2019 IL App (3d) 170052-U

Order filed May 31, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois.
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-17-0052 Circuit No. 16-CF-269
JEREMY D. SLEDGE,	)	
Defendant-Appellant.	)	Honorable Kevin W. Lyons, Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: The trial evidence was sufficient to prove defendant guilty beyond a reasonable doubt of armed robbery and unlawful possession of a weapon by a felon. The court did not err in admitting two handguns into evidence. No error occurred during the State's closing argument. Defendant is entitled to an additional day of presentence monetary credit to be applied against his fines and for the credit to be applied against additional fines in the amount of $80.

¶ 2 Defendant, Jeremy D. Sledge, appeals his convictions for armed robbery and unlawful possession of a weapon by a felon (UPWF). Specifically, defendant argues (1) the trial evidence

was insufficient to prove him guilty beyond a reasonable doubt, (2) the trial court abused its discretion in admitting two handguns into evidence, (3) the State committed prosecutorial misconduct during rebuttal closing argument, and (4) defendant is entitled to an additional $5 in presentence monetary credit and to the application of the credit against an additional $80 in applicable fines. We affirm defendant's convictions and remand the matter with directions.

¶ 3 I. BACKGROUND

¶ 4 A grand jury charged defendant with armed robbery (720 ILCS 5/18-2(a)(2) (West 2016)) and UPWF (*id.* § 24-1.1(a)).

¶ 5 The matter proceeded to a jury trial. On the day trial was set to commence, defense counsel stated that he had filed a motion *in limine* to bar any reference to two handguns that were found at an apartment on Lavelle Court (the Lavelle Court apartment). No written motion appears in the record. Defense counsel argued that it would be improper to introduce either of the handguns as being the one used during the armed robbery because there was no evidence tying the handguns to the incident. The State argued that it would present witnesses who would testify that a black handgun was used during the armed robbery and that officers found defendant in the Lavelle Court apartment shortly after the robbery. The State indicated that officers also found the handguns and a sweatshirt matching the description of the one defendant was wearing during the incident in the Lavelle Court apartment. The court denied defendant's motion *in limine*.

¶ 6 The parties agreed to bifurcate the charges so that the jury would first return a verdict on the charge of armed robbery. The State would then present stipulated evidence that defendant had a prior felony conviction, and the jury would be instructed as to the charge of UPWF.

¶ 7 The trial commenced. George Moss testified that he was in a relationship with Arricka Triplett. Moss was at Triplett's apartment on the morning of the incident. Someone knocked on

the door. Moss looked outside and saw a man who he recognized. Moss opened the door, and a different man ran into the apartment. The man who entered the apartment was holding a black automatic gun. He was wearing a black hooded sweatshirt that had something like "rest in peace" written on it. The man was not wearing the hood or a mask; Moss was able to see his face clearly. The man asked for money and hit Moss on the head with the gun several times. Moss told the man there was no money. Triplett then entered the room, and the man pointed the gun at her. The man asked for money, and Triplett said there was no money.

¶ 8 Moss testified that there was $10 to $15 laying on a table. The man grabbed the money and exited the apartment. Triplett called the police. The police arrived and drove Triplett and Moss to a nearby apartment complex on Lavelle Court. Triplett and Moss were in separate squad cars, but Moss knew which car Triplett was in. The police brought two individuals down from an apartment. Moss stated that the first individual was not the man involved in the robbery, but the second man was the robber. A police officer told Moss to tap on the window of the squad car if he saw the robber, so Moss tapped on the window when he saw the second man. Moss identified defendant in court as the man who robbed Triplett's apartment.

¶ 9 Triplett testified that she was in bed with Moss in her apartment on the morning of the incident. Someone knocked on the door, and Moss opened it. Triplett heard Moss say that he did not have any money. Triplett then got out of bed and went into the kitchen. She saw a man repeatedly hit Moss on the head with a black gun. The man asked Moss for money. The man then pointed the gun at Triplett and said he should kill her. Triplett told the man there was no money. The man then grabbed a small amount of money from a table and exited the apartment. The man was wearing a black hooded sweatshirt that said something like "rest in peace" on it. The man was not wearing a mask. The man's hood was up, but Triplett was able to see his face clearly.

¶ 10 After the man exited the apartment, Triplett shut the door and ran to the window. Triplett saw the man enter a white car with a black hood. The car drove away. Triplett called the police and told them what happened, including seeing the white car with the black hood. The police arrived at Triplett's apartment less than 30 minutes later.

