SIXTH DIVISION
March 16, 2018

No. 1-16-0531
2018 IL App (1st) 160531-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | |
| | ) | Appeal from the |
| | ) | Circuit Court of Cook County. |
| Plaintiff-Appellee, | ) | |
| | ) | |
| v. | ) | 12 CR 19237 |
| | ) | |
| JUSTIN AUTRY, | ) | |
| | ) | Honorable Arthur F. Hill, Jr., |
| Defendant-Appellant. | ) | Judge Presiding. |
| | ) | |

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Hoffman and Justice Cunningham concurred in the judgment.

**ORDER**

¶ 1 *Held:* The State proved beyond a reasonable doubt that defendant committed attempt armed robbery where the evidence established he possessed the requisite specific intent and took a substantial step in the commission of an armed robbery; the trial court's admission of a FOID certification was not error where defendant acquiesced to its admission by failing to object at trial; the order assessing fines, fees, and costs against defendant is ordered corrected; and the mittimus need not be corrected where it accurately reflected the merger of certain counts; affirmed.

¶ 2 Defendant, Justin Autry, was charged with attempted armed robbery, aggravated unlawful restraint, and numerous gun possession charges stemming from an incident that occurred on the night of October 4, 2012, wherein defendant demanded that the victim give him

her phone and pointed a gun at her. After a bench trial, defendant was convicted on some of the charges, and sentenced to two concurrent terms of 10 years' imprisonment. Defendant appeals, arguing that the State failed to present sufficient evidence to prove beyond a reasonable doubt that he committed attempted armed robbery, that the admission of a certification that stated defendant lacked a firearm owner's identification (FOID) card violated defendant's constitutional right of confrontation, that the order assessing fines and fees should be corrected, and that the mittimus should be corrected. For the reasons that follow, we affirm defendant's convictions. We also order the trial court's order assessing fines, fees, and costs against defendant to be corrected.

¶ 3 BACKGROUND

¶ 4 On October 22, 2012, defendant was charged by information with the following 12 respectively-numbered counts: (1) attempt armed robbery (720 ILCS 5/8-4(18-2(a)(2) (West 2012)); (2) unlawful use or possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)); (3) aggravated unlawful use of weapon (720 ILCS 5/24-1.6(a)(2)/(3)(C) (West 2012)); (4) aggravated unlawful use of weapon (720 ILCS 5/24-1.6(a)(2)/(3)(A) (West 2012)); (5) unlawful use or possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)); (6) aggravated unlawful use of weapon (720 ILCS 5/24-1.6(a)(1)/(3)(A) (West 2012)); (7) aggravated unlawful use of weapon (720 ILCS 5/24-1.6(a)(1)/(3)(C) (West 2012)); (8) aggravated unlawful use of weapon (720 ILCS 5/24-1.6(a)(2)/(3)(A) (West 2012)); (9) aggravated unlawful use of weapon (720 ILCS 5/24-1.6(a)(2)/(3)(C) (West 2012)); (10) aggravated unlawful use of weapon (720 ILCS 5/24-1.6(a)(1)/(3)(A) (West 2012)); (11) aggravated unlawful use of weapon (720 ILCS 5/24-1.6(a)(1)/(3)(C) (West 2012)); and (12) aggravated unlawful restraint (720 ILCS 5/10-3.1(a) (West 2012)). Counts 3, 7, 9, and 11 of the

charging instrument were based on the allegation that defendant carried a gun on his person on the night in question without having been issued a valid FOID card. Counts 4, 6, 8, 10 were based on the allegation that the guns defendant carried outside his home were "uncased, loaded, and immediately accessible."

¶ 5 Bench Trial

¶ 6 Defendant's case proceeded to a bench trial on January 7, 2015, during which he was represented by private counsel. Both parties waived opening statements. Prior to presenting its case-in-chief, the State entered motions *nolle prosequi* on counts 4, 6, 8, and 10, with counsel for the State explaining that those dismissals were pursuant to our supreme court's decision in *People v. Aguilar*, 2013 IL 112116[1].

