2017 IL App (1st) 150729-U

THIRD DIVISION
December 27, 2017

No. 1-15-0729

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 11CR17223
	)	
ESTEBAN SALGADO,	)	The Honorable
	)	Matthew E. Coghlan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Howse and Lavin concurred in the judgment.

ORDER

¶ 1 Held: Trial court properly allowed three witnesses to testify about other-crimes evidence to demonstrate defendant's propensity to commit the instant offense where there were sufficient similarities between the other-crimes evidence and the charged conduct; defendant's sentence is not excessive; and the Illinois Sex Offender Registry Act is not unconstitutional. Mittimus modified; fines and fees order amended. Affirmed; mittimus amended; fines and fees order modified.

¶ 2 Following a jury trial, defendant Esteban Salgado was convicted of three counts of aggravated criminal sexual abuse. He was sentenced to six years' incarceration on each count, to be served consecutively, for an aggregate term of 18 years' imprisonment. As a result of his conviction, defendant was required to register as a sex offender pursuant to the Illinois Sex Offender Registration Act (730 ILCS 150/1 *et seq*. (West 2014)), On appeal, defendant contends: (1) the trial court abused its discretion by admitting other crimes evidence; (2) his sentence was excessive; (3) the Illinois Sex Offender Registry Act is unconstitutional; (4) his mittimus should be corrected; and (5) his fines and fees order is in error. For the following reasons, we affirm defendant's conviction and sentence; amend the mittimus; and modify the fines and fees order.

¶ 3 I. BACKGROUND

¶ 4 Defendant, who was approximately 36 years old at the time of the alleged conduct, was charged with four counts of the aggravated criminal sexual abuse of J.A., who was under 13 years of age at the time, for: touching J.A.'s vagina with his hand for the purpose of sexual gratification or arousal; touching J.A.'s breasts with his hand for the purpose of sexual gratification or arousal; touching J.A.'s hand with his penis for the purpose of sexual gratification or arousal; and touching J.A.'s vagina with his finger for the purpose of sexual gratification or arousal, all between May 1, 2004, and September 30, 2005.

¶ 5 Prior to trial, the State filed a motion to allow evidence of other crimes, specifically evidence regarding three other pending cases charging similar sexual offenses against children. This evidence included the testimony of J.A.'s sister, Y.A., along with J.A.'s cousins, Y.M. and V.M., who were sisters themselves. The State argued that this evidence was admissible to show identity, intent, motive, lack of consent, and propensity to commit sexual abuse.

¶ 6 In that motion, the State presented the following facts:

"1. In the instant case, [defendant] is accused of placing his hands on [J.A.'s] vagina both over and under the clothes. While [J.A.] was 11 or 12, the defendant, who lived with the victim, would lure her into his room and forcefully touch her breasts and vagina over and under her clothes. The defendant would also place his penis on [J.A.'s] hand.

2. The People seek to introduce evidence of the defendant's other crime in the People's case in chief. The People assert that this is relevant on the issues of defendant's identity, intent, motive, lack of consent and propensity to commit sexual abuse.

3. The defendant is accused of also committing sexual abuse against the victim's sister and cousins, [Y.A., J.M., and V.M.]. The defendant lured [Y.A.], who was five, six, or seven, into his room, where he lived with victims [Y.A. and J.A.]. While in the room he would touch [J.A's] vagina over her clothes while in the defendant's bed.

4. When victim, [J.M.], was seven or eight years old, the defendant grabbed her breasts and vagina both over and under the clothes. The defendant would lure victim into his room with *** of candy and tell her he [wanted to] play with her. The defendant would also expose his penis to [J.M.]. The victim is a cousin of [J.A.] and this would take place when she would visit [J.A.]. The defendant placed his mouth on [J.M.'s] vagina and also placed his fingers in [J.M.'s] vagina.

5. When victim, [V.M.], was six or seven years old, the defendant touched her breasts and her legs. The defendant lured the victim into his room when she brought him food while she visited her cousins who lived with the defendant."

¶ 7 By this motion, the State argued that, pursuant to section 115-7.3 of the Code of Criminal Procedure (the Code), and under *Donoho*¸ 204 Ill. 2d 159, in certain sex crimes trials, evidence

of other crimes may be admissible if the probative value outweighs the danger of undue prejudice. See 725 ILCS 5/115-7.3 (West 2014); *People v. Donoho*, 204 Ill. 2d 159, 164 (2003). The three factors to consider in analyzing probative value versus unfair prejudice are: 1) the proximity in time to the charged or predicate offense; (2) the degree of factual similarity to the charged or predicate offense; and (3) other relevant facts and circumstances. See 725 ILCS 5/115-7.3 (West 2014); *Donoho*, 204 Ill. 2d at 164. In applying these factors to the case at bar, the State argued that defendant's actions toward victim [J.A.] were very similar to his actions toward [Y.A., J.M., and V.M.]. Specifically, the State argued:

> "22. Turning to the first factor, proximity in time, defendant abused and assaulted all four girls within a two year period of time. The time period is well within the guidelines set by Illinois court for the admission of other crimes evidence (the other crimes evidence allowed in *Donoho* occurred 12 years prior to the charged offense). Accordingly, the first factor of proximity in time is satisfied."

¶ 8 Then, as to the second factor, the State argued:

> "24. The second factor, addressing the degree of factual similarity to the charged offense, is also satisfied as the defendant's actions in that the four attacks [*sic*] are astonishingly similar:
>
> 1. All victims were under 13 when abused and assaulted by the defendant.
>
> 2. Two of the four victims lived with the defendant;
>
> 3. Al victims were abused and assaulted at defendant's home;
>
> 4. All victims were abused and assaulted in the defendant's room;
>
> 5. All victims were related to the defendant;
>
> 6. The defendant placed his hand on each of the victim's vaginas;

7. The defendant lacked consent in all instances;

8. The defendant had been drinking during the abuse and assault[.]"

¶ 9 As to the third factor, relevant facts and circumstances, the State argued:

"26. Allowing a jury to hear evidence of only the abuse of [J.A.] could create the false impression that this was an isolated incident. That is not the case. The other crimes evidence is highly relevant in this case. This is a case where defendant selected the same type of helpless victim, committed his offenses in the same manner, at the same location, and he perpetrated similar sexual violence against each victim. The other crime is relevant to the issue of his motive, intent, lack of consent and propensity."

¶ 10 In defendant's response, defendant argued that introduction of this evidence would prejudice him, and would "neither prove nor disprove a fact or consequence in this case and would serve only as improper propensity evidence."

¶ 11 At the hearing on the motion, the State informed the court that defendant was charged with predatory criminal sexual assault in case number 12 CR 12412; aggravated criminal sexual abuse against [Y.A.] in case number 12 CR 411 [*sic*]; and aggravated criminal sexual abuse in case number 11CR 17222.

