FIRST DIVISION
FILED: NOVEMBER 13, 2012

No. 1-11-1947

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 C 660330
	)	
SIGMUND PINKARD,	)	Honorable
	)	James L. Rhodes,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Karnezis and Cunningham concurred in the judgment.

O R D E R

¶ 1 Held: The trial court did not err in denying the defendant's motion to suppress or in finding him guilty beyond a reasonable doubt, but it did err in calculating the fees and fines to be assessed against him.

¶ 2 The defendant, Sigmund Pinkard, appeals from his bench trial convictions and subsequent sentence for possession of a controlled substance, namely ecstacy. On appeal, the defendant argues that (1) the drug evidence should have been suppressed because it was obtained pursuant to an unjustified fourth amendment stop, (2) the State failed to prove beyond a reasonable doubt that he possessed the ecstacy, and (3) the court erred in its calculation of various fines and fees to be assessed against him. The State concedes the fines and fees argument. For the reasons that follow, we affirm the judgment of the trial court as modified.

¶ 3 Prior to trial, the defendant filed a motion to exclude all evidence that was discovered by police pursuant to his arrest at a liquor store. The only witness to appear at the January 4, 2011, hearing on that motion was Inspector Gena of the Cook County Sheriff's Police Department. Gena testified that he had been a police officer for four years and a member of the gang crimes unit for two. Gena said that, on the night of February 10, 2010, he and other investigators pulled up to a liquor store to conduct a "premise[s] check." When Gena was asked to explain why the officers conducted the premises check at the liquor store, the following exchange occurred:

"Q. And why were you doing a premise[s] check of that liquor store?

A. It's a high crime narcotics area where we made numerous narcotics arrests.

Q. How many arrests would you say you have been personally involved with at that same location?

A. Well over 50.

Q. Is that in a two-year period that you have been on the Gang Crimes Task Force?

A. That's correct."

¶ 4 When the officers arrived at the store, all wearing clothing conspicuously identifying them as police, Gena saw the defendant standing outside in front of the store's doorway. On cross examination by the State, Gena recalled that he got out of the car, made eye contact with the defendant, whom he recognized as someone he had previously helped arrest, and saw the defendant "turn[] around and attempt[] to run into the store." Gena "followed him directly within ten feet *** to the inside of the liquor store on the other side of the door." Still under cross examination, Gena describe the encounter as follows:

"Well when I ran in I was behind him. I said hey, stop come here and talk to me. He said why are you police always fuck with me. He wouldn't turn around. He kept doing this (indicating) with his back towards me.

[PROSECUTOR]: Okay. For the record, your Honor, the witness is turning his body giving the Court his back."

¶ 5 Gena said that he could not see the defendant's hands at this point in the encounter but that the defendant "eventually" turned around. As the two spoke, Gena noticed that the defendant "kept taking [sic] his left foot while he was speaking to me, and he kept looking at the ground as he was speaking." Gena then saw a "clear plastic bag [with a] black tinted color" containing a "pink purplish pill" near the defendant's left foot that Gena believed to be ecstacy. Gena ordered the defendant to move his foot, picked up the bag, and placed the defendant in custody.

¶ 6 On re-direct examination by defense counsel, Gena acknowledged that his police report of the incident stated that the defendant had "walked" into the liquor store "in an aggressive manner." When defense counsel then asked about the defendant's "walk[ing]" into the store, Gena offered that he walked "in a brisk manner. He turned around. It was nothing slow about it." On further re-direct examination, Gena agreed that he had no knowledge regarding what was on the floor of the store prior to his entry. He also clarified that the defendant was shuffling his left foot throughout the time the two of them spoke. When asked by the court to clarify further, Gena explained that he did not know if the defendant put his foot directly on the bag, but he said that the defendant was moving his foot back and forth in the area of the bag.

¶ 7 After the defendant was arrested, police found additional narcotics on his person. Citing the high crime area, the defendant's going into the store, and the defendant's suspicious movements, the trial court denied the defendant's motion to suppress, with the following explanation:

> "So what I have heard was this was a high crime area. The Defendant is known to the officer. The officer approaches. The Defendant opens the door, goes into the store. The Defendant is standing there. The officer starts asking him things. He acts in a nervous manner.
>
> While he was standing there, the officer sees something on the floor that the Defendant may or may not have known was there, or may or may not have been trying to hide. It's not a trial. It's a motion. That's enough for probable cause [to arrest]. Motion is denied."

