No. 130919

IN THE

SUPREME COURT OF ILLINOIS

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

REPLY BRIEF FOR DEFENDANT-APPELLANT

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ARGUMENT

I.

This Court should adopt the *Ammons* approach for determining whether a jury should be instructed regarding self-defense during a resisting arrest or aggravated battery of a peace officer trial at which the defendant claims self-defense. Under said approach, the trial court erred in declining to give Vesey's jury a self-defense instruction, as there was at least slight evidence that Taylor used excessive force against Vesey in arresting him.

Although the parties agree that excessive force is unlawful force, (Def. Br. 19-20); (St. Br. 21-22), they dispute whether the *Ammons* approach is consistent with the law and whether there was slight evidence that officer-in-training Taylor used excessive force. (Def. Br. 18-27, 32-38); (St. Br. 21-28, 46-53).

A. The *Ammons* approach is superior to the Fourth District's test because it inherently considers all elements of self-defense in a manner that is consistent with this Court's precedent, and it is better at protecting the public's interests and safety during contacts with the police.

1. The Third District's *Ammons* approach is the better one to apply to determine if a defendant is entitled to a self-defense jury instruction when he claims he used self-defense in response to a police officer using excessive force.

The State's argument against the *Ammons* approach is based on the faulty premise that it is a novel legal standard that conflicts with this Court's precedent for evaluating whether a self-defense instruction should be given. (St. Br. 46-47, 49). The *Ammons* approach is actually entirely consistent with this Court's precedent, as it implicitly recognizes that slight evidence of excessive force demonstrates slight evidence of all six elements of self-defense. *See* (Def. Br. 14-15, 18-27); *People v. Jeffries*, 164 Ill.2d 104, 127-28 (1995) (mandating slight evidence of the self-defense elements for an instruction to be given).

Additionally, the *Ammons* approach *does* rely on evidence—circumstantial

evidence—and not mere assumptions. *See People v. Hilson*, 2023 IL App (5th) 220047, ¶ 57 (defining circumstantial evidence); (Def. Br. 18-27); (St. Br. 47).

The State's concern that giving a self-defense instruction based on evidence of excessive force, "regardless of whether the record contains any evidence of the other elements of self-defense, will result in juries improperly receiving self-defense instructions," (St. Br. 48), is unfounded. First, evidence of excessive force does establish slight evidence of the elements of self-defense. *See* (Def. Br. 18-27). Next, regarding the State's first example of a defendant kicking an officer after being taken to the police station, (St. Br. 48), Vesey's argument only concerns obtaining an instruction when the defendant acts *in response to* the excessive force, *i.e.*, *at the time the excessive force is happening and/or in its immediate aftermath*. (Def. Br. 18, 22-23). Indeed, that is when Vesey's use of force occurred and is a feature of the hypotheticals he presented. (People's Ex. No. 1.1 1:08-1:11; People's Ex. No. 1.1A 0:04-0:09; People's Ex. No. 1.3 0:03-0:14); (Def. Br. 29). Finally, as for a defendant shooting an officer after the officer punched the defendant once while struggling to handcuff him, (St. Br. 48), a defendant cannot assert self-defense under such a scenario because the officer's use of force was proportionate to the level of resistance he faced, meaning there is no evidence the officer used excessive force to begin with. *See* 720 ILCS 5/7-5(a) (2022) (allowing an officer to use force reasonably necessary to make an arrest under the circumstances).

Ammons relies on more than *People v. Williams*, 267 Ill.App.3d 82 (2d Dist 1994). (St. Br. 50). Consistent with the Criminal Code, *Ammons* noted that "[a]n arresting officer may use any force reasonably necessary to protect himself or to effectuate an arrest" and that "the officer need not retreat in the face of

