

in Hardin County, selling "hotdogs and hamburgers and that kind of stuff." Jack had been assisted by his wife and several friends, including Brett Deckard, Johnny Van Hentenryck, Bill Harvey, and Bill's wife, Melinda.

¶ 5 On the morning of Sunday, June 13, 2010, from one end of his concession trailer, Jack "heard a commotion down at the other end," so he "walked down to see what was going on." As he approached, Jack saw that Bill and the defendant were arguing and, at one point, were "nose-to-nose." Jack recalled that Bill was telling the defendant to "go somewhere else and do this," and the defendant was telling Bill to not tell him "what to do." Jack indicated that Bill had eventually tried to retreat by backing away from the defendant, but each time Bill had stepped back, the defendant had stepped forward. The defendant then brandished a knife, called Bill "an m-f-er and an s.o.b.," and threatened to kill him. Jack testified that the defendant had referred to himself as a "trained killer" and had made Bill call him a "bad ass." Jack stated that he, Brett, and Melinda had tried to calm the defendant down, but the defendant became more agitated and ultimately stepped towards Bill, grabbed him by the back of the neck, and sliced his throat with the knife. The defendant then lunged towards Brett, who fell against a nearby cooker and was scalded by a pot of hot water.

¶ 6 When the defendant subsequently tried to flee, Bill pulled him down, and Johnny and some "other guys" who had been watching were able to subdue him. Jack indicated that approximately an hour before the incident at the concession trailer, he had seen the defendant yelling and arguing with some other people by a row of nearby picnic tables. Jack further indicated that while he, Brett, and Melinda were attempting to calm the defendant down, a man with a shovel in his hand had come up behind them and suggested that he use it to hit the defendant. Melinda, however, had taken the shovel away from the man.

¶ 7 Brett testified that on the morning in question, he was behind Jack's concession trailer when he saw the defendant and another man enter the roped-off vendor area "where the

customers were not supposed to be." Brett indicated that the defendant and the other man had been arguing about something, and the other man was running from the defendant. Bill subsequently came around from the front of the trailer and told the defendant and the other man that they should leave, because "they didn't need to be back there." Brett testified that while the other man had complied and left, the defendant became aggressive and hostile, and he told Bill that he "would do whatever he wanted, wherever he wanted, whenever he wanted." When Bill told the defendant that there was no need for "any trouble," the defendant pulled a knife, announced that he was a "trained killer," and threatened to kill Bill and "all of his boys." In response, Bill tried to back away, but the defendant kept walking forward and making more violent threats. When Bill backed into a table and could not back up any further, the defendant called him a "smart mouth mother f-er" and grabbed him by the neck. The defendant then put the knife to Bill's throat and made Bill refer to him as a "killer" and a "killin' machine." Bill complied and further complied with the defendant's order that he call himself a "smart mouth mother f-er." The defendant then "sliced Bill's throat." Brett testified that the defendant had then tried to stab him, but the knife had only gone through his shirt and scratched him. Brett was injured when he jumped backwards and "tumbled over a pot of boiling water." When Melinda subsequently tried to stop the blood that was flowing from Bill's neck, the defendant stabbed her, and she fell down. At that point, several people who had been watching "rushed" the defendant, and Johnny was able to pry the knife from his hand. During the struggle, the defendant was "flinging around with the knife trying to [stab] whoever he could get." After the struggle, Brett kept track of the knife to ensure that no one took it. Brett indicated that before the situation had turned violent, the man who had originally been arguing with the defendant had reappeared with a shovel, but "the shovel was taken away from him and thrown on the ground[,] and he was told to leave again." Brett testified that no one other than the defendant had a knife and that the defendant "was never

in danger." Brett suffered second-and third-degree burns to various parts of his body.

