

proper fines, and remand the cause with directions to award the proper monetary credit.

¶ 4

I. BACKGROUND

¶ 5 On July 20, 2010, the State charged defendant with one count each of residential burglary (720 ILCS 5/19-3(a) (West 2008)) (count I), theft of property valued over \$300 (720 ILCS 5/16-1(a)(1)(A) (West 2008)) (count II), and unlawful possession of a stolen vehicle (625 ILCS 5/4-103(a)(1) (West 2008)) (count III). The trial court allowed defendant's motion to sever count I from counts II and III.

¶ 6 The charges stem from the following. On July 16, 2010, just after midnight, police were called to 1117 West Cerro Gordo in Decatur for a burglary in progress. The caller, Kenneth Dickson, advised police he saw the suspect remove a window screen and crawl through the window of Gregory Stearns' house. When the suspect saw the police car, he ran from the house, got onto a bicycle, and fled the scene. Police chased the suspect with lights and sirens activated for a short distance until the suspect fell from the bicycle. He was apprehended and taken into custody. Dickson positively identified the suspect, defendant, as the person he saw enter the home. At the time of defendant's arrest, police discovered he was wanted on an outstanding warrant for possession of a stolen vehicle.

¶ 7 At the December 8, 2010, jury trial, Dickson testified he lived across the street from Stearns' house. He watched as a man on a bicycle rode past his house and to Stearns' driveway. He laid his bicycle in the driveway and approached the door. He knocked. When no one answered, the man turned the doorknob, but the door was locked. Dickson knew Stearns was not home. The man walked to the side of the house and stood looking at the window for a few minutes. Because there is a streetlight in front of Stearns' home and lights from a nearby gas station, Dickson could "see him

really good." The man walked to the front of the house, got his bicycle, and took it to the side of the house. He walked to the street in front of the house and looked both ways. He then walked around the perimeter of the house. After circling the house, the suspect walked to the side window again and began "ripping the screen out." He entered the house by crawling through the window head first. Dickson testified he had already called the police and described "every little step [the suspect] was doing." The man was in the house for approximately five minutes when he exited through the front door. He looked around to see if anyone was watching. He went to the side of the house and retrieved his bicycle. He removed his T-shirt, got on his bike, rode to the corner, turned right, and rode until he was out of Dickson's sight. Dickson identified defendant as the suspect both at a showup and in court.

¶ 8 Stearns testified he was next door watching a movie at the time of the burglary. When he had left home, his doors were locked. When he returned home, his front door was unlocked, but nothing in the house seemed disturbed. It was not until the next day he noticed his cellular telephone, which had been plugged in next to his bed, was missing. He did not know defendant and had not given him permission to enter his house or remove his personal property.

¶ 9 Josh Sheets, a Decatur police officer, testified he responded to the burglary in progress. When he arrived at the house, he saw defendant take off his T-shirt, get on his bicycle, and ride away. It appeared defendant saw Sheets and was fleeing. Sheets activated the lights and siren on his marked police car. Defendant "increased his peddling speed and continued south bound." Sheets continued to pursue defendant until he lost control of his bicycle and fell to the ground. Sheets took defendant into custody and waited until Dickson arrived to perform a "street showup."

¶ 10 Another Decatur officer, Stephen Kirk, testified he too responded to the burglary in

progress. When he arrived, he saw a shirtless man exiting Stearns' driveway on a bicycle. After defendant was taken into custody, Kirk spoke with Dickson and transported him to defendant for a showup. Dickson immediately identified defendant.

¶ 11 Both parties rested. During the jury-instruction conference, defendant presented an instruction on the lesser-included offense of criminal trespass to a residence. After considering closing arguments and deliberations, the jury found defendant guilty of residential burglary.

¶ 12 On January 6, 2011, defendant filed a motion for a judgment notwithstanding the verdict, or in the alternative, a motion for a new trial. On January 27, 2011, defendant filed a *pro se* "addendum" to his posttrial motion, alleging ineffective assistance of counsel.

¶ 13 On February 3, 2011, the trial court conducted defendant's sentencing hearing. First, the court considered defendant's ineffective-assistance-of-counsel claims and found no basis for the claims or the need to appoint different counsel. Next, the court denied defendant's posttrial motion filed by counsel. Finally, the court proceeded to sentencing. Neither party presented evidence. After considering the relevant statutory factors, defendant's criminal history, defendant's statement in allocution, and recommendations of counsel, the court sentenced defendant to 12 years in prison. The court ordered defendant to pay court costs but imposed no other fines. The State dismissed counts II and III. Defendant's counsel filed a motion to reconsider his sentence, which the court denied. This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 A. Sufficiency of Evidence