resistance." *People v. Ammons*, 2021 IL App (3d) 150743, ¶ 21; *accord* 720 ILCS 5/7-5(a) (2022). Consistent with the Code, *Ammons* also stated, "A person may not use force to resist arrest by a known police officer, even if the arrest is unlawful." *Ammons*, 2021 IL App (3d) 150743, ¶ 21; *accord* 720 ILCS 5/7-7 (2022). Finally, consistent with the law, *Ammons* said, "An exception to this rule is made when the officer uses excessive force. [citations]. Use of excessive force by a police officer invokes the arrestee's right of self-defense." *Ammons*, 2021 IL App (3d) 150743, ¶ 21; *accord People v. Haynes*, 408 Ill.App.3d 684, 690 (1st Dist. 2011); 720 ILCS Anno. 5/7-7, Committee Comments, at 362 (Smith-Hurd 1993). Even the State recognizes that this is the law. (St. Br. 22-23). The State complains that *Williams* stated the *Ammons* approach "without citation to any authority at all," (St. Br. 50), but *Williams* rested its position on the premise—with citation to section 7-1 of the Code and to *People v. Bailey*, 108 Ill.App.3d 392 (2d Dist. 1982)—that the "use of [excessive] force invokes the right of self-defense." *Williams*, 267 Ill.App.3d at 88.

The State asserts *Williams* is contradictory because, despite discussing the *Ammons* approach, the *Williams* court subsequently addressed the element of whether the defendant subjectively believed her use of force was necessary. (St. Br. 50-51). There is nothing contradictory about *Williams*. The *Williams* court found that no instruction was necessary for three distinct reasons. *Williams*, 267 Ill.App.3d at 88-89. First, noting that a self-defense instruction is required in a resisting arrest case if the defendant is unaware of an officer's identity, the court determined that the evidence demonstrated that the defendant knew the officer was an officer. *Id.* at 88-89. Next, despite the State's contention otherwise, (St.

Br. 50-51), the court applied the *Ammons* approach, finding that "there is no evidence the police used excessive force." *Williams*, 267 Ill.App.3d at 89. Finally, the court determined that "the evidence does not demonstrate that [the] defendant was in fear of the police or the *possible* use of excessive force." *Id.* (emphasis added). Simply put, the court in *Williams* was looking to an individual self-defense element as a part of a determination of whether self-defense was available in the *possible* face of excessive force because it determined there was *no* evidence of excessive force. *Id.* In contrast, here, the claim of self-defense is not based on the mere *possibility* of excessive force, but slight evidence of the *actual* use of excessive force, thus warranting the instruction. (Def. Br. 32-38).

The State criticizes *Williams* for the way it interprets the statement of law that an officer using excessive force "invokes" the right of self-defense. (St. Br. 51). Relying on *Bailey*, the State asserts, "[T]his 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." (St. Br. 51). Vesey agrees that the elements of self-defense still apply in cases of excessive force. However, slight evidence of excessive force presents slight evidence of all elements. *See* (Def. Br. 18-27). Indeed, the State's interpretation of "invoke" is too narrow; "invoke" means "to call for with earnest desire," "to declare to be binding or in effect," and "to cause, call forth, or bring about." Dictionary.com, https://www.dictionary.com/browse/invoke (last visited June 10, 2025). It is ultimately the jury's factual determination to make as to whether the defendant acted in self-defense, *People v. McDonald*, 2016 IL 118882, ¶ 25, but these definitions of "invoke" put the question as to whether the defendant was acting in self-defense before the jury.

To the extent *Bailey* suggests that more evidence than slight evidence of excessive force is necessary to establish slight evidence of the self-defense elements, this Court should overrule it. Just like the Fourth District test, *Bailey* fails to recognize that slight evidence of excessive force presents slight evidence of all elements, is contrary to this Court's precedent, and disregards that excessive force may be the reason why a defendant resorts to his use of force in the first place. *See* (Def. Br. 27-29).

True, just because an officer used excessive force does not mean that the defendant's own force was self-defense in response. (St. Br. 52). However, that is ultimately a fact for the jury to determine. *McDonald*, 2016 IL 118882, ¶ 25; *see also* (Def. Br. 26-27). Instead, all that is needed for a self-defense instruction is slight evidence of the self-defense elements, *Jeffries*, 164 Ill.2d at 127-28, which evidence of excessive force provides. *See* (Def. Br. 18-27).

