Rule 23 filed December 6, 2017

Modified upon denial of Rehearing March 12, 2018

2017 IL App (4th) 150506-U

NO. 4-15-0506

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
STEPHEN M. WELLS,	)	No. 14CF1124
Defendant-Appellant.	)	
	)	Honorable
	)	Heidi N. Ladd,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Appleton and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court (1) affirmed the trial court's judgment as to counts I to IV, VII, and VIII, and (2) remanded for further proceedings regarding sentence credit and fines consistent with this order.

¶ 2 In March and April 2015, the State tried defendant, Stephen M. Wells, on seven counts of unlawful delivery of a controlled substance (720 ILCS 570/401(d) (West 2014)), and one count of unlawful possession with intent to deliver a controlled substance (720 ILCS 570/401(c)(2) (West 2014)). The jury found defendant guilty of all eight counts. The trial court sentenced defendant to concurrent terms of 30 years' imprisonment on each of the eight counts.

¶ 3 Defendant appeals, arguing (1) the State failed to prove him guilty beyond a reasonable doubt on six of the eight counts; (2) the trial court abused its discretion in repeatedly admitting irrelevant and highly prejudicial evidence of other crimes; (3) he is owed nine additional days of sentencing credit; and (4) the supplemental sentencing order must be corrected

to comport with the court's oral sentencing pronouncement. We affirmed in part, vacated in part, and remanded for further proceedings. On December 27, 2017, defendant filed a petition for rehearing pursuant to Illinois Supreme Court Rule 367 (eff. July 1, 2017). We now modify our decision upon denial of defendant's petition for rehearing. For the reasons set forth below, we affirm in part, vacate in part, and remand for further proceedings consistent with this order.

¶ 4 I. BACKGROUND

¶ 5 In August 2014, the State charged defendant with numerous counts of unlawful delivery of a controlled substance (720 ILCS 570/401(d) (West 2014)) for incidents occurring on (1) May 23, 2014 (count I); (2) June 5, 2014 (count II); (3) June 6, 2014 (count III); (4) July 11, 2014 (count IV); (5) July 18, 2014 (count V); and (6) August 6, 2014 (count VI). The State also charged defendant with unlawful possession with intent to deliver a controlled substance on August 14, 2014 (720 ILCS 570/401(c)(2) (West 2014)) (count VII). In February 2015, the State charged defendant with unlawful delivery of a controlled substance on June 9, 2014 (count VIII).

¶ 6 A. Trial

¶ 7 In March 2015, the matter proceeded to trial and the jury heard the following evidence.

¶ 8 1. *Testimony Regarding Counts I-VI, VIII*

¶ 9 a. Marshall Henry

¶ 10 Marshall Henry, a Champaign police officer, testified he was part of the community action team, which focuses on narcotic cases. In May 2014, Henry was patrolling the 1200 block of Joann Lane when he initiated a traffic stop against Ashley Dawson. Henry obtained Dawson's consent to search the vehicle.

¶ 11 While searching the vehicle, Henry discovered cocaine on the floorboard. Dawson admitted she used cocaine and some must have dropped onto the floorboard. Henry further discussed Dawson's cocaine use, with the intention of recruiting her as a confidential informant. According to Henry, it was common for officers to approach users of controlled substances to see if they would provide information about the dealer of the controlled substance. Dawson agreed to be a confidential informant and provided Henry with the name of the person from whom she was purchasing cocaine. Henry testified Dawson knew the person on the 1200 block of Joann Lane she bought cocaine from by the street name "B." Henry subsequently linked the name "B" with defendant. According to Henry, he later obtained defendant's driver's license, which listed his address as 1219 Joann Lane.

¶ 12 On May 23, 2014 (count I), Henry used Dawson to conduct a controlled buy. Prior to the controlled buy, a search revealed Dawson had no illegal drugs, weapons, or currency. According to Henry, he recorded the serial numbers on bills totaling $100 from the police department's controlled-buy fund and gave the money to Dawson. Dawson made a phone call and then traveled in her own vehicle to the 1200 block of Joann Lane with officers following her. After the transaction, Henry followed Dawson to the predetermined meeting location. Henry searched Dawson and found a small chunk of what appeared to be crack cocaine. Dawson no longer had the $100 she was provided. The Illinois State Police Crime Lab later determined the substance was 0.8 grams of cocaine.

¶ 13 Henry testified to substantially the same process for controlled buys on (1) June 5, 2014 (count II) (0.4 grams); (2) June 6, 2014 (count III) (0.6 grams); (3) July 11, 2014 (0.4 grams) (count IV); (4) July 18, 2014 (0.3 grams) (count V); and (5) August 6, 2014 (0.3 grams) (count VI)

¶ 14 During some of the controlled buys, Dawson drove a Champaign police department vehicle equipped with video recording cameras. According to Henry, Dawson was paid either $40 or $60 following some of the controlled buys.

¶ 15 The parties agreed to admit two video recordings by stipulation and the jury watched video recordings of the July 18, 2014, and August 6, 2014, controlled buys. Video stills from both videos were also admitted into evidence.

¶ 16 During his investigation, Henry received information that defendant called Ebonie Williams and told her the police had missed some money during a search of his residence. Henry met with Williams and discussed the information he received about Williams removing some money from defendant's residence. Following that discussion, Williams accompanied Henry to a location where she said the currency was located. Henry then seized the currency, which included two $50 bills with serial numbers matching those on money provided to Dawson for the July 11, 2014, controlled buy.

¶ 17 b. Ashley Dawson

¶ 18 Ashley Dawson testified, on May 1, 2014, she was pulled over after leaving "B's" house. According to Dawson, the officer who pulled her over found crack cocaine after searching her vehicle. Dawson began using cocaine sometime in May 2013 and considered herself addicted to cocaine at the time of the traffic stop. However, Dawson testified she stopped using cocaine in Fall 2014, without going through a treatment program. Over objection, the State asked Dawson who she got her cocaine from and if she got it from one person or more than one person. Dawson stated she got the cocaine from "B."

