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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CM-847
)	
ALAN J. VARBONCOEUR,)	Honorable
)	John S. Lowry,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Burke and Justice Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Evidence was sufficient to support defendant's conviction of domestic battery where trial court, sitting as the trier of fact, found that defendant's conduct in administering corporal punishment to a child to whom he stood *in loco parentis* exceeded the bounds of reasonableness; and (2) defendant was entitled to a \$10 credit against his domestic-violence fine for time spent in presentence custody.

¶ 2 Following a bench trial in the circuit court of Winnebago County, defendant, Alan J. Varboncoeur, was convicted of domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2010)). The trial court sentenced defendant to 12 months' probation and imposed various monetary charges, including a \$200 domestic-violence fine. On appeal, defendant raises two issues. First, he argues that the

State failed to prove him guilty beyond a reasonable doubt. Second, defendant argues that he is entitled to a five-dollar-a-day credit against his domestic-violence fine for the time he spent in presentence custody. We modify the mittimus to reflect the credit to which defendant is entitled, but otherwise affirm.

¶ 3

I. BACKGROUND

¶ 4 Defendant was initially charged by criminal complaint with domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2010)) for an incident that occurred on March 1, 2010. On February 16, 2011, the State charged defendant by information with two counts of domestic battery related to the same incident. The information was subsequently amended to include two additional counts of domestic battery. Count I of the amended information alleged that defendant committed the offense of domestic battery in that he “knowingly or intentionally made physical contact of an insulting or provoking nature with T.H. (DOB: 6/30/1997), a family member or a household member of said defendant, in that the said defendant struck T.H.” in violation of section 12-3.2(a)(2) of the Criminal Code of 1961 (Code) (720 ILCS 5/12-3.2(a)(2) (West 2010)). The remaining counts of the information alleged violations of the same provision of the Code in that defendant “grabbed” (Count II), “pushed” (Count III), and “held *** down” (Count IV) T.H. during the March 1, 2010, incident. Defendant waived his right to a trial by jury, and the matter proceeded to a bench trial on March 3, 2011.

¶ 5 Prior to trial, defendant filed a “Notice of Affirmative Defenses.” Defendant indicated that he may assert the affirmative defense of “justifiable use of force” at trial. In response, the State filed a motion *in limine*. In the motion, the State argued that whether defendant can assert the affirmative defense of “justifiable use of force” is contingent upon him standing *in loco parentis* to T.H. The

State requested the court to hold a separate hearing on whether defendant is a person standing *in loco parentis* to T.H. The trial court denied the State's request, noting that the matter was proceeding as a bench trial, and that, in the interests of judicial economy, it would "sort out the facts relevant to the parentis [*sic*] issue versus the facts relevant to the issues raised by the pleadings."

¶ 6 The evidence at the bench trial established that defendant and his wife, Julia, resided with their son, D.V., and C.T., Julia's daughter from another relationship. Julia worked with Michaele Scott. Sometime in 2008, defendant and Julia allowed Scott and her daughter, T.H., to move into their home. Pursuant to an agreement between the three adults, Scott paid rent to defendant and Julia, contributed to the grocery expenses, and performed other chores. In March 2010, all three adults had jobs working different shifts. As a result, defendant would sometimes be left to care for the children.

¶ 7 On the morning of March 1, 2010, T.H. was at the Varboncoeur residence with defendant and D.V. T.H. testified that she was sitting on a couch near defendant and D.V., when D.V., who was then about 2½ years of age, started screaming "at the top of his lungs." Defendant ignored D.V., so T.H. responded by tugging at D.V.'s shirt collar to bring him closer to her in an attempt to calm him down. When defendant observed what T.H. was doing, he told her to let go of D.V. T.H. complied with defendant's request, and after she released D.V.'s collar, defendant went upstairs. During his ascent, defendant told T.H. that she was stupid and that when D.V. got older, he would beat her up. In response, T.H. told defendant to shut up. At that point, defendant became "really angry," came downstairs, grabbed T.H.'s wrists, pushed her down onto the couch, and slapped her face four or five times as T.H. cried.

