

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).

2024 IL App (4th) 240624-U

NO. 4-24-0624

IN THE APPELLATE COURT

OF ILLINOIS

FILED

August 22, 2024

Carla Bender

4th District Appellate Court, IL

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellant,)	Circuit Court of
v.)	Winnebago County
ANGEL E. CERVANTES,)	No. 24CF469
Defendant-Appellee.)	
)	Honorable
)	Debra D. Schafer,
)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Lannerd and Vancil concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court reversed, finding the circuit court abused its discretion in granting defendant pretrial release in these circumstances.

¶ 2 The State appeals the circuit court’s order granting defendant, Angel E.

Cervantes, pretrial release pursuant to sections 110-5 and 110-6.1 of article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-5, 110-6.1 (West 2022)), hereinafter as amended by Public Act 101-652, § 10-255 (eff. Jan. 1, 2023), commonly known as the Pretrial Fairness Act (Act). See Pub. Act 102-1104, § 70 (eff. Jan. 1, 2023) (amending various provisions of the Act); *Rowe v. Raoul*, 2023 IL 129248, ¶ 52, 223 N.E.3d 1010 (setting the Act’s effective date as September 18, 2023).

¶ 3 On appeal, the State argues this court should reverse the circuit court’s order granting defendant’s motion to reconsider the conditions of his pretrial release. In the notice of appeal, the State contended:

“The court abused its discretion in determining, at a hearing on defendant’s continued detention pursuant to 725 ILCS 5/100-6.1(i-5) [*sic*], that continued detention was no longer necessary to avoid a real and present threat to the safety of any person or persons or the community, where the court found that the nature of the offense indicated defendant posed a real and present threat, and there were no changed circumstances between the date of defendant’s initial detention and the date of the continued detention hearing. The State had previously shown by clear and convincing evidence that there were no conditions or combination of conditions that would ensure the safety of the community, and nothing had changed in the interim.”

We agree and reverse.

¶ 4 I. BACKGROUND

¶ 5 On February 22, 2024, by way of a criminal complaint, the State charged defendant with three counts: (1) aggravated discharge of a firearm (720 ILCS 5/5/24-1.2(a)(2) (West 2022)), a Class 1 felony, (2) unlawful use of weapons by a felon (720 ILCS 5/24-1.1(a) (West 2022)), a Class 3 felony, and (3) reckless discharge of a firearm (720 ILCS 5/24-1.5 (West 2022)), a Class 4 felony. A grand jury later indicted defendant for the same offenses.

¶ 6 The charges arose from a gang-related shooting in the early morning of January 27, 2024. An altercation had erupted between defendant and members of a rival gang at a bar in Rockford, Illinois. Once the altercation moved outside the bar and into the parking lot, defendant, from the back seat of a black Chevrolet Silverado and while armed with a handgun, fired three shots into the air and four more shots in the direction of fleeing opposing gang members. Eyewitnesses identified defendant as the shooter, describing him as a Hispanic male, 23 to 24 years old, with long black hair, wearing a tan hooded sweatshirt with black pants, and armed with a black handgun. When officers reviewed the surveillance videos, they were able to observe a distinctive tattoo of a money sign near the right ear and the letter “B” tattooed on the neck of the Hispanic male wearing a tan hooded sweatshirt and black pants. From additional photographs and Facebook postings, officers positively identified defendant as the person shown on the surveillance videos shooting at fleeing rival gang members.

¶ 7 Police arrested defendant on February 26, 2024. The next day, the State filed a petition to deny pretrial release under section 110-6.1 of the Code (725 ILCS 5/110-6.1 (West 2022)), alleging: (1) defendant was charged with detainable offenses, namely, aggravated discharge of a firearm, unlawful use of weapons by a felon, and reckless discharge of a firearm, (2) there was probable cause to believe defendant committed the offenses, and (3) the proof was evident or presumption great defendant committed the offenses. In support of detention, the State relied on the nature of the charged offenses, the factual summary statement, defendant’s criminal history, and the pretrial services report. The State also referenced two other police reports not otherwise identified in the record.

