

No. 1-10-2518

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)
) Appeal from the
) Circuit Court of
 Plaintiff-Appellee,) Cook County
)
 v.) No. 10 CR 2357
)
 DARIUS ROMAN,) Honorable
) William Timothy O'Brien,
 Defendant-Appellant.) Judge Presiding.

PRESIDING JUSTICE EPSTEIN delivered the judgment of the court.
Justices Joseph Gordon and McBride concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not abuse its discretion in admitting testimony that defense witnesses found the knife defendant used in stabbing, but did not notify police, because the testimony was relevant to show the extent of witnesses' biases for defendant. State proved beyond a reasonable doubt that defendant did not act in self-defense, where defendant stabbed a man who had retreated from a fight with defendant. Trial court erred by failing to apply per diem presentence incarceration credit to Mental Health Court and Children's Advocacy Center fines.

¶ 2 Following a bench trial, defendant Darius Roman was convicted of one count of aggravated battery with great bodily harm and was sentenced to 30 months probation. At trial, defendant admitted that he stabbed Angel Torres, but claimed that he acted in self-defense after

Torres confronted him. On appeal, defendant first argues that the trial court erred by admitting irrelevant and prejudicial testimony from his girlfriend and mother regarding their handling of his knife after the stabbing. Defendant also argues that the State failed to prove beyond a reasonable doubt that he was not justified in using a knife to defend himself against Torres. Finally, defendant contends the trial court erred by failing to apply presentence credit to offset various assessments imposed at sentencing. For the reasons that follow, we affirm, with directions to apply presentence credit to offset certain fines imposed at sentencing.

¶ 3 BACKGROUND

¶ 4 On December 24, 2009, 18-year-old Darius Roman was visiting his girlfriend, Janessa Gonzalez, at her grandparents' apartment. Roman and Gonzalez had an argument, and Roman went outside. Gonzalez's neighbor, 51-year-old Angel Torres, then came outside to confront Roman. The exchange ended when Roman stabbed Torres twice. Roman turned himself in to police a few weeks later and was charged with four counts of aggravated battery and one count of attempted murder. At a subsequent bench trial, the witnesses offered conflicting explanations of the day's events. In light of defendant's challenge to the sufficiency of the evidence, we will review the testimony of each witness.

¶ 5 *Angel Torres*

¶ 6 Angel Torres testified that on December 24, 2009, he and his wife received a call from their neighbor of nine years, Janessa Gonzalez, who sounded like she was crying. Gonzalez told Torres that Roman had been at her apartment and was hitting her and her baby. Torres, who was the baby's godfather, was upset and went to Gonzalez's apartment next door. He spoke with

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Gonzalez, who looked as if she had been crying, and then went outside to confront Roman.

Torres asked Roman, "What's going on here? You know, this is a holiday." Roman responded,

"You p---- motherf-----." Torres then punched Roman in the chest for "disrespect[ing]" him.

Roman swung back and missed. Torres then turned around to go back to the apartment, deciding

that "you know, I don't have to deal with this no more." As he was walking, Torres fell on the ice

and snow and landed on his back. Roman then approached him holding a knife in his right hand.

Roman stabbed him twice, once on his left upper arm and once on the left side of his back. The

parties stipulated that Torres received treatment for stab wounds to his left arm and back.

¶ 7 On cross-examination, Torres testified that at the time of the incident, he had a key ring about two or three inches in diameter on his belt, a mobile phone and a flashlight, but not a knife.

While he wore a utility belt with a knife at work, Torres was not wearing it when he confronted

Roman because all utility belts must remain at work. Before arriving home that day, Torres had

three beers at a nearby bar, but he testified that he was not feeling the effect of alcohol when he

went outside to confront Roman. The parties stipulated that Torres had a blood alcohol level of

.097.

¶ 8 *Daisy Torres*

¶ 9 Daisy Torres testified that she and her husband went to Janessa Gonzalez's apartment

after receiving a call from Gonzalez, who was "almost crying." Daisy stayed in Gonzalez's

apartment while Angel went outside to speak with Darius Roman, but eventually went

downstairs to check on her husband. She saw Angel and Roman on the ground. Roman "said

something like motherf----- or something like that" to Angel Torres. On cross-examination,

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Daisy testified that she did not notice that her husband had been drinking. Daisy testified that at work her husband wears a utility belt with a knife on it, but he does not bring the belt home.

