2016 IL App (4th) 140466-U

NO. 4-14-0466

FILED
June 15, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Adams County
KENNETH M. SILMAN,	)	No. 13CF127
Defendant-Appellant.	)	
	)	Honorable
	)	William O. Mays,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Knecht and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed defendant's convictions and sentence, rejecting his claims that (1) his stipulated bench trial was tantamount to a guilty plea and (2) the State's evidence was insufficient to prove his guilt. The appellate court, however, vacated the trial court's imposition of a public defender fee.

¶ 2 Following a May 2014 stipulated bench trial, the trial court convicted defendant, Kenneth M. Silman, of possession of pseudoephedrine (a methamphetamine precursor) while having a previous conviction under the Methamphetamine Control and Community Protection Act (720 ILCS 646/120(a) (West 2012)). The court then imposed a prison sentence of one year.

¶ 3 Defendant appeals, arguing that (1) his conviction must be reversed because his stipulated bench trial was tantamount to a guilty plea, and, as a result, the trial court was required to, but did not, admonish him under Illinois Supreme Court Rule 402(a) (eff. July 1, 2012); (2) the State failed to prove him guilty beyond a reasonable doubt; and (3) the court erred by impos-

ing a $600 public defender fee without conducting a hearing to determine his ability to pay the fee.

¶ 4 For the reasons that follow, we (1) affirm defendant's conviction and sentence and (2) vacate outright the trial court's imposition of a public defender fee.

¶ 5 I. BACKGROUND

¶ 6 A. The State's Charges, the Appointment of Counsel, and Defendant's Motion To Dismiss

¶ 7 In March 2013, the State charged defendant with two counts of possession of pseudoephedrine (a methamphetamine precursor) while having a previous conviction for an offense under the Act.

¶ 8 Later that month—after the trial court continued defendant's case twice to allow him time to hire private counsel—defendant informed the court that he was unable to retain private counsel. The court then informed defendant as follows:

> "[The court is] going to appoint you counsel, since you've had time to hire one. You've been unable to do it, but it looks like you can afford one. So, to keep this case moving, [the court is] going to appoint you counsel."

The court then informed defendant that "[y]ou could be ordered to repay the county and if—and would be ordered to repay the county for the services of your public defender."

¶ 9 In October 2013, defendant filed a motion to dismiss the State's charges. In his motion, defendant acknowledged that (1) in July 2009, he had been convicted of an offense under the Act, and (2) in September 2012, the legislature enacted section 120(a) of the Act. Defendant alleged that because he was unaware that section 120(a) of the Act applied to him when, in January 2013, he purchased the pseudoephedrine at issue, section 120(a) of the Act was an *ex*

post facto law. See Black's Law Dictionary 601 (7th ed. 1999) (defining an *ex post facto* law as a "law that applies retroactively *** in a way that negatively affects a person's rights, as by criminalizing an action that was legal when it was committed").

¶ 10 Following a February 2014 hearing, the trial court denied defendant's motion, finding, in pertinent part, that (1) ignorance of the law was not a defense, and (2) defendant was not entitled to notice about the enactment of section 120(a) of the Act.

¶ 11 B. Defendant's Stipulated Bench Trial

¶ 12 During a February 2014 pretrial hearing, defendant presented a signed jury trial waiver to the trial court and confirmed orally his intent to waive a jury trial and, instead, proceed to a stipulated bench trial on the State's charges. At an April 2014 hearing, the following exchange occurred concerning the instant case, Adams County case No. 13-CF-127, and another case, Adams County case No. 13-CF-762 (case No. 13-CF-762 is not at issue in this appeal):

> "[DEFENDANT'S COUNSEL]: Your honor, I think we need to schedule a plea and sentencing instanter. These [two] cases are mandatory prison and we have a negotiation worked out.
>
> ***
>
> [THE STATE]: *** Your honor, *** we're doing a stipulated bench trial by facts on *** case [No. 13-CF-127] so that [defendant] has the right to appeal it if that were to ever happen. And then on *** case [No. 13-CF-762], [defendant will] be entering a plea of guilty ***. ***
>
> [DEFENDANT'S COUNSEL]: That's correct."