¶ 19 After the May 2014 traffic stop, Dawson agreed to become a confidential source. Dawson testified she completed seven controlled buys and was paid $260 during the time she

worked as a confidential informant. On May 23, 2014, Dawson participated in a controlled buy with Champaign police officers. After meeting the officers, Dawson called defendant to arrange to purchase cocaine. When asked by the State, Dawson provided defendant's telephone number. The following exchange occurred:

"Q. [ASSISTANT STATE'S ATTORNEY:] And, how did you know to call that number to reach the [d]efendant?

A. He gave it to me.

Q. And, why did he give you that number?

A. So I could buy—

MR. LERNER [(defense attorney)]: Objection. Calls for her to speculate as to his state of mind.

MR. CLIFTON [(assistant State's Attorney)]: I can rephrase the question, your Honor.

THE COURT: I'll allow you to rephrase.

MR. CLIFTON: When the [d]efendant gave you that number, did he tell you what you could use that number to do?

A. Yes.

Q. What did he tell you you could use that number to do?

A. I could buy crack cocaine from him.

Q. Now, when you spoke to the [d]efendant on the phone that day, had you ever spoken to him on the phone before?

A. Yes.

Q. And, had you ever spoken to him in person before?

A. Yes.

Q. How many times would you estimate before May 23rd that you had spoken to the [d]efendant on the phone?

A. Numerous times—

MR. LERNER: —I'm going to object, your Honor.

THE COURT: Overruled.

MR. CLIFTON: I'm sorry, what was your answer, ma'am?

A. Numerous times.

Q. And how many times would you say you had spoken to him in person prior to May 23rd of last year?

MR. LERNER: I would renew my objection.

THE COURT: I'll overrule.

THE WITNESS: Numerous times.

MR. CLIFTON: Had you spoken to him enough times on the phone and in person that you were able to recognize his voice on the phone?

A. Yes.

Q. And so, when you called him are you certain that the person who answered was the [d]efendant?

A. Yes."

According to Dawson, she arranged to meet defendant at his house to purchase one gram of crack cocaine for $100. When Dawson arrived at defendant's house, he came out to her vehicle,

took the $100, and gave her what appeared to be crack cocaine. Dawson testified she then met Officer Henry at the prearranged location and gave him the cocaine.

¶ 20 On June 5, 2014, Dawson participated in a second controlled buy. Dawson called the same phone number and defendant answered and told her to meet at his house. When Dawson arrived, defendant's friend, whose name she did not know, got into her car and told her to drive down the block. As she drove, Dawson gave defendant's friend $100 and he gave her what appeared to be one gram of crack cocaine. Dawson testified she let the man out of the vehicle and then met Officer Henry at the prearranged location and gave him the cocaine.

¶ 21 On June 6, 2014, Dawson again arranged a controlled buy. According to Dawson, she called the same phone number; defendant answered and told her to meet him at Arrowhead Lanes. When she arrived at Arrowhead Lanes, defendant called and told her to meet him at his house. When Dawson arrived at Joann Lane, defendant sold her $100 worth of crack cocaine. Dawson then went to the prearranged location and handed the crack cocaine to the police officers. Dawson testified to substantially similar events occurring on June 9, 2014, July 18, 2014, and August 6, 2014. Dawson also testified to similar events occurring on July 11, 2014, but she met defendant at the Atrium Apartments, instead of at the 1200 block of Joann Lane.

¶ 22 On cross-examination, Dawson acknowledged she was working with the police because she had a pending case and the police told her they could help her. Dawson had financial difficulties during that time and, at the time of trial, was working part-time. Although Dawson did not use the money the police gave her to make controlled buys of cocaine, she did continue to spend money on cocaine during the time period she participated in the controlled buys. Dawson told police officers she had to keep in touch with defendant in order to do the

controlled buys. Although she did not directly tell the officers, she believed they knew she continued to use cocaine during the months she did the controlled buys. Dawson testified she "slowed down [her] usage quite a bit" in August 2014.

¶ 23 On re-direct, Dawson testified defendant was not the only person she purchased cocaine from. Over defense counsel's objection, the State asked Dawson how defendant's arrest related to the time she stopped using cocaine. Dawson stated, "When *** I learned he had gotten arrested, I completely stopped using because I was wanting to stop for quite awhile, but I couldn't because I had that supplier available."

¶ 24 c. Nick Krippel

¶ 25 Nick Krippel, a Champaign police officer, testified he worked with the narcotics unit. On May 23, 2014, Krippel participated in a controlled buy. According to Krippel, he was a stationary post, focused on watching defendant's street from the back of a surveillance van. Krippel was familiar with Dawson's vehicle, and he was alerted when she turned the corner into his view. Krippel observed the vehicle park on the street and stated, "I saw the confidential source get out of the vehicle, start to meet with somebody in front of the vehicle and got back into the driver's seat." Dawson did not make any physical contact or exchange anything with the person. Krippel later observed a male get into the passenger seat of Dawson's vehicle. He remained in her car for less than a minute, then exited the vehicle and returned toward defendant's house. Krippel testified he could not make out a positive identification of the male.

¶ 26 On June 5, 2014, Krippel again participated in a controlled buy as a stationary post observing defendant's street. Dawson again parked on the side of the road and a male approached the vehicle and entered the passenger seat. Krippel could not positively identify the

male. Dawson's vehicle then traveled a short distance down the street before the male exited the vehicle and got into a black Cadillac Escalade.

¶ 27 On June 6, 2014, Krippel once more acted as a stationary post watching defendant's street during a controlled buy. Dawson's vehicle came into view and parked on the side of the street. A male approached the vehicle and leaned into the driver's side window. The male was at the driver's side window for less than 30 seconds. Although Krippel could not positively identify the man, the surveillance van video equipment worked and he recorded the exchange on video. Krippel testified the van was older and the recording equipment did not always work, so he did not have video of the May 23 or June 5 controlled buys.

¶ 28 d. Jeremiah Christian

¶ 29 Jeremiah Christian testified he was assigned to the narcotics unit of the Champaign police department. On June 9, 2014, Christian participated in a controlled-buy operation. When Christian initially met with the confidential source, he searched the source and her vehicle for controlled substances, currency, and other contraband that could affect the controlled buy. The confidential source then made a phone call and was given $100 for the purchase. According to Christian, the officers then conducted surveillance and followed the confidential source to Arrowhead Lanes. The source waited there for some time until Christian finally contacted her. She indicated defendant had recently contacted her and instructed her to go to the area near his residence. After the confidential source completed the controlled buy, Christian followed her to a meeting location and recovered 0.8 grams of cocaine. According to Christian, the substance was wrapped in a miniature candy bar wrapper.

