

further proceedings.

¶ 4

I. BACKGROUND

¶ 5 In November 2012, the State charged defendant with (1) obstructing justice (720 ILCS 5/31-4(a) (West 2010)) and (2) possession of a controlled substance (less than 15 grams of a substance containing cocaine) (720 ILCS 570/402(c) (West 2010)). The State's charges originated, in part, from an encounter in which defendant swallowed a plastic Baggie containing a suspected illegal substance while in the presence of police officers.

¶ 6

A. Pretrial Proceedings

¶ 7 In August 2013, the State filed a motion *in limine*, seeking to admit (1) testimony regarding a statement defendant made to police and (2) evidence that defendant had charges pending in Sangamon County case No. 11-CF-960. The State contended that the evidence was relevant and admissible to show "defendant's intent, motive, knowledge, and absence of mistake or accident." Later that month, defendant filed a motion to suppress evidence, alleging that the police improperly obtained statements he made during a custodial interrogation because they did not first inform him of his constitutional rights pursuant to the United States Supreme Court's decision in *Miranda v. Arizona*, 384 U.S. 436 (1966). The following evidence was presented at the hearing on these motions.

¶ 8

1. Defendant's Motion To Suppress

¶ 9 Springfield police detective Jason Sloman testified that in November 2012, he responded to a call reporting suspicious drug activity at the Red Roof Inn. When Sloman knocked on the motel room door at issue, a woman, later identified as Mia Poe, drew back the curtains, saw Sloman, and opened the door after Sloman knocked a second time. At that moment, Sloman (1) saw defendant standing in the motel room and (2) smelled the strong odor of burnt cannabis.

When Sloman inquired about the odor, defendant admitted, "[I] just got done smoking a blunt." Defendant and Poe then permitted Sloman and Officers Daniel Weiss and Michael Mazrim to conduct a search of their persons and the motel room.

¶ 10 A subsequent "pat-down" search of defendant's body did not reveal any contraband. Sloman went into the bathroom with Mazrim as the latter began searching it. Weiss remained with defendant and Poe as they sat at a table located just inside the doorway to the motel room. Sloman then heard Weiss tell defendant to sit down, which caused Sloman to step out of the bathroom. As he did so, Sloman saw defendant grab a plastic Baggie that was concealed by other objects that were on the table where defendant had been seated. Defendant then placed the Baggie in his mouth. A struggle ensued when Weiss attempted to identify what defendant had put in his mouth. Sloman and Mazrim assisted Weiss by handcuffing defendant "for his safety as well as ours." After complying with Sloman's request to open his mouth, defendant told Sloman, "I don't have anything anymore." Sloman then asked defendant what he swallowed. Sloman explained that his question to defendant was prompted by his concern that defendant had swallowed a dangerous drug that could cause a seizure. Defendant responded that "it was just some kush," which Sloman understood to mean that the baggie defendant had swallowed contained cannabis.

¶ 11 Sloman and Mazrim continued their search of the motel room and discovered several plastic Baggies, one of which contained a white substance. A field test of the substance revealed a cocaine base. Sloman then informed defendant that he was under arrest for possession of a controlled substance. Afterward, Sloman asked defendant why he would ingest cannabis. Defendant responded that he did so because he "was out on bond."

¶ 12 Following argument, the trial court ruled that because the record was clear that

police did not provide defendant any *Miranda* warnings, "[A]ny question asked and any statement given by *** defendant after handcuffs had been placed [on him was] inadmissible." However, the court noted that defendant's statement, "I don't have anything anymore," was admissible because it was a declarative admission that was not made pursuant to a custodial interrogation.

¶ 13 *2. The State's Motion in Limine*

¶ 14 Immediately thereafter, the trial court considered the State's motion *in limine*. Given the court's suppression ruling, the State sought only to introduce evidence that defendant was out on bond in case No. 11-CF-960 at the time he was arrested in the instant case. The State contended that this evidence was being offered to show (1) defendant's motive and intent for swallowing the Baggie and (2) that defendant did not "mistakenly swallow something." Defense counsel responded that (1) the State was attempting to circumvent the court's suppression ruling; (2) defendant never claimed he ingested the cannabis by mistake; and (3) other valid reasons existed why he would swallow cannabis—namely, to avoid going to jail.

¶ 15 The trial court ruled, as follows:

"[Defendant is] charged with obstructing justice. The State has to prove [defendant] *** with the intent to prevent his prosecution, *** knowingly destroyed, altered, concealed[,] or disguised physical evidence.

This evidence of [defendant] being on bail is very probative as to why he would swallow something."

The court then clarified that the State was prohibited from presenting defendant's statement that he ingested the Baggie because he was out on bond.