This Court should adopt the *Ammons* approach for determinating whether a self-defense instruction should be given when the defendant raises self-defense in response to an officer's use of excessive force.

2. The Fourth District's test undermines this Court's precedent and will wreak havoc on the public's safety and interest.

The novel standard that conflicts with this Court's precedent is actually the Fourth District's test, which uses a "two-step inquiry" to determine whether an instruction is appropriate. *Compare People v. Vesey*, 2024 IL App (4th) 230401, ¶ 28, *with Jeffries*, 164 Ill.2d at 127-28 (requiring merely slight evidence of the self-defense elements for a jury to receive a self-defense instruction). Indeed, despite the State's contention otherwise, (St. Br. 52), Vesey is not seeking a lower standard

for obtaining a self-defense instruction in cases against the police compared to cases against civilians; again, slight evidence of excessive force establishes slight evidence of the self-defense elements, thus meeting *Jeffries*'s requirements. *See* (Def. Br. 18-27). Rather, the Fourth District created a higher standard to gain a self-defense instruction for claims against officers than against civilians. *See Vesey*, 2024 IL App (4th) 230401, ¶ 28. It is therefore incorrect to say that the Appellate Court applied this Court's precedent. (St. Br. 38).

The State asserts as incorrect Vesey's claim that the Fourth District requires evidence of the self-defense elements beyond the evidence of excessive force. (St. Br. 38-39). But by expressly "distanc[ing]" itself from *Ammons* and requiring a "two-step inquiry," the first of which is to examine whether there is excessive force, *Vesey*, 2024 IL App (4th) 230401, ¶¶ 28-29, the Fourth District implicitly held that evidence of excessive force is not enough to obtain the instruction. If evidence of excessive force was enough under the Fourth District's test, its second step—"determin[ing] whether the trial record contains sufficient evidence of [the elements of] self-defense"—would be superfluous. *Id.* at ¶ 28. Indeed, in applying its test to the facts of this case, the Fourth District addressed the question of excessive force separately before addressing the elements of self-defense, and it found the fifth element not "satisf[ied]" without any discussion regarding what effect the use of excessive force may have had on that element. *Id.* at ¶¶ 33-38.

Responding to Vesey's argument that the Fourth District's test (which the State erroneously refers to as this Court's test) "clears the path for the police to continue to use excessive force unchecked," (Def. Br. 31), the State argues that an officer "who uses unlawful force is subject to civil and criminal penalties for

that unlawful act." (St. Br. 52-53). However, taxpayers end up paying the civil penalties, *see* (Def. Br. 31), and officers are routinely not prosecuted for using excessive force. Andrea J. Ritchie & Joey L. Mogul, *In the Shadows of the War on Terror: Persistent Police Brutality and Abuse of People of Color in the United States*, 1 DEPAUL J. FOR SOC. JUST. 175, 179 (2008).

This Court should reject the Fourth District's test.

B. Vesey was entitled to a self-defense jury instruction at his aggravated battery of a peace officer trial because there was at least slight evidence that Taylor used excessive force in arresting Vesey.

The State claims that there was insufficient evidence that officer-in-training Taylor used excessive force. (St. Br. 21-28). To support its claim, the State argues that Vesey "shoved Kuhlman's arm out of the way when Kuhlman tried to keep his distance, and then assumed a fighting posture." (St. Br. 24). The State continues, "In arresting [Vesey] for battery against Kuhlman, Taylor pushed [Vesey] away from Kuhlman and toward a grassy hill." (St. Br. 24). This is an incorrect and incomplete version of what happened, and a complete version of what happened is critical, as whether an officer's use of force rises to the level of excessive force is a fact-specific inquiry dependent on the totality of the circumstances. 720 ILCS 5/7-5(a), (f) (2022); *Barnes v. Felix*, 605 U.S. ___, ___, 145 S.Ct. 1353, 1357-58 (2025). Kuhlman did not just "tr[y] to keep his distance." (St. Br. 24). Instead, Kuhlman put his hand on Vesey's chest and shoved him. (People's Ex. No. 1.1 1:07-1:09). Nor did Vesey take a "fighting posture" after the shove. (St. Br. 24). The State asserts that Vesey took a "bladed" stance "with one foot forward, one foot back, and his hands in loose fists." (St. Br. 16). But the video footage shows Vesey had just been shoved backward, easily explaining why one foot was in front of the other.

