IN THE

Indiana Supreme Court

Supreme Court Case No. 21S-CR-410

Sierra M. DeWees,
Appellant (Defendant)

–v–

State of Indiana
Appellee (Plaintiff).

Argued: October 21, 2021 | Decided: February 3, 2022

Appeal from the Clay Superior Court,
No. 11D01-2003-F2-306
The Honorable Robert A. Pell, Judge

On Petition to Transfer from the Indiana Court of Appeals,
No. 20A-CR-1146

Opinion by Justice Goff

Chief Justice Rush and Justices David, Massa, and Slaughter concur.

Goff, Justice.

The General Assembly's recent codification of Criminal Rule 26 and the adoption of evidence-based practices in the administration of bail aim to strike the proper balance between preserving a defendant's pretrial liberty interests and ensuring public safety. But these changes call into question the legal standards governing pretrial release, the level of discretion enjoyed by trial courts, and the standard of review on appeal.

Today, we hold that these statutory reforms **enhance**, rather than restrict, the broad discretion entrusted to our trial courts when executing bail. What's more, a trial court can and **should** exercise that discretion to protect against the risk of flight or potential danger to the community. The trial court here did just that. And, so, we affirm its order denying the petitioner's motion for bond reduction or conditional pretrial release. We emphasize, however, that neither our affirmance of judgment nor our grant of transfer affects the trial court's order conditionally releasing the petitioner to pretrial electronic home detention with GPS monitoring.[1] So, should either party seek modification of the petitioner's conditional release, we remand with instructions for the trial court to conduct a hearing consistent with this opinion.

Facts and Procedural History

On March 27, 2020, Sierra DeWees drove three men—Weston Havey, Preston Hasler, and Blake Braun—to the home of sixty-seven-year-old Irving Mullins in Brazil, Indiana, believing they'd find marijuana and cash. When they arrived at their destination at around 1:30 AM, DeWees apparently remained in the car while the three men, armed with a shotgun, entered the home. At some point during the break-in, Mullins and one of DeWees's confederates exchanged gunfire, resulting in injury

[1] *See* Amended Order on Defendant's Motion For Reduction of Bond and/or Release with Conditions Set by the Court, June 26, 2020.

to Braun. The suspects fled, but police officers eventually arrested all four of them for crimes related to the incident.

For her part, DeWees stood charged with the level-2 felony offense of aiding, inducing, or causing burglary with a deadly weapon. *See* Ind. Code §§ 35-43-2-1(3)(A), 35-41-2-4 (2020). Soon after the State filed its charging information, Clay County Court Services assessed DeWees for pretrial release, designating her as a "moderate" risk of re-arrest and failure to appear at future court hearings. App. Vol. II, p. 18. This rating, based on the Indiana Risk Assessment System's Pretrial Assessment Tool (IRAS-PAT or IRAS), signified an assigned score of four: one point for DeWees's young age, two points for her lack of employment, and one point for her use of illegal drugs within the most recent six months. *Id.*

At an initial hearing, the trial court set DeWees's bond at $50,000 cash-only, with no option of paying 10 percent. After Clay County Community Corrections found her eligible for home detention, DeWees moved for a bond reduction or conditional pretrial release. At the hearing on this motion, the trial court heard testimony from both DeWees and Mullins.

DeWees, an eighteen-year-old high-school senior at the time, testified that she had lived with her mother and stepfather in Fillmore, Indiana, since 2008; that she visited her biological father in Carmel at least every other weekend; that she had worked part-time prior to the Covid-19 pandemic; that she had plans to attend college; that, despite occasional drug use in the past, she had no prior criminal or juvenile history; and that she agreed to obey the order barring her from contacting Mullins. DeWees further testified that she and her mother were saving money to post bond and that, should the court permit her to participate in a home-detention program, she would abide by all conditions.

Mullins, in turn, testified to having lived in constant fear since the break-in. DeWees and her co-defendants had turned his "world upside down," he stated, adding that he now "sleep[s] with two guns, one on each side." Tr. Vol. II, p. 15. While unsure of DeWees's specific role in the burglary, Mullins insisted that she "knew what was going on" when her accomplices entered the home with a shotgun. *Id.* at 15–17. Whatever positive factors may have weighed in support of DeWees's release,

Mullins opined, if she had "made bad choices before," there was nothing to assure him that she wouldn't "turn around and do it again." *Id.* at 22.

