2024 IL App (4th) 230574-U

NO. 4-23-0574

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
October 7, 2024
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
ALEX DEVERICK,	)	No. 20CF264
Defendant-Appellant.	)	
	)	Honorable
	)	Robert M. Travers,
	)	Judge Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Cavanagh and Justice Lannerd concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, holding the trial court did not err in (1) keeping the defendant partially shackled during trial without a hearing on the matter when counsel invited and acquiesced to the procedure used, (2) denying defendant's request for a self-defense jury instruction, and (3) declining to consider defendant's mental health as a mitigating factor during sentencing.

¶ 2 Following a jury trial, defendant, Alex Deverick, was found guilty of four counts of aggravated battery (720 ILCS 5/12-3.05(d)(4)(i) (West 2020)) and sentenced to four concurrent terms of eight years in prison. Defendant appeals, arguing the trial court erroneously (1) kept him shackled during trial without a hearing on the matter, (2) denied his request for a self-defense jury instruction, and (3) failed to consider his mental health as a mitigating factor during sentencing. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On October 2, 2020, defendant, an inmate at Pontiac Correctional Center, was charged with aggravated battery following a November 30, 2019, extraction from his cell by Department of Corrections (DOC) correctional officers after defendant became angry and refused to comply with the officers' instructions. In particular, the indictments alleged defendant knowingly made contact of an insulting or provoking nature with four correctional officers when he (1) bit Michael Oltman, (2) kicked Isaac Henderson, (3) struck Brent Sumner, and (4) struck Brandon Martinez. Before trial, defendant stated as part of his pre-trial discovery compliance that he intended to assert the affirmative defense of self-defense.

¶ 5 Before trial began, defense counsel requested "that my client's restraints be removed while in the presence of the jury." The following exchange then occurred:

"THE COURT: Has [defendant] been a problem at any prior hearing?

[DEFENSE COUNSEL]: Not that I'm aware of, Judge.

THE COURT: Let me ask the correctional officers, has he been a problem this morning?

CORRECTIONAL OFFICER: No, your Honor.

THE COURT: All right. If I remove his hand shackles, will that be a problem for you?

CORRECTIONAL OFFICERS: No, your Honor.

THE COURT: All right. Then I would note that we have three deputies here and two correctional officers. [Defendant] is a large man.

[Defense counsel], what about leg shackles?

[DEFENSE COUNSEL]: Your Honor, I guess my fear here is, if we hook him to the eyebolt down here, that the rattling and everything will, I mean, jurors

will know what that's all about. So, at minimum, if we could not have him attached to the eyebolt; but like I said, he has not been a problem, never, I've never felt threatened in his presence. So, I'd ask they be removed.

THE COURT: And Sergeant Durham?

SERGEANT DURHAM: No comment. I've got plenty of staff here.

THE COURT: All right. Then we'll remove the shackles from his hands; and as far as his leg shackles are concerned, you're indicating just as long as he's not attached to the eyebolt?

[DEFENSE COUNSEL]: Correct.

THE COURT: All right. Then we'll do that; he will not be attached to the eyebolt.

[Defendant], don't make any noise with your shackles on your legs please, and we'll move you around and make sure they don't see you in the shackles; but if there's a problem, then everything changes and we don't want that to happen, we want to get a fair trial for everybody.

All right. If you would please.

***

THE COURT: All right. I would note that the hand shackles have been removed.

* * *

THE COURT: All right. [Defense counsel], ready?

[DEFENSE COUNSEL]: We're ready, Judge."

¶ 6 After jury selection, before the jury was brought back to hear opening statements, the trial court asked defense counsel, "[A]re you satisfied with the accommodations we've made in relation to security or are you asking for further modifications?" Defense counsel replied, "No, I think we're fine, Judge."

¶ 7 During opening statements, the State asserted the evidence would show defendant fought the correctional officers and actively resisted complying with their orders. Defense counsel stated he believed the evidence would show defendant did not make contact of an insulting or provoking nature with any of the correctional officers.

¶ 8 At trial, Officer Bradley Staley testified he led a six-person emergency response team (ERT) at Pontiac Correctional Center. The ERT responded to "[a]nything that happens in cell houses or throughout the institution that is out of the realm of the normal officers' duties." In addition to Staley, the members of the ERT included Officers Oltman, Sumner, Henderson, Martinez, and an officer who operated a camera.

¶ 9 On November 30, 2019, the ERT responded to defendant's cell in the mental-health unit because defendant would not comply with orders to remove his arm from his cell's cuffing hatch, the area through which wrist restraints were applied. As a result, officers could not close the cuffing hatch. When the ERT arrived, no one could see inside the cell because defendant had blocked the cell's windows with something. As a result, officers could not perform a routine institutional count, which was done to verify the inmates' safety and establish they were still in their cells. Defendant had also placed his mattress through the cuffing hatch, continuing to prevent officers from closing it. Staley tried to talk to defendant but got no response.

¶ 10 The ERT members were equipped with helmets and face shields. Additionally, Martinez carried a baton, and Oltman carried a shield. Because he could not see into the cell, Staley

could not ascertain what defendant was doing. Staley gave defendant several orders, testifying that, "I told him to come to the front of the cell, cuff up, place his hands out and remove the blockage or extraction team and pepper spray would be used to remove him from the cell."

