2018 IL App (1st) 160171-U

No. 1-16-0171

Order filed December 14, 2018

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 17653
	)	
NAHSHON WILLIAMS,	)	Honorable
	)	Maura Slattery Boyle,
Defendant-Appellant.	)	Judge, Presiding.
	)	
	)	

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Rochford and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: Trial counsel was not ineffective for failing to file a motion *in limine* or object to evidence. Defendant failed to properly preserve his claims of prejudicial closing argument by the State or judicial bias; they do not rise to the level of plain error and are forfeited. The fines and fees order is corrected to reflect vacation of the Electronic Citation Fee, the Court System Fee, and the Trauma Fund Fee, as well as $115 of $5–per–day presentence custody credit toward the imposed fines.

¶ 2 Following a jury trial, defendant Nahshon Williams[1] was convicted of being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2012)) and sentenced to seven years' imprisonment. On appeal, defendant contends that: (1) he was denied effective assistance of counsel when counsel failed to challenge the admission of a mask he allegedly dropped during a police chase; (2) the State's closing argument prejudiced him and was plain error when it improperly argued that he was going to use the mask and gun to commit another crime; (3) the trial court's improper comments and conduct towards defense counsel denied him a fair trial; and (4) certain fines and fees were improperly assessed and should be vacated. For the following reasons, we affirm and correct the fines and fees order.

¶ 3 BACKGROUND

¶ 4 Defendant was initially charged with being an armed habitual criminal and multiple counts of unlawful use of a weapon (UUW) by a felon and aggravated UUW. The State subsequently nol prossed the UUW counts and proceeded to trial on the armed habitual criminal charge.

¶ 5 The following facts adduced at trial are not in dispute.

¶ 6 At trial, Chicago Police Officers David Carey, Nick Kakos and Detective Robert Vahl all testified that they were on patrol in an unmarked squad car on August 5, 2013, at approximately 7:21 p.m. near 5324 South Aberdeen Street. Officer Kakos was driving, Officer Carey was in the front passenger seat and Detective Vahl was in the back passenger seat. Officer Carey saw defendant standing next to a parked car in a vacant lot at that location, facing the officers, and the

[1] The record on appeal and most trial documents list defendant's name spelled as "Nashon." However, the notice of appeal, completed by defendant, lists his name spelled as "Nahshon;" we will use this spelling.

car's front passenger door was open. Officer Carey estimated that defendant was approximately 35 feet away when he first saw him. Both Officer Carey and Detective Vahl recognized defendant from previous encounters and saw him remove a large black object from his waistband and put it in the car's front passenger area. After putting the object in the car, defendant shut the door and ran southbound. Both officers thought the object might be a gun. They told Officer Kakos to stop the car, and they exited to pursue defendant.

¶ 7 Officer Carey ran directly behind defendant while Detective Vahl ran parallel to them. Officer Kakos drove to a nearby alley and waited. Officer Carey saw defendant hop a fence and before hopping a second fence into another vacant lot approximately 10 feet away, defendant dropped a black cloth face mask. Defendant continued running east back towards Aberdeen Street and ran into Detective Vahl. Defendant was subsequently handcuffed, Officer Kakos returned in the squad car and defendant was placed in the back seat.

¶ 8 After defendant was placed in the squad car, Detective Vahl went to assist Officer Carey, and Officer Kakos also left the squad car. Officer Kakos subsequently turned back to the squad car and saw that defendant was no longer in the back seat. He next saw defendant running towards 53rd and May Streets.

¶ 9 Meanwhile, Officer Carey recovered the black cloth face mask from where defendant dropped it and went to the car where he initially saw defendant. There he saw the handle of a gun sticking out under the front passenger seat and he recovered the gun, which was a loaded 9-millimeter XT Springfield with an extended clip. Officer Carey testified that approximately two minutes passed from when he first saw defendant place the object in the car and when he retrieved it.

¶ 10 While Officer Carey disarmed the gun, Officer Kakos told him that defendant fled the squad car. The officers unsuccessfully attempted to locate defendant on May Street and at his home. The officers sent out a police system investigative alert but did not obtain an arrest warrant for defendant. They also continued to look for defendant over the next several days but did not locate him.

¶ 11 At the police station, Officer Carey inventoried the mask and gun and submitted the gun to the crime lab for fingerprint testing. He also ran a report on the car and learned that it did not belong to defendant. People's Exhibit 1 was identified as the gun; People's Exhibits 2 and 3 were a photograph and aerial map of the vacant lot at 5324 South Aberdeen; and People's Exhibit 4 was the mask.

