No. 130919

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. COURTNEY VESEY, Defendant-Appellant.	)))))))))))	On Appeal from the Appellate Court of Illinois, Fourth Judicial District, No. 4-23-0401 There on Appeal from the Circuit Court of the Fourteenth Judicial Circuit, Rock Island County, Illinois, No. 22 CF 481 The Honorable Norma Kauzlarich, Judge Presiding.

BRIEF OF PLAINTIFF-APPELLEE PEOPLE OF THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

JOSHUA M. SCHNEIDER
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(773) 590-7123
eserve.criminalappeals@ilag.gov

Counsel for Plaintiff-Appellee
People of the State of Illinois

ORAL ARGUMENT REQUESTED

E-FILED
5/14/2025 3:03 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

TABLE OF CONTENTS

Page(s)

POINTS AND AUTHORITIES

NATURE OF THE ACTION

Following a jury trial, defendant was convicted of aggravated battery for wrapping his arms around a police officer's neck and sentenced to 24 months of probation. Defendant appeals from the appellate court's judgment affirming his conviction. No question is raised on the charging instrument.

ISSUES PRESENTED FOR REVIEW

1. Whether the trial court acted within its discretion by declining to instruct the jury on self-defense because there was insufficient evidence that defendant's use of force against the police officer was in self-defense.

2. Whether, in any event, any error in not instructing the jury on self-defense was harmless because the evidence showed that defendant did not act in self-defense when he wrapped his arms around the officer's neck.

JURISDICTION

This Court allowed defendant's petition for leave to appeal on September 25, 2024, and has jurisdiction under Supreme Court Rules 315 and 612(b).

STATEMENT OF FACTS

I. Defendant Is Tried and Convicted of Aggravated Battery for Wrapping His Arms Around a Police Officer's Neck.

Defendant was charged with two counts of aggravated battery for making contact of an insulting or provoking nature against two Rock Island police officers who were performing their official duties — one count for pushing Sergeant Kristopher Kuhlman's arm away, and a second count for

wrapping his arm around Officer Brett Taylor's neck. C10-11.[1] Before trial, defendant gave notice that he intended to assert a justifiable use of force under 720 ILCS 5/7-1 — that is, self-defense — as an affirmative defense. C42.

The evidence at defendant's jury trial showed that one morning in June 2022, his ex-wife Judinetta Robinson called 911 to ask that police conduct a welfare check on defendant and their nine-year-old daughter, who were at a park. R163, 174-75, 204. The child, who was with defendant that morning pursuant to his visitation rights, R161, had texted Robinson from the park that they were "going to heaven," R163. Alarmed, Robinson called her daughter. R162. While they spoke, Robinson heard defendant in the background declaring that he was God, his chariot was coming, and they were going to heaven. R163. Robinson called the police, then left for the park herself. R164.

Three Rock Island police officers were dispatched to conduct the welfare check: Sergeant Kuhlman, the patrol supervisor; Officer Taylor, a newer officer who had been in the field for about six months; and Officer Eugenio Barrera, Taylor's field training officer. R172, 175, 203-06. All three

[1] Citations to the common law record appear as "C__," to the report of proceedings as "R__," and to the People's video exhibits as "Peo. Exh. __," with time stamps referring to the progress bar of the video player. Defendant's brief and appendix are cited as "Def. Br. __" and "A__," respectively, and the People's brief in the appellate court, which was filed in this Court pursuant to Rule 318(c), is cited as "Peo. App. Br. __."

officers' body cameras were activated that morning, and the footage was admitted into evidence. R188-94, 215-17; *see* Peo. Exhs. 1.1 (Kuhlman), 1.2 (Taylor) & 1.3 (Barrera); *see also* Peo. Exhs. 1.1 (Kuhlman (slow motion)) & 1.3A (Barrera (slow motion)).

When they arrived at the park, the officers found defendant and his daughter sitting on a low retaining wall at the bottom of a grassy hill. R175-76; Peo. Exh. 1.2 at 00:12. Taylor explained to defendant that the officers were there because Robinson had called, worried about defendant and the child. Peo. Exh. 1.2 at 00:12-00:18. When Taylor mentioned that Robinson had reported defendant "saying some stuff about going to see Jesus or something," defendant responded that she had been incorrect: he had actually said "it was our day to go to heaven." *Id.* at 00:18-00:26. Asked what he meant by that, he responded "you'll see when my — when it comes down." *Id.* at 00:26-00:36. At that point, the officers asked defendant to take his hands out of his pockets, and they briefly patted him down for weapons. *Id.* at 00:37-00:55.

Once they confirmed that defendant was unarmed, *id.* at 00:43-00:55; R176-77, the officers asked about Robinson's report that he had been making odd statements, and defendant responded that the officers "kn[e]w what happened in that closet down there on Fifth Street," Peo. Exh. 1.2 at 01:26-01:33; *see* R177-78. The officers professed ignorance, but defendant insisted that they knew what had happened:

> You know where, on Fifth Street [inaudible]. You know about all that shit that was going on, y'all know who was in that closet: me. Fighting off all that shit that was coming through them things. And yesterday they did the same shit. Same motherfucking lizards, reptiles, all that shit [inaudible]. Why is it there? You guys, the people on top of the hill. So y'all know what's up, man.

Peo. Exh. 1.2 at 01:33-02:29; *see* R177-78. When the officers explained that Robinson had called the police because she was worried, defendant started to become agitated, insisted that his daughter was not in any danger, and expressed frustration that the officers were affecting his visitation with his daughter. Peo. Exh. 1.2 at 02:44-03:32.

The officers changed tack, returning to the topic of defendant's and his child's safety by asking if defendant had made any comments about him and his daughter going to "meet Jesus." *Id.* at 03:32-03:35. Defendant denied telling his daughter they were going to meet Jesus; as defendant explained, it would have made no sense to tell her they were going to meet Jesus because "Jesus is not in heaven." *Id.* at 03:35-03:39. After a pause, the officers reiterated that they were just concerned about the child's welfare, and defendant insisted that she was fine. *Id.* at 03:39-04:02.

At that point, Kuhlman went to talk to defendant's daughter, R178, 206, who had been moving away from defendant as he talked about lizards, *see* Peo. Exh. 1.2 at 01:43-02:0, and who was now approximately 20 feet from defendant, *see id.* at 04:08-04:11. When defendant noticed, he told Barrera that he did not like people talking to his daughter. *Id.* at 04:10-04:38; *see* R178. Raising his voice, he repeatedly called for Kuhlman to "step away"

from his daughter, then began clapping his hands while saying "Big birds! Big birds!" *Id.* at 04:10-04:38; *see* R178.

When Robinson arrived, the officers decided that they would notify the Department of Children and Family Services about the morning's events and that, in the meantime, the child should go with her mother (who had legal custody). R165, 178-79, 206-07. Taylor and Barrera approached defendant where he was sitting on the low retaining wall and explained the situation to him. Peo. Exh. 1.2 at 04:45-05:22. They acknowledged that they knew he was not going to be happy about it, but that it was necessary because the "troubling things" he had said had led the officers to believe he might put his daughter in danger. Peo. Exh. 1.2 at 04:47-05:22. Defendant stood, saying "I see what this is," and started walking alongside the retaining wall toward where Robinson and the child were sitting. *Id.* at 05:19-05:26.

Kuhlman, who had been talking to Robinson, saw defendant approaching and took a few steps forward, placing himself between defendant and the child, Peo. Exh. 1.2 at 05:33-05:37; *see* R207-08. Barrera stood next to Kuhlman, so that he, too, was between defendant and the child. Peo. Exh. 1.2 at 05:37-05:42. As defendant neared Kuhlman, he reminded the officers that they had already checked him for weapons, and he had only his phone in his pocket. *Id.* at 05:35-05:38. Kuhlman acknowledged that defendant was unarmed but explained that he did not need defendant "coming over here and getting all aggressive with everybody." *Id.* at 05:37-05:42.

Defendant stepped toward Barrera, saying "Excuse me, man, I'm talking to my daughter," and Barrera took a step back as Kuhlman told defendant, "No." *Id.* at 05:41-05:44. Defendant asked the officers why they were "surround[ing]" him, and Barrera pointed out that defendant was the one walking toward them. *Id.* at 05:45-05:50. Defendant corrected Barrera — "I'm walking *through* you" — and the officers again told him, "No." *Id.* at 05:50-05:55 (emphasis added to reflect spoken emphasis in video). Defendant asked, "I can't walk toward my car?" and Barrera answered that he was free to walk toward his car and leave. *Id.* at 05:55-05:59.

Kuhlman asked defendant if he felt like hurting himself. *Id.* at 05:58-6:00. Defendant answered that he did not, then demanded to see the text message where he expressed such a desire. *Id.* at 06:00-06:13. Kuhlman responded that there was a text that "said [defendant] said [he] w[as] God," and Barrera corrected him that defendant had "said it over the phone." *Id.* at 06:12-06:19. Defendant continued to demand that Kuhlman show him a text sent from his phone that said he was God. *Id.* at 06:19-06:24. Kuhlman said that he "didn't say that" and agreed that he did not have such a text. *Id.* at 06:23-06:28; Peo. Exh. 1.1 at 00:46-00:51. Defendant became increasingly animated as he accused Kuhlman of having lied to him, then told Kuhlman he did not want to talk to him anymore. Peo. Exh. 1.2 at 06:28-06:37. Kuhlman responded, "Okay, you're done, go." *Id.* at 06:36-06:39.