¶ 10 *Darius Roman*

¶ 11 Darius Roman testified that on December 24, 2009, after an argument with Gonzalez about pictures she posted to MySpace, Roman called his mother and went to stand just outside the apartment to wait for her. Angel Torres came down the stairs from Gonzalez's apartment, screaming, "What the f--- happened? Why are you disrespecting my family's house?" Roman, who could smell alcohol on Torres' breath, responded, "I didn't mean no disrespect. I didn't do nothing. I'm just waiting for my mom so I can get out of here." Torres pushed him, and Roman went to stand at the corner. Torres followed and then punched Roman in the face and chest. While Torres was an arm's length away from Roman, Torres made a move with his left hand, reaching for something near his belt that Roman thought looked like a knife. Roman took out his pocket knife and stabbed Torres in the left tricep. Torres then pulled him to the ground and they started wrestling and hitting each other. Roman's mother arrived and Roman got in her car. On cross-examination, Roman testified that he no longer had the knife and did not know what happened to it. After the incident, Roman had a scratch on his face and a mark on his upper arm, but he was not bleeding and did not go to the hospital.

¶ 12 *Janessa Gonzalez*

¶ 13 Janessa Gonzalez testified that Darius Roman was her boyfriend at the time of the incident, but she was no longer dating him. On the day of the incident, Gonzalez and Roman had an argument about photographs that Gonzalez posted to MySpace. After Roman left, Torres and

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his wife, who were godparents to Gonzalez's one-year-old son, came to her apartment. Gonzalez said that Torres was "crazy" that day and "wasn't himself," but she did not smell alcohol on his breath when he came to her apartment. Gonzalez heard Torres cursing and screaming at Roman outside. Through the window of her apartment, Gonzalez saw Roman walk away from Torres. Torres followed, punched Roman in the face, and kept "calling him and bothering him."

Gonzalez testified that after that, "there was a space in between—right after my neighbor had punched him in the face, like—I really don't remember." Gonzalez then saw them wrestling on the ground. After the fight, Gonzalez returned to Torres' apartment and saw a small pocket knife hanging on Torres' belt loop. Torres took it off and said he was going to stab Roman with it. At this time, she could smell alcohol on Torres' breath.

¶ 14 On cross-examination, Gonzalez testified that she had visited Roman three or four times in jail, still cared for him, and did not want anything bad to happen to him. Gonzalez indicated that she did not call Torres or his wife to her apartment. Gonzalez further explained that after the incident she found a knife on the sidewalk under the snow where Roman and Torres had been fighting. She took the knife upstairs and put it in a drawer. Although two police officers came to the apartment building that day, Gonzalez did not tell them about the knife because she found the knife after these officers left. She did not call the police when she found the knife or go to a police station, though she knew where one was. Instead, she called Roman's mother about the knife and gave it to her. About two weeks later, after Roman's arrest, Gonzalez told Detective Garrett Turner that she had found the knife and had given it to Roman's mother.

¶ 15 *Jeanette Roman*

¶ 16 Jeanette Roman testified that when she went to pick up her son after he called her, she saw a man talking to her son, standing about two feet in front of him. As she went to park her car, Ms. Roman saw the man strike her son. She pulled the car to the corner and ran towards them, but by the time Ms. Roman got to them, they were on the ground. Ms. Roman eventually pulled her son away, and he got in the car. She did not see her son lunge at the man with a knife.

¶ 17 On cross-examination, Ms. Roman testified that she visited her son every day in jail. Ms. Roman also stated that Janessa Gonzalez called her sometime after the incident and told her that she found a knife. Gonzalez gave the knife to Ms. Roman. While Ms. Roman was aware that the knife was the one used in the fight between her son and Angel Torres, she did not inform police about the knife. When Detective Turner later called and asked about the knife, Ms. Roman told the detective that she did not know where it was and would look for it. Ms. Roman searched, but could not find the knife.

¶ 18 *Court Findings and Sentencing*

¶ 19 At the close of the State's case, the court granted defense counsel's motion for a directed finding on the charge of attempted murder. After both sides rested, the trial court considered Roman's self-defense argument. The court noted that "[e]veryone was in agreement that Mr. Torres threw the first punch" and that "Mr. Roman tried to throw a punch but missed." Acknowledging that the case involved "a question of credibility," the court credited the testimony of Torres, who indicated that the defendant stabbed Torres twice while he was on his back trying to fend off Roman. The court also found that Torres sustained serious injuries.

