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.

REPLY BRIEF OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

MICHAEL L. CEBULA
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(773) 590-6952
eserve.criminalappeals@ilag.gov

Counsel for Plaintiff-Appellant
People of the State of Illinois

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CYNTHIA A. GRANT
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ARGUMENT

This Court should reverse the appellate court's judgment and affirm the circuit court's judgment denying defendant pretrial release. As explained in the People's opening brief, the appellate court reversed the lower court's judgment by misstating the circuit court's reasoning, not conducting an individualized assessment of the evidence, and not considering several required factors. Peo. Br. 18-27.[1] Defendant does not defend the appellate court's reasoning; instead, defendant maintains that its analysis is irrelevant because this Court reviews the circuit court's judgment de novo. Def. Br. 33. While it is true that this Court's review is de novo, it is telling that the appellate court reached the conclusion that defendant should be released *only* by committing a series of errors that even defendant is unwilling to defend. And defendant's brief fails to provide any persuasive reason to overturn the circuit court's considered determination that no conditions of release could mitigate the risk that defendant poses to the community.

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

Courts may deny pretrial release if (1) the proof is evident or presumption great that the defendant committed a detainable offense; (2) the defendant "poses a real and present threat" to the community; and (3) no conditions of release "can mitigate" that threat. 725 ILCS 5/110-6.1(e) (the

[1] The parties' briefs are cited as "Peo. Br." and "Def. Br."

Act); Def. Br. 13. Notably, defendant does not dispute that the proof is evident or presumption great that he committed a detainable offense (*i.e.*, the first degree murder of Sonya Massey) nor does he dispute the circuit court's finding that he "poses a real and present threat" to the community. Def. Br. 13-14. Instead, defendant challenges only whether the circuit court is correct that the threat he poses cannot be mitigated by conditions of release. *Id*.

The parties agree that whether conditions of release can mitigate the threat defendant poses depends on "the nature and circumstances" of his offense, as well as his history and personal characteristics. *People v. Mikolaitis*, 2024 IL 130693, ¶ 20; 725 ILCS 5/110-5(a); Def. Br. 14-33. The People's opening brief demonstrated that those factors prove defendant is not entitled to pretrial release. Peo. Br. 11-18. Defendant's arguments in response are contrary to the record and settled law.

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

The nature and circumstances of defendant's offense prove in three ways that conditions of release cannot mitigate the risk he poses to the community. Peo. Br. 12-16.

1. Defendant's offense proves he has a dangerous impulsiveness that conditions of release cannot mitigate.

To begin, as the circuit court correctly concluded, the body worn camera footage and the expert report from the Illinois State Police (ISP Report) prove that defendant has a dangerous "impulsiveness" that no set of

conditions can adequately mitigate because he fatally shot Massey, even though she "was no physical threat" and was "in her own home, unarmed, [and] of slight build." R15-16, 36-37. Indeed, as the expert who authored the ISP Report stated, when defendant pointed his gun at Massey, she was unarmed, standing in her own kitchen, and had not made "any aggressive movements" toward defendant, so "the necessity of force was not imminent." ES10-11. Yet, as the expert stated, defendant "escalated" the situation by telling Massey he would "fucking shoot [her] right in [her] fucking face," then "advanced" toward Massey and fatally shot her, a shooting the expert concluded was unjustified. ES13-14; V1 at 12:08-20; *see, e.g., People v. Byrd*, 2024 IL App (1st) 242094-UB, ¶ 26 (conditions of release could not mitigate threat 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 (conditions could not mitigate risk where defendant shot victim "without sufficient provocation").[2]

Notably, although the People's argument that defendant should be denied pretrial release has always focused "almost entirely on the nature and circumstances" of the shooting, Def. Br. 14, defendant did not affirmatively dispute in the circuit or appellate courts that the circumstances of the shooting prove he has a dangerous impulsiveness, let alone offer a basis to

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

believe the shooting was justified. Rather, in the detention hearing, defendant's motion hearing, and his motion for relief (which served as his appellate brief), defendant instead argued that the threat he poses could be mitigated by the loss of his job and certain conditions of release, such as electronic monitoring. R9-14, 21-34; C45-50.

