THIRD DIVISION
September 25, 2019

No. 1-17-0794

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 08356
	)	
ALEXON ARCENEAUX,	)	Honorable
	)	William H. Hooks,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Affirmed and remanded. Evidence was sufficient to prove possession of cannabis where officer testified that defendant admitted cannabis was his. Counsel was not ineffective for failing to move to suppress statement on fourth- or fifth-amendment grounds. Remanded for defendant to challenge certain monetary assessments in circuit court.

¶ 2 When the police entered his sister's apartment with a search warrant, defendant Alexon Arceneaux told the officers that he "ha[d] a little weed in the house" and directed them to a bag of cannabis in a kitchen cabinet. Or so one of the officers testified at defendant's bench trial. In his own testimony, defendant denied the admission, but the trial court believed the officer and thus found defendant guilty of possessing cannabis.

¶ 3 On appeal, defendant argues (1) that the officer's testimony was insufficient to prove his

possession of the cannabis in his sister's kitchen cabinet; (2) that his attorney was ineffective for failing to move to suppress his alleged statement to the officer, either as the fruit of an illegal seizure or as a violation of his *Miranda* rights; and (3) that certain monetary assessments were improper. We affirm defendant's conviction and sentence, and remand for the limited purpose of allowing him to challenge his monetary assessments in the circuit court.

¶ 4 BACKGROUND

¶ 5 On April 10, 2014, Officer Paolino and six or seven other officers executed a search warrant for an apartment in Skokie. Defendant did not live there, but his sister did, and he was a frequent guest. Along with a search of the apartment, the warrant also authorized a search of a man identified as "Albo" by a confidential informant. The informant claimed to have purchased cannabis from "Albo" at this address several times in the previous few months. She described "Albo" as a 29-32 year old black man, between 5'9'' and 5'11'', weighing 160-170 pounds, with dark brown hair, brown eyes, and a light complexion with freckles.

¶ 6 Paolino was the State's only witness at trial. He testified that the officers watched the front of the building for about 3 to 5 minutes before executing the warrant. They did not see anyone there. The front door to the building was locked, so they drove around back and found that the rear gate and entrance to the building were open. The officers went inside and knocked on the door to the first-floor apartment. Nobody answered. Paolino and Officer Czarnik broke down the door and stayed there while the others went inside. After the entry team said that the apartment was secure, Paolino and Czarnik took the tools back to their car in the alley and returned in "a minute or two" with the evidence bags.

¶ 7 Inside, Paolino found defendant standing in the living room with his sister. He did not recall defendant being handcuffed. The officers from the entry team were present. Paolino and

Czarnik took defendant into the bedroom to separate him from his sister.

¶ 8 Paolino told defendant that the officers had a search warrant "for him and the apartment." Defendant immediately said that he "ha[d] a little bit of cannabis, or weed, in the apartment." (Paolino clarified that defendant used the term "weed," a recognized street term for cannabis, and that "cannabis" was his own gloss.) Defendant then directed the officers to the kitchen, and specifically, the cabinet above the refrigerator. Paolino watched as Officer Rowe opened the cabinet and found a lunch box with plastic bags inside. The parties stipulated that the bags contained 136.6 grams of cannabis.

¶ 9 Tiffany Houston, who testified for the defense, lived in the apartment with defendant's sister, Alethia Harbison, and defendant's niece, Brianna Starling. Houston, Harbison, Starling, and some friends came home from the park and saw defendant standing outside, in front of the building, talking to a neighbor through the window of the basement apartment. The neighbor told Houston that the police were inside Harbison's apartment. The officers allowed Harbison to go inside, but Houston and the others had to wait in the hallway. Houston saw an officer go outside, handcuff defendant, and take him into Harbison's apartment.

¶ 10 Defendant testified that he has never gone by the nickname "Albo." Defendant was at his grandmother's house when Ben Parren, Harbison's downstairs neighbor, called and said that the police were at Harbison's apartment and looking for defendant. According to defendant, Parren heard the officers mention defendant by name.

