

2026 IL 132403

**IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS**

(Docket No. 132403)

THE PEOPLE OF THE STATE OF ILLINOIS, Appellee, v.
JESSE POST, Appellant.

Opinion filed October 29, 2026.

JUSTICE HOLDER WHITE delivered the judgment of the court, with opinion.

Justices Cunningham, O'Brien, and Tailor concurred in the judgment and opinion.

Chief Justice Neville specially concurred, with opinion.

Justice Overstreet specially concurred, with opinion, joined by Justice Rochford.

OPINION

¶ 1 The circuit court of Fulton County denied defendant, Jesse Post, pretrial release pursuant to article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/art. 110 (West 2024)), as amended by Public Acts 101-652, § 10-255, and 102-1104, § 70 (eff. Jan. 1, 2023), commonly known as the Pretrial Fairness Act (Act). Subsequently, defendant sought review of his pretrial detention. Following a hearing, the circuit court determined defendant's continued detention was necessary to avoid the real and present threat he posed. See 725 ILCS 5/110-6.1(i-5) (West 2024). Defendant appealed, and the Appellate Court, Fourth District, affirmed. 2025 IL App (4th) 250598, ¶ 1.

¶ 2 Now on appeal, defendant asks this court to (1) define the proper standard of review applicable to orders appealed from continued detention hearings and (2) find the appellate court erred in affirming the circuit court's order that he remain in pretrial detention.

¶ 3 I. BACKGROUND

¶ 4 A. Initial Pretrial Detention Proceedings

¶ 5 In November 2023, the State charged defendant by information with three counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2020)). The charges alleged defendant, who was 17 years of age or older, committed an act of sexual contact with F.W., C.W., and E.W., all under the age of 13 when the acts were committed, in that he made contact with the private parts of the minors for the purpose of sexual gratification or arousal.

¶ 6 After defendant's arrest in May 2024, the State filed a verified petition to deny him pretrial release, alleging he was charged with an enumerated sex offense under the Criminal Code of 2012 (720 ILCS 5/1-1 *et seq.* (West 2024)) and his pretrial release posed 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. See 725 ILCS 5/110-6.1(a)(5) (West 2024).

¶ 7 At the initial detention hearing, the State proffered that the victims' mother made a complaint in May 2020 to the police alleging defendant was having oral sex

with the children. The children were interviewed at the Child Advocacy Center but did not make a disclosure. A few years later, the children's mother reported that E.W. began talking about a sexual assault that took place in the 2020 timeframe. Further, F.W. and C.W., both of whom had undergone counseling, began disclosing they were sexually assaulted in 2020. Interviews with the children indicated defendant had lured them into the kitchen with candy and performed oral sex on them. The State also proffered that defendant lived close to the victims. In addition, in a prior criminal case, defendant failed to show up in court and make payments toward his fine.

¶ 8 Defendant testified he had four children but only one of them lived with him. At the time of the hearing, he was unemployed. When asked why he had missed court-ordered payments, he stated he started "to hold off on those payments" so he could pay it all off at once. If released, he stated he would come to court, wear an ankle monitor, and have no contact with the victims.

¶ 9 The circuit court found substantial articulable facts supported the charged offenses. Noting defendant's willful disregard of his payment order and believing that constituted a significant concern regarding his ability to comply with court orders, along with the minor victims being "extraordinarily vulnerable," the court denied pretrial release.

¶ 10 In July 2024, defendant filed a motion for relief pursuant to Illinois Supreme Court Rule 604(h)(2) (eff. Apr. 15, 2024), asking the circuit court to reconsider its detention order because there were less restrictive means than detention to secure his continued appearance in court and conditions could be imposed to ensure he was not a danger to the community. The court denied the motion, finding no substantial change in defendant's circumstances and that no less restrictive means were available.

¶ 11 Defendant appealed, and the appellate court reversed. *People v. Post*, 2024 IL App (4th) 241002-U, ¶ 2. The Fourth District found the circuit court failed to make sufficient findings to allow meaningful review of its decision to deny pretrial release. *Id.* ¶ 27. The appellate court vacated the order denying defendant pretrial release and remanded with directions for the circuit court to conduct a new detention hearing, where the State could present evidence and the court could make express findings. *Id.* ¶ 29.

- ¶ 12 On remand, the circuit court conducted a new detention hearing in November 2024. The State proffered that a complaint had been made in 2017 in regard to L.G., born in 2012, the daughter of defendant. L.G. told authorities about an incident where she and defendant went into the woods after defendant “had thrown a frisbee too far.” Defendant then “licked [her] butt.” Defendant denied the accusation.
- ¶ 13 The State also proffered that the charges in the present case were filed after criminal sexual assault allegations were made by E.W., born in 2016, who claimed defendant licked his penis on multiple occasions. E.W. described that defendant would put him on the kitchen counter next to a bowl of candy, pull down E.W.’s pants and underwear, lick his penis, give him a piece of candy, and tell him not to tell E.W.’s father.
- ¶ 14 F.W., born in 2013 and E.W.’s sibling, made a statement to investigators that defendant had previously been her father’s friend. F.W. indicated that on multiple occasions, while alone with defendant in the kitchen, defendant pulled down her pants and touched her vagina. C.W., born in 2014 and E.W.’s sibling, described an occasion where defendant took her into the kitchen, gave her candy, put her on the counter, and licked her vagina and buttocks. C.W. indicated defendant would unzip his pants and show his penis, “shaking it around” when doing so.
- ¶ 15 The victims’ father stated in an interview that he previously lived in an apartment with defendant. During that time, he would sometimes sleep on the couch or go to bed early and leave defendant to supervise the children. Upon being confronted with the allegations, defendant denied them but then “remained silent and did not speak.”
- ¶ 16 B.L., the mother of the three victims, testified defendant lived with the victims’ father in Canton in 2020. Defendant later moved to Peoria, and his current address was only half a mile from the home occupied by B.L. and her children. B.L. believed defendant moved to get closer to her, which she found “extremely terrifying.”
- ¶ 17 Over defense counsel’s objection, B.L. testified that other people had told her about being victimized by defendant. Specifically, B.L. stated S.R. told her that she rode the bus with defendant in the seventh grade and inappropriate acts occurred. B.H. reportedly said she was 16 years old when defendant was 20 and he forced

himself on her, such that she felt “coerced, manipulated, and violated.” B.L. stated defendant was present at her home at the same time as 16-year-old M.M. and saw him being “extremely inappropriate with her.” B.L. also stated M.M. said defendant had exposed himself to her in person and in photographs.

