2013 IL App (4th) 110814-U

NO. 4-11-0814

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
April 24, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
BRYAN R. SULLIVAN,	)	No. 10CF507
Defendant-Appellant.	)	
	)	Honorable
	)	James E. Souk,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Steigmann and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State provided sufficient evidence to prove defendant constructively possessed a controlled substance beyond a reasonable doubt.

(2) Defendant forfeited appellate review of whether the $1,000 child-protection-network assessment imposed by the trial court was excessive.

(3) Defendant's conviction for possession of a controlled substance (720 ILCS 570/402(c) (West 2010)) is vacated because it violates the one-act, one-crime rule.

(4) The mandatory drug assessment imposed by the trial court must be reduced to $1,000.

¶ 2 Following a bench trial conducted over two days in May and June 2011, the trial court convicted defendant, Bryan R. Sullivan, of unlawful possession of a controlled substance (psilocybin mushrooms) with intent to deliver (count II) (720 ILCS 570/401(d)(i) (West 2010))

and unlawful possession of a controlled substance (psilocybin mushrooms) (count III) (720 ILCS 570/402(c) (West 2010)). In August 2011, the trial court sentenced defendant to 36 months' probation, including as conditions that he serve 180 days in the county jail with credit for 3 days served (defendant was to serve an additional 10 days in jail with the balance stayed pending review), 200 hours of community service, and pay various fines and fees, including a $1,000 child-protection-network assessment and a $2,000 mandatory drug assessment.

¶ 3 Defendant appeals, arguing (1) the State failed to prove him guilty of actual or constructive possession of a controlled substance (psilocybin mushrooms) beyond a reasonable doubt and, as a result, also failed to prove him guilty of possession of a controlled substance with the intent to deliver; and (2) the trial court committed various sentencing errors, including the following: (a) failed to consider defendant's financial status in ordering defendant to pay an "excessive" $1,000 child-protection-network assessment; (b) entered conviction on count III, simple possession, when it is an included offense of count II; and (c) ordered a $2,000 mandatory drug assessment for a Class 2 felony, when only a $1,000 assessment is authorized. We affirm in part, vacate in part, and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 On May 25, 2010, defendant was arrested during the execution of a search warrant following a controlled buy of psilocybin mushrooms conducted by the vice unit of the Normal police department. Following his arrest, the State charged defendant by information with (1) possession of a controlled substance (psilocybin mushrooms) with the intent to deliver within 1,000 feet of a school, a Class 1 felony (count I) (720 ILCS 570/407(b)(2) (West 2010)); (2) unlawful possession of a controlled substance (psilocybin mushrooms) with the intent to deliver,

a Class 2 felony (count II) (720 ILCS 570/401(d)(i) (West 2010)); and (3) unlawful possession of a controlled substance (psilocybin mushrooms) with the intent to deliver, a Class 4 felony (count III) (720 ILCS 570/402(c) (West 2010)). The information was superseded by indictments filed in June 2010. The charges remained the same with the exception count III was amended to simple possession. In January 2011, defendant waived his right to a jury trial and his bench trial commenced in May 2011.

¶ 6 A. Trial Testimony

¶ 7 1. *The State's Case*

¶ 8 At trial, Detective Kevin Kreger with the Normal police department testified he interviewed Robert Allen following his arrest for possession of a controlled substance (psilocybin mushrooms) on May 22 or 23. Allen agreed to become a confidential source for the police department and directed Kreger to a house on Franklin in Normal, Illinois, where Allen had purchased the psilocybin mushrooms from his coworker, Brian Cochran. According to Kreger, Allen identified Cochran as an occupant of the house and also said he knew of a Bryan Sullivan (defendant), whom he had met "once for like five seconds" who also lived at the house. However, Allen was unable to identify defendant in a picture. Kreger verified a vehicle parked in the driveway of the Franklin residence was registered to defendant. It had a "for sale" sign in a window.

¶ 9 The police department conducted a controlled purchase of psilocybin mushrooms from the Franklin house on May 25, 2010, using Allen as the buyer. Allen arranged to buy $60 worth of psilocybin mushrooms from Cochran at the Franklin residence. Kreger gave Allen prerecorded money (money which had been photocopied to document the serial numbers) to use

in the purchase of the psilocybin mushrooms. Allen then drove to the Franklin residence in his personal car followed by Kreger in his undercover vehicle. Once Allen exited his car after parking in the driveway of the residence, Kreger was unable to see him.