¶ 11 Defendant drove to Harbison's apartment. He did not go inside because he did not have his own key. While he waited for Harbison in front of the building, he talked to Parren through a window. Harbison and the others soon arrived and went inside the building, but defendant stayed behind to finish talking to Parren. An officer came outside, handcuffed defendant, took him into

Harbison's apartment, and sat him down in the living room.

¶ 12 Paolino took defendant into a bedroom to talk. Defendant asked for a lawyer, but Paolino kept trying to engage him in conversation. Defendant denied telling Paolino that the cannabis in the kitchen cabinet was his, or that he even knew it was there. He knew nothing of the lunchbox, which was not his, and while he knew that Harbison smoked cannabis, he had never really spoken to her about it. Defendant testified that he did not live with Harbison, but he did visit her apartment regularly, about twice a week.

¶ 13 Roughly five months after the presentation of this evidence, the trial court heard closing arguments and rendered its findings. (The trial court had granted several continuances so that the State could locate and call rebuttal witnesses, which it never did.) In sum, the trial court found that Paolino was credible; that defendant was not credible; and that Paolino's testimony was sufficient to prove defendant's constructive possession of the cannabis. The trial court found defendant guilty of possessing between 100 and 500 grams of cannabis (720 ILCS 550/4(d) (West 2018)) and sentenced him to two years' probation.

¶ 14 ANALYSIS

¶ 15 I. Sufficiency of the evidence

¶ 16 Defendant first challenges the sufficiency of the evidence. In reviewing this challenge, we ask whether a rational trier of fact, viewing the evidence in the light most favorable to the State, could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Ross*, 229 Ill. 2d 255, 272 (2008). With regard to the credibility of the witnesses and the reasonable inferences to be drawn from the evidence, the trier of fact's findings are entitled to great deference, but they are not conclusive. *Ross*, 229 Ill. 2d at 272.

¶ 17 To prove defendant guilty of possessing cannabis, the State had to prove that he knew the cannabis was present and that it was in his possession or control. *People v. Givens*, 237 Ill. 2d 311, 334-35 (2010); see 720 ILCS 550/4 (West 2018). These are both questions of fact, and are thus for the trier of fact to resolve. *People v. Schmalz*, 194 Ill. 2d 75, 81 (2000).

¶ 18 Officer Paolino testified that defendant said he "had a little weed in the house" and then directed the officers to the kitchen cabinet where the cannabis was found. There is no reasonable way to construe defendant's statement to Paolino as anything but an admission that the cannabis was his. True, defendant denied that he made any such admission. But the trial court found that Paolino was credible and defendant was not. Viewed in the light most favorable to the State, the evidence was thus sufficient to prove that defendant knowingly possessed the cannabis.

¶ 19 Because defendant's admission directly proved his possession of the cannabis, the State did not need to prove that defendant lived in the apartment, exercised control over the kitchen cabinet, or otherwise "constructively" possessed the cannabis. *People v. Brown*, 327 Ill. App. 3d 816, 826 (2002) (because defendant admitted to testifying officer that gun in friend's apartment was his, there was "no need for the State to use utility bills or other evidence to link defendant to [the friend's] apartment"). Thus, we need not address defendant's arguments that the State failed to prove any such theory of constructive possession.

¶ 20 Defendant argues that his (alleged) admission to Paolino was legally insufficient to prove his guilt, because "the State cannot prove the *corpus delicti*—the existence of a crime—without evidence corroborating a defendant's out-of-court statement."

¶ 21 It is true that the State must introduce "some evidence, apart from [a defendant's out-of-court] confession, demonstrating that a crime occurred." *People v. Willingham*, 89 Ill. 2d 352, 360 (1982); see also *People v. Lara*, 2012 IL 112370, ¶¶ 17. But defendant's statement to

Paolino was not, as he asserts, the only evidence that a crime was committed. The undisputed presence of cannabis in the apartment was independent—and in fact sufficient—evidence that *someone* possessed cannabis. And because it is illegal to possess cannabis, it was self-evident that a crime was committed. In short, the cannabis itself was proof of the *corpus delicti* of the offense.

