2015 IL App (2d) 131142-U
No. 2-13-1142
Order filed October 27, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Winnebago County.
Plaintiff-Appellee,	)	
	)	No. 11-CF-2324
v.	)	
DARRION O. FOOTE,	)	Honorable John R. Truitt,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Schostok and Justice Spence concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not abuse its discretion by admitting other-crimes evidence and defendant was not denied his right to counsel at the proceeding on his motion to reconsider his sentence; affirmed.

¶ 2 Following a jury trial, defendant, Darrion Foote, was convicted of aggravated battery to a police officer, and the trial court sentenced him to 16 years' imprisonment. He contends on appeal that the trial court abused its discretion by admitting evidence of defendant's prior convictions and the facts underlying those convictions where he had battered police officers, and

that he was denied his right to counsel at the hearing on the motion to reconsider his sentence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged by indictment with two counts of home invasion, two counts of armed robbery, three counts of aggravated battery, and one count of resisting a peace officer. One charge of aggravated battery and the charge of resisting a peace officer arose while defendant was in the Winnebago County jail awaiting trial for the other charges. The charge of aggravated battery alleged that, on August 20, 2011, when, in committing a battery, defendant knowingly battered Officer P. Drnek, a peace officer in the performance of his official duties, in that defendant bit officer Drnek in violation of section 12-3.05(d)(4) of the Criminal Code of 1961 (720 ILCS 5/12 3.05(d)(4) (West 2010)). The allegations of the offense of resisting a peace officer arose out of the same conduct as the aggravated battery count. The case proceeded to trial on those two counts. The other counts, which were related to different victims, were severed on defendant's motion.

¶ 5 A. Motion *In Limine*

¶ 6 Prior to trial, the State filed a motion *in limine* for an order permitting evidence of acts other than those alleged in the indictment to be introduced at trial. The State introduced evidence of defendant's previous convictions for aggravated battery to three Winnebago County Corrections officers in case Nos. 08 CF 1355, 03 CF 3216, and 03 CF 3185. The State further noted that defendant had verbally threatened other corrections officers with bodily harm including threats of sexual assault once he is released from custody. The motion alleged that the incidents in these cases were admissible to show defendant's intent, absence of mistake, and method of operating, and that their probative value far outweighed any possible prejudicial

effect.

¶ 7 At the hearing on the motion, the prosecutor explained that, while defendant was in custody on an armed robbery charge in case No. 02 CF 2107, defendant made numerous verbal threats to three correction officers. Defendant allegedly head-butted James Kidd (No. 03 CF 3185) in retaliation for verbal abuse by Kidd, and defendant was placed in a holding cell. A video depicted defendant throwing fluid (presumably urine) from a cup at Kidd. Several hours later, Jonathan Swartz (03 CF 3216) brought a mattress to defendant's cell and defendant struck Swartz in the face. In case No. 08 CF 1355, defendant was in the courtroom for a hearing, he was hand and foot shackled. He wanted to address the judge about a matter, but the judge was not assigned to the case and the judge did not want to hear what defendant had to say. Tom Key touched defendant to move him towards the exit and Key said that defendant became violent. Defendant attempted to bite and scratch him.

¶ 8 The trial court found the incidents were "clearly" not admissible to show *modus operandi* or to prove identity, but they would become relevant if self-defense was raised. The court reasoned, though, that the incidents could become relevant to show intent and absence of mistake to rebut the defense of self-defense, if raised. The court would allow into evidence the two most recent cases in time: Nos. 08 CF 1355 and 03 CF 3216.

¶ 9 B. Trial

¶ 10 Officer Carl Bergstrom was dispatched to 523 Palm Street, Rockford, Illinois, where he arrested defendant. He transported defendant to another location where officers Drnek and Nicosia were waiting in a squadrol van, a vehicle with separate compartments used to transport prisoners to the county jail. When Bergstrom arrived, defendant became agitated. Bergstrom described defendant as flexing his muscles, yelling, and spitting. Defendant told the officers

that, if he were not handcuffed, he would kill them. Bergstrom and some other officers escorted defendant into the van and defendant seemed to calm down. However, after the van door was closed, Bergstrom could hear defendant screaming and pounding. He stated that the van was "kind of rocking back and forth." Defendant did not attack anyone at that time.

