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, -vs- SEAN GRAYSON, Defendant-Appellee.	))))))))))	Appeal from the Appellate Court of Illinois, No. 4-24-1100. There on appeal from the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Illinois, No. 24 CF 909. Honorable Ryan Cadagin, Judge Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLEE IN SUPPORT OF RULE 604(h) APPEAL

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ISSUE PRESENTED FOR REVIEW

Whether the State failed to prove by clear and convincing evidence that no conditions could mitigate any risk posed by Sean Grayson's pretrial release.

STATUTES AND RULES INVOLVED

725 ILCS 5/110-5(a)(1-3), (c) Determining . . . conditions of release

(a) In determining which conditions of pretrial release, if any, will reasonably ensure the appearance of a defendant as required or the safety of any other person or the community and the likelihood of compliance by the defendant with all the conditions of pretrial release, the court shall, on the basis of available information, take into account such matters as:

(1) the nature and circumstances of the offense charged;

(2) the weight of the evidence against the defendant, except that the court may consider the admissibility of any evidence sought to be excluded;

(3) the history and characteristics of the defendant, including:

(A) the defendant's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past relating to drug or alcohol abuse, conduct, history criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest, the defendant was on probation, parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal law, or the law of this or any other state;

* * *

(c) The court shall impose any conditions that are mandatory under subsection (a) of Section 110-10. The court may impose any conditions that are permissible under subsection (b) of Section 110-10. The conditions of release imposed shall be the least restrictive conditions or combination of conditions necessary to reasonably ensure the appearance of the defendant as required or the safety of any other person or persons or the community.

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, by conduct which may include, but is not limited to, a forcible felony, the obstruction of justice, intimidation, injury, or abuse as defined by paragraph (1) of Section 103 of the Illinois Domestic Violence Act of 1986, and

(3) no condition or combination of conditions set forth in subsection (b) of Section 110-10 of this Article can mitigate (I) the real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, for offenses listed in paragraphs (1) through (7) of subsection (a), or (ii) the defendant's willful flight for offenses listed in paragraph (8) . . . .

725 ILCS 5/110-10(a)(1-5), (b)(0.05-5, 9) Conditions of pretrial release

(a) If a person is released prior to conviction, the conditions of pretrial release shall be that he or she will:

(1) Appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged or final order of the court;

(2) Submit himself or herself to the orders and process of the court;

(3) (Blank);

(4) Not violate any criminal statute of any jurisdiction;

(5) At a time and place designated by the court, surrender all firearms in his or her possession to a law enforcement officer designated by the court to take custody of and impound the firearms and physically surrender his or her Firearm Owner's Identification Card to the clerk of the circuit court when the offense the person has been charged with is a forcible felony . . . ; the court may, however, forgo the imposition of this condition when the circumstances of the case clearly do not

warrant it or when its imposition would be impractical; if the Firearm Owner's Identification Card is confiscated, the clerk of the circuit court shall mail the confiscated card to the Illinois State Police; all legally possessed firearms shall be returned to the person upon the charges being dismissed, or if the person is found not guilty, unless the finding of not guilty is by reason of insanity; and

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(b) Additional conditions of release shall be set only when it is determined that they are necessary to ensure the defendant's appearance in court, ensure the defendant does not commit any criminal offense, ensure the defendant complies with all conditions of pretrial release, prevent the defendant's unlawful interference with the orderly administration of justice, or ensure compliance with the rules and procedures of problem solving courts. However, conditions shall include the least restrictive means and be individualized. Conditions shall not mandate rehabilitative services unless directly tied to the risk of pretrial misconduct. Conditions of supervision shall not include punitive measures such as community service work or restitution. Conditions may include the following:

(0.05) Not depart this State without leave of the court;

(1) Report to or appear in person before such person or agency as the court may direct;

(2) Refrain from possessing a firearm or other dangerous weapon;

(3) Refrain from approaching or communicating with particular persons or classes of persons;

(4) Refrain from going to certain described geographic areas or premises;

(5) Be placed under direct supervision of the Pretrial Services Agency, Probation Department or Court Services Department in a pretrial home supervision capacity with or without the use of an approved electronic monitoring device subject to Article 8A of Chapter V of the Unified Code of Corrections;

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(9) Such other reasonable conditions as the court may impose, so long as these conditions are the least restrictive means to achieve the goals listed in subsection (b), are individualized, and are in accordance with national best practices as detailed in the Pretrial Supervision Standards of the Supreme Court.

730 ILCS 5/5-8A-4 Program description

The supervising authority may promulgate rules that prescribe reasonable guidelines under which an electronic monitoring and home detention program shall operate. When using electronic monitoring for home detention these rules may include, but not be limited to, the following:

(A) The participant may be instructed to remain within the interior premises or within the property boundaries of his or her residence at all times during the hours designated by the supervising authority. Such instances of approved absences from the home shall include, but are not limited to, the following:

(1) working or employment approved by the court or traveling to or from approved employment;

(2) unemployed and seeking employment approved for the participant by the court;

(3) undergoing medical, psychiatric, mental health treatment, counseling, or other treatment programs approved for the participant by the court;

(4) attending an educational institution or a program approved for the participant by the court;

(5) attending a regularly scheduled religious service at a place of worship;

(6) participating in community work release or community service programs approved for the participant by the supervising authority;

(7) for another compelling reason consistent with the public interest, as approved by the supervising authority; or

(8) purchasing groceries, food, or other basic necessities.

(A-1) 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 such as those listed in paragraph (A). In this subdivision (A-1), "days" means a reasonable time period during a calendar day, as outlined by the court in the order placing the person on home confinement.

(B) The participant shall admit any person or agent designated by the supervising authority into his or her residence at any time for purposes of

verifying the participant's compliance with the conditions of his or her detention.