¶ 8 T.H. testified that defendant slapped her “hard” and that the slaps hurt her. T.H. further testified that while defendant was slapping her, he called her a “fat slut” and told her that he could not wait until she and her mother moved out of the home. Subsequently, defendant walked towards his computer, at which point T.H. told defendant that he should not have done what he did. Defendant then returned, grabbed T.H.’s arms, and pinned her down on the couch again, stating that while she could talk back to her mother, she was not allowed to talk back to him. After the second episode, defendant left the house with D.V. T.H. then went to her room and called her mother, who was at T.H.’s grandma’s house. When Scott arrived, she contacted the police. According to T.H., the incident left her with marks on her hands, arms, and face. T.H. stated that the police did not arrive until hours later, by which time the marks on her body had “faded.” On cross-examination, T.H. denied slapping D.V. on March 1, 2010. At the time of the events in question, T.H. was 12 years old.

¶ 9 Michaele Scott testified that on March 1, 2010, she was at her mother’s house, when she received a telephone call from T.H. According to Scott, T.H. was crying and asked her to come home right away. Scott left her mother’s house and arrived at the Varboncoeur residence about 30 minutes later. Scott found T.H. crying in her bed. Sometime later, Scott photographed T.H.’s face and hands, which, she testified, showed redness in certain areas. Some of these photographs were admitted into evidence at trial. After speaking with T.H., Scott contacted the police. Scott stated that the police did not arrive until hours later, by which time T.H.’s injuries had begun to “fade.” Scott testified that although she authorized defendant to send T.H. to her room, he did not have permission “[t]o lay a hand on [T.H.]”

¶ 10 On cross-examination, Scott acknowledged that on a few occasions, defendant approached her about T.H.'s behavior because T.H. would often "talk back" to defendant. Scott testified that although she did not have a problem with T.H. talking back to defendant, she told defendant that she would "take care of it." Scott explained T.H.'s behavior on the basis that she is a teenager and "teenagers rebel." Scott added that T.H. is "very opinionated" and "speaks her mind," which defendant did not like.

¶ 11 Officer Sean Welsh of the Rockford police department testified that on March 1, 2010, he was dispatched to the Varboncoeur residence at around 4:30 p.m. Defendant told Officer Welsh that at around 11 a.m., he was at home with D.V. and T.H., when he heard T.H. strike D.V. Subsequently, defendant went to check on the children and he observed T.H. strike D.V. Defendant instructed T.H. to stop hitting D.V., and T.H. "talked back" to defendant. Defendant thought T.H. was going to strike or scratch him, so he pushed T.H. onto a couch, got on top of her, held her down by her wrists, and struck her in the face twice with an open hand. T.H. then got up and ran to her bedroom. Officer Welsh testified that he did not observe any red marks, bruising, cuts, scrapes, or other signs of injury on T.H.

¶ 12 The trial was continued to April 15, 2011, at which time the State rested its case and defendant moved for a directed verdict. In particular, defendant argued that the State failed to prove the charges against him beyond a reasonable doubt because he was "standing in the shoes of the parent for [T.H.]" and that the discipline he administered to T.H. on March 1, 2010, was reasonable. The trial court agreed that defendant was acting *in loco parentis* based on the living arrangement between the parties as well as defendant's financial support of Scott and T.H. Nevertheless, the court denied defendant's motion, explaining in pertinent part:

“I will also find that based on [Scott’s] testimony *** she did not have a problem with disciplining, the Defendant disciplining her daughter, such as sending to the room, but she quickly added not to this extent as alleged. I will find there is such relationship. However, I’m going to find it’s come down on the issue of reasonableness in all of the counts by the State, whether or not the discipline was reasonable. That’s following the *Roberts* case [*People v. Roberts*, 351 Ill. App. 3d 684 (2004)] that a parent is legally justified in using reasonable force when necessary as part of reasonable discipline of a child. That question is a question of fact as to all of the State’s counts.”

¶ 13 Defendant testified that T.H. would not listen to the adults in the house and she would “talk back.” Defendant further testified that T.H. would hit D.V. Defendant stated that this became a problem when he was left in the house with T.H. Defendant stated that he told Julia about T.H. hitting D.V. In response, Julia asked Scott and T.H. to move out, but they never did. Defendant also spoke to Scott about T.H.’s behavior, but there was no improvement.

