THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 604(h)

No. 131279

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. SEAN P. GRAYSON, Defendant-Appellee.	))))))))))	Appeal from the Appellate Court of Illinois, Fourth District, No. 4-24-1100 There on Appeal from the Circuit Court of Sangamon County, Illinois, No. 2024-CF-909 The Honorable Ryan Cadagin, Judge Presiding.

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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NATURE OF THE CASE

Defendant, while a sheriff's deputy, fatally shot an unarmed woman in her home and was charged with first degree murder, aggravated battery with a firearm, and official misconduct. Following a hearing, the circuit court granted the People's petition seeking defendant's pretrial detention. The appellate court reversed, holding that the circuit court erred by concluding that no conditions of release would adequately mitigate the threat defendant posed to the community. No question is raised on the pleadings.

ISSUE PRESENTED FOR REVIEW

Whether the circuit court is correct that no conditions of release would adequately mitigate the risk defendant poses to the community.

JURISDICTION

Appellate jurisdiction lies under Supreme Court Rules 315, 604, and 612. This Court allowed leave to appeal on January 29, 2025.

STATUTE INVOLVED

725 ILCS 5/110-6.1(e)(1)-(3) (Denial of pretrial release)

> (e) Eligibility: All defendants shall be presumed eligible for pretrial release, and the State shall bear the burden of proving by clear and convincing evidence that:
>
> (1) the proof is evident or the presumption great that the defendant has committed an offense listed in subsection (a), and
>
> (2) for offenses listed in paragraphs (1) through (7) of subsection (a), the defendant poses 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, . . ., and
>
> (3) no condition or combination of conditions set forth in subsection (b) of Section 110-10 of this Article can mitigate . . . the real and present threat to the safety of any person or persons or the community. . .

STATEMENT OF FACTS

A. Defendant's Charges and the Pretrial Detention Hearing

On July 6, 2024, defendant, a Sangamon County Sheriff's Deputy, fatally shot an unarmed woman, Sonya Massey, in her kitchen, as shown in footage captured by a fellow officer's body worn camera. *See generally* V1.[1] On July 18, 2024, the People charged defendant with three counts of first degree murder, one count of aggravated battery with a firearm, and one count of official misconduct. C14-19. The People then filed a petition to deny pretrial release and submitted (1) the footage of the shooting and its aftermath recorded by the body worn cameras worn by defendant and his fellow officer and (2) an investigative report from the Illinois State Police (the ISP Report). C21-24.

At the pretrial detention hearing, the People proceeded by way of proffer and relied on the body worn camera footage and ISP Report. R4-9. On the night of the shooting, defendant and another deputy responded to a report of a prowler near Massey's home; defendant's body worn camera was turned off, but the other deputy's body worn camera began to record as they entered Massey's yard. R5-6; V1.

That footage showed that, after searching the yard for several minutes without locating a prowler, the deputies knocked on Massey's door. V1 at

[1] Citations to "C_" and R_" refer to the common law record and report of proceedings; "E_" and "ES_" refer to the hearing exhibits and secured exhibits; V1 and V2 refer to the body worn camera footage.

0:01-5:58. Massey, who was slightly built, answered the door. *Id*. at 7:26-30. Defendant, who was much taller and heavier than Massey, said that they had not found anyone outside and asked Massey whether she was "doing alright mentally." *Id*. at 7:49-8:47. Massey responded that she was mentally okay. *Id*. at 8:48-50. As the conversation on Massey's front step began to wind down, Massey said, "love y'all, thank y'all" and started to re-enter her house. *Id*. at 8:50-53. Defendant then asked her about a damaged SUV parked in her driveway. *Id*. at 8:54-59. After further conversation, Massey entered her home, and defendant and the other deputy followed. *Id*. at 9:00-54.

Although Massey was not under arrest, the deputies entered her living room, which was partially separated from the kitchen by a kitchen counter. *Id*. at 9:55-10:25. Defendant asked Massey to provide some form of identification. *Id*. at 11:15-23. While Massey sat on a couch in the living room and looked through her purse for her identification, defendant saw a pot of water on the kitchen stove and said, "We don't need a fire while we're here." *Id*. at 11:43-52. Defendant remained in the living room while Massey walked over to the stove, turned off the burner, carried the pot to the sink, and turned on the faucet. *Id*. at 11:52-59. She asked the deputies what they were doing, and defendant said, "Getting away from your hot, steaming water." *Id*. at 12:00-12:04. Massey, who was standing by the kitchen sink, then said twice: "I rebuke you in the name of Jesus." *Id*. at 12:05-09.

Defendant, who was still in the living room, responded, "You better fucking not. I swear to God, I'll fucking shoot you right in your fucking face." *Id*. at 12:09-12. Defendant then drew his 9-millimeter service weapon, pointed it at Massey, and shouted, "Drop the fucking pot! Drop the fucking pot!" *Id*. at 12:12-16.

Massey flinched and said, "I'm sorry," then crouched behind the kitchen counter that separated the living room from the kitchen. *Id*. at 12:13-17. Defendant walked toward Massey and shot at her three times. *Id*. at 12:17-21.[2] One of the shots hit Massey just below her left eye, an injury that would eventually prove fatal. R7. The time between Massey answering her door and defendant shooting her was less than five minutes. V1 at 7:26-12:21.

Defendant reported the shooting to the police dispatch center, then turned on his body worn camera. *See* V2. The other deputy said he was "going to get" his medical kit, and defendant said, "No, it was a headshot, dude, she's done. You can go get it, but that's a headshot," so the other deputy remained in Massey's home with defendant. *Id*. at 0:34-41. A minute later, defendant observed that Massey was "still breathing but she's losing a lot of blood." *Id*. at 1:43-47. Defendant then said he would get his "med kit" though "there's not much we can do," and the other deputy responded, "we

[2] The ISP report, which was based in part on defendant's account of the shooting, states that Massey crouched behind the kitchen counter, stood up and grabbed the pot, then threw the water. ES8.

can at least try and hold the — stop the blood." V1 at 14:01-09. The other deputy held Massey's head and used a kitchen towel to apply pressure to her wound while he waited for defendant to return with the medical kit; when defendant did not return, the deputy said, "C'mon. Where's he at? C'mon." *Id*. at 14:15-21:00. A third officer entered the house; the other deputy said that Massey was "still gasping" for air, and he asked the officer to hand him another kitchen towel to stanch the bleeding while they waited for an ambulance. *Id*. at 15:40-52; *see also id*. at 16:50-59, 18:04-10.

Meanwhile, defendant's body worn camera footage shows that, after the shooting, he walked around outside the house and then eventually went back inside, but he did not provide aid to Massey. V2 at 2:00-8:01. When other officers arrived, he claimed that Massey "came at [him] with boiling water," and he told the officers "this fucking bitch is crazy." *Id*. at 4:03-15, 4:43-48.

The other evidence submitted at the hearing — the ISP Report — was prepared by a Master Sergeant in the Illinois Division of Criminal Investigations who is "a Subject Matter Expert regarding Use of Force Incident Review." ES6. The report noted that, at the time defendant pointed his gun at Massey and began approaching her, Massey had not made "any aggressive movements toward either Deputy." ES10. And "[d]ue to Mrs. Massey not aggressively approaching [defendant] with the pot of liquid or making any aggressive movements," the report found that "the necessity of

force [by defendant] was not imminent." ES11. The report explained that defendant's "fear of great bodily harm could have been resolved by not approaching Mrs. Massey and coming within throwing distance of the liquid." ES13. Defendant "did not attempt to slow the situation down while Mrs. Massey was standing close to the pot of liquid in an attempt to de-escalate the situation" and "did not give Mrs. Massey any further commands after she let go of the pot and crouched below" the kitchen counter. *Id*. Instead, defendant "escalated" the situation "and advanced in the direction of" Massey. *Id*. The report likened these circumstances to an officer intentionally and unnecessarily putting himself in front of a moving car and then attempting to justify his use of force against the driver because he feared being hit by the car. ES14. The report concluded that because defendant escalated the situation and unnecessarily advanced toward Massey, the expert did "not feel the shooting of Mrs. Massey is justified." *Id*.

The prosecution argued in closing that Massey posed no threat to defendant, yet defendant "decided purposefully to utilize lethal force." R8. The prosecution noted that defendant needlessly escalated the situation because instead of simply asking Massey to put down the pot, defendant instead swore at her, pulled out his gun and pointed it at her, then threatened to shoot her. R6. Moreover, Massey responded by putting the pot in the sink then ducking behind the kitchen counter, which separated defendant from any hypothetical threat. R7. But rather than using that

protective distance and barrier, defendant walked toward Massey and shot at her three times. *Id*. The prosecution further argued that even if, for the sake of argument, defendant needed to use some force against Massey, defendant could have used his Taser. *Id*. These facts showed that defendant acted impulsively, disregarded his training as a law enforcement officer, failed to render aid, and displayed "callousness towards human life." R8. Accordingly, the prosecution asked the court to deny defendant pretrial release because no conditions of release could mitigate the threat he posed to the community. R8-9.