Because he has not disputed (and cannot credibly dispute) that his actions demonstrate a dangerous impulsiveness, defendant now attempts to minimize the significance of his fatal impulsiveness by calling his shooting of Massey an isolated incident. *See* Def. Br. 28 ("The State claims that [defendant] would not comply with conditions because he 'escalates situations and resorts to violence.' But this has happened precisely once, in a very specific circumstance[.]"). But as defendant's own authority holds, even one violent, impulsive act can be sufficient to show that no conditions of release can adequately mitigate the threat a defendant poses. *People v. Romine*, 2024 IL App (4th) 240321, ¶¶ 19-21 (conditions of release can be insufficient even if the defendant's violent history is limited to his "charged conduct," which "took place on a single occasion" (citing 725 ILCS 5/110-6.1)) (cited at Def. Br. 19).

Rather than justifying his conduct, defendant also suggests it is "premature" to discuss "the appropriateness of [his] actions." Def. Br. 17. But, to the contrary, whether conditions of release can mitigate the risk a defendant poses depends in large part on the "nature and circumstances of

[defendant's] offense." *Mikolaitis*, 2024 IL 130693, ¶ 20. And as the People demonstrated, and the circuit court correctly held, the nature and circumstances of defendant's offense show a dangerous impulsiveness that cannot be mitigated by conditions of release. Peo. Br. 12-16.

Importantly, when defendant finally addresses the circumstances of the shooting, he states that he acted "on the spur of the moment" (*i.e.*, impulsively) because he supposedly feared for his life, and he repeatedly acknowledges that his actions and alleged fear may have been unreasonable and unjustified. *E.g.*, Def. Br. 18 (claiming he shot Massey because "reasonably or not" he feared for his safety); *id.* at 19 (same); *id.* at 21 (claiming that he acted "correctly or not" in "the heat of the moment"). That defendant is unwilling to affirmatively argue that his alleged fear and resulting actions were objectively reasonable, *see id.*, is telling and further supports the circuit court's conclusion that defendant's offense proves he has a dangerous impulsiveness and lack of judgment that cannot be mitigated by conditions of release. R15-16, 36-37.

Moreover, the few specific arguments defendant makes to explain his supposed fear — such as that Massey "threw [a] steaming pot of water" at him, Def. Br. 15-16 — fail for multiple reasons. To begin, as noted, defendant did not argue in the detention hearing, in his motion hearing, or in his motion for relief (which served as his appellate brief) that Massey threw a pot of steaming water at him and, thus, that shooting Massey was justified or

otherwise not impulsive. R9-14, 21-34; C45-50. Accordingly, defendant is barred from raising such an argument now. *People v. Cherry*, 2016 IL 118728, ¶ 30 ("It is well settled that arguments raised for the first time in this [C]ourt are forfeited.").

More importantly, the evidence does *not* show that Massey threw a pot of water at defendant. Indeed, defendant concedes that "the actual throwing of the pot was not visible" on the body worn camera footage. Def. Br. 16. Defendant speculates that Massey threw the water because "there is no other explanation" for the water's "sudden appearance" on the kitchen floor. *Id.* But, of course, there is another, more sensible explanation: Massey *dropped* the pot because defendant screamed at her to "drop the fucking pot!" just before he shot her. V1 at 12:09-19. That Massey dropped the pot (rather than throwing it) explains why no water actually hit defendant and the pot and the water are not seen flying through the air. *Id.*

Moreover, defendant's argument — which effectively treats Massey's alleged and uncorroborated act of throwing the pot as if it were the start of their interaction — ignores that the events leading up to defendant killing Massey prove (as the ISP expert concluded) that defendant impulsively "escalated" the situation and shot Massey without justification. ES13-14. Specifically, the body worn camera footage shows that after defendant entered Massey's home, he asked her to provide identification, and she sat on her couch in the living room looking through her purse in an attempt to

comply with his request; during this time, Massey neither did nor said anything threatening. V1 at 11:15-52. Defendant then directed Massey to go to the kitchen because he did not want the pot on the stove to start a "fire." *Id*. at 11:43-52. Again, Massey was compliant, not combative: while defendant remained in the living room, Massey walked to the kitchen, turned off the stove, carried the pot to the sink, and turned on the faucet. *Id*. at 11:52-59; ES7.

