

(720 ILCS 5/12-3.2(a)(1) (West 2010)) and unlawful restraint (720 ILCS 5/10-3(a) (West 2010)). After receiving admonishments in accordance with Illinois Supreme Court Rule 401 (eff. July 1, 1984), defendant waived his right to counsel and proceeded *pro se*.

¶ 6 In July 2011, the trial court conducted defendant's jury trial. Barbara Whitfield testified defendant is her husband. On March 15, 2011, Barbara was using a computer while lying on the bed in her bedroom. She was having an argument with defendant. She testified she attempted to get up and defendant "grabb[ed] me by my waist and he just held me down." Defendant held her on the bed. She "hollered and told him to [']let me go.['] " Defendant continued to hold her on the bed. Barbara's daughter came in and called the police.

¶ 7 Brittany Whitfield testified she heard her parents arguing. She heard her mother yell and say something about the police. Brittany called the police. Brittany admitted she had two prior felony convictions.

¶ 8 Officer Brian Earles of the Decatur police department testified he responded to defendant's residence. Earles testified when he made contact with defendant "He was in the bedroom of the residence. I knocked on the door. He opened it. When he saw me he [said] something similar to, 'Let me get my shoes, you are going to take me to jail again.' I asked him what was going on today. He told me that he had grabbed his wife and thrown her on the bed. I asked [him] what he meant by 'grabbing his wife,' did he mean in a loving fashion, and he says, no, he grabbed her and threw her on the bed and held her down." Earles testified he could smell a strong odor of alcohol on defendant and defendant appeared intoxicated as he was having difficulty maintaining balance, slurring his words, and displaying erratic behavior.

¶ 9 On cross-examination, defendant asked Earles "How many times have you

arrested me?" Earles responded "To the best of my knowledge this is the first time I have arrested you." Defendant then stated "I remember an incident but you don't." Defendant asked "And when you came to my room I said, 'Let me put my shoes on' because what?" Earles responded "Because I was going to take you to jail."

¶ 10 Defendant testified on his own behalf. He testified "we was having a little discussion, and I held her for a minute, but *** there wasn't no malice in it. It was more like horse play [(sic)]." Defendant added his daughter called the police and "[u]sually when they come get me they take[] me to jail." On cross-examination, defendant denied pushing his wife to the bed but admitted grabbing her by the waist.

¶ 11 The jury found defendant guilty of unlawful restraint and not guilty of domestic battery (prior offense).

¶ 12 On August 5, 2011, defendant filed a *pro se* motion for mistrial, "Motion to Have Conviction Over-Turned," and a "Motion for An Appeal On Conviction." Defendant argued his wife testified against her will. He did not raise a prior-crimes evidence issue. On August 18, 2011, the trial court held a hearing and denied defendant's posttrial motions.

¶ 13 The same day, the trial court held a sentencing hearing. The trial court sentenced defendant to 24 months' probation. The court orally sentenced defendant to 180 days in the Macon County jail with credit for 11 days previously served. We note the written sentencing judgment states defendant is to serve 120 days in jail. Neither party raises this discrepancy on appeal. See *People v. Roberson*, 401 Ill. App. 3d 758, 774, 927 N.E.2d 1277, 1291 (2010) ("When the oral pronouncement of the court and the written order conflict, the oral pronouncement of the court controls.").

¶ 14 On August 26, 2011, defendant filed three motions identical to those filed on August 5, 2011. On September 14, 2011, defendant filed a *pro se* motion for appeal. The trial court struck defendant's motion to appeal as prior posttrial motions were pending. In January 2012, the court held a hearing and denied defendant's posttrial motions.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 Defendant argues he was denied a fair trial because the jury was allowed to infer he had a propensity to commit crime. Defendant contends Earles "impermissibly injected evidence of other crimes into the trial by indicating that [defendant] had been arrested before." Defendant concedes he did not raise this issue in the trial court. He argues the evidence was closely balanced and we should review this claimed error under the first prong of plain-error review.

