

NOTICE
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2012 IL App (4th) 100825-U

Filed 5/14/12

NO. 4-10-0825

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macoupin County
TEDDY L. MEYER,)	No. 09CF193
Defendant-Appellant.)	
)	Honorable
)	Kenneth R. Deihl,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Cook and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court did not err in admitting evidence of defendant's prior convictions where they were admitted for impeachment purposes.

(2) The State presented sufficient evidence to convict defendant beyond a reasonable doubt of child abduction.

(3) Defendant was properly assessed the \$10 medical-costs fee.

(4) We vacate the \$300 public-defender fee where the trial court did not impose it and the circuit clerk is without authority to do so on its own.

¶ 2 Following a January 2010 bench trial, defendant, Teddy L. Meyer, was convicted of child abduction (720 ILCS 5/10-5(b) (West 2008)). In May 2010, the trial court sentenced him to six years' imprisonment.

¶ 3 Defendant appeals, arguing (1) the trial court erred in admitting evidence of defendant's prior convictions, (2) the evidence was insufficient to find him guilty beyond a

reasonable doubt of child abduction, (3) his public-defender fee should be vacated because it was imposed without a hearing on his ability to pay, and (4) the \$10 medical-costs assessment was improperly imposed. We affirm in part, vacate in part, and remand with directions.

¶ 4

I. BACKGROUND

¶ 5 On September 29, 2009, the State charged defendant, by information, with child abduction (720 ILCS 5/10-5(b) (West 2008)).

¶ 6 On November 18, 2009, defendant's trial counsel filed a motion *in limine* to exclude defendant's 1993 Kane County convictions for aggravated battery of a child and aggravated kidnapping and a 1986 Montgomery County conviction for attempt (aggravated kidnapping). The State sought to admit defendant's prior convictions for impeachment purposes.

¶ 7 On December 30, 2009, the trial court granted defendant's motion *in limine* as to the attempt (aggravated kidnapping) out of Montgomery County because it was "too remote in time." However, the court denied the motion as to the convictions for aggravated battery of a child and aggravated kidnapping. The court stated it considered the *Montgomery* factors and found the State could use the Kane County convictions to impeach defendant.

¶ 8 During defendant's January 2010 bench trial, eleven-year-old C.A. testified he was staying with his father in Carlinville on September 27, 2009. He rode his bicycle from his father's house to McDonald's to return a rented movie to a Red Box located there. His tire was going flat so he walked his bike to a nearby gas station to use the air pump. He attempted to put air in the tire but the tire kept going flat. C.A. noticed a man he identified as defendant walking toward him from the train station. According to C.A.'s testimony, defendant offered to help him inflate the tire. Defendant then asked C.A. if he "wanted to learn how to make 'big money' " and

showed C.A. his wallet. C.A. testified he observed "five or six" twenty-dollar bills in the wallet. C.A. testified defendant said "come" or "follow" and C.A. followed him around the corner.

¶ 9 C.A. testified after following defendant around the corner, he observed defendant walk into the men's restroom. People's exhibits J, K, and L, show it was a small, single person restroom, with one toilet and one sink. The restroom door was open. C.A. testified defendant was inside the restroom when defendant asked C.A., "Are you coming?" Defendant also motioned with his hands "to come over here." C.A. testified he started walking away, toward the McDonald's because he learned "not to go into bathrooms with strangers" from watching television shows "like CSI and stuff."

¶ 10 C.A. then went to McDonald's and returned the movie. While he was walking back home, he observed defendant walking toward him. C.A. stopped and heard defendant ask "if I was sure." C.A. responded "yes" and continued walking home. Thereafter, C.A. saw defendant a third time. C.A. was approaching the town square when he turned around and observed defendant "kind of jogging" toward him. C.A. walked into a Casey's General Store and stood by the front desk. C.A. wanted to use the pay phone but did not have enough money. Defendant entered the store and asked the clerk if they had any tire patches. The clerk said they were in the first aisle. Defendant looked in the first aisle and then left the store. According to C.A.'s testimony, defendant did not say anything to him while he was in the store. A customer offered to let C.A. use his cell phone to call his father, who came and picked C.A. up.