¶ 8 That same day, defendant’s retained counsel entered an appearance, and both appeared before the circuit court for a hearing. The court entered a temporary detention order,

finding probable cause, finding a detainable offense, and noting the State’s verified petition asserting dangerousness was on file. The court continued the hearing to the next day over defendant’s objection.

¶ 9 On February 28, 2024, the State filed an amended petition to deny pretrial release, noting “[a]dditional grounds upon which the defendant should be denied pretrial release,” namely, “[Illinois State Police] report, Facebook information, RP24-00218, RP22-006117” to the allegations in the original petition. During the detention hearing, a transcript of which is not included in the record, the circuit court entered an order of detention, found probable cause, and gave foreign national admonishments. The detention order cited the dangerousness standard, finding

“by clear and convincing evidence that:

A. The proof is evident or the presumption great that defendant has committed a detainable offense pursuant to 725 ILCS 5/110-6.1(a)(1-7)); AND

B. The defendant poses a real and present threat to the safety of any person(s) or to the community; AND

C. No condition or combination of conditions set forth in 725 ILCS 5/110-10(b) can mitigate the real and present threat to the safety of any person(s) or to the community.”

In support of its detention order, the court provided a “[s]ummary of allegations, which, if supported by credible evidence at trial, could support a finding that the defendant committed a detainable offense,” such as:

“Defendant is alleged to have discharged a firearm in a parking lot of a local [restaurant]. Specifically, defendant allegedly got into an altercation with the alleged victim in the restaurant and security moved the [individuals] outside where the witness saw an individual, later determined by officers based on video surveillance, [to be the] defendant fire 3 rounds in the air and 1 towards an individual. Based on these facts, the court finds [defendant] committed a detainable offense.”

The court’s order further provided the basis for the “dangerousness” finding, *i.e.*, “the defendant poses a real and present threat and why less restrictive conditions would not avoid that threat, based on the specific articulable facts of the case,” to wit:

“Given the nature and circumstances of the offense, which involves defendant’s alleged firing of a firearm in the parking lot of a local restaurant, the court finds defendant poses a real and present threat to the safety of the community. Additionally, at the time of the offense, defendant was on probation for an [aggravated] fleeing conviction. Defendant subsequently received a neutral discharge on his probation a month later (‘off papers’). While defendant is a risk level of 2, which is low, the court finds there are no conditions or combinations of conditions that would ensure the safety of the community based on the nature and circumstances of the offense and defendant’s failure to comply with conditions of probation.”

The order also included a provision prohibiting defendant from having any contact with two of the named victims while he remained in custody. At the hearing's end, the court informed defendant of his next court date, March 14, 2024, for an arraignment on the grand jury indictment. Defendant did not appeal the detention order entered on February 28, 2024.

¶ 10 At defendant's arraignment on March 14, 2024, defense counsel filed a motion to reconsider pretrial release, asking the circuit court "to reconsider the decision to detain him" because there are "conditions [that] can be fashioned to allow for [his] release." The motion identified no new information or changed circumstances warranting pretrial release. The docket reflects defendant was arraigned, but the court continued the matter to March 25, 2024, for a hearing on defendant's motion. The court entered a continuing detention order that day, checking the box with the following findings: "The court finds that continued detention is necessary to avoid a real and present threat to the safety of any person(s) or the community, based on the specific articulable facts of the case, or prevent the defendant's willful flight from prosecution. 725 ILCS 5/110-6.1(i-5)." Defendant did not appeal this continued detention order, either.