¶ 18 Defendant testified he lived in Peoria and, if he was released from custody, he would live in St. David with his mother. Prior to his arrest, he had been a stay-at-home father but had applied at Walgreens. Defendant indicated he did not know where three of his children lived and had not seen them since 2020 because he did not “get along with their mothers.” He stated he would abide by any conditions of release, including restrictions on his movement, wearing an ankle monitor, and not contacting the victims or any minor.

¶ 19 The circuit court denied pretrial release. The court expressed concern for the victims and the community at large and found, at that time, no set of circumstances supported defendant’s pretrial release.

¶ 20 Thereafter, defendant filed a motion for relief pursuant to Rule 604(h)(2), arguing that the determination by the court that means less restrictive than detention were insufficient to protect the victims and the community was against the manifest weight of the evidence and an abuse of discretion. The court denied the motion. Defendant appealed, arguing the circuit court erred in (1) allowing hearsay evidence, (2) considering evidence of a minor’s interview that did not result in any arrest or criminal charges, and (3) finding the State proved there existed no less restrictive means of protecting the community from the threat he might pose. *People v. Post*, 2025 IL App (4th) 241527-U, ¶ 37. The Fourth District affirmed the detention order, finding the circuit court’s decision to deny pretrial release was not against the manifest weight of the evidence. *Id.* ¶ 49.

¶ 21 B. Defendant’s Motion for Release Based on
Change in Circumstances

¶ 22 In April 2025, defendant filed a motion for review of pretrial detention pursuant to section 110-6.1(i-5) of the Code (725 ILCS 5/110-6.1(i-5) (West 2024)), asking the circuit court to vacate the order for detention. Defendant alleged that, since the order finding no less restrictive means other than his continued detention, there had

been “a change in circumstance.” Specifically, defendant alleged he secured appropriate housing and would reside with his parents, who would provide constant and direct supervision, he would agree to wear an ankle monitor, and he would abide by all terms and conditions the court wished to impose. Defendant contended he was no longer a real and present threat to the safety of any person, persons, or the community and his continued detention was no longer necessary.

¶ 23 The circuit court conducted a hearing on the motion in May 2025. Defendant testified that, if released, he would reside with his mother in St. David. He stated he would submit to house arrest and wear an ankle monitor. His mother and father would provide constant supervision, and although his father worked, his mother did not. Defendant also stated release was necessary so he could assist in obtaining additional information for his defense.

¶ 24 On cross-examination, defendant testified he last lived with his parents from 2020 to 2022. On examination by the circuit court, defendant stated his father, age 67, was in good health but his mother, age 64, was not, due to her “heart condition” and “artery disease.”

¶ 25 The circuit court denied the motion, finding there had been no substantial changes in defendant’s circumstances and there were no less restrictive means available. The court believed GPS monitoring would not work in this case. Notable to the court, defendant’s testimony at the previous hearing was “of significant concern,” and his mother’s age and health were also relevant factors. Further, the court found defendant’s claim he needed to be released to obtain evidence to support his defense was not “at all credible.”

¶ 26 Defendant filed a motion for relief pursuant to Rule 604(h)(2), arguing he had provided information relating to a change in circumstance and showed there were less restrictive means than his continued detention. The circuit court denied the motion, finding no substantial changes in defendant’s circumstances and no less restrictive means were present.

¶ 27 Defendant appealed, arguing the circuit court’s continued detention order should be reversed because he established a change in circumstances showing there were less restrictive means of protecting the community from any threat he posed. 2025 IL App (4th) 250598, ¶ 1. The appellate court affirmed. *Id.*

¶ 28 On the merits, the appellate court first addressed whether a circuit court must find a change in circumstances has occurred before altering an existing detention order. *Id.* ¶ 26. The court stated showing new information or a change in circumstances is required for relief under section 110-6.1(i-5) because, “ ‘[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 [the] court would reverse its prior ruling for no particular reason.’ ” *Id.* (quoting *People v. Walton*, 2024 IL App (4th) 240541, ¶ 29).

¶ 29 The appellate court next considered the appropriate standard of review of a circuit court’s decision at subsequent hearings regarding continued detention pursuant to section 110-6.1(i-5) of the Code. *Id.* ¶ 27. The Fourth District noted this court had recently resolved the district conflict regarding the standard of review to be employed at a pretrial detention hearing. *Id.* (citing *People v. Morgan*, 2025 IL 130626). In *Morgan*, this court held “the standard of review to be employed when the parties to a pretrial detention hearing proceed solely by proffer is *de novo* and, when live testimony is heard, the standard is manifest weight of the evidence.” *Id.* (citing *Morgan*, 2025 IL 130626, ¶ 54).

¶ 30 After noting another split in the appellate court had developed, the Fourth District distinguished between a circuit court’s initial pretrial detention decision from its continued detention decisions and concluded the appropriate standard of review in the latter circumstance is the abuse of discretion standard. *Id.* ¶¶ 27-29.

¶ 31 The Fourth District went on to find the circuit court did not abuse its discretion in concluding defendant’s continued detention was necessary to avoid a real and present threat to the safety of any person or persons or the community. *Id.* ¶ 30. The court found defendant failed to present any new information or demonstrate a change in circumstances to justify changing the detention order. *Id.* The only “ ‘new information’ ” was defendant’s willingness to be on house arrest with GPS monitoring and under the supervision of his elderly parents, which the appellate court stated were options and information available to the circuit court at the prior detention hearing and therefore insufficient to show a change in circumstances. *Id.* ¶ 31. The court further found the result would have been the same under the manifest weight of the evidence standard as well. *Id.* ¶ 32.

¶ 32 This court granted defendant’s petition for leave to appeal pursuant to Illinois Supreme Court Rule 315(a) (eff. Dec. 7, 2023).

¶ 33 II. ANALYSIS

¶ 34 Under the Act, every person charged with an offense is presumed eligible for pretrial release. 725 ILCS 5/110-2(a), 6.1(e) (West 2024); *People v. Mikolaitis*, 2024 IL 130693, ¶ 16. To detain a defendant, the State must file a verified petition requesting the denial of pretrial release, and the circuit court shall hold a hearing on the petition. 725 ILCS 5/110-6.1(a) (West 2024). When seeking denial of pretrial release, the State bears the burden of proving by clear and convincing evidence that (1) the proof is evident or presumption great that the defendant committed a detainable offense; (2) the defendant poses a real and present threat to the safety of any person, persons, or the community, based on the specific, articulable facts of the case; and (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, for offenses listed in paragraphs (1) through (7) of subsection (a), or (ii) the defendant’s willful flight for offenses listed in paragraph (8) of subsection (a).” *Id.* § 110-6.1(e)(1)-(3).

