NOTICE
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2017 IL App (4th) 150154-U

NO. 4-15-0154

Order filed September 20, 2017

Modified upon denial of rehearing November 9, 2017

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
WOODROW A. BROWN,	)	No. 13CF1557
Defendant-Appellant.	)	
	)	Honorable
	)	Harry E. Clem,
	)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Holder White and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant failed to establish ineffective assistance of trial counsel, and the errors raised regarding fines and credits are matters for the circuit court.

¶ 2 In September 2013, the State charged defendant, Woodrow A. Brown, by information with one count of aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2012)), one count of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2012)), and one count of reckless discharge of a firearm (720 ILCS 5/24-1.5(a) (West 2012)). The reckless discharge of a firearm charge was later dismissed. After a November 2014 trial, the jury found defendant guilty of the two remaining charges. Defendant filed a motion for a new trial. At a joint January 2015 hearing, the Champaign County circuit court denied defendant's motion for a new trial and sentenced defendant to 30 years' imprisonment for aggravated battery with a firearm. Defendant filed a motion to reconsider his sentence, which the court denied in

February 2015.

¶ 3 Defendant appeals, (1) asserting he was denied effective assistance of counsel, and (2) challenging the imposition of certain fines and the failure to receive credit against other fines. We affirm but remand the cause with directions.

¶ 4 I. BACKGROUND

¶ 5 The charges in this case relate to an incident on September 18, 2013, in which defendant shot Dyvar Johnson, the brother of his girlfriend, Unique Ayers, at the apartment they all shared. Defendant raised the affirmative defense of self-defense. Before trial, the circuit court dismissed the reckless discharge of a firearm charge at the State's request.

¶ 6 In November 2014, the circuit court commenced defendant's trial on the two remaining charges. The State presented the testimony of (1) Johnson, the victim; (2) Andrew Charles, Urbana police department sergeant; (3) Bryan Moore, defendant's former coworker; (4) Dan Morgan, Urbana police department sergeant; (5) James Kerner, Urbana police officer; (6) Montrice Weathersby, defendant and Johnson's neighbor; (7) Amy Otis, Urbana resident; (8) David Smysor, Urbana police department detective; (9) Zachery Mikalik, Urbana police officer; (10) Matthew Mecum, Urbana police department detective; (11) Darrell Stafford, Illinois State Police crime scene investigator; and (12) David Roesch, Urbana police department detective. In addition to the witnesses' testimony, the State presented around 57 exhibits, most of which were photographs. Defendant testified on his own behalf. Additionally, the parties entered into four stipulations. The evidence relevant to the issues on appeal is set forth below.

¶ 7 Johnson testified that, in September 2013, he was living in apartment 207 in the Tennyson Apartment complex. In addition to defendant and Unique, Johnson shared the apartment with his children; and his girlfriend, Angel Lovelace. Johnson's mother and Unique

were on the apartment's lease and paid the rent. However, his mother had a different residence. The apartment had two bedrooms. The area by the front door was tiled, and a closet was located next to the front door. A carpeted living room was past the tile. A hallway led to two bedrooms. Defendant and Unique stayed in the bedroom on the right, and Johnson and Lovelace had the bedroom on the left.

¶ 8 Johnson did not spend the night preceding September 18, 2013, at apartment 207 because the power had been turned off. On September 18, 2013, Johnson paid the power bill for apartment 207 and went there to see if the power had been turned on. When Johnson entered apartment 207, defendant was using the bathroom. Defendant was the only other person in the apartment. They did not talk to each other, and Johnson began to clean his room. After defendant left the bathroom, he walked out the front door. Johnson locked the front door and continued cleaning.

