2019 IL App (3d) 160190-U

Order filed June 13, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois.
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-16-0190 Circuit No. 14-CF-260
CHRIS C. SANDERS,	)	
Defendant-Appellant.	)	Honorable Kathy S. Bradshaw-Elliott, Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The cumulative effect of multiple errors did not rise to the level of second-prong plain error. Remand is required so that defendant may raise his claims of error in the imposition of monetary assessments in the circuit court.

¶ 2 Defendant, Chris C. Sanders, appeals his convictions for aggravated criminal sexual assault, criminal sexual assault, and aggravated battery. Defendant argues that the cumulative effect of multiple errors deprived him of a fair trial such that reversal is required under the second prong of the plain-error doctrine. Defendant also argues that his counsel was ineffective

for failing to object to various monetary assessments. We affirm and remand the matter so that defendant may raise his claims of error regarding his monetary assessments in a motion pursuant to Illinois Supreme Court Rule 472 (eff. May 17, 2019).

¶ 3 I. BACKGROUND

¶ 4 A grand jury charged defendant with aggravated criminal sexual assault (720 ILCS 5/11-1.30(a)(3) (West 2014)), two counts of criminal sexual assault (*id.* § 11-1.20(a)(1)), and aggravated battery (*id.* § 12-3.05(a)(5)) for an incident that occurred with a single victim, E.C.

¶ 5 The matter proceeded to a jury trial. A 911 dispatcher testified that on June 25, 2014, she received a call from an open line at approximately 7:38 a.m. The dispatcher could hear crying and a male voice in the background, but no one spoke to the dispatcher. The dispatcher was able to see that the call originated from the Crestlane apartment complex using global positioning system (GPS) technology. The court admitted a recording of the 911 call into evidence, and the State played it for the jury. In the recording, no one spoke to the dispatcher, but a male voice and a woman crying could be heard.

¶ 6 Another 911 dispatcher testified that she received a call from E.C. on June 25, 2014, between 7 and 8:30 a.m. The court admitted a recording of the 911 call into evidence, and the State played it for the jury. In the recording, E.C. said that she was in defendant's apartment, and she had locked herself in a bathroom. E.C. stated that defendant had kidnapped her and forced her to have sexual intercourse with him. E.C. also said defendant had attacked defendant's mother, who had been trying to help E.C. Defendant's mother ran out of the apartment, and defendant followed her. E.C. said that defendant had a gun, and he tried to kill his mother and E.C. Throughout the phone call, E.C. was crying and breathing heavily.

¶ 7 Dora Bradley, defendant's mother, testified that defendant did not live with Bradley, but he occasionally stayed at her apartment. Sometimes defendant stayed with his girlfriend or at a motel. Defendant did not have keys to Bradley's apartment. Bradley testified that she let defendant into her apartment at approximately 2 a.m. on June 25, 2014. Defendant was alone. Bradley did not say anything to defendant when she let him in, and she went back to bed. The prosecutor asked Bradley if she had told defendant when he arrived that he either had to stay or leave. Bradley said she did not.

¶ 8 At some point after 7 a.m., Bradley heard noises in her apartment. She opened the door to the bedroom where defendant slept when he stayed there. Bradley saw a woman sitting "balled up" in the corner of the bed whining. The woman was not wearing any clothing. Defendant was on the side of the bed wearing his underwear. Bradley asked who the woman was and what was going on. The woman did not say anything to Bradley. Bradley told the woman to come to her room, and Bradley put a robe on the woman. Bradley then took the woman to the bathroom. Defendant was standing in the hallway. He said it was not the first time that he and the woman had sexual intercourse. Bradley and the woman then walked into the hallway. Bradley said that she "ended up getting pushed up side the wall because we all three was in there and the hallway *** is very narrow."

¶ 9 Defendant removed Bradley's phone from a table that morning, but he did not grab it out of her hand. Bradley said that she and defendant tripped over each other and she fell onto a recliner, but defendant did not push her. Defendant did not threaten Bradley. Bradley left the apartment wearing her pajamas, went to the office of her apartment complex, and called the police. Defendant did not follow. Defendant stayed in the apartment and let the woman use Bradley's phone. Bradley went back upstairs and saw a police officer talking to the woman.

¶ 10 The prosecutor asked Bradley if she had previously told a detective that she checked the room where defendant and the woman were located because she heard crying. Bradley repeated that the woman was whining. The prosecutor asked Bradley if she believed that whining and crying were the same. Bradley replied that the woman "wasn't boo-hooing. She was just whinning [*sic*]." The prosecutor asked Bradley what impression Bradley got when she saw the woman balled up crying. Bradley replied, "You got caught." Bradley stated that the woman had her head down and appeared to be embarrassed. Bradley did not recall telling a detective that she believed the woman was afraid or that the woman said defendant was going to kill her.

¶ 11 Bradley did not recall defendant telling her that he did what he wanted. Bradley did not remember telling a detective that defendant grabbed her phone. Bradley said that she did not recall telling a detective that defendant said he "might as well go to jail for a good goddamn reason, knocking both of you bitches out." Bradley also did not recall telling a detective that defendant followed her when she ran out of the apartment.

¶ 12 Police Officer David Skelly testified that he interviewed Bradley at the police station on the morning of the incident. The interview was videotaped. Over defendant's objection, the court admitted a video recording containing clips of the interview into evidence, and the State played it for the jury. In the clips, Bradley said when she let defendant into her apartment, he left and returned several times. Bradley told defendant to make up his mind as to whether he was staying. Defendant said he was staying. Bradley said she did not see anyone standing behind defendant when she let him in. She said he must have let the woman in the last time he went out.

¶ 13 In another clip, Bradley said she found defendant in bed with a woman. They were both naked. The woman was balled up in a corner crying, and defendant was lying on the side of the bed. Bradley asked who the woman was and "what the fuck [was] going on." Defendant said,

"What the fuck you think [is] going on?" Bradley said the woman was afraid and said defendant threatened to kill her.

¶ 14 In another clip, Bradley said that defendant told her, "I do the fuck I want to do. Fuck you, bitch." Bradley said that defendant threatened to punch her. Bradley said defendant grabbed her by her arm and pushed her up against the wall in the hallway. Defendant grabbed Bradley's phone. Defendant said, "I know you're going to call the police, so I might as well go to jail for a good goddamn reason, for knocking both of you bitches out." Bradley asked defendant to return her phone, and defendant said, "I ain't giving you a motherfucking thing." Defendant then pushed Bradley into a recliner.