¶ 11 Staley testified the ERT was able to remove the mattress from the cuffing hatch. Then, after defendant ignored three direct orders to comply, the ERT deployed pepper spray through the hatch. After defendant still did not comply with orders to cuff up, the ERT forcefully entered his cell. When the ERT entered, defendant was "combative and throwing multiple closed-fist strikes to the face, heads and shields of the team." Defendant was also kicking toward Martinez, striking Martinez in the chest with the kicks. Staley observed defendant bite Oltman. The ERT had to use pepper spray multiple times because defendant remained combative.

¶ 12 The officers directed defendant to an escort chair in the hallway outside his cell, which restrains the limbs of individuals who are acting unpredictably or combatively. While Officers Oltman and Henderson were attempting to secure defendant's legs in restraints, defendant began kicking, striking Henderson in the groin. Staley testified use of force was always "the last go to." He stated, "We always try to do de-escalation and give them every chance to comply and cuff up or even in the middle of an altercation such as this, as soon as the use of force negates happenings, we will stop immediately." He added the incident with defendant "was a lengthy time of combativeness of an individual."

¶ 13 Marinez testified he was the "baton man" whose job was to stand at the door to make sure defendant stayed in the cell. Martinez described defendant as "actively combative" during the incident. Martinez testified that he was struck in the chest by defendant's foot during the incident.

¶ 14 Sumner testified that defendant's fists made contact with his and Oltman's facial regions. In response, the team "delivered closed-fist strikes to large muscle groups," such as the leg or arm, on defendant. Sumner explained, "[W]e're trained to do that because they're less vital areas and in order for us to [still] gain positive control on him."

¶ 15 The State presented video of the altercation. The video shows Staley giving multiple orders for defendant to clear the cuffing hatch. Defendant was specifically warned each time that if he failed to do so, the ERT would extract him from the cell. The video shows defendant struggling during the extraction, during which the ERT repeatedly told defendant to quit fighting, cuff up, and to give up his hands. When the ERT ordered defendant to roll over, he did not do so. During the extraction, members of the ERT could be heard telling defendant to stop biting. After defendant was removed to the hallway, a shield was placed in front of him. Defendant head butted the shield and kicked, at which point the shield was pressed against him while he was further restrained. The video shows an ERT member applying pressure to a point on defendant's neck as other members of the ERT finished restraining him.

¶ 16 Through the incident, defendant made various loud vocalizations, many of which are difficult to discern in the video. However, he stated or yelled multiple times things to the effect of "fighting," "that was fun," "do dirty s*** to you," "it's gonna be all night", "depends how long you want to go," and "I can go all day." He also called the ERT "b***." Defendant continued vocalizing such things and continued to be verbally aggressive even once fully restrained.

¶ 17 The defense called as witnesses several inmates who were in cells near defendant's cell at the time of the incident. Marlin Minter testified that he could not see inside defendant's cell but could hear what was happening. Minter testified that, based on his experience of being

extracted from a cell before, what he heard, and what defendant said when the incident occurred, it sounded like defendant was being assaulted.

¶ 18 Martino Smith testified that, prior to the incident, he could hear defendant saying "something about [an] obituary or something like that being ripped or stolen." According to Smith, as the ERT arrived at the scene, several members were saying, "do you want to fight" and "basically encourag[ing] him to fight." As the incident occurred, Smith used a mirror and could see a "stick swing" inside defendant's cell.

¶ 19 Latayuss Curry testified defendant had been taken from his cell earlier in the day, and while he was gone, officers "proceeded with a shakedown in the cell." When defendant was escorted back to his cell, "he was missing items." Curry testified that, before the entire ERT arrived, correctional officers were "trying to agitate, amp the situation up" and "trying to get him to fight" the ERT. Curry could not see into defendant's cell, but he could hear what was going on. After the ERT removed defendant from the cell and put him in a chair, Curry could see defendant in the hallway. Curry believed the ERT used excessive force against defendant because they were "poking his eyes, pulling at his hair, stuff like that *** while he's already contained and already secured." Curry did not see defendant kick an officer. Curry believed that correctional officers wanted to fight with inmates.

¶ 20 Demondra Burnett also testified defendant left his cell for part of the day and returned to find that officers had gone through his items. Defendant requested to talk to a lieutenant and "had his arm in the chuckhole to try to get the lieutenant on location." Burnett could not see that but could hear what was going on. No lieutenant came, but the ERT was called. Burnett testified Martinez began antagonizing defendant before the cell extraction. Once defendant was taken into the hallway, the ERT put a shield on top of defendant.

¶ 21 Ralph Kings similarly testified that, before the cell extraction, defendant's "cell was shook down" and personal items were destroyed. Kings stated defendant "was trying to speak to somebody about trying to retrieve the items back or find out why was they destroyed." Kings could see into the hallway and could see defendant's hand extending through the chuckhole in the door. He could also hear the door being operated. Kings testified he could hear the officers talking to defendant and "playing with the locks." He further stated, "[Y]ou know how they click the lock and slide the thing to make it like they going to slam your hand in the chuckhole."

¶ 22 Kings testified defendant's problem was not getting resolved and the ERT was "agitating" defendant. When the cell extraction occurred, he could not see inside defendant's cell. He stated, however, that he knew what happened in the cell because defendant "was voicing everything" as it occurred, which was a practice inmates did "so it can be on camera and on audio in case they kill you in that cell." When Kings could see defendant in the hallway, he did not see defendant kick or strike an officer.