¶ 10 Officer Joseph Gossmeyer was conducting video surveillance on the Franklin residence and was parked in a minivan across the street. The videotape, identified as People's exhibit No. 4, was played for the court during Gossmeyer's testimony. Gossmeyer identified Allen as the confidential source and Cochran as the person who met Allen at the door. Gossmeyer observed Allen and Cochran exchange handshakes and high fives. Approximately five minutes after the meeting, Kreger saw Allen return to his vehicle at which time he followed Allen back to the police department where Allen gave Kreger two bills of unused buy money and a bag of psilocybin mushrooms. After Allen and Kreger left the residence, Gossmeyer observed defendant and another white male pull into the driveway. Defendant was shirtless and entered the Franklin residence with a key.

¶ 11 Following the controlled buy, Kreger obtained a search warrant for the Franklin residence; the warrant was executed at approximately 8 p.m. by the vice unit of the Normal police department. Normal police detective Patrick Easter testified he went to the Franklin residence to assist with surveillance prior to the execution of the search warrant. Easter observed a white car pull into the driveway and a black man carrying a black bag, later identified as Ronnie Berry, meet Cochran at the door and enter the house. Shortly after Berry entered the house, the blinds in the northwest bedroom were "pulled" closed.

¶ 12 The police entered the residence by ramming open the front door. Upon entering the house, Kreger testified they encountered two subjects inside the house, later identified as

defendant and Ronnie Berry, who, according to Kreger, were coming from the bedroom area into the kitchen. Detective Easter was also part of the "breach team" and upon entering the residence, he saw Berry and defendant entering the kitchen from the northwest corner of the house. Easter was certain it was defendant in the kitchen with Berry as prior to the execution of the search warrant, he was shown pictures of defendant and Cochran. The men were "ordered to the ground" and they complied and were handcuffed. Additional people were encountered by other officers in the backyard. Cochran was also arrested during the search. Easter testified from the time he observed Berry enter the residence with Cochran to entering the residence and observing defendant and Berry coming into the kitchen approximately 5 to 10 minutes had passed.

¶ 13 According to Kreger, when he asked defendant which bedroom was his, defendant gestured toward the northwest bedroom. Upon further questioning, defendant confirmed the front bedroom, *i.e.*, the northwest bedroom, was his. Kreger was unable to recall the exact gesture made by defendant, stating it could have been a "head nod" but he did remember defendant "clearly" indicated the northwest bedroom was his. According to Kreger, defendant also told him Cochran lived at the residence with him.

¶ 14 After the subjects were removed from the residence, Easter began conducting a search of the house, which included taking a video of the house. In the northwest (front) bedroom, he found $4,500 on the floor, a black bag containing $3,500 and cannabis, and a box just inside the bedroom closet containing three bags of psilocybin mushrooms, a digital scale, and empty bags. Easter explained scales are used to weigh narcotics and the bags are used to package the product for sale. A second digital scale was found inside a dresser drawer in the northwest bedroom. Just outside the door to the northwest bedroom, Easter found more cash on

the floor. Additional plastic bags were located in a drawer in the kitchen. Three pieces of mail addressed to defendant at a different address were found in the kitchen. Easter testified he also confiscated defendant's wallet from the northwest bedroom; however, on cross-examination and after looking at his report, Easter acknowledged defendant's wallet had actually been found on the kitchen table. Neither the buy money nor the psilocybin mushrooms recovered from the Franklin residence were tested for fingerprints.

¶ 15 Allen testified he agreed to become a confidential informant following his May 22, 2010, arrest for possession of psilocybin mushrooms. Allen testified no one else was at the Franklin residence when he purchased the mushrooms from Cochran on May 22, 2010, and explained Cochran retrieved the mushrooms from a box in a front bedroom, weighed them, and gave them to Allen. However, on cross-examination, Allen testified he had met three other people at the Franklin house on May 22, one of whom Cochran introduced as defendant. According to Allen, Cochran had told him the mushrooms belonged to defendant, whose house he was staying at until he found his own place.