After taking the matter under advisement, the trial court ultimately denied DeWees's motion. While acknowledging DeWees's "strong" family ties, her lack of criminal record, and no evidence of bad character, the trial court cited in support of its ruling the "extremely serious" nature of the crime; Mullins' testimony that he lived in fear; DeWees's IRAS score and her unemployment status; and, should she live with her father, her distance from the community. App. Vol. II, pp. 50–51.

In a published opinion, the Court of Appeals reversed, finding a "dearth of evidence" to show that DeWees posed a risk to the physical safety of Mullins.[2] *DeWees v. State*, 163 N.E.3d 357, 366, 367 (Ind. Ct. App. 2021). In support of its ruling, the panel adjusted DeWees's IRAS-PAT rating from moderate to low, having found the two-point assessment for her unemployment status "unreasonable." *Id.* at 364. The panel also cited "evidence of substantial mitigating factors" to suggest that "DeWees recognized the trial court's authority to bring her to trial." *Id.* at 365–66. These factors, coupled with the "trial court's inordinate reliance on Mullins' testimony," the panel concluded, justified DeWees's release to pretrial home detention. *Id.* at 366, 367. Deviating from the certification process under Indiana Appellate Rule 65(E), the panel issued its opinion "effective immediately" and instructed the trial court to expedite its order. *Id.* at 367 (citing Ind. Appellate Rule 1).

The State petitioned to transfer, which we granted, vacating the Court of Appeals decision. *See* Ind. Appellate Rule 58(A).

Standard of Review

An abuse-of-discretion standard of review applies to a trial court's bail determination. *Perry v. State*, 541 N.E.2d 913, 919 (Ind. 1989). A trial court

[2] Pending resolution of the appeal, the Court of Appeals granted DeWees's emergency motion to stay and ordered her released to pretrial home detention.

abuses its discretion if its "decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) (cleaned up).

Discussion and Decision

By the 1980s, the American penal philosophy had clearly shifted from a rehabilitative model (predominant since the early nineteenth century) to a retributive one. A wave of tough-on-crime policies—which expanded the number of offenses punishable by incarceration, introduced mandatory minimum sentences, and enhanced penalties for repeat offenders—sought to keep more criminals off the street for longer periods of time. Cecelia Klingele, *The Promises and Perils of Evidence-Based Corrections*, 91 Notre Dame L. Rev. 537, 544–45 (2015). Contemporary bail-reform legislation, at both the federal and state level, played a crucial role in furthering these policies. Alexa van Brunt & Locke E. Bowman, *Toward a Just Model of Pretrial Release: A History of Bail Reform and a Prescription for What's Next*, 108 J. Crim. L. & Criminology 701, 738 (2019). And courts continued to rely heavily on money bail while releasing fewer defendants on personal recognizance, casting the pretrial detention net on an even broader scale.[3] Bureau of Justice Statistics, U.S. Dep't of Justice, *Pretrial Release of Felony Defendants in State Courts* 1–2 (2007). Unsurprisingly, then, over the last

[3] On any given day, nearly half a million detainees—presumptively innocent of their charged offenses—sit in America's jails awaiting trial. Crim. Justice Policy Program, Harvard Law School, *Bail Reform: A Guide for State and Local Policymakers* 1 (2019). The Pew Charitable Trust cites a similar figure, reporting that, of the nearly 750,000 people nationwide held in the nation's jails, only a third have been convicted of a crime, with the remaining two-thirds awaiting trial. Pew Charitable Trust, *Americans Favor Expanded Pretrial Release, Limited Use of Jail* 1 (Nov. 21, 2018), https://www.pewtrusts.org [https://perma.cc/C62D-NMC4].

several decades, the states have witnessed an exponential growth in the number of incarcerated persons nationwide.[4]

This dramatic increase in incarceration rates came at a huge expense to the American taxpayer.[5] Factoring in the incidental costs—including an overburdened court system, public-service budget cuts, and the absence of an income source in many families—America's tough-on-crime policy had become fiscally unsustainable. The economic fallout of the Great Recession only compounded the problem, prompting many states to scrutinize their existing criminal-justice systems. Policymakers across the country—and across the political divide—sought new strategies designed to prevent crime and recidivism, enhance community safety, reduce reliance on incarceration (pretrial and post-conviction), and, ultimately, to save taxpayer dollars.

