2019 IL App (1st) 161670-U

No. 1-16-1670

Third Division
June 28, 2019

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ALIF ALI, Defendant-Appellant.	)))))))))))	Appeal from the Circuit Court of Cook County. No. 13 CR 17987 Honorable Maura Slattery Boyle, Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Ellis concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's conviction affirmed where eye witnesses' identifications were sufficient to prove guilt beyond a reasonable doubt. Trial counsel was not required to call expert witness regarding eyewitness reliability in order to offer effective assistance of counsel. Trial court's admission of motive evidence, erroneously categorized as other crimes evidence, was proper and did not result in undue prejudice. Motion for mistrial was properly denied despite motion in *limine* violation. Trial court's misstatement of *Zehr* principles during jury *voir dire* did not warrant reversal of conviction. Lastly, mittimus must be corrected to reflect only charges on which defendant was convicted and order assessing fines corrected to reflect pre-sentence incarceration credits.

¶ 2 Defendant, Alif Ali, was convicted of attempted murder and aggravated discharge of a firearm and sentenced to 37 years' imprisonment. On appeal, he contends that his conviction should be reversed because the State failed to prove his guilt beyond a reasonable doubt and trial counsel was ineffective for failing to call an expert witness in regards to misidentification factors. He further contends that the trial court erred in admitting improper evidence as to motive, denying his request to declare a mistrial, and failing to admonish potential jurors that his failure to testify could not be held against him. Additionally, defendant contests the fines and fees assessed against him and requests correction of the mittimus to properly reflect only the charges for which he was found guilty.

¶ 3 I. BACKGROUND

¶ 4 A. The Offense and Investigation

¶ 5 The trial began on December 8, 2015, and the following testimony was elicited from the victims of the shooting offense. Kwan Johnson, 21 years old at the time of the trial, stated that on August 16, 2013, he drove to a 24-hour convenience store. Two other individuals were in the car with him: Laquisha Carson in the front passenger seat and Shawn Butler in the back seat. It was just after midnight and as they sat in the drive-through line, gunshots suddenly rang out. Several bullets struck Johnson including in his eye, elbow, back, and both legs. He did not see the shooter and was transported to the hospital from the scene where he spent two weeks recovering. As a result of the shooting, Johnson lost his left eye and had a bullet still lodged in his back during trial.

¶ 6 Johnson admitted having a prior conviction for a 2012 felony gun charge and being a gang member. He did not have a gun on him at the time of the shooting and denied any knowledge as to whether the passengers in the car were also gang members. Johnson stated

he did not remember if he was intoxicated at the time of the shooting or if he told the officers he was intoxicated. He also denied having "beef" with anyone at the time. Johnson was also asked about his father, Randall White, and noted that White was currently incarcerated and serving time for the murder of Fred Couch.

¶ 7 Butler testified next. He was 20 years old at the time of trial and had two prior felony convictions for a drug charge and possession of a stolen car. He confirmed that he was with Johnson and Carson at the convenience store drive-through on August 16, 2013. Butler denied all gang affiliations and stated he had no knowledge of whether Johnson and Carson were gang members. He also denied drinking prior to the shooting.

¶ 8 He stated that he was looking straight ahead out the front window of the car when he heard a "skirt" sound and looked to his side for the source of the sound. He saw somebody on the passenger side of the car sitting on a bicycle, approximately three feet from him, holding a gun. He described the gun as a revolver, which he believed was a "Chrome 357, with 38." He testified that he saw the shooter's face and made an in-court identification of defendant. He recalled that defendant was wearing dark pants and a dark hooded sweatshirt with the hood up at the time of the shooting.

¶ 9 Defendant held the gun "outstretched" and fired into the car. Butler ducked towards the floor of the car and tried to shield himself from the bullets, but was struck once in the arm. The bullet was still lodged in his arm during the trial. Butler heard multiple shots but could not recall how many. He did not see where defendant went after the shots were fired. Butler knew that Johnson had also been hit and that the car began rolling forward before crashing into a pole. Butler exited the car and tied a bandana around his arm. Butler did not speak to the police at the scene and was taken to the hospital via ambulance. He talked to a detective

at the hospital. Three days later, police officers picked Butler up from his house and brought him to the police station to view a line-up. Butler verified that he had signed a line-up advisory form and that a picture of the line-up was an accurate picture of the same line-up he viewed in person.

¶ 10 The last car occupant, Carson, was not injured in the shooting. She testified that she was 22 years old at the time of the trial. She had grown up with Johnson and Butler and was with them on August 16, 2013. She admitted that she and Johnson were gang members, but denied Butler's affiliation with a gang. Carson explained that the three of them were in a rental car, borrowed under her mother's name, which she had been using for over a month. Carson specified that Butler was sitting in the backseat on the driver's side behind Johnson.

¶ 11 Prior to the gunshots, Carson was looking at her phone while talking to Johnson and Butler and listening to music. She looked to her right side out the passenger window right before the shots were fired. She stated she looked over because it was like she felt somebody standing over her. She estimated that she heard seven shots, but also noted that she basically "blacked out" during the shooting. She stated she felt "hot stuff" when the bullets "skimmed" through her clothes. Carson reclined in her seat as the shots came through the car. Carson maintained that her head was still facing the passenger side of the car as she leaned back and that her blackout was brief. She stated she was alert as the car slowly rolled forward before hitting the pole. She recalled Butler getting out of the car and running into the store after the shooting. When pressed about what the shooter was wearing on August 16, she described him as wearing "a hoody and a fisher man hat." She did not see the shooter approach their car and did not know how long he stood at the side of the car.

¶ 12 Carson made an in-court identification of defendant as the shooter. She could not remember which officers she spoke with, but she named defendant as the shooter when interviewed at the scene. She was then taken to the police station and viewed a photo array where she selected defendant's picture. She could not recall the details about the line-up conducted on August 19, but verified her signature on the line-up advisory and stated that she went to the police station after receiving a phone call from the detectives. She also went over her statement which was typed up and signed by her that same day. Her statement included a comment that she "felt someone watching [her]" when she was waiting in the drive-through. She also noted in her statement that the passenger window was down prior to the shooting and when she looked out the open window she saw a chrome gun pointed at her. Her written statement omitted the fact that she blacked out briefly as she had testified earlier.

