

SIXTH DIVISION  
November 1, 2013

No. 1-11-3610

**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).

---

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court
Plaintiff-Appellee,	)	of Cook County
	)	
v.	)	No. 09 CR 16795
	)	
EARL HILL,	)	Honorable
	)	Neil J. Linehan,
Defendant-Appellant.	)	Judge Presiding.

---

JUSTICE REYES delivered the judgment of the court.  
Justices Hall and Lampkin concurred in the judgment.

### ORDER

¶ 1 *Held:* The circuit court did not err in denying the defendant's motion to suppress evidence recovered during a police search of an automobile driven by defendant. The defendant's convictions for aggravated unlawful use of a weapon and one of his convictions for unlawful use of a weapon by a felon violated the "one-act, one-crime" rule. The defendant was entitled to credit for time served in presentence custody against certain fines imposed by the circuit court. The defendant's DNA analysis fee was unauthorized.

¶ 2 Following a bench trial in the circuit court of Cook County, defendant Earl Hill (Hill) was found guilty and convicted of violating the armed habitual criminal statute (720 ILCS 5/24-1.7(b) (West 2008)), two counts of unlawful use of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1) and six counts of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6 (West

2008)). The trial court sentenced Hill to eight years in prison on the armed habitual criminal charge, with concurrent seven-year sentences on each of the remaining charges. On appeal, Hill argues: (1) the trial court erred in denying his motion to suppress evidence; (2) his AUUW convictions and one of his convictions for UUWF should be vacated under the "one act, one crime" rule; and (3) the fees and fines imposed by the trial court should be reduced to reflect time spent in presentencing custody and the improper imposition of a DNA collection fee. For the following reasons, we affirm the judgment of the circuit court with modifications.

¶ 3 BACKGROUND

¶ 4 The record on appeal discloses the following facts. On September 16, 2009, Hill was charged by information with six counts of AUUW, two counts of UUWF, and one count of being an armed habitual criminal, all arising out of an incident which occurred on September 5, 2009.

¶ 5 Motion to Suppress Evidence

¶ 6 On January 26, 2010, Hill filed a motion to quash arrest and suppress evidence, alleging he was unlawfully arrested and that the vehicle he was driving was unlawfully searched, wherein the police recovered a .357 revolver. Hill sought to bar introduction of the revolver as evidence at trial and the suppression of all testimony related to the revolver.

¶ 7 At the hearing on the motion, Hill testified that on September 5, 2009, at approximately 8:30 p.m., he was driving alone near the intersection of 56th Street and Normal in Chicago, Illinois. Hill was driving a Buick Park Avenue belonging to his friend, Sarah King (King), who was a Wisconsin resident. Hill also testified King had just arrived from Wisconsin and had

requested Hill to drive to a store to make some purchases. According to Hill, King's Buick had Wisconsin license plates and current vehicle registration.

¶ 8 Hill further testified he observed a marked police vehicle activate its lights as he proceeded southbound on Normal Avenue. Consequently, Hill stated, he immediately pulled over to the right side of the street and came to a complete stop. As he pulled over, he searched the glove compartment and under the visor for the vehicle's insurance and registration. Hill discovered these documents under the visor and in a console in the center armrest of the vehicle.

¶ 9 Hill also testified police officers approached on both sides of the Buick. One officer approached the driver's side window, while the other observed Hill through the rear window. Hill lowered his window in order to speak to the police officer. When the police officer requested Hill's driver's licence and vehicle registration, Hill provided the registration and insurance, but informed the officer his driver's license was suspended. According to Hill, the police officer requested him to exit and step to the rear of the vehicle. Hill further testified the police officer requested Hill to place his hands on the trunk of the Buick and performed a pat-down search. Hill additionally testified the police searched the Buick after placing Hill in the rear of the police vehicle. Hill observed the police recover a gun from under the passenger side seat. On cross-examination, Hill testified he did not know the weapon was in the vehicle, and also denied owning the ammunition discovered in the vehicle. On redirect examination, however, Hill conceded the weapon belonged to him.

¶ 10 Chicago police officer Daniel Burns (Officer Burns) identified Hill as the individual he arrested on September 5, 2009. Officer Burns testified he and his partner, Chicago police officer

William Johnson (Officer Johnson) were driving westbound on 55th Street when they observed the vehicle directly in front of them bore a Wisconsin license plate without any registration sticker. After the vehicle executed a left turn onto Normal, Officer Burns activated his vehicle's emergency lights to conduct a traffic stop.

