2026 IL App (2d) 260366-U
No. 2-26-0366
Order filed November 24, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23(b) and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,

v.

OMAR A. MENDEZ-GUTIERREZ, Defendant-Appellant

Appeal from the Circuit Court of Kane County.
Honorable Eun K. Yoon and John A. Barsanti, Judges, Presiding.
No. 25-CF-1157

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's detention order is affirmed, where the State established by clear and convincing evidence that defendant poses a real and present risk of danger to the community and that less-restrictive conditions do not sufficiently mitigate that risk.

¶ 2 On May 23, 2025, the circuit court granted the State's motion to deny defendant, Omar A. Mendez-Gutierrez, pretrial release under article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/art. 110 (West 2024)), as amended by Public Act 101-652 (Act) (eff. Jan. 1, 2023). See Pub. Act 102-1104, § 70 (eff. Jan. 1, 2023) (amending various provisions of Public Act

101-652 (eff. Jan. 1, 2023)). On June 4, 2025, the court denied defendant's motion for relief. Ill. S. Ct. R. 604(h)(2) (eff. Apr. 15, 2024). He appeals, and we affirm.[1]

¶ 3 I. BACKGROUND

¶ 4 On May 21, 2025, defendant was charged with five counts of predatory criminal sexual assault (class X) (720 ILCS 5/11-1.40(a)(1) (West 2024)), and three counts of aggravated criminal sexual abuse (class 2) (*id.* § 5/11-1.60(c)(1)(i)). On May 23, 2025, the State moved to deny defendant pretrial release, pursuant to sections 110-6.1(a)(1.5) and (a)(5) of the Code. 725 ILCS 5/110-6.1(a)(1.5), (a)(5) (West 2024). The public safety assessment (PSA) rated defendant a two out of six on both the new-criminal-activity and failure-to-appear scales; further, it noted that he had one prior misdemeanor conviction.

¶ 5 On May 23, 2025, the court (Judge Eun K. Yoon) held a hearing on the State's petition. At the hearing, the State proffered a sworn police synopsis, which was admitted without objection. In sum, the synopsis related that two minors had complained that defendant, their mother's ex-boyfriend, sexually abused them when they were 7 or 8 years old and left in his care while their mother worked. They alleged multiple, specific incidents, which included defendant touching their private parts, digital penetration, contact with his penis, and telling one victim not to tell anyone what he did. According to their mother, she dated and lived with defendant and the children from

[1]Defendant filed his notice of appeal with the circuit court on October 24, 2025. Thus, pursuant to Illinois Supreme Court Rule 604(h)(5) (eff. Dec. 7, 2023), absent a finding of good cause for extending the deadline, our decision in this case was due on or before February 2, 2026. However, the circuit court clerk's office did not transmit the appeal to this court until August 27, 2026, long after our deadline had passed. Based on the foregoing circumstances, we find there to be good cause for extending the deadline. See, *e.g.*, *People v. Earnest*, 2024 IL App (2d) 230390, ¶ 1 n.2.

2017 through 2019. One victim stated that she had not seen defendant since his relationship with her mom ended. The other victim described that, in January 2024, while she was at work, defendant arrived and asked her name. According to the synopsis, a LEADS inquiry reflected that defendant had two prior arrests, one for driving under the influence of alcohol and one for driving while license suspended.

¶ 6 The State argued that the court should note the synopsis included an uncharged allegation reflecting escalation, wherein one victim related that defendant pulled down her pants and positioned himself on top of her, but she was able to leave the situation. Further, the State noted, defendant told the other victim not to tell anyone what he did to her, which, it argued, was relevant to dangerousness. The State argued that the proof was evident and presumption great that defendant committed a detainable offense and, further, that he posed a real and present threat to the safety of the alleged victims and the community. It asserted that allowing defendant access to children would put them at risk. Moreover, the State argued that no conditions could mitigate the threat posed by defendant's potential release because, here, defendant gained access to the victims through a dating relationship with their mother, and access to other children could also be gained by numerous other means. It further argued that there were no conditions the court could impose that would protect and ensure young children were kept away from defendant. The State agreed that defendant had no criminal history or convictions; rather, he had traffic tickets and supervision for driving under the influence.