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¶ 20 The trial court ultimately did not believe Roman's claim of self-defense. While Torres had been impeached "on very minor issues," the court found the testimony of defendant and his witnesses unreliable. As to Janessa Gonzalez, the trial court explained:

"All of a sudden, Angel Torres interceded in a case where he chases down a young man out of the building on his own stead on Christmas Eve. I don't believe her.

* * * I believe that she did call the Torreses looking for help."

The trial court also commented on the events after the fight:

"He leaves the knife on the scene. He flees the scene. He doesn't go to the police.

His girlfriend recovers the knife. She doesn't turn the knife over to the police.

She calls the mother of the defendant and turns the knife over to her, who she [sic]

loses the knife. So I don't buy his defense."

The court found Roman guilty of three counts of aggravated battery (great bodily harm; with a deadly weapon, no firearm; and in a public place) and acquitted him of the charge of aggravated battery (permanent disfigurement). The court later merged the convictions into one count of aggravated battery with great bodily harm and sentenced Roman to 30 months probation, with \$640 in mandatory fees and costs. This appeal followed.

¶ 21 ANALYSIS

¶ 22 *Admissibility of Testimony Regarding the Handling of the Knife*

¶ 23 Defendant first argues that the trial court erred in admitting testimony from Janessa Gonzalez and Jeanette Roman regarding their handling of the knife used to stab Torres.

Defendant concedes that he forfeited review of this issue because his counsel did not raise it in a

posttrial motion. He therefore invokes the plain-error rule, which "bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved claims of error in specific circumstances." *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). A reviewing court will only apply the plain-error doctrine when

" '(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.' " *Id.* (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007)).

"In plain-error review, the burden of persuasion rests with the defendant." *Id.*

¶ 24 The first step in applying the plain-error doctrine is to determine whether any error occurred. *Id.* The admission of evidence lies within the discretion of the trial court, and we review the trial court's decision to admit evidence for an abuse of discretion. *People v. Becker*, 239 Ill. 2d 215, 234 (2010). "An abuse of discretion occurs where the trial court's decision is arbitrary, fanciful or unreasonable [citation] or where no reasonable person would agree with the position adopted by the trial court [citations]." *Id.*

¶ 25 On cross-examination of defendant's girlfriend and mother, the State asked about their handling of the knife defendant used to stab Torres. Gonzalez found the knife in the snow outside her apartment and put it in a drawer in her room. She called defendant's mother and gave her the knife. After receiving the knife, Ms. Roman lost it. Gonzalez later told the police about

the knife when questioned, but neither Gonzalez nor defendant's mother called police when they had possession of the knife. When defense counsel objected to some of the questions eliciting this testimony as irrelevant or "beyond the scope" of direct examination, the State responded, "it's credibility," and the trial court overruled defense counsel's objections. The State now argues that the questions were meant to expose the extent of Ms. Roman's and Gonzalez's biases for defendant. Defendant counters that the testimony regarding the handling of the knife was not necessary to demonstrate the witnesses' biases. According to defendant, it was enough for the factfinder to hear that Gonzalez was defendant's girlfriend at the time of the incident and that Ms. Roman is his mother.

¶ 26 We start with the undisputed principle that "[s]howing bias, interest and motive to testify is an accepted method of impeachment." *People v. Thomas*, 354 Ill. App. 3d 868, 885 (2004). "Bias describes the 'relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party. * * * Proof of bias is almost always relevant because the jury * * * has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness' testimony.'" *Id.* (quoting *United States v. Abel*, 469 U.S. 45, 52 (1984)).

¶ 27 Even where the relationship is apparent, however, evidence showing extent or strength of a witness' bias is relevant to assist the factfinder in assessing witness credibility. In *United States v. Abel*, for example, the United State Supreme Court found that evidence that the defendant and a witness were both members of the Aryan Brotherhood was relevant to show the witness' bias. 469 U.S. at 54. The Court further explained that "[t]he attributes of the Aryan Brotherhood—a

secret prison sect sworn to perjury and self-protection—bore directly not only on the *fact* of the bias but also on the *source* and *strength* of [the witness'] bias." (Emphasis in original.) *Id.* Similarly, in *People v. Draheim*, 242 Ill. App. 3d 80 (1993), a witness was impeached with evidence showing that she had a bias for the State because she was an informant paid by the police to set up drug transactions. *Id.* at 90. The appellate court reasoned that "[a]lthough bias had been revealed, *the degree* to which it existed was not revealed when the [trial] court prevented [the witness] from stating how much total money she made as an information." (Emphasis added.) *Id.* The appellate court concluded that the trial court erred by not allowing questions regarding the amount of money paid to the witness, which revealed the *extent* of her bias. *Id.*