As the officers turned and began walking away, defendant followed, saying "no, give me my daughter." *Id.* at 06:39-06:41. The officers said "no," and defendant continued to advance, shouting "Legal right! Legal right!" *Id.* at 06:41-06:43. Kuhlman put his hand on defendant's chest, keeping him at arm's length — Kuhlman testified that officer safety required keeping his distance so he would have an opportunity to react if defendant did something, R209 — and defendant pushed his arm away. Peo. Exh. 1.2 at 06:43-06:44; R212. Saying "get your hand off of me," defendant stepped back, his hands in loose fists, and assumed a bladed stance toward Kuhlman, with one foot forward and one foot back. Peo. Exh. 1.1 at 01:08-01:09.

Kuhlman and Taylor testified that at that point, they believed there was probable cause to arrest defendant for striking Kuhlman's arm. R184, 214. Taylor had "split seconds" to decide how to arrest defendant. R185. His preferred method of arrest was to "just tell somebody they are under arrest and have them place their hands behind their back." R184. But Taylor did not believe that method was appropriate here because defendant appeared aggressive and had already pushed Kuhlman. *Id.* Nor did Taylor think it was appropriate to deploy his Taser or pepper spray to make the arrest. R185-86. Instead, given the availability of backup, the proximity of Robinson and the child (only five to ten feet behind the officers), and "the surrounding area," Taylor decided to push defendant into the grassy area on the other side

of the retaining wall, away from Robinson and the child. R185. His decision made, Taylor moved forward to make the arrest. R186.

The following occurred over the course of the next three seconds. First, Taylor reached out to push defendant:

Peo. Exh. 1.3A at 00:03. However, defendant immediately broke Taylor's grip using his left arm —

id. — which he then used to grab Taylor's right elbow:

Id. at 00:04.

With Taylor's right arm down, defendant threw *his* right arm around the back of Taylor's neck:

Id. at 00:05. As Taylor continued moving forward, defendant wrapped his other arm around Taylor's neck:

Id. at 00:06. The two then fell over the low retaining wall onto the grassy hill, where Taylor planted his palms on the ground and tried to get back up while defendant held him down with both arms wrapped around his neck:

Id. at 00:07; R186 ("Once I began pushing him, he wrapped both arms around the back of my head and we fell backwards into the grass.").

On the ground, defendant gripped Taylor's head to his chest with both arms. R186. Taylor was unable to break free. *Id.* Kuhlman and Barrera rushed to Taylor's aid and, after struggling for about eight seconds, managed to pry defendant's left arm from around Taylor's neck. Peo. Exh. 1.3 at 0:03-00:11. Defendant held Taylor in a headlock with his right arm for a few seconds more before Taylor was able to slip his head out. *Id.* at 00:11-13. It then took the three officers nearly two minutes to overcome defendant's resistance and handcuff him. *See id.* at 00:13-2:08.

There was no evidence presented that Taylor's initial push contravened any departmental rules governing the use of force during arrest, nor was any evidence presented that defendant suffered a bruise, scratch, or injury of any kind from Taylor's initial push, their fall onto the grassy hill, or the subsequent struggles with multiple officers to free Taylor and arrest defendant. The defense presented no evidence, and defendant did not testify to his state of mind when Taylor pushed him or when he put first one arm, then both arms, around Taylor's neck. *See* R227.

Defendant requested an instruction that "[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] against the imminent use of unlawful force." R235-36, 238-39; Illinois Pattern Jury Instruction (IPI), Criminal, No.

24-25.06.[2] The prosecutor argued that defendant was not entitled to the instruction because 720 ILCS 5/7-7 prohibits a person from using force to resist arrest, and that prohibition is lifted only when the arresting officer was using excessive force. R239-40. The court believed that section 7-7 did not apply because Taylor did not tell defendant that he was under arrest, but noted that defendant was not entitled to a self-defense instruction in any event unless the record provided some evidence supporting each of the six elements of self-defense under 720 ILCS 5/7-1: (1) that force was threatened against defendant, (2) that defendant was not the initial aggressor, (3) that the danger of harm was imminent, (4) that the threatened force was unlawful, (5) that defendant subjectively believed danger existed that required the use of force applied, and (6) that his belief was objectively reasonable. R241-42 (citing *People v Jeffries*, 164 Ill. 2d 104 (1995), and 720 ILCS 5/7-1). The court found insufficient support for any of the elements except the first — that force was threatened against defendant — and declined to give the instruction. R242-44, 247.

The jury found defendant not guilty of aggravated battery for pushing Kuhlman's arm and guilty of aggravated battery for wrapping his arm around Taylor's neck. R277; C108-09. In his post-trial motion, defendant renewed his objection to the court's decision not to instruct the jury on self-

[2] Although the proposed instruction was labeled "People's Instruction No. 14," defendant sought the instruction; the prosecutor prepared the proposed instruction only "as a courtesy to [defense counsel]." R238-39.

defense. C111. The court denied the motion, R285, 287, and sentenced defendant to 24 months of probation, with the conditions that he submit to a mental health evaluation and comply with all recommended treatment, R295-96; C116-20.

II. The Appellate Court Affirms.

The appellate court affirmed. A11, ¶ 1. In doing so, the majority "distance[d] [it]sel[f] from language in *People v. Ammons*, 2021 IL App (3d) 150743, ¶ 21, and other cases suggesting that 'a jury instruction on self-defense is *required* where . . . there is evidence that the arresting officer used excessive force.'" A19, ¶ 29 (quoting and adding emphasis to *Ammons*). The majority explained that "[a]n officer's use of excessive force removes the protections of section 7-7" — the statute providing that a person is not authorized to use force to resist arrest — "but that does not mean [the officer] loses the protection that would be afforded under section 7-1" — the statute defining self-defense — "to any other victim of aggravated battery who has used unlawful force on the defendant." A19, ¶ 28. Accordingly, "[a]lthough the officer's conduct is obviously central to the trial court's inquiry, the record must nevertheless contain sufficient evidence of all six elements of self-defense for a self-defense instruction to be appropriate under section 7-1." A19, ¶ 29. The majority held that the record contained insufficient evidence that defendant "'subjectively believed a danger existed which required the use of the force applied,'" A21, ¶ 35 (quoting *Jeffries*, 164 Ill. 2d at 128), and

the trial court therefore did not abuse its discretion by not issuing a self-defense instruction, A22, ¶ 36. As the majority put it, the trial court's "conclusion that this record reflected something other than actual fear on defendant's part was within the bounds of reason and justified its refusal to instruct the jury on self-defense." A22-23, ¶ 37. Because the majority found the evidence insufficient to support the element that defendant subjectively believed his use of force was necessary for self-defense, it declined to address the other five elements of self-defense. A23, ¶ 38.

The dissent took issue with the majority's conclusion that it was "within the bounds of reason" for the trial court to decline to issue a self-defense instruction, construing that language as addressing the standard governing the trial court's review of the evidence in deciding whether it supported an instruction rather than the abuse-of-discretion standard governing the appellate court's review of the trial court's decision. A24-25, ¶ 45 (Turner, J., dissenting). The dissent would have reversed on the ground that the record provided some evidence that defendant wrapped his arms around Taylor's neck in fear for his safety. A23, ¶ 44. In the dissent's view, the body camera footage "indisputably show[ed] Officer Taylor tackled defendant straight on over a concrete retaining wall causing defendant to fall backward," so that "his unprotected head and body were exposed to slamming into the ground or concrete." *Id.* The dissent did not address whether the

record provided adequate support for the remaining five elements of self-defense to warrant an instruction. *See* A23-25, ¶¶ 43-45.

STANDARDS OF REVIEW

A defendant is not entitled to a jury instruction on self-defense unless "there is some evidence to support it." *People v. Sloan*, 2024 IL 129676, ¶ 14. The question of what facts must have evidentiary support to entitle a defendant to a self-defense instruction — that is, what the elements of self-defense are — is a question of law that this Court reviews de novo. *See People v. McDonald*, 2016 IL 118882, ¶ 39; *cf. People v. Sroga*, 2022 IL 126978, ¶ 9 (question of what elements make up an offense presents a question of law). The question of whether the trial court properly "determine[d] that there [wa]s insufficient evidence" supporting the elements of self-defense "to justify the giving of a jury instruction" is reviewed for an abuse of discretion, *McDonald*, 2016 IL 118882, ¶ 42, meaning that there is no error unless "the trial court's decision [wa]s arbitrary, fanciful, or unreasonable to a degree that no reasonable person would agree with it," *Sloan*, 2024 IL 129676, ¶ 15 (internal quotation marks omitted). The Court "is not required to accept the trial court's reason or reasons for its decision [not to issue a self-defense instruction] in affirming the trial court's holding and may in fact conclude that the trial court's reasoning is incorrect." *People v. Everette*, 141 Ill. 2d 147, 158-59 (1990). "It is the judgment of the trial court that is on appeal," and the Court "may sustain the trial court's

judgment upon any ground warranted, regardless of whether the trial court relied on it." *Id.* at 158.

