

NOTICE
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2014 IL App (5th) 120430-U

NO. 5-12-0430

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Effingham County.
)	
v.)	No. 10-CF-67
)	
BRANDON HESS,)	Honorable
)	Kimberly G. Koester,
Defendant-Appellant.)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Justices Spomer and Cates concurred in the judgment.

ORDER

¶ 1 *Held:* In a jury trial on a charge of violation of an order of protection, the defendant was not denied a fair trial as a result of the circuit court's failure to provide the jury with written instructions concerning the presumption of innocence and the State's burden of proof where the totality of the circumstances show that the jury otherwise understood and accepted these concepts. The circuit court did not abuse its discretion in allowing the State to impeach the defendant with a prior conviction for disorderly conduct stemming from a false report for an ambulance. The defendant's presentencing report established the trial court's basis for evaluating the defendant's financial resources and future ability to pay a \$200 fine.

¶ 2 A jury found the defendant, Brandon J. Hess, guilty of the offense of violation of an order of protection pursuant to section 12-30(a)(1) of the Criminal Code of 1961 (720 ILCS 5/12-30(a)(1) (West 2010)). The defendant appeals his conviction and sentence

and argues that the circuit court committed reversible error by failing to instruct the jury concerning the presumption of innocence and the State's burden of proof and, in addition, by improperly allowing the State to use a prior felony disorderly conduct conviction as impeachment evidence. The defendant also challenges the circuit court's imposition of a \$200 domestic battery fine. Finally, the defendant argues that he is entitled to a \$5-per-day credit for the days he spent in custody prior to sentencing, and the State confesses error with respect to this \$5-per-day credit. We modify the defendant's sentence to reflect the \$5-per-day credit, and for the reasons that follow, we affirm all other aspects of the defendant's conviction and sentence.

¶ 3

BACKGROUND

¶ 4 The charge of violation of an order of protection stems from a telephone call the defendant placed from the Effingham County jail to the victim, Tiffany Becker. In the past, the defendant and Becker had been involved in a romantic relationship for approximately two years, and they had an 11-month-old son together. At the time of the telephone call, Becker was a person who was protected under an order of protection that prohibited the defendant from contacting her through telephone calls. The State introduced the terms of the order of protection at the jury trial, and Becker told the jury about the defendant's violation of the order.

¶ 5 Becker told the jury that on April 1, 2010, she was grocery shopping with her friend, Sandra Huston, when her cellular phone began to ring. She answered her phone and listened to a recorded message that informed her that the phone call was coming from the Effingham County jail. The recording included a segment in which the person calling

could identify himself, but the identification portion of the recording contained "some weird noises."

¶ 6 Becker believed that the call was coming from the defendant, and she told the jury that she accepted the call because the defendant had threatened her in the past; he told her that if she did not accept his calls he would make her "life a living hell" and would make sure she never saw their son again. When she accepted the call, she recognized the defendant's voice speaking from the other end of the connection. Becker told the defendant that she was "tired of all this" and that she was going to hang up. Becker's friend Huston, however, encouraged her to keep the defendant on the phone while they drove to the Effingham County sheriff's office.

¶ 7 Becker and Huston proceeded to the sheriff's office where they met Officer Kuhns in the lobby of the sheriff's office/county jail. Officer Kuhns listened to the conversation on Becker's phone for approximately one minute and recognized the defendant's voice. He took Becker's phone and tried to interrupt the defendant's talking by stating "Brandon." The defendant cursed and warned him that he "better stay out of it." However, when the officer identified himself as Sergeant Kuhns with the sheriff's office, the defendant stopped talking. Officer Kuhns told the defendant that he was walking back to the jail to speak with him. The defendant replied okay and hung up. Officer Kuhns walked to the defendant's jail cell and issued him a written citation for violating the order of protection.

¶ 8 The State's evidence at the trial included a recording made of portions of the defendant's telephone conversation with Becker that he placed from the jail's telephone.

The State also presented testimony from Deputy Travis Monnet who told the jury that he had previously served the defendant with the order of protection on November 19, 2009, at 11:40 a.m.

