2018 IL App (1st) 153212-U
Order filed: September 21, 2018

FIRST DISTRICT
Fifth Division

No. 1-15-3212

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 13060
	)	
	)	Honorable
DAVID KING,	)	Neera Walsh and
	)	Angela M. Petrone,
Defendant-Appellant.	)	Judges Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Reyes and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held*: We affirmed defendant's conviction for possession of a controlled substance, finding that the trial court did not err in denying his motion to quash his arrest and suppress evidence, nor did the court erroneously apply a presumption of truth to the officer's testimony or place the burden of proof on defendant at trial. We modified the fines, fees, and costs order.

¶ 2 Following a bench trial, the trial court convicted defendant-appellant, David King, of possession of 15 grams or more but less than 100 grams of a substance containing cocaine and sentenced him to nine years' imprisonment and imposed fines and fees in the amount of $2550. On appeal, defendant contends: (1) the trial court erred by denying his motion to quash arrest and suppress evidence; (2) the trial court erroneously applied a presumption of truth to the police

officer's testimony at trial; (3) the trial court erroneously placed the burden of proof on defendant at trial; and (4) the fines and fees order must be corrected to properly apply his pre-sentence credit. We affirm defendant's conviction and modify the fines, fees, and costs order.[1]

¶ 3 I. The Motion to Quash Arrest and Suppress Evidence

¶ 4 Defendant filed a motion to quash arrest and suppress evidence, arguing that the officers arrested him on June 19, 2012, without a valid arrest warrant and without any probable cause that he had committed or was about to commit a crime. Defendant asked that any evidence discovered as a result of the unlawful arrest be suppressed.

¶ 5 At the hearing on the motion, Officer Roman Zawada testified that, at about 12:30 p.m. on June 19, 2012, he was on patrol wearing his police uniform and driving in an unmarked car with his partner. They drove to 6955 South May Street in Chicago, an area known for drug and gang activity, where they saw defendant less than a half a block away, crossing the street "in a northwesterly manner." Defendant looked in the officers' direction, and then changed his direction, walked around two parked cars, and headed west.

¶ 6 Officer Zawada noticed that defendant was "grasping his pocket" while he walked. Officer Zawada, in his vehicle, made eye contact with defendant and then "closed the distance" and drove parallel to him. Defendant fled to the porch of a nearby residence at 6946 South May Street, about 10 feet from the officers, and unsuccessfully attempted to open the door, which was locked.

¶ 7 Defendant began banging on the door and window. Officer Zawada, who was still in the vehicle, asked defendant whether he lived there. Defendant ignored the officer and banged

[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

louder and faster on the window and door. Officer Zawada opened his car door, at which point defendant leaped off the porch, over a railing, and into the adjacent yard.

¶ 8 Officer Zawada ran up the stairs to the porch, and jumped over the railing. Defendant ran, and Officer Zawada pursued him and announced his office. As the officer chased defendant, he saw defendant "remove a white item from his person" and toss it onto a roof at 6938 South May Street. Defendant fled east to a vacant lot at 6955 South May Street, where Officer Zawada arrested him.

¶ 9 Officer Zawada left defendant with his partner and returned to 6938 South May Street to recover the item that defendant had tossed on the roof. The officer stepped on a garbage can and used a broom to knock the item off the roof. About one minute had passed between the time Officer Zawada had arrested defendant and the time he recovered the item from the roof. Officer Zawada held onto the item because he suspected that it contained narcotics.

¶ 10 Following the testimony of Officer Zawada, the trial court denied defendant's motion to quash the arrest and suppress the evidence. The trial court stated:

> "I believe that the officer testified credibly that he had a reasonable articulable suspicion that he saw this defendant on the street. He saw him look in his direction. He saw this defendant knocking on this door. He was not able to get [in]. He saw this defendant look in his direction and then leap off of a porch as he put it and run. And that at some point he saw him toss an object onto a roof in which he later recovered and he found that to be suspect narcotic based on what he testified here today. Based on these reasons, I believe that the officer did have a reason to stop this defendant."

¶ 11 II. The Trial

¶ 12 At trial, Officer Zawada testified consistently with his testimony at the motion to suppress, except that he testified he was in plain clothes, not in uniform, on June 19, 2012. Officer Zawada testified to the events leading to his chase of defendant, and that during the chase, he saw defendant "remove a white baseball-sized item" from his front waistband area and toss it onto the roof at 6938 South May Street. About three minutes after arresting defendant, the officer returned to 6938 South May Street and recovered from the roof "one clear, knotted bag containing a white powdery substance, suspect crack cocaine." This was the same item he had seen defendant throw on the roof.