ARGUMENT

The trial court properly exercised its discretion by declining to instruct the jury on self-defense where the record provided insufficient support for all the elements of self-defense. For example, the record provided no evidence that defendant was not the aggressor, for it showed that he shoved one officer's arm away, then assumed what appeared to be a bladed, fighting stance, with one foot forward, one foot back, and his hands in loose fists, thereby provoking the arresting officer's use of force to arrest him for the battery against the first officer. The record further showed that defendant then gripped the arresting officer's neck with both arms for over eight seconds until two other officers were finally able to pry him loose, providing no support for the propositions that defendant subjectively and reasonably believed that his actions were necessary to defend himself against imminent unlawful force. Therefore, the appellate court correctly affirmed the trial court's decision not to instruct the jury on self-defense.

Defendant concedes that "for the jury to be instructed regarding the affirmative defense of self-defense, there must be at least slight evidence of all six elements of self-defense presented," Def. Br. 18, yet he argues that the appellate court applied a "new, different test" when it considered whether the record contained sufficient evidence of all the elements of self-defense, *id.* at

17. But the appellate court applied the same test this Court applies when reviewing a trial court's decision not to instruct the jury on self-defense. And defendant offers no sound basis for the Court to depart from its longstanding self-defense precedent and adopt a new rule for these circumstances. To the contrary, defendant's proposed rule — under which a defendant charged for using force against an arresting officer is entitled to a self-defense instruction whenever there is some evidence that the officer used excessive force — provides no advantages over the Court's rule. The Court's current rule already ensures that the jury is instructed on self-defense whenever there is sufficient evidence of each of the six elements of self-defense. Defendant's proposed rule would require self-defense instructions even in cases where there is insufficient evidence of one or more of the elements, thus needlessly confusing juries with inapplicable instructions and increasing the likelihood that the verdict will not be based on applicable law.

I. The Trial Court Appropriately Exercised Its Discretion by Denying Defendant's Request for a Self-Defense Instruction Because There Was Insufficient Evidence That He Acted in Self-Defense.

The trial court acted within its discretion by declining to instruct the jury on self-defense because it reasonably determined that the record contained insufficient evidence that defendant acted in self-defense. A defendant is not entitled to a jury instruction unless "there is some evidence to support it." *Sloan*, 2024 IL 129676, ¶ 14. As this Court has explained, the purpose of jury instructions is to "guid[e] the jury to a verdict that is based on

the applicable legal principles," *id.*, for "juries are composed of laypersons who are not trained to separate issues and to disregard irrelevant matters," *People v. Fane*, 2021 IL 126715, ¶ 34 (internal quotation marks omitted). If a particular legal principle — such as self-defense — is not supported by some evidence, then it is inapplicable, and an instruction on it will serve only to confuse the jury and increase the likelihood that the verdict will not be based on the applicable law. *See People v. Mohr*, 228 Ill. 2d 53, 65 (2008) ("Instructions convey the legal rules applicable to the evidence presented at trial and thus guide the jury's deliberations toward a proper verdict."); *accord Sloan*, 2024 IL 129676, ¶ 14 (instruction "that is not supported by the evidence or the law" or otherwise "could confuse the jury should not be given").

The legal principle of self-defense would have applied to defendant's case only if there was some evidence that his use of force against Taylor was justified under section 7-1, which defines the affirmative defense of self-defense. *See People v. Jeffries*, 164 Ill. 2d 104, 127 (1995); 720 ILCS 5/7-1. Under section 7-1, a defendant "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 . . . against such other's imminent use of unlawful force." 720 ILCS 5/7-1(a).

This definition of self-defense has several elements. Some focus on the other party's use force, requiring that it be both "imminent" and "unlawful" to

justify a use of force in response. 720 ILCS 5/7-1(a). Other elements focus on the defendant's use of force, requiring that the force actually *used* in response to the threat was the force that was *justified* by the threat, meaning the defendant's use of force was immediate ("when . . . necessary" to defend against imminent unlawful force), proportionate ("to the extent . . . necessary" to defend against imminent unlawful force), and motivated by self-defense ("believe[d] . . . necessary" to defend against imminent unlawful force). *Id.*; *see* Ill. Ann. Stat., ch. 38, par. 7-1, Committee Comments, at 352 (Smith-Hurd 1989) ("'When and to the extent that' the person reasonably believes that the use of force is necessary, refers both to the proper occasion for the use of force, and to the proper amount of force used in defense."). In addition, under section 7-4, the defendant must not have been the initial aggressor, meaning that he did not "initially provoke[ ] the use of force against himself." 720 ILCS 5/7-4(c).

After consulting the committee comments to section 7-1, this Court identified the elements of self-defense as follows:

> (1) the defendant was not the aggressor; (2) the danger of harm was a present one; (3) the force threatened must have been unlawful — either criminal or tortious; (4) the defendant must actually have believed that the danger existed, that his use of force was necessary to avert the danger, and the kind and amount of force which he used was necessary; and (5) the defendant's belief, in each of the aspects described, was reasonable, even if it was mistaken.

Everette, 141 Ill. 2d at 158 (citing Ill. Ann. Stat., ch. 38, par 7-1, Committee Comments, at 351-52). Since *Everette*, the Court has sometimes sequenced or

articulated these elements differently, but their substance has remained the same. *See, e.g., People v. Gray*, 2017 IL 120958, ¶ 50 (listing same substantive requirements, but splitting *Everette*'s fourth element — that defendant believed his use of force was necessary to avert danger — into two elements: one that force was necessary to avert danger and another that defendant believed his use of force was necessary to avert danger); *People v. Lee*, 213 Ill. 2d 218, 225 (2004) (same); *see also, e.g., People v. Washington*, 2012 IL 110283, ¶ 35 (listing same substantive requirements, but splitting *Everette*'s third element of threatened unlawful force into two elements: one that force was threatened and another that the threatened force was unlawful); *Jeffries*, 164 Ill. 2d at 127-28 (same).

Thus, to be entitled to an instruction on self-defense for his use of force against Taylor, defendant had to "establish some evidence of each" element of self-defense. *Jeffries*, 164 Ill. 2d at 127-28. As now explained, because he failed to do so, the trial court properly declined to issue a self-defense instruction.

A. Defendant failed to establish some evidence of four of the necessary elements of self-defense.

The trial court acted within its discretion by not issuing a self-defense instruction because defendant failed to establish some evidence of all the elements of self-defense. A failure to support "*any* one of the self-defense elements" makes self-defense unavailable. *Jeffries*, 164 Ill. 2d at 128 (emphasis in original). Here, defendant failed to establish some evidence

supporting four of the elements of self-defense, failing to identify evidence that (1) Taylor was using unlawful force against defendant, (2) defendant was not the initial aggressor (meaning he did not provoke Taylor's use of force), (3) defendant subjectively believed it was necessary to wrap his arm around Taylor's neck to defend himself against imminent unlawful force, and (4) that belief was reasonable.

1. Defendant failed to establish some evidence that Officer Taylor used unlawful force against him.

When, as here, a defendant wants to assert self-defense to justify his use of force against an arresting officer, the showing necessary to establish that the officer used "unlawful force," 720 ILCS 5/7-1(a), is a showing that the arresting officer used excessive force. If an arresting officer did not use excessive force, then the officer's use of force was not unlawful and cannot justify a defendant's use of force in response.

An officer's use of force to make an arrest is generally lawful, for an officer "is justified in the use of any force which he reasonably believes, based on the totality of the circumstances, to be necessary to effect the arrest" or "necessary to defend himself or another from bodily harm while making the arrest." 720 ILCS 5/7-5(a). This is so even when the arresting officer is the first person to use force during an encounter, for an officer "need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest." *Id.*

Because an officer is authorized to use reasonably necessary force to make an arrest, a person generally "is not authorized to use force to resist an arrest" — and correspondingly cannot defend his use of force against an arresting officer as justified — "even if he believes the arrest is unlawful and the arrest in fact is unlawful." 720 ILCS 5/7-7; *see* Ill. Ann. Stat., ch. 38, par. 7-7, Committee Comments, at 417 ("Section 7-7 states the corollary to the justification accorded to an officer or deputy in using force to make an arrest, even if the arrest, without his knowledge, is unlawful: the person arrested is not privileged to resist the arrest with force."). Otherwise, a person's use of force to resist arrest would only "invite[ ] the officer to use greater force to accomplish the arrest." Ill. Ann. Stat., ch. 38, par. 7-7, Committee Comments, at 417.