¶ 11 The police drove Triplett and Moss to an apartment complex on Lavelle Court, and she identified the white car with the black hood that she had seen earlier. Triplett and Moss were in separate squad cars. Triplett did not see which car Moss was in. The police brought two people down from an apartment. The police brought down Jemarco Moore first. Triplett testified that she knew Moore because he was a family member. Triplett knew that Moore had driven the white car with the black hood in the past, but she could not see who was driving the car that morning. The police then brought defendant out of the apartment. Triplett identified defendant as the robber because she remembered his face. Triplett identified defendant in court as the robber. Triplett said that defendant was Moore's brother, and she had known defendant since he was a child. Triplett did not recognize defendant at the time of the robbery because he had a different hair style than he did the last time she had seen him. Triplett said she knew defendant's name, but she did not realize that he was the robber either during the robbery or when the police brought him out of the Lavelle Court apartment because of his new hair style.

¶ 12 Officer Marilyn Robinson testified that she was dispatched to Triplett's apartment on the morning of the incident regarding an armed robbery. When Robinson arrived, she observed that Moss had a bump on the back of his head with a small amount of blood present. Triplett and Moss were upset, shaken, and scared. Moss and Triplett described the incident to Robinson. They described the individual who committed the robbery as a black male wearing a black hooded sweatshirt with writing on it. They also said the car involved in the incident was white

with a black hood. Robinson described the car over her police radio, and someone informed her that there was a vehicle fitting that description at an apartment complex on Lavelle Court. Robinson took Moss and Triplett to the Lavelle Court apartment complex to see if they could identify the car. Triplett identified the car. Triplett and Moss were then placed in separate squad cars. Two men walked by the officers and entered an apartment. Triplett indicated that one of the individuals was Moore, and she knew him. Officers went into the apartment that Moore and the other man had entered.

¶ 13 An officer brought Moore down to the parking lot. Another officer brought defendant down. When the officer brought defendant to the parking lot, Robinson could see the car Triplett was in moving and "bumping around." Robinson approached the squad car and Triplett identified defendant as the robber. Robinson asked the officer escorting defendant to stay where he was. Robinson moved the squad car that Triplett was in "to make sure *** that they didn't see eye to eye with each other." Robinson then saw Moss in the other squad car. Moss was looking at defendant and was "shaking his head up and down *** in a yes motion." Robinson said that Moss and Triplett could not see each other because there were other squad cars in between them.

¶ 14 Detective Stevie Hughes testified that he was dispatched to the Lavelle Court apartment on the day of the incident. Jamere Hayes, Moore, defendant, and a child were inside the apartment at that time. Defendant was in the bathroom when Hughes arrived. Hughes determined that the apartment was rented by a woman whose last name was Alexander; it was not defendant's apartment. Hayes was a resident of the apartment; he gave Hughes consent to search the apartment. Hughes found a black sweatshirt in the rear bedroom in a laundry basket. Officer Jarvis Harrison testified that he located a T-shirt "and what looked to be a handgun wrapped in it" inside a heater vent in the same bedroom where Hughes found the black sweatshirt.

¶ 15 Officer Scott Bowers identified several photographs that he had taken at the Lavelle Court apartment. Bowers identified photographs of a black hooded sweatshirt. The sweatshirt said "R.I.P." He also identified photographs of the two handguns wrapped in a T-shirt. When the officers discovered the handguns, the barrel of only one of the handguns was visible. The police later discovered that there were two handguns wrapped in the T-shirt. Bowers collected and processed the handguns. Bowers identified the handguns themselves, and the court admitted them into evidence. Bowers noted that both handguns were black.

¶ 16 A forensic scientist testified that she swabbed the two handguns recovered from the Lavelle Court apartment. She found human DNA from at least three individuals, but the samples were not suitable for comparison to a standard from a known individual.

¶ 17 The State rested.

¶ 18 Moore testified for the defense. Moore stated that defendant was his brother, and he knew Triplett through family. Moore's other brother, Tory Johnson, lived in the same apartment complex as Triplett. On the morning of the incident, Moore went to Johnson's apartment to see if Johnson could work for him that day. On the way to Johnson's apartment, Moore stopped by Triplett's apartment and asked for a cigarette, but she and Moss did not have any. Moore then went to Johnson's apartment, and Johnson told Moore he was unable to work that day. Moore talked to Johnson, a person named Sid, and some other individuals for a while in the hallway in front of Triplett's apartment.