¶ 8 Bill testified that he was in the front of Jack's concession trailer with Melinda when he saw the defendant and another man in the "private area" behind the trailer. The defendant and the other man were arguing and cussing at each other. Bill testified that he had told the two to "go dance somewhere else," because "they didn't belong back there." At that point, the other man left, but the defendant approached Bill, making derogatory remarks and suggesting that Bill had disrespected him. When Bill "backed off" a little bit, the defendant "produced a knife and opened it." The defendant then talked about being a "trained killer" and threatened to kill Bill. Bill testified that he had tried to diffuse the situation, but the defendant told him that he had a "smart mouth" and again threatened to kill him. Bill started to back away when the defendant grabbed the back of his head and put the knife to his throat. The defendant then ordered Bill to call him a "bad ass" and "a killer," and Bill complied. After stating, "I'll kill you all" and "f this," the defendant slashed Bill's throat. Bill subsequently saw the defendant and Melinda fall to the ground, and he was able to help subdue the defendant while Johnny pried the knife from his hand. Bill testified that when he realized that he could still talk and that "an artery wasn't cut," he "wasn't too terribly worried" about his injury. Bill stated that he had first learned that Melinda had been stabbed while she was being treated at the scene. Bill testified that he and Melinda had both been transported to a hospital by helicopter and that numerous stitches were needed to close the wound on his neck. Bill testified that no one had done anything to threaten the defendant.

¶ 9 Johnny testified that he had been working inside the concession trailer when he noticed the defendant and another man loudly arguing behind it. Johnny indicated that the defendant had threatened to "kick [the other man's] ass," while the other man had questioned the defendant's ability to do so. Johnny testified that he had asked them to leave the area, but they had ignored him. Bill then approached and told them to "take it somewhere else." In

response, the other man turned and walked away, but the defendant "got right in Bill's face and started hollering at him." Johnny stated that the defendant had berated Bill for talking to him "that way," while Bill had reiterated that he just wanted the defendant to leave the area. When Johnny realized that the defendant had a knife in his hand, he exited the trailer, but "by the time [he] got behind it[,] [the defendant] already had the knife at Bill's throat." Johnny testified that the defendant kept saying, "I'm a killer, I'm going to kill you," and he "made Bill repeat it." Johnny testified that Jack had asked the defendant to put the knife away, but no one had threatened the defendant. The defendant ultimately cut Bill's throat when Bill was backed up against a table. The defendant then lunged at Brett, and Johnny saw that Melinda "was sliding down the side of the trailer." At that point, Johnny "freaked out," and he, Bill, Jack, and "two other guys" who had been watching took the defendant to the ground and subdued him. Johnny was then able to grab the defendant's arm and secure the knife. Johnny indicated that no one had done anything threatening to the defendant prior to the attack, but at some point after the melee, the man who the defendant had originally been arguing with had returned and hit him with a shovel.

¶ 10 Melinda testified that she and Bill had been standing by Jack's concession trailer when they saw the defendant and another man arguing nearby. Melinda testified that Bill had told them that they "should go dance somewhere else," and the other man "disappeared." The defendant, on the other hand, "pushed forward and got into Bill's face." When Bill "told him again that he needed to go somewhere else," the defendant accused Bill of "disrespecting him" and told Bill to apologize. Initially, Bill did not apologize, but he attempted to back away from the defendant. Whenever Bill took a step or two back, however, the defendant "moved forward the same distance." Bill eventually said that he was sorry, and he politely asked the defendant to "just go away." At that point, the defendant "took [a knife] out of his pocket, flipped it open, and then he told Bill that Bill had disrespected him and [that] he was

going to have to take care of that." Attempting to diffuse the situation, Bill "took two more steps back" and "kept apologizing." The defendant then "took two steps forward very quickly, put his hand behind Bill's neck[,] put the knife up to his throat[,] and said he was going to kill [Bill]." After Bill had again tried to diffuse the situation, the defendant announced that he was "going to fucking kill everyone." He then slit Bill's throat, "jabbed at Brett," and stabbed Melinda in the stomach. Melinda indicated that her and Bill's wounds had required immediate surgery, and the surgeons "had to repair four cuts in [her] intestines." Melinda further indicated that when the defendant first pulled the knife, the man who he had originally been arguing with had come up behind her with a shovel in his hand. Not wanting to make the situation "worse," Melinda took the shovel and laid it down, and "then [the man] turned around and went away." Melinda testified that Bill had done all he could to prevent what had happened and that at no time during the encounter had anyone threatened the defendant.

