2018 IL App (5th) 150474-U

NO. 5-15-0474

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Edwards County.
	)	
v.	)	No. 15-CF-9
	)	
ERNEST HOLLAND III,	)	Honorable
	)	David K. Frankland,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Presiding Justice Barberis and Justice Overstreet concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the defendant's convictions and sentences, following a bench trial in the circuit court of Edwards County, because the defendant was proven guilty of the offense of home invasion beyond a reasonable doubt, and because to the extent that this court assumes, *arguendo*, that there was a discovery violation by the State in this case, the defendant suffered no prejudice thereby and therefore is not entitled to a new trial. The defendant was not denied a meaningful opportunity to decide whether he wanted a bench trial or a jury trial. We correct the circuit court's September 21, 2015, supplemental order to reflect a $75, rather than $100, assessment against the defendant to the Violent Crime Victims Assistance Fund for count IV, which was a misdemeanor conviction for aggravated assault.

¶ 2 The defendant, Ernest Holland III, appeals his convictions and sentences following a bench trial in the circuit court of Edwards County. For the following reasons, we affirm

the defendant's convictions and sentences, and correct the circuit court's September 21, 2015, supplemental order to reflect a $75, rather than $100, assessment against the defendant to the Violent Crime Victims Assistance Fund for count IV, which was a misdemeanor conviction for aggravated assault.

¶ 3 FACTS

¶ 4 On May 6, 2015, the defendant was charged, in a four-count information filed in the circuit court of Edwards County, with the following offenses: (1) home invasion (count I), (2) intimidation (count II), (3) aggravated unlawful restraint (count III), and (4) aggravated assault (count IV). Count I alleged that on the previous day, May 5, 2015, the defendant, *inter alia*, "knowingly, and without authority, entered the dwelling place of A.A." and remained there "until he knew A.A. to be present within that dwelling place and while armed with a dangerous weapon, a knife, threatened the imminent use of force against A.A. in that said defendant threatened to kill A.A." Count II alleged that on the date in question, the defendant "with the intent to cause A.A. to perform a sexual act, communicated to A.A. a threat, in person, to inflict, without lawful authority, physical harm upon A.A." Count III alleged that the defendant "without legal authority and while using a deadly weapon, knowingly detained A.A. in that said defendant refused to allow A.A. to leave her residence." Count IV alleged that the defendant "used a deadly weapon, in that he knowingly pointed a knife at A.A., thereby placing A.A. in reasonable apprehension of receiving a battery."

¶ 5 On July 2, 2015, an amended information was filed which replaced the initial allegation with regard to count II with the allegation that the defendant "with the intent to

cause A.A. to perform an act, the making of a bed, communicated to A.A. a threat, in person, to inflict, without lawful authority, physical harm upon A.A." The substance of the amended information was otherwise identical to the information filed on May 6, 2015. Subsequently, a motion *in limine* was filed by the State, and three motions *in limine* were filed by the defendant. Thereafter, on August 7, 2015, the defendant filed a signed waiver of trial by jury. At a hearing on that same day, the trial judge inquired of the defendant personally, and also inquired of the defendant's trial counsel, to ensure the defendant understood his right to a trial by jury and was making a knowing and voluntary waiver of that right. Thereafter, the trial judge and the parties confirmed the date of August 18, 2015, for the defendant's bench trial and vacated a previously agreed upon hearing date for the defendant's motions *in limine*, which were rendered moot by the waiver of jury trial.

¶ 6 On August 18, 2015, the defendant's bench trial began. After the State mentioned, in its opening statement, that it intended to call Kyle Stewart as one of its witnesses, trial counsel for the defendant objected, stating that although Stewart was on the defendant's witness list, Stewart had "never been disclosed as a witness for the State to me until this morning." When the State in fact called Stewart as a witness, trial counsel for the defendant again objected, stating Stewart had "not been previously listed as a witness for the State. He is listed as a witness for the defense. The State reserves the right and has the right to call all defense witnesses as well. Whether they testify as adverse witnesses will be determined." The trial judge responded, "I will allow him to testify since he's listed on the defense."