¶ 9 The defendant testified at the trial. He admitted that he placed two telephone calls to Becker on April 1, 2010, and he told the jury that he placed the telephone calls because "she had told me to." He admitted to being on the telephone with Becker for approximately 17 minutes. He told the jury that he was not aware that there was an active order of protection at the time he called Becker. He testified that he did not remember being served with the order of protection because he had been huffing paint for three weeks and did not remember much from that time period.

¶ 10 At the conclusion of the trial, the jury found the defendant guilty of violating the order of protection. The circuit court subsequently sentenced the defendant to four years' imprisonment in the Illinois Department of Corrections. The defendant appealed his conviction and sentence and raised an issue that concerned a claim of ineffective assistance of counsel. On May 9, 2012, we entered an order pursuant to Illinois Supreme Court Rule 23 (eff. July 1, 2011), remanding the case to the circuit court for the limited purpose of allowing the circuit court to conduct a preliminary examination concerning the factual basis of the defendant's claim of ineffective assistance of counsel.

¶ 11 On remand, the circuit court conducted the preliminary examination and determined that there was no factual basis for a finding that the defendant's trial counsel was ineffective. This appeal ensued. In the present appeal, the defendant raises issues that concern (I) the circuit court's jury instructions, (II) a ruling by the circuit court that

permitted the State to use a prior conviction for disorderly conduct to impeach him, and (III) the circuit court's assessment of a \$200 domestic violence fine.

¶ 12

DISCUSSION

¶ 13

I

¶ 14 Lack of a Jury Instruction Concerning the State's Burden of Proof and the
Presumption of Innocence

¶ 15 The first argument the defendant raises in challenging his conviction is that the circuit court's jury instructions did not include an instruction concerning the State's burden of proof and the presumption of innocence. The defendant acknowledges that his attorney did not raise an issue or an objection during the trial court proceeding with respect to the missing jury instruction. He argues, however, that the error amounted to plain error under Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967), which justifies reversal of his conviction even though defense counsel did not preserve the error.

¶ 16 The plain error doctrine allows a reviewing court to consider unpreserved error when "(1) a clear or obvious error occurs 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 occurs 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).

¶ 17 "[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with

which he is charged." *In re Winship*, 397 U.S. 358, 364 (1970). "In a criminal case, fundamental fairness requires that the trial court fully and properly instruct the jury on the elements of the offense, the burden of proof, and the presumption of innocence." *People v. Pierce*, 226 Ill. 2d 470, 475, 877 N.E.2d 408, 410 (2007). Accordingly, in the present case, we believe that a trial court's failure to instruct a jury in a criminal trial concerning the State's burden of proof and the defendant's presumption of innocence is an issue that could affect the fairness of the defendant's trial and the integrity of the judicial process. Therefore, we will address the merits of the defendant's argument "to determine whether [the failure to give a written instruction] denied defendant a fair trial." *People v. Layhew*, 139 Ill. 2d 476, 485-86, 564 N.E.2d 1232, 1236 (1990).

¶ 18 Illinois Pattern Jury Instructions, Criminal, No. 2.03 (4th ed. Supp. 2009), (hereinafter, IPI Criminal 4th) instructs a jury as follows:

"The defendant is presumed to be innocent of the charges against him. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that he is guilty.

The State has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence."

¶ 19 "A written instruction that informs the jury of the presumption of defendant's innocence and the State's burden of proving defendant guilty beyond a reasonable doubt is a time-honored and effective method of protecting a defendant's right to a fair trial,

which is guaranteed by the due process clause of the fourteenth amendment." *Layhew*, 139 Ill. 2d at 486, 564 N.E.2d at 1236. The supreme court has held that a trial court's failure to give this written instruction is an error, but it is not an error that automatically results in a finding that the trial proceeding violated the defendant's constitutionally protected right to a fair trial. *Id.* at 486, 564 N.E.2d at 1236-37. Instead, we must look at the totality of the circumstances to determine whether the defendant received a fair trial, including all of the jury instructions given by the trial court, the arguments of counsel, whether the weight of the evidence was overwhelming, and any other relevant factors. *Id.* at 486, 564 N.E.2d at 1237.