¶ 19 When Moore was exiting the apartment complex, he heard Sid say that someone was getting robbed. Moore did not see anyone getting robbed, and he did not see defendant at Triplett's apartment complex. The following exchange occurred between Moore and defense counsel:

"Q. Okay. So where were you with relationship to [Triplett's] apartment when you heard Sid say whatever it was he said?

A. I was actually going out the door. I was going out the door to get my car.

Q. So you were going out?

A. Yeah. And he came right out the door behind me and went to the building next to me so…"

¶ 20 On cross-examination, the prosecutor asked Moore where he was when he was talking to Johnson, Sid, and the other individuals. Moore replied that he was inside Triplett's apartment complex in a hallway on a set of stairs. The following exchange occurred between the prosecutor and Moore:

"Q. Okay. And then who says somebody is getting robbed?

A. Sid. That's when I was going out the door. Sid was like it sound [*sic*] like somebody getting robbed. He come [*sic*] right out the door behind me and going [*sic*] to the next building.

***

Q. Okay. He came right out the building behind me—

A. Yeah.

Q. —that's what he said?

A. That's what I'm saying. He came out the building behind me. When I were [*sic*] leaving the building, he came out the building behind me.

Q. Okay. I guess that's my question. Who came out of the building?

A. Sid.

Q. Okay. And that's when he was saying that about it sounds like somebody is—

A. Right."

¶ 21 After Moore left Triplett's apartment, he went to the Lavelle Court apartment, which was located in the apartment complex next to Triplett's apartment complex. When Moore arrived at the Lavelle Court apartment, only Hayes and his son were home. Moore and Hayes left the apartment to buy cigarettes at Triplett's apartment complex. When they returned to the Lavelle Court apartment, police officers were there. The police stopped Moore as he was walking up to the Lavelle Court apartment and placed him in a squad car. Moore then saw defendant exit the Lavelle Court apartment. That was the first time Moore had seen defendant that day.

¶ 22 The defense rested.

¶ 23 The parties presented closing arguments regarding the charge of armed robbery, and the jury found defendant guilty. The parties then stipulated that on the date of the incident, defendant was on mandatory supervised release for a felony offense. The parties did not make additional arguments regarding the offense of UPWF. The court then instructed the jury as to the offense of UPWF, and the jury found defendant guilty.

¶ 24 On September 13, 2016, the court imposed concurrent sentences of 25 years' imprisonment for armed robbery and 8 years' imprisonment for UPWF. The written sentencing order indicated that defendant was entitled to receive credit against his sentence of imprisonment for time served in presentence custody between April 4 and September 13, 2016.

¶ 25 The court also entered a written supplemental sentencing order imposing various monetary assessments. The supplemental sentencing order was a form on which the assessments imposed in the instant case were marked with an "x." The supplemental sentencing order stated that defendant was to receive monetary credit for 157 days served in presentence custody. The order indicated that this number did not include the date of sentencing. The order also indicated that the credit did not apply against assessments marked with an asterisk, including (1) the $5 drug court fund assessment, (2) the $10 drug court operation assessment, (3) the $50 felony court usage fee, and (4) the $15 State Police Operations Assistance Fund assessment.

¶ 26 II. ANALYSIS

¶ 27 A. Sufficiency of the Evidence

¶ 28 Defendant argues that the State failed to prove him guilty beyond a reasonable doubt of armed robbery and UPWF. Specifically, defendant argues that his convictions were based on insufficient circumstantial evidence. Defendant also argues that the testimony of Triplett and Moss was "improbable, unconvincing, and contrary to human experience." We find that, when viewed in the light most favorable to the State, the evidence was sufficient to prove defendant guilty beyond a reasonable doubt of both offenses.

¶ 29 We will not set aside a criminal conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Collins*, 106 Ill. 2d 237, 261 (1985). When considering a challenge to the sufficiency of the evidence, it is not the function of the appellate court to retry the defendant. *Id.* Rather, " 'the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). " 'This

standard of review does not allow the reviewing court to substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses.' " *People v. Hardman*, 2017 IL 121453, ¶ 37 (quoting *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009)).