Defendant's counsel argued that any threat defendant posed to the community could be mitigated by appropriate conditions of release. R10. Counsel proffered that defendant was 30 years old, owned a home with his fiancée, had served three years in the Army, had worked in law enforcement for nearly five years, and had been fired by the sheriff's department after he was charged with murder. R10-11. Counsel also noted that defendant had been diagnosed with colon cancer and was wearing an ostomy bag that was scheduled to be removed within a few months. R11. Counsel proposed that defendant be released on the conditions that he not possess any guns, not drink alcohol or use drugs, undergo a mental health examination, and submit to electronic monitoring. R12.

In its oral ruling, the circuit court began by finding that the People had met their burden to prove the first two elements permitting pretrial

detention, both of which were largely undisputed, *i.e.*, that (1) "the proof is evident or presumption great that Defendant committed a detainable offense"; and (2) defendant "poses a real and present threat to the community." R14-15.

Similarly, as to the third element (*i.e.*, the element at issue in this appeal), the court concluded that the People had met their burden to prove that "no condition or combination of conditions" could mitigate the threat defendant posed to the community. R16. The court explained:

> Defendant is a sworn officer who took an oath to protect the community. He knew or should have known that he was being recorded, was standing next to a Sheriff's deputy, and still fired a weapon at an unarmed woman from across the room. If a police officer being right next to you recording you and having gone through personally hours of training and taking an oath cannot prevent the Defendant from acting in such a way, I can think of no conditions or set of conditions that would sufficiently mitigate the threat.
>
> Furthermore, the Defendant's comments about the victim before and after the shooting including directing an officer not to give aid and disparaging remarks made about the victim are so out of bounds of societal norms that it suggests there's no condition that would be sufficient. Simply no longer working as a police officer or home confinement or electronic monitoring or any other conditions that are oftentimes used cannot sufficiently mitigate the threat of someone who acted in this way.

Id. The circuit court therefore ordered that defendant be detained pending trial. *Id*.; *see also* C26 (written order).

B. Defendant's Motion for Relief from Order Denying Pretrial Release

In August 2024, defendant filed a motion for relief from the order denying pretrial release. C45-50. Defendant did not dispute the circuit

court's findings that the People had proved the first two elements required for pretrial detention; defendant instead argued that the People had failed to prove the third element, *i.e.*, that no conditions would sufficiently mitigate the threat he posed if he were released pending trial. C46-50.

The prosecution filed a written response, which included new evidence that defendant had two prior offenses for driving under the influence (one of which resulted in a conviction, the other of which resulted in court supervision). C87. The prosecution argued, among other things, that no conditions could mitigate the threat defendant posed, and that defendant had failed to prove that he had surrendered all his guns or that he no longer had access to other guns. C89-92.

The circuit court observed that defendant challenged only the court's finding that no set of conditions could sufficiently mitigate the risk defendant posed to the community. R36-37. As to that factor, the circuit court stated:

> Electronic monitoring is insufficient. Electronic monitoring may detect a failure to comply with conditions, but it's not adequate to mitigate the threat.
>
> In the video the impulsiveness of the defendant as demonstrated by the amount of time that passes from the gun being drawn to him firing the gun, electronic monitoring does nothing to mitigate that threat. The police officer standing right next to him and recording this could not mitigate that threat. Also, home confinement and turning in weapons are insufficient because the Court does not have confidence he could comply with conditions.
>
> Evidence shows he didn't comply with his oath as an officer, he didn't comply with body camera requirements, and directed other officers to potentially not comply with their oaths as well. That is not mitigated by not being an officer [any longer]. That

> is evidence that he does not comply with conditions of being an officer, it is evidence that he doesn't comply with conditions. The Court is unsatisfied that he would comply with conditions of home confinement or simply stating that he is going to turn over all his weapons.

R37-38. The court thus denied the motion for relief. *Id*.

C. The Appellate Court's Opinion

Defendant appealed and chose not to file a brief; he instead relied solely on the motion for relief he filed in the circuit court, which challenged only the court's finding that no conditions could sufficiently mitigate the threat defendant posed to the community. *See* Ill. Sup. Ct. R. 604(h)(7) (motion for relief serves as defendant's argument on appeal and defendant "may file, but is not required to file" supporting brief).

Rather than conducting an individualized assessment of defendant's offense, personal history, and characteristics, the appellate court concluded that defendant is entitled to pretrial release because "this case arises purely out of defendant's law enforcement role, but that circumstance no longer exists now that he has" been fired by the sheriff's department. *People v. Grayson*, 2024 IL App (4th) 241100-U, ¶ 59. The appellate court therefore reversed and remanded to the circuit court to determine the least restrictive conditions that could be imposed as part of defendant's release. *Id*. ¶ 68

STANDARD OF REVIEW

A circuit court's order denying pretrial release following a detention hearing without live testimony is reviewed de novo. *People v. Morgan*, 2025 IL 130626, ¶ 54.

ARGUMENT

Section 110-6.1 of the Code of Criminal Procedure, as amended by Public Act 101-652 (eff. Jan. 1, 2023 and commonly known as the Pretrial Fairness Act (Act)), permits a circuit court to deny a defendant pretrial release if the court concludes that the People have proved that (1) the proof is evident or the presumption great that the defendant committed a detainable offense (such as the murder charge here); (2) the defendant poses a threat to a person or the community; and (3) "no condition or combination of conditions [of release] can mitigate" that threat. 725 ILCS 5/110-6.1(e).

Only the third element is at issue in this appeal: whether no conditions can mitigate the risk that defendant poses to the community. The circuit court correctly concluded that the circumstance of defendant's offense, his personal history and characteristics, and other factors prove there are no set of conditions that could adequately mitigate the threat he poses to others. *See infra* Section I. The appellate court's contrary conclusion is inconsistent with this Court's precedent and the record. *See infra* Section II.

I. The Circuit Court is Correct That the Evidence Proves That No Conditions of Release Can Mitigate the Threat Defendant Poses to the Community.

The prosecution's burden to prove that no conditions can sufficiently mitigate the threat a defendant poses "does not require [the prosecution] to specifically address every conceivable condition or combination of conditions and argue why each condition does not apply." *People v. Mikolaitis*, 2024 IL 130693, ¶ 20. Instead, the prosecution must "present sufficient evidence

regarding the specific scenario presented by each case, such as the nature and circumstance of the offense, the defendant's criminal history, the defendant's risk assessment score, and other considerations" that demonstrate pretrial detention is appropriate. *Id.* ¶¶ 20-21 (citing 725 ILCS 5/110-5(a) (listing factors courts may consider, including circumstances of charged offense and defendant's personal history and characteristics)). In this case, as the circuit correctly found, these factors demonstrate that pretrial detention is warranted because no conditions of release can sufficiently mitigate the threat defendant poses to the community.

A. The nature and circumstances of defendant's offense prove that no conditions of release can mitigate the threat defendant poses.

The "nature and circumstances of [defendant's] offense," *Mikolaitis*, 2024 IL 130693, ¶ 20, prove in several ways that no conditions of release could adequately mitigate the risk defendant poses to the community.

First, as the circuit court correctly concluded, the evidence demonstrates that defendant has a dangerous "impulsiveness" and lack of self-control that no set of conditions could sufficiently mitigate. R37. As the court explained, "this is a violent crime with a firearm against an unarmed woman," R36, Massey "was no physical threat to the Defendant" because she was "in her own home, unarmed, [and] of slight build," yet defendant killed her anyway, R15-16. Indeed, as the ISP Report states, at the time defendant pointed his gun at Massey and began approaching her, Massey had not made

"any aggressive movements toward either Deputy" and, therefore, "the necessity of force [by defendant] was not imminent." ES10, 11.

Specifically, the body worn camera footage shows that defendant was in the living room, Massey was in the kitchen, and the pot was in the sink when Massey verbally "rebuke[d]" defendant, to which defendant unnecessarily and impulsively responded by drawing his gun and yelling, "I swear to God, I'll fucking shoot you right in your fucking face!" V1 at 12:05-12. As the ISP Report notes, defendant was not in danger from the water in the pot (or anything else) and, even if he arguably were, he could have eliminated that danger simply by remaining in the living room. ES13-14. Moreover, when defendant threatened to shoot Massey, she meekly apologized rather than reacting aggressively, further demonstrating that she posed no risk to defendant. V1 at 12:13-17. Yet, defendant "escalated" the situation by "advanc[ing] in the direction of" Massey, and then fatally shot her, actions that the expert who authored the ISP Report concluded were unjustified. ES13-14.

