

No. 1-12-1453

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 14740
	)	
RENARDO PAGE,	)	Honorable
	)	Michael Brown,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE NEVILLE delivered the judgment of the court.  
Presiding Justice Simon and Justice Liu concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Defendant's armed habitual criminal conviction was affirmed where the record supported the finding that defendant was the same person named by a variant spelling in a certified copy of a prior conviction; the total of fines, fees and costs assessed was reduced where some fines and fees were improperly imposed or where defendant was not given the \$5-per-day presentence custody credit against certain eligible fines.

¶ 2 Following a bench trial, Renardo Page, the defendant, was found guilty of being an armed habitual criminal and sentenced to six years in prison. On appeal, defendant alleges he

was not proven guilty beyond a reasonable doubt because the State failed to prove an element of the offense, namely, two prior convictions under the statute, and failed to prove defendant was the "Renaldo" Page convicted of prior narcotics offense. Defendant also challenges the imposition of certain fines and fees and requests the application of the \$5-per-day presentence custody credit against certain eligible fines. We affirm defendant's conviction and reduce the total of the imposed fines, fees, and costs.

¶ 3 Defendant was charged by information with being an armed habitual offender by possessing a firearm after having been convicted of armed robbery under case number 01 CR 20196 and delivery of a controlled substance under case number 98 CR 22686 (Count 1); and with three other weapons violations counts after previously having been convicted of armed robbery: unlawful use or possession of a weapon by a felon (Count 2); and two counts of the Class 2 form of aggravated unlawful use of a weapon (Counts 3 and 4).

¶ 4 Prior to trial, the court ordered a pretrial investigation (PTI) report which was received and dated January 18, 2012, and which the parties subsequently agreed to use as the presentence investigation (PSI) report for sentencing purposes.

¶ 5 The lone trial witness, testifying for the State, was Chicago Police Officer Michael Cavanaugh. On August 29, 2011, shortly before 10:56 p.m., Cavanaugh and his partner were patrolling in a marked police vehicle when they received a radio transmission that a male black wearing a blue and white shirt was in possession of a gun. The man was reported to be sitting in a Buick LaSabre Regal parked in an alley behind a residence in the 6800 block of South King Drive. Within minutes, the officers drove into the alley behind a multi-dwelling apartment building between 6835 and 6849 South King Drive. They saw about six men in the area, one of

whom was defendant who was wearing a blue and white striped polo shirt. From a distance of 10 to 15 feet, Cavanaugh observed a shiny metallic object in defendant's left hand which Cavanaugh believed was a semi-automatic pistol. It was nighttime, but the area was illuminated by artificial light. Cavanaugh saw defendant walk up a stairway leading to an apartment and place the gun in an open apartment doorway. Cavanaugh's partner parked the police vehicle behind an unoccupied Buick Regal and the officers exited their vehicle. Defendant was detained, and Cavanaugh recovered from inside the open apartment door a .40 caliber Taurus automatic handgun that was uncased and loaded with 10 live rounds. Defendant did not live in that apartment and it was not his fixed place of business.

¶ 6 Following Cavanaugh's testimony, the assistant State's Attorney proffered three documents. The first, marked as People's Exhibit No. 1, was a certification from the Firearm Services Bureau that defendant had never been issued a FOID card as of October 18, 2011. The assistant State's Attorney represented that the second document, marked as People's Exhibit No. 2, was "a certified copy of conviction for Renardo Page under case No. 98 CR 22686 \*\*\* The defendant was found guilty on 10-19 of 1998 of a delivery of a controlled substance." People's Exhibit No. 3 was a certified copy of conviction of Renardo Page under case number 01 CR 20196, showing defendant was found guilty of armed robbery on December 15, 2003. Defense counsel stated: "Judge, I have an objection for the record, of course. I know the court is taking the certified convictions into mind only for the \*\*\* limited purpose for which they're offer [*sic*] of proving up the charge of armed habitual criminal."

¶ 7 After the State rested, the defense proffered 10 exhibits in evidence, including the report of defendant's arrest on August 29, 2011, showing his date of birth as "03 June 1981." After

defendant elected not to testify, the defense rested. The court found defendant guilty on all four counts but merged Counts 2 through 4 into Count 1, armed habitual criminal, on which count the court sentenced defendant to six years in prison.

