2018 IL App (1st) 153153-U

No. 1-15-3153

Order filed November 8, 2018

Fourth Division

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

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. 14 CR 1304
	)	
HENRY RICHARDSON,	)	Honorable
	)	James Michael Obbish,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Justices Gordon and Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's responses to the trial court indicated his knowing waiver of his right to a jury trial. Defendant's convictions for being an armed habitual criminal and criminal trespass to a residence were supported by the evidence. The trial court could consider and reject his posttrial claims of ineffective assistance of counsel based on its knowledge of counsel's performance. The order assessing fines, fees and costs is modified.

¶ 2 Following a bench trial, defendant Henry Richardson was convicted of the offense of armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2012)) and of criminal trespass to a

residence (720 ILCS 5/19-4(a)(2) (West 2012)). The trial court sentenced defendant to concurrent terms of 12 years and 1 year in prison, respectively, for those offenses. On appeal, defendant contends: (1) his jury waiver was invalid because the trial court did not explain his right to a jury trial or ensure the voluntariness of his waiver; (2) his armed habitual criminal conviction should be reversed because the testimony of the police officers was contradicted by other evidence and contrary to human experience; (3) the evidence was insufficient to support his criminal trespass conviction because the State did not prove beyond a reasonable doubt that he entered a residence and that he knew or had reason to know others were present; (4) the trial court did not conduct a hearing as to his posttrial allegations of ineffectiveness of his trial counsel pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984); (5) the trial court improperly imposed four fines and fees against him; and (6) several other charges should be offset by his monetary credit for time spent in custody prior to sentencing. We affirm and modify the order assessing fines, fees and costs.

¶ 3 At trial, Chicago police officers Michael Minow, Alexander Mercado and Nicholas Nunez testified as to the events that preceded defendant's arrest on December 11, 2013. Minow testified that at about 1:30 p.m., he received a radio call regarding a "domestic disturbance with a gun" at 1849 South Lawndale Avenue in Chicago. He and Mercado went to that location, where Nunez and a fourth officer had arrived.

¶ 4 Minow and Mercado walked through a gangway toward the back of the house while Nunez and another officer went to the front door. Minow heard male and female voices shouting from the rear of the house. Minow testified that when he was about "halfway" to the rear door,

defendant came out of the house. Minow could see defendant's face and testified defendant wore a black sweatshirt, yellow "undershirt" and dark blue jeans. Defendant carried a blue duffel bag.

¶ 5 After seeing Minow, defendant fled through the gangway, and Minow ran after him. Minow testified that "[a]lmost immediately," defendant threw the duffel bag over a chain link fence into the backyard of a house three or four houses away from where Minow first saw him. Minow saw the duffel bag land on the ground. Minow radioed the other officers about the location of the bag, which was recovered by Nunez. Minow continued to pursue defendant, with Mercado following Minow. During the chase, defendant looked back several times to see if he was still being pursued. Minow did not know how far back Mercado was. The officers eventually lost sight of defendant and "continued to tour the area for several minutes." The officers recovered a black sweatshirt behind a house.

¶ 6 Five or ten minutes later, the officers received a radio call of a burglary in progress at 1861 South Millard Avenue by an individual who matched defendant's description. That location was about a half-block away from where Minow last saw defendant. When Minow arrived there, defendant had been detained by other officers. Minow testified defendant was wearing a yellow shirt and dark blue jeans.

¶ 7 On cross-examination, Minow stated that when he was approaching the back door at 1849 South Lawndale, he could see the rear door. Minow was asked about his police report which stated that he approached the door, heard people arguing and then saw defendant run out the door, and he denied that report was inconsistent with his testimony. Minow said he saw defendant's face after defendant exited the rear door, though he acknowledged that was not in his report. Minow was 10 to 15 feet away from defendant when he saw defendant run out of the rear

door and was 10 feet away when defendant tossed the duffel bag into the yard. Minow did not see defendant remove his sweatshirt.

¶ 8 Mercado testified that as he and Minow approached 1849 South Lawndale, several people could be heard screaming. As he and Minow walked down the gangway, defendant ran out of the house carrying a blue duffel bag. Mercado testified that "as soon as [defendant] took a look at us, we were coming up the gangway, and he took off running into the alley[.]" Mercado did not see defendant throw the duffel bag, but noticed, at some point during the chase, that it was not in defendant's hands. Like Minow, Mercado lost sight of defendant during the chase. Mercado responded to the emergency call at 1861 South Millard and took defendant into custody. Mercado identified defendant in court.

¶ 9 Nunez testified that he went to the front door of 1849 South Lawndale while Minow and Mercado went to the back. While at the front door, he heard Minow shout that a man was running out the back and described his clothing. Nunez ran to the back of the house and down the alley. Nunez retrieved a blue duffel bag from the backyard of 1841 South Lawndale. He opened the bag and found a loaded shotgun.

¶ 10 Nunez also responded to 1861 South Millard, where defendant was lying on the stairs with his hands apart. Defendant was wearing a yellow shirt. Nunez was shown photographs of 1861 South Millard and identified the area where defendant was arrested. Those photos were admitted into evidence, along with a photo taken of defendant wearing a yellow sweatshirt.

