

No. 1-13-1110

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the Circuit Court
) of Cook County.
)
)
) No. 11 CR 18770
v.)
)
) Honorable
KELVIN PATRICK,) Michael Brown,
) Judge, Presiding.
)
Defendant-Appellant

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Simon and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to prove defendant guilty beyond a reasonable doubt. The admission of defendant's prior murder conviction as impeachment was harmless error. Defendant is estopped from arguing that the State should not have been allowed to question officers about other contraband found. Defendant's assessments are reduced to \$569.

¶ 2 Following a jury trial, defendant Kelvin Patrick was convicted of being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2012)), finding that he constructively possessed an

unloaded sawed-off shotgun, and was sentenced to 14 years' imprisonment. On appeal, defendant argues that: (1) the State failed to prove him guilty beyond a reasonable doubt; (2) evidence of his prior murder conviction that was admitted for impeachment was more prejudicial than probative; (3) the court erred in allowing the State to elicit evidence that "contraband" was found near the gun; and (4) the order assessing fines, fees and costs must be corrected. For the following reasons, we affirm defendant's conviction but reduce his assessments to \$569.

¶ 3

BACKGROUND

¶ 4 Defendant was originally charged with armed habitual criminal, unlawful possession of a firearm by a felon (UUWF), and possession of 15 to 100 grams of heroin with intent to deliver. Defendant's first trial ended in a hung jury.

¶ 5 Before defendant's first trial, the court conducted a hearing pursuant to *People v. Montgomery*, 47 Ill. 2d 510 (1971), to determine whether defendant's two convictions for armed robbery and murder could be admitted as impeachment if defendant testified. These two felonies were to provide the basis for the charge of armed habitual criminal pending against defendant. The court allowed the armed robbery conviction, which was a crime of dishonesty, to be introduced but precluded the State from bringing up the murder because its prejudicial impact outweighed its probative value.

¶ 6 Prior to the start of defendant's second trial, the trial court stated that it had changed its mind regarding its *Montgomery* ruling. The court noted that it had not given the probative value of defendant's murder conviction sufficient weight. The trial court reasoned that the current charge involved a weapon and the court speculated that defendant's murder conviction may also have involved a weapon. The court concluded that both defendant's armed robbery conviction and his murder conviction were admissible for impeachment purposes.

¶ 7 Also prior to defendant's second trial, the State filed a motion to sever the drug charges from the armed habitual criminal charge. Defendant filed a motion *in limine* to bar any reference to the heroin found near the gun. Defendant argued that the laboratory technician who tested it was unable to testify and therefore the State could not prove that the substance was illegal. The State indicated that it had no intention to discuss the recovered narcotics, especially since it had severed the drug charge, unless defendant opened the door to that line of questioning. The court ruled that there would be "no mention of the heroin."

¶ 8 At defendant's second trial, Officer Issac Shavers testified that on October 13, 2011, he and a team of other officers arrived at 6615 South Seeley Avenue at about 9:15 a.m. to execute a search warrant. Officer Shavers had a photograph of the person he was looking for.

¶ 9 About 30 minutes later, defendant, who resembled the man in the photograph, walked out of 6615 South Seeley wearing a bathrobe and smoking a cigarette. Defendant walked south toward Officer Shaver's car. When defendant started to walk back towards the house, Officer Shavers radioed his team and got out to detain defendant.

¶ 10 When Officer Jakob arrived with the other officers, defendant was handcuffed. The other officers went inside the house and detained at least two other adults and some small children. Based on a conversation between Officer Jakob and defendant, the officers went to a second-floor bedroom. On the bed was an unloaded sawed-off shotgun inside a bowling bag. The butt of the gun was sticking out. Officer Shavers testified that the gun was not in good condition and was duct taped around the stock area, which he believed was put there to absorb any recoil. Officer Shavers heard defendant tell Officer Jakob that the gun was for protection "on the block." Officer Shavers testified that "[o]ther items were recovered."

¶ 11 On cross-examination, defense counsel asked Officer Shavers whether any "narcotics"

were found on defendant's person. Officer Shavers replied, "Not on his person." Defense counsel then asked if the search warrant was for "marijuana." The State asked for a sidebar. During the sidebar, the State argued that defense counsel had "opened the door" and that the State should be able to introduce evidence about "narcotics." The State further argued that the "whole reason [they] severed the drugs from this case was so that it wouldn't be prejudicial to the defendant."