Therefore, the nature and circumstances of the offense — *i.e.*, an unjustified and impulsive shooting of a small, unarmed woman in her home that could have been avoided if defendant had controlled himself rather than escalating the situation — supports the conclusion that defendant lacks self-control such that conditions of release would not adequately mitigate the threat he poses to others. *E.g., People v. Byrd*, 2024 IL App (1st) 242094-UB,

¶ 26 (no set of conditions could sufficiently mitigate risk where defendant "demonstrated lack of impulse control by escalating a verbal argument" into a non-fatal shooting); *People v. Gary*, 2024 IL App (1st) 240288-U, ¶ 37 (no conditions could sufficiently mitigate risk where defendant shot the victim "without sufficient provocation").[3]

The circumstances of the shooting are relevant for another key reason: as the circuit court observed, defendant "knew or should have known that he was being recorded, [and] was standing next to a Sheriff's deputy, and still fired a weapon at an unarmed woman from across the room." R16. As the court correctly reasoned, if "a police officer being right next to [defendant]" and "recording [defendant]" was not enough to "prevent the defendant from acting in such a way," then there are "no conditions or set of conditions that would sufficiently mitigate the threat" that defendant poses to the public. *Id.*; *see, e.g.*, *People v. Hinton*, 2024 IL (4th) 240064-U, ¶ 23 (that portion of offense took place "in the presence of police officers" showed that no conditions could mitigate risk defendant posed); *cf. People v. Andino-Acosta*, 2024 IL App (2d) 230463, ¶ 25 (that defendant committed offense in front of witnesses "allow[ed] an inference that defendant has difficulty controlling himself" and, thus, that conditions would mitigate the threat he posed).

Simply put, if defendant was not deterred by a law enforcement officer standing next to him, there is no reason to believe defendant would be

[3] The nonprecedential Rule 23 orders cited in this brief are available on the Illinois courts' website, at https://www.illinoiscourts.gov/top-level-opinions/.

deterred by conditions of release, such as the electronic home monitoring that defense counsel proposed. That is especially true because, as the circuit court and other courts have correctly observed, electronic home monitoring "may detect a failure to comply with conditions, but it's not adequate to mitigate the threat" posed by a defendant. R37; *see, e.g.*, *People v. Thomas*, 2024 IL App (4th) 240248, ¶ 27 (electronic monitoring might inform police "if defendant violated a home confinement restriction" but it "would not, however, provide much in the way of prevention of such a violation or threat" against the community); *People v. Davis*, 2024 IL App (1st) 241747, ¶ 42 (similar). Moreover, as the appellate court observed in another case, "gaps" in electronic home monitoring provide opportunities for a defendant to access firearms or harm others because the Electronic Monitoring and Home Detention Act requires that anyone on pretrial home confinement be given at least "two days per week of unrestricted movement." *People v. Simpson*, 2024 IL App (4th) 240607-U, ¶¶ 40-42 (citing 730 ILCS 5/5-8A-4(A-1)).

Lastly, the circuit court was also correct that defendant's actions after the shooting — such as calling Massey a "fucking bitch," showing no concern for her well-being, and giving no aid even though he knew that she was still breathing — "are so out of bounds of societal norms that it suggests there's no condition that would be sufficient." R16. Indeed, as courts have concluded, if someone cannot comply with basic expectations of civilized behavior, such as showing concern for others and providing aid to injured people, then it is

reasonable to conclude that they will not comply with conditions of release. *See, e.g., People v. Romine*, 2024 IL App (4th) 240321, ¶¶ 20-23 (defendant's actions after shooting, including failure to assist victim, reflect "a departure from the basic expectations of civil society" and a "refusal to accept responsibility," which supported conclusion that he would not comply with conditions of release); *Gary*, 2024 IL App (1st) 240288-U, ¶ 37 (defendant's actions after shooting, such as failing to provide aid and blaming victim, supported conclusion that no conditions of release would be sufficient).

B. Defendant's personal history, characteristics, and criminal record are further evidence that no conditions of release can mitigate the threat he poses.

Defendant's personal history, characteristics, and criminal record likewise prove that no conditions of release would be sufficient to mitigate the threat he poses. *See Mikolaitis*, 2024 IL 130693, ¶ 20; 725 ILCS 5/110-5(a) (listing these factors for courts to consider). Specifically, defendant has demonstrated a lack of respect for the law, including a history of failing to comply with legal requirements, because (1) he has two prior offenses for driving under the influence; and (2) as the circuit court observed, he failed to turn on his body worn camera as the law required him to do. R31-32, 37-39; C87.[4] That defendant has a history of failing to comply with legal requirements supports the circuit court's conclusion that it "does not have confidence [defendant] could comply with conditions" the court might impose.

[4] The camera must be turned on where, as here, the officer is in uniform and engaged in a law-enforcement related encounter. 50 ILCS 706/10-20(a)(3).

R37-38; *see, e.g.*, *Andino-Acosta*, 2024 IL App (2d) 230463, ¶ 25 (that defendant had "pending DUI charges" when he committed his charged offense showed "disrespect toward the law" that supported conclusion he would not comply with conditions of release); *People v. Morales*, 2025 IL App (2d) 240656-U, ¶ 23 (defendant's prior driving offenses supported conclusion that he would not comply with conditions of release).

C. Defendant's risk assessment score does not prove he should be granted pretrial release.

Lastly, defendant's risk assessment score does not support his contention that he should be released. In the circuit court, defendant's counsel stated that defendant scored a "3" on the Virginia Pretrial Risk Assessment Instrument (VPRAI) and noted that the VPRAI handbook suggests that someone with a score of 3 can be granted pretrial release. R26-28; C49. However, the prosecution explained that counsel's calculation failed to include defendant's criminal history, which is worth 2 points; in rebuttal, defendant's counsel did not dispute that he had failed to include defendant's criminal history or that it was worth 2 points. R31-32, 34-35.

In any event, regardless of defendant's risk assessment score, the evidence (including the body worn camera footage and ISP Report) proves that no conditions of release could adequately mitigate the risk defendant poses to the community because his offense was extremely violent, he has a dangerous impulsiveness that is not curbed even when he is being observed and recorded by a law enforcement officer, and he has a history of failing to

comply with legal requirements and basic expectations of society. *Supra* pp. 12-17; *see, e.g.*, *People v. Feazelle*, 2023 IL App (2d) 230397-U, ¶¶ 9, 14 (affirming denial of pretrial release, despite defendant scoring a "3" on VRPAI, because the "violent nature of the charged offenses" and defendant's willingness "to disregard the presence of others" when committing those offenses, proved that no conditions of release could mitigate the risk he posed).

* * *

In sum, this Court should affirm the circuit court's judgment because the circumstances of defendant's offense and his personal history, characteristics, and criminal record prove that no conditions of release would adequately mitigate the risk he poses to the community.

II. The Appellate Court's Judgment That Defendant Should Be Released Pending Trial Is Contrary to Settled Law and the Record.

The appellate court's judgment that defendant is entitled to pretrial release is contrary to the plain language of the Act, this Court's precedent, and the record.

A. The appellate court failed to perform the individualized assessment that is expressly required by the Act and this Court's precedent.

The Act provides that "[d]ecisions regarding release, conditions of release, and detention prior to trial must be individualized, and no single factor or standard may be used exclusively to order detention." 725 ILCS

5/110-6.1(f)(7). Determining whether conditions of release can mitigate the risk posed by a defendant is a "unique factual question[ ]" that a court "must resolve based on an individualized assessment" of the evidence pertaining to that particular defendant. *Morgan*, 2025 IL 130626, ¶ 27. As discussed, this Court has held that when conducting this individualized assessment, a court should consider "the specific scenario presented by each case," including the "nature and circumstance of the offense," the defendant's "criminal history," and other factors. *Mikolaitis*, 2024 IL 130693, ¶ 20.

Contrary to the Act's express language and this Court's precedent, the appellate court did not conduct an individualized assessment of the evidence and statutory factors when it determined that defendant should be released pending trial. Instead, the appellate court's reasoning is contained in a single sentence: defendant is entitled to pretrial release because "this case arises purely out of defendant's law enforcement role, but that circumstance no longer exists now that he has" been fired by the sheriff's department. *Grayson*, 2024 IL App (4th) 241100-U, ¶ 59. In other words, the appellate court concluded that because defendant committed his offense while on duty, the risk he poses to others has been eliminated simply by the loss of his job.