¶ 30 We find that the trial evidence, when viewed in the light most favorable to the prosecution, was sufficient to prove defendant guilty beyond a reasonable doubt of armed robbery. To prove defendant guilty of armed robbery, the State was required to prove that defendant knowingly took property from the person or presence of another by the use of force or by threatening the imminent use of force while he was armed with a firearm. 720 ILCS 5/18-2(a) (West 2016). Moss and Triplett testified that a man holding a black gun entered Triplett's apartment and demanded money. The man was wearing a black hooded sweatshirt that said something like "rest in peace." The man struck Moss with the gun several times and took $10 to $15 from a table in the apartment. Triplett observed the man enter a white car with a black hood. Triplett identified the car a short time later. The car was parked near the Lavelle Court apartment. Moss and Triplett both identified defendant as the robber when they saw him from separate squad cars shortly after the robbery. Triplett testified that she had known defendant since he was a child, but she did not recognize him during the incident because his hair was styled differently from the last time she saw him. Triplett's and Moss's testimony, if found to be credible, was sufficient to prove defendant guilty of armed robbery.

¶ 31 Additionally, police officers testified that they located two black handguns and a hooded sweatshirt that said "R.I.P." in the same apartment where they found defendant shortly after the incident. Although the State did not present direct evidence that one of these handguns was used in the armed robbery or that the sweatshirt found in the apartment was the one worn during the

robbery, the fact that these items were found in the same apartment as defendant shortly after the incident provided additional circumstantial evidence of defendant's guilt.

¶ 32 We also find that, viewing the evidence in the light most favorable to the State, the evidence was sufficient to prove defendant guilty beyond a reasonable doubt of UPWF. To prove defendant guilty of UPWF, the State was required to prove (1) defendant knowingly possessed on or about his person any firearm, and (2) defendant had been convicted of a felony. 720 ILCS 5/24-1.1(a) (West 2016). The parties stipulated that defendant had been convicted of a felony offense. Moss and Triplett identified defendant as the robber and testified that he held a black gun during the robbery. Police officers found two black handguns in the apartment where they located defendant shortly after the incident.

¶ 33 We reject defendant's argument that the evidence was insufficient to prove him guilty of armed robbery because Triplett's identification of defendant as the robber was not credible. Specifically, defendant argues that it is "improbable and unconvincing" that Triplett had known defendant since he was a child, knew that he was Moore's brother, failed to recognize him when he was standing a few feet in front of her because his hair style was different, and recognized him a short time later from the back of a squad car. We reassert that, on review, we must construe the evidence in the light most favorable to the State. *Collins*, 106 Ill. 2d at 261. Viewing Triplett's testimony in the light most favorable to the State, the jury could have accepted Triplett's explanation regarding why she did not initially realize the robber was defendant even though she knew defendant. Moreover, we may not substitute our judgment for that of the jury on questions involving the credibility of witnesses. *Hardman*, 2017 IL 121453, ¶ 37.

¶ 34 Defendant also argues that Moss's identification of defendant was not credible. Specifically, defendant argues: "It is possible that Moss identified [defendant] as the robber only

after he saw [the officer] stop to emphasize the defendant and he saw Triplett identify him." This is complete speculation. While Moss testified that he knew which squad car Triplett was in, Moss never indicated that he saw Triplett identify defendant as the robber. Rather, Moss testified that he tapped on the window of the squad car when he saw defendant because he recognized defendant as the man who committed the robbery.

¶ 35 We also reject defendant's argument that the State's evidence made it equally likely that Hayes was the robber because Moss and Triplett described the robber only as a black man wearing a black sweatshirt, and Hayes was a black man who was found in the same apartment as defendant after the robbery. Defendant notes that the officers never showed Hayes to Triplett and Moss. Defendant argues that Hayes was just as likely to be selected as defendant if the officers had shown him to Triplett and Moss. This assertion is also complete speculation. Moss and Triplett both testified that they saw the robber's face, and they recognized defendant as the robber when they saw him outside the Lavelle Court apartment. We may not substitute our judgment for that of the jury on the issue of whether this testimony was credible. See *id.*

¶ 36 Finally, we reject defendant's assertion that the State's evidence was contradicted by Moore's testimony. Specifically, defendant argues that Moore testified that the robber followed Moore as he was exiting Triplett's apartment complex on the morning of the incident, and the robber was not defendant. This is not supported by the record. Moore clarified on cross-examination that Sid, not the robber, followed him out of the apartment complex. As they were leaving, Sid remarked that someone was getting robbed, but Moore did not see anyone getting robbed. Moore did not testify that he saw the robber.