In any order of detention, the circuit court is required to “make a written finding summarizing the court’s reasons for concluding that the defendant should be denied pretrial release, including why less restrictive conditions would not avoid a real and present threat to the safety of any person or persons or the community.” *Id.* § 110-6.1(h)(1). If the court denies pretrial release, the defendant is entitled to appeal that order. *Id.* § 110-6.1(j). However, as a prerequisite to appeal, the defendant “shall first present to the trial court a written motion requesting the same relief to be sought on appeal and the grounds for such relief.” Ill. S. Ct. R. 604(h)(2) (eff. Apr. 15, 2024).

¶ 35 If the circuit court has entered a detention order,

“[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 2024).

A defendant has a right to appeal a continued detention order, subject to the requirements of Rule 604(h)(2).

¶ 36

A. Standard of Review

¶ 37

On appeal from an *initial* order of detention, this court in *Morgan*, 2025 IL 130626, ¶ 54, articulated the appropriate standard of review. The court held that

“(1) when live witness testimony is presented at a pretrial detention hearing, the circuit court’s ultimate detention decision under section 110-6.1, in addition to any underlying factual findings supporting the decision, will not be disturbed on review unless found to be contrary to the manifest weight of the evidence and (2) when the parties to a pretrial detention hearing proceed solely by proffer, the reviewing court is not bound by the circuit court’s factual findings and may therefore conduct its own independent *de novo* review of the proffered evidence and evidence otherwise documentary in nature.” *Id.*

¶ 38

This case presents the question of the appropriate standard of review for appeals of *continued* detention orders under section 110-6.1(i-5). Determining the appropriate standard of review is a question of law that we review *de novo*. *Beggs v. Board of Education of Murphysboro Community Unit School District No. 186*, 2016 IL 120236, ¶ 52.

¶ 39

Initially, we note the State argues this court must first address what determination a circuit court is called upon to make at a continued detention hearing. The State contends the question before the circuit court was whether some new information or change in circumstances warranted altering its prior detention order. Defendant argues the plain language of section 110-6.1(i-5) does not require him to demonstrate a change in circumstances or to present new information before

his detention can be revisited. Based on a reading of the Act as a whole, we find a showing of new information or a change in circumstances is required.

¶ 40 The Act provides three similar provisions with respect to a circuit court's obligation to review detention or release status at subsequent hearings. The first provision of note requires that, when the court releases a defendant on conditions, it is required to review the continued necessity of those conditions as follows:

“At each subsequent appearance of the defendant before the court, the judge must find that the current conditions imposed are necessary to reasonably ensure the appearance of the defendant as required, the safety of any other person, and the compliance of the defendant with all the conditions of pretrial release. *The court is not required to be presented with new information or a change in circumstance to remove pretrial conditions.*” (Emphasis added.) 725 ILCS 5/110-5(f-5) (West 2024).

¶ 41 The second provision deals with the circuit court's review of detention status when a defendant is initially released but is later detained after that release has been revoked.

“At each subsequent appearance of the defendant before the court, the judge must find that continued detention under this Section is necessary to reasonably ensure the appearance of the defendant for later hearings or to prevent the defendant from being charged with a subsequent felony or Class A misdemeanor.” *Id.* § 110-6(j).

¶ 42 The third provision is the one that applies in this case, where the court must review whether the continued detention of a defendant is necessary.

“At 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.” *Id.* § 110-6.1(i-5).

¶ 43 “The cardinal rule of statutory construction is to ascertain and give effect to the true intent of the legislature.” *People v. Whitehead*, 2023 IL 128051, ¶ 18. “The statute should be evaluated as a whole, with each provision construed in connection

with every other relevant section.” *Nelson v. Kendall County*, 2014 IL 116303, ¶ 23. “It is well settled that where the legislature includes particular language in one section of a statute but omits it in another section of the same statute, courts will presume that the legislature acted intentionally in the exclusion or inclusion.” *People v. Smith*, 2016 IL 119659, ¶ 30; see *People v. Hunter*, 2017 IL 121306, ¶ 48 (stating that, where the legislature includes particular language in one section but omits it in another section of the same statute, courts will presume “that the legislature intended different results”).

¶ 44 In considering the three provisions of the Act quoted above, only section 110-5(f-5) specifically excludes the requirement that new information or a change in circumstances be presented. Neither section 110-6(j) nor section 110-6.1(i-5) contains a similar exclusion. Thus, presuming the legislature acted intentionally by not inserting that exclusion in section 110-6.1(i-5), we find a showing of new information or a change in circumstances is required to alter a defendant’s continued detention. Although the circuit court still has the inherent power to reconsider and correct its own rulings (*People v. Mink*, 141 Ill. 2d 163, 171 (1990)), the conclusion that new information or a change in circumstances must be shown comes as no surprise because, “[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 [the] court would reverse its prior ruling for no particular reason” (*Walton*, 2024 IL App (4th) 240541, ¶ 29).

¶ 45 With the requirement that new information or a change in circumstances be presented, we now turn to the appropriate standard of review of a circuit court’s continued detention order. Defendant argues *Morgan*’s standard is applicable to both initial and continued detention hearings. Specifically, in the factual scenario presented here where the circuit court heard live testimony, defendant argues the court’s ultimate determination that he remain detained should be reviewed under the manifest weight of the evidence standard.¹ In finding the abuse of discretion standard applied, the appellate court here focused on the fact that section 110-6.1(i-5) does not set forth a standard of proof or impose a burden of proof. 2025 IL App (4th) 250598, ¶ 29. It found the lack of such a standard of proof suggested the

¹As the factual scenario of the parties proceeding solely by proffer is not present here, we need not address the standard of review appropriate in that instance.

legislature intended to leave the continued detention decision to the circuit court's discretion. *Id.* Likewise, the State argues the inquiry required by section 110-6.1(i-5) calls on the circuit court to exercise its discretion rather than to determine whether any party has met its burden of proving any particular fact. We disagree with the appellate court and the State.

¶ 46 In *Morgan*, 2025 IL 130626, ¶ 36, this court noted “determinations regarding the appropriate standard of review on appeal historically turn on the nature and substance of the question under review (fact, law, or discretion), not the importance of the question.” In the context of initial detention hearings, *Morgan* found “the individualized assessment of evidence in conjunction with any relevant statutory factors and conditions is a factual exercise.” *Id.* Thus, we found the State’s burden under section 110-6.1(e) “presents a unique factual question that the circuit court must resolve based on an individualized assessment of the evidence, the credibility of the live witnesses, and a careful analysis of the relevant statutory factors and conditions provided in sections 110-6.1(g) and 110-10(b).” *Id.* ¶ 38.