¶ 8 At trial, Gena again appeared as the only witness. His testimony was consistent with the testimony he had offered at the hearing on the defendant's pretrial motion. The parties also offered stipulations establishing that the pill Gena found was, in fact, ecstacy and that the drug evidence had been kept in a proper chain of custody. At the conclusion of the trial, the court found the defendant guilty of possession of the ecstacy, without any specific factual findings. The court sentenced the defendant to 30 months' TASC probation, and it imposed $940 in fines and fees against him. The defendant now appeals.

¶ 9 The defendant's first argument on appeal is that the trial court erred in denying his pretrial motion to suppress evidence. Although his motion to suppress before trial challenged the validity of his arrest and the admissibility of all subsequently discovered evidence, the defendant now argues that police violated his fourth amendment rights in finding the ecstacy that led to his arrest. Although the defendant did not raise this argument below, he asks us to excuse the forfeiture and consider the issue pursuant to the plain-error rule. See Ill. Sup. Ct. R. 615(a) (eff. Jan. 1, 1967). As the defendant observes in his reply brief, the State offers no challenge to the defendant's assertion that we may consider the issue as plain error. We therefore excuse the defendant's forfeiture and consider his argument that the ecstacy found on the liquor store floor should have been suppressed from evidence.

¶ 10 In reviewing a trial court's ruling on a motion to suppress evidence, a reviewing court must apply the two-part standard of review adopted by the Supreme Court in Ornelas v. United States, 517 U.S. 690, 699 (1996). People v. Luedemann, 222 Ill. 2d 530, 542, 857 N.E.2d 187 (2006). Under this standard, we give great deference to the trial court's factual findings, and we will reverse those findings only if they are against the manifest weight of the evidence. Luedemann, 222 Ill. 2d at 542. A reviewing court, however, remains free to undertake its own assessment of the facts in relation to the issues and may draw its own conclusions when deciding what relief should be granted. Luedemann, 222 Ill. 2d at 542. Accordingly, we review de novo the trial court's ultimate legal ruling as to whether suppression is warranted. Luedemann, 222 Ill. 2d at 542.

¶ 11 The fourth amendment to the United States Constitution provides "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches [and] seizures." U.S. Const., amend. IV. Similarly, the Illinois Constitution provides citizens with "the right to be secure in their persons, houses, papers, and other possessions against unreasonable searches and seizures." Ill. Const.1970, art. I, § 6. Reasonableness, under these provisions, requires that an officer without an arrest warrant have probable cause to support an arrest (People v. Jackson, 232 Ill.2d 246, 274-75, 903 N.E.2d 388 (2009)) or reasonable suspicion to support a stop (Terry v. Ohio, 392 U.S. 1, 22 (1968)). The parties agree that the defendant was stopped at the time Gena ordered him to "stop" and answer questions, and remained stopped until police saw the drugs that led to the defendant's arrest. The question becomes whether police had the reasonable suspicion the fourth amendment requires to justify such a stop.

¶ 12 In order to justify the stop at issue, Gena must have had "knowledge of sufficient articulable facts at the time of the encounter to create a reasonable suspicion that [the defendant] [had] committed, or [was] about to commit a crime." People v. Smithers, 83 Ill. 2d 430, 434, 415 N.E.2d 327 (1980). Whether a stop is supported by reasonable suspicion depends on the facts known to the officer at the time of the stop. People v. DiPace, 354 Ill. App. 3d 104, 108, 818 N.E.2d 774 (2004). To determine if a stop is valid, "[a] court objectively considers whether, based on the facts available to [police], the police action was appropriate." People v. Thomas, 198 Ill. 2d 103, 109, 759 N.E.2d 899 (2001). "To justify the intrusion, the police officer must be able to point to specific and articulable facts which, taken together with rational inferences therefrom, reasonably warrant that intrusion." Thomas, 198 Ill. 2d at 109. "The facts supporting the officer's suspicions need not meet probable cause requirements, but they must [constitute] more than a mere hunch." Thomas, 198 Ill. 2d at 110.