¶ 13 Officer Cory Jones testified that he and his partner Officer Pringle were working a patrol shift from 10 p.m. on August 15 to 7:30 a.m. on August 16, 2013. Just after midnight, they received a radio call regarding a shooting. At the scene, Officer Jones saw a car "resting against a light pole at the edge of the parking lot" with a male in the front seat who had been shot in the face. Another male, later known to be Butler, was sitting on the ground outside the vehicle with a gunshot wound to the arm and a female, later known to be Carson, was outside the vehicle yelling at the officers.

¶ 14 Officer Jones spoke with Carson who identified defendant as the shooter. Officer Jones stated that no other civilians were at the scene, apart from the store clerk who stayed inside the building. On cross-examination, Officer Jones stated that he had no knowledge whether Carson had spoken with Butler or to any others about the incident prior to being interviewed

by the officers. Officer Jones also did not recall whether a description of the shooter was given to the patrol cars.

¶ 15 Officer Enrico Dixon testified that he and his partner, Officer Farias were on assignment in the area on August 16, 2013 and arrived at the crime scene after other officers and the ambulances. Officer Dixon did not speak with Butler who was being treated for his gunshot wound. He and Officer Farias interviewed Carson where she relayed that defendant had "rolled up on a bike and began firing inside of their vehicle." Officer Dixon shared Carson's identification with other officers and asked Carson to return to the station with him. Once at the station, Carson viewed a photo array prepared by Sergeant Beck and again identified defendant as the offender, without hesitation. The photo array and Carson's signed advisory form were admitted into evidence.

¶ 16 Officer Dixon stated in response to cross-examination that he did not recall if any other civilians were at the crime scene, he did not know if Carson had spoken to any other civilians in person or on the phone prior to their interview, and he did not recall if Carson ever mentioned the specific clothing defendant was wearing during the offense.

¶ 17 Detective Devin Jones testified that he and his partner, Detective Poole, arrived at the scene around the same time the ambulances arrived. Johnson was already being treated and Butler was about to be treated. Detective Jones processed the scene with an evidence technician who photographed the scene and recovered the bullet fragments. The photographs were authenticated and discussed by the detective and admitted as evidence. No casings were found at the scene.

¶ 18 Detective Jones interviewed Carson, at the scene, where she named defendant as the shooter. Detective Jones stated he arranged from Carson to be transported to the station and

spoke with Sergeant Beck to have a photo array prepared for Carson to view. Detective Jones also travelled to the hospital and attempted to interview Johnson, but could not because Johnson was in surgery. He then found and interviewed Butler[1] at a different hospital.

¶ 19 Defendant was arrested on August 18, 2013. Detective Jones spoke to defendant after his arrest. That same night, Carson and Butler were called in to view a line-up. Just after midnight on August 19, 2013, Carson and Butler viewed the line-up, separately, and each identified defendant as the shooter out of the five people present. Johnson was not interviewed until after charges were brought against defendant.

¶ 20 Detective Jones was questioned by defense counsel about the lighting conditions at the crime scene highlighting that the photos were taken with camera flash and that several squad cars were at the scene with their lights on during the time the photographs were taken. On redirect, Detective Jones noted that the drive-through area was illuminated by two overhead lights, a streetlight was near the lot, and the store's sign provided some light in the area as well. Defense counsel also questioned why defendant was the only person in the lineup wearing a dark hooded zip-up sweatshirt even though all the other individuals in the lineup were in short-sleeves or tank tops. Detective Jones responded that persons in the line-up appeared wearing the same clothes they were arrested in and the detective neither required defendant to wear the sweater nor told him to take it off.

¶ 21 James Norris, a former tech lab officer, testified that he obtained and copied the convenience store video surveillance footage for the investigating detectives. He authenticated the video disk which was admitted into evidence. The video was played for the jury and depicts the side of the store where drive-through patrons wait in their cars. In the

[1]Detective Jones and Butler were not asked to testify about the substance of this interview.

footage, three cars are present. The camera is focused on a dark-colored SUV which is in drive-through line. A dark-colored sedan is also in line and idling behind the SUV. A third car can be seen in the top left corner of the video, reversing in the parking lot and then turning to the car's right and driving away. Approximately 10 seconds after the third car exits the frame, a dark moving figure appears from the top left corner and takes less than 10 seconds to approach the sedan. The figure enters the lighted area near the store and can be seen as a person on a bicycle. He stops the bike next to the sedan, raises a gun in his right hand, and fires several shots in a three-second span. The SUV in front speeds off and the sedan also starts to roll forward until it is out of frame. As the car moves out of frame, the shooter pedals away, returning to the same area he entered the video.

¶ 22 B. Challenged Testimony

¶ 23 1. December 2009 Shooting

¶ 24 Prior to trial, the State moved to introduce "proof of other crimes," asking the court to allow evidence that defendant's brother was murdered by the father of one of the victims. The State argued that such other crimes gave "context" to the current offense and proffered that Carson had told police the shooter was defendant and it was "all over [defendant's brother] being murdered by [Johnson's father]." The State also proffered that detectives had interviewed Johnson's mother at the hospital where she made similar statements.

¶ 25 Defense counsel argued, citing *People v. Barnes*, 2013 IL App (1st) 112873, that the State had not met the threshold requirements for introducing proof of other crimes and the prejudicial effect of such evidence grossly outweighed any probative value. Counsel also

challenged the speculative nature of the connection between the offenses and the admissibility of the State's proffered statements[2] to support the connection.

¶ 26 The trial court stated "the Court is familiar because the Court recently had another case like this in which a murder happened two years before and then a second murder happened of the witness in the case." Without case citation, the trial court ruled that evidence of the first murder should be admitted as "a continuum of one motive, ability to identify, and to explain the event." The court continued, "the fact of the matter is whether a motive or not, it's because of this prior murder that they know who exactly he is due to the fact [of the murder.]" Defense counsel responded that the parties knew each other simply because they lived in the same neighborhood and that the murder itself was not the basis of identification. The court once again stated that the murder was "the continuum and the nexus," finding that three years was not far removed and ruled in favor of the State's motion.

¶ 27 Thus, at trial, Officer Dejuan Turner testified that he knew defendant and defendant's family, having met them around 2007. Office Turner explained that one of defendant's brothers, Fred Couch, died of a gunshot wound on December 30, 2009, and Randall White was convicted on the related murder charge. Kwan Johnson was identified as the son of Randall White.

