NOTICE
Decision filed 10/14/26. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2026 IL App (5th) 250862-U

NO. 5-25-0862

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MICHAEL W. LITHERLAND, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Pope County. No. 25-CF-2 Honorable Jayson M. Clark, Judge, presiding.

JUSTICE CLARKE delivered the judgment of the court.
Justices Vaughan and McHaney concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant's convictions are reversed, and the sentences imposed are vacated. The evidence was insufficient to prove that the defendant knowingly violated the emergency order of protection or committed stalking, because the emergency order of protection did not clearly prohibit the conduct, and the State failed to prove the requisite knowledge element of stalking.

¶ 2 Following a jury trial, the defendant, Michael W. Litherland, was found guilty of two counts of unlawful violation of an emergency order of protection (EOP) with a prior (counts I and II) (720 ILCS 5/12-3.4(a) (West 2022)) and one count of stalking with a prior (count III) (*id.* § 12-7.3(a)(1)). The trial court sentenced the defendant to an aggregate 13-year sentence (8 years for stalking, consecutive to the concurrent 5-year terms for the EOP convictions). On appeal, the defendant claims there was insufficient evidence to convict him of violating the EOP and stalking

charges, and, alternatively, that his sentence was excessive. For the following reasons, we reverse and vacate the defendant's convictions and sentence.

¶ 3 I. BACKGROUND

¶ 4 On January 22, 2025, the defendant's half-sister, Dawn Toland, obtained an EOP against him. The defendant was served with the EOP and summons on January 23, 2025. On February 11, 2025, the defendant was charged by information with two counts of violation of an EOP. Later, on May 9, 2025, the State filed an amended information adding the stalking count. Count I alleged that on January 24, 2025, the defendant, having been served with an EOP, issued in Pope County case 2025-OP-1, issued January 22, 2025, did knowingly commit an act which was prohibited by the EOP in that the defendant drove to Dawn Toland's residence, stopped in front of her driveway, and spit out his window. Count II alleged that on January 25, 2025, the defendant violated the same EOP by driving to Dawn Toland's residence. Count III alleged the defendant committed stalking in that he engaged in a course of conduct directed toward Dawn Toland, when he drove to her residence at 685 Raum Road, Golconda, Illinois, on January 24, January 25, February 6, and February 8, 2025, in violation of the same EOP, and knew that his course of conduct would cause a reasonable person to fear for her safety or the safety of a third person. The charges stemmed from five security-camera recordings that captured the defendant driving along Raum Road in front of one of Toland's residences at 685 Raum Road at times when Toland was not present.

¶ 5 The EOP, entered on January 22, 2025, ordered, under paragraph 3 (the "Stay Away from Petitioner and Certain Places" provision), that the defendant (1) shall not have any communication with Toland, (2) shall stay away from Toland at all times, and (3) shall stay at least 500 feet away from Toland at all times. Additionally, under the same paragraph 3, the EOP listed Toland's two residential properties (her primary Urbana residence and her Raum Road property) as "Other

locations" with no further description or information regarding the protections afforded to those locations. The "Other locations" section is a subcategory directly beneath the provision that reads "Respondent shall not be at or stay at any of these places while Petitioner is there," which the issuing court did not check. Paragraph 2 of the EOP, which separately addresses protections for the petitioner's residence, was left unchecked and completely blank.

¶ 6 At trial, the State introduced the EOP, the five recordings, and related testimony. Toland testified that she was not present at the property during any of the recorded events and that her testimony was based entirely on the camera footage installed in December 2024. She testified that the January 24 recording showed the defendant driving past the property, stopping at the end of her driveway, spitting out his window, and departing. Toland testified that the defendant drove past the property twice on January 25, once in the morning and the other in the afternoon. Toland identified the vehicle and driver in each recording as the defendant and testified that the truck was within 500 feet of her property. No testimony at trial described the defendant displaying the middle finger on this date; however, on appeal the State asserts that one of the videos from this date depicts the defendant making such a gesture. Toland testified that the February 6 recording depicted the defendant's truck driving past the property, with what appeared to be a dog or passenger visible in the cab. She testified the February 8 recording again showed the defendant traveling directly in front of the property and within 500 feet of it. Toland testified that she reported each incident because the EOP was in effect and stated that the recordings caused her fear for her own safety and her husband's. The State admitted all five recordings as exhibit 3.

¶ 7 On cross-examination, Toland acknowledged that she was not physically present at 685 Raum Road during any of the five incidents shown in the recordings. Consequently, she had no direct interaction with the defendant during any of those incidents. She further acknowledged that

the defendant's vehicle did not turn onto her driveway or onto the property and that nobody exited the vehicle at the driveway. Toland explained that her property was directly off Raum Road. She acknowledged that Raum Road was a public roadway and that the house and garage could not be seen directly from the roadway, although the chimney could be seen.