¶ 11 According to Officer Burns, after activating the emergency lights, the vehicle in front of him pulled to the right, slowed to one or two miles per hour and proceeded at that speed for approximately 30 seconds before coming to a complete stop. Officer Burns observed Hill's body while inside the vehicle moving up and down and his arms moving around. Officer Burns further testified he was trained to observe any unusual movement inside a vehicle subject to a traffic stop. Based on thousands of traffic stops he had conducted in the prior 11 years, Officer Burns found Hill's movements and failure to immediately curb his vehicle to be unusual. Officer Burns added that Hill was still making movements underneath the front seat as he approached the Buick with his weapon drawn. Officer Burns believed the movements were an attempt to conceal a weapon or narcotics. Officer Burns considered the situation to be dangerous, explaining that police officers are killed every day while conducting traffic stops.

¶ 12 Officer Burns testified he did not immediately request Hill to exit the vehicle because he wanted Hill to believe it was a routine traffic stop and wanted Hill to shut off the Buick's engine before he gave Hill any orders. Officer Burns requested Hill's driver's license. According to Officer Burns, Hill stated he did not have a license because his license was suspended. Officer Burns then requested Hill to shut down the engine and exit the Buick. Officer Burns testified he

then placed Hill into custody "in the opening of the doorway of the vehicle." The transcript contains the following exchange:

"Q. What happened next?

A. As I'm placing him into custody, my partner is coming around to assist me in placing [Hill] into custody, and I secured him into custody, and my partner searched the vehicle."

Officer Williams immediately searched the area underneath the seat where he and Officer Burns had observed Hill's hands moving. Officer Burns testified Officer Williams recovered a loaded .357 chrome Taurus revolver and a box of ammunition. According to Officer Burns, Hill was within reaching distance of the driver's seat when the search was performed. Officer Burns additionally testified an inventory search of the Buick was eventually performed.

¶ 13 On cross-examination, Officer Burns testified the lighting conditions were dark, but with some street lighting. Officer Burns testified he directed Hill to exit the Buick, immediately conducted a pat-down search, handcuffed Hill and removed Hill to the driver's side rear door of the Buick. Officer Burns handcuffed Hill not only because Hill did not possess a driver's license, but also for safety reasons. According to Officer Burns, Hill was placed into the police vehicle after the weapon was recovered from the Buick.

¶ 14 The redirect examination of Officer Burns consists of the following exchange:

"Q. Officer, I know this is a very detailed technical question. But at the point the gun was actually recovered, where was the defendant's body when he was in handcuffs?

A. Standing near the driver's side rear door."

The parties then stipulated to the admission of Hill's prior convictions, two of which were for UUWF, one of which was for possession of a controlled substance.

¶ 15 During closing arguments on the motion, Hill's counsel argued the evidence should be suppressed because the police search of the Buick fell outside the scope allowed under *Arizona v. Gant* because he was handcuffed at the time of the search. The State argued the search was within the scope of *Gant* because it occurred as Hill was being placed into handcuffs and Hill remained within reaching distance of the weapon. The State also argued the search "made sense" because it was a situation the police believed to be dangerous. The State further asserted the Buick would be impounded pursuant to the Illinois Vehicle Code. In rebuttal, Hill's counsel argued there was no evidence regarding whether the police were going to inventory the vehicle, to which the trial judge responded Officer Burns testified an inventory search was subsequently performed.

¶ 16 The trial court denied the motion to suppress. The trial judge first found Hill had standing to contest the search, based on Hill's admission that he owned the handgun. The trial judge determined this case was distinguishable from *Gant* and case law involving inventory searches because the police here had a reasonable suspicion a crime was being committed. The trial judge also indicated his reading of the facts was that the search occurred simultaneously to placing Hill under a valid arrest, and "almost simultaneously" to Hill being handcuffed. The trial judge further determined the handgun would have inevitably been discovered after the vehicle was impounded.

¶ 17

Trial

¶ 18 Officer Johnson was the State's sole trial witness. Officer Johnson's testimony regarding Hill's arrest and the search which recovered the handgun was substantially similar to the testimony Officer Burns provided during the motion to suppress evidence. Officer Johnson initially testified he searched the Buick as Officer Burns handcuffed Hill. Officer Johnson, however, subsequently testified during cross-examination he was proceeding around the rear of the vehicle when Officer Burns handcuffed Hill.

