2018 IL App (4th) 160415-U

NO. 4-16-0415

FILED
August 13, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
TIMOTHY WARE,	)	No. 13CF630
Defendant-Appellant.	)	
	)	Honorable
	)	Hugh Finson,
	)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Steigmann and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* (1) A reasonable trier of fact could find that, in trying to establish a personal or social relationship with a parolee, defendant implicitly exploited his position as a correctional officer and thereby met the element, in the official-misconduct statute (720 ILCS 5/33-3 (West 2012)), of acting "in his official capacity," in that the possibility of being sent back to prison—and, hence, to his authority and supervision—if the parolee violated any of the conditions of parole might have caused her to believe it would be unwise to spurn him.

(2) It would be impossible for a reasonable trier of fact to find that defendant exploited his position as a correctional officer, and thereby acted "in his official capacity," by lying to an internal-affairs investigator who was investigating him for socializing with parolees.

(3) If, in separate counts of a charging instrument, the alleged criminal conduct consists of the identical set of physical acts, that set of physical acts will be treated as one act in an analysis under the one-act, one-crime doctrine.

¶ 2 On appeal, defendant, Timothy Ware, argues (1) the evidence was insufficient to prove he committed the offenses of official misconduct alleged in counts III, IV, V, VII, and VIII

of the information (720 ILCS 5/33-3(b), (c) (West 2012)) and (2) the one-act, one-crime doctrine requires us to vacate his convictions on counts I and III. We only partly agree with his first argument but entirely agree with his second argument.

¶ 3 Because the evidence is insufficient, as a matter of law, to prove defendant guilty of counts V, VII, and VIII, we reverse the convictions on those counts, but we find sufficient evidence to support the convictions on counts III and IV. The conviction on count III, however, must be vacated, along with the conviction on count I, because the simultaneous convictions on counts I and II and on counts III and IV violate the one-act, one-crime doctrine. Therefore, we affirm the judgment in part, vacate it in part, reverse it in part, and remand this case for resentencing on the remaining convictions.

¶ 4 I. BACKGROUND

¶ 5 On May 24, 2013, the State filed an information, which, in its eight counts, accused defendant of committing official misconduct (720 ILCS 5/33-3(b), (c) (West 2012)) by socializing with two parolees, Ashlee N. Quesenberry and Brittany Debeck, and by providing false information to an investigator, Jeffrey Gabor, when he questioned defendant about the socialization. Specifically, the charges were as follows.

¶ 6 Count I alleged that, during the period of August 10 to 15, 2012, when acting in his official capacity as a correctional officer, defendant knowingly did what the law forbade him to do: he solicited the telephone number of a parolee, Quesenberry, and contacted her by telephone. Illinois Department of Corrections Administrative Directive II/G/3(a) (Directive 3(a)) forbade employees of the Illinois Department of Corrections (Department) to knowingly socialize with any parolee except in the performance of an assignment or as approved in writing by the Department's director, assistant director, or deputy director. See 720 ILCS 5/33-3(b)

(West 2012).

¶ 7 Count II alleged that, during the period of August 10 to 15, 2012, in his official capacity as a correctional officer and with the intent to obtain a personal advantage for himself—namely, a personal and social relationship with a parolee, Quesenberry—defendant acted beyond his lawful authority: he solicited Quesenberry's phone number and contacted her by telephone, thereby violating Directive 3(a). See *id.* § 33-3(c).

¶ 8 Count III alleged that, during the period of June 12 to September 27, 2012, in his official capacity as a correctional officer, defendant knowingly did what the law forbade him to do: he solicited the telephone number of a parolee, Debeck, and contacted her by telephone, thereby violating Directive 3(a).

¶ 9 Count IV alleged that, during the period of June 12 to September 27, 2012, in his official capacity as a correctional officer and with the intent to obtain personal advantage for himself—namely, a personal and social relationship with a parolee, Debeck—defendant acted beyond his lawful authority: he solicited Debeck's telephone number and contacted her by telephone, thereby violating Directive 3(a).

¶ 10 Count V alleged that, on December 28, 2012, in his official capacity as a correctional officer, defendant knowingly violated Illinois Department of Corrections Administrative Directive II/G/8 (Directive 8), which prohibited employees of the Department from knowingly providing false information during an internal investigation. Defendant violated Directive 8, on this occasion, by falsely telling Gabor that he, defendant, had never asked Quesenberry for her telephone number.