¶ 13 At a May 27, 2014, stipulated bench trial, the trial court confirmed its understand-

ing of what was about to occur, as follows:

"THE COURT: *** [The court's] understanding is—and we're going to talk about how we're going to do all of this in a minute—is that *** on [case No. 13-CF-127], *** a factual basis is going to be given, and, in effect, [the court is] going to find [defendant] guilty of that offense and sentence you on that one. All right?

[DEFENDANT]: Yes, sir."

¶ 14 Immediately thereafter, defendant's stipulated bench trial began. After the State confirmed it was prosecuting count I only, the following exchange occurred:

"THE COURT: [Defense counsel], your agreement is that it's now set for bench trial, and [the State] is going to give a factual basis. And you are going to stipulate that the [State] could prove that evidence and then not offer any evidence; is that correct?

[DEFENDANT'S COUNSEL]: That's correct ***.

THE COURT: *** [F]actual basis ***.

[THE STATE]: *** [If] this matter *** went to a jury trial or bench trial and certainly as a stipulated bench trial, [the State] would present testimony from several witnesses including [police officers] of the West Central Illinois Task Force.

Inspector [Tom] Picket would indicate that [defendant's] name was run through the *** national pseudoephedrine purchase logs [and defendant's] name came up. *** [The State] would pre-

sent a certified copy of [defendant's] conviction for unlawful possession of methamphetamine. That conviction [took] place in 2009 [in Adams County case No.] 09-CF-300. In that case[, defendant] was sentenced to the Department of Corrections.

[On January 27, 2013, defendant]—and representatives of Walgreens would verify this—presented [identification (ID)] for the purchase of [a] pseudoephedrine-based product *** in Quincy, Adams County, Illinois. [Defendant] bought one box on that date. That purchase was video recorded, and Master Sergeant Pat Frazier would testify that he obtained that footage. [Frazier] reviewed [the recording] and could identify [defendant] as the individual who purchased the pseudoephedrine pills, who presented a valid *** State of Illinois ID [card] ***.

THE COURT: *** [Defense counsel], you are stipulating that the [State] could present that evidence, and further, that *** you and [defendant] do not choose to present any evidence contradicting any of that; is that correct?

[DEFENDANT'S COUNSEL]: That's correct ***.

THE COURT: All right. Is that all correct, [defendant]?

[DEFENDANT]: Yes, sir.

THE COURT: *** Based on the factual basis and the statements of *** defendant and counsel, [the court] would then, therefore, enter a finding of guilty of the offense of *** possession

of pseudoephedrine in *** [case No.] 13-CF-127.

* * *

THE COURT: *** [I]s there an agreement regarding the sentence ***.

[THE STATE]: Yes ***. One year minimum sentence.

THE COURT: Is that correct, [defense counsel]?

[DEFENDANT'S COUNSEL]: It is ***."

¶ 15 After confirming with defendant that he was waiving his right to a presentence investigation report and opting, instead, to be sentenced immediately, the trial court sentenced defendant to one year in prison. That same day, the court entered an order imposing, in pertinent part, a $600 public defender fee.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 Defendant argues that (1) his conviction must be reversed because his stipulated bench trial was tantamount to a guilty plea, and, as a result, the trial court was required to, but did not, admonish him under Rule 402(a); (2) the State failed to prove him guilty beyond a reasonable doubt; and (3) the court erred by imposing a $600 public defender fee without conducting a hearing to determine his ability to pay the fee. We consider defendant's claims, in turn.

¶ 19 A. Defendant's Stipulated Bench Trial

¶ 20 Defendant argues that his conviction must be reversed because his stipulated bench trial was tantamount to a guilty plea, and, as a result, the trial court was required to, but did not, admonish him under Rule 402(a). We disagree.