True, Massey then verbally "rebuke[d]" defendant "in the name of Jesus," but as the ISP expert noted, (1) rebuking someone "is not a direct threat" of physical harm, but rather is a religious exhortation; (2) Massey still had not made any threatening gestures; and (3) Massey was standing in a different room than defendant, and behind a counter. ES12; V1 at 12:00-12:09. Defendant nevertheless showed his dangerous impulsiveness by escalating the situation and yelling, "I swear to God, I'll fucking shoot you right in your fucking face." V1 at 12:09-12. Defendant then drew his 9-millimeter service weapon and pointed it at Massey; only after he did so did Massey touch the pot again. *Id*. at 12:12-15; *see also* Def. Br. 15-16 (noting Massey was not touching the pot when defendant drew his gun). Defendant shouted, "Drop the fucking pot! Drop the fucking pot!"; notably, defendant admits that Massey complied with his order by putting the pot down. V1 at 12:12-16; Def. Br. 17 (stating: "On [defendant's] orders Massey dropped the

pot and ducked below the counter."); *see also* ES11 (noting that Massey complied with defendant's order).

It is further undisputed that as Massey let go of the pot, she said, "I'm sorry," then crouched behind the kitchen counter that separated the living room from the kitchen. V1 at 12:13-17; *see also* Def. Br. 17. Defendant was in no danger at this time, yet, as the ISP Report noted, defendant further escalated the situation by advancing toward Massey in the kitchen with his gun pointed at her. ES11, 13-14; V1 at 12:13-19.

It is only at that point that defendant claims Massey stood up, grabbed the pot, and threw it at him. Def. Br. 15-16. But, as the foregoing shows, even if true, Massey's alleged act of throwing the pot was not what precipitated defendant's impulsive, deadly actions. Rather, by the time Massey allegedly threw the pot, defendant had already (1) threatened to "shoot [Massey] in [her] fucking face"; (2) advanced toward her with his gun drawn; and (3) then began shooting. *Supra* pp. 6-8. Indeed, as the ISP expert noted, when defendant pointed his gun at Massey and began approaching, Massey had not made "any aggressive movements" and "[d]ue to Mrs. Massey not aggressively approaching [defendant] with the pot of liquid or making any aggressive movements," the "necessity of force was not imminent." ES10-11. The report explained that defendant's purported fear "could have been resolved by not approaching Mrs. Massey and coming within throwing distance of the liquid." ES13. Instead, defendant

"escalated" the situation "and advanced" toward Massey, then shot her, which the expert concluded was unjustified. ES13-14.

For similar reasons, defendant's self-serving claim that he "feared for his safety" merely because Massey "rebuked" him is not credible. Def. Br. 17. Even setting aside that a rebuke is not a physical threat, *see* ES12, defendant asks this Court to ignore that:

- Massey and defendant were standing in separate rooms, which the ISP expert noted provided sufficient distance "to keep [defendant] out of reach" of any water that might be thrown by Massey, ES13;
- There was also a kitchen counter between defendant and Massey that the expert noted provided defendant further protection, *id.*;
- When Massey rebuked defendant, she did not make any threatening gestures, ES12-14;
- Defendant was much larger than Massey and also had his partner with him for additional protection, *see* V1; and
- Defendant had non-lethal ways to protect himself, such as remaining in the living room or using his Taser, ES12-14; R7-9.