¶ 30 On July 18, 2014, Christian again participated in a controlled buy. Christian testified he was the surveillance unit for the controlled buy and set up approximately a block and

a half west of defendant's house. When the confidential source pulled up to defendant's house, a male exited a black Cadillac Escalade parked at the end of a driveway and approached the source's vehicle on the driver's side. The male was at the source's driver's side door for mere seconds before departing and entering the passenger side of the Escalade. From his position, Christian could not identify the male. However, other officers stayed with the confidential source while Christian and another officer conducted surveillance of the Escalade as it departed. Christian followed the Escalade to a park and observed defendant in the passenger seat.

¶ 31 e. Tom Walker

¶ 32 Tom Walker testified he was a detective sergeant with the Champaign police department in charge of the narcotics division. On June 9, 2014, Walker participated in a controlled-buy operation. Walker conducted surveillance from a covert vehicle parked on defendant's street. According to Walker, he was familiar with Dawson's vehicle. Once the drug transaction occurred, Walker followed the confidential source's vehicle until the other surveillance units picked up on the vehicle and took it out of the area.

¶ 33 On July 11, 2014, Walker was posted at Vineyard Church, directly north of the Atrium Apartments where another controlled-buy operation was conducted. Using binoculars, Walker observed a male he recognized as defendant near a vehicle in the parking lot. The confidential source's vehicle arrived and parked nearby. According to Walker, defendant entered the confidential source's vehicle and exited a short time later. Defendant left the parking lot in an SUV of some kind.

¶ 34 On August 6, 2014, Walker again conducted surveillance of defendant's street. Walker observed the confidential informant's vehicle arrive and testified, "we lost the vehicle

shortly, just because of—the informant moved in it just for a brief second, and then I was able to watch it from there." Walker then observed the informant's vehicle leave the area.

¶ 35 f. Ebonie Williams

¶ 36 Williams testified she and defendant had children together. Williams testified she met an individual whose street name was "John B." at defendant's address on Joann Lane. According to Williams, three people lived in the residence. Williams and "John B." entered the house and "John B." went into a few different areas of the home, "roaming around." Williams testified she was unsure what "John B." was doing, but after he finished roaming around he handed Williams some money. According to Williams, she gave the money to her parents. In August 2014, Champaign police officers contacted Williams regarding the money and ultimately recovered that money from her parents' house.

¶ 37 2. *Testimony Regarding Count VII*

¶ 38 a. Officer Henry

¶ 39 In August 2014, following the controlled-buy operations, Henry obtained a search warrant for 1219 Joann Lane. Henry conducted surveillance on the 1200 block of Joann Lane and observed defendant driving a gray Dodge pick-up truck. Henry stayed at defendant's residence on Joann Lane while other officers followed the pick-up truck to take defendant into custody. After defendant was taken into custody, officers brought him back to his residence to secure a large, vicious dog that prevented officers from executing the search warrant.

¶ 40 During the execution of the search warrant, Henry interviewed defendant. In the course of the search, officers found a substance that appeared to be crack cocaine. When Henry confronted defendant with this information, defendant said, "I'm fucked."

¶ 41 b. Corey Phenicie

¶ 42 Corey Phenicie testified he was a police officer for the city of Champaign. Phenicie assisted in defendant's arrest at a gas station and the search of the silver Dodge Ram pick-up truck defendant had been driving. During the search, Phenicie seized two cellular phones and $3000 in cash.

¶ 43 c. Dustin Sumption

¶ 44 Dustin Sumption, a Champaign police detective, testified he participated in serving a search warrant at defendant's house. According to Sumption, when an officer searching the house located evidence, Sumption would photograph the evidence in place then seize, package, and process the evidence. Sumption testified a substance that appeared to be cocaine was found in the gutter on the exterior of the house. Sumption testified he photographed the area where the suspected cocaine was found, including the fence and yard by the gutter. The State introduced these photographs into evidence, and one photograph shows a folding chair placed near the gutter where the suspected cocaine was found. The substance was in multiple small plastic bags contained within a larger grocery sack. Sumption separated the substance from the bags it was contained in so the packaging could be processed for fingerprints. The bags were marked People's exhibit Nos. 12 to 15. Sumption also identified People's exhibit No. 18, which was a grocery sack found in the kitchen garbage can.

¶ 45 d. Officer Christian

¶ 46 Christian was permitted to testify as an expert in the field of narcotics investigations. The State showed Christian People's exhibit No. 16, which Christian described as a controlled substance in "the large rock form, two large chunks." Christian estimated the controlled substance weighed approximately 10 grams and was more than a street-level user would possess. Christian stated, "generally[,] street level sales range from, anywhere from what

we call dubs, which are $20 purchases; half grams, which are $50 purchases; [to] $100, which is a gram purchase." According to Christian, it would be unusual for a street level user to purchase more than three grams of a controlled substance. The two large chunks of the controlled substance would be broken down into smaller pieces for the street-level user and, in Christian's opinion, were "a dealer amount which would be offered for sale for profit."

¶ 47 e. Aaron Roemer

¶ 48 Aaron Roemer, a drug chemist with the Illinois State Police crime lab, testified he conducted chemical analyses on People's exhibit No. 16, which contained the two large chunks of what appeared to be a controlled substance recovered from the gutter of defendant's house. According to Roemer, one chunk weighed 3.6 grams and the other weighed 6.1 grams, for a total of 9.7 grams. The piece that weighed 3.6 grams tested positive for the presence of cocaine. Roemer did not testify as to the chemical composition of the remaining 6.1 grams of substance. However, the State asked if it was Roemer's opinion "that the total of 9.7 grams contained 3.6 grams of a substance containing cocaine," and Roemer responded, "yes."

¶ 49 f. Brian Long

¶ 50 Brian Long, a forensic scientist, testified he worked for the Illinois State Police processing and examining evidence for latent prints. Long examined People's exhibit Nos. 12 to 15 and 18—the bags recovered from the gutter of defendant's house and the bag from the kitchen garbage can—for latent fingerprints. After conducting tests, Long was able to identify one print on People's exhibit No. 18. Long compared the print to a known standard on defendant's fingerprint card and determined the latent print was made by the same person. According to Long, there was one suitable latent print on People's exhibit No. 12, but it was inconclusive and Long could not determine whether the print was left by defendant.