¶ 12 The defense argued that allowing the three other girls to testify would be "extremely prejudicial," stating, in part:

"[DEFENSE COUNSEL:] There is no question that the prejudicial effect from four young individuals, from four young ladies, all related to [defendant] that that would have an extremely prejudicial effect on the trier of fact.

They won't just be hearing from one complaining witness, the state will parade complaining witness, after complaining witness, after complaining witness. There is no

question that if four complaining witnesses testify at this trial, [defendant] will not be judge[d] based on the elected case, which is the issue here.

Can he get a fair trial as to the complaining witness as to this one elected case when you have four complaining witnesses testifying? The prejudicial fact will far out[weigh] any type of probative value that the state may argue.

Again, Your Honor, we will be having essentially four mini trials or one trial and three mini trials in the midst of [defendant's] case."

The court took the matter under advisement.

¶ 13 At the next court date, the court granted the State's motion to allow other-crimes evidence as to motive, intent, and propensity, but not as to consent, as consent was not at issue in the present case, stating:

"THE COURT: The defendant has four files in front of him. The elected case is 11 CR 17223. State seeks to offer evidence of three other alleged abuse—of three other individuals, three girls – one is the sister, I believe, of the victim of the elected case and two others are the cousins.

It is alleged that all of these incidents occurred within the defendant's home, his bedroom. The girls were all under the age of 13. They are all related.

The court has considered the factors as delineated in the statute including the proximity in time of all of the allegations, their factual similarity, and the other relative facts and circumstances. After considering those matters, the Court is of the opinion that they weigh in favor of allowing the State to offer other crimes evidence.

The Court has weighed the probative value versus the prejudice and finds that the probative value outweighs the prejudice. The Court in its discretion will grant the State's

motion, and the State may admit all three other cases on the issues of the defendant's motive, intent, and propensity. Consent is not an issue. The motion is granted."

¶ 14 At a later date, the court also ruled that the State could not use defendant's prior statements in the additional cases in its case in chief, and limited the other-crimes evidence to the testimony of the three girls, Y.A., J.M., and V.M.

¶ 15 The following evidence was presented at defendant's trial. J.A. testified that she was born in February 1993. Although she was 21 years old at the time of her testimony, she was 11 and 12 years old between May 2004 and September 2005, the time of the incidents described herein. During those years, J.A. lived with her family at 2637 W. 55th Street in Chicago. She, along with her parents and siblings, lived on the first floor. Defendant, who is J.A.'s mother's cousin, lived in the basement. J.A. would see defendant every day and she often went into the basement to do laundry. When she was in the fifth grade and would go down into the basement to do laundry, she and defendant would talk and then defendant would "start pulling [her towards him] and start touching [her,]" grabbing her chest and putting his hands on her breasts beneath her clothes. She testified that defendant did not stop when she told him to stop. Sometimes she would kick him in order to defend herself and run away. J.A. testified that, as time went on, defendant started doing more, including putting his hands under her clothes and touching her vagina and rubbing in between her vagina lips with his bare fingers. Defendant would pull her towards him, grab her breasts, and ask her if she wanted it. J.A. would say "no", but defendant would continue touching her.

¶ 16 All of the above incidents happened in the house on 55th Street, and defendant was always clothed during these incidents. However, on another occasion, also when J.A. was 11 or 12 years old, she was playing with her cousin Y.M. at Y.M.'s house. They were locked in a

bedroom along with defendant. Defendant pulled J.A. down onto the bottom bunk of a bunk bed and started touching her. J.A. testified that defendant touched her vagina and then unzipped his pants. He was wearing a condom and asked J.A. if she wanted to have a sexual relationship with him. She refused, Y.M. hit him, and they fled the room.

¶ 17 J.A. testified that, on another occasion, defendant unzipped his pants, took out his penis with a condom on, and put J.A.'s hand on his penis. J.A. estimated that defendant grabbed her vagina approximately 40 times during the time she was 11 and 12 years old, and she never told anyone what was happening at the time because defendant threatened her, telling her he would hurt somebody in her family if she told. Just before her thirteenth birthday, she and her family moved out of the house on 55th street, away from defendant, and the abuse stopped. She first told a police officer about the abuse in 2011.

¶ 18 Before the other-crimes evidence was presented, defense counsel objected to giving the jury the limiting instruction for other crimes evidence. Specifically, defense counsel asked the court to use the term "conduct" rather than "offenses" in the limiting instruction, but the court determined that "offenses" the appropriate 3.14 language to use. Defense counsel then asked that the limiting instruction only be given with the other jury instructions at the close of trial.[1] Defense counsel also renewed the defense objection to the other-crimes evidence being presented, and the court overruled the objection.

[1] At the close of evidence, the court provided the jury with the following limiting instruction regarding other-crimes evidence:

> "Evidence has been received that the defendant has been involved in offenses other than that charged in the indictment.
>
> This evidence has been received on the issues of the defendant's intent, motive and propensity to commit sexual abuse and may be considered by you only for that limited purpose.
>
> It is for you to determine whether the defendant was involved in those offenses and, if so, what weight should be given to this evidence on the issues of intent, motive and propensity to commit sexual abuse."

¶ 19 Y.M. testified that she was born in January 1995. She and her family lived in the basement apartment of J.A.'s house when she was approximately 8 to 10 years old and in second or third grade. She described the basement as having two rooms plus a laundry area. Defendant slept in a bed under the stairs. Y.M. testified regarding several incident when she was doing her laundry, and defendant would ask her to "come over here" toward his bed. He grabbed her hand, pulled her over to his bed, and asked her if she needed money to buy candy. The first time this happened, defendant grabbed her hand and pulled her to his bed and asked her if she needed money for candy, Y.M. said no, and defendant touched her breasts under her shirt and his finger in her vagina. She was scared, and she pulled away from defendant and ran upstairs. A second time, she was in the laundry room and defendant grabbed her hand, pulled him toward his bed, pulled down Y.M's shorts, and put his hand inside her pants on her vagina. In the same incident, defendant put his mouth on Y.M.'s vagina and exposed his penis to her. She did not tell anybody what had happened because defendant told her nobody would believe her and to "keep her mouth shut." She first told somebody about the abuse when she was approximately 16 years old.

¶ 20 Y.M.'s younger sister, V.M., testified next. V.M. testified that she was born in February 2000.[2] During the years in question, she was six years old and lived in the basement with Y.M. and their family. Defendant also lived in the basement at that time, and Y.M. described him as her godfather. When she was six years old, her mother asked her to deliver some food to defendant, who was in the basement. She carried the food down to the basement, he took the food from her and then grabbed her by the shoulder and waist. He told her she was pretty and that when she grew up, she would be a "beautiful young lady." She ran away. Another time, V.M. was watching television in the living room when defendant approached her and started

tickling her. V.M.'s shirt started to come up, and defendant touched her beneath her breasts and on her legs. He touched her legs slowly and she felt scared. V.M. was too scared to tell anybody what happened because defendant told her that her father would not believe her.