¶ 15 Police Officer Lonnie Sturkey testified that he was dispatched to the Crestlane apartment complex at approximately 8:39 a.m. on June 25, 2014, regarding a report that a woman was being held by a man with a gun. Sturkey saw defendant walking outside the apartment complex, and he fit the description of the suspect. Sturkey made contact with defendant and searched him. Sturkey found a cell phone, which defendant stated belonged to Bradley.

¶ 16 Police Officer Melvina Calvin testified that she was dispatched to Bradley's apartment at approximately 8 a.m. to respond to a complaint of a sexual assault. Calvin knocked on the door of the apartment, and E.C. eventually opened the door. E.C. was still on the phone with a 911 dispatcher when Calvin arrived. E.C. was crying, shaking, and hysterical. E.C. had a piece of clothing wrapped around her, but Calvin could tell that she was naked.

¶ 17 E.C. told Calvin that she had driven defendant to the apartment. When they arrived, E.C. used the restroom and had a drink of water. She told defendant that she was ready to leave, and defendant said that she was going to stay. Defendant grabbed E.C. and walked her to a bedroom. He placed her on the bed, threatened to kill her, put a pillow over her head, and asked if she

wanted to die. E.C. said she tried to scream but his hand was over her mouth. Defendant removed E.C.'s clothing, placed his penis in her vagina, and made her perform oral sex on him. Defendant told E.C. that he would break her rib if she bit him.

¶ 18 Emergency response workers transported E.C. to the hospital. Calvin called for a detective to be dispatched to the scene. When the detective arrived, Calvin and the detective located a cell phone behind the bed where E.C. said the assault occurred. They determined that a prior 911 call had come from that cell phone.

¶ 19 Jessica McManimen testified that she was a nurse who worked in a hospital emergency room, and she examined E.C. on the day of the incident. E.C. came to the emergency room by ambulance wearing only a robe. E.C. was very tearful and emotional. McManimen completed a sexual assault kit on E.C. McManimen testified that E.C. had some fresh bruising and areas of redness on her hands and legs. McManimen identified photographs she had taken of E.C.'s injuries. During an internal examination of E.C., McManimen observed abrasions or wounds in two areas in E.C.'s vagina. In McManimen's experience, force or rough sexual intercourse caused the type of tears or abrasions she saw on E.C.

¶ 20 E.C. told McManimen that she gave a man a ride home, and she went inside his home to use the bathroom and get a drink of water. The man did not allow her to leave and tried to remove her clothing. The man threatened her and forced her to have sexual intercourse. At one point, the man put his hand over her mouth and nose so that she could not breathe. McManimen believed that E.C. told her that both oral sex and vaginal penetration occurred.

¶ 21 E.C. testified that at the time of the incident, she had known defendant for a couple years. E.C. and defendant were friends, but they never had sexual intercourse or had a romantic relationship. At approximately 12 to 1 a.m. on June 25, 2014, E.C. drove defendant and one of

his friends to a liquor store. E.C. then drove defendant to his friend's house. Defendant poured E.C. a cup of liquor. E.C. told defendant she did not really want it, but he set it in front of her anyway. E.C. took a sip of the liquor.

¶ 22 E.C. left the house around 2 a.m. because she had made plans to go see another man. E.C. stated that she wanted to have a relationship with that man. E.C. went to the man's residence and had sexual intercourse with him. The sexual intercourse was consensual and not rough. E.C. stayed at the man's residence for three to four hours. Defendant sent E.C. several text messages asking her to return to his friend's house. E.C. did not respond at first, but she eventually agreed to give defendant a ride home. E.C. picked defendant up and drove him to the Crestlane apartment complex.

¶ 23 They arrived at the apartment complex at around 6 or 7 a.m. E.C. entered the apartment with defendant to get a drink of water. Defendant let E.C. into the apartment. E.C. believed defendant had a key and that it was his apartment. Defendant gave E.C. a bottle of water, and they went to his bedroom. E.C. told defendant that she was going to go home and freshen up because she was driving her friends to Chicago that day. Defendant asked E.C. not to leave because he wanted to spend the day with her. E.C. said no. Defendant grabbed E.C.'s clothing and rubbed her breasts. Defendant asked E.C. to remove her shorts, and she said no. Defendant tried to remove E.C.'s shorts several times, but she pulled them back up. E.C. tried to leave, and defendant pushed her onto the bed. This occurred three or four times. E.C. told defendant several times that she wanted to leave. Defendant told E.C. that she was staying with him.

¶ 24 E. C. testified that defendant put his hand around her neck. He held her down on the bed, removed her shorts, and forcefully had sexual intercourse with her. E.C. was terrified. She started crying and panicking. Defendant threatened her several times. Defendant told E.C. to be

quiet or he would beat her head in or "stick *** a broomstick up [her] butt." Defendant also said that if E.C. was not quiet, he would retrieve his gun from his closet and kill her. Defendant placed a pillow over E.C.'s face and tried to smother her. E.C. could not breathe. Defendant also made E.C. perform oral sex. Defendant told E.C. that he would beat her head in if she tried to bite him. E.C. tried to make as much noise as she could. She did not yell the entire time, but she whined and cried. At one point, she put a cell phone under the sheet and dialed 911. She heard the 911 dispatcher talking, but she turned the volume down so defendant would not hear. She left the line open hoping that someone would come.

¶ 25 Bradley then walked into the room, and defendant stopped. E.C. was balled up against the wall crying. Bradley looked shocked and asked what was going on. E.C. ran over to Bradley and asked Bradley for help. Bradley took E.C. into her bedroom and covered E.C. with her robe. Bradley then took E.C. to the bathroom. Defendant walked over to them and told Bradley not to call the police. Defendant said that if Bradley called the police, he was going to give them a real reason to take him to jail. Defendant was loud and angry. Defendant and Bradley argued in the doorway of the bathroom for a minute. Defendant acted as though he was going to get something from his room, and Bradley ran out of the apartment. Defendant followed in the same direction. E.C. exited the bathroom and saw that neither Bradley nor defendant were in the apartment. She locked the front door, grabbed a phone, locked herself in the bathroom, and called 911. A police officer arrived at the apartment. E.C. talked to the officer and then went to the hospital.