¶ 11 Josie Dallas-Adams testified that she lived at 1861 South Millard on December 11, 2013. She described that building as a "greystone" with two floors and a basement. The back entrance had a black security gate and a wooden door. Inside the door, about 10 steps led to the first floor,

and a second set of stairs led to the second floor where her daughter and son-in-law, Calvin Robins, lived.

¶ 12 At about 2:15 p.m., Dallas-Adams heard "someone bamming" on the back door. She thought it was Robins and started downstairs to open the door when she saw defendant standing inside at the bottom of the stairs. Dallas-Adams called out to Robins that there was a man in the house. Defendant told her, "they're after me, they're going to kill me" and that he "just need[ed] a place to come in." Robins came downstairs with a gun and told Dallas-Adams to go to the front of the house, call 911 and wait for police, who arrived shortly thereafter. On cross-examination, Dallas-Adams said defendant was standing near the stairs in an enclosed porch.

¶ 13 Robins testified he lived on the second floor at 1861 South Millard and was upstairs in the kitchen when he heard Dallas-Adams screaming. He ran down the stairs to see what was happening, and Dallas-Adams was "pointing down into the basement area." Robins saw defendant standing "at the bottom of the stairwell, by the door, inside of the house." Upon seeing defendant, Robins drew his weapon and "announced [his] office."[1] Robins told defendant to get down on the stairs with his hands in front of him, and he pointed the gun at defendant while Dallas-Adams left to call police. Neither Dallas-Adams nor Robins had given defendant permission to enter their residence.

¶ 14 The State entered into evidence certified copies of defendant's prior felony convictions: a 2003 residential burglary in case No. 03 CR 18042-01 and a 2007 unlawful use of a weapon by a felon in case No. 06 CR 25538. The State also entered into evidence a certification from the

[1] The record established that Robins worked as a security guard.

Illinois State Police that as of March 4, 2014, defendant had never been issued a firearm owner's identification card.

¶ 15 For the defense, Shaquila Wembley testified that at the time of these events, she lived at 1849 South Lawndale with defendant, who was her boyfriend. At about 2 p.m., she and defendant arrived home to find Wembley's sister and Jonathan Lee present. Defendant and Lee began arguing in loud voices. Defendant pushed Lee, and Lee placed defendant in a headlock. Wembley and her sister broke up the fight. Defendant ran towards the back of the residence, followed by Lee, who shouted at defendant that he would kill him. Wembley did not see either man run out the back door or see them with a blue duffel bag. She did not see defendant with a gun while he was inside the house. She testified defendant wore a "gold thermal" shirt and black jeans, and Lee wore a black hooded sweatshirt and blue jeans.

¶ 16 The defense entered into evidence photographs of the rear porch, stairway and gangway area behind 1849 South Lawndale. Defense counsel asked Wembley if "[s]tanding in front of your gangway" a person could see the back door, and Wembley responded they could not because the "gangway is too long" and the back porch was curved, so a person would have to "come down to come outside to the gangway." On cross-examination, Wembley was not sure if Lee wore a shirt underneath his sweatshirt. Wembley was shown the photograph of defendant at the time of his arrest, and she acknowledged that photograph was of defendant in the clothing he wore that day.

¶ 17 The trial court found defendant guilty of being an armed habitual criminal and criminal trespass to a residence. Noting that the case centered on the identification of defendant as the

person who was seen fleeing from 1849 South Lawndale, the court recounted the police officers' testimony in detail and found it to be credible and found Wembley incredible.

¶ 18 Defendant filed a motion for reconsideration of the trial court's verdict or, in the alternative, for a new trial. The motion asserted that the State failed to prove his guilt beyond a reasonable doubt, no physical evidence tied him to the weapon that was recovered, Wembley's testimony was worthy of belief, and defendant lacked the intent to trespass on the residence of another.

¶ 19 The trial court held a hearing on the motion at which defense counsel argued, among other things, that defendant was "being chased" and had no intent to trespass in 1861 South Millard Avenue. In denying defendant's motion, the trial court reviewed the elements of criminal trespass and noted the State did not have to show defendant entered the residence with the intent to commit a crime. The court found defendant "clearly in my mind knowingly entered into the residence of an individual, saw the person there, and certainly would have every reason to believe that somebody was there in that residence." The trial court also reviewed the officers' testimony and found it credible and partially corroborated by Wembley's account of defendant's flight from 1849 South Lawndale.

¶ 20 At sentencing, the trial court noted that in addition to the two prior convictions used as qualifying offenses for the offense of armed habitual criminal, defendant also had an additional prior conviction that involved a weapon. The court sentenced defendant to 12 years for the offense of armed habitual criminal and 1 year for criminal trespass, with those terms to run concurrently.

¶ 21 Defense counsel filed a motion for reconsideration of that sentence, and defendant filed a *pro se* motion for reduction of his sentence that included several claims of counsel's ineffectiveness. The trial court denied defendant's *pro se* motion, as well as trial counsel's motion.

¶ 22 On appeal, we first address defendant's argument that even though he signed a written waiver of his right to a jury trial, his oral waiver of that right was invalid because the trial court did not adequately explain the right to him or confirm the voluntariness of his waiver. He contends the court's inquiries were minimal and his responses reflected his lack of understanding of their exchange.