¶ 23 Following Kings's testimony, the trial court recessed, during which time defense counsel informed the court that defendant intended to testify. The following exchange then occurred:

> THE COURT: All right. We need to present the defendant to the jury; so, you want him in the box before the jury is called in?
>
> [DEFENSE COUNSEL]: Yes, Judge.
>
> THE COURT: All right. And you'll be able to block their view of his manacles on his legs?
>
> SERGEANT DURHAM: As long as his feet stay under the bench, they can't see it.

THE COURT: Of course he won't be able to stand either.

SERGEANT DURHAM: Can you swear him in before they get here?

THE COURT: No, I'd swear him in while they're here.

SERGEANT DURHAM: As long as [the jurors are] all seated, I don't think they can because he'll be there.

THE COURT: All right. Well, let's try it."

After seating defendant at the witness stand and ensuring that the shackles would make no noise, the court asked defense counsel if he had any additional suggestions. Counsel responded, "No, I think Officer Durham makes a heck of a partition." When asked if the defense had anything further, counsel responded, "No."

¶ 24 Defendant testified that before the incident at his cell, he was taken to speak with a mental-health professional for a "crisis call." When he was returned to his cell, he found it was torn up. He stated he had lost a family member, and correctional officers tore up the obituary, put his toothbrush in the toilet bowl, and took hygiene products out of the cell. Defendant tried to address the situation by putting his arm out through the chuckhole so that a lieutenant would be called. Defendant intended to leave his arm there until a lieutenant came.

¶ 25 Defendant described the correctional officers who were there at that time as sarcastic. Defendant said a sergeant tried to slam his arm in the chuckhole, which hurt. Defendant said he never threatened the officers. Defendant put his mattress in the chuckhole to keep it open because he got tired of standing at the door.

¶ 26 Defendant testified that, when the ERT arrived, Martinez tried to antagonize him. According to defendant, the ERT would have been able to close the chuckhole. Defendant said he had never been extracted before, but he had seen it happen to others, so he knew what was going

to happen. His thoughts were racing, and he knew the ERT would use pepper spray. Defendant testified after the spray was used, the ERT entered and the "shield man rushed me." Defendant said he put his hands up and was pushed onto the bed. Defendant stated two members of the ERT began punching him, and he was moving his hands trying to break free. However, he denied ever hitting anyone.

¶ 27 Defendant testified members of the ERT also choked him and pulled his hair. When asked to describe how the ERT was choking him, he said, "All type of chokes. They know pressure points, forearm chokes in your neck, pulling your hair, all type of stuff." Defendant stated he had also been shot eight or nine times with pepper spray. He stated,

> "So, like, it was to a point like rage is building up in me, I was just trying to break loose; that's why my feet started kicking, you know what I'm saying, I was trying to get loose, like just get off me, like, that's human nature instance. Like, who's just going to sit there and let somebody just pull their hair and choke them, you know, that's human nature."

Defendant further stated,

> "So, I'm like, it was just rage, get off me, like, that was my kind, kind of my reaction, like, get off me. That's the only part of my body that was free was my legs; so, I'm trying to break free, that's why it looked like I was kicking."

Defendant denied trying to kick anyone and said he never made contact with anyone with his legs or feet. Defendant testified his arms were underneath him such that he could not give them up to be cuffed and described the ERT as "still *** applying excessive force." However, defendant also stated, "One point in time I was on the bed; so, they were trying to get my arms. So, I was so mad they hit me, I was refusing to give my arms to them, refusing to let them cuff me."

¶ 28 Defendant was eventually shackled. When defendant was placed in the chair in the hallway, he was restrained with straps around his shoulders, stomach, and legs. There was still pepper spray in his eyes when he was placed in the chair. Looking at the video, defendant acknowledged he moved his foot when in the chair in the hallway. He stated it was an "agitated move," but he said he never kicked anyone or made contact with anyone. Defendant further explained:

> "I didn't make contact with him at all, you know what I'm saying; it was an agitated move, because one guy, if you go back to the tape, one guy, I'm like, who was this pressing on my neck. He was pressing on my pressure points, like, I'm cuffed up and my neck this way; an officer got his fingers in my next neck like this, like trying to agitate me some more. So, I'm like, man, why did, the other tape that's showing, why are you pressing my pressure point, stop putting it on my neck, who just pressed my pressure point? So, that agitated me, you know what I'm saying, like, I'm already restrained, you right there sticking your hand in my—I can't do nothing. I'm cuffed up, I'm not spitting on you all, none of that, so why are you sticking your finger in my neck, like—"

Defendant admitted his legs were not yet strapped to the chair at that time. He also stated, "They say I kicked, I supposedly kicked Martinez." However, he also stated there was no way he could have kicked anyone with the shackles that were on his legs. After defendant was restrained, a shield was put over him, which defendant stated was being pressed toward his face.

¶ 29 Defendant repeatedly denied ever hitting or trying to hit anyone. He also denied biting Oltman. He testified he was missing four of his top teeth due to a basketball injury and his bottom teeth were sensitive. He said he was unable to eat "hard stuff" like apples or candy. Thus,

defendant said, "So, for me to try to grab onto, like, your arm would have to be in my mouth and I'd have to try to get you on my sides, you know."

