2015 IL App (4th) 130314

NO. 4-13-0314

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 20, 2015
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Morgan County
DEMARCO D. WATTS,	)	No. 12CF88
Defendant-Appellant.	)	
	)	Honorable
	)	John Madonia,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed in part and vacated in part, concluding (1) a police officer's testimony admitted at trial did not require reversal under the plain-error doctrine, but (2) certain fines and fees were improperly imposed upon defendant.

¶ 2 Following a January 2013 jury trial, defendant, Demarco D. Watts, was found guilty of armed robbery (720 ILCS 5/18-2(a)(2) (West 2010)). In March 2013, the trial court sentenced him to 26 years' imprisonment and 3 years' mandatory supervised release (MSR). The court imposed various fines as part of his sentence. On appeal, defendant argues (1) his sixth-amendment right to confront a witness was violated when the court allowed a sheriff's deputy to testify about a conversation he had with another deputy who did not testify at trial; and (2) the court erred when it improperly assessed fines against him. We affirm defendant's conviction and sentence but vacate certain fines improperly imposed.

¶ 3 I. BACKGROUND

¶ 4 A. The Charge

¶ 5 In June 2012, the State charged defendant by information with armed robbery (720 ILCS 5/18-2(a)(2) (West 2010)). The charge alleged on June 8, 2012, defendant, or one for whose conduct he was legally responsible, took property from Chapin State Bank by threatening the imminent use of force at a time when defendant was armed with a firearm. In May 2013, defendant's case proceeded to a jury trial.

¶ 6 B. The Trial

¶ 7 At trial, Cheryl Newell testified she was working as a teller at Chapin State Bank on June 8, 2012. Sometime after 12 p.m., an unfamiliar woman entered the bank, asking for directions. Shortly after the woman left, a man and another woman entered the bank. The man was wearing a white shirt with a black or brown apron and the woman was wearing pink shorts and a head scarf. The man asked to use the restroom, but Newell hesitated because she did not recognize him and restrooms are for customers only. Newell's coworker, Patty Crews, came out of her office to see what the man wanted, but he continued to walk through the lobby toward the rear of the bank. Newell testified she lost sight of the man when a second man, who was hiding in a corner and wearing a ski mask, suddenly jumped over the teller's counter, pointed a firearm at her, and demanded money. The man in the ski mask took Newell's purse, which was lying on the ground, opened the teller drawer, and began stuffing the purse with money. Meanwhile, the woman in pink shorts walked around the counter and helped the man empty cash from the drawers. The man in the ski mask ran out of the bank with Newell's purse and the woman left the bank with a handful of money. Immediately thereafter, the man in the apron ran through the

lobby and yelled something as he exited the bank. Newell identified defendant in court as the man who wore the apron and asked to use the restroom.

¶ 8 During her testimony, the State introduced People's exhibit No. 95, a document entitled "Pre-Recorded Serial Numbered Bills Record," listing the serial numbers of the bait money taken from Newell's drawer. Newell explained the serial numbers of the bills are prerecorded to help authorities identify stolen money. Newell further testified Chapin State Bank has a security-surveillance system. She viewed the surveillance video prior to testifying and said it truly and accurately depicted the images of what happened during the robbery. The State played the surveillance video without objection. The State also introduced still photographs taken from the surveillance cameras, as well as a photograph of Newell's purse.

¶ 9 On cross-examination, Newell acknowledged her written statement described the second male suspect as wearing a bandana over his face. Newell testified she lost sight of defendant when he went to the rear of the bank and she did not see him brandish a gun or take any money.

¶ 10 Crews testified that on June 8, 2012, at approximately 1 p.m., she was working in her office when an unfamiliar female entered the bank, looking for directions to Burlington, Iowa. Crews printed directions from MapQuest and gave them to the woman. Several minutes later, Crews observed three strangers "with questionable demeanor" enter the bank. Crews identified one of the men as defendant and described him as having a "very long, ugly goatee." Crews left her office and asked Newell what they wanted. When Newell replied defendant wanted to use the restroom, Crews informed him it might be out of order and told him to wait in the lobby while she checked. Defendant ignored Crews' request and continued walking through the lobby toward the rear of the bank. Crews sped up and managed to cut in front of him. She

walked to Brett Brockhouse's office, which is in the back of the bank, and informed him three strangers were in the lobby and something was not right. As Brockhouse began to stand up, Crews heard Newell scream. Crews turned around and observed defendant standing outside of Brockhouse's office with a gun. He ordered Crews and Brockhouse to get on the floor and said, "I will blow your motherfucking heads off." Crews and Brockhouse complied with his request. Defendant asked if anyone else was in the bank and repeated his threat to blow their "motherfucking head[s] off." At this time, a man in the lobby yelled something and defendant took off running. Crews testified she never saw defendant take any money or a cell phone.