¶ 21 J.A.'s younger sister, Y.A., testified she was born in May 1999. She lived at the house on 55th Street during the time in question along with her family, and defendant lived in the basement. She testified that, when she was between the ages of five and seven years old, defendant touched her two or three times. The first time, she was playing in the basement when defendant called her over and said he had something to show her. Defendant grabbed her arm and pulled her over to his bed, put her in his lap, and touched her thighs. He put his hand inside her underpants and put his hand on her vagina. Y.A. did not tell anybody because defendant threatened that he would hurt someone from her family if she told. The second time, Y.A. was playing with her sister and cousins when defendant told her to come over and then grabbed her, but she managed to run away. Defendant eventually moved out of the house on 55th Street. Y.A. first told her mother about the abuse in 2011, when she saw him and "everything came back."

¶ 22 Chicago Police Detective Lisa Sandoval testified she was assigned to a case of sexual abuse regarding Y.A. in June 2011. After speaking with Y.A., she focused her investigation on defendant. In the course of the investigation, she spoke with J.A., and from her interview with J.A., she "learned of two additional victims," Y.M. and V.M.

¶ 23 Detective Sandoval testified that defendant was taken into custody in September 26, 2011. She advised him of his rights[3] and he agreed to speak with her. Initially, defendant told Detective Sandoval that J.A. was accusing him because they did not get along and she did not like him, but then defendant told her "that he thinks he did it, that he might have done it, but at

[3] Detective Sandoval spoke to defendant in Spanish. Defendant had a Spanish interpreter during trial.

that time, he was drinking a lot and was drunk and couldn't remember. But that J.A. wasn't lying because she had no reason to like, and that he was just too drunk to remember." Detective Sandoval asked him how he was able to touch J.A.'s breasts and vagina but not penetrate her with his penis, and defendant responded "because she is my family." On cross-examination, Detective Sandoval admitted that the General Progress Report, completed on the day of her interview with defendant, noted that defendant first said, "I did nothing," but explained it should have read, "I don't remember nothing."

¶ 24 The State rested. Defendant moved for a directed verdict, which the trial court denied. Defendant did not present any evidence on his own behalf.

¶ 25 In closing arguments, the State informed the jury that the testimony of Y.A., J.M., and V.M., "is to show you Ladies and Gentlemen of the jury his propensity, that man's propensity to commit sexual abuse." Specifically, the State said:

> "[ASSISTANT STATE'S ATTORNEY:] Now, another thing I would like to discuss, it's called proof of other offenses. And I would like to read you that jury instruction.
>
> [']Evidence has been received that the defendant has been involved in an offense other than those charged in the indictment. This evidence has been received on the issues of the defendant's intent, motive, and propensity to commit sexual abuse, and may be considered by you only for those limited purposes.
>
> It is for you to determine whether the defendant was involved in this offense, and, if so, what weight should be given to this evidence on the issue of intent, motive, and propensity to commit sexual abuse.[']
>
> Now, what does that mean? In plain language, it means, do you remember when the three other girls took the stand? Specifically, [J.M., V.M., and Y.A.]? Do you

remember them? Do you remember their demeanor? How [V.M.] and [Y.A.] could barely talk, they were so upset they were crying?

The reason they took the stand is to show you Ladies and Gentlemen of the jury this propensity, that man's propensity to commit sexual abuse. He did it to [Y.A.]. He did it to [V.M.]. He did it to [J.M.]. Therefore he did it to [J.A.].

All four of those girls lived in that house. He was, he was able to do those things to all four girls at the same time.

And that's how you Ladies and Gentlemen of the jury can use that, his propensity to commit criminal sexual abuse. You can give that proper weight for all their testimony."

¶ 26 The jury found defendant guilty of three counts of aggravated criminal sexual abuse: touching J.A.'s vagina with his hand; touching J.A.'s breasts with his hand; and touching J.A.'s vagina with his finger. The jury found defendant not guilty of touching J.A.'s hand with his penis.

¶ 27 Defense counsel filed a motion for a new trial, arguing that the other-crimes evidence should not have been allowed at trial. The court denied the motion, stating, in part:

"THE COURT: Well, the decision whether or not to allow proof of other crimes is one within the Court's discretion. I did weigh the probative value versus the prejudice, I found that the probative value outweighed the prejudice, and I exercised that discretion to the best of my ability.

I believe that the evidence was sufficient to prove the defendant guilty beyond a reasonable doubt to support the jury's verdict. The motion for a new trial is denied."

¶ 28 At sentencing, the State asked the trial court to consider the other-crimes testimony in aggravation, and asked the court to impose discretionary consecutive sentences. Counsel explained that each count carries a sentencing range of 2 to 7 years. Detective Sandoval testified in aggravation that she interviewed defendant again in June 2012. In that interview, defendant stated that, when J.M. was 9 or 10 years old, she entered his room, got on top of him, and took off her clothes. Defendant told Detective Sandoval that he then rubbed J.M.'s vagina with his hand, put his hand between the lips of her vagina, put his mouth and tongue on her vagina, and performed oral sex on her. Defendant also stated that he felt bad for having previously lied when he said he did not remember, and that he wanted to make things right by telling the truth.

¶ 29 In mitigation, defense counsel requested probation or the minimum sentence. Counsel noted that defendant had no prior convictions, that he had worked for several years, and that he was cooperative throughout this case.

¶ 30 The court sentenced defendant to a term of six years' incarceration on each count, to be served consecutively, for an aggregate total of 18 years' incarceration. In so doing, the court noted:

> "THE COURT: After considering that and all the factors in aggravation and mitigation and having regard for the nature of the circumstances of the offense and the history and character of the defendant, it is the opinion of the Court that consecutive sentences are required to protect the public from further criminal conduct by the defendant."

¶ 31 Defendant appeals.

¶ 32 II. ANALYSIS

¶ 33 i. Other-Crimes Evidence

¶ 34 Defendant first contends that the trial court abused its discretion by admitting "an extensive amount" of other-crimes evidence, such that the prejudicial impact of the evidence substantially outweighed its probative value, and where it resulted in mini-trials on those offenses. Additionally, defendant argues that parts of the testimony presented by the other-crimes witnesses surpassed the crime at issue, that is, rather than presenting evidence regarding aggravated criminal sexual abuse, the other-crimes witnesses also testified to conduct that amounted to sexual assault. This, argues defendant, was prejudicial, as the substantive value of the evidence presented by the other-crimes witnesses outweighed its probative value. Defendant also points out that the State relied heavily on the other-crimes witnesses, directing this court to the appellate record which reflects 34 pages of transcript for J.A.'s testimony and approximately 100 pages of the trial transcript for the other-crimes witnesses' testimony, and arguing that this "sheer volume" of evidence "rendered it virtually impossible for the jury not to predetermine that [defendant] was a bad person deserving of punishment."