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(D) The participant shall acknowledge and participate with the approved electronic monitoring device as designated by the supervising authority at any time for the purpose of verifying the participant's compliance with the conditions of his or her detention.

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(G) The participant shall not commit another crime during the period of home detention ordered by the Court.

(H) Notice to the participant that violation of the order for home detention may subject the participant to prosecution for the crime of escape as described in Section 5-8A-4.1.

(I) The participant shall abide by other conditions as set by the supervising authority.

STATEMENT OF FACTS

On July 18, 2024, Sangamon County sheriff's deputy Sean Grayson was indicted for first degree murder, aggravated battery with a firearm, and official misconduct based on an incident in which he shot a woman, Sonya Massey, in her home following a call about a prowler. (C. 14-18)[1] An arrest warrant was issued the same day. (C. 4-5) Grayson, a stage 3 colon cancer patient with no violent history, was fired from the sheriff's office and remained in his home for the 12 days between the incident and the indictment. (R. 11) Within 30 minutes of learning that an arrest warrant had been issued, Grayson turned himself in. (R. 11) Since then he has remained in pretrial custody. On appeal from the circuit court's detention order, the appellate court found that the State had failed to prove, as required by the Pretrial Fairness Act (PFA), that any danger posed by his pretrial release could not be mitigated by conditions. *People v. Grayson*, 2024 IL App (4th) 241100-U.

Upon his arrest, the State filed a verified petition to deny Grayson pretrial release, alleging that he had committed a detainable offense and that his pretrial release would pose a real and present threat to specific people or the community. (C. 21-24; R. 2) The petition did not mention conditions of release.

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[1] Grayson adopts the State's system of citations. (St. Br. 2) Citations to "C. _" and "R. _" refer to the common law record and the report of proceedings; "E_" and "ES_" refer to the hearing exhibits and secured exhibits; "V1" and "V2" refer to the BWC footage.

The pretrial release hearing was held on July 18, 2024, the day Grayson turned himself in. The parties proceeded by proffer, and the State submitted body-worn camera (BWC) footage from Grayson (V2) and his partner (V1). It also submitted the report of the investigation conducted by an expert in the use of force, issued by the Illinois State Police (ISP) on July 15, 2024. (ES6-14)

According to the State's evidence, when the deputies arrived at Massey's house, Grayson's BWC was off, but his partner's was activated. They searched the yard, and Grayson's partner saw that at least two of the windows of a car parked in Massey's driveway had been smashed. (V1 2:55-3:05) The deputies knocked on Massey's door, and she answered the door several minutes later. (V1 3:35-7:27) The deputies assured Massey that no one was in her yard and asked her about the car with broken windows, which she said was not hers. (V1 8:00-35) Grayson asked if Massey was "doing all right mentally," and she said that she was. (V1 8:47-50) The other deputy went to check the license plates on the car parked in the driveway, and then both deputies followed Massey into her house. (V1 8:54-9:54)

Massey sat on her couch, and Grayson asked for her name for his paperwork; he then asked for identification so she did not have to spell her name for him. (V1 11:10-23) As Massey looked for her identification, Grayson noticed a pot of water, boiling on high heat, on the stove; he asked her to turn off the flame due to the risk of fire. (V1 11:40-52) Massey walked into the kitchen, turned off the stove, and brought the pot to the sink using

potholders. (V1 11:53-12:03) Low cabinets separated the kitchen from the living room, where Grayson was still standing. He stepped back as Massey brought the pot to the sink, and she asked what he was doing. (V1 11:58-12:02) Grayson said that he and the other deputy were "getting away from your hot, steaming water." (V1 12:00-04)

Massey, standing at the kitchen sink, then twice said, "I rebuke you in the name of Jesus." (V1 12:07-10) The ISP report presented by the State stated that Grayson perceived Massey's statement "I rebuke you in the name of Jesus" as "a direct threat." (ES9-10) Grayson, still in the living room, replied, "You better fucking not. I swear to God, I'll fucking shoot you right in your fucking face." (V1 12:09-12) According to the ISP report, Grayson feared for his safety, as Massey was behind the counter and he did not know whether she could reach a weapon. (ES9, 11) Grayson and his partner both drew their service weapons and, pointing them at Massey, both yelled at her to "drop the fucking pot." (V1 12:12-17)

Massey said, "I'm sorry," placed the pot on the counter, and ducked below the counter with potholders on her hands. At this point, Grayson's BWC is activated. (V2) The first 30 seconds of footage from Grayson's BWC is silent; it appears to be pre-event recording that was captured and retained when he turned his on BWC after the shooting. (V2 00:00-30) In the ISP report, Grayson said that he then approached Massey to "ensure she did not grab any other weapons." (ES9)

As Grayson reached the kitchen cabinets, his BWC footage very briefly

shows Massey standing up, though her actions beyond that are obscured by Grayson's arm. (V2 00:09) As Grayson fired his weapon, steaming hot water appeared at his feet. (V2 00:09-10) The steaming pot was then visible on a chair at the end of the counter, near Grayson. (V2 00:14) The rising steam is also visible in the other officer's BWC footage. (V1 12:17-21)

Grayson reported the shooting to the police dispatch center, requested emergency medical services, and then turned on his BWC. (V1 12:20-34) The other deputy said he would retrieve his medical kit, and Grayson said, "No, it was a head shot, dude. She's done. You can go get it, but that's a head shot." (V1 12:42-48) Grayson said, "What else could we do? I'm not taking hot boiling water to the face." (V2 13:00-37) When the deputies realized that Massey was still breathing, Grayson went to get his own medical kit. He noted, though, "There's not much we can do." (V1 14:01-09) The other deputy held Massey's head and used kitchen towels to try to stanch the bleeding until the ambulance arrived. (V1 14:09-20:52)