¶ 13 On cross-examination, Officer Zawada testified that prior to defendant jumping over the railing, the officer had not asked defendant to stop.

¶ 14 The parties stipulated that Paula Boscozlszum, a forensic chemist at the Illinois State Police Crime Lab, would testify that the item recovered from the roof tested positive for cocaine and weighed 59.2 grams. A proper chain of custody was maintained at all times.

¶ 15 After the State rested, defendant called Leche Doyle as a witness. Mr. Doyle testified that he was house-sitting at 6945 South May Street on June 19, 2012. At about 12:36 p.m. on that day, Mr. Doyle went outside and saw defendant exit his car and go to his grandmother's house, which was directly across the street. Defendant began knocking on the window in order to be let inside. About two or three minutes later, four marked police cars arrived near defendant's grandmother's house. The officers exited their police vehicles and walked toward defendant, who fled. Mr. Doyle explained: "In that area you just run. You *** don't stay around police long."

¶ 16 Defendant jumped over the banister and went westbound toward the back of the house, with the police in pursuit. Mr. Doyle described the chase as follows:

> "He ran around the side of the house next door, which is that lot. *** Then he came up in between *** the gangway of another house there, and he came through the gate, crossed the street and ran past me on my side of the house and went to the alley. After that *** that's when they caught him."

¶ 17 Mr. Doyle did not see anything in defendant's hand and did not see him toss anything away.

¶ 18 The police handcuffed defendant and placed him in a squad car, then began to search the area. They searched the lot next to defendant's grandmother's house for 45 minutes to an hour, but Mr. Doyle did not know whether they recovered anything in the search. Mr. Doyle never saw the police go up onto the roof at 6938 South May Street and never saw the police recover anything from the roof.

¶ 19 On cross-examination, Mr. Doyle testified that he was not under the influence of drugs or alcohol on the day of the incident. He saw four police cars converge on defendant, two coming from a southern direction and two coming from a northern direction. Two officers chased defendant up the stairs to his grandmother's house, while the other two officers remained standing in the middle of the street. Defendant jumped from the stairs and ran away from the police.

¶ 20 Mr. Doyle testified that about a week after the incident, defendant asked him to be a defense witness and he agreed. The first time that Mr. Doyle spoke with defendant's attorney was about two years prior to trial. The attorney told Mr. Doyle that the police would contact him, but they never did so. Mr. Doyle never talked to the police about this incident, and never informed them that he did not see defendant throw anything onto the roof. Mr. Doyle explained

that he never went to the police to tell them what he had seen, because "[a]round there, you don't say nothing. You live, you see it, you don't see it, you leave it alone."

¶ 21 Following all the evidence, the trial court delivered the following findings and conclusions regarding Officer Zawada's credibility:

> "I listened to the witnesses testify. I listened to Officer Zawada and I did find Officer Zawada to be credible. I observed his demeanor. He wasn't exaggerating in any way. He remembered this very well. He had a lot of details about the defendant. He knew what the house looked like. The defendant was knocking violently, loud and fast. The defendant was holding his side. The defendant fled from him. The defendant jumped over the railing of a porch. Now, there's no reason for a grown man to knock violently to get into his grandma's house after he looks at police except to get away from the police. So there's no reason for a grown man to jump over the rail of a porch and go, lead police on a foot chase through a gangway, an alley in back of his grandmother's house unless there's something that he's trying to hide from the police.
>
> That gives credence and credibility to Officer Zawada that the defendant threw something up on the roof of that house. When Officer Zawada said that he took a garbage can and a broom to get that off, that proves that, indicates to me that the item was close to the edge of the roof which corroborates with if the defendant tossed it up there. I do agree with the defense that if it took 45 to 50 minutes to find the object that would be reasonable doubt. I don't believe that happened."

¶ 22 The trial court made the following findings regarding Mr. Doyle's credibility:

> "The defense witness Doyle said that he stood out there and watched this whole thing until the time that he saw the police take the defendant into their squad car, yet he

never saw any drugs recovered, ever. So that means that these drugs came out of nowhere. Or that the officer somehow had them and put them on the defendant because he watched the whole thing from start to finish until the time the defendant was arrested and never saw drugs recovered. That doesn't make any sense to me because this is a large amount of drugs which was described as a softball-sized bag. Fifty-some grams. Yet the witness who watched everything and never saw the drugs recovered from anywhere. That makes the story not sensible to me.

