

NOTICE  
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2013 IL App (4th) 110810-U  
NO. 4-11-0810  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

**FILED**  
April 17, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
CARA M. GECKLES,	)	No. 08CF961
Defendant-Appellant.	)	
	)	Honorable
	)	Leo J. Zappa,
	)	Judge Presiding.

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

**ORDER**

¶ 1 *Held:* (1) The trial court properly denied defendant's motion for a directed verdict.

(2) The State proved defendant guilty beyond a reasonable doubt of aggravated battery.

(3) The \$2,000 public-defender fee was improperly imposed where the trial court failed to hold a hearing on defendant's financial circumstances and ability to pay.

¶ 2 In September 2008, the State charged defendant by indictment with two counts of aggravated battery of a child, alleging defendant knowingly caused great bodily harm to M.K.H. by burning him (720 ILCS 5/12-4.3(a) (West 2006)) and knowingly caused permanent disfigurement to M.K.H. by causing scarring (720 ILCS 5/12-4.3(a) (West 2006)). A jury found defendant guilty of aggravated battery (causing great bodily harm) and the included offense of aggravated battery (causing disfigurement) (720 ILCS 5/12-4.3(a) (West 2006)). The trial court

sentenced defendant to seven years' imprisonment, with three years of mandatory supervised release (MSR). The court ordered defendant to pay various fines and fees, including a \$2,000 public-defender fee.

¶ 3 Defendant appeals, arguing (1) the trial court erred in denying defendant's motion for a directed verdict, (2) the State did not prove her guilty beyond a reasonable doubt, and (3) the court improperly imposed a \$2,000 public-defender fee without holding a hearing on defendant's ability to pay. We affirm in part, vacate in part, and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 In September 2008, the State charged defendant by indictment with two counts of aggravated battery, alleging defendant knowingly caused great bodily harm to M.K.H. by burning him and knowingly caused permanent disfigurement to M.K.H. by burning him and causing scarring. M.K.H. was 16 months old at the time of the offense. In May 2011, the trial court held a jury trial.

¶ 6 Maurice Howard testified he is the father of M.K.H. On June 5, 2008, defendant brought M.K.H. and M.K.H.'s sister to Howard's residence. Howard noticed M.K.H. had "a scar, like a sore on his forehead with a red bruising, and he had a burn on his back and some bruises around his neck and welts on his legs." Howard asked defendant about the injuries and defendant told him " 'Don't worry about it, we'll just go to the hospital later on and take care of it.' " Defendant told Howard the injuries were the result of a sunburn. Howard did not want to wait to take M.K.H. to the hospital and had no transportation, so he called 9-1-1.

¶ 7 Scott Butterfield, a sheriff's deputy, testified on June 5, 2008, he was sent to 1730 East Kansas Street for an aggravated battery assignment. When he arrived, he noticed "marks"

on M.K.H.'s forehead. Butterfield transported M.K.H. and his father to the hospital. After arriving at St. John's, Butterfield called the Department of Children and Family Services (DCFS).

¶ 8 Doctor Linda Nordeman, an emergency medicine physician at St. John's Hospital, testified on June 5, 2008, she examined M.K.H. M.K.H. had "lesions to his forehead, his back, his trunk, his leg. Some of them were bruises, some of them appeared to be burns, some of them it was not completely clear \*\*\* what the cause was, but they all appeared to be injuries, not illness." The injuries were recent but not immediate.

¶ 9 M.K.H. had a lesion on his forehead "about a centimeter in diameter," which Nordeman described as a blister. Nordeman believed the blister "resulted from [an] injury, and the injury was in the shape that the blister subsequently took." She did not know the cause of the burn which resulted in the blister. M.K.H. also had a "redness" on his forehead which appeared to Nordeman to be a bruise Nordeman opined the "redness" on M.K.H.'s head was caused by an injury.

¶ 10 M.K.H. had a blister on his back that had ruptured. The blister was consistent with a second degree burn. Nordeman could not be certain what caused the burn on M.K.H.'s back but concluded "a burn on the back of a child is typically inflicted on the child because its not a place like a palm where a child would be exploring and touch something[.]"