¶ 8 On redirect examination, Toland testified that she recalled the defendant stopping in front of the home and driveway on January 24 and that she saw him spit from the vehicle's window. She testified that Raum Road was not a dead-end road and that there were multiple ways to enter and leave the area. She acknowledged that the defendant lived approximately three miles away on the same road (Raum Road). According to Toland, he had other routes available to reach his home without passing her property. Toland further testified that seeing the defendant's vehicle on the recordings caused her to become scared and fearful for her life and safety and for the safety of her husband.

¶ 9 Deputy Orval Crider testified and confirmed service of the EOP and summons on January 23, 2025, and Sheriff Jerry Suits testified that Raum Road is public, and the defendant had alternate routes available to reach his residence without passing Toland's property. After the State rested, defense counsel moved for a directed verdict, stating she did not believe the State had met or could meet its burden. The State responded that it had established all propositions necessary for the EOP counts. The State argued that the defendant drove "to 685 Raum Road" on the charged dates; that the EOP prohibited him from being there; that the order was in effect on those dates; and that the defendant was personally served with the EOP on January 23, 2025. The State also argued that the five recorded visits constituted a "course of conduct" supporting the stalking charge, noting Toland's testimony that she feared for her safety.

¶ 10 The trial court then questioned the parties specifically concerning the EOP's structure and scope.

> "THE COURT: I have some questions, first of all. Does this Emergency Order of Protection, does anyone believe it prohibited [the defendant] from coming within 500 feet of that property?
>
> [STATE'S ATTORNEY]: Judge, it ordered him to stay away from the property at 685 Raum Road, and under the stay away provision, it depends how the Court views the term stay away, but stay away based on the Court's rulings in this state.
>
> THE COURT: Are you talking about paragraph three of the order stay away?
>
> [STATE'S ATTORNEY]: Yes, [Y]our Honor.
>
> THE COURT: It says, stay away from petitioner in certain places, what it says.
>
> [STATE'S ATTORNEY]: Right. And two of those places that are listed in paragraph three are [the Urbana residence] and 685 Raum Road in Golconda.
>
> THE COURT: The judge who entered this order did not check the box that says respondent shall not be at or stay at any of these places while petitioner is there.
>
> [STATE'S ATTORNEY]: Correct.
>
> THE COURT: But [it] did check the box other locations.
>
> [STATE'S ATTORNEY]: Yes.
>
> THE COURT: I don't know who did the checkmark but some judge signed this order, okay, and it says, respondent shall stay at least 500 feet away from petitioner at all times. And then it says, if I view the evidence in the light most favorable to the State, the judge may have intended to say, respondent shall not be at or stay at any of these places while petitioner is there. Other locations, [Urbana residence]. 685 Raum Road, Golconda, Illinois. On its face does it say anything about not coming within 500 feet of any property?
>
> [STATE'S ATTORNEY]: It doesn't say 500 feet. Well I mean it says stay away 500 feet from the petitioner but also stay away from the property at 685 Raum Road.
>
> THE COURT: Was she at the property? Was she at the property?
>
> [STATE'S ATTORNEY]: No, she was not."

¶ 11 During the same exchange, the trial court further observed the following:

> "Well there is another paragraph of the Supreme Court's form order, it's paragraph two, possession of residence. Now that's not included here in the Order of Protection entered but that's one of the available remedies. That says that the petitioner will be given exclusive possession of the residence, you put the address there, and respondent is ordered to not stay or be at the residence. So the idea of that paragraph is to protect the petitioner's residence. It doesn't have a proximity on the form. It just says don't be present at the residence.
>
> And then paragraph three is what talks about staying away from the petitioner and it does have a proximity provision in that third line and it says 500 feet away from the petitioner at all times, but then there is [*sic*] those other locations and the Appellate Court talked about those other locations in, there is one case, People v. Leezer."

¶ 12 The State continued to argue that the stay-away provision independently prohibited presence at the listed locations regardless of whether Toland was present, relying on *People v. Leezer*, 387 Ill. App. 3d 446 (2008), and asserting that the Domestic Violence Act should be liberally construed to restrict an abuser's access to a victim. The State also cited *People v. Mortensen*, 2019 IL App (2d) 170020, for the proposition that "stay away" encompasses both physical presence and non-physical contact. Defense counsel responded that the cases were inapplicable because those defendants actually entered protected properties or approached residences, whereas here the defendant merely traversed a public roadway. She emphasized that the EOP did not bar the defendant from being at the location unless Toland herself was present, and she was undisputedly absent during each incident.

