

2024 IL App (1st) 232022-U

No. 1-23-2022B

Second Division

January 22, 2024

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF	)	Appeal from the
ILLINOIS,	)	Circuit Court of
	)	Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 23400528701 (superseded
	)	by 23 CR 1199901)
ADAM STOKES,	)	
	)	Honorable
	)	Kristyna C. Ryan,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.

Justices McBride and Ellis concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's order of continued detention is vacated where the State did not present a factual basis for continued detention and there was no specific articulable basis for the court's ruling in violation of section 110-6.1(i-5) of the Code. We remand for review of defendant's pretrial detention in accordance with the Code.

¶ 2 Defendant Adam Stokes appeals from the October 17, 2023 order of the circuit court of Cook County denying pretrial release pursuant to article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/art. 110 (West 2022)), which was recently amended by Public Act

101-652 (eff. Jan. 1, 2023), commonly known as the Safety, Accountability, Fairness and Equity-Today (SAFE-T) Act or the Pretrial Fairness Act (Act).¹ See also *Rowe v. Raoul*, 2023 IL 129248, ¶ 52 (lifting stay and setting effective date as September 18, 2023). Specifically, defendant argues on appeal that his due process rights were violated where he was denied an opportunity for a fair hearing prior to the entry of the order denying pretrial release. For the reasons that follow, we vacate and remand for compliance with the Code in reviewing defendant’s pretrial detention.

¶ 3

I. BACKGROUND

¶ 4 On October 10, 2023, defendant was arrested and charged with aggravated vehicular hijacking (720 ILCS 5/18-4(a)(4) (West 2022)), a Class X felony.

¶ 5 On October 13, 2023, the State filed a verified petition for a pretrial detention hearing. The petition alleged that defendant had committed a forcible felony, namely aggravated vehicular hijacking, and he posed “a real and present threat to the safety of any person or persons in the community, based on the specific articulable facts of the case” and had “a high likelihood of willful flight to avoid prosecution.” Specifically, the State alleged that defendant and his codefendant pointed a gun at the victim and her children, forcing them from their blue Jeep Compass, and defendant took possession of the car and was later taken into custody following a police pursuit.

¶ 6 On the same day, the State also filed a verified petition for revocation of bond for a different offense pursuant to section 110-6(b) of the Code (725 ILCS 5/110-6(b) (West 2022)), which is not at issue in this case.

¹ “Neither name is official, as neither appears in the Illinois Compiled Statutes or public act.” *Rowe v. Raoul*, 2023 IL 129248, ¶ 4 n. 1.

¶ 7 Also on October 13, 2023, defendant appeared before Judge Teresa Molina-Gonzalez in Maywood's Initial Appearance Court. Defendant was granted a continuance in that court.²

¶ 8 On October 15, 2023, defendant and his codefendant, Jamari Shaw, appeared together in Chicago at the Leighton Criminal Courthouse's Initial Appearance Court, where a pretrial detention hearing took place before Judge David Kelly. At the hearing, the State proffered the following to support its pretrial detention petition.

¶ 9 On October 10, 2023, in Cicero, Illinois, the victim was in her 2021 Jeep Compass in the parking lot of a Dunkin' Donuts, waiting for her 13-year-old daughter and her daughter's friends. Also in the car were her nine-year-old grandson and three-year-old granddaughter. The girls returned to the car, at which time a silver car pulled in front of the Compass, blocking it in. The victim observed defendant exit the silver car and point a handgun with an extended clip at her and he directed her to exit the Compass. The victim also observed two other individuals exit the car, carrying handguns. The victim and the children exited the Compass and the three individuals got into the Compass. After driving only a few feet, one of the individuals exited and demanded the keys to the Compass from the victim. She handed him the keys, and he returned to the Compass and they drove away. Video surveillance was obtained, which showed the incident. Additional POD cameras and red-light cameras tracked the Compass. Around 8:55 p.m., a police unit observed the victim's car conducting a U-turn, and the officer in the unit radioed that they had located the Compass. The officers attempted to effectuate a traffic stop but the driver of the Compass did not stop and multiple police units pursued the Compass. A police helicopter was also

² The transcript from defendant's court appearance before Judge Teresa Molina-Gonzalez is not contained in the report of proceedings; however, information regarding that proceeding was provided during defendant's appearance before Judge Kristyna Ryan on October 17, 2023.