What emerged was a new theory of detention—one that relies on actuarial models of prediction and evidence-based practices to determine offender risk. Criminal Rule 26, adopted by this Court in 2016 and codified by the General Assembly the following year, is emblematic of this new approach. At its core, the Rule aims to reduce pretrial-detention expenses for local jails (and taxpayers generally), enable defendants awaiting trial to return to their jobs and support their families, and enhance the benefits of reduced recidivism and improved public safety. Order Adopting Criminal Rule 26, No. 94S00-1602-MS-86 (Ind. Sept. 7, 2016). Adoption of this Rule reflected the state's new smart-on-crime approach to criminal-justice reform—a philosophy, in the words of one Hoosier statesman, designed to "separate the people we're mad at from

[4] Between 1972 and 2010, the state-prison population increased 705 percent, from 174,379 inmates in 1972 to 1,404,053 inmates as of January 1, 2010. Juliene James et. al., *A View from the States: Evidence-Based Public Safety Legislation*, 102 J. Crim. L. & Criminology 821, 821 (2012). In Indiana, the number of adult offenders incarcerated in our prisons more than doubled between 1989 and 2009, from fewer than 14,000 to nearly 30,000. G. Roger Jarjoura et al., Am. Inst. for Research, *Assessing the Local Fiscal Impact of HEA 1006*, at 4 (2014).

[5] In Indiana, the state prison population in 2010 cost Hoosier taxpayers $679 million—a 76% increase from ten years prior. Hon. Randall T. Shepard, *The Great Recession as a Catalyst for More Effective Sentencing*, 23 Fed. Sent. Rep. 146, 146 (2010).

the people we're afraid of." Tom Davies, *Ind. House Panel Backs Sentencing Laws Overhaul*, Dubois County Herald (Jan. 17, 2013) (quoting Rep. Greg Steuerwald), https://www.duboiscountyherald.com [https://perma.cc/B5WR-DMNQ].

To accomplish its goals, Criminal Rule 26 urges trial courts to use "the results of an evidence-based risk assessment" when determining whether to release a defendant before trial. Ind. Criminal Rule 26. This assessment, "based on empirical data derived through validated criminal justice scientific research," aims to assist a court in evaluating the likelihood of a defendant committing a new criminal offense or failing to appear in court. I.C. § 35-33-8-0.5. Evidence-based practices in the criminal-justice system have shown "considerable promise" in recent years. *See Malenchick v. State*, 928 N.E.2d 564, 569 (Ind. 2010). Indeed, research indicates that the IRAS-PAT itself "has strong to moderate predictive validity when assessing risk for failure to appear and re-arrest during the pretrial stage." Justice Reinvestment Advisory Council, *Report on Bail Reform and Pretrial Issues* 2 (2019) [hereinafter JRAC Bail Report].

Despite this progress, Indiana's recent bail-reform initiatives call into question the legal standards governing pretrial release, the level of discretion enjoyed by trial courts, and the standard of review on appeal.

Our decision today aims to resolve these questions. To that end, we begin our discussion with an overview of Indiana's statutory bail regime. *See* Pt. I, *infra.* Our analysis here leads us to conclude that Indiana's recent bail-reform measures enhance, rather than restrict, the broad discretion entrusted to our trial courts. *See id.* Next, we analyze the bail decision here, holding that the trial court did not abuse its discretion by denying DeWees's request for reduction of bond or conditional pretrial release. *See* Pt. II, *infra.* Finally, we turn to a brief discussion of Indiana Appellate Rule 65(E), the implications of deviating from that Rule, and the need for appellate courts to exercise prudence and restraint—especially in developing areas of the law like we're presented with today. *See* Pt. III, *infra.*

I. Trial courts should consider *any* factor relevant to the detainee's risk of nonappearance and potential danger to the community, and Indiana's recent bail reforms *enhance* their discretion.