¶ 16

The following exchange then occurred:

"[DEFENSE COUNSEL]: Your honor, I would ask that it be simply reduced *** to the fact that the defendant was out on bond in [case No.] 11-CF-960. I think if the jury was apprized [*sic*] specifically what [defendant] was out on bond for, armed habitual criminal, manufacture and delivery of a controlled substance, possession of a controlled substance, and unlawful possession of a weapon by a felon[, it] would be so unduly prejudicial to *** defendant.

THE COURT: [Response].

[THE STATE]: [The State] believe[s] it's necessary for the jury to know, again, to prove motive and intent. He's not out on bond in a disorderly conduct. It makes more sense that he would do this when he is pending these felony charges versus just some disorderly conduct.

THE COURT: *** [The court] agree[s] with [defense counsel]. The fact that [defendant] is out on bond is the crux of it.

It's not what he's on bail for."

Thereafter, the trial court ruled that at the appropriate moment during defendant's trial, it would take judicial notice and inform the jury that (1) defendant was out on bail in another Sangamon County case and (2) a condition of defendant's bail was that he not violate the law. The court refused the State's further request to specify that defendant was facing felony charges in case No. 11-CF-960.

¶ 17 B. The Evidence Presented at Defendant's Trial

¶ 18 During defendant's August 2013 trial, Sloman, Weiss, and Mazrim testified consistently with the account Sloman provided at the pretrial hearing regarding the timing of events that occurred during their November 2012 encounter with defendant at the motel room. (No evidence was presented regarding the aforementioned statements the court ruled were inadmissible.)

¶ 19 Weiss added that (1) he did not know what was in the plastic Baggie that defendant ingested and (2) police did not recover or identify the substance defendant swallowed.

¶ 20 Mazrim testified that after he handcuffed defendant, he resumed searching the area adjacent to the bathroom and subsequently found two empty corners of a sandwich Baggie located underneath the plastic liner of a trash can. After Mazrim removed the trash-can liner, he recovered a third sandwich-Baggie corner that contained a "white rock-like substance." Mazrim then advised Sloman that he suspected the substance was crack cocaine. Mazrim opined that based on his training and eight years of police experience, sandwich-Baggie corners are typically used to package crack or powder cocaine.

¶ 21 Forensic testing conducted by the Illinois State Police Springfield forensic science laboratory revealed that the substance police seized was 0.1 grams of cocaine.

¶ 22 In addition to the aforementioned testimony, the trial court, over defense counsel's objection, instructed the jury, as follows:

"Judicial notice is something you may consider as evidence and give it what weight you deem necessary.

The State asks the court to take judicial notice of the Sangamon County circuit court case against *** defendant *** which shows that on November 6, 2012, the case was pending and ***

defendant was out of custody on bond. And a condition of [defendant's] bond was that he not commit any criminal offense. That case is *** case [No.] 11-CF-960. And [the court] take[s] judicial notice of it."

¶ 23 Defendant did not present any evidence.

¶ 24 B. The Jury's Verdict and the Trial Court's Sentence

¶ 25 Thereafter, the jury found defendant (1) guilty of obstructing justice and (2) not guilty of possession of a controlled substance. The trial court later sentenced defendant to an extended prison term of 5 1/2 years.

¶ 26 This appeal followed.

¶ 27 II. THE TRIAL COURT'S EVIDENTIARY RULING

¶ 28 Defendant argues that (1) the trial court abused its discretion by taking judicial notice and informing the jury, during his trial, that he was out on bond on an unidentified charge in another case; (2) the court erred by providing a misleading, confusing, and unnecessary non-pattern instruction to the jury; and (3) this court should vacate the fines and fees imposed by the circuit clerk. Because we agree with defendant's first argument, we need not consider defendant's remaining claims.

¶ 29 "The admissibility of evidence by the trial court is reviewed for an abuse of discretion." *People v. Klein*, 2015 IL App (3d) 130052, ¶ 66, 40 N.E.3d 720.

¶ 30 Section 31-4(a) of the Criminal Code of 1961, the statutory provision under which defendant was convicted, provides, as follows:

"A person obstructs justice when, with intent to prevent the apprehension or obstruct the prosecution or defense of any person,

he *** knowingly commits any of the following acts:

(a) Destroys, alters, conceals[,] or disguises physical evidence, plants false evidence, furnishes false information[.]" 720 ILCS 5/31-4(a) (West 2010)).

Based the plain language of section 31-4(a) of the Code, the State was required to prove beyond a reasonable doubt that defendant had the requisite intent to obstruct his prosecution when he ingested the plastic Baggie containing an unknown substance.