¶ 20 Looking at the totality of the circumstances is "the only manner in which the reviewing court can protect the constitutional right of criminal defendants to receive a fair trial while at the same time protect the integrity of the judicial process by upholding the convictions of those found guilty through a fair trial." *Id.* at 489, 564 N.E.2d at 1238. In determining whether a defendant was denied a fair trial, each case necessarily turns on its own facts. *Id.*

¶ 21 In *People v. Casillas*, 195 Ill. 2d 461, 479, 749 N.E.2d 864, 877 (2000), a trial court failed to give the jury IPI Criminal 3d No. 2.03, but the supreme court applied the totality of the circumstances test described above and determined that the defendant was not denied his constitutionally protected right to a fair trial due to the failure of the trial court to give the instruction. In affirming the defendant's conviction, the supreme court noted that the trial court impressed upon the jury the importance of its duties and asked venire members as a group whether they had any difficulty understanding the

presumption of innocence or the State's burden of proof. *Id.* The supreme court noted that the concepts were repeated during closing arguments and again in the instructions on the elements of the offenses charged. *Id.* Also, the evidence of the defendant's guilt was overwhelming. *Id.* The supreme court concluded that the results of the trial "would not have been different had the trial court provided IPI Criminal 3d No. 2.03 in written form." *Id.*; see also *People v. Nunn*, 357 Ill. App. 3d 625, 635-37, 829 N.E.2d 796, 805-07 (2005) (trial court's failure to give the standard written instruction on the presumption of innocence and the burden of proof was harmless).

¶ 22 As noted above, the supreme court has identified certain factors for reviewing courts to consider when considering the totality of the circumstances. First, reviewing courts should look at the instructions that the trial court actually did give to the jury. In the present case, the entire jury trial, including jury selection, took place during the course of a one-day trial proceeding. During *voir dire*, the circuit court addressed the panel of potential jurors, explained the charge against the defendant, and emphasized to the panel as a group that "[e]very defendant in our country is presumed innocent of the charges" and that this "presumption remains with the defendant throughout the trial and even through your deliberations on your verdict." Concerning the State's burden of proof, the court instructed the panel that the defendant's presumption of innocence is not overcome "unless from all the evidence in this case you are convinced beyond a reasonable doubt that the defendant is guilty." The court explained to the panel that the State's burden was to prove the defendant guilty beyond a reasonable doubt and that this

burden remained with the State throughout the case. The court emphasized that the defendant was not required to prove his innocence.

¶ 23 During *voir dire*, the circuit court individually asked each potential juror if he or she understood the principle that the defendant was presumed innocent of the charges against him, and each potential juror stated that he or she understood and accepted that principle. The circuit court also individually questioned each prospective juror concerning whether he or she understood and accepted the principle that the State must prove the defendant guilty beyond a reasonable doubt, and each person expressly stated that he or she understood and accepted that principle as well.

¶ 24 After the parties selected the jury and the circuit court swore in the jury, the court again emphasized that "because of the presumption of innocence, the defense has no obligation to present any evidence of any kind." In explaining opening and closing statements, the circuit court again stated that the State had the burden of proving the defendant guilty beyond a reasonable doubt.

¶ 25 The formal written instructions given by the circuit court at the conclusion of the evidence included an instruction that defined the elements of the charge of violation of an order of protection. The instruction outlined four propositions and informed the jury that it should find the defendant guilty only if it found from its "consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt." This written instruction also expressly informed the jury: "If you find from your consideration of all the evidence that any one of the propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty."

¶ 26 Another factor that the supreme court identified as significant is the statements of counsel. Following the above described *voir dire* and jury selection, the State began its opening statement by reiterating that the State had the burden of proving the case against the defendant and that the "burden rests entirely with the State." It again emphasized that it had the burden of proof during closing arguments.

¶ 27 The supreme court also stated that whether the evidence is overwhelming was a significant consideration. Our review of the evidence in this case reveals facts that are overwhelming. The order of protection prohibited the defendant from contacting Becker over the telephone, and the evidence overwhelmingly established that the defendant violated this prohibition by calling Becker from a telephone at the Effingham County jail. Officer Kuhns was present at the jail when the defendant violated the order, was familiar with the defendant's voice, took Becker's cell phone out of her hand, and heard the defendant's voice. The officer walked to the jail and issued the citation for violating the order of protection. The jury heard portions of the actual recording of the telephone call.