¶ 26 E.C. was not aware that she had scratch marks on her legs until a nurse at the hospital pointed them out. E.C. did not have those injuries before the incident. E.C. acknowledged that she had sent text messages the night before and the morning of the incident saying that she was

drinking, smoking marijuana, and had taken a pain pill. E.C. said that she probably failed to tell the nurse about the substances she had used because she was panicking as a result of the assault.

¶ 27 E.C. testified that she rented a hotel room in June 2014 prior to the incident, but she did not remember which day. Defendant and one of his friends came to her room. The three of them sat in the room and talked. Defendant's friend left, and defendant stayed in the room with E.C. for a few minutes. E.C. did not have sexual intercourse with defendant. Defendant eventually left the room.

¶ 28 L.W. testified that defendant was formerly her friend. She was not in a dating relationship with defendant, but they had consensual sexual intercourse twice in early October 2013. In late October 2013, L.W. went to a nightclub and a house party with defendant. When the party was over, defendant went to another town with some other individuals. L.W. chose not to go, but she told defendant to call her when he returned.

¶ 29 L.W. went home, watched a movie, and drank liquor. Defendant called her approximately 10 to 12 times, but she did not answer because she wanted to be alone. L.W. heard knocking on her front door and her bedroom window. L.W. was lying in bed and did not get up. Defendant walked into L.W.'s bedroom and said he came in through the window. Defendant and L.W. began watching a movie. Defendant asked L.W. to have sexual intercourse with him, and she said no. Defendant became upset, and L.W. told him to leave. Defendant said he could not go home because he would not be able to get inside.

¶ 30 Defendant pushed L.W. on the bed and started kissing her. Defendant held L.W.'s arms above her head. L.W. got away from defendant and told him to leave. L.W. grabbed her phone and threatened to call the police. Defendant took L.W.'s phone, sat on the bed, smoked a cigarette, and drank some liquor. Defendant told L.W. he was going to hold her hostage and that

she was not going anywhere. Defendant pushed L.W. back onto the bed. He pulled up her nightgown, removed her underwear, and put his penis in her vagina. Initially, L.W. tried to break free. After awhile, she just lay there because she did not believe she could escape. L.W. started to cry. Eventually, defendant stopped and gave L.W. her phone.

¶ 31 L.W. called 911 while defendant was still at her house getting dressed. The court admitted an audio recording of the 911 call into evidence, and the State played it for the jury. In the recording, L.W. said she needed a police officer to come to her house because defendant sexually assaulted her and refused to leave her house. Toward the end of the call, L.W. began crying. L.W. testified that she went to the hospital that night and talked to the police about the incident. L.W. denied that she told defendant to stop seeing other women or she would have him locked up.

¶ 32 Detective Jennifer Schoon testified that she took a statement from L.W. Schoon stated L.W. was upset and cried when she discussed the incident. L.W. showed Schoon her cell phone, which indicated that defendant had called her 14 times between 3:19 and 3:36 a.m. on the morning of the incident. Schoon reviewed a written report stating that defendant called the police station the day of the incident and asked if the police were looking for him in connection with a possible sexual assault. Schoon later talked to defendant. Defense counsel asked Schoon if she arrested defendant as a result of her conversation with him. The State objected on relevance grounds. The parties held a sidebar discussion with the court off the record, and the court sustained the objection.

¶ 33 The State rested.

¶ 34 Antonio Thomas testified as a defense witness. Thomas stated that defendant had been his friend since high school. Thomas testified that in June 2014, defendant asked Thomas to

drive him to a hotel at approximately 1 a.m. Thomas drove defendant to the hotel, and they both entered a room. E.C. was in the room. Thomas stayed in the room for approximately 15 to 20 minutes and then left. Approximately one hour later, Thomas returned to the hotel and picked defendant up. Defense counsel asked Thomas if he saw anything that "gave [him] an indication of why [defendant] was going" to the hotel. Thomas replied that he had seen a "Facebook inbox" that indicated why defendant was going to the hotel. The State objected to Thomas testifying to the contents of the "Facebook inbox" on the basis that it constituted hearsay. The court sustained the objection.

¶ 35 Defendant testified that he went to L.W.'s house one night in late October 2013. Defendant said he tried to call L.W. before he came over, but she did not answer her phone. Defendant knocked on the door to L.W.'s house, and L.W. let him in. They had sexual intercourse. L.W. never told him to stop or that she did not want to have sexual intercourse. Afterwards, L.W. told defendant that if he did not stop seeing other women, she would get him "locked up." Defendant was seeing two other women at that time. Defendant told L.W. she was crazy, and L.W. called the police. Defendant left L.W.'s house and returned home. Defendant called the police and asked if they were looking for him. Defendant told the police his side of the story. The police told defendant they were not looking for him.

¶ 36 Defendant testified that he met E.C. in 2010 and they became friends in the summer of 2014. In the early morning hours of June 19, 2014, defendant met E.C. at a hotel after she sent him a "Facebook text." Thomas accompanied defendant to E.C.'s hotel room. Thomas left, and defendant had sexual intercourse with E.C. Thomas then picked defendant up.

¶ 37 Defendant testified that he went to a park and drank alcoholic beverages with E.C. in the afternoon on June 24, 2014. Defendant went to Walmart with E.C. that night. She then dropped

defendant off at his friend's residence. Defendant called E.C. at approximately 1:35 or 1:40 a.m. and asked her to drive him to the liquor store, which she did. E.C. then drove defendant back to his friend's residence. Defendant poured E.C. a cup of liquor, and she took a sip. E.C. left around 2:30 or 2:40 a.m.

¶ 38 E.C. picked defendant up at his friend's residence at approximately 6 a.m., and she drove him to Bradley's apartment. She asked defendant for water and accompanied defendant to the apartment door. Bradley opened the door for defendant. Bradley did not see E.C. because E.C. was standing behind defendant. Defendant and E.C. entered the apartment, and defendant gave E.C. a bottle of water. Defendant thought E.C. would leave, and he walked into his bedroom. He turned around and saw E.C. behind him. Defendant and E.C. talked and drank liquor for a few minutes. They started having sexual intercourse, and E.C. asked defendant if he would pay her. This surprised defendant because he had not paid E.C. in the past. Defendant told E.C. that he would not pay. E.C. then became very angry. She went up to the head of the bed and started whining. Bradley then entered the room, and E.C. started whining louder.