¶ 11 Nordeman did not believe the injuries were consistent with being sunburned. The injury to M.K.H.'s forehead was inconsistent with a sunburn because it was "very discreet, well circumscribed, severe" and it had "no surrounding lesser degree of burn." Nordeman explained as follows:

"typically, if you see a severe sunburn where there is blistering, it

fades out into a more minor first degree burn where there is just some mild redness.

I have never seen a sunburn that has that appearance. The burn on the back could not have been exposed to the sun at the same time as the burn on the forehead.

Had the child been laying in the sun with the rest of the body covered, it is conceivable that that could be from the sun; but, again, that's a pretty discreet area.

When asked what he meant by "discreet," Nordeman stated:

It's not diffused. You know, if you are in the sun, and you have a watch on, you'll have a mark from where it was protected from the sun.

If you have a back exposed, you don't have that kind of demarcation, and I would expect that that area of redness would be more diffuse, more broad. This is much more defined."

Nordeman did not believe the blister on M.K.H.'s forehead and the "redness" were "related to the sun or each other" because a severe burn from the sun is "not discreetly separate from the area of lesser degree burn that occurred at the same time."

¶ 12 Stephanie Harrold testified she is the mother of Larandus Stone. Larandus Stone was defendant's paramour in June 2008. On June 4, 2008, Harrold took Larandus to defendant's trailer so he could pick up a check. Harrold observed M.K.H. in the yard, wearing a diaper. M.K.H. had "a red mark going across his forehead \*\*\* and \*\*\* one on his back." Harrold said

M.K.H. did not have any "scabbing" at that time. Defendant told Harrold M.K.H. got sunburned from lying in his crib. Harrold recalled "it might have been sunny" that day. Harrold thought the injuries she saw on M.K.H. on June 4, 2008, looked different from the injuries in the pictures taken of M.K.H. on June 5, 2008.

¶ 13 Larandus Stone testified in early June 2008, he went to defendant's residence. Stone stated M.K.H. had a "ring" on his forehead that "looked like a sunburn." M.K.H. did not have a blister on his forehead when Stone saw him, but a blister could have been forming. Stone did not see M.K.H.'s back during his visit. Defendant told Stone M.K.H. had a sunburn and she was going to put "A & D ointment \*\*\* on his scar." M.K.H.'s appearance was different in the DCFS pictures from what Stone observed in June 2008.

¶ 14 Gerald Felts, a sergeant with the Sangamon County sheriff's department, testified in June 2008, he was assigned to a child abuse case. Felts reviewed pictures of M.K.H. taken by Butterfield and contacted Misty Hatcher from DCFS. Felts and Hatcher went to defendant's residence and questioned her about M.K.H.'s condition. Defendant told Felts M.K.H. received a sunburn from "his crib towards the later afternoon hours with the sunlight coming through the window in the crib." Defendant did not think anyone else could have abused M.K.H.

¶ 15 On September 26, 2008, Felts spoke with defendant a second time and arrested her. Defendant told Felts it appeared from the pictures M.K.H. had "been hit with something," but she did not know how that would have happened. Defendant did not know where some of the bruises on M.K.H. came from and other bruises she suggested were from M.K.H. playing.

¶ 16 Hatcher, an investigator for DCFS, testified on June 5, 2008, she went to St. John's to "check on a child with burns." Hatcher spoke with Howard and defendant at the

hospital. Defendant told Hatcher she did not know the source of the bruises on M.K.H.'s legs and neck. Defendant told Hatcher M.K.H. was sunburned when "the sun had reflected off the window onto the bed in the crib with no sheet on it and reflected up and burned his head and back." Hatcher testified M.K.H. had a bruise on his right thigh that matched the shape of a hanger. Defendant had several plastic hangers of similar shape at her residence. Defendant told Hatcher she did not hit or burn M.K.H. Hatcher testified she recently took pictures of M.K.H. (approximately three years after the injuries occurred), and the pictures show M.K.H. has scarring on his right shoulder-blade area.