¶ 35 Generally, evidence concerning other crimes is not admissible at trial when its purpose is to demonstrate a propensity to commit a crime. *Donoho*, 204 Ill. 2d at 170; Ill. R. Evid. 404(a) (eff. Jan. 1, 2011). This is because the evidence is considered likely to persuade the jury to convict the defendant based on his past bad behavior. See, *e.g.*, *Michelson v. United States*, 335 U.S. 469, 476 (1948) (barring other-crimes evidence "tends to prevent confusion of issues, unfair surprise and undue prejudice"). However, other-crimes evidence may be admissible to prove certain facts, such as "intent, *modus operandi*, identity, motive, [and] absence of mistake." *Donoho*, 204 Ill. 2d at 170, 173 (citing *People v. Illgen*, 145 Ill. 2d 353, 364-65 (1991)). The Illinois Rules of Evidence provides that other crimes evidence can be used for "proof of motive,

opportunity, intent, preparation, plan knowledge, identity, or absence of mistake." Ill. R. Evid. 404(b) (eff. Jan. 1, 2011).

¶ 36 Our legislature has created an exception to the common law bar against the use of other-crimes evidence to show propensity in cases where, as here, a defendant is accused of criminal sexual assault. Pursuant to section 115-7.3 of the Code of Criminal Procedure of 1963, evidence of certain other sex offenses is admissible to prove the defendant's propensity to commit the charged sex offense. 725 ILCS 5/115-7.3 (West 2014); *Donoho*, 204 Ill. 2d at 176. However, the probative value of the proffered evidence must outweigh its undue prejudice. 725 ILCS 5/115-7.3 (West 2014). This section provides:

"(a) This Section applies to criminal cases in which:

(1) the defendant is accused of predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, aggravated criminal sexual abuse, criminal sexual abuse, ***;

* * *

(b) If the defendant is accused of an offense set forth in paragraph (1) or (2) of subsection (a) or the defendant is tried or retried for any of the offenses set forth in paragraph (3) of subsection (a), or evidence of the defendant's commission of another offense or offenses set forth in paragraph (1), (2), or (3) of subsection (a), or evidence to rebut that proof or an inference from that proof, may be admissible (if that evidence is otherwise admissible under the rules of evidence) and may be considered for its bearing on any matter to which it is relevant.

(c) In weighing the probative value of the evidence against undue prejudice to the defendant, the court may consider:

(1) the proximity in time to the charged or predicate offense;

(2) the degree of factual similarity to the charged or predicate offense; or

(3) other relevant facts and circumstances." 725 ILCS 5/115-7.3 (West 2014).

¶ 37 Our supreme court has held that this statute allows evidence of other crimes to show other relevant matter, including a defendant's propensity to commit sex offenses. *Donoho*, 204 Ill. 2d at 176. Where the evidence meets the threshold statutory requirement of relevance and includes probative value, it is presumed to be admissible if its probative value is not substantially outweighed by its prejudicial effect. *Donoho*, 204 Ill. 2d at 182-83. A reviewing court will not reverse the trial court's decision to admit other-crimes evidence under section 115-7.3 absent an abuse of discretion. *Donoho*, 204 Ill. 2d at 183. An abuse of discretion occurs when the ruling is arbitrary, fanciful, unreasonable, or when no reasonable person would adopt the trial court's view. *Illgen*, 145 Ill. 2d at 364. "Reasonable minds can differ about whether such evidence is admissible without requiring reversal under the abuse of discretion standard. The reviewing court owes some deference to the trial court's ability to evaluate the impact of the evidence on the jury." *Donoho*, 204 Ill. 2d at 186. We "may not simply substitute [our] judgment for that of the trial court." *Illgen*, 145 Ill. 2d at 371.

¶ 38 Here, the parties agree that the evidence at issue falls within the purview of section 115-7.3 of the Code, but disagree as to whether it was unduly prejudicial to defendant at trial. Defendant contends that the court failed to engage in a meaningful assessment pursuant to *Donoho*, 204 Ill. 2d at 186, regarding the probative value versus the prejudicial impact of the evidence. See *Donoho*, 204 Ill. 2d at 186 (urging "trial judges to be cautious in considering the admissibility of other-crimes evidence to show propensity by engaging in a meaningful

assessment of the probative value versus the prejudicial impact of the evidence"). Specifically, defendant claims the court abused its discretion in allowing evidence of Y.M., V.M., and Y.A.'s allegations at trial, which allegations resulted in "mini-trials on those offenses." He argues that this testimony, which was not limited by the trial court, was more prejudicial than probative.

¶ 39 Our inquiry, then, having identified the relevant facts and circumstances, *e.g.*, the other-crimes evidence involved defendant's commission of sexual abuse and assault of three other young family members in his area of the basement, is whether the prejudice to defendant outweighs the probative value of the evidence. As noted above, in weighing the probative value of evidence of other sex offenses against undue prejudice to defendant, the court may consider (1) the proximity in time to the charged or predicate offense; (2) the degree of factual similarity to the charged or predicate offense; or (3) other relevant facts and circumstances. 725 ILCS 5/115-7.3 (West 2014). Applying these factors to the facts of the case at bar, we find that the probative value outweighs the prejudicial value.

¶ 40 In granting the State's motion to allow other-crimes evidence, the trial court stated:

"THE COURT: The defendant has four files in front of him. The elected case is 11 CR 17223. State seeks to offer evidence of three other alleged abuse—of three other individuals, three girls – one is the sister, I believe, of the victim of the elected case and two others are the cousins.

It is alleged that all of these incidents occurred within the defendant's home, his bedroom. The girls were all under the age of 13. They are all related.

The court has considered the factors as delineated in the statute including the proximity in time of all of the allegations, their factual similarity, and the other relative

facts and circumstances. After considering those matters, the Court is of the opinion that they weigh in favor of allowing the State to offer other crimes evidence.

The Court has weighed the probative value versus the prejudice and finds that the probative value outweighs the prejudice. The Court in its discretion will grant the State's motion, and the State may admit all three other cases on the issues of the defendant's motive, intent, and propensity. Consent is not an issue. The motion is granted."