¶ 28 In this case, the trial court was aware that the defense witnesses had close relationships with the defendant. What was not apparent from these relationships alone, however, was their strength. This is why the State asked both defendant's mother and his ex-girlfriend how often they visited the defendant in prison and why the State asked defendant's former girlfriend if she still cared for defendant. The witnesses' answers showed the extent of their ties to the defendant. The same is true regarding Ms. Roman's and Gonzalez's handling of the knife after the stabbing. Not every mother or every girlfriend would handle the knife as the witnesses did here—in a way that benefits the defendant but hinders an ongoing police investigation. Where defendant's girlfriend and mother acted contrary to a police investigation, which they knew was occurring, the trial court was entitled to draw the reasonable inference that they hoped to help defendant and protect him from prosecution. *Cf. People v. Sievers*, 56 Ill. App. 3d 880, 884 (1978) (concluding

that the trial court did not err in admitting evidence that defendant's wife "had attempted to smuggle hacksaw blades to her husband while he was in jail," where evidence was admitted to show wife's bias and interest). The actions of defendant's girlfriend and mother provided insight into the degree to which they cared for him—the extent of their biases—and their testimony regarding the handling of the knife was therefore a relevant consideration for the finder of fact.

¶ 29 Although the testimony regarding the handling of the knife was admissible to impeach Gonzalez's and Ms. Roman's credibility, we must address one additional concern raised by defendant: whether the trial court considered their testimony for an improper purpose. Defendant argues that court drew an improper inference that defendant knew about, or took part in, the concealment of the knife. According to defendant, the court therefore viewed the testimony as probative of defendant's consciousness of guilt and relied on it as a reason not to believe his account of the confrontation with Torres. In reviewing the factual findings in a bench trial, we must "presume[] that the trial court considered only admissible evidence and disregarded inadmissible evidence in reaching its conclusion." *People v. Naylor*, 229 Ill. 2d 584, 603 (2008). "The defendant may overcome this assumption only if the record *affirmatively demonstrates* the contrary." (Emphasis added.) *People v. Burdine*, 362 Ill. App. 3d 19, 26 (2005).

¶ 30 We acknowledge that relying on the testimony of Gonzalez and Ms. Roman regarding the knife as an indicator of defendant's consciousness of guilt, without evidence connecting defendant to their actions, would be improper. See, e.g., *People v. Lucas*, 151 Ill. 2d 461, 486 (1992) ("While evidence of a plan to eliminate witnesses is admissible to show a consciousness of guilt where the scheme is connected to the defendant, absent such a connection, the plan is not

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probative of the defendant's consciousness of guilt and should be excluded from evidence."). We also agree with defendant that in this case there was no evidence that defendant directed his girlfriend or mother to look for the knife or knew anything about their handling of it.

¶ 31 In view of the trial court's entire discussion of the evidence, however, we conclude that the record does not affirmatively demonstrate that the trial judge considered the testimony as probative of defendant's consciousness of guilt. Defendant references a single statement from the court's findings:

"He leaves the knife on the scene. He flees the scene. He doesn't go to the police. His girlfriend recovers the knife. She doesn't turn the knife over to the police. She calls the mother of the defendant and turns the knife over to her, who she [sic] loses the knife. So I don't buy his defense."

Defendant points to the trial court's phrase "I don't buy his defense" as an indication that the preceding discussion related to defendant's credibility, but the trial court used that phrase elsewhere in its findings as shorthand for rejecting defendant's self-defense argument, not as a finding regarding his credibility. Moreover, while reciting the undisputed testimony concerning what happened after the stabbing, the court never suggested that defendant directed his girlfriend to recover the knife or that he came into possession of the knife. Instead, the court found that Janessa alone recovered the knife and it was Ms. Roman who later lost it. We also note that the State's only mention of the handling of the knife during closing arguments was in reference to Gonzalez's credibility. Defendant has not overcome the presumption that the trial court considered only competent evidence in making its findings.