¶ 17 Doctor Neumeister, a plastic surgeon, testified he specializes in hand surgery, microsurgery, and burn management. On June 6, 2008, M.K.H. was admitted to the burn unit at Memorial Hospital for an evaluation by Neumeister. M.K.H. was 16 months old and had second degree burns on his forehead and back and had bruising on his thighs and shoulder. Neumeister testified second degree burns are the most painful and typically produce blisters. M.K.H. had a mixture of superficial and deeper second degree burns. When Neumeister examined M.K.H., the burns on his forehead were somewhere between four and seven days old. The burns on his back were three to seven days old. Neumeister's impression was M.K.H.'s burns were not consistent with a sunburn. M.K.H.'s burns were "very well demarcated, almost like a rectangle, which is really odd for a sunburn." Neumeister was unable to tell what caused the burns. Neumeister could not picture a scenario where M.K.H.'s back and forehead would burn through the same light, simultaneously. In order for M.K.H. to have been burned on the forehead while lying in his crib,

"the sun would have to be coming directly down on the forehead

rather than in from one side \*\*\* because \*\*\* the forehead is curved \*\*\*, so if the sun is actually hitting down from one side, as is mostly on the left side of the child here, the far side of the curve is actually in the shadow of the sun, so it shouldn't be burning. In this case the burn actually went over beyond that curvature, so that part doesn't make sense as to how the sun could do that."

¶ 18 Neumeister testified a sunburn could possibly be caused by lying exposed to the sunlight through an open window with no covering for a period of three to four hours. Neumeister testified second degree burns do not generally cause permanent injury. M.K.H. did not have any permanent disfigurement on his forehead and did not have any scar tissue on his back, but he did have an area of "hypopigmentation,"—a blanching of the skin—on his back that matched the area of the burn observed three years earlier. Neumeister did not know the cause of M.K.H.'s burns.

¶ 19 After the State rested its case, defendant made a motion for a directed verdict. The trial court denied defendant's motion, finding the State had proved its case "on its face." The court found the evidence in regard to disfigurement was "probably not the strongest[,] but based on Neumeister's testimony, the State adduced sufficient evidence to "get over the initial hurdle."

¶ 20 Bill Pollack, defendant's neighbor, testified he had known defendant for 9 or 10 years. On June 4, 2008, defendant brought M.K.H. to Pollack's trailer. On June 3 and 4, 2008, the weather "was really hot during the day." M.K.H. had a red mark on his head and back. Pollack testified the red marks resembled a sunburn. Pollack testified, in his experience with sunburns, a regular sunburn would usually cover an entire area and not be focused on a narrow

area of the body.

¶ 21 Amanda Stacey testified she is a friend of defendant. In June 2008, Stacey was living with her father, Pollack. On the afternoon of June 4, 2008, Stacey saw M.K.H. in defendant's home. Stacey observed M.K.H. had a sunburn on his forehead and back. Stacey suggested defendant put aloe vera on the burns, and Stacey retrieved aloe vera for defendant from her step-mother. When Stacey saw M.K.H. on June 4, 2008, his burns did not look as severe as they did in the pictures admitted at trial. Stacey testified M.K.H. would usually take four-hour naps in his crib by the window. Stacey had never seen M.K.H. with a sunburn before.

¶ 22 Defendant testified on June 3, 2008, she put M.K.H. down for a nap around noon, and he napped for 3 to 4 1/2 hours. M.K.H.'s crib had a window next to it, which was usually covered with a fitted sheet. When M.K.H. awoke that afternoon, the sheet was not on the window.

¶ 23 After his nap, defendant removed M.K.H. from his crib and allowed him to go outside to play with his sister. It was sunny that day. Around 8 or 9 p.m., defendant noticed M.K.H.'s forehead was turning "pinkish and almost to a red point." Defendant "didn't think much of it" when she first observed the redness. The next morning, defendant noticed M.K.H.'s forehead had become red. She did not notice M.K.H.'s back was red until she bathed him that morning. Defendant testified M.K.H. had redness on both sides of his back, but the right side was more red than the left. Defendant thought M.K.H. had a sunburn and put aloe vera on the burns. Later in the evening, defendant noticed what she described as "loose skin" on M.K.H.'s forehead and wiped it off with a washcloth. The skin underneath was a light pink. Defendant intended to get medical treatment for M.K.H. after she noticed M.K.H.'s condition had worsened.

