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2011 IL App (3d) 091035-U

Order filed December 20, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
Plaintiff-Appellee,)	Rock Island County, Illinois,
)	
v.)	Appeal No. 3-09-1035
)	Circuit No. 08-CF-275
DINO M. BASSETT,)	
)	Honorable
Defendant-Appellant.)	Frank Fuhr
)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Holdridge concurred in the judgment.
Justice Lytton specially concurred.

ORDER

¶ 1 *Held:* Defendant's constitutional rights were not violated when his counsel exercised challenges to remove jurors in chambers without defendant present. However, the matter is remanded to the trial court for a retrospective *Boose* hearing regarding the issue of shackling.

¶ 2 The jury found defendant guilty of two counts of predatory criminal sexual assault and one count of aggravated criminal sexual abuse. On appeal, defendant alleges that his constitutional rights were violated because he was shackled pursuant to court order during his

trial and was not present during a portion of the agreed procedure for the jury selection process. We affirm in part and remand the cause for further proceedings consistent with this order.

¶ 3

FACTS

¶ 4 On March 20, 2008, the State charged defendant with five counts of predatory criminal sexual assault and two counts of aggravated criminal sexual abuse. On June 6, 2008, the clerk of the court filed a handwritten letter from defendant to Judge Braud, dated June 2, apologizing for his behavior in court and assuring the court that defendant would keep his “composure” in the future. On that same day, the cause was assigned to Judge Meersman following both the State’s and defendant’s motions to substitute judges.

¶ 5 On June 17, 2008, defendant filed a *pro se* handwritten motion to dismiss counsel because attorney Lopez filed motions without his consent, withheld key evidence, and did not have his “best interest in mind.” Defendant claimed that defense counsel told him that he did not “have a chance at trial.” On June 30, 2008, defendant filed a *pro se* handwritten motion to substitute both the judge and defense counsel.

¶ 6 On June 23, 2008, during the hearing on defendant’s motion for a new attorney, defendant announced that he wanted to be taken back to jail and did not care what the judge did. Judge Meersman advised defendant to sit down. Defendant responded that defense counsel could “do what the fuck he want to do.” Later during the proceedings, defense counsel Lopez reported to the court that defendant just threatened both Lopez and his family. Defendant responded, “Call it what you want to.” Judge Meersman denied defendant’s *pro se* motion for new attorney. Defendant responded, “I’m going to give him a reason to get off my case.”

¶ 7 The trial court repeated that defendant could raise the issue regarding counsel again prior

to trial, and defendant said, “I’m going to make sure I do. Tell your family hi.” Thereafter, defendant said, “I’ll have my mama tell your family hi, bitch.” Judge Meersman indicated that it was time to remove defendant from the courtroom. However, after receiving multiple motions to dismiss defense counsel Lopez from defendant, on September 2, 2008, Judge Meersman granted defendant’s request for a new attorney and appointed attorney Dalton to represent defendant.

¶ 8 Shortly thereafter, on September 29, 2008, defense counsel Dalton filed a motion to withdraw. On October 6, 2008, Judge Meersman allowed this request and appointed attorney Schultz to represent defendant.

¶ 9 On October 31, 2008, defense counsel Schultz and the prosecutor appeared before the court when defense counsel advised the court that defendant did not want to come to court. Shortly thereafter, defendant appeared in court and requested a new attorney. Defense counsel asked defendant if he wanted his trial next week or wanted a continuance. Defendant responded, “Have a nice day, you all. This is bullshit. All you people in here tell me test the results, say yes or no! This is bullshit! Suck my dick, bitch!”

¶ 10 On January 6, 2009, defense counsel Schultz filed a motion to withdraw stating that there was a breakdown between defendant and counsel and defendant reported Schultz to the ARDC. On January 8, 2009, Schultz advised the court that defendant called his office claiming that if Schultz did not withdraw as defense counsel, defendant would “have someone come down and kick my [defense counsel’s] bitch ass.” Judge Meersman denied defense counsel’s motion to withdraw.

¶ 11 On January 27, 2009, the attorneys and defendant appeared before Judge Meersman on

substantive motions filed by defense counsel in preparation for trial. Defendant asked to return to the jail as the court was ruling on the motions. The court told defendant to “sit down.”

Defendant stated, “No.” Defense counsel renewed his request to withdraw as counsel.

Defendant said, “You are not getting out of it buddy.” After further discussion, defense counsel agreed to remain the attorney of record.