¶ 7 Stewart testified, *inter alia*, that late in the evening of May 4, 2015, the defendant, with whom he had been acquainted for three or four years, "kind of just showed up" at Stewart's residence. Stewart testified that the defendant "kind of seemed like he was messed up on something," and told Stewart "he just needed a place to stay for the night because nobody else would let him stay with them." Stewart agreed to let the defendant stay, but asked the defendant to leave after the defendant was rude to other guests and Stewart found the defendant going through Stewart's closet. With regard to A.A., Stewart testified that the defendant said "he wanted to go get his stuff from her house, and she was pissing him off because she wouldn't let him go over there and get his clothes or see his kid or anything, and he was getting mad and basically said, 'I want to kill this bitch.' " On cross-examination, Stewart conceded that he had not spent much time with the defendant in the three or four years he had known him, and that he did not know A.A. well, although he had seen the defendant and A.A. together and knew that they previously lived together.

¶ 8 The next witness to testify was Danielle Neumiller. She testified that she was A.A.'s sister, and that during the early morning hours of May 5, 2015, A.A. texted her that A.A. "was getting threatened" and asked Danielle to call 911, which Danielle did. She testified that she had never received a text message like that from her sister before.

¶ 9 A.A. testified next. She testified that the defendant was her ex-boyfriend, they shared a child together, and she had known him for six years. She testified that her relationship with the defendant was "[a]wful," and that he had "been physical" with her in the past. She testified that, prior to May 5, 2015, the defendant last had been to her

home in Albion in mid-April "to collect his belongings." Her last contact with the defendant had been a few days before May 5, 2015, at which time the defendant "wanted to come over really late to return" A.A.'s house key to her. She told him it was too late and that he could not come over. At approximately 3 a.m. on May 5, 2015, she discovered that the defendant was in her home, when he turned on a light. A.A. testified that she did not invite him to the home and that he did not have her authorization to enter the home. She testified that she had made it clear to him prior to May 5, 2015, that he was not allowed in the home by telling him, after they broke up, "he should stay away from me and my house and my child."

¶ 10 A.A. testified that when the defendant turned on the light and she discovered he was in her home, "he was sitting across the room on the floor" and "appeared to be crying." When A.A. asked the defendant "what he was doing [t]here and what was wrong," the defendant told A.A. he had been kicked out of a friend's house, had nowhere to go, and "hadn't slept in a few days because he was living on the streets and was afraid to close his eyes because he thought someone would get him." She testified, "So I told him he could stay for the night only. He would have to leave in the morning." A.A. testified that the defendant asked why she had not allowed him to "come over at midnight a couple days before" to return the house key, and she replied that she was expecting company at that time, and the defendant then "was acting really agitated" in terms of his appearance and body language. She testified that the defendant told her he was going to make her life "a living hell" and was going to make her kill herself. She testified that she subsequently attempted to go back to sleep. She was awakened when the defendant

elbowed her in the back. She described the elbowing as "hard" and testified that it hurt. She testified that the defendant told her she "was not going to go to sleep" but was "going to watch a movie with him." A.A. testified that she rolled over onto her back "so I wouldn't make him any more angry." As they began to watch the movie, the defendant told A.A. that she "was not watching the movie how [she] was supposed to." He did not respond when she asked him what he meant. She then asked the defendant "what he wanted from me," to which she testified he responded, " 'Nothing, like I said, I'm not a man whore.' " A.A. testified that she said, "Yeah, right," at which point the defendant "punched the wall, jumped out of bed, was being really dramatic and pulled out the knife." When asked how she felt after the elbowing, A.A. testified, "I was scared."