Grayson retrieved a medical kit from his car and then returned to the car for rubber gloves. (V2 2:25-3:15) As he was putting on his gloves several officers approached him and another officer went inside the house. (V2 3:20-35) He then brought the medical kit into the house, but the officer who had just arrived said that there was nothing to be done. (V2 3:42-52) Grayson told the other officer that Massey had "come at" him with boiling water. (V24:03-15) Back outside, another officer asked Grayson how he was doing, and he responded that he was all right, and that "this fucking bitch is crazy." (V2

4:43-48)

The ISP report the State submitted concluded that the deputies "were justified in pointing their service weapons at Mrs. Massey in an attempt to gain compliance." (ES14) However, the report also concluded that "[b]ecause Deputy Grayson placed himself in danger of great bodily harm" by advancing toward Massey, the expert did "not feel the shooting of Mrs. Massey is justified." (ES14)

The State acknowledged that Grayson had received only a three out 14 on the Virginia Pretrial Risk Assessment tool, but argued that that was "just one tool" for the court to consider. (R. 8) The State claimed that Grayson's "lack of judgment which is so far outside of societal norms demonstrates that there is no condition or combination of conditions that can protect the community." (R. 8-9)

Defense counsel proffered that Grayson is 30 years old, had graduated from a local high school, owns his own home where he lives with his fiancée, served in the Army, and had worked in law enforcement for five years. (R. 10-11) Further, in October 2023, he was diagnosed with stage 3 colon cancer and had spent a month and a half in the hospital following a colostomy; he was still using a colostomy bag, which was scheduled to be removed by surgery with in the next few months. (R. 11) Counsel expressed concern about the county jail's ability to manage Grayson's extensive medical conditions. (R. 11-12)

Counsel noted that Grayson's house had already been searched and

any firearms had been removed. (R. 12) He requested that Grayson be placed on electronic monitoring, undergo a mental health evaluation, and refrain from the use of alcohol or drugs. (R. 12)

The circuit court found that the State had sufficiently proved that Grayson had committed a detainable offense and that he posed a real and present threat to the community. (R. 14-15) The court found that no conditions could mitigate any risk because this incident occurred in front of another officer and because of disparaging remarks he made about Massey following the shooting. (R. 16; C. 26)

On August 8, 2024, Grayson filed a motion for relief from the order denying him pretrial release, arguing that the circuit court erred in finding that no conditions could mitigate any risk of pretrial release. (C. 45-50) The State filed a response to the motion in which it offered new evidence of two prior misdemeanor offenses for driving under the influence (DUI). (C. 87) One of the offenses occurred ten years ago and resulted in supervision; the other occurred nine years ago and resulted in a conviction. (C. 87) The circuit court denied the motion for relief, stating that it did not believe that Grayson would comply with conditions. (R. 37-38)

The appellate court, reviewing for an abuse of discretion, found that the State had failed to meet its burden of proving by clear and convincing evidence that no conditions of release could mitigate any risk. *People v. Grayson*, 2024 IL App (4th) 241100-U, ¶¶ 2, 42. It reversed the circuit court's ruling and remanded for a hearing on conditions of release. *Id.*, ¶¶ 67-69.

ARGUMENT

The State failed to prove by clear and convincing evidence that no conditions could mitigate any risk posed by Sean Grayson's pretrial release.

All defendants, even those accused of "reprehensible" crimes, are presumed to be entitled to pretrial release. *People v. Grayson*, 2024 IL App (4th) 241100-U, ¶ 59; 725 ILCS 5/110-2(a). "[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." *People v. Atterberry*, 2023 IL App (4th) 231028, ¶ 18. Rather, the State must also prove that no conditions of release could mitigate any safety risk. 725 ILCS 5/110-6.1(e). Similar to pretrial bail, pretrial release "permits the unhampered preparation of a defense and serves to prevent the infliction of punishment prior to conviction." *Stack v. Boyle*, 342 U.S. 1, 4 (1951). Without it, "the presumption of innocence . . . would lose its meaning." *Id.*

This is a high-profile case that evokes strong emotions. However, as the appellate court stated, the question is whether Sean Grayson may be safely released prior to trial on appropriate conditions, and therefore it is, at this time, "inappropriate to dwell on whether he fell short of the high expectations society rightly has for its law enforcement officers." *Grayson*, 2024 IL App (4th) 241100-U, ¶ 59. While this appeal relates specifically to the circumstances in Grayson's case, it looks to the larger question of what quantum of evidence is required to clearly and convincingly show that no conditions of release could mitigate any risk posed by the defendant's pretrial

release. Here, as the appellate court found, the State failed make that showing.

Pursuant to the statute commonly known as the Pretrial Fairness Act (PFA), a defendant may be held prior to trial under the dangerousness standard only if the State presents clear and convincing evidence that: 1) the defendant committed a detainable offense; 2) pretrial release of the defendant poses a real and present threat to the safety of any person or persons or the community, based on the specifics of the case; and 3) there are no conditions that can mitigate that threat. *People v. Whitmore*, 2023 IL App (1st) 231807-B, ¶ 19; 725 ILCS 5/110-2(a); 725 ILCS 5/110-6.1(e).

Clear and convincing evidence is "that quantum of proof that leaves no reasonable doubt in the mind of the fact finder about the truth of the proposition in question." *In re Tiffany W.*, 2012 IL App (1st) 102492-B, ¶ 12. Decisions regarding release, conditions of release, and detention must be individualized, and no single factor or standard may be used exclusively to detain. 725 ILCS 5/110-6.1(f)(7). Where, as here, no live testimony was presented at the detention hearing, a circuit court's order finding that the State had met its burden is reviewed *de novo*. *People v. Morgan*, 2025 IL 130626, ¶ 54.