¶ 11 Trooper Daniel Money of the Illinois State Police (ISP) testified that on the morning of June 13, 2010, he was one of several law enforcement officers who had responded to a call that there had been a multiple-victim stabbing at the Hog Rock campgrounds. While interviewing witnesses at the scene, Money had been told, *inter alia*, that when "some people" had "jumped" the defendant to "stop[] his assault on the other people," the defendant had been "hit in the head or the back with a shovel." Other witnesses indicated that the defendant had also been struck with a four-by-four piece of wood. ISP crime scene investigator Pete Sopczak testified that a broken shovel, a four-by-four, and a bottle of whiskey with bloodstains on it were among the items subsequently found at the crime scene. ISP Trooper Gregory Miller testified that a security officer at the campgrounds had given him the knife that had been used in the stabbing.

¶ 12 Deputy Elliot Daymon of the Hardin County sheriff's department testified that when

he arrived at the scene, the defendant was on the ground behind the concession trailer being treated by a paramedic. The defendant was moaning and rambling and "was reluctant to give his real name." Daymon subsequently rode with the defendant when he was transported to a local hospital by ambulance, and along the way, the defendant "was saying he was set up." In the emergency room, after ISP Trooper Thomas Goessman "read him his rights," the defendant said, "I'm not saying shit" and "I want an attorney." A few minutes later, however, the defendant voluntarily began speaking about the incident, claiming that he "really didn't remember a whole lot[,] but he *** might have stabbed some people." The defendant also stated that "some people [had] turned on him." Daymon testified that he had later overheard the defendant tell Goessman and another ISP trooper that he "could help them out" with "some sort of drug operation that was going on." Daymon testified that the defendant had been taken to jail after he was released from the hospital later that day.

¶ 13 The defendant testified that on the morning of June 13, 2010, he had been counting his cash at a picnic table near the concession trailers and had placed a \$100 bill underneath a ketchup bottle "so the wind wouldn't blow it away." An "unnamed" man then approached and took the \$100 bill, and the defendant advised him that if he did not return the money, a fight would ensue. The defendant explained that after arguing with him for "about 10 minutes," the man had given the money back, and "that was the end of that altercation."

¶ 14 The defendant testified that as he and the man were "finishing up" their argument, Bill had told them to "take that fucking shit somewhere else." In response, the unnamed man left, but the defendant stood his ground and questioned Bill's authority to intervene in the matter. Bill then walked behind the concession trailers and challenged the defendant to do the same. When the defendant subsequently walked behind the trailers, he found himself surrounded by Bill and several other men. At that point, the defendant realized "it was a setup" and that Bill and the other men were "getting ready to beat the crap out of [him]." Fearing for his

safety, the defendant put the knife to Bill's throat to "try to bluff him and maybe make an escape." The defendant indicated that his threats and "crazy sounding statements" were similarly strategic. The defendant further indicated that when he had the knife to Bill's throat, Bill had condescendingly challenged him to "do it." The defendant testified that he had not cut Bill's throat; he had only "cut the skin on his neck." The defendant further testified that the "only reason" Bill had been cut was because "the guy to [the defendant's] right was jerking [his] shoulder," and he felt that he needed to "do something." Immediately after cutting Bill, the defendant had tried to escape, but he "collided with someone." A "mob of people" then jumped him; he and Melinda were both stabbed "in the huddle," and Brett somehow fell into the pot of boiling water. The defendant surmised that whoever stabbed him had also stabbed Melinda. The defendant testified that he had also been beaten with a shovel and a piece of wood.