¶ 47 Although *Morgan* dealt with an initial petition for detention in which the State has the burden of proof, its reasoning applies equally to hearings with live testimony on continued detention. Section 110-6.1(i-5) states that, at each subsequent appearance by the defendant, the circuit court “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 2024).

¶ 48 Like *Morgan*, the circuit court’s assessment of whether a defendant is a real and present threat to the community, based on the specific articulable facts of the case, or to prevent his willful flight from prosecution, offers its own unique factual exercise. The court must consider the question of continued detention based on the evidence; the credibility of the witnesses; and a careful analysis as to whether defendant represents a real and present threat to the safety of any person, persons, or the community. “[W]hen confronted with such factual questions, the circuit court is in a superior position to resolve alleged inconsistencies and conflicts in the live witnesses’ testimony, as well as to weigh the testimony and determine the credibility of the witnesses in conjunction with the relevant statutory factors and

conditions.” *Morgan*, 2025 IL 130626, ¶ 38. Thus, whether a defendant’s detention should be continued is a question of fact, not one of discretion. Accordingly, similar to our holding in *Morgan*, when live witness testimony is presented at a continued detention hearing, a circuit court’s ultimate decision under section 110-6.1(i-5), in addition to any underlying factual findings supporting the decision, will not be disturbed on review unless found to be contrary to the manifest weight of the evidence. To the extent the Fourth District’s decision holds the appropriate standard of review is abuse of discretion, that portion of the opinion is hereby overruled.

¶ 49

B. Manifest Weight of the Evidence Review

¶ 50

With the appropriate standard of review in mind, we now consider whether the circuit court’s decision to continue defendant’s detention was against the manifest weight of the evidence. “A finding is against the manifest weight of the evidence where ‘the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented.’ ” *People v. Peterson*, 2017 IL 120331, ¶ 39 (quoting *People v. Deleon*, 227 Ill. 2d 322, 332 (2008)). Whether continued detention is necessary requires courts to first look at the initial detention decision. See *Walton*, 2024 IL App (4th) 240541, ¶ 37 (noting “the original detention order is always the context against which a subsequent review must be measured” and “[i]t is the baseline from which to assess the significance of any alleged change in circumstances or new information”).

¶ 51

At the initial detention hearing, the State proffered that defendant had allegedly performed oral sex on children and lived close to the victims. Defendant testified that, if released, he would come to court, wear an ankle monitor, and have no contact with the victims. In denying pretrial release, the circuit court found substantial articulable facts supported the charged offenses and questioned defendant’s ability to comply with court orders.

¶ 52

On remand for a new detention hearing, the circuit court heard the State’s proffer of further sexual assault allegations and defendant’s proximity to the victims. Defendant testified that, if released from custody, he would live in St. David with his mother. He stated he would abide by any conditions of release, including restrictions on his movement, wearing an ankle monitor, and not contacting the victims or any minor. The circuit court denied pretrial release,

expressing concern for the victims and the community and finding no set of circumstances supported release. The Fourth District affirmed the detention order.

¶ 53 Thereafter, defendant filed his motion for review of pretrial detention pursuant to section 110-6.1(i-5), the subject of this appeal. In the motion, defendant alleged there had been “a change in circumstance.” He stated he had obtained appropriate housing and would reside with his parents, his parents would provide constant and direct supervision, he would agree to wear an ankle monitor, and he would abide by all terms and conditions imposed by the circuit court. He contended he was no longer a real and present threat to the safety of any person, persons, or the community and his continued detention was no longer necessary.

¶ 54 At the hearing on the motion, defendant testified that, if released, he would reside with his mother in St. David and would be willing to undergo house arrest and wear an ankle monitor. His parents would provide constant supervision, and while his father worked, his mother did not. Defendant also stated release was necessary so he could assist in obtaining additional information for his defense. On cross-examination, defendant acknowledged his mother was not in good health due to her “heart condition” and “artery disease.”

¶ 55 The circuit court denied the motion. The court believed GPS monitoring would not work in this case, defendant’s testimony at the previous hearing was “of significant concern,” and his mother’s age and health were relevant factors. Further, the court found defendant’s claim he needed to be released to obtain evidence to support his defense was not “at all credible.”

¶ 56 After considering the testimony presented at the hearing, we find the circuit court’s decision to continue defendant’s pretrial detention was not against the manifest weight of the evidence. Defendant essentially presented the same or similar information he provided at the initial detention hearing. Living with his parents, a willingness to wear an ankle monitor, promises to comply with any terms and conditions, and having no contact with the victims were already available for consideration by the court. The only “new information” or “change in circumstances” defendant offered centered on being supervised by his ailing mother, being agreeable to house arrest, and the need to be released so he could obtain evidence in his defense. This evidence failed to show defendant was no longer a real and present threat to the community. Without more showing the

danger defendant presented had been mitigated, the circuit court had nothing before it to conclude continued detention was no longer necessary. As such, its decision to deny pretrial release cannot be said to be unreasonable, arbitrary, or not based on the evidence presented, and the opposite conclusion is not clearly evident.

¶ 57

III. CONCLUSION

¶ 58

We hold that a showing of new information or a change in circumstances is required for relief under section 110-6.1(i-5). We also hold that, when live testimony is presented at a continued pretrial detention hearing, the circuit court's decision under section 110-6.1(i-5), in addition to any underlying factual findings supporting the decision, will not be disturbed on review unless found to be contrary to the manifest weight of the evidence. Applying the appropriate standard, we affirm the circuit court's judgment continuing defendant's pretrial detention.

¶ 59

Judgments affirmed.

¶ 60

CHIEF JUSTICE NEVILLE, specially concurring:

¶ 61

I agree with the majority's analysis of the standard of review, and I agree with the result the majority reaches. I write separately because I disagree with the majority's interpretation of section 6.1(i-5) of article 110 of the Code of Criminal Procedure of 1963, as amended by what is commonly known as the Pretrial Fairness Act (Act) (725 ILCS 5/110-6.1(i-5) (West 2024)). The Act provides:

“At 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.” *Id.*

The majority holds that, under this section, “a showing of new information or a change in circumstances is required to alter a defendant's continued detention.” *Supra* ¶ 44.