¶ 19 After the arrest, the police transported Hill to the 7th district police station. According to Officer Johnson, the police also transported the Buick to the police station. Officer Johnson testified he probably drove the vehicle to the police station. The Buick was impounded because the handgun was found therein due to the fact there was no individual to whom control of the Buick could be transferred.

¶ 20 At the police station, Officer Johnson advised Hill of his constitutional rights, which Hill indicated he understood. Officer Johnson testified Hill acknowledged he was a member of the Gangster Disciples street gang and lacked a firearms owner identification (FOID) card. During the processing of Hill's arrest, Officer Johnson also learned of Hill's prior felony convictions.

¶ 21 King testified on behalf of Hill that on the date of the arrest, she had traveled from La Crosse, Wisconsin, to Chicago to visit her boyfriend. When she arrived at her boyfriend's home that evening, her boyfriend was not present, but Hill and others were present. She requested Hill, whom she had known since 2008, to use her Buick to purchase beer, because she was tired and unfamiliar with the neighborhood. King testified the Buick bore current registration stickers and

the handgun belonged to her. Although King testified she purchased the weapon for her protection, she did not know much about the weapon and never fired it. King did not produce proof of purchase or registration for the handgun.

¶ 22 When King proceeded to recover her Buick, she did not ascertain whether the handgun remained in the vehicle. Furthermore, when King subsequently learned of Hill's arrest, she did not contact the police to inform them the weapon belonged to her.

¶ 23 Following the close of evidence, the trial judge found Hill guilty on all counts. The trial judge determined Hill's movements in the Buick indicated Hill knew the handgun was under the seat and he attempted to conceal it from the police. The trial judge also found King's testimony incredible.

¶ 24 On October 24, 2011, Hill filed a posttrial motion for a new trial. On November 7, 2011, the trial court denied Hill's posttrial motion and proceeded to a sentencing hearing. Following a hearing of the factors in aggravation and mitigation of the offenses, the trial judge sentenced Hill to eight years in the Illinois Department of Corrections on the charge of being an armed habitual criminal. The trial judge also imposed seven-year sentences on each of the AUUW and UUW convictions, all to run concurrently with the armed habitual criminal conviction. The trial judge further imposed several fines and fees, which will be discussed in detail below. Later that day, Hill filed a notice of appeal to this court.

¶ 25 DISCUSSION

¶ 26 On appeal, Hill argues: (1) the trial court erred in denying his motion to suppress evidence; (2) his AUUW convictions and one of his convictions for UUWF should be vacated



under the "one-act, one-crime" rule; and (3) the fees and fines imposed by the trial court should be reduced to reflect time spent in presentencing custody and the improper imposition of a DNA collection fee. We address Hill's arguments in turn.

¶ 27

#### I. The Motion to Suppress Evidence

¶ 28 On appeal, Hill argues the trial court erred by denying his motion to suppress evidence of the handgun found in King's vehicle. The State initially responds that Hill forfeited the issue by failing to raise it in his posttrial motion. In general, the failure to raise a claim of error via a posttrial motion forfeits appellate review of the claim. See *People v. Enoch*, 122 Ill. 2d 176, 186-88 (1988). *Enoch*, however, includes an exception for constitutional issues that have been properly raised at trial and may be raised via a postconviction petition. *Id.* at 190. Accordingly, Hill argues the forfeiture rule does not apply to the denial of a motion to suppress. See *People v. Miller*, 355 Ill. App. 3d 898, 900 (2005); *People v. Cox*, 295 Ill. App. 3d 666, 669-70 (1998). When a defendant fails to challenge the denial of his motion to suppress in a posttrial motion, however, any claimed error relating to the motion to suppress is forfeited. *People v. Cosby*, 231 Ill. 2d 262, 271-73 (2008). "[T]he mere fact that an alleged error affects a constitutional right does not provide a separate ground for review, for 'even constitutional errors can be forfeited.'" *Id.* at 272-73 (quoting *People v. Allen*, 222 Ill. 2d 340, 352 (2006)). Indeed, our supreme court criticized this court for directly addressing such issues where forfeiture exists. *Id.*

¶ 29 Defendant argues in the alternative the trial court committed plain error. Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967) creates an exception to the forfeiture rule by allowing courts

of review to note "[p]lain errors or defects affecting substantial rights." Under Illinois' plain error doctrine, a reviewing court may consider a forfeited claim 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 strength of the evidence.' " *Johnson*, 238 Ill. 2d at 484 (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007)).