¶ 28 2. May 2013 Shooting

¶ 29 Defendant moved to exclude portions of Carson's testimony insofar as she would try to tie defendant to a shooting in May 2013 involving her cousin. The State had no objection and

[2]Neither of these statements came up during the trial as a motion *in limine* barring Carson's testimony as to her subjective belief of defendant's motive behind the shooting was granted and Johnson's mother was not called as a witness.

the trial court granted the motion. In spite of instructions from the prosecutors, Carson violated the motion *in limine* during her testimony.

¶ 30 Carson was asked if she could make an in-court identification of the shooter. She first responded "I can go on what people telling[*sic*] me." An objection to her statement was sustained. Carson was then asked about her conversations with the police officers at the scene. She told the officers that defendant shot at the car. When asked how did she know defendant, she responded, "[f]rom him shooting my cousin." Another objection to her statement was sustained. The trial court also instructed the statement be stricken and for the jury to disregard. Carson was then asked again to make an in-court identification of the shooter and defense counsel asked for a sidebar, but the trial court instructed the State to continue. Carson pointed out defendant for the record and was then asked "How long had you known [defendant] for back in 2013?" to which she responded "I mean I didn't personally know him. I just know him from shooting my cousin." The trial court again, sustained the objection, instructed the jury to disregard, and denied a request for a sidebar.

¶ 31 The State continued the examination and walked through Carson's interactions with the police officers including viewing the photo array, the in-person lineup, and giving her written statement. In reviewing the contents of her written statement, the State asked Carson if she identified defendant for the Assistant State's Attorney. She responded, "Yes. But I was going off what people telling[*sic*] me." An objection to her statement was sustained. She was then asked to confirm if she told the Assistant State's Attorney that she knew defendant's first name and recognized him from the neighborhood. She responded, "I don't know him by name. I know him through shooting my cousin."

¶ 32 At this point, the court sustained the objection, instructed the jury to disregard, and took a brief recess during which Carson was admonished that she could be held in contempt for mentioning the prior shooting again. Defense counsel moved for a mistrial based on the violation of the motion *in limine*. The court denied the motion and did not take the State's suggestion to further admonish[3] the jury stating that it wanted to avoid drawing more attention to the matter. The State resumed its examination and the trial continued.

¶ 33 At the close of the State's case, defense counsel moved for a directed finding and renewed its motion for mistrial. The trial court denied both motions. After the jury returned guilty verdicts, defense counsel again renewed the oral motion for mistrial. Counsel argued that Carson's statements clearly resulted in prejudice which could not be cured and the influence on the jury could not be known. The trial court rejected the motion, finding that the court's instruction to the jury was sufficient to cure any potential for prejudice. Furthermore, the court stated "that was also information presented in opening statement, so it wasn't exactly the first time that the jury was hearing about a prior event involving the shooting." Counsel clarified that opening statements by the State referred to a prior shooting involving Randall White, not Carson's cousin and defendant. The court reiterated that the court's admonishment to the jury was sufficient to cure any prejudice and adjourned the proceedings.

¶ 34 II. ANALYSIS

¶ 35 A. Sufficiency of the Evidence

[3]Defendant's brief states that the trial court admonished the jury upon its return from recess, however, the court's admonition that sustained objections are stricken from the record and should be "stricken from your minds as if it was never spoken at all" was given later in the proceedings in response to an objection about rival gangs and whether the shooting could be attributed to a gang attack.

¶ 36 Defendant first challenges his conviction arguing that the State failed to prove him guilty beyond a reasonable doubt where there was no physical evidence tying him to the offense and the eyewitness identification was unreliable. Defendant and the State agree that an eyewitness identification is evaluated under the standards set by the United States Supreme Court in *Neil v. Biggers*, 409 U.S. 188 (1972). Defendant asserts that the identifications were improbable and unsatisfactory where the lighting conditions were poor, the witnesses' attentions were not on the offender, and the hurried nature of the offense all call into question the reliability of the identification made. Defendant also claims that Carson's identification of defendant was improperly propped up by her alleged acquaintance with defendant[4] and she offered a physical description that did not match surveillance footage further diminishing her credibility. Defendant further challenges the composition of the lineup in which Butler identified him, as well as the lack of any statement from Butler's hospital interview concerning the shooter. The State responds that defendant had ample opportunity to challenge the witnesses' identifications, nevertheless, the jury clearly rejected defendant's arguments and the jury determination should stand.

¶ 37 In reviewing a challenge to the sufficiency of the evidence we determine whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). In our review, we are mindful that the trier of fact assesses the credibility of the witnesses, determines the appropriate weight of the testimony, and resolves conflicts or inconsistencies in the evidence. *People v. Naylor*, 229 Ill. 2d 584, 614 (2008). It is not the function of the reviewing court to retry the defendant or substitute its

[4]Carson's alleged acquaintance with defendant will be discussed in section D, *infra*. For the purposes of this section, we note that Carson's statements were stricken from the record and we will not consider them here.

judgment for that of the trier of fact. *People v. Collins*, 214 Ill. 2d 206, 217 (2005). We will reverse a conviction only where the evidence is so unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *People v. Campbell*, 147 Ill. 2d 363, 374-75 (1992).

¶ 38 We have consistently held that the even a single eyewitness, without corroborating physical evidence, will sustain a conviction if the witness viewed the accused under circumstances permitting a positive identification. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995) (citing *People v. Slim*, 127 Ill. 2d 302, 307 (1989) and *People v. Jones*, 60 Ill. 2d 300, 307-08 (1975)). As noted above, Illinois applies the five-factor test set out in *Biggers* for evaluating eyewitness identifications. These factors include: (1) the opportunity the victim had to view the criminal at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the criminal; (4) the level of certainty demonstrated by the victim at the identification confrontation; and (5) the length of time between the crime and the identification confrontation. See *Lewis*, 165 Ill. 2d at 356 and Illinois Pattern Jury Instructions, Criminal, No. 3.15 (approved October 17, 2014). In weighing these factors, we do not substitute our judgment for that of the trier of fact on questions involving witness credibility. *People v. Sutton*, 252 Ill. App. 3d 172, 180 (1993).

