

2014 IL App (2d) 130295-U  
No. 2-13-0295  
Order filed September 8, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 10-CF-2946
	)	
PAULINO URIOSTEGUI,	)	Honorable
	)	Susan Clancy Boles,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE ZENOFF delivered the judgment of the court.  
Justices McLaren and Hutchinson concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's convictions of leaving the scene of a property damage accident and of operating an uninsured motor vehicle were reversed where the State failed to prove defendant's guilt of the offenses beyond a reasonable doubt; defendant's fine for operating an uninsured motor vehicle was vacated; defendant's \$30 Child Advocacy Center fine was ordered to be satisfied by his \$5-per-day credit for time spent in custody prior to sentencing; the remainder of the judgment was affirmed.

¶ 2 Defendant, Paulino Uriostegui, appeals his convictions of two counts of aggravated driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2), (d)(1)(H) (West 2010) (no valid license); 625 ILCS 5/11-501(a)(2), (d)(1)(I) (West 2010) (uninsured motor vehicle)) and one count each of leaving the scene of a property damage accident (625 ILCS 5/11-402(a)

(West 2010)), driving without a valid license (625 ILCS 5/6-101 (West 2010)), improper lane usage (625 ILCS 5/11-709(a) (West 2010)), failing to reduce speed to avoid an accident (625 ILCS 5/11-601(a) (West 2010)), and operating an uninsured motor vehicle (625 ILCS 5/3-707 (West 2010)). For the following reasons, we reverse defendant's convictions of leaving the scene of a property damage accident and of operating an uninsured motor vehicle, and we vacate defendant's \$501 fine for operation of an uninsured motor vehicle. We also order that defendant's \$30 Child Advocacy Center fine be satisfied by the \$5-per-day credit for time he spent in custody prior to sentencing. Otherwise, we affirm.

¶ 3

### I. BACKGROUND

¶ 4 At a bench trial, Officer Brett Runkle of the St. Charles police department testified that, at 3:18 a.m. on December 2, 2010, he was dispatched to the scene of a motor vehicle accident in the area of 12th and Dean Streets in St. Charles, Illinois. Upon arrival, Officer Runkle located a GMC Sonoma pickup truck that had crashed into a Chevrolet S-10 pickup truck. The Sonoma was in the front yard of a house on 12th Street, and the S-10 was in the roadway. Based on tire tracks in the yard, it appeared to Officer Runkle that the Sonoma had struck the rear of the parked S-10, pushing it into the roadway, and then had travelled into the front yard. The tire tracks in the yard revealed that, after the Sonoma stopped in a row of bushes, the driver had attempted to reverse the truck but had struck a tree, where the truck came to rest. The officer observed no one at the scene.

¶ 5 Officer Runkle did not recall whether either of the Sonoma's doors was open, but he did recall finding several CDs on the ground outside of the Sonoma's driver-side door. Nothing was on the ground outside of the Sonoma's passenger door. The officer searched the interior of the truck in an attempt to locate an insurance card and registration, but he found neither. When

asked specifically whether he found an insurance card, Officer Runkle testified, “I don’t recall ever finding an insurance card.” The officer observed that the glove box was open. On the center of the passenger seat, he located “paperwork and a baggie along with a light bulb.” The paperwork was inside the baggie. The bulb appeared to be a replacement turn signal bulb. According to the officer, there was not room on the passenger seat for a person to sit without crushing the light bulb.

¶ 6 Officer Runkle ran the Sonoma’s license plate number through his computer and obtained defendant’s name and address as the registered owner. Another officer arrived on the scene, and Officer Runkle provided the officer with defendant’s information. The other officer left and returned later with defendant, whom he had located outside of his apartment building.