¶ 13 The defendant acknowledges the Supreme Court's now axiomatic holding that a suspect's presence in a high-crime area, coupled with "evasive behavior," amounts to the reasonable suspicion necessary to justify a Terry stop. See Illinois v. Wardlow, 528 U.S. 119 (2000). However, he argues

that neither of those circumstances is present in this case.

¶ 14 On the issue of whether the defendant was in a high-crime area at the time of the encounter, he asserts first that the record on the issue is too sparse to draw such a conclusion. As the State observes in its brief, the trial court's designation of the liquor store as a high-crime area constitutes a finding of fact that must stand unless it is against the manifest weight of the evidence. People v. Davis, 352 Ill. App. 3d 576, 580, 815 N..E.2d 92 (2004) (characterizing a trial court's designation of a high-crime area as a finding of fact). The defendant argues in his reply brief that the court actually made no such finding, because it stated only that "what [he had] heard was this was a high crime area," not that he actually believed that this was a high crime area. However, the court made this statement at the beginning of its ruling, as the first in a litany of historical facts that led it to its ruling. We see no way to read this statement as anything other than a finding that the defendant was arrested in a high-crime area.

¶ 15 Notwithstanding this point, the defendant argues that there was insufficient evidence presented at the pretrial hearing to support the trial court's finding. The defendant begins by noting that Gena cited the "well over 50" arrests he had participated in at the location in the 24 months preceding his testimony at the pretrial hearing. The defendant observes that only 13 of those months passed before the defendant was arrested, and he thus argues that Gena's statistic is "at best ambiguous." However, especially given the deference we owe to the trial court on this issue, we cannot say that the ambiguity in this testimony disqualifies it as support for the trial court's finding. Gena's testimony reveals that, in the period before and after the defendant's arrest, there was a particularly high level of illegal activity at the location in question. Further, there was no testimony to indicate that illegal activity in the area changed appreciably inside that two years–in fact, Gena testified that police had made "numerous previous narcotics arrests." This testimony, along with Gena's statement that police visited the location because it was a high-crime area, lend strong support to the trial court's finding that it was, in fact, a high-crime area.

¶ 16 The defendant also argues that it is impossible to determine from Gena's testimony exactly

what "location" he was identifying as a high-crime area. The defendant offers that it would be "unusual" for an officer to refer to a single business as a high-crime area, and from that he concludes that Gena's reference to a high-crime area was too vague to support any finding that the liquor store was such an area. We disagree with the defendant's interpretation of the testimony. In response to a question about why police were visiting "that liquor store," Gena responded, "[i]t's a high crime narcotics area." The prosecutor then asked how many arrests Gena had been involved in "at that same location," and Gena gave his answer. The most reasonable understanding to draw from these exchanges is that Gena was referring to the liquor store itself as a high-crime area. For that reason, we conclude that the trial court's finding to that effect was not against the manifest weight of the evidence.

¶ 17 The defendant also disputes that his presence in this area was coupled with his evasion of police. His argument on this point has two prongs. First, the defendant argues that Gena's testimony that he was "running" was impeached with the police report, which apparently indicated that he "walked" into the liquor store "in a brisk manner." We do not view the police report as significantly impeaching; Gena was consistent throughout his testimony (at both hearings) that the defendant turned from him and walked briskly into the liquor store.

¶ 18 Second, the defendant argues that, if he walked briskly into the store, his doing so, even in a high-crime area, did not supply Gena with a reasonable suspicion of criminal activity. According to the defendant, the Supreme Court requires "headlong flight" in a high-crime area in order to trigger reasonable suspicion. The defendant bases his view on the Supreme Court's decision in Wardlow, which did indeed rely on that defendant's headlong flight from police. However, the Surpeme Court's discussion of the issue leaves no doubt that it intended its holding to reach many types of evasive actions undertaken by suspects in reaction to police. Scilicet,

> "In this case, moreover, it was not merely respondent's presence in an area of heavy narcotics trafficking that aroused the officers' suspicion, but his unprovoked flight upon noticing the police. Our cases have also recognized that nervous, evasive behavior is a

> pertinent factor in determining reasonable suspicion. [Citations]. Headlong flight–wherever it occurs–is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." Wardlow, 528 U.S. at 125.