¶ 11 Brockhouse, a loan representative at the bank, testified and corroborated Crews' testimony regarding the events during the armed robbery. Brockhouse identified defendant in court as the individual who entered his office with a "glock-style" black semiautomatic handgun and ordered him to get on the floor. After the robbers left the bank, Brockhouse was going to use his cell phone to dial 9-1-1 but noticed it was missing from his desk. He identified People's exhibit No. 5 as a photograph of his cell phone. On cross-examination, Brockhouse stated he did not see defendant take his cell phone. Defendant never demanded money or asked where the vault was located, nor did defendant tell Brockhouse to empty his pockets or give him his wallet.

¶ 12 Deputy Tom Keegan of the Morgan County sheriff's department testified he was working patrol on June 8, 2012, when he received a radio call regarding the armed robbery. Dispatch described the suspects as two black males and a black female and stated they were in a red vehicle with Missouri license plates. Deputy Keegan drove northbound on Route 67 toward Chapin State Bank when he passed a red vehicle traveling in the opposite direction. He turned around, drove up to the vehicle, and determined the vehicle's Missouri license plate number matched the number provided by dispatch. Deputy Keegan broadcast his location and informed

dispatch he was preparing to make a stop. He activated his emergency lights and a high-speed chase ensued. The vehicle reached speeds of 120 miles per hour, made several sharp turns, and covered a distance of seven or eight miles before crashing in a ditch near Fifth and Lee Streets in Manchester, Illinois. All four occupants ran out of the vehicle and fled on foot toward a church. Since backup had not arrived, Keegan remained in his vehicle and chased the suspects back and forth by circling the small residential block. He observed the suspects "tossing stuff out" as they ran. Roodhouse police officer Steve Suttles was the first to arrive as backup and helped Deputy Keegan arrest three of the suspects. A police canine unit found defendant hiding behind a refrigerator in a nearby garage approximately 50 feet from where his accomplices were apprehended. Defendant was not wearing a shirt at the time of his arrest. The canine unit found Brockhouse's cell phone on a shelf behind the refrigerator where defendant was hiding.

¶ 13 Officers also recovered various items scattered throughout the area, including a ski mask, blue jeans, keys, a Chapin State Bank key fob, Newell's purse, a navy blue bag containing the proceeds from the robbery, and a silver revolver. In addition, officers found a loaded black semiautomatic handgun on the driver's floor and a green duffle bag containing a second ski mask in the trunk of the red vehicle. The State introduced the physical evidence as well as photographs of the evidence. When asked about Newell's purse, the following colloquy occurred:

> "MR. REIF [(assistant State's Attorney)]: Q. You testified previously as to an exhibit involving a purse. Did you find that on June 8th?
>
> A. I believe it was the next day.

Q. And how was it you were able to go down and locate it the next day?

A. I'd gotten off work. Deputy Suttles from the Sheriff's department called me and said that he had found—or had information as to where the purse was located.

Q. Did he indicate to you where that information came from?

MR. TURPIN [(special public defender)]: Your Honor, I'm going to object on the basis of hearsay at this time. The other officer's statement as to where something came from is hearsay.

THE COURT: Well, what's your position, Mr. Reif?

MR. REIF: The other officer's here and he's going to testify to it anyway, if the Court would prefer.

THE COURT: Plus whether it's offered for the truth of the matter asserted as to where it was actually located I don't think is relevant. It's more the effect it has on the listener here as to why he behaved in a certain way. I'm not going to consider it hearsay. I'm going to overrule the objection, and you may testify as to why you behaved yourself in a certain way based upon that information told to you Officer—or Deputy, I'm sorry. Objection overruled.

MR. REIF: Q. Go ahead and answer it.

A. He told me that he'd gotten the information from the defendant as to where the purse was located in the row of bushes.