However, this prohibition against using force against an arresting officer "does not apply to the situation in which the officer uses excessive force." *Id.* at 418. If an arresting officer uses excessive force — force that is beyond what the officer reasonably believes is necessary to make the arrest and that the officer therefore is not authorized to use, *see* 720 ILCS 5/7-5(a) — then the officer's use of force is unlawful, satisfies the unlawful-force element of self-defense, and "invokes the right of self-defense stated in section 7-1." Ill. Ann. Stat., ch. 38, par. 7-7, Committee Comments, at 418; *see People v. Bailey*, 108 Ill. App. 3d 392, 398 (2d Dist. 1982) ("The use of

excessive force invokes the right of self-defense." (citing Ill. Rev. Stat. 1979, ch. 38, par. 7-1)).

Because analysis of the element of unlawful force in the context of a defendant resisting arrest is governed by sections 7-5 and 7-7, which clarify that this element is satisfied only by the arresting officer's use of excessive force, the appellate court viewed the element as a threshold inquiry, asking first whether Taylor used excessive force, such that self-defense was available to defendant, and then asking whether there was evidence that defendant acted in self-defense. *See* A18, ¶ 28. The law does not require this approach, for a defendant's failure to establish sufficient evidence of excessive force precludes a self-defense instruction whether viewed as a failure to satisfy a threshold excessive-force requirement under section 7-7 or a failure to satisfy the unlawful-force element of self-defense under section 7-1. A defendant who fails to show some evidence that his victim posed an imminent threat of unlawful force is equally foreclosed from arguing self-defense whether the victim was an officer or a civilian. But it makes practical sense to address the element of unlawful force first in cases involving arresting officers, for it will often be the most difficult element to satisfy and therefore a lack of evidence of excessive force will often be the easiest way to determine that a defendant is not entitled to a self-defense instruction.

This case is a good example. There was insufficient evidence that Taylor used excessive force when arresting defendant, which alone meant

that defendant was not entitled to a self-defense instruction, regardless of whether he was the initial aggressor, he subjectively believed his use of force was necessary to defend himself, and so on. Defendant had just tried to push through Kuhlman and Barrera to reach his daughter (whom the officers were concerned he might harm), shoved Kuhlman's arm out of the way when Kuhlman tried to keep his distance, and then assumed a fighting posture. *See* Peo. Exh. 1.2 at 6:39-6:44; Peo Exh. 1.1 at 01:08-01:09. In arresting defendant for battery against Kuhlman, Taylor pushed defendant away from Kuhlman and toward a grassy hill. *See* R186. By doing so, Taylor ensured that (1) the struggle would occur away from defendant's child and ex-wife, who were both a short distance behind Kuhlman; and (2) defendant would fall a shorter distance and onto a softer surface than if Taylor pushed him toward the concrete sidewalk or asphalt parking lot. *See* R185-86 (Taylor decided to "push defendant into the grassy area" after considering "how close [Robinson's] and her daughter were" and "the surrounding area"). The record provides no evidence that Taylor's belief that this force was necessary — both to make the arrest and to protect Robinson and the child from harm while doing so — was unreasonable. *See* 720 ILCS 5/7-5(a).

Indeed, Taylor used even less force than the arresting officer in *People v. Jones*, 2015 IL App (2d) 130387, ¶ 23, where the appellate court found "no evidence of excessive force." There, the defendant was charged with aggravated battery for kicking an arresting officer after the officer grabbed

his arm and twisted it, the defendant tried to pull away, and the officer took him to the ground. *Id.* ¶¶ 7, 24. The appellate court held that no self-defense instruction was warranted because the officer "merely grabbed [the defendant's] arm and tackled him, which was necessary to effect his arrest" when "it was clear that [he] would not cooperate." *Id.* ¶ 26. If a self-defense instruction were required under those facts, the appellate court explained, then "in virtually every resisting-arrest case the trial court would have to instruct the jury on self-defense, inviting it to speculate that the officer used excessive force" and "all but eviscerat[ing] the rule that one may not resist an unlawful arrest." *Id.*

Defendant cites no authority holding that an arresting officer used excessive force by pushing an uncooperative defendant away from bystanders during an arrest or taking him to the ground. Instead, he argues that Taylor used excessive force by pushing him (and then taking him to the ground as defendant wrapped his arms around Taylor's neck) because that force risked death or great bodily harm given that defendant's "head and body [were] unprotected and exposed." *See* Def. Br. 35-36; *see also, e.g., id.* at 43, 44. Because an officer is authorized to use "force likely to cause death or great bodily harm" — that is, lethal force — only if he reasonably believes it necessary to prevent death or great bodily harm to himself or others, 720 ILCS 5/7-5(a), defendant reasons that Taylor's use of such force was excessive here because defendant presented no lethal threat, *see* Def. Br. 35-36. But

there is no reason to believe that the General Assembly intended that "force likely to cause death or great bodily harm" include merely taking someone to the ground. After all, if taking someone to the ground constituted lethal force, then whenever a police officer struggled with a suspect, whichever party reasonably perceived that he was in imminent danger of being taken down would be entitled to use lethal force against the other. *See* 720 ILCS 5/7-4(c)(1) (authorizing aggressor faced with imminent threat of lethal force to use lethal force if he cannot otherwise escape); 720 ILCS 5/7-5(a)(1) (authorizing officer to use lethal force if he reasonably believes it necessary to defend himself against lethal force). Indeed, whenever any two people struggled, the first one to feel he was losing his balance would be entitled to use lethal force. Accordingly, Taylor's use of force was not potentially lethal — and therefore excessive — just because it led to defendant falling down.

Nor is there any evidence that defendant's fall was unusually dangerous. If anything, the takedown in this case was *less* dangerous than the typical non-lethal takedown in an urban setting, for the ground to which Taylor took defendant was several feet higher than the sidewalk, sloped upward, and covered in sod. *See* Peo. Exh. 1.3A at 00:07. And there was no evidence that being pushed onto the grass was more violent or forceful than it otherwise seemed. For example, there was no evidence that defendant suffered any injuries — even minor scrapes or bruises — from being pushed and falling on the grass. *See Jones*, 2015 IL App (2d) 130387, ¶¶ 25-26

(evidence of injuries relevant to whether officer may have used excessive force (citing *People v. Sims*, 374 Ill. App. 3d 427, 435 (3d Dist. 2007)).

Defendant's suggestion that Taylor could not have reasonably used *any* force to arrest him is similarly meritless. *See* Def. Br. 34. Defendant argues that Taylor could not use any force to arrest him because he posed no danger where he (1) "made no further attempts to make contact with Kuhlman after swatting Kuhlman's arm away," (2) "did not even reapproach Kuhlman," and (3) was "outnumbered" and unarmed. *Id.* at 34-35. But defendant disregards the body camera footage showing him stepping into what appeared to be a bladed, fighting stance after Kuhlman thwarted his attempt to reach his ex-wife and daughter and, in response, he shoved Kuhlman's arm aside. *See* Peo. Exh. 1.2 at 06:43-06:44; Peo. Exh. 1.1 at 01:08-01:09. The fact that defendant did not then "attempt to make contact with" Kuhlman or "reapproach" him is hardly evidence that he posed no threat, especially where Taylor gave defendant no opportunity to attack Kuhlman, immediately pushing him away toward the grassy area. *See* Peo. Exh. 1.3A at 00:02-00:03. In short, contrary to defendant's suggestion, the record did not suggest that defendant was standing passively by when Taylor pushed him.

Nor did the fact that defendant was outnumbered and unarmed mean that Taylor could not reasonably use any force to arrest him. An unarmed person who has assumed a fighting stance opposite an officer poses a threat to that officer's safety, even if it is unlikely he will ultimately "win" a fistfight

given the presence of other officers. Moreover, officers are authorized to use reasonable force to arrest an uncooperative suspect regardless of whether he poses a physical danger to them. *See* 720 ILCS 5/7-5(a).

Indeed, the force that defendant appears to concede would have been reasonable under the circumstances — "an attempt . . . to move [him] away from Kuhlman," Def. Br. 35 — was exactly the force that Taylor used. He pushed defendant away from Kuhlman (and Robinson and the child, who were behind Kuhlman) and toward the grassy area. It was only when defendant threw his arm around Taylor's neck that the two lost their balance and fell onto the grass. *See* Peo. Exh. 1.3A at 00:01-00:07; R186. On this record, the trial court did not abuse its discretion by finding insufficient evidence of unlawful force to support a self-defense instruction.

2. Defendant failed to establish some evidence that he was not the aggressor.

Under section 7-4, a person is barred from justifying his use of force during an altercation as self-defense if he "initially provoke[d] the use of force against himself." 720 ILCS 5/7-4(c). By precluding aggressors from invoking self-defense to justify their uses of force, section 7-4 enforces the well-established rule that one cannot "provoke the quarrel and take advantage of it" to use force against the provoked party. *Adams v. People*, 47 Ill. 376, 379 (1868). Self-defense becomes available to an aggressor only if (1) the provoked party responds with force "so great that [the aggressor] reasonably believes that he is in imminent danger of death or great bodily harm" or

(2) the aggressor "withdraws from physical contact with the assailant and indicates clearly to the assailant that he desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force." 720 ILCS 5/7-4(c). In other words, a person who picks a fight cannot claim self-defense during that fight unless the other person either (1) changes the nature of the fight by introducing lethal force or (2) starts a new fight after the aggressor withdraws. *See* Ill. Ann. Stat., ch. 38, par. 7-4, Committee Comments, at 403.