¶ 30 At the jury instruction conference, when discussing the State's offer of Illinois Pattern Jury Instruction, Criminal, No. 11.15 (approved Apr. 26, 2016) (hereinafter IPI Criminal 11.15), defining aggravated battery, the following colloquy occurred:

> [DEFENSE COUNSEL]: The defendant filed an affirmative defense of self-defense; and per the instruction and I believe it's [IPI Criminal] 24-25.07 I believe, the phrase, without—get to it here—the phrase, without legal justification, should be inserted.
>
> [THE COURT]: Do you mean imminent use of unlawful force?
>
> [DEFENSE COUNSEL]: No. Knowingly, without legal justification, and by any means makes physical contact.

¶ 31 Although counsel cited to IPI Criminal No. 24-25.07, the record indicates he meant IPI Criminal No. 24-25.06, which provides in part, "A person is justified in the use of force when and to the extent that he reasonably believes that such conduct is necessary to defend [(himself) (another)] against the imminent use of unlawful force." Counsel also separately offered that instruction. The State argued defendant completely denied making any contact with anyone and thus was not entitled to a self-defense instruction. Counsel replied the video showed defendant's foot coming up and the State would argue that showed defendant kicking. Counsel also noted testimony that defendant raised his arms and legs during the incident to try to break free. The State responded those acts were already covered by the instruction requiring defendant to have knowingly made contact with the victims. The trial court gave the State's instruction over defense counsel's objection and did not give an instruction on self-defense.

¶ 32 The jury found defendant guilty. Defense counsel filed a motion for a new trial, alleging in part the trial court erred in denying defendant's request for jury instructions concerning self-defense. Counsel argued defendant was entitled to a self-defense instruction when there was evidence he fought back when the ERT used excessive force. The State argued defendant was not entitled to the instruction when he was the aggressor and resisted complying with orders, which instigated the use of force. The court denied the motion.

¶ 33 At sentencing, defense counsel presented a psychiatric evaluation performed by Doctor Terry Killian concerning defendant's mental health status. Killian noted defendant's social background, which included extensive mental, physical, and sexual abuse from the ages of 4 to 11. Killian diagnosed defendant with posttraumatic stress disorder, polysubstance dependence, and personality disorder not otherwise specified. Killian also identified a possible psychotic disorder and probable mood disorder. Killian opined that, at the time of the incident with the ERT, defendant was not suffering from the type or severity of psychiatric illness which would have rendered him incapable of appreciating the criminality of his conduct. In a section entitled "Mitigation," Killian noted defendant had a terribly traumatic childhood that was the cause of much of his emotional and behavioral problems.

¶ 34 Defense counsel asked the trial court to consider defendant's mental-health status in mitigation, noting defendant was on medication and attempting to control his behavior. Defendant gave a statement in allocution during which he noted his mental-health conditions, stated he was in a behavior management program, and expressed remorse.

¶ 35 The trial court stated it "considered the statutory matters of mitigation and aggravation." The court then found no factors in mitigation. The court stated:

> "I note from Dr. Killian's report the reference to—excuse me—the diagnosis of post-traumatic stress disorder, polysubstance dependent, probable mood disorder, and personality disorder. They do not rise to the level of factors in mitigation, and I don't want to give this particular Defendant an opportunity to use that on a continuing basis every time a fight breaks out in the department of corrections."

The court noted multiple factors in aggravation, including defendant's extensive criminal history, and sentenced him to concurrent eight-year terms of incarceration.

¶ 36 This appeal followed.

¶ 37 II. ANALYSIS

¶ 38 On appeal, defendant contends the trial court erroneously (1) kept him shackled during trial without a hearing on the matter, (2) denied his request for a self-defense jury instruction, and (3) failed to consider his mental health as a mitigating factor during sentencing.

¶ 39 A. Shackling

¶ 40 Defendant first contends the trial court erred when it allowed him to be shackled during trial without first conducting a hearing in accordance with *People v. Boose*, 66 Ill. 2d 261 (1977), and Illinois Supreme Court Rule 430 (eff. July 1, 2010). Defendant concedes he failed to object to the lack of a hearing or raise the matter in a posttrial motion. However, he argues plain error applies.

¶ 41 A defendant's failure to object at trial and to raise an issue in a posttrial motion operates as a forfeiture of the right to raise the issue as a ground for reversal on review. *People v. Harvey*, 211 Ill. 2d 368, 385 (2004). The plain-error rule is a narrow and limited exception and is applied to ameliorate the harshness of strict application of the forfeiture rule. *Id*. Under the

plain-error rule, a reviewing court may consider a forfeited claim when "(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). "In plain-error review, the burden of persuasion rests with the defendant." *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). Before considering whether the plain-error exception applies, we must first determine whether any error occurred. *People v. Glasper*, 234 Ill. 2d 173, 203-04 (2009).