¶ 22 The evidence of defendant's admission to Paolino was not, as defendant suggests, part of the State's proof of the *corpus delicti*. Rather, it was offered to prove the identity of the offender, which is distinct from the *corpus delicti*. See *Willingham*, 89 Ill. 2d at 359-60 (distinguishing *corpus delicti* from "guilt of the defendant"); *People v. Hannah*, 2013 IL App (1st) 111660, ¶ 26 (noting that State must prove two independent propositions for conviction: "(1) that a crime has been committed—that is, the *corpus delicti;* and (2) the identity of the person who committed the offense."). That is, the admission was offered to prove that it was *defendant* who committed the crime that obviously had occurred. Granted, it was the only evidence the State offered to prove *this* fact, but evidence that a defendant admitted his guilt, if believed by the trier of fact, is of course sufficient to prove the defendant's guilt (when there is adequate independent proof of the *corpus delicti*, as there was here). Indeed, defendant cites no case, and makes no argument, to the contrary.

¶ 23 Defendant next argues that Paolino's testimony was uncorroborated, impeached, and thus not credible. Witness credibility is a question for the trier of fact, and to win an outright reversal of his conviction, defendant must show that Paolino's testimony was so far beyond the pale that no reasonable person, judging it in the light of ordinary human experience, could have believed it beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). Defendant's arguments do not come close to carrying this heavy burden.

¶ 24 To begin, if Paolino's testimony was "uncorroborated," so too was defendant's, at least on the relevant point—whether defendant admitted ownership of the cannabis. Houston could not corroborate defendant's testimony on *this* point; by her own account, she was not even inside the apartment at the time.

¶ 25 It is true, as defendant says, that Paolino did not "record" his statement, but that hardly speaks to his credibility at all; this was a spontaneous statement made in a bedroom during a search, not a formal stationhouse interrogation, and thus it is not a statement that one would expect to be recorded. See 725 ILCS 5/103-2.1(e)(iv) (West 2018) (no requirement that police record spontaneous statement not made in response to any question). Since Officer Czarnik was also in the bedroom when defendant allegedly spoke up, the State's failure to call him as a witness may bear, to some extent, on the credibility of Paolino's testimony. But Czarnik's absence was not so glaring that no reasonable person could believe Paolino's testimony without Czarnik's; thus, the question defendant raises is simply how much weight this fact deserves, and that was a matter for the trial judge, sitting as the trier of fact, to determine. *Ross,* 229 Ill. 2d at 272.

¶ 26 The only example defendant offers of Paolino's "impeachment" is his initial denial, on cross-examination, that the other officers arrested defendant in front of the building and brought him inside Harbison's apartment, followed by his immediate acknowledgment, in response to a further question from defense counsel, that he was not in any position to know for sure whether that happened. As Paolino acknowledged, he would have been in the back alley, returning the tools to the car, at the time. A reasonable trier of fact could find that Paolino was simply clarifying his testimony, and thus that he was not substantively impeached on this, or any other, point. And even if the trier of fact did view this as an impeachment, it would not compel either a

wholesale rejection of Paolino as a witness, or even a more limited rejection of his testimony that defendant admitted ownership of the cannabis. See *Cunningham*, 212 Ill. 2d at 283 ("it is for the fact finder to judge how flaws in part of the testimony affect the credibility of the whole").

¶ 27 In short, defendant has merely asked us to reweigh the evidence and the credibility of the witnesses for ourselves. He points to nothing about Paolino's testimony that renders it beyond the pale. For all defendant has said, a reasonable trier of fact could have believed Paolino's testimony. So we must do the same.