In determining whether any conditions of release will reasonably ensure the safety of the community and the likelihood of compliance by the defendant, the trial court shall consider such matters as:

(1) The nature and circumstances of the offense charged;

(2) The weight of the evidence against the defendant;

(3) The history and characteristics of the defendant including

(A) The defendant's character, condition, history, and similar matters; and

(B) Whether the defendant was on probation, supervision, or other release at the time of the incident;

(4) The nature and seriousness of the real and present threat to safety of any person or persons in the community based on the specific articulable facts of the case;

(5) The nature and seriousness of the risk of the defendant attempting to obstruct criminal proceedings if released.

725 ILCS 5/110-5(a)(1-5).

While the State need not address every conceivable condition or combination of conditions and argue why each condition does not apply, it must present sufficient proof to meet its burden to produce clear and convincing evidence. *People v. Mikolaitis*, 2024 IL 130693, ¶ 20; *Morgan*, 2025 IL 130626, ¶ 29. Moreover, that evidence must be applicable to the "specific scenario" presented by the case at hand, and not rely on generalizations. *Mikolaitis*, 2024 IL 130693, ¶ 20. Here, though the State did not refer to any specific conditions of release at Grayson's detention hearing, the more important point is that it did not present clear and convincing proof that no conditions could mitigate any risk Grayson posed on pretrial release.

A. The nature and circumstances of the charged offenses do not prove that no conditions could mitigate any risk posed by pretrial release.

The evidence presented by the State at the detention hearing, which was based almost entirely on the nature and circumstances of the alleged

offense, was insufficient to meet its burden of proving that no conditions could mitigate any risk of release. (R. 5-9) The State described its version of the incident, leaving out crucial information, and some of the findings of the Illinois State Police (ISP) independent expert. Without making any specific argument, the State concluded that Grayson's "lack of judgment which is so far outside of societal norms demonstrates that there is no condition or combination of conditions that can protect the community." (R. 8-9)

In both its petition for leave to appeal (PLA) and its opening brief, the State continued to leave out crucial facts and insinuated that Grayson was lying about the circumstances of the incident. The State's own video evidence shows that Massey threw the pot of boiling water at Grayson immediately before the shooting, which is consistent with Grayson's account of the incident. (V2 at 00:09-14)

The ISP's investigator's report, which was based on body-worn camera (BWC) footage and on Grayson's account, stated that after Grayson drew his gun and ordered Massey to drop the pot of boiling water, Massey did so and then crouched behind the kitchen cabinets. (ES8) Grayson approached her with his firearm still pointed in her direction, and Massey quickly stood up and grabbed the pot. (ES8) As Grayson continued to tell her to drop the pot, Massey threw the steaming pot of water, striking the chair next to Grayson. (ES8)

Grayson's BWC footage confirms this. The video shows Massey crouching, with only pot holders in her hands, behind the cabinets when

Grayson draws his gun. (V2 at 00:06) Three seconds later, the video very briefly shows Massey standing up, though her actions beyond that are obscured by Grayson's arm. (V2 at 00:09) At the time Grayson fired his weapon, steaming hot water appeared at his feet. (V2 at 00:09-10) The steaming pot was then visible on the chair at the end of the counter. (V2 at 00:14) The rising steam is also visible in the other officer's BWC footage. (V1 at 12:17-21) Although the actual throwing of the pot was not visible, there is no other explanation for the pot and the steaming water's sudden appearance.

At the detention hearing, the State did not acknowledge that Grayson's fear that Massey would throw the steaming pot was, in fact, borne out. In its PLA, the State went so far as to describe the ISP report regarding Massey throwing the pot as an "alternative account" based on "defendant's self-serving description of the shooting," which the circuit court "could reasonably decline to credit." (St. PLA 15) The fact section in the opening brief claims that Massey put the pot in the sink, crouched behind the kitchen counter, and then Grayson shot her. (St. Br. 4, 6) It acknowledges in a footnote that "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." (St. Br. 4, fn 2, emphasis added) Throughout its brief, the State skips over the throwing of the water, claiming, for instance that Grayson shot Massey after she "meekly apologized rather than acting aggressively." (St. Br. 13)

None of this is to make any kind of premature argument about the appropriateness of Grayson's actions. Indeed, the question here is not whether Grayson "fell short of the high expectations society rightly places on law enforcement officers," but rather whether conditions of release could mitigate any risk he allegedly posed to the community. *See Grayson*, 2024 IL App (4th) 241100-U, ¶ 59. However, it does show that the State has adopted a cavalier attitude toward its presentation of the facts in its zeal to keep Grayson in custody. Those short moments of the video are *the* pivotal point in the State's own exhibit. Even if the State later claims that its misrepresentation of the evidence was inadvertent, it is notable that it did not examine the evidence and present the circumstances of the incident with care, preferring to insinuate that Grayson incorrectly described the events.

Moreover, the video corroborates Grayson's report that he feared for his safety. He perceived Massey's repeated statement "I rebuke you in the name of Jesus" as "a direct threat." (ES9-10) When she was behind the counter he did not know whether she could reach a weapon. (ES9, 11) By this time, the other deputy had also drawn his gun, showing that it was not just Grayson who perceived danger. On Grayson's orders Massey dropped the pot and ducked below the counter. He then approached to "ensure she did not grab any other weapons," and Massey threw the pot of steaming water at him right before he shot her. (ES9)

The ISP expert found that "Mrs. Massey did place Deputy Grayson in fear of great bodily harm due to her statement and having a pot of steaming

liquid in her possession." (ES11) The report found that force was not required because Massey showed no aggression until Grayson drew his gun and that Grayson's "fear of great bodily harm could have been resolved by not approaching Mrs. Massey." (ES13) However, while the report found that the shooting itself was not justified, it also concluded that both deputies "were justified in pointing their service weapons at Mrs. Massey in an attempt to gain compliance." (ES14)

The fact that Grayson feared for his safety—reasonably or not—is one of the factors that distinguishes this case from *People v. Byrd*, 2024 IL App (1st) 242094-UB, ¶ 26, which the State cites for the proposition that a defendant's "lack of impulse control" shows that no conditions could mitigate any risk of pretrial release. (St. Br. 13-14) In that case, the defendant was leaving the victim's house after an argument; he turned around on the sidewalk and fired at the victim multiple times and fled the scene. *Id.*, ¶ 8. The defendant had two prior convictions for unlawfully possessing a gun. *Id.*, ¶ 9. In that case, the defendant experienced no subjective fear and simply shot out of anger, while also illegally possessing a gun for the third time and then fleeing the scene. None of those circumstances exist in this case.