¶ 12 During defense counsel's cross and re-cross examinations of Officer Carey, the trial court stopped the questioning two times. The first time, the court requested that defense counsel's questions "follow the expectations of the court" in the presence of the jury. The second time, which happened after an exchange between the attorneys over an objection, the court removed the jury and advised all attorneys to maintain proper conduct in the courtroom. The trial court specifically asked that defense counsel remain respectful when questioning witnesses.

¶ 13 The parties stipulated that the gun, magazine, and ammunition were tested for fingerprints, but the recovered partial ridge print was insufficient for a positive match to defendant. The parties also stipulated that defendant had two prior qualifying felony convictions to satisfy an element of the armed habitual criminal charge. The trial court admitted the State's four exhibits into evidence and the State rested. Defense counsel's motion for directed finding was denied. The defense rested without presenting any evidence or witnesses.

¶ 14 The State argued in closing that defendant's possession of the mask was linked to a possible future crime and when the officers encountered him that evening they prevented defendant from committing that crime. The State also said that Officer Carey and Detective Vahl separately testified that they saw defendant place what they thought was a gun in a car and two minutes later Officer Carey retrieved a gun from that car. The State lastly argued that it only needed to prove that defendant had a gun that night to convict him of the armed habitual criminal charge and gave an explanation of the difference between actual and constructive possession in regards to an armed habitual criminal charge.

¶ 15 The defense argued in closing that the police officers' collective testimonies were not credible. During defense counsel's closing argument, the trial court sustained several objections to statements regarding discrepancies within the contents of the officers' police reports. In sustaining the objections, the court stated that the reports were not relevant as part of the evidence.

¶ 16 The jury convicted defendant of being an armed habitual criminal. Defendant filed a motion for a new trial, contending that the trial court had been prejudiced against him and denied him a fair trial, which was denied. Defendant was subsequently sentenced to seven years' imprisonment. This appeal followed.

¶ 17 ANALYSIS

¶ 18 On appeal, defendant contends that: (1) he was denied the effective assistance of counsel when defense counsel failed to challenge the admission of a mask he allegedly dropped when officers encountered him and when counsel failed to object to the State's closing arguments about the mask; (2) the State's closing argument prejudiced him and was plain error when it

improperly argued that he was going to use the gun and mask to commit another crime; (3) the trial court's improper comments and conduct towards defense counsel during the trial and closing arguments denied him a fair trial; and (4) certain fines and fees were improperly assessed and should be vacated.

¶ 19 A. Ineffective Assistance of Counsel

¶ 20 Defendant first contends that various errors by his trial counsel denied him effective assistance of counsel, including: (1) the failure to seek a motion *in limine* to exclude the mask as evidence; (2) the failure to object to the State's introduction of the mask at trial; and (3) the failure to object to the State's closing arguments which suggested the mask was evidence of a future potential crime.

¶ 21 In determining whether a defendant was denied the effective assistance of counsel, this court applies the two-prong test of *Strickland v. Washington*, 466 U.S. 668, 694 (1984), as adopted by our supreme court in *People v. Albanese*, 104 Ill. 2d 504, 526 (1984). To prevail on an ineffective assistance of counsel claim, a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defendant. *Strickland*, 466 U.S. at 687, *People v. Gabriel*, 398 Ill. App. 3d 332, 346 (2010). More specifically, the defendant must demonstrate that his counsel's performance was objectively unreasonable under prevailing professional norms and that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694, *Gabriel*, 398 Ill. App. 3d at 346. The failure to satisfy either prong of the *Strickland* test precludes a finding of ineffective assistance of counsel. *Gabriel*, 398 Ill. App. 3d at 346.

¶ 22 The right to effective assistance of counsel refers to competent, not perfect representation, and mistakes in trial strategy or tactics in judgment do not, in themselves, equate to incompetent representation. *People v. Fuller*, 205 Ill. 2d 308, 331 (2002). Rather, a defendant must show that counsel's deficient performance rendered the result of the trial unreliable or the proceeding fundamentally unfair. *People v. Griffin*, 178 Ill. 2d 65, 74 (1999). If the ineffective assistance claim can be disposed of on the ground that the defendant did not suffer prejudice, a court need not decide whether counsel's performance was constitutionally deficient. *Griffin*, 178 Ill. 2d at 74.