¶ 62

I. Interlocutory Orders

¶ 63

The legislature explicitly classified pretrial detention orders as interlocutory orders. Ill. S. Ct. R. 604(h)(1)(iii) (eff. Apr. 15, 2024) (“An appeal may be taken to the Appellate Court from an interlocutory order of court entered under section[] *** 110-6.1 of the Code of Criminal Procedure of 1963 *** by the defendant from an order denying pretrial release[.]”); see *People v. Walton*, 2024 IL App (4th) 240541, ¶ 19. Courts retain the inherent power to correct their erroneous interlocutory orders. *People v. Johnson*, 2017 IL 120310, ¶ 33 (“[A] court in a criminal case has the inherent power to reconsider and correct its *** interlocutory rulings.”); *People v. Mink*, 141 Ill. 2d 163, 171 (1990). Therefore the legislature cannot prevent the circuit court from reconsidering an interlocutory order for pretrial detention (*People v. Davis*, 93 Ill. 2d 155, 161 (1982)), even if the defendant has presented no new evidence.

¶ 64

The majority argues that the Act requires new evidence when a defendant seeks pretrial release after the circuit court has ordered pretrial detention. *Supra* ¶ 44; see 725 ILCS 5/110-6.1(i-5) (West 2024). The majority adopts the appellate court’s reasoning: “ ‘[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 [the] court would reverse its prior ruling for no particular reason.’ ” *Supra* ¶ 44 (quoting *Walton*, 2024 IL App (4th) 240541, ¶ 29).

¶ 65

I think that Illinois law permits the circuit court to exercise its inherent power to reverse its prior ruling, even with no new evidence, if it determines that it erred by granting the State’s motion to detain the defendant before trial. See *Johnson*, 2017 IL 120310, ¶ 33.

¶ 66

“In furtherance of the authority of the judiciary to carry out its constitutional obligations, the legislature is prohibited from enacting laws that unduly infringe upon the inherent powers of judges.” *Best v. Taylor Machine Works*, 179 Ill. 2d 367, 411 (1997); see *Davis*, 93 Ill. 2d at 161 (“The General Assembly has the power to enact laws governing judicial practice only where they do not unduly infringe upon the inherent powers of the judiciary.”).

¶ 67

If courts interpret subsection (i-5) to restrict the inherent power of the circuit court to reconsider and correct its interlocutory rulings, subsection (i-5) might

violate the constitutional provision for the separation of powers. See Ill. Const. 1970, art. II, § 1 (“The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.”); *Best*, 179 Ill. 2d at 410-11. “A statute should be interpreted so as to avoid a construction which would raise doubts as to its validity.” *Davis*, 93 Ill. 2d at 161.

¶ 68 I think the court should interpret subsection (i-5) in a manner that preserves the circuit court’s inherent power to reconsider and correct its interlocutory rulings, including its rulings on petitions for release from pretrial detention. Accordingly, the court should hold that subsection (i-5) does not require the presentation of new evidence to support a request for pretrial release.

¶ 69 II. Law of the Case

¶ 70 However, the procedural posture of this case requires affirmance. Post appealed from the initial detention order, and the appellate court held that the circuit court correctly ordered pretrial detention. The appellate court’s holding established the law of the case concerning the pretrial detention of Post on the basis of the record before the appellate court on the appeal from the initial detention order. See *PSL Realty Co. v. Granite Investment Co.*, 86 Ill. 2d 291, 312 (1981) (“ ‘Where the Appellate Court *** on the first appeal to it, announces a particular view of the law governing the case[,] *** the questions decided and determined by it on the first appeal are not open for re-consideration on the second appeal.’ ” (quoting *Zerullav. Supreme Lodge Order of Mutual Protection*, 223 Ill. 518, 520 (1906))); *Department of Registration & Education v. Schmidt*, 196 Ill. App. 3d 628, 631 (1990) (“ ‘[W]here the evidence on a subsequent appeal is the same as on the first or prior appeal, *** the adjudications of such first or prior appeal are binding on the reviewing court on a subsequent appeal.’ ” (quoting *Noe v. Chicago Great Western Ry. Co.*, 130 Ill. App. 2d 36, 41 (1969))).

¶ 71 “[T]he law-of-the-case doctrine *** limits relitigation of a previously decided issue in the same case, including decisions in an unreversed interlocutory appeal.” *Taylor v. Highline Auto Sales, Inc.*, 2023 IL App (1st) 221590, ¶ 22.

“The law of the case mandates that ‘issues presented and disposed of in a prior appeal are binding and will control in the circuit court on remand ***

unless the facts presented are so different as to require a different interpretation.’ [Citation.] *** ‘[A] trial court is bound by the appellate court’s determination of all questions decided and may act only in conformance with the appellate court’s judgment.’ [Citation.]” *Toushin v. First Merit Bank*, 2021 IL App (1st) 192171, ¶ 45.

¶ 72 The circuit court has the power to correct its own erroneous interlocutory orders, but it has no power to correct the appellate court’s orders. See *id.* Unless a substantial change in circumstances makes the appellate court’s ruling inapplicable to the case for continued detention, the law of the case doctrine requires the circuit court to apply the appellate court’s ruling. See *People v. Patterson*, 154 Ill. 2d 414, 468 (1992) (“Under the law-of-the-case doctrine, generally, a rule established as controlling in a particular case will continue to be the law of the case, as long as the facts remain the same.”); *People v. Lyles*, 208 Ill. App. 3d 370, 376 (1990) (“ ‘[A]n appellate court’s determination on a legal issue is binding on both the trial court on remand and appellate court on a subsequent appeal given the same case and substantially the same facts.’ ” (quoting Black’s Law Dictionary 887 (6th ed. 1990))).

¶ 73 III. CONCLUSION

¶ 74 I agree with the majority’s conclusion that Post did not present significant new information that could justify a result different from the result reached by the appellate court on the appeal from the initial detention order. Accordingly, I concur with the result reached by the majority: the circuit court did not err by ordering Post’s pretrial detention to continue.

¶ 75 JUSTICE OVERSTREET, specially concurring:

¶ 76 I agree with my colleagues that the circuit court did not err in denying defendant’s “motion for review,” which followed an evidentiary hearing and alleged a change of circumstances since the entry of the initial detention order that made conditions of release available to mitigate any risk defendant posed should he be granted pretrial release. I write separately, however, for four reasons.