Given these facts, it is perhaps unsurprising that defendant does not affirmatively argue that his actions were justified or reasonable. *E.g.*, Def. Br. 21 (claiming that he "correctly or not, acted in the heat of the moment").

Defendant's remaining arguments fare no better. Defendant's suggestion that the ISP Report supports his account of the shooting, *id.* at 17-

18, ignores that the report criticized defendant's actions and concluded that the shooting was unjustified, ES12-14. And defendant's observation that "the other deputy had also drawn his gun," Def. Br. 17, ignores that (1) the other deputy drew his gun only after he saw defendant do so, which suggests the deputy was automatically backing up his partner (*i.e.*, defendant), rather than independently deciding that Massey posed a threat requiring lethal force; and (2) regardless of why the deputy drew his gun, he did not shoot Massey, as defendant did, V1 at 12:09-21.

Lastly, defendant's attempt to distinguish the People's authority falls short. Def. Br. 18-19. *Byrd* and *Gary* held that defendants who were charged with *non-fatal* shootings were not entitled to pre-trial release where prosecutors *proffered* that they acted without justification. *Byrd*, 2024 IL App (1st) 242094-UB, ¶¶ 7-10; *Gary*, 2024 IL App (1st) 240288-U, ¶¶ 6-11. Here, the conclusion that defendant has a dangerous impulsiveness that will not be curbed by conditions of release is even stronger because (1) defendant is charged with murder because he *fatally* shot a small, unarmed woman; (2) the shooting was recorded and thus the People's arguments do not rest on a proffer of what prosecutors believe happened; and (3) an "independent expert" (as defendant describes the ISP expert, Def. Br. 15) concluded the shooting was unjustified.

Notably, defendant fails to cite any authority suggesting that the circuit court erred by concluding that the circumstances of defendant's

offense require detention, let alone a case holding that a defendant charged with murder should be released where prosecutors presented (1) video evidence of the defendant shooting a small, unarmed woman; and (2) a report from an independent expert concluding that the shooting was unjustified. Defendant cannot cite any authority because the reality is that someone who shoots a small, unarmed woman in her home without justification is precisely the type of person who should be detained because they have demonstrated a dangerous impulsiveness that cannot be mitigated by conditions of release.

2. Shooting Massey in front of a deputy proves defendant would not be deterred by conditions of release.

Second, the People demonstrated that the circuit court was correct when it reasoned that if another deputy "being right next to [defendant]" was insufficient to stop defendant from shooting Massey, then no conditions of release (such as home monitoring) could mitigate the threat defendant poses. R16; Peo. Br. 14-15, 18 (citing cases holding that committing offense in front of others supports conclusion defendant will not be deterred by conditions of release).

In response, defendant first contends that the fact that he knew he was being observed but shot Massey anyway proves he did not believe he was doing anything wrong. Def. Br. 19-20. But, as discussed, impulsive violent crimes are sometimes committed in the presence of others and the mere fact that an offender knew he was being watched does not mean he can credibly claim he thought his actions were permissible. *See* Peo. Br. 14-15, 18

(collecting cases). It is therefore unsurprising that defendant cites no authority for his theory that the willingness to commit a violent offense in front of a law enforcement officer proves he should be released.

Defendant next argues, in contradiction of his first argument, that the presence of the other deputy is irrelevant because defendant shot Massey "on the spur of the moment," which prevented him from considering (and thus being deterred by) the deputy's presence. Def. Br. 19-21. But defendant's argument that he did not consider the deputy's presence and shot an unarmed woman "on the spur of the moment" supports the circuit court's conclusion that defendant has a dangerous "impulsiveness" that was not mitigated by the presence of a law enforcement officer and, thus, would not be mitigated by conditions of release. R15-16, 37.

