2018 IL App (1st) 160517-U
No. 1-16-0517
Order filed October 30, 2018

Second Division

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 20731
	)	
ROMAIN MARTIN,	)	Honorable
	)	Carol M. Howard,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Justice Lavin concurred in the judgment.
Presiding Justice Mason concurred in part and dissented in part.

ORDER

¶ 1 *Held*: Defendant's conviction for delivery of a controlled substance within 1000 feet of a public park affirmed where the evidence was sufficient to prove him guilty; mittimus amended to correct days of sentencing credit; fines and fees order amended to vacate one fee and apply a $69 credit against four assessments; claim that additional fees constitute fines entitled to credit is without merit.

¶ 2 Following a bench trial, defendant Romain Martin was convicted of delivery of a controlled substance within 1000 feet of a public park and sentenced to six years' imprisonment. The court also assessed Martin $659 in various fines, fees and court costs.

¶ 3 On appeal, Martin contends that the State failed to prove him guilty beyond a reasonable doubt because (i) the testimony from the police officers was not credible, (ii) the State did not show that the offense occurred within 1000 feet of a public park, and (iii) the State did not establish that the equipment used by the forensic chemist to measure and test the suspect heroin was functioning properly. After carefully reviewing the evidence in the light most favorable to the State, we find no reason to disturb the trial court's findings.

¶ 4 Martin also contends, and the State agrees, that he is entitled to 17 additional days of sentencing credit. Finally, Martin argues that his fines and fees order should be amended by vacating one fee and applying monetary credit against several other assessments.

¶ 5 We correct the sentencing credit, vacate one fee, apply a credit of $69 against four assessments, and affirm Martin's conviction and sentence in all other respects.

¶ 6 Background

¶ 7 Martin was charged with one count of delivering between 1 and 15 grams of heroin, and one count of committing that offense within 1000 feet of a public park. During discovery, the State informed the court that the evidence would show that the narcotics transaction occurred inside the park itself. Therefore, the State did not have a measurement taken to show that the offense occurred within 1000 feet of the park.

¶ 8 At trial, Chicago police officer David Bridges testified that he was working as the "buy officer" for an undercover narcotics team. Bridges went to Horan Park, located at the 3000 block of West Van Buren Street. There he saw Martin sitting alone on a bridge "in the park" that crosses over the Eisenhower Expressway.

¶ 9 Bridges approached Martin and asked him for "Nike bags," which are $10 bags of heroin. Martin told Bridges to sit down and walked out of view. Martin returned seconds later and

handed Bridges three clear Ziploc bags with Nike logos. Each bag contained a white powder substance of suspect heroin. Bridges handed Martin $30 in prerecorded police funds consisting of one $20 bill and one $10 bill. Bridges confirmed that the transaction occurred "within the park." Bridges returned to his automobile, radioed his team that he made a positive buy, and gave them Martin's physical description and location. He then left the area. Minutes later, Bridges was informed that Martin had been detained. Bridges drove to a gas station at Van Buren and Sacramento, and identified Martin as the man who sold him the suspect heroin.

¶ 10 On cross-examination, Bridges acknowledged that his supplemental police report did not indicate that he had entered the park, or that Martin was inside the park. Bridges explained that the bridge where he saw Martin was "adjacent to the Eisenhower from north to south, and the address of the park is the address of the occurrence." He further explained that "the base of the bridge is in the park." Bridges testified that the weight of a $10 bag of heroin varies from 0.2 to 0.4 gram. He acknowledged that in his report he estimated the weight of the three bags he received from Martin as 0.6 gram. He arrived at that estimate because one bag usually weighs 0.2 gram, although it could weigh more. Bridges also acknowledged that he generally checks to verify that the serial numbers for the prerecorded funds he uses appear on the fund sheet. In this case, however, he did not do so because the money was given to him by Officer Louie.

¶ 11 On redirect examination, Bridges acknowledged that his report states that the "narcotics transaction took place within one-thousand feet of Horan Park." He also explained that he estimated the weight of the narcotics by an eyeball and weight test. The weight of one bag may vary from 0.2 to 0.6 gram, depending on who filled it. The crime laboratory determines the exact weight.

¶ 12 Chicago police officer Marvin Randolph was working as the primary surveillance officer on the narcotics team with Bridges. Randolph saw Bridges enter the park area and approach Martin, who was wearing a black do-rag, a gray and black striped shirt, and black pants. Randolph was sitting in a car 30 to 50 feet away. No other people were near the men. Bridges spoke briefly with Martin who then walked to a gate where there was a bunch of bricks, bent down, and retrieved an item. Martin returned to Bridges and handed him the item in exchange for prerecorded money. Bridges returned to his automobile and drove away.