¶ 42 It is well established physical restraints in criminal proceedings may be used only upon a showing of manifest necessity. *In re Benny M.*, 2017 IL 120133, ¶ 27 (citing *People v. Allen*, 222 Ill. 2d 340, 347 (2006), and *Boose*, 66 Ill. 2d at 265-66). "Physical restraints should be avoided whenever possible because they tend to prejudice the jury against the defendant, hinder the defendant's ability to assist counsel, and offend the dignity of the judicial process." *People v. Reese*, 2017 IL 120011, ¶ 46. However, "[a] defendant may be shackled when there is reason to believe that he or she may try to escape, that he or she may pose a threat to the safety of people in the courtroom, or when necessary to maintain order during the trial." *Id.*

¶ 43 In *Boose*, our supreme court set forth factors to be considered in deciding whether there is a manifest need to restrain a defendant at trial: (1) the seriousness of the offense; (2) the defendant's temperament and character; (3) the defendant's age and physical attributes; (4) the defendant's past criminal record, particularly whether that record contains crimes of violence; (5) any past escapes, attempted escapes, or evidence of a present plan of escape by the defendant; (6) any threats by the defendant to harm others, create a disturbance, or be self-destructive; (7) the

risk of mob violence or of attempted revenge by others; (8) the possibility of attempts to rescue the defendant by others; (9) the size and mood of the audience; and (10) the nature and physical security of the courtroom and the availability of alternate arrangements. *Boose*, 66 Ill. 2d at 266-67. The principles from *Boose* have been codified in Rule 430. "The record should clearly disclose the reason underlying the trial court's decision for the shackling and show that the defendant's attorney was given an opportunity to oppose this decision." *People v. Harding*, 2012 IL App (2d) 101011, ¶ 14 (citing *Boose*, 66 Ill. 2d at 266-67).

¶ 44 Here, we note the State did not offer any reason for the shackling. While the trial court inquired with officers in the courtroom whether there were concerns with keeping defendant shackled, it did not hold a specific hearing on the matter to determine whether shackling was appropriate because of a reason to believe defendant might try to escape, he posed a threat to the safety of people in the courtroom, or it was necessary to maintain order during the trial. Nor did the court consider all of the *Boose* factors. In failing to do so, the court erred.

¶ 45 The trial court was required to conduct a hearing where defendant would have the opportunity to argue against the restraints. Following any argument, the court was required to make specific findings related to the factors provided by *Boose* and Rule 430 and then balance the need for restraints against defendant's right to be free from restraint. Only after this process occurred should the court have reached a decision concerning whether to restrain defendant. The court's failure to follow the procedure established in *Boose* and later codified in Rule 430 resulted in a violation of defendant's due process rights. See *People v. Bell*, 2020 IL App (4th) 170804, ¶¶ 122-124. Here, however, not only did defendant fail to object to the lack of a hearing, he invited the error.

¶ 46 "[P]lain-error review is forfeited when the defendant invites the error." *Harding*, 2012 IL App (2d) 101011, ¶ 17. When a party "procures, invites, or acquiesces" to a trial court's ruling, even if the ruling is improper, he cannot contest the ruling on appeal. *People v. Bush*, 214 Ill. 2d 318, 332 (2005). "Simply stated, a party cannot complain of error which that party induced the court to make or to which that party consented." *In re Detention of Swope*, 213 Ill. 2d 210, 217, (2004).

¶ 47 A defendant's invitation or agreement to a procedure later challenged on appeal goes beyond mere waiver and is sometimes referred to as one of estoppel. *Harding*, 2012 IL App (2d) 101011, ¶ 17. "To allow a defendant to use the exact ruling or action procured in the trial court as a vehicle for reversal on appeal would offend notions of fair play and encourage defendants to become duplicitous." *Id*. It also would deprive the State of the opportunity to cure the alleged defect. *Id*. "Thus, these principles also apply to preclude plain-error analysis." *Id*. Where a defendant has invited error, our supreme court has declined to address any related plain-error claim. *Id*. (citing *People v. Patrick*, 233 Ill. 2d 62, 76 (2009)).

¶ 48 In *People v. Woods*, 373 Ill. App. 3d 171 (2007), the Third District applied the invited-error rule in part in a case involving shackling. There, on two occasions, defense counsel asked that the defendant's handcuffs be removed so the defendant could take notes during trial. At the time of the first request, defense counsel suggested that doing so was permissible because the defendant's legs would remain shackled, and the trial court allowed the handcuffs to be removed. On the second occasion, counsel asked that the defendant have one or both handcuffs removed, and the court allowed one. The Third District held that any error regarding the handcuffs was invited, but the court then addressed whether it was plain error for the trial court to fail to remove the leg shackles. *Id*. at 175-76.

¶ 49 In *Harding*, the Second District similarly applied the invited error rule. There, defense counsel specifically stated the defendant could keep leg shackles on but asked that hand shackles be removed so the defendant could "participate meaningfully in the trial." *Harding*, 2012 IL App (2d) 101011, ¶ 20. "Counsel at some point discussed the matter with the bailiff, who stated no objection to proceeding with one of [the] defendant's hands freed." *Id.* The trial court agreed to allow one hand to be freed, and the record was silent as to whether the shackle on the other hand was physically attached to anything. The *Harding* court noted counsel specifically asked that defendant be freed in a way that would allow him to participate meaningfully in the trial and he was granted that request. The court held that, by not asking for more, such as the removal of all shackles, counsel made a specifically limited request to remove enough items so that defendant could meaningfully participate in the trial. *Id*.