¶ 7 According to Officer Runkle, he next spoke with defendant at the St. Charles police department. He observed that defendant had very glassy, bloodshot eyes, slurred speech, an unsteady gait, and a strong odor of alcohol. The officer performed the horizontal gaze nystagmus test on defendant and observed six out of six possible indicators of intoxication. Defendant declined to undergo breath or chemical testing for alcohol intoxication.

¶ 8 Officer Runkle testified that, during booking at the police department, defendant “just kept telling [the officer] that he wasn’t the driver, that his cousin was driving.” Despite repeated requests, however, defendant refused to give his cousin’s name or phone number. Defendant told the officer that “his cousin would be killed in Mexico for causing him so much trouble.” When Officer Runkle informed defendant that he would be transported to the Kane County jail, defendant changed his story and told the officer that “he wasn’t even in the truck.”

¶ 9 Officer Runkle performed a final search of defendant’s person prior to transporting him to the jail. His search uncovered a key to the Sonoma in defendant’s right front pants pocket.

¶ 10 Officer Tom Shaw testified that, when he arrived at the accident scene, Officer Runkle provided him with defendant's name and address. Defendant's address was an apartment located approximately two blocks from the scene. Officer Shaw drove there and located defendant behind the apartment building talking on a cell phone, saying, " 'Open the door.' "

¶ 11 Officer Shaw approached defendant, who appeared to be intoxicated. Defendant admitted to being in an accident but claimed that he was in the passenger seat and that his cousin was driving. Defendant refused to identify his cousin or provide his location or phone number. Officer Shaw observed small cuts on defendant's hands with a small amount of blood and redness. The cuts were minor and did not require medical attention. Officer Shaw placed defendant under arrest and transported him to the accident scene, where defendant identified the Sonoma as his vehicle. Officer Shaw then took defendant to the police department. A pat down search of defendant at the police department revealed a set of house keys in his pocket.

¶ 12 The State rested, and defendant called Mario Bahena. Bahena testified that, in December 2010, he was a kitchen manager at the St. Charles Pub & Grill. One week prior to the DUI incident, defendant began working at the pub as a bus boy. On the evening of December 1, 2010, defendant worked a shift that ended at 12:00 a.m. on December 2, 2010. After his shift ended, defendant waited for Bahena to give him a ride home. Defendant sat at the bar drinking beer until 1 a.m., when the bar closed, and then moved to the patio, where he continued to wait. At around 2 a.m., Bahena was still working, and someone else arrived to give defendant a ride. Bahena observed defendant enter the passenger side of a black truck, which was being driven by a man other than defendant. Defendant did not appear to be intoxicated.

¶ 13 The State called Officer Shaw as a rebuttal witness. According to the officer, the St. Charles Pub & Grill is located less than two minutes by car from the accident scene.

¶ 14 The trial court found defendant guilty of all counts. Defendant filed a motion for a new trial, which was denied. The court merged the two aggravated DUI convictions for sentencing. The court sentenced defendant to 172 days' imprisonment with credit for time served<sup>1</sup> and to 30 months' probation. The court ordered defendant to perform 50 hours of community service and imposed fines and fees totaling \$3,116, including a discretionary \$400 fine, a mandatory \$501 fine for operation of an uninsured motor vehicle, and a \$250 DNA analysis fee. Although the court stated on the record that it was imposing the discretionary \$400 fine, on the written sentencing order, in the space designated for the fine amount, is written "\$0" followed by a nearly illegible notation that appears to say "afert PTP crdt." On the record, the court indicated that defendant was entitled to a credit of \$430 against his fines for the 86 days he spent incarcerated prior to sentencing. Defendant timely appealed.