¶ 11 On March 25, 2024, the circuit court held a hearing on defendant's motion to reconsider pretrial release, although defense counsel mischaracterized the motion as a "motion to reconsider pretrial conditions." The motion did not challenge the condition of not contacting the named victims. Both the State and defense counsel reargued the factual circumstances, defendant's family circumstances, his employment status, his criminal history, and the pretrial services report. The court, after considering the nature and circumstances of the offense, defendant's criminal history, his family circumstances, and the pretrial services report, reasoned as follows:

“Does he pose a real and present threat? I think that kind of goes with the nature of the offense. I don’t know if this was personal; or, based on at least the allegations, this is based on some stupid gang thing. I’d say it’s a stupid gang thing that may be really serious, in your mind; but, to me, just the fact of getting into a fight in a bar and somebody is in an opposite gang—that, to me, is very stupid. So, it’s just, by virtue of being a person affiliating with a different gang, so that person is at risk.

But I still have to look at whether there are conditions, or a combination of conditions, that can be put in place. And not in any way to take away from the serious nature of this offense, I do find that there are conditions, or a combination of conditions, that I hope can be put in place to make sure that you come to court when you’re supposed to and don’t get re-involved with the system.”

After discussing defendant’s obligations to his family, the court concluded, based on defendant’s limited criminal history and the time he already spent in custody, it should add pretrial conditions. The court imposed a curfew from 10 p.m. to 5 a.m., required defendant to report to Pretrial Services, and prohibited him from having any contact with gang members, going to “any establishment whose primary focus is serving alcohol,” or consuming alcohol, cannabis, or illegal drugs. The court also prohibited defendant from possessing firearms, though he was already a felon prohibited from having a firearm.

¶ 12 The circuit court issued an order titled “Original Conditions of Pretrial Release Order,” finding

“the State has proven by clear and convincing evidence that the below-listed individualized conditions of pretrial release are reasonably necessary to ensure 1) the appearance of the defendant in court; 2) the protection of the safety of any other person or the community; 3) the defendant will not attempt to obstruct the criminal justice process; and 4) the defendant’s compliance with all conditions of release.”

The court then checked the boxes on the form order consistent with defendant’s release on the conditions ordered in court, and it entered a separate “Notice of Conditions of Pretrial Release Upon Release from Custody,” advising defendant of his next court date, along with a recitation of the conditions previously imposed, except it also ordered no contact with an additional victim and no contact with the bar where the fight occurred or any other establishment where the primary purpose is selling alcohol.

¶ 13 The State filed a timely notice of appeal on April 8, 2024, seeking reversal of the circuit court’s order granting release. It filed a memorandum on May 23, 2024. The appeal encountered delays due to the State initially serving the wrong defense counsel and then with the Office of the State Appellate Defender’s (OSAD) late appointment to this case on July 11, 2024. OSAD did not file a response to the State’s memorandum until July 30, 2024. Accordingly, we find there is good cause for extending the deadline for this decision from its original deadline of July 17, 2024. See Ill. S. Ct. R. 604(h)(5) (eff. Apr. 15, 2024).

¶ 14 **II. ANALYSIS**

¶ 15 The State argues the circuit court erred in granting defendant pretrial release during the March 25, 2024, hearing because “no circumstances had changed since the prior court

order granting the State’s petition for detention.” Without an express finding of changed circumstances, the State maintains the court reached the “complete opposite conclusion [from] the prior trial judge” and reasons this amounts to an abuse of discretion. Defendant counters by arguing the court rightly found there were conditions that could mitigate any threat defendant posed to a person, persons, or the community. As for the changed-circumstances argument, defendant argues there is no requirement under section 110-6.1(i-5) of the Code (725 ILCS 5/110-6.1(i-5) (West 2022)) for a court to find changed circumstances when finding continued detention is not necessary. According to defendant, “[e]ven the most learned and diligent judge could make a mistake or find that its previous holding was in error and there is nothing in the [Act] that prevents a judge from doing so.” For the reasons below, we agree with the State and reverse the circuit court’s March 25, 2024, order granting defendant pretrial release.