The State's reliance on *People v. Gary*, 2024 IL App (1st) 240288-U, fails for similar reasons. (St. Br. 14) In that case, the defendant, who possessed his gun illegally, shot his roommate's 61-year-old father multiple times, including in the back of the legs as he attempted to flee. *Id.*, ¶ 37. The victim, who was also the landlord and had been trying to evict his son and

the defendant for nonpayment of rent, was in the apartment to investigate a bedbug situation. *Id.*, ¶¶ 7-8. The appellate court found that the trial court had not abused its discretion in rejecting any conditions of release due to the level of violence, including when the victim was fleeing, and the illegal possession of the gun. *Id.*, ¶ 37. Here, of course, the standard of review is *de novo*, and the circumstances bear little relevance to those in this case.

Still focusing on the circumstances of the incident, the State argues that no conditions could mitigate any risk because Grayson "was not deterred by a law enforcement officer standing next to him" and recording the incident. (St. Br. 14, citing R. 16) This argument, however, presupposes that Grayson believed that he was violating the law and that deterrence was a relevant consideration. The circumstances of the incident suggest that Grayson fired his weapon in the heat of the moment where he—reasonably or not—feared for his safety. (ES9-11) This Court has previously noted "the difficulty of thinking conceptually of 'deterring' a crime . . . which is committed on the spur of the moment and, by definition, without any deliberation." *People v. Alejos*, 97 Ill. 2d 502, 507 (1983). Further, the question of whether a defendant believed that his actions were necessary is relevant in determining whether any alleged danger could be mitigated by conditions. *People v. Romine*, 2024 IL App (4th) 240321, ¶ 21.

Indeed, the fact that the other deputy was present and recording the interaction suggests not that Grayson would not comply with conditions, but rather that he, in the moment, believed that his actions were justified. Such

an act would not be deterred by the presence of another officer. Again, the ISP investigator concluded that both Grayson and the other deputy, who also drew his gun, "were justified in pointing their service weapons at Mrs. Massey in an attempt to gain compliance." (ES14)

The cases the State relies on for its argument that the presence of Grayson's partner did not deter Grayson are not applicable. For instance, the State argues that *People v. Hinton,* 2024 IL App (4th) 240064-U, shows that defendants who commit crimes in front of police officers will not comply with conditions. (St. Br. 14) There, the appellate court, applying the abuse of discretion standard, found that the trial court did not err in ruling that no conditions could mitigate the risk the defendant posed to the victim where she fought the officers in order to lunge at and bite the victim's face, kicked an officer in the chest, and screamed detailed and violent threats to kill the victim while in the squad car and while being processed. *Id.*, ¶¶ 6, 23. Additionally, that defendant was already under court supervision at the time of the offense. *Id.*, ¶ 23.

Likewise, the State argues that *People v. Andino-Acosta*, 2024 IL App (2d) 230463, shows courts may infer that no conditions could mitigate of any threat posed by defendants who commit offenses in front of witnesses. (St. Br. 14) There, the defendant, who was already on pretrial release for a DUI, strangled the victim, pushed her to the floor, and punched her in front of her young children. *Id.*, ¶ 4. He then locked the victim out of the house and remained there with the children, forcing the police to knock down the door,

and then repeatedly resisted arrest. *Id.* Based on all of these factors, the court found, using the manifest weight of the evidence standard, that release on conditions would not sufficiently protect the victim. *Id.*, ¶¶ 9, 25.

The differences between *Hinton* and *Andino-Acosta* and this case are self-evident. The police in *Hinton* were actively trying to stop the defendant's actions, and the children in *Andino-Acosta* were themselves victims, as they watched the defendant assault their mother and tell them they would be better off if she were dead. By contrast, here, both Grayson and the other deputy drew their guns, and both were attempting to regain control of the situation. Grayson was not defying the other officer, and all of his actions at the time of and after the shooting show that he, correctly or not, acted in the heat of the moment.

After arguing that Grayson would not comply with conditions because he committed the shooting while he knew his actions were being recorded, the State turns around and argues that he would not comply because, although he knew the officer was recording him, he himself did not record the entire interaction with Massey. (St. Br. 16)

However, while his BWC was not activated throughout the interaction, Grayson turned it on immediately after firing his weapon. As required by law, Grayson's BWC was equipped with 30 seconds of pre-event recording and thus included the shooting itself and his and Massey's actions immediately preceding it. *See* 50 ILCS 706/10-20(a)(1). If he were in fact trying to hide anything about the encounter, as the State implies, he would

not have turned on the camera at all, or he would have waited at least 30 seconds after the shooting. Moreover, he knew that all of his actions were being recorded by the other deputy, so any failure to have his own BWC activated throughout the interaction had no effect on his behavior or later observers' ability to understand the events.