¶ 39 Defendant and Bradley began yelling at each other. Defendant believed Bradley would call the police because that is what she usually did when "any type of argument [broke] out." Defendant told Bradley not to call the police and attempted to explain to her what had happened. Defendant stated that he grabbed Bradley's phone at one point because she was getting ready to call the police. Defendant stuck his arm out to prevent her from walking forward, and Bradley fell into a chair. Bradley left the apartment, and defendant followed her. A police officer arrested defendant outside the apartment building.

¶ 40 Defendant stated that he did not force E.C. to have sexual intercourse, remove her clothes against her will, smother her with a pillow, put his hands around her neck, or cover her mouth

and nose. Defendant said he did not force E.C. to perform oral sex on him or threaten to kill her with a gun. E.C. never yelled or told defendant to stop. E.C. did not push defendant, shove him, or try to get away from him.

¶ 41 Defendant testified that he talked to a police officer about the incident the day it occurred. Defendant did not tell the officer that E.C. had asked him for money while they had sexual intercourse. Defendant said that he might have told the officer that he also had sexual intercourse with E.C. in a car on the morning of the incident, but defendant did not remember.

¶ 42 Skelly again testified as a rebuttal witness for the State. Skelly testified that he met with defendant at approximately 10:03 a.m. on the day of the incident. Skelly audiotaped and videotaped the interview. Skelly stated that defendant did not tell him at any point during the interview that the reason E.C. was upset was because she wanted money from him. The State then played several clips from Skelly's videotaped interview with defendant. In the video clips, defendant said E.C. was angry with him because he lied to her and told her that it was his apartment when it was really Bradley's apartment.

¶ 43 The jury found defendant guilty on all four counts. The court sentenced defendant to six years' imprisonment for aggravated criminal sexual assault, two years' imprisonment for aggravated battery, and four years' imprisonment for one count of criminal sexual assault. The court ordered that all three sentences be served consecutively. The court found that the remaining count of criminal sexual assault merged with the charge of aggravated criminal sexual assault.

¶ 44 The court also ordered that defendant pay various monetary assessments, including: (1) four circuit clerk fees in the amount of $100, for a total of $400; (2) four State's attorney felony conviction fees in the amount of $30, for a total of $120; and (3) three sexual assault fines in the amount of $200, for a total of $600.

¶ 45 II. ANALYSIS

¶ 46 A. Cumulative Error

¶ 47 Defendant argues that the cumulative effect of multiple errors denied him of a fair trial. Defendant argues that reversal of his convictions and a new trial is necessary to preserve the integrity of the judicial process regardless of the strength of the evidence of his guilt.

¶ 48 1. Forfeiture

¶ 49 Initially, we address the State's argument that some of the alleged errors raised by defendant—including improper admonitions during jury selection, improper remarks during opening statements, and certain improper remarks during closing argument—were forfeited because defendant failed to raise them in the circuit court. Defendant contends that it was unnecessary for him to preserve each individual error because his claim is only that the cumulative effect of the errors deprived him of a fair trial. In his reply brief, defendant contends that his cumulative error argument is cognizable under the second prong of the plain-error doctrine.

¶ 50 The fact that defendant requested plain error review for the first time in his reply brief does not preclude us from considering his claim under the plain-error doctrine. Our supreme court has held that a defendant's failure to raise a plain error argument in his or her opening brief does not preclude a reviewing court from considering a plain error argument raised in his or her reply brief. *People v. Williams*, 193 Ill. 2d 306, 347 (2000); *People v. Ramsey*, 239 Ill. 2d 342, 412 (2010).

¶ 51 We reject the State's argument that *Williams* stands for the proposition that a defendant may raise the issue of plain error for the first time in a reply brief only if the State fails to argue forfeiture in its appellee's brief. In *Williams*, the court stated that it would consider the

defendant's plain error argument even though the defendant raised it for the first time in his reply brief. *Williams,* 193 Ill. 2d at 347. The court reasoned:

> "The rules of waiver are applicable to the State as well as the defendant in criminal proceedings, and the State may waive an argument that the defendant waived an issue by failing to argue waiver in a timely manner. [Citations.] Under these principles, in order to obtain review of an argument that a defendant waived an issue for review, the State must raise this argument in its appellee's brief. [Citation.] Accordingly, we believe it would be unfair to require a defendant to assert plain error in his or her opening brief." *Id.* at 347-48.

The State interprets the above language to mean that a defendant may only raise plain error in a reply brief where the State fails to assert forfeiture in its appellee's brief.

¶ 52 The State's interpretation is incorrect. The *Williams* court was expressing that because the State must assert a claim of forfeiture in its appellee's brief (or forfeit the issue of forfeiture), it would be unfair not to allow a defendant to respond with a plain error argument in the reply brief. Indeed, under the principles set forth in *Williams*, it would be illogical only to allow a defendant to raise plain error in a reply brief if it had not been raised in the State's brief. If the State had forfeited the issue of forfeiture by failing to include it in its brief, there would be no need for a defendant to argue plain error in order to avoid forfeiture. We also note that in *People v. Thomas*, 178 Ill. 2d 215, 234-35 (1997), and *Ramsey*, 239 Ill. 2d at 411-12, our supreme court considered plain error arguments raised in reply briefs where the State had raised the issue of forfeiture.

¶ 53 2. Substantive Cumulative Error Claim

¶ 54 We now turn to defendant's substantive argument that the cumulative effect of multiple errors deprived him of his right to a fair trial pursuant to the second prong of the plain-error doctrine.

¶ 55 Initially, we believe that it is improper to include forfeited errors which individually do not rise to the level of plain error in a cumulative error claim. Rather, we believe that only preserved errors and errors that individually constitute plain error are properly considered in a cumulative error argument.