dispatched. The police maintained a constant visual of the Compass. The Compass stopped near 8315 Langley Avenue in Chicago, and four individuals exited the car and attempted to flee on foot. Police officers apprehended the driver of the Compass, who had a gun on her person, and pursued the other three suspects on foot and observed them enter into an apartment building on Langley Avenue. Officers entered an apartment, where defendant and Shaw were located. Also in the apartment were defendant's father and defendant's girlfriend. A search warrant was executed on the apartment and law enforcement recovered loose rounds of ammunition, a loaded magazine, and a handgun with an extended magazine. The initial silver car was later found crashed into a fire hydrant and abandoned. Defendant and Shaw were arrested and placed into custody.

¶ 10 Regarding defendant's background, the State proffered that defendant was on pretrial release for a charge of possession of a stolen motor vehicle. Defendant also had a prior violation in May 2023 for criminal trespass to a vehicle that was stricken with leave to reinstate, and he had a prior juvenile adjudication in 2022 for aggravated unlawful use of a weapon.

¶ 11 The State argued that the allegations, particularly the possession of handguns and the presence of minor children, showed the dangerousness of defendant's conduct, and defendant's violation of his already imposed pretrial release demonstrated that he could not "be relied upon and that there's no condition or combination of conditions that [could] mitigate that risk."

¶ 12 Defense counsel argued that the State had not proven by clear and convincing evidence that defendant committed the offense because there was no evidence presented that the witnesses identified defendant as one of the hijackers, only that he was seen exiting the Compass near Langley Avenue. Defense counsel also questioned the number of people involved where the State alleged that three people exited the silver car and took possession of the Compass but later four people exited the Compass near Langley Avenue. Defense counsel pointed out that the silver car

was later found crashed and abandoned but there was no information regarding the driver of that car. Accordingly, defense counsel maintained that the State did not show that defendant was actively participating in flight from police. As to mitigation, defense counsel noted that defendant was 18 years old, a senior at Jefferson High School, and a lifelong Chicago resident, and suggested that defendant could be placed on electronic monitoring at his father's residence.

¶ 13 After considering the parties' arguments, the court orally found, by clear and convincing evidence, that the proof was evident and the presumption great that defendant committed aggravated vehicular hijacking. The court also entered a written order, stating the same and finding that law enforcement identified defendant as one of the individuals who exited the victim's car shortly after the victim was carjacked at gunpoint. The court also found that defendant posed a real and present threat to the safety of persons in the community because defendant participated in an armed vehicular hijacking where guns were pointed at the victim and her minor children. The court further found that the State had not met its burden showing "willful flight." Finally, the court concluded that, based on the violent nature of the offense and defendant's past criminal history, there were no conditions that could mitigate the real and present threat defendant posed to the safety of persons in the community. Defendant was ordered to be detained and remanded to the custody of the Cook County sheriff and to refrain from any contact with the victims and witnesses. As relevant here, the court also stated, "this matter will go [sic] motion State to the date of 10/17" and noted that it "goes to" Maywood.

¶ 14 On October 17, 2023, defendant was brought before Judge Ryan in the Maywood Courthouse in the Fourth Municipal District for a review of defendant's initial detention. We glean from the transcript that the previous case before the court was defendant's codefendant, Shaw. The State informed the court: "Your Honor, [defendant] appears to be the co-defendant on the previous

matter. I'm sorry this was not brought to the Court's attention. *** We will also ask for a finding of continued ordered detention[.]” Defense counsel confirmed for the court that defendant was ordered detained on October 15, 2023, during “26th Street’s Initial Appearance Court” and stated, “We are answering ready for preliminary hearing, demanding trial, and counsel’s also correct that you need to make a finding that continued detention is necessary.” The court then stated the following:

“Same allegations. I do feel that as co-defendant’s on an armed vehicular hijacking---it is also a forcible felony---I believe that the defendant does pose a real and present threat to the safety of persons in the community. Again, co-defendant pointed a gun, allegedly, at the victim and children forcing them out of the vehicle. I’m ordering that the defendant continue to be detained.”

¶ 15 Defense counsel responded, stating that there was not a sufficient basis for the court’s factual finding because the court’s knowledge of the case was based on allegations and there was not a sufficient basis to make a factual finding under the safety standard or the willful flight standard. Defense counsel requested that defendant be released.

