

NOTICE
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2013 IL App (4th) 110841-U
NO. 4-11-0841
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
March 1, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
EARL D. NAWLS,)	No. 10CF940
Defendant-Appellant.)	
)	Honorable
)	James R. Coryell,
)	Judge Presiding.

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.
Justice Knecht concurred in the judgment.
Justice Pope specially concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the defendant's conviction and remanded with directions to afford the trial court the opportunity to correct its sentencing order.

¶ 2 Following the execution of a June 2010 search warrant, the State charged defendant, Earl D. Nawls, with five offenses, including (1) unlawful possession of a controlled substance with intent to deliver within 1,000 feet of school property with a prior unlawful-possession-of-a-controlled-substance-with-intent-to-deliver conviction (720 ILCS 570/407(b)(1) (West 2010)), and (2) possession of cannabis with intent to deliver (720 ILCS 550/5(d) (West 2010)). In March 2011, a jury found defendant guilty of those two offenses. The trial court later sentenced defendant to concurrent 15-year and 4-year sentences, respectively.

¶ 3 Defendant appeals, arguing that (1) he was denied a fair trial, given that the trial

court allowed expert testimony from a police officer about the characteristics of those who sell drugs, which amounted to "improper profile testimony"; (2) he is entitled to sentencing credit for the 327 days he spent in custody prior to sentencing; (3) his street-value fine must be vacated, given that it violates the rules set forth in *Apprendi v. New Jersey*, 530 U.S. 466 (2000); (4) several of his other fines must be vacated, given that they were imposed by a nonjudicial body; and (5) his \$10 anti-crime fee must be vacated, given that the court sentenced him to prison rather than probation. We affirm defendant's convictions, vacate the anti-crime fee, and remand with directions that the trial court modify the sentencing order.

¶ 4

I. BACKGROUND

¶ 5

A. Undisputed Facts and the State's Charges

¶ 6

On June 21, 2010, the Decatur police department's Street Crimes Unit executed a warrant to search defendant and his residence, which was located less than 500 feet away from a high school. When police arrived to execute the warrant, they found defendant and two others, London Eubanks and Taylor Phillips. Eubanks told police that defendant had sold him \$10 worth of cannabis; Eubanks gave defendant a \$20 bill and, in exchange, defendant gave him the cannabis and a \$10 bill. Police found cannabis on Eubanks' person, as well as a \$20 bill and eight \$1 bills on defendant's person. Police found several other items in defendant's home, including (1) clear plastic sandwich bags, (2) digital scales, (3) a clear plastic bag containing a clear plastic "Baggie" corner that contained 1.4 grams of cocaine, (4) a cellular telephone, (5) \$1,281 in United States currency, (6) two individually knotted clear plastic bags that (a) tested positive for defendant's fingerprints and (b) contained 0.9 grams of cocaine, and (7) 34.67 grams of cannabis and a loaded handgun under the bedroom nightstand.

¶ 7 That same day, the State charged defendant with five offenses, including (1) unlawful possession of a controlled substance with intent to deliver within 1,000 feet of school property with a prior unlawful-possession-of-a-controlled-substance-with-intent-to-deliver conviction (720 ILCS 570/407(b)(1) (West 2010)), and (2) possession of cannabis with intent to deliver (720 ILCS 550/5(d) (West 2010)).

¶ 8 B. Defendant's March 2011 Trial

¶ 9 At defendant's March 2011 trial, the State presented a number of witnesses who testified regarding the undisputed facts outlined above. To explain how this evidence proved that defendant possessed the cocaine and cannabis with intent to deliver, the State relied on the expert testimony of Officer Chad Ramey. In that regard, Ramey testified as follows:

"[PROSECUTOR:] Now, you've described for the jury your training *** and your experience with regard[] to expertise. Can you explain for the jury how it is that cocaine is brought in and distributed here in Macon County?

[RAMEY:] [I]t's actually brought across the borders of the [United States]. Whether it's actually through Canada or most commonly through the southern borders. ***.

Unfortunately[,] Chicago is one of [the] source cities. One of the larges[t] ones ***. And from that point it's sold from either that kilo size or it can be broken down into ounce size and transported or purchased from several different individuals. And

then it can be broken down even smaller. You can buy it in ounce quantities and then sell that *** ounce by that size or you could break it down into grams also and sell it in even smaller amounts. It's more profitable if you break it down into smaller amounts.