¶ 11 Drnek testified that he was assigned to drive the squadrol van with Nicosia. The back area of the van is visible from the driver's area through a screened window. Drnek observed that defendant was extremely agitated. He was threatening everyone in the area and was yelling obscenities. Drnek and Nicosia placed defendant into the rear of the van.

¶ 12 The jail was located about three-quarters of a mile away. After parking in the jail's garage, the officers secured their weapons and went to the rear of the van. They opened the door and told defendant to go to the intake door. Defendant had calmed down a bit. A control device inside the jail activated the entrance doors to the jail. The booking area is located on the other side of the doors.

¶ 13 Because of defendant's behavior, he was escorted to holding cell No. 2, which is about 8' by 10' wide and has a toilet and a sink. Defendant was physically cooperative but still agitated. There are multiple cameras set up in the garage, in the doorway to the jail, and in the booking area. There is no surveillance camera of the cell No. 2.

¶ 14 Drnek testified that the booking process takes about 30 to 40 minutes, beginning with an interview by a nurse who explores potential medical issues. The prisoner speaks with the nurse through a glass and a pass-through slot.

¶ 15 Drnek overheard defendant make threats and state that he wanted to use the bathroom. When Drnek went to remove defendant from the holding cell so that defendant could speak with the nurse, he discovered that defendant had removed his shoes and slipped the handcuffs in front

of him. Defendant, however, did calm down when he spoke with the nurse. Drnek and Nicosia returned to the paperwork attendant.

¶ 16 When the nurse's interview had completed, Drnek asked defendant to return to the holding cell. Defendant began walking back to the cell, which was located about 20 to 25 feet away. He became agitated again, raised his hands above him, and began to scream obscenities. Drnek became concerned that defendant might choke Drnek. Drnek was located on the right side of defendant and he grabbed defendant's hands and pulled them down using a pain compliance technique called a wrist lock. Defendant tried to pull out of Drnek's grasp and slow him down by locking his legs. Nicosia followed about three feet behind Drnek. Once they entered the holding cell, defendant broke loose from Drnek's grasp and turned to his right, causing Drnek's arm, which was on defendant's right wrist, to come up into Drnek's face. Drnek was located a foot and a half away from defendant and they were facing each other. Defendant then lunged forward and bit Drnek on the right forearm and began to shake his head back and forth.

¶ 17 Nicosia entered the cell from behind Drnek and to Drnek's right. Drnek punched defendant several times and kneed defendant in the groin. He punched defendant several times in the face and kicked him before defendant let go. Drnek and Nicosia directed defendant to the ground, but defendant seemed to reach for Nicosia's leg. Drnek kicked defendant in the groin again. The officers were able to escape from the cell and close the door.

¶ 18 Drnek sought treatment from the nurse for his bite wound, which was bleeding. Drnek overheard defendant say that he had AIDS, that he had "fucked up" Drnek's life, and that it would kill him and his family. Photographs of Drnek and of his bite wound before it was treated were admitted into evidence.

¶ 19 David Huff testified that the jail area has three cameras. He downloaded onto a DVD a

portion of the events that took place around 11 p.m. on August 20. The DVD was published to the jury and Drnek narrated the events depicted in the recording.

¶ 20 Nicosia testified that he saw defendant bite Drnek's arm and shake his head back and forth. In response, Nicosia started punching and kicking defendant. After defendant released Drnek, he continued to struggle, so Nicosia kicked defendant in the stomach.

¶ 21 Following Nicosia's testimony, the trial court stated that, consistent with the court's ruling in the motion *in limine*, if defendant "puts forward some evidence of self defense, then the other crime—the actual facts of the other crimes evidence comes in to show intent."

¶ 22 On direct examination, defendant admitted that he had been in the Winnebago County jail before and that he had been convicted of armed robbery in case No. 02 CF 2017. He also admitted that he had been convicted of aggravated battery to Officers Kidd and Swartz in the 2003 cases.

¶ 23 Defendant testified that, on August 20, 2011, he was arrested and was taken to the county jail. He admitted yelling while he was inside of the van because the handcuffs he was wearing were too tight and the officers had shoved him inside the van. Defendant stated that this was the first time he had been in the garage of the new county justice center.

¶ 24 Once he went into the jail, he was assigned to a holding cell. Defendant stated that he was handcuffed behind his back but maneuvered the cuffs to the front of his body so that he could urinate. After about 30 minutes to an hour, he was brought to a nurse. Because he was handcuffed, he could not sign the paperwork she provided.