* * *

Q. Okay. And is that in close proximity to the garage the defendant was found in?

A. Yes. *** [T]he purse was *** just to the east of the garage."

¶ 14 On cross-examination, Deputy Keegan said he was unsure who was driving the red vehicle. Deputy Keegan searched defendant but did not find any guns, money, bags, gloves, ski mask, or cell phones on his person. Brockhouse's cell phone was the only piece of evidence recovered from the garage where defendant was hiding. When asked whether defendant had a long goatee, Deputy Keegan replied, "it was a couple inches."

¶ 15 Deputy Dick Heise testified and corroborated Deputy Keegan's testimony regarding the evidence recovered from the scene in Manchester. He added a Golden Corral apron and white button-down shirt were lying on the backseat of the red vehicle. The black handgun and silver revolver were sent to the crime lab and dusted for fingerprints, but none were found. Heise also recovered $12,457 from the blue bag. Tellers at the bank later identified the money as coming from the bank based upon the presence of "bait money," the serial numbers of which had been previously recorded.

¶ 16 Sergeant James Jackson of the Illinois State Police testified he interviewed defendant at the Morgan County sheriff's department. Defendant explained their original plan was to rob a drug dealer in Iowa. He and his girlfriend, Tiffany Oden, rode in one vehicle, while his friends, Sterling Martin and Ashley Anderson, rode in a separate vehicle. Defendant said a friend rented the vehicles for them and Martin "brought the *** thumpers," a street term for

guns. Defendant said they never committed an armed robbery in Iowa because their plan "didn't work out."

¶ 17 During the drive home to St. Louis, they stopped at several banks along Route 67, including Chapin State Bank, because Anderson wanted to get directions. Defendant wondered why she was asking for directions since he knew how to get home. As to the armed robbery, defendant admitted he entered Chapin State Bank, asked to use the restroom, and walked toward the back of the bank with one of the bank's employees. Although he heard someone scream, he waited until someone yelled his name before running out of the bank. After exiting the bank, defendant noticed Anderson closing a trunk and Martin wiping the steering wheel in one of the vehicles, which they left behind. Defendant said he drove Oden, Martin, and Anderson away from the bank and he tried to remain calm when a patrolman pulled up next to him. When detectives asked what happened next, defendant said he drove to a small town, where they bailed out of the car and took off running. Detectives asked defendant if he believed he was responsible for the armed robbery and defendant said, "if I'm driving the car, then I guess I'm involved." Defendant denied carrying a gun and denied taking money or a cell phone from the bank.

¶ 18 After the State rested, defendant moved to strike Deputy Keegan's hearsay testimony regarding the location of a purse, arguing Deputy Suttles was never called to testify. The trial court denied the motion, stating the testimony was offered to explain the course of the investigation. The court noted it instructed the jury "to consider that evidence for the limited purpose of the effect that it had on [Deputy Keegan] as to why he behaved in a certain way, and I think I instructed the jury to take that evidence and that testimony and limit it for that specific purpose."

¶ 19 The defense rested without presenting evidence. Following deliberations, the jury found defendant guilty of armed robbery.

¶ 20 C. Posttrial Motion and Sentencing

¶ 21 In January 2014, defendant filed a motion for a new trial, asserting, *inter alia*, the State failed to prove him guilty beyond a reasonable doubt, the trial court gave incorrect jury instructions, and the court erred when it allowed the State to play surveillance video during opening arguments. The motion further alleged defendant was denied his sixth-amendment right to confrontation because he was not allowed to cross-examine Sergeant Jackson about statements defendant made during his confession. The trial court denied defendant's motion for a new trial.

¶ 22 The trial court sentenced defendant to 26 years' imprisonment and 3 years' MSR, with credit for 271 days served in custody. The court imposed a $100 lab fee, $100 trauma center fine, $100 Crime Stopper's fee, $250 deoxyribonucleic acid (DNA) analysis fee, $25 children's-advocacy-center (CAC) fee, and $100 violent crime victims assistance (VCVA) assessment. The court granted defendant a $1,355 credit for 271 days in custody to be applied against his fines.

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 A. Confrontation Clause

¶ 26 Defendant argues his sixth-amendment right to confront a witness was violated when the trial court allowed Deputy Keegan to testify about the substance of a conversation he had with Deputy Suttles. Since Deputy Suttles did not testify at trial and was not subject to cross-examination, defendant contends the admission of his statement via Deputy Keegan's hearsay testimony was error under *Crawford v. Washington*, 541 U.S. 36 (2004). The State

asserts defendant forfeited his sixth-amendment challenge by failing to raise the issue at trial and in a posttrial motion.