¶ 7 The State first called the victim, Kadeagaja Jordan, to testify. Jordan testified that at approximately 10:40 p.m. on October 4, 2012, she was walking home in the area of 62nd and 63rd Streets in Chicago with her friend, Chakundala Wadlington. Jordan stated that she and Wadlington were walking toward defendant, and were face-to-face with him. Jordan testified that she did not know defendant, and had never seen him before. Jordan stated that when defendant approached them and was about two feet away, he stated "Give me your phone," in reference to Jordan's cell phone which she was holding in her left hand. Jordan responded, "I'm not giving you shit" and kept walking. Jordan testified that defendant then called her "a strag ass bitch" twice and she turned around and said, "[W]ho the fuck are you talking to." Jordan stated that defendant then pulled out a gun from his back waist and pointed it at her head. Jordan stood there, looking at defendant, and her friend Wadlington tried to run, but Jordan told her not to.

[1] The *Aguilar* court held that the former version of the statute that set forth the Class 4 felony offense of aggravated unlawful use of weapon, which categorically prohibited the possession and use of an operable firearm for self-defense outside the home, facially violated the Second Amendment right to keep and bear arms. *Aguilar*, 2013 IL 112116, ¶ 21.

Jordan testified that she and defendant "had a stare off for about 15 seconds" and afterwards, defendant told Jordan "I'll shoot the shit out yo ass." Defendant then put the gun behind his back, and walked away towards 63rd Street.

¶ 8 Because she knew police officers hung out there, Jordan stated that she went to nearby Nick's Gyros to inform the police what had just happened. Jordan testified that she gave the police a description of what just occurred, and a description of what defendant was wearing—a gray hoodie, blue jeans, and dark shoes. Jordan told the police the direction in which defendant had gone on 63rd Street, and also told them that defendant was light-skinned and had facial hair from ear-to-ear. Jordan testified that the officers then had her sit in a patrol truck, and approximately five minutes later, other officers arrived with defendant. Jordan identified defendant as the person who pulled the gun on her and tried to take her phone. Further, Jordan stated that she was then taken to a police station where she met with Detective Dennis Pagan, who showed her two handguns, the smaller of which was a .380 caliber, which Jordan identified as the gun defendant used to rob her.

¶ 9 On cross-examination, Jordan stated that at the time he demanded her phone, defendant had not yet pulled the gun. Jordan also testified that she never told any of the officers that defendant had called her a "whore." Jordan stated that she never called 911, but that Wadlington may have used her phone to call 911. She also stated that she never told any officers that she called 911. On re-direct, Jordan testified that from the time when defendant first demanded her phone to the time when he pointed the gun at her head was "[l]ess than two minutes."

¶ 10 Officer David Garza testified that at approximately 10:43 p.m. on the night of October 4, 2012, he was working with his partner, Officer Habiak, when they received information over dispatch that there was a person with a gun, described as "a male black with a gray hoody [*sic*]

and blue jeans[,]" in the area of 63rd Street, which was approximately two blocks from the officers' location. Officer Garza and his partner then toured the area, and saw defendant, who matched the description, at the corner of 63rd Street and Wood Street, which was approximately one block away from where the encounter between Jordan and defendant occurred. Officer Garza stated that while still in his vehicle, he approached defendant to conduct a field interview, but as the car pulled alongside him, defendant ran in the opposite direction of where he was originally travelling. Officer Garza then gave chase, and testified that after running for about five or ten feet, he observed "a black colored handgun falling from [defendant's] person onto the pavement," and heard the sound of it fall to the ground. Officer Garza stated that defendant continued to run for "[m]aybe another ten feet," and then he was able to apprehend defendant and placed him into custody.

¶ 11 Officer Garza testified that his partner conducted a custodial search of defendant, and recovered a nickel-plated, .380-caliber semi-automatic handgun from defendant's right pocket that was loaded with three rounds. Officer Garza stated the gun that defendant had dropped while running away was a Glock 17, loaded with 16 rounds, and was recovered by another officer who was in another squad car but responding to the same call from dispatch. Defendant was taken to 2011 West 63rd Street, where Jordan was located. The officers conducted a show-up, and Jordan identified defendant as "the person who pointed a gun at her and attempted to rob her and demanded her cell phone."

¶ 12 Prior to resting its case-in-chief, the State sought to introduce two certifications into evidence. The first certification, regarding defendant's lack of a FOID card, was from the Illinois State Police. The FOID certification stated:

> "Based on the following name and date of birth information provided by the Cook County State's Attorney's Office, I, Sergeant Matt Weller, Firearms Services Bureau, Illinois State Police, do hereby certify after a careful search of the FOID files, the information below to be true and accurate for Justin Autry whose date of birth, January 22, 1988, has never been issued a FOID card as of November 07, 2012."

