

No. 1-10-0396

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 06 CR 24495
	)	
GREGORY CHAMPION,	)	Honorable
	)	William O' Brien,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Quinn and Justice Cunningham concurred in the judgment.

**ORDER**

¶ 1 *Held:* Judgment entered on defendant's conviction of residential burglary affirmed over his challenge to the credibility of a witness for the State; \$30 Children's Advocacy Center Fee vacated; mittimus modified to reflect proper presentence credit, fines and fees order modified to reflect \$20 VCVA fine.

¶ 2 Following a jury trial, defendant Gregory Champion was found guilty of residential burglary, then sentenced to six years' imprisonment, and assessed fines and fees totaling \$620. On appeal, defendant contends that the State failed to prove him guilty of residential burglary beyond a reasonable doubt where the only evidence connecting him to the crime was an oral

confession witnessed by a single detective. He also challenges the calculation and assessment of certain of his pecuniary penalties.

¶ 3 The record shows, in relevant part, that defendant was charged with the residential burglary of a single-family home at 3532 North Hamilton Avenue, in Chicago, after he was arrested nearby with a laptop computer stolen from that address and, later, orally confessed to the crime. Defendant's first jury trial on that charge resulted in a mistrial after it was discovered that the general case report for the incident leading to defendant's arrest had been mistakenly left inside of a Whole Foods bag which was sent back with the jury during deliberations. The State was permitted to re prosecute defendant, and a second jury trial ensued.

¶ 4 At that trial, Kevin Adams testified that on Friday, October 13, 2006, he and a roommate, Giselle Pellikan, were living in the subject premises which had two entryway doors in the front and one in the back near which they kept cloth, reusable shopping bags on a hook. About 8:30 that morning, Kevin left the house through the back door, after Giselle had gone, and noted that all of the doors were locked. When he returned home about 6:15 p.m., Kevin knew something was wrong because the back door was open and the lights in the hallway were on. When he entered, he noticed that the deadbolt on the wooden back door was broken, and that the wood doorjamb was broken and splintered. Giselle, who was on the back stairs, was "clearly upset" and immediately told him that there had been a break-in.

¶ 5 As Kevin and Giselle did a walkthrough of the house, they discovered that a jar full of cash was missing from the dining room table, that some jewelry was missing from a small basket on the dresser in Kevin's bedroom, and that some jewelry and a laptop computer were missing from Giselle's bedroom. They called 911, and when police arrived, they explained what had happened, gave them the serial number of Giselle's computer, and walked an evidence technician

through the house. In the garage, Kevin showed police a bicycle that did not belong to him, as well as a bottle of wine, a six-pack of beer, and a pair of black gloves.

¶ 6 On October 14, 2006, Kevin received a call from police requesting that he and Giselle come to the station because they had recovered Giselle's laptop computer. At the station, Giselle identified the computer based on the contents of the hard drive and the serial number, and she and Kevin were then interviewed by a detective. Kevin testified that he did not know defendant and never gave him permission to enter the house or take any of his or Giselle's property, and identified a reusable grocery bag which had been in his kitchen on October 13, 2006.

¶ 7 On cross-examination, Kevin stated that the jar of money stolen from the dining room table contained over \$150 in coin and cash, that two rings were missing from his bedroom, that the laptop computer was taken from a folding table in Giselle's second-floor bedroom, and that a pearl necklace and ring were taken from a jewelry box on her dresser.

¶ 8 Chicago police officer Gerald Poradzisz testified as an expert evidence technician. He related that about 7:15 p.m. on October 13, 2006, he was assigned to the subject premises as an evidence technician, and spoke there with the reporting officer and the two victims. He asked the victims for their impression of what had happened, then did a walkthrough of the house starting at the backdoor, *i.e.*, the point of entry. Officer Poradzisz observed that the door stop on the backdoor was splintered in the location of the deadbolt, and that the deadbolt, itself, was bent. He dusted the lid of a jewelry box in Giselle's second-floor bedroom for fingerprints, where there was a swipe in some dust, and the bicycle and wine bottle in the garage, but only obtained prints off the bottle.