¶ 77 First, appellate review of the circuit court’s order denying defendant’s motion for review does not require a determination of whether section 110-6.1(i-5) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-6.1(i-5) (West 2024)) mandates changed circumstances in order to release a defendant. The circuit court denied defendant’s “motion for review” after an evidentiary hearing, finding defendant had not proven his allegations, as per that motion, that a change in circumstances rendered conditions of pretrial release available that would mitigate any risk he posed. To review the propriety of that order, the appellate court needs only to review whether that finding was supported by the evidence. A determination of whether a change in circumstances is, in fact, required by section 110-6.1(a)(5) of the Code in order for the circuit court to release a defendant it has initially detained is not required under the facts of this case, considering defendant was not released. As such, the appellate court improperly issued an advisory opinion on that issue, and I would vacate the corresponding portion of the appellate court’s opinion. See 2025 IL App (4th) 250598, ¶ 26.

¶ 78 Second, while I would decline to render an advisory opinion on the issue presented, I disagree with the majority’s finding that, as a matter of statutory interpretation, section 110-6.1(i-5) of the Code (725 ILCS 5/110-6.1 (i-5) (West 2024)) requires the circuit court to find a change of circumstances in order to release a defendant it has initially detained.

¶ 79 Third, my colleagues’ discussion of the standard of review is stated broadly to encompass all “*continued* detention orders under section 110-6.1(i-5).” (Emphasis in original.) *Supra* ¶ 38. However, that section requires the circuit court to make findings at every appearance of a defendant in pretrial detention, regardless of the status of any appeal of the initial detention decision and whether or not defendant affirmatively seeks release from pretrial detention by motion or otherwise. As such, it is important to limit the court’s holding on the standard of review to the circumstances presented here, where, after the initial detention decision was affirmed on appeal, defendant’s appearance before the circuit court was occasioned by his own motion, in which he made allegations of changes in circumstances and affirmatively sought release from pretrial detention.

¶ 80 Finally, as expressed in my special concurrence in *People v. Morgan*, 2025 IL 130626, ¶¶ 58-86 (Overstreet, J., specially concurring, joined by Theis, C.J., and

Rochford, J.), where defendant’s appeal raises the issue of whether the circuit court erred in determining that no condition or combination of conditions would mitigate the risk imposed by him to any person or the community, the abuse of discretion standard is the appropriate standard of review. I continue to believe the abuse of discretion standard of review is the correct standard, that good cause exists to depart from *stare decisis*, and that this court should overrule *Morgan*. See *People v. Colon*, 225 Ill. 2d 125, 146 (2007) (prior decision should not be overturned absent “ ‘good cause’ ” or “ ‘compelling reasons’ ” (quoting *People v. Suarez*, 224 Ill. 2d 37, 50 (2007))). Defendant’s motion for review alleged a change of circumstances resulting in mitigating conditions of pretrial release, and the circuit court determined that this was not the case. Thus, I would hold that the abuse of discretion standard of review applies. See *Morgan*, 2025 IL 130626, ¶¶ 57-85. Because the circuit court’s order denying defendant’s motion for review is supported by the evidence, based upon the appropriate legal criteria, and reflects reasoned judgment, I would affirm the circuit court’s order. See *id.* ¶ 77 (abuse of discretion standard of review ensures circuit court exercised its discretion within the bounds of the law and factual determinations are supported by the evidence of record).

¶ 81

A. Interpretation of Section 110-6.1(i-5) of the
Code Is Advisory

¶ 82

As the appellate court noted, in defendant’s motion for relief, filed pursuant to Illinois Supreme Court Rule 604(h)(2) (eff. Apr. 15, 2024), defendant argued the circuit court erred in denying his motion for review because a change in circumstances had occurred, establishing there were less restrictive means than continued confinement to protect the victims and the community. 2025 IL App (4th) 250598, ¶ 24. Following the circuit court’s denial of the motion for relief, defendant filed a notice of appeal pursuant to Rule 604(h)(3), and the Office of the State Appellate Defender filed a notice that it did not intend to file the optional memorandum supplementing the motion for relief as provided in Rule 604(h)(7). Ill. S. Ct. R. 604(h)(3), (7) (eff. Apr. 15, 2024). Accordingly, as per Rule 604(h)(7), the motion for relief served as defendant’s argument, and only the issue raised therein was properly before the appellate court.

¶ 83 In defendant’s motion for relief, he did not argue that the circuit court is required to find a change of circumstances in order to grant his motion for review and order his pretrial release, and he does not cite section 110-6.1(i-5) of the Code (725 ILCS 5/110-6.1(i-5) (West 2024)) or make any argument that it is applicable to his motion for review. Rather, he argued that the circuit court erred in denying his motion for review because, at the evidentiary hearing on his motion, he showed a change of circumstances had occurred that indicated the availability of mitigating conditions and that thus required his release.

¶ 84 In its appellee’s memorandum, the State argued that the circuit court’s denial of the motion for review and order of continued detention was not contrary to the manifest weight of the evidence. The State argued that, based on the entire record before the circuit court following the evidentiary hearing on defendant’s motion for review, it had continued to carry its burden to show, based on clear and convincing evidence, that no condition or combination of conditions can mitigate the real and present threat to the safety of any persons or the community, based on the specific articulable facts of the case, as required by section 110-6.1(e) of the Code. *Id.* § 110-6.1(e).

¶ 85 In fact, there is no reference to section 110-6.1(i-5) of the Code anywhere in the legal memoranda that were before the appellate court, other than the State’s recitation of the title of defendant’s motion in paragraph 11 of the “Background” section of its memorandum, as a “Motion for Review of Pre-Trial Detention Pursuant to 725 ILCS 5/110-6.1(i-5).” This court has held that the appellate court’s *sua sponte* consideration of issues not considered by the circuit court and never argued by the parties in the circuit court constitutes error. See *People v. Hunt*, 234 Ill. 2d 49, 56 (2009).

¶ 86 In addition to the absence of any argument by the parties before the appellate court concerning the applicability of section 110-6.1(i-5) of the Code to the facts of this case, it was improper for the appellate court to decide whether that section requires a change of circumstances to release a defendant, because a holding on that issue is unnecessary to a determination of the propriety of the circuit court’s order denying defendant’s motion for review. Regardless of whether section 110-6.1(i-5) requires a change of circumstances to release a defendant, a change of circumstances was the stated basis for defendant’s motion for review. Defendant’s

motion for review was based on his contention that, because a change of circumstances had occurred since the initial order was entered, the State could no longer meet its burden to show that no conditions of release could mitigate any risk he poses to the victims or community. The State's argument was that there had been no change in circumstances, and the circuit court agreed, thus denying defendant's motion for review. The circuit court was not called upon to determine whether a change in circumstances is required to release a defendant, pursuant to section 110-6.1(i-5) of the Code or otherwise, but only to determine the propriety of defendant's argument that a change in circumstances had occurred making mitigating conditions available.