Lastly, the one pre-trial detention case defendant relies on, *Romine*, 2024 IL App (4th) 240321, ¶¶ 20-23 (cited at Def. Br. 19), does not suggest that he should be released pending trial. In *Romine*, no one saw the defendant shoot the victim, and thus the decision does not support either argument defendant makes about the presence of the deputy when he shot Massey. *Id.* More importantly, in *Romine*, the appellate court affirmed the denial of pretrial release because the circuit court "was not required to accept defendant's contention that he acted in self-defense when the record permitted other conclusions concerning his culpability and, by extension, his dangerousness." *Id.* at ¶ 21. Here, of course, there is overwhelming evidence

that defendant's actions cannot be justified as self-defense and, thus, that he presents a threat that cannot be mitigated by conditions of release: the body worn camera footage shows that defendant shot an unarmed woman and an independent expert concluded the shooting was not justified.

3. Defendant's actions after the shooting support the conclusion that he should not be released.

Third, the circuit court is correct that defendant's actions after the shooting — such as calling Massey a "fucking bitch," showing no concern for her well-being, and providing no aid though he was aware she was still breathing — "are so out of bounds of societal norms that it suggests there's no condition that would be sufficient." R16; Peo. Br. 16-17; *see, e.g., Gary*, 2024 IL App (1st) 240288-U, ¶ 37 (failing to provide aid and blaming victim supported conclusion that no conditions of release would be sufficient). Although defendant attempts to distinguish the People's cases on their specific facts, Def. Br. 23, he does not dispute the legal principle that certain actions after committing an offense, such as showing callousness and failing to aid the victim, weigh in favor of denying pretrial release. Defendant instead makes several factual arguments to justify his actions after the shooting, but those arguments are rebutted by the record.

Defendant first claims he acted appropriately because he reported the shooting to the dispatch center, said they needed emergency medical services (EMS), and eventually retrieved his medical kit "when directed to do so by the other officer." *Id.* But that ignores what occurred while Massey lay on

the floor gasping for breath and awaiting EMS: (1) the other deputy said he was going to get his medical kit, but defendant said, "No, it was a headshot, dude, she's done," so the other deputy did not retrieve his kit; (2) later, when they realized that Massey was still breathing, defendant finally agreed to get his medical kit; (3) defendant never provided aid to Massey but instead walked around outside, briefly returned inside to speak with an officer who had just arrived at the scene, then returned outside and told arriving officers that "this fucking bitch is crazy"; and (4) while much of this was happening, the other deputy used a kitchen towel to stanch Massey's bleeding while expressing his frustration with defendant's delay in returning with medical supplies by saying, "C'mon. Where's he at? C'mon." V1 at 12:42-21:00; V2 at 1:50-4:48.

Perhaps realizing the record shows he did not actually provide aid, defendant switches gears and claims he "made a realistic assessment of the situation" that no one could help Massey. Def. Br. 23. Defendant's self-serving claim that this was "realistic" ignores that (1) the other deputy disagreed and said they should retrieve the medical kits; (2) the deputy tried to help Massey by stanching the bleeding; (3) as the deputy waited for EMS, he repeatedly noted that Massey was breathing; (4) when EMS arrived, the deputy said Massey was gasping for breath, he answered their questions about her injury, and he kept pressure on her wound while they prepared their equipment. V1 at 12:42-21:00.

Similarly, defendant is incorrect that his actions are understandable because "other, uninvolved officers and medical personnel were handling the situation." Def. Br. 24. When defendant was walking around and making callous remarks, "medical personnel" were not yet treating Massey and the person "handling the situation" was defendant's partner, who was attempting to stanch Massey's bleeding with a kitchen towel. V1 at 12:42-21:00.

Lastly, defendant argues that he should be released because he stayed home and committed no crimes for 12 days after the shooting, then turned himself in when his arrest warrant was issued. Def. Br. 24. Like nearly all of the arguments in his brief, defendant fails to cite any authority supporting his contention that he is entitled to release merely because he did not evade arrest or commit additional crimes after shooting Massey. *Id*. Given the violent, impulsive, unjustified nature of defendant's offense and his callous treatment of Massey after the shooting, defendant's contention that he caused no trouble in the 12 days after the shooting (when, presumably, he was hoping he would not be charged with murder), deserves no weight.