¶ 9 About five minutes after defendant left, Johnson heard a knock at the door. He saw it was defendant and opened the door for him. Defendant entered, and Johnson shut the door and locked it. When he turned around, defendant had a sawed-off shotgun in his face. The shotgun had a brown grip and a black barrel, and Johnson identified the gun pictured in State's exhibit No. 50 as the gun in defendant's possession (the actual gun was admitted as State's exhibit No. 1 and was introduced during Detective Smysor's testimony). Defendant asked Johnson, "Where is my shit at?" Johnson did not know what defendant was talking about and asked defendant what he meant. Defendant then asked where his gun was. Johnson had not taken a gun from defendant and did not know where the gun was. When Johnson told defendant he did not know where the gun was, Johnson heard a click sound. Once Johnson heard the click, he was about to run out the front door, but defendant shot him in the left bicep before he could

move. Johnson was in the tile area near the front door when he got shot. Defendant ran out the front door after he shot Johnson. After he realized he was shot, Johnson fell to the floor.

¶ 10 Johnson was on the floor for about two minutes, and then he got up and left the apartment. When Johnson turned to the right, he saw defendant trying to put the shotgun into a black duffle bag. He had never seen the bag before, and defendant did not have it in the apartment. Johnson also saw Weathersby, who lived in apartment 208, peeking his head out the door. Johnson tried to get past defendant and into Weathersby's apartment, but Weathersby shut his door. At that point, defendant punched Johnson twice in the face. Johnson then went down the stairs and out of the complex's door. He fell down on some grass and received help from a passerby. Johnson did not see where defendant went. While at the hospital later that day, Johnson talked to Detective Roesch. Johnson did not recall telling Detective Roesch the shotgun had a pump action and grey tape on the handle.

¶ 11 Johnson testified his relationship with defendant "wasn't that good." Johnson had strong opinions about the fact defendant was dating Unique. He tried to break them up. Johnson thought defendant had abused Unique and was involved in some stuff being stolen. Johnson denied keeping guns in the apartment. Additionally, Johnson admitted having an aggravated battery conviction.

¶ 12 Detective Charles was the third police officer to respond to the shooting and followed the blood trail to apartment 207. He testified the largest amount of blood was found near the front door. Detective Charles did not find any blood in the bedrooms and did not notice anything out of place.

¶ 13 Moore testified he worked with defendant at a towing company. On September 18, 2013, Moore received three telephone calls from defendant. The first call came from

defendant's number, and the second and third calls were from another number. During the calls, defendant asked for money and a ride.

¶ 14 Sergeant Morgan testified the two later calls were from a number that belonged to Kenneth Corbin. On September 19, 2013, Sergeant Morgan along with Officer Kerner and Detective Mecum searched Corbin's home but did not find defendant. Officer Kerner testified that, in an upstairs bedroom, he found a brown, soft shotgun case leaning against the wall. Sergeant Morgan testified he opened the shotgun case, and it contained a full-sized, pump action shotgun. Sergeant Morgan did not think it was the weapon involved in the shooting. Officer Kerner testified, that while he was in the upstairs bedroom, he observed Corbin retrieve a set of car keys from a pair of men's pants lying on the bedroom floor. The keys belonged to defendant's Chevy Blazer. Detective Mecum testified that, in the same upstairs bedroom, he found a sawed-off shotgun between the mattresses. The shotgun had a live shell in it. The State's exhibit No. 50 was a picture of the sawed-off shotgun Detective Mecum recovered from Corbin's home. Additionally, Detective Mecum testified he searched apartment 207 and no weapons were found.

¶ 15 Weathersby testified he did not have a problem with either defendant or Johnson. He was home in apartment 208 on the morning of September 18, 2013. Weathersby heard a boom and went to his door. He opened the door and saw defendant in the hallway. Defendant was putting something in a duffle bag. The bag was black or green. Weathersby spoke to defendant, and he nodded back. The only thing Weathersby could recall defendant wearing was black or grey gloves. Weathersby then saw Johnson come out of the apartment yelling and screaming. Johnson had blood on him. As Weathersby was trying to get his son back into the apartment, he heard defendant say something to Johnson and then heard what sounded like

someone getting punched in the face.