Something else stands out. With all this going on, where is the grandma? If the defendant was visiting her and he never showed up and the police are out there, two squads running from one direction, two careening from another direction, all this noise, all the hullabaloo, who for 45, 50 minutes where is the grandma while all this is going on that the defendant was supposed to be visiting. And the defendant's unexplained flight is circumstantial evidence or consciousness of guilt. I don't accept the fact that a grown man minding his own business merely visiting [his] grandmother, completely innocent activity, would lead police on the type of chase that the defendant did unless he had something to hide and that was completely corroborated by the witness Doyle. So *** those are the reasons there is a finding of guilty."

¶ 23 The trial court sentenced defendant to nine years' imprisonment and imposed fines and fees in the amount of $2550. Defendant filed this appeal.

¶ 24 III. The Appeal

¶ 25 First, defendant contends that the trial court erred by denying his motion to quash his arrest and suppress the bag of cocaine recovered from the roof of 6938 South May Street. On review of the trial court's ruling on a motion to quash arrest and suppress evidence, we will not

reverse the court's factual findings unless they are against the manifest weight of the evidence. *In re Maurice J.*, 2018 IL App (1st) 172123, ¶ 17. We review the trial court's ultimate ruling on whether to grant or deny the motion *de novo*. *Id*. When conducting this analysis, the reviewing court may consider the evidence presented at trial in addition to the evidence presented at the suppression hearing. *In re O.S.*, 2018 IL App (1st) 171765, ¶ 20.

¶ 26 Under the fourth amendment and the Illinois Constitution of 1970, persons have the right to be free from unreasonable searches and seizures. *Id.* ¶ 18; U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. "The 'essential purpose' of the fourth amendment is to impose a standard of reasonableness upon the exercise of discretion by law enforcement officers to safeguard the privacy and security of individuals against arbitrary invasions." *People v. McDonough*, 239 Ill. 2d 260, 266 (2010).

¶ 27 For fourth amendment purposes, a person has been seized when his freedom of movement has been restrained by means of physical force or show of authority. *In re O.S.*, 2018 IL App (1st) 171765, ¶ 22. Relevant factors to consider when determining whether defendant was seized include: (1) the threatening presence of multiple officers; (2) the officer's display of a weapon; (3) some physical touching of defendant's person; and (4) the use of language or tone of voice indicating that compliance might be compelled. *Id*. ¶ 23.

¶ 28 However, not every interaction between police officers and private citizens results in a seizure that violates the fourth amendment. *Id.* ¶ 21. There are three tiers of police-citizen encounters that do not constitute an unreasonable seizure. *People v. Gherna*, 203 Ill. 2d 165, 176 (2003). The first tier involves the arrest of a citizen, which must be supported by probable cause. *Id*. Probable cause exists when the facts and circumstances known by the arresting officer are sufficient to warrant a reasonable person to believe that defendant has committed an offense. *Id*.

The second tier involves a brief, investigatory stop of a citizen pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968), when the officer has a reasonable, articulable suspicion of criminal activity, and such suspicion is more than a mere hunch. *Gherna*, 203 Ill. 2d at 177. The third tier of police-citizen encounters involves those encounters that are consensual and, as they involve no coercion or detention, do not implicate the fourth amendment. *Id.*

¶ 29 Defendant argues on appeal that Officer Zawada attempted to effectuate a *Terry* stop when he exited his vehicle and ran after defendant, who had fled from his grandmother's porch. Defendant contends that the attempted *Terry* stop was unjustified as the officer had no reasonable, articulable suspicion that defendant had committed, or was about to commit a crime, where the officer only saw him walking in a high crime area, glancing back at the officer, holding the pocket of his shorts, and knocking loudly on the door of a house. See *People v. Shipp*, 2015 IL App (2d) 130587, ¶ 35 (holding that an individual's presence in a high crime area, is not in and of itself sufficient to support a reasonable, articulable suspicion that he is committing a crime). Defendant argues that these "scant facts" known to Officer Zawada provided only a "hunch" of criminal activity, making the attempted *Terry* stop unjustified at its inception, and necessitating the suppression of the packet of cocaine subsequently recovered by the officer after defendant threw it onto a nearby roof.

¶ 30 Initially, we note that defendant forfeited review of this issue where his motion to suppress only argued that the officers lacked probable cause to arrest him, and did not argue that they lacked a reasonable, articulable suspicion to make a *Terry* stop. See *People v. Coleman*, 129 Ill. 2d 321, 340 (1989).