¶ 16 The State provided information from defendant’s Pretrial Services Report, which stated that his risk-assessment scores were 4 on the New Criminal Activity Scale and 2 on the Failure to Appear Scale. The court did not specifically respond to this but set the next court date.

¶ 17 The court’s order of continued detention was written in a docket entry dated October 17, 2023. Subsequently, defendant filed a timely notice of appeal under Illinois Supreme Court Rule 604(h)(1)(iii) (eff. Sept. 18, 2023).

¶ 18

II. ANALYSIS

¶ 19 On appeal, defendant argues that he was denied an opportunity to a fair hearing prior to the entry of the circuit court’s October 17, 2023, order. In particular, he contends that the court’s finding on October 17 that detention was necessary to avoid a real and present threat to the safety of persons in the community did not have a sufficient basis because a hearing was not held. Rather, according to defendant, the court made its finding based on another judge’s finding following the October 15, 2023 hearing. Additionally, defendant maintains, even if the requisite hearing took place, the court’s finding was not in accordance with the Act. Defendant requests that this court vacate the circuit court’s October 17 detention order, or, in the alternative, remand to the circuit court for a hearing in compliance with the Act.

¶ 20 Pretrial release in Illinois is now governed by article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/art. 110 (West 2022)), as amended by the Act. The Act abolished the requirement for monetary bail (725 ILCS 5/110-1.5) and provides the process for pretrial release (725 ILCS 5/110-5). We set forth below the sections of the Code that are necessary for our review.

¶ 21 The section titled, “Denial of Pretrial Release” provides that: “Upon a verified petition by the State, the court shall hold a hearing and may deny pretrial release only if” the defendant is charged with a qualifying offense, and the circuit court concludes that the defendant poses a real and present threat to the safety of any person or the community (*id.* § 110-6.1(a)(1)-(7)), or there is a high likelihood of willful flight to avoid prosecution (*id.* § 110-6.1(a)(8)). The State has the burden to prove by clear and convincing evidence that the proof is evident, or the presumption is great, that the defendant has committed a qualifying offense; that the defendant's pretrial release poses a real and present threat to the safety of any person or the community or a flight risk; and that less restrictive conditions would not avoid a real and present threat to the safety of any person or the community and/or prevent the defendant's willful flight from prosecution. *Id.* § 110-6.1(e),

(f). To this point, section 110-2(c), which is generally titled “Pretrial Release,” provides that: “When it is alleged that pretrial release should be denied to a person upon the grounds that the person presents a real and present threat to the safety of a person or persons or the community, based on the specific articulable facts of the case, the burden of proof of such allegations should be upon the State.” *Id.* § 110-2(c).

¶ 22 Section 110-6.1(h), labeled “Detention order”, provides the requirements for the court in entering any detention order. It states, that the court shall, “in any order for detention,” make written findings summarizing the reasons for denying pretrial release, including why less restrictive conditions would not avoid a real and present threat to the safety of persons or the community or prevent the defendant’s willful flight; direct that the defendant be committed to the custody of the sheriff for confinement pending trial; direct that the defendant be given a reasonable opportunity to privately consult with counsel and to communicate with others via visitation, mail, and telephone; and direct that the sheriff deliver the defendant for required court appearances. 725 ILCS 5/110-6.1(h).

¶ 23 Section 110-6.1(i-5) addresses proceedings that occur after the court has denied pretrial release and issued a detention order pursuant to sections 110-6-1(a) and (h) of the Code. This section 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.* § 110-6.1(i-5).

¶ 24 Defendant argues that the plain language of the statute indicates that the State’s burden of proof under the safety standard is not limited to only the initial pretrial release hearing. Thus,

according to defendant, the State was required to present a factual basis prior to the court's order of continued detention on October 17. He also argues that, similar to revocations, modifications, and sanctions, subsequent reviews of detention require the judge to find that continued detention is necessary to reasonably ensure the defendant's appearance at later court dates or to prevent the defendant from being charged with additional crimes, which, he maintains, the court failed to do. Finally, he contends that the Code mandates that the court shall, in any order of detention, including the one from which he is appealing, make a written finding summarizing the court's reasons for denying pretrial release, including why less restrictive conditions would not avoid a threat to the safety of persons or the community or prevent the defendant's willful flight. Accordingly, defendant maintains that the trial court also erred as a matter of law in failing to set forth written findings as required by the Act.