¶ 14 Regarding the events of March 1, 2010, defendant testified that when he awoke that morning, the only other individuals in the home were T.H. and D.V. Defendant planned to take D.V. to the mall that day, while T.H., who was home schooled, stayed at home to study. Defendant asked T.H. to play a game on the computer with D.V. while he went downstairs to use the washroom and retrieve D.V.’s shoes and jacket. While defendant was in the bathroom, he heard T.H. slap D.V. and D.V. start to cry. Defendant yelled for T.H. to “knock it off.” Defendant subsequently heard T.H. slap D.V. again, so he went upstairs. D.V. tried to run towards defendant, but T.H. grabbed his collar and yanked him in her direction. Defendant again told T.H. to “knock it off.” T.H. responded, “[y]ou can’t tell me what to do.” Defendant testified that T.H. then tried to knee him and clenched

her fists in the air as if she was going to hit him, so he grabbed her wrists and “pinned her back against the couch.” Defendant told T.H., “this is how it feels when somebody bigger than you pushes you around.” Defendant then “lightly tapped” T.H. on the cheek two or three times “just to scare her.” He then got up, retrieved D.V., and left the house. Defendant stated that T.H. appeared “upset” at the situation and angry at him. However, he disputed T.H.’s account of the incident, stating that T.H. was not crying when he held her down and struck her. In addition, defendant denied calling T.H. a “fat slut.”

¶ 15 In rebuttal, the State recalled Scott and T.H. Scott reiterated that defendant did not have her permission to physically discipline T.H. Scott further testified that on one occasion she observed T.H. slap D.V. on the hand “for discipline or something.” Scott also recalled that Julia had admitted at a different hearing to seeing T.H. slap D.V. on the hand “maybe more than once.” T.H. was asked whether she slapped D.V. She responded, “Did I slap him? Like there’s different types of slapping, isn’t there?” She later stated that she “touched” D.V. when she reached over for him. T.H. also reiterated that while defendant was slapping her, she closed her eyes and cried and that the slaps “hurt.”

¶ 16 On April 22, 2011, the trial court announced its verdict. Initially, the court again determined that the evidence at trial supported a finding that defendant stood *in loco parentis* to T.H. at the time the events alleged in the information occurred. In support of this finding, the court noted that at the time of the occurrence, T.H. and her mother resided in the same house as defendant and his family. The court also cited some financial support by defendant for T.H. and Scott, defendant’s supervisory role over the minor when Scott was absent, and Scott’s testimony that defendant “had the right to send [T.H.] to her room but not permission to lay a hand on her.”

¶ 17 The court next considered “whether the parental discipline in this case was justified.” In making this determination, the court found that the reasonableness standard set forth in *Roberts*, 351 Ill. App. 3d 684, applied. The court noted that under that standard, “[a] parent is legally justified in using reasonable force when necessary as part of [the] reasonable discipline of a child.” Applying this standard, the court found defendant guilty of the allegations set forth in Count I of the amended information, explaining:

“As to Count 1, the allegation that the defendant committed the offense of domestic battery in that he struck *** the minor, the Court having observed the testimony of both the defendant and *** the minor, the manner while testifying, and considering the testimony and circumstances of the case, the Court finds the minor *** was credible as to her description of the number of slaps, four to five, to the face and the force used by the defendant.

The Court further finds that the defendant’s testimony of a light tap on the cheek three times to scare her or swatting was not credible.

The Court will further find that these actions of the striking by the defendant multiple times in the manner set forth and the circumstances including, ‘Now you know what it’s like when somebody bigger hits you,’ end quote, are not justified and were out of anger, not justified under the reasonable standards set forth by *Roberts*.”

The court found that the State did not prove defendant guilty beyond a reasonable doubt of the allegations set forth in counts II through IV of the amended information.