¶ 25 As he was walking away from the nurse's window, defendant testified that Drnek grabbed him on the left arm. He asked Drnek why he grabbed him. From defendant's perspective, he saw no reason for Drnek to have his hands on defendant. When they arrived at

the cell, Drnek shoved him inside and then came into the cell, struck him in the face with a closed fist, and caused defendant to fall to the floor. Drnek began to choke defendant around the neck. Another officer arrived and kicked defendant. When Drnek loosened his grip, defendant bit him. The officers stomped, kicked, and punched him.

¶ 26 Defendant denied shaking his head after he bit Drnek. When the officers left his cell, defendant pressed the intercom for assistance, but no one came to help. Defendant admitted shouting that he had AIDS and that he had "fucked up" Drnek's life, but defendant said that he shouted this out of spite because the officers had "beat the living crap out of [him]." Defendant further stated that he did not have AIDS.

¶ 27 On cross-examination, defendant denied yelling or being agitated after he completed the interview with the nurse. He stated that, when Drnek pulled on his arm, this "compelled them to raise up." Defendant denied shifting his weight rearward as Drnek was escorting him into the holding cell. Defendant did not want the officer touching him. He bit Drnek in self-defense in response to the choking. Defendant admitted this was not the first time that he attacked a police or corrections officer. He further admitted that he had punched Officer Swartz in the face.

¶ 28 The following exchange occurred between the prosecutor and defendant beginning with the prosecutor using a portion of the transcripts of the sentencing hearing in the Swartz case:

> "Q. And you're describing your reason for striking Officer Swartz in the face. The question was—this is on page 13, line 11—'When did you make the determination that you were going to strike Officer Swartz,' and your answer was 'Basically he was bringing property into my cell. I believe I asked him something to the effect did he think this was funny because I was being brought back from the medical unit. Officer Swartz, Officer Kidd, numerous other officers were in the hallway laughing, basically celebrating

their attack on me. When he was bringing the property to my cell, I asked him did he think this was funny, and he said something to the effect, "You're fucking right," and basically the punch was just in the heat of the moment decision.'

So in the heat of the moment because you felt you were improperly treated, you felt it was okay to punch a corrections officer; isn't that correct?

A. No, that's not correct.

Q. That was your testimony.

A. Is that a question?

Q. I'm telling you. That was your sworn testimony. What is your testimony today?

A. What is the question? What am I being asked?

Q. Do you think you were justified in punching a corrections officer because you didn't like what he was doing?

A. I really don't understand your question.

Q. Were you justified in punching a corrections officer?

A. Was I justified in punching a corrections officer, no.

* * *

Q. You also got into an altercation with Lieutenant Key; isn't that correct?

A. That is correct.

Q. And that was actually leaving this courtroom; isn't that correct?

A. Actually, it occurred within the courtroom. It started in the courtroom.

Q. Because the judge—I believe it was Judge Kennedy at the time—told you he was done talking to you; isn't that correct?

A. That's not correct.

Q. What happened?

* * *

A. I asked the judge could I speak. I asked the judge could I speak. As I began speaking, the officer stepped up and said, 'You Honor, are you through with this guy?' Before the judge—it was Judge Vidal. Before he was able to speak, the officer grabbed my arm while I was handcuffed to a belly chain—handcuffed to a belly chain with leg arms [*sic*] around both of my ankles. This officer grabbed my arm and pulled on me.

Q. And escorted you out of the courtroom; is that correct?

A. I wouldn't call it escorting me. He kind of dragged me out of the courtroom.

Q. And then you proceeded to tussle with him in the hallway behind the courtroom?

A. Again, I was handcuffed to a belly chain with leg arms [*sic*] on me. It's virtually impossible to scuffle with anyone.

Q. But you were convicted of aggravated battery to Officer Kidd—

A. I'm not sure of the disposition of that, ma'am. I was charged with it.

Q. [F]or fighting with a police officer? And you admit that after this incident with Officer Drnek and Nicosia was over—and I believe I'm quoting you.

MR. GREEN [Defense counsel]: Page and line please.

MS. LARSON [Assistant State's Attorney]: No, I'm quoting his recent testimony.