The plain error doctrine is intended to ensure that a defendant receives a fair trial, but it does not guarantee every defendant a perfect trial. *Johnson*, 238 Ill. 2d at 484. Rather than operating as a general savings clause, it is construed as a narrow and limited exception to the typical forfeiture rule applicable to unpreserved claims. *Id.* The burden of persuasion rests with the defendant under both prongs of the plain error analysis. *People v. Sargent*, 239 Ill. 2d 166, 190 (2010). The ultimate question of whether a forfeited claim is reviewable as plain error is a question of law reviewed *de novo*. *Johnson*, 238 Ill. 2d at 485.

¶ 30 Generally, the first step of plain-error review is to determine whether any error occurred. *Thompson*, 238 Ill. 2d at 613. The burden of proof is on the defendant at a hearing on a motion to suppress evidence. 725 ILCS 5/114-12(b) (West 2008); *People v. Gipson*, 203 Ill. 2d 298, 306 (2003). If the defendant makes a *prima facie* case that the evidence was obtained through an illegal search, then the State can counter with its own evidence. *Id.* at 306-07. Review of a trial court's ruling on a motion to suppress involves a mixed question of law and fact. See *People v.*

*Pitman*, 211 Ill. 2d 502, 512 (2004). When reviewing a trial court's decision on a motion to suppress, we afford deference to the court's factual findings and only reject those findings which are against the manifest weight of the evidence. *People v. Johnson*, 237 Ill. 2d 81, 88 (2010).

The court's ultimate ruling on a motion to suppress, however, is subject to *de novo* review. *Id.* at 88-89. "[I]n reviewing the trial court's ruling on a motion to suppress, we may consider the entire record, including trial testimony." *People v. Robinson*, 391 Ill. App. 3d 822, 830 (2009).

¶ 31 Both the fourth amendment and the Illinois Constitution of 1970 guarantee the right of individuals to be free from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. Generally, " 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions.' " *Arizona v. Gant*, 556 U.S. 332, 338 (2009) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967) (footnote omitted)). "Among the exceptions to the warrant requirement is a search incident to a lawful arrest." *Id.* "The exception derives from interests in officer safety and evidence preservation that are typically implicated in arrest situations." *Id.*

¶ 32 In *Gant*, however, the United States Supreme Court held "[p]olice may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest." *Id.* at 351. In particular, police may "search a vehicle incident to a recent occupant's arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search." *Id.* at 343. "When these justifications are

absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies." *Id.* at 351.

¶ 33 In this case, Hill does not contest the legality of the traffic stop or his subsequent arrest for driving on a suspended license, but argues the search of King's Buick was illegal under *Gant* because Hill was secured when Officer Williams searched for and recovered the handgun.

¶ 34 The State next responds the search falls within the scope of *Gant*, asserting Hill was unsecured and within reaching distance of the weapon when the search occurred. The record is ambiguous on the question of whether Hill was handcuffed when the search occurred. Officer Burns testified he "secured [Hill] into custody, and my partner searched the vehicle." The State's redirect examination inquired, "[A]t the point the gun was actually recovered, where was the defendant's body when he was in handcuffs?" The question suggests Hill was handcuffed when the search occurred, but that is not the testimony. At trial, Officer Johnson initially testified he searched the Buick as Officer Burns handcuffed Hill, but testified on cross-examination he was proceeding around the rear of the vehicle when Officer Burns handcuffed Hill. The trial judge, in denying the motion to suppress evidence, indicated his reading of the facts was that the search occurred simultaneously with Hill being placed under arrest, and "almost simultaneously" to Hill being handcuffed, but did not make a factual finding regarding the sequence of these events.

¶ 35 Indeed, the trial judge determined this case was distinguishable from *Gant* because the police here had a reasonable suspicion a crime was being committed. In *Terry v. Ohio*, 392 U.S. 1 (1968), the United States Supreme Court held a brief investigatory stop, even in the absence of probable cause, is reasonable and lawful under the fourth amendment when the totality of the

circumstances reasonably lead the officer to conclude criminal activity may be afoot and the subject is armed and dangerous. *Id.* at 30. The United States Supreme Court subsequently extended *Terry* to permit a protective search of a passenger compartment of a vehicle during an investigatory stop. *Michigan v. Long*, 463 U.S. 1032 (1983); see also *Gant*, 556 U.S. at 352 (2009) (Scalia, J., concurring) (noting that "the rule of *Michigan v. Long* is not at issue here"). The *Long* Court explained that roadside encounters are "especially hazardous," and a police officer may reasonably believe that he is in danger from the possible presence of accessible weapons inside the vehicle. *Long*, 463 U.S. at 1049.