¶ 27 B. Forfeiture

¶ 28 We initially address the State's argument on forfeiture. Ordinarily, to preserve an issue for review a party must raise it at trial and in a written posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 190, 522 N.E.2d 1124, 1131-32 (1988). Defendant concedes he failed to raise the issue in a posttrial motion, but he urges this court to apply the constitutional-issue exception to forfeiture. In *People v. Cregan*, 2014 IL 113600, ¶ 16, 10 N.E.3d 1196, our supreme court explained forfeiture is inapplicable where the unpreserved claim involves a constitutional issue that was properly raised at trial and may be raised later in a postconviction petition. The State argues defendant's sixth-amendment claim was not properly raised at trial because defense counsel never objected to the testimony on this basis. We agree with the State. Since defense counsel objected to Deputy Keegan's testimony on hearsay grounds only, defendant failed to properly raise the constitutional issue at trial. See *People v. Lovejoy*, 235 Ill. 2d 97, 148, 919 N.E.2d 843, 871 (2009) ("A specific objection at trial forfeits all grounds not specified."). Thus, he has forfeited his sixth-amendment claim.

¶ 29 C. Plain-Error Review

¶ 30 Given defendant's forfeiture of this claim, we review the issue for plain error. Under the plain-error doctrine, we 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 closeness of the

evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007). Defendant bears the burden of persuasion in plain-error review. *People v. Eppinger*, 2013 IL 114121, ¶ 19, 984 N.E.2d 475.

¶ 31 Historically, courts first address whether an error has occurred, and only if an error is found does the court go on to determine whether defendant has satisfied either prong of the plain-error doctrine. In this matter, while the parties agree Deputy Keegan's testimony regarding defendant's statements to Deputy Suttles was inadmissible hearsay, the accord ends there. Defendant contends his right to confrontation under *Crawford* and its progeny was violated. The State asserts, "there is simply no indication in this record regarding the circumstances surrounding defendant's statement to Deputy Suttles, namely whether it was the result of a formal interrogation or whether it was a volunteered statement." Considering the unique facts of this matter, we find resolution of this cause is more easily accomplished by dispensing with an analysis of whether an error occurred, and instead immediately examining whether defendant can satisfy either prong of the plain-error doctrine. Therefore, for purposes of our plain-error analysis, we will assume the admission of Deputy Keegan's testimony regarding defendant's statements to Deputy Suttles was in violation of defendant's sixth-amendment right to confrontation. If in light of this assumption defendant is unable to carry his burden of persuasion as to either prong of the plain-error doctrine, he is not entitled to relief.

¶ 32 D. Plain-Error Analysis

¶ 33 1. *Closely Balanced*

¶ 34 As to the first prong, we agree with the State the evidence is not closely balanced. In determining whether the closely balanced prong has been met, reviewing courts "undertake a

commonsense analysis of all the evidence" within the context of the circumstances of the individual case. *People v. Belknap*, 2014 IL 117094, ¶ 50, 23 N.E.3d 325.

¶ 35 Here, it was virtually undisputed defendant was one of four individuals who entered Chapin State Bank and participated in the armed robbery. All three bank employees identified defendant as the perpetrator who wore an apron, asked to use the restroom, and followed Crews to the back of the bank. Surveillance video corroborates this testimony and establishes defendant was the only robber who went to the back of the bank. Crews and Brockhouse both testified defendant entered Brockhouse's office wielding a black semiautomatic handgun and threatened to blow their heads off. The evidence showed defendant was the getaway-car driver who led police on a high-speed chase. After crashing in a ditch, defendant fled on foot and was found hiding behind a refrigerator in a garage. Officers found a cell phone, which was taken from the presence of Brockhouse, behind the refrigerator defendant was hiding behind. The getaway car contained the black semiautomatic handgun defendant used in the robbery, as well as a white dress shirt and brown apron that defendant wore during the robbery. Defendant confessed to his involvement when he spoke with Sergeant Jackson following his arrest. He admitted entering Chapin State Bank, driving the red getaway vehicle, and fleeing on foot.