¶ 87 Despite the reference in defendant's motion for review, section 110-6.1(i-5) of the Code does not address the filing of any motion, for review or otherwise, and it does not set forth a procedure for the adjudication of any motion. See 725 ILCS 5/110-6.1(i-5) (West 2024). Rather, section 110-6.1(i-5) of the Code simply provides that, at each subsequent appearance of the defendant before the court following an initial order granting the State's petition to detain, the judge must make a *finding* that continued detention is necessary, and it reiterates the standards set forth in section 110-6.1(e) of the Code, as relevant here, "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." *Id.*; *accord id.* § 110-6.1(e).

¶ 88 Although defendant's motion for review prompted an appearance by defendant before the circuit court and that appearance implicated section 110-6.1(i-5) of the Code, resolution of defendant's appeal does not require the reviewing court to determine whether, as a matter of law, a circuit court must find a change of circumstances in order to release a defendant that it initially detained. Rather, the appeal requires the reviewing court to determine whether, as a factual matter, the circuit court erred in determining that continued detention is required under the standards set forth in section 110-6.1(e).

¶ 89 Determining whether section 110-6.1(i-5) of the Code requires a change of circumstances to release a defendant is unnecessary because the circuit court ordered defendant's continued detention, not his release. The appropriate standard for determining that an initially detained defendant should be released would become necessary upon the State's appeal of an order releasing a defendant, which

is not the case here. For these reasons, the appellate court's holding that a change of circumstances is required by section 110-6.1(i-5) of the Code before a circuit court may release a defendant is wholly advisory, and I would vacate those portions of the appellate court's opinion that addressed that issue. See *Stone Street Partners, LLC v. City of Chicago Department of Administrative Hearings*, 2017 IL 117720, ¶ 27 n.4 (statements or holdings by the appellate court that are not necessary to the disposition of the case are wholly advisory as would be any statements made by this court on the issue, resulting in this court vacating those portions of the appellate court's opinion that addressed same).

¶ 90 B. The Majority’s Statutory Interpretation Analysis
Is Incorrect as a Matter of Law

¶ 91 While I would decline to adopt an advisory opinion on the issue of whether section 110-6.1(i-5) of the Code requires a change in circumstances in order to release a defendant who the circuit court has initially detained, the majority’s statutory interpretation analysis, which concludes that the statute mandates such a requirement, is incorrect as a matter of law. *Supra* ¶ 44. For ease of reference, I restate the language contained in section 110-6.1(i-5) of the Code here, which applies in cases where the circuit court has granted the State’s petition to detain a defendant:

“At 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 2024).

¶ 92 To reach its advisory conclusion, the majority adopts the reasoning of the Fourth District in *People v. Walton*, 2024 IL App (4th) 240541, ¶ 28, finding that, because section 110-5(f-5) of the Code (725 ILCS 5/110-5(f-5) (West 2022)) specifically *excludes* the requirement of a change of circumstances when removing conditions of pretrial release, section 110-6.1(i-5) of the Code necessarily *includes* a requirement of a change in circumstances in order to release a previously detained defendant. *Supra* ¶ 44. While I agree that we presume the legislature acted intentionally where it includes particular language in one section of a statute but

omits it in another section, I disagree that this canon applies in the manner stated by my colleagues.

¶ 93 It is crucial to reiterate that section 110-6.1(i-5) of the Code is only implicated here because defendant’s motion for review was addressed at a “subsequent appearance of the defendant before the court,” triggering the circuit court’s duties to make findings regarding the necessity of continued detention. See 725 ILCS 5/110-6.1(i-5) (West 2024). Section 110-6.1(i-5) of the Code does not provide for the filing of a motion, an evidentiary hearing, or even an “order of continued detention.” It also does not purport to provide any standard governing the release of a defendant. In contrast, section 110-5(f-5) expressly governs the review and removal of conditions of release. See *id.* § 110-5(f-5). For this reason alone, it is inappropriate to derive the legislature’s intent to exclude a provision in section 110-6.1(i-5) based on its inclusion of that provision in section 110-5(f-5).

¶ 94 Even if these two sections could be properly compared in the manner advanced by my colleagues, section 110-5(f-5) of the Code expressly excludes *the requirement* of a change of circumstances when removing conditions of pretrial release. Thus, we presume the legislature acted intentionally in not excluding such *a requirement* in section 110-6.1(i-5). Applying the canon correctly, the inference is that the legislature declined to bar the circuit court from considering whether there had been a change of circumstances in carrying out the mandates of that provision, not that it intended to prohibit the circuit court from releasing a defendant absent a change of circumstances. As the majority recognizes, the circuit court retains the inherent power to reconsider and correct its own rulings. *Supra* ¶ 44 (citing *People v. Mink*, 141 Ill. 2d 163, 171 (1990)). What the majority fails to acknowledge, however, is that its advisory ruling effectively eliminates this power under the guise of a statutory provision that does nothing more than require the circuit court to exercise its inherent power in relation to a detained defendant at each subsequent appearance.

¶ 95 The plain language of section 110-6.1(i-5) neither requires nor prevents the circuit court’s reconsideration of its detention decision based on a change of circumstances. Rather, it requires, at every appearance of a detained defendant, that the circuit court renew its initial detention findings based on the specific, articulable facts of the case as they are known to the circuit court at the time of the appearance.

To find this provision requires, by silence, a change of circumstances to release a defendant is a departure from the plain language of the statute, which defines clearly its directive. See *People v. Roberts*, 214 Ill. 2d 106, 117 (2005) (canons of statutory interpretation, such as *expressio unius est exclusio alterius*, are aids of statutory construction and are applicable only to help ascertain the intent of the legislature when that intent is not clear from the plain language of the statute).

¶ 96 Section 110-6.1(e) of the Code allows the circuit court to detain a defendant if it makes the findings, based on clear and convincing evidence or proffer, set forth therein. 725 ILCS 5/110-6.1(e) (West 2024). These are the same findings that are mandated for continued detention in section 110-6.1(i-5). Whether or not, as a practical matter, it makes sense for a circuit court to reverse an initial detention decision without a change of circumstances (*supra* ¶ 44 (citing *Walton*, 2024 IL App (4th) 240541, ¶ 29)), I disagree that section 110-6.1(i-5) imposes such a mandate. Indeed, we are not reviewing the State’s appeal of a circuit court’s decision to release defendant but rather defendant’s appeal of an order denying his motion for review and continuing his pretrial detention. Thus, I turn to the issue of the appropriate standard of review applicable to defendant’s appeal.