¶ 12 The court ruled that the motion *in limine* to "keep out the heroin" was still in effect but the State was allowed "to ask the officer was there other contraband recovered." However, the State was not permitted to ask the officer what the alleged contraband was.

¶ 13 On redirect examination, the officer agreed that there were "other items of contraband" recovered from the bedroom where the shotgun was found. Officer Shavers further testified that defendant stated that he got the shotgun from a friend who died 20 years ago. Defendant also stated that he lived with his girlfriend at the address where the gun was found.

¶ 14 Officer Mark Jakob testified that when he and other members of the search warrant team arrived, he informed defendant that they had a search warrant for him and the residence at 6615 South Seeley. Defendant was then handcuffed and walked back to the residence. Officer Jakob testified that defendant was wearing a bathrobe.

¶ 15 The door to the residence was unlocked so officers gained easy access to the residence. Defendant told Officer Jakob that he would show them "the stuff" because he did not want them to "tear the house up" because it belonged to him and his girlfriend. Defendant directed Officers Shavers and Jakob to a second floor bedroom. On the bed was a maroon bowling bag. Officers Shavers and Jakob saw the butt of a sawed-off shotgun sticking out of the bag. Pictures of the shotgun were taken before it was recovered. Defendant said "Oh that old thing? I've had that for

like 20 years." Defendant explained that he got it from a friend and needed it for protection "on the block." Officer Shavers testified that the gun was unloaded, was in bad condition and was duct taped to make it easier to use. Other items were also recovered.

¶ 16 In the bedroom where the shotgun was found, Officer Jakob found a State Farm Insurance card with defendant's name on it along with the name Kathy Morris (defendant's wife). There was also an electric bill addressed to Kathy Morris. There was also men's clothing in the bedroom where the shotgun was found.

¶ 17 Before taking defendant to the police station, the officers allowed defendant to change out of his bathrobe. Defendant changed into some clothing that was in the bedroom where the shotgun was found. At the police station, defendant told Officer Don Story that his address was 6615 South Seeley, the address where the search warrant was executed.

¶ 18 The parties stipulated that defendant had two qualifying convictions to support a conviction for armed habitual criminal.

¶ 19 Defendant testified on his own behalf. He stated that on the day the search warrant was executed, he was living with his mother-in-law at 6529 South Seeley and had been living there for seven months to a year because he was separated from his wife, Kathy Morris. He went to 6615 South Seeley on the morning of October 13, 2011, to watch his two kids. Kathy has two other older sons. Kathy lived at 6615 South Seeley with all of her children.

¶ 20 When he arrived at 7 a.m. to watch his kids, he was wearing black jeans, a white hooded sweatshirt and white gym shoes. He left about an hour later and headed toward the gas station. As he walked, a brown car drove up and two officers jumped out and detained him.

¶ 21 After he was detained, he walked with the officers back to 6615 South Seeley. Defendant testified that the officers never showed him a warrant. Defendant testified that he told one of the

adults in the living room to ask to see the warrant and then the officers put him in the back of a car and transported him to the police station. He never told the officers that he would show them where "the stuff" was located, never took them upstairs to a second floor bedroom and did not make a statement about the gun. He never changed his clothes and claimed that the clothes found in the bedroom where the gun was located were not his. The bedroom where the gun and men's clothes were found belonged to Kathy's other sons.

¶ 22 At the police station, the officers never asked him his address but just used the address on his driver's license. Defendant identified a Social Security Administration statement that showed his address as 6529 South Seeley. The statement was dated seven months prior to the execution of the search warrant.

¶ 23 In rebuttal, the State presented certified copies of defendant's convictions for armed robbery and murder from June 21, 1993.

¶ 24 After hearing all of the evidence, the jury found defendant guilty of armed habitual criminal. He was sentenced to 14 years' imprisonment and assessed \$814 in fines and fees. It is from this judgment that defendant now appeals.

¶ 25 ANALYSIS

¶ 26 Defendant first argues that his conviction for armed habitual criminal should be reversed because the State failed to prove beyond a reasonable doubt that he constructively possessed the shotgun found at the residence of 6615 South Seeley as there was insufficient proof that defendant lived there or exercised control over the shotgun.