¶ 24 On the morning of June 5, 2008, after defendant removed M.K.H. from his crib, she noticed, for the first time, the left side of his forehead was red. Defendant did not believe the left side of his forehead was sunburned, but thought it was irritated from being on the plastic of the mattress. Defendant did not take M.K.H. to the hospital but told Howard he could do so. Defendant met M.K.H. and Howard at the hospital after she left work early. Defendant testified she did not burn M.K.H. Defendant did not tell Hatcher the sun reflected off the window, off the bed, and burned M.K.H.'s back; nor did she tell Hatcher the sun reflected off his bed and onto his face, burning his forehead. She said Hatcher lied.

¶ 25 Defendant did not know how M.K.H. got the bruises on his legs, and she has never hit him with anything. Defendant also said she had been off work for that week and no one else had babysat for M.K.H. Defendant thought it was unusual M.K.H. was only burned on one part of his back.

¶ 26 At the close of the evidence, defendant renewed her motion for a directed verdict, and the trial court denied her motion.

¶ 27 The jury found defendant guilty of aggravated battery (causing great bodily harm), a Class X felony, and the included offense of aggravated battery (causing disfigurement), a Class 3 felony. On June 17, 2011, defendant filed a motion for a new trial, alleging, in relevant part, the trial court erred in denying her motion for a directed verdict and the State did not prove her guilty beyond a reasonable doubt. The trial court denied defendant's motion.

¶ 28 The trial court sentenced defendant to seven years' imprisonment, with three years of MSR. The court ordered defendant to pay various fines and fees, including a \$2,000 public-defender fee. On August 31, 2011, defendant filed a motion to reconsider sentence. The trial

court denied defendant's motion.

¶ 29 This appeal followed.

¶ 30 II. ANALYSIS

¶ 31 On appeal, defendant argues (1) the trial court erred in denying defendant's motion for a directed verdict, (2) the State did not prove her guilty beyond a reasonable doubt, and (3) the court improperly imposed a \$2,000 public-defender fee without holding a hearing on defendant's ability to pay. We address each in turn.

¶ 32 A. Motion For Directed Verdict

¶ 33 Defendant argues the trial court erred in denying her motion for a directed verdict because the State failed to introduce any evidence defendant knowingly caused great bodily harm or disfigurement to M.K.H. We note the State has not challenged defendant's ability to raise the denial of the motion for directed verdict on appeal.

¶ 34 "[A] motion for a directed verdict of not guilty asks whether the State's evidence could support a verdict of guilty beyond a reasonable doubt." (Emphasis omitted.) *People v. Connolly*, 322 Ill. App. 3d 905, 915, 751 N.E.2d 1219, 1227 (2001). The evidence must be considered in a light most favorable to the State, and "[t]he trial judge does not pass upon the weight of the evidence or the credibility of the witnesses in testing the sufficiency of the evidence to withstand a motion for a directed verdict." *Connolly*, 322 Ill. App. 3d at 915, 751 N.E.2d at 1227. We review *de novo* a trial court's ruling on a motion for a directed verdict. *Connolly*, 322 Ill. App. 3d at 917-18, 751 N.E.2d at 1229.

¶ 35 The State charged defendant with two counts of aggravated battery under section 12-4.3(a) of the Criminal Code of 1961 (720 ILCS 5/12-4.3(a) (West 2006)), alleging defendant

knowingly caused (1) great bodily harm (count I) and (2) permanent disfigurement (count II) to M.K.H. Defendant argued in her motion for a directed verdict the State did not make a *prima facie* case defendant knowingly caused (1) great bodily harm and (2) permanent disfigurement to M.K.H. On appeal, defendant challenges whether the State made a *prima facie* case defendant knowingly caused great bodily harm and disfigurement, not *permanent* disfigurement, in regard to her motion for a directed verdict. We presume defendant has done so because the jury ultimately found defendant caused disfigurement, but did not find she caused *permanent* disfigurement. However, because at the time defendant made her motion for a directed verdict, the charged offense alleged *permanent* disfigurement, we review the court's ruling on defendant's motion with respect to whether the State made a *prima facie* case for *permanent* disfigurement. We address the evidence on each count individually.