¶ 13 Randolph saw Martin walk eastbound from the park, passing Randolph's automobile on the passenger side. Martin approached an apartment building at 3016 West Van Buren, placed money on a step, and walked to a gas station. Randolph recovered the money from the step and radioed Martin's description and location to the enforcement officers on his team. He directed them to arrest Martin at the gas station.

¶ 14 On cross-examination, Randolph confirmed that he saw Bridges receive the prerecorded money from Louie, and saw Bridges cross-reference the serial numbers on the bills with the numbers on the funds sheet. Bridges handed Martin a $20 bill and a $10 bill. The $30 in prerecorded funds was found in the $110 that Randolph recovered from the step. The narcotics transaction occurred in the park near the bridge, but Randolph could not recall if Martin was near or on the bridge. Randolph was looking across Van Buren Street, "into the park." Martin was the only person Randolph saw "in the park at the time." Martin had retrieved the item at the south end of the park, "within the park."

¶ 15 A forensic scientist in the drug chemistry section of the Illinois State Police Forensic Science Center, Daniel Beerman, was deemed an expert in the field of forensic chemistry, without objection. Beerman analyzed the suspect heroin recovered by the police. Beerman

opened the sealed inventory bag and weighed the three items inside by using the gross weight method. He adjusted the reading on the balance at his work station to zero, placed the three Ziploc bags containing powder into the weighing dish on the balance, and recorded that weight. Beerman then emptied the powder from each of the three bags into three separate weighing dishes, and weighed the three empty bags. Beerman subtracted the weight of the empty bags from the initial weight, and determined that the weight of the powder was 1.25 grams.

¶ 16 Beerman knew the balance was functioning properly because he checked it weekly with a set of known weights. In addition, he had observed a person from an external company calibrate the balance by placing a set of their own weights on the balance and recording the reading. That person wrote a report indicating that the balance was properly calibrated. In analyzing substances, Beerman relies on the calibration reports. If his balance was not properly calibrated, he would not use it. During the year, Beerman received a report from the external vendor regarding the calibration of his balance. He did not receive any reports indicating that his balance was not properly calibrated.

¶ 17 Beerman next analyzed the powder by using color tests. In the preliminary set of tests, he conducted three separate color tests on each of the powder samples from the three Ziploc bags by reacting a small amount of the powder with three color test reagents. Beerman observed color changes in all three color reagents, which indicated that heroin may be present in all three powder samples. Beerman knew the color tests had worked properly because he later confirmed the results of the preliminary tests with a confirmatory test.

¶ 18 Beerman conducted a confirmatory test known as gas chromatography/mass spectrometry (GCMS). In that test, the components of the powder mixture are separated and passed to a detector which produces a mass spectrum. The spectrum is compared to known standards that

were produced on the same instrument. The test indicated that heroin was present in the samples from all three Ziploc bags, which matched the results of the color test.

¶ 19 The weighing method, color test, and GCMS test that Beerman used were generally accepted by the scientific community. Based on his education, training, experience in drug chemistry, and the test results, Beerman opined that the 1.25 grams of powder from the three Ziploc bags contained heroin.

¶ 20 Martin testified that he was walking to the area of 3000 West Van Buren to buy heroin for his addiction. As he entered the south end of the bridge, he saw about 15 people on the bridge saying "[h]ere comes the police." Everyone ran off the bridge heading north. Martin ran with the group to the gas station. The police stopped the group and handcuffed four people together, including Martin. One officer placed Martin's wallet and belongings on the hood of the police car. Another officer opened Martin's wallet. As he did so, Martin read that officer's lips as he said "[i]t's not there."

¶ 21 Martin testified that the location is known as a place to buy heroin, and he had made purchases there. Martin purchased $20 of heroin every other day. On the day of his arrest, Martin had $23 on him that he intended to use to buy heroin, but did not get the chance to do so. Martin denied that he was selling heroin, and denied placing money on the step.

¶ 22 On cross-examination, Martin testified that the location where he usually purchased heroin was on the overpass with the bridge. He acknowledged that the location was "real close" to Horan Park, but denied that it was inside the park. Martin also acknowledged that he was wearing a black stocking cap on his head and a camouflage uniform when arrested, and denied that he was wearing black pants or a striped sweater. About six or seven of the people running were wearing black hats or do-rags.