In 1980, Indiana amended its bail statutes by prohibiting trial courts from setting bail "higher than that amount reasonably required to assure the defendant's appearance in court." Pub. L. No. 202-1980, § 1, 1980 Ind. Acts 1640, 1642 (codified at I.C. § 35-33-8-4(b)). To ensure individualized assessment, these amendments required courts to consider "all facts relevant to the risk of nonappearance," among which included "the length and character" of the detainee's "residence in the community," the detainee's "employment status and history," his "family ties and relationships," his "criminal or juvenile record," and anything else that "might indicate" a lack of recognition and adherence "to the authority of the court to bring him to trial." *Id.*

Sixteen years later, the General Assembly enacted additional amendments to its bail statutes. *See* Pub. L. No. 221-1996, 1996 Ind. Acts 2722. These revisions permitted trial courts to set conditions of pretrial release designed to "assure the public's physical safety" upon finding by "clear and convincing evidence that the defendant poses a risk of physical danger to another person or the community." Pub. L. No. 221-1996, § 2, 1996 Ind. Acts at 2722–23 (codified at I.C. § 35-33-8-3.2).

How Criminal Rule 26 affects this statutory framework is a question we turn to first.

Whether in setting bail or modifying bail, a trial court must first consider, among "other relevant factors," the "results of the Indiana pretrial risk assessment system (if available)." I.C. § 35-33-8-3.8(b). If the trial court finds, based on the results of its assessment, that a defendant presents no "substantial risk of flight or danger" to himself or to others,

"the court shall," with certain exceptions,[6] "consider releasing the arrestee without money bail or surety." *Id.* After considering the IRAS results, "other relevant factors, and bail guidelines described in section 3.8," the "court may admit a defendant to bail" and require the defendant to execute a bail bond, restrict the defendant's activities, place the defendant under supervision, or impose any other "reasonable" conditions on the defendant's release. I.C. § 35-33-8-3.2(a).[7]

These bail conditions aim to assure the defendant's appearance at future proceedings and "to assure the public's physical safety." *Id. See also* I.C. § 35-33-8-4(b) (prohibiting the amount of bail to exceed that "reasonably required" to ensure future court appearances "or to assure the physical safety of another person or the community"). This latter goal requires "a showing of clear and convincing evidence that the defendant poses a risk of physical danger to another person or the community." I.C. § 35-33-8-3.2(a). *See also* I.C. § 35-33-8-4(b) (specifying the same standard of proof).

If the trial court considers money bail necessary as a condition of release, the court "shall consider," when "setting and accepting an amount of bail," the results of an IRAS (when available) "and other relevant factors," along with "all facts relevant to the risk of nonappearance." *Id.* (citing I.C. § 35-33-8-3.8). These facts include, among other things, the length and character of the defendant's residence in the community; the defendant's employment status and history; the defendant's criminal history or juvenile record; the defendant's family ties and relationships; the defendant's character, reputation, habits, and mental condition; the nature and gravity of the offense and the potential penalty; and "any other factors" that may "indicate that the defendant

[6] Exceptions apply when the detainee "is charged with murder or treason," "is on pretrial release" following an unrelated incident, or "is on probation, parole, or other community supervision." I.C. § 35-33-8-3.8(b).

[7] Other conditions may include restrictions on the defendant's movements, associations, and place of residence; adherence to a no-contact order; or release on personal recognizance. I.C. § 35-33-8-3.2(a)(2).

might not recognize and adhere to the authority of the court to bring the defendant to trial." *Id.*

Finally, a trial court may reduce the amount of bail when a defendant presents "evidence of substantial mitigating factors." I.C. § 35-33-8-5(c). These factors, the same as those a court must consider when setting and accepting an amount of bail, must "reasonably" suggest "that the defendant recognizes the court's authority" over him or her. *Id.* (citing I.C. § 35-33-8-4(b)). A trial court may not reduce bail—and in fact may increase bail or revoke bail entirely—if it finds by "clear and convincing" evidence that the defendant "poses a risk to the physical safety of another person or the community." I.C. §§ 35-33-8-5(b)–(d).

Though far from a model of clarity, this statutory scheme imparts considerable judicial flexibility in the execution of bail. What's more, these statutes clearly permit—indeed mandate—a trial court to consider all "relevant factors" when setting or modifying bail. *See* I.C. § 35-33-8-3.8(a). *See also* I.C. § 35-33-8-4(b) (directing the court to "consider the bail guidelines described in section 3.8" along with "all facts relevant to the risk of nonappearance); I.C. § 35-33-8-5 (permitting modification of bail "based on the factors set forth in section 4(b)"). This reading comports with the very nature of a bail determination. Indeed, to tailor that decision to the individual offender, the trial court should consider the "widest range of relevant information in reaching an informed decision." *See Malenchick*, 928 N.E.2d at 574 (quoting *Dumas v. State*, 803 N.E.2d 1113, 1120–21 (Ind. 2004)).