¶ 8 On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt of being an armed habitual criminal because the name on one of the certified copies of conviction did not match the spelling of his name. Defendant contends that the certified copy of a 1998 conviction for delivery of a controlled substance under case number 98 CR 22686 named "Renaldo" Page as the defendant, not Renardo Page. The State responds that defendant forfeited this claim by failing to object at trial to the variant spelling, that the variation was insufficient to defeat the presumption defendant was the named person in the certified copy, and that defendant had used the "Renaldo" spelling of his first name with law enforcement authorities on other occasions.

¶ 9 When a defendant challenges the sufficiency of the evidence, a reviewing court must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact court have found the essential elements of the crime beyond a reasonable. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). When considering a challenge to a criminal conviction based upon the sufficiency of the evidence, it is not this court's function to retry the defendant. *People v. Hall*, 194 Ill. 2d 305, 329-30 (2000). On review, a conviction will not be set aside on grounds of insufficient evidence unless the proof is so improbable or unsatisfactory that there remains a reasonable doubt as to the defendant's guilt. *People v. Cox*, 195 Ill. 2d 378, 387 (2001).

¶ 10 The armed habitual criminal statute provides:

"(a) A person commits the offense of being an armed habitual criminal if he or she receives, sells, possesses, or transfers any firearm after having been convicted a total of 2 or more times of any combination of the following offenses:

(1) A forcible felony as defined in Section 2-8 of this Code;

(2) Unlawful use of a weapon by a felon; aggravated unlawful use of a weapon; aggravated discharge of a firearm; vehicular hijacking; aggravated battery of a child as described in Section 12-4.3 or subdivision (b)(1) of Section 12-3.05; intimidation; aggravated intimidation; gunrunning; home invasion; or aggravated battery with a firearm as described in Section 12-4.2 or subdivision (e)(1), (e)(2), (e)(3), or (e)(4) of Section 12-3.05; or

(3) Any violation of the Illinois Controlled Substances Act or the Cannabis Control Act that is punishable as a Class 3 felony or higher.

(b) Sentence. Being an armed habitual criminal is a Class X felony."

720 ILCS 5/24-1.7 (West 2010).

¶ 11 To prove one element of the statute, the State presented certified copies of two convictions: one for armed robbery, a forcible felony, and the other for delivery of a controlled substance. Upon the trial court's request as to how the exhibits were marked, the assistant State's Attorney stated the document in question was People's Exhibit No. 2, "a certified copy of conviction for Renardo Page under case No. 98 CR 22686." Neither that exhibit nor any other trial exhibits are included in the record before us.<sup>1</sup> Defendant draws our attention to a supplemental volume of the common law record which contains a certified copy of conviction

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<sup>1</sup> Three State exhibits (numbers 1-3) and 10 defense exhibits (numbers 1-7, 9-11) were admitted in evidence.

for delivery of a controlled substance naming "Renaldo" Page rather than Renardo Page, in case number 98 CR 22686. Defendant claims a conviction under the name of "Renaldo" Page was insufficient to prove that defendant Renardo Page committed that prior felony.

¶ 12 The State acknowledges that the certified copy of conviction in the common law record named "Renaldo" Page but asserts that defendant forfeited his claim of error by failing to draw the trial court's attention to the variation in names. We do not agree that defendant forfeited this issue. The State was required to prove defendant's prior conviction of two felonies falling within the statute's felony categories as an element of the offense. *People v. Tye*, 141 Ill. 2d 1, 15 (1990). Defendant's failure to object "did not absolve the State of its duty to prove the case beyond a reasonable doubt." *People v. Moton*, 277 Ill. App. 3d 1010, 1013 (1996).

¶ 13 Our supreme court has "adopted a general rule that 'identity of name gives rise to a rebuttable presumption of identity of person.' " *People v. Smith*, 148 Ill. 2d 454, 465 (1992), quoting *People v. Davis*, 95 Ill. 2d 1, 31 (1983). "Where the presumption is not rebutted, a defendant is not prejudiced by finding that a certified copy of his prior felony conviction, without more, meets the State's burden of proving this element beyond a reasonable doubt." *Moton*, 277 Ill. App. 3d at 1012, citing *Smith*, 148 Ill. 2d at 465. However, where the presumption does not apply or is rebutted, the State must adduce other evidence to substantiate that the defendant is the person named in the record of conviction. *Moton*, 277 Ill. App. 3d at 1012.