¶ 23 Chicago police officer Richard Sanchez testified for the defense that he arrested Martin, who had $24 on him when arrested.

¶ 24 The defense also called Chicago police officer Defonda Louie. He testified that he withdrew $500 in prerecorded funds, and recorded the denominations and serial numbers of each bill on a sheet. Defense counsel asked Louie if two $10 bills with specific serial numbers were on his sheet, and Louie acknowledged that they were not.

¶ 25 On cross-examination, Louie testified that he gave Bridges a $10 bill and a $20 bill to use for the undercover buy. The $20 bill was recorded on Louie's sheet, but the $10 bill was not. Following Martin's arrest, Louie saw both bills that he gave to Bridges at the police station. Louie did not know why the $10 bill was not recorded.

¶ 26 On redirect examination, Louie explained that when he gave Bridges the money, he recorded the serial numbers for both bills in his personal records. He therefore knew that the $10 bill he gave to Bridges was the same one later recovered from Martin. Louie testified that he had "no idea" as to what he did with his personal notes, or where they were at the time of trial.

¶ 27 In rebuttal, Randolph testified that during his surveillance, he saw Bridges interact with Martin. He saw Martin approach the bridge area at the park, bend down, and retrieve an item. He then saw Martin hand Bridges an unknown item in exchange for money. Martin remained in the area until Bridges left, then left the area. Randolph never saw Martin running down the street with other people. Randolph also saw the area where Martin was detained and arrested. No other individuals were detained or searched. The police specifically detained and arrested Martin because he was the person who sold suspect narcotics to Bridges.

¶ 28 On cross-examination, Randolph testified that he did not see anyone else in the park at the time of the offense. Nor did he see anyone near the step where Martin placed the money.

¶ 29 The trial court found that the officers' testimony that the offense occurred "in a park," established that it occurred within 1000 feet of a park. The trial court found that Martin's argument that the police put a case on him was not persuasive. According to the court, the testimony about the funds being recorded in personal notes that disappeared went against the credibility of the evidence. But, the testimony of Bridges and Randolph was credible, and specifically, more credible than Martin. (The parties agree that the trial court misspoke when it stated that it found Louie and Randolph credible, and that the court was actually referring to Bridges rather than Louie.)

¶ 30 The trial court expressly stated that it did not find Louie's testimony credible. Nonetheless, the court noted that the issue was whether delivery of drugs had occurred, and the amount of actual dollars exchanged was not necessary to establish delivery. The court concluded that Martin delivered the heroin, and found him guilty of delivery of a controlled substance within 1000 feet of a park.

¶ 31 The trial court sentenced Martin to the minimum term of six years' imprisonment and awarded him 64 days of credit for time spent in custody before sentencing. The court also assessed Martin $659 in various fines, fees, and court costs.

¶ 32 Analysis

¶ 33 On appeal, Martin first contends that the State failed to prove him guilty beyond a reasonable doubt because the testimony from the police officers was improbable, unconvincing, and contrary to human experience. He also contends that the State did not prove that the offense occurred within 1000 feet of a public park. In addition, Martin argues that the State did not establish that the equipment used by Beerman to measure and test the suspect heroin was functioning properly.

¶ 34 Sufficiency of the Evidence

¶ 35 When a defendant claims that the evidence is insufficient to sustain his conviction, this court must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the offense proved beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). This standard applies whether the evidence is direct or circumstantial, and does not allow this court to substitute its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42.

¶ 36 In a bench trial, the trial court is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences from therein. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We will not reverse a criminal conviction based on insufficient evidence unless the evidence is so improbable or unsatisfactory that reasonable doubt exists as to a defendant's guilt (*People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011)). Nor will we do so simply because a defendant claims that a witness was not credible or that the evidence was contradictory (*Siguenza-Brito*, 235 Ill. 2d at 228).

¶ 37 To prove Martin guilty of delivery of a controlled substance, the State was required to show that he knowingly delivered between 1 and 15 grams of a substance containing heroin, and he did so within 1000 feet of Horan Park. 720 ILCS 570/401(c)(1), 407(b)(1) (West 2014).

¶ 38 Martin first contends that the State failed to prove him guilty because the testimony from the police officers was improbable, unconvincing, and contrary to human experience. Martin claims that his testimony was more credible than theirs. Martin argues that Randolph's testimony

that Martin placed $110 on a step outside a building and walked away is unbelievable because no one would leave money where it could be taken. He further argues that Randolph's testimony that no one else was in the park is unbelievable because the police would not devote resources to a drug investigation under those circumstances, and a drug dealer would not stay in a location with no buyers. Martin also argues that Bridges' testimony about the estimated weight of the three bags of heroin was inconsistent where he testified to various weight ranges, and estimated the weight to be 0.6 gram in his arrest report, thereby undermining his credibility. In addition, he asserts that Bridges' testimony about the prerecorded funds should be considered together with Louie's testimony, which was not credible.