¶ 36

1. *Count One—Great Bodily Harm*

¶ 37

"Under the battery and aggravated battery statutes, a defendant charged with knowingly causing great bodily harm or bodily harm must be consciously aware that his conduct is practically certain to cause great bodily harm or bodily harm." *People v. Lovelace*, 251 Ill. App. 3d 607, 619, 622 N.E.2d 859, 867 (1993). "It is not necessary that the State prove that the defendant intended the specific consequence that occurred." *People v. Isunza*, 396 Ill. App. 3d 127, 132, 917 N.E.2d 1079, 1084 (2009). Knowledge may be inferred and, in the absence of an admission by the defendant, circumstantial evidence is the only way to prove knowledge. *People v. Rader*, 272 Ill. App. 3d 796, 806, 651 N.E.2d 258, 265 (1995).

¶ 38

In determining whether knowledge can be inferred from circumstantial evidence, our appellate courts have considered the nature and degree of the severity of the victim's injuries

(see *People v. Renteria*, 232 Ill. App. 3d 409, 417, 597 N.E.2d 714, 719 (1992)); the circumstances surrounding the incident (see *Renteria*, 232 Ill. App. 3d at 417, 597 N.E.2d at 719); and whether the defendant's version of events is inconsistent with the severity of the injuries (see *People v. Ripley*, 291 Ill. App. 3d 565, 569, 685 N.E.2d 362, 366 (1997)).

¶ 39           Considering the totality of the circumstantial evidence, we conclude it could support a finding of guilt beyond a reasonable doubt as to count I.

¶ 40           Nordeman testified the bruises and burns on M.K.H. were "injuries" that appeared to be caused by different things. Although Nordeman was not certain of the source of the burn on M.K.H.'s back, it was her opinion the burn was "inflicted" upon M.K.H. Nordeman further testified the injuries were not consistent with a sunburn as defendant claimed. The injury to M.K.H.'s forehead was inconsistent with a sunburn because it was "very discreet, well circumscribed, severe," and it had "no surrounding lesser degree of burn." Nordeman further explained "[t]he burn on the back could not have been exposed to the sun at the same time as the burn on the forehead." Nordeman testified treatment should have been sought immediately for M.K.H.'s injuries.

¶ 41           Neumeister testified M.K.H. had second degree burns on his forehead and back, which contained a mixture of superficial and deeper second degree burns. Neumeister explained second degree burns are the most painful with regard to different degrees of burns. Although Neumeister did not know the cause of M.K.H.'s burns, he did not believe them to be consistent with a sunburn because they were "very well demarcated, almost like a rectangle, which is really odd for a sunburn." Neumeister could not picture a scenario where M.K.H.'s back and forehead would have been burned by the sunlight simultaneously.

¶ 42 We also find the jury could infer knowledge from the obviousness and extent of the injuries revealed in the photographs.

¶ 43 Based on the above evidence viewed in the light most favorable to the State, we conclude the State's evidence could support a finding of knowledge on defendant's part and guilt beyond a reasonable doubt, and thus we affirm the trial court's denial of defendant's motion for a directed verdict on count I.

¶ 44 *2. Permanent Disfigurement*

¶ 45 We also conclude the State's evidence, viewed in the light most favorable to the State, could have supported a finding of guilt beyond a reasonable doubt as to count II and was sufficient to withstand defendant's motion for a directed verdict.

¶ 46 Neumeister testified M.K.H. did not have any permanent disfigurement on his forehead and did not have any scar tissue on his back, but he did have an area of "hypopigmentation,"—a blanching of the skin—on his back that matched the burn he observed on M.K.H. three years earlier. However, Hatcher testified M.K.H. had scarring on his right shoulder-blade area. Nordeman testified the burn on M.K.H.'s back could result in a scar, "depending on how the child scars," but M.K.H.'s injuries would have no "disabling" effect.

¶ 47 B. Proof Beyond A Reasonable Doubt

¶ 48 Defendant further contends the State did not prove her guilty beyond a reasonable doubt. Defendant solely disputes whether she possessed the requisite mental state for the charged offenses.

¶ 49 "When a defendant challenges the sufficiency of the evidence supporting his conviction, the relevant inquiry is whether, after viewing the evidence in the light most favorable

to the prosecution, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt." *People v. Brooks*, 187 Ill. 2d 91, 132, 718 N.E.2d 88, 111 (1999). The trier of fact is responsible for determining witness credibility, weighing the testimony, resolving conflicts in the evidence, and drawing reasonable inferences from the evidence. *Brooks*, 187 Ill. 2d at 132, 718 N.E.2d at 111. We will not substitute our judgment for that of the trier of fact. *Brooks*, 187 Ill. 2d at 132, 718 N.E.2d at 111.