¶ 16 While our sister districts have equivocated on what standard of review applies to decisions on pretrial release, we have not. “Since this court began deciding appeals under the Act, the Fourth District has consistently reviewed the trial court’s findings regarding pretrial release for an abuse of discretion.” *People v. Morgan*, 2024 IL App (4th) 240103, ¶ 13 (citing *People v. Inman*, 2023 IL App (4th) 230864, ¶¶ 10-11). “A court abuses its discretion by issuing a decision that is arbitrary, fanciful, or unreasonable—a decision with which no reasonable person would agree.” *People v. Atterberry*, 2023 IL App (4th) 231028, ¶ 12 (citing *Inman*, 2023 IL App (4th) 230864, ¶ 10). Likewise, our supreme court “has also found ‘a [circuit] court abuses its discretion if it fails to apply the proper criteria when it weighs the facts.’ ” *People v. Jones*, 2023 IL App (4th) 230837, ¶ 30 (quoting *People v. Ortega*, 209 Ill. 2d 354, 360, 808 N.E.2d 496, 501 (2004)). Though there has been disagreement among the five districts on the applicable standard of review in pretrial release matters generally (see *Morgan*, 2024 IL App

(4th) 240103, ¶¶ 13-30), there seems to be an agreement that we should review a court’s specific decision on continued detention pursuant to section 110-6.1(i-5) under an abuse of discretion standard. *People v. Thomas*, 2024 IL App (1st) 240479, ¶ 16; *People v. Mulbrandon Casey*, 2024 IL App (3d) 230568, ¶ 14 (applying abuse of discretion standard to section 110-6.1(i-5) determination).

¶ 17 Despite the handwringing in the circuit court during the March 25, 2024, hearing, and now on appeal, about whether the State clearly and convincingly proved defendant posed a threat to any persons or the community and then whether any conditions existed or could be imposed to mitigate such a threat, those determinations were not before the circuit court then, and they are not before us now. Those questions were answered by the detention order the court entered on February 28, 2024, which defendant did not appeal. And the answers to those questions were seemingly cemented in the continued detention order issued on March 14, 2024, which defendant did not appeal. To be sure, the requirement that the State prove by clear and convincing evidence each of the three detention elements outlined in section 110-6.1(e) applies to the initial detention hearing. *Mulbrandon Casey*, 2024 IL App (3d) 230568, ¶ 13 (citing 725 ILCS 5/110-6.1 (West 2022)); see *Thomas*, 2024 IL App (1st) 240479, ¶ 13; *People v. Hongo*, 2024 IL App (1st) 232482, ¶ 27; *People v. Harris*, 2024 IL App (2d) 240070, ¶ 41. Once a court denies pretrial release and orders a defendant detained,

“[a]t each subsequent appearance of the defendant before the court, the judge must find that continued detention is necessary to avoid 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, or to prevent the defendant’s willful flight from prosecution.” 725 ILCS

5/110-6.1(i-5) (West 2022); see *Mulbrandon Casey*, 2024 IL App (3d) 230568, ¶ 13 (quoting 725 ILCS 5/110-6.1(i-5) (West 2022)); see also *Thomas*, 2024 IL App (1st) 240479, ¶ 13; *Hongo*, 2024 IL App (1st) 232482, ¶ 27; *Harris*, 2024 IL App (2d) 240070, ¶ 41.

Although it was not mentioned in the March 25, 2024, hearing, section 110-6.1(i-5) of the Code sits at the center of this appeal—whether the continued detention of defendant was necessary to avoid the real and present threat he posed to any person, persons, or the community.

¶ 18 Because all pretrial detention decisions involve common considerations of ensuring public safety and assuring defendants’ appearance in court, a section 110-6.1(i-5) finding naturally shares commonalities with the State’s burden at the initial detention hearing pursuant to section 110-6.1(e), but the analyses are not identical. *Thomas*, 2024 IL App (4th) 240479, ¶ 14. For example, the initial decision on pretrial detention begins with the presumption the defendant should be released. See 725 ILCS 5/110-2(a) (West 2022). By contrast, section 110-6.1(i-5) “starts from the premise that detention was necessary to guard against” the threat a defendant posed to society or the system “and [then] asks *whether anything has changed* such that a defendant’s detention is no longer warranted.” (Emphasis added.) *Thomas*, 2024 IL App (4th) 240479, ¶ 14 (citing 725 ILCS 5/110-6.1(i-5) (West 2022)).