¶ 11 The State then produced People's Exhibit 1, which A.A. authenticated as a photograph of the knife in question. She agreed that the knife was not "a folding knife" and testified that the defendant removed it from a sheath, although she did not "remember if it was in his pocket or on his side." She testified that the defendant was standing at the end of the bed when he unsheathed the knife, and that the defendant "said that he was going to try to kill himself again." A.A. testified the defendant then said, "better yet, I'll just kill you." The defendant also threatened to hurt A.A.'s family with the knife, and said that if anybody came to the door, the defendant would " 'stab first and ask questions later.' " A.A. testified that she responded, "This is my home. No one is going to get stabbed," to which the defendant replied, " 'No. This is my home, and I will stab any mother fucker that comes to the door."

¶ 12 A.A. testified that she "told him that it was not his home, that we were not together, and that he was not going to be living there. I told him he could only stay for the night only." She added that she "told him he should leave." A.A. testified that the defendant refused to leave, so she told him that if he would not leave, she would. She testified that the defendant, still holding the unsheathed knife, said that if she tried to leave, "he would beat the hell out of me." He subsequently asked her to have sex with him, which she refused. The defendant then "put the knife to his neck and he added pressure and pulled it downward." A.A. authenticated two photographs of the defendant which she testified showed the defendant with "a scratch mark with blood on his neck." She testified the scratches and blood resulted from the act she witnessed. She testified that it was at that point that the defendant said he would kill her, and that she was "very scared." She asked if she could go to the bathroom, which the defendant allowed her to do. Once there, she texted her sister asking for help, then placed her phone "on silent" and hid it under some clothes in the bathroom. The defendant, still holding the knife, subsequently "barged into" the bathroom and berated and threatened her. Before returning to the bedroom, the defendant told A.A. she had two minutes to use the bathroom "before he dragged me off of the toilet by my hair." While still in the bathroom, she received a call from "Garcia" and told him she needed help.

¶ 13 A.A. testified that she went back into the bedroom, where the defendant remained, and that he forced her, at knifepoint, to make the bed, while he told her that he was going to kill her, her family, and then himself. She testified that after she finished making the bed, the defendant, still holding the unsheathed knife in a threatening manner, "got closer

to me and told me he was going to make me wish I was dead." A.A. testified that she "pretended" she "was going to get sick" so that she could return to the bathroom. At that point, she heard "Garcia" knocking on the apartment's front door, so she "ran down the stairs and unlocked the door with" the defendant chasing her. She testified the defendant "stopped at the second set of stairs" when he saw "the officer" at the door. She testified that she ran out of the house and met Officer Garcia outside. A.A. was subsequently asked if she had done "in any way *** anything to make [the defendant] think he had authority to enter [her apartment] that evening"; she testified, "No." She further testified that the defendant did not have any belongings at her home on May 5, 2015.

¶ 14 Albion police officer Luis E. Garcia testified that in the early morning hours of May 5, 2015, he was "on standby" when he received a call from dispatch. He subsequently called A.A., who told him she could not talk. He asked her if she needed him to respond to her home, and she replied that she did. Officer Garcia went directly to A.A.'s apartment and knocked on the door. A.A., whom Officer Garcia described as crying and shaking, "ran out the door" and stood behind him. Officer Garcia testified that he spoke with A.A. "for a couple of seconds," then saw the defendant running down the stairs from the apartment's second floor. Officer Garcia testified that the defendant stopped, presumably because he saw the officer. The defendant was not holding a weapon at the time. Officer Garcia testified that the photographs of the defendant with scratches and blood on his neck accurately depicted the condition of the defendant at the time Officer Garcia encountered him. Officer Garcia testified that after he arrested the defendant, he recovered "a nine-inch knife" from the apartment, which was given to him

by A.A. He authenticated People's Exhibit 1 as the knife in question, and the exhibit was then introduced into evidence. He testified that it was a "dagger-style" knife rather than a folding knife.