¶ 25 In response, the State argues that another comprehensive pretrial release hearing was not required under these circumstances and the circuit court appropriately considered defendant's participation in the alleged aggravated vehicular hijacking and made the requisite findings for continued detention. Specifically, the State asserts that the Code requires the court to hold a hearing when the State files a petition for pretrial detention but, pursuant to section 110-6.1(i-5), a hearing is not required for subsequent reviews of detention following the initial denial of pretrial release. The State further contends that defendant's citations to sections of the Code that apply to initial pretrial hearings and revocations or modification of pretrial release is improper. Finally, the State cites to *People v. Long*, 2023 IL App (5th) 230881, as an analogous case where the circuit court reviewed and continued the defendant's detention without conducting another comprehensive hearing.

¶ 26 To resolve defendant’s claim on appeal, we must construe the Act, a question of law, which we *de novo*. See *People v. Battle*, 2023 IL App (1st) 231838. The fundamental rule of statutory construction is to ascertain and give effect to the legislature’s intent. *People v. Ramirez*, 2023 IL 128123, ¶ 13. The best indicator of intent is the language used in the statute, which must be accorded its plain and ordinary meaning. *Id.* Statutes must be read as a whole, and this court may not add exceptions, limitations, or conditions that are in contravention of the purpose of the enactment. *Id.* Where the text of the statute is clear and unambiguous, we need not resort to canons of statutory construction. *Department of Transportation v. Singh*, 393 Ill. App. 3d 458, 465 (2009).

¶ 27 In the case before us, the State filed a verified petition and subsequently both defendant and codefendant appeared before the court for an initial pretrial release hearing on October 15, 2023, before Judge Kelly. At that hearing, the State proffered a factual basis for both defendant and codefendant Shaw’s charges of aggravated vehicular hijacking. The State presented defendant’s criminal history and defense counsel also offered evidence in mitigation. The State and defense counsel were given the opportunity to argue their positions. Judge Kelly determined that the proof was evident and the presumption great that defendant committed aggravated vehicular hijacking and entered a pretrial detention order that made the requisite findings set forth in section 110-6.1(h). Thus, defendant, at the same time as his codefendant, received a thorough pretrial detention hearing in accordance with the Code.

¶ 28 Just two days later, on October 17, 2023, defendant appeared before Judge Ryan on the same case, and at that appearance, defense counsel stated: “We are answering ready for preliminary hearing, demanding trial, and counsel’s also correct that you need to make a finding that continued detention is necessary.” That appearance constituted a “subsequent appearance before the court”

after pretrial release had been denied under section 110-6.1(i-5).³ At that point, no new verified petition had been filed by the State and, according to the record, there was no specific motion filed with the court regarding defendant's detention. As such, on October 17, 2023, Judge Ryan needed only to review defendant's detention and determine whether it should be continued, in accordance with section 110-6.1(i-5). However, in this instance, defendant and codefendant Shaw did not appear together, as they had at the pretrial release hearing before Judge Kelly. Apparent from the record is that, just prior to defendant being brought before Judge Ryan, Judge Ryan had reviewed codefendant Shaw's detention and presumably heard some factual basis, addressed the recent detention hearing, or mentioned Judge Kelly's detention order. However, none of that is in the record before this court. All that appears before this court is Judge Ryan's summary statement to the effect that the allegations, as related to Shaw are the "same allegations" as related to defendant, followed by equally summary statements regarding danger to the community, the alleged offense, and the order of continued detention.

¶ 29 As stated above, the Code provides, in a general section titled "Pretrial Release," that when denial of pretrial release is requested, "upon the grounds that the person presents a real and present threat to the safety of a person or persons or the community, based on the specific articulable facts of the case, the burden of proof of such allegations should be upon the State." 725 ILCS 5/110-2(c). We find that the State's burden is not extinguished after the court's initial order of pretrial detention; rather, it remains the State's burden throughout the progression of the defendant's case to demonstrate that detention continues to be necessary. In order for that burden to be satisfied,

³ The procedural progression of this case from October 13, 2023 to October 17, 2023, where defendant was before three different judges, sometimes with and at other times without his codefendant, in two different courthouses on the same case, lends itself to some confusion, not instantly resolved by the only record before us. This is likely what led to the issues involved in this appeal.

even in subsequent reviews for continued pretrial detention, there must be specific and articulable facts pertaining to the defendant before the court that would support continued detention. This interpretation is bolstered by the requirement in section 110-6.1(i-5) that the circuit court must make its decision to continue detention based on the specific articulable facts of the defendant's case. Thus, at subsequent appearances after denial of pretrial release, the State must set forth a factual basis to support continued detention and the court must base its finding on the specific articulable facts of the case.