¶ 41 We agree with the trial court in this matter. Regarding the first factor of proximity of time to the charged or predicate offense, the parties agree that the actions underlying all of the allegations occurred while defendant lived in the basement apartment. Specifically, J.A. testified that defendant abused her between May 2004 and September 2005. Y.M., who was born in January 1995, testified defendant abused her when she was nine or ten years old. This, too, would have been during the same time period in 2004 and 2005. V.M., who was born in 2000, testified that defendant abused her when she was six years old. This would have been approximately during the same time period in 2006. Y.A., who was born in 1999, testified that defendant abused her when she five, six, and seven years old. This, too, was during the same time period of 2004 to 2006. The first section 115-7.3(c) factor is satisfied.

¶ 42 Next, we find the second factor regarding the degree of factual similarity to the charge or predicate offense is met here. To be admissible, other-crimes evidence must have " 'some threshold similarity to the crime charged.' " *Donoho*, 204 Ill. 2d at 185 (quoting *People v. Bartall*, 98 Ill. 2d 294, 310 (1983)). As factual similarities increase, so does the relevance, or probative value, of the other-crimes evidence. *Bartall*, 98 Ill. 2d at 310. Where such evidence is not being offered under the *modus operandi* exception, general areas of similarity will suffice. *Illgen*, 145 Ill. 2d at 372-73.

¶ 43 Here, the trial court found there were sufficient similarities between the charged conduct and the other offenses because the victims were all under age 13 at the time of the respective abuse, the alleged abuse had occurred when the victims were in defendant's basement apartment, and the victims were all related. We agree. The evidence admitted at trial indicated that J.A. was abused by defendant in his basement apartment. For instance, defendant grabbed J.A., pulled her towards him, touched her breasts and her vagina under her clothes, and exposed his penis to her. During this same time period, he also grabbed Y.M., touched her breasts and her vagina under her clothes, and exposed his penis to her. Also during this time period, defendant grabbed V.M. by the shoulder and touched her, and lifted her shirt and touched beneath her breasts and on her legs. Additionally, defendant pulled Y.A. towards him, and touched her thighs and vagina. All of these incidents involved young girls who were family members—two sets of sisters who were also related to defendant himself. Many of these incidents occurred in the same house, specifically in defendant's area of the basement apartment. In addition, defendant told each girl not to tell anybody, and threatened to harm her or her family if she did so. We agree that the factual similarities in this case were sufficient to justify admission of the other-crimes evidence.

¶ 44 Evidence that defendant had a propensity to sexually abuse his young female family members by pulling them to his part of the basement apartment and touching their vaginas is probative of whether defendant pulled J.A. toward him in his part of the basement apartment and touched her vagina.

¶ 45 Given all of the above-mentioned facts, we find that the probative value of the witnesses' testimony was not outweighed by its prejudicial effect, and the trial court did not abuse its discretion in allowing this evidence to be admitted pursuant to section 115-7.3 of the Code. See 725 ILCS 5/115-7.3 (West 2014).

¶ 46 Defendant also argues that the witness' testimony was improperly admitted to show intent or motive, because these were not at issue in the case where he denied having committed the instant offense. Whether the trial court erred in allowing J.M., V.M., and Y.A. to testify in order to demonstrate intent or motive is largely immaterial based upon our ruling that the testimony was properly admitted to prove defendant's propensity to commit the instant offenses. Here, we have held that the trial court properly weighed the probative value of the other-crimes evidence against its prejudicial effect and properly determined that the evidence was admissible to demonstrate defendant's propensity to commit the instant offense. 725 ILCS 5/115-7.3 (West 2014). Our supreme court has held that the improper introduction of other-crimes evidence is harmless error when a defendant is neither prejudiced nor denied a fair trial based upon its admission. *People v. Nieves*¸ 193 Ill. 2d 513, 530 (2000). Because the other-crimes evidence in this case was properly admitted on propensity grounds, defendant was not prejudiced by the admission of the evidence on the grounds of intent and motive.

¶ 47 We are not persuaded by defendant's contention that the volume of the other-crimes witnesses' testimony, which constitutes more pages of the trial transcript than does the testimony of J.A., the victim in the instant cause, is proof that the other-crimes evidence was unduly prejudicial and created "mini-trials" within this trial. "Even when relevant and probative, other-crimes evidence must not become a focal point of the trial." (Internal quotation marks omitted.) *People v. Arze*, 2016 IL App (1st) 131959, ¶ 98. "In admitting evidence of other crimes to show propensity, a trial court should not permit a mini-trial of the other, uncharged offense[s], but should allow only that which is necessary to illuminate the issue for which the other crime was introduced." (Internal quotation marks omitted.) *Arze*, 2016 IL App (1st) 131959, ¶ 98; accord, *People v. Chromik*, 408 Ill. App. 3d 1028, 1041 (2011) ("Courts have warned about the dangers

of putting on a trial within a trial with detail and repetition greatly exceeding what is necessary to establish the particular purpose for the evidence."). Defendant principally relies on *People v. Cardamone*, 381 Ill. App. 3d 462, 496 (2008), in this regard, in which the appellate court held that the volume of the other-crimes evidence presented in that trial was overwhelming and more prejudicial than probative. *Cardamone*, 381 Ill. App. 3d at 497. Our research has not revealed a clear line as to what amount of other-crimes evidence constitutes too much such that the scales are tipped from probative to overly prejudicial. We do, however, find the recent decision in *People v. Arze* to be instructive insofar as delineating the limits of *Cardamone*:

> "In *Cardamone*, however, the trial court admitted testimony regarding what the appellate court conservatively estimated to be between 158 and 257 uncharged acts. [Citation.] The appellate court noted that, 'unlike a case where the trial court might admit other-crimes evidence as it pertains to 1 or even 2 victims, the court here found admissible uncharged conduct, many of which were vague as to dates, placed defendant in the impossible position of accounting for his whereabouts and behavior almost all day, every day, over a three-year period.' [Citation.] 'Simply put, *Cardamone* was an extreme case.' " *Arze*, 2016 IL App (1st) 131959, ¶ 99 (quoting *People v. Perez*, 2012 IL App (2d) 100865, ¶ 49).

¶ 48 We agree that *Cardamone* was an extreme case, and we find it differs greatly from the instant cause, in which evidence from three victims was presented to show defendant had a propensity to sexually abuse his young female family members by pulling them to his part of the basement apartment and touching their vaginas in much the same ways as he was accused of doing to J.A. We find this case is similar to *Arze*, 2016 IL App (1st) 131959, ¶ 100, in which this court upheld the other-crimes evidence testimony of two additional victims, and *Perez*, 2012

IL App (2d) 100865, where the reviewing court upheld other-crimes evidence of four additional other crimes. *Perez,* 2012 IL App (2d) 100865, ¶ 54. The *Perez* court noted:

> "[I]n *Cardamone*, the risk of juror confusion was heightened by [the] fact that the case was complex and involved over 100 witnesses. Here, there were significantly fewer witnesses, the issues were not complex, and the volume of other-crimes evidence, while greater than that pertaining to the charges, was not excessive. Given the contextual relevance of the other-crimes evidence, as well as the fact that the trial court clearly considered the relevant case law regarding admission of section 115-7.3 evidence, conducted a meaningful assessment of the probative value versus prejudicial effect of the evidence, and narrowed the scope of the evidence to avoid mini-trials by directing the State to select only three or four incidents to provide context for the charges, we conclude that there was no abuse of discretion." *Perez,* 2012 IL App (2d) 100865, ¶ 54.