The Supreme Court went on to clarify that citizens retain the right to ignore police who have no cause to stop them, but "unprovoked flight is simply not a mere refusal to cooperate." Wardlow, 528 U.S. at 125. The Supreme Court continued: "Flight, by its very nature, is not 'going about one's business'; in fact, it is just the opposite." Wardlow, 528 U.S. at 125.

¶ 19 Although the Supreme Court referred several times to "flight" in the above passages, it articulated the rationale, and thus the boundaries, for its rule quite clearly: the Supreme Court considers evasive behavior to be a pertinent factor in determining reasonable suspicion. This "evasive behavior" might take the form of headlong flight, but there are any number of other evasive or nervous actions a suspect might take that do not constitute his "going about his business." Abandoning a spot outside and hurriedly walking into a store immediately upon sight of police officers, as the defendant did here, qualifies as one of these evasive maneuvers.

¶ 20 In so holding, we distinguish several decisions upon which the defendant relies to argue that his actions did not amount to the type of evasion that can trigger reasonable suspicion. For example, in People v. Kipfer, 356 Ill. App. 3d 132, 824 N.E.2d 1246 (2005), this court found no reasonable suspicion where an officer drove past a Dumpster and saw the defendant "[come] out from behind that Dumpster[,] *** walk[] in the direction opposite to the direction the squad car was traveling," and ignore the officer's initial efforts to stop him. Kipfer, 356 Ill. App. 3d at 138. Or, in People v. Smith, 331 Ill. App. 3d 1049, 780 N.E.2d 707 (2002), this court found no reasonable suspicion where the defendant, whom police encountered standing outside a known drug house, refused to answer questions and backed away from officers who asked him to remove his hands from his pockets. Smith, 331 Ill. App. 3d at 1051, 1055. In both of these cases, the defendant did not take actions that fairly could be described as evasive, and, in fact, both defendants' actions were quite consistent with their right to continue about their business and ignore police. Here, by contrast, as we have said, the

defendant did not go about his business–he suddenly and hurriedly ceased his business upon sight of the police.

¶ 21 For these reasons, we conclude that, at the time the defendant submitted to Gena's authority, Gena had noticed both his presence in a high-crime area and his unprovoked evasion of police. These factors sufficed to give Gena a reasonable and articulable suspicion that the defendant was engaged in criminal activity, so that the ensuing stop was justified under the fourth amendment. Accordingly, we reject the defendant's argument that the ecstacy found as a result of that stop should have been suppressed from evidence.

¶ 22 The defendant's first argument assumes that he held the ecstacy until he was stopped. If he never possessed it, then its discovery would not be traceable to a fourth amendment violation, and he would have no grounds to ask that the evidence be suppressed. See, eg., People v. Davis, 398 Ill. App. 3d 940, 959, 924 N.E.2d 67 (2010) (the exclusionary rule "typically require the exclusion of any evidence obtained in violation of the fourth amendment"). If the defendant dropped the pill and gave up possession of it before he was seized, then he would have abandoned it without police coercion, and its recovery would not implicate the fourth amendment. See California v. Hodari D., 499 U.S. 621, 623-24 (1991) ("If [the defendant was not seized at the time he discarded illegal drugs], the drugs were abandoned *** and lawfully recovered by the police"). That leaves only the possibility that the defendant held the drug until he was stopped and then put it on the floor in response to police coercion. The defendant's second argument discards this premise, and asserts instead that the State failed to prove that he possessed the ecstacy.