The codification of Criminal Rule 26 and the adoption of evidence-based practices in the administration of bail results in no change to this judicial flexibility. While Indiana Code section 35-33-8-3.8 mandates a trial court to "**consider** the results" of an IRAS (if available), there's nothing in the statute that compels the defendant's release or that requires the court to rely on the results of the IRAS assessment when setting bail. *See* I.C. § 35-33-8-3.8(a) (emphasis added). What's more, the legislature qualified its mandate to include consideration of "other relevant factors." I.C. § 35-33-8-3.8(b). *See also* Crim. R. 26(B) (encouraging a trial court to "utilize the results of an evidence-based risk assessment . . . and such other

information as the court finds relevant"); JRAC Bail Report at 13 ("The use of validated, empirically-based pretrial risk assessment tools can enhance the pretrial decision-making process when utilized in conjunction with professional judgment."). And because the IRAS-PAT measures only the defendant's risk of failure to appear and risk of re-offending, Indiana's *Pretrial Practice Manual* "encourages trial courts to use risk assessment results and other relevant information about arrestees"—including the probable cause affidavit, victim statement(s), domestic violence screeners, substance abuse screeners, mental health screeners, and criminal history—to determine whether the defendant poses a "danger to self or others in the community." Indiana EBDM Pretrial Work Group, *Pretrial Practices Manual* 62, 63 (2018).

To be sure, Criminal Rule 26 strongly **encourages** pretrial release for many accused individuals awaiting trial. This is especially true for persons charged with only non-violent and low-level offenses. And if a defendant presents no "substantial risk of flight or danger" to others, the court **must** consider releasing the defendant "without money bail or surety," subject to any reasonable conditions deemed appropriate by the court. I.C. § 35-33-8-3.8(a); I.C. § 35-33-8-3.2(a). Releasing this category of defendants under suitable nonfinancial conditions—such as electronic monitoring, community supervision, no-contact orders, and restrictions on activities or place of residence—will often prove sufficient to ensure the defendant's appearance at trial and to ensure community safety. But when a person poses a risk of flight or a risk to public safety, Criminal Rule 26 in no way hinders a trial court's ability to set bond in an amount sufficient to curtail such risks.

II. Clear and convincing evidence supports the trial court's bail determination.

DeWees argues that the trial court abused its discretion by denying her motion for reduction of bail or conditional pretrial release. She insists that the State presented no "objective evidence to support a finding that [she] posed a threat to Mullins or anyone else in the community." Resp. to Trans. at 11. A victim's statement of fear, standing alone, she contends,

falls short of the clear-and-convincing standard necessary for the evidence to support such a finding. *Id.* at 11–12.

The State counters that, while the trial court got it right, the Court of Appeals ignored the standard of review by impermissibly reweighing Mullins' testimony. Pet. to Trans. at 9–10. What's more, the State contends, the panel mistakenly "concluded that there was no evidence DeWees posed a risk to the physical safety of the victim or that she was a flight risk." *Id.* at 10.

While we consider this a close case, our standard of review prompts us to agree with the State.

In reaching its decision, the trial court acknowledged DeWees's "strong" family ties, her lack of criminal record, and no evidence of past bad character. App. Vol. II, p. 50. The court also cited the "extremely serious" nature of the offense; DeWees's IRAS score and unemployment status; and her potential distance from the community, depending on living arrangements. *Id.* at 50. These factors, the trial court ultimately concluded, prevented it from saying that DeWees "is not a substantial flight risk" or "that she is not a danger to others." In specifically finding that DeWees posed a risk of physical safety to Mullins, the court relied "[p]rimarily" on his testimony that he lived in fear. *Id.* at 51.

We find sufficient record evidence to support the trial court's ruling.

A. Evidence, including DeWees's involvement in an armed home invasion involving gunfire and injury to a person, supports the trial court's determination that DeWees posed a risk to the physical safety of Mullins.