¶ 28 Considering the totality of the circumstances, we are confident that the circuit court's failure to give IPI Criminal 4th No. 2.03 did not impinge upon the defendant's right to a fair trial. In *Layhew*, the supreme court noted that "the trial court questioned each juror about his or her understanding of the principle that defendant is innocent until proven guilty beyond a reasonable doubt." *Layhew*, 139 Ill. 2d at 491, 564 N.E.2d at 1239. In concluding that the defendant received a fair trial, the supreme court explained that this questioning was "at least as effective a method of ensuring that the jury engage upon the proper analysis as any formal, written instruction." *Id.*

¶ 29 Likewise, in the present case, the circuit court admonished potential jurors as a group and questioned each juror individually about his or her acceptance and understanding of the presumption of innocence and the State's burden of proof. The trial concluded on the same day as the circuit court's admonishments to and questioning of the jurors, and nothing occurred during the trial which leads to a conclusion that the jury would have abandoned its understanding or acceptance of those principles prior to reaching its verdict. We believe that the results of the defendant's trial "would not have been different had the trial court provided IPI Criminal 3d No. 2.03 in written form." *Casillas*, 195 Ill. 2d at 479, 749 N.E.2d at 877. Accordingly, we conclude that the defendant was not denied a fair trial as a result of the circuit court's failure to include IPI Criminal 4th No. 2.03 in its formal written jury instructions.

¶ 30 We agree with the State that the facts of this case were "solidly overwhelming." However, although we affirm the defendant's conviction in this case, we want to emphasize that it is imperative that trial courts properly instruct juries with formal, written instructions on the State's burden of proof and the defendant's presumption of innocence. In *Layhew*, the Illinois supreme court stated that even though the federal constitution does not require automatic reversal in all cases when the instruction is not given, "trial courts should give IPI Criminal 2d No. 2.03 to the jury in *every* case." (Emphasis added.) *Layhew*, 139 Ill. 2d at 489, 564 N.E.2d at 1238. When the circuit court fails to give this written instruction, we will reverse the defendant's conviction unless we are certain that "the court's failure to do so is harmless beyond a reasonable doubt." *Casillas*, 195 Ill. 2d at 479, 749 N.E.2d at 877. If the totality of the

circumstances were to reveal a reasonable possibility that the failure to give the instruction contributed to an accused's conviction, we would be required to reverse the conviction on appeal. *People v. Merideth*, 152 Ill. App. 3d 304, 319, 503 N.E.2d 1132, 1144 (1987) (the harmless beyond a reasonable doubt standard involves a determination of "whether there is a reasonable possibility that the error might have contributed to the accused's conviction").

¶ 31

II

¶ 32 Impeachment of the Defendant With His Prior Felony Conviction

¶ 33 The next issue the defendant raises on appeal concerns the circuit court's decision to allow the State to impeach his testimony with his prior conviction of felony disorderly conduct. The disorderly conduct conviction stemmed from an incident in which the defendant falsely requested an ambulance while knowing that there were no grounds for the emergency assistance. The defendant argues that use of the conviction was unfairly prejudicial and had no probative value. We disagree.

¶ 34 In criminal proceedings, the State cannot use a defendant's criminal convictions to demonstrate his propensity to commit the charged crime. *People v. Donoho*, 204 Ill. 2d 159, 170, 788 N.E.2d 707 (2003). The courts generally prohibit the admission of other crimes evidence because the jury should not convict a defendant on the basis that he is a bad person deserving punishment; instead, guilt or innocence should be evaluated solely on the basis of the charged crime. *Id.* However, other crimes evidence is admissible in a criminal trial for certain limited purposes. In certain circumstances, prior convictions may be admissible for impeachment purposes to attack the defendant's credibility when

he takes the stand and testifies. *People v. Mullins*, 242 Ill. 2d 1, 14, 949 N.E.2d 611, 619 (2011).