[PROSECUTOR:] Now, you said when it comes in, originally comes in the country you call it cocaine. Is there a difference between cocaine and what we commonly refer to as crack cocaine?

[RAMEY:] Yes. *** [W]hen it's actually made[,] there's all kind[s] of different binders and different chemicals that are inside of it ***. When it's made into the crack form[,] that powder cocaine is sometimes[—]you can cook just with the powder cocaine by itself or you can cook it [with] other agents. Commonly[,] you use baking soda. You can either [cook it] in the microwave *** [or] on a stove. Most commonly[,] it's put in a Pyrex dish for larger volumes ***. Then you cook it and it breaks it down into a base form of that cocaine which is called the crack cocaine. And *** when it's cooked[,] it looks more like a pasty form. As [it] dries out[,] it turns into a harder form. That's why it's called *** a rock of crack cocaine.

[PROSECUTOR:] And there being that difference, is there *** a difference between the way cocaine would be consumed and

the way crack cocaine is consumed?

[RAMEY:] Yes. There is. Crack cocaine is most commonly smoked. Powder cocaine you can snort it, you can also cook it up on a spoon. And also most commonly with a needle. [B]ut crack cocaine is primarily smoked.

[PROSECUTOR:] With regards to the end use or the end user when you became familiar, in you experience, with the term dosage unit?

[RAMEY:] Yes.

[PROSECUTOR:] [C]an you explain for the jury what a dosage unit is in general terms?

[RAMEY:] Dosage unit is what a person would most commonly—that's the quantity that they would use, whether it's *** cannabis[,] cocaine[,] or whatever it may be. That's the actual amount that they would use during *** that one time use.

[PROSECUTOR:] And in addition to the term dosage unit have you also become familiar with the term street value?

* * *

[RAMEY:] The street value is that, it's the price that one person would pay for that dosage unit."

Ramey thereafter explained how dealers arrive at street values based on the weight of the drug sold, noting that the smaller the size, the larger the profit margin. The prosecutor then turned to

the items recovered from defendant's home.

"[PROSECUTOR:] Have you had the opportunity, in this case, to review the items of evidence that were seized and the photographs that *** were taken, pursuant to the search warrant ***?

[RAMEY:] Yes.

* * *

[PROSECUTOR:] And with regards to the distribution of either controlled substance[s] or cannabis, how are digital scales used or utilized within that process?

[RAMEY:] The[y're] used to weigh out, whether it's to be a large amount. It could be whatever, cannabis, cocaine, or ** any type of *** narcotic. It's used to make sure when somebody is selling *** the narcotic they don't *** lose money on what they're selling. If they sold somebody what they thought was supposed to be maybe one ounce of cocaine, but actually it was a little more. [If i]t was an ounce and a quarter[,] they're technically losing their money.

[PROSECUTOR:] And in your experience[,] are digital scales typical *** of your average user of either cannabis or controlled substance[s]?

[RAMEY:] No.

[PROSECUTOR:] Why is that a user wouldn't carry or have in his possession a digital scale?

[RAMEY:] Most users when they *** go to purchase it it's already been weighed by someone. And, unfortunately, when it comes to people that are buying crack cocaine a lot of them all they're worried about is getting that crack cocaine. They're not worried about exactly what they're getting. ***.

* * *

[PROSECUTOR:] [C]an you explain for the jury how is it that sandwich bags are utilized in the distribution of either controlled substances or cannabis?

[RAMEY:] Whether it's cannabis, cocaine, actually crack cocaine, it's commonly packaged in a clear plastic bag. If you take out one plastic bag[,] the narcotic, cannabis, whatever it may be, is placed in one of the corners. And if you use a plastic bag you've got at least two corners you can utilize sometimes even more. That once you put [the drug] over in the corner[,] the bag is twisted up, cut off, or ripped off, *** then the bag is tied up. ***.

* * *

[PROSECUTOR:] And People's Exhibit Number 15 has been previously identified as a 9[-]millimeter handgun. Can you

explain to the jury *** what [role] handguns or firearms have in the distribution of cannabis or cocaine?

[RAMEY:] Well, unfortunately, it's very common for us to find firearms ***. The firearms are usually kept or actually possessed, you know, for their protection. Sometimes *** they obtain them by trading cannabis or cocaine, whatever the drug may be ***.