While armed with a deadly weapon, DeWees and her three accomplices drove to Mullins' home under the cloak of darkness. When they arrived at their destination, they kicked open the door, entered the home with the intent to steal "weed and cash," and exchanged gunfire with their victim when he awoke from the intrusion. These actions, completely

unprovoked, implanted in Mullins a reasonable fear for his physical safety.

To be sure, we agree with DeWees that a victim's statement of fear, standing alone, falls short of the clear-and-convincing standard necessary for the evidence to support a finding that she posed a risk of physical danger to others. But we understand the emphasis placed on Mullins' fear by the trial court here simply as a mischaracterization of the evidence presented to support the risk of harm posed by DeWees. In any case, as our analysis below indicates, the trial court did **not** rely exclusively on Mullins' statement of fear to support its determination.

The trial court also relied on the "extremely serious" nature of the offense: level-2 felony aiding, inducing, or causing burglary with a deadly weapon. App. Vol. II, p. 50. *See* I.C. § 35-50-2-4.5. DeWees attempts to shield herself from the gravity of this charge. Rather than directly participating in the crime, she insists that she acted only as the getaway driver, "never possessed a weapon, never entered the residence," and fully cooperated when detained by law enforcement. Appellant's Br. at 15. We find this argument unpersuasive. If convicted, DeWees's actions make her just as responsible for the offense as any of her accomplices. *See* I.C. § 35-41-2-4 ("A person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense."). And even if she remained in the car while the crime took place, she knew that Mullins faced potential harm—if not death—when her accomplices exited the vehicle and entered the home armed with a shotgun.

Finally, in its written order, the court specifically noted the proximity (less than thirty miles) from DeWees's hometown of Fillmore to Mullins' residence in Brazil. This factor reasonably increases the likelihood that DeWees, despite her assurance of complying with the no-contact order, could inflict harm on Mullins to prevent him from testifying.

B. Evidence also supports the trial court's determination that DeWees posed a flight risk.

The evidence likewise supports the trial court's determination that DeWees posed a flight risk.

While noting that DeWees had "no criminal record, and therefore no failures to appear," the trial court pointed to the "nature and gravity of the offense charged." App. Vol. II, p. 50. The "possible penalty which might be imposed by reason of the offense charged," we've emphasized, is a "primary fact to be considered in determining an amount which would assure the accused's presence in court." *Hobbs v. Lindsey*, 240 Ind. 74, 79, 162 N.E.2d 85, 88 (1959). *See also* I.C. § 35-33-8-4(b)(7) (directing trial court, when setting bail, to consider "the nature and gravity of the offense and the potential penalty faced, insofar as these factors are relevant to the risk of nonappearance"). The crime DeWees allegedly committed carries a maximum penalty of thirty years. *See* I.C. § 35-50-2-4.5. Such a potentially lengthy sentence "tends to increase the risk that [the defendant] will fail to appear for trial" and this "cuts substantially against [the] argument that the trial court abused its discretion" by denying a motion to reduce bail. *See Sneed v. State*, 946 N.E.2d 1255, 1258–59 (Ind. Ct. App. 2011) (citing I.C. § 35-33-8-4(b)(7)).

Finally, we note that the trial court relied on DeWees's IRAS score and her unemployment status, accepting her designation as a "moderate" risk of re-arrest and failure to appear at future court hearings. App. Vol. II, pp. 18, 50. DeWees challenges the court's reliance on this score, arguing that she was a "full-time high school student." Resp. to Trans. at 8. The State, to its credit, acknowledged at oral argument that, according to one IRAS scoring guide, "a full-time student should be scored a zero on the unemployment question." Oral Argument at 18:02–19:38. *See* JRAC Bail Report at 40 (directing pretrial-service assessors to assign a zero if the detainee is "currently attending a school full time (or part-time schooling co-occurring with a part-time job)").

But even if the assessor improperly assigned DeWees two points for her unemployment, we've emphasized before that, while "highly useful and

important for trial courts to consider as a broad statistical tool," an evidence-based assessment like IRAS is no substitute for a judicial determination of bail but is merely supplemental to all other evidence informing the trial court's decision. *Malenchik*, 928 N.E.2d at 572. In other words, evidence-based assessment tools "do not replace but may inform a trial court's sentencing determinations." *Id.* at 566.