¶ 19 The *Thomas* court is not alone in its conclusion that there must be changed circumstances when a circuit court decides continued detention is no longer necessary. We came to a similar conclusion in *People v. Walton*, 2024 IL App (4th) 240541. There, we considered the processes and standards for changing an existing order relating to pretrial release—*i.e.*, orders for detention or orders for release with conditions. We compared the three provisions in the Code governing such orders. Section 110-5(f-5) applies “when the circuit court releases a defendant on

conditions” and it requires the court “to review the continued necessity of those conditions.” *Walton*, 2024 IL App (4th) 240541, ¶ 25 (citing 725 ILCS 5/110-5(f-5) (West 2022)). Section 110-6(j) “relates to review of detention status when a defendant is initially released but later detained after that release has been revoked.” *Walton*, 2024 IL App (4th) 240541, ¶ 26 (citing 725 ILCS 5/110-6(j) (West 2022)). Section 110-6.1(i-5) requires the court to review “the continued necessity of detention of defendants who were detained at the initial detention hearing.” *Walton*, 2024 IL App (4th) 240541, ¶ 27 (citing 725 ILCS 5/110-6.1(i-5) (West 2022)). Without rehashing our statutory interpretation analysis, we compared the language in each section and arrived at the following conclusion: “Because only section 110-5(f-5) specifically *excludes* the requirement to show ‘new information or a change in circumstance’ [citation], we conclude that such a showing *is required* for relief under section 110-6(j) or section 110-6.1(i-5).” (Emphases added.) *Walton*, 2024 IL App (4th) 240541, ¶ 28. We held a circuit court must find changed circumstances before it alters an existing order to detain a defendant, reasoning that “[i]f a court has found that a defendant qualifies for detention and no new information or change in circumstances is presented, it makes little sense to think that court would reverse its prior ruling for no particular reason.” *Walton*, 2024 IL App (4th) 240541, ¶ 29.

¶ 20 The law governing motions to reconsider further supports the conclusion that new information or changed circumstances are necessary to alter an existing detention order. It is well established that “[t]he purpose of a motion to reconsider is to bring to the court’s attention newly discovered evidence, changes in the law, or errors in the court’s previous application of existing law.” *Malcome v. Toledo, Peoria & Western Ry. Corp.*, 349 Ill. App. 3d 1005, 1008, 811 N.E.2d 1199, 1203 (2004) (citing *Gardner v. Navistar International Transportation Corp.*, 213 Ill. App. 3d 242, 248, 571 N.E.2d 1107, 1111 (1991)); see *People v. Medina*, 221 Ill. 2d 394, 413, 851

N.E.2d 1220, 1230-31 (2006) (outlining the same requirements for a motion to reconsider sentence in a criminal matter). Of course, as we emphasized in *Walton*, a court holds the inherent power to reconsider and correct its rulings (*Walton*, 2024 IL App (4th) 240541, ¶ 20), and we note a court is required to revisit the necessity of continued detention every time the defendant appears before it. Nevertheless, we expect “there will likely be no reason to [revise the detention order] unless circumstances have changed or new information has come to light.” *Walton*, 2024 IL App (4th) 240479, ¶ 29.