As the State notes, Grayson may have violated the law by failing to have his BWC activated for the entirety of the interaction with Massey. St Br. 16, citing 50 ILCS 706/10-20(a)(3). The knowing and intentional violation of that statute is charged as law enforcement misconduct, a Class 3 felony. 720 ILCS 5/33-9(a)(3), (b). Although the State chose to charge Grayson with official misconduct for the shooting itself, also a Class 3 felony, it declined to charge him with law enforcement misconduct. (C. 18) It is at least curious that the State relies so heavily on this alleged violation of the BWC statute to show that Grayson would not comply with conditions, but decided against charging him with failing to comply, perhaps recognizing that there was no evidence of intentional noncompliance.

It is also notable that a charge of violating the BWC statute is not itself detainable under the PFA, yet the State argues that that uncharged allegation shows that Grayson could not abide by conditions. If the allegation of failing to comply with the BWC statute were so indicative of an inability to follow pretrial conditions, the legislature presumably would have at least allowed a defendant to be detained under the charge.

The State also argues that Grayson's actions after the shooting show

that he would not abide by conditions because he provided no aid. (St. Br. 15-16) However, within seconds of the shooting, while the other officer still pointed his gun at Massey, Grayson called for emergency medical services. (V1 at 12:30) The trial court stated that Grayson "directed" the other deputy not to aid Massey after the shooting, but that is not true. (R. 16) Rather, Grayson appears to have made a realistic assessment of the situation, stating that, while the other deputy could retrieve his medical kit, he did not believe any treatment could prevent Massey's death. (V1 at 12:48) Further, Grayson did retrieve his own medical kit when directed to do so by the other officer after they realized that Massey was still breathing. (V1 at 14:07)

This scenario is completely different from *Gary*, 2024 IL App (1st) 240288-U, ¶ 37, in which the defendant rendered no aid to the victim, who had been shot in the legs, and thus clearly would benefit from any attempt to stanch the bleeding. *Id.,* ¶ 37. Moreover, after shooting the victim, that defendant retreated to his bedroom and did not even call 911. (St. Br. 16)

Romine, 2024 IL App (4th) 240321, ¶¶ 20-23, is likewise not relevant. (St. Br. 16) The State's description of that defendant as "fail[ing] to assist victim," vastly understates the point. (St. Br. 16) In fact, the defendant shot his mother in the head and left the scene. *Id.*, ¶ 5. He engaged in extreme tactics to evade arrest and obstruct the police investigation, including telling police that his mother was still alive. *Id.*, ¶ 6. This is far cry from calling for medical assistance within seconds, as Grayson did.

While some of Grayson's comments after the shooting could be seen as

callous, he was in a highly agitated state and knew that other, uninvolved, officers and medical personnel were handling the situation. This does not show that Grayson would not abide by conditions.

Moreover, Grayson's actions between the incident and his arrest are highly relevant to rebut the State's claims about conditions. After the incident, Grayson "did nothing other than remain in his home for [12] days until the arrest warrant was issued." (R. 13) Once he was notified that the warrant had been issued, he turned himself in less than 30 minutes later. (R. 13) Those are not the actions of someone who would violate the conditions of release.

B. The State failed to prove that Grayson's personal history and characteristics show that he would not abide by conditions.

In determining whether a defendant's personal characteristics prove that no conditions can mitigate any risk, courts consider "the defendant's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past relating to drug or alcohol abuse, conduct, history criminal history, and record concerning appearance at court proceedings." 725 ILCS 5/110-5(a)(3)(A). Courts also consider whether the defendant was on probation or any other kind of release at the time of the offense. 5/110-5(a)(3)(B). The State failed to prove by clear and convincing evidence that these factors show that Grayson would not abide by conditions of release.

Sean Grayson is a 30-year-old man who owns his own home and is

engaged to be married. (R. 10) He graduated from a local high school and then enlisted in the Army. (R. 10) After that, he began working in law enforcement. (R. 10-11) There is no evidence to suggest that Grayson has an alcohol or drug problem or that he had ever previously engaged in any violent acts.

Further, about nine months before this incident, Grayson was diagnosed with Stage 3 colon cancer. (R. 11) He was hospitalized for a month and a half, beginning in November 2023, following a colostomy. (R. 11) At the time of the incident, he required a colostomy bag and further surgery. (R. 11)

The only two personal factors the State cites to argue that Grayson would not comply with conditions are two previous misdemeanor DUI offenses and the fact that his BWC was not on for the entirety of his interaction with Massey. (St. Br. 16-17) In response to Grayson's motion for relief, the State presented new evidence of the two DUI offenses.[2] (C. 87) However, this does not show that he would not comply with conditions. One of these offenses, from ten years ago, resulted in supervision, which Grayson completed successfully. (C. 120) The other, from nine years ago, resulted in a misdemeanor conviction. (C. 122) Grayson apparently successfully fulfilled all of the requirements of his sentences; the State does not argue otherwise. The records on the clerk's computer from Macoupin County show that he

[2] The State's introduction of new evidence violated Illinois Supreme Court Rule 604(h)(2), which prevents the parties from introducing new evidence in the proceedings on the motion for relief. *People v. Williams*, 2024 IL App (1st) 241013, ¶ 29. Grayson, however, acknowledges that this issue has not been preserved.

made regular monthly payments on his fines, which were paid in full. *See Coronet Insurance Co. v. Travers*, 282 Ill. App. 3d 920, 927 (1st Dist. 1996) (courts may take judicial notice of the circuit court's records in another case); *Walsh v. Union Oil Co.*, 53 Ill. 2d 295, 299-300 (1972) (same). Further, Grayson is not on probation or other any other kind of release from those offenses or any other offense. *See* 5/110-5(a)(3)(B).

Moreover, both of the DUI offenses occurred in Illinois, yet Sangamon County did not consider them to disqualify him from employment as a police officer; indeed, Grayson's entire career in law enforcement has taken place after in spite of those misdemeanor offenses.[3] It would be anomalous to use two misdemeanor offenses that did not disqualify Grayson from working in law enforcement to prove that he would not comply with conditions of release. Notably, neither of those offenses is even eligible for pretrial detention.