¶ 16 Working with the police, Allen set up another appointment with Cochran to purchase more psilocybin mushrooms. Prior to the May 25, 2010, controlled buy, Allen met Kreger at the police station where he was searched and given money to buy the mushrooms. Allen then went to the Franklin residence where he met with Cochran and purchased the mushrooms. Allen stated Cochran retrieved the already packaged mushrooms from a kitchen cabinet. Following the purchase, Allen drove back to the police station, where he gave Kreger the mushrooms and the extra money not used in the buy.

¶ 17 2. *Defendant's Case*

¶ 18 Defendant testified he was a 23-year-old college student who worked at the school library and the Academy of Mixed Martial Arts. He grew up with Robert Sutter who, at the beginning of May 2010, lived at the Franklin house. After Sutter graduated college, and moved out of the house, defendant was going to rent the house from Sutter's parents. Defendant's lease was scheduled to begin on June 1, 2010, but his landlords agreed to let him move some of his possessions into the house prior to the commencement of the lease.

¶ 19 Defendant was in a study group with Cochran when Cochran told defendant he needed a place to stay until June 1, 2010. Defendant allowed Cochran to stay at the Franklin residence because he had a key to the house, even though defendant was still residing elsewhere. Defendant testified the address on the mail seized from the Franklin address during the search was his primary address (his parents' address).

¶ 20 Defendant testified he was out of town the weekend of May 21 and 22, 2010. On Friday he had driven to LaGrange Park, a suburb of Chicago, and stayed with his girlfriend at her mother's house. On Saturday they drove to Starved Rock Illinois State Park where they hiked all day, ate dinner at a local restaurant, and drove back to LaGrange Park, where they stayed over-night. A number of date-stamped photos depicting defendant, his girlfriend, and his dog driving to Lagrange Park and at Starved Rock were introduced as defendant's group exhibit No. 1. Defendant stated after dinner on Sunday, he drove back to Bloomington-Normal where he stayed overnight at his girlfriend's house.

¶ 21 Defendant explained his actions on May 25, 2010, as follows. He woke up at his current residence on Glenn, worked at the Milner library until 2 p.m., and then met his mother and brother for a late lunch. Next he met with his friend, Justin Miller, and the two played disc golf

until 6 p.m. at which time they drove back to his house on Glenn. After stopping at the Glenn residence, they continued on to the Franklin residence. Once at the Franklin residence, defendant grabbed a drink of water, set his wallet down, and went to the backyard for the next one to two hours playing disc golf and frisbee with his two dogs.

¶ 22 Defendant stated he first saw the officers when he was on the back deck retrieving a steak from the outside refrigerator. He was frightened because they were aiming guns at him. They told him to lay down so he did. Following this encounter, the front door was rammed in and several officers entered the house. Eventually, defendant stated, Detective Easter handcuffed him and a female officer began escorting him out to her patrol car. As he was following the officer, defendant described the situation as "extremely hectic." The female officer asked him if he wanted a T-shirt and where it would be to which defendant said "yes" and made a motion with his head toward a T-shirt on the floor. According to defendant, Kreger asked him which bedroom was his and whether Cochran was his roommate, but defendant did not respond to Kreger's questions. Defendant stated Kreger may have taken his "yes" response intended for the female officer to be a response to his question regarding whether Cochran was his roommate and his head nod also intended for the female officer as a response to the question of which bedroom was his.

¶ 23 Defendant further testified he had never spent a night at the Franklin house in May, and although some of his personal possessions were in the house, including both bedrooms, he was not yet living there.

¶ 24 3. *State's Rebuttal*

¶ 25 On rebuttal, the State recalled Detective Kreger, who testified no other officer was near defendant asking questions at the same time he was and he made eye contact with defendant

when he asked which room belonged to him and whether Cochran was his roommate.