¶ 36 Defendant was clearly an active participant in the armed robbery. He made no effort to conceal his identity and the witnesses gave nearly identical descriptions of defendant. Thus, although Deputy Keegan's testimony about defendant's knowledge of the purse's location bolstered the State's case by connecting defendant to the armed robbery, we disagree the outcome would have been different absent such testimony. The additional evidence presented against defendant—even absent Deputy Suttles' statement—overwhelmingly established his

guilt. Under these circumstances, we cannot say the evidence was so closely balanced that admission of Deputy Keegan's hearsay testimony regarding defendant's knowledge of the purse's location threatened to tip the scales of justice against defendant. See *People v. Adams*, 2012 IL 111168, ¶ 21, 962 N.E.2d 410. Thus, the first prong of the plain-error doctrine is not satisfied in this case.

¶ 37 2. *Structural Error*

¶ 38 Defendant does not dispute the evidence was overwhelming. Instead, he appears to argue the error is cognizable under the second prong of plain-error analysis. We say "appears to argue" because defendant does not specifically identify which prong warrants reversal. Instead, he conflates both prongs and argues the admission of Deputy Keegan's testimony was error and "deprived him of a fair trial."

¶ 39 Under the second prong of plain-error review, the error must be so serious it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *Piatkowski*, 225 Ill. 2d at 565, 870 N.E.2d 410-11. In *Thompson*, our supreme court equated the second prong of plain-error review with structural error, asserting automatic reversal is only required when an error is deemed structural, *i.e.*, " 'a systemic error which serves to "erode the integrity of the judicial process and undermine the fairness of the defendant's trial." ' " *People v. Thompson*, 238 Ill. 2d 598, 613-14, 939 N.E.2d 403, 413 (2010) (quoting *People v. Glasper*, 234 Ill. 2d 173, 197-98, 917 N.E.2d 401, 416 (2009), quoting *People v. Herron*, 215 Ill. 2d 167, 186, 830 N.E.2d 467, 479 (2005)). Our supreme court recognized structural errors in a limited class of cases, including the following: "a complete denial of counsel, trial before a biased judge, racial discrimination in the selection of a

grand jury, denial of self-representation at trial, denial of a public trial, and a defective reasonable doubt instruction." *Id.* at 609, 939 N.E.2d 411.

¶ 40 In *People v. Patterson*, 217 Ill. 2d 407, 424-25, 841 N.E.2d 889, 899-900 (2005), our supreme court held all confrontation-clause violations are not structural errors. The court reasoned as follows:

> "[M]ost constitutional errors are not structural defects. Rather, they are 'trial errors,' which the Court defines as 'error[s] which occurred during the presentation of the case to the jury, and which may therefore be quantitatively assessed in the context of other evidence presented in order to determine whether its admission was harmless beyond a reasonable doubt.' [Citation]. ***
>
> Confrontation clause violations such as the one *** in the case at bar are not 'structural defects in the constitution of the trial mechanism' that affect '[t]he entire conduct of the trial from beginning to end.' [Citation]. Rather, the violation at issue here—the improper admission of Rivera's grand jury testimony—is more accurately described as a 'trial error,' *i.e.*, an 'error which occurred during the presentation of the case to the jury.' [Citation]." *Id.*

¶ 41 The Second District, in *People v. Czapla*, 2012 IL App (2d) 110082, ¶ 19, 980 N.E.2d 791, held confrontation-clause errors are not automatically cognizable under the second prong. There, the court declined to find the improper playing of an emergency call containing statements by defendant's brother that defendant committed the crime satisfied the second prong of the plain-error doctrine. *Id.* ¶ 10, 980 N.E.2d 791. In so holding, the court cited our supreme

court's decision in *Thompson*, wherein it equated the second prong of plain-error analysis to structural errors that erode the integrity of the judicial process and undermine the fairness of the defendant's trial. *Id.* ¶ 19, 980 N.E.2d 791. The court also cited our supreme court's decision in *Patterson*, which held confrontation-clause violations can simply constitute trial errors. *Id.* Thus, because not every confrontation-clause violation is a structural error, it is not necessarily cognizable under the second prong of plain-error review. *Id.*

¶ 42 We agree with *Czapla* and hold confrontation-clause violations are not automatically cognizable under the second prong of plain-error review.