¶ 23 When a defendant challenges the sufficiency of the evidence, the appellate court must determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 (1979); People v. Cunningham, 212 Ill. 2d 274, 278, 818 N.E.2d 304 (2004). In such a case, it is not the role of the reviewing court to retry the defendant. People v. Sutherland, 223 Ill.2d 187, 242, 860 N.E.2d 178 (2006). A criminal conviction will not

be set aside on the grounds of insufficient evidence unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. People v. Brown, 169 Ill. 2d 132, 152, 661 N.E.2d 287 (1996). In reviewing the evidence we will not substitute our judgment for that of the trier of fact. Sutherland, 223 Ill. 2d at 242; People v. Collins, 214 Ill. 2d 206, 217, 824 N.E.2d 262 (2005). The determination of the weight to be given the witnesses' testimony, their credibility, resolution of inconsistencies and conflicts in the evidence, and reasonable inferences to be drawn from the testimony are the responsibility of the trier of fact. Sutherland, 223 Ill. 2d at 242.

¶ 24 The defendant asks us to eschew this Collins standard of review in favor of de novo review. In so asking, the defendant directs us to the supreme court's decision in People v. Smith, 191 Ill. 2d 408, 732 N.E.2d 513 (2000). In Smith, the supreme court considered whether a defendant could be convicted of armed violence despite the fact that he dropped his firearm before police reached him. Smith, 191 Ill. 2d at 411. The supreme court stated that, "[b]ecause the facts [were] not in dispute, defendant's guilt [was] a question of law, which [it] review[ed] de novo." Smith, 191 Ill. 2d at 411. The supreme court then proceeded to analyze the armed violence statute to determine whether the defendant's conduct fell within the statute's reach. See Smith, 191 Ill. 2d at 411-13. Thus, as the State observes, the question in Smith did not depend on the sufficiency of the evidence, but on the legal significance of that evidence. In other words, the supreme court in Smith was engaged in a question of statutory interpretation, not of evidentiary review. Here, the question put to us is whether the evidence supports the inference that the defendant possessed the drugs in question. This is a question of evidentiary review, not of law, and we review the question under the Collins standard.

¶ 25 To achieve a successful prosecution for possession of a controlled substance, the State must establish the accused's knowing possession of the drugs. People v. Givens, 237 Ill. 2d 311, 334-35, 934 N.E.2d 470 (2010). Possession may be either actual or constructive. People v. Blue, 343 Ill. App. 3d 927, 939, 799 N.E.2d 804 (2003). "Actual possession is the exercise by the defendant of present personal dominion over the illicit material and exists when a person exercises immediate and

exclusive dominion or control over the illicit material, but does not require present personal touching of the illicit material." Givens, 237 Ill. 2d at 335. "Constructive possession exists without actual physical dominion over the narcotics but where there is an intent and a capacity to exercise control and dominion over them. Blue, 343 Ill. App. 3d at 939.

¶ 26 The defendant argues that the evidence cannot establish his actual possession of the ecstacy because "the only evidence that [he] possessed the pill is his mere proximity to it when it was recovered and his action of shuffling his left foot while Investigator Gena was questioning him."[1] The defendant then argues that the baggie, found on a public floor, cannot have been within his immediate and exclusive control, and he cites several decisions in which mere proximity was deemed insufficient to establish possession. See People v. Scott, 367 Ill. App. 3d 283, 854 N.E.2d 795 (2006) (drugs found in mailbox to which the defendant had no key); People v. Adams, 242 Ill. App. 3d 830, 610 N.E.2d 763 (1993) (drugs found in a cabinet in bathroom of an apartment the defendant was visiting); People v. Ray, 232 Ill. App. 3d 459, 597 N.E.2d 756 (1992) (defendants found in an apartment with illegal drugs inside); People v. Howard, 29 Ill. Ap. 3d 387, 330 N.E.2d 262 (1975) (drugs found near the defendant and another person in the other person's motel room); People v. Stewart, 27 Ill. App. 3d 520, 327 N.E.2d 287 (1975) (drugs found in area of public parking lot immediately after the defendant left the area); People v. Kissinger, 26 Ill. App. 3d 260, 325 N.E.2d 28 (1975) (drugs found in areas of a home rented by people other than the defendants).