* * *

[PROSECUTOR:] And in your experience the fact that this cannabis is in one chunk as opposed to individual bags does that mean that this cannabis is personal use cannabis?

Does [it have to be] bagged up in order to sell it?

[RAMEY:] Well, *** it could be either one. I mean you could break it off and sell it that way or break it off and use it also.

* * *

[PROSECUTOR:] With regards to the money, in your experience is money or can money be indicative or one of [the] things you look at to determine whether or not there is a distribution situation or personal use situation?

[RAMEY:] Yes. The buying [of] narcotics is a cash and carry business. ***.

[PROSECUTOR:] In your experience and through your investigations, have you determined whether or not someone who's selling at the street level whether or not there's gonna be times when they're gonna be more cas[h] heavy as opposed to have having a lot of cocaine or cannabis or they're gonna be more cannabis and cocaine heavy and little money?

[RAMEY:] Yeah. It varies from *** person to person too. And, you know, the amounts that they're selling. I mean what they want to do with their money. [S]ay I bought a pound of cannabis or an ounce of crack and I'm selling those[,] I probably wouldn't keep all my money with me.

I would keep it some place that *** law enforcement *** or somebody that want[ed] to rob [me could not find it]. *** Throughout that process they'll add up that money and maybe stash that money some place else within that residence, hold onto it, and then they move that money some place after that. They could stack up a thousand dollars, take that thousand dollars and either they can move it or have somebody else move it ***. And then *** after they sell that then they have to resupply their drugs again. They'll use the money or whatever they have on them and go back to that stash or money they have and get more money to purchase more drugs.

[PROSECUTOR:] Now, in this case, as you're aware, there was a quantity of cannabis that was located in the kitchen drawer ***. And then there was also the quantity of cannabis that was found in the downstairs under the dresser on top of the 9[-]millimeter handgun. In your experience[,] is it not uncommon for someone to keep a small quantity[] readily available for sale, and a larger quantity some place separate so as to prevent potentially being []ripped off[]?

[RAMEY:] Yes. Ripped off and also law enforcement finding [it]. If we *** find what was in the drawer, which is I think *** about 11 grams of cannabis, if we find that it's just 11 grams of cannabis. But if we find 35 more grams stuffed some place else in the residence, then that's more. If it's all laying there together, chances are we're go[ing to] find all that. But they *** hope that we're just gonna find *** what [is] in the drawer. They're not go[ing to] mess around with looking underneath the stand ***.

[PROSECUTOR:] After having the opportunity to review all of the evidence in this case and including the photographs, do you have an opinion with a reasonable degree of certainty *** as to whether the cocaine and cannabis, in this case, *** was consistent with intent to deliver or was consistent with personal use?

[RAMEY:] Both were actually consistent with the [in]tent to deliver.

First, and with the quantities. You have to look at both of them. First with the cannabis *** that was in the drawer. As I stated earlier, I think, it was about 11 grams roughly, that's in that block form.

Then you have separate cannabis that was located somewhere else in the house and it's roughly 35 grams in one bag and I don't recall the exact amount in the other bag. ***.

Somebody may go and buy maybe a half an ounce to an ounce of cannabis *** and hold onto that and smoke it [b]ecause they may *** get a little bit better price out of [it. T]hose items being in separate locations, *** plus there [was] cannabis located that was prepackaged. You have digital scales that were located *** upstairs.

On th[e] countertop you have the digital scale, plastic bags. Right underneath that you have a drawer with *** cannabis sitting in the drawer at that same location. You have several other older scales that were there in the house that were, obviously, used at some point for packaging.

When you look at the crack cocaine[,] there's *** no items

that were found there in the residence that were for use of *** that crack cocaine. That could be a pipe, just a metal pipe. It could be a piece of a pen that they could smoke it out of. No items to clean out pipes at all either.

The crack cocaine was prepackaged. It's not laying there loose. It's not just one rock in one location sitting by itself. That *** cocaine that was found on the countertop was found with a scale *** sitting next to it. It's found with a plastic bag sitting next to [it]. It's packaged in a [B]aggie corner itself. And it's also sitting inside of just a plastic bag itself ***.