¶ 50 The *Harding* court noted one of the key reasons for a *Boose* hearing was to allow defense counsel to oppose the defendant's appearance in restraints. The court held that, by specifically raising the issue in a limited form, counsel invited the trial court to address the matter in that same limited form. Because counsel made a limited request and that request was granted without further objection, the defendant could not contend on appeal it was error for the trial court to grant the request without going further. *Id*. ¶ 21. Because the error was invited, the court did not address plain error. *Id*. ¶ 22.

¶ 51 Here, counsel asked for the shackles to be removed and suggested that, at a minimum, the leg shackles should not be attached to the eyebolt. We note counsel nevertheless also stated regarding the leg shackles, "I'd ask they be removed." But then the trial court asked, "[A]s far as his leg shackles are concerned, you're indicating just as long as he's not attached to the eyebolt?" Counsel replied, "Correct." Then, after jury selection, the court asked defense

counsel, "[A]re you satisfied with the accommodations we've made in relation to security or are you asking for further modifications?" Defense counsel replied, "No, I think we're fine, Judge." Later, when defendant testified, counsel not only did not object to the procedure used, he agreed with it. The court asked defense counsel if he had any additional suggestions and counsel responded, "No, I think Officer Durham makes a heck of a partition." When asked if the defense had anything further, counsel responded, "No."

¶ 52 Thus, here, it was counsel who suggested that "at minimum," defendant should not be attached to the eyebolt. Counsel then explicitly agreed to the modifications that were made and stated he was not asking for further modifications. As such, counsel's actions were more than a mere failure to object. Instead, counsel participated in suggesting and agreeing to the procedure that was used. In doing so, counsel invited the trial court to proceed in the manner that occurred and acquiesced and consented to the procedures used without a hearing. Accordingly, we find defendant invited the error and plain error does not apply.

¶ 53 While we find defendant invited the error, we pause to remind the trial court of the importance of properly addressing the shackling of defendants and making the necessary factual findings. "The presumption of innocence is central to our administration of criminal justice. In the absence of exceptional circumstances, an accused has the right to stand trial 'with the appearance, dignity, and self-respect of a free and innocent man.' " *In re Staley*, 67 Ill. 2d 33, 37 (1977) (quoting *Eaddy v. People*, 174 P.2d 717, 719 (Colo. 1946)). "It jeopardizes the presumption's value and protection and demeans our justice for an accused without clear cause to be required to stand in a courtroom in manacles or other restraints while he is being judged." *Id*. See also *People v. Luna*, 2023 IL App (4th) 230024-U, ¶¶ 54-73 (Steigmann, J. specially concurring) (noting an unusually large number of cases involving shackling in Livingston County).

¶ 54 B. Self-Defense Instruction

¶ 55 Defendant next contends the trial court erred in denying his requests for a self-defense instruction. He argues there was evidence he acted to defend himself from the ERT's excessive use of force. The State argues defendant was not entitled to the instruction when (1) there was insufficient evidence the ERT used excessive force and (2) defendant denied ever making contact with any of the officers.

¶ 56 Under the Criminal Code of 2012 (Criminal Code), "A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force." 720 ILCS 5/7-1(a) (West 2020). "Self-defense is an affirmative defense, and once a defendant raises it, the State has the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense, in addition to proving the elements of the charged offense." *People v. Lee*, 213 Ill. 2d 218, 224 (2004).

¶ 57 "The elements of self-defense are: (1) that unlawful force was threatened against a person; (2) that the person threatened was not the aggressor; (3) that the danger of harm was imminent; (4) that the use of force was necessary; (5) that the person threatened actually and subjectively believed a danger existed that required the use of the force applied; and (6) the beliefs of the person threatened were objectively reasonable." *Lee*, 213 Ill. 2d at 225.

¶ 58 A criminal defendant is entitled to a self-defense jury instruction where any credible evidence whatsoever supports such a defense, no matter how slight. *People v. Lewis*, 2015 IL App (1st) 122411, ¶ 56. When the trial court, after reviewing all the evidence, determines there is insufficient evidence to justify the giving of a jury instruction, the proper standard of review of that decision is for an abuse of discretion. *People v. Vesey*, 2024 IL App (4th) 230401, ¶ 23 (citing

People v. McDonald, 2016 IL 118882, ¶ 42). Accordingly, we will reverse the trial court's determination only "where the trial court's decision is arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it." (Internal quotation marks omitted.) *Id*. When reviewing the trial court's decision for an abuse of discretion, we look to the criteria on which the trial court should rely. *Id*.

¶ 59 Section 3-6-4(b) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/3-6-4(b) (West 2020)) provides that if a committed person injures or attempts to injure in a violent manner a correctional officer or damages or attempts to damage any building or its appurtenances, or disobeys or resists any lawful command, the correctional officers shall use all suitable means to defend themselves, to enforce the observance of discipline, to secure the offender, and prevent such attempted violence.

¶ 60 Generally, an inmate may not use force to resist a DOC officer. 720 ILCS 5/31-1 (West 2020). An exception to this rule is made when the officer uses excessive force and the defendant acted out of fear for his safety. See *People v. Wicks*, 355 Ill. App. 3d 760, 764 (2005). Thus, for a defendant to be entitled to a self-defense instruction there first must be evidence of excessive force. See *People v. Montgomery*, 176 Ill. App. 3d 367, 374-75 (1988); *People v. Athey*, 43 Ill. App. 3d 261, 265 (1976). Then, if such force is found, the trial court must next determine whether the trial record contains sufficient evidence of self-defense, as governed by a six-element test established by the supreme court for evaluating claims. See *Vesey*, 2024 IL App (4th) 230401, ¶ 28.