¶ 31 Even choosing to address the issue on the merits, we find no cause for reversal. We begin our analysis by examining the main case defendant cites in support of his argument,

People v. Moore, 286 Ill. App. 3d 649 (1997). In *Moore*, Officer Ruben Bautista testified that, on July 18, 1995, he was assigned to the gang crime unit and was wearing a State police T-shirt with a badge on his left chest, a web gear belt with a badge and radios, and a State police baseball cap. *Id*. at 650. Officer Bautista arrived at a tavern frequented by gang members and at which many narcotic activities and shootings had occurred. *Id.* Officer Bautista saw the defendant standing approximately 75 to 100 feet away, next to a van, parked in front of the tavern entrance; the defendant was talking to someone sitting inside the van, and they appeared to be exchanging money. *Id*. at 650-51. Because of the distance and lack of light, Officer Bautista was unable to determine whether the exchange he saw was part of an illegal transaction. *Id*. at 651.

¶ 32 Officer Bautista walked toward the van. *Id*. When the defendant saw the officer approaching, he began to walk away. *Id*. Officer Bautista announced his office, and the defendant walked more quickly away. *Id*. Officer Bautista began to chase the defendant, who started running and turned into an alleyway. *Id*. The defendant was eventually tackled by another officer, who performed a pat-down search of the defendant and recovered a plastic bag of cocaine from his person. *Id*.

¶ 33 The trial court granted the defendant's motion to suppress the bag of cocaine, finding that the officers had no reasonable, articulable suspicion that the defendant was involved in a crime prior to the chase, and that by running away from the officers, the defendant committed no crime that would have justified his search and seizure. *Id*. On appeal, the State conceded that Officer Bautista did not have sufficient articulable facts to justify a *Terry* stop at the time he approached the defendant, but the State argued that the defendant's subsequent flight from the scene constituted obstruction or resistance of an officer under section 31-1(a) of the Criminal Code of

1961 (Code) (720 ILCS 5/31-1(a) (West 1994)), that justified the seizure after they caught up to him. *Id*. at 653. The appellate court disagreed with the State holding that, when a police officer approaches a person to make a *Terry* stop without sufficient articulable facts warranting the stop, his actions are not justified at the inception and, therefore, the person who runs away is not resisting or obstructing an officer. *Id*. at 654. The appellate court affirmed the trial court's suppression order. *Id*. at 654-55.

¶ 34 In the present case, defendant argues that, similar to *Moore*, Officer Zawada had no reasonable, articulable suspicion that defendant was involved in a crime prior to the chase, that defendant committed no crime by running away from the officer and, therefore, that his seizure was unreasonable under the fourth amendment and the proper remedy was to exclude the package of cocaine recovered as a result of the officer's unlawful conduct.

¶ 35 We disagree. In *Moore*, the State tried to justify the seizure by arguing that the defendant resisted or obstructed the police officer under section 31-1(a) of the Code by running away; here, the State's argument is not that defendant obstructed or resisted Officer Zawada under section 31-1(a) of the Code when he ran from him but, rather, that defendant's tossing of the suspect narcotics on the roof at 6938 South May Street, coupled with his earlier evasive actions in a neighborhood known for drug and gang activity, provided the requisite suspicion justifying the *Terry* stop of defendant following the chase.

¶ 36 *People v. Thomas*, 198 Ill. 2d 103 (2001), is instructive. In *Thomas*, the defendant rode his bicycle past Officer Melton, who noticed that the defendant was holding a police scanner allowing him to monitor police radio transmissions. *Id*. at 106. Officer Melton had previously arrested the defendant for drug offenses and he had heard of a confidential informant's tip that the defendant was using his bicycle to deliver illegal drugs. *Id*. Based on this knowledge and the

defendant's possession of a police scanner, Officer Melton drove after the defendant to speak with him "about his activities." *Id*. Officer Melton also radioed Officer Burtnett and informed him about his intent to stop the defendant. *Id*.

¶ 37 Officer Melton drove past the defendant and positioned his squad car across the defendant's path. *Id*. The defendant then turned into an alleyway, and departed at "an accelerated pace." *Id*. Meanwhile, Officer Burtnett pursued the defendant down the alley, pulled his squad car alongside, lowered his window, and directed the defendant to stop. *Id*. at 107. The defendant asked Officer Burtnett what he wanted, and then changed direction and accelerated. *Id*.