¶ 23 On the day this case was set for a bench trial, the following colloquy took place:

"THE COURT: Mr. Richardson, is this your signature on this document, indicating you want to waive your right to a trial by jury and submit your case to me for a bench trial?

DEFENDANT: Yes, your honor.

THE COURT: Do you know what a jury trial is, sir?

DEFENDANT: I believe so, your honor.

THE COURT: All right. Well, did you have any questions about what a jury is or what they do, or the fact that you're entitled to a jury trial? I'll answer your questions if you have any. Do you have any?

DEFENDANT: Not necessarily, your honor.

THE COURT: All right. Anybody force you, threaten you or promise you anything to get [you] to waive your right to trial by jury?

DEFENDANT: No, your honor.

THE COURT: You did it of your own free will?

DEFENDANT: Yes, your honor.

THE COURT: All right. Mr. Richardson, you may have a seat. Record will reflect I believe Mr. Richardson has knowingly and voluntarily exercised his right to a trial by jury in the presence of his counsel."

¶ 24 "The right to a trial by jury is a fundamental right guaranteed by our federal and state constitutions." *People v. Bracey*, 213 Ill. 2d 265, 269 (2004). While a defendant may waive that right, that waiver is only valid if it is knowingly and voluntarily made. *Id*.; see also 725 ILCS 5/103-6 (West 2012); *People v. Warnock*, 2013 IL App (2d) 120057, ¶ 7.

¶ 25 Defendant did not challenge his jury waiver in the trial court. If review of an issue is forfeited, the issue can only be considered by this court under a plain-error analysis. *People v. Thompson*, 238 Ill. 2d 598, 611 (2010). The doctrine of plain error allows a reviewing court to consider unpreserved error when a clear or obvious error occurred and either: (1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error; or (2) the error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). The validity of a defendant's jury waiver is reviewed under the second prong of the plain-error doctrine as affecting the defendant's substantial rights. *People v. Bannister*, 232 Ill. 2d 52, 65 (2008). However, to establish plain error, the defendant first must show that a clear or obvious error occurred. *People v. Hood*, 2016 IL 118581, ¶ 18.

¶ 26 Although defendant in this case executed a written jury waiver, as reflected in the above colloquy, the existence of a written waiver is not dispositive. See *Bannister*, 232 Ill. 2d at 66 (a written waiver "merely memorializes the defendant's decision, allowing a court to review the record to ascertain whether a defendant's jury waiver was made understandingly"). Still, a signed waiver, in light of other circumstances, can "lessen[] the probability that the waiver was not made knowingly." (Internal quotation marks omitted). *People v. Stokes*, 281 Ill. App. 3d 972, 978 (1996).

¶ 27 The trial court is required to ensure a defendant waives the right to a jury trial expressly and understandingly; however, the court is not required to provide a specific admonition, declaration or advice for a jury waiver to be effective. *Bannister*, 232 Ill. 2d at 66. Accordingly, whether a jury waiver is valid cannot be determined by the application of a precise formula but is dependent on the facts and circumstances of the particular case. *Id*. at 71. Those circumstances include the defendant's prior interactions with the criminal justice system. *People v. West*, 2017 IL App (1st) 143632, ¶ 13; *People v. Parker*, 2016 IL App (1st) 141597, ¶ 48. A defendant challenging his jury waiver bears the burden of establishing that the waiver was invalid. *People v. Gibson*, 304 Ill. App. 3d 923, 930 (1999).

¶ 28 The "crucial determination" is whether the defendant understood his case would be decided by a judge and not a jury. *People v. Reed*, 2016 IL App (1st) 140498, ¶ 7; see also *Bannister*, 232 Ill. 2d at 69. Here, the court began by asking defendant if that was his signature on the written jury waiver and stated that defendant's signature on that document indicated that he wanted to waive his right to a jury trial and "submit your case to me for a bench trial."

Defendant responded yes. The court then asked defendant if he knew what a jury trial was, and he responded, "I believe so, your honor."

¶ 29 Defendant contends his waiver was unknowing because the trial court's use of the phrase "jury trial" could have "any number of different meanings." He argues he has a limited education and asserts the court failed to tell him he was "constitutionally entitled" to a jury trial.

¶ 30 The colloquy quoted above reflects the court told defendant he was "entitled to a jury trial" and allowed defendant to ask questions about the process. Moreover, defendant's experience with the criminal justice system can be considered in determining the validity of his jury waiver. *West*, 2017 IL App (1st) 143632, ¶ 13; *Parker*, 2016 IL App (1st) 141597, ¶ 48; *Reed*, 2016 IL App (1st) 140498, ¶ 8. Defendant's presentence investigation report, which is contained in the record on appeal, shows that he completed ninth grade; more pertinent is its listing of defendant's nine prior criminal convictions dating back to 2003, two of which were felony convictions, as noted at defendant's trial to establish the offense of armed habitual criminal. Defendant was admonished of his right to a jury trial instead of a bench trial, was told he was entitled to a jury trial, was asked if he knew what a jury trial was and if he waived that right of his own free will. Based on those circumstances, along with defendant's signed jury waiver and his prior exposure to the criminal justice system, defendant has not met his burden of showing his jury waiver was invalid. Thus, we find no error, and accordingly, there can be no plain error. See *Hood*, 2016 IL 118581, ¶ 18.