(People's Ex. No. 1.1 1:07-1:09). Although Vesey did form fists, they were very loose, and his arms remained down by his shorts. (People's Ex. No. 1.1 1:08-1:09). Based on the images below showing Vesey's stance immediately after Kuhlman shoved him, it is unreasonable to conclude that Vesey was in a "fighting stance:"

(People's Ex. No. 1.1A 0:05).

(People's Ex. No. 1.1A 0:05).

Additionally, Taylor did not merely "push[] [Vesey] away from Kuhlman and toward a grassy hill." (St. Br. 24). Taylor instead immediately charged at Vesey with relentless forward momentum, intending from the very beginning to take Vesey down over a concrete retaining wall with Vesey's head and body exposed. (R. 184-85; People's Ex. No. 1.1 1:08-1:11). Further, Taylor did so without any warning in order to effect an arrest for a mere swat to Kuhlman—an act the jury did not find to be a criminal one—after officers outnumbered Vesey, knew he had no weapons, and made no attempt to make a peaceful arrest—let alone inform Vesey that he was under arrest. (C. 108; R. 175-77, 184-85, 199-201, 218; People's Ex. No. 1.1 0:00-1:11; People's Ex. No. 1.2 6:42-6:44).

Also, and critically, the video footage showed that Vesey did not make *any* contact with Taylor, let alone wrap his arms around him, until Taylor was already aggressively pushing Vesey toward the concrete retaining wall. (People's Ex. No. 1.1 1:09-1:11; People's Ex. No. 1.1A 0:04-0:07).

The State says that, in arresting Vesey by "push[ing] [him] away from Kuhlman and toward a grassy hill"—which again is not an accurate or full recitation of what occurred—Taylor "ensured that (1) the struggle would occur away from [Vesey's] child and ex-wife who were both a short distance behind Kuhlman; and (2) [Vesey] would fall a shorter distance and onto a softer surface than if Taylor pushed him toward the concrete sidewalk or asphalt parking lot." (St. Br. 24). This disregards that there was no struggle for an arrest to be had until Taylor chose to dangerously tackle Vesey over the wall in the first place and that tackling Vesey was not reasonably necessary under the circumstances. Vesey never even had the chance to submit to a peaceful arrest. (R. 201). Further, Robinson and

the child had already started walking away. (R. 167; People's Ex. No. 1.1 1:05-1:06).

The State's argument that the "fall" was not shown to be unusually dangerous in this case is meritless. (St. Br. 26). First, the situation here was not merely a "falling down" or a "loss of balance." (St. Br. 26, 28). Taylor tackled Vesey:

(People's Ex. No. 1.1A 0:08). Taylor even admitted that he tackled Vesey. (R. 199). Further, the State again disregards that Taylor tackled Vesey over a *concrete retaining wall without warning and with Vesey's head and body exposed*. (People's Ex. No. 1.1 1:08-1:11).

The State analogizes to *People v. Jones*, 2015 IL App (2d) 130387, in arguing that there was insufficient evidence of excessive force here. (St. Br. 24-25). However, reliance on the facts of another case is inapposite, as whether an officer used excessive force is a fact-specific inquiry. 720 ILCS 5/7-5(a), (f) (2022); *Barnes*, 605 U.S. at ___, 145 S.Ct. at 1357-58. Indeed, *Jones* is readily distinguishable. There, an officer grabbed the defendant's arm to arrest him. *Jones*, 2015 IL App (2d) 130387, ¶ 7. The defendant pushed and pulled away, and the officer took the defendant

to the floor of a porch in response. *Id.* at ¶¶ 4, 7. The Second District found that there was no explanation as to "how the arrest could have been accomplished with a lesser degree of force." *Id.* at ¶ 24. After all, once the defendant initially resisted in pulling his arms away, taking a defendant to the ground could be a reasonable level of force to effect an arrest under the circumstances. *See* 720 ILCS 5/7-5(a) (2022) (noting that an officer can use force reasonably necessary to effect an arrest or for safety purposes). The Second District also noted that the defendant "was belligerent and combative from the beginning" of his interaction with the police. *Jones*, 2015 IL App (2d) 130387, ¶ 26. The Second District concluded, "When it was clear that [the] defendant would not cooperate, [the officer] merely grabbed his arm and tackled him, which was necessary to effect the arrest." *Id.*