¶ 51 3. *Defendant's Testimony*

¶ 52 Defendant testified, from May through August 2014, he lived on Joann Lane with his brother and his cousin. According to defendant, he and Dawson had an off and on sexual relationship since 2013. Dawson frequently borrowed money from defendant and refused to repay him. The two had a falling out due to Dawson's refusal to repay defendant and she stopped calling him. According to defendant, in May 2014, Dawson called to talk about the traffic stop and said the police were talking about taking her child.

¶ 53 Defendant testified he had never sold drugs in his life. Defendant denied seeing Dawson or selling her drugs on May 23, June 5, June 6, June 9, or July 11. Defendant admitted being in the video taken on July 18, 2014. According to defendant, Dawson called to let him know she was going to Joann Lane to see a friend she went to high school with and wanted to see defendant. Defendant had to pick something up from his house and return to work, so he briefly said hello to Dawson and asked about her child.

¶ 54 Defendant also acknowledged he was in the video taken on August 6, 2014. The video showed defendant sitting on his neighbor's front porch doing something with his hands. According to defendant, Dawson owed him $120 and gave him a pair of earrings to hold for her. On the video, defendant had the earrings in a napkin in his hands. Dawson gave defendant $80 and, because he was happy to get any money back, he gave her the earrings.

¶ 55 Defendant testified he was detained at a gas station and the officers took him to his house to secure his dog. When they arrived at his house, defendant's cousin had already restrained the dog. Police officers asked defendant numerous questions about being a confidential informant and threatened defendant with charges if he did not cooperate. Officers found nothing illegal in defendant's house but recovered a grocery bag from his trash garbage

can. Defendant testified he never placed a controlled substance in his gutter. Officers had been at defendant's house for two hours when he informed them he wanted to see his lawyer and refused to agree to be a confidential informant. Defendant testified, "[o]nce I told them I want[ed] to see my lawyer, that's when they sa[id] they found something outside of my residence." According to defendant, he lived in a "high drug area," his yard was not completely enclosed with a fence, and people routinely walked through his yard.

¶ 56 In rebuttal, based on defendant's testimony that he had never sold drugs in his life, the State sought to introduce three prior drug convictions. The trial court noted evidence of prior convictions are admissible if the door has been opened and determined defendant "threw the door open" with his gratuitous testimony that he had never sold drugs. Accordingly, the court allowed the State to introduce evidence of defendant's 2005 conviction for attempted delivery of a controlled substance and his 2012 conviction for possession with intent to deliver a controlled substance.

¶ 57 B. Verdict and Sentencing

¶ 58 The jury returned guilty verdicts on seven counts of unlawful delivery of a controlled substance (counts I to VI, VIII) and one count of unlawful possession with intent to deliver a controlled substance (count VII).

¶ 59 Following a sentencing hearing, the trial court sentenced defendant to concurrent terms of 30 years' imprisonment followed by 3 years' mandatory supervised release, with 272 days' credit, on all eight counts. The court also ordered a $100 dollar street-value fine be imposed on counts I through VI and count VIII. The court imposed a $360 street-value fine on count VII.

¶ 60 This appeal followed.

¶ 61 II. ANALYSIS

¶ 62 On appeal, defendant argues (1) the State failed to prove him guilty beyond a reasonable doubt on six of the eight counts; (2) the trial court abused its discretion in repeatedly admitting irrelevant and highly prejudicial evidence of other crimes; (3) he is owed nine additional days of sentencing credit; and (4) the supplemental sentencing order must be corrected to comport with the court's oral sentencing pronouncement.

¶ 63 A. Sufficiency of the Evidence

¶ 64 When considering whether the evidence was sufficient to support a conviction, "our function is not to retry the defendant." *People v. Sutherland*, 223 Ill. 2d 187, 242, 860 N.E.2d 178, 217 (2006). Instead, we 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.' " (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261, 478 N.E.2d 267, 277 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Accordingly, we allow all reasonable inferences in favor of the State. *People v. Beauchamp*, 241 Ill. 2d 1, 8, 944 N.E.2d 319, 323 (2011). "The testimony of a single witness, if it is positive and the witness credible, is sufficient to convict." *People v. Smith*, 185 Ill. 2d 532, 541, 708 N.E.2d 365, 369 (1999). It is the province of the finder of fact to determine the credibility of a witness and the finding is entitled to great weight. *Id.* at 542. However, the jury's determination is not conclusive and where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt, we will reverse. *Id.*

¶ 65 1. *Counts I to IV and VIII*

¶ 66 Defendant contends the evidence was insufficient to prove him guilty on five of the seven unlawful delivery of a controlled substance counts. Defendant asserts the sole

evidence that he delivered an unlawful substance to Dawson was Dawson's testimony. He further asserts Dawson's testimony was insufficient because she (1) was motivated to testify falsely to avoid her own arrest and (2) regularly used drugs in the year preceding the first controlled buy and continued to use drugs during the months the controlled buys occurred.

¶ 67 For counts I to IV, Officer Henry testified he searched Dawson and her vehicle before the controlled buys to be sure she did not have any drugs, money, or other contraband. Officer Henry gave Dawson $100 to use to purchase cocaine from defendant and then met Dawson at a prearranged location where she turned over the suspected cocaine she purchased from defendant. For count VIII, Officer Christian testified to the same procedure. For count I, Dawson testified, on May 23, 2014, she called defendant, met him at his house, and purchased cocaine from him. Officer Krippel testified he acted as a stationary post observing Joann Lane. He recognized Dawson's vehicle and observed as she parked on the street and a male got into the passenger side of her vehicle. He remained in the car for less than a minute, then exited and returned toward defendant's house. Roemer testified the substance Dawson turned over to Officer Henry weighed 0.8 grams and tested positive for cocaine.

¶ 68 For count II, Dawson testified, on June 5, 2014, she called defendant and arranged to meet at his house. When she arrived, defendant's friend got into her car, told her to drive a short distance, and sold her suspected cocaine. Officer Krippel testified he acted as a stationary post and observed a man enter Dawson's vehicle. The vehicle drove a short distance before the male exited the vehicle and got into a black Cadillac Escalade. Roemer testified the substance Dawson turned over to Officer Henry weighed 0.4 grams and tested positive for cocaine.