¶ 56 We note that in *People v. Hall*, 194 Ill. 2d 305, 351 (2000) and *People v. Caffey*, 205 Ill. 2d 52, 118 (2001), our supreme court did not consider forfeited errors that did not individually rise to the level of plain error when conducting their cumulative error analyses beyond noting that they did not individually constitute plain error. In *Hall* and *Caffey*, the defendants raised multiple claims of error, some of which were forfeited. *Hall*, 194 Ill. 2d at 329-50; *Caffey*, 205 Ill. 2d at 88-118. The defendants argued that each alleged error constituted an individual basis for reversal and, alternatively, that the cumulative effect of all the errors warranted reversal. *Hall*, 194 Ill. 2d at 329-50; *Caffey*, 205 Ill. 2d at 88-118. The *Hall* and *Caffey* courts considered each error claimed by the defendants, including forfeited errors, when analyzing whether any individual error constituted basis for reversal. *Hall*, 194 Ill. 2d at 329-50; *Caffey*, 205 Ill. 2d at 88-118. The courts found that none of the forfeited errors constituted plain error, and, consequently, did not individually warrant reversal. *Hall*, 194 Ill. 2d at 336, 339-40, 345-49; *Caffey*, 205 Ill. 2d at 104, 112. Then, when addressing the defendants' cumulative error arguments, the *Hall* and *Caffey* courts dismissively noted that none of the unpreserved errors rose to the level of plain error. *Hall*, 194 Ill. 2d at 351; *Caffey*, 205 Ill. 2d at 118. The *Hall* and

Caffey courts did not consider whether the cumulative effect of the forfeited errors warranted reversal despite the fact that no individual forfeited error rose to the level of plain error.

¶ 57 We also find the dissent in *People v. Sullivan*, 48 Ill. App. 3d 787, 794 (1977) (Mills, J. dissenting) to be persuasive. The dissenting justice in that case opined that it was improper to review a cumulative error claim involving three unpreserved errors under the plain-error doctrine. *Id.* The dissenting justice reasoned: "I am at a loss to comprehend how such alleged errors, standing alone being acceptable, and not found objectionable at trial, and not preserved by post-trial motions, can now—for the first time in the judicial process—be declared so horrendous and shocking as to require reversal." *Id.*

¶ 58 We acknowledge that the majority in *Sullivan* found that it was proper to address a cumulative error claim involving unpreserved errors under the plain-error doctrine. *Id.* at 793. We also acknowledge that the supreme court considered unpreserved errors as well as preserved errors in the context of a cumulative error argument in *People v. Johnson*, 208 Ill. 2d 53, 87 (2003). The decision in *Johnson* concerned the consolidated cases of three defendants. *Id.* at 60-61. The *Johnson* court noted that "a pattern of intentional prosecutorial misconduct may so seriously undermine the integrity of the judicial proceedings as to support reversal under the plain-error doctrine." *Id.* at 64. The court reasoned: "We need not render a *pro forma* accounting of which errors were properly preserved for purposes of appeal and which were not, as the second prong of plain-error analysis clearly justifies affirmance of the judgments of the appellate court in these cases." *Id*. at 87. However, unlike the cases at issue in *Johnson*, this case does not involve an intentional pattern of prosecutorial misconduct.

¶ 59 Even if we were to include forfeited errors that do not individually rise to the level of plain error in our cumulative error analysis, we would still find that the cumulative effect of the

alleged errors in the instant case did not rise to the level of second-prong plain error. Accordingly, we will discuss all of defendant's claims of error, including the ones the State contends were subject to forfeiture. We will first determine whether error actually occurred. See *People v. Thompson*, 238 Ill. 2d 598, 613 (2010) ("The first step of plain-error review is determining whether any error occurred."). We will then consider whether the cumulative effect of any errors rises to the level of second-prong plain error.

¶ 60 a. Claims of Error

¶ 61 Defendant claims that several errors occurred during his trial, including: (1) improper admonishments under Illinois Supreme Court Rule 431(b) (eff. July 1, 2012), (2) improper remarks during opening statements, (3) improper impeachment of a State witness, (4) refusal to allow rebuttal evidence under section 115-7.3(b) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-7.3(b) (West 2014)), (5) refusal to allow Thomas to testify as to the contents of E.C.'s Facebook message, and (6) improper remarks during closing argument. We address each of these claims in turn to determine whether error occurred.

¶ 62 To be clear, defendant does not argue that any of these individual errors is reversible on its own; rather, defendant contends only that the cumulative effect of these errors requires reversal. Accordingly, in conducting our analysis, we will not consider whether any individual error satisfied the second prong of plain-error analysis. Rather, after determining if error occurred, we will examine whether the cumulative effect of all errors warrants reversal under the second prong of the plain-error doctrine.

¶ 63 i. Rule 431(b) Admonishments

¶ 64 First, defendant argues that the court failed to comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) during jury selection. Rule 431(b) provides:

> "The court shall ask each potential juror, individually or in a group, whether that juror understands and accepts the following principles: (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that if a defendant does not testify it cannot be held against him or her ***.
>
> The court's method of inquiry shall provide each juror an opportunity to respond to specific questions concerning the principles set out in this section." *Id.*

The above principles were set out in *People v. Zehr*, 103 Ill. 2d 472, 477 (1984), and are commonly referred to as the "*Zehr* principles." In *Thompson*, 238 Ill. 2d at 607, the supreme court held that the circuit court violated Rule 431(b) where the court asked the prospective jurors whether they understood the *Zehr* principles but did not ask whether they accepted the principles. The *Thompson* court reasoned that Rule 431(b) "requires questioning on whether the potential jurors both understand and accept each of the enumerated principles." *Id.*

¶ 65 Here, the court asked three panels of jurors, "Do you understand and accept the following principles of constitutional law[?]" The court then set forth the *Zehr* principles. After stating the *Zehr* principles, the court asked the three panels if they could "accept and follow" the principles. The court told a fourth panel that it would read them four principles of law and ask if the potential jurors could "follow them and accept them." The court then read the *Zehr* principles and asked if the jurors could "follow" them.

¶ 66 Although the court initially asked three panels of prospective jurors whether they understood and accepted the *Zehr* principles, it changed the wording of the question to whether they jurors could "accept and follow" the *Zehr* principles when asking the question of the individual jurors. The court asked the fourth panel only whether they could follow the *Zehr* principles. Under these circumstances, we find that the court failed to ascertain whether the prospective jurors understood the *Zehr* principles. Thus, the court violated Rule 431(b).