¶ 16 Defendant claims his conviction for residential burglary should be reduced to criminal trespass to a residence because the State failed to prove beyond a reasonable doubt he had the intent

to commit a theft when he entered the residence. The offense of criminal trespass to a residence is a lesser-included offense of residential burglary. *People v. Austin*, 216 Ill. App. 3d 913, 916 (1991). The difference between the two crimes is that the offense of criminal trespass to a residence does not require the offender to possess the intent to commit a felony or theft inside the residence as does residential burglary. See 720 ILCS 5/19-3(a) (West 2008) (elements of residential burglary); 720 ILCS 5/19-4(a)(1) (West 2008) (elements of criminal trespass to a residence). Defendant claims the State's evidence regarding defendant's intent was insufficient to support the residential-burglary conviction. We disagree.

¶ 17 When viewing the evidence in a light most favorable to the State, as we are required to do, we must determine whether the evidence was so unreasonable, improbable, or unsatisfactory that there remained a reasonable doubt of defendant's guilt. *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007). The intent necessary for a conviction for residential burglary may be proved with circumstantial evidence. *People v. Burney*, 2011 IL App (4th) 100343, ¶ 29.

" 'Intent must ordinarily be proved circumstantially, by inferences drawn from conduct appraised in its factual environment. *** [In] the absence of inconsistent circumstances, proof of unlawful breaking and entry into a building which contains personal property that could be the subject of larceny gives rise to an inference that will sustain a conviction of burglary. Like other inferences, this one is grounded in human experience, which justifies the assumption that the unlawful entry was not purposeless, and, in the absence of other proof, indicates theft as the most likely purpose.' " *People v. Ehrich*,

165 Ill. App. 3d 1060, 1069 (1988) (quoting *People v. Johnson*, 28 Ill. 2d 441, 443 (1963)).

In analyzing the sufficiency of circumstantial evidence related to intent, courts may look to evidence relating to "the time, place, and manner of entry into the premises; the defendant's activity within the premises; and any alternative explanations offered for his presence." *People v. Maggette*, 195 Ill. 2d 336, 354 (2001).

¶ 18 Defendant relies on the supreme court's decision in *People v. Soznowski*, 22 Ill. 2d 540, 545 (1961), which addressed a similar argument. In that case, the victim, who had been asleep in her bed, was awakened by the defendant hitting her in the face. When she began screaming, he fled the apartment, but he was apprehended by a neighbor and held until the police arrived. The police discovered the defendant had been drinking and did not recall being in the apartment. The court reversed the defendant's burglary conviction, finding "[t]he evidence disclose[d] no overt act on the part of the defendant, after his entering of the dwelling, directed toward accomplishing his alleged intention of stealing." *Soznowski*, 22 Ill. 2d at 544. In fact, the court found the evidence that the defendant beat a sleeping woman until she awoke "appear[ed] inconsistent with an attempt to steal." *Soznowski*, 22 Ill. 2d at 544.

¶ 19 Further, the court rejected the State's argument that the defendant's "unlawful entry of the dwelling at night, from his evasiveness when asked the purpose of his presence[,] and from his flight when discovered" led to the only conceivable conclusion that he entered the house to commit a theft. *Soznowski*, 22 Ill. 2d at 544. Instead, the court found "[t]he fact that defendant was discovered in the middle of the night in a lady's bedroom beating her, whatever the purpose of this act, would seem sufficient motivation for his flight and does not compel the conclusion that he

entered the dwelling with the intent to steal." *Soznowski*, 22 Ill. 2d at 544. In addition to the entry into the apartment, defendant's overt act of beating the victim tended to "disprove the existence of an intent to commit larceny and to dispel any inference of such intent that might otherwise arise." *Soznowski*, 22 Ill. 2d at 545.

¶ 20 Defendant also relies on this court's decision in *Ehrich*, 165 Ill. App. 3d at 1070, where we reversed the defendant's residential-burglary conviction because the State had failed to sufficiently prove the defendant possessed the requisite intent when he entered the victims' home. The evidence showed the victim awoke to sounds in his house. He entered his seven-year-old daughter's bedroom and found the defendant holding her on his lap with his hand over her mouth. The defendant had entered the home through an unlocked basement window, but nothing in the house had been disturbed. *Ehrich*, 165 Ill. App. 3d at 1063. When considering the sufficiency of the evidence supporting the defendant's residential-burglary conviction, this court noted:

"Because there are circumstances inconsistent with an intent on the part of Ehrich to commit a theft when he entered the [victims'] residence, the presumption of intent to commit a theft which normally flows from an unexplained breaking and entering is inapplicable to this case. [Citation.] Since the evidence does not establish beyond a reasonable doubt the commission of a theft was uppermost in Ehrich's mind when he entered the [victims'] residence, we must reverse Ehrich's residential burglary conviction." *Ehrich*, 165 Ill. App. 3d at 1070.

