

2019 IL App (1st) 170990-U

No. 1-17-0990

Order filed June 28, 2019

Fifth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 16 CR 2323
)	
LAWRENCE GREEN,)	Honorable
)	Thomas J. Byrne,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Hall concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for possession of a controlled substance affirmed where his challenge to the trial court's denial of his motion to quash arrest and suppress evidence is forfeited because it was not litigated before the trial court; case remanded to the trial court on the fines and fees issues.

¶ 2 Following a jury trial, defendant Lawrence Green was convicted of possession of a controlled substance and sentenced to 30 months of TASC probation. The court also assessed defendant \$1074 in fines, fees and court costs. On appeal, defendant contends that the trial court

erred when it denied his motion to quash arrest and suppress evidence (“motion to suppress”) because it misapprehended the testimony presented at the suppression hearing. Defendant also argues that his fines and fees order must be amended by vacating a fee and applying presentence monetary credit against several fees that are actually fines. We remand this case to the trial court on the fines and fees issues, and affirm defendant’s conviction and sentence in all other respects.¹

¶ 3 Defendant was charged with one count each of delivery of a controlled substance (720 ILCS 570/401(d) (West 2016)) and possession of a controlled substance with intent to deliver less than one gram of heroin (720 ILCS 570/401(d) (West 2016)). He was also charged with one count each of committing those offenses within 1000 feet of a school (720 ILCS 570/401(d), 407(b)(2) (West 2016)).

¶ 4 Prior to trial, defendant filed a motion to suppress arguing that the police arrested him without a valid arrest or search warrant. He also asserted that “at the time of the search and field interview”, the officers had no reason to believe that he was violating the law, and his conduct could not reasonably be interpreted by the arresting officer as constituting probable cause that he had committed or was about to commit a criminal offense. Consequently, defendant argued that any evidence obtained during, and as the result of, his arrest must be suppressed.

¶ 5 At the hearing on the motion to suppress, defendant testified that about 6:30 p.m. on January 16, 2016, he was riding his bicycle to the store to purchase some items for dinner. Defendant lived in the 7200 block of South Sangamon Street and was going to the store at 72nd

¹ In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

and Halsted Streets. As he rode his bicycle through the alley behind his house, an unmarked Chicago police SUV approached him. Three plainclothes police officers exited the vehicle. One of the officers asked defendant if he had anything on him that he was not supposed to have. Defendant replied “no.” The officer reached into defendant’s “corner” pocket and removed a small plastic bag that contained less than a gram of heroin. The officer handcuffed defendant and placed him in the back of the police vehicle. Defendant denied that any of the officers asked to purchase cigarettes from him or asked him where they could buy “blows.” Nor did any of the officers hand him \$20. Defendant had about \$85 on him, which he earned by doing rehab work with his cousin. Defendant was also the caregiver for his disabled son and received his son’s disability checks.

¶ 6 On cross-examination, defendant testified that the bag the police officer retrieved from his pocket was a small Ziploc bag. Defendant also had cigarettes on him. Defendant acknowledged that he was wearing a black leather jacket, a beige cap, and dark colored jeans.

¶ 7 After the defense rested, the State moved for a directed finding, which was denied. The State presented a stipulation that defendant had a prior conviction for retail theft.

¶ 8 The State called Chicago police officer Shane Jones who testified that about 6:30 p.m. on January 16, he was working undercover with a team of 8 to 12 officers who were attempting to purchase narcotics in the area of 7200 South Sangamon Street. Officer Jones was the purchasing officer. He was driving an undercover police vehicle with his partner, Officer Brandon Smith. As they drove eastbound on 71st Street approaching Sangamon Street, Officer Jones saw defendant. Defendant was wearing a black leather jacket, a tan or beige-colored cap, and dark jeans. Officer Jones identified defendant in court. Officer Jones stopped his vehicle about 15 to 20 feet from

defendant. He asked defendant if he could purchase two cigarettes from him. Defendant walked to the officers' vehicle and sold Officer Jones two cigarettes. Officer Jones asked defendant if he knew anyone in the area who was selling "blows," meaning heroin. Defendant replied that he knew someone around the corner who was. Defendant directed the Officers to drive around the block and motioned towards Sangamon Street.