¶ 36 In his reply brief, Hill argues the State has forfeited any reliance on *Long* by failing to argue the exception in opposition to the motion to suppress. See *People v. Adams*, 131 Ill. 2d 387, 396 (1989). Hill, however, acknowledges in his initial brief the trial court's decision was based on *Long*. *Adams* is based on the long-standing rule "that an issue not raised in the trial court is considered waived." *Id.* at 395. In *Adams*, the State raised *Terry* "almost as an afterthought." *Id.* In this case, the trial court's ruling was based on *Terry* and *Long* and thus was raised in the trial court. Hill had the opportunity to challenge the ruling in a motion to reconsider and in his posttrial motion.

¶ 37 Hill, moreover, cannot be said to be surprised or prejudiced by the invocation of *Long* in this appeal, as his initial brief argues *Long* does not apply in this matter. Hill asserts his case does not involve a protective search pursuant to an investigatory stop. Hill's assertion, however, begs the questions of whether the traffic stop was also an investigatory stop and, if so, whether a protective search was proper. Accordingly, we consider the application of *Long* to this case.

¶ 38 The State primarily relies on Hill's movements inside the Buick to establish the police officers' reasonable suspicion that criminal activity may have been afoot and the subject was armed and dangerous. Furtive movements by an occupant of a vehicle, in conjunction with other factors, may justify a search of the vehicle for weapons. *People v. Rodriguez*, 154 Ill. App. 3d 401, 403 (1987); *People v. Houldridge*, 117 Ill. App. 3d 1059, 1064 (1983). In *Rodriguez*, the defendant was loitering late at night in an area where several garage burglaries had recently occurred and was consuming alcohol in a public place. *Rodriguez*, 154 Ill. App. 3d at 403. In *Houldridge*, the police relied on information acquired over the police radio that the registration of the vehicle was expired or invalid, and the subsequent search was based in part on the officer smelling the odor of marijuana, and defendant dropping a marijuana cigarette as the officer approached. *Houldridge*, 117 Ill. App. 3d at 1063-64. In contrast, in *People v. Brown*, 190 Ill. App. 3d 511, 513 (1989), when the police officer approached a vehicle during a traffic stop, the officer observed the defendant reach up toward the dashboard with his right hand and then down to the floor on the passenger's side. The *Brown* court concluded the officer could not articulate a reasonable basis to search the defendant's vehicle after ordering defendant to exit it, because the defendant produced his driver's license upon request in a manner which caused no alarm to the officer. *Id.* at 515.

¶ 39 These cases reflect the general principle that a determination of whether the police had reasonable suspicion is based on the totality of the circumstances. *U.S. v. Sokolow*, 490 U.S. 1, 8 (1989). For example, a motorist's failure to pull over promptly in response to police may be used to support reasonable suspicion. See, e.g., *Village of Gurnee v. Gross*, 174 Ill. App. 3d 66, 68

(1988). Attempts to conceal the identity of the vehicle or the driver from observers also may be considered in determining reasonable suspicion. See *People v. Hoekstra*, 371 Ill. App. 3d 720, 725 (2007) (vehicle occupants discarded clothing during traffic stop); *People v. McGee*, 44 Ill. App. 3d 1027, 1029 (1976) (absence of license plates).

¶ 40 In this case, the police observed Hill driving a vehicle with an out-of-state license plate lacking a registration sticker. The trial court found that after Officer Burns activated his vehicle's emergency lights to conduct a traffic stop, Hill pulled to the right, slowed to one or two miles per hour and proceeded at that speed for approximately 30 seconds before coming to a complete stop, which Officer Burns testified was unusual. During this time period, the police observed Hill's body moving up and down and his arms moving around inside the Buick. After the police approached the vehicle and requested Hill's driver's license and vehicle registration, Hill indicated he did not possess a driver's license. Given these circumstances, the trial judge did not err in concluding the police had reasonable suspicion justifying a protective search of the areas of the vehicle within reaching distance of the driver.