¶ 7 In response, defendant's counsel argued that, while the allegations were serious, defendant did not pose a real and present threat of danger to the specific victims or the community, since the synopsis reflected that the alleged incidents happened more than five years earlier, while defendant was in a dating relationship that has since ended. Counsel noted that defendant was no longer

living with the children and had no contact or access to them. He had no prior or subsequent cases of a similar or violent nature, and the PSA reflected that he was only a level two for risk of new criminal activity. Finally, counsel urged that any purported danger could be mitigated if the court ordered defendant: (1) placed on electronic home monitoring (EHM) to limit his location and movement; (2) to have no access to children; and (3) to travel only for employment or reasons delineated by the court. In response to the court's question, defense counsel confirmed that, at the time of the hearing, defendant was living with family and that his minor nephews lived in the home.

¶ 8 The court granted the State's petition to detain. First, it found the State met its burden of demonstrating that defendant committed a detainable offense.

¶ 9 Second, the court found that defendant posed a danger to the victims and community, noting that defendant attempted to contact one of the victims as recently as January 2024 and asked her name. Further, the very specific acts alleged would be dangerous to the community, if defendant had access to minor children, and, here, minor family members were living with defendant.

¶ 10 Third, the court found that no conditions would mitigate the threat defendant posed. It considered that the offenses involved minor children who were entrusted into defendant's care and to whom he was a father figure. The court did not agree that EHM and limiting defendant's contact with children would adequately mitigate the threat, where defendant was living with his minor nephews and the allegations took place in private, while adults were out of the home. "And so his access to the children or children who are visiting, [they] will be all be exposed to the danger and their safety is going to be an issue because EHM only confines him at home." Finally, the court noted that it had considered defendant's lack of criminal history and that the PSA report ranked

him a two out of six for risk of new criminal activity. However, even considering those facts, the court found he remained a danger and that no conditions short of detention would mitigate the danger and ensure the safety of the victims or community.

¶ 11 On June 2, 2025, defendant filed a motion for relief. Ill. S. Ct. R. 604(h)(2) (eff. Apr. 15, 2024). He argued, generally, that the State failed to meet its burden of demonstrating that he committed a detainable offense. Further, he argued that the State failed to establish that he was a real and present danger to the victims or the community and that the court erred by relying on (1) the allegations in the police synopsis, since he is innocent until proven guilty, as well as (2) the proffered evidence that defendant had contact with one of the complaining witnesses, when he unknowingly entered her place of employment. Defendant argued that the court failed to consider his lack of knowledge or intent when the incidental contact occurred, and that the court incorrectly determined that the single encounter of incidental contact amounted to defendant having continued access to that complainant. Finally, defendant argued that the State failed to establish that there were no conditions short of detention that could mitigate the risk he allegedly posed, where he could be placed on EHM and ordered to check in frequently with pretrial services. Moreover, he argued that, in assessing whether conditions could mitigate the risk of his release, the court relied on the fact that defendant had minors living in his home, but it failed to consider measures that could be taken to ensure that his conduct with minors in the household be supervised, and that, while the minors lived at the same residence, he did not share a living space with them.

¶ 12 On June 4, 2025, the court (Judge John A. Barsanti) held a hearing on the motion for relief. Defense counsel explained that defendant was 40 years old, lived in Elgin with his sister for 10 years, and worked full time selling life insurance as an independent contractor. Counsel reiterated that defendant is presumed innocent and that the allegations were between six and eight years old.

He has no criminal history. Further, counsel argued, if defendant were to be released, he would reside with a friend in Elgin, without any minors present. Finally, considerations short of detention could mitigate safety concerns, specifically, GPS, a "stay away" order, or home detention.

¶ 13 The State noted that, even if defendant could live in a residence without children, the danger to children in the community would not be alleviated because the charges reflected that defendant acted multiple times with multiple victims, he told one victim not to tell anyone the events occurred, and he acted in private when their mother was not home. These circumstances, the State argued, reflected that defendant, when given access to minor children, took advantage of that access. As such, conditions such as GPS or EHM would not mitigate dangerousness because they would not bar children from the residence where he would be staying and do not keep children away from him.

¶ 14 After reviewing the police synopsis, the court denied the motion for relief.

¶ 15 On October 24, 2025, defendant filed his notice of appeal. The Office of the State Appellate Defender filed a memorandum on defendant's behalf pursuant to Illinois Supreme Court Rule 604(h)(7) (eff. Apr. 15, 2024). The State submitted a memorandum opposing defendant's appeal.