¶ 21 "A stipulated bench trial *** provides a defendant the benefits and convenience

of a guilty plea, yet preserves any pretrial objections ***for appellate review. " *People v. Harris*, 2015 IL App (4th) 140696, ¶ 32, 32 N.E.3d 211. "Courts recognize two types of stipulated bench trials: one in which the defendant stipulates to the evidence but does not stipulate to his or her guilt; and the other where the defendant stipulates to the sufficiency of the State's evidence to convict." *People v. Weaver*, 2013 IL App (3d) 130054, ¶ 18, 2 N.E.3d 621.

¶ 22 "Where a stipulated bench trial is tantamount to a guilty plea, the trial court must admonish the defendant pursuant to Illinois Supreme Court Rule 402(a) ***." *People v. Campbell*, 2015 IL App (3d) 130614, ¶ 15, 40 N.E.3d 756. A stipulated bench trial is tantamount to a guilty plea when the entirety of the State's case is presented by stipulation and the defendant (1) does not preserve a defense or (2) stipulates that the evidence is sufficient to convict. *Weaver*, 2013 IL App (3d) 130054, ¶ 19, 2 N.E.3d 621. "[I]f the stipulation 'includes a statement that the evidence is sufficient to convict the defendant,' then Rule 402(a) admonitions are required regardless of whether a defense was presented and preserved." *People v. Foote*, 389 Ill. App. 3d 888, 895, 906 N.E.2d 1214, 1220 (2009) (quoting *People v Campbell*, 208 Ill. 2d 203, 218, 802 N.E.2d 1205, 1213 (2003)). We review *de novo* whether a stipulated bench trial was tantamount to a guilty plea. *Id.* at 893, 906 N.E.2d at 1219.

¶ 23 Defendant contends that his stipulated bench trial was tantamount to a guilty plea because (1) he "did not use [his] stipulated bench trial *** to preserve a defense"; (2) he "effectively agreed to the State's complaint *in toto*"; and (3) the trial court and parties treated the stipulated bench trial as a guilty plea. We reject all three of defendant's contentions.

¶ 24 As to defendant's first contention, we note that during the April 2014 hearing that followed his February 2014 decision to waive a jury trial, defendant represented to the trial court that, in the instant case, he wanted to proceed to a stipulated bench trial to preserve his right to

appeal. The only defense defendant raised and preserved was the court's February 2014 denial of his motion to dismiss, wherein he alleged that section 120(a) of the Act was an *ex post facto* law. Defendant acknowledges his motion to dismiss but claims that he "did not use the stipulated bench trial to preserve a defense." Essentially, defendant asserts that he did not need to opt for a stipulated bench trial to appeal the court's dismissal of his motion to dismiss because his constitutional challenge to section 120(a) of the Act was automatically preserved for appeal. See *People v. Rush*, 2014 Il App (1st) 123462, ¶ 9, 19 N.E.3d 1196 (constitutional challenges to criminal statutes can be raised at any time).

¶ 25 Given defendant's contention, we question the logic underlying his decision to opt for a stipulated bench trial in this case instead of simply pleading guilty as he had in case No. 13-CF-762. Nonetheless, the flaw in defendant's logic is that if his stipulated bench trial was tantamount to a guilty plea—as he urges this court to conclude—his purported guilty plea effectively waived "all errors, defects, and irregularities in the proceeding that are not jurisdictional, including constitutional error." *People v. Kidd*, 327 Ill. App. 3d 973, 976, 765 N.E.2d 488, 491 (2002).

¶ 26 We similarly are not persuaded by defendant's second contention that his stipulated bench trial was tantamount to a guilty plea because he "effectively agreed to the State's complaint in *toto*." In other words, defendant claims that he effectively conceded the State's factual basis was sufficient to convict him by not presenting any evidence on his behalf. However, the record clearly refutes that claim. At his May 2014 stipulated bench trial, defendant conceded only that the State could present the evidence proffered in its factual basis. At no time during the stipulated bench trial did defendant or his counsel affirmatively concede that the State's factual basis was sufficient to convict him beyond a reasonable doubt of possession of pseudoephedrine.