¶ 39 Martin's challenges to the credibility of the testimony of Officers Bridges and Randolph is unpersuasive. Bridges testified that he approached Martin inside Horan Park and asked him for $10 bags of heroin. Martin walked away, returned seconds later, and handed Bridges three clear Ziploc bags containing suspect heroin. Bridges testified that he handed Martin $30 in prerecorded funds, left the area, and notified his team that he had made a positive buy. Minutes later, Bridges drove to a gas station where Martin had been detained and identified him as the man who sold him the suspect heroin. Randolph testified that he saw all of this activity while conducting surveillance from his vehicle 30 to 50 feet away from the men. Randolph also observed Martin walk to a gate, bend down, and retrieve the item that he handed to Bridges moments later. In addition, Randolph testified that he observed Martin leave the park, walk past his vehicle, place money on a step, and walk to the gas station, where he was then detained.

¶ 40 The trial court expressly found the testimony of Bridges and Randolph credible, specifically stating that their testimony was more credible than that of Martin. We find no merit in Martin's claim that Randolph's testimony that Martin left money on the step, and that no one

else was in the park, was so contrary to human experience that it rendered his testimony incredible. It was the trial court's duty to determine the veracity of Randolph's observations, and it found his testimony credible. *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 41 Nor do we find that Bridges' testimony about the estimated weight of the three bags of heroin was inconsistent. The record shows that Bridges repeatedly testified that the weight of a $10 bag of heroin could vary. Bridges explained that one bag usually weighs 0.2 gram, but that it could weigh more depending on who filled the bag. He estimated the weight of the three bags he received from Martin as 0.6 gram based on the typical weight of 0.2 gram. Bridges' estimation was based on him eyeballing the items, and that the exact weight is determined by the crime laboratory. Thus, the record shows that rather than being inconsistent, Bridges' testimony explained the weight variances.

¶ 42 In addition, we find that Louie's testimony about the prerecorded funds did not adversely affect the credibility of Bridges' testimony. The record shows that the trial court found Louie's testimony not credible. But, the court explained that the issue was whether delivery of drugs had occurred, and the amount of actual dollars exchanged was not necessary to establish delivery. So the record shows that the trial court determined that Louie's testimony had no impact on the credibility of Bridges' testimony about the delivery of the heroin.

¶ 43 The determination of the credibility of the testimony from all of the witnesses, including Martin, was a matter entirely within the province of the trial court which heard and observed them testify. *Siguenza-Brito*, 235 Ill. 2d at 228. The court expressly found the testimony of Bridges and Randolph credible. Based on this record, we find no reason to disturb that determination.

¶ 44 Martin next contends that the State failed to prove him guilty because it did not prove that the offense occurred within 1000 feet of a public park. Martin notes that Bridges testified that Martin was sitting on a bridge that crosses the expressway, and that the base of the bridge was in the park. He argues that the State failed to show how far the base of the bridge was from the location of the transaction. Martin argues that the testimony here was too vague, and that the State was required to provide precise evidence and an actual measurement of the distance. He acknowledges, however, that this court has held that an exact measurement is not required to prove distance. See *People v. Clark*, 231 Ill. App. 3d 571, 576-77 (1992) (police officer's testimony that distance from location of narcotics transaction to school was equivalent to distance from home plate to second base on a baseball field sufficient for jury to find that it occurred within 1000 feet of school).

¶ 45 The record shows that Bridges and Randolph repeatedly testified that the narcotics transaction occurred inside the park. Bridges testified that the bridge was located "in the park." While testifying about the details of the transaction, Bridges again confirmed that it occurred "within the park." On cross-examination, Bridges explained that "the base of the bridge is in the park." Similarly, Randolph testified that he saw Bridges enter the park area and approach Martin. On cross-examination, Randolph testified that the narcotics transaction occurred in the park near the bridge. Randolph saw the transaction by looking across the street "into the park," and that Martin was the only person he saw "in the park at the time." Randolph also testified that Martin retrieved the item at the south end of the park, "within the park."