¶ 15 The defendant testified that he had served in the Army from 1989 to 1992 and had been in combat in Iraq. Stating that his job in the Army was to "[k]ill people," the defendant explained that he had killed with a knife before and had not intended to kill Bill. The defendant further explained that there had not been a police presence at the weekend motorcycle rally and that attendees had to generally take care of themselves or else possibly "end up dead."

¶ 16 The jury ultimately rejected the defendant's claim of self-defense and found him guilty as charged. At the defendant's sentencing hearing, the State presented testimony that in April 2006, at an outdoor gathering in Henderson County, Kentucky, the defendant had been arrested on an alcohol-related charge stemming from "a complaint about an intoxicated person on a four-wheeler running over people." The testimony further established that the defendant had fought with the officers who had arrested him and had spit on the officer who had transported him to jail. The defendant had also threatened to kill one of the arresting

officer's wife and kids. The State presented testimony that the defendant had later been charged with numerous offenses stemming from a January 2010 incident that also arose out of Henderson County. During that incident, while the defendant was being arrested for driving under the influence of alcohol after wrecking his truck, the defendant had "hailed off and hit [an arresting officer] right square in the face." At the sentencing hearing, Brett, Bill, and Melinda testified as to their injuries, medical bills, and lost time at work.

¶ 17 The trial court ultimately sentenced the defendant to serve a total of 25 years in prison. In addition to fines and fees, the court further ordered the defendant to pay Brett, Bill, and Melinda restitution for out-of-pocket expenses. Referencing the time the defendant spent in custody prior to sentencing, the court ordered that the defendant receive a \$5-per-day credit "for any fine." See 725 ILCS 5/110-14(a) (West 2010). The present appeal followed.

¶ 18 ANALYSIS

¶ 19 As previously noted, Deputy Daymon testified that at the hospital, after Trooper Goessman had "read [the defendant] his rights," the defendant had said, "I'm not saying shit" and "I want an attorney." Daymon further testified that a few minutes later, the defendant had voluntarily begun speaking about what had occurred at the campgrounds. When Daymon was asked what the defendant had subsequently said, defense counsel objected, and the trial court granted counsel's request for a sidebar conference. At the sidebar, counsel argued that given the defendant's condition at the time, the defendant had not competently rescinded his invocation of his right to counsel. Counsel maintained that the statements that the defendant made at the hospital were therefore inadmissible. Rejecting these arguments, the trial court overruled counsel's objection, and Daymon was allowed to testify as to what the defendant had stated after Goessman had read him his rights.

¶ 20 The defendant's first argument on appeal is that he was denied the effective assistance of counsel due to the manner in which his trial attorney objected to the testimony regarding

the statements that the defendant made after Goessman "read him his rights" (see *Miranda v. Arizona*, 384 U.S. 436 (1966)). Intimating that Daymon's testimony that the defendant had initially stated, "I'm not saying shit" and "I want an attorney," was elicited in violation of *Doyle v. Ohio*, 426 U.S. 610 (1976), the defendant complains because "[t]rial counsel did not object to the testimony regarding [his] right to remain silent or his right to an attorney."

¶ 21 To succeed on a claim of ineffective assistance of trial counsel, a defendant must satisfy the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Patterson*, 217 Ill. 2d 407, 441 (2005). "Under *Strickland*, a defendant must prove not only that defense counsel's performance fell below an objective standard of reasonableness, but also that this substandard performance caused prejudice by creating a reasonable probability that, but for counsel's errors, the trial result would have been different." *People v. Johnson*, 218 Ill. 2d 125, 143 (2005). "Because [a] defendant must satisfy both prongs of the test, the failure to satisfy either element precludes a finding of ineffective assistance of counsel under *Strickland*." *People v. Shaw*, 186 Ill. 2d 301, 332 (1998).

¶ 22 Under *Doyle*, "[i]t is error to comment on a defendant's postarrest silence or exercise of his right to counsel." *People v. Leak*, 398 Ill. App. 3d 798, 820 (2010). "However, '[i]t is not error to elicit a complete recitation of police procedure, even if the recitation includes reference to a defendant's exercise of his constitutional rights, so long as the recitation is not argued to be indicative of guilt.'" *Id.* (quoting *People v. Lindgren*, 111 Ill. App. 3d 112, 117 (1982)). Moreover, where a defendant waives his rights, *Doyle* is inapplicable. *Patterson*, 217 Ill. 2d at 445.