¶ 9 Chicago police officer Hoffmann testified that about 10:15 a.m. on October 14, 2006, he responded to a criminal trespass call at 3450 North Leavitt Street, about two blocks away from the house in question, spoke to the victim, then began looking for defendant. He found him in

the backyard of 3450 North Hoyne Avenue where he was placed under arrest. At that time, defendant had in his possession a Whole Foods shopping bag containing a Dell laptop computer and some other items. Officer Hoffmann subsequently processed defendant at the station, reviewed reports of recent burglaries in the district, and discovered a report of a stolen Dell laptop computer with a serial number that matched the one found in defendant's possession. He called Giselle and requested that she and Kevin come to the station. Upon arrival, Giselle identified the computer as belonging to her after checking its serial number and finding her personal information on it. At trial, Officer Hoffmann identified the same Whole Foods bag previously identified by Kevin as the bag in which the computer was found. On cross-examination, Officer Hoffmann stated that the laptop computer was the only item he recovered from defendant that was from the subject premises.

¶ 10 Chicago police detective Leonard Muscolino testified that about 2 p.m. on October 14, 2006, he was assigned to investigate the burglary in question. He initially ran a background check on defendant, spoke with Officer Hoffmann and reviewed some reports, and interviewed the victims at the station. He then brought defendant into an interrogation room and collected some personal information from him, including his address at 1419 Woodhollow Lane, in Flossmoor. Detective Muscolino also read defendant his *Miranda* rights from a pre-printed card, defendant acknowledged his understanding of those rights, and agreed to speak with the detective.

¶ 11 Defendant told him that on October 13, 2006, he entered the subject premises by pushing open the backdoor, which he described as "old and splintered" and made of dark mahogany wood. Once inside, he went into the dining room/living room area and took the laptop, then returned to the kitchen and took a bag into which he placed the laptop, and was out of the house within 90 seconds. Defendant also told the detective that he had been a lead pressman at Eagle

Press for about 26 years. During the interview, defendant was "very relaxed, very cooperative," and Detective Muscolino took handwritten notes on a general progress report.

¶ 12 On cross-examination, Detective Muscolino acknowledged that he did not have anyone else observe defendant when he made his statement, nor did he write the statement down for defendant to read, or have him sign it. On redirect, he testified that he went over his interview notes with defendant before the interview was over, and the detective signed the bottom of each page of the general progress reports. On recross, Detective Muscolino stated that he has never taken a written statement from a burglary suspect and believes it is against procedure.

¶ 13 Defendant testified that he is 52 years of age and worked as an offset pressman for 26 years before losing his job as lead pressman for Eagle Printing on September 4, 2006. He was homeless at the time he was arrested with the Dell laptop computer on October 14, 2006, and stated that he had found the computer in a garbage can in an alley near the house while he was "looking for food or anything that a homeless person could use."

¶ 14 After Detective Muscolino brought defendant into an interrogation room and began questioning him, defendant explained that he had found the laptop in a garbage can in an alley, and that he had no information about a burglary at a house or anywhere else. Defendant also requested an attorney, but Detective Muscolino told him that he was not under arrest for residential burglary and therefore did not need an attorney, then continued to question him about the crime. Defendant testified that he never admitted any involvement in the burglary, and denied making any of the statements testified to by Detective Muscolino. He also testified that the discrepancy regarding his address came about because his identification lists his mother's address in Flossmoor, and he did not remember telling Detective Muscolino that he was homeless. On cross-examination, defendant stated that he had been carrying the laptop around for five hours before being arrested in someone else's yard.

¶ 15 In rebuttal, Detective Muscolino testified that defendant never asked for a lawyer during the interview. Defendant also gave specific information about the crime scene which Detective Muscolino, who had not been there, knew nothing about, including that the door was colored a dark mahogany and was old and splintered. Detective Muscolino further testified that defendant never told him that he had been scrounging through garbage cans in the area.

¶ 16 Following deliberations, the jury returned a verdict finding defendant guilty of residential burglary, and the court subsequently sentenced him to six years' imprisonment. Defendant was granted 914 days credit for time spent in pre-sentence custody and assessed fines and fees totaling \$620.