¶ 28 And we must credit Paolino's testimony even if, as defendant contends, the trial court misremembered or failed to remember the testimony of the witnesses—Paolino included—when the court announced its findings. Because defendant seeks an outright reversal, rather than a new trial owing to a procedural defect, the question is whether the evidence was sufficient to sustain his conviction. In this context, we review the *judgment* (of conviction) itself, and the *evidence* offered to support it. *Jackson*, 443 U.S. at 318 ("critical inquiry" is whether "the record evidence could reasonably support a finding of guilt beyond a reasonable doubt"). We do not review the trial court's perception or interpretation of the evidence, or the reasoning (if any) the trial court offered for its findings. Rather, we must affirm the judgment if "*any* rational trier of fact" could find that the evidence, viewed in the light most favorable to the State, proved the elements of the offense. (Emphasis in original.) *Id.* That means, among other things, that if a reasonable trier of fact could believe a given witness's testimony, then we must accept that testimony as fact for purposes of our review.

¶ 29 Now here's the problem for defendant: He cannot show that it would be unreasonable for anyone to believe a given witness's testimony by pointing out alleged defects in the trial court's memory or perception of that testimony. Those defects do not speak to the sufficiency of the

evidence itself to carry the State's burden at trial. Defendant, as we have said, has not shown that Paolino's testimony was beyond reasonable belief. The errors he alleges cannot change that, and thus they cannot show that the evidence was insufficient to support the judgment of conviction.

¶ 30 To be clear, we do not make light of such errors, when in fact they have occurred. If the judge at a bench trial demonstrably forgot or misapprehended evidence that would have given the defendant a fighting chance of winning an acquittal, then the defendant was denied a fair trial. *People v. Williams*, 2013 IL App (1st) 111116, ¶¶ 81-91; *People v. Bowie*, 36 Ill. App. 3d 177, 180 (1976); see also *People v. Mitchell*, 152 Ill. 2d 274, 325-26 (1992) (trial court committed "constitutional error" when it "failed to recall the crux of defendant's testimony" at suppression hearing). But to remedy this deprivation of due process, an appellate court should not decide for itself which witnesses were credible, just by reading a paper record, and then use its own *de novo* credibility findings to reverse the conviction outright. The proper remedy is to grant a new trial, before an attentive and clear-eyed trier of fact, who can assess the witnesses after they retake the stand. See *Williams*, 2013 IL App (1st) 111116, ¶ 118. Defendant does not ask for that remedy here.

¶ 31 All of that said, we don't think the record bears out defendant's claims. For the sake of completeness, not to mention fairness to the trial judge, we will explain why.

¶ 32 The crux of defendant's argument is that the trial court, as a general matter, did not recall the testimony of the witnesses, and in particular, labored under the mistaken impression that two officers, rather than just Paolino, testified for the State.

¶ 33 To begin, defendant conspicuously omits any citation to the trial court's statement of its findings, which refer clearly to the State's one and only witness: "I have reviewed the testimony of *the State's witness*, *the police officer*, and the two witnesses—the defendant and the witness

called by the defense." (Emphases added.) The trial court went on to find that the officer, namely Paolino, was credible, and that defendant was not. So the findings themselves betray no evident confusion on the part of the trial judge.

¶ 34 We acknowledge, as defendant says, that the trial court needed the parties to jog its memory about the case at the outset of the closing arguments, and that the trial court did, at one point during the State's argument, interject that a second officer had testified.

¶ 35 To put these points into context, recall that the trial court did not hear closing arguments and announce its findings until nearly five months after the witnesses testified. In the intervening months, the trial court had continued the case several times for the State to find and call some of the other officers as rebuttal witnesses. But logistical hurdles and confusion ensued. On one court date, for instance, the officers were in court, but the judge could not be present. After additional continuances, the officers were able to come to court again; but by then, the trial prosecutors had been transferred to a different courtroom, and the newly assigned prosecutors did not yet know enough about the case to know which, if any, of the officers they wanted to call. After the case was passed, the prosecutors conferred with the trial team, decided not to call the officers after all, and rested in rebuttal. The case was continued again for closing arguments the following week.

¶ 36 When the case was recalled, the judge initially asked the parties, "So this is on argument on the motion—what is it on? Refresh my memory." The judge also noted, "This matter is entered and continued. Apparently it was a bench trial." These remarks do not show that the trial court had no recollection of the witnesses' testimony when it made its findings. At most they show that the trial court, presiding as it does over a vast docket, needed a moment to recall the matter, and its procedural posture, to memory.