In sum, the evidence, taken together, supports the trial court's conclusion that DeWees posed a "substantial flight risk" and a "danger to others," including Mullins. *See* App. Vol. II, p. 51. What's more, the trial court's decision—factoring in the applicable statutory factors, setting forth its reasons in writing, and issued after a timely hearing at which DeWees, represented by counsel, testified on her own behalf—rested on appropriate procedural safeguards necessary to protect the rights of the accused.

To be sure, several factors—DeWees's strong family ties, her lack of criminal record, and no evidence of past bad character—certainly militate **against** denying DeWees's motion. But when, like here, the trial court followed the appropriate procedural safeguards and the evidence provides sufficient support for its ruling, we refrain from interfering with the trial court's discretion—even when, like here, we consider it a close call.

III. We urge prudence and restraint when deviating from Appellate Rule 65(E).

Finally, we address the implications of issuing a precedential opinion effective immediately and the need for appellate courts to exercise prudence and restraint when deviating from Appellate Rule 65(E).

When an appellate court issues an opinion or memorandum decision, the court clerk "shall serve uncertified copies" to the trial court and to all counsel of record and unrepresented parties. App. R. 65(E). Neither the trial court nor the parties may act in reliance on an uncertified opinion or memorandum decision. *Id.* And unless all parties seek earlier certification, the court clerk "shall certify the opinion or memorandum decision to the

trial court" only when "the time for all Petitions for Rehearing, Transfer, or Review has expired." *Id.*

An appellate court may, however, deviate from these rules, whether on its own motion or the motion of a party. App. R. 1.

Our Appellate Rules, as with all rules of procedure, "were adopted in order to simplify and streamline prevailing procedural practice, and to secure the just, speedy and inexpensive determination of every action." *S. Indiana Rural Elec. Co-op., Inc. v. Civ. City of Tell City, Perry Cty.*, 179 Ind. App. 217, 223, 384 N.E.2d 1145, 1149 (1979) (internal quotation marks omitted). Indeed, the purpose of these rules "was to liberalize the practice in the trial courts and courts of appeal and to reduce technical burdens, not increase them." *Perry v. Baron*, 152 Ind. App. 29, 34, 281 N.E.2d 544, 547 (1972).

With these goals in mind, we've recognized that a blind or mechanical application of the rules threatens to elevate these technicalities to "the position of being the ends instead of the means." *Am. States Ins. Co. v. State ex rel. Jennings*, 258 Ind. 637, 640, 283 N.E.2d 529, 531 (1972). But the opposite is likewise true, as frequent deviation from the rules presents the risk of "defeat[ing] justice." *See id.* This is especially true in developing areas of the law like we're presented with today. Issuing an opinion "effective immediately," and before the parties had the opportunity to seek rehearing, potentially deprived this Court of further briefing on the merits.

To be sure, a trial court's bail decision implicates an individual's fundamental liberty interest. *United States v. Salerno*, 481 U.S. 739, 755 (1987). And deviation from Appellate Rule 65(E) may very well be justified in the exceptional circumstance of pretrial detention. *Cf. Williams v. State*, 791 N.E.2d 193, 201 (Ind. 2003) (deviating from appellate rule calling for a rehearing petition in a death-penalty case). Absent such an exceptional circumstance, the "best practice is to comply with the rules in all instances," George T. Patton, Jr., 24 Indiana Practice, § 3.1 at 53 (3d ed. 2001), deviating from the procedural technicalities only to avoid defeating the "ultimate end of orderly and speedy justice," *Jennings*, 258 Ind. at 640, 283 N.E.2d at 531.

Conclusion

Because the State met its burden of proof in showing that DeWees posed a flight risk and a risk to Mullins' physical safety, and because the trial court applied the appropriate procedural safeguards, we affirm its order denying DeWees's motion for bond reduction or conditional pretrial release. That said, we acknowledge the trial court (by order of the Court of Appeals) ordered DeWees "released to pretrial electronic home detention with GPS monitoring" on the condition that she "strictly obey all rules of Clay County Community Corrections." App. Vol. II, p. 58. And neither our grant of transfer nor our affirmance of the trial court's judgment changes DeWees's status. But should either party seek modification of DeWees's conditional release, we remand with instructions for the trial court to conduct a hearing consistent with this opinion.

Rush, C.J., and David, Massa, and Slaughter, JJ., concur.

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