¶ 27 The standard of review on a challenge to the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Ross*, 229

Ill. 2d 255, 272 (2008). It is not the function of the reviewing court to retry the defendant or substitute its judgment for that of the trier of fact. *People v. Collins*, 214 Ill. 2d 206, 217 (2005). The trier of fact assesses the credibility of the witnesses, determines the appropriate weight of the testimony and resolves conflicts or inconsistencies in the evidence. *People v. Naylor*, 229 Ill. 2d 584, 614 (2008). The trier of fact is not required to disregard inferences that flow from the evidence or search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt. *People v. Hall*, 194 Ill. 2d 305, 332 (2000). A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 28 In this case the State was required to establish the crime of armed habitual criminal by proving that defendant: (1) received, sold, possessed, or transferred any firearm; and (2) he had been convicted two or more times of any qualifying offense. 720 ILCS 5/24-1.7(a) (West 2010). The State specifically charged that defendant "knowingly or intentionally possessed a firearm, to wit: a shotgun." The parties stipulated to the two prior convictions so the only disputed issue at trial was whether defendant knowingly or intentionally possessed the shotgun found at 6615 South Seeley.

¶ 29 As defendant was not found in actual possession of the shotgun, the State was required to prove that defendant constructively possessed it. Proof of constructive possession is sufficient in establishing the element of possession and the State need not prove that defendant had actual physical possession of the contraband. *People v. McLaurin*, 331 Ill. App. 3d 498, 502 (2002). In order to establish constructive possession, the State must show that defendant had knowledge of the contraband, and exercised immediate and exclusive control over the area where it was found to establish constructive possession. *People v. Love*, 404 Ill. App. 3d 784, 788 (2010).

Constructive possession is often proven entirely by circumstantial evidence. *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003). Thus, both actual and constructive possession requires proof beyond a reasonable doubt that the defendant knew or knowingly possessed the prohibited item.

¶ 30 Viewing the evidence in the light most favorable to the State, the evidence in this case established the following: Officer Shavers and his team had a search warrant for 6615 South Seeley. Officer Shavers saw defendant walk out of 6615 South Seeley wearing a bathrobe and detained him. Defendant led officers into the home and upstairs telling them that he would show them "the stuff" because he did not want the officers to "tear up" "my house." Defendant led them to a second-floor bedroom where a bowling bag containing a sawed-off shotgun was sitting on the bed. Defendant admitted owning the gun and told officers he needed it for protection. The bedroom where the gun was found contained a State Farm insurance card showing defendant's and Kathy Morris' names (but no address), an electric bill addressed to Kathy Morris and men's clothing. Before defendant left for the police station, he changed into clothes that came from that same bedroom. Later, at the police station, defendant stated that he lived at 6615 South Seeley.

¶ 31 Defendant argues that this evidence was insufficient to convict him because the State did not present any evidence that defendant had keys to the home or any documents or mail establishing that defendant lived at 6615 South Seeley. Defendant argues that the only document presented at trial that connected him to any residence was the Social Security Administration statement that was addressed to him at 6529 South Seeley. Defendant also argues that his alleged statements to Officer Jakob that he would show them where "the stuff" was because he didn't want them to "tear the house up" and that the gun was his and he used it "for protection"

are implausible and do not stand up to scrutiny. Defendant claims that the version of events he testified to is more credible than the evidence produced by the prosecutor.

¶ 32 While defendant's story is completely different from that of the officers, his argument regarding the sufficiency of the evidence against him is based solely on his assessment of the weight of the evidence and the credibility of the witnesses. It was the jury's role, as the trier of fact, to weigh the evidence, assess the credibility of the witnesses, resolve any conflicts, and draw reasonable inferences therefrom. *People v. Washington*, 2012 IL 110283, ¶ 60. The jury in this case clearly found the officers more credible, and rejected defendant's explanation of the events. We may not, and will not in this case, substitute our judgment for that of the trier of fact on questions involving the weight of the evidence, the credibility of the witnesses, or the resolution of conflicting testimony. *People v. Campbell*, 146 Ill.2d 363, 375 (1992). Therefore, viewing the evidence in the light most favorable to the State, we find the evidence sufficient to support defendant's conviction.