¶ 37 B. Admission of the Handguns

¶ 38 Defendant argues that the trial court abused its discretion in admitting into evidence the two black handguns found at the Lavelle Court apartment because they were not sufficiently connected to defendant. Specifically, defendant argues that the handguns were not relevant evidence because he did not possess the handguns and they were not connected to the crime.

¶ 39 " 'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ill. R. Evid. 401 (eff. Jan. 1, 2011). "The general rule is that weapons are admissible if there is proof to connect them to the defendant and the crime." *People v. Fierer*, 124 Ill. 2d 176, 194 (1988).

> "When there is evidence the perpetrator possessed a weapon at the time of the offense, a similar weapon which the evidence somehow connects to the defendant may be admitted into evidence even though not identified as the weapon used. [Citations.] It is only necessary that the weapon be suitable for commission of the crime, not that it be positively shown to have been used in committing the crime. [Citation.] A doubt whether the weapon was connected to the crime or to the defendant does not prevent the weapon's admission, so long as a reasonable jury could find a connection." *People v. Lee*, 242 Ill. App. 3d 40, 43 (1993).

See also *Fierer*, 124 Ill. 2d at 194.

¶ 40 Here, the trial court did not abuse its discretion in admitting into evidence the two black handguns. Moss and Triplett identified defendant as the man who robbed Triplett's apartment. They both testified that defendant held a black gun during the robbery. The two black handguns found in the Lavelle Court apartment were sufficiently connected to defendant, as officers

discovered the handguns shortly after the robbery in the same apartment where they located defendant. The officers found the handguns in the same room as a sweatshirt matching the description of the one that defendant wore during the robbery. While Moss and Triplett did not identify either of the two black handguns as the one defendant used during the offense, the State was not required to prove that either of the two handguns was actually used to commit the offense in order for the handguns to be admissible. *Id.*; *Lee*, 242 Ill. App. 3d at 43. Rather, it was sufficient that the black handguns found in the Lavelle Court apartment matched the description of the weapon that Moss and Triplett testified defendant used during the robbery. See *Fierer*, 124 Ill. 2d at 194 ("Where there is evidence that the defendant used a particular type of weapon and a similar weapon is found, the jury may reasonably infer that it was the one used to commit the offense.").

¶ 41 We reject defendant's reliance on *People v. Yelliott*, 156 Ill. App. 3d 601 (1987), in support of his argument that the court abused its discretion in admitting the black handguns into evidence. In *Yelliott*, the defendant was charged with committing an armed robbery of a hotel with another individual. *Id.* The victim of the armed robbery was unable to identify the two robbers or the gun they used. *Id.* at 602. A handgun discovered in a dresser drawer in the apartment of Mike Edwards was admitted into evidence, and the prosecutor argued that the defendant had procured and used the handgun during the robbery. *Id.* The only evidence linking the defendant to Edwards or his apartment was the testimony of one witness that the defendant and some other individuals were at the apartment having drinks on the night of the incident. *Id.* at 603. Another witness testified that he had participated in the robbery, the defendant was not with him during the robbery, and the gun found in the apartment was not the one used during the robbery. *Id.* The *Yelliott* court held that the trial court erred in admitting the handgun into

evidence because there was no evidence supporting a finding that the handgun was ever in the defendant's possession, and there was uncontradicted evidence that it was not the weapon used during the robbery. *Id.*

¶ 42 We find *Yelliott* to be distinguishable from the instant case. Unlike in *Yelliott*, no witness in this case testified that neither handgun found in the Lavelle Court apartment was used during the robbery. In the instant case, unlike in *Yelliott*, officers found the handguns shortly after the robbery, and defendant was present in the Lavelle Court apartment when the officers found the guns.

¶ 43 We reject defendant's argument that the handguns were not admissible because he was not in actual or constructive possession of the handguns at the time of his arrest. The State was not required to show that defendant was in possession of the handguns at the time of his arrest in order for the handguns to be admitted into evidence. See *Lee*, 242 Ill. App. 3d at 43 ("When there is evidence the perpetrator possessed a weapon at the time of the offense, a similar weapon which the evidence somehow connects to the defendant may be admitted into evidence even though not identified as the weapon used.").