¶ 18 A. Plain-Error Review

¶ 19 Plain-error review averts forfeiture where: "(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant; or (2) a clear or obvious error occurred, and the error is so serious that it affected the fairness of the defendant's trial and the integrity of the juridical process, regardless of the closeness of the evidence." *People v. Taylor*, 2011 IL 110067, ¶ 30, 956 N.E.2d 431. The first step is to determine whether error occurred at all. *Id.*

¶ 20 B. Defendant's Claim of Other-Crimes Evidence

¶ 21 "[E]vidence of other crimes is admissible if relevant for any purpose other than to show a defendant's propensity to commit crimes." *People v. Dabbs*, 239 Ill. 2d 277, 283, 940

N.E.2d 1088, 1093 (2010). "Other-crimes evidence may include both criminal acts and acts which may not constitute a criminal offense." *People v. Mendez*, 2013 IL App (4th) 110107, ¶ 28, 985 N.E.2d 1047. "Although the erroneous admission of other-crimes evidence ordinarily calls for reversal, the evidence must have been a material factor in the defendant's conviction such that, without the evidence, the verdict likely would have been different." *People v. Hall*, 194 Ill. 2d 305, 339, 743 N.E.2d 521, 541 (2000). The admissibility of other-crimes evidence is within the sound discretion of the trial court, and will not be disturbed absent a clear abuse of that discretion. *Dabbs*, 239 Ill. 2d at 284, 940 N.E.2d at 1093.

¶ 22 Defendant argues Earles' testimony defendant said " 'Let me get my shoes, you are going to take me to jail again' " when Earles made contact with defendant "had no purpose other than to suggest a propensity to commit crime." The State contends the testimony "was relevant to explain what occurred when Officer Earles arrived at defendant's house in regards to the offense charged."

¶ 23 We agree with the State. Earles' testimony was not other-crimes evidence offered to show defendant's propensity to commit crimes. Rather, Earles' testimony provided an account of his initial contact with defendant and what defendant said. Earles did not offer an explanation why police had previously responded to defendant's residence, or what conduct defendant had been accused of when he was previously taken to jail. Earles' testimony—a vague reference to defendant having previously been taken to jail—was not offered for the proposition defendant committed the charged offenses because he had previously been taken to jail, and accordingly was not other-crimes evidence. See generally 725 ILCS 5/115-7.4 (West 2010) (other-crimes evidence in domestic violence cases).

¶ 24 A defendant forfeits any issue as to the impropriety of evidence if he invites or acquiesces in the admission of that evidence. *People v. Korzenewski*, 2012 IL App (4th) 101026, ¶ 7, 970 N.E.2d 90 (quoting *People v. Durgan*, 346 Ill. App. 3d 1121, 1131, 806 N.E.2d 1233, 1241 (2004)); see also *People v. Brown*, 275 Ill. App. 3d 1105, 1112, 657 N.E.2d 642, 647 (1995) (rejecting claim that officer's testimony about " 'contact' " with the defendant was prior-crimes evidence where it was the defendant who brought out the fact he had been previously arrested). On cross-examination, defendant further inquired whether Earles remembered a previous arrest, which Earles did not. Defendant testified the police usually take him to jail when the police are called out to his residence. This additional testimony elicited and provided by defendant show acquiescence in the admission of the evidence.

¶ 25 For these reasons we find no error occurred with regard to defendant's claim of other-crimes evidence.

¶ 26 Even if we were to find an error occurred, we do not find the evidence of defendant's guilt was closely balanced. Defendant's wife testified defendant held her to the bed after she told him to get off her. Earles testified defendant told him he had held his wife to the bed. Defendant, himself, admitted holding his wife by her waist on the bed. We reject defendant's suggestion his testimony that he and his wife were engaged in "horseplay" causes this case to be a "credibility contest." The jury's role was to assess defendant's credibility, determine the weight given to his testimony, and resolve discrepancies in the evidence. *People v. Burney*, 2011 IL App (4th) 100343, ¶ 25, 963 N.E.2d 430. Putting aside Earle's testimony about defendant's previous trips to jail, by defendant's own admission he held Barbara down on the bed. The evidence amply supports the jury's verdict defendant held his wife on the bed against her

will. See 720 ILCS 5/10-3(a) (West 2010). We conclude the effect of Earles' testimony—if the jury even drew an inference of other criminal conduct—was not a material factor in defendant's conviction such that the verdict likely would have been different without the evidence. *Hall*, 194 Ill. 2d at 339, 743 N.E.2d at 541 ("If it is unlikely that the error influenced the jury, reversal is not warranted.").

¶ 27

III. CONCLUSION

¶ 28 For the reasons stated, we affirm the trial court's judgment. We award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2010).

¶ 29 Affirmed.