¶ 15

## II. ANALYSIS

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<sup>1</sup> The record indicates that defendant spent 86 days in jail prior to sentencing and that he received day-for-day good conduct credit pursuant to section 3-6-3(a)(2.1) of the Unified Code of Corrections (730 ILCS 5/3-6-3(a)(2.1) (West 2010)), which satisfied the entire 172-day sentence. We note, however, that section 3-6-3(a)(2.3) of the Unified Code of Corrections indicates that a defendant serving a sentence for aggravated driving under the influence of alcohol "shall receive no more than 4.5 days of good conduct credit for each month of his or her imprisonment." 730 ILCS 5/3-6-3(a)(2.3) (West 2010). Thus, defendant should not have received day-for-day good conduct credit for time served. Neither party has raised this issue, however, so we will overlook it. Furthermore, it is clear from the record that the trial court's intention was for defendant not to serve any additional term of imprisonment.

¶ 16 On appeal, defendant raises six arguments: (1) the State failed to prove beyond a reasonable doubt that he was driving the Sonoma at the time of the accident; (2) the State failed to prove beyond a reasonable doubt that the Sonoma was uninsured; (3) the State failed to prove beyond a reasonable doubt all of the elements of the offense of leaving the scene of a property damage accident; (4) the offense of driving without a valid license is a lesser-included offense of aggravated DUI; (5) defendant did not receive the full \$5-per-day credit to which he was entitled for time spent in custody prior to sentencing; and (6) the trial court should have imposed a DNA analysis fee of \$200 rather than \$250.

¶ 17 A. Sufficiency of the Evidence

¶ 18 Three of defendant's arguments challenge the sufficiency of the evidence. When presented with a challenge to the sufficiency of the evidence, it is not the function of the reviewing court to retry the defendant. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Rather, “the relevant question is 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.) *Collins*, 106 Ill. 2d at 261 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The reviewing court should not substitute its judgment for that of the trier of fact, who is responsible for weighing the evidence, assessing the credibility of witnesses, resolving conflicts in the evidence, and drawing reasonable inferences and conclusions from the evidence. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). However, a reviewing court must set aside a defendant's conviction if a careful review of the evidence reveals that it was so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of the defendant's guilt. *People v. Evans*, 209 Ill. 2d 194, 209 (2004).

¶ 19 1. Defendant's Status as the Driver

¶ 20 Defendant contends that the State failed to prove beyond a reasonable doubt that he was driving the Sonoma at the time of the accident and that, accordingly, all seven of his convictions must be reversed. In support of his argument, he points out that Bahena observed another man driving the truck when defendant left work around 2 a.m., that the evidence did not establish at what time the accident occurred, and that defendant at all times maintained that his cousin was driving. Defendant further argues that, although his hands were bleeding, the State presented no evidence of blood on the steering wheel or in the driver's side of the truck.

¶ 21 Section 11-501(a)(2) of the Illinois Vehicle Code (Code) (625 ILCS 5/11-501(a)(2) (West 2010)) makes it an offense for a person to “drive or be in actual physical control of any vehicle within the State” while under the influence of alcohol. “It is well established that observation of a defendant in the act of driving is not an indispensable prerequisite for a conviction.” *People v. Lurz*, 379 Ill. App. 3d 958, 969 (2008). The State can prove the driving element of a DUI offense by circumstantial evidence alone. *Lurz*, 379 Ill. App. 3d at 969.

¶ 22 We disagree with defendant that the evidence was insufficient to prove beyond a reasonable doubt that he was driving the Sonoma at the time of the accident. Defendant admitted to being in the truck at the time of the accident. Although he told the officers that he was in the passenger seat, the physical evidence undermined his story. Officer Runkle found CDs on the ground outside of the Sonoma's driver-side door, but nothing outside of the passenger door. The glove box was open, and a light bulb and a baggie containing papers were on the passenger seat. According to Officer Runkle, there was not room on the seat for someone to sit without crushing the light bulb.

¶ 23 Defendant contends that, given the force of the collision, the baggie and light bulb could not have been on the seat at the time of the collision, because they would have been thrown to

the floor of the truck. Even so, their presence on the passenger seat renders defendant's claim that he was in the passenger seat unlikely. It is plausible that the force of the collision made the glove box open and its contents fall into the empty passenger seat. This could have happened during either the initial collision or the second collision, when the truck was reversed into a tree. Even if someone removed the materials from the glove box after the collisions, had defendant been sitting in the passenger seat, the person could not have placed the materials on the seat.