The appellate court's perfunctory conclusion ignores several key factors including but not limited to:

- The nature and circumstances of defendant's offense prove that he has a dangerous impulsiveness and inability to control himself that

is not mitigated even when he is standing next to a law enforcement officer who is recording his actions, *supra* pp. 12-16; and

- Defendant has a history of failing to respect and comply with the law and basic expectations of society (even when off duty, as reflected by his DUI offenses), which suggests he will not comply with conditions of release ordered by a court, *supra* pp. 16-17.

By ignoring these factors — all of which prove that defendant should not be released — the appellate court failed to conduct the individualized assessment required by law and consequently reached an incorrect conclusion.

Moreover, there is a logical and evidentiary gap in the appellate court's ruling. Specifically, the appellate court assumed that if someone commits a violent act during their employment, the risk they pose can be eliminated simply by the loss of their job. But there is no logic or evidence proving that to be true. To the contrary, the record shows that defendant is impulsive and unable to control his emotions, escalates situations and resorts to violence, does not respect the law, and even when off-duty engages in illegal activities that put others at risk (*i.e.*, driving while intoxicated). *Supra* pp. 12-17. Those characteristics, and thus the risk defendant poses, will not disappear simply because he lost his job. Indeed, common sense and experience show that violent outbursts sometimes *increase* when someone loses their job and

is dealing with the corresponding loss of income and additional stressors resulting from the job loss.

The appellate court's decision also sets a bad precedent because it effectively creates an automatic exception for law enforcement officers: under the appellate court's reasoning, if an officer commits their charged offense while on duty, they may not be detained pending trial if they have since been fired. Such an exemption is contrary to the plain language of the Act and this Court's precedent, which (1) require an individualized assessment of the unique facts and specific circumstances of each defendant's case; and (2) do not create an automatic exemption for law enforcement officers.

In sum, the appellate court's judgment should be reversed because the court failed to perform the individualized assessment required by law and, in doing so, reached the erroneous conclusion that defendant should be released.

B. The appellate court's limited critiques of the circuit court's judgment are incorrect.

Apart from its conclusory assertion that defendant was entitled to pretrial release because he had been fired from his job in law enforcement, the appellate court offered a handful of critiques of the circuit court's judgment. However, those critiques misunderstand both the circuit court's reasoning and the record.

To begin, the appellate court misunderstood the circuit court's reasoning when the appellate court stated that defendant's failure to comply with body worn camera requirements was irrelevant because "if defendant is

fitted with a GPS monitoring device, it will not be up to him to activate it." *Grayson*, 2024 IL App (4th) 241100-U, ¶ 53. The circuit court did not suggest that defendant's failure to turn on his body worn camera meant that he would not turn on his electronic monitoring device. Instead, the circuit court correctly concluded that defendant's history of failing to comply with legal requirements (which includes not only the body worn camera requirements but also defendant's prior DUI offenses) proves that defendant cannot be trusted to comply with conditions of release the court might impose, including conditions that he turn over all his guns and not have access to firearms. *E.g.,* R37-38 (circuit court noting that, due to defendant's failure to comply with body worn camera requirements, it was not satisfied he would comply with his promise to turn over his guns). The appellate court also overlooked that regardless of whether someone else turns on the home monitoring device, defendant's history of non-compliance with legal requirements is important because (1) a person on home confinement is statutorily entitled to at least two days of movement outside the home, during which time the person must be trusted to comply with the law and other conditions of release; and (2) even on restricted days, home monitoring at best detects violations of conditions, but does not stop them. *Supra* p. 15 (collecting cases)

The appellate court also misunderstood the circuit court's reasoning when the appellate court stated that defendant's breach of his oath as a law enforcement officer and his actions after the shooting were irrelevant because

"defendant was no longer a law enforcement officer" and, therefore, "there was no way, then, that he could violate [his oath] again" or "fall short in providing [medical] assistance when acting in a law enforcement role." *Grayson*, 2024 IL App (4th) 241100-U, ¶¶ 49, 51. The point is not that defendant's breach of his oath or failure to provide aid prove he can no longer be trusted to be a law enforcement officer. Rather, as the circuit court correctly reasoned, these facts are evidence that defendant cannot be trusted to do what he is expected to do — indeed, what he has sworn to do — and, therefore, for these additional reasons cannot be trusted to comply with conditions of release. *E.g.*, R37-38.

The appellate court likewise misunderstood the circuit court's reasoning when the appellate court stated that the circuit court erred by "describ[ing] the other deputy's accompanying of defendant as 'supervision from law enforcement'" because "there is no indication that the other deputy had a supervisory role over defendant." *Grayson*, 2024 IL App (4th) 241100-U, ¶ 55. Contrary to the appellate court's assertion, the circuit court did not suggest that the other deputy had a formal supervisory role over defendant within the sheriff's department. Rather, the circuit court was making an undisputed factual observation: defendant "was standing next to a Sheriff's deputy, and still fired a weapon at an unarmed woman from across the room." R16. And the circuit court correctly reasoned that if "a police officer being right next to [defendant]" and "recording [defendant]" was not enough

to "prevent the defendant from acting in such a way," then "no conditions or set of conditions that would sufficiently mitigate the threat" that defendant posed to the public. *Id.*; *see, e.g.*, *Hinton*, 2024 IL (4th) 240064-U, ¶ 23 (where defendant committed part of the offense in front of police officers, no conditions could mitigate risk defendant posed).

Lastly, the appellate court erred when it faulted the circuit court for referring to defendant as a "trained" law enforcement officer because there "was no evidence in the record concerning defendant's training" or how he violated his training. *Grayson*, 2024 IL App (4th) 241100-U, ¶ 47. Although the prosecution did not call a witness to testify about the training defendant received, it has long been established that a factfinder is entitled to "draw reasonable inferences" from the evidence by relying on common knowledge and common sense. *People v. Leib*, 2022 IL 126645, ¶ 36; *see also*, *e.g.*, *People v. Smaszcz*, 344 Ill. 494, 502 (1931). Given that the undisputed evidence showed that defendant had been a law enforcement officer for nearly five years, R10-11, the circuit court's belief that defendant had been trained to perform law enforcement duties is a reasonable inference based on common knowledge and common sense, *see Manson v. Brathwaite*, 432 U.S. 98, 115 (1977) (holding that a "trained police officer" can be "expected" to "pay scrupulous attention to detail" when he witnesses crime, but not requiring specific evidence of the officer's training); *United States v. Caldwell*, No. 95-1003, 1996 U.S. App. LEXIS 8431, *10-11 (10th Cir. Apr. 17, 1996) (applying

Manson presumption because "although not specifically stated in the record, it is apparent that [eyewitness] 'was a trained police officer'"); *see also Jennings v. Beightler*, No. 10 CV 2371, 2011 U.S. Dist. LEXIS 150784, *27 (N.D. Ohio Dec. 20, 2011) (observing that "[p]olice officers are trained in handling stressful, crime situations"). And the circuit court's conclusion that defendant violated his training is a reasonable inference based on the body worn camera footage and the ISP Report (which concluded that defendant escalated the situation and the shooting was unjustified), ES10-14, the fact that defendant was fired, and the common sense inference that law enforcement officers are trained to de-escalate situations and not shoot small unarmed women in their homes without justification.

In addition, and tellingly, defendant did not argue that the circuit court erred by considering that he was a "trained" officer. At the pretrial detention hearing, the prosecution asserted that defendant "disregarded his training as a law enforcement officer," R8, defendant's counsel did not dispute that defendant was a trained officer, and the circuit court observed in its oral ruling that defendant was a "trained" officer who acted impulsively despite his "training," R15-16. Defendant thereafter filed a motion for relief, in which he argued that the court should reconsider its order denying pretrial release for several reasons, including because defendant believed that "a combination of conditions," including electronic monitoring, "would reasonably mitigate any threat Defendant may pose." C50. Notably,

however, defendant's motion (which defendant elected to serve as his appellate brief) did not dispute that defendant was a trained law enforcement officer or that officers are trained not to shoot without justification. *See id*.

That defendant did not raise such arguments is further evidence that the circuit court's common sense inferences about defendant's training were proper. And, as a matter of law, it also means that the appellate court should not have sua sponte held that the circuit court erred by considering that defendant was a trained officer. *See, e.g.*, *People v. Givens*, 237 Ill. 2d 311, 323 (2010) (it is "well settled" that reviewing courts normally should not rely on "unargued and unbriefed reasons to *reverse* a trial court's judgment") (emphasis in original).