¶ 35 In *People v. Montgomery*, 47 Ill. 2d 510, 268 N.E.2d 695 (1971), the supreme court set forth factors for the courts to consider when determining whether a defendant's prior conviction can be used to attack his credibility. Pursuant to the *Montgomery* rule, a prior conviction may be admitted for impeachment purposes if: (1) the crime was punishable by death or a term of imprisonment in excess of one year, or the crime involved dishonesty or false statements regardless of the punishment imposed; (2) less than 10 years has elapsed since the date of the conviction of the prior crime or release from confinement, whichever date is later; and (3) the probative value of admitting the prior conviction outweighs the danger of unfair prejudice. *Id.* at 516, 268 N.E.2d at 698.

¶ 36 In the present case, the defendant challenges the third prong of the *Montgomery* rule. He argues that the unfair prejudicial effect of the disorderly conduct conviction far outweighed its minimal probative value.

¶ 37 The third *Montgomery* factor requires the trial court to perform a balancing test, taking into consideration factors such as whether the prior conviction is veracity-related, the recency of the prior conviction, the defendant's age and other circumstances surrounding the prior conviction, the length of the defendant's criminal record and his conduct subsequent to the prior conviction, the similarity of the prior offense to the instant offense thus increasing the danger of prejudice, the need for the defendant's testimony and the likelihood he would forgo his opportunity to testify, and the

importance of the defendant's credibility in determining the truth. *People v. Medreno*, 99 Ill. App. 3d 449, 452, 425 N.E.2d 588, 591 (1981).

¶ 38 A trial court has "wide latitude in determining whether the probative value of a prior conviction outweighs any unfair prejudice to the defendant." *People v. Tribett*, 98 Ill. App. 3d 663, 675, 424 N.E.2d 688, 697 (1981). The determination of whether a defendant's prior conviction is admissible for purposes of impeachment is within the discretion of the trial court. *Mullins*, 242 Ill. 2d at 15, 949 N.E.2d at 619-20. An abuse of discretion occurs when the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court. *People v. Caffey*, 205 Ill. 2d 52, 89, 792 N.E.2d 1163, 1188 (2001).

¶ 39 In the present case, when the circuit court conducted the balancing test required by *Montgomery*, it ruled as follows: "[A]lthough it is a disorderly conduct case which does not necessarily in and of itself render itself to be a dishonesty charge, the allegations of this particular charge is that he transmitted to a privately-owned ambulance service a false request for an ambulance while knowing at the time that there was no reasonable grounds for believing that such assistance was required. Because of that, I do find the facts of that particular case to go to the truth and veracity of the defendant." Accordingly, the record demonstrates that the circuit court properly applied *Montgomery* and weighed the probative value of the prior conviction against the danger of unfair prejudice. We cannot find that the circuit court abused its discretion in conducting this balancing test.

¶ 40 The prior conviction of disorderly conduct included the specific element that the defendant made a "false request" for an ambulance. The defendant pled guilty to the offense, which constituted a judicial admission to the truth of the acts as charged. *People v. Medrano*, 2014 IL App (1st) 102440, ¶ 67, 10 N.E.3d 246. As the State correctly articulates in its brief, this offense "has, at its root, an affirmative act of deception." The affirmative act of deception was a statement by the defendant, a false request, that was the opposite of the truth. The record does not reveal any special circumstances surrounding the false statement or the resulting disorderly conduct conviction that would mitigate the conviction's probative value. Therefore, the defendant's argument that the disorderly conduct conviction does not reflect adversely on his honesty is not convincing.

¶ 41 Furthermore, the circuit court limited the prejudicial effect of the admission of the prior conviction with a limiting jury instruction. Specifically, the circuit court instructed the jury as follows: "Evidence of a defendant's previous conviction of an offense may be considered by you only as it may affect his believability as a witness and must not be considered by you as evidence of his guilt of the offense which he is charged." The trial court minimized the potential prejudice to the defendant by "providing the jury with limiting instructions regarding the narrow use of that evidence." *Mullins*, 242 Ill. 2d at 19, 949 N.E.2d at 622.

¶ 42 Finally, we also note that the defendant was impeached with two other convictions that are not challenged on appeal and that the evidence against him was overwhelming. Accordingly, any prejudicial effect due to the admission of the disorderly conduct conviction was minimal at best.

¶ 43 Based upon the record presented, we hold that the trial court did not abuse its discretion in permitting the State to introduce the defendant's prior felony disorderly conduct conviction as impeachment evidence.