¶ 23 Defendant first contends that trial counsel was ineffective for failing to file a motion *in limine*. A party may file a motion *in limine* to obtain an order before trial excluding inadmissible evidence (*People v. Ebert*, 401 Ill. App. 3d 958, 960 (2010)) or to exclude references to such evidence because its admissibility violates a rule of evidence (*People v. Smith*, 248 Ill. App. 3d 351, 357 (1993)). The decision whether to file a pretrial motion is considered trial strategy, and trial counsel enjoys a strong presumption that failure to file such a motion was proper. *People v. Morrison*, 2013 IL App (1st) 111251, ¶ 116. To overcome this presumption, a defendant must demonstrate that the motion had a reasonable probability of success and the outcome of the trial would have been different if the evidence at issue had been suppressed. *People v. Patterson*, 217 Ill. 2d 407, 438 (2005). The failure to file a futile motion is not ineffectiveness of counsel. *People v. Haynie*, 347 Ill. App. 3d 650, 654 (2004).

¶ 24 Here, defendant contends that trial counsel was ineffective for failing to file a motion *in limine* to exclude the mask because it was irrelevant. A trial court has discretion in granting a motion *in limine*. *People v. Owen*, 299 Ill. App. 3d 818, 823 (1998). Additionally, a trial court

has discretion to choose not to entertain a motion *in limine*. *Owen*, 299 Ill. App. 3d at 823. Defendant has not established that filing the motion would have been successful; the trial court could have used its discretion to deny the motion. Moreover, even if we conclude that counsel should have filed the motion to exclude based on relevancy, the trial court has discretion to determine whether evidence is relevant and admissible, and its ruling will not be reversed absent a clear abuse of discretion resulting in manifest prejudice to defendant. *People v. Lynn*, 388 Ill. App. 3d 272, 280 (2009). Defendant cannot reasonably argue that he was manifestly prejudiced by the admission of the mask as evidence because the State presented sufficient evidence to convict defendant of being an armed habitual criminal.

¶ 25 To convict defendant, the State needed to show that defendant received, sold, possessed or transferred any firearm after being convicted two or more times of unlawful use of a weapon by a felon. 720 ILCS 5/24-1.7 (West 2012). In this case, evidence presented at trial showed that officers saw defendant remove a gun from his waistband and place it inside the front passenger area of a car in a vacant lot at 5324 South Aberdeen Street. The officers subsequently recovered the gun. Additionally, the parties stipulated to defendant's two prior, qualifying felony convictions. Defendant was bound by that stipulation, because stipulations are binding on the parties (*People v. Calvert*, 326 Ill. App. 3d 414, 419 (2001)), and the State was only required to prove beyond a reasonable doubt that defendant possessed a gun (*People v. Newton*, 2018 IL 122958, ¶ 25). As such, the admission of the mask had no effect on defendant's conviction of being an armed habitual criminal and defendant was not prejudiced by its admission.

¶ 26 Since we conclude that defendant was not prejudiced by the admission of the mask, we need not decide whether counsel's performance was so deficient that it affected the outcome of trial. *Gabriel*, 398 Ill. App. 3d at 346.

¶ 27 We reach the same result with respect to defendant's claim that trial counsel was ineffective for failing to object to irrelevant testimony and arguments regarding the mask at trial. Trial counsel's decision to object to testimony is generally a matter of trial strategy that is entitled to great deference and does not amount to ineffective assistance. *People v. Smith*, 2012 IL App (1st) 102354, ¶ 71. During closing arguments, the prosecutor may comment on the evidence and on any fair and reasonable inference the evidence may yield, even if it reflects negatively on defendant. *People v. Perry*, 224 Ill. 2d 312, 347 (2007). A reviewing court will find reversible error only if defendant shows that the improper remarks were so prejudicial that real justice was denied or that the verdict resulted from error. *Perry*, 224 Ill. 2d at 347.

¶ 28 Defendant cannot reasonably argue that defense counsel's failure to object to testimony or closing arguments concerning the mask denied him real justice or resulted in an erroneous verdict. We have already concluded that defendant was not prejudiced by counsel's failure to file a motion to exclude the mask because the evidence was sufficient to find defendant guilty of being an armed habitual criminal. It follows then that defense counsel was not ineffective for failing to object to testimony and closing arguments regarding the mask because defendant suffered no prejudice.