¶ 27 Defendant also contends that the trial court and the parties treated the stipulated

bench trial as a guilty plea in that in the court's brief summation immediately prior to the May 2014 stipulated bench trial hearing, the court indicated that after hearing the State's uncontroverted factual basis, the court was going to "find [defendant] guilty of that offense." In support of that claim, defendant cites to *People v. Gonzalez*, 313 Ill. App. 3d 607, 617-18, 730 N.E.2d 534, 544 (2000), for the proposition that "stipulated bench trials are tricky creatures prone to mistake by trial courts and attorneys alike" because they require "[p]recise language" to properly preserve the denial of a pretrial motion lest the stipulated bench trial mutate into a guilty plea, which forecloses such a challenge. We disagree with the characterization that stipulated bench trials are "tricky creatures." A stipulated bench trial is tantamount to a guilty plea in only the following two simple scenarios: (1) the State's entire case is presented by stipulation and the defendant does not present or preserve a defense or (2) the stipulation includes a statement that the State's evidence is sufficient to convict the defendant. *People v. Clendenin*, 238 Ill. 2d 302, 322, 939 N.E.2d 310, 322 (2010).

¶ 28 Regardless of defendant's characterization of the trial court's synopsis immediately prior to his stipulated bench trial, our focus concerns what actually transpired at that proceeding. Applying the aforementioned test to defendant's May 2014 stipulated bench trial, it is clear that neither scenario was satisfied. Accordingly, we reject defendant's claims to the contrary.

¶ 29 B. Sufficiency of the Evidence

¶ 30 1. *The Standard of Review*

¶ 31 When reviewing a challenge to the sufficiency of the evidence, we determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Phillips*, 2014 IL App (4th) 120695, ¶ 19, 14 N.E.3d 1. In so doing, we allow all reasonable in-

ferences from the record in favor of the State. *People v. Beauchamp*, 241 Ill. 2d 1, 8, 944 N.E.2d 319, 323 (2011). " 'We will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt.' " *People v. Mefford*, 2015 IL App (4th) 130471, ¶ 45, 44 N.E.3d 616 (quoting *People v. Collins*, 214 Ill. 2d 206, 217, 824 N.E.2d 262, 267-68 (2005)).

¶ 32 2. *Defendant's Challenge to His Conviction*

¶ 33 Defendant argues that the State failed to prove him guilty beyond a reasonable doubt. Specifically, defendant contends that the State failed to provide evidence that he knowingly possessed a product containing a methamphetamine precursor. We disagree.

¶ 34 Section 120(a) of the Act provides, as follows:

> "(a) Whenever any person pleads guilty to, is found guilty of, or is placed on supervision for an offense under this Act, in addition to any other penalty imposed by the court, no such person shall thereafter knowingly purchase, receive, own, or otherwise possess any substance or product containing a methamphetamine precursor as defined in Section 10 of this Act, without the methamphetamine precursor first being prescribed for the use of that person ***." 720 ILCS 646/120(a) (West 2012).

¶ 35 In response to defendant's argument, the State points out that "somewhat ironically," defendant argues initially that his stipulated bench trial was tantamount to a guilty plea, "then makes a 180 degree turn" and argues that his stipulation was "inappropriate for proof beyond a reasonable doubt." Citing to this court's decision in *Harris*, 2015 IL App (4th) 140696, 32 N.E.3d 211, the State contends that defendant's sufficiency-of-the-evidence argument is mis-

leading and without merit. We agree with the State.

¶ 36 In *Harris*, 2015 IL App (4th) 140696, ¶ 4, 32 N.E.3d 211, the defendant moved to suppress blood-alcohol-concentration evidence, which the trial court later denied. Thereafter, the court held a stipulated bench trial on two counts of aggravated driving under the influence that the State alleged defendant committed. *Id*. At that proceeding, the court considered a stipulation of facts drafted by the State and signed by the defendant. *Id*. Based on the parties' stipulation of facts, the court found the defendant guilty on both counts and later sentenced him to 13 years in prison. *Id*. The defendant appealed, presenting a novel argument that his stipulation of facts merely placed into evidence that the various witnesses would testify if called and not the substance of their respective testimony because he did not stipulate to the truth of their underlying statements. *Id*. ¶ 34.