Q. You said out of spite you yelled out 'I have AIDS. I just fucked up his life'; right?

A. Something to that effect, yes.

Q. And you felt you were justified, didn't you.

A. I most definitely felt I was justified after being—with my ass being kicked while I was handcuffed and defenseless. I don't believe any man—any African American in the state—in the United State of America should feel my pain when a man puts his hands on you when you are in chains. No man has a right to put his hands on you when you are in chains.

* * *

Q. And you're justified in doing whatever—

A. It's not justified. Again, I stated I did it out of spite."

¶ 29 After closing argument, the jury was instructed on the law, including the following instruction:

"Evidence has been received that the defendant has been involved in offenses other than those charged in the indictment.

This evidence has been received on the issues of the defendant's intent, motive [*sic*] and may be considered by you only for that limited purpose.

It is for you to determine whether the defendant was involved in those offenses and, if so, what weight should be given to this evidence on the issues of intent and motive."

¶ 30 The jury found defendant guilty of one count of aggravated battery and one count of resisting a peace officer.

¶ 31 C. Posttrial Motions and Sentencing

¶ 32 Defendant expressed his desire to represent himself after the jury returned the verdicts, and the trial court continued the cause to allow defendant to consider the matter. At a hearing on

November 9, 2011, the court admonished defendant about proceeding *pro se* pursuant to Illinois Supreme Court Rule 401 (eff. July 1, 1984) and allowed defendant's motion.

¶ 33 On January 30, 2012, defendant filed a *pro se* motion for a new trial challenging, *inter alia*, defense counsel's conduct of the trial. The court appointed counsel to represent defendant. At the next hearing, the court reconsidered the appointment of counsel and called upon trial defense counsel, Green, to respond to defendant's complaints. Following Green's response, the court found no ineffectiveness. However, the court appointed conflict counsel, Patrick Braun, to represent defendant on the remaining claims in defendant's *pro se* posttrial motion.

¶ 34 The cause was continued several months until, on July 17, 2012, defendant alleged that Braun was neglecting the case. The court appointed Michael Phillips to represent defendant.

¶ 35 The cause was continued several more times for Phillips to prepare. At a hearing on November 21, 2012, Phillips began to argue the merits of his motion for a new trial, but defendant objected that Phillips had not consulted with him. Defendant rejected Phillips' representation, refused to participate in the hearing, and left the courtroom. After argument, the court denied Green's posttrial motion, defendant's *pro se* posttrial motion, and Phillips' posttrial motion.

¶ 36 At the sentencing hearing on December 7, defendant appeared with Phillips. Defendant asserted that he had spoken to Kunal Kulkarni the previous night about representing him. Kulkarni informed defendant that he had an emergency family matter to attend to which prevented his appearance. Defendant denied having any communication with Phillips and maintained that he was unaware that the case was up for sentencing. Phillips stated that he had scheduled a video conference and that defendant refused to participate in the conference. Phillips further stated that he had notified defendant on November 29 of the pendency of the

sentencing hearing. Defendant denied refusing to participate in a conference and receiving any communication. He repeated that he had obtained private counsel, refused to participate in the sentencing hearing, and left the courtroom.

¶ 37 The court denied defendant's motion to continue the sentencing hearing. After hearing evidence in aggravation and argument of counsel, the court sentenced defendant on the more serious offense of aggravated battery to 16 years in prison.

¶ 38 At a hearing on December 21, 2012, Kulkarni appeared in court and stated that after, "numerous requests," he was representing defendant. He filed a motion to reconsider sentence. The trial judge stated that he did not know why defendant's presence was needed for a motion to reconsider sentence and that defendant was "incredibly disruptive." The cause was continued until January 9, 2013. Defendant filed his own motion to reconsider sentence on February 7, 2013.

¶ 39 The cause was continued several more times until March 2013 when defendant filed a *pro se* motion stating that Kulkarni had failed to communicate with him and he asked for the appointment of new counsel or for leave to represent himself. On May 7, Kulkarni appeared and stated that defendant had written him an "accusatory" 13-page letter which gave rise to an issue whether Kulkarni could continue his representation of defendant. The court continued the case until June 5.

¶ 40 On June 5, Kulkarni filed a motion to withdraw from the case. The court reminded him of his obligation to notify defendant and the cause was continued. On June 24, defendant filed a motion in court firing Kulkarni "effective immediately." On August 21, the court allowed the motion to withdraw. On October 1, 2013, defendant's motion to reconsider sentence was denied. Defendant was not present and no attorney appeared on defendant's behalf. Defendant timely

appeals.

