2019 IL App (4th) 150972-U

NO. 4-15-0972

FILED
January 3, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Adams County
CHAD E. PAYNE,	)	No. 15CF337
Defendant-Appellant.	)	
	)	Honorable
	)	William O. Mays Jr.,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Holder White and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: Defense counsel's representation of defendant was not ineffective. Defendant's convictions based upon counts I and III violate the one-act, one-crime rule. The trial court conducted an inadequate hearing on the public defender reimbursement fee and improperly imposed a crime stoppers assessment against defendant.

¶ 2 A jury found defendant, Chad E. Payne, guilty of armed violence (720 ILCS 5/33A-2(a) (West 2014)) (count I), aggravated unlawful restraint (720 ILCS 5/10-3.1(a) (West 2014)) (count II), and two counts of domestic battery (720 ILCS 5/12-3.2(a)(1), 3.2(a)(2) (West 2014)) (counts III and IV). The trial court sentenced him to 15 years in prison for armed violence and three concurrent 10-year sentences for the remaining counts. Defendant appeals, arguing (1) he received ineffective assistance of counsel; (2) his convictions on counts I and III violate the one-act, one-crime rule; (3) the trial court erred in ordering a $5000 public defender

reimbursement fee without holding an adequate hearing; and (4) the court improperly imposed a crime stoppers assessment. We affirm in part, vacate in part, and remand with directions.

¶ 3 I. BACKGROUND

¶ 4 In June 2015, the State charged defendant with armed violence (720 ILCS 5/33A-2(a) (West 2014)) (count I) and aggravated unlawful restraint (720 ILCS 5/10-3.1(a) (West 2014)) (count II). Defendant was also charged with two counts of domestic battery for causing bodily harm to his wife, Janda G. (720 ILCS 5/12-3.2(a)(1) (West 2014)) (count III), and her then 16-year old daughter, C.G. (720 ILCS 5/12-3.2(a)(2) (West 2014)) (count IV).

¶ 5 Defendant's trial began in September 2015. C.G. testified that she lived in an apartment with her mother, Janda, and her mother's husband, defendant. On June 22, 2015, C.G. was awakened by an argument between defendant and Janda. C.G. testified that Janda came into her bedroom to ask for car keys because Janda wanted to leave. C.G. followed Janda back into the kitchen where defendant told Janda, "You are not leaving."

¶ 6 C.G. testified she attempted to stop the argument by standing between Janda and defendant. The argument became physical, and defendant cornered them against a refrigerator. C.G. testified that Janda stood in front of C.G. to protect her. Defendant then pushed Janda into C.G., causing both of them to fall. C.G. yelled, "Leave us alone, [l]eave her alone. I don't want her to get hurt."

¶ 7 C.G. testified defendant took all of the knives out of a kitchen drawer "[s]o we couldn't have anything to defend ourselves [with]." She stated that defendant threw a drinking glass and a pot from the stove onto the kitchen floor. At some point during the altercation, C.G. cut her foot after she stepped on a piece of glass.

¶ 8 Defendant left the kitchen and consumed a bottle of antidepressants, saying he "want[ed] to kill [him]self." The arguing continued and Janda told C.G. to go downstairs to get help. C.G. stated that defendant "tried to stop [her]" and he "held up" both of them at the bottom of the stairs. Defendant then called his stepmother.

¶ 9 According to C.G., defendant told his stepmother that "he was going to kill himself and [C.G.] and [Janda] before the cops got there because he said he didn't want to do it anymore." C.G. testified that, while he was on the phone, defendant was blocking part of the stairs to prevent them from leaving. Defendant "had a knife *** in his hand," which C.G. described as a steak knife with a black handle. Defendant handed Janda the phone, and she told defendant's stepmother their address.

¶ 10 C.G. testified defendant became angry when Janda informed his stepmother of their location. He "grabbed [Janda] by the throat," causing her to fall to the ground. Defendant continued choking Janda after she fell. When C.G. attempted to push defendant away from Janda, defendant "shoved" C.G. into a wall and she fell to the ground. Janda stood up and positioned herself between defendant and C.G. Defendant "pushed" Janda down again. C.G. ran upstairs to get away, but defendant followed her. C.G. grabbed a knife to "get him to stop." Defendant picked up a glass lantern located in the hallway saying, "[P]ut the knife down" or he would "hit [Janda] in the head." C.G. threw the knife down. She then heard police banging on the door downstairs, and she yelled for help.