¶ 37 In rejecting the defendant's argument, we wrote the following:

> "Defendant stipulated to the admission of the State's summary of the testimony and did not present any further evidence. Having not presented evidence to controvert the stipulated testimony, defendant may not now complain that this stipulated testimony was not worthy of consideration and that the court's judgment, based upon such consideration, was error. [Citation.] Defendant is bound by the stipulation he entered into and if he wanted to challenge the weight or adequacy of the testimony, he should have done so before the trial court. [Citations.] Counsel cannot on one hand argue this proceeding was a genuine stipulated bench trial preserving appellate review of the suppression issue without ac-

tually going to trial, then turn around and argue on the other hand the nature of the stipulation is inappropriate for proof beyond a reasonable doubt." (Internal quotations marks omitted.) *Id.* ¶ 36.

¶ 38 We adhere to our holding in *Harris*, and applying it to the facts of this case, we conclude that defendant's initial argument that his stipulated bench trial was tantamount to a guilty plea is incompatible with his alternative argument that the State's factual basis, to which he stipulated, was insufficient proof beyond a reasonable doubt, especially when, as here, defendant made no objections to that stipulated testimony before the trial court. Further, in reviewing the stipulated evidence in the light most favorable to the State, we conclude that a rational trier of fact could have found defendant knowingly purchased a product containing a methamphetamine precursor. Accordingly, we reject defendant's sufficiency-of-the-evidence claim.

¶ 39 C. Public Defender Fee

¶ 40 Defendant argues that the trial court erred by imposing a $600 public defender fee without conducting the requisite hearing to determine his ability to pay the fee. We agree.

¶ 41 1. *The Statute at Issue and the Standard of Review*

¶ 42 Section 113-3.1(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/113-3.1(a) (West 2014)) provides, as follows:

"Whenever under either Section 113-3 of this Code or Rule 607 of the Illinois Supreme Court [Ill. S. Ct. R. 607 (eff. Feb. 6, 2013)] the court appoints counsel to represent a defendant, the court may order the defendant to pay to the Clerk of the Circuit Court a reasonable sum to reimburse either the county or the State for such

> representation. In a hearing to determine the amount of the payment, the court shall consider the affidavit prepared by the defendant under Section 113-3 of this Code and any other information pertaining to the defendant's financial circumstances which may be submitted by the parties. Such hearing shall be conducted on the court's own motion or on motion of the State's Attorney at any time after the appointment of counsel but no later than 90 days after the entry of a final order disposing of the case at the trial level."

¶ 43 Compliance with section 113-3.1(a) of the Code requires a trial court to do more than impose a public defender fee in a perfunctory manner. *People v. Roberson*, 335 Ill. App. 3d 798, 804, 780 N.E.2d 1144, 1148 (2002). Instead, the trial court must give the defendant notice of its intent to impose the fee and must allow the defendant the opportunity to present evidence regarding his ability to pay. *Id*. at 803-04, 780 N.E.2d at 1148. "Whether the trial court complied with section 113-3.1(a) in imposing the fee presents a question of law, which we review *de novo*." *People v. Moore*, 2015 IL App (1st) 141451, ¶ 31, 45 N.E.3d 696.

¶ 44 2. *Defendant's Public-Defender-Fee Claim*

¶ 45 Defendant contends that because the trial court failed to hold a hearing in compliance with section 113-3.1(a) of the Code within 90 days of its May 2014 sentencing order, the $600 public defender fee the court imposed must be vacated outright. The State concedes that the public defender fee must be vacated but asserts that because the court did attempt to conduct a hearing by providing defendant notice of its intent to impose a public defender fee at the March 2014 hearing—when the court initially appointed counsel—this court should remand the matter for a proper hearing instead of vacating the fee outright, as defendant advocates. In support of its

position, the State relies on *People v. Somers*, 2013 IL 114054, ¶ 14, 984 N.E.2d 471.