In contrast, here, Vesey did not initially resist his arrest, as the tackle occurred immediately following the superficial swat at Kuhlman (which Vesey only did after Kuhlman put his hands on Vesey), and no one ever informed Vesey he was under arrest. (R. 199, 218; People's Ex. No. 1.1 1:07-1:11). Similarly, because officers did not tell Vesey that he was under arrest and Taylor tackled Vesey immediately after Vesey superficially swatted Kuhlman in response to Kuhlman putting his hands on Vesey, it was *not* clear here that Vesey would not cooperate with an arrest; he was never given the chance. (R. 201). Finally, the tackle here was not merely a tackle to the floor of a porch; it was a tackle over a concrete retaining wall with Vesey's head and body exposed without warning—an inherently dangerous action. (People's Ex. No. 1.1 1:07-1:11); *Vesey*, 2024 IL App (4th) 230401, ¶ 44 (Turner, J., dissenting) (noting that Vesey's head and body were unprotected and "exposed to slamming into the ground or concrete").

The State argues that Vesey "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." (St. Br. 25). Once more, this is an inaccurate and incomplete version of what happened here. *See supra*. Regardless, as discussed, the determination as to whether an officer used excessive force requires a fact-specific inquiry. Similarly, the State's argument that "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" fails. (St. Br. 26). Excessive force is a fact-specific inquiry, and there is more than mere "taking someone to the ground" here. *See supra*. The State's concerns that merely going to the ground would allow for self-defense in every case, (St. Br. 26), are thus misplaced.

At no point does Vesey argue that Taylor could not use any force to effect an arrest. (St. Br. 27). The State misinterprets Vesey's argument. Of course, some use of force, even if superficial, is necessary to effect an arrest. Instead, Vesey argues that the *level of force* used to arrest him was not justified under the circumstances, especially in light of Vesey having no chance to peacefully submit. *See* (Def. Br. 33-37).

The State asserts that the force Vesey "appears to concede would have been reasonable under the circumstances" in moving Vesey away from Kuhlman was the force that Taylor used. (St. Br. 28) (citing Def. Br. 35). The State takes Vesey's argument out context. The problem is not what Taylor was trying to accomplish, but the amount of force he used to accomplish his goal.

The State points to no evidence of injuries to Vesey. (St. Br. 26). However,

injury is not an element of self-defense. *See People v. Gray*, 2017 IL 120958, ¶ 50 (listing the self-defense elements). Indeed, merely *threatened* unlawful force is enough to claim self-defense assuming the other elements are present. *Id.* Further, the standard at this stage is only slight evidence, and evidence is to be viewed in the light most favorable to Vesey. *People v. Everette*, 141 Ill.2d 147, 156 (1990); *People v. Alexander*, 250 Ill.App.3d 68, 76 (2d Dist. 1993). Considering the evidence that *is* present in the record, the slight evidence standard was satisfied as to Taylor's use of excessive force. The trial court thus erred in not giving the self-defense instruction. *Ammons*, 2021 IL App (3d) 150743, ¶ 21.

C. The trial court's error was not harmless beyond a reasonable doubt.

Despite the State's contention to the contrary, (St. Br. 53-54 n.6), its harmless error argument is forfeited. Its reliance on *In re Veronica C.*, 239 Ill.2d 134 (2010), is misplaced because it is distinguishable. (St. Br. 53-54, n.6). There, the issue—standing—was not addressed at all in the appellate court. *Veronica C.*, 239 Ill.2d at 150-51. In contrast, here, Vesey raised harmless error in the Appellate Court, and the State flatly did not address it. (Def. Br. App. Ct. 18-19); (St. Br. App. Ct. 9-12). Thus, the State's argument is forfeited. *See In re Deborah S.*, 2015 IL App (1st) 123596, ¶ 27 ("We note that respondent has argued these issues extensively in her brief, but that the State has failed to respond to or address them in any way in its brief. Accordingly, the State has essentially conceded these issues on appeal."); Ill. S. Ct. R. 341(h)(7), (i) (noting that "points not argued are forfeited" and imposing that rule on the appellee). Regardless, the trial court's error was not harmless. *See* (Def. Br. 38-39). Therefore, this Court should reverse Vesey's conviction and remand for a new trial.