¶ 69 For count III, Dawson testified, on June 6, 2014, she called defendant and initially arranged to meet him at Arrowhead Lanes. Defendant subsequently called Dawson and changed

the meeting location to his house. According to Dawson, when she arrived, defendant sold her $100 worth of crack cocaine. Officer Krippel testified he observed Dawson's vehicle park on Joann Lane and a man approached the driver's side window. Officer Krippel estimated the man spent less than 30 seconds at Dawson's window. Roemer testified the substance recovered from Dawson weighed 0.6 grams and tested positive for cocaine.

¶ 70 For count IV, Dawson testified, on July 11, 2014, she again called defendant and arranged to meet him at Atrium Apartments, where she purchased $100 worth of crack cocaine. Officer Walker testified he was posted at Vineyard Church, north of Atrium Apartments. Through binoculars, Officer Walker observed a man he recognized as defendant waiting in the parking lot. According to Officer Walker, Dawson's vehicle arrived and defendant entered the vehicle and exited a short time later. Roemer testified the substance Dawson turned over to Officer Henry weighed 0.4 grams and tested positive for cocaine. Additionally, two of the bills whose serial numbers were used in the July 11, 2014, controlled buy were recovered from the money defendant directed Williams to remove from his residence.

¶ 71 Finally, for count VIII, Dawson testified, on June 9, 2014, she called defendant and agreed to meet at Arrowhead Lanes. Defendant called her and changed the meeting location to his house. When Dawson arrived, defendant sold her $100 worth of crack cocaine. Officer Christian testified Dawson arranged to meet defendant at Arrowhead Lanes. Dawson waited at Arrowhead Lanes for some time before Officer Christian contacted her. She told Officer Christian defendant had just called and changed the meeting location. Officer Walker testified he was posted on Joann Lane that day and observed Dawson's vehicle arrive. Once the suspected drug transaction occurred, Officer Walker maintained surveillance of Dawson's vehicle until

another officer took over. Roemer testified the substance Dawson turned over to Officer Christian weighed 0.8 grams and tested positive for cocaine.

¶ 72 Viewing this evidence in the light most favorable to the State, we conclude a rational jury could easily have accepted Dawson's testimony as credible and found the essential elements of the crime beyond a reasonable doubt. Police officers searched Dawson and her vehicle before each controlled buy and maintained constant surveillance of Dawson's vehicle during the operations. The officers' testimony also corroborated Dawson's account of how and where the controlled buys occurred.

¶ 73 Defendant also asserts Dawson was motivated to testify falsely to avoid her own arrest. As part of this argument, defendant suggests Officer Henry threatened to arrest Dawson if she did not assist in his investigation of defendant. This misstates the testimony and wrongly implies Officer Henry drove the development of defendant as a suspect. Rather, Dawson and Officer Henry both testified that Dawson identified defendant as the person who sold her the controlled substance located in her vehicle during the traffic stop and thereafter Officer Henry recruited her as a confidential source. Moreover, as to her motivation to testify falsely to avoid her own arrest, defense counsel had ample opportunity to cross-examine Dawson and the jury was aware of the fact that she was hoping to avoid charges by acting as a confidential informant and witness for the State.

¶ 74 Finally, defendant contends Dawson's testimony was incredible because she regularly used drugs in the year preceding the first controlled buy and continued to use drugs during the months the controlled buys occurred. In support of this argument, defendant relies on *People v. Anders*, 228 Ill. App. 3d 456, 464, 592 N.E.2dd 652, 657 (1992), for the following proposition: "testimony by an informant who himself abuses unlawful substances and who

participates in an undercover operation to minimize punishment for his own illegal activity should be closely scrutinized." However, the *Anders* court went on to state, "when this testimony is partially corroborated, the reasonable doubt threshold can be overcome." *Id.* As noted, Dawson's testimony was partially corroborated by the police officer's testimony and was consistent with the physical evidence. Moreover, defendant had the opportunity to cross-examine Dawson regarding her drug use and the jury was well aware of this information. As the evidence is sufficient, we decline to disregard to jury's credibility finding. As the finder of fact, the jury was in a superior position to observe the witnesses and make credibility determinations. See *People v. Hernandez*, 319 Ill. App. 3d 520, 533, 745 N.E.2d 673, 684-85 (2001) ("Inconsistencies in the testimony of the witnesses, bias or interest affecting their credibility, and the weight to be given to the testimony of witnesses are for the trier of fact to determine.").

¶ 75 The evidence is not so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *Smith*, 185 Ill. 2d at 541. Viewing the evidence in the light most favorable to the prosecution, we conclude a rational trier of fact could have found defendant guilty beyond a reasonable doubt of counts I through IV and VIII. See *Collins*, 106 Ill. 2d at 261. Accordingly, we affirm the judgment of the trial court.

¶ 76 2. *Count VII*

¶ 77 a. Possession

¶ 78 "In Illinois, possession of a controlled substance with intent to deliver requires the State prove: (1) defendant had knowledge of the presence of a controlled substance, (2) the substance was in defendant's immediate possession or control[,] and (3) defendant intended to deliver narcotics." *People v. Pittman*, 2014 IL App (1st) 123499, ¶ 15, 24 N.E.3d 280.

¶ 79 Defendant does not deny he lived in the house where the controlled substance was found and does not dispute he had control of the interior of the home. In light of the fact the home belonged to the defendant, we note, "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 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); see also *People v. Nettles*, 23 Ill. 2d 306, 308-09, 178 N.E.2d 361, 363 (1961).

¶ 80 However, defendant contends he did not have exclusive control of the exterior gutter where the drugs were found. In support, defendant points to his testimony that he lived in a "high drug" area and that people routinely walked through his yard. While defendant seeks to minimize his control over the exterior of the home, he cannot escape the fact that the "premises" consists of "a house or building, together with its land and outbuildings." *Premises Definition*, Oxforddictionaries.com, http://en.oxforddictionaries.com/definition/premises (last visited Nov. 19, 2017). While the specific location of the illegal drugs on the premises may impact the strength of the inference of knowledge and possession, it does not change the fact that the illegal drugs were found on defendant's premises. As the resident of the home, defendant had access to and control over the interior and exterior of the home.