¶ 16 Otis testified she lived at the "Michigan East Apartments." On September 18, 2013, "a new-found friend" texted her and told her there was a bag on her porch that they would deal with later. When she arrived home, she found a greenish-gray duffle bag underneath a chair on her back porch. She texted a neighbor several times asking what was going on with the bag. Eventually, the neighbor sent two teenage girls to Otis's apartment. The girls opened the bag, and Otis observed a big, old gun that was "probably in pieces." Otis and the girls put the duffle bag in a garbage bag, and the girls put the garbage bag in the Dumpster. The next day, Otis talked to Detectives Roesch and Smysor and took them to the Dumpster. The garbage bag containing the duffle bag was no longer in the Dumpster.

¶ 17 Detective Smysor testified that, on September 19, 2103, the police found defendant's Chevy Blazer in the parking lot for what he referred to as the "Michigan Avenue Apartments," which were about a mile away from the scene of the shooting. At the same apartment complex, he spoke to Otis. After doing so, Detective Smysor searched the Dumpster for the shotgun and duffle bag but did not find them. The Dumpster was not empty when he searched it.

¶ 18 Investigator Stafford testified a shotgun wad was found on the southwest corner of the tile that was in the entryway of apartment 207. It was very near the pool of blood.

¶ 19 Additionally, the State played the first 22 minutes of Detective Roesch's March 24, 2014, interview of defendant. During the interview, defendant stated he had "no beef" with Johnson. However, he said Lovelace had lied to Johnson and told him defendant was beating on Unique and stealing money from her. Defendant also denied the rumor Johnson had stolen a gun from him and noted he had not possessed a gun since he was 16. Defendant lived in apartment

207 and had a key to enter. On September 18, 2013, defendant was using the restroom when Johnson entered the apartment. Defendant left the apartment to get a cigar at the gas station. When defendant returned to the apartment, he had a bag with him for his clothes and went to his bedroom to pack some clothes for a shower since the power was turned off in the apartment. Johnson came into defendant's bedroom and told him he should pack all of his stuff. Johnson confronted defendant about stealing from Lovelace and beating on Unique. Defendant denied the accusations, and they continued to argue. Defendant stated Johnson used the term "black stone." During the argument, Johnson was pacing in and out of defendant's bedroom. Defendant turned around and saw Johnson was brandishing a gun. Defendant went for Johnson's legs, and Johnson tried to pin defendant. Defendant grabbed the gun, Johnson tried to break out, and defendant just fired. He was nervous and scared. It happened very fast and was a blur. After defendant shot Johnson, he left the apartment and got into his Blazer. At some point, he put the gun in his bag of clothes, and he threw the gun in some bushes that were not near Craig's house. Defendant parked the Blazer near "Craig's house." He was only in town a couple of hours after the shooting.

¶ 20 At trial, defendant testified that, on September 18, 2013, he was using the bathroom when Johnson entered apartment 207. He spoke to Johnson, but Johnson did not say anything. After he was done, defendant left and went to the gas station. He returned shortly to apartment 207 and went to his bedroom to pack his clothes. At the time, Johnson was in his own room. In an aggressive tone, Johnson told defendant he should pack all of his clothes. Defendant asked Johnson what he meant, and Johnson mentioned defendant beating Unique and stealing from Lovelace. Defendant denied both accusations, and Johnson noted that was not what everyone else was saying, and told defendant he was not going to keep living there.

Defendant again asked Johnson what he meant, and Johnson said, “Not black stone, you ain’t going to be living here.” Defendant explained, “black stone” was a gang term that meant a “serious threat.” Defendant continued to pack his clothes, and Johnson paced between the front room and the hallway by defendant’s room and mumbled other threats.

¶ 21 After several minutes, defendant turned around and noticed Johnson had something in his hand along the side of his leg. Defendant realized it was a gun. At that point, Johnson was half in defendant’s room and half in the hallway. Defendant tackled Johnson, but he did not fall. Defendant and Johnson began to wrestle. Eventually, they ended up in the front room, and defendant had the gun in his hand. They broke loose, and Johnson began to backpedal toward the door with his hands down on his side. As soon as Johnson began to backpedal, the gun went off. Defendant ran out of the apartment without looking at Johnson. Defendant was holding his duffle bag throughout the incident. Defendant ran out of the apartment building without stopping and did not punch anyone. He drove off and dumped the gun in some bushes. Defendant was on the run for about six months until he turned himself in.