¶ 16 II. ANALYSIS

¶ 17 Pretrial release is governed by article 110 of the Code. 725 ILCS 5/110 (West 2024). Under the Code, as amended, all persons charged with an offense are eligible for pretrial release, and a defendant's pretrial release may be denied only in certain statutorily limited situations. *Id*. §§ 110-2(a), 110-6.1(e). As relevant here, upon filing a verified petition requesting denial of pretrial release, the State has the burden to prove by clear and convincing evidence that the proof is evident or presumption great that the defendant has committed a detainable offense (*id*. § 110-6.1(e)(1)), that the defendant's pretrial release poses a real and present threat to the safety of any person or

the community (*id*. § 110-6.1(e)(2)), and that no combination of conditions can mitigate that risk (*id*. § 110-6.1(e)(3)). "Evidence is clear and convincing if it leaves no reasonable doubt in the mind of the trier of fact as to the truth of the proposition in question." *Chaudhary v. Department of Human Services*, 2023 IL 127712, ¶ 74.

¶ 18 We review *de novo* a detention decision where, as here, the parties relied solely on documentary evidence, and no live testimony was presented to the court. *People v. Morgan*, 2025 IL 130626, ¶¶ 51, 54.

¶ 19 On appeal, defendant argues first that the court erred in finding that the State satisfied its burden to prove that he poses a real and present threat to the safety of the alleged victims or the community. He relies on *People v. Smith*, 2025 IL App (4th) 231028, ¶ 40, where the court determined that, by a "wide margin," the State failed to overcome the presumption that the defendant was entitled to pretrial release. In *Smith*, the court reversed detention, where (1) the defendant was charged with four counts of predatory criminal sexual assault, including penile penetration, of two children; (2) the victims were now adults, with one living out of state; (3) the defendant lived alone; (4) the record did not detail if there were any minors in the defendant's family and whether he would have opportunity to contact them; (5) the defendant had no criminal history, except a misdemeanor 30 years prior to the charges; (6) the charged conduct occurred 25 years prior to the detention hearing; and (7) the PSA report marked him at the lowest risk level for violating pretrial release conditions. *Smith*, 2025 IL App (4th) 231028, ¶¶ 27-31. The court rejected the trial court's finding that the defendant posed a threat to other minors whom he might access through other means (such as friends, neighbors, or just by living in the community), as those factors are "so universally true that, if sufficient, it would stand as a reason for the detention of any person charged with the offenses with which defendant is charged." *Id.* ¶ 29.

¶ 20 Here, defendant argues, the State failed to demonstrate how he would have access to the two victims. Further, defendant contends, the charged conduct occurred more than five years earlier, while he was in a relationship with the victims' mother, but they are no longer dating. One victim explained that she had not seen defendant since the breakup and, although the other victim stated that she saw him at her job on January 14, 2024, and it appeared he tried to confirm her identity by asking her name, defendant "explained that the encounter was incidental, as he had entered her place of employment not knowing that she worked there." Defendant also reiterates that he has no prior felony convictions, scored a level two in the PSA, and that he informed the court that, if released, he could live with a friend in Elgin, where no minors resided. He argues that, like the court in *Smith*, we should reject the State's broad statements and concerns about any threat, where they are not supported by the evidence.

¶ 21 In deciding whether a defendant poses a real and present threat to safety, based upon the specific articulable facts of the case, the court may consider several non-exhaustive statutory factors, including the nature and circumstances of the offense charged, as well as the age and physical condition of any victim or complaining witness. 725 ILCS 5/110-6.1(g) (West 2024). No one factor is determinative, and the inquiry must be individualized. *Id.* § 6.1(f)(7).

¶ 22 Here, the record supports the court's finding that the State proved by clear and convincing evidence that the proof is evident or presumption great that, if not detained, defendant poses a real and present danger to the victims and/or the community. In this individualized inquiry, we find *Smith* distinguishable. Unlike in *Smith*, the charged conduct here is comparatively close in time to the detention hearing (only 5 years, as opposed to the 25 years in *Smith*). Further, considering the nature and circumstances of the charged offenses, defendant's access to the alleged victims was acquired through a dating relationship, which could recur if defendant were released and