¶ 41 Hill argues a protective search was unjustified because he was removed from the vehicle and handcuffed at the time of the search. As previously noted, the record does not clearly indicate whether Hill was handcuffed when the search commenced. For the sake of argument, our analysis of this issue assumes Hill was handcuffed when the search commenced.

¶ 42 "[W]hen an officer has a reasonable suspicion during an investigatory stop that the individual may be armed and dangerous, the officer is permitted to take necessary measures to determine whether the person is armed and to neutralize any threat of physical harm." *People v.*

*Colyar*, 2013 IL 111835, ¶ 45 (citing *Terry*, 392 U.S. at 24). The *Colyar* court determined handcuffing Colyar and his two passengers to be a reasonable and necessary measure to effect a protective search of Colyar's vehicle. *Colyar*, 2013 IL 111835, ¶ 47. Moreover, "nothing in the record suggest[ed] that the police officers used excessive force or that [Colyar's] brief detention while handcuffed and searched was overly intrusive or otherwise exceeded the scope of a limited search for weapons." *Colyar*, 2013 IL 111835, ¶ 47. Hill argues *Colyar* is distinguishable because in that case: (1) it was dusk and the officers were on foot in a parking lot away from their vehicle; (2) the two officers, who had not drawn their weapons, were also outnumbered by defendant and his two passengers; (3) Colyar's engine was running; and (4) the police had only a brief exchange with Colyar prior to observing a bullet in plain view. *Colyar*, 2013 IL 111835, ¶ 47. "[T]he propriety of handcuffing during a *Terry* stop depends on the circumstances of each case." *Colyar*, 2013 IL 111835, ¶ 46.

¶ 43 In this case, the police encountered Hill at 8:30 p.m. in early September. Officer Burns testified the lighting conditions in the vicinity were dark, but with street lighting. Officer Burns approached the Buick with his weapon drawn because he already observed Hill behaving suspiciously. The record does not indicate the distance between the police vehicle and the Buick. The trial judge, moreover, found the search was conducted "almost simultaneously" to Hill being handcuffed. The two officers outnumbered Hill, but it was not unreasonable to have one officer focused on controlling Hill while the other officer conducted the protective search. The record does not indicate the police used excessive force against Hill. Furthermore, the use of handcuffs as a protective measure is less intrusive where, as here, the police had probable cause to arrest



Hill for driving on a suspended license. Based on this record, we conclude the use of handcuffs was reasonable and did not invalidate the protective search.

¶ 44 Insofar as the trial court did not err in denying the motion to suppress evidence, Hill cannot establish the trial court committed plain error, and we need not consider the applicability of the inevitable discovery doctrine.

¶ 45 II. The "One-Act, One-Crime" Rule

¶ 46 Hill next argues that where he was found guilty of a single physical act of possessing a single handgun, this court should vacate seven of his convictions on lesser offenses and correct the mittimus to reflect only a conviction for being an armed habitual criminal and one conviction for UUWF based on Hill's possession of ammunition. The one-act, one-crime doctrine prohibits the imposition of multiple convictions based on a single act and provides that only a conviction for the most serious offense may be sustained. See *In re Samantha V.*, 234 Ill. 2d 359, 379 (2010); *People v. King*, 66 Ill. 2d 551, 566 (1977). The one-act, one-crime doctrine involves a two-step analysis:

"First, the court must determine whether the defendant's conduct involved multiple acts or a single act. Multiple convictions are improper if they are based on precisely the same physical act. Second, if the conduct involved multiple acts, the court must determine whether any of the offenses are lesser-included offenses. If an offense is a lesser-included offense, multiple convictions are improper." *People v. Miller*, 238 Ill. 2d 161, 165 (2010).

Hill forfeited review of this issue by failing to raise it in the trial court, but "forfeited one-act, one-crime arguments are properly reviewed under the second prong of the plain-error rule because they implicate the integrity of the judicial process." *People v. Nunez*, 236 Ill. 2d 488, 493 (2010). Accordingly, we address the argument.