¶ 27 We see two flaws in the defendant's approach. First, the defendant considers only inculpatory events that occurred after he was stopped. However, in this case, police encountered the defendant, and observed his suspicious activity, before they ultimately stopped him and found the pill. Thus,

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[1]The defendant also argues that the State should be barred from asserting actual possession, because it argued only constructive possession before the trial court. However, the defendant does not raise this point until his reply brief, and his opening brief argues actual possession on the merits. For those reasons, we decline the defendant's invitation to bar the State's reliance on actual possession.

there is more evidence of his possession than just his proximity to the pill. Second, the defendant assumes that the only time he could have been found to have possessed the ecstacy was after he was stopped and the pill was on the floor. However, the facts of this case also raise the probability that the defendant actually possessed the ecstacy pill–held it in his hands, even–from the time Gena first saw him outside the store until the time he threw it on the floor and submitted to Gena's stop. Viewed in the light most favorable to the prosecution, the evidence supports this inference.

¶ 28 Indeed, the trial court was given several pieces of evidence to support the inference that the defendant had the ecstacy when Gena first saw him and then threw it to the ground upon being seized. First, the ecstacy was found on the floor very close to the defendant, in fact in the precise place he stopped in the liquor store. Second, Gena described the defendant's persistent suspicious foot movements in the immediate area of the ecstacy pill. Third, Gena described the defendant's staring down at the area in which the pill was located. These second and third pieces of evidence strongly indicate the defendant's awareness of the pill's presence, and his apprehension that Gena would discover it. Fourth, the defendant hurriedly evaded Gena from the moment he saw Gena arrive at the liquor store. Again, this shows the defendant's consciousness of guilt. Fifth, Gena testified that, when he followed the defendant inside the liquor store, the defendant remained turned away with his hands concealed even after Gena ordered him to stop. Sixth, the Gena encountered the defendant at a known narcotics trafficking location. Standing alone, any of these pieces of evidence might be insufficient to support a finding that the defendant dropped the drugs before speaking with Gena. However, their cumulative weight lends strong credence to that inference.

¶ 29 The defendant raises several points to undercut this inference. He notes that Gena did not testify that he saw the defendant drop the ecstacy and that the State introduced no corroborating evidence such as fingerprints. He also observes that, when he was processed for arrest and detention, the defendant was found to be in possession of additional drugs, as well as small baggies dissimilar to the ecstacy baggie found on the liquor store floor. He contends that the dissimilarities in the baggies demonstrate that the ecstacy baggie was not his, and he also asserts that it would make little

sense for him to discard his ecstacy while continuing to hold other drugs. We agree with the defendant that further State evidence on any of these points might have strengthened its case. However, even with those unresolved issues, the question for us is whether a rational trier of fact could have found that the defendant possessed the ecstacy; we must leave to the trier of fact the resolution of any disputes in the evidence. Based on the evidence we cite above, and viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found beyond a reasonable doubt that the defendant possessed the ecstacy before he was stopped. For that reason, we reject the defendant's second argument on appeal.

¶ 30 The defendant's final argument on appeal is that the court erred in its imposition of several fees and fines against him. He argues, and the State concedes, that the court overcharged him as follows: it imposed $75 of inapplicable traffic-related assessments (see 625 ILCS 5/16-104c, d (West 2008), 55 ILCS 5/5-1101(a) (West 2008)); it imposed a $200 DNA identification fee (730 ILCS 5/5-4-3(j) (West 2008)) despite the fact that his DNA had already been catalogued (see People v. Marshall, 242 Ill. 2d 285, 950 N.E.2d 668 (2011); it improperly imposed a $110 misdemeanor complaint filed fee (705 ILCS 105/27.2a(w)(1)(B) (West 2008)) even though he was not convicted of a misdemeanor; it imposed a $20 violent crime victim assistance fine (725 ILCS 240/10(b) (West 2008)) when the proper amount should have been $8; and it failed to award him $195 worth of credits for presentence custody (725 ILCS 5/110-14(a) (West 2008)) and for his bail bond (725 ILCS 5/110-7(f) (West 2008)). In total, the parties agree that we should modify the trial court's judgment to reduce his total assessments from $940 in fees and fines to $348. Pursuant to our authority under Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we now order that modification.

¶ 31 For the foregoing reasons, we affirm the judgment of the trial court, with the modification that the fines and fees assessed against the defendant be reduced from $940 to $348.

¶ 32 Affirmed as modified.