commenced dating again; in contrast, the minors in *Smith* alleged that the occurrences happened while at their grandmother's home, where the defendant resided. Moreover, although in *Smith* the victims had grown into adults and one was living out of state, such that there was no evidence that the defendant had contact with them, here, both victims remained under age 18 at the time of the detention hearings, and there is evidence that the defendant *did* have contact with one of the victims at her place of employment. Although defendant asserts that he "explained" the contact was incidental and he did not know she worked there, we note that counsel did not present such an explanation on defendant's behalf at the hearings themselves. Rather, the only place that assertion appears is in his motion for relief, wherein he notes that the court erred where it failed to consider that he "unknowingly" entered her place of employment, *i.e.*, it did not consider his "lack of knowledge or intent" when the "incidental contact" occurred. Thus, the record does not necessarily support defendant's lack of knowledge, but it *does* confirm that the contact occurred, and, critically, there is no express denial from defendant that he asked the victim to confirm her name.

¶ 23 Finally, whereas the evidence in *Smith* demonstrated that the defendant lived alone, here, the evidence before the court at the initial detention hearing was that defendant lived with his sister and minor nephews. In his written motion for relief, defendant did not deny the minors lived in the same residence as him; rather, he asserted, without further clarification, that he did not share a living space with them. Then, at the hearing on the motion for relief, defense counsel asserted that, if released, defendant would reside with a "friend who lives in Elgin" and that there would be no minors in that residence, but no further information was provided (*i.e.*, no name of the "friend," description of the residence itself, nor who else lives there, no address, etc.) Given the foregoing, it is not clear that defendant would lack access to children through his or another's living environment, especially considering that he has knowledge of one victim's place of employment

and had interacted with her there. As such, we conclude the State satisfied its burden of establish a real and present threat to the victims and/or community.

¶ 24 Defendant next argues that the court erred where it found the State met its burden of establishing that no combination of pretrial release conditions could mitigate the risk he allegedly poses. Again, defendant argues, relying on *People v. Alderson*, 2025 IL App (4th) 250684-U, there was no evidence that he has committed any offenses since the time of the alleged incidents, which occurred in 2017 to 2019; he scored low on the PSA; he could be placed on EHM, GPS, home detention, and ordered to stay away from the complaining witnesses; and he would live at a residence without access to minors. He argues that the State did not meet its burden, where it improperly relied on speculation and the charges alone to argue that there are no mitigating conditions.

¶ 25 If a court finds that the State has established that a defendant poses a real and present threat of danger to a person or the community, it must assess what pretrial release conditions, if any, will ensure the safety of that person or the community, taking into account several factors, including the nature and circumstances of the offense charged. 725 ILCS 5/110-5(a) (West 2022).

¶ 26 We do not find error with the court's decision that the State established no combination of conditions could mitigate the threat posed by defendant's pretrial release. As noted at the hearings, EHM and GPS would not preclude contact between defendant and children. While we acknowledge that pure speculation cannot satisfy the State's burden, the evidence presented here reflected *only* that either: (1) defendant, in fact, lived with minors; or (2) he could live with an unnamed "friend" at an apparently undisclosed address.

¶ 27 Moreover, defendant's reliance on *Alderson* is misplaced. There, the court reversed a detention order, where the defendant was charged with one count of predatory criminal sexual

assault, but had no criminal history; had not committed any crimes since the charged incident; was assessed on the PSA as having zero risk of violating pretrial release conditions; and, "significantly," there was no evidence in the record regarding the victim's present age, residence, or the nature and timing of her interactions with the defendant. *Alderson*, 2025 IL App (4th) 250684-U, ¶¶ 24-29. The court concluded that the foregoing rendered only speculative the risk of threat and that, consequently, the trial court had placed undue emphasis on its concern that conditions could not prevent the defendant from having access to children through his employment, the community, or social media, and it would be difficult for court services to monitor him. *Id.* ¶¶ 26-28.

¶ 28 Again, the assessment of conditions is an individualized inquiry based upon several considerations and the specific facts of each case. 725 ILCS 5/110-5(a) (West 2022). Here, in contrast to *Alderson*, the record reflects that defendant had knowledge concerning a victim's employment and interacted with her there. Further, it reflects that defendant's residence would either be in a home with minors, in a home with minors who do not share his living space (unexplained), or allegedly without minors, at an unspecified location, which renders not undue the court's concern that the evidence did not reflect release conditions could mitigate the risk of harm.

¶ 29 In these circumstances, considering the nature and circumstances of the offense charged, the court did not err in finding that no conditions could mitigate the particular threat posed by defendant's release.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 32 Affirmed.