¶ 31 Defendant next contends the evidence was insufficient to convict him of the offense of armed habitual criminal. Defendant challenges the credibility of the police officers' identification of him, asserting the testimony of Minow and Mercado was contradicted by the photographs of

the back door and gangway area, and he maintains their accounts were inconsistent with other testimony and "contrary to human experience."

¶ 32 When considering a challenge to a criminal conviction based on the sufficiency of the evidence, a reviewing court must determine whether, viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the required elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Bradford*, 2016 IL 118674, ¶ 12. As a reviewing court, we will not substitute our judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of the witnesses. *Bradford*, 2016 IL 118674, ¶ 12. On appeal from a criminal conviction, this court will not reverse the judgment of the trial court unless the evidence is so unreasonable, improbable or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt. *Id*.

¶ 33 To convict defendant of the offense of armed habitual criminal, the State was required to prove that defendant knowingly possessed a weapon after previously having been convicted of two or more offenses in the armed habitual criminal statute. 720 ILCS 5/24-1.7(a)(1)-(3) (West 2012). The State presented evidence of defendant's qualifying prior convictions for felony residential burglary, which is a forcible felony as defined in section 2-8 of the Criminal Code of 2012 (720 ILCS 5/2-8 (West 2012)) and unlawful use of a weapon by a felon, an offense enumerated in the armed habitual criminal statute. The offense of armed habitual criminal is a Class X felony. 720 ILCS 5/24-1.7(b) (West 2012).

¶ 34 Defendant does not dispute that the State established the elements of the offense of armed habitual criminal. Rather, he challenges the sufficiency of the evidence identifying him as the offender. The identification of an offender by a single witness is sufficient to sustain a conviction

if the witness viewed the accused under circumstances that permitted a positive identification, though we note that here, several people identified defendant as the offender. *People v. Branch*, 2018 IL App (1st) 150026, ¶ 25. When assessing identification testimony, this court applies the factors set out by the United States Supreme Court in *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972). *Branch*, 2018 IL App (1st) 150026, ¶ 25. Those factors are: (1) the opportunity that the witness had to view the offender at the time of the offense; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the offender; (4) the level of certainty demonstrated by the witness at the identification; and (5) the length of time between the crime and the identification. *Id.*

¶ 35 Because defendant largely challenges Minow's testimony, we apply the *Biggers* factors to Minow's account and find the majority of those factors favor the State. First, Minow had a good opportunity to view the offender. He testified that when he was about "halfway" down the gangway, defendant came out of the back door of 1849 South Lawndale. Minow was within 10 and 15 feet of defendant in daylight. Minow began to pursue defendant, which requires a degree of attention, thus supporting the second *Biggers* factor. Minow testified that he again saw defendant's face several times when defendant looked behind him while being pursued. During the chase, Minow was within 10 feet of defendant when the duffel bag was discarded and saw the bag land on the ground. Mercado corroborated that account, testifying that defendant "took a look at us" as he and Minow were "coming up the gangway."

¶ 36 Third, Minow's description of defendant was accurate. Minow said defendant wore dark blue jeans and a black sweatshirt over a yellow shirt. Defendant was detained at 1861 South Millard wearing a yellow shirt and dark blue jeans, and a black sweatshirt was recovered from a

yard between the spot where officers lost sight of him and the house where defendant was detained. The clothing that defendant wore when he was arrested was consistent with that described by Minow and other officers, as well as the victims, and was consistent with the photograph of defendant that was entered into evidence.

¶ 37 Fourth, the record does not establish any uncertainty in Minow's identification. Finally, the length of time between the crime and the identification also weighs in favor of the State. Minow testified they arrived at 1849 South Lawndale at about 1:30 p.m., and Dallas-Adams testified defendant first entered her house at about 2:15 p.m. Minow saw defendant when he was detained at 1861 South Millard within an hour of first seeing him.

¶ 38 Defendant asserts, however, that Minow could not have seen him go out the back door from his position in the gangway. Pointing to the photographs of 1849 South Lawndale entered into evidence, defendant argues a person standing in the narrow gangway between the house and the neighboring structure would not be able to see the back door of his house. He argues the accounts of Minow and the other officers were "contradicted and impossible." Defendant claims that a more plausible version of events is that they saw Lee run out of the house. He notes Wembley's account of a loud argument preceding the chase and her testimony that Lee wore a black hooded sweatshirt and pursued defendant after threatening to kill him. Defendant maintains that when he told Dallas-Adams that "[t]hey're after me, they're going to kill me," he was referring to Lee.