The circumstances to which this court referred included (1) Ehrich's intoxication, (2) the fact he was

at least 10 miles from his house without transportation, (3) evidence that a police officer found him earlier lying in a parking lot sleeping, and (4) the fact he was found holding the daughter on her bed. *Ehrich*, 165 Ill. App. 3d at 1070. These circumstances suggested to this court that Ehrich may have entered the house with the intent to find a place to sleep or with the intent to sexually abuse any victim encountered. Either way, this court concluded the State had failed to prove beyond a reasonable doubt that the defendant had entered the home with the intent to commit a theft, the only theory upon which he was tried. *Ehrich*, 165 Ill. App. 3d at 1070.

¶ 21 The facts of the case before us are distinguishable from those presented in *Soznowski* and *Ehrich*. Here, the evidence does not suggest defendant entered the home with any purpose other than to commit a theft. In fact, his actions as testified to by Dickson and the police officers suggest theft was indeed defendant's intent. According to Dickson, defendant knocked on the front door to see if anyone was home. When no one answered the door, defendant turned the doorknob. He found the door was locked. He walked to the side of the house and stared at the window for a few minutes, apparently contemplating his next move. He circled the house before tearing out the window screen and climbing through the window. The acts of breaking and entering into a house where no one is home strongly suggest a defendant's motive to steal. See *Johnson*, 28 Ill. 2d at 443 (proof of an unlawful breaking and entering ordinarily supports an inference of an intent to commit a theft absent inconsistent circumstances). Additionally, the victim testified he noticed the next day his cellular telephone was missing from his bedroom.

¶ 22 Defendant points to no circumstances or evidence of his conduct that could be described as inconsistent with an intent to commit a theft. Absent such circumstances, we find the evidence sufficient to prove defendant guilty of residential burglary beyond a reasonable doubt.

Determinations of intent are best left to the trier of fact and will not be disturbed on review unless defendant is able to demonstrate that the evidence is so improbable there is a reasonable doubt of the defendant's guilt. *People v. Maggette*, 311 Ill. App. 3d 388, 398 (2000). Defendant has not met his burden here.

¶ 23

B. Fines Assessed

¶ 24 Next, defendant contends the circuit clerk improperly, or without the authority to do so, assessed the following fines, as listed on a "Payment Status Information" document: (1) \$5 for "Youth Diversion"; (2) \$10 for "Anti-Crime Fund" (which defendant claims should be vacated as void); (3) \$20 for "Violent Crime"; and (4) \$14.25 for "Child Advocacy Fee." Defendant asks this court to either vacate the fines or, in the alternative, reimpose the mandatory fines and offset them in the amount of \$5 per day for the 202 days defendant spent in pretrial custody. See 725 ILCS 5/110-14 (West 2008) (providing for a \$5-per-day credit against fines for each day of incarceration on a bailable offense).

¶ 25 The State agrees (1) the circuit clerk lacked the authority to impose these fines, (2) the \$10 "Anti-Crime Fund" fine should be vacated as void, and (3) defendant is entitled to \$5-per-day credit toward the creditable fines imposed. We accept the State's concessions and hold that the assessments for (1) \$5 for "Youth Diversion," (2) \$20 for "Violent Crime," and (3) \$14.25 for "Child Advocacy Fee" are mandatory and that each constitutes a "fine" because they do not compensate the State for costs incurred as a result of the prosecution of defendant. See *People v. Folks*, 406 Ill. App. 3d 300, 305 (2010). Further, we hold the circuit clerk was without the authority to impose these fines, and we therefore vacate them. However, pursuant to our authority granted in Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994), we reimpose these mandatory fines and remand with

directions to award defendant credit in the amount of \$5 per day toward the creditable fines for the 202 days he spent in pretrial custody. (The statute providing for the "Violent Crime" fine expressly provides it is not subject to the credit provisions set forth in section 110-14 of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14 (West 2008)). See 725 ILCS 240/10(c) (West 2008).)

¶ 26

III. CONCLUSION

¶ 27 For the reasons stated, we affirm the trial court's judgment as modified. This court (1) affirms defendant's conviction for residential burglary, (2) vacates the circuit clerk's assessments of fines, (3) reimposes the (a) \$5 "Youth Diversion" fine, (b) \$20 "Violent Crime" fine, and (c) \$14.25 "Child Advocacy" fine, and (4) remands with directions to award defendant credit toward the creditable fines assessed in the amount of \$5 per day for each day spent in pretrial custody. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 28

Affirmed as modified and remanded with directions.