¶ 32 We conclude that the trial court did not abuse its discretion in allowing the defense witnesses to testify regarding the handling of the knife. "Having found no error, there can be no plain error." *People v. Bannister*, 232 Ill. 2d 52, 79 (2008). We also reject defendant's claim that he was denied his sixth amendment right to effective assistance of counsel because his trial counsel failed to file a posttrial motion preserving the claim of error. The Illinois Supreme Court has made clear "that on a claim of ineffective assistance of counsel for failing to properly preserve issues for review, defendant's rights are protected by Supreme Court Rule 615(a), which allows a court to review unpreserved claims of plain error that could reasonably have affected the verdict." *People v. Coleman*, 158 Ill. 2d 319, 350 (1994); see also *People v. Evans*, 209 Ill. 2d 194, 222 (2004) (finding that where the admission of testimony was not error, "counsel was not deficient for failing to object"). Defendant's counsel was not ineffective for failing to raise the admission of testimony regarding the handling of the knife in a posttrial motion.

¶ 33 *Sufficiency of the Evidence*

¶ 34 We next consider defendant's claim that the State failed to prove beyond a reasonable doubt that he did not stab Angel Torres in self-defense. "Self-defense is an affirmative defense, and once a defendant raises it, the State has the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense, in addition to proving the elements of the charged offense." *People v. Lee*, 213 Ill. 2d 218, 225 (2004). "The elements of self-defense are: (1) that unlawful force was threatened against a person; (2) that the person threatened was not the aggressor; (3) that the danger of harm was imminent; (4) that the use of force was necessary; (5) that the person threatened actually and subjectively believed a danger existed that required the

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use of the force applied; and (6) the beliefs of the person threatened were objectively reasonable." *Id.*; 720 ILCS 5/7-1(a) (West 2008). The State has the burden to disprove at least one element to defeat a defendant's self-defense claim. *Lee*, 213 Ill. 2d at 225.

¶ 35 In considering the sufficiency of the evidence in the context of self-defense, the question for the reviewing court is "whether, after considering the evidence in the light most favorable to the State, any rational trier of fact could have found, beyond a reasonable doubt, that defendant did not act in self-defense." *People v. Young*, 347 Ill. App. 3d 909, 920 (2004). This court will not retry the defendant. *People v. Ward*, 215 Ill. 2d 317, 322 (2005). "Rather, determinations of the credibility of witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence are responsibilities of the trier of fact." *People v. Jimerson*, 127 Ill. 2d 12, 43 (1989); see also, *e.g.*, *People v. Agnew-Downs*, 404 Ill. App. 3d 218, 228 (2010).

¶ 36 On appeal, defendant first argues that the State failed to disprove the second element of self-defense: that defendant was not the aggressor in the quarrel with Torres. "The right of self-defense does not justify killing [or using force against] the original aggressor after the aggressor abandons the quarrel * * *." *People v. De Oca*, 238 Ill. App. 3d 362, 368 (1992). Torres was undisputedly the initial aggressor after he threw the first punch, but if Torres retreated from the fight before defendant stabbed him, defendant would be considered the aggressor and his self-defense claim would fail. Defendant contends that the trial court wrongly concluded Torres retreated from the fight before defendant stabbed him.

¶ 37 The court heard testimony from Torres that after he punched the defendant, he said to himself, "I don't have to deal with this no more," and headed back to his apartment building. Torres testified that after turning his back, he fell on the ice, and defendant then came after him with a knife. According to defendant, after Torres punched him, Torres was only an arm's length away from defendant. Defendant testified that he saw that Torres had what looked like a knife, feared for his life, and then stabbed Torres. The trial court plainly stated that "[t]his is a case of someone bringing a knife to a fist fight," noting that "[i]t is a question of credibility." The court then found that Torres had been impeached on minor issues and credited his testimony in recounting the sequences of events during the dispute with defendant. It was the province of the trial court, which saw and heard the testimony, to resolve the inconsistencies among the witnesses' conflicting descriptions of events. *Lee*, 213 Ill. 2d at 225; *People v. Mullen*, 141 Ill. 2d 394, 403 (1990). We must defer to the trial court's resolution of conflicting evidence, and we cannot say that the trial court's decision to rely on Torres' description of events was so unreasonable or unsatisfactory as to leave a reasonable doubt as to defendant's guilt.