Here, as the trial court recognized, R241-42, 244, the evidence showed that defendant was the aggressor. The body camera footage showed that he tried to push past Kuhlman and Barrera to reach his daughter, whom they feared he might harm based on his troubling statements earlier that day. *See* Peo. Exh. 1.2 at 06:41-06:43. When Kuhlman put a hand on defendant's chest to keep him at arm's length, defendant shoved Kuhlman's arm aside and stepped back into a fighting stance, with one foot forward, one foot back, and his hands in loose fists. *Id.* at 06:43-06:44; Peo. Exh. 1.1 at 01:08-01:09. By aggressively encroaching on Kuhlman's personal space, shoving Kuhlman's arm away when Kuhlman tried to reestablish that space (thereby providing probable cause to believe defendant had committed battery), and assuming a fighting stance, defendant provoked Taylor's use of force to arrest him and was barred from asserting self-defense when he responded by grabbing Taylor's neck.

Contrary to defendant's assertion, Def. Br. 42, the fact that Kuhlman was the first person to make physical contact — that he "put his hands on [defendant] first" by trying to keep defendant at arm's length as defendant advanced, *id.* — did not make Kuhlman the aggressor. Defendant suggests that section 7-4 is concerned only with "the *physical* aggressor," *id.*, but a person who provokes the use of force against himself is the aggressor under section 7-4 regardless of how he does it. *See* 720 ILCS 5/7-4(c) (a person is the aggressor if he "initially provokes the use of force against himself" without limitation on means of provocation); Ill. Ann. Stat., ch. 38, par 7-4, Committee Comments, at 401-02 (explaining that section 7-4 bars assertion of self-defense if one, "by words or actions, provokes the use of force against himself" and discussing cases "involv[ing] the use of words or actions other than assault" as provocation). The effectiveness of non-physical provocation is well known. *See, e.g., People v. Heinrich*, 104 Ill. 2d 137, 146 (1984) ("personally abusive epithets . . . likely to provoke a violent reaction" are "fighting words"); *People v. Barnard*, 208 Ill. App. 3d 342, 350 (5th Dist. 1991) ("It has been held that mere words may be enough to qualify one as an initial aggressor." (citing *Greschia v. People*, 53 Ill. 295 (1970), and *People v. Tucker*, 176 Ill. App. 3d 209 (2d Dist. 1988)). There is no reason to believe that the General Assembly intended to privilege an aggressor's use of force against a party he provokes just because he chooses any of the myriad ways to pick a fight other than throwing the first punch.

Nor is there any merit to defendant's argument that an aggressor can only provoke the use of lawful force against himself, such that if Taylor responded to defendant's provocation with unlawful force, then defendant cannot have been the aggressor under section 7-4. *See* Def. Br. 35, 42-43. Whether a person provoked another to use force against him and whether the other's use of force was lawful are separate questions. If a person showers vile personal abuse on another's child until the aggrieved parent punches him, the person has provoked the parent's use of force. The fact that the parent's use of force may have been unlawful — that is, that it is not legally justifiable under section 7-1 — does not mean that it was not provoked.

Nor does the unlawfulness of a provoked party's use of force render the provoking party's use of force lawful. The fact that the parent's use of force against the abusive stranger is not legally justifiable does mean that the abusive stranger's use of force in response is legally justifiable. The parent is liable for his punch against the abusive stranger because the stranger's provocation did not privilege the parent to use force. But the abusive stranger is *also* liable for any force *he* uses in response to the parent's punch because, as the aggressor who provoked the punch, his use of force is similarly unprivileged. In other words, *both* participants in a fight may be guilty of battery if neither was legally justified in his use of force. *See* 720 ILCS 5/12-3.

Thus, even if the force Taylor used against defendant — pushing him toward the grassy hill, then falling on top of him when defendant grabbed his neck — was unlawful, defendant would still be the aggressor. He provoked the use of force by aggressively advancing on Kuhlman, shoving his arm aside, and then assuming what appeared to be a fighting stance. As the aggressor, his use of force in response to Taylor's use of force was unprivileged under subsection 7-4 because neither of the exceptions provided in its subsections applied.

Subsection 7-4(c)(1) did not apply because there was no evidence that the force of Taylor's push was "so great that [defendant] reasonably believe[d] that he [wa]s in imminent danger of death or great bodily harm." 720 ILCS 5/7-4(c)(1). Defendant suggests that being pushed or tackled onto the grassy hill was lethal force that justified his own use of force under subsection (c)(1). *See* Def. Br. 20-21 (citing 720 ILCS 5/7-4(c)(1), which justifies an aggressor's use of lethal force in response to the threat of imminent lethal force); *id.* at 35 (citing statutory provision governing officers' use of deadly force). But, as explained, merely taking a suspect to the ground generally is not potentially lethal. *See supra* pp. 25-26. And there is no evidence that defendant could have reasonably believed falling a few feet onto a grassy slope was potentially lethal. *See supra* pp. 26-27.

Nor did the exception under subsection 7-4(c)(2) apply. Defendant had not, by taking a fighting stance immediately after he shoved Kuhlman's arm,

"indicate[d] clearly to [the officers] that he desire[d] to withdraw and terminate the use of force," 720 ILCs 5/7-4(c)(2). To the contrary, he signaled his willingness to engage in the continued use of force.

Therefore, the trial court did not abuse its discretion by concluding that there was insufficient evidence that defendant was not the aggressor to support a self-defense instruction. *See* R242.

3. Defendant failed to establish some evidence that he actually and reasonably believed the force he used was necessary to defend himself.

Finally, the record contained insufficient evidence that defendant (1) actually believed that self-defense required that he use the force he used against Taylor and (2) that belief was reasonable. Defendant focuses on the force he used at the moment he and Taylor lost their balance — putting a second arm around Taylor's neck — and argues that he had no choice "but to wrap his arms around Taylor's neck to brace himself for the fall." Def. Br. 44. But defendant ignores his uses of force against Taylor both before and after they fell. Before they fell, defendant broke Taylor's grip and wrapped one arm around the back of his neck in what appeared to be an attempt at a headlock. Peo. Exh. 1.3A at 00:04-00:05; *supra* p. 9. And after defendant was safely on the grass, he refused to let go of Taylor's neck, holding on with both arms for eight seconds until Kuhlman and Barrera managed to pry one of his arms loose, Peo. Exh. 1.3 at 03:00-00:11, and then holding Taylor in a headlock with his other arm for another few seconds until Taylor was finally

able to break free, *id.* at 00:11-13.[3] It is *those* uses of force that are indefensible as uses of force that defendant actually and reasonably believed necessary to defend against Taylor's allegedly unlawful push.

The body camera footage showed that when Taylor pushed defendant, defendant did not lose his balance and grab Taylor's neck to break his fall. Rather, the moment Taylor's hands made contact with defendant's shoulders, defendant broke Taylor's grip and grabbed him around the neck with one arm. Peo. Exh. 1.3A at 00:00-00:05; *supra* pp. 8-9. As defendant acknowledges, he was plainly "upset — and reasonably so — because he was being denied his court-ordered visitation time with his daughter," Def. Br. 35, due to the concerns for her safety raised by his earlier statements. He had just been shouting at Kuhlman as he tried to push past the officers and get his daughter, shoved Kuhlman's arm aside when Kuhlman stopped him, and then stepped back into a fighting stance as he told Kuhlman not to touch him. *See* Peo. Br. 1.2 at 06:39-06:44; Peo. Exh. 1.1 at 01:07-01:09. When Taylor pushed him away from Kuhlman (and away from defendant's daughter and ex-wife), defendant's reaction of grabbing Taylor around the neck was not an attempt to protect himself from harm but to fight Taylor. *See Everette*, 141 Ill. 2d at 162 ("The right of self-defense does not justify an act of retaliation or of revenge; it is a right intended to protect an individual

[3] Defendant's refusal to let go of Taylor's neck after they fell was the primary focus of the prosecution's closing argument that defendant committed battery against Taylor. *See* R258-59, 260.

and not an individual's pride."). Absent any testimony that defendant subjectively believed he needed to grab Taylor neck to prevent Taylor from harming him, the record provided no basis for a reasonable juror to believe that defendant held such a belief, much less that the belief was objectively reasonable.[4]

Moreover, even disregarding the first arm defendant threw around Taylor's neck before they lost their balance and the second arm he threw around Taylor's neck as they fell, defendant's refusal to release his grip on Taylor's neck after they fell was indefensible as a sincere and reasonable effort to defend himself against any unlawful force from Taylor. Taylor's hands were flat on the ground as he tried and failed to get off of defendant. *See* Peo. Exh. 1.3A at 00:07-00:11. Rather than let Taylor stand up and disengage, defendant maintained his grip on Taylor's neck so tightly that it took the sustained and concerted efforts of two other officers to pry him loose. *See* Peo. Exh. 1.3 at 00:03-00:14.