¶ 33 Defendant next argues that the trial court abused its discretion when it changed its *Montgomery* ruling prior to his second trial. Defendant argues that the murder conviction was far more prejudicial than probative and that the court admitted evidence of his prior murder conviction as probative of his guilt and not his credibility.

¶ 34 When a defendant testifies on his own behalf, prior convictions are admissible for the sole purpose of discrediting him as a witness and not to determine his guilt or innocence in the pending case. *People v. Naylor*, 229 Ill. 2d 584, 594 (2008). In *Montgomery* 47 Ill. 2d at 510, our supreme court set forth the test that must be used to determine whether a witness's prior conviction should be admitted for purposes of attacking his credibility. According to *Montgomery*, prior convictions may be admitted if: "(1) the prior crime was punishable by death

or imprisonment in excess of one year, or involved dishonesty or false statement regardless of the punishment; (2) less than 10 years has elapsed since the date of conviction of the prior crime or release of the witness from confinement, whichever is later; and (3) the probative value of admitting the prior conviction outweighs the danger of unfair prejudice." *People v. Mullins*, 242 Ill. 2d 1, 14 (2011) (citing *Montgomery*, 47 Ill. 2d at 516.) The last prong of the test requires the trial court to conduct a balancing test, weighing the prior conviction's probative value against its potential prejudice. *Mullins*, 242 Ill. 2d at 14. When performing the balancing test, the trial court should consider "the nature of the prior conviction, the nearness or remoteness of that crime to the present charge, the subsequent career of the person, the length of the witness' criminal record, and whether the crime was similar to the one charged." *Id.* at 15-16. Thus, a prior conviction has probative value if it may potentially impair the defendant's credibility. *People v. Clay*, 379 Ill. App. 3d 470, 476 (2008) (citing *People v. McKibbins*, 96 Ill. 2d 176, 188 (1983)). The trial court's ruling regarding the admissibility of a prior conviction for impeachment purposes is within its sound discretion. *Id.*

¶ 35 When the trial court reconsidered its prior *Montgomery* ruling and determined that the probative value of both of defendant's prior convictions were admissible for impeachment, the court stated:

"You know, I've reconsidered. The probative value of allowing both the murder and armed robbery goes I think to the charges that are remaining here. Mr. Patrick. It is a charge involving a weapon. It appears that there was a single incident involving the weapon, for the use of taking property, as well as a murder that resulted. I don't know if the gun was used for the murder or not. We're not going to get into that, but I do find that it is probative.

I think the prejudicial value is still the same but, in reconsidering, I think the probative values should be a bit higher. And so the motion *in limine* to bar convictions will be denied today. * * * [I]f Mr. Patrick testifies, then I will allow the State to properly use for impeachment purposes both the murder and the armed robbery."

Later, the trial judge instructed the jury that the "[e]vidence of a defendant's previous conviction of an offense may be considered by you only as it may affect his believability as a witness and must not be considered by you as any evidence of his guilt of the offense with which he is charged."

¶ 36 Defendant was released from custody on the murder conviction in 2005 and concedes that his murder conviction meets the first two prongs of the *Montgomery* test. He cites *People v. Williams*, 161 Ill. 2d 1 (1994) in support of his argument that his murder conviction was improperly admitted as probative of his guilt rather than his credibility and therefore was improperly admitted under the third prong of *Montgomery*.

¶ 37 In *Williams*, the defendant was charged with murder and the trial court allowed the State to present evidence of the defendant's prior conviction for voluntary manslaughter to impeach his credibility. On appeal to our supreme court, the defendant argued that the trial court erred in admitting the evidence of his voluntary manslaughter conviction because it was admitted for the purpose of establishing guilt and was not probative of his credibility. Examining defendant's claim, our supreme court noted that the trial court had allowed the voluntary manslaughter conviction to be used as impeachment because the court found that it was of "great probative value in a case of this nature" and it was "highly probative of the nature of the offense." *Id.* at 40.