Most importantly, however, the People's arguments that defendant is not entitled to pretrial release do not depend on defendant being a trained law enforcement officer. *See supra* Section I. That is to say, even if defendant were not a trained law enforcement officer, the evidence proves he is not entitled to pretrial release because, among other reasons, (1) the specific circumstances of defendant's charged offense prove that he has a dangerous impulsiveness and inability to control himself that is not mitigated even when he is being observed and recorded by a law enforcement officer; and (2) his personal history and characteristics, including his criminal history, show a lack of respect for the law that demonstrate he is unlikely to comply with conditions of release ordered by a court. Accordingly, the circuit

court's judgment that defendant is not entitled to pretrial release was correct and should be affirmed.

CONCLUSION

This Court should reverse the appellate court's judgment and affirm the circuit court's judgment denying pretrial release.

March 3, 2025

Respectfully submitted,

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RULE 341(c) CERTIFICATE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service and those matters to be appended to the brief under Rule 342(a), is 27 pages.

/s/ Michael L. Cebula
MICHAEL L. CEBULA
Assistant Attorney General

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People v. Grayson

Appellate Court of Illinois, Fourth District

November 27, 2024, Filed

NO. 4-24-1100

Reporter
2024 IL App (4th) 241100-U *; 2024 Ill. App. Unpub. LEXIS 2336 **

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. SEAN GRAYSON, Defendant-Appellant.

Subsequent History: Appeal granted by People v. Grayson, 2025 Ill. LEXIS 27 (Ill., Jan. 28, 2025)

Prior History: **[**1]** Appeal from the Circuit Court of angamon County. No. 24CF909. Honorable Ryan M. Cadagin, Judge Presiding.

Disposition: Reversed and remanded with directions.

Judges: JUSTICE DOHERTY delivered the judgment of the court. Justices Knecht and DeArmond concurred in the judgment.

Opinion by: DOHERTY

Opinion

ORDER

[*P1] *Held*: The appellate court reversed the trial court's pretrial detention order and remanded for a hearing on conditions of pretrial release because the State failed to introduce clear and convincing evidence that no combination of conditions would mitigate any danger defendant posed to the community.

[*P2] Law enforcement officers are entrusted with the responsibility of responding to dangerous situations for the protection of the public. Defendant Sean Grayson, a former Sangamon County sheriff's deputy, is alleged to have violated his duties in the gravest manner: he is alleged to have shot and murdered Sonya Massey during a visit to her home in response to a 911 call reporting that there was a prowler in her neighborhood. Whether defendant is guilty of these offenses and, if so, what punishment he will receive are questions that have not yet been resolved. The issue before the court is not defendant's guilt or innocence but whether **[**2]** he should be detained prior to trial. Specifically, the question is whether the trial court erred in finding that the State proved by clear and convincing evidence that defendant "pose[s] a threat to the safety of individuals or to the community which no condition of release can dispel." United States v. Salerno, 481 U.S. 739, 755, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987). The trial court found that the State met its burden of proof; we hold that the court's finding was unsustainable on the evidence the State supplied. Accordingly, we reverse the court's detention order and remand for a hearing on conditions of pretrial release.

[*P3] I. BACKGROUND

[*P4] A. Pretrial Detention

[*P5] The fundamental premise underlying pretrial detention based on the defendant's likelihood of future dangerousness is that it does not constitute punishment before trial. Id. at 746; see Bell v. Wolfish, 441 U.S. 520, 535 n.16, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979) ("Due process requires that a pretrial detainee not be punished."). Therefore, this severe restriction on the defendant's liberty must be justified not by the government's interest in *punishing* crime but by its interest in *preventing* crime by individuals the State can prove are dangerous. See Salerno, 481 U.S. at 749.

[*P6] B. Illinois Statutory Provisions

[*P7] In Illinois, pretrial release is governed by article 110 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/art. 110 (West 2022)), as amended by

Public Act 101-652 (eff. Jan. 1, 2023), commonly known **[**3]** as the Pretrial Fairness Act (Act). See *Rowe v. Raoul, 2023 IL 129248, ¶ 52, 469 Ill. Dec. 248, 223 N.E.3d 1010* (lifting the stay of the Act's pretrial release provisions and setting their effective date as September 18, 2023). The Code provides that every defendant is eligible for pretrial release and presumed to be entitled to release on conditions imposed by the trial court, irrespective of the seriousness or the nature of the offense. *725 ILCS 5/110-2(a)* (West 2022). The Code allows for the State to file a verified petition for a denial of pretrial release on the basis of either dangerousness or flight risk. *Id.* *§ 110-6.1(a)*. In this case, the State has not alleged that defendant poses a flight risk, so we are concerned only with the dangerousness prong of the analysis.

[*P8] To detain a defendant on the basis of dangerousness, the trial court must find that the State has proven the following three elements: (1) "the proof is evident or the presumption great that the defendant has committed an offense" in a specific list of detention-eligible offenses, (2) "the defendant poses 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," and (3) "no condition or combination of conditions [of release] *** can mitigate **[**4]** *** the real and present threat to the safety of any person or persons or the community." *Id.* *§ 110-6.1(e)(1)-(3)*. Those conditions ordinarily include a requirement that the defendant "surrender all firearms in his or her possession to a law enforcement officer designated by the court" and may include home confinement with electronic location monitoring. *Id.* *§ 110-10(a)(5)*, *(b)(5)*. The Code lists a number of specific conditions that the court may impose along with any "other reasonable conditions." *Id.* *§ 110-10(b)*. Although the Code provides nonexhaustive lists of factors for the trial court to consider (*id.* *§§ 110-5(a)*, *110-6.1(g)*), it emphasizes that "[d]ecisions regarding release, conditions of release, and detention prior to trial must be individualized, and no single factor or standard may be used exclusively to order detention" (*id.* *§ 110-6.1(f)(7)*).

[*P9] The trial court makes its findings after conducting a detention hearing, at which the State and the defendant may present evidence on all three elements, including evidence "by way of proffer based upon reliable information." *Id.* *§ 110-6.1(f)(2)*. Those findings must be supported by clear and convincing evidence, which is defined as evidence that "produces the firm and abiding belief that it is highly probable that the proposition **[**5]** on which the [State] has the burden of proof is true." Illinois Pattern Jury Instructions, Criminal, No. 4.19 (approved July 28, 2023); see *Enbridge Energy (Illinois), L.L.C. v. Kuerth, 2016 IL App (4th) 150519, ¶ 134, 410 Ill. Dec. 62, 69 N.E.3d 287* (noting that this standard does "not quite approach[ ] the criminal standard of proof beyond a reasonable doubt").

[*P10] If the trial court finds that the State has failed to meet its burden of proof, the court must deny the State's petition and impose "the least restrictive conditions or combination of conditions necessary to reasonably ensure *** the safety of any other person or persons or the community." *725 ILCS 5/110-5(c)* (West 2022). The State may file a second petition within 21 calendar days after the defendant is released (*id.* *§ 110-6.1(c)(1)*), but "the State shall be required to present a verified application setting forth in detail any new facts not known or obtainable at the time of the filing of the previous petition" (*id.* *§ 110-6.1(d)(2)*). Furthermore, "the defendant if previously released shall not be detained." *Id.* *§ 110-6.1(c)(1)*.

[*P11] C. The Detention Hearing

[*P12] On July 17, 2024, defendant was indicted for first degree murder (*720 ILCS 5/9-1(a)(1)*, *(2)* (West 2022)), aggravated battery with a firearm (*id.* *§ 12-3.05(e)(1)*), and official misconduct (*id.* *§ 33-3(a)(2)*); all counts rested on the allegation that defendant, without lawful justification, discharged a firearm, striking Sonya Massey and causing her **[**6]** death.

[*P13] On July 18, 2024, the State filed a verified petition to deny defendant pretrial release, and the trial court held a detention hearing. Defendant stipulated that the State had satisfied the first element based on the first degree murder charge. See *725 ILCS 5/110-6.1(a)(1.5)* (West 2022) (providing that first degree murder is a detention-eligible offense). Because our holding addresses only the sufficiency of possible conditions of release to mitigate any danger defendant may pose, we will address the question of justification as it pertains only to the second and third elements. See *People v. Romine, 2024 IL App (4th) 240321, ¶¶ 14-15, 475 Ill. Dec. 330, 238 N.E.3d 628* (noting that lack of justification potentially implicates the first element, as well as the second and third elements).