¶ 9 Officers Jones and Smith drove eastbound to Peoria Street and around the block to head northbound to the 7200 block of Sangamon Street, which took about one minute. When they arrived in that area, they again saw defendant. Officer Jones estimated that they were slightly more than a quarter of a block from the location where they first saw defendant. He handed defendant a \$20 bill in prerecorded police funds. Defendant handed Officer Jones two clear capsules containing a white powder substance which the officer suspected was heroin. Officer Jones drove away heading northbound. Over the radio, Officer Smith notified the other team members and enforcement officers that they had made a successful purchase of suspect heroin. Officer Smith gave the other officers a clothing description and defendant's last known location. Shortly thereafter, the enforcement officers notified Officers Jones and Smith over the radio that they had detained defendant. Officer Jones drove past the alley where defendant was detained and positively identified defendant as the man who sold him suspect heroin in exchange for \$20 in prerecorded police funds. Officer Jones estimated that he identified defendant three or four minutes after purchasing the suspect heroin. Upon returning to the police station, Officer Jones inventoried the two capsules in accordance with police procedures.

¶ 10 On cross-examination, Officer Jones acknowledged that he lost sight of defendant after purchasing the cigarettes. Defendant was on foot; Officer Jones did not recall him riding a

bicycle. As Officer Smith radioed a description and location of defendant to the enforcement officers, Officer Jones could still see defendant in his rearview mirror. Officer Jones thought that the cap defendant wore was a baseball cap. He acknowledged that the sun had set when the offense occurred.

¶ 11 On redirect examination, Officer Jones testified that the person who sold him the cigarettes and narcotics, and whom he thereafter identified, was defendant. Pursuant to the court's question, he testified that he did not use police funds to purchase the cigarettes.

¶ 12 In rebuttal, defendant testified that he was not wearing a baseball cap, but instead, was wearing a wool "winter hat" that he called a "skull hat." It was dark outside and fairly chilly. Defendant maintained that he was riding a bicycle through the alley when he was stopped.

¶ 13 In closing, the State argued that the enforcement officers had probable cause to arrest defendant and "any narcotics recovered from his person would have been incident to that arrest."

¶ 14 Defense counsel argued that defendant was not the person who sold Officer Jones cigarettes and drugs. Defendant was at the scene because he was riding his bike to the store to purchase items for dinner and that the cash in defendant's pocket was money he earned from rehabbing homes and from his son's disability check. He was wearing a wool cap and not a baseball cap. After defendant denied having anything on him, the officers "just started going through his pockets," and found the money and heroin. Counsel argued that the police arrested the wrong person, and that they did not have probable cause to stop defendant and search his pockets.

¶ 15 The trial court denied the motion to suppress. The court stated:

“The officers were in the vicinity, didn’t seem to be in dispute, of the 7200 block of Sangamon. There was a narcotics purchase and this Defendant was identified by the individual that he had bought narcotics as the person who sold him narcotics. That was radioed by Officer Jones’ partner, Smith, that a buy took place and the description was that of the Defendant who stopped in the alley, matching the general description of a beige cap, black leather jacket and dark jeans.

Officer Jones indicated that he drove past the location where Defendant was stopped in the alley with the enforcement team, and he observed the same person he bought the cigarettes from, the same person he had a second encounter and bought two capsules containing heroin, and then identified, to the enforcement team, the Defendant as that same person.

At that juncture, there is probable cause to arrest the Defendant, regardless of whether or not he was the correct person. Based on what they knew at the time, there was probable cause to arrest the defendant. Anything that was recovered from the [d]efendant was pursuant to a lawful arrest that’s supported by the probable cause from the prior purchase from the undercover officer.”

¶ 16 The State proceeded to trial on one count of delivery of a controlled substance and one count of possession of a controlled substance with intent to deliver less than one gram of heroin. The State nol-prossed the two counts that referred to the offenses occurring within 1000 feet of a school.

¶ 17 At trial, Officer Jones testified substantially the same as he did at the suppression hearing, specifying that he first observed defendant standing on the corner of 71st and Sangamon Streets.

Officer Jones identified defendant in court. Officer Jones testified that both of his transactions with defendant, for the cigarettes and heroin, took place through the passenger window of his undercover police vehicle, across Officer Smith, who was in the passenger seat. After defendant was detained, Officers Jones and Smith drove past the alley, slowed down, looked down the alley, and observed the enforcement officers with defendant detained outside of their vehicle. Defendant was detained approximately two houses away from the location where the narcotics transaction occurred.