¶ 38 The *Williams* court found that the trial court erred in allowing the conviction for

voluntary manslaughter to be admitted because it was "probative of the issue of defendant's guilt of the charged offense of murder, rather than as bearing upon defendant's credibility as a witness." *Id.* In so finding, the court emphasized that the State also failed to provide an explanation of "the relationship required by *Montgomery* between defendant's conviction and his testimonial credibility." *Id.* The *Williams* court criticized the "increasingly mechanical application" with which courts apply the *Montgomery* rule and stated that "the *Montgomery* rule does not * * * allow for the admission of evidence of any and all prior crimes." *Id.* at 39. The court also criticized and rejected the practice by some courts of admitting evidence of prior convictions for impeachment purposes, where the prior felony has no direct relation to credibility, by employing "the rationale that a felony of any type evinces a disrespect for societal order and thus adversely affects the defendant's veracity." *Id.* More specifically, the *Williams* court stated that this premise "does not comport with the principles expressed in *Montgomery*." *Id.* Rather, according to the *Williams* court, "[t]he focus of *Montgomery* was on crimes which bear upon the defendant's truthfulness as a witness." *Id.* "[A]cts of deceit, fraud, cheating, or stealing * * * are universally regarded as conduct which reflects adversely on a man's honesty and integrity," whereas acts of violence "generally have little or no direct bearing on honesty and veracity." *Id.* at 37 (quoting *Gordon v. United States*, 383 F.2d 936 (D.C.Cir.1967)).

¶ 39 The State attempts to distinguish *Williams* by arguing that the record in this case clearly shows that the trial court conducted the required *Montgomery* balancing test. The State also argues that unlike the court in *Williams*, the court here specifically stated that the prior convictions could only be used for impeachment purposes and instructed the jury that it could only use defendant's prior conviction in determining his credibility. Therefore, the State argues, unlike *Williams*, the trial court's decision to admit the murder conviction does not contravene the

Montgomery principles.

¶ 40 Here, the State has failed to provide an explanation, just as it similarly failed to do in *Williams*, of the relationship between defendant's prior conviction for murder and his credibility other than arguing generally that the court complied with *Montgomery*. On the other hand, defendant suggests that upon hearing that defendant was convicted of armed robbery with a weapon and murder, the jurors would have likely made the "jump" to the next logical conclusion that he committed the murder with the gun he was charged with possessing. Furthermore, defendant argues the introduction of his prior conviction could easily have persuaded the jury to believe that defendant had a propensity to commit crime. "[T]he introduction of other crimes to show or suggest a propensity to commit crime is an improper purpose and is prohibited." *Williams*, 161 Ill. 2d at 39. We agree with defendant. In accordance with *Williams*, we find that any probative value of defendant's prior murder conviction was outweighed by its prejudicial effect and the trial court erred in admitting it, especially where the record shows that the court speculated that the weapon used in defendant's murder was a gun.

¶ 41 However, we agree with the State that any error with respect to the admission of defendant's prior murder conviction is harmless. The improper admission of evidence is harmless error if no reasonable probability exists that the verdict would have been different if the evidence in question had been excluded. *People v. Lynn*, 388 Ill. App. 3d 272, 282 (2009). "When deciding whether error is harmless, a reviewing court may: (1) focus on the error to determine whether it might have contributed to the conviction; (2) examine the other properly admitted evidence to determine whether it overwhelmingly supports the conviction; or (3) determine whether the improperly admitted evidence is merely cumulative or duplicates properly admitted evidence." *In re Rolandis G.*, 232 Ill. 2d 13, 43 (2008).

¶ 42 The evidence in this case was overwhelming despite defendant's testimony. Defendant was seen leaving 6615 South Seeley early in the morning wearing a bathrobe. After defendant was presented with the search warrant he led officers inside to a second-floor bedroom to show them "the stuff." Defendant admitted to owning the shotgun found on the bed in that bedroom and later admitted to police at the station that he lived at 6615 South Seeley. Based upon this overwhelming evidence, we find that the admission of defendant's prior murder conviction evidence is harmless error because no reasonable probability exists that the verdict would have been different if the evidence in question had been excluded.

¶ 43 This conclusion is reached in view of the armed robbery conviction also being introduced for impeachment purposes. Defendant does not complain of the trial court's ruling in this regard. It is likely the jury was influenced by the armed robbery conviction-that was the purpose of introducing it. It is also likely the jury was influence by the murder conviction. We are not persuaded, however, that the error in allowing the murder conviction, along with the armed robbery conviction, was so prejudicial that the verdict would have been different if the error were removed. *People v. Mullins*, 242 Ill. 2d 1, 27 (2011).