The State argues that the prior misdemeanors, which did not prevent Grayson from becoming a law enforcement officer, show that he "has a demonstrated lack of respect for the law," such that no conditions could mitigate any risk. (St. Br. 16) For this point, the State relies *Andino-Acosta*, 2024 IL App (2d) 230463, ¶ 25, in which, unlike here, the defendant was on pretrial release for a *pending* DUI offense. (St. Br. 17) In addition to stressing the pending charge, the appellate court in that case also cited the defendant's attempts to strangle a woman in front of her children, and his refusal to

[3] The State describes the DUI offenses as occurring while Grayson was "off duty," but they occurred years before he worked in law enforcement. (St. Br. 20; R. 10-11)

comply with any police orders upon his arrest. *Id.* By contrast, here the sentences for the DUI offenses were successfully completed years ago, and Grayson has fully complied with police orders, including turning himself in within a half hour of learning that an arrest warrant had been issued. (R. 13)

The State also relies on *People v. Morales*, 2024 IL App (2d) 240656-U, ¶ 5, in which the defendant, facing Class 2 domestic battery charges, had a criminal history involving recent felony and misdemeanor domestic batteries, at least eight convictions for driving with a suspended license, and multiple other offenses. (St. Br. 17) The appellate court affirmed the trial court's finding that the defendant would not comply with conditions of release based on his "extensive criminal history, especially his repeated convictions for driving with a suspended license" as those convictions "demonstrated an inability to follow the laws of the State and conditions of release." *Id,* ¶ 23. Here, the State describes that case as holding that "driving offenses supported [the] conclusion" that the defendant would not comply, eliding over the massive differences between that defendant's significant history and Grayson's decade-old driving misdemeanors. (St. Br. 17).

The other "history" cited by the State is Grayson's failure to activate his BWC throughout the encounter with Massey. (St. Br. 16) As discussed above, Grayson was fully aware that the other deputy was recording the entire interaction, and, moreover, he activated his own camera in time for the pre-event recording to capture the moments before the shooting. Further, the State's focus on this factor again raises the question of why, if it so clearly

shows a "lack of respect for the law," it declined to charge him with a Class 3 felony based on his failure and, moreover, why the offense is not even subject to pretrial detention.

The State further maintains that Grayson's status as a *former* law enforcement agent, who will no longer find himself in the kind of high-stress situation involved here, is not relevant. (St. Br. 19) The appellate court found that the State failed to prove that Grayson would not comply with conditions of release in part because "this case arises purely out of defendant's law enforcement role, but that circumstance no longer exists now that he has been discharged." *Grayson*, 2024 IL App (4th) 241100-U, ¶ 59. But the appellate court's point is well-taken: the shooting occurred in a situation that is extremely common for law enforcement officers, all but unheard-of for ordinary citizens, and literally impossible for someone on home confinement. Grayson and his partner entered a stranger's house late at night, having no idea who else could be present or what weapons might be stored in the home. Regardless of whether Grayson's response to that situation was reasonable, that situation will not occur again if he is released on home confinement.

Indeed, in his 30 years, Grayson apparently has never behaved violently in his personal life or, prior to this, in his professional life. The State claims that Grayson would not comply with conditions because he "escalates situations and resorts to violence." (St. Br. 20) But this has happened precisely once, in a very specific circumstance that will not reoccur.

Encouraging the exact opposite of an individualized assessment, the

State insists that "common sense and experience show that violent outbursts sometimes *increase* when someone loses their job" and is dealing with the attendant stressors. (St. Br. 20-21; emphasis in original) The State's own "common sense and experience" regarding what "sometimes" might happen to "someone" has nothing to do with the "specific articulable facts of [this] case," which is the relevant consideration. 5/110-5(a)(4).

The State also claims that placing Grayson on home confinement "effectively creates an automatic exception for law enforcement officers" who commit an offense on duty and are then fired. (St. Br. 21) In fact, it is the State that seeks to create a catch-22 situation in which such an officer could never be released. The State claims that Grayson should not be released because his BWC was not activated for the entirety of the interaction and also because his partner's BWC *was* continually activated. That is, an officer-defendant whose actions are not recorded may not be released because his failure to use his BWC shows a "lack of respect for the law" (St. Br. 16), while an officer-defendant whose actions were recorded and observed may not be released because that shows that nothing can deter his allegedly illegal acts (St. Br. 14) Likewise, the State claims that anyone who commits an offense in front of an officer will not comply with conditions, which means that no officer who works with a partner could be released. (St. Br. 14)

The State's arguments that Grayson would not comply with conditions of release due to his personal characteristics fall apart upon examination and should be rejected.

C. Home confinement with electronic monitoring would sufficiently mitigate any risk Grayson poses to the community.

The State opines that electronic monitoring and home detention, as requested by Grayson, are simply and generally ineffective. (St. Br. 15) This argument fails for multiple reasons.

First, the State grossly mischaracterizes the statute governing electronic monitoring and home detention by claiming that it guarantees a defendant two days per week of "unrestricted" movement. St. Br. 15, 22 quoting *People v. Simpson*, 2024 IL App (4th) 240607-U, ¶ 41. The statute does not automatically grant defendants two entire days of free movement. A defendant on home confinement is entitled to leave the house two days per week only "as outlined by the court in the order placing the person on home confinement." 730 ILCS 5/5-8A-4(A-1). The statute allows movement for work, seeking work, medical treatment, education, or community service, *only when approved by the trial court or supervising authority*. 730 ILCS 5/5-8A-4(A). The defendant may also attend a regularly scheduled service at a place of worship or may be permitted to leave to purchase "basic necessities." *Id.* This means that Grayson could, for instance, be entitled to receive treatment for his late-stage colon cancer, but *only at the discretion of the court*. Grayson urges this Court to examine the actual language of the statute and ignore the State's exaggerations.