¶ 37 The parties argued the case, reviewing the evidence and testimony of the witnesses in

detail. The trial court interjected, from time to time, during the State's argument. Sometimes the court explicitly stated that it recalled a particular piece of evidence. Other times the court posed a question or asked the State to summarize its take on certain evidence—including defendant's testimony.

¶ 38 Defendant takes that request to show that the trial court was in the dark, unable to recall the trial evidence, when it later found that his testimony was not credible. We see it differently. Consider the broader exchange, between the trial court and the State, in which that request was made. The State had been discussing its proof of the chain of custody of the cannabis, a matter not in dispute, when the court asked if the State wished to reserve any time for rebuttal. Taking the hint, the State immediately moved on to the defense case—and started with defendant's prior conviction. The trial court swiftly interjected again: "And defendant's testimony was in summary . . ." As we read the record, the trial court was simply trying to move the State's argument along and to focus it on pertinent matters. The request for a summary of defendant's testimony is not, as he contends, any reason for us to disregard the trial court's credibility findings.

¶ 39 While the State was arguing that Paolino's testimony was unimpeached and credible, the court interjected, "There were two police officers that testified." (That statement, as defendant himself suggests in his brief, can easily be read as a question to the State, rather than an assertion of fact.) At that point in the State's argument, the trial court apparently was either mistaken or uncertain as to whether, after months of confusion and delay, a second officer ever testified for the State in rebuttal. So the trial court, for a time, did indeed need its memory refreshed about at least this aspect of the case. But to that end, the trial court had the benefit of the parties' detailed arguments before rendering its findings. And as we have noted, those findings, on their face, did not reveal any error or confusion about the evidence that *was* presented at trial. Given the record

as a whole, this one remark does not justify us in disregarding the trial court's credibility findings and supplanting them with our own. So we will not do so.

¶ 40 In sum, we find that the evidence was sufficient to prove beyond a reasonable doubt that defendant possessed the cannabis.

¶ 41 II. Ineffective assistance of counsel

¶ 42 Defendant next argues that his attorney was ineffective for failing to move to suppress his statement to Paolino on fourth-amendment grounds, as the fruit of an illegal seizure, and on fifth-amendment grounds, as a violation of his *Miranda* rights.

¶ 43 A claim that counsel was ineffective for failing to move to suppress evidence is governed by the familiar two-part standard established in *Strickland v. Washington*, 466 U.S. 668 (1984). See *People v. Bew*, 228 Ill. 2d 122, 127 (2008). The decision to file a motion to suppress is generally a matter of trial strategy and is thus entitled to "great deference," but counsel may still be judged deficient if the failure to move for suppression was objectively unreasonable and thus "below prevailing professional norms." *Id.* at 128. To establish prejudice, a defendant must show a reasonable probability that (1) the motion to suppress would have been granted, and (2) the outcome of the trial would have been different had the evidence been suppressed. *Id.* at 128-29.

¶ 44 In reviewing a claim of ineffective assistance of counsel, we defer to the trial court's findings of fact, unless they are against the manifest weight of the evidence, but we review *de novo* the legal questions of whether counsel's representation was deficient and prejudicial to the defendant. *People v. Harris*, 389 Ill. App. 2d 107, 131 (2009).

¶ 45 As an initial matter, the State notes that ineffective-assistance claims based on what trial counsel *failed* to do—including filing a motion to suppress evidence—typically must be resolved on collateral, rather than direct, review. More often than not, the trial record alone does not

provide the factual basis necessary to review such claims on direct appeal, for the simple reason that the underlying issue (for instance, an alleged fourth- or fifth-amendment violation) was not raised in the trial court. *Bew*, 228 Ill. 2d at 134; *Massaro v. United States*, 538 U.S. 500, 504-05 (2003). But in some cases, the trial record does provide the factual basis necessary to determine whether counsel unreasonably failed to pursue a viable suppression issue. *People v. Henderson*, 2013 IL 114040, ¶¶ 19-24. Defendant says that is the case here, and we agree. The testimony and findings from the bench trial allow us to resolve defendant's claim, albeit not in his favor.