We find no abuse of discretion here where, like in *Perez*, the evidence here was not complex, the contextual relevance of the other-crimes evidence was on-point with the underlying facts of the case, the trial court conducted a meaningful assessment of the probative value versus the prejudicial effect of the evidence, the court limited the other-crimes evidence to the personal testimony of the three other-crimes witnesses, and the court properly instructed the jury regarding other-crimes evidence.

¶ 49 While reasonable minds may differ as to the trial court's determination regarding the other-crimes evidence herein, we do not find the court's decision was so unreasonable as to constitute an abuse of discretion.

¶ 50 ii. Defendant's Sentence

¶ 51 Next, defendant contends that his sentence is excessive. Specifically, defendant argues the trial court abused its discretion in sentencing him to consecutive terms of six years' incarceration for each count of aggravated criminal sexual abuse, for an aggregate of 18 years' incarceration. Defendant acknowledges that the six-year terms are within the proper sentencing range, and concedes that "consecutive sentencing may have been within the court's discretion," but argues that the aggregate 18-year sentence was "manifestly disproportionate" to the nature of his offenses, his potential for rehabilitation, and his lack of criminal history. Defendant also alerts this court to the high financial cost to the State of his incarceration. Defendant asks this court to either reduce his three underlying six-year sentences to the minimum terms of three years' incarceration each, or to "terms more reflective of [defendant's] rehabilitative potential," or to remand this matter for resentencing.

¶ 52 A trial court has broad discretion in determining an appropriate sentence. *People v. Patterson*, 217 Ill. 2d 407, 448 (2005). A reviewing court will reverse the trial court's sentencing determination only where the trial court has abused its discretion. *Patterson*, 217 Ill. 2d at 448. A sentence within the statutory range does not constitute an abuse of discretion unless it varies greatly from the purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Henderson*, 354 Ill. App. 3d 8, 19 (2004). The trial court may appropriately consider the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age when sentencing a defendant. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). Where mitigating evidence is presented to the trial court, it is presumed, absent some indication other than the sentence itself to the contrary, that the court considered it. *People v. Benford*, 349 Ill. App. 3d 721, 735 (2004). When determining the propriety of a particular sentence, we cannot

substitute our judgment for that of the trial court simply because we would weigh the sentencing factors differently. *Fern*, 189 Ill. 2d at 53.

¶ 53 The offense of aggravated criminal sexual abuse is a Class 2 felony (720 ILCS 5/11-1.60 (West 2014)), with a sentencing range of three to seven years' incarceration, or a period of probation of up to four years. 730 ILCS 5/5-4.5-35(a) (West 2014). Defendant was convicted of three counts of aggravated criminal sexual abuse and, therefore, faced a sentencing range for each individual count of three to seven years' imprisonment or probation for up to four years. Pursuant to 730 ILCS 5/5-8-4(b), the sentencing court was authorized to order the sentences to run consecutively if, after "having regard to the nature and circumstances of the offense and the history and character of the defendant, it is of the opinion that consecutive sentences are required to protect the public from further criminal conduct by the defendant[.]" 730 ILCS 5/5-8-4(b) (West 2014). Here, defendant was sentenced to three consecutive terms of six years' imprisonment, which is within the permitted statutory sentencing range.

¶ 54 The trial court conducted a thorough sentencing hearing, and both parties presented evidence in aggravation and mitigation. The court was presented with a thorough pre-sentence investigation report, which it acknowledged it had reviewed, and allowed the parties opportunity to amend. The report detailed defendant's childhood in Mexico during which his family lived in poverty, he was unable to get an education, and was one of many children raised by a single mother. The pre-sentence investigation report also detailed defendant's lack of a criminal history and his regular work history in construction and restaurants after coming to the United States in the year 2000.

¶ 55 The State asked the trial court to consider the other-crimes testimony in aggravation, and asked the court to impose discretionary consecutive sentences. Detective Sandoval testified in

aggravation that she interviewed defendant again in June 2012. In that interview, defendant stated that, when J.M. was 9 or 10 years old, she entered his room, got on top of him, and took off her clothes. Defendant told Detective Sandoval that he then rubbed J.M.'s vagina with his hand, put his hand between the lips of her vagina, put his mouth and tongue on her vagina, and performed oral sex on her. Defendant also stated that he felt bad for having previously lied when he said he did not remember, and that he wanted to make things right by telling the truth.

¶ 56 In mitigation, defense counsel requested probation or the minimum sentence. Counsel noted that defendant had no prior convictions, that he had worked for several years, and that he was cooperative throughout this case. Defendant provided a statement in allocution in which he asserted his innocence and said he was in Florida during the times he was accused of the sexual abuse.

¶ 57 In sentencing defendant, the court noted:

> "THE COURT: After considering that and all the factors in aggravation and mitigation and having regard for the nature of the circumstances of the offense and the history and character of the defendant, it is the opinion of the Court that consecutive sentences are required to protect the public from further criminal conduct by the defendant."

¶ 58 The trial court at sentencing clearly stated that it had considered the appropriate sentencing factors in aggravation and mitigation; considered the nature of the circumstances of the offense; the history and character of defendant; and the necessity to protect the public from further criminal conduct by defendant.

¶ 59 Based on this record, which establishes that the trial court reviewed defendant's presentence investigation report, considered appropriate mitigating and aggravating factors, and

sentenced defendant to a term within the permissible sentencing range, we find that the trial court did not abuse its discretion.

¶ 60 iii. The Sex Offender Registration Act

¶ 61 Next, defendant argues that the Illinois Sex Offender Registration Act (730 ILCS 150/1 *et seq*. (West 2014)), and other related statutes applicable to sex offenders (collectively, the "SORA Statutory Scheme"), violate his procedural and substantive due process rights. As a result of his conviction, defendant was required to register as a sex offender and now argues that SORA infringes on registrants' fundamental liberty interests without providing procedural or substantive due process of law due to its severe restrictions, intrusive monitoring, burdensome registration requirements, and its failure to provide a mechanism by which courts can evaluate the propriety of imposing punitive disabilities and restraints.