¶ 24 Although one possibility is that defendant exited the vehicle and then either he or another person placed the contents of the glove box on the passenger seat, proof beyond a reasonable doubt "does not require the exclusion of every possible doubt" (*People v. Shevock*, 335 Ill. App. 3d 1031, 1037 (2003)), and a reviewing court "is not required to search out all possible explanations consistent with innocence" (*People v. Wheeler*, 226 Ill. 2d 92, 117 (2007)). Rather, this court's task is to "ask, after considering all of the evidence in the light most favorable to the prosecution, whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt." *Wheeler*, 226 Ill. 2d at 117-18. In this case, we conclude that it does.

¶ 25 In reaching this conclusion, we further note that the accident scene was approximately two blocks from defendant's apartment, which suggests that defendant was driving himself home. It is undisputed that, after the accident, defendant walked from the accident scene to his apartment. Although Bahena observed another man pick up defendant from work around 2 a.m. in a black truck, the officers were not dispatched to the accident scene until 3:18 a.m. Defendant is correct that we do not know at what time between 2 a.m. and 3:18 a.m. the accident occurred, but the time frame is large enough for defendant to have had ample opportunity to drop off the individual who picked him up from work. Given Bahena's testimony that defendant did not appear intoxicated when he left work, it is reasonable to infer that defendant and the individual

who picked him up from work went elsewhere and continued drinking after leaving the St. Charles Pub & Grill.

¶ 26 Defendant contends that he “maintained throughout that it was his cousin who was driving the truck.” This statement is not accurate, as Officer Runkle testified that once he informed defendant that he would be transported to jail, defendant changed his story and said that “he wasn’t even in the truck.” This undermines defendant’s story. Furthermore, defendant declined to identify his cousin despite repeated requests. According to Officer Runkle, defendant’s basis for refusing to do so was that “his cousin would be killed in Mexico for causing him so much trouble.” This far-fetched explanation further discredits defendant’s claim.

¶ 27 Another critical piece of evidence was that defendant possessed the Sonoma’s key following the accident. Defendant is correct that it is possible that another person driving the truck could have handed him the key after the accident. However, we must view the evidence as a whole and in the light most favorable to the prosecution. *Collins*, 106 Ill. 2d at 261. Viewed with the other circumstantial evidence, defendant’s possession of the key suggests that he was driving the Sonoma at the time of the accident. Simply because the truck key was on a key ring separate from his house keys does not mean that defendant was not driving the truck. The evidence suggests that another man was driving the truck earlier in the evening, which explains why the keys were separate. Moreover, the trier of fact was entitled to draw the reasonable inference that defendant, as the owner of the vehicle, was its driver. *People v. Rhoden*, 253 Ill. App. 3d 805, 812 (1993). This inference is supported by the fact that defendant had the key in his possession.

¶ 28 We disagree with defendant that a reasonable doubt as to his guilt arises from the State’s failure to present evidence of blood on the steering wheel or in the driver’s side of the truck.

According to Officer Shaw, defendant had small cuts on his hands with a small amount of blood and redness. Based on this testimony, it does not appear that defendant's hands were bleeding enough such that there would have been blood on the truck's steering wheel. According to Officer Shaw, the cuts were minor and did not require medical attention.