¶ 46 A. Fifth amendment

¶ 47 Defendant first contends that counsel should have moved to suppress his statement to Paolino as a violation of his fifth-amendment right against self-incrimination, because he was not read his *Miranda* rights before (allegedly) admitting that the cannabis was his.

¶ 48 There is no dispute that defendant's statement was unwarned. But *Miranda* warnings are only required when the defendant is subject to a custodial interrogation. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). Putting aside the question of custody, an interrogation takes place, and thus *Miranda* warnings must be given, when a person "is subjected to either express questioning or its functional equivalent." *Rhode Island v. Innis*, 446 U.S. 291, 300-01 (1980).

¶ 49 The term "interrogation" thus encompasses "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Id.* at 301. To qualify as an interrogation, the conduct of the police, whether it involves express questioning or not, "must reflect a measure of compulsion above and beyond that inherent in custody itself." *Id.* at 300. Thus, "[v]olunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by [*Miranda*'s holding]." *Miranda*, 384 U.S. at 478.

¶ 50 Paolino, whom the trial court believed, testified that he took defendant into the bedroom to separate him from his sister. There, he told defendant that the officers had a search warrant "for him and the apartment." Defendant immediately said that he "ha[d] a little bit of weed in the apartment" and directed the officers to a kitchen cabinet where the cannabis was found.

¶ 51 Paolino did not question defendant. And he did not engage in the functional equivalent of questioning. Paolino simply announced why the officers were there and what searches they were authorized to conduct. That explanation was just about the bare minimum he could have said in these circumstances. It did not add any element of compulsion beyond that inherent in the execution of the warrant (and any accompanying detention) itself. Nor was it all too likely to elicit an incriminating response. To the contrary, defendant's response was clearly spontaneous and volunteered.

¶ 52 By way of contrast, consider *People v. Fort*, 2014 IL App (1st) 120037, cited here by defendant. In *Fort*, one of the officers executing a search warrant pointedly asked the defendant "if there [was] anything in the room [police] should know about because the room eventually is going to get searched anyway." (Brackets in original.) *Id.* ¶¶ 4, 18. That was express questioning. And it was reasonably likely to elicit an incriminating response, as it asked the defendant to disclose the whereabouts of any contraband. Thus, it was an (unwarned) interrogation. *Id.* ¶ 18. Here, Paolino did not take that extra step of expressly asking—or otherwise goading—defendant to disclose any contraband he knew of in the apartment. He merely told defendant why the officers came to the apartment. He hardly could have said any less.

¶ 53 Defendant argues that Paolino interrogated him by engaging in the "psychological ploy" of "positing [his] guilt of a crime as fact." Such "ploys" may amount to interrogations. *Innis*, 446 U.S. at 299; *Miranda*, 384 U.S. at 450-53. As an example, the Court in *Miranda* pointed to the

so-called reverse lineup: a ruse in which a coached witness purports to identify the defendant as the perpetrator of a made-up crime, so that the defendant, hoping to escape the pretend charge, confesses to the crime he is actually suspected of committing. *Miranda*, 384 U.S. at 453.

¶ 54 Paolino did nothing like that. As we have explained, he merely said that the officers had a warrant to search defendant and the apartment. That simple explanation for their presence cannot reasonably be construed as the opening gambit in an effort to elicit incriminating information from defendant without issuing *Miranda* warnings.

¶ 55 But it can, defendant insists, because Paolino lied to him. The warrant, defendant says, did not authorize a search of *him*; it authorized a search of "Albo," and he is not "Albo." More importantly, he does not match the confidential informant's description of "Albo." Thus, Paolino "had no basis for believing" that defendant was the actual subject of the warrant. Paolino just made that up to trick defendant into incriminating himself.

¶ 56 We cannot agree, for three independent reasons. First, regardless of whether defendant was truthfully identified as one of the subjects of the search, the other object was the apartment, itself. And that was the critical point, of course, because the cannabis was found in the apartment, not on defendant personally. Defendant had nothing to fear about being personally searched, but he had everything to fear about the officers searching the apartment. And on *that* point, Officer Paolino was unquestionably telling the truth—the apartment was going to be searched.