The second exhibit was a certified conviction that in case number 10 CR 2069401, defendant was convicted for manufacturing/delivering 10-30 grams of cannabis pursuant to section 550/5(c) of the Cannabis Control Act (720 ILCS 550/5(c) (West 2012)). The trial court did not ask whether the defense had any objection to the admission of the certifications, but stated, "Okay" after the State presented each exhibit.

¶ 13 The defense made a motion for a directed verdict, or in the alternative, acquittal which was denied. Thereafter, the defense presented a stipulation whereby the parties agreed that if called to testify, Detective Dennis Pagan of the Chicago police department would state that on October 5, 2012, he had a conversation with the victim Jordan regarding this incident. Specifically, defense counsel stated, "In his conversation with Ms. Jordan, she related that the offender began cursing at her, calling her a bitch and a whore. It would also be related by Detective Pagan, that in further conversations with the victim, Kadeagaja Jordan, she related that she called 911 and went to Nick's Gyros to meet the police." The defendant exercised his right not to testify, and the defense rested.

¶ 14 The trial court ultimately found defendant guilty of one count of attempt armed robbery, two counts of unlawful use of a weapon by a felon, and four counts of aggravated unlawful use of weapon, but found defendant not guilty on the count for aggravated unlawful restraint. In explaining its decision, the trial court stated that it found Jordan's testimony to be powerful,

articulate, and clear and convincing. The court noted, "There were some matters of impeachment for her, but they don't amount to anything powerful enough for this [c]ourt to just disregard her, otherwise very strong, very credible testimony." The court made a finding of guilt on counts 1 through 3, 5, 7, 9, and 11. The court also stated that it found defendant not guilty of unlawful restraint because there was not enough to prove that count beyond a reasonable doubt.

¶ 15 Posttrial Motion and Sentencing

¶ 16 On January 14, 2015, defendant, through different private counsel, filed an amended[2] motion for a new trial, arguing that defendant's trial counsel was ineffective, the court erred in denying defendant's motion for a directed verdict, and the testimony that led to defendant's conviction was unreliable. After a hearing on July 30, 2015, the court denied defendant's motion, stating that it had found Jordan's testimony was "clear, convincing, and very persuasive." The court also stated that it believed that at the time defendant pointed the gun at Jordan, the offense was "still going."

¶ 17 On August 12, 2015, the court denied defendant's motion to reconsider the court's denial of his motion for a new trial, and conducted defendant's sentencing. The State noted that defendant was eligible to be sentenced as a Class X offender due to his criminal background. The court merged counts 2, 5, 7, 9, and 11 into count 3, and sentenced defendant to 10 years' imprisonment on counts 1 and 3, as a Class X offender on both, and with the 10-year sentences to run concurrently. The court stated that defendant had earned 1,042 days credit for time served, and that fines, fees, and costs in the amount of $499 were assessed against defendant.

[2] The record on appeal does not contain a copy of defendant's initial motion for a new trial, so we are unaware of its contents.

¶ 18 On March 9, 2016, upon motion by defendant, acting *pro se*, this court granted defendant leave to file a late notice of appeal, and appointed the Office of the State Appellate Defender to represent him.

¶ 19 ANALYSIS

¶ 20 Defendant raises the following arguments on appeal: (1) the State failed to prove defendant guilty beyond a reasonable doubt of attempted armed robbery; (2) the admission of a certification reflecting defendant's lack of a FOID card violated defendant's constitutional right of confrontation; (3) the order assessing fines, fees, and costs against defendant should be corrected; and (4) the mittimus should be corrected. We address each issue in turn.

¶ 21 Attempted Armed Robbery

¶ 22 Defendant argues that we should reverse his conviction for attempted armed robbery because no rational trier of fact could have found that the State proved beyond a reasonable doubt that defendant specifically intended to rob the victim or that he took a substantial step toward committing an armed robbery.

¶ 23 It is well-established that "[w]hen considering a challenge to a criminal conviction based upon the sufficiency of the evidence, this court will not retry the defendant." *People v. Smith*, 185 Ill. 2d 532, 541 (1999). Further, "[w]here a defendant challenges the sufficiency of the evidence to sustain his conviction, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Ciechanowski*, 379 Ill. App. 3d 506, 516 (2008).