¶ 39 Viewed in the light most favorable to the prosecution, the eyewitness testimony in this case substantially satisfies the five-factor test. The record shows that defendant rode his bike up close to the car prior to shooting. This placed him clearly in the witnesses' line of sight. Although the witnesses were not paying attention to defendant prior to the shooting, they both testified that their attention was drawn to him and they turned to look at him. Carson clearly and unequivocally identified defendant to the responding officers, during the photo

array shortly after the offense, and the in-person line-up three days later. Butler similarly identified defendant through the in-person line-up. Although there were no prior descriptions to compare Carson and Butler's identifications with, the remaining four factors (the witnesses' opportunity to view defendant during the crime, the witnesses' attention, their level of certainty, and the length of time between the offense and identification) weigh in favor of finding a positive identification. Moreover, Carson and Butler's identifications reinforced each other and there was no evidence of collusion[5] between the two witnesses. See *People v. Negron*, 297 Ill. App. 3d 519, 530 (1998) (citing *United States ex. rel. Kosik v. Napoli*, 814 F. 2d 1151, 1156 (7th Cir.1987)). Therefore, there are no factors, such as collusion or contradictory statements, indicating that this is a misidentification.

¶ 40 Defense counsel highlighted that the shooting itself lasted mere seconds and the witnesses may have been more focused on protecting themselves from the sudden spray of bullets than making a positive identification. However, this does not render the witness identification so fraught with doubt as to raise a reasonable doubt to defendant's guilt. Even if the victims or witnesses only had a few seconds to identify the offender, their testimony may still be found sufficient. See *People v. Negron*, 297 Ill. App. 3d 519, 530-31 (1998) (listing cases where eyewitness identifications were found sufficient to convict despite brevity of witness's opportunity to view offender). Defense counsel also challenged the lighting conditions under which the identifications were made. However, Detective Jones testified about the lighting conditions that night and the jury had an opportunity to see the surveillance video in determining judge whether there was sufficient lighting for the witnesses to see defendant and make a positive identification.

[5]Although counsel implied that Carson and Butler had time between the shooting and the responding officers' arrival to collude, there was no evidence offered that Butler's identification was influenced by Carson.

¶ 41 Defendant also argues now that Carson's identification included an incorrect statement about what defendant was wearing. However, discrepancies and omissions as to facial and other physical characteristics merely affect the weight to be given to the identification testimony and do not, in themselves, negate the sufficiency of the evidence. *Lewis*, 165 Ill. 2d at 357. Therefore, the fact that no physical description of the offender was given immediately after the offense, and Carson's seemingly incorrect statement that defendant was wearing a fisherman's hat does not cause us to find that the identification was so improbable as to warrant reversal. Defendant also asserts that Butler failed to give a report to the officers about the shooter prior to his identification of defendant at the lineup. Defendant states, "[a]lthough Butler was interviewed at the hospital, there was no testimony that he told the officers anything about the shooting." This is again, a matter of weight to be afforded to the identification by Butler as Butler did not have to give a prior description of the offender. See *Lewis*, 165 Ill. 2d at 357.

¶ 42 Defendant lastly challenges the composition of the lineup in which Butler identified him. Defendant fails to cite any caselaw or develop his argument as to why this lineup was unduly suggestive or should be considered as affecting the weight given to Butler's identification. A reviewing court is entitled to have the issues before it clearly defined and is not simply a repository in which appellants may dump the burden of argument and research; an appellant's failure to properly present his own arguments can amount to waiver of those claims on appeal. *People v. Chatman*, 357 Ill. App. 3d 695, 703 (2005).Nevertheless, we briefly note that that under Illinois law, the mere fact that a suspect appears in the lineup with one article of clothing that matched his or her description does not render a lineup suggestive. *People v. Peterson*, 311 Ill. App. 3d 38, 49-50 (1999) (collecting seven cases holding similarly). A

defendant bears the initial burden to show that a pretrial lineup is impermissibly suggestive. *People v. McTush*, 81 Ill. 2d 513, 520 (1980). Defendant has not met his burden here, and we find that his contention bears no weight on the reliability of Butler's identification.

¶ 43 B. Ineffective Assistance of Counsel

¶ 44 Related to defendant's claim that the evidence was insufficient, defendant argues that he was denied his constitutional right to effective assistance of counsel, see U.S. Const., amends., VI, XIV; Ill. Const. 1970, art. I, § 8, where counsel did not call an expert witness to testify regarding the fallibility of eyewitness identifications. Defendant asserts that counsel had an affirmative duty to conduct a factual and legal investigation and to rely on readily available sources of evidence to introduce and develop a sound defense strategy. He contends that it is now widely accepted that juries struggle to understand the flaws with eyewitness identification and that an expert witness can help explain the issues with such identifications without usurping the role of the jury in determining witness credibility. Defendant argues that there was no bar to admitting such expert testimony, and such testimony was crucial to the defense theory, therefore there was no strategic reason to exclude such evidence.

¶ 45 It is well-established that every criminal defendant has a constitutional right to receive effective assistance of counsel. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I § 8; *Strickland v. Washington*, 466 U.S. 668, 685 (1984). The right to effective assistance of counsel entails "reasonable, not perfect, representation." *People v. Wilborn*, 2011 IL App (1st) 092802, ¶ 79. To establish a claim of ineffective assistance, a defendant must prove two prongs: (1) that counsel's performance was deficient or fell below an objective standard of reasonableness; and (2) that the defendant suffered prejudice as a result of the deficient performance. *Strickland*, 466 U.S. at 687; *People v. Ford*, 368 Ill. App. 3d 562, 571 (2006).

The failure to establish either prong is fatal to a claim of ineffective assistance of counsel. *People v. Richardson*, 189 Ill. 2d 401, 411 (2000). There are no facts in dispute and our review of defendant's claim is *de novo*. *People v. Nowicki*, 385 Ill. App. 3d 53, 81 (2008).

¶ 46 Our review of counsel's performance under the first prong of *Strickland* is highly deferential as there is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *Id*. at 689. Defendant must overcome the presumption that the challenged action is a part of a sound trial strategy. *Id*. Counsel's "strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable." *Strickland*, 466 U.S. at 690.