¶ 12 On February 6, 2009, defense counsel Schultz filed a written motion to withdraw as counsel, stating that defendant now refused to communicate with Schultz. According to the motion, defendant telephoned counsel’s office and told a staff member that, if Schultz did not withdraw, defendant was going to “send someone down to my office to ‘fuck your bitch ass.’”

¶ 13 On February 23, 2009, defendant’s jury trial was scheduled to begin but Schultz advised the court that defendant wanted defense counsel to withdraw and would not communicate with defense counsel. Judge Meersman denied defense counsel’s motion to withdraw. Later, defendant asked the court what he had to do in order to have defense counsel Schultz “taken off” his case. The court responded, “nothing. At this point he is your attorney.” Shortly thereafter, defendant told the court, “So you’re saying, fuck that, he is representing me.” The court told defendant to “watch” his language. After apologizing, defendant again asked the court what he had to do to get defense counsel “off” his case. The court said, “Nothing.” Defendant responded, “We will see. Get them in here.”

¶ 14 According to the minute entry of February 23, 2009, after the jury panel was brought into the courtroom and sworn. Shortly thereafter, the court allowed Schultz's renewed motion to withdraw and continued defendant’s jury trial to another date. The court appointed attorney Khoury to represent defendant.

¶ 15 On June 9, 2009, defense counsel Khoury filed a motion to disqualify Margaret Osborn as the prosecutor in the case because the Rock Island County Sheriff's Office was investigating threats defendant allegedly made towards Osborn. Khoury claimed the investigation created a conflict of interest for the prosecutor.

¶ 16 On June 12, 2009, defense counsel Khoury filed a motion to withdraw because he received a letter from defendant claiming Khoury would not provide defendant with a fair trial. Further, Khoury stated that defendant contacted his office on June 9, 2009, demanding that counsel remove himself from the case and used profanities.

¶ 17 On June 24, 2009, the State filed a motion *in limine* requesting the court to prohibit defendant from making comments or statements regarding the prosecutor's deceased husband or son. According to the motion, in an attempt by defendant to disrupt the proceedings, defendant previously made remarks about the prosecutor's deceased husband and son in open court

¶ 18 On June 25, 2009, defendant and the attorneys appeared before Judge Fuhr when Khoury told the court the State had filed charges against defendant for allegedly threatening the prosecutor. Again, defense counsel argued that this created a conflict of interest for Osborn. Judge Fuhr disagreed and denied defendant's motion to disqualify prosecutor Osborn from the case. Judge Fuhr granted the State's motion *in limine* and directed defendant to not talk directly to the prosecutor during any court proceedings. Judge Fuhr denied defense counsel's motion to withdraw.

¶ 19 On June 26, 2009, the clerk filed a *pro se* handwritten motion from defendant requesting the court to appoint new counsel. On August 3, 2009, the attorneys appeared before Judge Fuhr for defendant's jury trial. However, before defendant arrived in the courtroom, Judge Fuhr

advised the attorneys that he received a letter from defendant requesting that the court discharge defense counsel Khoury and threatening Khoury's life. The court indicated that it would place the letter into the court file. The letter from defendant to Judge Fuhr, dated July 29, 2009, is titled, "New Attorney/or I'm going to kill Hany Khoury." In the letter, defendant writes as follows:

¶ 20 "[F]or the last time I'm asking you too [sic] remove this muslim peice [sic] of shit off my case before I kill him. If I can't get too [sic] him, then I will have someone get too [sic] his family."

¶ 21 Before defendant arrived in the courtroom, the court asked the attorneys if there were any other motions to address, other than the request for defense counsel to withdraw, before the jury trial would begin. The prosecutor asked the court to shackle defendant during trial because, "It appears that he is trying to do two things; stall as long as possible, get his way, and if that doesn't work disrupt the court to force a mistrial."

¶ 22 At that point, a deputy advised the court that defendant said that "he's not going to jury trial today" and refused to dress in street clothes for the trial. The court directed the deputy to bring defendant into the courtroom. Once defendant arrived, the court asked defendant if he intended to attend his own trial. Defendant said that he did not want defense counsel Khoury as his attorney. Judge Fuhr said Khoury had done a fine job of representing defendant and Khoury was defendant's fourth attorney. The court again asked defendant if he was going to change into street clothes. Defendant responded:

"[A]ll I figure is if you're going to allow that to happen, Judge, I'm going to let you know, just – all I can tell you, Your Honor,

remember my name, remember my face, because when I get out of here, I'm going to kill you. You, Judge Fuhr, I am going to get you, because you're allowing this bullshit. I promise you that."