¶ 11 Pamela Payne, defendant's stepmother, testified next. She stated defendant called her on the day of the altercation because he wanted to speak with his father. Defendant told her that he "couldn't take it anymore" and he was "going to kill himself." According to Pamela,

defendant said, “Tell my dad I love him” and hung up the phone. Pamela then called the police but could not recall Janda’s address. During a second phone call with Janda, Janda provided the correct address. Pamela testified that, during her second phone call with Janda, Janda “seemed okay” but “worried.” Pamela testified she could not recall her conversation during the 9-1-1 calls.

¶ 12 The State presented audio recordings of Pamela’s 9-1-1 calls. In those phone calls, Pamela states that defendant told her, “ ‘I’m going to kill them and I’m going to kill myself.’ ” Pamela reported that Janda was hurt and “crying hysterically.”

¶ 13 Janda G. testified next. She stated that she married defendant in May 2014. She testified she still loved him very much. She explained that, on the day of the altercation, defendant was upset about his brother passing away. Janda was in her bedroom and defendant was attempting to speak with her. She testified that “[i]t wasn’t really an argument” but defendant was “grieving” and “very emotional.” She told defendant she was going to leave so they could “just cool down.” Defendant became agitated and swallowed a bottle of pills saying he “didn’t want to live anymore.” Janda testified defendant became more upset after taking the pills.

¶ 14 When asked if defendant became physical in the kitchen, Janda stated defendant grabbed her by the arms to stop her because he wanted to “work it out.” She explained the kitchen was in a state of disarray because she “kept dropping glasses” and “a carton of eggs got dumped *** on the floor.” She testified that defendant “grabbed a couple of knives out of the drawer when he was talking” but he never had a knife in his hand when they were engaged in physical contact.

¶ 15 Janda further testified defendant called his stepmother when they were standing in the stairwell. Janda spoke with Pamela and explained that defendant was upset about his brother. Janda said they were at home and "that was it." When asked whether defendant pushed her, Janda stated as follows: "We were on the staircase and I fell. Whether or not it was because he pushed me, I couldn't directly say." She further stated that, at some point, C.G. fell when they were in the hallway where the stairwell was located.

¶ 16 Janda identified herself in photos that the State presented as evidence. She testified that, in the photos, her face was flushed and red from crying. When shown a photo of a scratch on her wrist, she explained she could not recall how it happened but she "kn[e]w [defendant] didn't do it ***." She also stated she had a scratch on her waist that could have come from the "wooden railing around the staircase *** when [she] fell backwards ***." She acknowledged that part of the railing broke on the day of the incident but "[i]t was flimsy when [she] first moved in."

¶ 17 On redirect examination, the prosecutor asked Janda about her prior convictions. The following exchange occurred:

> "MISS KECK [(Prosecutor):] I did forget to ask[,] Ms. Payne. You do have prior convictions. Correct?
>
> A. Correct.
>
> Q. You have a prior conviction for possession of methamphetamine. Correct?
>
> A. Correct.
>
> Q. And a prior obstructing identification?

A. Correct.

Q. And there's also a prior deceptive practices case. Correct?

A. Correct.

MS. KECK [(Prosecutor):] I have no other questions, Your Honor.

THE COURT: Miss Henze, you want to ask any questions about that?

MISS HENZE [(Defense Counsel):] No. I have no questions."

¶ 18 Officer William Calkins testified he responded to the 9-1-1 call. He testified that, upon arrival, he could hear a female screaming for help. When he entered the apartment, he saw defendant coming downstairs yelling, "Janda, Janda." Officer Calkins stated that, "as [defendant] was coming down the stairs, I could see that there was a knife." He explained the knife was located on the "platform" of the stairs. After defendant was ordered to the ground and secured, Officer Calkins proceeded upstairs and discovered a white towel soaked in blood. He then observed "two women *** huddled together crying and screaming *** and *** holding on to each other." Officer Calkins interviewed both women—Janda and C.G.—and took photos of the apartment.