¶ 46 The trial court found that the officers' testimony that the offense occurred "in a park" established that it occurred within 1000 feet of a park, satisfying that element of the offense. It was the trial court's duty to weigh the evidence and determine if the State proved the elements of

the offense. *Siguenza-Brito*, 235 Ill. 2d at 228. Based on this record, and viewed in the light most favorable to the State, we find no reason to disturb the court's finding.

¶ 47 Foundation as to Proper Functioning of Scale

¶ 48 Martin also contends that the State failed to prove him guilty because it did not establish that the equipment used by Beerman to weigh and test the suspect heroin was functioning properly on the date of the testing. Martin argues that Beerman's testimony was inadmissible because the State did not provide a sufficient foundation to establish that the scale Beerman used to weigh the substance, or the color spectrum test and GCMS machine used to determine the nature of the substance, were reliable.

¶ 49 As a threshold matter, we find that this issue is not a challenge to the sufficiency of the evidence, but instead, a challenge to the admissibility of the evidence. A claim that the State failed to lay a proper foundation for the proof of an element of the offense attacks the admissibility of the evidence rather than the sufficiency of the evidence. *People v. Woods*, 214 Ill. 2d 455, 473 (2005). See also *People v. Bush*, 214 Ill. 2d 318, 332 (2005) (rejecting defendant's argument that lack of adequate foundation for expert's opinion goes to sufficiency of evidence). The determination of whether evidence is admissible is within the sound discretion of the trial court, and its decision will not be reversed on review absent a clear abuse of discretion. *People v. Morgan*, 197 Ill. 2d 404, 455 (2001). An abuse of discretion will be found only where the trial court's decision was arbitrary, fanciful, or where no reasonable person would agree with the court's view. *Id.*

¶ 50 To admit expert testimony from a forensic scientist regarding the results of testing of a suspected controlled substance, the State must lay a sufficient foundation showing that the facts or data relied on by the expert are of a type reasonably relied on by other experts in that field in

forming opinions. *People v. Raney*, 324 Ill. App. 3d 703, 710 (2001) (citing *People v. Bynum*, 257 Ill. App. 3d 502, 513-14 (1994)). Additionally, where the expert's testimony is based on a mechanical or electronic device, the expert must offer some foundational proof regarding the method of recording the information, and proof that the device was functioning properly at the time of testing. *Id.* See also *People v. DeLuna*, 334 Ill. App. 3d 1, 20 (2002). Martin's challenge is to the proper functioning of Beerman's equipment.

¶ 51 We find no merit in Martin's claim that the State failed to lay an adequate foundation to show that Beerman's scale was functioning properly. Beerman expressly testified that he knew his balance was functioning properly because he checked it weekly with a set of known weights. He further testified that he observed a person from an external company calibrate the balance by placing a set of their own weights on the balance and recording the reading. During the year, Beerman received a report from that person indicating that his balance was properly calibrated, and Beerman relied on that report. Beerman did not receive any reports indicating that his balance was not properly calibrated, but if it was not, he would not have used it. Over defense counsel's objection, the trial court found that the State laid a sufficient foundation and admitted Beerman's testimony that the weight of the substance recovered from Martin was 1.25 grams. Based on this record, we find no abuse of discretion by the court in admitting this testimony.

¶ 52 Admission of Color Tests

¶ 53 Similarly, we find no merit in Martin's challenge to the admission of Beerman's testimony regarding the color tests. When defense counsel objected to the foundation for the admission of this testimony, Beerman testified that the color tests were preliminary tests, and he knew they had worked properly when he later confirmed the results by using a confirmatory test. With no further objection from defense counsel, Beerman testified that the color tests indicated

that heroin was present in the powder samples from all three Ziploc bags. We do not find that the trial court's admission of this testimony was an abuse of discretion.

¶ 54 Foundation for GCMS Machine

¶ 55 Finally, Martin argues that Beerman's testimony regarding the results of the confirmatory test should not have been admitted because there was no foundation that the GCMS machine was working properly. In his reply brief, Martin acknowledges that he did not object to the foundation for the GCMS machine during trial and urges this court to consider this challenge under the plain error doctrine.

¶ 56 It is well settled that to preserve an issue for appeal, a defendant must make a timely objection during trial and raise the issue in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). By failing to object to the foundation for the GCMS machine during trial, Martin has waived this argument for appeal. *DeLuna*, 334 Ill. App. 3d at 19. If a defendant had made a timely objection, the State would have had a reasonable opportunity to correct any deficiency in the foundational requirements and easily cured the matter. See *Id.* at 20.