The court told defendant that, if he was convicted, defendant could appeal any issues. Defendant said, "[W]hen this trial is over, I'm going to find you."

¶ 23 The court advised defendant of his right to a trial. The court asked defendant if he wanted to be shackled, and defendant said, "No." In defendant's presence, the State again moved to have defendant shackled "because of his disruptive behavior which he is, again, indicating today with his threats or – and/or be removed from the courtroom during the proceedings." The court allowed the request for leg shackles only and indicated that there was a skirt around the table so the jury would not be able to see the leg shackles. The court stated defendant's handcuffs would be removed.

¶ 24 Later in the proceedings, but before the jury entered the courtroom, Khoury moved to withdraw based upon the written threat made to Khoury and the threat made to the court. The court responded that defendant was "just doing whatever he can to thwart the administration of justice as the case law says. If he can't stall the trial by threatening you [defense counsel], then he is going to threaten me. So if we let this continue, this case will never go to trial."

¶ 25 After addressing all other pending motions and preliminary matters, the court stated that the parties should discuss "how we're going to pick the jury." The court proposed:

"[W]e will put 12 people in the box, I'll ask them my questions, then Miss Osborn [prosecutor] can ask them her questions and then Mr. Khoury [defense counsel] can ask some questions. Then Mr.

Khoury will discuss with Mr. Bassett challenges. Then the attorneys and I will go to chambers. We will start with the State panels of four and you do challenges.”

The court asked defense counsel, “That okay with you.” Defense counsel responded, “Yes.”

¶ 26 The clerk called 12 prospective jurors for *voir dire*. Judge Fuhr, the prosecutor and defense counsel each questioned the potential jurors in open court with defendant present. After defense counsel completed his questioning of the potential jurors, the court asked defense counsel if he needed to consult with defendant. Defense counsel said, “Please.” At that point, the court told the jurors that “both attorneys are going to consult and then I’m going to meet them back in my chambers and then we will be right back.”

¶ 27 According to the record, the court, along with the attorneys, then met in chambers to allow the attorneys exercise challenges to the prospective jurors. Thereafter, the attorneys and the court returned to the courtroom and Judge Fuhr announced which jurors would be excused. Next, with defendant present, the clerk called more prospective jurors for questioning in open court by Judge Fuhr and the attorneys. The court, defendant, and the attorneys continued this process until the jury was complete.

¶ 28 On one occasion, while in chambers, the prosecutor advised the court that she knew one of the prospective jurors through her daughter, although the juror did not say anything. The court advised the clerk to bring the juror into chambers for further questioning. At that point, defense counsel told the court that he would need to speak with defendant again because he felt it was important that defendant help him in selecting the jurors. Judge Fuhr agreed.

¶ 29 On August 4, 2009, defendant’s jury trial continued. After the alleged victim’s

testimony, the attorneys and Judge Fuhr met in chambers with one of the jury members who informed Judge Fuhr and the attorneys that she knew the alleged victim, the victim's grandmother, and possibly defendant's mother. Judge Fuhr asked Khoury if he wanted to talk to defendant and possibly ask more questions. Khoury indicated that he did, and the record shows that the parties went off the record. When the attorneys returned to chambers with Judge Fuhr, the clerk advised that defendant had filed additional documents.

¶ 30 These documents include a *pro se* handwritten motion to dismiss attorney and appoint new counsel. Defendant stated that the court must remove defense counsel Khoury from his case or he was "going to kill him," and that "it's no longer safe for him or his family." He said that defense counsel Khoury was a "racist peice [*sic*] of shit" and should be sent "back too [*sic*] the middle east." Defendant also sent a letter to Judge Fuhr requesting the court to remove Khoury because Khoury had neglected his case and refused to provide defendant with relevant information. Again, defendant threatened to kill Khoury for sabotaging his case and told the court that it was not safe for Khoury to remain as counsel in this case.

¶ 31 Following receipt of these documents on August 4, 2009, outside the presence of the jury and with defendant present, defense counsel renewed his motion to withdraw. The court stated that Khoury was doing an admirable job of communicating with defendant and zealously representing defendant. The court denied the motion.