¶ 81 Clearly, the jury had the opportunity to consider defendant's testimony on this point. The jury also heard testimony regarding the other individuals present at the house at the time the officers executed the search warrant. However, the trier of fact is not required to accept explanations of evidence that are consistent with defendant's innocence. See *Sutherland*, 223 Ill. 2d at 272. Apparently, the jury chose to reject defendant's version of events, and the State provided ample evidence to meet its burden of proof.

¶ 82 During an interview following the execution of the search warrant, defendant indicated no one lived with him. The photograph in People's exhibit No. 11(b) showed the location and nearly pristine condition of the packaging that contained the illegal drugs found in the gutter. The photograph in People's exhibit No. 11(a) showed a folding chair situated on the ground below the gutter where police discovered the illegal drugs. The placement of the folding chair beneath the gutter where the drugs were found gives rise to the inference that defendant knew of and used the chair to access the drugs. Moreover, the jury heard evidence defendant was actively involved in selling drugs, as proved by the controlled buys, and it was reasonable for a jury to conclude he kept a supply available. See *People v. Marshall*, 256 Ill. App. 3d 310, 319, 629 N.E.2d 64, 70-71 (1993). Even though defendant testified his yard was not fully fenced, the photographs the State introduced into evidence show at least a portion of the yard was fenced, indicating the gutter was not easily accessible to others. Finally, defendant described his predicament using an expletive when the officer advised him of the discovery of the drugs.

¶ 83 Although defendant disputes his control of the premises, we think the specific circumstances of this case—particularly the placement of the folding chair and the fencing—permit a reasonable inference that defendant knowingly possessed the controlled substance. This circumstantial evidence, taken in the light most favorable to the State, is sufficient for a rational trier of fact to find defendant knowingly possessed the controlled substance. See *Collins*, 106 Ill. 2d at 261.

¶ 84 b. Intent To Deliver

¶ 85 Defendant also contends the State failed to prove he had the intent to deliver the drugs found in his gutter. Specifically, defendant asserts the State relied on Officer Christian's

testimony that the 10 grams of the substance found in the gutter was not a user amount, but was consistent with the amount a dealer would have. Defendant further asserts the State improperly introduced into evidence all 10 grams of the substances found in the gutter, as opposed to presenting only the 3.6 grams of cocaine that was the subject of the criminal charge and much closer to the "user amount" which Officer Christian testified was approximately 3 grams.

¶ 86 Direct evidence of intent to deliver a controlled substance is rare and must usually be proved by circumstantial evidence. *People v. Johnson*, 2013 IL App (4th) 120162, ¶ 28, 986 N.E.2d 782. "Generally, we look to a variety of factors as indicative of intent to deliver, including, among other things[:] (1) whether the quantity is too large to be viewed as being solely for personal use[;] (2) the purity of the drug confiscated[;] (3) possession of weapons[;] (4) possession of large amounts of cash[;] (5) possession of police scanners, beepers, or cellular telephones[;] (6) possession of drug paraphernalia[;] and (7) the manner in which the substance is packaged." *Id.* The quantity of a controlled substance may be sufficient evidence to prove an intent to deliver beyond a reasonable doubt where the amount could not reasonably be viewed as designed for personal consumption. *People v. Robinson*, 167 Ill. 2d 397, 410-11, 657 N.E.2d 1020, 1028 (1995). "Further, as the quantity of controlled substance on the defendant's person decreases, the need for additional circumstantial evidence of intent to deliver increases." *People v. Sherrod*, 394 Ill. App. 3d 863, 865, 916 N.E.2d 1256, 1259 (2009).

¶ 87 As noted above, defendant focuses his argument on the fact the State relied on the quantity of the controlled substance to establish defendant's intent to deliver. Defendant asserts the State's evidence tends to prove he did not intend to deliver because the actual amount of cocaine he possessed was much closer to the user amount of 3 grams, as Officer Christian testified. Accordingly, defendant contends the first factor set forth above is inapplicable.

Johnson, 2013 IL App (4th) 120162, ¶ 28. Defendant contends the second factor is also inapplicable because the State chose not to test the purity of the cocaine. Finally, defendant contends none of the other factors are present in the instant case, except for the two cellular telephones and the large amount of cash found at the time of defendant's arrest. Defendant argues the State only proved one phone belonged to him and the cash was easily explained by defendant's side business buying and selling used cars.

¶ 88 The jury heard evidence that the substance contained 3.6 grams of cocaine, which, contrary to defendant's assertion, exceeds the 3-gram "user amount" Officer Christian testified about. It is not unreasonable for the jury to infer this amount indicated defendant's intent to deliver. Moreover, the cellular telephones and the $3000 defendant had with him at the time of his arrest, viewed in the light most favorable to the State, support an inference defendant intended to deliver the controlled substance. As stated above, the trier of fact is not required to accept innocent explanations for the evidence. *Sutherland*, 223 Ill. 2d at 272. Moreover, the jury could properly have considered the following evidence: (1) the numerous controlled buys Dawson conducted; (2) defendant's own statement that he had never sold drugs in his life, and (3) the properly introduced evidence of his other convictions for attempted delivery of a controlled substance and possession with the intent to deliver a controlled substance. This evidence was sufficient for a trier of fact to find defendant intended to deliver the controlled substance. We conclude the evidence in this case, taken in the light most favorable to the State, is sufficient for a rational trier of fact to find defendant guilty beyond a reasonable doubt of count VII. See *Collins*, 106 Ill. 2d at 261.

¶ 89 B. Other-Crimes Evidence

¶ 90 Defendant contends the trial court abused its discretion in admitting the following irrelevant or prejudicial other crimes evidence: (1) Dawson bought cocaine exclusively from defendant throughout the year preceding the May 23, 2014, controlled buy; (2) Dawson recognized defendant's voice from calling him "numerous times" in the past using a number he gave her for the purpose of buying cocaine from him; (3) Dawson was only able to beat her cocaine addiction because defendant was arrested; and (4) defendant possessed 10 grams of cocaine, despite the fact only 3 grams were in controversy. Defendant further asserts the cumulative impact of various trial errors warrants a new trial.