II.

Alternatively, if this Court does not adopt the *Ammons* approach, under the facts of this case, the trial court abused its discretion in failing to instruct the jury regarding self-defense, as the evidence, including Taylor's use of excessive force, established at least slight evidence of all six self-defense elements, and it employed the wrong evidentiary standard in denying the instruction, something the Appellate Court also did in affirming Vesey's conviction.

The State concedes that evidence of excessive force can provide slight evidence of the self-defense elements on at least some occasions. (St. Br. 39-40, 47). Given the facts of this case, this is one such case. Thus, even if this Court does not adopt the *Ammons* approach, the trial court still erred in not giving the self-defense instruction. The State disagrees, arguing that there was no evidence of four of the elements. (St. Br. 20-21). The State also argues that the trial court and Appellate Court did not misapply the slight evidence standard and that the Appellate Court did not misapply the abuse of discretion standard. (St. Br. 41-46).

A. Under the facts of this case, the evidence established at least slight evidence of all elements of self-defense.

The State initially argues that there was no evidence that Taylor employed excessive force. (St. Br. 21-28). For the reasons in Vesey's opening brief, (Def. Br. 32-38), and those discussed above, the State is incorrect.

The State also argues that there was insufficient evidence that Vesey was not the aggressor. (St. Br. 28-33). It is incorrect to say that Vesey "tried to push past Kuhlman and Barrera to reach his daughter." (St. Br. 29). The body-worn camera footage demonstrated that Vesey initially asked Barrera to move so he could talk to his daughter. (People's Ex. No. 1.1 0:06-0:08). Upon being told, "No," he continued to say, "Excuse me." (People's Ex. No. 1.1 0:08-0:20). After a brief discussion about Vesey's mental health and both parties indicating they did not

want to speak with each other anymore, when officers started to walk away, Vesey verbally asked for contact with his daughter and followed the officers without making physical contact with them. (People's Ex. No. 1.1 0:22-1:06; People's Ex. No. 1.2 6:38-6:42). With officers still refusing to allow Vesey to speak with his daughter, Vesey continued to only use his words instead of physically pushing officers. (People's Ex. No. 1.1 1:06-1:07). It was then that *Kuhlman* pushed *Vesey*. (People's Ex. No. 1.1 1:07-1:08).

As explained and shown above, the evidence fails to support the State's claim that Vesey took a "fighting stance." (St. Br. 29). Nor did Vesey "shove" Kuhlman's arm. (St. Br. 29). It was a swat done only in response to Kuhlman making contact with Vesey. (People's Ex. No. 1.2 6:42-6:44).

The State also posits that Vesey was the aggressor because his words provoked the use of force against him. (St. Br. 30). But Vesey made no verbal threats to the safety of the officers or anyone else. (People's Ex. No. 1.1 0:00-1:08). And to the extent Vesey's words were emotionally provocative, they still did not merit a physical response.

Furthermore, even if Vesey's behavior could be considered provocative, that does not extinguish his right of self-defense against an officer who employs excessive force in response. That is to say, in the context of citizen-police interactions, a citizen should only be considered the "aggressor" where an officer responds to the citizen's provocation with force that is lawful, *i.e.*, not excessive.