¶ 29 The only case on which defendant relies in arguing that he was not driving the truck is *Lurz*. In that case, an officer located the defendant at 4 a.m. walking down a road in a rural area. *Lurz*, 379 Ill. App. 3d at 962. The defendant, who was obviously intoxicated, told the officer that his truck had run out of gas and that he was walking to a friend's house. *Lurz*, 379 Ill. App. 3d at 962. The truck was located approximately a half mile away, and no one else was present in the area. *Lurz*, 379 Ill. App. 3d at 963. The officer testified that the defendant admitted to driving the truck and that the passenger seat of the truck was covered with papers and a sweatshirt. *Lurz*, 379 Ill. App. 3d at 963. The defendant presented testimony from a friend who claimed that she was driving the truck at the time it ran out of gas. *Lurz*, 379 Ill. App. 3d at 964. The appellate court affirmed the defendant's conviction, reasoning that the circumstantial evidence, combined with defendant's admission to the officer, was sufficient to prove that defendant was driving the truck at the time it ran out of gas. *Lurz*, 379 Ill. App. 3d at 972.

¶ 30 According to defendant, *Lurz* is distinguishable because the defendant in that case admitted to driving the vehicle and was located alone in an isolated rural area. Defendant is correct that these facts are not present here, but this is of no consequence. The issue of whether a defendant in a DUI case was driving or had actual physical control of a vehicle must be decided on a case-by-case basis. See *People v. Davis*, 205 Ill. App. 3d 431, 435 (1990) (noting that the issue presents a question of fact that must be decided on a case-by-case). As discussed above,



Runkle's testimony that he did not "recall ever finding an insurance card." According to defendant, this evidence was insufficient to meet the State's burden of proof. We agree.

¶ 35 Section 3-707(a) of the Code makes it an offense to "operate a motor vehicle unless the motor vehicle is covered by a liability insurance policy in accordance with Section 7-601 of this Code." 625 ILCS 5/3-707(a) (West 2010). Section 3-707(b) provides that "[a]ny person who fails to comply with a request by a law enforcement officer for display of evidence of insurance, as required under Section 7-602 of this Code, shall be deemed to be operating an uninsured motor vehicle." 625 ILCS 5/3-707(b) (West 2010). Section 7-602 of the Code, in turn, provides that "[e]very operator of a motor vehicle subject to Section 7-601 of this Code shall carry within the vehicle evidence of insurance" and shall display it "upon request made by any law enforcement officer wearing a uniform or displaying a badge or other sign of authority." 625 ILCS 5/7-602 (West 2010).

¶ 36 As section 3-707(b) of the Code provides, the State can meet its burden of proof by presenting evidence that a driver failed to comply with a law enforcement officer's request to display evidence of insurance. Here, the State contends that, although there was no evidence that any officer requested proof of insurance from defendant, it nevertheless met its burden by presenting Officer Runkle's testimony that a search of defendant's truck uncovered no insurance card. According to the State, section 7-602 requires a driver to carry proof of insurance "within the vehicle," and defendant did not have proof of insurance in his vehicle.

¶ 37 In *People v. Merritt*, 318 Ill. App. 3d 115 (2001), the defendant appealed a conviction of driving an uninsured motor vehicle. In that case, the arresting officer searched the defendant's vehicle. At trial, when asked why he issued an uninsured vehicle citation, the officer testified, "There was no evidence that the vehicle was insured. There was no insurance card presented to

me at the time of this traffic stop.’ ” The appellate court reversed the conviction, reasoning that “[t]here was no evidence in the record that the officer had asked anyone to produce an insurance card.” The court explained that evidence that the officer had not located or been shown an insurance card was insufficient to prove beyond a reasonable doubt that the defendant was driving an uninsured vehicle. *Merritt*, 318 Ill. App. 3d at 116-17.

¶ 38 Here, as in *Merritt*, there was no evidence that either Officer Runkle or Officer Shaw requested proof of insurance from defendant. Although Officer Runkle’s search of defendant’s truck uncovered no insurance card, the statute does not require a driver to carry insurance in a vehicle that is not being driven. Contrary to the State’s argument, an “operator of a motor vehicle” can “carry within the vehicle” evidence of insurance by carrying an insurance card on his or her person while driving the vehicle. As the court in *Merritt* reasoned, the State did not prove beyond a reasonable doubt that defendant was driving an uninsured motor vehicle by presenting evidence that a search of his vehicle failed to uncover an insurance card.