¶ 30 The record does not bear out that that occurred here. Instead, the record shows that, when defendant was brought before Judge Ryan for the October 17 proceeding, the State did not, at that time, provide any specific details of the case or the allegations specifically against defendant. Rather, the State merely provided, *after the court ruled*, that defendant's risk-assessment scores were 4 on the New Criminal Activity Scale and 2 on the Failure to Appear Scale.

¶ 31 Moreover, Judge Ryan's oral findings that defendant poses a real and present threat to any person, persons, or the community are based on findings, presumably made regarding defendant's codefendant, Shaw. In particular, the court stated:

“Same allegations. I do feel that as co-defendant's on an armed vehicular hijacking---it is also a forcible felony---I believe that the defendant does pose a real and present threat to the safety of persons in the community. Again, co-defendant pointed a gun, allegedly, at the victim and children forcing them out of the vehicle. I'm ordering that the defendant continue to be detained.”

Basing her decision on the allegations made regarding Shaw does not comport with the statute, where the basis must be specific and articulable to the defendant before the court. Moreover, Judge Ryan repeatedly switched between using the word “defendant” and “co-defendant,” making it

impossible to determine whether she was referring to Shaw or defendant in connection with the stated factual allegations.

¶ 32 The State contends that Judge Ryan had access to the court file and Judge Kelly's detention order. However, the record does not support that contention, where Judge Ryan made no reference on the record to either the court file or the detention order. Under these circumstances, this court will not presume what information was before the circuit court. As such, based on the record before us, neither the State nor the court set forth a specific articulable basis for continued detention, and thus, the review and order of defendant's continued detention was not in accordance with the Code. Had defendant's appearance been before the judge that presided over the initial pretrial release hearing, it is conceivable that a different result here on appeal might yield. However, that is not the case here and, as we have made clear, there is nothing in the record that would suggest that Judge Ryan had been presented with the State's proffered allegations specifically against defendant.

¶ 33 We also reject the State's reliance on *People v. Long*, 2023 IL App (5th) 230881, for support of its argument that the circuit court complied with the Code here. In *Long*, the defendant appealed from the circuit court's order finding that continued detention was necessary. *Id.* ¶ 1. On September 18, 2023, the circuit court held a pretrial release hearing and subsequently granted the State's petition to deny pretrial release. *Id.* ¶¶ 6, 8. A week later, on September 25, 2023, the court conducted a pretrial hearing, at which defense counsel made a motion for the defendant's release from custody, and the court conducted a detention review hearing. *Id.* ¶ 9. Defense counsel restated the same arguments made at the pretrial release hearing but additionally presented a letter from the victim's father, and the State argued that, while it did not have any new information, there remained a risk of harm to the victim and the community. *Id.* ¶¶ 9, 10. The court then found that

continued detention was necessary to avoid the specific real and present threat to specific persons. *Id.* ¶ 11. On appeal, the Fifth District of this court found that the circuit court did not abuse its discretion in ordering the defendant's continued detention. *Id.* ¶ 19.

¶ 34 The circumstances in *Long* are vastly different from those in the case before us. There, defense counsel presented, once again, a letter from the victim and a new letter from the victim's father, both indicating that the defendant was not a threat to the victim's safety. *Id.* ¶ 9. The State argued that, "given the sworn synopsis of the initial criminal sexual assault of the defendant's family member and the discovery of child pornography on the defendant's phone," the reasons for detention were still present. *Id.* ¶ 10. The information presented to the court in *Long* is substantially more than what was offered to the court in the case before us. Moreover, in ruling, the circuit court in *Long* specifically found that the letters were only beliefs or opinions and the court was "required to 'look at every hearing with individuals who are detained as a review of the detention.' " It is clear that the circuit court in *Long* had a factual basis for its finding of continued detention and recognized that its review was required to be specific to the defendant before it. Finally, there is no suggestion in *Long* that a different judge presided over the detention review hearing. Thus, we do not agree that *Long* supports a finding in this case that the circuit court's order of continued detention was in compliance with the Code. In fact, to the contrary, we find this case instructive as to what *should* have occurred in this case.