¶ 11 Count VI alleged that, on January 8, 2013, in his official capacity as a correctional officer, defendant knowingly violated Directive 8 by falsely telling Gabor he had

never asked Debeck for her phone number.

¶ 12 Count VII alleged that, on January 8, 2013, in his official capacity as a correctional officer, defendant knowingly violated Directive 8 by falsely telling Gabor he had telephoned or texted Debeck only five or six times.

¶ 13 Count VIII alleged that, on January 8, 2013, in his official capacity as a correctional officer, defendant knowingly violated Directive 8 by falsely telling Gabor he was not pursuing a personal or social relationship with Quesenberry or Debeck.

¶ 14 Defendant's case proceeded to a jury trial, in which the following evidence was presented.

¶ 15 In 2012, defendant was a correctional officer at Decatur Correctional Center, and Quesenberry and Debeck were inmates there. He had been a correctional officer for seven years.

¶ 16 From August 10 to 15, 2012, defendant socialized with Quesenberry. Before she was released on parole, he asked her for her telephone number. She gave him her mother's telephone number and, sometime later, gave him her personal telephone number as well. He telephoned her and asked her on a date. She repeatedly turned him down. She testified that, if she got in trouble while on parole, she could be sent back to prison.

¶ 17 From June 12 to September 27, 2012, defendant socialized with Debeck. Five days after her release from prison and while she was still was on parole, he asked her, through Facebook messaging, for her telephone number. He socialized with her mostly through text messaging, initiating conversations with her and asking her on dates. She, too, declined to go out with him. She testified that, if she got in trouble while on parole, she could be sent back to prison.

¶ 18 Stephen Spade, who was an administrative assistant to the warden of Decatur

Correctional Center, testified that defendant's primary duties as a correctional officer were the supervision and control of offenders and the safety of the facility. Because of those duties, correctional officers had to obey administrative rules, which were covered in monthly memoranda to all employees and in initial and annual training that all correctional officers had to undergo. Spade testified that one of the administrative rules prohibited socialization with parolees, inmates, and offenders and that the reason for the rule was that socialization might lead to officers' bringing contraband into the facility and committing other acts inimical to the safety and security of the facility. Spade added that socialization with parolees could make correctional officers vulnerable because the parolee might have friends who still were incarcerated in the facility.

¶ 19 Gabor, an investigator with the Department, interviewed defendant to investigate his socialization with Quesenberry and Debeck. On December 28, 2012, defendant met with Gabor. Defendant admitted knowing that Quesenberry and Debeck were on parole when he socialized with them. He also admitted knowing that contacting parolees was against the Department's rules. He claimed, however, that he telephoned Quesenberry only because he had missed a call and he was returning the call. He denied telephoning Quesenberry's mother. He represented to Gabor that he spoke with Debeck only five or six times in one month and that he contacted her only to try to find out who was calling him.

¶ 20 Gabor believed that defendant was untruthful the first time he interviewed him, and Gabor interviewed defendant a second time. Ultimately, he determined that defendant and Quesenberry had 11 contacts and that defendant and Debeck had 1832 contacts, which included telephone calls and text messages.

¶ 21 In his testimony, Gabor distinguished the duties of a correctional officer from

those of a parole officer. A correctional officer, Gabor explained, was responsible for the safety and security of the facility, inmate control, inmate movement control, and protecting inmates. On parole, the inmate was still in custody, and parole officers checked on inmates. A correctional officer could affect an inmate's good conduct credit (credit inmates could earn to leave prison earlier). By writing an inmate disciplinary report, a correctional officer could cause an inmate's good conduct credit to be revoked.

¶ 22 Megan Fouch, Quesenberry's acquaintance in prison, testified that defendant had contacted her, Fouch, and had asked her how to get in contact with Quesenberry. Defendant wanted to speak with Quesenberry about the pending case because he wanted her to change her account of what had happened between the two of them.

¶ 23 The jury acquitted defendant of count VI but found him guilty of the remaining seven counts of official misconduct. The trial court entered judgment on the guilty verdicts.

¶ 24 In February 2016, the trial court sentenced defendant to 30 months of probation.