¶ 23 Here, although the defendant initially invoked his rights to counsel and silence, a few minutes later, he voluntarily reinitiated further communication with the police. The defendant thus waived the rights that he briefly invoked, and *Doyle* is thus inapplicable in

the present case. *People v. Velez*, 388 Ill. App. 3d 493, 508 (2009). We note that on appeal, the defendant does not challenge the trial court's implicit determination that by reinitiating contact with the officers at the hospital, the defendant voluntarily rescinded the invocation of his rights to counsel and silence. We also note that the defendant's initial invocation of his rights was never used to imply guilt but was rather part of Daymon's description of the events that resulted in the statements that the defendant subsequently made. In any event, had trial counsel objected to the complained-of testimony on *Doyle* grounds, the objection would have been properly overruled, and counsel cannot be deemed ineffective for failing to lodge a futile objection. *People v. Bean*, 137 Ill. 2d 65, 132 (1990). Having reviewed the transcripts of the proceedings below, we lastly note that trial counsel competently represented the defendant throughout the proceedings and that the evidence of the defendant's guilt was overwhelming.

¶ 24 The defendant's second argument on appeal is that the trial court impermissibly assessed several fees on each of his three convictions, even though the convictions were obtained through a single prosecution. The defendant specifically alleges that he was triply charged a circuit clerk fee, a court automation fee, a document storage fee, a State's Attorney fee, and a court security fee. From the circuit clerk's fee schedule included in the record on appeal, it appears that the defendant was, in fact, triply charged a circuit clerk fee, a court automation fee, a document storage fee, and a court security fee. See 55 ILCS 5/5-1103 (West 2010); 705 ILCS 105/27.1a(w)(1)(A), 27.3a, 27.3c (West 2010); *People v. Martino*, 2012 IL App (2d) 101244, ¶¶ 28-30, 36-38; *People v. Pohl*, 2012 IL App (2d) 100629, ¶¶ 10-12, 21; *People v. Alghadi*, 2011 IL App (4th) 100012, ¶ 22. These fees are capped by statute and are charged per case not per conviction. *Id.* It appears that the defendant was properly charged three State's Attorney fees, however, as such fees "may be charged on a per-conviction basis." *Martino*, 2012 IL App (2d) 101244, ¶¶ 45-47. In any event, the State's

motion to strike the defendant's references to the clerk's fee schedule is denied, and per the parties' suggestion, we remand this issue so that the trial court can reconsider the defendant's fees and vacate any which were improperly imposed.

¶ 25 The defendant's final argument is that he is entitled to an offset against the youth diversion/peer court fee (55 ILCS 5/5-1101(e) (West 2010)) and the ISP operations fee (705 ILCS 105/27.3a (West 2010)) that the trial court ordered him to pay. The clerk's fee schedule indicates that the defendant has an outstanding balance of \$5 on the former and \$15 on the latter. The State concedes that the trial court awarded the defendant the \$5-per-day credit that he was entitled to receive for time spent in custody prior to sentencing and that the youth diversion/peer court fee is a fine eligible for offset. See *People v. Maldonado*, 402 Ill. App. 3d 411, 435 (2010). The State does not contest the defendant's argument that the ISP operations fee is also a fine eligible for offset. See 30 ILCS 105/6z-82 (West 2010). The record indicates that the defendant was in custody for over 300 days before he was sentenced. Accordingly, on remand, the record should be amended to reflect the \$20 offset that the defendant seeks.

¶ 26 CONCLUSION

¶ 27 For the foregoing reasons, we hereby affirm the defendant's convictions and sentences and remand on the issues regarding the assessed fines and fees.

¶ 28 Affirmed and remanded with directions.