---

[4] Defendant is mistaken that the People below "never argued that [he] did not resist his arrest before he was tackled, thus conceding the point." Def. Br. 25 n.1 (emphasis omitted). The People argued to the appellate court that after "Taylor made the split-second decision to arrest defendant with force and pushed [him] toward the retaining wall," defendant "then grabbed the back of Taylor's head, which caused them to fall to the ground." Peo. App. Br. 10. Moreover, as appellee, the People "may raise any argument or basis supported by the record to show the correctness of the judgment below, even though [they] had not previously advanced such an argument." *In re Veronica C.*, 239 Ill. 2d 134, 151 (2010).

To the extent that defendant's grip on Taylor's neck might have been defensible as they were falling, it ceased to be so after they were on the grass and any risk of harm from the fall had passed. A person who trips on the curb and starts to fall may understandably reach out and grab a stranger's arm to try to regain his balance. Indeed, doing so would not be battery, for under those circumstances, having one's arm grabbed is not "insulting or provoking." 720 ILCS 5/12-3. But after the person has fallen to the ground, he may not then justify refusing to let go of the stranger's arm — and hanging on with such force that he can be pried loose only with the help of two bystanders — on the ground that he had been falling earlier. In short, there was no basis for a reasonable jury to conclude that when defendant refused to release Taylor's neck while Kuhlman and Barrera ordered him to let go and strained to break his grip, he did so because he sincerely and reasonably believed it was necessary to protect himself against imminent unlawful force. Accordingly, the trial court did not abuse its discretion by finding insufficient evidence that defendant subjectively and reasonably believed that self-defense required he use the force he used against Taylor. R243.

* * *

In sum, the trial court did not abuse its discretion when, after reviewing the record, it concluded that there was insufficient evidence that defendant acted in self-defense to support a self-defense instruction.

Defendant had to establish at least some evidence of all the elements of self-defense under section 7-1 and failed to do so with respect to at least four of those elements.

B. The appellate court did not apply a new test by requiring that defendant show some evidence of all the elements of self-defense to get a self-defense instruction.

Defendant acknowledges that the Court has recognized six necessary elements of self-defense, Def. Br. 17 (citing *Gray*, 2017 IL 120958, ¶ 50), and that "there must be at least slight evidence of all six aforementioned elements of self-defense present" for a self-defense instruction to be appropriate, *id.* at 18-19 (citing *Jeffries*, 164 Ill. 2d at 127-28). Yet defendant asserts that the appellate court applied a "new, different test" by requiring "adequate evidence of all the aforementioned self-defense elements," *id.* at 17, and applied a "heightened evidentiary standard" when it held the trial court's ruling was "'within the bounds of reason.'" *Id.* at 49 & n.2 (quoting A22-23, ¶ 37).

Defendant is incorrect on both counts. First, the appellate court applied the same test that this Court applies, evaluating whether there was some evidence of each element of self-defense. Second, the appellate court applied the same abuse-of-discretion standard that this Court applies when it held that the trial court's determination that the record did not support a self-defense instruction was within the bounds of reason.

1. The appellate court applied the same test this Court applies to determine whether a defendant is entitled to a self-defense instruction.

When deciding whether defendant was entitled to a self-defense instruction, the appellate court applied the same test this Court has applied for decades. Under this Court's test, a defendant is not entitled to a self-defense instruction unless he establishes some evidence of *all* the elements of self-defense, *see Jeffries*, 164 Ill. 2d at 127-28, including in cases involving uses of force against arresting officers, *see People v. Bratcher*, 63 Ill. 2d 534, 539-40 (1976) (affirming denial of self-defense instruction where record contained insufficient evidence that defendant subjectively believed his use of force necessary to defend himself). The appellate court applied this test in affirming the trial court's ruling. *See* A16, ¶ 22 (recognizing that "the court must provide the instruction 'if there is some evidence, however slight, in the record to support th[e] defense'" (quoting and altering *Washington*, 2012 IL 110283, ¶ 43)); A18-19, ¶ 28 (explaining that court must "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 under section 7-1"); A19-20, ¶ 31 (citing *Jeffries*, 164 Ill. 2d at 127-28, for elements of self-defense).

Defendant's assertion that the appellate court applied a different test rests on a misunderstanding of the appellate court's decision. According to defendant, the appellate court announced a rule that "requires evidence of self-defense elements *exclusive of* an officer's use of excessive force," Def. Br.

18 (emphasis added), thus requiring a defendant to identify "evidence of excessive force plus additional evidence of each element of self-defense," *id.* at 27, and precluding "a self-defense instruction just because the only evidence to support the instruction came in the form of evidence that an officer's use of force was excessive," *id.* at 28-29. Defendant is incorrect.

The appellate court did not purport to exclude evidence of excessive force from the inquiry into the evidentiary support for the other elements of self-defense. To the contrary, the court explained that "the officer's conduct is obviously central to the trial court's inquiry." A19, ¶ 29. And it recognized that, when evaluating whether "the record . . . contain[s] sufficient evidence of all six elements of self-defense for a self-defense instruction to be appropriate under section 7-1," *id.*, the court must review the "the entire trial record," A22, ¶ 36 (citing *Bratcher*, 63 Ill. 2d at 540). Thus, the appellate court affirmed the trial court's decision because the record as a whole did not provide the necessary support for a self-defense instruction. *See* A22-23, ¶¶ 37-38 (affirming because "the trial record in the present case" provides insufficient support).

For that reason, the appellate court's conclusion that the evidence in this case was insufficient to warrant a self-defense instruction does not mean that it would necessarily find the evidence insufficient in defendant's counterfactual scenarios. *See* Def. Br. 29. For example, defendant offers the scenario of an arresting officer placing an unarmed suspect in a chokehold or

otherwise smothering him. *Id.* If that suspect were charged with aggravated battery for grabbing or striking the officer as he was being choked or smothered, there is no reason to believe that the appellate court, applying this Court's test as it did here, would find insufficient support for a self-defense instruction. The facts and circumstances of the hypothetical arresting officer's use of unlawful force — unlawful lethal force prompting the suspect's immediate use of force in response — would provide at least slight evidence of all the elements of self-defense. Regardless of whether the suspect provoked the altercation, the officer's unwarranted introduction of lethal force would be evidence that the suspect was no longer the aggressor. *See* 720 ILCS 5/7-4(c)(1). The evidence that the suspect was being choked or smothered would also be some evidence that he faced a danger of harm that was both imminent and unlawful, and that the suspect both subjectively and reasonably believed that grabbing or striking the officer was necessary to defend himself against being choked. *See Everette*, 141 Ill. 2d at 158 (listing elements of self-defense). In short, the Court should reject defendant's baseless speculation that the appellate court would not properly apply the Court's self-defense test to a materially different record merely because it held that the trial court acted within its discretion in denying an instruction on the record in this case.

2. The appellate court applied the same standard of review this Court applies when reviewing a trial court's decision not to issue a self-defense instruction.

Defendant's arguments that the appellate court applied the wrong standard of review, in addition to providing no basis to reverse the trial court's judgment, are meritless. The appellate court explained that it was reviewing the trial court's decision for an abuse of discretion, the same standard this Court applies when reviewing such decisions. A16-17, ¶ 23 (quoting *McDonald*, 2016 IL 118882, ¶ 42). It then affirmed the trial court's ruling because the trial court's conclusion — that the evidence was insufficient to establish defendant subjectively believed his use of force was necessary to defend himself against imminent unlawful force — was "within the bounds of reason." A22-23, ¶ 37. Contrary to defendant's assertion, Def Br. 48-49, this holding is consistent with the abuse-of-discretion standard.

As the appellate court explained, a trial court abuses its discretion by concluding that the evidence is insufficient to support a self-defense instruction if that conclusion is "'arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it.'" A17, ¶ 23 (quoting *McDonald*, 2016 IL 118882, ¶ 42). In other words, the trial court's conclusion regarding the sufficiency of the evidentiary support for a self-defense instruction is an abuse of discretion if it is outside the "bounds of reason." *See, e.g., People v. Ortega*, 209 Ill. 2d 354, 360 (2004) (review of trial court's decision for abuse of discretion turns on "whether the result is within the

bounds of reason"); *In re D.R.*, 307 Ill. App. 3d 478, 482 (1st Dist. 1999) ("An abuse of discretion occurs when the court rules arbitrarily or when its ruling exceeds the bounds of reason." (internal quotation marks omitted)). The appellate court's holding that the trial court's decision was within the bounds of reason was a holding that the decision was not "arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it" — that is, not an abuse of discretion.