¶ 39 The trier of fact is not required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt. *People v. Faulkner*, 2017 IL App (1st) 132884, ¶ 35 (citing *People v. Siguenza-Brito*, 235 Ill. 2d 213, 229 (2009)). Minow

was cross-examined about his police report stating he saw defendant run out the rear door. Minow testified that he saw defendant's face after defendant came out the rear door, even though that was not stated in his report. The finder of fact is charged with deciding whether any flaws in testimony affect the credibility of the testimony as a whole. *People v. Gray*, 2017 IL 120958, ¶ 47. Even if minor contradictions exist within the testimony, this court is not required to reject the trial court's credibility determinations due to discrepancies in the evidence that do not create a reasonable doubt as to the defendant's guilt. See *People v. Barnes*, 2017 IL App (1st) 143902, ¶ 74; *People v. Larry*, 218 Ill. App. 3d 658, 666 (1991) (minor inconsistencies in testimony go to the weight to be given that testimony and do not render the testimony unworthy of belief). Moreover, the trier of fact may "accept or reject as much of the testimony as it wishes" and draw reasonable inferences therefrom. *People v. Soteras*, 295 Ill. App. 3d 610, 621 (1998). Contrary to defendant's argument, it was not necessary for the officers to see him run out of the back door for them to positively identify defendant as the person who they saw fleeing from them while carrying and then discarding the duffel bag.

¶ 40 Although Wembley testified Lee wore a black sweatshirt, that testimony must be considered together with the officers' accounts that defendant was initially seen wearing a black sweatshirt but was detained without that item of clothing and that a sweatshirt was recovered from the path of the chase. The fact that the officers did not see defendant discard a black sweatshirt is consistent with their testimony that they each lost sight of him briefly. Viewing the evidence in the light most favorable to the prosecution, it was sufficient for the trial court to have found that defendant was the person seen by the officers and thus, sustain his conviction for the offense of armed habitual criminal.

¶ 41 Defendant next contends his conviction for criminal trespass to a residence should be reversed because the State failed to prove beyond a reasonable doubt that he entered a residence or that he knew or had reason to know others were present. He argues that he entered the enclosed porch of a multi-family residence after knocking and did not know anyone was inside until Dallas-Adams appeared, and he contends he only remained inside because Robins was pointing a gun at him.

¶ 42 A person commits criminal trespass to a residence when, without authority: (1) he knowingly enters the residence of another and (2) he either knows or has reason to know one or more persons is present, or he remains in the residence after he knows or has reason to know one or more persons is present. 720 ILCS 5/19-4(a)(2) (West 2012). As defendant notes, that statute provides that in a "multi-unit residential building or complex," the "residence" includes "the portion of the building or complex which is the actual dwelling place of any person" and excludes "such places as common recreational areas or lobbies." 720 ILCS 5/19-4(a-5) (West 2012).

¶ 43 Referring to that definition, defendant argues 1861 South Millard is a "multi-family building"[2] and a "multi-unit home." He contends he did not enter a portion of the building that was an actual dwelling but only went into a place that was not part of the living area. He further maintains that if 1861 South Millard is not a "multi-unit residential building" under the statute, the State still did not establish that he entered a residence.

[2] In making that argument, defendant refers to a document from the office of the Cook County Assessor that he attached as an appendix to his brief. This court may not consider documents outside of the certified record on appeal. *Raines v. Illinois Bell Telephone Co.*, 2012 IL App (1st) 113679, ¶ 15; *Walczak v. Onyx Acceptance Corp.*, 365 Ill. App. 3d 664, 672 (2006) (documents that the appellate court may consider must be included in record and may not simply be made an appendix to a brief).

¶ 44 First, we find that 1861 South Millard is not a "multi-unit residential building or complex" as contemplated by section 19-4(a-5). That section refers to structures that have "common recreational areas or lobbies." 720 ILCS 5/19-4(a-5) (West 2012). The photographs in the record show that the house at 1861 South Millard did not have a common recreational area or lobby. Dallas-Adams testified that inside the back door were two flights of stairs; one set of stairs led to the first floor where she lived, and another set of stairs led to the second floor, where her daughter and Robins lived. Robins testified defendant was standing "at the bottom of the stairwell, by the door, inside of the house."

¶ 45 Secondly, the statute does not include a general definition of the term "residence." 720 ILCS 5/19-4 (West 2012). This court has found the term "residence" to be "a relatively permanent habitat." *In re A.C.*, 215 Ill. App. 3d 611, 614 (1991) (a detached garage was not a "residence"). Defendant argues he did not enter a "permanent habitat" but instead was in an area that was only used as a "passageway or for storage." He asserts the part of the building inside the back door was not used "for residential or living purposes."

¶ 46 Again, when considering a challenge to the sufficiency of the evidence, the evidence is viewed in the light most favorable to the State. See *Jackson*, 443 U.S. at 319; *Bradford*, 2016 IL 118674, ¶ 12. Although defendant did not enter the victims' individual living spaces, the photos and testimony establish that he entered the house itself. As mentioned, Robins testified defendant was standing "at the bottom of the stairwell, by the door, inside of the house." Photographs of the back entrance of 1861 South Millard where defendant was detained were entered into evidence. The evidence was sufficient for the trial court to have found that defendant entered a "residence" under this statute.

¶ 47 Defendant further contends the State did not prove he knew or had reason to know anyone was present or that he remained in 1861 South Millard once he learned others were present. Defendant argues he did not know anyone was there until Dallas-Adams went to the back of the building to find him at the bottom of the stairs, and he further asserts that once Robins appeared and pointed a gun at him, he had no choice but to remain inside the building.