¶ 47 We first recognize that, recently, both the Illinois Supreme Court and this court have acknowledged that there can be problems with eyewitness identification testimony. In *People v. Lerma*, 2016 IL 118496, the Illinois Supreme Court held that the circuit court abused its discretion in denying the defendant's motion to allow expert testimony concerning the reliability of eyewitness identifications. During trial, there was no physical evidence linking the defendant to the crime and the defendant's guilt was proven by two eyewitness identifications. 2016 IL 118496, ¶ 26. Only one eyewitness was subject to cross-examination and the identification by the victim was admitted under the excited utterance exception to the hearsay rule. *Id*. at ¶ 26. Defense counsel proffered expert witness testimony to identify factors which had the potential to render a witnesses' identification unreliable such as: the stress of the event itself, the use and presence of a weapon, the wearing of a partial disguise, exposure to postevent information, nighttime viewing, and cross-racial identification. *Id*. ¶ 26. The Illinois Supreme court first recognized that "research concerning eyewitness identification[ ] * * * is well settled, well supported, and in appropriate cases a perfectly

proper subject for expert testimony." *Id*. ¶ 24. It then reversed the defendant's conviction, finding that the trial court had abused its discretion in barring the testimony of the expert witness where the proffered testimony was relevant, probative, and from a qualified expert. *Id*. ¶ 32. The circuit court was specifically directed to conduct a new trial and allow the expert testimony previously excluded. *Id*. ¶ 35.

¶ 48 Although defendant draws parallels between the circumstances surrounding the eyewitnesses' identifications and the strength of the State's case, the legal issue resolved in *Lerma* is manifestly different than the arguments raised by defendant here. In *Lerma*, the court was asked to find whether the trial court abused its discretion in rejecting the expert witness's testimony, whereas defendant asks us to find that his counsel was deficient for failing to even obtain an expert witness. Defendant essentially is asking us to create a *per se* rule that the failure to present an expert eyewitness on identification evidence constitutes ineffective assistance of counsel.

¶ 49 The court's recognition of the value of an expert witness's testimony on the matter of eyewitness identification does not, standing alone, support the conclusion that trial counsel here was *per se* ineffective for not presenting such expert testimony or that expert testimony is required in every case. Counsel is entitled to consider as a matter of trial strategy that the designation of an eyewitness expert by the defense will likely be met with a counterdesignation by the State, which would highlight and bolster the accuracy of the eyewitness identification. The related argument that trial counsel failed to conduct meaningful adversarial testing of the State's case, simply by failing to bring an expert witness, is refuted by counsel's efforts in cross-examination and argument at trial. Here, defense counsel challenged the witnesses' opportunity to view the offender by calling into

question the lighting conditions at the crime scene and highlighting the brief nature of the incident. Counsel also called attention to the degree of the witnesses' attention at the time and challenged the circumstances of the later identification. Thus, we cannot say that counsel's performance and strategy were so unsound as to fail to conduct any meaningful adversarial testing. Furthermore, the Illinois supreme court has not gone so far as to hold, or even suggest, that not offering expert testimony is a ground for finding ineffective assistance of counsel and we see no reason to do so either.

¶ 50 We therefore hold that that defendant has failed to sustain his burden under the first required prong under *Strickland* to show that his counsel's performance was deficient. Because of our disposition of this issue, we need not reach the second *Strickland* prong.

¶ 51 C. Proof of Other Crimes; Motive

¶ 52 The State concedes that evidence regarding the murder of defendant's brother by Johnson's father was improperly characterized as proof of other crimes, however, the State asserts that such evidence was admissible under ordinary rules of relevance to show motive. We agree with defendant that the murder of defendant's brother was unrelated to defendant and did not satisfy the requirements for introducing proof of other crimes. See *People v. Pikes*, 2013 IL 115171, ¶ 15 (admission of other-crimes evidence requires showing that a crime took place and that the defendant committed it or participated in its commission) (citing *People v. Thingvold*, 145 Ill. 2d 441, 455 (1991)). Nonetheless, we disagree with defendant's assertion that the connection was so remote it could not be attributed to defendant as motive evidence.

¶ 53 "Evidence is considered 'relevant' if it has any tendency to make the existence of any fact that is of consequence to the determination of an action more or less probable than it

would be without the evidence." *People v. Illgen*, 145 Ill. 2d 353, 365-66 (1991); see also Ill. R. Evid. 401 (eff. Jan. 1, 2011). However, evidence is inadmissible if it has little to no probative value and its only purpose is to stir the emotions of the jury. See *People v. Orange*, 168 Ill. 2d 138, 161 (1995); *People v. Iniguez*, 361 Ill. App. 3d 807, 817 (2005), see also Ill. R. Evid. 402 (eff. Jan. 1, 2011). When the State undertakes to prove facts which the State asserts constitute motive for a crime charged, it must be shown that the accused knew of those facts. *People v. Smith*, 141 Ill. 2d 40, 56 (1990). "This rule seeks to avert the very real danger that through the guise of motive evidence, the State may present to the jury highly inflammatory matter which, in actuality, is of little or no probative value." *Id*. at 57.

¶ 54 Defendant argues that the trial court abused its discretion by admitting evidence concerning the murder of Fred Couch because the murder had occurred three years prior; there was no direct evidence that defendant sought retaliation or knew that Johnson and Couch's murderer, Randall White, were related; and there were alternative explanations for Johnson and his friends being shot. Thus, defendant contends that the State's "motive evidence" is not attributable to him, and even if it was, was too remote in time and speculative to show any clear link between the prior shoot and the current offense. Defendant leans on our supreme court's resolution in *People v. Smith*, 141 Ill. 2d 40 (1990), as support for his claim that his conviction should be reversed.

¶ 55 In *Smith*, the defendant was charged with the murder of an assistant prison warden. *Id*. at 47. Eyewitnesses identified the defendant as the shooter who murdered the victim and placed them at the same bar prior to the shooting. *Id*. at 47-49. The defendant was at the bar with two other men, one of whom briefly left to speak with an alleged gang leader before rejoining the defendant in the bar. *Id*. The defendant was linked to this gang leader by a

witness's testimony that she had once been in an apartment with the gang leader, the defendant, and the defendant's bar companion. *Id*. at 48. The defendant was also talking to the gang leader in a public lot at the time of his arrest. *Id*. at 51. During trial, the court allowed testimony, over defense counsel's objection, that the victim was a strict disciplinarian as an assistant warden, that there was significant gang activity in the prison, and that the gang leader linked to the defendant had a prior altercation with the victim while incarcerated. *Id*. at 52.