¶ 44 Even if we were to find that the trial court erred in admitting the handguns into evidence, the error would be harmless. "Error will be deemed harmless and a new trial unnecessary when 'the competent evidence in the record establishes the defendant's guilt beyond a reasonable doubt and it can be concluded that retrial without the erroneous admission of the challenged evidence would produce no different result.' " *People v. McKown*, 236 Ill. 2d 278, 311 (2010) (quoting *People v. Arman*, 131 Ill. 2d 115, 124 (1989)). Moss and Triplett testified that defendant entered Triplett's apartment, held a black gun, struck Moss repeatedly with the gun, and took money from a table. This testimony and the parties' stipulation regarding defendant's prior

felony conviction was sufficient to prove defendant guilty beyond a reasonable doubt of armed robbery and UPWF. Thus, a new trial without admission of the guns would not produce a different result.

¶ 45 C. Closing Argument

¶ 46 Defendant argues that the State committed prosecutorial misconduct during rebuttal closing argument where it stated:

> "The Defense *** wants you to have DNA. It want [*sic*] you to have this. It wants you to have that.
>
> It wants you to have a lab officer with a forensic microscope, remember that, to look over each little piece of evidence. Well, in this day and age that's not gonna happen, ladies and gentlemen.
>
> The Peoria Police don't have the money for that period [*sic*] forensic microscopes at scenes of crimes or period [*sic*] to go over a sweatshirt. It's ridiculous, and I understand that the Defense has to make ridiculous arguments sometimes, and that's what we just heard."

Defendant argues that the above comments disparaged the integrity of defense counsel by stating that it was defense counsel's job to make closing arguments.

¶ 47 Defendant argues that this issue is preserved for appellate review despite the fact that defense counsel did not contemporaneously object to the challenged comment. Defendant contends that because he raised the issue in a posttrial motion and the court addressed the merits of the issue, he has preserved the issue for appeal. Defendant cites *People v. Montgomery*, 47 Ill. 2d 510, 512-13 (1970), for the proposition that an issue is preserved for appeal despite a defendant's failure to contemporaneously object where defendant includes the issue in a posttrial

motion and the trial court rules on the merits of the issue. While the *Montgomery* court reviewed an issue under these circumstances, our supreme court subsequently held that both a contemporaneous objection and a posttrial motion are necessary in order to preserve an issue for appeal. *People v. Reese*, 2017 IL 120011, ¶ 60 ("To preserve an issue for review, a defendant must object at trial and raise the alleged error in a written posttrial motion."); *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) ("*Both* a trial objection *and* a written post-trial motion raising the issue are required for alleged errors that could have been raised during trial.") (Emphasis in original.) In *Enoch*, our supreme court expressly rejected the argument that an issue is preserved for appeal if the issue is raised either during trial or in a posttrial motion. *Enoch*, 122 Ill. 2d at 186. Accordingly, we find that the issue has been forfeited based on counsel's failure to object.

¶ 48 As we have found that this issue has not been preserved for review, we address defendant's alternative argument that we should review the issue under the first prong of the plain error doctrine. We may consider an unpreserved error under the first prong of the plain error doctrine where "a clear or obvious error occurred and 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." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). The first step in plain error analysis is to determine whether a clear or obvious error occurred. *People v. Sebby*, 2017 IL 119445, ¶ 49.

¶ 49 "A prosecutor has wide latitude in making a closing argument and is permitted to comment on the evidence and any fair, reasonable inferences it yields." *People v. Glasper*, 234 Ill. 2d 173, 204 (2009). "A closing argument must be viewed in its entirety, and the challenged remarks must be viewed in their context." *Id.* A prosecutor's statements during closing argument are not improper if they were provoked or invited by defense counsel's argument. *Id.*

¶ 50 "[I]t is well settled that prosecutorial comments either disparaging the integrity of defense counsel [citation] or accusing defense counsel of fabricating a defense [citation] are improper." *People v. Jenkins*, 333 Ill. App. 3d 534, 540 (2002). However, the State may challenge the credibility of a defendant's theory of defense when there is evidence to support such a challenge. *People v. Kirchner*, 194 Ill. 2d 502, 549 (2000). Our supreme court has held that comments which "did 'not sufficiently refer to defense counsel or attribute any particular wrongdoing to him,' *** did not suggest that defense counsel fabricated a defense." *Id.* at 550 (quoting *People v. Hudson*, 157 Ill. 2d 401, 443 (1993)).

¶ 51 Here, when read in context, the prosecutor's statement that "the Defense has to make ridiculous arguments sometimes" was a comment on defendant's theory of defense. The prosecutor's argument was responsive to defense counsel's closing argument, during which defense counsel noted the lack of forensic evidence linking defendant to the sweatshirt or guns that the police found in the Lavelle Court apartment. The prosecutor was calling this argument ridiculous. Contrary to defendant's assertion that the prosecutor stated it was defense counsel's job to make ridiculous arguments, the prosecutor did not specifically refer to defense counsel or attribute any particular wrongdoing to him.