¶ 14 Defendant contends, however, that the identity-of-person presumption is rebutted by the certified copy of conviction under the name of "Renaldo" Page which is in a supplemental volume of the common law record. The document is not marked as a trial exhibit to indicate it was the same document as, or identical to, People's Exhibit No. 2, which was received in

evidence at trial as a certified copy of conviction of Renardo Page. Nevertheless, it is documentary evidence that the conviction in case number 98 CR 22686 was for "Renaldo" Page, not Renardo Page. Defendant asserts that the names "Renardo" and "Renaldo" are sufficiently dissimilar to rebut the presumption of identity.

¶ 15 In *People v. Coleman*, 409 Ill. App. 3d 869 (2011), defendant's name was Jesse Coleman but a certified copy of conviction under the name "Jessie" Coleman was admitted in evidence. This court went beyond the substantive evidence adduced at trial and examined defendant's criminal history report in the record. We determined that "Jessie" Coleman was listed as an alias at least eight times, with four convictions under that name. *Id.* at 876. In the instant case, a dichotomy exists between the State's oral representation at trial that Renardo Page was convicted of delivery of a controlled substance in case number 98 CR 22686 and the documentary evidence in the supplemental common law record of the same conviction under the name of "Renaldo" Page. To resolve this dichotomy, we have examined defendant's criminal history as we did in *Coleman*. The criminal history report issued by the Chicago Police Department that was attached to the pretrial investigation (PTI) report contains the section "Key Historical Identifiers." Under the subheading "Alias or AKA used" is the information that defendant had used the following names when arrested on the dates noted:

PAGE, RENARDO J	28-NOV-2001
PAGE, RENARDO	01-MAR-1999
PAGE, RENARDO J	17-NOV-1998
PAGE, RENARDO J	26-OCT-1998
PAGE, RENALDO J	29-JUL-1998

¶ 16 On all five occasions, defendant gave his date of birth as June 3, 1981, the same date of birth noted on defendant's arrest report (admitted in evidence at trial as a defense exhibit) in the

instant case. Defendant gave a social security number on the occasion of three of those five arrests, including his arrest as "Renaldo" Page on July 29, 1998, and the social security number was identical in each case. Defendant's criminal history records also show that when he was arrested as Renardo Page on October 26, 1998, December 21, 1998, and March 1, 1999, and when he was arrested as "Renaldo" Page on July 29, 1998, he represented on each occasion that he resided in the 6500 block of North Lakewood Avenue, Chicago, IL 60626. An entry elsewhere in defendant's records history attached to the PTI report showed that defendant was arrested under the name "Renaldo" Page on July 29, 1998, for manufacture/delivery of a controlled substance, of which he was convicted on October 19, 1998, under "Case # 1998CR22686." The PTI report lists case number 98CR22686 and the charge "Other Amount Narcotic Schedule," with the disposition that on "January [sic] 19, 1998, defendant was sentenced to 24 months probation by Judge Haberkorn." At defendant's sentencing hearing, his trial counsel advised the court that no corrections to the PTI report were required. Given the identical birth date, social security number, and residence address for "Renardo" and "Renaldo" Page, we conclude that both names refer to defendant.

¶ 17 Defendant replies that the reference to defendant's criminal history is "wholly improper" as "inadmissible hearsay evidence not presented at trial." While we note defendant's objection, we also note the fact that the certified copy of conviction in the supplemental record for "Renaldo" Page is not marked as "People's Exhibit No. 2" which was admitted in evidence at trial. At no time in the trial court or in this court has defendant contended that he was not convicted in 1998 of delivery of a controlled substance in case number 98 CR 22686. We decline to reverse defendant's armed habitual criminal conviction based on his claim of error where,

whether by clerical error or by defendant's willful act of falsifying his name, documents in the record reveal that the name "Renaldo" was ascribed to or used by defendant when he was arrested and convicted of delivery of a controlled substance in case number 98 CR 22686.