¶ 48 To commit criminal trespass to a residence, the defendant must knowingly enter or remain within the residence without authority. 720 ILCS 5/19-4(a)(2) (West 2012). Dallas-Adams testified she heard someone pounding on the back door and when she started downstairs, defendant was standing inside at the bottom of the stairs, saying that someone was going to kill him. Defendant remained in the residence while Dallas-Adams shouted to Robins for help. Based on those facts, the trial court could find defendant remained in the residence after he learned someone was present. As such, the evidence was sufficient to prove defendant guilty of criminal trespass to a residence.

¶ 49 Defendant next argues the trial court did not conduct an adequate *Krankel i*nquiry into his posttrial *pro se* allegations of the ineffectiveness of his trial counsel. He contends the trial judge could not assess the factual basis of his claims because the court considered his assertions without him or his trial counsel present.

¶ 50 "The main objective of a *Krankel* inquiry is to "facilitate the trial court's full consideration of a defendant's *pro se* claim and thereby potentially limit issues on appeal." *People v. Ayres*, 2017 IL 120071, ¶ 13. When a defendant makes a posttrial claim of ineffective assistance of counsel, either orally or in writing, the trial court must address the claim to determine if independent counsel is needed. *People v. Patrick*, 2011 IL 111666, ¶ 39; *People v.*

Willis, 2016 IL App (1st) 142346, ¶ 17. The trial court must conduct an inquiry "sufficient to determine the factual basis of the claim." *People v. Banks*, 237 Ill. 2d 154, 213 (2010). The trial court may question the defendant's trial counsel about the facts and circumstances surrounding the defendant's allegations, or the court may discuss the allegations directly with the defendant. *People v. Jolly*, 2014 IL 117142, ¶ 30.

¶ 51 A third alternative is that the trial court may resolve the motion by evaluating the defendant's allegations of ineffective assistance of counsel based on the court's knowledge of defense counsel's performance at trial, as well as the "insufficiency of the defendant's allegations on their face." *Id*. (quoting and citing *People v. Moore*, 207 Ill. 2d 68, 78-79 (2003)). This court should remand for a full *Krankel* inquiry if it appears from the record that no inquiry was conducted and no consideration was given to the defendant's claim. *Moore*, 207 Ill. 2d at 79. Whether the trial court conducted an adequate preliminary inquiry is a question of law that is reviewed *de novo*. *Jolly*, 2014 IL 117142, ¶ 30.

¶ 52 Here, the record shows that the trial court properly resolved defendant's claims of ineffectiveness based on its knowledge of counsel's performance at trial and the insufficiency of defendant's allegations. Defendant's *pro se* motion sought a reduction in his sentence and included several claims of trial counsel's ineffectiveness. The trial court addressed defendant's *pro se* motion in open court. The report of proceedings indicates that an assistant State's attorney was present. The court began by stating:

> "I have reviewed the motion that has been filed here. What I am reviewing it for is not related to what it was entitled [*sic*], reduction of sentence, because that motion has already been heard and denied, and the defendant has filed a notice of appeal. What I am

> looking for is allegations of ineffective assistance of counsel that might cause the court to be obligated to conduct a *Krankel* hearing regarding those allegations."

¶ 53 The court noted defendant's first allegation of ineffectiveness was that defense counsel did not tell him "that going into a [Supreme Court Rule] 402 conference would incriminate him and that it would be looked upon as a plea of guilty." The court found that assertion was "belied by the record here" that showed a Rule 402 conference was held in March 2015 at defendant's request at which defendant "acknowledged in writing knowing what [such] a conference was as opposed to what he is alleging now which [] quite frankly isn't true."

¶ 54 The court went on to state:

> "I don't believe he would be entitled to a *Krankel* hearing on something that is not correct. He is saying his counsel didn't tell him things that his counsel would not have told him because if his attorney had said those things, it would be untrue that a conference is an incriminating action."

¶ 55 The court then described defendant's claim in the motion that counsel was ineffective for not filing defendant's *pro se* motion alleging the armed habitual criminal statute was unconstitutional. The trial court pointed out "that would not be ineffective assistance of counsel" because that statute has been found constitutional. The court also noted defendant's complaint that his attorney did not file a motion to suppress his identification by police officers. The court stated that defendant was arrested in a home after the residents called 911 to report his presence and that Robins used his weapon to detain defendant until police could arrive, concluding that it was "never a case of suppressing the identification surrounding [defendant's] arrest."

¶ 56 The court denied all of defendant's claims of ineffectiveness. The court pointed out that the "majority of the other arguments" in the motion were that rulings of the court went "against [defendant's] interests" and defendant was "not alleging that his attorney did not put certain matters before the court."

¶ 57 Defendant contends the trial court has a duty to "conduct an inquiry into the underlying factual bases" of his claims and the court rejected his arguments without him or his counsel present. As we have noted above, the court may base its evaluation of a defendant's posttrial claims of counsel's ineffectiveness on the court's own knowledge of counsel's performance at trial and on the insufficiency of the allegations on their face. See *Jolly*, 2014 IL 117142, ¶ 30 (quoting and citing *Moore*, 207 Ill. 2d at 78-79).

