

Defendant, while on duty as a Sangamon County Sheriff's deputy, shot and killed Sonya Massey, in a case that has garnered national media attention.²

The People filed a verified petition to deny defendant pretrial release. C21-24. The People's petition alleged that defendant was charged with a detainable offense and that his pretrial release posed a real and present threat to the safety of the community. C21. The petition contained a detailed factual basis in support of pretrial detention. C21-22. The factual basis incorporated video footage of the shooting, as captured by the body worn camera of another deputy at the scene. C21; SUP ES 4. It also referenced the July 15, 2024 investigative report of the Illinois State Police deeming the shooting unjustified. C22; SUP ES 6-14.

Following a hearing at which it reviewed the People's proffer, the circuit court found that the People had met their burden of proof, granted the petition, and ordered defendant detained pending trial. C25-26. The circuit court found by clear and convincing evidence that the proof was evident and the presumption great that defendant committed one or more detainable offenses, that defendant posed a real and present threat to the safety of any person or persons or the community, and that no condition or combination of pretrial release conditions would mitigate that threat. C25.

Defendant appealed under Supreme Court Rule 604(h). The appellate court issued its disposition on November 27, 2024, reversing the circuit court's detention

² See, e.g., Associated Press, *Body camera video focused national attention on an Illinois deputy's fatal shooting of Sonya Massey*, posted on July 24, 2024, available at <https://tinyurl.com/52m7kt8a> (last visited Dec. 3, 2024).

order and ordering a hearing to determine the least restrictive conditions of pretrial release. *See People v. Grayson*, 2024 IL App (4th) 241100-U. Seven days later, and two days before the appellate court was due to issue its mandate, *see* Ill. S. Ct. R. 613(d) (in pretrial detention cases, mandate issues “five court days after the entry of judgment”), the People filed a PLA in this Court.

Ordinarily, the filing of a PLA before the issuance of an appellate court mandate automatically stays issuance of the mandate until this Court’s review of the case concludes. *See* Ill. S. Ct. R. 368(b). Under Rule 368(b), “the mandate is stayed automatically if, before it may issue, a party who is entitled to seek review by the Supreme Court files a petition in the Supreme Court for such review,” and “[t]he stay is effective until the expiration of the time to seek review, and, if review is timely sought, until disposition of the case by the Supreme Court.” *Id.*; *see People v. Quick*, 321 Ill. App. 3d 392, 395 n.1 (3d Dist. 2001) (observing that Rule 368(b) applies to criminal appeals).

However, the rule contemplates that “[t]he Supreme Court, the Appellate Court, or a judge of either court may, upon motion, order otherwise.” Ill. S. Ct. R. 368(b). Here, on December 3, 2024, the appellate court ordered that the automatic stay set forth in Rule 368(b) should not apply in this case. *See* Exh. The appellate court ordered that a stay of the mandate instead should terminate on January 2, 2025 — the People’s deadline for filing a PLA — and specified that “the mandate *will not* be automatically stayed beyond that date as otherwise provided by Supreme Court Rule 368(b).” *Id.* at 2 (emphasis added).

Argument

This Court should modify the appellate court's order and continue the stay as Rule 368(b) contemplates. The purpose of Rule 368(b)'s automatic stay is to maintain the status quo while this Court considers whether to grant review and, if review is granted, until the Court disposes of the appeal. The circuit court in this case has already found that defendant presents a danger to the community and that no conditions of release are sufficient to mitigate this risk. For the reasons set forth in the People's PLA, the appellate court's reversal of this order was erroneous, and defendant should, as the circuit court ordered, remain detained.

The appellate court incorrectly reasoned that a continued stay in this matter should be unavailable based on Supreme Court Rule 604(a)(3). *See* Exh. at 2-3. That rule provides that a "defendant shall not be held in jail . . . during the pendency of an appeal by the State, or of a petition or appeal by the State under Rule 315(a), unless there are compelling reasons for his or her continued detention[.]" Ill. S. Ct. R. 604(a)(3). By its terms, the rule applies, because the People's PLA is pending. However, the sole issue on which review is sought is whether the circuit court correctly determined that defendant *should not be released* because he poses a danger to the community and that no conditions of release are sufficient to mitigate that threat. The circuit court's findings — which, as the PLA explains, were wrongly rejected by the appellate court — provide "compelling reasons" for staying defendant's release until this Court has had the opportunity to review them.

Conclusion

This Court should order that the mandate be stayed until this Court has disposed of this appeal.

December 6, 2024

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VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

/s/ Erin M. O'Connell
ERIN M. O'CONNELL
Assistant Attorney General

CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On December 6, 2024, the foregoing **Motion to Continue Stay of Mandate Through Disposition of Appeal** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which automatically served notice on the following e-mail address:

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