¶ 25 On May 19, 2016, defendant filed notice of appeal.

¶ 26 On August 18, 2016, we allowed the late notice of appeal.

¶ 27 II. ANALYSIS

¶ 28 A. The Dispute Over What Is the Applicable Standard of Review

¶ 29 Defendant first argues that the evidence is insufficient, as a matter of law, to prove him guilty, beyond a reasonable doubt, of counts III, IV, V, VII, and VIII of the information. He acknowledges that, ordinarily, when a defendant challenges the sufficiency of the evidence, we should look at all the evidence in a light most favorable to the prosecution and consider whether any rational trier of fact could find the elements of the charged offense to be proved beyond a reasonable doubt. See *People v. Campbell*, 146 Ill. 2d 363, 374 (1992).

Defendant claims, however, that all the facts in this case are undisputed and that this appeal, therefore, gives no occasion for the deferential standard of review. He cites *People v. Giraud*, 2012 IL 113116, ¶¶ 4-6, and *People v. Smith*, 191 Ill. 2d 408, 411 (2000), in support of the proposition that, "where, as here, a sufficiency of the evidence claim turns on the application of undisputed facts to the language of a statute, the sufficiency of the evidence claims becomes a question of statutory interpretation that is reviewed *de novo*."

¶ 30 The State maintains, on the other hand, that we should apply the ordinary deferential standard of review as the appellate court did in another official-misconduct case, *People v. Brogan*, 352 Ill. App. 3d 477, 490 (2004). In that case, the defendant, an off-duty correctional officer for Cook County, flashed his badge, and used his official capacity as a sheriff's deputy, to help his friend Ronald Schickel avoid arrest for choking someone to death in a melee outside a hotel bar. The appellate court concluded it was "quite reasonable for a trier of fact to deduce" that the defendant had used his status as a deputy sheriff to persuade the hotel manager, William Pishotta, not to give Schickel away to the police and to prevent him from learning Schickel's identity. *Id.* at 492. Also, the appellate court concluded, it "was entirely reasonable" to find that the defendant's oral report to an investigating state trooper, Carolyn Black, "was an attempt to utilize his official capacity as a sheriff's deputy to provide inaccurate facts that would be imbued automatically with the enhanced credibility given to police officers." *Id.*

¶ 31 The defendant in *Brogan* did not dispute the basic facts, such as that he had falsely told Black he never saw anyone, including Schickel, put the victim in a chokehold. See *id.* at 483. Nor did he dispute that he had declined to disclose Schickel's identity to Pishotta and that he had asked Pishotta to " 'try not to point this guy out because [the defendant did not] want

[this guy] to get into trouble.' " *Id.* at 482. Instead of disputing he had done those things, the defendant in *Brogan* disputed that (1) he knowingly had broken the law and (2) he had done so in his official capacity—the two elements of official misconduct as charged. *Id.* at 490. Significantly for the present case, the appellate court in *Brogan* held that not only (1) but also (2) posed a question of fact. *Id.* ("[O]ur inquiry must focus on whether there is evidence in the record to support the trial court's conclusion[,] [in the bench trial, that the defendant (1) knowingly performed an act which he knew [he] was forbidden by law to perform and (2) that he did so in his official capacity.]"). Even though the basic, underlying facts in *Brogan* were undisputed, it still was a question of fact whether the defendant had acted in his official capacity. *Id.*

¶ 32 Thus, it is a question of fact, not a question of law, whether defendant was acting in his official capacity when he solicited Debeck's telephone number and contacted her by telephone and afterward made false statements to the Department's investigator, Gabor. See *id.* This appeal is not about what it means, under section 33-3 (720 ILCS 5/33-3 (West 2012)), to act "in [one's] official capacity." Case law already states what it means. "An act is performed in a public officer's official capacity if it is accomplished by exploitation of his public position." *People v. Lynn*, 223 Ill. App. 3d 688, 691 (1992); see also *People v. Hampton*, 307 Ill. App. 3d 464, 477 (1999). Presumably, defendant did not take this appeal just so we could repeat to him the gloss that case law has put on section 33-3. Instead of being (as he claims) about statutory interpretation, this appeal really is about whether—or to what extent—he exploited his position as a correctional officer by violating the administrative directives he does not dispute he violated. Whether he knowingly (see 720 ILCS 5/33-3(b) (West 2012)) or intentionally (see 720 ILCS 5/33-3(c) (West 2012)) used his official position "meanly or unjustly for [his] own advantage"