¶ 61 A defendant's ability to claim self-defense arises only after officers use excessive force and may be inapplicable where a defendant resisted officers, requiring the officers to use force. For example, in *Wicks*, a resisting arrest case, the trial court refused the defendant's request

for a self-defense instruction, finding the evidence showed the defendant refused from the outset to cooperate with police. *Wicks*, 355 Ill. App. 3d at 764. There, police officers asked the defendant to remove his hands from his pockets, fearing he had a weapon. When the defendant refused, the officers tried to physically remove the defendant's hands from his pockets by pulling on his arms. When that did not work, they told the defendant he would be sprayed with pepper spray if he did not comply. Finally, an officer struck the defendant to get him to comply with the command to remove his hands from his pockets. *Id.* at 762-63. The Third District found that, given the threat that the defendant may have had a weapon, the progressive actions by the officers were not an excessive use of force. The officers were entitled to use the force required to protect themselves and complete the arrest. Thus, because the evidence did not show the officers used excessive force, the defendant's right of self-defense was not triggered, and the trial court did not err when it refused to give a self-defense instruction. *Id*. at 764.

¶ 62 In *People v. Haynes*, 408 Ill. App. 3d 684 (2011), the First District addressed *Wicks* and held a self-defense instruction is inappropriate where a defendant resisted arrest and then officers used force to effectuate the arrest. There, the defendant knew she was being placed under arrest, but refused to comply with police commands to place her hands behind her back because the officers would not accommodate her request to be cuffed in the front of her body. In response, the officers resorted to using force. *Id*. at 691. The trial court refused to give a self-defense instruction, and the appellate court agreed, holding, "A self-defense instruction should only be given in a resisting arrest case when a defendant resists arrest after the officers resort to using excessive force. A self-defense instruction is inappropriate in this case where defendant resisted arrest and then officers used force to effectuate the arrest." *Id*.

¶ 63 The rule from *Haynes* has been adopted in additional appellate districts, See *People v. Ericson*, 2023 IL App (2d) 200657-U, ¶ 70; *People v. Ammons*, 2021 IL App (3d) 150743, ¶ 22. This court as well has noted that, under *Haynes*, after an officer uses excessive, unlawful force—but not before—the arrestee's own use of force is governed by the general self-defense statute. *Vesey*, 2024 IL App (4th) 230401, ¶ 27. It has been noted that, if a trial court was required to instruct on self-defense in cases in which a defendant is combative from the beginning of an encounter, before any force is used, the court would have to instruct the jury on self-defense in virtually every resisting-arrest case, inviting it to speculate the officer used excessive force. That in turn would all but eviscerate the rule that one may not resist an arrest. *People v. Jones*, 2015 IL App (2d) 130387, ¶ 26.

¶ 64 In comparison, in *People v. Sims*, 374 Ill. App. 3d 427 (2007), the defendant was prosecuted for battery and resisting arrest. The trial court rejected the defendant's request for a self-defense instruction based on the officers' use of excessive force. There, the evidence showed the defendant cooperated with the officers until, after being arrested and placed in a squad car, his girlfriend, holding their baby, approached the car. They got into an argument, and an officer either told her to back away or " 'nudged' " her. *Id*. at 429-30. When the defendant became upset, the officers removed him from the car, threw him face-first to the ground, placed a knee or elbow against his neck, and threw him into the back of the car, where an officer began hitting him in the ribs. He added he was again dragged out of the car and " 'roughed *** up' " by several officers. *Id*. at 430. The officers testified defendant was removed from the car to be cuffed, and defendant was flailing and kicking, resulting in defendant kicking an officer several times. Photographs admitted at trial showed the defendant's face was extremely swollen, his right eye was swollen completely shut, and he sustained numerous cuts, scrapes, and bruises. *Id*. at 435. The reviewing

court found that there was sufficient evidence of excessive force such that the defendant was entitled to his requested instruction on self-defense. *Id*.

¶ 65 On appeal, the *Sims* court distinguished *Wicks* and found the trial court incorrectly denied the defendant's request for a self-defense instruction because there was evidence the defendant only resorted to force when an officer put his hands on the defendant's girlfriend and threw the defendant to the ground. The court concluded the defendant produced evidence demonstrating he was afraid and was struggling to try to get away from the officers. *Sims*, 374 Ill. App. 3d at 434-35. In addition, a jury could have reasonably believed officers used excessive force where photographs of the defendant showed he had sustained a swollen eye and numerous cuts and bruises. *Id*. at 435. The court also noted the defendant was entitled to a self-defense instruction even in the face of conflicting testimony. *Id*.