¶ 26 B. Verdict and Sentence

¶ 27 At the close of evidence, the trial court found defendant guilty of unlawful possession of a controlled substance (psilocybin mushrooms) with the intent to deliver (count II) and unlawful possession of a controlled substance (psilocybin mushrooms) (count III), but not guilty of unlawful possession of a controlled substance (psilocybin mushrooms) (count I) within 1,000 feet of a school. In July 2011, defendant filed a "motion for judgment notwithstanding the finding of guilty, or in the alternative, for a new trial." Following an August 2011 hearing, the court denied defendant's motion and sentenced defendant to 36 months' probation, including as conditions that defendant serve 180 days in the county jail with credit for three days served (defendant was to serve an additional 10 days in jail, with the balance stayed pending review), 200 hours of community service, and pay various fines and fees, including a $1,000 child-protection-network assessment and a $2,000 mandatory drug assessment. Defendant did not file a postsentencing motion.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 On appeal, defendant argues (1) the State failed to prove him guilty of actual or constructive possession of a controlled substance (psilocybin mushrooms) beyond a reasonable doubt and, as a result, also failed to prove him guilty of possession of a controlled substance with the intent to deliver; and (2) the trial court committed various sentencing errors, including the following: (a) failed to consider defendant's financial status in ordering defendant to pay an "excessive" $1000 child-protection-network assessment; (b) entered conviction on count III, simple

possession, when it is an included offense of count II; and (c) ordered a $2,000 drug assessment for a Class 2 felony, when only a $1,000 drug assessment is authorized.

¶ 31 A. Sufficiency of the Evidence

¶ 32 When reviewing whether the evidence is sufficient to support a defendant's conviction, we 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." (Internal quotation marks omitted.) *People v. Pollock*, 202 Ill. 2d 189, 217, 780 N.E.2d 669, 685 (2002).

¶ 33 To sustain a conviction for possession of a controlled substance, the State must prove the defendant had knowledge of the presence of the narcotics and immediate and exclusive control over them. *People v. Morrison*, 178 Ill. App. 3d 76, 90, 532 N.E.2d 1077, 1086 (1988). However, "[t]he rule that possession must be exclusive does not mean that the possession may not be joint [citation]; if two or more persons share immediate and exclusive control or share the intention and power to exercise control, then each has possession [citation]." *People v. Schmalz*, 194 Ill. 2d 75, 82, 740 N.E.2d 775, 779 (2000). Possession can be actual or constructive. *People v. Givens*, 237 Ill. 2d 311, 335, 934 N.E.2d 470, 484 (2010). Actual possession exists where a defendant has present, personal dominion or control over the controlled substance. *Schmalz*, 194 Ill. 2d at 82, 740 N.E.2d at 779. Constructive possession exists where a defendant has the intent and capability to maintain control and dominion over the controlled substance despite failing to have actual personal, present dominion over it. *People v. Macias*, 299 Ill. App. 3d 480, 484, 701 N.E.2d 212, 215 (1998). Further, "the mere presence of illegal drugs on premises which are under the control of the defendant gives rise to an inference of knowledge and possession sufficient to

sustain a conviction [for unlawful possession] absent other factors which might create a reasonable doubt as to the defendant's guilt." *People v. Smith*, 191 Ill. 2d 408, 413, 732 N.E.2d 513, 515 (2000).

¶ 34 In this case, Detective Kreger testified defendant told him he lived at the Franklin address with Cochran. Defendant indicated the front, northwest bedroom was his, which is where the box containing the psilocybin mushrooms, digital scale, and bags used to package the mushrooms were found, as well as $4,500 cash. Defendant had a key to the residence and Detective Gossmeyer observed defendant let himself into the house with his key. Defendant acknowledged he had parked a vehicle in the driveway with a "for sale" sign in it and had numerous personal items throughout the house, including his computer, Wii game system, entertainment center, clothes, and several pieces of mail. Also, he left one of his dogs at the Franklin house and when the warrant was executed, both defendant's dogs were at the house. Further, Detectives Kreger and Easter testified when they entered the house, defendant and Berry were the only individuals inside and they were coming from the bedroom area—where the drugs and money were found— into the kitchen.