was a factual issue, not a legal issue. Merriam-Webster's Collegiate Dictionary 409 (10th ed. 2000) (definition of "exploit"). Accordingly, looking at all the evidence in a light most favorable to the prosecution, we will ask whether any rational trier of fact could find, beyond a reasonable doubt, that defendant exploited his official position as a correction officer. See *Brogan*, 352 Ill. App. 3d at 490.

¶ 33 B. The Sufficiency of the Evidence

¶ 34 1. *Counts III and IV: Socializing With Debeck*

¶ 35 In count III, the State alleged that, during the period of June 12 to September 27, 2012, defendant, in his official capacity, "knowingly performed an act which he knew he was forbidden by law to perform in that [he] solicited [the] *** phone number [of a parolee, Debeck,] and contacted [her] by telephone[,] in violation of" Directive 3(a). See 720 ILCS 5/33-3(b) (West 2012) ("A public officer *** commits misconduct when, in his official capacity ***, he *** [k]nowingly performs an act which he knows he is forbidden by law to perform ***.").

¶ 36 In count IV, the State alleged that, during the period of June 12 to September 27, 2012, defendant, in his official capacity and "with the intent to obtain [a] personal advantage for himself, being a personal and social relationship with [a parolee,] Debeck, performed an act in excess of his lawful authority in that [he] solicited *** Debeck's telephone number and contacted [her] by telephone[,] in violation of" Directive 3(a).

¶ 37 Defendant acknowledges that, although the Department's administrative directives, as distinct from its administrative rules, normally are not considered to be "law" (see *Lucas v. Department of Corrections*, 2012 IL App (4th) 110004, ¶ 14), they are "law" for purposes of a charge of official misconduct, which "can be based on the violation of an administrative rule or regulation [even though] that rule or regulation does not itself carry any

penalty" (*People v. Davis*, 281 Ill. App. 3d 984, 989 (1996)). He does not dispute that, by socializing with Debeck, he violated Directive 3(a), which, in the context of official misconduct, is "law." He disputes, however, that, by doing so, he acted "in his official capacity" (720 ILCS 5/33-3 (West 2012))—that is to say, he disputes that he exploited his position as a correctional officer in order to get into a relationship with Debeck (see *Lynn*, 223 Ill. App. 3d at 691). He observes that, as a correctional officer, he had no authority over her while she was on parole.

¶ 38 The State counters that, even though defendant no longer had any present authority over Debeck, he still could implicitly use his position as a correctional officer to try to coerce her into a personal or social relationship with him. What made him of continuing practical relevance to her was that, if she violated any of the conditions of her parole, she could be sent back to the Decatur Correctional Center, where she would be under his authority again—which would include the authority to imperil her good conduct credits and inmate privileges by writing disciplinary reports.

¶ 39 Defendant responds, in his reply brief, that there was no evidence he "threatened or pressured [Debeck] to socialize." But the official-misconduct statute does not require an explicit threat or explicit coercion. See 720 ILCS 5/33-3 (West 2012). It requires, rather, that the defendant exploit his or her official position (*Lynn*, 223 Ill. App. 3d at 691), and exploitation need not be blatant and explicit. The exploitation can operate silently and "automatically." *Brogan*, 352 Ill. App. 3d at 492. A correctional officer can exploit his or her official position without stating outright what already is obvious to the parolee: it might be imprudent to offend the correctional officer, considering that, if the parolee violates any of the conditions of parole, the parolee might well be returned to the supervision of the correctional officer. This power dynamic was more than Debeck's "subjective feelings," as defendant puts it; this power dynamic

was an objective reality in his relationship with her—no less real and palpable for being unspoken—and it justified the guilty verdicts on counts III and IV.