¶ 18 On May 3, 2011, defendant filed a motion to reconsider. The trial court denied defendant’s motion on June 8, 2011. Thereafter, the parties agreed to a sentence of 12 months’ probation, subject to certain conditions, and the imposition of various monetary charges, including a \$200 domestic-

violence fine. On July 20, 2011, the trial court sentenced defendant in accordance with the agreed upon disposition. Subsequently, defendant filed the present appeal.

¶ 19

II. ANALYSIS

¶ 20

A. Sufficiency of the Evidence

¶ 21 Defendant first argues that the State failed to prove him guilty beyond a reasonable doubt of domestic battery. When a defendant challenges the sufficiency of the evidence used to convict him, it is not the function of the reviewing court to retry the defendant. *People v. Howard*, 2012 IL App (3d) 100925, ¶ 8. Instead, the relevant inquiry 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.’ ” (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The trier of fact has the responsibility to assess the credibility of the witnesses, weigh their testimony, resolve inconsistencies and conflicts in the evidence, and draw reasonable inferences therefrom. *People v. Slim*, 127 Ill. 2d 302, 307 (1989); *People v. Lipscomb-Bey*, 2012 IL App (2d) 110187, ¶ 21. A court of review will not substitute its judgment for that of the trier of fact on issues of the credibility of witnesses or the weight of the evidence. *People v. Jasoni*, 2012 IL App (2d) 110217, ¶ 19. We will set aside a criminal conviction only if the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant’s guilt. *Lipscomb-Bey*, 2012 IL App (2d) 110187, ¶ 21. This standard of review applies regardless of whether the evidence is direct or circumstantial, and regardless of whether the defendant received a bench or jury trial. *People v. Taylor*, 2012 IL App (2d) 110222, ¶ 8.

¶ 22 The parental right to discipline is not a statutory affirmative defense. *People v. Green*, 2011 IL App (2d) 091123, ¶ 16; *Roberts*, 351 Ill. App. 3d at 688. Nevertheless, the common-law rule that parents may take reasonable steps to discipline their children when necessary is, like self-defense, a legal justification for an otherwise criminal act. *Green*, 2011 IL App (2d) 091123, ¶ 16; *Roberts*, 351 Ill. App. 3d 684, 688 (2004). To negate such a legal justification, the State must prove the defendant guilty beyond a reasonable doubt as to the affirmative defense together with all the other elements of the offense. *Green*, 2011 IL App (2d) 091123, ¶ 16; see also 720 ILCS 5/3-2(b) (West 2010) (providing that where affirmative defense is raised, “the State must sustain the burden of proving the defendant guilty beyond a reasonable doubt as to [the affirmative defense] together with all the other elements of the offense.”). To prove defendant guilty of the domestic battery of T.H., the State had to prove beyond a reasonable doubt that defendant intentionally or knowingly without legal justification and by any means made physical contact of an insulting or provoking nature with T.H. as alleged in the various counts of the information. See 720 ILCS 5/12-3.2(a)(2) (West 2010); *Green*, 2011 IL App (2d) 091123, ¶ 16. In addition, to sustain a conviction of domestic battery where a claim of parental right has been asserted, the State must also prove beyond a reasonable doubt that the discipline used exceeded the standards of reasonableness. *Green*, 2011 IL App (2d) 091123, ¶ 16; see also *Roberts*, 351 Ill. App. 3d at 690 (“Reasonableness is the proper standard for the [trier of fact] to apply in determining whether the parental discipline is justified.”); Restatement (Second) of Torts § 147(1) (1965). We note that an individual found to be *in loco parentis* is subject to the same standard of reasonableness applicable to a parent. *People v. Ball*, 58 Ill. 2d 36, 40 (1974).

¶23 In assessing whether the discipline exceeded the bounds of reasonableness, this court recently remarked as follows:

“[T]he degree of injury inflicted upon a child is not the exclusive or determinative factor in evaluating whether the discipline exceeded the bounds of reasonableness. [Citation.] Other factors to consider include the likelihood of future punishment that might be more injurious, the psychological effects of the discipline on the child, and whether the parent was calmly attempting to discipline the child or whether the parent was lashing out in anger. [Citation.]”
Green, 2011 IL App (2d) 091123, ¶ 24.