¶ 38 Officers Melton and Burtnett gave chase. *Id*. The defendant eventually abandoned his bicycle and ran into a field, where Officer Melton arrested him for obstructing a police officer. *Id*. Officer Melton conducted a pat-down search and recovered from the defendant's pants pocket what appeared to be three rocks of crack cocaine. *Id*.

¶ 39 The defendant moved to suppress the purported cocaine, arguing that Officer Melton made the investigatory stop without the requisite degree of suspicion to support it. *Id*. at 110. The trial court granted the defendant's motion to suppress. *Id*. at 107. The appellate court reversed the trial court's suppression order, holding that the "defendant's flight corrected Officer Melton's ungrounded suspicion, upon which he based his initial, unwarranted attempt to stop defendant." *Id*. at 107-08. The defendant appealed to the supreme court. *Id*. at 106.

¶ 40 The supreme court held that Officer Melton lacked the requisite reasonable, articulable suspicion of criminal activity under *Terry* when he initially effected the investigatory stop via a roadblock (*id*. at 110) and that had the defendant submitted to the officer's show of authority, an unconstitutional seizure would have occurred, necessitating the suppression of the subsequently-

recovered cocaine. *Id*. at 112. However, the defendant was not seized by Officer Melton's attempted roadblock because he refused to halt and instead fled. *Id*. The defendant was seized only when physical force was applied after he was caught. *Id*.

¶ 41 Our supreme court further agreed with the following analysis by the appellate court:

> " 'We choose to examine Officer Melton's basis for a seizure of the defendant's person at that point in time when he was successful in effecting it. By that time, Officer Melton's ungrounded suspicion had ripened into suspicion that fully warranted an investigatory stop. The defendant's history, his possession of a police scanner, and the informant's tip was information that grew more credible with each evasive turn that the defendant took in his effort to outrun two squad cars. The defendant's desire to avoid an encounter with the police was so great that he was willing to place the public's safety, as well as his own safety, at risk. He was even willing to abandon his bicycle and police scanner in the hope of escaping. The defendant's response to Officer Melton's unsuccessful effort escalated into headlong flight, a consummate act of evasion. It credited other information that Officer Melton possessed and gave rise to an articulable suspicion that criminal activity was afoot. Therefore, the defendant's ultimate stop and detention was legal and proper.' " *Id*. at 113-14 (quoting *People v. Thomas*, 315 Ill. App. 3d 849, 858 (2000)).

¶ 42 Accordingly, our supreme court affirmed the appellate court judgment which reversed the trial court's suppression order. *Id*. at 115.

¶ 43 In accordance with *Thomas*, we must examine the basis for Officer Zawada's seizure of defendant at the point in time when he was successful in effecting it. Accordingly, we consider when the seizure occurred. Defendant argues that the seizure occurred when Officer Zawada

pulled up to his grandmother's house and opened his car door to effectuate a *Terry* stop. However, at that point in time, Officer Zawada was about 10 feet from defendant, had not touched defendant nor told him to stop, and there was no evidence that his language or tone of voice when talking to defendant indicated that compliance might be compelled. Defendant's freedom of movement had not been restrained by means of physical force or show of authority when the officer drove near defendant's grandmother's house and opened the car door, and thus no seizure had yet occurred. *In re O.S.*, 2018 IL App (1st) 171765, ¶¶ 22-23.

¶ 44 Nor did a seizure occur when Officer Zawada exited his vehicle and began running after defendant while announcing his office, as defendant did not slow down or submit to the officer's show of authority. *Thomas*, 198 Ill. 2d at 112 (holding that a person must submit to a show of authority before that show of authority can constitute a seizure). The seizure also did not occur when defendant threw the suspect narcotics onto the roof at 6938 South May Street, as he was still fleeing from the officer and had not submitted to his show of authority. *Id*. The seizure only occurred subsequent thereto, at the conclusion of the chase, when Officer Zawada physically detained defendant.

¶ 45 At the point in time when Officer Zawada physically detained defendant, he knew the following facts: that defendant had been seen in a neighborhood known for the presence of narcotics and gangs; he was grabbing at his pocket; he had eyed the officers in their car and walked in a different direction; he ran to the porch of a nearby house when the officers started to drive near him; he pounded loudly and quickly on the door and window of the house in order to be let inside, while ignoring the officer's question regarding whether he lived there; he fled from the porch and refused to slow down after the officer announced his office; and during the chase he removed a white baseball-sized item (suspect narcotics) from his waistband and threw it onto

a nearby roof at 6938 South May Street. The totality of these circumstances known to Officer Zawada was such that he had a reasonable, articulable suspicion that defendant was involved in illegal narcotics activity and, thus, that he had sufficient reason to stop and detain defendant under *Terry*. When the suspect narcotics were recovered from the roof at 6938 South May Street about one minute later, the officers had probable cause to arrest defendant. We find no fourth amendment violation.