¶ 40 2. *Counts V, VII, and VIII: Lying to Gabor*

¶ 41 Defendant acknowledges that knowingly providing false information to an investigator, Jeffrey Gabor, was a violation of Directive 8. He argues, however, that the record lacks any evidence that, in providing false information to Gabor, he exploited his official position. See *Lynn*, 223 Ill. App. 3d at 691. In other words, he argues there is no evidence that he used his position as a correctional officer to "effectuate" his act of making misrepresentations to Gabor. *People v. Steinmann*, 57 Ill. App. 3d 897-98, 898 (1978) ("[T]he defendants had manipulated their offices to effectuate the wrongful transfer of money.").

¶ 42 The State argues, on the other hand, that defendant was "employed as a correctional officer in his official capacity when he knowingly provided the false statements" and, "[t]hus, his acts of providing these false statements were inextricably intertwined with his public employee status and he exploited his status in doing so." But employment is not the test, and inextricable intertwinement is not the test, either. Rather, the test is exploitation of the official position. The State asserts that defendant "exploited his status" by lying to Gabor, but the State fails to provide a coherent explanation for that assertion. It is unclear how, by telling lies to Gabor, defendant exploited his position as a correctional officer. His position as a correctional officer (together with his socializing with parolees) provided the *occasion* for lying to Gabor, but it is unclear how he "manipulated" his position to "effectuate" his untruthfulness. *Id.*

¶ 43 This is not to deny that a police officer could use his or her badge to bestow credibility on lies. In *Brogan*, for example, a Cook County correctional officer "utilize[d] his official capacity as a sheriff's deputy to provide inaccurate facts that would be imbued

automatically with the enhanced credibility given to police officers." *Brogan*, 352 Ill. App. 3d at 492. But a state trooper was interviewing the defendant in *Brogan* as a witness (*id.* at 482-83), whereas Gabor, an investigator for the Department, was interviewing defendant on a charge of misconduct. The posture of Gabor toward defendant was significantly different from the posture of the state trooper toward the defendant in *Brogan*. It would be fanciful and implausible to assume that defendant's status as a correctional officer carried any weight with Gabor, whose job, specifically, was to investigate correctional officers. Evidently, in Gabor's eyes, defendant's uniform did not give him an aura of credibility. Gabor disbelieved him from the start.

¶ 44 Looking at all of the evidence in the light most favorable to the prosecution, we conclude it would be impossible for a rational jury to find, beyond a reasonable doubt, that, by making false statements to Gabor, defendant exploited his position as a correctional officer. See *Campbell*, 146 Ill. 2d at 374; *Lynn*, 223 Ill. App. 3d at 691. Because the element of acting "in his official capacity" (720 ILCS 5/33-3 (West 2012)) was, as to counts V, VII, and VIII, unproved, we reverse the convictions on those counts.

¶ 45 C. The One-Act, One-Crime Doctrine

¶ 46 1. *Counts I and II*

¶ 47 The one-act, one-crime doctrine is a two-step test in which the court first determines whether a defendant's conduct consisted of separate physical acts or a single physical act. *People v. Rodriguez*, 169 Ill. 2d 183, 186 (1996). Multiple convictions are impermissible if they are based on the same physical act (*id.*), which is defined as any overt or outward manifestation that will support a different offense (*People v. King*, 66 Ill. 2d 551, 566 (1977)).

¶ 48 If one count of the charging instrument alleges multiple acts, A, B, and C, and another count alleges the same multiple acts, A, B, and C, the intent of the prosecution is to

portray A, B, and C as a single act for purposes of the one-act, one-crime doctrine. *People v. Crespo*, 203 Ill. 2d 335, 344 (2001). The charging instrument "must indicate that the State intended to treat the conduct of defendant as multiple acts in order for multiple convictions to be sustained." *Id.* at 345. The rationale is that a defendant has a fundamental right to be informed of the nature and cause of the criminal accusations so that (1) the defendant may prepare a defense and (2) the charged offense may serve as a bar to subsequent prosecution arising out of the same conduct. *Id.*

¶ 49 If, from an examination of the charging instrument, the court determines that the defendant committed multiple physical acts, the analysis proceeds to step two, at which the court determines whether any of the charged offenses are lesser included offenses. *Rodriguez*, 169 Ill. 2d at 186. If any of the offenses are lesser included offenses, multiple convictions are impermissible. *Id.* If there are no lesser included offenses, multiple convictions may stand. *Id.*