¶ 35 Based on our interpretation of the Code, we must conclude that the State failed to satisfy its burden of proof and the court's finding of continued detention was not based upon the specific articulable facts of defendant's case. Accordingly, we must vacate the trial court's October 17, 2023 order of continued detention and remand for compliance with the Code in reviewing defendant's detention.

¶ 36 Although we agree with defendant that the trial court's review of his detention at his subsequent appearance fell short of the requirements under the Code, we nonetheless briefly address and reject defendant's other arguments. First, defendant asserts that the Code requires the circuit court to repeatedly hold comprehensive pretrial release hearings. We disagree. Section 110-6.1(a) provides that, after the State files a verified petition, a hearing shall be held. Thus, only where a verified petition to deny pretrial release is before the court does the Code mandate a comprehensive pretrial hearing. A review of the record reveals that the State's petition to deny pretrial release had been ruled upon by Judge Kelly on October 15, 2023, and no new petition was before Judge Ryan. Moreover, the statute makes clear that, during the pretrial release hearing, the State has to prove by clear and convincing evidence (1) the proof is evident or presumption great that defendant committed a detainable offense; (2) defendant poses a real and present threat to any person, persons, or the community or is a flight risk; and (3) no conditions could mitigate this threat or risk of flight. *Id.* § 110-6.1(e). These three findings are *not* required under the statutory section addressing a defendant's subsequent appearances before the court after pretrial release has been denied. Rather, that section only requires that the court 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). These distinctions cannot be glossed over. Because the statute requires fewer findings at subsequent appearances as opposed to upon the State's verified petition to deny pretrial release, it is clear that the hearing, and its accompanying criteria, required under section 110-6.1(a)(1)-(7) is not required at subsequent appearances, regardless of whether a new judge has been assigned to the case.

¶ 37 Defendant also asserts that the Code requires the trial court to enter a detention order in compliance with section 110-6.1(h) whenever pretrial detention is reviewed and continued. Section 110-6.1(h) mandates that, in any detention order, the court shall make written findings summarizing the reasons for denying pretrial release, including why less restrictive conditions would not avoid a real and present threat to the safety of persons or the community or prevent the defendant's willful flight; direct that the defendant be committed to the custody of the sheriff for confinement pending trial; direct that the defendant be given a reasonable opportunity to privately consult with counsel and to communicate with others via visitation, mail, and telephone; and direct that the sheriff deliver the defendant for required court appearances. 725 ILCS 5/110-6.1(h). To satisfy this statutory section, the circuit court of Cook County has employed a preprinted form order to be completed by the judge following the pretrial release hearing. The form, which was utilized by Judge Kelly in this case, has sections that correspond to each of the requirements of section 110-6.1(h). In contrast, Judge Ryan merely wrote her order of continued detention in a docket entry dated October 17, 2023.

¶ 38 There is a fundamental difference, of course, between an order of detention and an order of continued detention. Before the initial order of detention is entered, it is presumed that a defendant should be on pretrial release. See 725 ILCS 5/110-2(a). The order of detention is necessary where the court concludes that pretrial release should be denied. However, at the time of a defendant's subsequent appearance and review of detention, a defendant has already been detained under a final order of detention. Thus, we have no basis, and defendant offers none, that to support the entering a new detention order with each continued detention. Further, as we have made clear, section 110-6.1(i-5) only requires that the court 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." Thus, when reviewing a defendant's pretrial detention, the court is *not* required to make findings as to whether less restrictive conditions of release could be utilized, as is required under section 110-6.1(h). These differences make clear that section 110-6.1(h) is not applicable to subsequent reviews of detention.

¶ 39 As a final note, we express no opinion as to the correctness of Judge Ryan's ruling of continued detention. We only hold that the review of defendant's detention before Judge Ryan in this instance did not comply with the Code. In the interim, defendant shall remain detained pursuant to the circuit court's October 15, 2023 detention order.

¶ 40 III. CONCLUSION

¶ 41 For the reasons stated, we vacate the judgment of the circuit court, and the cause is remanded for the court to comply with the Code in reviewing defendant's pretrial detention.

¶ 42 Vacated and remanded.