¶ 66 Unlike in *Sims*, where the evidence showed the defendant was initially compliant and resisted only after officers used excessive force, the evidence here overwhelmingly showed defendant was belligerent and combative from the beginning of the encounter. As in *Wicks*, defendant began resisting before any force was used against him. Defendant repeatedly refused to comply with orders to cuff up and uncover the cell. When it was clear that defendant would not cooperate, and after multiple warnings, the ERT used pepper spray. When defendant still did not comply, and again after multiple warnings, the ERT entered the cell to restrain him. During that process, defendant remained combative and verbally aggressive, and by his own admission, defendant refused to allow the ERT to cuff him. Indeed, even after he was restrained, defendant remained verbally aggressive. Given the threat that defendant posed by struggling and refusing to comply, the progressive actions by the officers were not an excessive use of force. The officers were entitled to apply escalating levels of force to protect themselves and effectuate the extraction,

and a self-defense instruction based on excessive force would have been inappropriate. See *Ammons*, 2021 IL App (3d) 150743, ¶ 24; see also *People v. Agnew-Downs*, 404 Ill. App. 3d 218 (2010) (finding no evidence of excessive force where, the officers' use of greater force was in direct response to the defendant's actions). As such, defendant was not entitled to a self-defense instruction.

¶ 67 Defendant suggests he nevertheless is entitled to a self-defense instruction because he testified the ERT choked him or used force as a form of retaliation, which is a prohibited use of force under the Criminal Code. 720 ILCS 5/7-5.5 (West 2020). However, defendant's contention ignores that he resisted the ERT before the alleged choking occurred. Relying on *Haynes*, the Second District has rejected a similar argument. *People v. Ericson*, 2023 IL App (2d) 200657-U, ¶¶ 70-71 (stating the defendant that alleged he fought to break a chokehold when he could not breathe was not entitled to self-defense instruction where he resisted arrest before the alleged excessive force was used). The same applies here.

¶ 68 Further, we note raising the issue of self-defense generally requires the defendant to admit to the crime as the basis for his reasonable belief that such force was necessary. *People v. Lahori*, 13 Ill. App. 3d 572, 577 (1973). Here, defendant denied making contact with any of the ERT officers. We recognize *Sims* provides some authority for giving a self-defense instruction in circumstances similar to this case, even when a defendant has not admitted to the crime. See *Sims*, 374 Ill. App. 3d at 435 (stating a self-defense instruction should have been given in a battery and resisting arrest case when the defendant, who never admitted kicking the officers, acknowledged he was "feisty" and struggled with the officers after they put him face down and began hurting him). However, there is also support to the contrary. *See e.g.*, *People v. Freneey*, 2016 IL App (1st) 140328, ¶ 32; *People v. Diaz*, 101 Ill. App. 3d 903, 914 (1981); *People v. Barwicki*, 2023 IL

App (2d) 230142-U, ¶¶ 25-26. In any event, because we conclude defendant cannot invoke the excessive force exception, we need not decide that issue.

¶ 69 In sum, we hold the trial court did not abuse its discretion when it denied defendant's request for self-defense jury instructions.

¶ 70 C. Sentencing

¶ 71 Finally, defendant argues the trial court erred in refusing to consider defendant's mental health at sentencing. In particular, defendant contends the court failed to consider the statutory factor in mitigation that,

> "[a]t the time of the offense, the defendant was suffering from a serious mental illness which, though insufficient to establish the defense of insanity, substantially affected his or her ability to understand the nature of his or her acts or to conform his or her conduct to the requirements of the law." 730 ILCS 5/5-5-3.1(a)(16) (West 2020).

Defendant acknowledges he failed to raise the issue in a motion to reconsider the sentence. However, he argues plain error applies.

¶ 72 "A trial court must consider the factors in aggravation and mitigation set forth in sections 5-5-3.1 and 5-5-3.2 of the Unified Code (730 ILCS 5/5-5-3.1, 5-5-3.2 (West 2018)) before rendering a sentence." *People v. Gavin,* 2022 IL App (4th) 200314, ¶ 79. However, the trial court is not required to expressly outline every factor it considers for sentencing, and we presume the court considered all aggravating and mitigating factors in the record in the absence of explicit evidence to the contrary. *Id.* "Ultimately, the court has broad discretionary powers in imposing a sentence, and its sentencing decision will not be altered on review absent an abuse of discretion." *Id*.

¶ 73 Here, the trial court expressly stated it considered the statutory factors in aggravation and mitigation when reaching its sentence. The court then found there were applicable aggravating factors and no applicable mitigating factors. The court expressly found defendant's health was not mitigating, stating,

> "I note from Dr. Killian's report the reference to—excuse me—the diagnosis of post-traumatic stress disorder, polysubstance dependent, probable mood disorder, and personality disorder. They do not rise to the level of factors in mitigation, and I don't want to give this particular Defendant an opportunity to use that on a continuing basis every time a fight breaks out in the department of corrections."

¶ 74 We disagree with defendant that the trial court's statement showed a refusal to consider a statutory factor in aggravation. To the contrary, the statement shows the court considered the factor and rejected it. The court expressly referenced the report and found it inapplicable. We further note the court's determination the statutory factor in mitigation was inapplicable was reasonable. In the report, Killian opined that, at the time of the incident with the ERT, defendant was not suffering from the type or severity of psychiatric illness which would have rendered him incapable of appreciating the criminality of his conduct. Accordingly, we find no error. Because there was no error there likewise was no plain error.

¶ 75 III. CONCLUSION

¶ 76 For the reasons stated, the judgment of the trial court is affirmed.

¶ 77 Affirmed.