[*P14] 1. *Evidence at the Detention Hearing*

[*P15] Prior to the detention hearing, the trial court

reviewed "the recordings of body worn camera[s] depicting the events" and "a Use of Force Report from the Illinois State Police (ISP Report)" documenting the relevant events based on the body camera videos and reports submitted by the deputies. Pursuant to an agreed protective order, these materials were impounded—meaning sealed from public view. In addition to these materials, the court considered proffers by the attorneys **[**7]** for defendant and the State. The question in this case is whether the court's decision to grant the State's petition was reasonable based on this evidence. We note as well that the ultimate determination as to the truth of the allegations against defendant will be made based on the evidence admitted at his eventual trial.

[*P16] a. The Shooting

[*P17] On July 6, 2024, at approximately 12:50 a.m., defendant and another Sangamon County sheriff's deputy were dispatched to Massey's home in response to her 911 call, in which she had reported that there was a prowler in her neighborhood. When the deputies arrived, they began searching around Massey's home for a prowler. Both deputies were wearing body cameras, but defendant's body camera was turned off. It is unclear whether the other deputy turned on his body camera immediately upon arrival, but the video in the record begins with the deputies entering Massey's backyard.

[*P18] After several minutes of searching, the deputies did not find anyone, but they did notice that the car in Massey's driveway had two broken windows. The deputies knocked on the front door of the house, and Massey opened the door approximately four minutes later, apparently distraught **[**8]** and not thinking clearly. Massey had a slight build; defendant is approximately a foot taller and significantly heavier. Defendant was armed with his service weapon, a 9-millimeter handgun.

[*P19] After the deputies explained to Massey that they had not found anyone, defendant asked her, "Are you doing alright mentally?" Defendant asked her questions about the car in her driveway, which she said was not hers. The deputies followed her into her living room, where they attempted to obtain identification and asked about the damage to the car.

[*P20] A row of floor cabinets approximately three feet high separated Massey's living room from her kitchen. In the kitchen, a pot of water was sitting on a gas stove. Having noticed that the gas burner was on, defendant gestured toward the stove and said, "We don't need a fire while we're here." Massey walked over, turned off the gas burner, carried the pot to the nearby sink, and turned on the faucet. The deputies both backed away into the living room. When Massey asked why, defendant responded that they were getting away from the hot, steaming water.

[*P21] Massey twice said, "I rebuke you in the name of Jesus." In response, defendant said, "You better f*** not. **[**9]** I swear to God, I'll f*** shoot you right in your f*** face." Defendant then drew his service weapon and pointed it at Massey, repeatedly shouting, "Drop the f*** pot!" Massey said, "Okay, I'm sorry."

[*P22] The subsequent events are not entirely visible in the body camera videos, but the ISP Report describes those events as follows: "Mrs. Massey flinched, let go of the pot, and then crouched below the line of the cabinets. [Defendant] continued to instruct Mrs. Massey to drop the pot as he approached Mrs. Massey with his service weapon still pointed in her direction. Mrs. Massey quickly stood up and grabbed the pot. As [defendant] continued to instruct Mrs. Massey to drop the pot and approached the cabinets, Mrs. Massey threw the steaming hot water from the pot. While Mrs. Massey was throwing the water, [defendant] fired his weapon in the direction of Mrs. Massey. The water appeared to strike a chair next to the cabinets." Defendant fired three times; one of the bullets struck Massey just below her left eye. She collapsed to the ground, lying on her left side, with the left side of her head against the floor.

[*P23] Defendant reported the shooting to the police dispatch center and asked them to **[**10]** send emergency medical services (EMS). At that point, defendant activated his body camera, which made two beeps and began recording audio as well as video. We note that defendant's body camera video in the record begins exactly 30 seconds earlier, shortly before he drew his gun. However, the first 30-second portion of the video features no audio (as is the case with the other officer's video), possibly because it constituted "pre-event recording." See *50 ILCS 706/10-20(a)(1)* (West 2022) (providing that body cameras generally "must be equipped with pre-event recording, capable of recording at least the 30 seconds prior to camera activation"). In response to defendant's action, the other deputy stated, "I was on, I was on," presumably referring to his own body camera, which had been activated earlier.

[*P24] The other deputy said, "I'm going to go get my kit," presumably referring to a medical kit. Defendant responded, "You can go get it, but that was a headshot." Approximately 1 minute and 15 seconds later, defendant went to get the "med kit," saying "there's not much we can do." The other deputy said, "[W]e can at least try and hold the—stop the blood."

[*P25] The other deputy took a dish towel from Massey's kitchen and **[**11]** held it against the bullet wound. Approximately 2 minutes and 20 seconds later, the other deputy asked defendant, "Do you still want me holding this pressure?" Defendant answered, "Yeah, EMS is coming." The other deputy continued to hold Massey's head and apply pressure to the wound for another four minutes until EMS arrived. Despite these efforts, Massey ultimately died from the wound. During this time frame, defendant's body camera video shows him referring to Massey as a "f*** b***" and describing her as "crazy." Although defendant did retrieve a red duffel bag from the deputies' vehicle—presumably the medical kit he had gone to retrieve—neither deputy opened the kit nor used its contents to render aid to Massey.

[*P26] On July 15, 2024, the Illinois State Police issued the ISP Report opining whether defendant's conduct was justified under the circumstances, applying standards established by United States Supreme Court caselaw regarding excessive force, Illinois statutes governing the use of force by peace officers, and Integrated Communications, Assessment and Tactics (ICAT) Law Enforcement De-Escalation Training, which the ISP Report endorsed. However, the ISP Report did not address **[**12]** events after the shooting, including the medical aid that was provided to Massey.

[*P27] The ISP Report—which we mention here because the trial court considered the opinions it expressed in making the decision to detain defendant—stated, in pertinent part, as follows:

> "It is unknown if the Sangamon County Sheriff's Office has mandated this [ICAT] training to their Deputies. From the videos reviewed, the only tactics utilized during this incident were [defendant's] statement right after Mrs. Massey stated 'I rebuke you in the name of Jesus.' [Defendant] stated 'You better not. I will shoot you right in your [f***] face, Drop the pot.', drew his service weapon, and pointed it at Mrs. Massey."

[*P28] The ISP Report concluded as follows:

> "After a careful review of the incident and weighing the incident against [*Graham v. Connor, 490 U.S. 386, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989)*], Illinois Compiled Statutes, and ICAT De-escalation training, the Officer Survival Section finds [the deputies] were justified in pointing their service weapons at Mrs. Massey in an attempt to gain compliance. [Defendant's] advancement and removing himself from the limited cover from Mrs. Massey and the distance the liquid could have been thrown, placed himself within a distance where he could **[**13]** have been injured. This is similar to an officer stepping in front of a moving vehicle and fearing for their safety. Because of [defendant's] advancement, [defendant] had no other option but to fire his duty weapon. Because [defendant] placed himself in danger of great bodily harm, the Officer Survival Section does not feel the shooting of Mrs. Massey [wa]s justified."

[*P29] b. Defendant's Background and Proposed Conditions of Release

[*P30] The State did not introduce any evidence as to whether defendant had a criminal history. Defendant's attorney proffered the following information about his background:

> "You have before you a 30-year-old Defendant. He has owned his own home for the last four years. He lives there with his fiancée. They are set to be married in October.
>
> [Defendant] graduated from North Mac in 2013 at which time he enrolled in the Army and was in the Army for three years before he was honorably discharged as a Private First Class.
>
> His law enforcement career includes a year of service to Virden and Pawnee, another year of service to the community of Auburn, a year at the Logan County Sheriff's Department, and currently one-and-a-half years at the Sangamon County Sheriff's Office. **[**14]** That service ended yesterday [(July 17, 2024)] when Sheriff Campbell terminated him."

Defendant voluntarily surrendered himself to the Sangamon County jail less than a half hour after he was notified that he had been indicted in this case.

[*P31] Defendant's attorney proposed release on the following conditions:

> "That combination of conditions would be shall not possess any firearm or other dangerous weapons. Those have already been removed from his home.

> Shall not use any intoxicating or controlled substances, shall refrain from the use of alcohol, shall undergo a mental health evaluation and complete all treatment, sign any necessary releases so the pretrial services can confirm his compliance, and, lastly, submit to 24-hour seven-day a week electronic monitoring."

[*P32] At the hearing, there was no discussion of the pretrial risk assessment that had been performed on defendant. Though the risk assessment scoresheet is not contained in the record, a later discussion between defense counsel and the trial court suggests that defendant received a score of 3 on a scale of 14 solely because the risk assessment provides that a felony charge is worth 3 points. According to the manual for interpreting **[**15]** the risk assessment, which is in the record, this score placed defendant in the second-lowest of six risk categories.