¶ 18 After reviewing the evidence in the light most favorable to the State, we conclude the trier of fact could have found that defendant Renardo Page was the person convicted of delivery of a controlled substance in 1998. Accordingly, we affirm defendant's conviction for being an armed habitual criminal.

¶ 19 The parties agree that the total of fines, fees and costs assessed were excessive and should be reduced where certain fines and fees were imposed improperly.

¶ 20 A \$100 Streetgang Fine was improperly imposed under section 5-9-1.19 of the Unified Code of Corrections (Code) (730 ILCS 5/5-9-1.19 (West 2012)) where it was not proven at trial that defendant was a member of a street gang.

¶ 21 The court improperly imposed a \$100 Trauma Fund Fine under section 5-9-1.10 of the Code (730 ILCS 5/5-9-1.10) (West 2012)). That fine is to be added to a sentence imposed for any one of three weapons violations, including unlawful use of a weapon by a felon. Although defendant was found guilty of that offense, the court did not impose sentence on that count but merged it into the armed habitual criminal count.

¶ 22 Two Quasi-Criminal Complaint Conviction assessments were also imposed. One such assessment, \$50 for a quasi-criminal complaint, was imposed under section 27.2(a)(w)(2)(B) of the Clerks of Courts Act (705 ILCS 105/27.2a(w)(2)(B) (West 2012)). The assessment was improper where defendant was also assessed \$190 for Felony Complaint Filed. See *People v. Martino*, 2012 IL App (2d) 101244, ¶¶ 34-35, citing *People v. Pohl*, 2012 IL App (2d) 100629, ¶

9. The second quasi-criminal complaint conviction assessment, for \$25, under section 4-2002.1(b) of the Counties Code (55 ILCS 5/4-2002.1(b) (West 2012)) was also improper as it applies only to violations of the Illinois Vehicle Code or municipal vehicle ordinances.

¶ 23 A \$200 DNA analysis fee pursuant to section 5-4-3(j) of the Code (730 ILCS 5/5-4-3(j) (West 2012)) was improperly imposed where, after the DNA requirement became effective on January 1, 1998, defendant was convicted of two felonies, armed robbery and delivery of a controlled substance. See *People v. Leach*, 2011 IL App (1<sup>st</sup>) 090339, ¶¶ 37-38.

¶ 24 A \$5 Electronic Citation Fee was improperly imposed under section 27.3e of the Clerks of Courts Act (705 ILCS 5/27.3e) (West 2012)) because that fee applies only to traffic, misdemeanor, municipal ordinance, or conservation cases.

¶ 25 A \$20 Violent Crime Victim Assistance fine imposed under section 10(c) of the Violent Crime Victims Assistance Act (725 ILCS 240/10(c) (West 2012)) was improper "because it applies only where 'no other fine is imposed.'" *People v. Lee*, 379 Ill. App. 3d 533, 541 (2008). Here, other fines totaling \$50 were properly imposed and, consequently, an \$8 fine should have been imposed pursuant to section 10(c) (725 ILCS 240/10(b) (West 2012)) instead of the \$20 fine, thus requiring that the fine be reduced by \$12.

¶ 26 Consequently, the total of fines and fees improperly assessed is \$492.

¶ 27 Defendant also contends, and the State agrees, that, pursuant to section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2012)), the \$50 in fines for which he was properly assessed (\$10 Mental Health Court fine, \$5 Youth Diversion/Peer Court fine, \$5 Drug Court fine, and \$30 Children's Advocacy Center fine) should have been offset *in toto* by the \$5-per-day presentence custody credit where defendant was credited with 241 days

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served in presentence custody. We agree.

¶ 28 Pursuant to our authority in Illinois Supreme Court Rule 615(b) (eff. Feb. 6, 2013), we direct the circuit court to reduce the present \$950 total of fines by \$542 (by vacating \$492 of the fines and fees as specified above and vacating the remaining \$50 in fines by offsetting them with defendant's presentence credit for time served), and to amend the fines and fees order to reflect a corrected total amount of \$408. We affirm the judgment of the trial court in all other respects.

¶ 29 Affirmed in part; vacated in part.