Moreover, contrary to the State's claim about two days of unrestricted movement, a "day" does not mean an entire day. Rather it is only a

"reasonable time period during a calendar day." 730 ILCS 5/5-8A-4(A-1). This means that, should Grayson require a visit to his oncologist, he would not be free for the rest of the day, but rather would have to return to home confinement after the appointment. Again, he would be permitted even that kind of medical visit only if it were preapproved.

Additionally, a person on home confinement must allow "any person or agent designated by the supervising authority into his or her residence at any time" in order to confirm that the defendant is in compliance with the conditions" of the detention. 730 ILCS 5/5-8A-4(C). One of the mandatory conditions of pretrial release when charged with a forcible felony is the surrender of all firearms, which means that the defendant's home may be searched at any time to ensure that he does not possess firearms. 5/5-110-10(a)(5). Indeed, Grayson's house had already been searched and his firearms removed at the time of the original detention hearing. (R. 12) Further, the court has the power to impose any "reasonable conditions," including that there be no firearms or other weapons in his home at all, even if they are owned by his fiancée.

The State further argues that electronic home monitoring would not be adequate to mitigate any threat posed by Grayson because it can only detect—but not prevent—a violation. (St. Br. 15) However, a defendant should not be detained "based on a general perception that conditions of release are loosely monitored." *People v. Atterberry*, 2023 IL App (4th) 231028, ¶ 18. Here, there was no evidence that law enforcement would not

act promptly if Grayson were to violate home confinement. In fact, the Office of Statewide Pretrial Services (OSPS) explains that law enforcement agencies, including in Sangamon County, are contacted immediately about violations. *See* Smith, Cara, "Chief's Column: OSPS Launches Electronic Monitoring in 70 Counties," available at https://tinyurl.com/59b82b5y (last visited April 2, 2025). GPS data is transmitted every 60 seconds, and every 30 seconds when an individual is in violation. *Id.* Additionally, GPS monitoring is a constant reminder that the court and law enforcement are tracking where a defendant is, greatly increasing the likelihood that any crime the defendant commits will be detected and punished.

Further, given that Grayson has been charged with the most serious possible offenses, he has considerable incentive to minimize his prison exposure by abiding by conditions of release. A violation of home confinement could not only be used as aggravation at sentencing, it could lead to additional Class 3 charges of escape. 730 ILCS 5/5-8A-4.1(A). Even if he is not charged with escape, Grayson's release could be revoked at any time should he be accused of committing a Class A misdemeanor or felony while on release. 725 ILCS 5/110-6(a).

Moreover, while the State has previously used the high-profile nature of this case to argue against Grayson's release, this case's prominence actually increases Grayson's already high likelihood of complying with conditions of release. (*See* St. Mtn for Stay, 4-24-1100, ¶ 3) Grayson, who is now well-known because of this case, would surely be spotted and reported

should he leave the house, even if, somehow, his electronic monitoring were to fail. The high-profile nature of this case provides even greater incentive to comply with conditions.

Finally, the question is whether conditions can mitigate risk, not "absolutely eliminate" it. *People v. Martinez-Ortiz*, 2024 IL App (2d) 240102-U, ¶ 31. The State's insistence that home detention and electronic monitoring would not eliminate all risk does not correspond to the statute's focus on *reducing* risk. *See* 5/110- 6.1(e)(3); 5/110-10(b) (court shall impose "least restrictive" conditions to mitigate risk).

D. Conclusion.

For the remainder of its brief, the State discusses at length what it describes as the appellate court's failure to comprehend the circuit court's "reasoning." (St. Br. 21-26) However, because this Court's review is *de novo*, the question of whether the circuit court's decision was correct "concern[s only] the quantum and quality of proof that must be presented" by the State. *Morgan*, 2025 IL 130626, ¶ 29, quoting *In re D.T.*, 212 Ill. 2d 347, 355 (2004). This is a binary question, and not dependent on the circuit court's "reasoned judgment." *Morgan*, 2025 IL 130626, ¶ 41. Where, as here, the parties proceeded only by documentary evidence, there is no reason for this Court to afford any deference to the circuit court's fact-finding or reasoning. *Id.*, ¶ 51.

Every defendant in Illinois, regardless of the charges against him, is presumed to be eligible for release. Now is not the time to determine whether Sean Grayson's actions as a law enforcement officer were criminal. Rather,

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," including home confinement and electronic monitoring. *Grayson*, 2024 IL App (4th) 241100-U, ¶ 67. At the detention hearing, the State failed to present sufficient evidence to rebut the presumption of release. Grayson is a member of the community and a cancer patient with no violent history whatsoever, and he would comply with the conditions of home confinement and electronic monitoring. Accordingly, this Court should affirm the decision of the appellate court and remand the case for a hearing on conditions of release.

CONCLUSION

For the foregoing reasons, Sean Grayson, Defendant-Appellee, respectfully requests that this Court affirm the appellate court's ruling and remand for a hearing on conditions of release.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in 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, is 34 pages.

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IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, -vs- SEAN GRAYSON, Defendant-Appellee.	)	Appeal from the Appellate Court of Illinois, No. 4-24-1100. There on appeal from the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Illinois, No. 24 CF 909. Honorable Ryan Cadagin, Judge Presiding.

NOTICE AND PROOF OF SERVICE

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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 7, 2025, the Brief and Argument for Defendant-Appellee in Support of Rule 604(h) Appeal was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the Defendant-Appellee in an envelope deposited in a U.S. mailbox in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument for Defendant-Appellee in Support of Rule 604(h) Appeal to the Clerk of the above Court.

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