¶ 15 After the State rested, and during his argument in favor of a directed verdict for the defendant, the defendant's trial counsel renewed his objection to the testimony of Kyle Stewart, stating that Stewart's testimony that the defendant had stated he wanted to kill A.A. "was never disclosed prior to trial." The State responded that it "was just made aware of that statement minutes before this trial began" and contended that because Stewart was listed as a defense witness, the defense had a "duty to know what he's going to say or try to know what he's going to say." The trial judge denied the defendant's motion to strike Stewart's testimony, and denied the motion for a directed verdict. The defense rested without presenting any evidence. Following closing arguments, the trial judge found the defendant guilty of all four counts charged in the amended information. With regard to the home invasion charged in count I, the trial judge specifically found both that the defendant lacked the authority to enter A.A.'s home when he did so, and that the defendant entered A.A.'s home with the intent to commit a crime therein.

¶ 16 On September 18, 2015, a sentencing hearing was held. At the conclusion of the hearing, the trial judge sentenced the defendant to 15 years in the Illinois Department of Corrections on count I, 5 years on count II, 3 years on count III, and 364 days in the county jail on count IV, all to be served concurrently and followed by the applicable, and uncontested on appeal, periods of mandatory supervised release. On September 21, 2015, the trial judge signed and entered a supplemental order that imposed fines, fees, and costs

upon the defendant. Therein, of significance to this appeal, the trial judge ordered the defendant to pay an assessment of $100 to the Violent Crime Victims Assistance Fund for count IV, which was the misdemeanor charge of aggravated assault.

¶ 17 On October 9, 2015, a hearing was held on the defendant's motion to reconsider and for a new trial. Therein, the parties requested permission to provide additional facts with regard to Stewart's testimony at the defendant's bench trial, which was granted. The State's Attorney characterized the morning of the defendant's bench trial as "a hectic morning" and contended that the State "had no idea about this witness, Kyle Stewart, being involved in this case prior to the defense listing him as a witness in discovery." The State's Attorney continued, "If the Court and [defense counsel] recall, Mr. Stewart actually laughed and giggled on the stand when he said the defendant made the statement about, quote, 'killing the bitch.' " The State's Attorney noted that, in his opinion, "looking back on it now, I don't think Mr. Stewart was helpful to the State's case, and again, that's looking back now." The State's Attorney reiterated the fact that Stewart was "the defendant's witness," and that the State's Attorney "anticipated" Stewart might be an adverse witness and accordingly called him as one. The State's Attorney noted that defense counsel had access to all of the State's files, as the two attorneys had "a very good working relationship." With regard to Stewart's statement about what the defendant said on the night of the crimes, the State's Attorney stated, "I learned of that statement moments before we walked in to begin opening statements the morning of this trial," and that "I had no idea that [defense counsel] was unaware of that statement." He said he had spoken to defense counsel, who agreed "there is no allegation of any sort of intentional

hiding of this statement or of this witness" by the State. The State's Attorney also noted that he had an affidavit from his secretary, who was also the "Victim Witness Coordinator," Tracy Beuligmann, which he tendered to the court and in which Beuligmann averred that "approximately 30 to 45 minutes before the bench trial began," she "orally advised [defense counsel] that [the State] was going to call" Stewart as a witness for the State.

¶ 18 In response to the State's additional facts, defense counsel agreed that the facts stated in Beuligmann's affidavit were accurate. He stated that he was surprised to see Stewart at the courthouse on the morning of the trial, because "for other reasons" he had decided not to call Stewart as a witness and had not subpoenaed him. After Beuligmann told him that the State intended to call Stewart, defense counsel again interviewed Stewart. He specifically asked Stewart "what he would testify to" and for Stewart "to relate to [defense counsel] the events of the evening," but Stewart did not disclose the statement the defendant had allegedly made about wanting to kill A.A. Defense counsel stated, "I asked Kyle Stewart questions that should have elicited that answer, but he did not provide me with that answer." Defense counsel agreed that he had complete access to the State's files and the files did not note that Stewart was a witness to any "oral statement made by the defendant," which defense counsel conceded was consistent with the State's Attorney's position that he did not learn of the statement until the morning of the trial. Defense counsel argued that "[n]evertheless, the statement was subject to disclosure," and that once the State learned that Stewart had heard such a statement from the defendant, the State "did have an obligation" to tell defense counsel about the

statement, notwithstanding the fact that the trial was about to begin. Defense counsel posited that had he learned of Stewart's testimony prior to trial, he "would have prepared differently for the case," and "likely would have asked for a continuance of the trial." He added that he believed the statement "was highly prejudicial," and "went completely against the defendant's theory" that the entry into A.A.'s home was not done with any intent to harm A.A. and that accordingly the *mens rea* necessary for a home invasion was not present.