¶ 29 B. Prosecutor's Improper Closing / Judicial Bias

¶ 30 Defendant next contends that the prosecutor improperly stated during closing argument that he planned to use the mask to commit a future, more dangerous crime and made improper

references to evidence that he fled from police. Additionally, defendant contends that the trial court denied him a fair trial by displaying strong antagonism against defense counsel, commenting on the credibility of the State's witnesses, and allowing the State to heavily interrupt defense counsel's closing arguments.

¶ 31 Defendant acknowledges that he did not properly preserve these issues for review, but nevertheless contends that they constitute plain error.

¶ 32 The plain-error doctrine bypasses standard forfeiture principles and allows a reviewing court to consider unpreserved error when either (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence. *People v. Hudson*, 228 Ill. 2d 181, 191 (2008). A defendant raising a plain error argument bears the burden of persuasion for both prongs of the plain-error analysis. *People v. Lewis*, 234 Ill. 2d 32, 43 (2009). If the defendant fails to meet this burden, the issue is forfeited and the reviewing court will honor the procedural default. *People v. Ahlers*, 402 Ill. App. 3d 726, 734 (2010). The first step of plain-error review is to determine whether any error occurred. *Lewis*, 234 Ill. 2d at 43.

¶ 33 We first determine whether there was any error during the comments made by the State during its closing. Prosecutors are afforded wide latitude in closing argument. *People v. Wheeler* 226 Ill. 2d 92, 123 (2007). In reviewing comments made at closing arguments, this court asks whether a guilty verdict resulted from them. *Wheeler*, 226 Ill. 2d at 123. Misconduct in closing argument is substantial and warrants reversal and a new trial if the improper remarks constituted a material factor in defendant's conviction. *Wheeler*, 226 Ill. 2d at 123 (citing *People v. Linscott*, 142 Ill. 2d 22, 28 (1991)). If the jury could have reached a contrary verdict had the improper

remarks not been made, or the reviewing court cannot say that the prosecutor's improper remarks did not contribute to the defendant's conviction, a new trial should be granted. *Wheeler*, 226 Ill. 2d at 123 (citing *Linscott*, 142 Ill. 2d at 28).

¶ 34 Defendant contends that the State improperly argued that he planned to use the mask to commit a future, more dangerous crime and also made improper references to evidence that he fled from the police officers. After a review of the State's closing argument in its entirety, we find that the complained of remarks, while a negative reflection on defendant, did not constitute a material factor in defendant's conviction. As stated previously, the State presented sufficient evidence to support defendant's conviction, and we find that the State's remarks during closing did not materially contribute to his conviction. Thus, we conclude that there was no plain error (See *People v. Johnson*, 208 Ill. 2d 53, 64 (2003)); defendant's claim of improper closing argument by the State is forfeited and we will honor the procedural default (*Ahlers*, 402 Ill. App. 3d at 734).

¶ 35 Although defendant's claim of judicial bias was raised in his motion for a new trial, he failed to individually object at trial to the trial court's comments, and this failure would prohibit our review of this issue on appeal. *People v. Sprinkle*, 27 Ill. 2d 398, 399 (1963). However, as noted in *Sprinkle*, judicial misconduct could form the basis for relaxation of the forfeiture rules. *People v. Lopez*, 2012 IL App (1st) 101395, ¶ 60. Relaxation of the forfeiture rules in such cases will be applied only in extraordinary circumstances, such as when a judge makes inappropriate remarks to a jury, and the forfeiture rule must be applied uniformly because failure to raise a claim properly denies the trial court the opportunity to correct an error or grant a new trial, thus wasting time and judicial resources. *People v. Thompson*, 238 Ill. 2d 598, 612 (2010). Thus, we

must first determine whether the complained-of judicial conduct was error. *Lewis*, 234 Ill. 2d at 43.

¶ 36 A trial judge may not insert opinions or comments that reflect prejudice against or towards a party. *Lopez*, 2012 IL App (1st) 101395, ¶ 57. A trial judge's hostile attitude toward defense counsel or remarks that defense counsel presented his case in an improper manner may also be prejudicial and erroneous. *Lopez*, 2012 IL App (1st) 101395, ¶ 57. The reviewing court must evaluate whether a trial judge's comments had an effect on the jury in light of the trial evidence, the context in which they were made and the circumstances surrounding the trial. *Lopez*, 2012 IL App (1st) 101395, ¶ 57.