¶ 57 Martin's argument that this court should review his claim under the plain error doctrine is unpersuasive. The plain error doctrine is a limited and narrow exception to the forfeiture rule that exists to protect Martin's rights, and the reputation and integrity of the judicial process. *People v. Herron*, 215 Ill. 2d 167, 177 (2005). To obtain plain error relief, Martin must demonstrate that a clear or obvious error occurred, and either (i) that the evidence was closely balanced, or (ii) that the error was so serious that it affected the fairness of his trial. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

¶ 58 Because Martin's challenge to the foundation goes to the admissibility of the evidence rather than its sufficiency, Martin's fundamental or substantive rights are not involved. *DeLuna*,

334 Ill. App. 3d at 20-21 (citing *Bynum*, 257 Ill. App. 3d at 515). Accordingly, this court has held that the issue raised by Martin is not reviewable as plain error because the State's failure to lay a proper foundation for expert testimony does not amount to a violation of a defendant's substantial rights. *Id.* at 21; *People v. Rigsby*, 383 Ill. App. 3d 818, 823-24 (2008) (following *DeLuna*). See also *Bynum*, 257 Ill. App. 3d at 515 ("[n]or do we believe that the failure of the State to lay a proper technical foundation *** is a violation of defendant's 'substantial rights' sufficient to warrant reversal of this case under the supreme court's plain error rule").

¶ 59 Nevertheless, Martin asserts that the first prong of the plain error doctrine applies because Beerman's testimony was the only evidence that identified the substance as heroin, and thus, the only evidence that he delivered heroin. Martin argues that because this testimony was erroneously admitted, the evidence was closely balanced. We disagree. Beerman's testimony regarding the color test, which also indicated that the substance was heroin, was properly admitted. Even if Beerman's testimony regarding the results of the GCMS test had not been admitted, the State still presented sufficient evidence that the substance was heroin.

¶ 60 Accordingly, Martin's challenge to the admission of Beerman's testimony regarding the results of the GCMS test is forfeited. Where Martin failed to object at trial, we find no abuse of discretion by the trial court in admitting Beerman's testimony that the GCMS test indicated that the substance recovered from Martin was positive for heroin.

¶ 61 The record reveals that the evidence was sufficient for the trial court to find that the State proved Martin guilty beyond a reasonable doubt of delivery of a controlled substance within 1000 feet of a public park. We find no basis to disturb Martin's conviction.

¶ 62 Sentencing Credit

¶ 63 Martin next contends, and the State agrees, that he is entitled to sentencing credit for 81 days served in custody, rather than 64, and that his mittimus should be amended to reflect the correct number. Pursuant to our authority (Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999); *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995)), we direct the clerk of the circuit court to amend the mittimus to reflect that Martin is to receive 81 days of credit for time served.

¶ 64 Fines and Fees

¶ 65 Finally, Martin contends that his fines and fees order must be amended. Martin contends that the $5 electronic citation fee must be vacated because it was erroneously assessed. Martin further argues that he is entitled to apply presentence monetary credit against several assessments that are labeled as fees, but are actually fines.

¶ 66 Martin acknowledges that he did not preserve these issues for appeal because he did not challenge the assessments in the trial court. See *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). He argues, however, that this court may modify the fines and fees order under Supreme Court Rule 615(b)(1). Martin further asserts that he may request the *per diem* monetary credit at any time and that his right to the credit cannot be forfeited. See *People v. Woodard*, 175 Ill. 2d 435, 444-48 (1997). In addition, he urges this court to vacate the one fee under the second prong of the plain error doctrine.

¶ 67 The State acknowledges the forfeiture, but asserts that the *per diem* monetary credit is a statutorily mandated benefit that cannot be waived. See *People v. Caballero*, 228 Ill. 2d 79, 83 (2008). The State further asserts that Martin's claims may be considered under the plain error doctrine or as a claim of ineffective assistance of counsel, and addresses the merits of his claims.

¶ 68 Martin's request for the *per diem* monetary credit is not merely requesting credit that is due against his fines, but rather, is raising a substantive issue regarding whether the assessments