¶ 35 As the trier of fact in this case, it was the trial court's responsibility to judge the credibility of the witnesses, determine the weight to be given to their testimony, resolve any conflicts in the evidence, and to draw reasonable inferences therefrom. *People v. Ortiz*, 196 Ill. 2d 236, 259, 752 N.E.2d 410, 425 (2001). Great weight must be given to the court's determination and we will not reverse the court's findings unless "the evidence is so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of defendant's guilt." *People v. Evans*, 209 Ill. 2d 194, 209, 808 N.E.2d 939, 947 (2004). In this case, the court found (1) defendant's testimony was

not credible and (2) the testimony of detectives Kreger and Easter, which directly contradicted defendant's, was credible. Based on the evidence presented, the court found defendant guilty of constructive possession of a controlled substance. We do not find this determination to be so improbable, inconclusive, or unsatisfactory as to warrant a reversal of defendant's convictions.

¶ 36 B. Alleged Sentencing Errors

¶ 37 1. *Child-Protection-Network Assessment*

¶ 38 Defendant contends the $1,000 child-protection-network assessment is excessive due to his lack of substantial income or assets and status as a full-time college student. The State asserts defendant has forfeited appellate review of this argument because he failed to file a postsentencing motion challenging the assessment and, further, the trial court did not err in imposing the fine. We agree with the State.

¶ 39 Pursuant to section 5-4.5-50(d) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-4.5-50(d) (West 2010)), "A defendant's challenge to the correctness of a sentence or to any aspect of the sentencing hearing shall be made by a written motion filed with the circuit clerk within 30 days following the imposition of sentence." Despite being admonished by the trial court of the need to file a written motion to reconsider the sentence within 30 days, defendant failed to file a postsentencing motion challenging the $1,000 child-protection-network assessment and, thus, he has forfeited the issue on appeal. However, defendant urges this court to consider the issue under the plain-error doctrine.

¶ 40 The plain-error doctrine set forth in Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967) provides a narrow exception to the general rule of forfeiture. *People v. Walker*, 232 Ill. 2d 113, 124, 902 N.E.2d 691, 697 (2009). "Under the plain-error doctrine, this court will review

forfeited challenges 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; or (2) a clear or obvious error occurred, and the error is so serious that it affected the fairness of the defendant's trial and the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Taylor*, 2011 IL 110067, ¶ 30, 956 N.E.2d 431. The defendant has the burden of persuasion under both prongs of plain-error analysis. *People v. Lewis*, 234 Ill. 2d 32, 43, 912 N.E.2d 1220, 1227 (2009). Prior to determining whether plain error occurred, however, we first determine whether error occurred at all. *Id.* If error did occur, we then consider whether either prong of the plain-error doctrine has been satisfied. *People v. Sargent*, 239 Ill. 2d 166, 189-90, 940 N.E.2d 1045, 1059 (2010).

¶ 41 Section 5-6-3(b)(13) of the Unified Code(730 ILCS 5/5-6-3(b)(13) (West 2010)) provides as a condition of probation, a court may order a defendant to "contribute a reasonable sum of money, not to exceed the maximum amount of the fine authorized for the offense for which the defendant was sentenced *** to a 'local anti-crime program', as defined in Section 7 of the Anti-Crime Advisory Counsel Act." Because the child-protection-network assessment does not reimburse the county for the costs of his prosecution, defendant asserts the child-protection-network assessment is a fine and requires the trial court determine defendant's ability to pay prior to assessing the fine. However, as the State points out, although section 5-9-1(d)(1) of the Unified Code (730 ILCS 5/5-9-1(d)(1) (West 2010)) provides a court should consider the financial resources and future ability of an offender to pay a fine, this court has found this section of the Unified Code generally refers to fines imposed under section 5-9-1(a), a fine for general felonies, misdemeanors, petty offenses, and business offenses. *People v. Coleman*, 391 Ill. App. 3d 963,

979, 909 N.E.2d 952, 966 (2009). This court is also unaware of any authority standing for the proposition a fine must be affordable. *Id*.