¶ 41 II. ANALYSIS

¶ 42 A. Other Crimes

¶ 43 Defendant argues that the trial court abused its discretion in allowing evidence of the facts surrounding defendant's previous aggravated battery convictions where defendant battered police officers. The court allowed this evidence on the issues of intent and motive.

¶ 44 The admissibility of evidence at trial is within the sound discretion of the trial court and its exercise of discretion may not be reversed on appeal absent a clear abuse of discretion. *People v. Illgen*, 145 Ill. 2d 353, 364 (1991). An abuse of discretion will be found only where the trial court's decision is "arbitrary, fanciful or unreasonable," or "where no reasonable man would take the view adopted by the trial court." *Id*.

¶ 45 Defendant first asserts that, since it was clear that he intended to bite the officer, intent was not at issue in the case. Even if this is true, it was not an abuse of discretion to admit the evidence to show motive. Evidence is relevant to prove *modus operandi*, intent, identity, motive, absence of mistake, or "if it is relevant for any other purpose other than to show propensity to commit crime." [Citations omitted.] *Id*. at 364-65. "Motive" is defined as "that which incites or stimulates a person to do an act." *People v. Thingvold*, 191 Ill. App. 3d 144, 149 (1989) (aff'd, 145 Ill. 2d 441 (1991)). Here, when defendant introduced self-defense into the case, the State was allowed to put in evidence of other similar crimes to show defendant's motive was not to avoid being choked but to batter the officer. The evidence of defendant's violence against other officers clearly showed what incites or stimulates defendant and why he did not act in self-defense.

¶ 46 Defendant argues that the prior incidents were not "actually all that similar to the one for which the defendant was on trial." "Where such other-crimes evidence is offered, it is admissible so long as it bears some threshold similarity to the crime charged." *People v. Wilson*, 214 Ill. 2d 127, 136 (2005). Here, there are a number of general similarities between the crime charged and the prior assaults upon the other victims. Although the victims were different, each was someone of authority who was attacked by defendant while defendant was in custody. As long as the other-crimes evidence was sufficiently similar to the charged offense, it can be used to rebut defendant's contention that he acted in self-defense. *Id*. at 141. We conclude that the prior incidents were sufficiently similar to the present aggravated battery as to render them admissible on the issue of intent and motive.

¶ 47 Defendant argues that the introduction of the prior crimes evidence was improperly admitted as character evidence to show his proclivity to violence. Evidence of other crimes is generally inadmissible to demonstrate a defendant's propensity to commit crimes. *People v. Donoho*, 204 Ill. 2d 159, 170 (2003). However, a defendant's prior conviction may be admitted for impeachment purposes. Ill. R. Evid. 609(a) (eff. Jan.1, 2011); *People v. Mullins*, 242 Ill. 2d 1, 14 (2011) (citing *People v. Montgomery*, 47 Ill. 2d 510, 516 (1971)). In addition, other-crimes evidence may be admissible to demonstrate motive. *Donoho*, 204 Ill. 2d at 170; *People v. Reese*, 2015 IL App (1st) 120654, ¶ 115. As we previously stated, the other-crimes evidence was admitted on the issue of defendant's motive for his actions, which he put in issue by raising self-defense; it was not offered or admitted as character evidence. We note that "other-crimes evidence often tends to implicate the character of the accused, but if the evidence is properly offered for a purpose which is permissible and the jury is given a limiting instruction as in this

case, then it is not excludable simply because it also implicates the character of the accused." *Illgen*, 145 Ill. 2d at 375 (citations omitted).

¶ 48 Defendant next maintains that the evidence was too remote in time to have probative value. "As a general rule, other offenses which are close in time to the charged offense will have more probative value than those which are remote. Nevertheless, the admissibility of other-crimes evidence should not, and indeed cannot, be controlled solely by the number of years that have elapsed between the prior offense and the crime charged. The decision whether to admit or exclude such evidence must be made on a case-by-case basis by the trial judge responsible for evaluating the probative value of the evidence." *Illgen*, 145 Ill. 2d at 370.