¶ 11 According to defendant's testimony, he was in Carlinville visiting his mother at a nursing home. His sister dropped him off at the train station so he could take the train back to Springfield. Defendant testified she gave him \$10 (in the form of a five-dollar bill and five one-

dollar bills) and he had a total of \$13 with him that day. Defendant also had two suitcases, a guitar, and a duffel bag with him. He explained he lived in a homeless shelter in Springfield, and they did not permit him to leave his things there during the day. Defendant testified he walked across the street from the train station to use the restroom at the Shell gas station. He noticed C.A. pushing his bicycle. Defendant testified he used the bathroom and left his belongings inside.

¶ 12 After defendant came out of the restroom, he observed C.A. walking his bicycle toward the air pump. He went inside the Shell station to try to get something to eat. When defendant came out, he observed C.A. fumbling with the air hose and went over to ask him if he needed help. C.A. responded "yes" and defendant tried unsuccessfully to put air in the tire. Defendant "aired up the tire" for C.A. but it immediately went flat again. Defendant asked C.A. if he had enough money for a patch kit and C.A. told him he "had a couple of bucks." Defendant then showed C.A. the top bill in his wallet and asked him, "if he wanted to make \$5.00." Defendant explained he was going to give C.A. \$5 for going to McDonald's for him. Defendant testified, "when I was a kid I enjoyed feeling like I earned money for something. I was trying to help him get a tire patch, but, in a way, where he could feel like he earned the money himself."

¶ 13 He went to the restroom because his duffel bag was located there. According to defendant, he wanted to get a pen and something to write on so he could write down his McDonald's order. When defendant came back out of the bathroom C.A. was walking away with his bicycle. Defendant yelled to him asking if he changed his mind. C.A. did not respond. Defendant admitted to following C.A. but only to ask him if was sure he did not want the money. Defendant admitted he went into Casey's but testified it was to buy C.A. a patch kit. He testified

he did not see one and left the store. Although he knew C.A. was in the store, he did not talk to him.

¶ 14 During cross-examination, the State asked defendant about his prior convictions. Defendant admitted having anger issues in the past but testified he changed and his intentions in this case were different from those in the past. Defendant testified he did not intend to harm C.A. In rebuttal, the State introduced People's exhibit No. 4, a digital video disk (DVD) of defendant's September 30, 2009, police interview and People's exhibit No. 5, a transcript of that interview.

¶ 15 In a January 29, 2010, written docket entry, the trial court found defendant guilty of child abduction.

¶ 16 On February 26, 2010, defendant filed a motion for a new trial, which the trial court denied.

¶ 17 On May 28, 2010, the trial court sentenced defendant to an extended-term sentence of six years' imprisonment. Defendant was also assessed \$10 for "medical costs" and a \$300 public-defender fee.

¶ 18 On June 28, 2010, defendant filed a motion to reconsider sentence, which the trial court denied.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, defendant argues (1) the trial court erred in admitting evidence of defendant's prior convictions, (2) the evidence was insufficient to find him guilty beyond a reasonable doubt of child abduction, (3) the \$10 medical-costs assessment was improperly

imposed, and (4) his public-defender fee should be vacated where it was imposed without a hearing on his ability to pay it, and the case should be remanded for a hearing to determine defendant's ability to pay.

¶ 22 A. Admissibility of Evidence

¶ 23 Defendant argues the trial court erred in admitting (1) a DVD and transcript of defendant's police interview and (2) evidence of defendant's prior convictions for impeachment purposes.

¶ 24 1. *DVD and Transcript*

¶ 25 The State argues defendant should not be heard to complain regarding the admission of the DVD and corresponding transcript of his interview. We agree.

¶ 26 The issue of the DVD and transcript was not raised in defendant's motion *in limine* or argued during the hearing on that motion. In fact, defendant's trial counsel had no objection to the use of the DVD during trial. During trial, the following colloquy took place:

"THE COURT: Mr. Meyer, just for the record, you have no objection to the playing of the September 30th DVD?

MR. MEYER: [(defendant's trial counsel)] So long as it's only being presented for the purposes of rebutting statements made by [defendant] during direct, and if the Court is going to disregard anything else within the videotape, no, I do not.

THE COURT: That's the expressed purpose the State has in mind.

MR. MORETH: [(assistant state's attorney)] That's fine.

THE COURT: So that's fine. We'll show by stipulation.

Very good."