¶ 18 Officer Smith testified similar to Officer Jones about the events surrounding their interactions with defendant. Officer Smith specified that Officer Daniel Nunez was the enforcement officer, and Officer Armador Ugarte was the surveillance officer. Officer Smith observed defendant standing alone on the corner of 71st and Sangamon Streets wearing a black leather jacket, a beige cap, and dark jeans. Officer Smith identified defendant in court. When Officer Jones asked defendant about purchasing “blows,” defendant pointed south and directed them to drive around the block. It took the officers 30 to 45 seconds to do so. When they arrived in the 7200 block of South Sangamon Street, defendant was standing there alone, wearing the same clothing. Defendant approached the passenger window of the vehicle. Officer Jones reached across him and handed defendant a \$20 bill in prerecorded police funds. Defendant reached inside the vehicle across him and handed Officer Jones two clear capsules containing suspect heroin.

¶ 19 As the officers drove away, Officer Smith radioed their team members that there was a positive narcotics transaction. Officer Smith notified the team of defendant’s last location and described his clothing as a black leather jacket, beige cap and dark jeans. About five minutes

later, the enforcement officers notified Officers Smith and Jones that they had detained someone who matched the description. Officers Smith and Jones returned to the same area where the narcotics transaction occurred, and Officer Jones positively identified defendant as the person who sold him the heroin. Officer Jones asked Officer Smith to notify the enforcement officers over the radio that he had identified defendant, and Smith did so. After Officer Smith radioed that information, the enforcement officers placed defendant in custody and transported him to the police station.

¶ 20 Officer Nunez testified that about 6:30 p.m. on January 16, he was working as an enforcement officer when he was notified over the radio that a positive narcotics transaction had occurred. The radio information described the offender's clothing as a beige hat, a black leather jacket, and dark pants. Officer Nunez observed defendant wearing that clothing and detained him. Officer Nunez identified defendant in court. After defendant was detained, Officer Jones identified defendant over the radio. Officer Nunez recovered a \$20 bill in prerecorded police funds from defendant's left hand; a bag of suspect heroin from the small coin pocket on the right side of defendant's pants; and approximately \$78 from defendant's person.

¶ 21 Officer Ugarte testified that at 6:30 p.m. on January 16, he was working as an assisting officer with the narcotics team that was conducting a narcotics purchase in the 7200 block of South Sangamon Street. Over the radio, he was notified that someone had sold narcotics to Officer Jones in exchange for police funds. Officer Ugarte returned to the police station where Officer Nunez gave him a Ziploc bag containing a white powder substance of suspect heroin. He inventoried that item in accordance with police procedures.

¶ 22 Forensic chemist Francis Manieson testified that the powder inside the two capsules tested positive for 0.558 gram of heroin. The powder inside the small Ziploc bag tested positive for 0.106 gram of heroin.

¶ 23 Defendant testified substantially the same as he did at the suppression hearing. Defendant added that after the officers stopped him on his bicycle in the alley, and he denied being in possession of anything illegal, one of the officers “frisked” him. That officer reached into defendant’s “corner” pocket and removed a “half bag” of heroin. Defendant testified that the heroin was for his personal use. He denied that he was going to sell it. Defendant also had \$80 to \$90 in his pocket. He denied that he had a \$20 bill in his hand when stopped, that he sold cigarettes to Jones, that he delivered two capsules of heroin to Officers Jones or Smith, or telling the Officers to meet him down the street. Defendant acknowledged that he had a prior conviction for retail theft.

¶ 24 In rebuttal, the State presented a copy of defendant’s prior conviction from 2007 for retail theft. The court granted defendant’s request for a jury instruction for the lesser-included offense of simple possession of a controlled substance.

¶ 25 The jury acquitted defendant of delivery of a controlled substance, and found him guilty of the lesser-included offense of simple possession of a controlled substance. In his motion for a new trial, defendant generally asserted, *inter alia*, that the trial court erred in denying the motion to suppress. Defense counsel stood on the written posttrial motion without argument. The State argued that the court did not err when it denied the motion to suppress because there was sufficient evidence of probable cause based on the testimony from the officers that defendant was the person who tendered the narcotics to Officer Jones. The trial court stated that it heard the

evidence and arguments for the motion to suppress, and that its denial of that motion was proper. The court denied defendant's posttrial motion.

¶ 26 The trial court sentenced defendant to 30 months of TASC probation and 30 days in the Cook County Department of Corrections, considered satisfied by the 40 days defendant served on electronic monitoring. The court also assessed fines, fees and court costs totaling \$1074.