¶ 37 Defendant's assertions of trial court antagonism and hostility towards the defense fall into the following categories: (1) pretrial (improper increase of bail and threat of *Batson* challenge); (2) during trial (reprimands, denial of sidebar and comments during impeachment questioning); and (3) during closing arguments (improper comments on the evidence).

¶ 38 We turn our attention first to the trial court's increase of defendant's bail. The trial court is responsible for setting and modifying bail. *People v. Campa*, 217 Ill. 2d 243, 264 (2005). Section 5/110-6(a) of the Illinois Criminal Code (Criminal Code) (725 ILCS 5/110-6(a) (West 2014)) allows a trial court on its own motion to increase or reduce the amount of bail or to alter the conditions of the bail.[2] Defendant previously requested bail review but the record does not reflect that his request was ever considered. At the final pretrial hearing, the court noted that based on an earlier discussion with the attorneys (that does not appear on the record), it was going to *sua sponte* review defendant's bail and raised it from $40,000 to $125,000. In doing so,

[2] 725 ILCS 5/110-6 was amended on January 1, 2018, but this amendment does not affect the section applicable to this case.

the trial court explained that it reviewed defendant's bail and found that while the original amount was appropriate for the lesser UUW and aggravated UUW counts, it was inappropriate for the Class X felony of armed habitual criminal because when [the court] previously served in bond court, bonds for Class X felonies started at $125,000. Defendant fails to show that the trial court's *sua sponte* decision to increase his bail, which is allowable under the Criminal Code, was error, and thus we decline to review this issue under plain-error.

¶ 39 Next we examine defendant's claim that the trial court threatened him with a *Batson* challenge which also showed hostility towards defense counsel and tainted the proceedings. A trial court has standing to raise a *Batson* preemptory challenge issue against a party *sua sponte* in certain circumstances. *People v. Davis*, 231 Ill. 2d 349, 365 (2008). However, the trial court in this case never raised a *Batson* challenge against defendant as shown by the record.

¶ 40 During the juror challenge portion of *voir dire*, the trial court noted that defense counsel used his peremptory challenges to strike white women from the jury. A discussion was then held off the record. At the end of the first day of trial, outside of the jury's presence, the trial court clarified as follows:

> "[I]f you want to inject error, I suggest I have acted completely in compliance with the law. I never called out a Batson on you. I called out what you were doing on record and said based on the next round, I would have to determine whether or not there would be one as you excused six white women * * *."

¶ 41 Defendant fails to show how the trial court's comments were error and our review of the record shows none. See *People v. Edwards*, 74 Ill.2 d 1, 7 (1978) (where the record is insufficient or does not demonstrate the alleged error, the reviewing court must refrain from supposition and decide accordingly). As such, we decline to review this issue under plain-error.

¶ 42 Defendant next complains of the trial court's conduct during trial. Specifically, he contends that the trial court showed hostility and irritation towards defense counsel during trial when it reprimanded him several times in front of the jury, denied counsel's request for a sidebar and removed the jury after an exchange between the State and defense counsel.

¶ 43 A trial judge is the court's governor and must maintain decorum and proper procedure of the proceedings. *People v. Moss*, 205 Ill. 2d 139, 192 (2001). Remarks that belittle or demonstrate hostility to defense counsel may prevent defendant from receiving a fair trial. *People v. Barnes*, 2017 IL App (1st) 143902, ¶ 60. However, a judge displaying irritation with an attorney's behavior is not necessarily evidence of prejudice against defendant or his counsel. *People v. Urdiales*, 225 Ill. 2d 354, 426 (2007). When a trial court properly exercises its role to control the trial and makes its comments with a valid basis, the conduct does not prove specific prejudice against defense counsel requiring reversal. *Barnes*, 2017 IL App (1st) 143902, ¶ 70.

¶ 44 Here, we find that the complained-of conduct of the trial court was aimed at maintaining decorum and proper procedure during the trial. The trial court admonished defense counsel several times regarding questioning it found to be improper comments on the testimony during direct examination, and then outside the presence of the jury, told defense counsel that it found his conduct to be disrespectful and admonished both counsels that once it makes a ruling, there would be no debate between the attorneys.

¶ 45 Finally, defendant contends that the trial court improperly restricted his closing arguments when it sustained the State's objections to part of his argument. The State objected to statements regarding the content of the officers' various police reports, and he maintains that the court's actions limited the presentation of his case to the jury and improperly commented on the credibility of the State's witnesses.