¶ 62 Before we consider defendant's constitutional arguments, we first acknowledge that the State notes in its brief that there is "some dispute" among courts regarding whether defendant has standing to include criminal offenses in his challenge to SORA's constitutionality. Specifically, on appeal, defendant challenges 720 ILCS 5/11-9.3 (West 2014) (presence within school zone by child sex offenders prohibited) and 720 ILCS 5/11-9.4-1 (presence or loitering in or near public parks prohibited) as "part of the regime of affirmative disabilities and restraints placed on sex offenders." The State does not go so far as to argue that defendant has no standing, but it does assert that, "regardless of whether defendant has standing to bring challenges to these statutes, his argument should still be rejected where both statutes have explicitly been found constitutional." We, therefore, will briefly address the issue of standing, which has been fully addressed in this precise context in *People v. Avila-Briones*, 2015 IL App (1st) 132221, ¶ 27.

¶ 63 We find defendant has standing. To have standing to bring a constitutional challenge, a party must demonstrate that he or she is within the class aggrieved by the alleged unconstitutionality. *In re M.I.*, 2013 IL 113776, ¶ 32. Additionally, the individual "must have suffered or be in immediate danger of suffering a direct injury as a result of enforcement of the challenged statute." *People v. Greco*, 204 Ill. 2d 400, 409 (2003). "The claimed injury must be: (1) distinct and palpable; (2) fairly traceable to defendant's action; and (3) substantially likely to be prevented or redressed by the grant of the requested relief." *Avila-Briones*, 2015 IL App (1st) 132221, ¶ 27.

¶ 64 In *Avila-Briones*, this court considered the issue of standing in a similar situation, *e.g.*, in a question of whether the SORA Statutory Scheme violates substantive and procedural due process, and concluded the *Avila-Briones* defendant did have standing to challenge the SORA Statutory Scheme. *Avila-Briones*, 2015 IL App (1st) 132221, ¶ 43; also see *People v. Pollard*, 2016 IL App (5th) 130514, ¶¶ 26-27. The *Avila-Briones* court concluded that the provisions the defendant challenged would automatically apply to him upon his release and that he alleged that the provisions would impact his fundamental right to liberty. *Avila-Briones*, 2015 IL App (1st) 132221, ¶ 41. The reviewing court reasoned, "Whether these laws, in fact, do infringe on defendant's fundamental rights goes to the merits of his due-process claims, which should not affect his standing to bring them." *Avila-Briones*, 2015 IL App (1st) 132221, ¶ 41. As such, we also conclude that defendant here has standing to raise a due process challenge to the SORA Statutory Scheme.

¶ 65 As to defendant's substantive argument about the constitutionality of the SORA Statutory Scheme, defendant acknowledges that our supreme court found the SORA to be constitutional in *People v. Malchow*, 193 Ill. 2d 413 (2000), but claims that "the increasingly burdensome

provisions" of SORA "warrant new constitutional analysis." These burdens include increased registration requirements and fees, as well as more severe consequences for non-compliance; and increased restrictions on where a sexual predator or child sex offender may live or be present.

¶ 66 Defendant acknowledges that this precise issue has been addressed and rejected in both *Avila-Briones*, 2015 IL App (1st) 132221, and *People v. Parker*, 2016 IL App (1st) 141597 (petition for leave to appeal denied, March 29, 2017) (Cert. denied, June 22, 2017) (rejecting procedural and substantive due process challenges to the SORA Statutory Scheme), but urges this court not to follow those decisions. In *Avila-Briones*, this court rejected the same constitutional arguments that defendant asserts here regarding his substantive and procedural due process rights. See *Avila-Briones*, 2015 IL App (1st) 132221, ¶¶ 71-93. This court held, in part, that even under the new and more cumbersome SORA laws, no further process is required to ensure that SORA is imposed in a procedurally safeguarded manner. *Avila-Briones*, 2015 IL App (1st) 132221, ¶ 92. In fact, whether or not SORA impacts any liberty interests, procedural due process is satisfied because registrants are already given an opportunity to be heard when they challenge the charges against them at trial. *Avila-Briones*, 2015 IL App (1st) 132221, ¶ 92; accord, *Pollard*, 2016 IL App (5th) 130514, ¶¶ 47-48 (following the "persuasive reasoning" articulated in *Avila-Briones* and rejecting the defendant's procedural and substantive due process claims and eighth amendment proportionate penalties challenges to the SORA). Additionally, courts in *Avila-Briones*, 2015 IL App (1st) 132221, *Pollard*, 2016 IL App (5th) 130514, and *In re A.C.*, 2016 IL App (1st) 153047, have refused to recognize the right to be free from registration as a fundamental right. See *Avila-Briones*, 2015 IL App (1st) 132221, ¶¶ 74-80; *Pollard*, 2016 IL App (5th) 130514, ¶¶ 33-37; *In re A.C.*, 2016 IL App (1st) 153047, ¶¶ 43-48

(rejecting due process and eighth amendment challenges to SORA as applied to a juvenile offender).

¶ 67 We see no reason to depart from these well-reasoned cases, and we conclude that there is no basis for defendant's argument that the SORA Statutory Scheme violates substantive or procedural due process. See *Avila-Briones*, 2015 IL App (1st) 132221, ¶ 94; *Pollard*, 2016 IL App (5th) 130514, ¶¶ 44, 48; and *In re A.C.*, 2016 IL App (1st) 153047, ¶¶ 57, 66; *Parker*, 2016 IL App (1st) 141597, ¶ 77.

¶ 68 iv. Modify the Mittimus

¶ 69 Next, defendant contends and the State properly agrees that the mittimus should be modified to correctly reflect the number of days he served in presentencing custody.

¶ 70 Here, defendant was arrested on September 26, 2011, and remained in custody until the day he was sentenced on February 6, 2015. Including the date of his arrest, and excluding the date of his sentencing, this is a total of 1,229 days spent in pre-sentencing custody. The mittimus incorrectly reflects a credit of 1,228 days. Pursuant to our authority under Supreme Court Rule 615(b)(1), we order the clerk of the circuit court to correct the mittimus to reflect a credit of 1,229 days of presentencing custody. 134 Ill. 2d R. 615(b)(1); *People v. Magee*, 374 Ill. App. 3d 1024, 1035-36 (2007).

¶ 71 v. Fines, Fees, and Costs

¶ 72 Lastly, defendant contends, and the State properly agrees, that his fines and fees order by which the trial court assessed $2,024 in fines and fees against him must be amended because several of the assessments were improperly imposed. Specifically, defendant challenges his $500 Child Pornography Fine; $20 Probable Cause Hearing fee; $5 Electronic Citation fee; $200 Sexual Assault Fine; $15 State Police Operations Fee; and $5 Court System fee.