¶ 24 Section 8-4(a) of the Criminal Code of 2012 (Code) provides, "A person commits the offense of attempt when, with intent to commit a specific offense, he or she does any act that

constitutes a substantial step toward the commission of that offense." 720 ILCS 5/8-4(a) (West 2012). Section 18-1 of the Code states, "A person commits robbery when he or she knowingly takes property *** from the person or presence of another by the use of force or by threatening the imminent use of force." 720 ILCS 5/18-1(a) (West 2012). Further, a person commits armed, or aggravated, robbery, when he commits a robbery "while indicating verbally or by his or her actions to the victim that he or she is presently armed with a firearm or other dangerous weapon." 720 ILCS 5/18-1(b)(1) (West 2012). Thus, in order to convict defendant of attempted armed robbery, the State had to establish beyond a reasonable doubt both that (1) defendant intended to commit armed robbery, and (2) defendant took a substantial step toward the commission of an armed robbery. *People v. Smith*, 148 Ill. 2d 454, 458 (1992).

¶ 25 Defendant challenges whether the State established beyond a reasonable doubt either of the aforementioned two requisites. We first address defendant's contention regarding his intent. Defendant argues that the State failed to prove that he had the specific intent necessary to commit attempted armed robbery because his act of pointing a gun at Jordan and threatening her with the gun were not connected to his request that she give him her phone. The State responds that defendant's act of demanding Jordan's phone, pointing a gun at Jordan, and threatening to shoot her were all part of the same series of events that constituted a single incident.

¶ 26 "[T]he force sufficient to sustain the crime of robbery is force administered at any time during the criminal act." *People v. Robinson*, 206 Ill. App. 3d 1046, 1053 (1990). Further, "[t]he force or threatened force need not transpire before or during the time the property is taken; the force may be used as part of a series of events constituting a single incident." *Id.*

¶ 27 In *People v. Brooks*, 202 Ill. App. 3d 164, 168 (1990), the victim was seated on a bus when she felt someone open her purse, and when she turned around after noticing her wallet was

missing from her purse, she saw defendant holding her wallet. The victim demanded her wallet back, and in response, defendant pushed her left shoulder and ran away from the bus. *Id.* The defendant argued that he was not proven guilty of robbery beyond a reasonable doubt because no force was used in the actual removal of the victim's wallet from her purse and the defendant did not push the victim in a struggle for the wallet. *Id.* at 169. In affirming defendant's conviction for robbery, this court found:

> "The victim here, after she became aware that defendant had positioned himself behind her and had reached into her purse and had taken her wallet, immediately offered verbal resistance to the taking, to which defendant responded by pushing her shoulder and then exiting the bus. We believe this force, used in a series of events involving a single incident and in response to the victim's challenge immediately upon the taking and before defendant's departure is sufficient to sustain the robbery conviction under Illinois case law." *Id.* at 170.

¶ 28 Defendant argues that the case at bar is unlike *Brooks* because the events in question here were not a single incident, but were two separate incidents. We disagree. Jordan testified that while she was walking with her friend on the night of October 4, 2012, defendant approached her, and when he was about two feet away, he said, "Give me your phone." At the time, Jordan was holding her cell phone in her left hand. Jordan responded that she was not going to give defendant her phone, and kept walking. In response to Jordan's statement that she would not give defendant her phone, defendant twice called Jordan "a strag ass bitch." Jordan stated that she then turned around and asked defendant who he was talking to. Defendant then pulled out a gun and pointed it at Jordan's head. Jordan testified that she and defendant had a stare-off for

about 15 seconds and defendant put the gun behind his back and walked away. Jordan testified that the entire encounter lasted less than two minutes.

¶ 29 Defendant contends that he did not point the gun at Jordan in response to the first incident which included her refusal to give him her phone, but instead was part of the second incident wherein Jordan re-approached defendant, and they exchanged insults. We find that defendant's demand for Jordan's phone and his threat of imminent force were part of the same series of events that constituted a single incident with no significant interval between the attempted taking and the threat of force. Similar to *Brooks*, the use of force here occurred after defendant attempted the taking. However, the use of force need not occur before or simultaneously with the attempted taking when it is part of the series of events that constitute a single incident. *Robinson*, 206 Ill. App. 3d at 1053. The entire exchange between defendant and Jordan stemmed from his demand that she give him her phone. Jordan testified that she did not know defendant and had never seen him before. There is no question this was not an encounter between two friends or acquaintances. The evidence showed that the sole purpose of defendant's interaction with Jordan was to obtain her phone. Defendant's demand resulted in Jordan's response that she would not comply with his demand. Her refusal to comply resulted in defendant twice calling Jordan a derogatory name, which prompted Jordan to turn around and ask defendant who he was talking to. Defendant's response to Jordan's question was to pull out a gun and point it at her head. This series of events between defendant and Jordan constitute a single incident. The entire exchange lasted less than two minutes, and all stemmed from defendant's demand for Jordan's phone.