¶ 27 "[W]hen a defendant procures, invites, or acquiesces in the admission of evidence, even [if] the evidence is improper, [the defendant] cannot contest the admission on appeal." *People v. Bush*, 214 Ill. 2d 318, 332, 827 N.E.2d 455, 463 (2005) (citing *People v. Caffey*, 205 Ill. 2d 52, 114, 792 N.E.2d 1163, 1202 (2001); *People v. Payne*, 98 Ill. 2d 45, 50, 456 N.E.2d 44, 46 (1983)). "This is because, by acquiescing in rather than objecting to the admission of allegedly improper evidence, a defendant deprives the State of the opportunity to cure the alleged defect." *Bush*, 214 Ill. 2d at 332-33, 827 N.E.2d at 463-64 (citing *People v. Trefonas*, 9 Ill. 2d 92, 98, 136 N.E.2d 817, 820 (1956) ("A party cannot sit by and permit evidence to be introduced without objection and upon appeal urge an objection which might have been obviated if made at the trial")). Thus, a defendant cannot proceed in one manner in the trial court only to claim error on appeal.

¶ 28 After the DVD was admitted into evidence and played for the trial court, the State sought to introduce the transcript of the DVD. Defendant's trial counsel argued the following:

"I don't think we need that. The Court saw the DVD, and if the Court is inclined to introduce or allow [the transcript] into evidence, I would ask that it be for the same purpose as the DVD, which is not for everything that is in there. It's only to rebut or impeach what [defendant] said on the stand. 99 percent of what we saw in that DVD and what you are going to read in that transcript should not be considered by this Court."

The trial court noted the proceeding was a bench trial and stated it understood the limitation for which the transcript was being offered. The court allowed the transcript over counsel's objection "specifically for the purposes that [it] allowed the DVD to be played."

¶ 29 While it appears counsel objected to the admission of the transcript, he did not preserve this specific issue in his posttrial motion. To preserve an issue for review, a defendant must raise an objection *both* at trial and in a written posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124, 1130 (1988). "[T]he failure to raise an issue in a written motion for a new trial results in a waiver of that issue on appeal." *Enoch*, 122 Ill. 2d at 186, 522 N.E.2d at 1129. With that said, we turn our attention toward the issue of the admissibility of defendant's prior convictions.

¶ 30 *2. Other-Crimes Evidence*

¶ 31 On November 18, 2009, defendant filed a motion *in limine* to exclude his prior convictions. The State sought their admission for impeachment purposes.

¶ 32 Generally, evidence of other crimes is inadmissible to demonstrate a defendant's propensity to engage in criminal activity. *People v. Donoho*, 204 Ill. 2d 159, 170, 788 N.E.2d 707, 714 (2003). However, a defendant who testifies may be impeached by proof of a prior conviction. *People v. Tribett*, 98 Ill. App. 3d 663, 675, 424 N.E.2d 688, 697 (1981). The supreme court in *People v. Montgomery*, 47 Ill. 2d 510, 516, 268 N.E.2d 695, 698-99 (1971), held evidence of a witness' prior conviction is admissible to attack his credibility where (1) the prior crime was punishable by death or imprisonment in excess of one year, or involved dishonesty or false statement regardless of the punishment, (2) less than 10 years has elapsed since the date of conviction of the prior crime or release of the witness from confinement,

whichever is later, and (3) the probative value of admitting the prior conviction outweighs the danger of unfair prejudice.

¶ 33 The third *Montgomery* factor requires the trial court to conduct a balancing test, in which it weighs the prior conviction's probative value against its potential prejudice. See *People v. Robinson*, 299 Ill. App. 3d 426, 441, 701 N.E.2d 231, 243 (1998). If, after balancing, the trial court finds that the prejudice substantially outweighs the probative value of admitting the prior conviction, then the evidence of the prior conviction must be excluded. *Montgomery*, 47 Ill. 2d at 517-18, 268 N.E.2d at 699. A trial court's decision to admit evidence of prior convictions for impeachment purposes is reviewed under an abuse of discretion standard. *Montgomery*, 47 Ill. 2d at 517-18, 268 N.E.2d at 699.

¶ 34 Defendant's convictions in this case included a 1986 Montgomery County conviction for an attempted aggravated kidnapping and two 1993 Kane County convictions for aggravated battery of a child and aggravated kidnapping.

¶ 35 Following a December 3, 2009, hearing, the trial court made the following docket entry:

"Defendant's Motion *in Limine* is allowed in part and denied in part: State's use of the Montgomery County conviction is prohibited as being too remote in time. However, the Kane County conviction is not too remote. This court has considered each factor cited in *People v. Montgomery*. Each factor having been assessed and balanced pursuant to the *Montgomery* case, the Court has determined that the Kane County conviction can be used by the State."