¶ 73 A defendant is entitled to credit for time spent in custody as a result of the offense for which a sentence is imposed. *People v. Williams*, 239 Ill. 2d 503, 507 (2011); *People v. Jones*, 223 Ill. 2d 569, 580 (2006) (Section 110-14 of the Code allows for a $5-per-day credit for days spent in presentencing custody, but this credit offsets only fines, not fees). Defendant was incarcerated on a bailable offense for 1,229 days before sentencing and is therefore entitled to a maximum of $6,145 in offsetting credit.

¶ 74 Defendant acknowledges that he failed to preserve this issue for appeal because he did not challenge the assessments in the trial court. It is well settled that a defendant forfeits a sentencing issue that he fails to raise in the trial court through both a contemporaneous objection and a written postsentencing motion. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). He argues, however, that he may request the *per diem* monetary credit at any time and that his right to the credit cannot be forfeited. See *People v. Woodard*, 175 Ill. 2d 435, 444-48 (1997). In addition, he urges this court to review his request to vacate certain assessments under the second prong of the plain error doctrine or, in lieu of that, as a product of the ineffective assistance of trial counsel.

¶ 75 The State does not argue against the forfeiture, but instead, addresses the merits of the issue and asserts that this court may correct the fines and fees order pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999). The rules of forfeiture and waiver also apply to the State, and where the State fails to argue that defendant has forfeited the issue, it waives the forfeiture. *People v. Bridgeforth*, 2017 IL App (1st) 143637, ¶ 46. Here, the State has not argued that the issue is forfeited, and thus, we address the merits of defendant's claims.

¶ 76 First, pursuant to 730 ILCS 5/5-9-1.4, "a fine of $500 shall be imposed upon a person convicted of child pornography under Section 11-20.1 of the Criminal Code[.]" 730 ILCS 5/5-9-

1.4 (West 2014). Defendant was not convicted of that offense, and so the $500 Child Pornography Fine should be vacated here.

¶ 77 The $20 Probable Cause Hearing Fee imposed pursuant to 55 ILCS 5/4-2002.1(a), which entitled State's attorneys to $20 for a "preliminary examination for each defendant held to bail or recognizance" must also be vacated here, as no probable cause hearing was conducted in defendant's case. ILCS 5/4-2002.1(a) (West 2014); *People v. Coleman*, 404 Ill. App. 3d 750, 753 (2010).

¶ 78 The parties agree, and we concur, that the $5 Electronic Citation Fee assessed pursuant to section 27.3e of the Clerks of Courts Act (705 ILCS 105/27.3e (West 2012)) must be vacated as that fee only applies to traffic, misdemeanor, municipal ordinance and conservation violations, and does not apply to defendant's felony offenses. We vacate the $5 Electronic Citation Fee and direct the clerk of the circuit court to amend the fines, fees and costs order accordingly.

¶ 79 Next, the parties agree that defendant is due full credit for the $200 Sexual Assault fine (730 ILCS 5/5-9-1.7(a)(1) (West 2015), the $15 State Police Operations Fee (705 ILCS 105/27.3a(1.5) (West 2012)), and the $50 Court System Fee[4] (55 ILCS 5/5-1101(c) (West 2012)). The Sexual Assault Fine imposed pursuant to 730 ILCS 5/5-9-1.7(a)(1) was amended in 2005 to include language stating that the credit "does not apply to a person incarcerated for sexual assault[.]" However, where the offense took place prior to the amendment, the defendant is entitled to credit against the fine. *People v. Prince*, 371 Ill. App. 3d 878, 881 (2007).

[4] Defendant points out, and the State appears to agree, that the amount assessed here was incorrect. The Court System fee is $5 only when the defendant was convicted of a violation of 625 ILCS 5/1-100. 55 ILCS 5/5-1101(a) (West 2014). When a defendant is convicted of a felony, the Court System fee should instead be $50. 55 ILCS 5/5-1101(c)(1) (West 2014). Accordingly, we remove the $5 Court System fee and instead impose the $50 Court System fee. Pursuant to this order, we also order the clerk of the circuit court to ensure that the $50 Court System fee is offset by defendant's pretrial credit.

Therefore, where defendant's offenses in this case were committed prior to the amendment, he is entitled to credit towards the fine.

¶ 80 Defendant is also entitled to credit to be applied towards the $15 State Police Operations Fee and the $50 Court System Fee where both have been held to constitute fines. *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 (the $15 State Police Operations Fee is a "fine" as it does not reimburse the State for any expenses incurred in a defendant's prosecution); *People v. Wynn*, 2013 IL App (2d) 120575, ¶ 17 (the $50 Court System Fee is a fine that is offset by presentence incarceration credit). We direct the clerk of the circuit court to amend the fines, fees and costs order to reflect a $200 credit for the Sexual Assault fine, a $15 credit for the State Police Operations Fee, and a $50 credit for the Court System Fee.

¶ 81 The State also points out, and we agree, that the fines and fees order does not reflect that any credit was applied towards the $10 Mental Health Court Fine, the $5 Youth Diversion Fine, and the $30 Children's Advocacy Center Fine. The record shows that defendant was assessed at $10 mental health court fee (55 ILCS 5/5-1101(d-5) (West 2014)), a $30 Children's Advocacy Center (CAC) charge (55 ILCS 5/5-1101(f-5) (West 2014)), and a $5 Youth Diversion Fine (55 ILCS 5/5-1101(e) (West 2014)). Defendant is entitled to credit towards these charges, as they are fines subject to offset by time spent in pre-trial custody. See *People v. Anthony*, 2011 IL App (1st) 091528, ¶ 32 (mental health court fee and Children's Advocacy Center charge are both fine to which a defendant is entitled to apply presentence credit); *People v. Gildart*, 377 Ill. App. 3d 39, 42 (2007 (Youth Diversion/Peer Court charge is a fine and not intended to reimburse the state for any prosecution cost).

¶ 82 In sum, we vacate the $500 Child Pornography Fine; the $20 Probable Cause Hearing Fee; and the $5 Electronic Citation Fee from the Fines, Fees and Costs order. We direct the clerk

of the circuit court to further amend the fines and fees order to reflect a credit of $835 to offset the $200 Sexual Assault fine, the $15 State Police Operations Fee; the $10 Mental Health Court Fine, the $5 Youth Diversion Fine, and the $30 Children's Advocacy Center Fine. We also direct the clerk of the circuit court to amend the fines and fees order to adjust the Court System Fee from $5 to $50, which amount will also be offset by defendant's presentence custody credit. Defendant's adjusted total assessment should be $1.184. We affirm defendant's conviction and sentence in all other respect

¶ 83 III. CONCLUSION

¶ 84 For all of the foregoing reasons, we affirm the judgment of the circuit court of Cook County, amend the mittimus, and modify the fines and fees order.

¶ 85 Affirmed; mittimus amended; fines and fees order modified.