¶ 56 On appeal, our supreme court reversed the defendant's conviction finding that "the evidence simply failed to establish that defendant was affiliated with the [gang]." *Id*. at 60. Thus, the evidence could not lend itself to prove that the defendant's motive for the shooting was to carry out the gang leader's assassination orders and the State's argument to that effect was improper and served no purpose other than to prejudice the jury. *Id*. at 60-62. As a result, the court found that the jury may have been influenced in weighing the evidence by the improper motive evidence and reversed the defendant's conviction, remanding for a new trial. *Id*. at 72.

¶ 57 Defendant asserts that in the same way the defendant in *Smith* could not be tied to the gang's motive for wanting the victim dead, the actions of the shooter in this case cannot be attributed to him simply because his brother was murdered by the father of one of the shooting victims. However, the problem with the alleged motive evidence in *Smith* was that there was no evidence the defendant was a gang member. Thus, the State improperly portrayed him as a gang member, carrying out the orders of a known gang leader, potentially prejudicing the jury. Here, the alleged revenge motive could be attributed to defendant. It is plausible to assume that defendant knew who was responsible for the murder of his brother.

It is not a big leap to also assume that defendant knew of Johnson's relation to Randall White, given the implications that the parties were all from the same neighborhood. Direct testimony is not necessary to prove the relevance of motive evidence; it only must be fairly inferable from the evidence. *People v. Wallace*, 114 Ill. App. 3d 242, 249 (1983). In *Smith*, it was not a fair inference that the defendant was a gang member simply because he had been seen with an alleged gang leader on two occasions. Here, it is a fair inference that defendant knew who was responsible for his brother's death, knew the family of the person responsible, and still harbored resentment towards that person and his family. There is no requirement that the State has to prove defendant actually harbored ill will and had made threats of harm towards the victim to offer evidence of a revenge motive.[6] Thus, the introduction of the 2009 shooting was relevant and properly admitted, even if it was improperly categorized as "other crimes" evidence at the time.

¶ 58 Defendant further asserts that introducing such evidence through the testimony of Officer Dejuan Turner improperly suggested that Officer Turner and defendant had a relationship due to a history of other criminal conduct. Defendant cites *People v. Stover*, 89 Ill. 2d 189 (1982), as support for finding that defendant was prejudiced by this improper suggestion of his prior bad acts. However, defendant neglects to note that the court in *Stover* explicitly stated, "evidence that the arresting officer was previously acquainted with defendant does not necessarily imply a criminal record." *Id*. at 196 (citing *People v. Rogers*, 375 Ill. 54, 59 (1940)). Additionally, *Stover* is distinguishable because there, the officer was asked about his

[6]Defendant cites *People v. Hendricks*, 137 Ill. 2d 31, 53 (1990), for the proposition that a direct link between the evidence and motive must be established and the State's failure to prove defendant's expression of ill will rendered the evidence inadmissible. However, *Hendricks* describes the "direct link" as evidence which "tended to show that defendant still harbored ill will for those actions—in other words, he still held a grudge". *Id*. Thus, there is no requirement that direct evidence of the defendant's ill will or grudge is offered. The only requirement is that the evidence offered tends to show the existence of an ill will or grudge.

previous acquaintance with the officer to prove that defendant would have known the officer's position and therefore knowingly resisted arrest by a peace officer. *Stover*, 89 Ill. 2d at 196. This inquiry was deemed unnecessary given that the officer had already testified he was wearing his uniform and could be identified as a police officer. *Id*. Thus, the only plausible reason for the inquiry was to improperly imply a history of past illegal conduct. Here, Officer Turner's acquaintance with defendant and his family was used solely to establish the familial relationship between defendant and the 2009 murder victim, his brother, putting the alleged motive evidence in context. Officer Turner did not discuss the circumstances of his familiarity with defendant or his family and this was not duplicative evidence. As discussed above, the motive evidence was relevant and admissible, and we find that the use of Officer Turner's testimony to introduce the evidence supporting a motive was not used to improperly imply that defendant had a criminal record.

¶ 59 Lastly, defendant argues that the motive evidence was used to improperly bolster the strength of the eyewitness identifications. As we have already addressed the identifications and found that there was no reason to reject the positive identifications, we will not entertain this collateral attack on the strength of the eyewitness identifications.

¶ 60 D. Request for Mistrial

¶ 61 Prior to trial, defendant was granted a motion *in limine* barring Carson's testimony that defendant allegedly shot her cousin. Nevertheless, Carson mentioned the alleged shooting three times in relation to explaining how she knew defendant. Defendant contends that the trial court's failure to timely address the first violation and prevent the subsequent references distinguishes it from other cases where a minor violation was swiftly dealt with and the prejudice could be easily cured. See *e.g.*, *People v. Phillips*, 383 Ill. App. 3d 521 (2008);

People v. Monroe, 366 Ill. App. 3d 1080 (2006). In contrast to those cases, defendant argues that because Carson was allowed to make three separate references alleging defendant's involvement in another shooting, it was impossible to cure the substantial prejudice solely by instructing the jury to disregard the statements.

¶ 62 Generally, testimony pertaining to a defendant's prior unrelated crimes or acts of misconduct to prove the defendant's propensity to commit a crime is prejudicial. See *People v. Jackson*, 372 Ill. App. 3d 112, 121-22 (2007). Here, Carson's allegations that defendant was involved in another shooting offense was improper reference to an unrelated crime. As this allegation was the subject of a motion *in limine*, it could constitute grounds for mistrial if the violation deprived the defendant of a fair trial. *People v. Hall*, 194 Ill. 2d 305, 342 (2000). Mistrials are granted at the discretion of the trial court and the court's ruling will be upheld unless the court abused its discretion. *People v. Phillips*, 383 Ill. App. 3d 521, 547 (2008). An abuse of discretion exists only when the trial court's ruling is "arbitrary, fanciful or unreasonable or where no reasonable man would take the view adopted by the trial court." *People v. Santos*, 211 Ill. 2d 395, 401 (2004). Improper remarks are considered in context of the language used, their relationship to the evidence, and their effect on the defendant's rights to a fair and impartial trial; reversal is merited only if the remarks result in substantial prejudice to the defendant. *People v. Smith*, 141 Ill. 2d 40, 60 (1990). Generally, the trial court can cure any error by instructing the jury to disregard the question and answer. *Hall*, 194 Ill. 2d at 342.