¶ 36 People's exhibit No. 2, the record of defendant's prior Kane County convictions, showed that in 1992 the State charged defendant with (1) aggravated battery of a child in that he choked a child around the neck and dragged him by his neck along the ground, and (2) aggravated kidnapping of a child in that he forced the child from one place to another with the intent to securely confine the child. Defendant pleaded guilty to both charges.

¶ 37 In this case, it is uncontested defendant was released from confinement within the past 10 years and that the offenses for which he was imprisoned were punishable by more than a year in prison. As a result, the only remaining issue is whether the probative value of the evidence outweighs its prejudicial nature. *Robinson*, 299 Ill. App. 3d at 441, 701 N.E.2d at 243. Factors trial courts can consider in making this determination include the following: (1) whether the prior conviction is veracity related; (2) the recency of the prior conviction; (3) the witness's age and other circumstances surrounding the prior conviction; (4) the length of the witness's criminal record and his conduct subsequent to the prior conviction; (5) the similarity of the prior offense to the instant offense thus increasing the danger of prejudice; (6) the need for the witness's testimony and the likelihood he would forego his opportunity to testify; and (7) the importance of the witness's credibility in determining the truth. *Robinson*, 299 Ill. App. 3d at 441, 701 N.E.2d at 243-44.

¶ 38 Citing *People v. Williams*, 161 Ill. 2d 1, 641 N.E.2d 296 (1994) (*Williams I*), defendant argues against the mechanical application of the balancing test. In *Williams I*, the supreme court expressed concern over trial courts taking a more mechanical approach to the *Montgomery* balancing test thereby allowing more prior-conviction evidence. *Williams I*, 161 Ill. 2d at 39, 641 N.E.2d at 312. The court "emphasized the importance of conducting the balancing

test of probative value versus unfair prejudice before admitting prior convictions for impeachment purposes." *People v. Williams*, 173 Ill. 2d 48, 81-82, 670 N.E.2d 638, 654-55 (1996) (*Williams II*). While it admonished trial courts not to admit prior-conviction evidence as probative of guilt, *Williams I* did not modify *Montgomery*. *People v. Cox*, 195 Ill. 2d 378, 384, 748 N.E.2d 166, 170 (2001) (citing *Williams II*, 173 Ill. 2d at 82, 670 N.E.2d at 655 ("We hold that [*Williams I*] does not alter the three-prong rule set forth in *Montgomery*. Rather, this court in [*Williams I*] was expressing concern about the indiscriminate admission of all prior felony convictions for impeachment purposes absent application of the critical balancing test mandated by *Montgomery*.")).

¶ 39 Moreover, the facts of *Williams I* are distinguishable from the facts in the instant case. In *Williams I*, the defendant sought to prevent the State from using his prior voluntary manslaughter conviction as impeachment evidence. *Williams I*, 161 Ill. 2d at 40, 641 N.E.2d at 312. The supreme court found the defendant's conviction was clearly offered and admitted as relevant to the question of the defendant's guilt of murder, and not for impeachment, which was directly contrary to *Montgomery*. *Williams I*, 161 Ill. 2d at 41, 641 N.E.2d at 313.

¶ 40 In this case, the convictions were clearly offered and admitted for impeachment purposes. Further, the trial court stated it considered each *Montgomery* factor and used the balancing test to determine whether the convictions should be permitted. Specifically, the court stated, "Each factor having been assessed and balanced pursuant to the *Montgomery* case, the Court has determined that the Kane County conviction can be used by the State." While the trial court did not articulate the specific factors it weighed, its failure to do so is not error. See *People v. Atkinson*, 186 Ill. 2d 450, 463, 713 N.E.2d 532, 538 (1999) (finding although the trial court did

not articulate the factors it considered in applying the *Montgomery* balancing test, no error occurred because the trial court's comments showed it was aware of the test); *Williams II*, 173 Ill. 2d at 83, 670 N.E.2d at 655 (finding the trial court did not disregard the *Montgomery* standard even though it did not expressly articulate it was applying it).

¶ 41 We also note this was a bench trial. The rules regarding the admissibility of evidence are the same in a bench trial as in a jury trial. *People v. Naylor*, 229 Ill. 2d 584, 603, 893 N.E.2d 653, 665 (2008). "However, when a trial court is the trier of fact a reviewing court presumes that the trial court considered only admissible evidence and disregarded inadmissible evidence in reaching its conclusion." *Naylor*, 229 Ill. 2d at 603, 893 N.E.2d at 665. While we agree with defendant this presumption may be rebutted where the record affirmatively demonstrates evidence to the contrary, (*Naylor*, 229 Ill. 2d at 603-04, 893 N.E.2d at 666), we find nothing in the record before us to show the State or the trial court used defendant's prior convictions as propensity evidence against him. The court did not err in admitting defendant's prior convictions for impeachment purposes.