¶ 46 Defendant argues, though, that his flight should not be considered when determining whether the officers had justification for a *Terry* stop, because the officers were in plain clothes and in an unmarked vehicle and, thus, he did not know that they were police. Defendant argues that *Thomas* and other cases in which a defendant's flight has been considered all involved uniformed police officers and, thus, the defendants in those cases knew they were running from the police. See *e.g.*, *Illinois v. Wardlow*, 528 U.S. 19 (2000).

¶ 47 Initially, we note that, while Officer Zawada testified at trial that he was in plain clothes, he testified at the suppression hearing that he was in uniform and that he announced his office. Even crediting Officer Zawada's trial testimony that he was in plain clothes while in the unmarked car, and thus that defendant arguably did not know he and his partner were police officers when they got out and chased him, the officer still had a reasonable, articulable suspicion to effectuate a *Terry* stop where defendant was seen throwing suspect narcotics onto the roof at 6938 South May Street after having earlier been viewed grasping his pocket and walking furtively in the neighborhood which was known for narcotics activity. No fourth amendment violation occurred here, and accordingly we affirm the order denying defendant's motion to suppress.

¶ 48 Next, defendant argues that he was denied due process of law when, in rendering a verdict in favor of the State, the trial court exhibited a pro-police bias by presuming that the testimony of Officer Zawada was truthful and failing to conduct a proper credibility test. See *People v. McDaniels*, 144 Ill. App. 3d 459, 462 (1986) (defendant is denied due process and a fair trial when the trial court is not unbiased and open-minded and instead exhibits favoritism to the State).

¶ 49 The State argues that defendant forfeited review by failing to object to the trial court's alleged demonstration of pro-police bias when rendering its verdict. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Defendant counters that the issue was not forfeited because the application of the forfeiture rule is "less rigid where the basis for the objection is the trial judge's conduct." *People v. Nevitt*, 135 Ill. 2d 423, 455 (1990). Our supreme court has explained the genesis of the relaxation of the forfeiture rule when the basis for the objection is the trial judge's conduct:

> "The making of an objection to questions or comments by a judge poses a practical problem for the trial lawyer. It can prove embarrassing to the lawyer, but, more importantly, assuming that most juries view most judges with some degree of respect, and accord to them a knowledge of law somewhat superior to that of the attorneys practicing before the judge, the lawyer who objects to a comment or question by the judge may find himself viewed with considerable suspicion and skepticism by the very group whom he is trying to convert to his client's view of the facts, thereby perhaps irreparably damaging his client's interests." *People v. Sprinkle*, 27 Ill. 2d 398, 400-01 (1963).

¶ 50 The present case involved a bench trial, not a jury trial, and therefore the rationale for relaxing the forfeiture rule did not apply here.

¶ 51 We note that our supreme court has occasionally applied *Sprinkle* and relaxed the forfeiture rule in cases where no jury was present. See *People v. McLaurin*, 235 Ill. 2d 478, 487 (2009) (citing cases). However, our supreme court has been reluctant to extend the *Sprinkle* doctrine beyond a narrow set of extraordinary circumstances, explaining:

> "We stress, however, that trial counsel has an obligation to raise contemporaneous objections and to properly preserve those objections for review. Failure to raise claims of error before the trial court denies the court the opportunity to correct the error immediately and grant a new trial if one is warranted, wasting time and judicial resources. [Citation.] This failure can be excused only under extraordinary circumstances, such as when a trial judge makes inappropriate remarks to a jury [citation] or relies on social commentary, rather than evidence, in sentencing a defendant to death [citation]. That we have seldom applied *Sprinkle* to noncapital cases further underscores the importance of uniform application of the forfeiture rule except in the most compelling of situations." *Id*. at 488.

¶ 52 Defendant points to no such extraordinary circumstance warranting relaxation of the forfeiture rule here.

¶ 53 Further, even choosing to address the issue of the trial court's alleged pro-police bias on the merits, we find no reversible error. Sitting as the trier of fact, the trial court's duty was to weigh the evidence and determine the credibility of the witnesses. We give great deference to the trial court's credibility determinations and will not substitute our judgment for that of the trial

court because it was in the best position to evaluate the conduct and demeanor of the witnesses. *People v. Bryant*, 241 Ill. App. 3d 1007, 1017 (1993).