¶ 46 Defense counsel does not have the right to make closing statements that go beyond the evidence presented, the inferences that can be made, or to misstate the law. *People v. Woolely*, 178 Ill. 2d 175, 209 (1997). The trial court has the discretion to bar comments made during closing argument that are speculative. *People v. Maldonado*, 402 Ill. App. 3d 411, 429 (2010). A trial court limiting improper closing arguments will not be reversible error unless the limitation is a material factor in the defendant's conviction or causes substantial prejudice to the defendant. *People v. Jimerson*, 404 Ill. App. 3d 621, 633 (2010).

¶ 47 The record reveals that the trial court sustained the State's objections as to the relevancy of defense counsel's statements about the discrepancies in the police reports and argued facts that were not part of the evidence. The trial court told the jury to disregard defense counsel's statements as irrelevant and outside the presented trial evidence when counsel stated that the gun's omission from the police reports meant that defendant had no gun at the time of the event, that the police officers had lied during their witness testimony and that the jury would have to "imagine and fill in the gaps" of what other evidence should have been presented to it. We find no error which deprived defendant of a fair trial and thus decline to review this issue on plain-error.

¶ 48 In sum, none of the complained-of instances of judicial conduct during the proceedings below constituted error that was a material factor in the conviction and deprived defendant of a fair trial. It follows then that they do not rise to the level of extraordinary circumstances sufficient to invoke application of the plain-error doctrine. *Thompson*, 238 Ill. 2d at 612.

¶ 49 C. Assessed Fines and Fees

¶ 50 Finally, defendant contends that four of the fines and fees assessed against him are invalid and must be vacated. These assessments are a $25 Court Services Fee, a $5 Electronic Citation Fee, a $5 Court System Fee and a $100 Trauma Fund Fee. While the defendant did not raise this assessment issue before the trial court or in his motion for a new trial, the State does not object to this issue and concedes that three of the costs were improperly assessed and should be vacated. The State disagrees, however, that the $25 court services assessment should be vacated, and defendant concedes as such in his reply brief.

¶ 51 Our court has the authority to modify fees, fines, and costs under Illinois Supreme Court Rule 615(b)(1), which allows this court to modify the judgment or order from which the appeal is taken. Ill. S. Ct. R. 615(b)(1) (eff. Jan. 1, 1963).

¶ 52 The Electronic Citation Fee (705 ILCS 105/27.3e (West 2014)) only applies to certain traffic violations, and does not apply to felony convictions; thus it must be vacated. The Court System Fee (55 ILCS 5/5-1101(a) (West 2014)) only applies to convictions for violation of the Illinois Vehicle Code or "violations of similar provisions contained in county or municipal ordinances ***" which is not applicable here. Thus, the Court System Fee must be vacated. The Trauma Fund Fine (730 ILCS 5/5-9-1.10 (West 2014)) only applies to "violation[s] of Sections 24-1.1, 24-1.2, or 24-1.5 of the Criminal Code of 1961 or the Criminal Code of 2012." As the

jury convicted defendant under section 720 ILCS 5/24-1.7 (West 2014) of the Criminal Code, and section 5/5-9-1.10 does not authorize a fine under this section, it must be vacated.

¶ 53 The Court Services Assessment (55 ILCS 5/5-1103 (West 2014)) applies to convictions in all criminal cases, as stated in *People v. Adair*, 406 Ill. App. 3d 133, 144 (2010), and should remain.

¶ 54 Defendant also correctly asserts that he is entitled to a presentence incarceration credit for 530 days before sentencing amounting to a $2650 credit. See 725 ILS 5/110-14(a) (West 2014). In addition to the previously credited Mental Health Court Fine ($10), the Youth Diversion / Peer Court Fine ($5), the Drug Court Fine ($5), and the Children's Advocacy Center Fine ($30), he contends that two fines, a $15 State Police Operations Fee and a $50 Court System Fee, were incorrectly noted as unable to be offset. The State concedes that these two fines may be added to others the court already allowed to be offset, and we agree. See *People v. Brown*, 2017 IL App (1st) 150146, ¶¶ 36-37. Defendant is thus entitled to a credit of $115 against all fines imposed, including the State Police Operations Fee and Court System Fee.

¶ 55 CONCLUSION

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

¶ 57 Affirmed; fines and fees order modified.