¶ 31 "State of mind or intent need not be proved by direct evidence, but can be inferred from the proof of surrounding circumstances." *People v. Jackiewicz*, 163 Ill. App. 3d 1062, 1065, 517 N.E.2d 316, 318 (1987); see also *People v. Velez*, 2012 IL App (1st) 101325, ¶ 30, 967 N.E.2d 433 (" 'Criminal intent is a state of mind that is usually inferred from the surrounding circumstances.' "). Inferences are usually drawn, as follows:

"An inference is a conclusion as to the existence of a particular fact reached by considering other facts in the usual course of human reasoning. [Citation.] With respect to an inference, if fact A is established, fact B may be deduced from fact A through reasoning and logic. An inference is thus a deduction the fact finder may in its discretion draw but is not required to draw as a matter of law. [Citation.] An inference may be based upon another inference. [Citations.] Under certain circumstances an inference may be so strong that no other may reasonably be drawn." (Emphases omitted.) Michael H. Graham, *Graham's Handbook of Illinois Evidence* § 302.2, at 101-02 (9th ed. 2009)).

¶ 32 Prior to reaching the merits of defendant's evidentiary claim, we note what is not at issue in this case—that is, the trial court's ruling suppressing any *statements* defendant made after he was placed in handcuffs because the police solicited those statements during an improper custodial interrogation. Because the State did not appeal that portion of the court's ruling, our focus concerns the circumstances surrounding defendant's *act* of ingesting a plastic Baggie containing an unknown substance.

¶ 33 In this case, the evidence the State presented at the August 2013 pretrial hearing showed that in November 2012, police responded to a call of suspected drug activity occurring at a motel room. Upon arriving, officers encountered the strong odor of burnt cannabis emanating from the room, which defendant admitted he had smoked. During the early stages of a voluntary search to determine whether any additional contraband existed, defendant (1) stood up from his seated position; (2) disobeyed an officer's command to remain seated; (3) uncovered a plastic Baggie that was hidden by other objects on the table where he had been seated; and (4) ingested the Baggie and its unknown contents before the officer could react. When asked to open his mouth immediately thereafter, defendant stated, "I don't have anything anymore."

¶ 34 In this context, the trial court determined that defendant's legal status at that time—that is, that defendant was on bail in another case—was probative of his motive for ingesting the Baggie. However, evidence of defendant's legal status was completely unnecessary and unwarranted because defendant's actions showed an overwhelming consciousness of guilt. Indeed, when evaluating defendant's actions in the context in which they occurred, without more, the circumstances suggesting defendant's consciousness of guilt are so compelling that no other inference could reasonably be drawn by the jury, other than defendant knowingly ingested the Baggie because he wanted to deprive the State of the illegal substance contained therein and, by

extension, obstruct his prosecution for possessing that substance. Had the court decided not to take judicial notice that defendant was out on bond in another case, the State's case would have been no less compelling. Simply put, no further evidence was required because no other reasonable inference could have been drawn to explain why defendant swallowed the Baggie. By taking judicial notice that defendant was on bail and so informing the jury, the court prejudiced defendant by (1) informing the jury that defendant was a defendant in another, unrelated criminal case and (2) permitting the jury to speculate as to the exact nature of that other case.

¶ 35 In this regard, we note that after granting the State's motion *in limine*, the trial court attempted to eliminate any unfair prejudice to defendant by deciding not to identify the four serious felony charges defendant faced in case No. 11-CF-960. Instead, the court opted to instruct the jury that the court was taking judicial notice that defendant was out on bond in a pending case and, as a condition of that bond, defendant agreed not to commit any criminal offenses. By balancing whether the probative value of that evidence was substantially outweighed by the danger of unfair prejudice to defendant, the court essentially employed a mere-fact approach that the supreme court has disapproved.

¶ 36 In *People v. Atkinson*, 186 Ill. 2d 450, 459, 713 N.E.2d 532, 536-37 (1999), the supreme court declined to adopt the mere-fact approach, explaining, as follows:

"Under the mere-fact approach, the jury hears direct proof that the accused has been convicted of a felony, the exact nature of which is excluded from the jury. This bare announcement unavoidably invites jury speculation about the nature of the prior crime. There is a potential danger that the jury would speculate that the defendant was previously convicted of a more serious crime. Conse-

quently, the mere-fact approach may result in unfair prejudice to the defendant arising from jury speculation as to the nature of the prior unnamed crime. *** Moreover, the possibility of resulting prejudice to the defendant from revealing the nature of the prior conviction is controlled by the judicial balancing test set forth in the third prong of [*People v. Montgomery*, 47 Ill. 2d 510, 268 N.E.2d 695 (1971)]. Under that test, if prejudice to the defendant substantially outweighs the probative value of admitting the impeachment evidence, the prior conviction must be excluded."

¶ 37 The evidence of defendant's legal status of being on bond in another, unrelated case was irrelevant and prejudicial and should not have been admitted. That the trial court did not tell the jury the nature of the offenses for which defendant was on bond did not make that evidence any less prejudicial or more relevant. Accordingly, because we conclude that the court abused its discretion by admitting this evidence, we reverse defendant's conviction and remand for further proceedings.

¶ 38 III. CONCLUSION

¶ 39 For the foregoing reasons, we reverse defendant's conviction and remand for further proceedings.

¶ 40 Reversed; cause remanded.