¶ 19 After hearing argument from both parties, the trial judge stated, on the record, that he agreed with the State that there had been no discovery violation, but that even if there had been one, "it would be harmless error as the Court basically gave no credence to the statement." The trial judge agreed with the State that "the evidence was overwhelming just covering the testimony from the time [the defendant] entered the house, and you had the eye witness testimony of a police officer, too, in terms of a good substantial portion of what was going on in that home." Following the hearing, in a written order dated October 9, 2015, the trial judge denied both the motion to reconsider, and the motion for a new trial. This timely appeal followed. Although the defendant initially requested oral argument on appeal, the defendant subsequently withdrew that request. Additional facts will be provided as necessary below.

¶ 20 ANALYSIS

¶ 21 On appeal, the defendant contends (1) he was not proved guilty of home invasion beyond a reasonable doubt, (2) "[a] new trial is necessary because the State's discovery violation precluded an informed and intelligent jury waiver and impeded the preparation

of the defense," and (3) the trial judge's September 21, 2015, supplemental order must be corrected so that it reflects the appropriate assessment of $75 to the Violent Crime Victims Assistance Fund for count IV, the misdemeanor charge of aggravated assault.

¶ 22 With regard to the first issue, the defendant's contention that the State failed to prove, beyond a reasonable doubt, that the defendant was guilty of home invasion, the defendant posits that the facts adduced at trial "do not establish that [the defendant] had a criminal intent when seeking and receiving [A.A.'s] permission to stay the night with her," and that instead, the facts demonstrate that the defendant's "intent at that time was only to find a safe place to stay for the night and that any criminal intent did not form until sometime later because of a [conversation] they had while [lying] in bed together." In support of this argument, the defendant seeks to invoke what has been deemed by courts as the "limited-authority doctrine," a doctrine that, according to the defendant, negates the "unauthorized entry" element of the crime of home invasion in cases where a defendant has been invited or granted access into a dwelling and enters that dwelling with no criminal intent. The defendant posits that his "actions after first arriving in asking for permission to stay, [lying] in bed with [her], and then watching a movie with her are all entirely inconsistent with any intent to kill her."

¶ 23 The State counters that with regard to the only element of home invasion the defendant contests on appeal—the "unauthorized entry" element—the defendant's argument fails because A.A. testified that the defendant did not have permission to enter her home when he did so, which renders inapplicable the "limited-authority doctrine," notwithstanding the fact that A.A. thereafter told the defendant he could spend the night.

In the alternative, the State argues that even if the "limited-authority doctrine" does apply, there was sufficient evidence adduced at trial from which the trial judge could have found that the defendant entered the home with the intent to harm A.A. The State posits that this is true even if Stewart's contested testimony is excluded, and points out that the trial judge in fact stated, on the record, that he gave Stewart's testimony "no credence."

¶ 24 We agree with the State that even if this court were to assume, *arguendo*, that the limited-authority doctrine applies in this case, the defendant's argument still would fail. When a reviewing court in Illinois considers a challenge to the sufficiency of the evidence in a criminal case, the court must determine whether, viewing the evidence adduced at the trial in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the offense charged beyond a reasonable doubt. See, *e.g.*, *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007). We apply this standard in both jury trials and bench trials, and with regard to both direct evidence of guilt and circumstantial evidence of guilt. See *id*. We do not retry the defendant, because we recognize that "[t]he trier of fact is best equipped to judge the credibility of witnesses, and due consideration must be given to the fact that it was the [trier of fact] that saw and heard the witnesses." *Id*. at 114-15. We recognize as well that " 'the trier of fact is not required to disregard inferences which flow normally from the evidence and to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt.' " *Id*. at 117 (quoting *People v. Hall*, 194 Ill. 2d 305, 322 (2000)). Likewise, a reviewing court is not required to search out all possible explanations

consistent with innocence. *Id*. Reversal of a conviction is warranted only "where the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of [the] defendant's guilt." *Id*. at 115.