¶ 22 Defendant explained he shot defendant because he feared for his life. He had seen Johnson have guns in the apartment about seven times. One time, he pulled a gun from the closet in the front room. According to defendant, Johnson’s brother, William Ayers, also lived in the apartment and kept a gun under the couch. Defendant denied bringing a gun into apartment 207.

¶ 23 At the conclusion of the trial, the jury found defendant guilty of both charges. Defendant filed a motion for a new trial, asserting the State failed to prove him guilty beyond a reasonable doubt. At a joint hearing in January 2015, the circuit court denied defendant’s motion for a new trial and sentenced him to 30 years’ imprisonment for aggravated battery with a

firearm. The court did not sentence defendant on the aggravated discharge of a firearm charge based on the one-act, one-crime doctrine. In addition to the written sentencing judgment, the circuit court entered two other sentencing orders, addressing defendant's financial obligations related to his aggravated battery with a firearm conviction. Defense counsel filed a timely motion to reconsider defendant's sentence, asserting defendant's sentence was excessive. Defendant also filed a *pro se* motion to reconsider his sentence, which defense counsel asked the court to consider. After a February 26, 2015, hearing, the court denied defendant's motions to reconsider his sentences.

¶ 24 On March 2, 2015, defendant filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 606 (eff. Feb. 6, 2013). Thus, this court has jurisdiction of this cause under Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013).

¶ 25 II. ANALYSIS

¶ 26 A. Ineffective Assistance of Counsel

¶ 27 Defendant first asserts he was denied effective assistance of counsel because counsel failed to understand how to (1) exclude inadmissible evidence, (2) admit admissible evidence, (3) preserve the record for appeal, and (4) adequately prepare for trial and zealously advocate on his behalf. He further contends that, even if the individual errors made by counsel do not constitute ineffective assistance of counsel, the cumulative impact of the errors denied him effective assistance of counsel. The State contends defendant has not established prejudice from the alleged errors.

¶ 28 This court analyzes ineffective assistance of counsel claims under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Evans*, 186 Ill. 2d 83, 93, 708 N.E.2d 1158, 1163 (1999). To obtain reversal under *Strickland*, a defendant must prove (1) his

counsel's performance failed to meet an objective standard of competence and (2) counsel's deficient performance resulted in prejudice to the defendant. *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163. To satisfy the deficiency prong of Strickland, the defendant must demonstrate counsel made errors so serious and counsel's performance was so deficient that counsel was not functioning as "counsel" guaranteed by the sixth amendment (U.S. Const., amend. VI). *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163. Further, the defendant must overcome the strong presumption the challenged action or inaction could have been the product of sound trial strategy. *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163. To satisfy the prejudice prong, the defendant must prove a reasonable probability exists that, but for counsel's unprofessional errors, the proceeding's result would have been different. *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163-64. The *Strickland* Court noted that, when a case is more easily decided on the ground of lack of sufficient prejudice rather than that counsel's representation was constitutionally deficient, the court should do so. *Strickland*, 466 U.S. at 697.

¶ 29 As to the alleged trial errors, the evidence was undisputed defendant shot Johnson in the left bicep. The issue was self-defense. Once a defendant raises the defense, the State has the burden of proving beyond a reasonable doubt the defendant did not act in self-defense along with the elements of the charged offense. *People v. Lee*, 213 Ill. 2d 218, 224, 821 N.E.2d 307, 311 (2004). The elements of self-defense are the following: (1) unlawful force was threatened against a person; (2) the person threatened was not the aggressor; (3) the danger of harm was imminent; (4) the use of force was necessary; (5) the person threatened actually and subjectively believed a danger existed that required the use of the force applied; and (6) the beliefs of the person threatened were objectively reasonable. 720 ILCS 5/7-1 (West 2012); *Lee*, 213 Ill. 2d at 225, 821 N.E.2d at 311. If the State negates any one of the aforementioned elements, the

defendant's claim of self-defense fails. *Lee*, 213 Ill. 2d at 225, 821 N.E.2d at 311. Additionally, "[t]he right of self-defense does not justify a person in committing an act of retaliation or revenge [citation], nor does the right permit a person to pursue and inflict injury upon an initial aggressor after the aggressor abandons the altercation [citation]." *People v. Dillard*, 319 Ill. App. 3d 102, 106, 745 N.E.2d 185, 189 (2001).