¶ 63 It is undisputed that Carson's testimony violated the motion *in limine* three times and that such testimony was impermissible because it implied defendant's propensity to commit the offense charged. Following each of Carson's impermissible responses, defense counsel posed

an immediate objection, which the trial court immediately sustained. In cases where the reference to the inadmissible other crimes evidence is brief, the trial court's instructions to the jury are sufficient to cure any prejudice to the jury. See *Hall*, 194 Ill. 2d at 342-43 (concluding that the reference to other crimes was brief and the trial court did not abuse its discretion in denying the defendant's request for a mistrial where defendant's objection was sustained, the jury was admonished to disregard the answer and instructed at the end of trial to disregard). Defendant asks us to find that the prejudice to him could not be cured because the trial court allowed the motion *in limine* violations to be repeated instead of admonishing the witness immediately. We see no reason to distinguish defendant's case from the defendant in *People v. Monroe*, 366 Ill. App. 3d 1080, 1092 (2006), where four separate witnesses violated a motion *in limine* by referring to uncharged acts by the defendant and the court found that the potential prejudice was cured by admonishing and instructing the jury after each violation. Here, the prejudice was not more substantial simply because it was repeated by the same witness instead of repeated by four separate witnesses. Each brief remark was promptly dealt with and Carson was not allowed to elaborate or expand on the matter.

¶ 64 Furthermore, the language used by Carson was not particularly inflammatory. Carson remarked that she knew defendant "from him shooting my cousin," "I just know him from shooting my cousin," and "I know him through shooting my cousin." Although her first remark accused defendant of uncharged conduct, the next two remarks are less specific and do not contain outright accusations. We note that from the record, it is clear that the trial court was cognizant of the potential prejudice from Carson's statements and exhibited a desire to minimize the effect of the statements by avoiding bringing any more attention to the

matter. It was not arbitrary for the trial court to deny the request for a sidebar in order to minimize drawing attention to the matter. Thus, we find it reasonable for the court to rule that admonishing the jury to disregard the statements and later instructing the jury that sustained objections were to be disregarded was sufficient to cure the potential for prejudice. We do not find that the trial court abused its discretion in denying defendant's motion for mistrial.

¶ 65 We briefly note that the defendant also cites *People v. Rivera*, 277 Ill. App. 3d 811 (1996), in support of his argument for mistrial. However, *Rivera* dealt with the specific matter of out-of-court identifications. The court noted that the prejudice of motion *in limine* violations, which contain these types of hearsay statements, was palpable and could not be cured by the trial court's remedial actions. *Id*. at 819-20. This is not the type of evidence at issue here and is inapposite.

¶ 66 Lastly, defendant argues that these statements were prejudicial because they caused confusion for the trial court and were also likely to have confused the jurors. The trial court commented, in ruling on the motion for mistrial, that the statement was not particularly prejudicial because the opening statements had already referred to an earlier shooting. As counsel pointed out, the earlier shooting referenced was the 2009 shooting death of Fred Couch, not the May 2013 shooting of Carson's cousin. Although evidence should be excluded, even if relevant, where there is danger of unfair prejudice, confusion, or delay, Ill. R. Evid. 403 (eff. Jan. 1, 2011), defendant cites no case law for the proposition that a conviction must be reversed because the jury could have been confused.

¶ 67 E. Rule 431(b)

¶ 68 Defendant contends that he is owed a new trial because the trial court violated Illinois Supreme Court Rule 431(b) during the *voir dire* examination of the potential jurors.

Although defendant concedes he did not preserve this issue for review, he requests this court consider the effect of the trial court's actions for plain error. He asserts that the evidence was closely balanced, such that the error resulted in prejudice which tipped the scales of justice against him. The State concedes that the trial court erred in omitting one of the *voir dire* questions; however, the State argues that the evidence was not closely balanced and such error does not warrant reversal of defendant's conviction.

¶ 69 The plain-error doctrine requires a showing of a clear or obvious error. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). After showing a clear or obvious error occurred, defendant must then show either (1) "the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error" or (2) the error is "so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v.Piatkowski*, 225 Ill. 2d 551, 565 (2007). Defendant bears the burden of proof. *People v. Marcos*, 2013 IL App (1st) 111040, ¶ 58.

¶ 70 Thus, we begin by determining whether the trial court erred in its application of Rule 431(b). Rule 431(b) provides that the court must ask potential jurors if they understand and accept the following principles: the presumption of a defendant's innocence, the State's burden of proof beyond a reasonable doubt, the lack of a requirement for a defendant to offer any evidence; and that the defendant's failure to testify cannot be held against him. See Ill. S. Ct. R. 431(b) (eff. July 1, 2012). These principles were set forth in the Illinois Supreme Court case *People v. Zehr*, 103 Ill. 2d 472 (1984), and are commonly referred to as the Zehr principles.

¶ 71 During *voir dire* the court asked the potential jurors if they understood and accepted four principles, indicating for the record that no one had raised their hands to indicate a lack of understanding or acceptance. However, the court misstated the *Zehr* principles, reciting the third and fourth principles as: "Do you understand and accept that [defendant] does not have to prove his innocence. *** Do you understand and accept that [defendant] does not have to present any evidence on his own behalf." Although Rule 431(b) provides for the omission of the fourth principle if the defendant objects, the record does not contain any objection by defendant. See Ill. S. Ct. R. 431(b). Thus, we find that the trial court did not fully comply with Rule 431(b) and a clear error has occurred.

¶ 72 Having found that a clear or obvious error has occurred, defendant bears the burden to prove either that the evidence was so closely balanced or that the error was so serious it affected the fairness of his trial and challenged the integrity of the judicial process. Although defendant's arguments first focus on arguing the closeness of the evidence, he then pivots to comments about the fairness and integrity of the judicial process. He states that he "exercised one of the very rights that the trial judge failed to admonish the jurors about." Defendant then offers statistics about jurors surveyed who admitted that whether a defendant testified affected their determination. Defendant speaks in terms of widespread prejudice stemming from the court's error which effectively invalidated his right to not testify. However, in *People v. Sebby*, 2017 IL 119445, ¶ 52, the Illinois Supreme Court noted that, "[a] Rule 431(b) violation is not cognizable under the second prong of the plain[-]error doctrine absent evidence that the violation produced a biased jury." This requires more than speculation and statistics about a possibly prejudiced jury. See *People v. Thompson*, 238 Ill. 2d 403, 412-13

(2010). As defendant offers no evidence that the jury was actually biased against him, we cannot find that he has satisfied the second prong of plain-error review.