labeled as fees are fines, and therefore, is subject to forfeiture. See *People v. Brown*, 2017 IL App (1st) 150203, ¶¶ 40-41. Martin's challenges are not reviewable under the plain error doctrine. *People v. Griffin*, 2017 IL App (1st) 143800, ¶ 9, *pet. for leave to appeal granted*, No. 122549 (Nov. 22, 2017). Nor can we reach the merits of his claims under Rule 615(b). *People v. Grigorov*, 2017 IL App (1st) 143274, ¶¶ 13-14. Similarly, Martin cannot avoid forfeiture by alleging ineffective assistance of counsel. *People v. Rios-Salazar*, 2017 IL App (3d) 150524, ¶ 8 (failure to object to fines and fees is not error of constitutional magnitude that will support claim of ineffectiveness), *pet. for leave to appeal granted*, No. 123052 (Mar. 21, 2018). But, the rules of forfeiture and waiver also apply to the State, and where the State fails to argue that a defendant forfeited the issue, it waives the forfeiture. *People v. Bridgeforth*, 2017 IL App (1st) 143637, ¶ 46. Here, although the State acknowledges the forfeiture, it asserts that this court may reach the issues, thereby waiving the forfeiture. So we address the merits of Martin's claims. The propriety of the imposition of fines and fees is a question of law which we review *de novo*. *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22.

¶ 69 First, the parties agree, and we concur, that the $5 electronic citation fee (705 ILCS 105/27.3e (West 2014)) must be vacated as that fee only applies to traffic, misdemeanor, municipal ordinance and conservation violations, and does not apply to Martin's felony offense. We vacate the $5 electronic citation fee and direct the trial court to amend the fines, fees and costs order accordingly.

¶ 70 Martin also contends that he is due monetary credit against several of his assessments. Pursuant to section 110-14 of the Code of Criminal Procedure (Code) (725 ILCS 5/110-14 (West 2014)), a defendant is entitled to have a credit applied against his fines of $5 for each day he

spent in presentence custody. Here, Martin spent 81 days in presentence custody, and is therefore entitled to a maximum credit of $405.

¶ 71 The credit under section 110-14 can only be applied to offset fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 580 (2006). To determine whether an assessment is a fine or a fee, we consider the nature of the assessment rather than its statutory label. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). 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.) *Id.* (quoting *Jones*, 223 Ill. 2d at 581). A "fee," on the other hand, is "a charge that 'seeks to recoup expenses incurred by the state,' or to compensate the state for some expenditure incurred in prosecuting the defendant." *Id.* (quoting *Jones*, 223 Ill. 2d at 582).

¶ 72 Martin contends, the State agrees, and we concur, that he is due full credit for the $15 state police operations fee (705 ILCS 105/27.3a(1.5) (West 2014)) and the $50 court system fee (55 ILCS 5/5-1101(c) (West 2014)). (The State also asserts that a $5 court system fee (55 ILCS 5/5-1101(a) (West 2014)) was erroneously assessed and should be vacated. The record shows, however, that this fee was not assessed.)

¶ 73 The parties agree that, although these two charges are labeled as fees, this court has held that they are fines because they do not compensate the State for expenses incurred in the prosecution of a defendant, and thus, they are subject to offset by the monetary sentencing credit. *People v. Wynn*, 2013 IL App (2d) 120575, ¶¶ 13, 17. We direct the trial court to amend the fines, fees, and costs order to reflect a $15 credit for the state police operations fee and a $50 credit for the court system fee.

¶ 74 Martin next contends that he is entitled to credit against three assessments: the $190 felony complaint filed fee (705 ILCS 105/27.2a(w)(1)(A) (West 2014)), the $15 circuit court

clerk automation fee (705 ILCS 105/27.3a(1) (West 2014)), and the $15 circuit court clerk document storage fee (705 ILCS 105/27.3c(a) (West 2014)). Martin argues that these assessments are fines rather than fees because they do not reimburse the State for the costs incurred in prosecuting a defendant, but instead, finance a component of the court system for the general costs of litigation. Whether the felony complaint filed, automation, document storage, Public Defender records automation, and State's Attorney records automation assessments are fees or fines is currently pending before the Illinois Supreme Court in *People v. Clark*, 2017 IL App (1st) 150740-U, *pet. for leave to appeal granted*, No. 122495 (Sept. 27, 2017).

¶ 75 This court has already considered challenges to these three assessments and has determined that they are fees, not fines, and therefore, not subject to presentence incarceration credit. See *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006); *People v. Bingham*, 2017 IL App (1st) 143150, ¶¶ 41–42 (relying on *Tolliver* and finding the $190 felony complaint filed fee to be a fee), *pet. for leave to appeal granted*, No. 122008 (May 24, 2017); *People v. Brown*, 2017 IL App (1st) 142877, ¶ 81 (finding that the circuit court clerk's document storage fee and automation fee are fees not subject to offset by presentence incarceration credit). See also *People v. Heller*, 2017 IL App (4th) 140658, ¶ 74 (citing *Tolliver* and finding the automation and document storage fees are fees rather than fines). We adhere to the reasoning in our prior decisions and find that these assessments are fees that compensate the clerk's office for expenses incurred in the prosecution of a defendant. As such, Martin is not entitled to offset these fees with his presentence custody credit.