¶ 17 In this appeal from that judgment, defendant first contends that the State failed to prove him guilty of residential burglary beyond a reasonable doubt. He claims that the only "real" evidence presented by the State was "an alleged confession, heard by a single detective, unwritten and unsigned," and that the State's evidence therefore "failed to pass muster." The State responds that there was sufficient evidence to sustain defendant's conviction where he admitted to entering the house and stealing Giselle's laptop, gave a detailed description of the door that he broke to gain entry, and was arrested two blocks from the crime scene with the stolen laptop and bag.

¶ 18 Where, as here, defendant challenges the sufficiency of the evidence to sustain his conviction, the question for the reviewing court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Jordan*, 218 Ill. 2d 255, 269 (2006). It is the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any inconsistencies and conflicts in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006).

A reviewing court will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Smith*, 185 Ill. 2d 532, 542 (1999). We do not find this to be such a case.

¶ 19 To sustain defendant's conviction for residential burglary, the State was required to prove that defendant knowingly and without authority entered the dwelling place of another with the intent to commit therein a felony or theft. 720 ILCS 5/19-3(a) (West 2006). Viewed in the light most favorable to the prosecution, the record shows that on October 13, 2006, an individual forcibly entered the residence of Kevin Adams and Giselle Pellikan at 3532 North Hamilton Avenue by breaking through the wooden backdoor and causing it to splinter, then stole, *inter alia*, a Dell laptop computer from Giselle's second-floor bedroom and a Whole Foods shopping bag from the kitchen. The next day, defendant was arrested in connection with a criminal trespass at an address about two blocks away from the house in question. At that time, he had in his possession the Whole Foods bag, which contained Giselle's Dell laptop computer, that had been stolen from Kevin and Giselle's residence. Kevin testified that defendant did not have permission to enter the residence or take anything from it. Defendant subsequently confessed to Detective Muscolino that he broke into the residence at 3532 North Hamilton Avenue through the "old and splintered" dark mahogany backdoor, took the computer from the dining room/living room area, and put the computer in a bag that he took from the kitchen. This evidence was sufficient to allow the trier of fact to find the essential elements of the crime of residential burglary proved beyond a reasonable doubt. 720 ILCS 5/19-3(a) (West 2006).

¶ 20 Defendant, nonetheless, takes issue with the credibility of Detective Muscolino's testimony regarding his confession, claiming that the confession does not "jibe" with Kevin's description of the crime, that it is "troubling" that Detective Muscolino was the only person to witness the confession, and that he had no reason to confess. In finding defendant guilty of

residential burglary, however, the jury clearly found Detective Muscolino credible, and resolved any conflicts between defendant's confession and the testimony of Kevin in favor of the State as it was entitled to do. *Sutherland*, 223 Ill. 2d at 242. After reviewing the record, we find nothing so unreasonable about that determination to raise a reasonable doubt of defendant's guilt (*Smith*, 185 Ill. 2d at 542), and thus have no basis for setting aside his conviction here.

¶ 21 Defendant next challenges the calculation and assessment of certain of the pecuniary penalties imposed by the court. Although defendant did not raise these claims in the circuit court, a sentence that does not conform to a statutory requirement is void and may be attacked at any time. *People v. Jackson*, 2011 IL 110615, ¶ 10. The propriety of court-ordered fines and fees raises a question of statutory interpretation, which we review *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 22 Defendant first claims that the \$30 Children's Advocacy Center Fee should be vacated because it was not in effect at the time defendant committed the offense of residential burglary, and therefore violates the proscription against *ex post facto* laws. The State concedes that the fee was improperly assessed and should be vacated. The record shows that defendant committed residential burglary on October 13, 2006, and that section 5-1101(f-5) of the Counties Code (55 ILCS 5/5-1101(f-5) (West 2008)), which authorizes assessment of the Children's Advocacy Center Fee, took effect on January 1, 2008. Pub. Act 95-103 (eff. Jan. 1, 2008) (adding 55 ILCS 5/5-1101(f-5)). Because retroactive assessment of the Children's Advocacy Center Fee would inflict greater punishment on defendant than the law in effect at the time of the offense, imposition of the fee violates the *ex post facto* clauses of the United States Constitution (*People v. Cornelius*, 213 Ill. 2d 178, 207 (2004)), and we therefore agree that the fee must be vacated.