¶ 52 Even if we were to find the prosecutor's comments to be improper, reversal would not be warranted under the first prong of the plain error doctrine because the evidence was not closely balanced. Moss and Triplett testified that defendant entered Triplett's apartment, repeatedly struck Moss with a black gun, and took money from a table. Moss and Triplett testified that they were able to clearly see defendant's face and that defendant was wearing a black sweatshirt that said "rest in peace," or something similar. Triplett saw defendant enter a white car with a black hood as he left her apartment complex. A short time after the robbery, Triplett identified the car

she had seen, and both Moss and Triplett identified defendant as the robber. Also, the police located defendant in an apartment where they also discovered two black handguns and a black sweatshirt that said "R.I.P." Moss and Triplett's testimony was uncontradicted. As we have discussed, Moore did not testify that he saw the robber and that it was not defendant, as defendant claims. See *supra* ¶ 36.

¶ 53 D. Presentence Monetary Credit

¶ 54 Defendant argues that he is entitled to additional monetary credit for time spent in presentence custody in the amount of $5 to be applied against his applicable fines. Defendant also argues that the monetary credit should be applied against additional fines in the amount of $80. We address each argument in turn.

¶ 55 1. Claim for Additional Credit

¶ 56 Defendant claims that he is entitled to an additional day of monetary credit pursuant to section 110-14(a) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-14(a) (West 2016)) for time spent in presentence custody because the supplemental sentencing order imposing monetary assessments indicates that he did not receive credit for the date of sentencing. The State argues that defendant is not entitled to an additional day of credit because the presentence monetary credit only applies to time spent in custody prior to sentencing. We find that defendant is entitled to an additional $5 in presentence monetary credit for the date of sentencing because defendant spent a portion of that day in custody prior to the imposition of the sentence.

¶ 57 Under section 110-14(a) of the Code, "[a]n incarcerated person against whom a fine is levied is entitled to a credit of $5 per day for every day served in custody prior to sentencing." *People v. Bailey*, 2015 IL App (3d) 130287, ¶ 19. Section 110-14(a) provides:

> "Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of $5 for each day so incarcerated upon application of the defendant. However, in no case shall the amount so allowed or credited exceed the amount of the fine." 725 ILCS 5/110-14(a) (West 2016).

Illinois courts have held that "any portion of a day in custody constitutes a full day for purposes of section 110-14." *People v. Stahr*, 255 Ill. App. 3d 624, 627 (1994). See also *People v. Robinson*, 391 Ill. App. 3d 822, 845 (2009); *People v. Montoya*, 373 Ill. App. 3d 78, 86 (2007); *People v. Stewart*, 343 Ill. App. 3d 963, 980 (2003).

¶ 58 Defendant cites *People v. Williams*, 239 Ill. 2d 503, 509-10 (2011) in support of his argument. Defendant contends that *Williams* stands for the proposition that the calculation of the $5-per-day monetary credit under section 110-14 of the Code is different from the calculation of presentence incarceration credit to be applied against a defendant's sentence of imprisonment under section 5-4.5-100 of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-4.5-100 (West 2008)).

¶ 59 In *Williams*, the court held that the calculation of presentence incarceration credit under section 5-4.5-100 of the Unified Code did not include the date of sentencing. *Id.* at 509. The court reasoned that, under the Unified Code, a defendant's sentence commences on the day of the issuance of the mittimus. *Id.* The court also noted that a defendant is entitled to have each day in custody counted against his or her sentence only once. *Id.* In reaching its holding, the *Williams* court rejected the defendant's argument that the appellate court had long held that the $5-per-day credit against fines pursuant to section 110-14(a) of the Code accrued for each day spent in custody between the defendant's arrest and sentencing. *Id.* The court reasoned that the monetary

credit was imposed pursuant to an entirely separate code and was not at issue in that case. *Id.* at 510. The court also noted that only one case cited by the defendant—*People v. Leggans*, 140 Ill. App. 3d 268, 272 (1986)—explicitly gave monetary credit for the date of sentencing. *Id.* at 509-10.