[*P33] 2. *The Trial Court's Findings*

[*P34] At the conclusion of the hearing, the trial court found that the State had met its burden of proof, granted the State's petition, and ordered defendant detained pending trial. The court summarized its findings on the second and third elements in a form detention order, shown here with the statutory factors in italics and the court's findings in ordinary type:

> "*Nature and circumstances of the offense(s) charged*. Defendant was a sworn officer with training and was accompanied by another officer. Defendant was aware or should have been aware he was being video recorded. Despite these safeguards and supervision from law enforcement, the Defendant still discharged his firearm against an unarmed woman. He was in violation of his oath as a sworn officer, which is evidence he is not a good candidate to be in compliance with his conditions. He directed law enforcement not to render aid, which is counter to basic norms of public safety. Defendant was not using his body camera until after the shooting. Not being in compliance with body camera requirements **[**16]** is further evidence that points to him not being able to comply with conditions. Defendant's characterizations of the victim after the shooting, as contained in the video in People's [Exhibit] A, are such a departure from the basic expectations of civil society that they are evidence of the Defendant's dangerousness and also that he could not comply with conditions.
> * * *
>
> *The age and/or physical conditions of any victim of complaining witness*. The victim was a slight woman who weighed 110 lbs and was not a physical threat to the Defendant.
>
> *Defendant is known to possess or have access to weapons*. A firearm was used in this case." (Emphases added.)

See *725 ILCS 5/110-6.1(g)(1)*, *(6)-(7)* (West 2022) (identifying these as factors for the court to consider).

[*P35] D. The Follow-Up Hearing

[*P36] Pursuant to *Illinois Supreme Court Rule 604(h)(2)* (eff. Apr. 15, 2024), defendant filed a motion with the trial court seeking relief from its order denying him pretrial release, arguing that the court's findings on the third element were erroneous. The court denied the motion, reiterating its prior findings as follows:

> "Electronic monitoring is insufficient. Electronic monitoring may detect a failure to comply with conditions, but it's not adequate to mitigate the threat.
>
> In the video **[**17]** the impulsiveness of the defendant as demonstrated by the amount of time that passes from the gun being drawn to him firing the gun, electronic monitoring does nothing to mitigate that threat. The police officer standing right next to him and recording him could not mitigate that threat. Also, home confinement and turning in weapons are insufficient because the Court does not have confidence he could comply with conditions.
> Evidence shows he didn't comply with his oath as an officer, he didn't comply with body camera requirements, and directed other officers to potentially not comply with their oaths as well. That is not mitigated by not being an officer. That is evidence that he does not comply with conditions of being an officer, it is evidence that he doesn't comply with conditions. The Court is unsatisfied that he would comply with conditions of home confinement or simply stating that he is going to turn over all his weapons."

[*P37] For the first time, the trial court addressed defendant's relatively low score on the risk assessment, though it noted that his score would have been two

points higher (*i.e.*, 5 out of 14) if two prior misdemeanor charges for driving under the influence had **[**18]** been factored into the risk assessment.

[*P38] This appeal followed.

[*P39] II. ANALYSIS

[*P40] Defendant has elected to have his motion for relief to serve as his argument on appeal. See *Ill. S. Ct. R. 604(h)(7)* (eff. Apr. 15, 2024). The State argues that defendant's motion is deficient in several respects and that it "simply raises factual issues that the trial court resolved in favor of the State." The State's argument on this point is not well taken; defendant's motion contains sufficient detail to enable meaningful appellate review (see *id.*), and that review extends to his allegations that the court's factual findings were erroneous (see *People v. Ortiz, 196 Ill. 2d 236, 259, 752 N.E.2d 410, 256 Ill. Dec. 530 (2001)* ("[A]lthough determinations by the trier of fact are entitled to great deference, they are not conclusive.")).

[*P41] A. Standard of Review

[*P42] Definitive guidance from the supreme court on the appropriate standard of review is likely forthcoming, but we have explained at length why we review the trial court's decisions regarding pretrial release for an abuse of discretion. See generally *People v. Morgan, 2024 IL App (4th) 240103, 475 Ill. Dec. 299, 238 N.E.3d 597, argued, No. 130626 (Ill. Sept. 12, 2024)*. " 'An abuse of discretion occurs when the [trial] court's decision is "arbitrary, fanciful or unreasonable," or where "no reasonable person would agree with the position adopted by the [trial] court." ' " *People v. Inman, 2023 IL App (4th) 230864, ¶ 10, 477 Ill. Dec. 314, 242 N.E.3d 978* (quoting **[**19]** *People v. Simmons, 2019 IL App (1st) 191253, ¶ 9, 436 Ill. Dec. 1004, 143 N.E.3d 833*, quoting *People v. Becker, 239 Ill. 2d 215, 234, 940 N.E.2d 1131, 346 Ill. Dec. 527 (2010)*). "Although abuse-of-discretion review is the most deferential standard of review available," it does not constitute "mere rubber-stamping." *Paul v. Gerald Adelman & Associates, Ltd., 223 Ill. 2d 85, 99, 858 N.E.2d 1, 306 Ill. Dec. 556 (2006)*. In the present case, we find that reversal is appropriate even under this deferential standard of review, so it would also be appropriate under any more exacting standard.

[*P43] Defendant argues that the trial court erred by finding that conditions of release, including not working as a law enforcement officer, home confinement, electronic location monitoring, and the removal of firearms from his home, would be inadequate to mitigate the threat he posed to the safety of the community. See *725 ILCS 5/110-10(a)(5)*, *(b)(5)* (West 2022). Defendant does not directly challenge the court's finding that he poses a real and present threat to the safety of the community but that finding must still factor into our analysis because "dangerousness and conditions of release are two sides of the same coin; the nature and severity of the threat necessarily determine the nature and severity of the conditions that could—or could not—mitigate the threat." *Romine, 2024 IL App (4th) 240321, ¶ 16*; see *People v. Thomas, 2024 IL App (4th) 240248, ¶ 26* ("[A]ny condition of release must be appropriately measured to meet the danger presented in each case.").

[*P44] B. Findings Not Supported **[**20]** by Evidence

[*P45] " '[F]or a reviewing court to determine whether the trial court abused its discretion, it must undertake a review of the relevant evidence.' " *Morgan, 2024 IL App (4th) 240103, ¶ 35* (quoting *People v. McDonald, 2016 IL 118882, ¶ 32, 412 Ill. Dec. 858, 77 N.E.3d 26*). Our review of the evidence here fails to turn up support for several of the trial court's findings; as such, the court's conclusion that the State supplied clear and convincing evidence to support these findings is necessarily unreasonable.

[*P46] 1. *Defendant's Training*

[*P47] Although the trial court emphasized that defendant was a trained officer who "ha[d] gone through personally hours of training," there is no evidence in the record concerning defendant's training or how it was violated. More importantly, the question before the trial court was whether there were adequate conditions to guard against any danger defendant would pose if he were released pending trial. Defendant's training may be an important issue at the eventual trial of the charges against him, but it bears little on this question.

[*P48] 2. *Defendant's Oath*

[*P49] The trial court emphasized that defendant violated his oath as a sworn officer. Irrespective of what obligations bound defendant while he was a sworn officer, however, the evidence showed that at the time

of the **[**21]** hearing, defendant was no longer a law enforcement officer subject to any oath; there was no way, then, that he could violate those obligations again if released. Imposing pretrial detention solely for a past infraction when a similar infraction would be impossible on pretrial release crosses the line from permissible regulation of pretrial release to impermissible punishment.

[*P50] 3. *"Basic Norms of Public Safety"*

[*P51] In its detention order, the trial court found that defendant "directed law enforcement not to render aid, which is counter to basic norms of public safety." The record does show that the officers discussed whether any aid they could render with the medical kit would be futile in light of Massey's severe injury, but they also summoned EMS to provide aid, and defendant still retrieved the medical kit. But again, these matters do not reasonably bear on whether adequate release conditions could be fashioned to mitigate any danger defendant poses as a private citizen, not as a law enforcement officer. On pretrial release, defendant will not be able to issue directives to other law enforcement officers or fall short in providing assistance when acting in a law enforcement role.

[*P52] 4. **[**22]** *Body Camera Requirements*

[*P53] The trial court found that defendant failed to comply with statutory body camera requirements by activating the video immediately before the shooting and the audio immediately after the shooting. Presumably, the court was attempting to analogize defendant's compliance with body camera regulations and his possible future compliance with GPS monitoring if ordered by the court. This is a strained connection; if defendant is fitted with a GPS monitoring device, it will not be up to him to activate it. See *730 ILCS 5/5-8A-4.15(b)* (West 2022) (subjecting defendants on pretrial release to criminal penalties when they deactivate electronic monitoring devices). Therefore, this analogy provides little support for the court's conclusion that pretrial release conditions would be inadequate.