¶ 67 ii. Opening Statements

¶ 68 Defendant next argues that the State made an improper remark during its opening statement. Specifically, defendant contends that it was improper for the State to say: "The defendant *** is a man who will not take no for an answer. He thinks he can have any woman he wants when he feels like it regardless of that woman's wishes."

¶ 69 "The purpose of an opening statement is to apprise the jury of what each party expects the evidence to prove." *People v. Kliner*, 185 Ill. 2d 81, 127 (1998). "While the State has wide latitude in making opening statements and closing arguments and is entitled to comment on the evidence [citation], comments intending only to arouse the prejudice and passion of the jury are improper [citation]." *People v. Jones*, 2016 IL App (1st) 141008, ¶ 21. Opening statements should not become argumentative. *Id*. ¶ 22.

¶ 70 While the challenged remark in the instant case may have been a bit over the top, it did not constitute error. The remark served to apprise the jury that the State planned to introduce evidence that defendant had a propensity to commit sexual offenses. Notably, prior to making this remark, the prosecutor stated that the State would present evidence that defendant sexually assaulted both E.C. and L.W.

¶ 71 iii. Improper Impeachment

¶ 72 Defendant argues that the State improperly impeached Bradley with prior statements Bradley made during her video-recorded interview at the police station that were inconsistent with her trial testimony. Specifically, defendant argues that it was impermissible for the State to impeach Bradley with her prior statements because Bradley's testimony did not affirmatively damage the State's case. We find that Bradley's prior inconsistent statements were properly admissible as substantive evidence such that the affirmative damage requirement did not apply.

¶ 73 It is true that the party calling a witness can only impeach the witness's credibility by means of a prior inconsistent statement "upon a showing of affirmative damage." Ill. R. Evid. 607 (eff. Jan. 1, 2011). However, the "affirmative damage" requirement does not apply to statements that are substantively admissible pursuant to Illinois Rule of Evidence 801(d)(1)(A) (eff. Oct. 15, 2015). Ill. R. Evid. 607 (eff. Jan. 1, 2011). Rule 801(d)(1)(A)(2)(c) provides that, in a criminal case, a witness's prior statement is admissible to prove the truth of the matter asserted if "the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement"; the statement is "inconsistent with the declarant's testimony at the trial or hearing"; the statement "narrates, describes, or explains an event or condition of which the declarant had personal knowledge"; and "the statement is proved to have been accurately recorded by a tape recorder, videotape recording, or any other similar electronic means of sound recording." Ill. R. Evid. 801(d)(1)(A)(2)(c) (eff. Oct. 15, 2015).

¶ 74 Rule 801(d)(1)(A) is a "codification" of section 115-10.1 of the Code (725 ILCS 5/115-10.1 (West 2014)). *People v. Evans*, 2016 IL App (3d) 140120, ¶ 31. Both Rule 801(d)(1)(A) and section 115-10.1 of the Code allow the use of prior inconsistent statements as substantive evidence. *Id.* See *People v. Bannister*, 378 Ill. App. 3d 19, 38 (2007) (holding that a witness's prior inconsistent statements were properly admitted as substantive evidence where each term set

forth in section 115-10.1 of the Code was satisfied); *People v. Willis*, 274 Ill. App. 3d 551, 555 (1995) (holding that the court erred in denying the admission of a witness's prior inconsistent statement as substantive evidence where all the criteria in section 115-10.1 of Code were satisfied).

¶ 75 Here, Bradley's prior inconsistent statements were properly admitted as substantive evidence under Illinois Rule of Evidence 801(d)(1)(A)(2)(c) and section 115-10.1 of the Code. Bradley's trial testimony was inconsistent with her prior statements to the police, the State confronted Bradley with the prior inconsistent statements, Bradley was subject to cross-examination regarding the prior inconsistent statements, the prior statements concerned matters of which Bradley had personal knowledge, and the prior inconsistent statements were shown to have been accurately recorded via videotape. Because Bradley's statements were not admitted to impeach her credibility but rather as substantive evidence, the State was not required to show that Bradley's trial testimony affirmatively damaged its case. Ill. R. Evid. 607 (eff. Jan. 1, 2011). Accordingly, no error occurred in the admission of Bradley's prior inconsistent statements.

¶ 76 iv. Refusal to Allow Rebuttal Evidence

¶ 77 Defendant contends that the court erred in refusing to allow defense counsel to ask Detective Schoon whether she arrested defendant after speaking with him. Defendant asserts that the record shows that the police did not arrest him for sexually assaulting L.W. until after E.C. alleged that defendant had sexually assaulted her (E.C.). Defendant contends that this evidence would have supported an inference that the police did not initially find L.W.'s complaint to be credible. Accordingly, defendant argues that this evidence was admissible under section 115-7.3(b) of the Code (725 ILCS 5/115-7.3(b) (West 2014)) to rebut L.W.'s testimony.

¶ 78 We find that the court was within its discretion in refusing to allow defense counsel to question Schoon as to whether she arrested defendant after speaking with him on the basis of relevance. The "inference" that defendant argues he could have drawn from the delay in his arrest for sexually assaulting L.W. is speculative. There are many reasons why the police could have delayed arresting defendant, and the record in this case does not show the actual reason for the delay. Moreover, any reason Schoon had for delaying defendant's arrest was irrelevant to this issue of whether L.W.'s testimony was credible. Even if Schoon did not personally believe L.W., Schoon's opinion would not be evidence that the sexual assault L.W. described did not happen. Also, any testimony from Schoon directly commenting on L.W.'s credibility would have been improper. See *People v. Becker*, 239 Ill. 2d 215, 236 (2010) (quoting *People v. Kokoraleis*, 132 Ill. 2d 235, 264 (1989)) ("Under Illinois law, it is generally improper to ask one witness to comment directly on the credibility of another witness [citations] as '[q]uestions of credibility are to be resolved by the trier of fact.' ").

¶ 79 v. Refusal to Allow Out-of-Court Statement for Effect on the Listener

¶ 80 Defendant next argues that the court erred in refusing to allow Thomas to testify as to the contents of the "Facebook inbox" from E.C. on the basis that it constituted hearsay. Defendant contends that the content of the "Facebook inbox" was not hearsay to the extent that it revealed why Thomas drove defendant to the hotel. It is true that "[o]ut-of-court statements offered to prove their effect on a listener's mind or to show why the listener subsequently acted as he or she did are admissible as nonhearsay." *People v. Szudy*, 262 Ill. App. 3d 695, 711 (1994). However, Thomas had already testified that the reason he drove defendant to the hotel was because defendant asked him to. Thus, the content of the "Facebook inbox" would not show why Thomas drove defendant to the hotel. Rather, it would only show why defendant was going to the hotel.