¶ 50 Defendant argues that, by the logic of *Crespo*, counts I and II allege the same act: his solicitation of Quesenberry's telephone number and his contact of her by telephone while she was on parole. Count I alleges that, "on or about August 10, 2012[,] through August 15, 2012[,] *** the said defendant solicited parolee Ashlee N. Qu[e]senberry's phone number and contacted parolee Ashlee N. Quesenberry by telephone." Count II identically alleges that "on or about August 10, 2012[,] through August 15, 2012[,] *** the said defendant solicited Parolee Ashlee N. Quesenberry's telephone number and contacted Parolee Ashlee N. Quesenberry by telephone." The only difference between the two counts is that, in count I, defendant, by so doing, "[k]nowingly perform[ed] an act which he [knew] he [was] forbidden by law to perform" (see 720 ILCS 5/33-3(b) (West 2012)) whereas, in count II, by so doing, he "performed an act in excess of his lawful authority" and "with the intent to obtain a personal advantage for himself"

(see 720 ILCS 5/33-3(c) (West 2012)). Because the State did not indicate, in the information, that it intended to treat this conduct by defendant as multiple acts, the multiple convictions in counts I and II cannot stand. See *Crespo*, 203 Ill. 2d at 345.

¶ 51 The supreme court has held that, when multiple convictions are obtained for offenses arising from a single act, the conviction for the less serious offense should be vacated and a sentence should be imposed on the more serious offense. *People v. Artis*, 232 Ill. 2d 156, 170 (2009); *In re Samantha V.*, 234 Ill. 2d 359, 379 (2009); *People v. Lee*, 213 Ill. 2d 218, 226-27 (2004); *People v. Garcia*, 179 Ill. 2d 55, 71 (1997). Because defendant's conviction for count I was the less culpable offense, requiring knowledge instead of intention, we vacate the conviction for count I and allow the conviction on count II to stand.

¶ 52 2. *Counts III and IV*

¶ 53 Defendant argues that his simultaneous convictions of counts III and IV likewise violate the one-act, one-crime rule because those two counts allege the same act: his solicitation of Debeck's telephone number and his contact of her by telephone while she was on parole. See *Crespo*, 203 Ill. 2d at 345; *Rodriguez*, 169 Ill. 2d at 186. We agree. Count III alleges that, "on or about June 12, 2012[,] through September 27, 2012, *** the said defendant solicited parolee Brittany A. Debeck's phone number and contacted parolee Brittany Debeck's [*sic*] by telephone." Count IV identically alleges that, "on or about June 12, 2012[,] through September 27, 2012, *** the said defendant solicited Parolee Brittany Debeck's telephone number and contacted Parolee Brittany Debeck by telephone." The only difference between the two counts is that, in count III, defendant, by so doing, "[k]nowingly perform[ed] an act which he [knew] he [was] forbidden by law to perform" (see 720 ILCS 5/33-3(b) (West 2012)) whereas, in count IV, by so doing, he "perform[ed] an act in excess of his lawful authority" and "with intent to obtain a

personal advantage for himself" (see 720 ILCS 5/33-3(c) (West 2012)). Because the State did not indicate, in the information, that it intended treat to this conduct by defendant as multiple acts, the multiple convictions in counts III and IV cannot stand. See *Crespo*, 203 Ill. 2d at 345. We vacate the conviction on count III, which alleges the less culpable mental state of knowledge, and we allow the conviction on count IV to stand, since it, by comparison, alleges intent. See *Fuller*, 205 Ill. 2d 308, 346-47; *In re Samantha V.*, 234 Ill. 2d at 379.

¶ 54 D. Remand

¶ 55 The State agrees with defendant that, because the trial court sentenced defendant to a single sentence of 30 months' probation without imposing specific sentences on the seven individual convictions, we should remand this case for resentencing if we vacate any of the convictions—as, in fact, we do in this decision. See *People v. Guppy*, 30 Ill. App. 3d 489, 496 (1975).

¶ 56 III. CONCLUSION

¶ 57 For the foregoing reasons, we reverse the convictions on counts V, VII, and VIII, and we vacate the convictions on counts I and III. We otherwise affirm the judgment, but we remand this case for resentencing. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 4-2002 (West 2016).

¶ 58 Affirmed in part, vacated in part, reversed in part, and cause remanded with directions.