When somebody is holding onto *** powder cocaine or crack cocaine that they're gonna sell if the[y're] gonna have it in their pocket, or drawer or something like that. Most commonly we find they've put it in a plastic bag or some other kind of a bag.

If you put two rocks of crack cocaine inside of a drawer it may take a little bit to find the two rocks of cocaine inside that drawer, but if *** that plastic bag [is] in your pocket *** it's right there for you to pull it out of that plastic bag and sell it.

[PROSECUTOR:] In this case[,] the scale that was found closest to the cocaine on the countertop, when the scale itself was sent to the crime lab, the scale itself had cannabis residue on it?

[RAMEY:] Okay.

* * *

[PROSECUTOR:] Is this uncommon to have a situation where you would be selling cocaine, potentially, utilizing a digital scale, but yet have no residue on the scale?

[RAMEY:] Throughout my experience, *** when you're packaging cannabis it's a rather messy situation sometimes. ***.

With powder cocaine it's probably around the same, you know, the same problem sometimes. It's a powder form. It's *** loose[, it has] a baking soda look to it. That you could get that *** powder cocaine whether it's on, on your hands, whether it's on the *** outside of a bag that you're packaging with and weighing that bag.

It's *** common to find powder cocaine. Now, [crack] cocaine not as much. It's not a loose powdery form. ***.

Most commonly, it's put in the bag, then that bag is placed on the scale and it's the same way for cannabis, powder, whatever it may be. It's most commonly put in that *** corner and then placed on a scale to make sure it's roughly about that size. That is the .2 grams. If it's 28 grams for an ounce whatever it may be.

[PROSECUTOR:] [Y]ou talked about the money. Does the money, in this case, was that a factor that you considered in formulating your opinion?

[RAMEY:] Yes. *** The currency, it's not in somebody's pocket. It's not in an envelope that they may take to the bank. It's sitting on top of a cabinet on the very, very top where if you walk in the room you don't see it. You have to get up on the countertop or on a chair and actually find it laying up there. It's all laying loose. It's not nicely bundled up.

The bills aren't all together, 50's here, 20's here, five's together, ten's together. It's all thrown loosely up there as if somebody had just thrown it up there, not just standing up there and laying it up there. They're throwing it up there.

[PROSECUTOR:] And with the fact that the money is found next to another quantity of cocaine does that factor into your opinion?

[RAMEY:] Yes.

[PROSECUTOR:] And why is that?

[RAMEY:] Because that *** money is being thrown up in the same location as the crack cocaine. That crack cocaine could be what that person has left to sell. They may have something laying on the countertop, in a drawer, wherever it may be, that the[y're] selling from and having something else up that that's *** their last part of their cocaine to sell.

[PROSECUTOR: W]ith regards to the gun that was found

with the larger quantity of cannabis[,] was that one of the factors or is that one of the things you used to form your opinion that it was consistent with the intent to deliver?

[RAMEY:] Yes. With *** that cannabis that was located downstairs, that's a larger amount. As I stated earlier[,] it's roughly 35 grams, I believe. It's *** not a single dose. *** It's a large amount of cannabis, but it's found with that firearm, which *** would show that either it's been obtained by trading for the gun [or] *** for their protection ***.

¶ 10 C. The Jury's Verdict and the Trial Court's Sentence

¶ 11 On this evidence, the jury convicted defendant of (1) unlawful possession of a controlled substance with intent to deliver within 1,000 feet of school property with a prior unlawful-possession-of-a-controlled-substance-with-intent-to-deliver conviction (720 ILCS 570/407(b)(1) (West 2010)), and (2) possession of cannabis with intent to deliver (720 ILCS 550/5(d) (West 2010)). In August 2011, the trial court sentenced defendant to concurrent 15-year and 4-year sentences, respectively.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 Defendant argues that (1) he was denied a fair trial, given that the trial court allowed expert testimony from a police officer—namely, Ramey—about the characteristics of those who sell drugs, which amounted to "improper profile testimony"; (2) he is entitled to sentencing credit for the 327 days he spent in custody prior to sentencing; (3) his street-value fine

must be vacated, given that it violates the rules set forth in *Apprendi*; (4) several of his other fines must be vacated, given that they were imposed by a nonjudicial body; and (5) his \$10 anti-crime fee must be vacated, given that the court sentenced him to prison rather than probation.

We address defendant's contentions in turn.