¶ 13 After considering the parties' arguments, the trial court denied the defense's motion for a directed verdict as to counts I and II. The court explained that the critical question was whether the defendant was "at 685 Raum Road, Golconda, Illinois," rather than whether he was physically "upon the property" itself. The court further reasoned that the defendant was not merely shown to have been within 500 feet of the property. Rather, based on the particular facts and the court's understanding that the Domestic Violence Act should be liberally construed in light of its protective purpose, a rational trier of fact could find that the defendant was at 685 Raum Road. The court concluded that the evidence, viewed in the light most favorable to the State, permitted a rational trier of fact to find that the defendant was at 685 Raum Road even though he remained on the public roadway.

¶ 14 On the stalking count, defense counsel declined further argument, and the trial court found that the State had presented sufficient evidence of a pattern of conduct, including the five recordings contained in exhibit 3, and that a rational trier of fact could find that the defendant

committed stalking as charged. The court accordingly denied the motion for a directed verdict on count III.

¶ 15 The jury found the defendant guilty on all counts. The trial court later imposed an aggregate 13-year sentence (8 years for stalking, consecutive to concurrent 5-year terms for the EOP violations). The court denied the defendant's motion to reconsider sentence on September 23, 2025, and he filed a notice of appeal on October 22, 2025.

¶ 16 II. ANALYSIS

¶ 17 On appeal, the defendant raises a sufficiency challenge to each of his convictions and challenges his sentence as an abuse of discretion.

¶ 18 A. EOP Convictions

¶ 19 The defendant argues that the State failed to prove him guilty beyond a reasonable doubt of violating the emergency order of protection because the order did not prohibit him from driving past 685 Raum Road, particularly where Toland was absent. He acknowledges that the issuing court selected remedy paragraph 3 but did not select paragraph 2. He therefore maintains that the order granted the remedy authorized by section 214(b)(3) of the Illinois Domestic Violence Act of 1986 (Act) (750 ILCS 60/214(b)(3) (West 2022)), which permits a court to prohibit a respondent from entering or remaining at specified places "at times when petitioner is present." Because Toland was not present when the defendant drove past 685 Raum Road on January 24 or 25, the defendant contends that the State failed to establish that he committed an act prohibited by the order. Alternatively, he argues that the order is ambiguous because the court listed 685 Raum Road under paragraph 3 but did not select the provision stating that the defendant "shall not be at or stay at any of these places while Petitioner is there," making it unclear exactly what conduct was meant to be prohibited by the order.

¶ 20 The State responds that the order prohibited the defendant from being at 685 Raum Road regardless of Toland's presence because the address was her residence. Although acknowledging that the issuing court did not select paragraph 2, the State contends that the order's substance nevertheless invoked the protection authorized by section 214(b)(2), which permits a court to prohibit a respondent from entering or remaining in the petitioner's residence, household, or premises. *Id.* § 214(b)(2). The State characterizes the placement of the residences under paragraph 3 as a clerical or form-related error and argues that the issuing court's intent was apparent from the order and surrounding circumstances. Relying principally on *People v. Mortensen*, 2019 IL App (2d) 170020, the State maintains that an incorrectly completed preprinted form should not defeat an otherwise valid residence restriction. The State also invokes the Act's protective purpose and argues that the defendant's knowledge of whether Toland was actually present is irrelevant because, in the State's view, the order prohibited the defendant from being at 685 Raum Road at all times.

¶ 21 A challenge to the sufficiency of the evidence is ordinarily reviewed under the standard articulated in *People v. Collins*, 106 Ill. 2d 237, 261 (1985): whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. We will not substitute our judgment for that of the trier of fact regarding the credibility of witnesses or the weight to be given their testimony. *People v. Gray*, 2017 IL 120958, ¶ 35. Nevertheless, a conviction cannot stand when the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of guilt remains. *Id.*

¶ 22 Here, the sufficiency question also requires us to construe the order of protection and the statutes governing its issuance. The interpretation of a court order and the applicable statutes presents a question of law that we review *de novo*. *People v. Gabriel*, 2014 IL App (2d) 130507,

¶¶ 12, 21. Thus, although we defer to the jury's factual findings and reasonable inferences, we independently determine what the order prohibited and whether the conduct proved constituted a violation.

¶ 23 Because we presume that the trial court intended to enter a valid judgment, we construe the order to uphold its validity, if reasonably possible. *Id.* We apply strict statutory construction principles in construing the language of an order of protection. *People v. Davit*, 366 Ill. App. 3d 522, 527 (2006). If the language contained in the order of protection reasonably can be interpreted in two different ways, it is ambiguous. *Id.* "In a criminal context, when the reviewing court is presented with ambiguous language to enforce, the principle of lenity is applied." *Id.* "Under this principle, the language in the order of protection must be strictly construed in favor of the accused." *Id.*

¶ 24 Section 12-3.4(a)(1)(i) of the Criminal Code of 2012 provides that a person violates an order of protection when he or she "knowingly commits an act which was prohibited by a court" in violation of a remedy in a valid order of protection authorized under section 214(b)(1), (2), (3), (14), or (14.5) of the Act. 720 ILCS 5/12-3.4(a)(1)(i) (West 2022). The State must also establish that the defendant had been served with the order or otherwise acquired actual knowledge of its contents. *Id.* § 12-3.4(a)(2). The offense therefore requires proof that the defendant knowingly committed an act prohibited by the order. *Davit*, 366 Ill. App. 3d at 525.