¶ 30 In this case, defendant testified Johnson had the gun, and he tackled him to escape. The pair wrestled, and defendant ended up with the gun. Johnson broke free and began to "backpedal" toward the door with his hands down at his side. After he began to backpedal, the gun went off. Johnson was "[a] good three feet away" when the gun went off. He testified a gun was kept under the couch and in the closet next to the front door. In his recorded statement to Detective Roesch, defendant also stated he shot Johnson as he ran toward the door. In both versions, the wrestling was over and Johnson was not advancing toward defendant when defendant fired the gun. Moreover, no evidence existed Johnson was reaching for a gun when defendant shot him. Thus, even if the jury found defendant's versions of the incident more credible than Johnson's, the danger of harm was not imminent and defendant's use of force was unnecessary as defendant's versions indicate Johnson was retreating from the altercation. Since defendant's version of the incident did not meet the elements of self-defense, any alleged bolstering of Johnson's version by trial counsel's alleged errors during trial could not have impacted the outcome of defendant's trial. Additionally, any alleged improper evidence would also not have affected the outcome of the trial.

¶ 31 Regarding the trial counsel's posttrial errors in preserving the record and present the posttrial motions, defendant fails to assert one issue on appeal that he could not properly raise on appeal due to trial counsel's actions. He also fails to assert how the results of the posttrial

proceedings would have been different but for trial counsel's alleged errors. Thus, defendant has also failed to establish the prejudice prong of the *Strickland* test as to posttrial errors.

¶ 32 Accordingly, we find defendant has not established ineffective assistance of trial counsel.

¶ 33 B. Fines

¶ 34 Defendant also asserts (1) the $250 deoxyribonucleic acid (DNA) should be vacated because he was already registered in the database, (2) the $20 State Police Services fine was improperly imposed by the circuit clerk, and (3) he is entitled to a *per diem* credit under section 110-14(a) of the Code of Criminal Procedure of 1963 (Procedure Code) (725 ILCS 5/110-14(a) (West 2012)). The State concedes defendant's arguments.

¶ 35 However, in this case, the circuit court's sentencing orders are correct. The court entered two orders in addition to the sentencing judgment, which addressed fine, fees, credits, and other sentencing matters. Specifically, the court ordered defendant to comply with section 5-4-3(j) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-4-3(j) (West 2012)) and pay the associated $250 DNA fee *unless he had previously done so*. The court also ordered defendant to pay the $30 juvenile expungement fund assessment (730 ILCS 5/5-9-1.17 (West 2012)). Section 5-9-1.17(b) of the Unified Code (730 ILCS 5/5-9-1.17(b) (West 2012)) sets forth where the assessment proceeds should be distributed, and thus the $30 assessment is generally listed on a circuit clerk's printout as a $10 assessment for the Clerk Operations and Administrative Fund, a $10 assessment for the State's Attorney Office Fund (the $10 assessment for the State's Attorney is included in the $40 charge listed for the State's Attorney on the circuit clerk's printout), and *a $10 assessment for the State Police Services Fund* (see *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 134, 55 N.E.3d 117). Last, the court awarded defendant a $1425

credit toward his fines. Accordingly, the circuit court's sentencing orders were proper, and the errors raised by defendant occurred in the circuit clerk carrying out the circuit court's orders. These ministerial matters need to be addressed in the circuit court, and thus we remand the cause for it to do so.

¶ 36 III. CONCLUSION

¶ 37 For the reasons stated, we affirm the Champaign County circuit court's judgment but remand the cause for the circuit court to address defendant's fines and credit issues. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 38 Affirmed; cause remanded with directions.