¶ 42 B. Sufficiency of the Evidence

¶ 43 Defendant argues the evidence was insufficient to find him guilty beyond a reasonable doubt of child abduction. We disagree.

¶ 44 "When reviewing a challenge to the sufficiency of the evidence in a criminal case, the relevant inquiry is whether, when 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. Singleton*, 367 Ill. App. 3d 182, 187, 854 N.E.2d 326, 331 (2006).

This standard of review applies when reviewing the sufficiency of evidence in all criminal cases, including cases based on direct or circumstantial evidence. *People v. Pollock*, 202 Ill. 2d 189, 217, 780 N.E.2d 669, 685 (2002). "Circumstantial evidence alone is sufficient to sustain a conviction where it satisfies proof beyond a reasonable doubt of the elements of the crime charged." *Pollock*, 202 Ill. 2d at 217, 780 N.E.2d at 685.

¶ 45 In a bench trial, the trial court, as the trier of fact, has the responsibility to resolve conflicts in witnesses' testimony, determine whether witnesses are credible, and draw reasonable inferences from all the evidence presented. *People v. Sutherland*, 223 Ill. 2d 187, 242, 860 N.E.2d 178, 217 (2006). A court of review will not overturn the verdict of the fact finder "unless the evidence is so unreasonable, improbable[,] or unsatisfactory that it raises a reasonable doubt of defendant's guilt." *People v. Evans*, 209 Ill. 2d 194, 209, 808 N.E.2d 939, 947 (2004).

¶ 46 The statute at issue in this case provides, a person commits child abduction when he intentionally "lures or attempts to lure a child under the age of 16 into a *** building *** without the consent of the parent or lawful custodian of the child for other than a lawful purpose." 720 ILCS 5/10-5(b)(10) (West 2008).

¶ 47 In this case, the State presented the following evidence. C.A. was riding his bicycle to return a DVD to the Red Box located by McDonald's. He got a flat tire. C.A. testified he first noticed defendant in the Amtrak station parking lot as he was pushing his bicycle to the Shell station to put air in his tire. C.A. noticed defendant walking towards him while he was kneeling down and putting air in his tire. Defendant started talking to C.A. and offered to help him put air in the tire. C.A. testified defendant then asked him if he wanted to learn how to make "big money." C.A. testified defendant then removed his wallet and showed C.A. five to six \$20 bills.

C.A. agreed, and defendant walked around the corner of the gas station to the men's restroom. According to C.A.'s testimony, defendant stood with the door of the restroom open and motioned for C.A. to follow defendant inside. Defendant then asked and motioned for C.A. to come into the gas station restroom.

¶ 48 Defendant disputes he lured C.A. "for other than a lawful purpose." While defendant argues he made no statements indicating he intended to commit a criminal act, criminal intent is a state of mind that is usually inferred from the surrounding circumstances. See *People v. Maggette*, 195 Ill. 2d 336, 353, 747 N.E.2d 339, 349 (2001). "Although due process requires the State to prove every element of an offense beyond a reasonable doubt [citation], the State may properly rely on certain [permissive] presumptions or inferences in proving those elements. [Citation.]" *People v. Woodrum*, 223 Ill. 2d 286, 308, 860 N.E.2d 259, 274 (2006); see also *People v. Roberson*, 401 Ill. App. 3d 758, 772-73, 927 N.E.2d 1277, 1290 (2010) (noting the State may properly rely on inferences in proving elements of a criminal offense beyond a reasonable doubt).

¶ 49 Defendant testified he did not attempt to lure C.A. into the restroom and that he did not intend to harm him. Defendant also explained he was going to give C.A. a \$5 tip for going to McDonald's for him. However, C.A. testified defendant never asked him to go to McDonald's to buy food for him in exchange for \$5. Instead, C.A. testified defendant simply showed C.A. some money and then stood by the open restroom door motioning and asking C.A. to come into the restroom. The trial court, sitting as the trier of fact heard both C.A. and defendant testify. The court was not required to accept defendant's version of events over C.A.'s testimony as to what transpired. See *Sutherland*, 223 Ill. 2d at 242, 860 N.E.2d at 217 (finder of

fact has the responsibility to resolve conflicts in testimony and determine witness credibility).