¶ 19 The State presented the photos taken by Officer Calkins. The photos depicted a knife and a bloody towel located on the stairs, broken eggs on the kitchen floor, soil spilled from an overturned plant, and multiple red marks on Janda's body. The State also introduced evidence of defendant's prior convictions for domestic battery.

¶ 20 The State rested and defendant presented no evidence.

¶ 21 During closing argument, the State argued defendant committed domestic battery against Janda, stating as follows:

"[Y]ou're going to have to decide whether or not the defendant committed an act of domestic battery against Janda G[.] Payne.

In doing so, you have to *** look at two things. First, did the defendant cause bodily harm to Janda G[.] Payne, and did he do so when she was a family or household member of the defendant?

* * *

Was there bodily harm? Again, we saw the pictures. *** Janda admitted [the injuries] were not there prior to this day. The [pictures show] redness on Janda's throat, the injury to her wrist and those injuries to her back.

Now, as to the throat, how did that happen? [C.G.] told us. [Defendant] pushed [Janda] down on the ground, and he held her, choking her while she was on the ground.

The back? We are not completely sure. Was it from when he pushed her into the fridge? Was it when he pushed her down on the stairs? We're not for sure how that injury got there, but either way, we know that was from [defendant].

[There were] [m]ultiple ways he caused bodily harm to [Janda.] *** [W]e know that she got that wrist injury that day. That was bodily harm that was caused by the defendant's action."

¶ 22 The State further argued defendant committed an act of armed violence against Janda, stating as follows:

"Did the defendant do an act of armed violence? The first thing you have to decide is did he commit an offense of domestic battery, and, again, if you've

already found he committed an act of domestic battery, then you go to the next part, which is when the defendant committed the offense of domestic battery, he was carrying on or about his person or was otherwise armed with a knife of at least three inches in length.

* * *

*** [C.G.] *** said [defendant] had that knife in his hand when *** he pushed Janda down and choked her.

* * *

So again, while *** [defendant is in] the stairwell, which is where *** he pushed Janda to the ground and choked her, where he pushed her into that stairwell, there were two knives. If he wasn't holding them, they were right there by him. That's why he was otherwise armed with a knife."

¶ 23 The jury found defendant guilty on all counts. The trial court sentenced defendant to 15 years in prison for armed violence and three concurrent 10-year sentences for the remaining counts. The trial court also ordered defendant to reimburse the public defender $5000 and imposed fines, fees, and costs.

¶ 24 This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 Defendant argues on appeal that (1) he received ineffective assistance of counsel; (2) his convictions on counts I and III violate the one-act, one-crime rule; (3) the trial court erred in ordering a $5000 public defender reimbursement fee without holding an adequate hearing; and (4) the court improperly imposed a crime stoppers assessment.

¶ 27 A. Ineffective Assistance of Counsel

¶ 28 Defendant argues he was denied effective assistance of counsel because defense counsel failed to object to the State's questioning of Janda during redirect examination regarding her prior convictions. Defendant contends this line of inquiry was improper because it went beyond the scope of cross-examination. He claims Janda's credibility was improperly undermined, and because the trial involved a credibility contest between Janda and C.G., it likely affected the outcome of the trial. We disagree.

¶ 29 To determine whether a defendant received ineffective assistance of counsel, we apply the two-prong test set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). See *People v. Cherry*, 2016 IL 118728, ¶ 24, 63 N.E.3d 871. Under this test, a defendant must establish (1) his counsel's performance "was objectively unreasonable under prevailing professional norms" and (2) "there is a 'reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.' " *Id.* (quoting *Strickland*, 466 U.S. at 694). "Because a defendant must satisfy both prongs of the *Strickland* test to prevail, the failure to establish either precludes a finding of ineffective assistance of counsel." *Id.*