The reasonableness of, and the necessity for, the punishment is to be determined by the finder of fact, under the circumstances of each case. *Green*, 2011 IL App (2d) 091123, ¶ 24.

¶24 In the present case, the trial court, sitting as the trier of fact, initially determined that defendant stood *in loco parentis* to T.H. on the day the incident at issue occurred. The court then determined that defendant’s act of striking T.H. as charged in count I of the amended information did not fall within the bounds of reasonable parental discipline. In reaching this conclusion, the court referred to the circumstances surrounding the incident and the credibility of T.H. and defendant. The court found credible the testimony of T.H. regarding the number of slaps administered and the amount of force used. The court determined that T.H.’s testimony that defendant forcefully slapped her face four or five times while verbally insulting her was more credible than defendant’s testimony that he “lightly tapped” T.H. on the cheek two or three times “just to scare her.” The court further determined that defendant’s actions were committed “out of anger.” As noted above, the trier of fact is in the best position to determine the credibility of the witnesses, weigh evidence and draw reasonable inferences therefrom, and resolve any conflicts in

the evidence. *Slim*, 127 Ill. 2d at 207. Viewing the foregoing evidence in the light most favorable to the prosecution, the evidence was sufficient to find that defendant's conduct exceeded the bounds of reasonableness and that defendant was guilty of domestic battery as charged in count I of the amended information.

¶ 25 Defendant acknowledges that when he slapped T.H., he was acting out of anger in response to T.H.'s contact with his son, D.V. He suggests, however, that none of the other factors cited in *Green* are present. For instance, with regards to the possibility of future punishment, defendant argues that there was no showing that future punishment would occur, "especially because [he] was not related to [T.H.]" and he "immediately left the house after the incident." This argument is without merit. Application of the domestic battery statute is not limited to individuals with a familial relationship. See 720 ILCS 5/12-3.2(a)(2) (West 2010) (providing that a person commits domestic battery if he intentionally or knowingly without legal justification by any means "[m]akes physical contact of an insulting or provoking nature with any family or household member." (Emphasis added.)). Moreover, even though defendant left the house immediately after the accident, the record establishes that he later returned to the residence, where the victim continued to reside.

¶ 26 Defendant also states that there was no evidence that T.H. suffered any psychological effects as a result of the incident. However, as this court noted in *Green*, "when corporal punishment is administered there is no assurance that a child will not suffer psychological effects." *Green*, 2011 IL App (2d) 091123, ¶ 24.

¶ 27 Citing the American Heritage Dictionary 1031 (1982), defendant defines "reasonable" as "[w]ithin the bounds of common sense." He goes on to state that the trial court "did not find that slapping [T.H.] exceeded common sense." However, as previously stated, the trial court was in the

best position to evaluate the evidence and the testimony of the witnesses, and, unless the proof was “so unsatisfactory, improbable or implausible as to justify a reasonable doubt as to the defendant’s guilt,” we will not disturb the trial court’s judgment. *Slim*, 127 Ill. 2d at 307.

¶ 28 Defendant also insists that the trial court “abandoned the ‘reasonableness’ standard” and instead, “found that [he], despite his status of *in loco parentis*, could not successfully assert the parental corporal punishment privilege because [T.H.’s] mother had barred him from ‘lay[ing] a hand on her.’ ” We find no evidence to support this assertion. The trial court only referenced the discussions of disciplinary practices between Scott and defendant with respect to its determination whether defendant stood *in loco parentis* to T.H. In finding that defendant’s actions of repeatedly striking T.H. were not reasonable, at no point did the court reference the disciplinary limitations about which Scott testified. Therefore, defendant’s argument that his conduct was found to be unreasonable only because Scott prohibited his use of corporal punishment is not supported by the record.