¶ 58 Citing *Moore*, defendant asserts that a consideration of the facts underlying the claims of ineffective counsel will almost always require the court to discuss the claims with the defendant. We note that in *Moore*, the trial court "conducted no inquiry of any sort." *Id*. at 79. This court has held that "some interchange between the court and the defendant's attorney must take place" in the court's evaluation of a defendant's claims. *People v. Jackson*, 131 Ill. App. 3d 128, 139 (1985). However, *Jackson* noted, that is not to say counsel need engage in a lengthy defense of his or her trial performance; rather, "counsel may simply answer questions and explain the facts and circumstances" surrounding the defendant's claims of ineffectiveness. *Id*.

¶ 59 We do not read *Moore* and *Jackson* to require the trial court to seek the defendant's input where, as here, the court is able to consider the sufficiency of the claims on their face based on the facts of the case before it. Indeed, subsequent to *Jackson*, this court has acknowledged that "[t]here may be cases where the allegations of the motion itself are so obviously baseless or

conjectural to the trial judge, who, having observed all of the proceedings, is in the best position to determine the question, that any further inquiry is unnecessary." *People v. Levy*, 186 Ill. App. 3d 842, 847 (1989). Here, the record indicates the court was fully aware of the relevant facts and described the factual and legal basis of each of defendant's claims, prior to rejecting them. Specifically, the court found defendant's claims were belied by the record or had no legal or factual merit. Accordingly, the trial court conducted a sufficient consideration of defendant's claims pursuant to *Krankel*.

¶ 60 Defendant's remaining contentions involve the imposition of fines and fees. Defendant challenges four charges that were assessed against him as part of his sentence and he contends his monetary credit for days spent in custody prior to sentencing can be applied to offset several other charges.

¶ 61 Although defendant did not challenge these charges in the trial court, he asserts he can raise the issue now because pursuant to *People v. Woodard*, 175 Ill. 2d 435, 444-48 (1993), the credit that a defendant may receive under section 110-14 cannot be forfeited by failing to seek it at the trial court level. The State agrees that the issue of presentence custody credit cannot be waived. Where the State does not argue defendant has forfeited these issues and proceeds to address them on their respective merits, the State has waived the defendant's forfeiture. See *People v. Bridgeforth*, 2017 IL App (1st) 143637, ¶ 46; *People v. Reed*, 2016 IL App (1st) 140498, ¶ 13. We therefore address the merits of defendant's claims. This court reviews the imposition of fines and fees *de novo*. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 68.

¶ 62 Defendant first argues that four fees were erroneously imposed in this case. We first address the $25 court services (sheriff) fee (55 ILCS 5/5-1103 (West 2012)). That statute states, in pertinent part:

> "A county board may enact by ordinance or resolution a court service fee dedicated to defraying court security expenses incurred by the sheriff in providing court services or for any other court services deemed necessary[.] *** In criminal, local ordinance, county ordinance, traffic and conservation cases, such fee shall be assessed against the defendant upon a plea of guilty, stipulation of facts or findings of guilty, resulting in a judgment of conviction, or order of supervision, or sentence of probation without entry of judgment pursuant to [sections of various enumerated statutes.]" 55 ILCS 5/5-1103 (West 2012).

¶ 63 Defendant argues that charge should not have been imposed in this case because the offenses underlying his convictions are not enumerated in the statute. This court has rejected defendant's interpretation of the statute, instead reading the statute to allow the fee either upon a judgment of conviction or upon an order of supervision or probation without entry of judgment made under the specific criminal provisions in the statute. *People v. Taylor*, 2016 IL App (1st) 141251, ¶ 32; *People v. Akins*, 2014 IL App (1st) 093418-B, ¶ 24. Because a judgment of conviction has been entered here, this charge was correctly imposed.

¶ 64 We agree with defendant that the other three charges he challenges should be vacated. He contends, and the State correctly agrees, he should not have been assessed a $20 probable cause hearing fee (55 ILCS 5/4-2002.1(a) (West 2012)) because he was charged by indictment and no such hearing was held. Therefore, that $20 charge is vacated.

¶ 65 In addition, defendant challenges the $250 State DNA analysis fee (730 ILCS 5/5-4-3(j) (West 2012)). A defendant is only required to submit a DNA sample and pay the fee if he is not currently registered in the DNA database. *People v. Marshall*, 242 Ill. 2d 285, 303 (2011). Here, defendant had prior felony convictions for which he would have had to submit a DNA sample. Accordingly, that $250 charge is vacated.

¶ 66 Defendant also asserts, and the State correctly concedes, that the $5 electronic citation fee was incorrectly imposed because it only applies to a defendant in "any traffic, misdemeanor, municipal ordinance or conservation case." 705 ILCS 105/27.3e (West 2012). The instant case does not meet any of those categories; thus, that $5 charge is vacated, putting the total amount of charges to be vacated at $275.

¶ 67 Defendant next contends several other charges imposed against him are fines subject to offset. A defendant is entitled to a credit of $5 for each day he is incarcerated, with that amount to be put toward the fines levied against him as part of his conviction. 725 ILCS 5/110-14(a) (West 2012). In this case, the trial court granted defendant credit for 621 days spent in custody. Thus, at $5 per day, defendant has accumulated $3105 worth of credit that potentially could be applied toward his eligible fines.