¶ 30 Generally, "[t]he credibility of a witness may be attacked by any party, including the party calling the witness ***." Ill. R. Evid. 607 (eff. Jan. 1, 2011). Evidence of a prior conviction is admissible "if the crime, (1) was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, or (2) involved dishonesty or false statement regardless of the punishment unless (3), in either case, the court determines that the probative value of the evidence of the crime is substantially outweighed by the danger of

unfair prejudice." Ill. R. Evid. 609(a) (eff. Jan. 1, 2011); see also *People v. Montgomery*, 47 Ill. 2d 510, 516-17, 268 N.E.2d 695, 698-99 (1971). Where a prior conviction is used to impeach a witness other than the defendant, "there is less possibility of unfair prejudice *** because a defendant who has committed a previous crime may be convicted because of his prior offense, rather than because of the lack of credibility in his defense." *People v. Thomas*, 58 Ill. App. 3d 402, 405, 374 N.E.2d 743, 746 (1978). If a witness offers crucial testimony, the trial court should permit the parties wide latitude to impeach the witness to ensure the jury has " 'access to all necessary information and impressions in order to evaluate credibility.' " *Bianchi v. Mikhail*, 266 Ill. App. 3d 767, 777, 640 N.E.2d 1370, 1377 (1994) (quoting *People v. Morando*, 169 Ill. App. 3d 716, 730, 523 N.E.2d 1061, 1072 (1988)); see also *People v. Gray*, 406 Ill. App. 3d 466, 475, 941 N.E.2d 338, 346 (2010). In fact, it may be error to limit impeachment of a witness because a prior conviction "is a matter for the jury to consider" with respect to "reliability and credibility of the witness." *People v. Smith*, 105 Ill. App. 3d 84, 92, 433 N.E.2d 1054, 1059 (1982); see also *People v. Gonzalez*, 120 Ill. App. 3d 1029, 1039, 458 N.E.2d 1047, 1055 (1983) (On redirect examination, counsel "was not obliged to demonstrate surprise before seeking to impeach the witness that it called and denial of that right was prejudicial error.").

¶ 31 Here, defendant does not challenge the admissibility of Janda's prior convictions; rather, defendant only claims defense counsel provided ineffective assistance because she failed to object when the State asked about them for the first time on redirect examination. During the State's redirect examination, the following colloquy ensued:

> "MISS KECK [(Prosecutor):] I did forget to ask[,] Ms. Payne. You do have prior convictions. Correct?

A. Correct.

Q. You have a prior conviction for possession of methamphetamine. Correct?

A. Correct.

Q. And a prior obstructing identification?

A. Correct.

Q. And there's also a prior deceptive practices case. Correct?

A. Correct.

MS. KECK [(Prosecutor):] I have no other questions, Your Honor.

THE COURT: Miss Henze, you want to ask any questions about that?

MISS HENZE [(Defense Counsel):] No. I have no questions."

¶ 32 We find no error here. As previously noted, on appeal, defendant does not challenge the admissibility of Janda's prior convictions. He only challenges the timing of their admission—i.e. during the redirect examination of Janda instead of the direct examination. In his brief, defendant complains that the introduction of Janda's prior convictions "was beyond the scope of trial counsel's cross-examination." Besides being unsupported by legal authority, defendant's argument fails to take into account the unique nature of impeachment evidence. A witness's credibility is a critical determination for the jury and subject to attack throughout the witness's examination. Certainly, a witness may be impeached during her direct examination or cross-examination. However, it is also possible that the need to impeach the witness might not arise until redirect examination or re-cross examination. In that event, no matter the stage of the examination, examining counsel has the right to impeach the witness. Stated another way, an

objection to the impeachment based on it being beyond the scope of the preceding examination would be baseless. Accordingly, in this case, defense counsel was not ineffective for failing to object to the introduction of Janda's prior convictions for impeachment purposes during her redirect examination.

¶ 33 B. One-Act, One-Crime Rule

¶ 34 Defendant argues his convictions for armed violence (count I) and domestic battery (count III) violate the one-act, one-crime rule because both convictions arose from the same physical act. He further argues his conviction for count III should be vacated because it is a lesser-included offense of count I.

¶ 35 Initially, we note defendant acknowledges on appeal that he has forfeited this claim because he failed to object at trial and he failed to raise the issue in a posttrial motion. *People v. Smith*, 2016 IL 119659, ¶ 38, 76 N.E.3d 1251. He maintains, however, that his forfeiture may be excused under the plain-error doctrine. A reviewing court may consider an unpreserved error in the following circumstances:

> " '(1) 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, or (2) a clear or obvious error occurred and that 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. Thompson*, 238 Ill. 2d 598, 613, 939 N.E.2d 403, 413 (2010) (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007)).