¶ 91 1. *Other-Crimes Evidence*

¶ 92 Defendant contends the trial court erred in allowing Dawson to testify she (1) bought cocaine exclusively from defendant in the year preceding the first controlled buy, and (2) recognized defendant's voice from speaking to him on the phone numerous times in the past. Initially, counsel for defendant argued these claims were not subject to forfeiture. Now, in his petition for rehearing, counsel urges this court to undertake plain error review. The State contends defendant has forfeited review of the argument by failing to preserve it in a posttrial motion. The State further contends defendant cannot prevail under either prong of the plain-error doctrine.

¶ 93 Generally, to preserve a question for review, "[*b*]*oth* a trial objection *and* a written post-trial motion raising the issue are required for alleged errors that could have been raised during trial." (Emphases in original.) *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124, 1130 (1988). Where a defendant has failed to preserve an issue in a posttrial motion, appellate "review will be limited to constitutional issues which have properly been raised at trial and

which can be raised later in a post-conviction hearing petition [citation], sufficiency of the evidence, and plain error." *Id.* at 190.

> "[T]he plain-error doctrine allows a reviewing court to consider unpreserved error 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).

¶ 94 We note defendant concedes he did not preserve these claims in a posttrial motion. Defendant challenges the admissibility of what he characterizes as other-crimes evidence. As such, we conclude defendant does not raise a constitutional claim which can be raised in a postconviction hearing petition as contemplated by the supreme court in *Enoch*. See *Enoch*, 122 Ill. 2d at 190. Moreover, the plain-error two-pronged test provides "two different ways to ensure the same thing—namely, a fair trial." *People v. Herron*, 215 Ill. 2d 167, 179, 830 N.E.2d 467, 475 (2005). Because defendant raises a challenge to the admissibility of evidence, we conclude he is entitled to review under the plain-error doctrine and not the exception to forfeiture for a constitutional issue which may be raised later in a postconviction hearing petition.

¶ 95 To obtain relief under the plain-error doctrine, the burden of persuasion is on the defendant to show one of the two prongs set forth above applies. *People v. Hillier*, 237 Ill. 2d

539, 545, 931 N.E.2d 1184, 1187 (2010). "A defendant who fails to argue for plain-error review obviously cannot meet his burden of persuasion." *Id.* at 545. Because defendant did not initially argue for plain-error review, we continue to conclude he has forfeited these claims. Accordingly, we affirm the trial court's judgment.

¶ 96 2. *Evidence of Dawson's Addiction*

¶ 97 Defendant asserts the trial court abused its discretion by admitting irrelevant and highly prejudicial "other-crimes evidence" that Dawson was only able to beat her cocaine addiction because defendant was arrested. In his petition for rehearing, defendant contends this issue was not forfeited because counsel objected to the testimony at trial and preserved the issue in a posttrial motion. Upon review of the record, we conclude counsel did preserve this issue in the posttrial motion, which asserted the court erred by allowing this testimony because it had no relevancy and was designed to appeal to the passion and prejudice of the jury. Accordingly, we address the merits of this argument.

¶ 98 "A trial court's evidentiary rulings are discretionary and, therefore, such rulings will not be overturned absent an abuse of discretion." *People v. Irwin*, 2017 IL App (1st) 150054, ¶ 27, 78 N.E.3d 566. "The threshold for finding an abuse of discretion is high." *In re Leona W.*, 228 Ill. 2d 439, 460, 888 N.E.2d 72, 83 (2008). We will find an abuse of discretion only where no reasonable person would take the view adopted by the trial court or where the ruling is arbitrary, fanciful, or unreasonable. *People v. Purcell*, 362 Ill. App. 3d 283, 293, 846 N.E.2d 203, 211 (2006).

¶ 99 On direct examination, the State asked Dawson when she stopped using cocaine and she responded, "It was last fall at some point." On cross-examination, defense counsel asked a series of questions about Dawson's cocaine use during the time she conducted the controlled

buys. These questions established that Dawson was a regular user of cocaine during the first five controlled buys, but she had slowed down her cocaine usage "quite a bit" toward the time of the August controlled buys. On redirect, the State asked Dawson if defendant was the only person she purchased cocaine from and Dawson stated, "No." Over defense counsel's objection, the State asked Dawson how the time of defendant's arrest related to the time she decided to stop using cocaine. Dawson testified, "When he had got—I learned he had gotten arrested, I completely stopped using because I was wanting to stop for quite awhile, but I couldn't because I had that supplier available."

¶ 100 The trial court determined defense counsel's questions regarding Dawson's frequency and length of drug use related to her bias and motivation to cooperate with police. We agree with the court's assessment on this point, and further note "[i]t is also well-settled in Illinois that narcotics addiction has an important bearing upon the credibility of a witness." *People v. Adams*, 259 Ill. App. 3d 995, 1004, 631 N.E.2d 1176, 1183 (1993). The court noted the State was allowed to explore information about how often Dawson was using cocaine and when she stopped in response to defense counsel's questions suggesting bias or motive. The court further noted nothing was unduly emphasized or prejudicial and determined it was an appropriate response to defense counsel's line of inquiry. See *People v. Thompkins*, 121 Ill. 2d 401, 444, 521 N.E.2d 38, 57 (1988) ("Redirect examination is a tool used by prosecutors to remove or correct unfavorable inferences left by the preceding cross-examiner.").

¶ 101 In his reply brief, defendant concedes the testimony regarding when Dawson stopped using cocaine was relevant to establishing (1) she used cocaine throughout the entire investigation and (2) she was not using cocaine at the time she testified. Defendant contends, however, that *how* Dawson stopped using drugs was irrelevant to any issue and, thus, was

inadmissible and so prejudicial it denied him a fair trial. We disagree. First of all, Dawson's testimony that she stopped using cocaine around the time of defendant's arrest related to *when* she quit. To the extent defendant argues this testimony established *how* Dawson quit, we note defendant ignores her testimony that defendant was not her exclusive supplier. It also ignores the fact that defendant opened the door to testimony regarding when Dawson quit using cocaine by attempting to impeach Dawson's credibility with questions suggesting bias or motive. The State responded to this line of inquiry by asking Dawson how often she used cocaine and when she stopped, which established she was no longer using cocaine at the time she testified. Moreover, the court explicitly determined this testimony was not unduly emphasized and was not prejudicial. As noted above, the threshold for finding an abuse of discretion is high. *Leona W.*, 228 Ill. 2d at 460. Under these circumstances, we conclude the trial court did not abuse its discretion in allowing this testimony.