¶ 27 On appeal, defendant first contends that the trial court erred when it denied his motion to suppress because at the time of his arrest and search, the enforcement officers lacked probable cause to believe that he was engaged in criminal activity. Defendant argues that the trial court mistakenly believed that the enforcement officers waited until after Officer Jones identified defendant to arrest and search him. According to defendant, the enforcement officers did not testify at the suppression hearing, and therefore there was no evidence that those officers waited until after Officer Jones identified defendant to arrest and search him. Instead, as defendant testified, the police reached into his pocket as soon as they approached him, and that he was arrested before an identification by Officer Jones could have been made. Defendant further asserts that at the time of the arrest, the enforcement officers only knew that defendant matched a generic clothing description of the offender, which was insufficient to establish probable cause for the arrest.

¶ 28 The State responds that defendant is attempting to raise a new theory on appeal that was not raised before the trial court, specifically, that the search was not a valid custodial search incident to an arrest. The State points out that defendant argued below that the police had no reason to believe that he was violating the law based on his conduct, and that he was not the person who sold the narcotics to Officer Jones. The State argues that defendant did not challenge

the timing and validity of the search itself, nor did he claim that the search was invalid because it occurred prior to Officer Jones identifying him. Because defendant did not specifically challenge the validity of the search in his motion to suppress, the record is silent as to the exact sequence of events. The State claims that defendant is using that silence to improperly draw a presumption in his favor and raise this new theory on appeal. The State argues that it never had the opportunity to address or disprove this claim below because it was unaware that the timing of the search was at issue. The State asserts that defendant has therefore waived the new argument he is now raising in this appeal.

¶ 29 In addition, the State argues that defendant has forfeited his argument that the trial court misapprehended the evidence at the suppression hearing because he did not object to the court's finding and did not raise the issue in his posttrial motion. Alternatively, the State argues that the evidence showed that the police had probable cause to arrest defendant, and the court properly inferred that the search occurred incident to the arrest.

¶ 30 In reply, defendant argues that the State has misapprehended his argument. Defendant maintains that the enforcement officers did not have probable cause to arrest him until after he was identified by Officer Jones. He argues, however, that the issue on appeal is whether Officer Nunez was acting pursuant to a valid search incident to an arrest when he reached into defendant's pocket. Defendant asserts that Officer Nunez recovered the heroin from his pocket before Officer Jones identified him, and therefore, the heroin was not recovered pursuant to a valid search incident to an arrest. Defendant argues that his claim is not waived or forfeited because it is fundamentally the same as his argument at the suppression hearing.

¶ 31 Our review of the trial court's ruling on a motion to quash arrest and suppress evidence presents questions of both fact and law. *People v. McCarty*, 223 Ill. 2d 109, 148 (2006). The trial court's factual findings are given great deference and will not be disturbed on review unless they are against the manifest weight of the evidence. *People v. Burns*, 2016 IL 118973, ¶ 15. However, the court's ultimate ruling on the motion is a question of law which we review *de novo*. *Id.* ¶ 16. At a hearing on a motion to quash and suppress, the trial court is responsible for determining the credibility of the witnesses, weighing the evidence, and drawing reasonable inferences therefrom. *People v. Ballard*, 206 Ill. 2d 151, 162 (2002). When reviewing the trial court's ruling on a motion to suppress, we may consider the testimony presented at trial as well as the testimony from the suppression hearing. *People v. Slater*, 228 Ill. 2d 137, 149 (2008).

¶ 32 The fourth amendment of the United States Constitution, which applies to the states through the fourteenth amendment, protects all citizens from unreasonable searches and seizures in their homes, effects and persons. U.S. Const., amend. IV. An arrest secured without a warrant is valid only where it is supported by probable cause. *People v. Grant*, 2013 IL 112734, ¶ 11. Police have probable cause to arrest an individual when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the person has committed a crime. *Id.* Whether probable cause exists depends on the totality of the circumstances at the time of the arrest. *Id.*

¶ 33 In this case, the record reveals that in his written motion to suppress, defendant alleged that the officers had no reason to believe that he was violating the law, and that his conduct could not reasonably be interpreted by the arresting officer as constituting probable cause that he had committed or was about to commit a criminal offense. At the hearing on his motion, defendant

testified and argued that he was not doing anything wrong but was merely riding his bicycle to the store when he was stopped by three officers who exited a police vehicle. Defendant argued that after he denied having anything illegal on him, the officers “just started going through his pockets,” and found the money and heroin. Defendant argued that he was not the person who sold Officer Jones the cigarettes and heroin, and that the police had stopped and arrested the wrong person.