¶ 15 A. Defendant's Claim That He Was Not Afforded a Fair Trial

¶ 16 Defendant contends that he was denied a fair trial, given that the trial court allowed expert testimony from Ramey about the characteristics of those who sell drugs, which amounted to "improper profile testimony." Specifically, defendant claims that he was prejudiced as a result of Ramey's testimony, as follows: "[Ramey's] testimony was highly prejudicial because it was unrelated to [defendant's] case and improperly bolstered the State's case in matters that should have been solely decided by the jury. Given that the State's case was so closely balanced, *** Ramey's testimony unfairly influenced the jury's verdict." We disagree.

¶ 17 1. *Forfeiture and the Plain-Error Doctrine*

¶ 18 Initially, we note that defendant has forfeited his claim that the trial court erred by allowing Ramey's testimony because he failed to contemporaneously object to it at trial and raise the issue in a posttrial motion. See *People v. Hillier*, 237 Ill. 2d 539, 544, 931 N.E.2d 1184, 1187 (2010) (it is well settled that, to preserve a claim, a contemporaneous objection and a written postsentencing motion raising the issue must be filed). Defendant concedes that he has forfeited his claim in this regard but posits that we should nevertheless review his claim for plain error. Under the plain-error doctrine, we may review otherwise forfeited claims when (1) the evidence is closely balanced or (2) the error is so serious that it threatened to tip the scales of justice against a defendant. *People v. Adams*, 2012 IL 111168, ¶ 21, 962 N.E.2d 410, 415.

Although the usual first step in a plain-error analysis is to determine whether any error occurred at all, when the record clearly shows that plain error did not occur, we will reject a plain-error contention without further analysis. *People v. Bowens*, 407 Ill. App. 3d 1094, 1108, 943 N.E.2d 1249, 1264 (2011).

¶ 19

2. *The Evidence in This Case*

¶ 20

In this case, the State presented extensive, uncontested circumstantial evidence that defendant possessed the cocaine and cannabis with the intent to deliver. As previously outlined, the State presented evidence that in June 2010, the Decatur police executed a warrant to search defendant and his residence. When police arrived to execute the warrant, they found defendant, Eubanks and Phillips. Eubanks told police that defendant had sold him \$10 worth of cannabis, which he paid for with a \$20 bill. Police found cannabis on Eubanks' person, as well as a \$20 bill and eight \$1 bills on defendant's person. Police also recovered several other items in defendant's home, including (1) clear plastic sandwich bags, (2) digital scales, (3) a clear plastic bag containing a clear plastic "Baggie" corner that contained 1.4 grams of cocaine, (4) a cellular telephone, (5) \$1,281 in United States currency, (6) two individually knotted clear plastic bags that (a) tested positive for defendant's fingerprints and (b) contained 0.9 grams of cocaine, and (7) 34.67 grams of cannabis and a loaded handgun under the bedroom nightstand.

¶ 21

The State elicited Ramey's testimony to show how these items demonstrated that defendant had the intent to deliver. Most of Ramey's testimony accomplished this goal. Although some of Ramey's testimony may have arguably been irrelevant, none of it was so prejudicial that its admission amounts to plain error. In other words, the evidence in this case was not closely balanced, and the admission of the arguably irrelevant portions of Ramey's

testimony did not threaten to tip the scales of justice against defendant. Indeed, as we pointed out in *People v. Holloman*, 304 Ill. App. 3d 177, 184, 709 N.E.2d 969, 974 (1999)—ironically, a case that defendant cites in support of his argument—expert testimony by a police officer about how controlled substances are manufactured or packaged can be highly relevant, particularly when, as here, an issue in the case is whether defendant possessed the controlled substances merely for his personal use, as opposed to possession with intent to deliver.

¶ 22 Accordingly, we reject as forfeited defendant's claim that he was denied a fair trial based upon Ramey's testimony.