¶ 47 In this case, Hill was convicted of violating the armed habitual criminal statute, which is a Class X felony. 720 ILCS 5/24-1.7(b) (West 2008). Hill was also convicted of two counts of UUWF and six counts of AUUW, all of which were Class 2 felonies, based on Hill's prior conviction for UUWF. See 720 ILCS 5/24-1.1(e), 24-1.6(d)(3) (West 2008). The State agrees these convictions, with the exception of the UUWF conviction based on Hill's possession of ammunition, are based on the same physical act of possessing the .357 handgun. Accordingly, of the convictions based on the handgun possession, only the conviction for violating the armed habitual criminal statute may stand. In contrast, the UUWF statute allows for multiple convictions based on simultaneous possession of a firearm and firearm ammunition. *People v. Anthony*, 2011 IL App (1st) 091528-B at ¶¶ 3, 9. Accordingly, pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we correct the mittimus to reflect convictions on count 1 of the indictment (armed habitual criminal) and count 9 of the indictment (UUWF based on ammunition possession), and vacate Hill's remaining convictions on counts 2-8 of the indictment.

¶ 48 III. Fees and Fines

¶ 49 Lastly, Hill raises two arguments relating to the trial court's imposition of fees and fines against him. Though these claims were not raised in the circuit court, a sentence that does not conform to a statutory requirement is void and may be attacked at any time. *People v. Jackson*,

2011 IL 110615, ¶ 10. The propriety of court-ordered fines and fees raises a question of statutory interpretation, which we review *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 50 First, Hill argues he should receive \$5 per day credit against his fines for the 50 days he served in presentence custody. In this case, the trial judge ordered a \$5 drug court fine (55 ILCS 5/5-1101(f) (West 2008)); a \$100 Trauma Center Fund fine (730 ILCS 5/5-9-1.10 (West 2008)); a \$30 Children's Advocacy Center fine (55 ILCS 5/5–1101(f-5) (West 2008)); and a \$200 DNA analysis fee under section 5-4-3(j) of the Unified Code of Corrections (730 ILCS 5/5-4-3(j) (West 2008)). The State concedes that defendant is entitled to credit for presentence custody to offset each of these fines except the \$200 DNA assessment, which is not a fine under *People v. Johnson*, 2011 IL 111817, ¶ 28.

¶ 51 We agree with the parties that defendant is entitled to \$5 of *per diem* credit for the time he spent in presentence custody (725 ILCS 5/110-14(a) (West 2010)), which may be used to offset the \$5 Drug Court fine, \$30 Children's Advocacy Center fine, and \$100 Trauma Center Fund fine. See *People v. Jones*, 223 Ill. 2d 569, 595 (2006) (Trauma Center Fund fine); *People v. Butler*, 2013 IL App (5th) 110282, ¶7 (Children's Advocacy Center fine); *People v. Unander*, 404 Ill. App. 3d 884, 886 (2010) (Drug Court fine). Therefore, Hill is entitled to apply \$135 of his \$250 credit for presentence custody against these fines.

¶ 52 Second, Hill argues the \$200 DNA analysis assessment was unauthorized because his DNA was presumably collected and registered with the State's DNA database following one of his prior convictions. The State agrees. Section 5-4-3(j) of the Unified Code of Corrections (730 ILCS 5/5–4–3(j) (West 2008)) requires that anyone convicted of a felony in Illinois must submit

a blood, saliva, or tissue specimen to the Illinois State Police for analysis and must also pay an analysis fee of \$200. This statute "authorizes a trial court to order the taking, analysis and indexing of a qualifying offender's DNA, and the payment of the analysis fee only where that defendant is not currently registered in the DNA database." *People v. Marshall*, 242 Ill. 2d 285, 303 (2011). The record on appeal indicates Hill was convicted of felonies in 2004 and 2006, after the DNA analysis and fee requirement was added by a 1997 amendment to section 5-4-3 of the Unified Code of Corrections (Pub. Act 90-130 (eff. Jan. 1, 1998) (amending 730 ILCS 5/5-4-3 (West 1996))). Accordingly, "we presume that the circuit court imposed this requirement as part of defendant's sentence following at least one of his prior convictions." *People v. Leach*, 2011 IL App (1st) 090339, ¶ 38. Thus, we agree the \$200 DNA analysis fee should be stricken.

¶ 53 Accordingly, pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999)), we order the clerk of the circuit court to correct the fines and fees order to reflect the vacation of the \$200 DNA analysis fee and to reflect a \$135 credit for his \$5 drug court fine, \$100 Trauma Center Fund fine, and \$30 Children's Advocacy Center fine.

¶ 54 CONCLUSION

¶ 55 For all of the aforementioned reasons, the judgment of the circuit court is affirmed as modified.

¶ 56 Affirmed as modified.