¶ 46 In *Somers*, the supreme court considered whether section 113-3.1(a) of the Code authorized the appellate court to remand for a rehearing on the defendant's ability to pay a public defender fee if more than 90 days had elapsed since the entry of the trial court's final judgment. *Id*. ¶ 20. In addressing that issue, the supreme court focused on the trial court's attempt to comply with section 113-3.1(a) of the Code by conducting a hearing within the aforementioned 90-day period that the appellate court later determined to be insufficient. *Id*. ¶ 15. Specifically, the trial court conducted a hearing at which the court asked the defendant three questions concerning his employment status. *Id*. ¶ 4. Based on the defendant's answers, the trial court imposed a $200 public defender fee. *Id*.

¶ 47 On appeal, the supreme court affirmed the appellate court's remand for a proper public-defender-fee hearing under section 113-3.1(a) of the Code (*Id*. ¶ 20), concluding that the trial court's questions about defendant's employment status were insufficient to satisfy section 113-3.1(a) of the Code (*Id*. ¶ 14). The supreme court continued, as follows:

> "Clearly, then, the trial court did not fully comply with the statute, and defendant is entitled to a new hearing. Just as clearly, though, the trial court did have some sort of a hearing within the statutory time period. The trial court inquired of defendant whether he thought he could get a job when he was released from jail, whether he planned on using his future income to pay his fines and costs, and whether there was any physical reason why he could not work. Only after hearing defendant's answers to these questions did the court impose the fee. Thus, we agree with the State's con-

> tention that the problem here is not that the trial court did not hold a hearing within 90 days, but that the hearing that the court did hold was insufficient to comply with the statute." *Id.* ¶ 15.

¶ 48 As noted, the issue before us does not concern whether the $600 public defender fee imposed by the trial court should be vacated. Both parties agree on this point, and based on this record, we accept the parties' stance and vacate the $600 public defender fee. Instead, the matter at hand concerns whether this court should (1) vacate the public defender fee outright, as defendant urges; or (2) remand the matter for a hearing that complies with section 113-3.1(a) of the Code, as the State advocates. Defendant contends that *Somers* is distinguishable because, contrary to the State's assertion, the court never questioned him about his employment status, financial situation, or ability to pay a public defender fee. Instead, the court imposed the public defender fee by written order after his sentencing hearing. In this regard, we find the First District's decision in *Moore* instructive.

¶ 49 In *Moore*, 2015 IL App (1st) 141451, ¶ 30, 45 N.E.3d 696, the First District considered the following scenario:

> "After defendant was sentenced, the State reminded the court that it had earlier filed a motion for reimbursement of attorneys' fees. The court addressed defense counsel and asked him how many times he had appeared in this case. Defense counsel replied, 'Judge, I have appeared—there was a private on this case. I have appeared seven times, and there were additional appearances by [another attorney] I believe two times.' The court responded, 'All right. A hundred fifty dollars should be appropriate.' "

¶ 50 In *Moore*, as in this case, the State argued that the aforementioned exchange constituted a hearing, albeit insufficient to meet the requirements of section 113-3.1(a) of the Code. Thus, remand for a new hearing was the remedy. *Id.* ¶ 33. The defendant argued that no hearing pursuant to section 113-3.1(a) of the Code occurred because the trial court did not inquire into his financial ability to pay, and, as such, the appellate court had no authority to remand for a new hearing because more than 90 days had passed since the trial court's final order. *Id.*

¶ 51 In vacating the fee outright, the *Moore* court held, as follows:

> "In our view, 'some sort of hearing' is more than the mere imposition of the public defender fee by way of a pronouncement in open court while the defendant is present. At minimum it requires compliance with the directive given by our supreme court in *Somers*:
>
> > 'Rather, the court must give the defendant notice that it is considering imposing the fee, and the defendant must be given the opportunity to present evidence regarding his or her ability to pay and any other relevant circumstances. [Citation.] The hearing must focus on the costs of representation, the defendant's financial circumstances, and the foreseeable ability of the defendant to pay. [Citation.] The trial court must consider, among other evidence, the defendant's financial affidavit. [Cita-

tions.]' " *Id.* ¶ 40 (quoting *Somers*, 2013 IL 114054, ¶ 14, 984 N.E.2d 471).