¶ 32 Defense counsel Khoury advised the court that he explained to defendant what the juror said in chambers and, after discussing the matter with defendant, defendant chose not to seek the juror's removal from the jury panel. Defendant acknowledged on the record that Khoury advised him of the information and that defendant did not have a "problem" with the juror. Thereafter,

defendant's jury trial continued.

¶ 33 On August 6, 2009, the jury found defendant guilty of two counts of predatory criminal sexual assault and one count of aggravated criminal sexual abuse and not guilty of the other counts contained in the information.

¶ 34 On August 11, 2009, defense counsel Khoury filed a motion to withdraw claiming that defendant had repeatedly stated that defense counsel was ineffective and that defendant had repeatedly threatened defense counsel in *pro se* pleadings. On August 21, 2009, Judge Fuhr granted defense counsel Khoury's motion to withdraw and appointed attorney Jackson to represent defendant.

¶ 35 On October 13, 2009, defense counsel Jackson filed an amended posttrial motion alleging defendant did not receive a fair trial because defendant was shackled during the trial. Further, defense counsel claimed that the "Court should not have conducted a hearing outside the Jury's and Defendant's presence concerning Motion's to Strike Juror's, for whatever reason." On October 20, 2009, defendant filed a *pro se* supplemental posttrial motion which set forth the same allegations contained in defense counsel Jackson's posttrial motion, but also alleged further details regarding defense counsel Khoury's ineffectiveness and claimed that the State offered perjured testimony. Defendant also made complaints about other appointed counsel and Judge Meersman's pretrial rulings.

¶ 36 On October 21, 2009, Judge Fuhr conducted a hearing on defendant's posttrial motions and denied the posttrial motions. The court sentenced defendant to 30 years imprisonment for the offenses of predatory criminal sexual assault and 7 years for the offense of aggravated criminal sexual abuse, to run consecutively.

¶ 37 On December 11, 2009, the trial court denied defendant's motion to reconsider sentence and to reconsider the denial of the posttrial motions. The court clarified for the record that, in denying the posttrial motions, it considered and denied both posttrial motions. Defendant filed a notice of appeal on December 15, 2009.

¶ 38 ANALYSIS

¶ 39 On appeal, defendant raises two claims of error. First, defendant argues that his due process rights were violated when the trial court granted the State's motion to shackle defendant during his jury trial without articulating the factors considered by the court. Second, defendant argues that his constitutional rights were violated because defendant was not allowed to be present in the judge's chambers when the attorneys exercised challenges to potential jurors.

¶ 40 Motion to Shackle

¶ 41 Defendant claims the trial court violated his due process rights by granting the State's motion to shackle him, thereby warranting a new trial. In response, the State argues that the record on appeal establishes that the trial court acted within its discretion by granting the State's motion to shackle defendant. Alternatively, the State argues that, even if the court erred by failing to announce the reasons for granting the State's motion to shackle defendant, the cause should be remanded to the trial court for a retrospective *Boose* hearing (*People v. Boose*, 66 Ill. 2d 261 (1977)), in lieu of a new trial.

¶ 42 It is well established that shackling a defendant should be avoided, if possible, because: (1) it tends to prejudice the jury against the accused; (2) it restricts his ability to assist his counsel during trial; and (3) it offends the dignity of the judicial process. *People v. Boose*, 66 Ill. 2d at 265. A defendant may be shackled when there is reason to believe that he may try to escape, that

he may pose a threat to the safety of the people in the courtroom, or that it is necessary to maintain order during the trial. *People v. Boose*, 66 Ill. 2d at 266. In determining whether to shackle a defendant, a trial court must “place its reasons for shackling a defendant on the record and provide defense counsel with an opportunity to offer reasons why the defendant should not be shackled.” *People v. Urdiales*, 225 Ill. 2d 354, 416 (2007); See *People v. Allen*, 222 Ill. 2d 340, 348 (2006); *People v. Boose*, 66 Ill. 2d at 267.

¶ 43 A reviewing court examines whether the trial court abused its discretion when allowing a defendant to appear shackled before the jury. *People v. Allen*, 222 Ill. 2d at 348; *People v. Boose*, 66 Ill. 2d at 267. Absent an abuse of discretion, a court's decision will not be overturned on appeal. *People v. Starks*, 287 Ill. App. 3d 1035, 1037 (1997).