¶ 57 Second, the record reveals very little basis for believing that the officer was lying to defendant when he told him he was a target of the search warrant. The informant described "Albo" as a 29-32 year old black man, between 5'9'' and 5'11'', weighing 160-170 pounds, with dark brown hair, brown eyes, and a light complexion with freckles. Defendant was 29 years old

at the time. As defendant points out, his PSI says that he is 6'2'', 200 lbs., with light brown hair and green eyes. (The arrest report, included by defendant in the supplemental record on appeal, lists defendant as 6'2'', 170 lbs, with brown eyes and a light brown complexion.) We have no reason to think that the informant was any better at eyeballing features such as height and weight than the next person. Such descriptions are bound to be off to some degree. And these descriptions are not so far apart, in our view, that Paolino could not have had a good-faith basis for believing that defendant, whom he encountered inside the apartment where the informant had purchased the cannabis, was the person identified as "Albo."

¶ 58 And third, there was a good reason why trial counsel may have opted *not* to argue that Paolino "had no basis for believing" that defendant was the target of the warrant: Defendant himself testified, in so many words, that he was. Specifically, defendant testified that he was not present when the officers arrived at Harbison's apartment. Rather, he was at his grandmother's house; he drove to Harbison's apartment only after Parren, Harbison's downstairs neighbor, called and said that the police were looking for him. And defendant was adamant on cross-examination that, according to Parren, the police mentioned him by name: Parren, he testified, "overheard my name"—that is, his first name, "Alex"—"being spoken" by the officers.

¶ 59 Defendant's argument on appeal is thus inconsistent with his own testimony and theory of the case. If the officers actually *said* that they were looking for defendant, as he testified, then it makes no sense at all to accuse Paolino of lying when he told defendant that he was the target of the warrant. There is no way defendant could have carried his burden on a motion to suppress without testifying to his account of events at a suppression hearing. But then counsel, in making this argument, would have been arguing against defendant's own testimony, asking the trial court, at least implicitly, to reject it as false. For this reason, counsel could take a pass on this

argument as a matter of reasonable trial strategy.

¶ 60 In sum, because defendant was not interrogated, and for the other reasons we have given, defendant has not established either deficiency or prejudice. Counsel was not ineffective for failing to move to suppress defendant's statement on fifth-amendment grounds.

¶ 61 B. Fourth amendment

¶ 62 Defendant argues that counsel should have moved to suppress his statement to Paolino on fourth-amendment grounds, as the fruit of an unreasonable seizure. Defendant's argument rests on two factual premises: first, that the police seized him outside the building, rather than inside Harbison's apartment; and second, that the warrant did not authorize the police to search, and thus to seize, him. Because he was seized without a warrant, away from the premises to be searched, the seizure was reasonable only if an exception to the warrant requirement applied. But none did.

¶ 63 Let's start with defendant's first premise, that the police seized him outside the building. Is that premise supported by the record, or consistent with the trial court's findings? It is not so easy to say. Defendant testified that he was handcuffed in front of the building, while talking to Parren, and taken inside Harbison's apartment. Houston said the same. As a general matter, the trial court did not find the defense's version of events credible. But the trial court did not make any specific findings about this particular aspect of the testimony. And defendant argues that this testimony can be reconciled with Paolino's testimony that *he* first encountered defendant in the Harbison's living room. As Paolino acknowledged on the stand, he was returning his tools to the car when the other officers first encountered defendant, and thus he did not know where that encounter took place.

¶ 64 Defendant's first premise raises some knotty factual and record questions. But we need

not untangle them. No matter where defendant was detained—inside Harbison's apartment, or outside, in front of the building—he does not have a viable suppression argument on fourth-amendment grounds.