¶ 52 In rejecting the State's argument, the First District concluded that "[t]here was no hearing within the 90-day required period, because there was no inquiry, however slight, into the issue of the defendant's ability to pay the public defender fee, the defendant's financial circumstances, and his foreseeable ability to pay or the defendant's financial affidavit, if any." *Id.* ¶ 41. In so concluding, *Moore* disagreed with *People v. Williams*, 2013 IL App (2d) 120094, 1 N.E.3d 1270, in which the Second District held that "the *Somers* court intended for 'some sort of a hearing' to include a hearing where there was no discussion of the amount of fees to be imposed or defendant's ability to pay them." *Moore*, 2015 IL App (1st) 141451, ¶ 38, 45 N.E.3d 696; *Williams*, 2013 IL App (2d) 120094, ¶ 20, 1 N.E.3d 1270. See also *People v. McClinton*, 2015 IL App (3d) 130109, ¶¶ 16, 18, 27 N.E.3d 712 (While insufficient for purposes of section 113-3.1(a) of the Code, remand for a proper hearing was warranted because the trial court relied on the presentence investigation report and statements the defendant made during allocution concerning his ability to work to impose a $2,958 public defender fee.).

¶ 53 We agree with *Moore* that the notice requirement contemplated by the Act, as interpreted by the supreme court in *Somers*, pertains to a notice of a hearing at which the trial court will determine what amount of public defender fees, if any, a defendant can financially absorb. No such notice occurred in the instant case, and we reject the State's position that a hearing occurred—albeit an insufficient one for purposes of section 113-3.1(a) of the Code—when the court informed defendant that it intended to impose a public defender fee 14 months prior to defendant's May 2014 stipulated bench trial. Moreover, as in *Moore*, no inquiry, however slight, was undertaken to determine defendant's (1) financial circumstances or (2) ability to pay a public

defender fee at any time during the pendency of defendant's case, which is inconsistent with *Somers*' interpretation that a hearing contemplated under section 113-3.1(a) of the Code focuses on the costs of representation, the defendant's finances, and the ability of the defendant to satisfy the fee imposed. *Somers*, 2013 IL 114054, ¶ 14, 984 N.E.2d 471. Indeed, the court did not even afford defendant the opportunity to provide evidence in the form of a financial affidavit as to his finances. Accordingly, we vacate the trial court's imposition of a $600 public defender fee outright.

¶ 54 In so concluding, we note the "disappointment" the Supreme Court of Illinois expressed four years ago in *People v. Gutierrez*, 2012 IL 111590, ¶¶ 25-26, 962 N.E.2d 437, that defendants were still being denied proper hearings under section 113-3.1 of the Code 14 years after its decision in *People v. Love*, 177 Ill. 2d 550, 687 N.E.2d 32 (1997), which clearly explained how trial courts should conduct hearings under that rather simple, straightforward statute. In *Gutierrez*, the supreme court "again remind[ed] the trial courts of their duty," concluding that "we trust that we will not have to speak on this issue again." *Gutierrez*, 2012 IL 111590, ¶ 26, 962 N.E.2d 437. We reiterate what the supreme court wrote and do not expect to see this issue arise in future cases.

¶ 55 III. CONCLUSION

¶ 56 For the foregoing reasons, we affirm defendant's conviction and vacate defendant's $600 public defender fee. Because the State successfully defended a portion of the appeal, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 57 Affirmed in part and vacated in part.