¶ 60 Defendant cites several cases in which courts have included the day of sentencing as the final day of presentence monetary credit. See, *e.g.*, *People v. Maldonado*, 402 Ill. App. 3d 411, 435 (2010); *People v. Richards*, 394 Ill. App. 3d 706, 710 (2009); *People v. Rivera*, 378 Ill. App. 3d 896, 900 (2008); *People v. McNair*, 325 Ill. App. 3d 725, 726-27 (2001); *People v. Bennett*, 246 Ill. App. 3d 550, 551-52 (1993). However, the question of whether the day of sentencing should be counted in the calculation of the $5-per-day presentence monetary credit was not at issue in any of those cases. We note that other cases have not included the date of sentencing in the calculation of the monetary credit. See, *e.g.*, *People v. Daily*, 2016 IL App (4th) 150588, ¶¶ 19-25; *People v. Allen*, 371 Ill. App. 3d 279, 284-85 (2006).

¶ 61 We hold that defendant is entitled to an additional $5 in presentence monetary credit for the day of sentencing. The record indicates that defendant's sentencing hearing was not held until the afternoon of September 13, 2016. Accordingly, defendant spent a portion of September 13, 2016, in custody prior to sentencing, and he is entitled to $5 in presentence monetary credit for that day. See *Bailey*, 2015 IL App (3d) 130287, ¶ 19 ("An incarcerated person against whom a fine is levied is entitled to a credit of $5 per day for every day served in custody prior to sentencing."); *Stahr*, 255 Ill. App. 3d at 627 ("[A]ny portion of a day in custody constitutes a full day for purposes of section 110-14.").

¶ 62 Also, the rationale set forth in *Williams* for not counting the day of sentencing when calculating the presentence custody credit under section 5-4.5-100 of the Unified Code (730

ILCS 5/5-4.5-100 (West 2008)) does not apply with equal force to the calculation of presentence monetary credit under section 110-14 of the Code (725 ILCS 5/110-14(a) (West 2016)). The *Williams* court's holding was rooted in its interpretation of the Unified Code, which, as the court noted, is "entirely separate code" from the Code of Criminal Procedure of 1963. *Williams*, 239 Ill. 2d at 509-10. Also, unlike in *Williams*, the concern that a defendant may improperly receive double credit for a single day of incarceration is not present in the context of the presentence monetary credit. A defendant is entitled to the $5-*per-diem* credit against his or her fines only for time spent in custody *prior* to sentencing. See 725 ILCS 5/110-14(a) (West 2016); *Bailey*, 2015 IL App (3d) 130287, ¶ 19. Because the monetary credit does not apply to time spent in custody *after* sentencing, there is no danger that the day of sentencing could be counted twice in calculating the monetary credit.

¶ 63 2. Additional Fines Subject to the Presentence Monetary Credit

¶ 64 Defendant also argues that the presentence monetary credit should be applied against several additional fines imposed by the trial court, which total $80. These assessments include: (1) the $5 drug court fund assessment (55 ILCS 5/5-1101(f) (West 2016)), (2) the $10 drug court operation assessment (*id.* § 5-1101(d-5)), (3) the $50 felony court usage fee (*id.* § 5-1101(c)), and (4) the $15 State Police Operations Assistance Fund assessment (705 ILCS 105/27.3a (West 2016)). The supplemental sentencing order indicated that these assessments were not subject to offset by the presentence monetary credit.

¶ 65 The State concedes that the challenged assessments are fines subject to the presentence monetary credit. After reviewing the record and the applicable case law, we accept the State's confession of error. We note that courts have held that all of the challenged assessments were

fines subject to the presentence monetary credit. See *People v. Christian*, 2019 IL App (1st) 153155, ¶ 25; *People v. Gomez*, 2018 IL App (1st) 150605, ¶¶ 45-46.

¶ 66 The State requests that we direct the circuit court of Peoria County to remove the asterisk next to the challenged assessments on its standard form for imposing monetary assessments to eliminate future appeals raising the same issue. We decline to take this action, as it is outside the scope of this appeal and our authority.

¶ 67 III. CONCLUSION

¶ 68 For the foregoing reasons, we affirm defendant's convictions for armed robbery and UPWF. We remand the matter to the trial court with directions to apply an additional $5 in presentence monetary credit pursuant to section 110-14(a) of the Code. We also direct the trial court to apply the presentence monetary credit against the following additional assessments: (1) the $5 drug court fund assessment, (2) the $10 drug court operation assessment, (3) the $50 felony court usage fee, and (4) the $15 State Police Operations Assistance Fund assessment.

¶ 69 Affirmed and remanded with directions.