"A plain error has occurred if either of the two prongs are satisfied." *In re Samantha V.*, 234 Ill. 2d 359, 378, 917 N.E.2d 487, 499 (2009). "[I]t is well established that a one-act, one-crime violation affects the integrity of the judicial process, thus satisfying the second prong of the plain-error test." *Id.* at 378-79. Here, we find plain error occurred where count I was predicated upon the same physical act as count III.

¶ 36 "The one-act, one-crime rule prohibits multiple convictions when the convictions are based on precisely the same physical act." *People v. Millsap,* 2012 IL App (4th) 110668, ¶ 18, 979 N.E.2d 1030. On review, the one-act, one-crime analysis involves the following two considerations: (1) "whether the defendant's conduct consisted of one physical act or separate physical acts"; and (2) "if the court concludes that the conduct consisted of separate acts, *** the court must determine whether any of those offenses are lesser-included offenses." *In re Rodney S.*, 402 Ill. App. 3d 272, 281–82, 932 N.E.2d 588, 597 (2010).

¶ 37 An " '[a]ct' " is defined as "any overt or outward manifestation which will support a different offense." *People v. King*, 66 Ill. 2d 551, 566, 363 N.E.2d 838, 844-45 (1977). "[A] series of closely related acts may be considered a single act for purposes of the one-act, one-crime rule when the State charges the acts as a single course of conduct." *In re Rodney S.*, 402 Ill. App. 3d at 284; see also *In re Samantha V.*, 234 Ill. 2d at 377. To sustain multiple convictions for closely related separate blows, "the indictment must indicate that the State intended to treat the conduct of defendant as multiple acts in order for multiple convictions to be sustained." *People v. Crespo*, 203 Ill. 2d 335, 345, 788 N.E.2d 1117, 1123 (2001).

¶ 38 Where there is a violation of the one-act, one-crime rule, "[a] sentence should be imposed on the more serious offense and the less serious offense should be vacated." *People v.*

Artis, 232 Ill. 2d 156, 170, 902 N.E.2d 677, 686 (2009). "In determining which offense is the more serious, a reviewing court compares the relative punishments prescribed by the legislature for each offense." *Id.*

¶ 39 In this case, we first examine the State's allegations in the charging instrument. The State charged defendant with armed violence (count I) and domestic battery (count III). Count I alleged as follows:

> "That *** [defendant] committed the offense of [armed violence], in that he, while armed with a dangerous weapon as defined as a [c]ategory II weapon, a knife with a blade greater than 3", committed the offense of felony Domestic Battery, performed acts prohibited by Illinois Compiled Statutes *** *in that he shoved Janda L. G*[.] *into a wall and threw her to the ground* ***." (Emphasis added.)

¶ 40 Count III alleged as follows:

> "That *** [defendant] committed the offense of [domestic battery], in that he, without legal justification and by any means, knowingly caused bodily harm to Janda G[.], a family or household member of the defendant, *in that [he] shoved Janda* [*L.*] *G*[.] *into a wall and threw her to the ground*, and the defendant had previously been convicted of the offense of Domestic Battery on three separate occasions ***." (Emphasis added.)

¶ 41 As stated, defendant argues the charging instrument described the same physical act—shoving and throwing Janda—as a single series of events in both counts I and III in violation of the one-act, one-crime rule. In support of this position, defendant cites *In re Rodney*

S. and *People v. Crespo*. We will address each in turn.

¶ 42 In *In re Rodney S.*, this court found that defendant's convictions on two counts of aggravated battery violated the one-act, one-crime rule. Both counts alleged defendant rubbed cheese on the victim's shirt, threw batteries and a shoe at the victim, rubbed a sock in the victim's face, and repeatedly punched the victim. *Id.* at 283. The only distinction between the two counts of aggravated battery was that one count alleged the acts occurred on public property and the other stated the victim was an employee of a local school district. *Id.* at 284. Otherwise, both counts "used the exact same language to describe the acts as *a single series of events* ***." (Emphasis added.) *Id.* We concluded that, because the State failed to pursue the charges against defendant as individual acts, his convictions for aggravated battery violated the one-act, one-crime rule. *Id.*