¶ 68 Before considering whether the individual charges challenged by defendant can be offset by his presentence custody credit, we note that credit can be applied only to fines, and we set out the difference between a "fee" and a "fine." A "fee" is defined as "a charge that seeks to recoup expenses incurred by the state or to compensate the state for some expenditure incurred in prosecuting the defendant." (Internal quotation marks omitted). *People v. Graves*, 235 Ill. 2d 244, 250 (2009), citing *People v. Jones*, 223 Ill. 2d 569, 582 (2006). In contrast, a "fine" is

"punitive in nature" and is "a pecuniary punishment imposed as a part of a sentence on a person convicted of a criminal offense." (Internal quotation marks omitted). *Graves*, 235 Ill. 2d at 250, citing *Jones*, 223 Ill. 2d at 581, quoting *People v. White*, 333 Ill. App. 3d 777, 781 (2002). The labeling of a charge as a "fee" or a "fine" by the legislature is not dispositive. *Graves*, 235 Ill. 2d at 250-51 ("the most important factor is whether the charge seeks to compensate the state for any costs incurred in prosecuting the defendant").

¶ 69 The State correctly concedes that two charges are fines to which defendant's presentence custody credit can be applied. This court has held the $50 Court System charge (55 ILCS 5/5-1101(c)(1) (West 2012)) is a fine. See *People v. Reed*, 2016 IL App (1st) 140498, ¶ 15; *People v. Blanchard*, 2015 IL App (1st) 132281, ¶ 22. This court held in *People v. Smith*, 2013 IL App (2d) 120691, ¶¶ 17-21, that charge was punitive because its amount depends on the degree of a defendant's offense. See also *Graves*, 235 Ill. 2d at 253 (costs assessed under section 5-1101 of the Counties Code are "monetary penalties to be paid by a defendant" upon a judgment of guilty).

¶ 70 Similarly, the State concedes the $15 State Police Operations charge (705 ILCS 105/27.3a-1.5 (West 2012)) is a fine subject to offset. See *People v. Jackson*, 2018 IL App (1st) 150487, ¶ 61; *People v. Brown*, 2017 IL App (1st) 150146, ¶ 74; *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 (that charge is a fine because it does not reimburse the State for costs incurred in the defendant's prosecution). Accordingly, defendant's presentence custody credit should be applied to offset those two charges totaling $65.

¶ 71 Defendant also contends the $25 court services (sheriff) fee (55 ILCS 5/5-1103 (West 2012)) is a fine because it does not reimburse the State for a cost incurred in his prosecution but

it instead "finances a component of the overall court system." However, this court has found the charge is not a monetary penalty and, thus, is not a fine subject to offset. *People v. Adair*, 406 Ill. App. 3d 133, 145 (2010).

¶ 72 Defendant argues that five additional charges are fines: the $190 felony complaint fee (705 ILCS 105/27.2a(w) (West 2012)); the $15 clerk automation fee (705 ILCS 105/27.3a(1), (1.5) (West 2012)); the $15 document storage fee (705 ILCS 27.3c(a) (West 2012)); the $2 State's Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2012)); and the $2 Public Defender records automation fee (55 ILCS 5/3-4012 (West 2012)).

¶ 73 The Illinois Supreme Court has granted leave to appeal in a case in which this court held those charges are fees not subject to offset by presentence custody credit. *People v. Clark*, 2017 IL App (1st) 150740-U, ¶¶ 21-23, *appeal allowed*, No. 122495 (Sept. 27, 2017). Numerous appellate court decisions have addressed these assessments and found them to be fees. *People v. Smith*, 2018 IL App (1st) 151402, ¶¶ 15-16 (felony complaint charge and clerk's automation and document storage charges, along with the State's Attorney and Public Defender automation fund assessments, are fees, not fines, because they "represent part of the costs incurred for prosecuting a defendant" and compensate departments for expenses incurred while prosecuting and defending cases). See also *Brown*, 2017 IL App (1st) 150146, ¶ 38 (collecting cases); *People v. Larue*, 2014 IL App (4th) 120595, ¶¶ 62-68 (felony complaint filing, clerk's automation and document storage charges are fees); *Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65 (finding "no reason to distinguish" between the State's Attorney and Public Defender automation fund charges and concluding they are fees that reimburse those offices for expenses); *contra People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56 (the State's Attorney and Public Defender

assessments are fines because they do not compensate the State for any costs associated in prosecuting a particular defendant). We follow *Clark*, *Smith* and the other cases that have found the felony complaint charge, the clerk's automation and document storage charges, and the State's Attorney and Public Defender assessments are fees not subject to offset by a defendant's presentence custody credit.

¶ 74 In conclusion, the preliminary examination fee, the State DNA analysis fee and the electronic citation fee were erroneously imposed in this case and are vacated. The $50 court system charge and $15 State Police Operations assessment are fines that should be offset by defendant's presentence custody credit. The clerk of the circuit court is ordered to modify the fines and fees order accordingly. The judgment of the trial court is affirmed in all other respects.

¶ 75 Affirmed; fines, fees and costs order modified.