¶ 76 Martin next contends that he is entitled to credit against the $2 State's Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2014)) and the $2 Public Defender records automation fee (55 ILCS 5/3-4012 (West 2014)). Martin points out that these assessments apply

to all defendants who are found guilty of an offense, and that the purpose of the assessments is to discharge the expenses associated with establishing and maintaining automated record keeping systems. He argues that the assessments therefore do not compensate the State for prosecuting a particular defendant, and thus, they constitute fines rather than fees.

¶ 77 This court has found that the $2 State's Attorney records automation assessment and the $2 Public Defender records automation assessment are fines because they do not compensate the State for the costs associated with prosecuting a particular defendant. *People v. Camacho*, 2016 IL App (1st) 140604, ¶ 56. In *Camacho*, we explained that the costs associated with developing and maintaining automated record keeping systems for the State's Attorney's and Public Defender's offices were not related to the prosecution of a specific defendant. *Id.* ¶ 50. In addition, the Public Defender assessment may be imposed against any guilty defendant, regardless of whether or not he was represented by the Public Defender. *Id.* ¶ 51. Consequently, we concluded that the assessments are fines, and thus, entitled to be offset by the *per diem* credit. *Id.* ¶ 56. *Contra People v. Reed*, 2016 IL App (1st) 140498, ¶¶ 16-17 (finding the assessments are fees because they compensate the State for the costs associated with prosecuting a particular defendant).

¶ 78 In accordance with *Camacho*, in this case, we similarly conclude that the $2 State's Attorney records automation assessment and the $2 Public Defender records automation assessment are fines. Martin is therefore entitled to offset these fines with his presentence custody credit. We direct the trial court to amend the fines, fees, and costs order to reflect a $4 credit to offset these fines.

¶ 79 Finally, Martin contends that he is entitled to credit against the $25 court services (sheriff) fee (55 ILCS 5/5-1103 (West 2014)). Martin argues that this assessment is a fine

because it applies to all defendants who are found guilty of an offense. He further argues that the assessment does not compensate the State for the costs of prosecuting a particular defendant, but instead, defrays the costs of court security incurred by the sheriff.

¶ 80 This court has considered challenges to this assessment and determined that it is a fee, not a fine, and therefore, not subject to presentence incarceration credit. See *Tolliver*, 363 Ill. App. 3d at 97 (holding that the charge is a fee because it is compensatory and a collateral consequence of the defendant's conviction); *People v. Adair*, 406 Ill. App. 3d 133, 144-45 (2010) (finding the plain language of the statute indicates it is a fee to defray the costs of court security during the defendant's court proceedings). See also *Heller*, 2017 IL App (4th) 140658, ¶ 74 (citing *Tolliver* and finding the court services fee is a fee rather than a fine). We adhere to the reasoning in our prior decisions and find that the court services assessment is a fee rather than a fine. Therefore, Martin is not entitled to offset this fee with his presentence custody credit.

¶ 81 For these reasons, we vacate the $5 electronic citation fee from the fines, fees and costs order. We further direct the trial court to apply a credit of $69 to offset the $15 state police operations fee, the $50 court system fee, the $2 State's Attorney records automation fine, and the $2 Public Defender records automation fine. We also direct the trial court to correct the mittimus to reflect 81 days of sentencing credit. We affirm Martin's conviction and sentence in all other respects.

¶ 82 Affirmed in part; vacated in part; mittimus corrected; fines and fees order corrected as directed.

¶ 83 JUSTICE MASON, concurring in part and dissenting in part.

¶ 84 I concur in the majority's decision to affirm the circuit court's judgment and to vacate certain assessments and allow the per diem credit against fines.

¶ 85 But I have previously concluded, as have the majority of courts that have considered the issue, that the $2 Public Defender Records Automation Fee and the $2 States Attorney Record Automation Fee are not fines and I adhere to that determination. *People v. Taylor*, 2016 IL App (1st) 141251, ¶ 29; see also *People v. Smith*, 2018 IL App (1st) 151402, ¶ 16; *People v. Reed*, 2016 IL App (1st) 140498, ¶¶ 16-17; *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 65; *People v. Warren*, 2014 IL App (4th) 120721, ¶ 108. Therefore, I respectfully dissent from the majority's conclusion that these assessments are fines against which defendant is entitled to per diem credit.