¶ 44

III

¶ 45

\$200 Domestic Violence Fine

¶ 46 The defendant challenges the circuit court's assessment of a \$200 domestic violence fine. Specifically, the defendant's sentence included the assessment of a \$200 fine pursuant to section 5-9-1.5 of the Unified Code of Corrections (the Code) (730 ILCS 5/5-9-1.5 (West 2010)). Section 5-9-1.5 of the Code provides that a \$200 fine shall be imposed upon any person who is convicted of, among other offenses, violation of an order of protection. *Id.* The defendant argues that the circuit court improperly imposed this fine without determining his ability to pay the fine. He cites section 5-9-1(d) of the Code and argues that we should remand for a determination by the circuit court of whether the fine is appropriate considering his financial resources and his future ability to pay. Again, we disagree.

¶ 47 In *People v. Maldonado*, 109 Ill. 2d 319, 324, 487 N.E.2d 610, 612 (1985), the court held that section 5-9-1(d) only requires that "the record show that the court considered the financial resources and future ability of the offender to pay the fine." Section 5-9-1(d) does not require the trial court to articulate a specific opinion about the defendant's financial resources or future ability to pay. In *Maldonado*, the supreme court held that the record sufficiently established that the trial court complied with the requirements of 5-9-1(d) where the court stated at sentencing, " I would note that the

defendant had been gainfully employed, and that, as testified, he's been on unemployment.' " *Id.* at 324, 487 N.E.2d at 612-13.

¶ 48 In *People v. Clark*, 191 Ill. App. 3d 505, 506, 548 N.E.2d 120, 122 (1989), the court upheld a fine where the court's sentence was based solely on a presentence investigation report that was filed prior to the sentencing hearing. In upholding the fine, the *Clark* court outlined the facts contained within the sentencing report that were relevant to the defendant's financial resources and future ability to pay, including her social security income, food stamps, and ownership of a trailer, lot, and automobile. In addition, the court noted that the report indicated that the defendant had no monthly financial obligations and no outstanding financial obligations. *Id.* at 507, 548 N.E.2d at 122. The *Clark* court concluded: "It is apparent from the record that the trial court was aware of the defendant's financial resources and future ability to pay fines. The amount of the fine and the delay in the requirement of the payment of the fine adequately establish that the court considered the financial resources and future ability of the defendant to pay the fine. " *Id.*

¶ 49 Likewise, in the present case, at the sentencing hearing, the circuit court expressly stated that it had "considered the presentence investigation" which was on file with the court prior to the sentencing hearing. The presentence investigation report shows that the defendant had a work history which included working on a farm at \$8 per hour. The defendant reported that his only outstanding financial obligations were a \$150 debt to Family Video for overdue videos and a financial obligation owed to St. Anthony Hospital

for an unknown amount. The defendant was 26 years old, a high school graduate, and had no reported health problems other than a history of substance abuse.

¶ 50 The record, therefore, establishes that the circuit court had a sufficient basis to impose the fine. The presentencing report sufficiently apprised the circuit court of the defendant's financial resources and future ability to pay a \$200 fine, and nothing in the presentencing report or elsewhere in the record establishes that the circuit court abused its discretion in imposing this fine.

¶ 51 The State argues that the defendant waived his challenge to the \$200 fine by failing to raise the issue in the trial court proceeding and, alternatively, that section 5-9-1(d)'s requirements are not applicable to the \$200 fine contained in section 5-9-1.5. In light of our analysis above, we need not address these alternative arguments in support of the circuit court's assessment of the \$200 fine.

¶ 52

IV

¶ 53

\$5-Per-Day Credit

¶ 54 The defendant's final argument is that he is entitled to a credit of \$5 per day for each day he spent in custody prior to sentencing pursuant to section 110-14 of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14 (West 2010)). He argues that he is entitled to \$800 credit for the 160 days he served in presentence custody. The State confessed error with respect to this argument. Accordingly, we modify the defendant's sentence to include an \$800 credit for 160 days that he served in presentence custody.

¶ 55

CONCLUSION

¶ 56 For the foregoing reasons, we hereby modify the defendant's sentence to reflect a \$5-per-day credit for the 160 days he served in presentence custody and affirm all other aspects of the defendant's conviction and sentence.

¶ 57 Affirmed as modified.