The State plainly disagrees with the above proposition. (St. Br. 31). However, an officer is only permitted to use the force reasonably necessary to effect an arrest or for safety purposes. 720 ILCS 5/7-5(a) (2022); *Graham v. Connor*, 490 U.S. 386,

395-96 (1989). Additionally, as the State recognizes, (St. Br. 22-23), an officer's use of excessive force invokes the civilian's right of self-defense. *People v. Haynes*, 408 Ill.App.3d 684, 690 (1st Dist. 2011); 720 ILCS Anno. 5/7-7, Committee Comments, at 362 (Smith-Hurd 1993). It follows that, even if a civilian provokes a police officer's use of force—such as, for example, by resisting an arrest or by doing something that poses a safety threat to officers or others—when the officer uses more force than is reasonable—in other words, uses excessive force—in response to the civilian's provocation, the civilian is entitled to use force to defend himself. It makes no logical sense to say both that excessive force invokes the right of self-defense and that the defendant cannot in practice use self-defense because he provoked a reasonable use of force that the officer ultimately exceeded in using excessive force. Both cannot be true; the latter undermines the former despite the former being supported by law.

If the State's position is correct, then upon being provoked to use a *reasonable* level of force, a power-tripping officer, with multiple weapons at his disposal, can use wholly *disproportionate and excessive* force, even if such force does not constitute lethal force, without repercussion against a helpless civilian under color of law. The appalling nature of such a scenario needs no explanation.

Regardless, section 720 ILCS 5/7-4(c)(1) (2022), arguably allowed Vesey to use force in this case despite the State's belief otherwise, (St. Br. 32), as the evidence of excessive force here established at least some evidence of lethal force. Again, the State fails to grasp the full nature of what occurred; Taylor did not "merely tak[e] a suspect to the ground." (St. Br. 32). Taylor instead charged at Vesey intending to tackle him—and indeed tackled him—over a concrete retaining

wall without warning and with Vesey's head and body exposed after Vesey merely swatted at Kuhlman. (R. 184-85, 199; People's Ex. No. 1.1 1:07-1:11; People's Ex. No. 1.2 6:42-6:44). Further, Robinson and the child had already started walking away, and the officers outnumbered Vesey, knew he had no weapons, did not make an attempt to arrest him peacefully, and did not tell him that he was under arrest. (R. 167, 175-77, 199-201, 218; People's Ex. No. 1.1 0:00-1:11).

The State argues that there was no evidence that Vesey subjectively believed his use of force was necessary or that such a belief would be objectively reasonable. (St. Br. 33-36). In making its argument, the State notes that, before the tackle, Vesey "broke Taylor's grip and wrapped one arm around the back of [Taylor's] neck in what appeared to be an attempt at a headlock." (St. Br. 33). There was a period before Taylor and Vesey went over the concrete barrier and onto the hill. But in that period, Taylor charged at Vesey with a steady and purposeful forward momentum. Viewing the full-speed footage in particular, it becomes clear that Taylor was planning to take Vesey down from the get-go. (People's Ex. No. 1.1 1:08-1:11). Indeed, Taylor's testimony reflected a conscious decision to take Vesey over the concrete barrier. (R. 185). In response to Taylor's charge, Vesey immediately and instinctively engaged in his own defensive maneuvering, which included trying to break Taylor's grip and grappling around Taylor's neck with his arm. (People's Ex. No. 1.1 1:09-1:11). After all, by the time Taylor was tackling Vesey over the concrete retaining wall, Vesey had also wrapped his leg around Taylor, putting himself in a full brace position:

(People's Ex. No. 1.1A 0:08). At a minimum, this provides slight evidence, when viewed in the light most favorable to Vesey, *People v. Alexander*, 250 Ill.App.3d 68, 76 (2d Dist. 1993), that he subjectively and reasonably believed his use of force was necessary in order to protect himself. It is difficult to conceive how *anyone* on the receiving end of Taylor's charge would not react defensively.

As for Vesey continuing to hold his arms around Taylor's neck after the tackle, (St. Br. 33, 35), there was still slight evidence that Vesey subjectively believed his force was necessary and that such belief was objectively reasonable. There was evidence that Taylor had just used excessive force against Vesey in tackling him over a concrete retaining wall with his head and body exposed without warning. It is thus reasonable to infer that Vesey subjectively believed continuing to hold onto Taylor was necessary to prevent any further use of excessive force against him, and given that such an inference can reasonably be made, there is also slight evidence that the belief is reasonable. *See People v. Vesey*, 2024 IL App (4th) 230401, ¶ 44 (Turner, J., dissenting) ("[I]t is obvious a juror could infer [Vesey] acted

instinctively out of fear for his safety and actually and subjectively believed a danger existed requiring the use of the force he applied to Officer Taylor."); (Def. Br. 23-24).