¶ 42 Further, as the State notes, documents in the record are sufficient to satisfy any inquiry by the trial court as to defendant's ability to pay. During sentencing, when the State asked the court to impose a discretionary $1,000 crime-detection-network assessment, defense counsel asked the court to take into consideration defendant's minimum-wage job. However, defense counsel also noted defendant would be graduating college soon and would likely be employed in the field of agriculture or business. In his statement in allocution, defendant informed the court he had two jobs and worked every day of the week. Further, the presentence investigation report noted defendant worked 15 hours per week at the library for $8.50 an hour, had $17,000 in college loans, and his mother paid his rent and credit cards. He was expected to graduate in December 2011 and had posted a cash bond of $2,500. Only after hearing this evidence did the court assess the $1,000 child-protection-network assessment, apparently in lieu of the discretionary crime-detection-network assessment requested by the State. As is the case here, a trial court is not required to specifically state it determined defendant had the ability to pay a fine where the judge is aware of the facts supporting such a determination. *People v. Bishop*, 354 Ill. App. 3d 549, 563, 821 N.E.2d 677, 690 (2004).

¶ 43 Because we find the trial court did not err in assessing the $1,000 child-protection-network assessment, we need not conduct a plain-error analysis.

¶ 44 2. *Included Offense*

¶ 45 Defendant next contends the trial court erred by entering conviction on count III, simple possession, when it is an included offense of count II. The State concedes the simple

possession conviction must be vacated because it is a lesser-included offense of count II, in violation of the one-act, one-crime rule. We accept the State's concession.

¶ 46 Whether multiple convictions violate the one-act, one-crime doctrine is a question of law, which we review *de novo*. *People v. Johnson*, 237 Ill. 2d 81, 97, 927 N.E.2d 1179, 1189 (2010).

¶ 47 When determining whether the one-act, one-crime doctrine has been violated, a two-step analysis is required. *People v. Rodriguez*, 169 Ill. 2d 183, 186, 661 N.E.2d 305, 306 (1996). First, the court must determine whether the defendant's conduct involved multiple acts or a single act. *People v. Miller*, 238 Ill. 2d 161, 165, 938 N.E.2d 498, 501 (2010). When based on the same physical act, multiple convictions are improper. *Id*. Where multiple acts are at issue, the court must then determine whether any of the offenses are lesser-included offenses. *Id*. If lesser-included offenses are present, multiple convictions are improper. *Id*.

¶ 48 As conceded by the State, in this case, both charges consisted of the same singular act of possession of the controlled substance. Thus, defendant's multiple convictions were improper and the conviction for simple possession (count III) must be vacated.

¶ 49 3. *Mandatory Drug Assessment*

¶ 50 Last, defendant contends the trial court erred by ordering a $2,000 drug assessment for a Class 2 felony, when only a $1,000 assessment is authorized. The State concedes the $2,000 assessment was improper and should be reduced to $1,000. We accept the State's concession.

¶ 51 Section 411.2(a) of the Illinois Controlled Substances Act (Act) (720 ILCS 570/411.2(a) (West 2010)) provides every person convicted of a violation of the Act shall be assess a fixed sum based on the level of the offense. For a Class 2 felony, of which defendant was

convicted, an assessment of $1,000 is authorized. 720 ILCS 570/411.2(a)(3) (West 2010). Although defendant failed to object to the $2,000 assessment actually imposed by the trial court during sentencing, unauthorized sentences are void and may be challenged at any time. *People v. Anthony*, 2011 IL App (1st) 091528-B, ¶ 20, 960 N.E.2d 1124; see also *People v. Hare*, 315 Ill. App. 3d 606, 609, 734 N.E.2d 515, 518 (2000) ("The parties could not bind the court to impose a sentence that was unauthorized by law."). Thus, defendant's drug assessment must be reduced to $1,000.

¶ 52 III. CONCLUSION

¶ 53 For the reasons stated, we (1) affirm defendant's conviction for possession of a controlled substance with intent to deliver (count II) and the $1,000 child-protection-network assessment, (2) vacate defendant's conviction for possession of a controlled substance (count III) because it violates the one-act, one-crime rule, and (3) remand with directions to reduce the mandatory drug assessment to $1,000 as authorized by statute. As part of our judgment, since the State successfully defended a portion of the appeal, we award it its $50 statutory assessment against defendant as costs of this appeal. See *People v. Smith*, 133 Ill. App. 3d 613, 620, 479 N.E.2d 328, 333 (1985) (citing *People v. Nicholls*, 71 Ill. 2d 166, 178, 374 N.E.2d 194, 199 (1978)).

¶ 54 Affirmed in part, vacated in part, and cause remanded.