¶ 21 Here, the question of continued detention came before the court at defendant’s arraignment on the grand jury indictment on March 14, 2024. He had already been detained, and the court was required to consider continued detention since defendant appeared in court. 725 ILCS 5/110-6.1(i-5) (West 2022). The court found continued detention necessary. However, defendant filed a “Motion to Reconsider Pre-trial Release,” something not contemplated by the Act or the Illinois Supreme Court Rules at the time. Nevertheless, defendant’s motion asserted “there are conditions or a combination of conditions that can be fashioned to secure the appearance of the Defendant, ANGEL CERVANTES and to [alleviate] any concerns regarding safety to the alleged victim or the community.” The motion noted defendant had a job and would work if released and he would reside with his wife and children. This information was previously presented to the court in the pretrial assessment. Aside from not offering new information or changed circumstances warranting reconsideration, defendant’s motion aimed to ensure he would not flee prosecution. However, the State never alleged or sought a finding from the court that defendant posed a flight risk, and the court never made such a finding. Defendant’s motion merely asked the court to reconsider the original detention order, not consider new information.

¶ 22 In light of defendant’s argument in the motion and at the hearing, it is no surprise the circuit court may have been distracted from making the necessary finding of changed circumstances or new information warranting pretrial release during the March 25, 2024, hearing. More importantly, there is no dispute the court failed to address what, if any, new information or changed circumstances made continued detention unnecessary. The term “continued detention” was not uttered during the March 25, 2024, hearing. It did not appear in defendant’s motion.

¶ 23 When rendering her decision, the judge began by noting she reviewed the February 28 detention order, which is best practice in these hearings because “the original detention order is always the context against which a subsequent review must be measured. It is the baseline from which to assess the significance of any alleged change in circumstances or new information.” *Walton*, 2024 IL 240541, ¶ 37. The judge also reviewed the factual summary and pretrial service report. The judge then discussed the nature of the offense and considered whether any conditions or a combination of conditions could be imposed to ensure defendant appeared in court and did not commit another offense. The court explained to defendant:

“This is a difficult choice for me because of the circumstances of the offense, but because you have limited involvement with the court system previously, I am very hopeful that us having this conversation—and, hopefully, this time that you’ve spent in custody—will remind you of who’s important, including your twins.”

The court then granted pretrial release with the following conditions: no firearms, a curfew, no alcohol or drugs, and no contact with the victims, fellow gang members, or establishments that

primarily sell alcohol. The State is correct in noting the “court did not even *mention* any changed circumstances in its oral order.” (Emphasis in original.) By failing to even consider, let alone mention, new information or changed circumstances, the court failed to apply the proper criteria when evaluating the necessity for continued detention based on the facts before it. See *Jones*, 2023 IL app (4th) 230837, ¶ 30 (stating a court abuses its discretion when it applies improper criteria to facts). Instead, it gave defendant a “do over” on the original petition seeking detention under section 110-6.1. The court previously detained defendant because it found by clear and convincing evidence that he posed a real and present threat to a person, persons, or the community and no conditions could mitigate that threat. Then, without explanation, the court reversed course and released defendant with conditions—conditions which were just as present and available to the previous judge who made a finding there were no conditions or combination of conditions which could mitigate the threat—the same finding this judge made in her previous continued-detention order, and a finding which was not appealed after the initial detention hearing. Perhaps there is no better example of an arbitrary decision from a court—when the facts and the law do not change, but the outcome does. See *Atterberry*, 2023 IL App (4th) 231028, ¶ 12 (stating a court abuses its discretion when it issues an arbitrary order).

¶ 24 When making a continued-detention determination under section 110-6.1(i-5), a circuit court must consider and make a finding regarding whether circumstances have changed such that continued detention is no longer necessary to either mitigate the threat the defendant posed to society or to prevent willful flight, whichever ground provided the basis for the court’s original detention order. The court here identified no changed circumstances, so it abused its discretion by granting defendant’s motion to reconsider pretrial release without making the proper findings. See *Atterberry*, 2023 IL App (4th) 231028, ¶ 12; *Jones*, 2023 IL App (4th)

230837, ¶ 30. Consequently, we reverse the court's March 25, 2024, decision granting defendant's motion for reconsideration and remand for a hearing consistent with this order. We express no opinion on the merits of the continued-detention decision.

¶ 25

III. CONCLUSION

¶ 26 For these reasons, we reverse the circuit court's judgment and remand for further proceedings.

¶ 27 Reversed; cause remanded.