¶ 23 Defendant next claims that he is entitled to a \$5 *per diem* credit for each of the 914 days he spent in presentence custody for a total \$4,570 credit to offset his fines. The State agrees that

defendant is entitled to a \$5 *per diem* credit, but claims that he only spent 909 days in presentence custody and, thus, is only entitled to \$4,545 credit. In reply, defendant agrees with the State's calculation.

¶ 24 The record shows that defendant was arrested for residential burglary on October 14, 2006, and released from custody on bond after his first trial resulted in a mistrial on March 18, 2009. His bond was revoked after he was found guilty of residential burglary on January 6, 2010, and he remained in custody until his sentencing hearing on January 28, 2010. Under the relevant statute, defendant was entitled to credit for each day that he spent in custody as a result of the convicted offense (730 ILCS 5/5-4.5-100(b) (West 2010)), but not for the day on which he was sentenced (*People v. Williams*, 239 Ill. 2d 503, 510 (2011)). We therefore agree with the State that defendant was only entitled to 909 days of presentence credit and, pursuant to our authority under Illinois Supreme Court Rule 615(b) (eff. Aug. 27, 1999)), we direct the clerk to modify his mittimus to reflect that credit. We also agree with the State that defendant was entitled to a \$5 *per diem* credit for that time totaling \$4,545 to offset any fines (725 ILCS 5/110-14 (West 2010)), but as discussed below, we find no fines eligible to be offset by that credit.

¶ 25 Defendant claims that the \$200 DNA analysis fee imposed by the trial court is actually a fine which should be offset by his sentencing credit, citing *People v. Long*, 398 Ill. App. 3d 1028 (2010), *People v. Clark*, 404 Ill. App. 3d 141 (2010), and *People v. Mingo*, 403 Ill. App. 3d 968 (2010). This court has previously rejected the same argument, notwithstanding the holdings in *Long* and *Clark*, and determined that the "fee" is not subject to preincarceration credit. *People v. Williams*, 405 Ill. App. 3d 958, 966 (2010). We find no reason to depart from that ruling here, and therefore conclude that defendant's \$200 DNA analysis *fee* is not subject to offset by his presentence credit.

¶ 26 Lastly, defendant claims that his \$25 fine under the Violent Crime Victims Assistance Act (VCVA) should be reduced to \$24 where he was assessed \$230 in fines. The State responds that the \$25 VCVA fine was proper because no other fines were imposed. We find, contrary to both positions, that defendant should have been assessed a \$20 VCVA fine.

¶ 27 Under the VCVA, when no other fine is imposed, a \$25 fine will be assessed against defendant if he is convicted of a crime of violence as defined in section 2© of the Crime Victims Compensation Act (CVCA) (740 ILCS 45/2© (West 2006)), and a \$20 fine will be assessed if he is convicted of any other felony or misdemeanor. 725 ILCS 240/10(c)(1)-(2) (West 2006). Since we have vacated defendant's \$30 Children's Advocacy Center Fee and determined that his \$200 DNA analysis fee is a fee, and not a fine, the end result is that defendant was not assessed any fines. In addition, defendant was convicted of the Class 1 felony of residential burglary (720 ILCS 5/19-3(b) (West 2006)), which is not a crime of violence under section 2© of CVCA. On these facts, defendant should have been assessed a \$20 VCVA fine which, by statute, was not subject to presentence credit. 725 ILCS 240/10(c)(2) (West 2006). Pursuant to our authority under Rule 615(b), we direct the clerk to modify his fines and fees order to reflect a \$20 fine.

¶ 28 For the reasons stated, we order the clerk to vacate the \$30 Children's Advocacy Center Fee, modify his mittimus to reflect 909 days of presentence credit, modify his fines and fees order to reflect a \$20 VCVA fine, and affirm the judgment in all other respects.

¶ 29 Affirmed, as modified.