¶ 39 The State contends that “Officer Runkle did not have the benefit of asking defendant for proof of insurance, because defendant fled the scene of the accident.” This argument lacks merit, because the officer could have asked defendant for proof of insurance either after Officer Shaw located defendant and brought him back to the accident scene or when Officer Runkle was questioning defendant at the police department.

¶ 40 Accordingly, we reverse defendant’s conviction of operating an uninsured motor vehicle, and we vacate the associated \$501 fine.

¶ 41 3. Leaving the Scene of an Accident

¶ 42 Defendant contends that the State failed to prove beyond a reasonable doubt all of the elements of the offense of leaving the scene of a property damage accident. Specifically, he

contends that section 11-402(a) of the Code required the State to prove that the vehicle to which defendant caused damage was “driven or attended by any person.” 625 ILCS 5/11-402(a) (West 2010). The State concedes error on this issue, and we agree with its concession.

¶ 43 The State charged defendant with violating section 11-402(a) of the Code, which requires “[t]he driver of any vehicle involved in a motor vehicle accident resulting only in damage to a vehicle which is driven or attended by any person” to, among other things, remain on the scene. 625 ILCS 5/11-402(a) (West 2010). By contrast, section 11-404 of the Code applies when a driver is involved in an accident with an unattended motor vehicle. 625 ILCS 5/11-404 (West 2010). Here, it is undisputed that the S-10 truck that defendant’s vehicle struck was unattended. Accordingly, the State failed to prove defendant guilty of leaving the scene of an accident in violation of section 11-402(a) of the Code. Therefore, we reverse that conviction.

¶ 44 **B. Lesser-Included-Offense**

¶ 45 Defendant next contends that his conviction of driving without a valid license (625 ILCS 5/6-101 (West 2010)) must be reversed because the offense is a lesser-included offense of aggravated DUI based on driving without a valid license (625 ILCS 5/11-501(d)(1)(H) (West 2010)). The State responds that defendant has forfeited this issue by not raising it before the trial court and by not arguing for plain-error review on appeal. In his reply brief, defendant urges this court to review the issue for plain error, but also acknowledges that the supreme court in *People v. Nunez*, 236 Ill. 2d 488 (2010), rejected an argument nearly identical to his.

¶ 46 Because a defendant can argue for plain error review for the first time in a reply brief (*People v. Williams*, 193 Ill. 2d 306, 348 (2000)), we decline to deem defendant’s argument forfeited. However, we determine that *Nunez* is controlling here.

¶ 47 In *Nunez*, the defendant was convicted of aggravated driving under the influence of a drug or combination of drugs during a period in which his driver's license was suspended or revoked (625 ILCS 5/11-501(a)(4), (c-1)(2.1) (West 2006)) and of driving while his driver's license was suspended or revoked (DWLR) (625 ILCS 5/6-303(d) (West 2006)). *Nunez*, 236 Ill. 2d at 490-91. On appeal, he argued that his conviction for DWLR must be vacated because the offense was a lesser-included offense of aggravated DUI based on DWLR. *Nunez*, 236 Ill. 2d at 496. The supreme court rejected this argument, reasoning that there is only one offense of DUI. *Nunez*, 236 Ill. 2d at 497. The supreme court concluded that the fact that defendant's license was revoked at the time he committed the offense of DUI was not an element of the DUI offense but was a factor that served to enhance the sentence classification for the offense from a misdemeanor to a Class 3 felony. *Nunez*, 236 Ill. 2d at 499.