¶ 25 Section 214(b)(2) permits a court to "[p]rohibit respondent from entering or remaining in any residence, household, or premises of the petitioner." 750 ILCS 60/214(b)(2) (West 2022). That provision contains no limitation based upon the petitioner's presence. Section 214(b)(3), by contrast, permits the court to prohibit the respondent from entering or remaining at the petitioner's

school, place of employment, or "other specified places at times when petitioner is present." *Id.* § 214(b)(3).

¶ 26 Section 221(a)(1) requires an order of protection to describe each remedy granted "in reasonable detail" so that the respondent may "clearly understand what he or she must do or refrain from doing." *Id.* § 221(a)(1). It further provides that remedies in preprinted forms shall be numbered consistently with and correspond to the numerical sequence of remedies in section 214. *Id.*

¶ 27 Because an order of protection supplies an element of the criminal offense, its terms must be construed with appropriate regard for the principles applicable to criminal prohibitions. *Davit*, 366 Ill. App. 3d at 527-28. Where the language of an order is reasonably susceptible to two interpretations, the ambiguity must be resolved in favor of the accused. *Id.*

¶ 28 In *People v. Gabriel*, 2014 IL App (2d) 130507, the Second District refused to construe an order broadly where doing so would have exceeded the authority granted under section 214(b)(3). There, the order purported to prohibit the defendant from being within 1,000 feet of the petitioner's school regardless of whether she was present. The court held that section 214(b)(3) limited such a specified-place restriction to times when the petitioner was present and reversed because the State failed to prove the petitioner was present. *Id.* ¶¶ 15-22. Importantly, *Gabriel* recognized that the sufficiency question could not be separated from the proper interpretation of the order. Although the evidence was sufficient under the trial court's interpretation, that interpretation was legally incorrect. *Id.* ¶ 9.

¶ 29 In *People v. Mortensen*, 2019 IL App (2d) 170020, ¶¶ 3, 13-16, the order at issue expressly required the defendant to stay at least 1,000 feet from the petitioner's residence under a separate residence provision of the preprinted form, while separately restricting access to other locations

when the petitioner was present. The defendant in *Mortensen* entered onto the property of the protected residence and delivered flowers and cupcakes to the petitioner's doorstep. The Second District held that the residence restriction was authorized by section 214(b)(2), notwithstanding the numbering of the remedy on the form. *Id.* ¶¶ 13-15. Thus, *Mortensen* establishes that the placement or numbering of a clearly stated residence restriction does not, by itself, prevent enforcement of that restriction.

¶ 30 In *People v. Leezer*, 387 Ill. App. 3d 446 (2008), the order of protection expressly required the respondent to stay 1,000 feet from the petitioner's residence. *Id.* at 447. Although that restriction appeared within the form's section 214(b)(3) stay-away provision, the court held it was a valid, unconditional residence restriction based on the language and structure of the particular preprinted order before it. *Id.* at 450-53. The particular preprinted form at issue contained a distinct and separate subcategory for the petitioner's residence that may be selected under section 214(b)(3), the stay-away provision of the Act. *Id.* The *Leezer* court agreed with the State that "the section 214(b)(3) stay-away-from-petitioner provision applies equally to [the petitioner] and her residence *as both are selected on the order of protection*." (Emphasis added.) *Id.*at 450-51.

¶ 31 Taken together, these cases establish a narrower principle relevant here: an unconditional restriction concerning a petitioner's residence may be authorized under section 214(b)(3), and a defect in the numbering or placement of a remedy does not necessarily invalidate a clearly stated residence restriction. *Mortensen*, 2019 IL App (2d) 170020, ¶¶ 13-15; *Leezer*, 387 Ill. App. 3d at 450-53. But the cases do not eliminate the requirement that the order itself clearly communicate the restriction the State seeks to enforce. In both *Leezer* and *Mortensen*, the orders expressly imposed restrictions concerning the petitioner's residence. Here, by contrast, the residence was identified under "other locations" within the provision stating that the defendant shall not be at or

stay at such places "while Petitioner is there." The reviewing court must still determine what the issuing court actually ordered and may not expand an order beyond what its language reasonably communicates. *Gabriel*, 2014 IL App (2d) 130507, ¶¶ 9, 12-19; *Davit*, 366 Ill. App. 3d at 527-28.