¶ 50 We need not repeat the evidence previously discussed in relation to the directed verdict. However, we note additionally defendant testified M.K.H. had been in her care when he sustained the burns and "no one babysat him that week." Defendant also testified she intended to get medical treatment for M.K.H. after she noticed M.K.H.'s condition had worsened. See *People v. Coleman*, 311 Ill. App. 3d 467, 475, 724 N.E.2d 967, 973 (2000) (the defendant's action of seeking medical treatment demonstrated his conscious awareness of the severity of the victim's injuries). We conclude based on such evidence, the jury could reasonably infer defendant's knowledge from (1) the severity of M.K.H.'s burns, (2) testimony that M.K.H.'s burns were inconsistent with a sunburn, and (3) defendant's own testimony the burns were serious enough she intended to seek medical treatment. We defer to the jury's fact-finding determinations and conclude the State proved defendant guilty beyond a reasonable doubt of aggravated battery premised on great bodily harm and disfigurement.

¶ 51 C. Public-Defender Fee

¶ 52 Finally, defendant argues the trial court erred in ordering her to pay a \$2,000 public defender fee without conducting a hearing pursuant to section 113-3.1(a) of the Code of Criminal Procedure of 1963 (Criminal Procedure Code) (725 ILCS 5/113-3.1(a) (West 2008)).

The State concedes this point, and we accept the State's concession.

¶ 53 Section 113-3.1(a) of the Criminal Procedure Code (725 ILCS 5/113-3.1(a) (West 2008)), allows a trial court to impose a reasonable public-defender fee upon a defendant who receives the assistance of court-appointed counsel. Our supreme court has held the court must conduct a hearing into the defendant's financial circumstances and determine the defendant's ability to pay before imposing such a fee. *People v. Love*, 177 Ill. 2d 550, 556, 687 N.E.2d 32, 35 (1997). A defendant must be given notice the court is considering imposing the fee and an opportunity to present evidence on his ability to pay. *People v. Barbosa*, 365 Ill. App. 3d 297, 301, 849 N.E.2d 152, 154 (2006). See also *People v. Gutierrez*, 2012 IL 111590, ¶¶ 25, 26, 962 N.E.2d 437; *People v. Somers*, 2013 IL 114054, ¶ 18, 984 N.E.2d 471.

¶ 54 The record shows the trial court ordered defendant to pay a \$2,000 public-defender fee at the July 12, 2011, sentencing hearing. That same day, defendant signed a final order, agreeing she understood the terms of the court's final order for reimbursement to the public defender. The court's order stated the court considered defendant's financial affidavit and information submitted by the parties in imposing a \$2,000 public-defender fee. The record, however, contains no financial affidavit for defendant and the parties did not present information on the matter. The only information in the record regarding defendant's financial circumstances is found in the presentence investigation report (PSI), and a comment by the court at sentencing as follows: "Clearly Miss Geckles, from a financial standpoint you were definitely in straits." Even if we assume the court was referring to the financial information in the PSI in its final order for reimbursement, we still conclude the fee was improperly imposed because the court did not give defendant notice of the possibility she would be required to reimburse the public defender

fee or hold a hearing on her ability to pay the fee. Moreover, the PSI showed defendant had no income and no cash on hand. Therefore, we vacate the fee and remand for a hearing on defendant's financial circumstances and ability to pay the fee. See *People v. Somers*, 2012 IL App (4th) 110180, ¶ 45, 970 N.E.2d 606 (remand is appropriate where the court imposed the public-defender fee at the sentencing hearing, prior to final disposition of the case, but failed to conduct the necessary hearing); accord *People v. Brown*, 2012 IL App (2d) 110640, ¶¶ 25-28, 976 N.E.2d 674.

¶ 55

### III. CONCLUSION

¶ 56 For the reasons stated, we affirm the trial court's judgment in part, vacate the reimbursement order, and remand for a hearing thereon. Because the State successfully defended a portion of the criminal judgment, we grant the State 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)).

¶ 57

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