Thus, the "Facebook inbox" was not admissible for the nonhearsay purpose of showing why Thomas acted as he did.

¶ 81 vi. Closing Argument

¶ 82 Defendant argues that the prosecutor made several improper remarks during closing arguments. First, defendant contends that the following statement was improper:

> "[E.C.] may not live in the world you live in. In [E.C.'s] world people stay up all night, they sleep late in the day, they smoke marijuana and they drink. The defendant lives in the same world that [E.C.] lives in. And whether you live in this world with them or in a different world, one thing is consistent. No means no, no matter what world you live in."

Defendant argues that the above statement was improper because it argued facts that were not based on the evidence. Specifically, defendant contends that the statement implied that defendant smoked marijuana when there was no evidence of this.

¶ 83 We find that this statement did not argue facts that were not based on the evidence. The prosecutor did not say that defendant used marijuana. Rather, the prosecutor was expressing that defendant and E.C. had similar lifestyles in that people in their social circle generally stayed up all night, slept late in the day, drank alcoholic beverages, and smoked marijuana. This was supported by evidence that defendant and E.C. both stayed out late and drank alcoholic beverages. It was also supported by evidence that defendant socialized with E.C., who admitted that she used marijuana.

¶ 84 Defendant also argues that it was improper for the prosecutor to say that defendant was a "womanizer" who had "multiple baby mommas." Defendant contends that these remarks were inflammatory and served only to arouse the passions of the jury. We agree that these statements

were improper. See *People v. Armstrong*, 183 Ill. 2d 130, 145 (1998) ("[P]rosecutors may not engage in inflammatory arguments designed solely to arouse the passions of the jury.").

¶ 85 Next, defendant argues that it was improper for the prosecutor to say: "Do not deny [E.C.] and [L.W.] justice. We ask that you find the defendant guilty of all counts." We agree that these remarks were improper insofar as the prosecutor asked the jury to give justice to L.W. "It is incumbent upon the prosecution under general ethical principles to " ' "refrain from argument which would divert the jury from its duty to decide the case on the evidence, by injecting issues broader than the guilt or innocence of the accused under the controlling law." ' " *People v. Chavez*, 327 Ill. App. 3d 18, 28 (2001) (quoting *People v. Martin*, 29 Ill.App.3d 825, 829 (1975), quoting 1 ABA Standards for Criminal Justice § 3-5.8). While L.W.'s testimony was admissible in the instant case to show defendant's propensity to commit sexual offenses, the issue before the jury was whether defendant was guilty of committing offenses against E.C. It was improper for the prosecutor to suggest that the jury should find defendant guilty of an offense against E.C. in order to give "justice" to L.W.

¶ 86 Defendant also argues that the following comment made by the prosecutor during her rebuttal closing argument was improper.

> "You saw [L.W.] and you saw [E.C.] You were able to observe their demeanor. [L.W.], I'm not sure her head came up at any time. [E.C.], she was trying to keep it together, but when she was talking about the sexual assault her head was down the whole time. Are these women putting on a show? No. He is putting on a show. He is the one who wants to put on a show and he was putting on a show for you this morning. You know, they want you to believe that [E.C.] is a liar. Well, what about him?

> You observed him in lies this morning. He told you things contradictory to what he told the detective when he interviewed him."

Defendant argued that it was improper for the prosecutor to say that defendant was "putting on a show" for the jury.

¶ 87 When read in context, the prosecutor's comment about defendant "putting on a show" was a challenge to the credibility of defendant's testimony and was not improper. *People v. Kirchner*, 194 Ill. 2d 502, 549 (2000) ("The State may challenge a defendant's credibility and the credibility of his theory of defense in closing argument when there is evidence to support such a challenge."). Also, the prosecutor's characterization of defendant as "putting on a show" was in response to a comment made by defense counsel during closing argument. In arguing that E.C.'s testimony was not credible, defense counsel said E.C. was "not above putting on a show to get what she wants."

¶ 88 Defendant also argues that the prosecutor's comparison of defendant to a magician performing a card trick was improper. Specifically, the prosecutor argued that the defense wanted to take the focus off of what defendant did and put it on the victims. The prosecutor described a magician doing "a card trick where he's having you focus over here when he's doing something over here." The prosecutor then stated: "Well, that's what the defendant wants you to do." The prosecutor continued: "[Defendant] wants you to take the focus off of what's going on over here so that you don't pay attention to what's going on over here. And what's going on over here is that the defendant did rape and strangle [E.C.] and we're asking that you find the defendant guilty." We agree that these statements were improper, as they suggested that the defense was trying to trick the jury. See *People v. Kidd*, 147 Ill. 2d 510, 542 (1992) (" '[S]tatements made in closing arguments by the prosecutor which suggest that defense counsel

fabricated a defense theory, attempted to free his client through trickery or deception, or suborned perjury are improper.' " (quoting *People v. Emerson*, 97 Ill. 2d 487, 497 (1983))).

¶ 89 Finally, defendant argues that the following statement made by the prosecutor during rebuttal closing argument was improper:

> "[Defendant] is *** a 33-year-old man who doesn't have a home. I mean, he lays his head down wherever he ends up for the night, according to his mother. He doesn't have a key to anybody's apartment. He doesn't have a license. He doesn't have a car. He doesn't have a job. What does he have to offer? You know, this is the man that everybody's falling in love with and that everybody's pursuing and that these women are—are so scorned over that they're crying rape."

We agree that these remarks were improper, as they were inflammatory and did not bear on defendant's guilt or innocence. See *People v. Lucas*, 132 Ill. 2d 399 (1989).