¶ 30 We also find *People v. Collins*, 366 Ill. App. 3d 885 (2006), to be instructive here. In *Collins*, the defendant drove off in the victim's van after the victim stepped away from it with the

engine running. *Id.* at 888. The victim caught up and entered the van approximately two blocks later while it was stuck in traffic, and told the defendant that the van belonged to him. *Id.* The defendant then demanded money from the victim, stating, " 'You got some money? Give me some money.' " *Id.* The victim reached across defendant to attempt to grab the keys from the ignition, and as the victim reached for the keys, the defendant grabbed his wrist and a struggle ensued. *Id.* at 888-89. The defendant swung at the victim and hit him once in the neck. *Id.* at 889.

¶ 31 The defendant in *Collins* was convicted of attempted robbery and possession of a stolen motor vehicle. *Id.* at 887. On appeal, the defendant argued that his conviction for armed robbery must be reversed because the State failed to prove that he attempted to take the victim's money by force or the threat of force where the punch to the victim's neck was unrelated to his demand for money. *Id.* at 894. Finding in favor of the State, the court opined that the State adequately showed that defendant's attempted taking and use of force were part of a series of events that constituted a single incident. *Id.* at 897. The court found that there was no significant interval between the demand and the use of force. *Id.* The court also determined that the victim's "reach for the keys separated defendant's demand for money and the punch into two separate incidents." *Id.*

¶ 32 The timeline of the events of this case are similar to *Collins* because no significant interval between defendant's demand for Jordan's phone and his pulling the gun on her occurred here. The entire exchange between defendant and Jordan occurred within the same two minutes, and in the same location. Merely because Jordan walked a few feet away before turning back to face defendant is not enough to create a separate incident in this court's opinion. As a result, we

find that the State proved beyond a reasonable doubt that defendant possessed the specific intent necessary to sustain his conviction for attempted armed robbery.

¶ 33 Turning to the second part of defendant's argument, we examine whether defendant took a substantial step toward the commission of an armed robbery. The State contends that defendant took the requisite substantial step toward the commission of an armed robbery by making a demand for Jordan's phone while armed with two firearms on his person. We agree with the State's characterization of the evidence, and find that the substantial step element was proved beyond a reasonable doubt.

¶ 34 "A substantial step occurs when the acts taken in furtherance of the offense place the defendant in a dangerous proximity to success." *People v. Oduwole*, 2013 IL App (5th) 120039, ¶ 44. The determination of what constitutes a substantial step toward the commission of a crime "can only be accomplished by evaluating the facts and circumstances of the particular case" because "[i]t would be an impossible task to compile a definitive list of acts, which performed, constitute a substantial step toward the commission of every crime." *People v. Terrell*, 99 Ill. 2d 427, 433 (1984). However, section 5.01 of the Model Penal Code provides the following examples:

> "(a) lying in wait, searching for or following the contemplated victim of the crime;
>
> (b) enticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission;
>
> (c) reconnoitering the place contemplated for the commission of the crime;
>
> (d) unlawful entry of a structure, vehicle or enclosure in which it is contemplated the crime will be committed;

(e) possession of materials to be employed in the commission of the crime, that are specially designed for such unlawful use or that can serve no lawful purpose to the actor under the circumstances;

(f) possession, collection or fabrication of materials to be employed in the commission of the crime, at or near the place contemplated for its commission, if such possession, collection or fabrication serves no lawful purpose of the actor under the circumstances;

(g) soliciting an innocent agent to engage in conduct constituting an element of the crime." Model Penal Code § 5.01(2) (West 2012).