¶ 102 3. *Weight of the Narcotics*

¶ 103 Defendant contends the trial court abused its discretion in admitting "other-crimes evidence" that the substance recovered from his gutter was 10 grams of cocaine when only 3.6 grams was cocaine and the remaining substance was heroin. Defendant contends it was error to allow the State to prove intent to deliver through the use of testimony regarding the total amount of the substances found, rather than the amount of drugs actually in controversy (the 3.6 grams of cocaine). Initially, counsel for defendant argued that, although defendant forfeited this argument by failing to preserve it in a posttrial motion, the failure to properly preserve this issue denied him the effective assistance of trial counsel. In his petition for rehearing, counsel for defendant now seeks plain error review. We decline to review the matter under plain error, and instead, continue to analyze defendant's ineffective assistance of counsel claim.

¶ 104 We review claims of ineffective assistance of counsel under the familiar standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). To prevail under *Strickland*, a defendant must show counsel's performance was deficient and prejudice resulted from counsel's deficient performance. *People v. Houston*, 226 Ill. 2d 135, 143, 874 N.E.2d 23, 29 (2007). To establish prejudice, a defendant must show a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *People v. Cherry*, 2016 IL 118728, ¶ 30, 63 N.E.3d 871.

¶ 105 Defendant contends there is a reasonable probability the result of the proceeding would have been different if the State were only allowed to present evidence of the 3.6 grams of cocaine, rather than the combined 10 grams of the substance entered into evidence and testified about by Officer Christian. Specifically, defendant contends Christian's testimony established that approximately 3 grams was a "user amount" and, had he not testified that the 10 grams was a "dealer amount," the jury probably would not have found defendant had the requisite intent to deliver.

¶ 106 However, as noted above, the jury heard evidence that the substance contained 3.6 grams of cocaine, which, contrary to defendant's assertion, exceeds the 3-gram "user amount" Officer Christian testified about. The jury also heard the following evidence relevant to establishing defendant's intent to deliver: (1) defendant had two cellular telephones at the time of his arrest; (2) he had $3000 dollars on him at the time of his arrest; (3) the seven controlled buys Dawson conducted; (4) defendant's own statement that he had never sold drugs in his life; and (5) his other convictions for attempted delivery of a controlled substance and possession with the intent to deliver a controlled substance.

¶ 107 Here, the State did not rely *solely* on the weight of the drugs found in the gutter to prove defendant's intent to deliver. Indeed, as the State argues, the most compelling evidence of defendant's intent to deliver was the evidence of the controlled buys in which defendant actually engaged in the sale of drugs seven times prior to his arrest. Because there was sufficient evidence to support a finding of defendant's intent to deliver without the evidence related to the weight of the drugs, we conclude defendant cannot establish prejudice. Moreover, we reiterate the actual amount of the drugs in controversy was 3.6 grams and Officer Christian testified 3 grams was a "user amount." Although close, the actual weight of the drugs in controversy exceeded the "user amount" established by the testimony. Defendant's failure to establish prejudice is fatal to his claim of ineffective assistance of counsel. *People v. Sanchez*, 169 Ill. 2d 472, 487, 662 N.E.2d 1199, 1207-08 (1996).

¶ 108 C. Sentencing Credit

¶ 109 Defendant asserts he is entitled to nine additional days of presentence custody credit for the time he spent in custody from August 14, 2014, to his sentencing on May 22, 2015. The State concedes defendant is due 281 days' credit and asks this court to enter an order consistent with section 5-4.5-100(b) of the Unified Code of Corrections (730 ILCS 5/5-4.5-100(b) (West 2014)). "Whether a defendant should receive presentence custody credit against his sentence is reviewed under the *de novo* standard of review." *People v. Jones*, 2015 IL App (4th) 130711, ¶ 12, 44 N.E.3d 1112.

¶ 110 After reviewing the record, we find defendant is entitled to credit from the date of his arrest (August 14, 2014) to the date of his sentencing (May 22, 2015). Accordingly, we accept the State's concession that defendant is due 281 days' credit. We note future mathematical

errors may be foreclosed by the use of specific dates a defendant is in presentence custody, leaving the calculation of sentence credit to the Department of Corrections.

¶ 111 D. Sentencing Order

¶ 112 Finally, defendant contends the supplemental sentencing order and the fines and fees sheet do not accurately reflect the trial court's oral pronouncement that defendant pay a $1060 street value fine. The State concedes the trial court's oral pronouncement controls and asks this court to enter an order consistent with the trial court's oral sentencing order.

¶ 113 Whether a sentencing order should be corrected is a purely legal issue subject to *de novo* review. *People v. Carlisle*, 2015 IL App (1st) 131144, ¶ 86, 35 N.E.3d 649. "When an oral pronouncement of judgment and a trial court's written judgment are in conflict, it is the oral pronouncement that is controlling." *People v. Savage*, 361 Ill. App. 3d 750, 762, 838 N.E.2d 247, 257 (2005).

¶ 114 At sentencing, the trial court ordered a $100 street-value fine on each of the seven counts of unlawful delivery of a controlled substance (counts I to VI, VIII). The court further imposed a $360 street-value fine on the count of unlawful possession with intent to deliver a controlled substance (count VII), for a total street-value fine of $1060. However, the supplemental sentencing order shows a street-value fine of $1360 and the fines and fees sheet lists the street-value fine as $2320. The record shows the court's written judgment order is inconsistent with its oral pronouncement. Accordingly, we remand for the trial court to amend the written sentencing judgment to impose a total street-value fine of $1060.

¶ 115 III. CONCLUSION

¶ 116 For the reasons stated, we affirm the trial court's judgment in part, vacate in part, and remand for further proceedings consistent with this order. As part of our judgment, because

the State successfully defended a portion of this appeal, we award the State its $75 statutory assessment against defendant as costs of this appeal. See *People v. Smith*, 133 Ill. App. 3d 613, 619-20, 479 N.E.2d 328, 333 (1985); 55 ILCS 5/4-2002 (West 2016).

¶ 117 Affirmed in part, vacated in part, and remanded with directions.