B. Defendant's personal history and characteristics show that conditions of release would not mitigate the threat he poses.

The parties agree that defendant (1) has two prior offenses for driving under the influence; and (2) failed to turn on his body worn camera as he was legally required to do. Peo. Br. 16-17. The People's brief demonstrated that, under the Act and existing precedent, that history of failing to comply with legal requirements supports the circuit court's conclusion that defendant

should be detained because the court was not confident he would "comply with conditions" of release. R37-38; Peo. Br. 16-17 (citing cases holding that prior criminal history suggests a defendant would not comply with conditions of release). Although defendant attempts to distinguish the People's authority, he again fails to cite any case in his favor nor does he dispute the legal principle that a criminal record weighs in favor of denying release, because a history of not complying with the law suggests the offender may not comply with conditions of release. Def. Br. 26-27.

Instead, in response to the one-paragraph discussion of defendant's criminal history in the People's brief, defendant devotes several pages of his brief to attempting to minimize that history. *Id*. at 21-22, 25-29. To be clear, the People addressed defendant's criminal history because the Act and this Court's precedent expressly state that a defendant's "criminal history" should be considered. 725 ILCS 5/110-5(a)(3)(A) (courts should consider a defendant's "criminal history"); *Mikolaitis*, 2024 IL 130693, ¶ 20 (same). However, the People's argument that defendant should not be released has never hinged on his criminal history. That is to say, even if defendant were correct that his criminal history is minimal — or even if he had no criminal history at all — defendant still should be detained pending trial because the nature and circumstances of his offense prove that no conditions of release would mitigate the risk he poses. Peo. Br. 12-16.

Nevertheless, it should be noted that defendant's attempts to minimize his criminal history are inconsistent with the record and settled law. For example, defendant argues that this Court should ignore his criminal history because his offenses did not disqualify him from employment in law enforcement, were non-violent, and were not detainable offenses. Def. Br. 25-29. Defendant cites no authority for these arguments, which is unsurprising because the Act and this Court's precedent direct courts to consider a defendant's "criminal history" and do not limit that consideration to offenses that disqualify the defendant from certain occupations, involve violence, or are detainable offenses. 725 ILCS 5/110-5(a)(3)(A); *Mikolaitis*, 2024 IL 130693, ¶ 20.

Although defendant claims it is "curious" that he has not been charged with failing to activate his body worn camera, Def. Br. 22, in addition to first degree murder and other charges, defendant does not dispute that he was legally required to turn on his camera yet failed to do so, which is but one of several reasons the circuit court concluded it could not trust defendant to comply with conditions of release, R36-39. Moreover, as this Court knows, prosecutors make charging decisions based on many considerations, including a desire to streamline trial and focus the jury's attention on particular issues; given that defendant is charged with first degree murder, the fact he is not also charged with failing to activate his camera is unsurprising and fails to support his claim that he should be released.

Defendant is also incorrect that he is in a "catch-22 situation" because he is being faulted for failing to turn on his camera and also for shooting Massey in front of another deputy who had a camera. Def. Br. 29. This is not a "catch-22 situation" because: (1) defendant admits he was required to activate his camera, but he failed to do so, which is an example his failing to comply with the law in a manner that suggests he is unlikely to comply with conditions of release; and (2) separately, the deputy's presence did not deter defendant from shooting an unarmed woman, which suggests he would not be deterred merely by electronic monitoring. *Supra* pp. 11-13. Far from being a "catch-22 situation," defendant needed only to turn on his camera when he arrived at Massey's house and not shoot an unarmed woman.

Defendant also notes that in 2023 (nine months before he shot Massey) he was diagnosed with cancer and given a colostomy bag. Def. Br. 25. Defendant does not explain how his diagnosis in 2023 mitigates the risk he poses to the public in 2025, nor could he credibly do so because his diagnosis did not prevent him from shooting Massey.