¶ 50 Here, the fact finder could reasonably infer defendant's display of cash money and his offer to show C.A. how to make some money was intended to coax C.A. into the restroom for an unlawful purpose. This inference is strengthened when viewed in conjunction with the fact defendant was standing inside the restroom with the door open while motioning and then telling C.A. to come into the restroom. The inference is further strengthened by defendant's actions after C.A. walked off, *i.e.*, defendant jogged after him and then followed him to the convenience store. Once inside the store, defendant saw C.A. but did not talk to him. These inferences, taken together, are sufficient such that the trier of fact could infer defendant's guilt.

¶ 51 Viewing the evidence in the light most favorable to the State, the evidence in this case was not so unreasonable, improbable, or unsatisfactory that it created a reasonable doubt of defendant's guilt. See *People v. Wheeler*, 226 Ill. 2d 92, 115, 871 N.E.2d 728, 740 (2007) ("a conviction will be reversed where the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of defendant's guilt"). The evidence presented was sufficient to find defendant guilty of child abduction.

¶ 52 C. \$10 Medical Charge

¶ 53 On appeal, defendant initially argued the \$10 medical-costs assessment was improperly imposed because there was no evidence he received any medical treatment. The State argues the supreme court recently resolved this issue in *People v. Jackson*, 2011 IL 110615 ¶¶ 12-15, 955 N.E.2d 1164, 1168-1170 (finding the assessment is valid regardless of whether the inmate personally received any treatment). In his reply brief, defendant concedes the State is

correct and abandons this portion of his appellate argument. We agree with the State and accept defendant's concession.

¶ 54 D. Public-Defender Fee

¶ 55 Defendant argues his public-defender fee should be vacated where it was imposed without a hearing on his ability to pay.

¶ 56 The State concedes the trial court did not impose a public-defender fee. The record contains a document, not signed by the court, which imposed a \$300 public-defender fee. The State correctly observes the circuit clerk had no authority to impose the fee.

¶ 57 In *People v. Gutierrez*, 2012 IL 111590, ¶ 28, 962 N.E.2d 437, 444, the supreme court vacated a public-defender fee the Lake County circuit clerk imposed on its own. The court found there was no indication either the State or the trial court was seeking the fee. *Gutierrez*, 2012 IL 111590, ¶ 28, 962 N.E.2d at 444. In doing so, the court admonished *all* circuit clerks "they may not impose public defender fees on their own." *Gutierrez*, 2012 IL 111590, ¶ 26, 962 N.E.2d at 444. Instead, the court made clear "a public defender fee may be imposed only by the circuit court after notice and a hearing on the defendant's ability to pay." *Gutierrez*, 2012 IL 111590, ¶ 26, 962 N.E.2d at 444.

¶ 58 Like the trial court in *Gutierrez*, the trial court here did not impose a public-defender fee. During sentencing, the trial court specifically stated it was "waiving the public defender fees because of [defendant's] financial situation." Thus, it is clear the court did not impose the public-defender fee. Accordingly, no hearing on defendant's ability to pay the fee was necessary. However, a review of the record shows the circuit clerk nonetheless assessed

defendant that fee. The record contains a document, unsigned by the trial court, assessing a \$300 public-defender fee. Pursuant to the supreme court's holding in *Gutierrez*, we vacate the public-defender fee and remand for the issuance of an amended schedule of fines and fees so reflecting. We remind the circuit clerk it has no authority to *sua sponte* impose the public-defender fee.

¶ 59 While defendant requests we remand this case for a hearing on defendant's ability to pay, we decline to do so. The trial court never imposed a public-defender fee and one could not be imposed upon remand.

¶ 60 III. CONCLUSION

¶ 61 For the foregoing reasons, we vacate defendant's \$300 public-defender fee and remand with directions to issue an amended sentencing judgment schedule of fines and fees so reflecting. We otherwise affirm. Because the State successfully defended a portion of the criminal judgment, we grant the State its \$50 statutory assessment against defendant as costs of this appeal. See *People v. Smith*, 133 Ill. App. 3d 613, 620, 479 N.E.2d 328, 333 (1985) (citing *People v. Nicholls*, 71 Ill. 2d 166, 178, 374 N.E.2d 194, 199 (1978)).

¶ 62 Affirmed in part, vacated in part, and cause remanded with directions.