¶ 54 In the present case, review of the trial court's comments when convicting defendant shows that the court found Officer Zawada to be credible based on his demeanor when testifying, as well as on his detailed recollection of the events leading to defendant's arrest and the subsequent recovery of the drugs from the edge of the roof. There is no indication anywhere in the court's comments that it had prejudged Officer Zawada's credibility prior to his taking the stand, or that the court presumed that the testimony of Officer Zawada was truthful simply because he was a police officer.

¶ 55 Defendant argues, though, that we should disbelieve the testimony of Officer Zawada, and reverse for a new trial, because he gave so-called "dropsy" testimony. "A 'dropsy case' is one in which a police officer, to avoid the exclusion of evidence on fourth-amendment grounds, falsely testifies that the defendant dropped the narcotics in plain view (as opposed to the officer's discovering the narcotics in an illegal search)." *People v. Ash*, 346 Ill. App. 3d 809, 816 (2004) (citing G. Chin & S. Wells, *The 'Blue Wall of Silence' as Evidence of Bias and Motive to Lie: A New Approach to Police Perjury*, 59 U. Pitt. L. Rev. 233, 248-49 (1998)).

¶ 56 Defendant cites in support reports, studies, and articles discussing "dropsy cases" and police perjury; however, none of this evidence was raised in the trial court and may not be considered for the first time on appeal. *People v. Brown*, 249 Ill. App. 3d 986, 994 (1993).

¶ 57 Further, even if officers in other cases have given false "dropsy" testimony, it does not follow that the testimony of Officer Zawada here was similarly untruthful (and we note that defendant cites no evidence of Officer Zawada having ever been accused or found to have given such untruthful testimony). See *Ash*, 346 Ill. App. 3d at 818 (rejecting defendant's argument that

because of the plenitude of dropsy cases, the testimony of *all* officers, even those who have never been accused of giving false testimony, is automatically suspect and must be corroborated).

¶ 58 Defendant also contends that the court disbelieved Mr. Doyle's testimony solely because it conflicted with the testimony of Officer Zawada, and that we should reverse and remand for a new trial in which the court evaluates Mr. Doyle's credibility more fairly. Defendant's contention is without merit. The trial court here specifically found, from observing Officer Zawada's demeanor at trial and his detailed recollection of defendant's arrest and the recovery of the drugs from the nearby roof, that he was a credible witness and that his account of defendant throwing the contraband onto the roof was truthful. The court also observed Mr. Doyle, who, unlike Officer Zawada, gave conflicting testimony, first testifying on direct examination that he saw officers walk up the stairs of the grandmother's house, after which defendant ran, and then testifying on cross-examination that the officers chased defendant up the stairs of the house. In discussing Mr. Doyle's lack of credibility, the trial court asked "where is the grandma" during all the "hullaballoo" testified to by him, *i.e.*, where was defendant's grandmother when according to Mr. Doyle, four police cars pulled up near defendant at her house, and two of the officers chased him up the stairs of her house and then searched the area for 45 to 50 minutes. The trial court found Mr. Doyle to be an unbelievable witness and discounted his testimony that conflicted with Officer Zawada, including his testimony of never seeing defendant throw the contraband away. We find no cause on this record to substitute our judgment for the trial court's credibility determinations.

¶ 59 Defendant argues that the trial court's comment "where is the grandma" indicates that instead of holding the State to its burden of proving his guilt beyond a reasonable doubt, it

shifted the burden of proof to defendant to prove his innocence by calling his grandmother as a witness on his behalf. See *People v. Cameron*, 2012 IL App (3d) 110020, ¶ 27 (the State bears the burden of proving beyond a reasonable doubt all the elements of the charged offense, and the burden remains on the State throughout the trial and never shifts to defendant).

¶ 60 Defendant forfeited review by failing to object to the court's comment regarding "where is the grandma." *Enoch*, 122 Ill. 2d at 186. Defendant again argues for relaxation of the forfeiture rule because the basis for the objection is the trial court's conduct but, as discussed, the argument is not well-taken because the present case involved a bench trial, not a jury trial, and there were no extraordinary circumstances warranting relaxation of the forfeiture rule. See *McLaurin*, 235 Ill. 2d at 488.