Lastly, the People's brief noted that defendant's risk assessment score does not prove he should be released. Peo. Br. 17-18. Defendant's brief does not dispute that observation.

* * *

In sum, the circuit court is correct that the circumstances of defendant's offense and his history, characteristics, and criminal record prove that no conditions of release would adequately mitigate the threat he poses.

II. Defendant's Remaining Arguments Are Meritless.

Defendant's remaining arguments are contradicted by the record and settled law. To begin, defendant is incorrect that prosecutors must provide evidence "that leaves no reasonable doubt" that release should be denied. Def. Br. 13. The Act requires prosecutors to establish by "clear and convincing evidence" that a defendant should be detained pending trial. 725 ILCS 5/110-6.1(e). And "clear and convincing evidence" is an "intermediate standard" that is less stringent than requiring proof beyond a reasonable doubt. *E.g., People v. Peterson*, 2017 IL 120331, ¶ 37.

Defendant also mischaracterizes the People's position by contending that the People's "insistence" that conditions of release "would not eliminate all risk" is inconsistent with the Act's focus on mitigating risk. Def. Br. 33. The People never suggested (let alone "insisted") that conditions of release must "eliminate all risk," and defendant provides no citation supporting his contention that the People did. Rather, the People stated, just like the Act provides, that the question is whether conditions of release could adequately "mitigate" the threat the defendant poses, and the People explained why the evidence proves that in this case they would not. 725 ILCS 5/110-6.1(e)(3); Peo. Br. 1, 11-18.

Next, defendant argues that "the shooting occurred in a situation that is extremely common for law enforcement officers" and "all but unheard of for ordinary citizens," and he should be released because he no longer works in

law enforcement. Def. Br. 28. Defendant effectively is asking this Court to create an exemption for law enforcement officers, *i.e.*, to hold that an officer who commits his offense on duty should not be detained if he has been fired. As the People's brief noted, such an exemption is contrary to the Act and this Court's precedent, which require individualized assessments of the facts and circumstances of each particular case and do not create exemptions for police officers. 725 ILCS 5/110-6.1(f)(7); *Mikolaitis*, 2024 IL 130693, ¶ 20.

Defendant's argument is also illogical because it is based on the unsupported and counterintuitive assumption that someone who, at work, impulsively escalates a situation and resorts to violence would not also impulsively resort to violence when not at work. The more logical conclusion is that someone, like defendant, who impulsively escalates a situation at work into the fatal shooting of an unarmed woman is capable of escalating other situations and resorting to violence even if he is unemployed. In this respect, it is worth reiterating that defendant has not challenged (and has forfeited any challenge to) the circuit court's finding, *made after defendant was fired*, that he "poses a real and present threat" to the public. *Supra* p. 2. That threat is not mitigated merely by defendant *remaining* unemployed.

Defendant is also incorrect when he argues (without any evidence) that he should be released because it is "literally impossible" while on electronic home monitoring to commit a violent act like his. Def. Br. 28. To the contrary, the circuit court is correct that home monitoring "may detect a

failure to comply with conditions, but it's not adequate to mitigate the threat" posed by defendant. R37. Indeed, the appellate court repeatedly has observed that electronic home monitoring "simply informs law enforcement that a defendant *violated* a home confinement restriction," but it "cannot, however, provide much in the way of *prevention* of such a violation or threat" to the public. *People v. Simpson*, 2024 IL App (4th) 240607-U, ¶ 40 (emphasis in original); *accord, e.g.*, *People v. Thomas*, 2024 IL App (4th) 240248, ¶ 27; *People v. Davis*, 2024 IL App (1st) 241747, ¶ 42.