¶ 44 Defendant next argues that it was error for the State to elicit testimony that "contraband" was found near the shotgun because: (1) the testimony about the nature of the substance violated his right to cross-examination; (2) the testimony about the nature of the substance constituted inadmissible lay opinion; (3) testimony about the substance was not admissible as other-crimes evidence; and (4) the evidence was not relevant for any purpose.

¶ 45 Despite the fact that defendant successfully moved the court to exclude evidence of the heroin found next to the gun, defense counsel on cross-examination asked Officer Shavers whether any narcotics were found on defendant's person. Officer Shavers replied, "Not on his

person." Defense counsel then asked if the search warrant was for marijuana. The State objected and requested a sidebar. During the sidebar, defense counsel argued that he wanted the jury to know that the officers were "searching for marijuana and nothing more." The trial court noted that defendant was trying to leave the impression that a search warrant only authorizes officers to seize the items listed in the search warrant and nothing more. The court stated that on redirect the State should be allowed "to have the officer testify that when they are executing a search warrant, they still have the authority to recover items that appear to be contraband in plain view. They are not necessarily restricted to the items on the search warrant." In addition, the court stated that because defense counsel asked whether there were any narcotics recovered from defendant's person, the State should be given "some leeway" to "ask the officer was there other contraband recovered."

¶ 46 It was defendant who opened the door to this line of questioning when he asked on cross-examination about whether narcotics were recovered and whether the search warrant was for marijuana. He cannot now complain that the court's decision to allow the State an opportunity to elicit similar testimony on redirect was improper. A defendant who procures, invites, or acquiesces to the admission of evidence, even if the evidence is improper, cannot complain of the admission on appeal. *People v. Greenwood*, 2012 IL App (1st) 100566, ¶ 35. Therefore, defendant is estopped from arguing that it was improper for the State to question Officer Shavers about other contraband found in the bedroom.

¶ 47 Not only is defendant estopped from making these arguments, he also forfeited this issue for review when he failed to include it in a posttrial motion. See *People v. Enoch*, 122 Ill.2d 176, 186 (1988) (to preserve an issue for review a party must object at trial and raise the issue in a posttrial motion). Defendant's argument would not fare any better under plain error analysis.

The plain error doctrine allows a court of review to consider a forfeited error when “(1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence.” *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005). Even if we were to assume that error occurred, we reject defendant's argument as we have already determined that the evidence against defendant was overwhelming and not closely balanced. Defendant does not argue that the alleged error in this case falls under the second prong of plain error analysis.

¶ 48 In the alternative, defendant argues that reversal is warranted because he was denied effective assistance of counsel and was prejudiced where counsel failed to object to the testimony regarding the contraband in the motion for a new trial. See *Strickland v. Washington*, 466 U.S. 668, 687 (1984) (to establish ineffective assistance, a defendant must show that the attorney's performance fell below an objective standard of reasonableness and that this deficient performance prejudiced the defendant).

¶ 49 However, defendant suffered no prejudice as a result of defense counsel's failure to include the issue of the contraband testimony in a motion for a new trial. The underlying issue is nonmeritorious where defendant opened the door to such testimony through his questions on cross-examination.

¶ 50 Finally, defendant argues and the State agrees that defendant is entitled to a \$145 reduction in assessments from \$714 to \$569. The \$100 Trauma Fund fee was incorrectly assessed. 730 ILCS 5/5-9-1.10 (West 2010); *People v. Williams*, 394 Ill. App. 3d 480, 483 (2009). In addition, defendant is entitled to a credit toward the \$50 Court System assessment fine and the \$15 State Police operations fine, which should have been offset by the \$5-per-day presentence credit. See *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31; *People v. Wynn*,

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2013 IL App (2nd) 120575, ¶ 18. We therefore reduce defendant's assessments to \$569.

¶ 51

CONCLUSION

¶ 52 For the foregoing reasons, we affirm the judgment of the circuit court but modify defendant's assessments to \$569.

¶ 53 Affirmed as modified.