¶ 29 Defendant suggests that courts typically find discipline to be unreasonable when the victim sustains some type of physical injury or an object is used to corporally punish the child. However, whether T.H. suffered bodily harm is irrelevant to the case at bar because defendant was charged with committing domestic battery in that he “knowingly or intentionally made physical contact of an insulting or provoking nature” with the victim. See 720 ILCS 5/12-3.2 (West 2010). As such, the State was not required to prove that T.H. sustained bodily injuries. Moreover, we have previously rejected this precise argument. *Green*, 2011 IL App (2d) 091123, ¶ 26 (“We decline to hold that, as a matter of law, when no bodily harm results from the parent’s conduct, he or she cannot be found guilty of exceeding the bounds of reasonableness under the domestic battery statute as

written.”). In addition, defendant cites no authority for the proposition that to find discipline unreasonable an “object” must be used to corporally punish the child.

¶ 30 Defendant notes that there is no case exactly like this one in Illinois, but “[w]hen other states have considered the common-law standard of reasonableness of corporal punishment in the context of parental discipline, slapping has not been found to be unreasonable force.” Defendant cites to *State v. Stocker*, 976 P. 2d 399 (Haw. 1999), and *State v. Lefevre*, 117 P.3d 980 (N.M. Ct. App. 2005), to support this proposition. However, the reasonableness of, and the necessity for, the punishment is to be determined by the finder of fact under the circumstances of each case. *Green*, 2011 IL App (2d) 091123, ¶ 24. Further, neither *Stocker* nor *Lefevre* serve as persuasive authority because they are distinguishable from the case at bar.

¶ 31 In *Stocker*, the defendant slapped his 11-year-old son as a result of his son’s failure to come to him after being repeatedly requested to do so. The incident in *Stocker* was described as a single slap. The defendant’s son described the force of the blow as “between *** hard and soft” and stated that it “didn’t hurt *** [o]nly hurt a little bit.” The defendant’s son acknowledged that the slap did not leave any mark or bruising. Under these circumstances, the *Stocker* court found the defendant’s conduct to be reasonable parental discipline. *Stocker*, 976 P. 2d at 409-10. In the instant case, T.H. testified that defendant slapped her four or five times, which she described as “hard,” hurtful, and occurring in conjunction with defendant calling her a “fat slut” and telling her that he could not wait until she moved out of the home. In *Lefevre*, the court reversed a battery conviction in a case in which the defendant squeezed his 12-year-old daughter’s hand “really hard” and told her he was “sick of her” in response to her having gone through her brother’s backpack. *Lefevre*, 117 P. 3d at 985. *Lefevre* is also distinguishable from the instant case, because here, defendant’s conduct did not

consist of a single physical act. T.H. testified that in a fit of anger, defendant slapped her multiple times and that his conduct was accompanied by verbal insults. Thus, for the reasons set forth above, we conclude that defendant was proven guilty beyond a reasonable doubt of domestic battery.

¶ 32 B. Credit Against Fine

¶ 33 Defendant also contends that he is entitled to a five-dollar-a-day credit against his domestic-violence fine for the time he spent in presentence custody. Section 110-14(a) of the Code of Criminal Procedure of 1963 provides:

“Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of \$5 for each day so incarcerated upon application of the defendant. However, in no case shall the amount so allowed or credited exceed the amount of the fine.” 725 ILCS 5/110-14(a) (West 2010).

Any portion of a day in custody constitutes a full day for purposes of section 110-14(a). *People v. Stahr*, 255 Ill. App. 3d 624, 627 (1994). Moreover, a defendant may apply for the credit for the first time on appeal. *People v. Burton*, 2012 IL App (2d) 110769, ¶ 19. In this case, the record shows that defendant was arrested on March 1, 2010, and that he was released on bail the following day, March 2, 2010. Therefore, defendant has accumulated a credit of \$10 which may be applied to offset any eligible fines assessed against him. The State concedes that defendant is entitled to the credit. Accordingly, we modify the mittimus to reflect a \$10 credit against defendant’s domestic-violence fine. See *People v. Crow*, 403 Ill. App. 3d 698, 706 (2010) (applying statutory credit against domestic-violence fine).

¶ 34 III. CONCLUSION

¶ 35 For the reasons set forth above, we affirm defendant's conviction of domestic battery, but modify the mittimus to reflect that defendant is entitled to a credit of \$10 against his domestic-violence fine for the time he spent in presentence custody.

¶ 36 Affirmed as modified.