The appellate court's holding that defendant "fail[ed] to satisfy" the elements of self-defense, A23, ¶ 38, was similarly a correct articulation of defendant's burden of establishing his entitlement to a self-defense instruction. Defendant asserts that that he "had no obligation to 'satisfy' the self-defense element" because he needed only to "establish . . . slight evidence of all elements of self defense." Def. Br. 46 (citing *Everette*, 141 Ill. 2d at 156). But that is what "satisfying" an element of self-defense means: establishing evidence of the element sufficient to meet the evidentiary minimum. *See Everette* 141 Ill. 2d at 157 (whether defendant is entitled to self-defense instruction turns on "whether the defendant has met the evidentiary minimum entitling him to instructions on [the] affirmative defense"); *see also Washington*, 2012 IL 110283, ¶ 43 (defendant seeking self-defense instruction "must establish some evidence of [the elements of self-defense]"); *Jeffries*, 164 Ill. 2d at 127-28 (same). The appellate court's conclusion that defendant had not satisfied the elements — that is, had not established evidence of those

elements sufficient to meet the evidentiary minimum — is consistent with the proper evidentiary standard, especially given the appellate court's earlier accurate articulation of that standard. *See* A16, ¶ 22 (explaining that "the court must provide the instruction 'if there is some evidence, however slight, in the record to support th[e] defense'" (quoting and altering *McDonald*, 2016 IL 118882, ¶ 25)); *Stanley v. Bartley*, 465 F.3d 810, 813 (7th Cir. 2006) (rejecting argument that Illinois Appellate Court applied incorrect standard based on wording of its conclusion because, "[h]aving expounded the well-known standard correctly" earlier in its opinion, "it is more likely that the court stated its conclusion imprecisely than that it applied a different standard").

Although defendant insists that the appellate court, by affirming the trial court's decision, "applied the wrong criteria" because the trial court "did not apply the proper criteria" when determining whether to issue the instruction, Def. Br. 41, he does not identify what improper criteria the trial court considered. Nor could he; the trial court expressly stated that it was reviewing the record to determine whether there was "some evidence" of each of the elements of self-defense that this Court identified as necessary in *Jeffries*. R241-42. The trial court then concluded that the evidence did not support those elements. R242-43 (rejecting request for instruction because "there is nothing that has been presented" in support of all but one element).

In fact, the trial court determined that not only did the evidence not support the elements of self-defense, it refuted them. The court found that defendant failed to establish some evidence that he was not the aggressor because the body camera footage showed that he *was* the aggressor. *See* R242, 244.

Contrary to defendant's assertion, Def. Br. 40-41, 45, 47, the trial court did not improperly "weigh" the evidence by recognizing that that the evidence refuted rather than supported the elements of self-defense. As this Court has explained, the trial court's role when determining whether to issue an instruction is to evaluate the quantum of evidence supporting the instruction, not the credibility of that evidence — to determine "whether there is *some evidence*" that supports the instruction, "not whether there is *some credible* evidence." *McDonald*, 2016 IL 118882, ¶ 25 (emphasis in original); *see Mathews v. Unites States*, 485 U.S. 58, 63 (1988) (defendant is entitled to instruction on an affirmative defense when "there exists evidence sufficient for a reasonable jury to find in his favor"). That is what the trial court did here. The trial court reviewed the record and found insufficient evidence of self-defense to support a self-defense instruction because the only evidence relevant to several of the elements refuted rather than supported those elements. R241-42. The trial court did not impermissibly credit the People's evidence over defendant's or the testimony of one witness over another.

Nor did the trial court violate this Court's holding in *Washington* by recognizing that the record refuted rather than supported certain elements of self-defense. Defendant is incorrect that *Washington* held that a trial court may not find that a defendant's belief in the necessity of his use of force was unreasonable. *See* Def. Br. 16, 26-27, 45-46, 47. *Washington* held that when a trial court instructs the jury on self-defense based on sufficient evidence of a murder defendant's subjective and reasonable belief in the need for self-defense, that same evidence is necessarily sufficient to instruct the jury on the lesser mitigated offense of second-degree murder, which requires only evidence of a subjective belief in the need of self-defense. 2012 IL 110283, ¶ 56 (holding that "when the evidence supports the giving of an instruction on self-defense, an instruction on second degree murder must be given as a mandatory counterpart"); *see also McDonald*, 2016 IL 118882, ¶ 27 (summarizing *Washington*). Thus, the trial court may not refuse to instruct the jury on second degree murder based on its own findings that the defendant held a belief in the need for self-defense and that belief was reasonable rather than unreasonable because the ultimate determinations of whether *in fact* the defendant held the belief and *in fact* that belief was reasonable are for the jury. *Washington*, 2012 IL 110283, ¶ 56. But *Washington* did not suggest that the trial court may not deny a request for a self-defense instruction where the record contains insufficient evidence that a defendant subjectively believed his use of force was necessary for self-defense.

See id. (cautioning that the Court's "holding applies only in cases, such as *Lockett* and the instant case, where the trial court has determined that the giving of an instruction on self-defense is warranted and the defendant requests the giving of a second degree murder instruction"). After all, this Court itself has found record evidence of defendants' subjective beliefs that their uses of force were necessary for self-defense wanting. *See*, *e.g.*, *Everette*, 141 Ill. 2d at 161-63; *Bratcher*, 63 Ill. 2d at 539-40.

The trial court properly applied the same standard when evaluating the sufficiency of the evidentiary support for a self-defense instruction, *see* R241-43; *see also* R283-85, and the appellate court properly deferred to the trial court's reasonable conclusion that the evidentiary support was insufficient, A22-23, ¶¶ 36-37. At bottom, defendant's quarrel is not with nature of the trial and appellate court's evaluation of the record support for a self-defense instruction but with their conclusions that the support was insufficient.

C. Defendant's proposed single-element test has no basis in law, no advantage over the Court's test, and serious disadvantages.

Defendant recognizes that it is actually *his* proposed test — that a defendant is entitled to self-defense instruction for force used against an arresting officer whenever there is some evidence that the officer used excessive force — that would be the new test. *See* Def. Br. 1 (recognizing that issue on appeal is whether this Court "should adopt" defendant's test); *see also id.* 15 (arguing that the Court should "adopt" defendant's test), 32

(same), 39 (same), 50 (same). But defendant provides no legal basis or compelling reason to depart from the established standard and adopt a new one.

First, defendant offers no reason to believe that the Court's established standard is deficient in any way. Defendant identifies no circumstances where limiting self-defense instructions to defendants who have established at least some evidence of all the elements of self-defense will result in the improper denial of an instruction. Instead, he offers a shortcut that "*assumes* at least slight evidence of all elements of self-defense once any evidence of excessive force has been put forth." *Id.* at 18 (emphasis added).

But defendant's shortcut is contrary to the fundamental principle that an instruction must not be given unless it is supported by the evidence. *See Sloan*, 2024 IL 129676, ¶ 14 ("An instruction that is not supported by the evidence or the law should not be given."). Although defendant is correct that the "the evidentiary standard that must be met in order to obtain a self-defense instruction" is "low," Def. Br. 18, it is still an evidentiary standard, and it must be met with evidence, not assumptions.

To be sure, there may be cases in which evidence that an arresting officer used excessive force would satisfy the evidentiary minimum not only for the element of unlawful force, but for the other elements as well. *See supra* pp. 39-40. In those cases, considering whether there is evidence of all

the elements of self-defense rather than assuming such evidence exists will not deprive the defendant of a self-defense instruction.

On the other hand, issuing self-defense instructions whenever there is some evidence of excessive force alone, regardless of whether the record contains any evidence of the other elements of self-defense, will result in juries improperly receiving self-defense instructions. For example, suppose an officer used excessive force during an arrest — perhaps by punching a defendant during the struggle to handcuff him — and the defendant, after being cuffed and driven to the station, kicked the officer as he was led inside. If the defendant was charged with aggravated battery for that kick, he could not justify it as self-defense. Because the altercation during which he was punched had ended, he was now the aggressor, he faced no imminent unlawful force when he kicked the officer, and he could not have reasonably believed the kick necessary to defend against imminent unlawful force. Yet defendant's test would require an instruction in that circumstance, too.

Or suppose that when the officer punched the defendant during the struggle to handcuff him, the defendant responded by drawing a gun and shooting the officer in the head. Again, the defendant could not justify his use of force as self-defense, this time because he could not have reasonably believed his use of lethal force was necessary to defend against the threat posed by the officer's single unlawful punch. Yet defendant's test again would require that the jury be instructed on self-defense.

By requiring that juries be instructed on self-defense in cases where the evidence does not support that instruction, defendant's test would do little more than invite nullification. *See People v. Griffith*, 334 Ill. App. 3d 98, 116 (1st Dist. 2002) (defendant "is not entitled to . . . an instruction that encourages jury nullification"); *see also People v. Moore*, 171 Ill. 2d 74, 110 (1996) (defendant has no right to argue nullification because "[a] defendant does not have the right to have the jury ignore the law or the undisputed evidence in a case"). The purpose of jury instructions is to "guid[e] the jury to a verdict that is based on the applicable legal principles." *Sloan*, 2024 IL 129676, ¶ 14. Instructing juries on inapplicable legal principles would serve only to confuse them and increase the likelihood that they will reach a verdict on a basis other than the applicable law. This is a steep price to pay just to avoid reviewing the record for evidence of all the elements of self-defense.