¶ 32 The question is whether this particular EOP actually imposed an unconditional restriction prohibiting the defendant from being at 685 Raum Road when Toland was absent. The EOP does not clearly answer that question. That ambiguity is critical because section 221(a)(1) requires an order of protection to describe each remedy in reasonable detail so that the respondent may clearly understand what he or she must do or refrain from doing. 750 ILCS 60/221(a)(1) (West 2022). Thus, the issue is not whether the issuing court intended to protect Toland's residence, but whether the EOP actually communicated an unconditional prohibition with sufficient clarity to permit criminal enforcement.

¶ 33 The issuing court did not select paragraph 2 of the form order, which expressly addresses exclusion from the petitioner's residence. Instead, the court selected paragraph 3 and checked the three boxes directly addressing the petitioner, ordering that the defendant (1) shall not have any communication with Toland, (2) shall stay away from Toland at all times, and (3) shall stay at least 500 feet away from Toland at all times. Below those provisions, the form contains a separate provision stating that the defendant "shall not be at or stay at any of these places while Petitioner is there." That provision contains subcategories for the petitioner's workplace, school or daycare, and other locations. The issuing court did not select that overarching "shall not be at or stay at any of these places while Petitioner is there" provision. It nevertheless checked "other locations" and listed 685 Raum Road.

¶ 34 The significance of that selection is not entirely clear. The issuing court specifically identified 685 Raum Road as an "other location," suggesting that it intended to restrict the

defendant's presence there. But the "other locations" entry appears within the provision stating that the defendant "shall not be at or stay at any of these places while Petitioner is there," and the court did not select that overarching provision. Unlike the forms considered in *Leezer* and *Mortensen*, this EOP contains no separately stated residence restriction, no specified distance from the residence, and no language expressly stating that the defendant must remain away from 685 Raum Road regardless of Toland's presence.

¶ 35 That structure creates an ambiguity concerning the scope of the restriction the court imposed. We do not disregard the checked "other locations" box; rather, we must determine what restriction that selection communicated when the language of the order is considered as a whole. On the one hand, the State argues that the court's decision to check "other locations" and identify 685 Raum Road indicates an intent to prohibit the defendant from being at that location. On the other hand, the "other locations" entry is not presented on the form as a freestanding remedy; it appears as a subcategory of a provision expressly conditioned on the petitioner's presence. Thus, there is a reasonable basis to understand the "other locations" restriction as subject to the "while the Petitioner is there" limitation. At a minimum, the EOP does not clearly communicate that the defendant was prohibited from traveling on the public roadway past that address when Toland was absent.

¶ 36 That ambiguity is reinforced by the issuing court's failure to select paragraph 2, the provision specifically addressing the petitioner's residence, and by the absence of any separate language imposing a distance or other geographic restriction around the residence. Thus, even if the "other locations" entry demonstrates an intent to restrict the defendant's presence at 685 Raum Road, the EOP does not clearly define whether that restriction extended to the public roadway when Toland was absent or what geographic area surrounding the address was prohibited.

¶ 37 We do not hold that an address listed under paragraph 3 can never constitute an unconditional restriction on a residence. *Mortensen* and *Leezer* foreclose such a categorical rule. Rather, those cases require us to examine the language of the particular order, as a whole, to determine whether it clearly imposed the restriction the State seeks to enforce. Here, the EOP's absence of a separate residence restriction under paragraph 2, the unselected "while Petitioner is there" overarching provision, the conditional nature of the "other locations" provision, and the absence of a stated distance from the residence create a reasonable ambiguity as to whether the EOP prohibited the defendant from traveling on the public roadway past the residence when Toland was absent. The ambiguity is particularly significant because Toland was undisputedly absent during the charged incidents, the defendant remained on a public roadway, and he also lived on the same roadway.

¶ 38 The State argues that the issuing court's intent was nevertheless obvious because Toland sought protection for both of her residences, 685 Raum Road was known to be a residence, and the court listed the address in the EOP. The State also points to the form's structure, noting that paragraph 2 provided only a single line for a residence while the "other locations" section provided space for multiple addresses, and argues that the placement of both of Toland's residences under "other locations" therefore reflected the court's intent to protect them unconditionally. But even assuming the record supports an inference that the issuing court intended to protect Toland's residences, the court's possible intent cannot substitute for the actual terms of the order where those terms do not clearly communicate the scope of the prohibition. The requirement is particularly significant here, because the asserted prohibition supplies the basis for criminal liability. The State cannot establish a knowing violation of a prohibition that the EOP did not clearly communicate. See *Davit*, 366 Ill. App. 3d at 527-28.

¶ 39 The State's proposed construction would require more than correcting the placement of a checked box. It would require us to construe the order as prohibiting the defendant from being at 685 Raum Road regardless of Toland's presence and, based on the charged conduct, as prohibiting the defendant from traveling past the residence on the public roadway even when Toland was not present. But the order contains no language clearly defining such a restriction. *Mortensen* permits enforcement of a clearly stated residence restriction despite its placement under a different numbered remedy, and *Leezer* permits a residence restriction under section 214(b)(3) when the order clearly imposes such a restriction. Neither case, however, requires a reviewing court to infer the existence or scope of a restriction that the order does not clearly state. To adopt the State's construction here would require us to supply both the unconditional nature and geographic scope of the restriction rather than interpret the language the issuing court actually entered.