¶ 23 *3. Ineffective Assistance of Counsel*

¶ 24 We note that defendant alternatively claims that his counsel was ineffective for failing to (1) object to Ramey's testimony and (2) include that issue in his posttrial motion. Ineffective-assistance-of-counsel claims are examined under two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). As this court explained in *People v. Thompson*, 359 Ill. App. 3d 947, 952, 835 N.E.2d 933, 937 (2005), "[t]o obtain reversal under *Strickland*, a defendant must prove (1) his counsel's performance failed to meet an objective standard of competence and (2) counsel's deficient performance resulted in prejudice to the defendant." To satisfy *Strickland's* prejudice prong, the defendant must show that but for counsel's errors, a reasonable probability exists that the outcome of the proceedings would have been different. *People v. Johnson*, 368 Ill. App. 3d 1146, 1161, 859 N.E.2d 290, 304 (2006). *Strickland* itself explained that a "reasonable probability" is one that is "sufficient to undermine confidence in the outcome" of the defendant's trial. *Strickland*, 466 U.S. at 694. In *People v. Logan*, 2011 IL App (1st) 093582, ¶ 33, 954 N.E.2d 743, the court noted that if it could dispose of a defendant's

ineffective-assistance claim because he suffered no prejudice, it did not need to address whether his counsel's performance was objectively reasonable. We agree, and conclude that we can dispose of defendant's ineffective-assistance claim in this case because he has failed to satisfy *Strickland's* prejudice prong. In so concluding, we reiterate what we said in the preceding section of this decision—namely, the evidence in this case was not closely balanced, and the admission of the arguably irrelevant portions of Ramey's testimony did not threaten to tip the scales of justice against defendant.

¶ 25 B. Defendant's Claim That He Is Entitled to Additional Sentencing Credit

¶ 26 Defendant next contends that he is entitled to sentencing credit for the 327 days he spent in custody prior to sentencing. Defendant posits that this credit entitles him to an additional \$490 in additional sentencing credit toward his drug-assessment fine. The State concedes this point, and we accept the State's concession.

¶ 27 Here, the trial court credited defendant \$1,145 against his \$3,000 drug-assessment fine even though he spent 327 days in custody (June 17, 2010, through May 10, 2011). Defendant was entitled to \$5 for each day he was incarcerated, or \$1,635. 725 ILCS 5/110-14 (West 2010). Accordingly, defendant's sentencing order should reflect an additional \$490 in credit against his drug-assessment fine.

¶ 28 C. Defendant's Claim That His Street-Value Fine Must Be Vacated Under *Apprendi*

¶ 29 Defendant next contends that his street-value fine must be vacated, given that it violates the rules set forth in *Apprendi*—namely, that facts, other than prior convictions, that increase the penalty for a crime beyond the statutory maximum must be decided by the fact finder. Specifically, defendant asserts that the trial court erroneously imposed a \$697 street-value

fine because the statute that authorized the court to impose that fine—section 5-9-1.1(a) of the Unified Code of Corrections (730 ILCS 5/5-9-1.1(a) (West 2010))—"stands in contravention of the rules established in *Apprendi*." Essentially, defendant complains that section 5-9-1.1(a) is unconstitutional because it does not require the fact finder to determine the weight of the controlled substance and, therefore, the street-value of those substances. We disagree.

¶ 30 Initially, we note that defendant has forfeited his street-value-fine argument. *People v. McCreary*, 393 Ill. App. 3d 402, 406, 915 N.E.2d 745, 748 (2009) (deeming the defendant's street-value fine forfeited and reviewing the defendant's claim for plain error). However, rather than making a plain-error argument, defendant couches his challenge to his fine as challenge to the constitutionality of section 5-9-1.1(a). We are not persuaded.

¶ 31 Defendant's argument erroneously presumes that the Supreme Court's holding in *Apprendi* restricts legislatures from authorizing fines that do not specify a statutory maximum. In *Southern Union Co. v. United States*, the United States Supreme Court held that the rule in *Apprendi* applies to criminal fines (*Southern Union Co.*, ___ U.S. ___, ___, 132 S. Ct. 2344, 2348–49 (2012)). However, a close reading of that case reveals that *Apprendi* merely "guards against [] judicial factfinding that enlarges the maximum punishment a defendant faces beyond what the jury's verdict or the defendant's admissions allow." *Southern Union Co.*, ___ U.S. at ___, 132 S. Ct. at 2352. Here, defendant was not subjected to the maximum punishment, much less anything beyond the maximum punishment, given that the street-value fine imposed was \$697 and the Illinois Controlled Substances Act allows a fine "not to exceed \$500,000." See 720 ILCS 570/401(b) (West 2010). Accordingly, we reject defendant's facial challenge to the constitutionality of section 5-9-1.1(a) of the Unified Code.