¶ 65 Suppose, for argument's sake, that defendant was detained inside Harbison's apartment. The police have "categorical" authority to detain (and handcuff) anyone found inside a residence where they are executing a search warrant. *Bailey v. United States*, 568 U.S. 186, 193 (2013); *Muehler v. Mena*, 544 U.S. 93, 99 (2005); *Michigan v. Summers*, 452 U.S. 692, 702-03 (1981). So if defendant was inside Harbison's apartment when the police entered, that would be the end of the matter; his detention would unquestionably be lawful.

¶ 66 Now suppose, instead, that defendant was detained outside, as he testified. That is still not enough to show that he had a viable suppression argument. This is where defendant's second factual premise comes into play. If defendant was the person described and identified as "Albo," or if the police had a good-faith basis for believing that he was, then defendant was lawfully seized, even if he was outside at the time. The warrant authorized a search of "Albo's" person, and it is literally impossible to search someone's person without thereby seizing the person. So the warrant itself authorized a seizure of "Albo" to the extent necessary to complete that search.

¶ 67 And if defendant was the target of the warrant, the officers did not unreasonably extend the seizure by taking him inside Harbison's apartment. (Rather than, say, searching him outside and then allowing him to leave after finding no incriminating evidence on his person.) Under the fourth amendment, "[t]he scope of [a] detention must be carefully tailored to its underlying justification." *Florida v. Royer*, 460 U.S. 491, 500 (1983) (plurality opinion). Defendant's detention was justified by the search for evidence of his possession and sale of cannabis. The search of Harbison's apartment, also authorized by the warrant, had the same justification; in

both instances, the police were searching for evidence of the same crime. Thus, any extension of defendant's seizure remained rooted in its underlying purpose and justification. The police could lawfully detain defendant outside the building and take him inside Harbison's apartment for the duration of the search—if, as Paolino testified, defendant was the target of the warrant.

¶ 68 So both of defendant's factual premises are essential to his argument. To prevail on a motion to suppress, defendant would have to show not only that he was outside the apartment when he was detained—an uncertain proposition at best, given the trial court's assessment of his credibility—but also that he was *not* the target of the warrant, or at least that the officers, as he says, "had no basis for believing" that he was.

¶ 69 But that leaves defendant alleging, once again, that his attorney was ineffective for failing to make an argument that contradicted his own testimony. Indeed, counsel could have raised a legally viable suppression issue only by arguing, at least implicitly, that defendant's testimony was false. And as we have already explained, counsel could make a reasonable strategic decision not to do that.

¶ 70 Defendant has not identified any basis for suppression that was legally non-frivolous and factually consistent with his own testimony. Thus, he has not shown that counsel was ineffective for failing to move to suppress his statement to Paolino as the fruit of an unreasonable seizure.

¶ 71 III. Monetary assessments

¶ 72 Defendant also claims, for the first time on appeal, that his $5 Electronic Citation Fee (705 ILCS 105/27.3e (West 2018)) and all but $100 of his $450 in per-day Trial State's Attorney Fees (55 ILCS 5/4-2002.1(a) (West 2018)) were improperly assessed. Illinois Supreme Court Rule 472 provides that the circuit court retains jurisdiction to correct certain sentencing errors, including errors in the imposition of monetary assessments or in the application of *per diem*

credits, at any time following judgment. Ill. S. Ct. R. 472(a)(1)-(2) (eff. May 1, 2017). And when, as here, a criminal case was pending on appeal as of March 1, 2019, and a party raised sentencing errors covered by Rule 472 for the first time on appeal, "the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule." Ill. S. Ct. R. 472(e) (eff. May 17, 2019). Thus, under Rule 472(e), defendant must first file a motion in the circuit court requesting the correction of the errors alleged here. See *People v. Whittenburg*, 2019 IL App (1st) 163267, ¶ 4; *People v. Loggins*, 2019 IL App (1st) 160482, ¶ 131. We remand to the circuit court for that limited purpose only.

¶ 73 CONCLUSION

¶ 74 For these reasons, we affirm defendant's conviction and sentence and remand to the circuit court for the limited purpose of allowing defendant to raise any alleged errors in his monetary assessments.

¶ 75 Affirmed and remanded.