¶ 40 The Act's liberal-construction provision does not change the result. See 750 ILCS 60/102 (West 2022). Section 102 directs that the Act be liberally construed to promote its purposes, including protecting victims of domestic violence from further abuse. *Id.* But liberal construction of the Act does not permit a court to expand the scope of an ambiguous criminal prohibition after the fact. The State was required to prove that the defendant knowingly committed an act prohibited by the EOP. That requirement cannot be satisfied by relying on the protective purpose of the Act to impose a prohibition that the order itself did not clearly communicate.

¶ 41 Accordingly, this case is not controlled by *Leezer* or *Mortensen*, because neither involved an order with the particular combination of provisions presented here. Unlike the orders in *Mortensen* and *Leezer*, which expressly imposed specific, geographically defined restrictions concerning the petitioner's residence, the EOP here does not clearly communicate that 685 Raum Road was subject to an unconditional restriction when Toland was absent or that traveling on the

public roadway past that address was prohibited. As in *Gabriel*, the ambiguity concerns the scope of the restriction actually imposed. Because the EOP forms the basis for criminal liability, that ambiguity must be resolved in the defendant's favor. See *Davit*, 366 Ill. App. 3d at 527-28.

¶ 42 The evidence further demonstrates why the scope of the order matters. Toland was not present during any of the charged incidents, and the defendant remained on the public roadway; there was no evidence that he entered the driveway, yard, or residence at 685 Raum Road. Sheriff Jerry Suits testified that the defendant lived approximately three miles south of the Toland residence and that Raum Road is a public road, not a dead-end road. The EOP contains no stated distance restriction governing the defendant's proximity to the residence. The State emphasizes that at least two alternate routes were available and argues that the defendant's decision to travel on Raum Road demonstrated that he knowingly chose to violate the EOP. The availability of alternate routes may support an inference that the defendant deliberately traveled that way; however, it does not establish what the EOP prohibited. The State's argument therefore depends on a restriction that is not supplied by the EOP's text.

¶ 43 The State also emphasizes that the defendant knew 685 Raum Road was Toland's residence. That evidence may establish that the defendant knew the identity and location of the residence, but it does not establish that he knew the EOP prohibited him from being on the public roadway near the residence when Toland was absent. The fact that the defendant himself lived on Raum Road further underscores the need for the order to clearly define the scope of any unconditional geographic restriction.

¶ 44 The State's trial presentation further illustrates the problem. With respect to each video, the State asked whether the defendant was within 500 feet of 685 Raum Road. But the EOP's 500-foot provision required the defendant to remain 500 feet from Toland—not 500 feet from her

residence. Thus, the State's own questioning treated the EOP as imposing a geographic restriction around the residence that the order did not actually impose. The State's closing argument likewise relied on the defendant's ability to take an alternate route and characterized his decision to travel past 685 Raum Road as a violation of the order. Those arguments demonstrate that the State's theory depended on treating the defendant's travel on the public roadway as a violation of an unconditional geographic restriction. But neither the State's characterization of the EOP, nor the availability of an alternate route, can supply a prohibition that the order itself did not clearly impose.

¶ 45 Because the EOP is ambiguous as to whether the restriction concerning 685 Raum Road applied when Toland was absent, that ambiguity must be resolved in the defendant's favor. The State therefore failed to prove beyond a reasonable doubt that the defendant knowingly committed an act prohibited by the EOP. Accordingly, the evidence was insufficient to sustain the two EOP convictions, and those convictions must be reversed.

¶ 46 B. Stalking Conviction

¶ 47 The defendant separately challenges the stalking conviction. He argues that the State failed to prove beyond a reasonable doubt that he knew or should have known his conduct would cause a reasonable person in Toland's situation to fear for her safety or the safety of a third person. He emphasizes that the State proved five occasions, over approximately two weeks, on which he drove past 685 Raum Road. Toland was not present during any of the incidents. The defendant did not enter the property, confront Toland, communicate with her, threaten her, or commit physical violence. He maintains that the State's characterization of the conduct as surveillance or monitoring is unsupported because he remained on a public roadway and Toland was not present for any incident.

¶ 48 The State responds that the evidence was sufficient when viewed in the light most favorable to the prosecution. It characterizes the repeated trips as monitoring or observing Toland and emphasizes the five occasions, the defendant's gestures, his knowledge of the EOP, Toland's testimony that she feared for her safety, and the history between the parties. The State also relies on the circumstances surrounding the issuance of the EOP, including the issuing court's findings and the defendant's knowledge that Toland had obtained an order for her protection. The State argues that the stalking statute does not require an express threat, physical violence, or an independently criminal act.