¶ 32 D. Defendant's Claim That Several of His Other Fines Must
be Vacated as They Were Imposed by a Nonjudicial Body

¶ 33 Defendant next contends that several of his other fines must be vacated, given that they were imposed by a nonjudicial body. Specifically, defendant contends that his (1) youth-diversion assessment, (2) child-advocacy assessment, and (3) violent-crimes-victims-assistance-fund assessment should be vacated because they were improperly imposed by the circuit clerk. The State responds that although the circuit clerk improperly imposed the assessments, this court should remand with directions that the trial court impose the assessments. We agree with the State.

¶ 34 The imposition of a fine is a judicial act and, therefore, any fine imposed by a circuit clerk, a nonjudicial body, must be vacated. *People v. Shaw*, 386 Ill. App. 3d 704, 711, 898 N.E.2d 755, 762-63 (2008). Because the imposition of the fine is a judicial function, beyond the authority of the circuit clerk, we vacate the youth-diversion, child-advocacy, violent-crimes-victims-assistance-fund assessments that were improperly imposed by the circuit clerk in this case and remand for imposition of the proper fines by the trial court.

¶ 35 E. Defendant's Claim That His \$10 Anti-crime Fee Must be Vacated

¶ 36 Finally, defendant contends that his \$10 anti-crime fee must be vacated, given that the trial court sentenced him to prison rather than probation. The State concedes, and we accept the State's concession.

¶ 37 Sections 5-6-3(b)(12) and 5-6-3.1(c)(12) of the Unified Code (730 ILCS 5/5-6-3(b)(12), 5-6-3.1(c)(12) (West 2010)) authorize anti-crime fees when a sentence of probation, conditional discharge, or supervision are imposed. *People v. Beler*, 327 Ill. App. 3d 829, 837,

763 N.E.2d 925, 931 (2002). Here, the trial court sentenced defendant to a prison term.

Accordingly, defendant's \$10 anti-crime fee is void and must be vacated. See *Belser*, 327 Ill. App. 3d at 837, 763 N.E.2d at 931 (vacating the same fee as void).

¶ 38

III. CONCLUSION

¶ 39

For the reasons stated, we affirm in part, vacate in part, and remand with directions that the trial court modify the sentencing order, credit defendant an additional \$490 against his drug assessment fine based on credit for time served (\$1,635), and impose the youth diversion, child-advocacy, and violent-crime-victims-assistance-fine assessments, the latter of which is noncreditable. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 40

Affirmed in part and vacated in part; cause remanded with directions.

¶ 41 JUSTICE POPE, specially concurring.

¶ 42 I write separately with respect to the alleged *Apprendi* violation regarding the imposition of a street-value fine by the trial court. Defendant challenges section 5-9-1.1(a) as unconstitutional on its face. Rather than find there is no statutory maximum street-value fine, I would find defendant has failed to overcome the "strong presumption" of the constitutionality of section 5-9-1.1(a) because he has failed to establish this statute could never be valid under any set of circumstances. For example, if a defendant chose to have a bench trial and the trial judge made factual findings regarding the street value and weight of the drugs during defendant's trial, the rule of *Apprendi* would not be violated. Further, if a defendant stipulated to the weight and street value of the drugs prior to trial, contesting only the issue of possession, the rule of *Apprendi* would again not be violated. Defendant does not address these two situations which support the facial validity of the statute. As a result, I would find defendant has failed to overcome the "strong presumption" section 5-9-1.1(a) is constitutionally viable. No further analysis is needed to dispose of this issue.

¶ 43 Further, if defendant were to make an unconstitutional-as-applied argument, I would find he forfeited this argument by failing to object in the trial court. See *People v. Crespo*, 203 Ill. 2d 335, 347, 788 N.E.2d 1117, 1124 (2001) (supplemental opinion upon denial of rehearing filed March 31, 2003); *People v. Nitz*, 219 Ill. 2d 400, 411-12, 848 N.E.2d 982, 989-90 (2006). Because defendant did not object to the lack of an instruction requiring the jury to make those findings, he failed to preserve any error for review. The weight and value of the drugs at trial were undisputed. I would find any error here did not seriously affect the fairness, integrity, or public reputation of judicial proceedings and therefore should not be recognized.