[*P54] 5. *"Supervision From Law Enforcement"*

[*P55] The trial court described the other deputy's accompanying of defendant as "supervision from law enforcement." However, there is no indication that the other deputy had a supervisory role over defendant; indeed, the court seems to have believed that the opposite was true, faulting *defendant* for directing the *other deputy* not to render aid to Massey.

[*P56] C. The Trial Court's **[**23]** Conclusions

[*P57] To recap, the State introduced no evidence, much less clear and convincing evidence, of (1) the training that defendant is alleged to have clearly disregarded, (2) the provisions of the oath that defendant is alleged to have violated, or (3) the Sangamon County Sheriff's Office's policies that defendant is alleged to have deliberately disobeyed. Nevertheless, the trial court found clear and convincing evidence that defendant's unspecified noncompliance, together with his impulsiveness and disparagement of Massey, were such a "departure from the basic expectations of civil society" that no conditions of release would be adequate to mitigate the threat he posed to the safety of the community.

[*P58] The trial court apparently drew this language from our decision in *Romine, 2024 IL App (4th) 240321, ¶ 20*, which defendant discussed at the detention hearing. There, we addressed the question of whether pretrial detention can be justified on dangerousness grounds for a firsttime offender charged with a crime of violence. *Id. ¶ 16*. The allegations in *Romine* were that the defendant shot his mother, abandoned her body, falsely told the police that she was alive and well, tried to destroy his cell phone, tried to elude the police by **[**24]** running red lights, threw a loaded ARstyle rifle out of his car window, tried to ingest a large number of pills, and told the police that his mother had likely been killed by an attempted robber named "John." *Id. ¶¶ 5-7*. At the detention hearing, however, the defendant acknowledged that he did kill his mother but asserted that his use of force was justified, *i.e.*, that he acted in self-defense. *Id. ¶ 13* (citing *720 ILCS 5/7-1(a)* (West 2022)). In affirming the trial court's order on dangerousness grounds, we concluded that even charged conduct alone "may reflect such a departure from the basic expectations of civil society that it becomes difficult to predict the defendant's compliance with court orders." *Id. ¶ 20*.

[*P59] We find *Romine* offers little support for the trial court's ruling here. Defendant is alleged to have breached his responsibilities as a police officer with terrible consequences; unlike in *Romine*, where the defendant's conduct extended over multiple days, the case on the merits against defendant here is focused on

whether his reaction to a momentary situation was criminal. Thus, this case arises purely out of defendant's law enforcement role, but that circumstance no longer exists now that he has been discharged. **[**25]** See *People v. Russell*, 2023 IL App (4th) 230918- U, ¶ 18 (reversing a detention order for a defendant charged with causing the death of a child because conditions of release could prevent her from caring for another child and therefore "mitigate the general alleged threat to the community"). When the question before the court is whether defendant can be safely released prior to trial on appropriate conditions, it is inappropriate to dwell on whether he fell short of the high expectations society rightly has for its law enforcement officers. A defendant's conduct may be reprehensible and deserving of punishment, but that is an inappropriate basis for imposing pretrial detention. See *People v. Atterberry, 2023 IL App (4th) 231028, ¶ 18, 477 Ill. Dec. 367, 242 N.E.3d 1031* ("[T]he fact that a person is charged with a detainable offense is not enough to order detention, nor is it enough that the defendant poses a threat to public safety.").

[*P60] D. Remand

[*P61] 1. *Conditions of Release*

[*P62] In previous appeals where the trial court's explanation behind its detention order was insufficient, we have vacated the detention order and remanded for a new detention hearing, at which the court could properly explain its decision. See, *e.g.*, *Atterberry, 2023 IL App (4th) 231028, ¶ 21*. Our reason is that the State should not be held responsible for the court's error when the State supplied sufficient **[**26]** evidence at the first detention hearing. Here, however, the State failed to supply sufficient evidence, so we hold the State responsible by reversing the court's detention order outright and placing the parties in the same position they would have been had the court properly denied the State's petition and proceeded to a hearing on conditions of release. Although our order has addressed only the conditions of release addressed at the detention hearing, we express no opinion as to what conditions of release may be appropriate on remand.

[*P63] 2. *The Protective Order*

[*P64] As noted above, the materials the trial court considered at the detention hearing were impounded. When adopting the parties' agreed protective order, the court failed to explain its reasoning for sealing these materials from public view. We recently cautioned that this practice is improper:

> "[T]he public has a presumptive right of access to [court] records. *In re Marriage of Johnson, 232 Ill. App. 3d 1068, 1074-75, 598 N.E.2d 406, 174 Ill. Dec. 209 (1992)* ('The file of a court case is a public record to which the people and the press have a right of access. *** Once documents are subject to the right of access, only a compelling reason, accompanied by specific factual findings, can justify keeping them from public view.'). The **[**27]** record on appeal does not disclose why the records were sealed, so we presume the trial court acted within its discretion in sealing them. See *Skolnick v. Altheimer & Gray, 191 Ill. 2d 214, 231, 730 N.E.2d 4, 246 Ill. Dec. 324 (2000)* (noting that the decision to seal court records is discretionary); *Bicek v. Quitter, 38 Ill. App. 3d 1027, 1030, 350 N.E.2d 125 (1976)* ('It is well settled that there is no presumption of abuse of discretion by a trial court ***.')." *Schultz v. Sinav Ltd., 2024 IL App (4th) 230366, ¶ 150*.

The remedy we ordered in *Schultz* is appropriate here as well:

> "[T]he trial court on remand must revisit whether the party or parties seeking to seal these documents have met the heavy burden necessary to warrant the continued restriction on public access; absent such a showing, the documents must be unsealed. See *Skolnick, 191 Ill. 2d 214* (explaining what the party opposing public access must show); see also *Marriage of Johnson, 232 Ill. App. 3d at 1075* ('The parties' desire and agreement that the court records were to be sealed falls far short of outweighing the public's right of access to the files.'). The parties' agreement on sealing cannot be the end of the trial court's scrutiny because the strong presumption in favor of open access cannot be so easily overcome. The court must satisfy itself that it has a proper basis for sealing and that the extent of the sealing goes no further than is necessary to serve the interest which justifies it, regardless **[**28]** of what the parties may agree to." *Id. ¶ 151*.

[*P65] In the meantime, the exhibits impounded by the trial court "shall remain as such when filed in the reviewing courts" (*Ill. S. Ct. R. 371* (eff. June 11, 2021)), and the name of the Sangamon County sheriff's deputy

who accompanied defendant to Massey's house appears only in the impounded record. Our choice to avoid using his name in this order does not constitute a finding that his name should be withheld from public view; it means only that the trial court should be given the first opportunity to make the necessary factual findings. *Johnson, 232 Ill. App. 3d at 1074-75*; see *Simmons v. Union Electric Co., 104 Ill. 2d 444, 463, 473 N.E.2d 946, 85 Ill. Dec. 347 (1984)* (explaining that reviewing courts are not fact-finding tribunals).

[*P66] III. CONCLUSION

[*P67] We ask members of law enforcement to go into sometimes tense situations, but we do so with the expectation that they will conduct themselves in a way that makes our communities safer, not more dangerous. Whether defendant fell below these expectations to the point of criminality is a matter which will eventually be decided on the merits of this case. In considering whether defendant poses a danger justifying his pretrial detention in the interim, however, the question is not whether he will meet the high expectations of a law enforcement officer; **[**29]** the question is whether, as a private citizen, he poses a danger to the public that cannot be mitigated by appropriate conditions of pretrial release. The trial court's focus on defendant's failings as a law enforcement officer, while understandable, distracted from the central question of how to address any risk he posed after being stripped of his office.

[*P68] For the reasons stated, we reverse the trial court's detention order and remand with directions for the court to promptly (1) set the case for a hearing to determine the least restrictive conditions of defendant's pretrial release pursuant to *section 110-5* of the Code (*725 ILCS 5/110-5*) (West 2022)) and (2) revisit whether the party or parties seeking to impound the exhibits considered at the detention hearing have met the heavy burden necessary to warrant the continued restriction on public access to those exhibits.

[*P69] Reversed and remanded with directions.

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PROOF OF 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 March 3, 2025, the foregoing **Brief and Appendix of Plaintiff-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the following registered email address:

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Additionally, upon its acceptance by the court's electronic filing system, the undersigned will mail thirteen copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois, 62701.

/s/ Michael L. Cebula

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