¶ 49 Section 12-7.3(a)(1) provides that a person commits stalking when he or she knowingly engages in a "course of conduct directed at a specific person" and knows or should know that the course of conduct would cause a reasonable person to fear for his or her safety or the safety of a third person. 720 ILCS 5/12-7.3(a)(1) (West 2022). A "course of conduct" means "2 or more acts," including, but not limited to, acts in which the defendant follows, monitors, observes, surveils, threatens, communicates to or about a person, engages in other nonconsensual contact, or interferes with or damages the person's property or pet. *Id.* § 12-7.3(c)(1). The statute defines "reasonable person" as "a person in the victim's situation." *Id.* § 12-7.3(c)(8). Further, subsection (a)(1) does not require an express threat or physical violence. See *People v. Relerford*, 2017 IL 121094, ¶¶ 27-29. However, the State must still prove that the defendant knew or should have known that his particular course of conduct would cause a reasonable person in the victim's situation to fear for her safety.

¶ 50 The nature and context of the conduct are therefore relevant to that inquiry. In *People v. Ashley*, the course of conduct included repeated explicit threats of death or bodily harm directed at the victim. *People v. Ashley*, 2020 IL 123989, ¶¶ 98-101. Although an express threat is not

required under subsection (a)(1), the conduct in *Ashley* included direct communications expressing an intent to inflict unlawful violence. *Id.* ¶¶ 98-101. Thus, the conduct at issue in *Ashley* was materially different from the five drive-bys on a public roadway at issue here. In *People v. Diercks*, the State proceeded under section 12-7.3(a)(1) based on repeated communications it characterized as threatening. *People v. Diercks*, 2024 IL App (5th) 220757-U, ¶¶ 4, 58, 64-65.[1] This court nevertheless found the communications insufficient to establish true threats, describing them at worst as "distressing communications demonstrating the defendant's anger and frustration with [the victim]." (Internal quotation marks omitted.) *Id.* ¶¶ 61-66. Although neither case involved the precise conduct presented here, both provide useful context for evaluating the character of the conduct on which the State relies.

¶ 51 The five trips to 685 Raum Road satisfy the numerical component of the statutory definition of a "course of conduct." But repetition alone does not establish stalking. The defendant does not challenge that his conduct was directed at Toland; only that the State failed to prove that he knew or should have known his conduct would cause a reasonable person in Toland's situation to fear for her safety.

¶ 52 Here, the State's evidence showed that the defendant drove along a public roadway near 685 Raum Road on five occasions. The State presented Toland's testimony that, on January 24, the defendant stopped in front of the property and spat from his vehicle, although the parties dispute on appeal whether those actions are captured by the surveillance video. On January 25, he drove past twice, with the State characterizing one pass as involving a middle-finger gesture toward the property, although no trial testimony established that gesture. He drove past the

[1]This order was filed under Illinois Supreme Court Rule 23 (eff. Jan. 1, 2021) and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

property again on February 6 and February 8. Thus, the evidence established repeated travel past the property and, at most, two incidents of conduct that could reasonably be viewed as angry or hostile. Toland was absent during every incident, and the defendant never approached her, communicated with her, entered the property, threatened her, or committed violence.

¶ 53 The State characterizes the repeated drive-bys as monitoring or surveillance. Section 12-7.3(c)(7) defines surveillance to include remaining present outside the victim's school, workplace, vehicle, other place occupied by the victim, or residence. 720 ILCS 5/12-7.3(c)(7) (West 2022). Section 12-7.3(c)(6) defines nonconsensual contact to include being in the victim's physical presence or sight, approaching or confronting the victim, appearing at the victim's residence, or entering or remaining on property occupied by the victim. *Id.* § 12-7.3(c)(6). Those provisions identify conduct that may constitute acts within a stalking course of conduct, but the evidence here did not establish that the defendant was using the roadway to watch for, observe, or monitor Toland or her vehicle, or to remain present outside the residence. He remained on the public roadway and in his vehicle, and Toland was absent during every incident. Thus, while the drive-bys and alleged gestures could reasonably be viewed as expressions of anger or frustration, the evidence did not establish surveillance of Toland in the sense urged by the State.

¶ 54 The geographic circumstances further weaken the State's inference. The defendant lived approximately three miles south of the Toland residence on the same public road. Although alternate routes existed, the defendant's residence provided an innocent geographic explanation for his presence on the road. The availability of alternate routes may support an inference that he deliberately chose to pass the property, but it does not establish why he did so or that he knew or should have known his conduct would cause a reasonable person in Toland's situation to fear for her safety.