¶ 38 Defendant contends that we should abandon our deference to the trial court's factual findings because Torres' testimony that he headed back to the apartment after punching defendant is "contrary to human experience." This court has held that "when a conviction is based upon testimony that is 'improbable, unconvincing and contrary to human experience,' * * * the conviction must be reversed." *People v. Delgado*, 376 Ill. App. 3d 307, 311 (2007) (quoting *People v. Vasquez*, 233 Ill. App. 3d 517, 527 (1992)). It is true that Torres, who was admittedly angry, initiated the fight by coming downstairs to confront defendant about his treatment of

Janessa Gonzalez. But Torres also offered an explanation for his decision to walk away: Torres concluded that he "didn't have to deal with" defendant anymore. The trial court could have concluded that it was plausible for a 51-year-old man to decide he didn't "have to deal with" an 18-year-old who no longer posed a threat to Janessa, and to return to be with his family on Christmas Eve. Torres' testimony was not so improbable or contrary to human experience that, as a matter of law, no reasonable trier of fact could have found, beyond a reasonable doubt, that Torres abandoned the fight and defendant then became the aggressor. See *De Oca*, 238 Ill. App. 3d at 367-68 (finding no error in the trial court's conclusion that defendant was the initial aggressor because although the victim initiated fistfight with the defendant, the defendant became the aggressor when he presented a loaded shotgun after the fistfight had ended).

¶ 39 There was sufficient evidence that defendant became the aggressor after Torres retreated, and the State thus disproved the second element of defendant's self-defense claim. We therefore need not consider defendant's arguments that the State failed to disprove other elements of defendant's self-defense claim. We conclude that a rational trier of fact could have found, beyond a reasonable doubt, that defendant did not act in self-defense.

¶ 40 *Presentence Incarceration Credit*

¶ 41 Defendant's final argument is that he was entitled to have the \$200 "State DNA ID System," the \$10 "Mental Health Court," and the \$30 "Children's Advocacy Center" assessments satisfied by presentence incarceration credit and eliminated from the total amount imposed during sentencing. Section 110-14 of the Code of Criminal Procedure provides, in relevant part: "Any person incarcerated on a bailable offense who does not supply bail and against whom a fine

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is levied on conviction of such offense shall be allowed a credit of \$5 for each day so incarcerated upon application of the defendant." 725 ILCS 5/110-14(a) (West 2008). The parties agree that the section 110-14 operates to offset only fines, not fees or costs. See *People v. Johnson*, 2011 IL 111817, ¶ 8. "Broadly speaking, a 'fine' is a part of the punishment for the conviction, whereas a 'fee' or 'cost' seeks to recoup expenses incurred by the State—to 'compensate' the State for some expenditure incurred in prosecuting the defendant." *People v. Jones*, 223 Ill. 2d 569, 580 (2006). Although the trial court imposed the assessments listed above, among others, the court did not apply any presentence credit to satisfy any of these assessments. Defendant was incarcerated on the bailable offense of aggravated battery for 173 day, and we consider whether defendant is entitled to offset any assessments imposed with his presentence incarceration credit.

¶ 42 Defendant contends that the \$200 "State DNA ID System" assessment, imposed pursuant to 730 ILCS 5/5-4-3(j) (West 2008), is a fine. After the parties submitted their briefs to this court, the Illinois Supreme Court definitively rejected this argument, holding that "the \$200 DNA charge is not a fine, and therefore is not subject to offset by the section 110-14 presentence incarceration credit." *Johnson*, 2011 IL 111817, ¶ 8. Following *Johnson*, we conclude that defendant's presentence incarceration credit does not offset the \$200 "State DNA ID System" assessment.

¶ 43 As to the \$10 "Mental Health Court" assessment, imposed pursuant to 55 ILCS 5/5-1101(d-5) (West 2008), the State concedes that the assessment was a fine subject to offset. We agree that although the "Mental Health Court" assessment is labeled a "fee," it is properly

considered a "fine" because it was not designed to reimburse the State for money it expended in prosecuting the defendant. See *Jones*, 223 Ill. 2d at 580; *People v. Williams*, 405 Ill. App. 3d 958, 966 (2010) (concluding that "Mental Health Court" assessment was a fine "for which presentence incarceration credit of \$5 per day is authorized"). The State also concedes that the \$30 "Children's Advocacy Center" assessment, imposed pursuant to 55 ILCS 5/5-1101(f-5) (West 2008), constitutes a fine. See *People v. Jones*, 397 Ill. App. 3d 651, 660 (2009) (finding "Children's Advocacy Center" assessment to be a fine subject to offset).

¶ 44 Defendant is therefore entitled to a \$5 per diem presentence credit to the Mental Health Court and Children's Advocacy Center assessments. We direct the clerk to apply presentence credit and vacate the \$10 Mental Health Court fine and the \$30 Children's Advocacy Center fine.

¶ 45 CONCLUSION

¶ 46 For the foregoing reasons, we affirm defendant's conviction for aggravated battery and remand with directions to modify the fines, fees, and costs order.

¶ 47 Affirmed and remanded with directions.