Defendant relies on *People v. Ammons*, 2021 IL App (3d) 150743, *see* Def. Br. 17-18, but *Ammons* provides no basis, either in its reasoning or its cited authority, to depart from this Court's rule that self-defense instructions are improper absent some evidence of each element of self defense. *See Jeffries*, 164 Ill. 2d at 127-28; *Everette*, 141 Ill. 2d at 157-58; *see also Bratcher*, 63 Ill. 2d at 539-40. In stating that "a jury instruction on self-defense is required where . . . there is evidence that that arresting officer used excessive force," *Ammons* neither addressed this Court's contrary precedent nor offered any reason why that precedent did not control. 2021 IL App (3d) 150743,

¶ 21. Instead, *Ammons* cited two appellate court cases for the proposition, *id.*: (1) *People v. Wicks*, 355 Ill. App. 3d 760, 764 (3d Dist. 2005), which similarly stated the proposition without reasoning; and (2) the case that *Wicks* cited for the proposition, *People v. Williams*, 267 Ill. App. 3d 82, 88 (2d Dist. 1994)).[5] Thus, *Ammons*'s assertion that a self-defense instruction is required whenever there is some evidence of excessive force ultimately rested entirely on *Williams*.

But *Williams* stated that proposition without citation to any authority at all, *see* 267 Ill. App. 3d at 88, and, moreover, did not appear to give it the breadth that *Ammons* did. After stating that a self-defense instruction was required if there was evidence of excessive force by the arresting officer, *Williams* analyzed another element of self-defense — whether there was sufficient evidence that the defendant subjectively *believed* that her use of force against the arresting officers was necessary to defend herself against unlawful force by the officers. *See id.* at 89. Williams concluded that the evidence was *insufficient* because, "[a]lthough defendant expressed that she was surprised, confused, and did not understand what was happening during the incident," there was no evidence that she acted in fear of "the possible use

[5] *Ammons* also generally cited *People v. Witanowski*, 104 Ill. App. 3d 918 (3d Dist. 1982), *see Ammons*, 2021 IL App (3d) 150743, ¶ 21, but that case did not involve any dispute over whether the jury should have been instructed on self-defense, *see Witanowski*, 104 Ill. App. 3d at 921-22 (addressing whether trial court erred by instructing that one may not use force to resist arrest, even if he believes arrest is unlawful, in case where a self-defense instruction was given).

of excessive force." *Id.* In other words, *Williams* did little more than apply the usual rule that no self-defense instruction is warranted unless there is evidence that the defendant actually and reasonably believed her use of force necessary to defendant against unlawful force. *Williams*'s unsupported assertion that evidence of excessive force alone requires a self-defense instruction was therefore overbroad or, at most, dicta.

To the extent that *Williams* held that a defendant is entitled to a self-defense instruction whenever there is some evidence of excessive force — even though its holding demonstrates that *Williams* did not apply that rule — it should be overruled. *See People v. Marcum*, 2024 IL 128687, ¶¶ 35-41 (overruling line of appellate cases that simply repeated a misstatement of law). *Williams*'s statement appears to rest on a misreading of the committee comments to section 7-7, which explain that section 7-7's rule that a person may not use force against an arresting officer "does not apply to the situation in which the officer uses excessive force" because "the officer's use of excessive force invokes the right of self-defense stated in section 7-1." Ill. Ann. Stat., ch. 38, par. 7-7, Committee Comments, at 418; *see Williams*, 267 Ill. App. 3d at 88 ("Use of [excessive] force invokes the right of self-defense."). But this just means that section 7-7's bar against asserting self-defense under section 7-1 is lifted in cases of excessive force, not that the requirements of section 7-1 no longer apply. *See Bailey*, 108 Ill. App. 3d at 398-401 (stating that "[t]he use of excessive force invokes the right of self-

defense," then analyzing whether there was sufficient evidence that defendant's use of force was justifiable under section 7-1 to warrant self-defense instruction (citing *Bratcher*, 63 Ill. 2d at 540)). The fact that the threat of unlawful force triggers a person's right to use force in self-defense does not mean that the force the person actually uses is necessarily justifiable as self-defense. For example, a person may respond with force beyond that necessary to defend himself. *See In Interest of D.N.*, 178 Ill. App. 3d 470, 474 (1st Dist. 1988) (affirming criminal liability for aggravated battery where provoked juvenile respondent continued striking initial aggressor "beyond the reasonable need for self-defense"). Or he may respond with force motivated by anger rather than defense. *See Bratcher*, 63 Ill. 2d at 539-40. In short, the use of unlawful force by an arresting officer does not prohibit a person from using force in self-defense, but it also does not privilege force beyond what could otherwise be justified as self-defense. As the appellate court below put it, "section 7-1 provides the arrestee the same right of self-defense when excessive force is used on him as in any other situation where unlawful force is used on him." A19, ¶ 29.

Defendant fails to provide a rationale for privileging uses of force against police that would not be privileged against civilians. He argues that continuing to apply this Court's rule "will clear[ ] the path for the police to continue to use excessive force unchecked" because, without self-defense instructions for defendants in criminal cases, "there is nothing to deter

them." Def. Br. 31-32. But a police officer who uses unlawful force is subject to civil and criminal penalties for that unlawful act. It is irrelevant to the consequences that the officer faces for his own unlawful conduct whether there is some evidence that a defendant's *response* to that unlawful act is itself justifiable as self-defense and warrants a self-defense instruction.

II. Any Error in Not Instructing the Jury on Self-Defense Was Harmless.

Even if there was some evidence of excessive force and evidence of excessive force alone were enough to warrant a self-defense instruction — and, as explained, neither true — the jury would have been instructed that defendant's guilt turned on whether his use of force against Taylor was justified under section 7-1's multi-element test, not just whether Taylor used excessive force. *See* IPI, Criminal, 24-25.06 ("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] against the imminent use of unlawful force."). Thus, any error in not issuing that instruction was harmless because there is no reasonable doubt that the jury would have found the prosecution disproved at least one of the necessary elements of self-defense. *See Gray*, 2017 IL 120958, ¶ 50 ("If the State negates any one of these elements, the defendant's claim of self-defense necessarily fails.").[6]

---

[6] Although as the appellee below the People did not address the harmlessness of the alleged instructional error, the People did not forfeit their argument that any error was harmless, for "an appellee may raise any argument or basis supported by the record to show the correctness of the judgment below, even though [it] had not previously advanced such an

For example, the jury could not have harbored a reasonable doubt that defendant did not reasonably believe self-defense required that he continue gripping Taylor's neck after they fell. The video evidence showing that defendant held onto Taylor's neck after any danger from the fall had passed — and with such strength that Taylor could not escape without the sustained effort of two other officers to pry defendant loose — conclusively showed that defendant was not acting in self-defense at that point. There was no evidence that defendant subjectively believed that he had to hold Taylor in a headlock to protect himself against imminent unlawful force, but even if he held such a belief, there was no evidence that belief was reasonable.

Contrary to defendant's assertion, Def. Br. 39, the fact that the jury acquitted defendant of aggravated battery for pushing Kuhlman's arm does not suggest otherwise. The jury was not instructed on self-defense, so its acquittal of defendant with respect to the charge of aggravated battery against Kuhlman reflected a determination that the prosecution failed to prove beyond a reasonable doubt that defendant made contact of an insulting or provoking nature by pushing Kuhlman's arm away. *See* 720 ILCS 5/12-3. In contrast, the jury found that defendant's contact with Taylor's neck —

---

argument." *Veronica C.*, 239 Ill. 2d at 151 (2010), and this Court correspondingly "may affirm on any basis presented in the record," *People ex rel Alvarez v. $59,914 U.S. Currency*, 2022 IL 126927, ¶ 24. In addition, should the Court determine that there was an instructional error, "it is entirely appropriate" to also consider whether the error was harmless or requires reversal. *In re Rolandis G.*, 232 Ill. 2d 13, 37-38 (2008).

grabbing it with first one arm, then two arms, and refusing to let go until he was finally pried loose by two other officers — *was* contact of an insulting or provoking nature.

CONCLUSION

This Court should affirm the judgment of the appellate court.

May 14, 2025

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

JOSHUA M. SCHNEIDER
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(773) 590-7123
eserve.criminalappeals@ilag.gov

Counsel for Plaintiff-Appellee
People of the State of Illinois

RULE 341(c) 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 containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 13,377 words.

/s/ Joshua M. Schneider
JOSHUA M. SCHNEIDER
Assistant Attorney General

CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On May 14, 2025, the foregoing **Brief of Plaintiff-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, which provided service to the following:

Elliott A. Borchardt
Assistant Appellate Defender
Office of the State Appellate Defender
Second Judicial District
One Douglas Avenue, Second Floor
Elgin, Illinois 60120
2nddistrict.eserve@osad.state.il.us

Counsel for Defendant-Appellant

/s/ Joshua M. Schneider
JOSHUA M. SCHNEIDER
Assistant Attorney General