¶ 44 On the day that the trial court granted the State’s oral motion to shackle defendant, the trial court had just received defendant’s letter which contained the subject line, “New Attorney/or I’m going to kill Hany Khoury.” In the letter, defendant wrote, “[F]or the last time I’m asking you too [sic] remove this muslim peice [sic] of shit off my case before I kill him. If I can’t get too [sic] him, then I will have someone get too [sic] his family.” Further, prior to granting the State’s motion, defendant told the court, “[A]ll I can tell you, Your Honor, remember my name, remember my face, because when I get out of here, I’m going to kill you. You, Judge Fuhr, I am going to get you, because you’re allowing this bullshit. I promise you that.”

¶ 45 It is abundantly apparent from this record that defendant had threatened the safety of persons present in the courtroom that day including the prosecutor, defense counsel, and the judge. Even though the court's reasons for shackling defendant may be obvious based on the unique circumstances in this case, our supreme court requires that a trial judge specifically

articulate the reasons for shackling a defendant, on the record, and provide defense counsel with an opportunity to respond to the shackling request. *People v. Urdiales*, 225 Ill. 2d at 416. Since this articulation of reasoning did not occur in this case, the trial court did not comply with the requirements of *Boose*. However, we agree with the State that a new trial is not warranted in this case.

¶ 46 This court has previously held that, “rather than proceeding immediately to a new trial, this problem can be remedied by remanding the case to the trial court for a retrospective *Boose* hearing.” *People v. Buckner*, 358 Ill. App. 3d 529, 534 (2005); *People v. Johnson*, 356 Ill. App. 3d 208, 212 (2005). This holding is particularly helpful in a case such as this where defendant’s conduct before the court, on the date of the shackling request, includes a specific threat to harm both the court and counsel. However, there may have been other, equally compelling reasons for shackling defendant which are not immediately apparent to this court based on this record.

¶ 47 Accordingly, we remand the cause to the trial court for a complete and formal retrospective *Boose* hearing at which time defense counsel may offer reasons as to why defendant should not have been shackled. After conducting this hearing, the trial court should articulate on the record the reasons the court considered before allowing the State’s motion to shackle in this case.

¶ 48 Jury Selection

¶ 49 In his brief, defendant asserts that his due process rights to be present during all aspects of jury selection were violated based on the jury selection procedure in this case. During oral arguments before this court, defense counsel abandoned any challenge to the selection of the second and third jury panels based on the record. Consequently, defendant argues that his due

process rights were violated when counsel did not confer with him prior to excusing jurors from the first panel of jurors in this case.

¶ 50 The State argues that defendant forfeited this issue by failing to object to the process of retiring to chambers without defendant before excusing jurors in open court. Alternatively, the State argues that the jury selection process did afford defendant due process and, since error did not occur, plain error does not apply.

¶ 51 When determining whether a defendant's constitutional right to be present at trial has been denied, we review *de novo*. *People v. O'Quinn*, 339 Ill. App. 3d 347, 358 (2003) (citing *People v. Leeper*, 317 Ill. App. 3d 475, 480 (2000)).

¶ 52 It is well settled that a criminal defendant has a general right to be present at every stage of his trial, including jury selection. *People v. Bean*, 137 Ill. 2d 65, 80 (1990) (citing *Illinois v. Allen*, 397 U.S. 337, 338 (1970)). Under the United States Constitution, the right to be present “is not an absolute, inviolable right.” *People v. Bean*, 137 Ill. 2d at 82 (citing *Snyder v. Massachusetts*, 291 U.S. 97, 105–08 (1934)). Similarly, pursuant to the Illinois Constitution, a defendant “is not denied a constitutional right every time he is not present during his trial, but only when his absence results in a denial of an underlying substantial right.” *People v. Bean*, 137 Ill. 2d at 81. This right is violated only when a defendant's absence results in him being denied a fair and just trial. *People v. Bean*, 137 Ill. 2d at 83-84; See *Snyder v. Massachusetts*, 291 U.S. at 107-08.

¶ 53 We first address the issue of forfeiture. In this case, before beginning jury selection, the court stated that it wanted to talk about “how we’re going to pick the jury.” The court proposed:

“[W]e will put 12 people in the box, I’ll ask them my questions,

then Miss Osborn [prosecutor] can ask them her questions, and then Mr. Khoury [defense counsel] can ask some questions. Then Mr. Khoury will discuss with Mr. Bassett challenges. Then the attorneys and I will go to chambers. We will start with the State panels of four and you do challenges.”