¶ 90 Although we find these remarks to be improper, we note that the prosecutor did not argue that defendant's lack of a home, job, or vehicle made it more likely that he sexually assaulted E.C. or L.W. Rather, the prosecutor made these statements in response to an argument made by defense counsel during closing argument—namely, that L.W. and E.C. pursued defendant for a relationship and money, respectively, and accused him of sexual assault when they did not receive what they wanted. Specifically, defense counsel argued:

> "[D]o not forget in both of these scenarios the women were pursuing [defendant] all night and for all hours. At the end of the night when they didn't get what they wanted each of them claimed to have been sexually assaulted complete with a trip to *** the emergency room."

Regarding L.W., defense counsel stated: "This is a woman who was in love with [defendant]. She want[ed] more. She couldn't have it. Heaven has no rage like love to hatred turned." Regarding E.C., defense counsel stated: "She asked [defendant] for money and he told her no. He wasn't nice about the words he used *** when she asked for money. She was now a woman scorned, and we know the rest of the *** quote—hell hath no fury."

¶ 91 b. Cumulative Effect of the Errors Under the Plain-Error Doctrine

¶ 92 Defendant argues that he is entitled to relief under the second prong of the plain-error doctrine because the cumulative effect of the above errors created a pervasive pattern of unfair prejudiced and deprived him of a fair trial such that reversal is necessary regardless of the strength of the State's evidence. Under the second prong of the plain-error doctrine, we may review a forfeited error "where the error is so serious that the defendant was denied a substantial right, and thus a fair trial, a reviewing court may consider a forfeited error in order to preserve the integrity of the judicial process." *People v. Herron*, 215 Ill. 2d 167, 179 (2005). In determining whether a defendant's right to a fair trial has been compromised, "[w]e ask whether a substantial right has been affected to such a degree that we cannot confidently state that defendant's trial was fundamentally fair." *People v. Blue*, 189 Ill. 2d 99, 138 (2000).

¶ 93 In the instant case, we found that error occurred when the circuit court failed to ascertain whether the prospective jurors understood the *Zehr* principles. We also found that error occurred during closing argument when the prosecutor: (1) said that defendant was a "womanizer" who had "multiple baby mommas;" (2) noted that defendant did not have a home, job, or vehicle; (3) compared the defense to a magician performing a magic trick; and (4) asked the jury not to deny L.W. justice. Even in the aggregate, these errors were not "so serious that [they] affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *Herron*,

215 Ill. 2d at 187. "[A] defendant in a criminal case is entitled to a fair trial, not a perfect one." *People v. Ruiz*, 94 Ill. 2d 245, 260 (1982). Defendant's trial was not perfect. However, the cumulative effect of the Rule 431(b) violation and the improper remarks during closing argument did not deprive defendant of a fair trial such that reversal is warranted despite the overwhelming evidence of defendant's guilt.

¶ 94 We reject defendant's reliance on *Blue* in support of his cumulative error argument. In *Blue*, the defendant was tried and convicted of the first degree murder of a police officer. *Blue*, 189 Ill. 2d at 103, 108-09. The *Blue* court held that the circuit court erred in allowing the victim's bloody, brain-spattered police uniform to be displayed on a life-size mannequin during the testimony of several witnesses and sent to the jury room during deliberations along with gloves in case the jurors wanted to handle the uniform. *Id.* at 121-26. The *Blue* court also found that error occurred during closing argument where the prosecutor said that the victim's family needed to " 'hear' from the jury" and that the jury should send a message to the police that the jury supported them. *Id.* at 130-33. The court found that the erroneous argument was compounded by the erroneous admission of irrelevant evidence concerning the victim's family, oath of office, and fact that the victim's police badge was retired and displayed in the " 'honored star case' " at the police department. *Id.* at 133. The court also found that error occurred where the prosecutors made " 'testifying' objections." *Id.* at 136. The court found that the cumulative effect of these errors deprived the defendant of a fair trial and that reversal was required despite the overwhelming evidence of the defendant's guilt. *Id.* at 139-40.

¶ 95 The errors in the instant case were not nearly as egregious as those in *Blue.* Most of the errors in this case consisted of improper remarks during closing argument. Unlike in *Blue*, these

errors were not compounded by the admission of irrelevant and highly prejudicial evidence. The circumstances in this case were simply not comparable to those in *Blue*.

¶ 96 B. Ineffective Assistance of Counsel Regarding Monetary Assessments

¶ 97 Defendant argues that he received ineffective assistance of counsel where defense counsel failed to object to excessive monetary assessments. Specifically, defendant argues that the court erroneously imposed four $100 circuit clerk fees when only one should have been imposed because section 27.1a(w)(1)(A) of the Clerks of Courts Act (705 ILCS 105/27.1a(w)(1)(A) (West 2014)) authorizes only one $100 circuit clerk fee per felony complaint. Defendant also argues that the court erroneously imposed four $30 State's attorney felony conviction assessments when only three such assessments should have been imposed because only three judgments of conviction were entered. Defendant also contends that the court erroneously imposed three $200 sexual assault fines when it should have only imposed two such fines. Defendant argues that the sexual assault fines were applicable to his convictions for aggravated criminal sexual assault and criminal sexual assault but not to his conviction for aggravated battery. Defendant contends that his monetary assessments should be reduced by a total of $530. The State concedes that the challenged monetary assessments were improper and that defendant's monetary assessments should be reduced by $530.

¶ 98 While this case was pending on appeal, our supreme court adopted Illinois Supreme Court Rule 472 (eff. Mar. 1, 2019). Rule 472 provides that the circuit court retains jurisdiction to correct sentencing errors in the imposition or calculation of fines, fees, assessments, or costs at any time following judgment on the motion of any party. *Id.* Rule 472 further provides that no appeal may be taken from a judgment of conviction on the ground of any sentencing error specified in the rule unless the error was first raised in the circuit court. *Id*. Rule 472 was

subsequently amended to state: "In 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).

¶ 99 In the instant case, defendant has raised his claims of error in the imposition of monetary assessments for the first time on appeal. Thus, in accordance with Rule 472, we do not reach the merits of this issue, and we reject the State's confession of error. We remand the matter to the circuit court so that defendant may file a motion pursuant to Rule 472 raising his claims of error in the imposition his monetary assessments.

¶ 100 III. CONCLUSION

¶ 101 For the foregoing reasons, we affirm the judgment of the circuit court of Kankakee County. Regarding defendant's claims of error in the imposition of monetary assessments, we remand the matter so that defendant may file a motion pursuant to Rule 472.

¶ 102 Affirmed and remanded.