¶ 97 C. The Majority Holding Should Not Apply to All Orders
Entered Pursuant to Section 110-6.1(i-5) of the Code

¶ 98 My colleagues indicate that “[t]his case presents the question of the appropriate standard of review for appeals of *continued* detention orders under section 110-6.1(i-5).” (Emphasis in original.) *Supra* ¶ 38. However, it is important to reiterate that section 110-6.1(i-5) simply requires the circuit court to revisit the initial detention order and make a *finding* that defendant’s pretrial detention continues to meet the requirements of section 110-6.1 of the Code. See 725 ILCS 5/110-6.1 (West 2024). In addition, this section is implicated at every appearance of defendant after the initial detention order, whether or not defendant makes an affirmative request for release, based on changed circumstances or otherwise, and regardless of whether defendant has appealed the initial detention order or the status of any such appeal. See *id.* As such, the majority’s application of its holding to “continued detention orders under section 110-6.1(i-5)” (*supra* ¶ 38) is overbroad.

¶ 99 For example, in this case, when the circuit court entered its initial detention order on May 28, 2024, following which defendant was admonished regarding his right to appeal, the circuit court entered docket entries into the record at each subsequent appearance prior to the order on appeal, stating “[d]efendant’s detention reviewed” and “[d]efendant remains detained.” In addition, the circuit court made this finding in every order setting the next pretrial or status hearing. During the pendency of both prior appeals from the initial detention order, these docket entries and hearing orders continued at every appearance of defendant before the circuit court.

¶ 100 While each of the above-referenced docket entries and/or findings set forth in the circuit court’s scheduling orders is mandated by section 110-6.1(i-5) of the Code and specifically orders defendant’s continued detention, they are outside the scope of review for this appeal, which is from an order denying defendant’s motion for review following an evidentiary hearing in which defendant presented evidence and argument and requested release. Indeed, I question whether “continued detention orders” entered without an affirmative motion by a defendant for release are appealable pursuant to Illinois Supreme Court Rule 604(h) (eff. Apr. 15, 2024), which allows appeals by a defendant from an order revoking pretrial release or denying pretrial release. Additionally, Rule 604(h)(11) prohibits subsequent appeals during the pendency of an appeal from a prior order, making orders “of continued detention” pursuant to section 110-6.1(i-5) unappealable until the mandate issues on any prior appeal. *Id.* Thus, the majority holding as to the standard of review should be limited to continued detention orders in which a defendant has requested affirmative relief from the circuit court, as defendant requested here through his motion for review.

¶ 101 D. The Appropriate Standard of Review Is
Abuse of Discretion

¶ 102 The standard of review for a circuit court’s order denying defendant’s motion for review, thus continuing defendant’s detention, rests on the nature of the inquiry the circuit court had to make in disposing of that motion. See *Morgan*, 2025 IL 130626, ¶¶ 59, 62. As in *Morgan*, defendant’s argument rests with the availability of appropriate conditions of release that would mitigate any risk defendant poses to

any person or the community. See *id.* As I expressed in my special concurrence in *Morgan*, regardless of whether evidence is presented or proffered, the circuit court is in a better position to make this determination and should be afforded deference. *Id.* ¶ 73. As I stated in *Morgan*:

“[T]he circuit court is in a much better position than is the appellate court to consider whether any condition of pretrial release, or combination thereof, can mitigate the risk defendant poses to any person, or the community, or the risk of willful flight, as the Code may require, depending on the crime charged. See [725 ILCS 5/110-6.1(a) (West 2022)]. Pursuant to the pretrial provisions of the Code, the circuit court is tasked, in all criminal cases, with determining ‘which conditions of pretrial release, if any, will reasonably ensure the appearance of a defendant as required for the safety of any other person or the community’ as well as to assess the ‘likelihood of compliance by defendant with all the conditions of pretrial release.’ *Id.* § 110-5(a). In the absence of a petition to detain, the circuit court is to make these statutorily mandated calculations ‘on the basis of available information’ for each person that is charged with a crime, using the same nonexhaustive list of factors that the circuit court must consider when ruling on a petition to detain. *Id.* Thus, it has become the daily business of the circuit court to make predictive determinations regarding which conditions of pretrial release are necessary to ensure the safety of victims and the community, to ensure appearance by defendants at future proceedings, and to prevent defendants from committing further crimes. In addition, it must make these determinations based on the limited information available to it at the earliest stages of criminal proceedings. As implementation of this system proceeds, circuit courts will continue to develop expertise in making these predictive risk assessments as those circuit courts witness firsthand the relative effectiveness of conditions and combinations of conditions of release.” *Id.*

¶ 103 For the same reasons, when a defendant moves for release based on his contention that a change in circumstances has made conditions of pretrial release available to mitigate any risk defendant poses, the abuse of discretion standard of review is the appropriate standard by which to review the circuit court’s order denying the motion and continuing pretrial detention. The nature of the determination to be made by the circuit court is based on an assessment of the effectiveness of particular conditions of release to deter a defendant and a balancing

of this effectiveness with the risk a defendant poses. An abuse of discretion standard of review accommodates all aspects of the multifaceted determination to be made by the circuit court, mandating reversal if the evidence does not support the circuit court's assessment or if the circuit court used improper legal criteria to make the determination. At the same time, this standard defers to the circuit court's prudential determination based on its risk assessment under all potential conditions of pretrial release or combinations thereof. For these reasons, I would hold the abuse of discretion standard of review applies and affirm the circuit court's decision to continue defendant's detention.

¶ 104

Conclusion

¶ 105

My colleagues accept the parties' invitation to advise the circuit courts as to what standard is required to release a defendant under the guise of section 110-6.1(i-5) of the Code. 725 ILCS 5/110-6.1(i-5) (West 2024). The true answer to that question depends on the appeal posture of the case and whether defendant has made an affirmative motion for release and is not governed by section 110-6.1(i-5) of the Code. *Id.* Here, after the initial detention decision was appealed and affirmed, defendant moved the court for release based on a change of circumstances, and the circuit court found there had been no such change and there continued to be no condition or combination of conditions that could mitigate any risk defendant poses to the alleged victims or the community. Because the circuit court's decision was supported by the evidence, employed the correct legal criteria, and indicated a reasoned judgment, I would affirm its decision on the basis that there has been no abuse of the circuit court's discretion. Accordingly, I specially concur.

¶ 106

JUSTICE ROCHFORD joins in this special concurrence.