¶ 35 We find that defendant's demand for Jordan's phone and pointing a gun at her during the same incident constituted a substantial step in the commission of an armed robbery. Although the facts of this case do not fit neatly into any one of the examples from the Model Penal Code, we find subsections (e) and (f) to be the most applicable because defendant possessed materials, *i.e.* two firearms, to be employed in the commission of the armed robbery of Jordan, and he possessed those materials at the same place he committed the crime. Further, we note that it is well-settled that although mere preparation cannot be considered a substantial step, "the offense of attempt may be committed at some point short of the last deed prior to committing the intended offense." (Internal quotation marks omitted.) *People v. Jiles*, 364 Ill. App. 3d 320, 334 (2006). In this case, defendant's actions went far beyond mere preparation. He chose Jordan as his victim, approached her, and demanded her phone. Additionally, he pointed a gun at her head and told her "I'll shoot the shit out yo ass" after she refused to give him her phone. As mentioned previously, there was not enough attenuation between defendant's demand and his pointing a gun at Jordan to separate the events into two incidents. All of the events were part of one cohesive occurrence. Further, defendant, while armed with not one, but two, firearms

demanded that Jordan give him her phone. He did not ask for it, or "request" it, as defendant contends. Instead, defendant walked up to Jordan, a stranger, and demanded that she give him her property. When she refused to comply, he twice called her a derogatory name, and when Jordan responded to defendant's insults, he pulled a gun and pointed it at her head. As a result, this court finds the evidence overwhelmingly proved that defendant made a substantial step toward the commission of an armed robbery when he demanded Jordan's phone, and threatened her with a gun. See *People v. Scott*, 2015 IL App (1st) 133180, ¶ 19 (finding that the defendant did not commit armed robbery where although the defendant pointed a gun at the victim and told him not to move, the defendant did not make a demand for any property). This court can think of no better example of a substantial step in the commission of an armed robbery than the combination of demanding a person's property and threatening them with a firearm. Having found that the State proved that defendant had the specific intent to commit an armed robbery and that he made a substantial step in the commission thereof, we affirm defendant's conviction for attempted armed robbery.

¶ 36 Admission of FOID Certification

¶ 37 Next, defendant argues that the trial court violated his sixth amendment right to confront the witnesses against him when it admitted an Illinois State Police certification showing that he had never been issued a valid FOID card, where the State had not called a representative from the Illinois State Police to authenticate the document or testify as to its contents. Defendant concedes that his trial counsel did not object to this alleged error, nor was it included in his posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (holding that in order to preserve a claim for review, a defendant must both object at trial and include the alleged error in a written

posttrial motion). Therefore, defendant asks that we review this issue under the doctrine of plain error, and in the alternative, argues that his trial counsel was ineffective.

¶ 38 It is well-established that the plain-error doctrine is a narrow and limited exception. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). The first hurdle a defendant must overcome is showing that a clear or obvious error occurred. *People v. Sebby*, 2017 IL 119445, ¶ 48. Then, defendant must show that either: (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing. *Id.* "Under both prongs of the plain-error doctrine, the defendant has the burden of persuasion." *Hillier*, 237 Ill. 2d at 545. Defendant argues that both prongs of plain error apply here. Prior to determining whether plain error occurred, we must first determine whether a clear or obvious error occurred.

¶ 39 The sixth amendment guarantees that, "In all criminal prosecutions, the accused shall enjoy the right *** to be confronted with the witnesses against him." U.S. Const., amend. VI. "[T]he basic objective of the Confrontation Clause *** is to prevent the accused from being deprived of the opportunity to cross-examine the declarant about statements taken for use at trial." *Michigan v. Bryant*, 562 U.S. 344, 358 (2011).

¶ 40 The State argues that defendant cannot show that a clear and obvious error occurred where he acquiesced to the introduction of the certification. "Under the invited-error doctrine, a party cannot acquiesce to the manner in which the trial court proceeds and later claim on appeal that the trial court's actions constituted error. [Citations.] Simply stated, a party cannot complain of error which that party induced the court to make or which that party consented." (Internal quotation marks omitted.) *People v. Manning*, 2017 IL App (2d) 140930, ¶ 16. In this case, defendant concedes that after the State moved to enter the FOID certification into evidence, his trial counsel remained silent and did not object.

¶ 41 In *People v. Cox*, 2017 IL App (1st) 151536, ¶ 76, this court determined that no error existed where "the defense invited the trial court to admit the certificate by affirmatively responding to the trial court's questions that it had no objection to its admission." In that case, the trial court asked defense counsel on three separate occasions whether the defendant had any objection to the certification and each time counsel stated that he had no objection. *Id.* ¶ 74. The *Cox* court explained how the case before it differed from *People v. Diggins*, 2016 IL App (1st) 142088, wherein this court reversed a defendant's conviction and remanded for a new trial on the basis that defendant's right under the Confrontation Clause was violated by the admission of a FOID certification over the defendant's objection. *Id.* ¶ 79. The *Cox* court explained that although *Diggins* was somewhat factually similar, it significantly differed from the case before it because the defense counsel in *Diggins* objected to the admission of the FOID certification at trial, whereas defense counsel in *Cox* affirmatively stated he had no objection on three occasions. *Id.* ¶¶ 80-81.