¶ 34 Before the trial court, defendant never challenged the timing of Officer Jones’ identification of him, nor did he challenge the timing of the search itself. Defendant did not object to the trial court’s findings at the hearing, or raise these issues in his posttrial motion. Defendant has raised these claims for the first time in this appeal. This court has previously held that where a defendant fails to raise an allegation in his written motion to suppress and does not raise the issue in his posttrial motion, the issue is waived. See *People v. Williams*, 272 Ill. App. 3d 868, 876 (1995); *People v. Cleesen*, 177 Ill. App. 3d 103, 114 (1988).

¶ 35 Section 114-12 of the Code of Criminal Procedure of 1963, which provides the requirements for motions to suppress evidence, specifically states, in pertinent part:

“The motion shall be in writing and state facts showing wherein the search and seizure were unlawful. The judge shall receive evidence on any issue of fact necessary to determine the motion and the burden of proving that the search and seizure were unlawful shall be on the defendant.” 725 ILCS 5/114-12(b) (West 2016).

In analyzing this section, the Fourth District of this court has adopted the following analysis:

“ ‘A motion to suppress is, in effect, a pleading to the extent that it frames the issues to be determined in a pretrial hearing on the motion. The fundamental role of a

pleading is to give an opposing party notice of the pleader's position concerning the facts and law so that the opposing party can begin to prepare his defense. A pleading thus both defines and limits the areas of consideration at a trial or other evidentiary hearing ***, by enabling the court to determine the relevance of offered evidence.' ” *People v. Ramirez*, 2013 IL App (4th) 121153, ¶ 60 (quoting *State v. Johnson*, 519 P.2d 1053, 1057 (Or. Ct. App. 1974)).

¶ 36 Our supreme court has held that where a defendant raises arguments on appeal that are distinct from the arguments he raised in his motion to suppress before the trial court, the defendant has not adequately preserved his claims for review. *People v. Hughes*, 2015 IL 117242, ¶ 45. In *Hughes*, the defendant, who was charged with and ultimately convicted of first degree murder, filed a motion to suppress claiming that his confession was involuntary. *Id.* at ¶¶ 1-2. Before the trial court, the defendant argued that his statements were involuntary because the police questioned him off camera and without advising him of his *Miranda* rights, and due to physical coercion from handcuffs being kept on him for an excessively long time. *Id.* at ¶ 2. The trial court denied his pretrial motion to suppress, and also denied his posttrial motion where the defendant raised the issue again. *Id.* On appeal, the defendant argued that his confession was involuntary and should have been suppressed for reasons different than what he argued before the trial court, including his age, educational level, sleep and food deprivation, prior substance abuse, deceptive conduct by police, and lack of experience with the criminal justice system. *Id.* at ¶ 25. The State argued that the defendant waived the issue for appeal because he did not present these reasons for suppression to the trial court. *Id.* at ¶ 26. The appellate court, with one justice dissenting, found that the issue was not forfeited because he had raised the issue of

voluntariness in his posttrial motion. The court concluded that the confession should have been suppressed, and reversed and remanded for a new trial. *Id.* at ¶ 27.

¶ 37 On appeal, the supreme court found that the defendant's reasons for suppression in the trial and appellate courts were almost entirely distinct from one another. *Id.* at ¶ 40. The court noted that the defendant presented no evidence or arguments to the trial court for the claims he raised on appeal. *Id.* at ¶ 41. The court therefore found that when the defendant failed to raise his claims in the trial court, he deprived the State of its opportunity to present evidence and arguments challenging those claims. *Id.* at ¶ 46. The court further found that the defendant also deprived the trial court of the opportunity to decide the issue on those bases, and deprived the appellate court of an adequate record to make its determination on review. *Id.* The court concluded that the defendant did not adequately preserve his claims for appeal, and that the trial court did not err when it denied the defendant's motion to suppress. *Id.* at ¶ 47.

¶ 38 Similar to *Hughes*, in this case, defendant has raised issues on appeal that were not argued before the trial court. Defendant claims that the enforcement officers did not have probable cause to arrest him until after Officer Jones identified him. Defendant argues that the trial court mistakenly found that the officers waited until after Officer Jones identified him to arrest and search him. Defendant points out that the enforcement officers did not testify at the suppression hearing, and argues that, consequently, there was no evidence that those officers waited until after Officer Jones identified him to arrest and search him. Relying on his own testimony, defendant argues that Officer Nunez reached into his pocket as soon as he approached defendant. Defendant therefore claims that Officer Nunez recovered the heroin from his pocket

before Officer Jones identified him, and thus, the heroin was not recovered pursuant to a valid search incident to an arrest.