¶ 43 Defendant cites *People v. Feazell*, 386 Ill. App. 3d 55, 898 N.E.2d 1077 (2007), in support of his contention we should reverse his conviction and remand for a new trial. The *Feazell* court reversed a conviction on the basis of a procedurally defaulted *Crawford* issue, but only after a careful review of the facts. *Id.* at 67, 898 N.E.2d at 1089. In *Feazell*, the State offered the testimony of a detective to establish the defendant knowingly participated in armed vehicular hijacking, armed robbery, and murder. *Id.* at 60-61, 898 N.E.2d at 1083-84. The defendant argued her confrontation rights were violated because the detective testified to the substance of incriminating statements made by Banks, a nontestifying codefendant. *Id.* at 63, 898 N.E.2d at 1085. The court noted without Banks' testimony, no other evidence established the defendant had knowledge Banks possessed a gun. *Id.* 898 N.E.2d at 1088-89. This was particularly damaging since the defendant was convicted of knowing murder. *Id.* Thus, the court concluded the "error is such that to preserve the integrity of the judicial process, we must reverse [the defendant's] conviction and remand for a new trial." *Id.*

¶ 44 We do not read *Feazell* as holding a *Crawford* violation is automatically reviewable under the second prong of plain-error analysis. In *Feazell*, several detailed,

extremely incriminating statements were improperly admitted when a police officer was allowed to testify to the codefendant's statements regarding the defendant's involvement. See *id.*, 898 N.E.2d at 1088. The statements directly impeached the defendant's version of the events and severely contradicted her testimony before the jury. *Id.* The court, in its order, referred to the improper testimony as, "a powerful force for the State and was an integral part of its case." *Id.* In short, in considering the specific facts of that case, the court determined the error affected the entire conduct of the trial. This case is not a similar situation.

¶ 45 Here, defendant received a fair trial. The error that occurred did not constitute a "systemic error" such that it eroded the integrity of the judicial process and served to undermine the fairness of defendant's trial. *Glasper*, 234 Ill. 2d at 197-98, 917 N.E.2d at 416. The evidence at issue was not the crux of the State's case. In this matter, defendant may not have had a perfect trial, but he has not demonstrated an error of the magnitude to persuade us he was not afforded the protections associated with a structurally sound trial.

¶ 46 In sum, the evidence is not closely balanced and any confrontation-clause violation did not amount to a structural error. Thus, defendant has failed to satisfy either prong of plain-error review and, therefore, the issue is forfeited.

¶ 47 E. Fines

¶ 48 We now turn to defendant's claim the trial court lacked statutory authority to impose certain fines. The State concedes error in imposition of (1) a $100 crime lab analysis fee and a $100 trauma center fine as defendant was not convicted of an offense for which these are authorized and was not placed on probation (730 ILCS 5/5-9-1.4(b), 5-9-1.1(b) (West 2012)); (2) a $100 Crime Stopper's fee, which is only authorized if the defendant is sentenced to probation or conditional discharge (730 ILCS 5/5-6-3(b)(12) (West 2012)); and (3) a $100 VCVA fine,

which must be assessed at the rate in effect on the date of the offense to avoid the *ex post facto* prohibition (725 ILCS 240/10(b) (West 2012)). We accept the State's concession, vacate the fines, and remand for the trial court to determine the proper VCVA fine and impose it. See, *e.g.*, *People v. Rogers*, 2014 IL App (4th) 121088, 13 N.E.3d 1280; *People v. Warren*, 2014 IL App (4th) 120721, 16 N.E.3d 13; *People v. Larue*, 2014 IL App (4th) 120595, 10 N.E.3d 959; *People v. Montag*, 2014 IL App (4th) 120993, 5 N.E.3d 246.

¶ 49 Finally, defendant argues the CAC fee is actually a fine (55 ILCS 5/5-1101(f-5) (West 2012)), which is creditable for purposes of his $5 per day credit. The State agrees and we accept the State's concession. Defendant is entitled to $1,355 in presentence credit for the 271 days of time served.

¶ 50 III. CONCLUSION

¶ 51 For the reasons stated, we vacate the specified fines and fees and remand for the trial court to impose the VCVA fine statutorily authorized at the time of the offense. We direct the trial court to apply the $5 *per diem* sentencing credit against creditable fines as stated. We otherwise affirm defendant's conviction. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2012).

¶ 52 Affirmed in part and vacated in part; cause remanded with directions.