The court specifically asked defense counsel, whether this procedure was acceptable, and defense counsel responded, “Yes.” Based on this discussion, it is clear defense counsel agreed to this procedure. Failure to object at trial forfeits any objection on appeal. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988).

However, defendant claims on appeal that defense counsel did not discuss the challenges to the first panel before the jurors were excused. A careful review of the record demonstrates that defendant's contention is not supported by this record. Here, after the court and both attorneys completed their questioning of the first panel of potential jurors in open court with defendant present, the court asked defense counsel if he needed to consult with defendant. Defense counsel said, “Please.” At that point, the court told the jurors that “both attorneys are going to consult and then I’m going to meet them back in my chambers and then we will be right back.”

¶ 54 Contrary to defendant’s position, it is clear from the record that the trial court gave defense counsel an opportunity to consult with his client before exercising any challenges to the prospective jurors in chambers. Further, defendant was present in open court when the trial court announced the removal of jurors based upon the events that transpired in chambers. Therefore, we disagree with defendant’s assertion that he was denied due process by the selection procedure

pertaining to the first panel of jurors in this case.

¶ 55 Since we conclude that error did not occur in this case, defendant is not entitled to relief pursuant to plain error. Further, we cannot conclude that defense counsel was ineffective for failing to object to the manner in which the trial court conducted jury selection, since the agreed process was approved by the parties and protected defendant's due process rights in this case.

¶ 56 CONCLUSION

¶ 57 The judgment of the circuit court of Rock Island County granting the State's motion to shackle defendant is reversed, and the cause remanded to the trial court for a retrospective *Boose* hearing. Defendant's constitutional rights were not violated despite the fact that defendant was not present in the judge's chambers when the attorneys exercised challenges to prospective jurors during *voir dire*.

¶ 58 Affirmed in part; reversed in part and remanded with directions.

¶ 59 JUSTICE LYTTON, specially concurring.

¶ 60 As I have previously stated, I believe that remand for a new trial is ordinarily appropriate when there is no *Boose* hearing. See *People v. Buckner*, 358 Ill. App. 3d 529 (2005) (Lytton, J., dissenting); *People v. Johnson*, 356 Ill. App. 3d 208 (2005) (Lytton, J., dissenting).

¶ 61 In *Buckner*, the trial court mentioned the use of a security belt during *voir dire*. The State did not file a motion requesting restraints, and defendant did not object to the use of the device. *Buckner*, 358 Ill. App. 3d at 530-31. In *Johnson*, the court determined that an electronic security belt should be used to restrain the defendant based solely on the defendant's prior convictions. *Johnson*, 356 Ill. App. 3d at 211. In that case, the record indicated that defendant was a "little shaky" during trial, and counsel expressed his apprehension about sitting next to the defendant in

the event the sheriff activated the device. Neither of the defendants in *Buckner* or *Johnson* exhibited aggressive behavior during court proceedings.

¶ 62 The case before us presents an unusual situation for several reasons.

¶ 63 First, the State made a motion for shackles at a pretrial hearing, and defendant objected. The State then argued that shackles were necessary to protect those involved in the proceedings. Although the trial court granted the motion without specifically weighing the *Boose* factors, it did consider a major *Boose* factor in making its decision.

¶ 64 Second, the trial transcript indicates that defendant actively participated in his defense. He assisted counsel during *voir dire*, instructed counsel to dismiss potential jurors by challenging them for cause and exercising peremptory challenges and interacted with his attorney during trial.

¶ 65 Third, defendant's conduct on the record strongly suggests that there was a manifest need to protect the security of the courtroom. At the hearing on the day of the shackling request, the defendant made vicious threats against both the trial court and defense counsel. The record also demonstrates that defendant threatened to have defense counsel and his family "taken care of."

¶ 66 Together, these reasons make this case appropriate for a retrospective hearing. In this case, defendant's threatening conduct in the courtroom suggests that, had the trial court considered the *Boose* factors, a manifest need for restraints most likely would have been found. Under the specific circumstances presented here, I agree that the appropriate remedy is to remand for a retrospective hearing on the decision to restrain defendant.

¶ 67 This issue is an important one, and cases continue to arise on appeal challenging trial courts' failure to conduct a *Boose* hearing. Thus, I write separately in the hope that our supreme court review this issue and finally resolve it.