¶ 55 The State also relies on the parties' history, Toland's testimony that she feared for her safety, the defendant's knowledge of the EOP, and the availability of alternate routes. Those circumstances must be considered together. Although the State characterizes the EOP and the issuing court's findings as evidence of a broader history of hostility or prior abuse, the trial record did not include testimony describing any past threatening or abusive conduct by the defendant. Toland testified only that the defendant was her half-brother and that she had known him throughout her life; she did not testify to any earlier incidents that might provide the context the State urges or explain why the defendant should have known the charged conduct would cause fear.

¶ 56 The defendant's knowledge of the EOP does not supply the missing inference. It established that Toland had sought judicial protection and that the defendant knew an order was in effect; it did not establish the circumstances underlying its issuance or what the defendant knew about the effect his subsequent conduct would have on Toland. Knowledge that an EOP existed therefore did not, by itself, establish that the defendant knew or should have known that his subsequent drive-bys would cause a reasonable person in Toland's situation to fear for her safety.

¶ 57 The State's reliance on the EOP is further complicated by its argument that the defendant repeatedly violated an unconditional prohibition against being near 685 Raum Road. As we explained above, the EOP did not clearly prohibit the defendant from traveling on the public roadway past the residence while Toland was absent. We do not hold that the EOP was irrelevant to the stalking charge or that evidence of the defendant's knowledge of the order could not be considered. Nor do we hold that reversal of the EOP convictions automatically requires reversal of the stalking conviction. The five trips remain evidence the jury could consider. The State cannot, however, treat those trips as repeated violations of a judicial prohibition that the EOP did not

clearly impose and then use those alleged violations to establish that the defendant knew or should have known his conduct would cause Toland to fear for her safety.

¶ 58 The State's own closing argument at trial demonstrates the significance of that distinction. It emphasized that the defendant lived approximately three miles away, that alternate routes existed, and that he nevertheless chose to pass 685 Raum Road despite being ordered to stay away. The State characterized that choice as part of a "ploy or his plan" to "stalk Dawn Toland." The State's argument treated the EOP as establishing an unconditional prohibition against the defendant's presence near the residence. That assumption is inconsistent with our construction of the EOP. Because that inference depended in significant part on treating the EOP as an unconditional prohibition, the evidence does not establish the required knowledge merely from the defendant's repeated presence on the public roadway.

¶ 59 The remaining evidence does not bridge that gap. Toland testified that the defendant's conduct made her fear for her safety, and the State emphasizes the history between the parties and the defendant's apparent hostile gestures. Subjective fear, although relevant, does not establish the statutory knowledge element. See 720 ILCS 5/12-7.3(a)(1), (c)(8) (West 2022). Moreover, the State's principal inference—that the defendant deliberately and repeatedly disregarded a judicial command to stay away from the residence—rests on a construction of the EOP that we have rejected. Once that premise is removed, the evidence is reduced to five drive-bys over approximately two weeks, two alleged gestures that could reasonably be viewed as angry or hostile, knowledge of the EOP, and no physical confrontation, entry onto the property, communication of a threat, or established attempt to approach, observe, or surveil Toland.

¶ 60 Accordingly, viewing the evidence in the light most favorable to the State and considering the evidence as a whole, it does not permit a rational trier of fact to find beyond a reasonable doubt

that the defendant knew or should have known his course of conduct would cause a reasonable person in Toland's situation to fear for her safety. The stalking conviction must therefore be reversed.

¶ 61 C. Sentence

¶ 62 Because we have reversed the defendant's convictions on all counts, the 13-year sentence imposed by the circuit court cannot stand. A criminal sentence cannot survive reversal of the underlying convictions; once the judgment of guilt is vacated, "the sentence necessarily falls with it." This principle is long-established in Illinois. See, *e.g.*, *People v. O'Neal*, 125 Ill. 2d 291, 297-301 (1988) (vacating consecutive sentences after reversing convictions, noting that sentencing must be supported by a valid conviction). The same result follows here. The defendant's challenges to the extended-term and consecutive sentences are moot. The sentence imposed by the circuit court is vacated as a consequence of the reversal of the convictions.

¶ 63 III. CONCLUSION

¶ 64 For the foregoing reasons, the State failed to prove beyond a reasonable doubt that the defendant violated the emergency order of protection or committed stalking. The EOP did not clearly prohibit the conduct underlying the convictions, and the evidence was insufficient to establish the elements of stalking beyond a reasonable doubt. Accordingly, the defendant's convictions for two counts of violation of an emergency order of protection and one count of stalking are reversed and vacated, the matters are dismissed, and the defendant is ordered to be discharged. When a conviction is reversed for insufficiency of the evidence, the double jeopardy clause precludes the State from retrying the defendant, and the only proper remedy is a judgment of acquittal. *People v. Williams*, 239 Ill. 2d 119, 133 (2010). Based on our ruling and the

circumstances of this case, we order that our judgment and the corresponding mandate be issued immediately.

¶ 65 Reversed, vacated, and the defendant discharged.