¶ 48 Although defendant's DUI offense was enhanced under a different subsection of the statute than the defendant's DUI offense in *Nunez*, the holding of *Nunez* nevertheless is controlling here. Defendant was convicted of aggravated DUI because he committed the offense of DUI while not in possession of a valid driver's license (625 ILCS 5/11-501(d)(1)(H) (West 2010)). The fact that defendant was not in possession of a valid driver's license was not an element of the DUI offense, but was the factor that served to enhance the sentence classification for the offense from a Class A misdemeanor to a Class 4 felony. See *Nunez*, 236 Ill. 2d at 499; see also 625 ILCS 5/11-501(d)(2)(A) (West 2010) (aggravated DUI is a Class 4 felony). Thus, the offense of driving without a valid license is not a lesser-included offense of aggravated DUI.

¶ 49 Defendant suggests, without explicitly saying so, that *Nunez* was wrongly decided because it conflicts with the United States Supreme Court's decision in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). The appellate court lacks authority to overrule or modify decisions of the

Illinois Supreme Court, which are binding on all lower courts. *People v. Medrano*, 2014 IL App (1st) 102440, ¶ 65. We further note that *Apprendi* was decided nearly a decade before *Nunez*, and that the Illinois Supreme Court clearly was aware of *Apprendi* at the time it decided *Nunez*. Therefore, we decline defendant's invitation to disagree with *Nunez*.

¶ 50

C. Full \$5-per-Day Credit

¶ 51 Defendant argues that he did not receive the full \$5-per-day credit to which he was entitled under section 110-14 of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14 (a) (West 2010)). According to defendant, he was entitled to a credit of \$430 for 86 days spent in custody prior to sentencing, but he received a credit of only \$400. The State responds that the sentencing order is less than clear, but nevertheless indicates that it has no objection to defendant receiving an additional \$30 credit toward his fines.

¶ 52 At the sentencing hearing, the trial court indicated on the record that defendant was entitled to a \$430 credit toward his fines for the 86 days he spent in custody prior to sentencing. The court also indicated that it was imposing a discretionary fine of \$400. On the written sentencing order, in the space designated for the fine amount, is written "\$0" followed by a nearly illegible notation that appears to say "afert PTP crdt." Although we agree that the sentencing order is less than clear, it appears that defendant received only \$400 in credit toward his fines, instead of the full \$430 to which he was entitled. Accordingly, we order that the \$30 Children's Advocacy Center fine be satisfied by credit for time defendant spent in custody. See *People v. Jones*, 397 Ill. App. 3d 651, 664 (2009) (holding that the Children's Advocacy Center charge is a "fine" subject to the \$5-per-day credit).

¶ 53

D. DNA Analysis Fee

¶ 54 Defendant's final argument is that the trial court should have imposed a DNA analysis fee of \$200 instead of \$250. According to defendant, on the date of the offense, the DNA analysis fee was \$200 (730 ILCS 5/5-4-3(j) (West 2010)), while at the time of sentencing it was \$250 (730 ILCS 5/5-4-3(j) (West 2012)). Defendant maintains that he is entitled to be sentenced in accordance with the law at the time of the offense.

¶ 55 This court recently rejected this argument. In *People v. Harris*, 2014 IL App (2d) 120990, at the time the defendant committed the offense of DUI, the DNA analysis fee was \$200, but at the time he was sentenced, the fee was \$250. This court held that the defendant was required to pay the fee in effect at the time of sentencing. *Harris*, 2014 IL App (2d) 120990, ¶ 25. Accordingly, the trial court here imposed the correct DNA analysis fee.

¶ 56

### III. CONCLUSION

¶ 57 For the reasons stated, we reverse defendant's convictions of leaving the scene of a property damage accident and of operating an uninsured motor vehicle, and we vacate defendant's \$501 fine for operation of an uninsured motor vehicle. We also order that defendant's \$30 Child Advocacy Center fine be satisfied by the \$5-per-day credit for time he spent in custody prior to sentencing. Otherwise, we affirm the judgment of the circuit court of Kane County.

¶ 58 Affirmed in part as modified and reversed in part.