¶ 42 We find the case before us is more similar to *Cox* than *Diggins*, and thus, we determine no error occurred due to defendant's trial counsel's acquiescence to the admission of the FOID certification. In *Diggins*, the court admitted the certification over the defense's objection. *Diggins*, 2016 IL App (1st) 142088, ¶ 7. In *Cox*, the defendant's counsel affirmatively stated that he had no objection to the admission of the certification. *Cox*, 2017 IL App (1st) 151536, ¶ 83. The case before us falls somewhere in between the two aforementioned factual scenarios. Here, defendant's trial counsel did not object to the introduction of the certification into evidence. He also did not affirmatively state that he had no objection. He merely stood silent, allowing the certification to be admitted into evidence, which we find is certainly more similar to affirmatively stating "no objection" than it is to making an express objection. We find trial

counsel's silence here constitutes acquiescence to the admission of the certification. To be clear, it is not affirmative acquiescence as was present in *Cox,* but it is acquiescence nonetheless. "[W]hen a defendant procures, invites, or acquiesces in the admission of evidence, even though the evidence is improper, [h]e cannot contest the admission on appeal." *People v. Bush*, 214 Ill. 2d 318, 332 (2005). We find that defendant's trial counsel acquiesced to the admission of the FOID certification when he failed to object when the State moved the certifications into evidence.

¶ 43 By allowing the FOID certification to be admitted without objection, "defendant deprives the State of the opportunity to cure the alleged defect." *Id.* Here, defense counsel acquiesced through his silence. See *People v. Camden*, 115 Ill. 2d 369, 378-79 (finding that defendant's silence and failure to object to the trial court's declaration of a mistrial, despite having the opportunity to do so, evinced the defendant's acquiescence to the mistrial); *People v. Hill*, 353 Ill. App. 3d 961, 966 (holding that defendant's failure to object to the mistrial constituted acquiescence); Here, if the defense had objected, "the State could have easily remedied the problem by simply calling the State employee to the stand." *Cox*, 2017 IL App (1st) 151536, ¶ 75. Thus, we find that defendant through silence, acquiesced to the admission of the FOID certification into evidence at his trial, he cannot contest on appeal that its admission, even though improper, was error.

¶ 44 We similarly reject defendant's claim that his trial counsel was ineffective for failing to object to the admission of the FOID certification and include it in his posttrial motion. In order to prevail on a claim of ineffective assistance of counsel, a defendant must show both (1) that his counsel's performance was objectively unreasonable under prevailing professional norms, and (2) that there is a reasonable probability that, but for counsel's unprofessional errors, the result of

the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). A "strong presumption that the challenged action or inaction may have been the product of sound trial strategy" exists. *People v. Manning*, 241 Ill. 2d 319, 327 (2011).

¶ 45 In this case, "the only way that defense counsel's decision not to object to the certification could *possibly* be ineffective assistance was if defendant actually had a FOID card and the certification was in error." (Emphasis in original.) *Cox*, 2017 IL App (1st) 151536, ¶ 88. The record before us does not contain any indication that defendant possessed a FOID card, or any indication that the FOID certification was in error. See *id.* Further, it seems the theory of the case advanced by the defense during trial was that the State could not meet their burden in proving defendant possessed either weapon through a single officer's testimony. Thus, counsel's decision to refrain from objection was a matter of sound trial strategy and we do not find that counsel's performance was objectively unreasonable under prevailing professional norms.