Defendant next criticizes the People for quoting an appellate decision's observation that "gaps" in home monitoring lessen its ability to mitigate threats because everyone on pretrial home confinement is statutorily entitled to at least "two days per week of unrestricted movement." *Simpson*, 2024 IL App (4th) 240607-U, ¶¶ 40-41; Def. Br. 30. To the extent defendant suggests those two days each week are not literally unrestricted because defendants are supposed to use that time for "basic activities" such as "working" or "purchasing groceries," he is correct. 730 ILCS 5/5-8A-4(A). However, to the extent defendant suggests courts have the power to confine defendants to their homes 24 hours a day, seven days a week, he is incorrect. The Electronic Monitoring and Home Detention Act provides: "At a minimum, any person ordered to pretrial home confinement with or without electronic monitoring must be provided with movement spread out over no fewer than two days per week, to participate in basic activities." 730 ILCS 5/5-8A-

4(A); *see also People v. Brito*, 2025 IL App (1st) 242601-U, ¶ 50 (statute bars courts from ordering home monitoring that does not allow the defendant "*a minimum* period of public movement twice per week") (emphasis in original). As courts have consistently recognized, that gap provides opportunities for a defendant to harm others, which means that in some cases home monitoring is insufficient to mitigate the threat posed by a particular defendant. *E.g.*, *Simpson*, 2024 IL App (4th) 240607-U, ¶¶ 40-42; *see also People v. Hardy*, 2024 IL App (1st) 240550-U, ¶¶ 24, 34-35 (affirming denial of pretrial release where circuit court concluded that home monitoring, given its two-day weekly allowance for movement, would not sufficiently mitigate risk posed by defendant charged with murder). Thus, (1) defendant is incorrect that it is impossible to commit violent offenses on home monitoring; and (2) in this case, given defendant's unjustified and impulsive shooting of an unarmed woman, as well as the other factors discussed, the circuit court is correct that home monitoring does not adequately mitigate the threat he poses.

Defendant's other argument — that monitoring equipment would provide his GPS location and "promptly" notify police if he violated his home confinement, Def. Br. 31-32 — is irrelevant. As discussed, courts have consistently recognized that electronic monitoring can inform police that a defendant has violated his home confinement, but it does little to mitigate the threat posed by a defendant who violates his conditions of release. *Supra* pp. 20-21. And the limited protection provided by home confinement is especially

a concern here, given the facts of defendant's offense. After all, defendant states that he fatally shot an unarmed woman "on the spur of the moment" and that he was not "deterred" by the physical presence of the deputy standing next to him. Def. Br. 19-21. If he was not deterred by a deputy standing next to him, it cannot credibly be argued that he will be deterred by a system that merely provides his GPS location to police.

Defendant's final arguments warrant little response. Defendant's assertion that he can be trusted to comply with conditions of release because he is charged with the "most serious possible offenses" and wants to "minimize his prison exposure," *id*. at 32, is unsupported by authority and, if accepted, would lead to the absurd result that defendants charged with the most serious offenses are granted release, but defendants charged with lesser offenses are not. And defendant's argument that he should be released because if he breaks his conditions of release he will "surely be spotted" and "reported" by ordinary citizens, *id*., not only lacks legal support, it flatly ignores the facts of this case. Given that defendant indisputably shot an unarmed woman in her kitchen, and an independent expert concluded the shooting was not justified, the public should not be relied upon to police defendant's compliance with conditions of release. Rather, the public should be protected from the threat defendant poses by denying him pretrial release.

CONCLUSION

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

April 22, 2025

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

MICHAEL L. CEBULA
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(773) 590-6952
eserve.criminalappeals@ilag.gov

Counsel for Plaintiff-Appellant
People of the State of Illinois

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, and the certificate of service, is 5,792 words.

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

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 April 22, 2025, the foregoing **Reply Brief 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:

Carolyn R. Klarquist
Deborah K. Pugh
Office of the State Appellate Defender
203 N. LaSalle Street, 24th Floor
Chicago, Illinois 60601
pfa.eserve@osad.state.il.us

Counsel for Defendant-Appellee

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

MICHAEL L. CEBULA
Assistant Attorney General
eserve.criminalappeals@ilag.gov