¶ 25 As the parties to this case agree, under the limited-authority doctrine, for purposes of the home invasion statute, a person who is granted access to a home is not "an authorized entrant if he intends to commit criminal acts therein, because, if such intentions had been communicated to the owner at the time of entry, it would have resulted in the individual's being barred from the premises *ab initio*." *People v. Bush*, 157 Ill. 2d 248, 253-54 (1993). Accordingly, under the doctrine, "the determination of whether an entry is unauthorized depends upon whether the defendant possessed the intent to perform a criminal act therein at the time" of entry to the home. *Id*. at 254. Therefore, if we assume, *arguendo*, that A.A.'s subsequent decision to allow the defendant to spend the night in the home somehow equated with granting him access to the home in the first place—and that accordingly the limited-authority doctrine applies to this case—the question this court must answer is whether sufficient evidence existed that the defendant entered A.A.'s home with the intent to commit a criminal act therein.

¶ 26 We exclude from our analysis—as the trial judge stated that he excluded from his analysis—the testimony of Stewart. Of significance to this appeal, we are therefore left with A.A.'s testimony, described in detail above, that, *inter alia*: (1) her relationship with the defendant was "[a]wful," and that he had "been physical" with her in the past; (2) she had not authorized him to come to her home on the night in question, and in fact had made it clear to him prior to that night that he was not allowed in the home by telling

him, after they broke up, "he should stay away from me and my house and my child";[1] (3) the defendant became visibly agitated after she answered his question about why she had not allowed him to come over a few days before; (4) he became more and more visibly agitated as his stay continued, which left A.A. "scared" and caused her to comply with his demands so she "wouldn't make him any more angry"; (5) he eventually "pulled out" a large knife from a sheath, although she did not "remember if it was in his pocket or on his side"; (6) he proceeded to threaten to kill himself, her, her family, and anyone else who entered the home; and (7) he refused to leave when she asked him to, and also would not allow her to leave.

¶ 27 Although the defendant posits that the evidence adduced at trial proves that he did not become visibly upset until *after* A.A. answered his question about why she had not allowed him to come over a few days before, and therefore proves he had no intent to harm her when he entered the home, we note that it is also plausible that the defendant, who had "been physical" with A.A. before, was already upset and stewing about being denied entry to the home by A.A., who told him, after they broke up, "he should stay away from me and my house and my child," and that the defendant therefore already planned to harm A.A., regardless of how, or even whether, she answered his question about why he could not come over a few days before. Likewise, although the defendant suggests possible innocent explanations for his possession of the large knife—described

[1]We analyze this testimony not with regard to whether the defendant had authorization to enter the home on the night in question, but solely with regard to its probative value as to whether he did so with the intent to commit a criminal act therein. As described below, this relates, for example, to whether he was upset with A.A. for excluding him and therefore entered her home with the criminal intent to punish her for the exclusion.

by Officer Garcia as being nine inches long and dagger-like—again it is also plausible that he brought the knife with him solely because he intended to harm A.A. with it.[2] In other words, it is far from inconceivable that the defendant planned, prior to entering A.A.'s home in the middle of the night without first asking permission to enter, many, if not all, of his subsequent criminal actions there, even if it is possible that he had not yet planned the exact manner in which he would execute them or the exact timing thereof. As noted above, neither the trier of fact nor this court is required to disregard inferences which flow normally from the evidence and to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt. See *Wheeler*, 226 Ill. 2d at 117. Moreover, as also explained above, it is not the province of this court to retry the defendant. *Id*. at 114-15. We conclude that, viewing the evidence adduced at trial in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of home invasion—including that the defendant entered A.A.'s home with criminal intent—beyond a reasonable doubt. *Id*. at 114. Indeed, there was ample evidence from which the trial judge could have concluded, beyond a reasonable doubt, that the defendant entered A.A.'s home with the intent to commit a criminal act therein, and that therefore he was guilty of the offense of home invasion. This is not, by any means, a case "where the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of [the] defendant's guilt." *Id*. at 115.