¶ 49 In *Illgren*, the defendant murdered his wife. At trial, the State introduced evidence showing that the defendant abused his wife on numerous occasions throughout their 19-year marriage. The first incident of abuse occurred within two years after their wedding and the last incident of physical abuse which a witness observed occurred approximately three years before the victim's death. Additionally, the evidence established that the defendant expressed a belief several months before the shooting that a man could kill his wife and escape criminal responsibility. The supreme court held that it was within the trial court's discretion to conclude that such evidence established a pattern of abuse which extended throughout the defendant and the victim's marriage and that, despite the period of time intervening between the prior acts and the charged offense, evidence of this abuse was probative of the defendant's motive and mental state. *Id*. at 371. In support of its conclusion, the court cited the following cases: *People v. Brown*, 199 Ill. App. 3d 860 (1990) (evidence that defendant caused death of another child three years earlier was not too remote in child abuse prosecution); *People v. Barber*, 116 Ill. App. 3d 767 (1983) (evidence that defendant wrote threatening letter to victim two years before victim's

death not too remote to be relevant); see also *Pena v. State*, 780 P. 2d 316 (Wyo. 1989) (evidence that defendant had other altercations with police officers in the seven years preceding the charged assault upon a police officer was not too remote); *Commonwealth v. Donahue*, 549 A. 2d 121 (Pa. 1988) (prior incident of child abuse three years earlier not too remote in prosecution for child abuse); *United States v. Woods*, 484 F. 2d 127 (4th Cir.1973) (evidence that seven other children in defendant's care had died in similar manner during the 25 years before trial was relevant in prosecution for suffocating infant); *United States v. Ross*, 886 F. 2d 264 (9th Cir.1989) (in prosecution for improperly using his wife's social security number, evidence that defendant had improperly used his wife's social security number 13 years before was admissible to prove intent and was not so remote as to require exclusion). *Id*. at 371-72.

¶ 50 In this case, the challenged incidents occurred three years and eight years before the present offense. It was within the trial court's discretion to conclude that, despite the period of time intervening between the prior acts and the charged offense, evidence of these incidents was probative of defendant's motive for his actions. Based on the similarity of the offenses, we cannot say that the other crimes evidence was so remote that they lacked probative value.

¶ 51 We further agree with the State that, even if we were to find that the trial court abused its discretion in admitting this evidence, it would be harmless given the strength of the State's case. The DVD depicts defendant beginning to resist as he is being returned to the holding cell. Prior to defendant resisting, there is no evidence of any abusive conduct by Drnek. Also, defendant admitted at trial that, after he bit the officer, he yelled that he had AIDS and he just "fucked up" the officer's life.

¶ 52 B. Right to Counsel

¶ 53 Defendant contends that he was denied his right to counsel at the hearing on the motion to reconsider his sentence, held on October 1, 2013. He asserts that he was denied representation at a critical stage of his criminal proceedings, and he contends that this cause should be remanded for a new hearing on his motion. We disagree.

¶ 54 By the time the motion to reconsider was heard, defendant had had four different attorneys representing him. Defendant hired a private attorney to represent him. That attorney filed a motion to reconsider sentence. Defendant also filed a *pro se* motion to reconsider sentence. On March 25, 2013, defendant filed a *pro se* motion asking for appointment of new counsel or, in the alternative, to proceed *pro se*. On June 24, 2013, defendant filed a motion firing his attorney. On October 1, 2013, both motions to reconsider were denied without argument and without defendant being present. We find the trial court's tacit denial of defendant's request for appointment of new counsel was reasonable in light of the fact that defendant had just fired his fourth attorney and the trial court had found that defendant was "so incredibly disruptive."

¶ 55 Defendant was not denied his right to be present at the decision on the motion since the trial court ruled without input from the State. See *People v. Burnett*, 237 Ill. 2d 381, 386-87 (2010). Furthermore, the trial court did not abuse its discretion in not entertaining argument on the motions. See *Burnett*, 237 Ill. 2d at 388-90. Also, defendant fails to set forth what he would have presented at the hearing had he been represented by appointed counsel or had he represented himself.

¶ 56 III. CONCLUSION

¶ 57 For the preceding reasons, we affirm the judgment of the circuit court of Winnebago County. As part of our judgment, we grant the State's request that defendant be assessed $50 as

costs for this appeal. 55 ILCS 5/4-2002(a) (West 2012); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 58 Affirmed.