¶ 46 Fines, Fees, and Costs

¶ 47 Defendant argues, and the State concedes that the order assessing fines, fees, and costs against defendant should be corrected because several of the assessments levied against defendant that were labeled as fees were actually fines that are subject to the $5-per-day presentence incarceration credit. In relevant part, section 110-14 of the Code of Criminal Procedure of 1963 states, "Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of $5 for each day so incarcerated upon application of the defendant." 725 ILCS 5/110-14 (West 2010). Specifically, defendant argues that he is entitled to pre-sentence incarceration credit for the $15 State Police Operations fee and the $50 Court System fee. The State agrees that defendant is entitled to presentence incarceration credit toward these two charges because they

do not compensate the state for an expenditure incurred in the prosecution of defendant. See *Jones*, 223 Ill. 2d at 582 (holding that "a 'fine' is a part of the punishment for a conviction, whereas a 'fee' or 'cost' seeks to recoup expenses incurred by the state"). Both defendant and the State agree that defendant is entitled to presentence incarceration credit of $5 for each of 1,042 days he spent in custody prior to sentencing. Accordingly, both parties agree defendant should receive a total credit of $5,210. This credit should be applied to cover the $15 State Police Operations fee and the $50 Court System fee (for a total credit of $65). Further, the order assessing fines, fees, and costs entered by the trial court also reflected that the $30 Children's Advocacy Center charge was to be offset by $5-per-day presentence incarceration credit. Defendant is, therefore, entitled to $65 credit in addition to the $30 credit that he was already entitled. Thus, we order the fines, fees, and costs order to reflect that $404 is the total amount remaining to be paid, after the $95 of pre-sentence incarceration credit is applied.

¶ 48 Mittimus

¶ 49 Defendant argues that the mittimus should be corrected because it states that defendant was convicted and sentenced to the Illinois Department of Corrections on counts 1, 2, 3, 5, 7, 9, and 11, even though counts 2, 5, 7, 9, and 11 were merged into count 3, and defendant was only sentenced on counts 1 and 3. The State responds that defendant's mittimus is already correct because on the second page, it states "it is further ordered that counts 2, 5, 7, 9 and 11 merge into count 3." The State suggests that perhaps this language was overlooked by defendant's counsel. The question of whether defendant's mittimus should be corrected is a purely legal issue, which we review *de novo*. *People v. Carlisle*, 2015 IL App (1st) 131144, ¶ 86.

¶ 50 The mittimus must be amended to conform with the judgment when it does not accurately reflect the defendant's conviction. *People v. Pryor*, 372 Ill. App. 3d 422, 438 (2007). "Although

a written order of the circuit court is evidence of the judgment of the circuit court, the trial judge's oral pronouncement is the judgment of the court." (Internal quotation marks omitted.) *Carlisle*, 2015 IL App (1st) 131144, ¶ 87. When a court's oral ruling and its written order are in conflict, then the oral ruling controls. *Id.*

¶ 51 In this case, defendant was originally charged with 12 counts. As to the gun charges against defendant, the State proceeded to trial on four counts of aggravated unlawful use of a weapon for not having a FOID card — counts 3, 7, 9, and 11 — and two counts of unlawful use of a weapon by a felon — counts 2 and 5. Although defendant was found guilty on all six of those counts, the trial court orally ordered counts 2, 5, 7, 9, and 11 to be merged into count 3, and sentenced defendant to 10 years' imprisonment on count 3[3]. Defendant argues that in spite of the court's merger of five of the counts into count 3, the mittimus incorrectly reflects that he was convicted and sentenced on all six counts.

¶ 52 We find that the mittimus is correct as it stands. We acknowledge that although the mittimus does list all six of the gun-related counts, it only lists a sentence on counts 1 and 3, which are the counts pursuant to which defendant was sentenced. Specifically, the mittimus states that on counts 1 and 3, defendant was sentenced to 10 years and 0 months. As to counts 2, 5, 7, 9, and 11, which were the counts merged into count 3, the mittimus states that defendants was sentenced to 0 years and 0 months. Therefore, the mittimus is accurate. The mittimus also contains the following language: "it is further ordered that counts 2, 5, 7, 9 and 11 merge into count 3." Therefore, we do not find that the mittimus, in any way, deviates from the oral ruling of the trial court, and agree with the State that defendant's mittimus is already correct. Defendant argues that the "superfluous language creates confusion for the entities applying the

[3] Defendant was also sentenced to ten years' imprisonment on count 1 (attempt armed robbery), to run concurrently with the sentence on count 3.

mittimus" but fails to provide any explanation or authority to support such a contention. Thus, we see no reason to correct the mittimus, which already accurately reflects the oral ruling of the trial court.

¶ 53 CONCLUSION

¶ 54 Based on the foregoing, we order that the order assessing fines, fees, and costs be corrected to show that the amount remaining to be paid is $404 and we affirm the trial court's decision on all other issues.

¶ 55 Affirmed as modified.