¶ 39 The record shows that defendant did not raise these issues in his written motion to suppress, and he never presented any evidence or argument in support of these specific claims before the trial court. As the State points out, the record is silent as to the precise timing of Officer Jones' identification of defendant in relation to the arrest and search. It appears that the trial court found that defendant was detained in the alley by the enforcement officers, identified by Officer Jones, then placed under arrest, and the heroin was thereafter recovered from defendant's pocket during a search incident to the arrest. The only evidence in support of defendant's claim that he was searched and arrested prior to Officer Jones' identification is his own testimony, which it appears that the trial court found not credible. *Ballard*, 206 Ill. 2d at 162.

¶ 40 Because these claims were not litigated before the trial court, the State never had the opportunity to present additional evidence or arguments to clearly establish the sequence of events. Had the issues been raised below, the State could have called Officer Nunez to testify at the suppression hearing to show whether he had detained defendant based on the description and location, then waited for Officer Jones to identify defendant before placing him under arrest and searching his pocket.

¶ 41 Moreover, the record shows that the trial court inferred the sequence of events based on the evidence presented. *Ballard*, 206 Ill. 2d at 162. Because defendant never challenged the trial court's findings, it did not have an opportunity to consider defendant's arguments as to the sequence of events, including any disputed factual issues. In addition, because defendant failed

to raise his sequence claims below, this court is deprived of an adequate record to reach the merits on appeal.

¶ 42 For these reasons, we conclude that defendant did not preserve these claims for appeal. Accordingly, we find that the trial court's denial of defendant's motion to suppress was proper.

¶ 43 Defendant next contends that his fines and fees order should be corrected in several respects. Specifically, he contends that the total summation of his assessments should be corrected from \$1074 to \$1069. He also argues that the \$5 electronic citation fee (705 ILCS 105/27.3e (West 2016)) was erroneously assessed and should be vacated. Defendant further argues that monetary credit for the days he spent in presentencing custody should be applied against the \$15 state police operations fee (705 ILCS 105/27.3a(1.5) (West 2016)), the \$50 court system fee (55 ILCS 5/5-1101(c) (West 2016)), and the \$25 court services (sheriff) fee (55 ILCS 5/5-1103 (West 2016)). In addition, defendant asserts that the trial court should have waived nearly all, if not all, of his assessments due to his inability to pay.

¶ 44 We note that in his opening brief, defendant also contended that he was entitled to apply presentence monetary credit against five additional assessments that are labeled as fees, but he claimed were fines. Those assessments included the \$190 felony complaint filed fee (705 ILCS 105/27.2a(w)(1)(A) (West 2016)), the \$25 automation fee (705 ILCS 105/27.3a(1) (West 2016)), the \$25 document storage fee (705 ILCS 105/27.3c(a) (West 2016)), the \$2 State's Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2016)) and the \$2 Public Defender records automation fee (55 ILCS 5/3-4012 (West 2016)). In his reply brief, however, defendant conceded his challenges to these assessments, acknowledging that our supreme court recently determined

that all five of these assessments are fees, not fines, and therefore, are not subject to offset by the presentence monetary credit. See *People v. Clark*, 2018 IL 122495.

¶ 45 On February 26, 2019, while this appeal was pending, our supreme court adopted new Illinois Supreme Court Rule 472, which sets forth the procedure in criminal cases for correcting sentencing errors in, as relevant here, the “imposition or calculation of fines, fees, and assessments or costs” and “application of *per diem* credit against fines.” Ill. S. Ct. R. 472 (a)(1), (2) (eff. Mar. 1, 2019). On May 17, 2019, Rule 472 was amended to provide that “[i]n all criminal cases pending on appeal as of March 1, 2019, or appeals filed thereafter in which a party has attempted to raise sentencing errors covered by this rule for the first time on appeal, the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule.” Ill. S. Ct. R. 472(e) (eff. May 17, 2019). “No appeal may be taken” on the ground of any of the sentencing errors enumerated in the rule unless that alleged error “has first been raised in the circuit court.” Ill. S. Ct. R. 472(c) (eff. May 17, 2019). Therefore, pursuant to Rule 472, we “remand to the circuit court to allow [defendant] to file a motion pursuant to this rule,” raising the alleged errors regarding the imposition of fees and the application of *per diem* credit against fines. Ill. S. Ct. R. 472(e) (eff. May 17, 2019).

¶ 46 Affirmed; remanded as to fines, fees and costs.