¶ 61 Even choosing to address the issue on the merits, though, we would still affirm. *Cameron*, 2012 IL App (3d) 110020, is instructive. In *Cameron*, the defendant was charged with unlawful possession of firearm ammunition by a felon and theft of a driver's license. *Id*. ¶ 16. The defendant testified that he did not know how the victim's stolen driver's license ended up in the vehicle he was driving, and that he was not the only person who drove the car; two friends, "Bone" and "Kenny Mac," also drove the car. *Id*. ¶ 11. The defendant also testified that a bag containing bullets, found in the car, belonged to his cousin. *Id*. ¶ 13. In convicting the defendant, the trial court stated, in pertinent part:

> "At the very least, it's up to [defendant] to demonstrate that the—that this luggage belongs to somebody other than him;" "This maybe could have been rebutted had—had Mr. Bone and Mr. K Mac come into Court and said—testified that, yeah, I was responsible for it;" "There's no corroboration that [the bullets] belonged to this cousin

> who could have been here [and] it's up to [defendant] *** to come forward with some evidence to corroborate what he said." *Id*. ¶ 16.

¶ 62 On appeal, the defendant argued that the trial court's comments indicated that it had shifted the burden of proof to him at the bench trial. *Id*. ¶ 24. After reviewing the record, the appellate court found that it did not contain "strong, affirmative proof" that the trial court erroneously diluted the State's burden of proof or shifted the burden of proof to defendant. *Id*. ¶ 29. The appellate court found that "[t]he trial court's comments about defendant's testimony and about evidence or witnesses that were not presented merely indicate that the trial court thoroughly considered and tested the defendant's theories and credibility in deciding this case" and did not support a claim that the trial court erroneously shifted the burden to the defendant. *Id*.

¶ 63 Similar to *Cameron*, the record here does not contain strong, affirmative proof that the trial court shifted the burden of proof to defendant by stating "where is the grandma." The trial court referenced the grandmother's absence when considering and testing Mr. Doyle's testimony that multiple officers had chased the defendant up the stairs of her house and subsequently searched the lot next to her house for 45 minutes to one hour (as opposed to the testimony of Officer Zawada, that one officer entered her porch, and that the search took about three minutes). The court found that Mr. Doyle's testimony could not be sustained where the grandmother never appeared outside of her house in response to all the lengthy police action allegedly occurring there. As in *Cameron*, the trial court's comment about the grandmother's absence was indicative of the trial court's thorough consideration and testing of Mr. Doyle's testimony and did not support a claim that the court erroneously shifted the burden of proof to defendant.

¶ 64 Next, defendant argues that his fines, fees, and costs order must be corrected to apply his *per diem* pre-sentence credit to two assessments that are denominated "fees" but are actually fines.

¶ 65 Pursuant to section 110-14 of the Code (725 ILCS 5/110-14 (West 2016)), defendant is entitled to have a credit applied against his fines of $5 for each day he spent in presentence custody. The credit under section 110-14 can only be applied to fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 580 (2006). Our supreme court has defined a "fine" as "punitive in nature" and "a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense." (Internal quotation marks omitted.) *People v. Graves*, 235 Ill. 2d 244, 250 (2009) (quoting *Jones*, 223 Ill. 2d at 581). A "fee" is "a charge that 'seeks to recoup expenses incurred by the [S]tate,' or to compensate the [S]tate for some expenditure incurred in prosecuting the defendant." *Id*. (quoting *Jones*, 223 Ill. 2d at 582). Even if a statute labels a charge as a "fee," it may still be considered to be a "fine." *People v. Smith*, 2018 IL App (1st) 151402, ¶ 13.

¶ 66 First, defendant contends, and the State correctly concedes, that the $50 court system fee is actually a fine that should be offset by presentence credit. See *People v. Reed*, 2016 IL App (1st) 140498, ¶ 15 (court system fee is a fine). We direct the clerk of the circuit court to correct the fines, fees, and costs order to reflect this credit.

¶ 67 Next, defendant contends that the $190 felony complaint filing fee is actually a fine subject to presentence incarceration credit. This court has already considered a challenge to this assessment and found that it is a fee, not a fine, and thus is not subject to offsetting presentence credit. See *Smith*, 2018 IL App (1st) 151402, ¶ 15.

¶ 68 Finally, defendant filed a supplemental brief arguing that his mittimus should be amended to reflect the 210 days he spent in presentence custody. The State responded that the

mittimus correctly reflects the number of days for which defendant is entitled to presentence incarceration credit. In his reply brief, defendant concedes that the calculation on the mittimus is correct. Accordingly, we need not address the issue.

¶ 69 Fines, fees, and costs order modified; judgment of the circuit court is affirmed in all other respects.