¶ 73 With respect to the first prong of plain-error, defendant reasserts that the eyewitnesses' identifications were not credible and thus he claims the evidence was closely balanced because his conviction turned on the credibility of these eyewitnesses. Defendant frames this assertion as a challenge distinct from his earlier challenge to the sufficiency of the evidence. We acknowledge that "whether the evidence is closely balanced is, of course, a separate question from whether the evidence is sufficient to sustain a conviction on review against a reasonable doubt challenge." *People v. Piatkowski*, 225 Ill. 2d 551, 566 (2007). However, we find that the evidence in defendant's case is not closely balanced.

¶ 74 One hallmark of cases where the evidence is closely balanced involves "contests of credibility." For example, in *Sebby*, the defendant was charged with a Class 4 felony for resisting a peace officer, the elements of which include knowing resistance and an injury to the officer proximately caused by the resistance. See *Sebby*, 2017 IL 119445, ¶ 1; 720 ILCS 5/31-1(a-7) (West 2010). The State offered testimony from three officers who claimed that the defendant had resisted whereas the defendant and other witnesses claimed that the officers were yanking the defendant around. *Sebby*, 2017 IL 119445, ¶¶ 55-58. The court found that neither accounts were fanciful, claims that the defendant's witnesses were biased due to their relationship with defendant bore no merit, each side's accounts were internally consistent, and there was no extrinsic evidence to corroborate either side. *Id*. ¶¶ 61-62. Thus, the evidence was closely balanced and even a minor error could tip the scales towards the State. The "contest of credibility" at issue, rendering the evidence closely balanced, involved two equally credible, but diametrically opposed accounts of the underlying events.

¶ 75 Unlike the opposing accounts in *Sebby*, there was only one version of the offense presented at trial and no "contest of credibility" existed. Through Carson and Butler's testimony, the State presented two witness accounts identifying defendant as the shooter. Although defendant challenged these identifications due to the circumstances under which they were made, there was nothing contradicting the account given by Carson and Butler. Thus, the evidence presented in this case is not analogous to the evidence in *Sebby* or other similar cases. See *e.g.*, *People v. Naylor*, 229 Ill. 2d 584 (2008); *People v. Lee*, 2019 IL App (1st) 162563, ¶ 70. Even if the circumstances of Carson and Butler's identifications were not perfect, evidence does not have to be perfect to avoid application of the plain-error doctrine. We afford great deference to a jury's credibility determinations. *People v. Johnson*, 385 Ill. App. 3d 585, 593 (2008). We will not reverse a conviction under the guise of closely balanced plain-error review, where the jury simply rejected defendant's arguments regarding the credibility of the witnesses' identifications.

¶ 76 Another traditional hallmark of cases involving closely balanced evidence is presented by lengthy jury deliberations or jury notes during deliberations indicating that they had reached an impasse. See *e.g.*, *People v. Wilmington*, 2013 IL 112938, ¶ 35; *People v. Lee*, 303 Ill. App. 3d 356, 362 (1999) (holding that the evidence was closely balanced under the plain-error analysis based on the jury being deadlocked for several hours and on three occasions indicating that it could not reach a unanimous verdict); *People v. Aguirre*, 291 Ill. App. 3d 1028, 1035 (1997) (finding a close case under the plain-error doctrine as evidenced by the jury's note requesting police reports and witnesses' statements and by the note stating that the jury was split 10 to 2). Defendant does not raise any argument concerning the manner of the jury deliberations in his case.

¶ 77 Accordingly, we find that the evidence was not so closely balanced as to warrant reversal under plain-error due to the trial court's omission of one of the *Zehr* principles.

¶ 78 F. Mittimus and Order Assessing Fines, Fees, and Costs

¶ 79 The State proceeded to trial against defendant on counts one, two, seven, and eight, dismissing the remaining charges of the 12-count indictment. The mittimus records guilty convictions on four counts: attempt murder of Johnson resulting in serious bodily harm, attempt murder of Johnson resulting in permanent disfigurement, aggravated battery with a firearm as to Johnson, and aggravated battery with a firearm as to Butler. Both defendant and the State agree that this is incorrect. A corrected mittimus can be issued at any time. *People v. Latona*, 184 Ill. 2d 260, 278 (1998). Upon review of the record, the jury returned three pages of signed verdict forms finding defendant guilty of the attempted murder of Johnson, of personally discharging a firearm resulting in permanent disfigurement, and the aggravated battery of Butler with a firearm. Thus, the mittimus is clearly erroneous and we strike the convictions on counts one and seven, attempt murder of Johnson resulting in serious bodily harm and aggravated battery with a firearm as to Johnson.

¶ 80 Lastly, defendant argues that the trial court erred in its assessment of certain fines and fees totalling $50 which should have been offset by his pre-sentence incarceration credit. A reviewing court may modify a fines and fees order without remand. Ill. S. Ct. R. 615(b)(1); see *People v. McGee*, 2015 IL App (1st) 130367, ¶ 82 (ordering clerk of the circuit court to correct fines and fees order). We review the propriety of a trial court's imposition of fines and fees *de novo*. *McGee*, 2015 IL App (1st) 130367, ¶ 78. The State correctly concedes that section 110-14(a) of the Code of Criminal Procedure, 725 ILCS 5/110-14(a) (West 2014), provides a presentence incarceration credit against fines. Of the $724 assessed against

defendant for fines, fees, and costs, the presentence incarceration credit applies to the charges levied under subsections 1101(d-5), 1101(e), 1101(f), and 1101(f-5) of the Counties Code, 55 ILCS 1101(d-5)-(f-5) (West 2014). Defendant spent 1,009 days in presentence incarceration and earned a credit of $5 per day. However, the amount credited cannot exceed the amount of the fines. Thus, the defendant should be credited $50 to cover the fines assessed for the Mental Health Court, Youth Diversion/Peer Court, Drug Court, and the Children's Advocacy Center. Accordingly, the Clerk of the Circuit Court is directed to correct the order to reflect defendant's credits.

¶ 81 III. CONCLUSION

¶ 82 For the reasons stated, we affirm the judgment of the circuit court of Cook County and direct the Clerk to enter corrections to the mittimus in accordance with this order.

¶ 83 Affirmed; mittimus corrected.