The State's analogy to a person refusing to let go of someone else's arm after grabbing it to regain balance after tripping over a curb and falling is thus inapt. (St. Br. 36). The one who tripped and fell was not initially subject to the use of force, let alone an excessive use of force, like Vesey was subject to here.

In the end, it could be true that Vesey wrapped his arms around Taylor's neck not "to protect himself from harm but to fight Taylor." (St. Br. 34). However, that is ultimately a determination for the jury to make. *People v. McDonald*, 2016 IL 118882, ¶ 25. There was still slight evidence of all elements of self-defense under the facts of this case, and the trial court thus erred in failing to give a self-defense instruction. *See People v. Jones*, 175 Ill.2d 126, 131-32 (1997) ("A defendant is entitled to an instruction on his theory of the case if there is some foundation for the instruction in the evidence, and if there is such evidence, it is an abuse of discretion for the trial court to refuse to so instruct the jury. [citation]. Very slight evidence upon a given theory of a case will justify the giving of an instruction.").

B. The trial court abused its discretion because it applied the wrong evidentiary standard when deciding the jury should not receive a self-defense instruction.

Vesey does indeed "identify what improper criteria the trial court considered" in refusing the instruction. (St. Br. 43). Namely, that it made factual determinations instead of applying the slight evidence test. (Def. Br. 45-46).

The State recognizes that the trial court found that the evidence "refuted"

the elements of self-defense and definitively found that Vesey was the aggressor. (St. Br. 44). This is precisely the problem. The trial court's language demonstrates it was not "evaluat[ing] the quantum of evidence," (St. Br. 44), to determine if there was slight evidence of the elements when viewing the evidence in the light most favorable to Vesey, but rather improperly making factual determinations in assessing whether to give the instruction. *McDonald*, 2016 IL 118882, ¶ 25. Just because the trial court said "some evidence" of the elements must be presented to obtain the instruction, (R. 241), does not mean it actually applied that test, especially when considering the language it used when determining whether to give the instruction. *See* (Def. Br. 45).

Despite the State's contention otherwise, (St. Br. 45), this Court in *Washington* stated, "[I]t is not the trial judge's role to weigh the evidence and decide whether [the defendant's subjective belief that the use of force was necessary] was reasonable or unreasonable." *People v. Washington*, 2012 IL 110283, ¶ 43.

C. The Fourth District similarly applied the wrong evidentiary standard in affirming Vesey's conviction.

Contrary to the State's assertion, (St. Br. 43), Vesey argues that the trial court and the Appellate Court distinctly erred, and he argues that the Appellate Court misapplied the abuse of discretion standard and the slight evidence test. (Def. Br. 45-49).

D. The trial court's error was not harmless.

Again, the State has forfeited its harmless error argument. *See supra.* Even so, the trial court's error in failing to give a self-defense instruction was not harmless. *See* (Def. Br. 38-39). Accordingly, this Court should reverse Vesey's conviction and remand for a new trial even if it does not adopt the *Ammons* approach.

CONCLUSION

For the foregoing reasons, and those in his opening brief, Courtney Vesey, Defendant-Appellant, respectfully requests that this Court adopt to the *Ammons* approach for determining whether a jury should be instructed regarding self-defense when the defendant asserts self-defense in response to an officer's use of excessive force. Regardless of whether this Court does so, Vesey also respectfully asks that this Court reverse his aggravated battery conviction and remand for a new trial at which the jury receives a self-defense instruction.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding words contained in the Rule 341(d) cover, the Rule 341(c) certificate of compliance, and the certificate of service, is 5,781 words.

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IN THE

SUPREME COURT OF ILLINOIS

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

NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On June 11, 2025, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Elgin, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

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