110-6.1(a)(1), (e)(1)-(3).

¶ 19 Here, defendant was charged with knowingly delivering more than 1 gram but less than 15 grams of a substance containing cocaine, a Class 1 felony. 720 ILCS 570/401(c)(2) (West 2024). Based upon the charge and defendant's criminal history, a sentence of imprisonment was required by law upon conviction, making it a detainable offense under the statute. See 725 ILCS 5/110-6.1(a) (West 2024); 730 ILCS 5/5-5-3(c)(2)(F) (West 2024) (providing a period of probation, periodic imprisonment, or conditional discharge shall not be

imposed for a Class 1 or greater felony if the offender was previously convicted within 10 years of a Class 1 or greater felony). Although defense counsel argued at the hearing on the petition to detain that defendant did not commit the charged offense and the State failed to prove defendant's release would pose a real and present safety threat to others, defendant did not challenge those findings in his motion for relief. Rather, the sole challenge raised by defendant in his motion for relief filed in the trial court was that the State failed to prove by clear and convincing evidence that there were no less restrictive conditions to mitigate the safety threat posed by defendant. Thus, any argument that the State failed to meet its burden with respect to the first two elements is waived. See Ill. S. Ct. R. 604(h)(2) (eff. Apr. 15, 2024) ("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."); see also *People v. Nettles*, 2024 IL App (4th) 240962, ¶ 33 ("[T]he language in Rule 604(h)(2) is clear that we are to consider waived any arguments not advanced in the motion for relief."). Therefore, we limit our analysis to the third element—whether the State proved by clear and convincing evidence there were no conditions to mitigate the safety threat posed by defendant. When the parties proceed solely by proffer at a pretrial detention hearing, as in this case, our review is *de novo*. *People v. Morgan*, 2025 IL 130626, ¶ 54.

¶ 20 As noted above, under the Procedure Code, it is presumed all criminal defendants are entitled to pretrial release on personal recognizance, subject to certain conditions. *People v. Popovich*, 2025 IL App (4th) 250196, ¶ 19. Thus, a finding of dangerousness alone does not automatically warrant pretrial detention. *People v. Atterberry*, 2023 IL App (4th) 231028, ¶ 18. Rather, the trial court must further evaluate, based on the specific facts of the case and the defendant's individual background and characteristics, whether any condition or combination of

conditions can mitigate the threat and allow the defendant's pretrial release. *Id.* However, "dangerousness and conditions of release are two sides of the same coin; the nature and severity of the threat necessarily determine the nature and severity of the conditions that could—or could not—mitigate the threat." *People v. Romine*, 2024 IL App (4th) 240321, ¶ 16.

¶ 21 Section 110-5(a) of the Procedure Code (725 ILCS 5/110-5(a) (West 2024)) sets forth a nonexhaustive list of factors a trial court is to consider in determining which conditions of pretrial release, if any, will reasonably ensure the safety of others and the likelihood of the defendant's compliance with any conditions of pretrial release. Relevant here, the court is to consider (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, and (4) the nature and seriousness of the real and present threat to the safety of the community, based on the specific articulable facts of the case, which would be posed by the defendant's release. *Id.* § 110-5(a)(1)-(4).

¶ 22 After our *de novo* review of the record, we conclude the trial court considered the relevant statutory factors and did not err in determining no condition or combination of conditions of pretrial release would mitigate the threat posed by defendant based on the specific articulable facts of this case. The evidence proffered by the State indicates defendant had a history of prior felony drug and weapons offenses, including a prior conviction for manufacturing or delivering more than 15 grams of cocaine. The court considered and rejected the condition of requiring defendant to report to OSPS. It also considered and rejected imposing the condition of electronic monitoring. The court concluded both conditions would not mitigate the threat of defendant committing another crime. In particular, the court pointed out that defendant was engaging in his criminal behavior while at work.

¶ 23 We agree with the trial court's finding that the State proved by clear and convincing evidence that further reporting requirements, electronic monitoring, or other restrictions on defendant's movement or conduct would not be sufficient to mitigate the threat to the safety of any person or persons in the community. In reaching this conclusion, we reiterate that the OSPS proffer outline is purely for informative purposes and not evidence relevant to the specific facts and circumstances of this case. See *People v. Yarbrough*, 2025 IL App (4th) 250915-U, ¶ 39. Thus, we affirm the court's decision that there exists no condition or combination of conditions that would adequately mitigate the threat posed by defendant's pretrial release in this case.

¶ 24 III. CONCLUSION

¶ 25 For the reasons stated, we affirm the trial court's judgment.

¶ 26 Affirmed.