[2]We agree with the State that although A.A. did not explicitly testify that the defendant brought the knife with him, rather than finding it somewhere in A.A.'s home, there was adequate circumstantial evidence that he did so, such as A.A.'s testimony that the defendant "pulled out" the knife from a sheath in his pocket or on his side.

¶ 28 With regard to the second issue raised on appeal by the defendant, that "[a] new trial is necessary because the State's discovery violation precluded an informed and intelligent jury waiver and impeded the preparation of the defense," this argument is, of course, premised on this court finding that there was in fact a discovery violation. The State, not surprisingly, vigorously contends on appeal, as it did in the trial court, that there was no discovery violation with regard to Stewart's testimony. We conclude, however, that even if this court were to assume, *arguendo*, that a discovery violation occurred with regard to that testimony, the defendant's claim of error would fail. Our standard of review of a defendant's claim that he or she did not validly waive his or her right to a jury trial is *de novo*, because that question is a question of law. See, *e.g.*, *People v. Rincon*, 387 Ill. App. 3d 708, 717 (2008). The purpose of the rules of discovery in a criminal action in Illinois "is to protect the accused against surprise, unfairness, and inadequate preparation." *People v. Heard*, 187 Ill. 2d 36, 63 (1999). Compliance with the rules of discovery is mandatory, but "the failure to comply with these rules does not require reversal absent a showing of prejudice." *Id*. It is the burden of the defendant, not the State, to show prejudice. *Id*. In this case, the defendant cannot meet his burden to show that he was prejudiced by the State's failure to disclose Stewart's testimony. At the posttrial hearing held on October 9, 2015, the trial judge stated, on the record, that to the extent there was a discovery violation, there was no ensuing prejudice, specifically noting "it would be harmless error as the Court basically gave no credence to the statement" that Stewart, in his testimony, attributed to the defendant. Moreover, as the State aptly notes, this court has held that where, as here, a purported discovery violation involves only

evidence that would not have changed the outcome of a defendant's bench trial, and that is therefore not material, the purported discovery violation has not denied that defendant a meaningful opportunity to decide whether the defendant wants a bench trial or a jury trial. *Rincon*, 387 Ill. App. 3d at 725-31.

¶ 29 The third and final issue raised by the defendant in this appeal is that the trial judge's September 21, 2015, supplemental order must be corrected so that it reflects the appropriate assessment of $75 to the Violent Crime Victims Assistance Fund for count IV, the misdemeanor charge of aggravated assault. With regard to this issue, the State concedes, and we agree, that pursuant to statute, an assessment of $100 was permissible only for the felony counts, and therefore the defendant is correct that the order must be corrected as to the count IV misdemeanor charge, to the $75 assessment permissible by statute for a misdemeanor offense. See 725 ILCS 240/10(b)(3) (West 2014). Accordingly, we correct the supplemental order as requested. See, *e.g.*, *People v. Brown*, 2017 IL App (1st) 150146, ¶ 34 (propriety of fine and fee order subject to *de novo* review; pursuant to Illinois Supreme Court Rule 615(b)(1), appellate court may modify fine and fee order without remand to circuit court).

¶ 30 CONCLUSION

¶ 31 For the foregoing reasons, we affirm the defendant's convictions and sentences, and correct the circuit court's September 21, 2015, supplemental order to reflect a $75, rather than $100, assessment against the defendant to the Violent Crime Victims Assistance Fund for count IV, the misdemeanor charge of aggravated assault.

¶ 32 Affirmed; supplemental order corrected.