¶ 43 In *People v. Crespo*, defendant stabbed the victim three times in rapid succession, once in the right arm and twice in the left thigh. The State charged defendant with armed violence and aggravated battery. *Id.* at 339. The armed violence charge was predicated upon the aggravated battery charge. *Id.* Neither charge differentiated between the separate stab wounds. *Id.* at 343. A jury found defendant guilty of both aggravated battery and armed violence. *Id.* at 344. On appeal, defendant argued his convictions violated the one-act, one-crime rule. The State disagreed, asserting each of the three stabs constituted separate acts that could separately support convictions. Our supreme court rejected this argument, stating that "[a] careful review of the indictment in this case reveals that the counts charging defendant with armed violence and aggravated battery do not differentiate between the separate stab wounds." *Id.* at 342. Instead, "these counts charge defendant with the same conduct under different theories of criminal

culpability." *Id.* Further, the court noted that, at trial, the State portrayed defendant's conduct as a single attack. *Id.* at 344. The court concluded it would be improper to allow the State to argue for the first time on appeal that each stab constituted a separate act. *Id.* at 345. The court further stated, "Today's decision merely holds that in cases such as the one at bar, the indictment must indicate that the State intended to treat the conduct of defendant as multiple acts in order for multiple convictions to be sustained." *Id.*

¶ 44 Just like *In re Rodney S.* and *Crespo*, the State in the instant case used the same language in counts I and III to describe the same act as a single series of events, which included shoving Janda into a wall and throwing her to the ground. See also *In re Samantha V.*, 234 Ill. 2d at 376-77 (A series of closely related acts may be considered a single act for purposes of the one-act, one-crime rule.). The State could have charged defendant in separate counts based on the separate acts of "throwing" and "shoving." However, the State failed to do so. Further, during closing argument, the State explained that the offense of armed violence was based upon a finding that defendant committed domestic battery. Based on the charging instrument and the State's theory at trial, we find the State premised counts I and III on the same series of events in violation of the one-act, one-crime rule. Accordingly, because we find the one-act, one-crime rule was violated, the second prong of the plain-error test is satisfied.

¶ 45 We further find that the conviction for the less serious offense must be vacated. *Artis*, 232 Ill. 2d at 170. As stated, to determine the less serious offense, we compare the relative punishments prescribed by the legislature. *Id.* Here, domestic battery, a class 3 felony (720 ILCS 5/12-3.2(a)(1) (West 2014)) (counts III), is less serious than armed violence, a Class X felony (720 ILCS 5/33A-2(a) (West 2014)) (count I). We thus vacate defendant's conviction on count

III. In addition, we remand the cause for a recalculation of defendant's fines, fees, and costs because certain assessments were imposed based on defendant's conviction for domestic battery (count III).

¶ 46 C. Public Defender Reimbursement Fee

¶ 47 Next, defendant argues the trial court erred in ordering him to reimburse the public defender $5000 without holding an adequate hearing. Defendant contends the public defender fee should be vacated without a remand. The State concedes the court did not conduct an adequate hearing but maintains the proper remedy is to remand the matter to the trial court. We agree the public defender fee should be vacated but determine the proper remedy includes a remand.

¶ 48 We note defendant failed to challenge the public defender fee by objecting at the sentencing hearing or including the issue in a posttrial motion. However, it is well established that a defendant's failure to object to the public defender fee does not result in the issue being forfeited on appeal. *People v. Hardman*, 2017 IL 121453, ¶ 49, 104 N.E.3d 372.

¶ 49 Section 11-3.1(a) of the Code of Criminal Procedure permits a trial court to order a defendant to pay a public defender fee. Specifically, section 11-3.1(a) provides, in pertinent part, as follows:

> "Whenever * * * the court appoints counsel to represent a defendant, the court may order the defendant to pay to the Clerk of the Circuit Court a reasonable sum to reimburse either the county or the State for such representation. In a hearing to determine the amount of the payment, the court shall consider the affidavit prepared by the defendant under Section 113-3 of this Code and any other

> information pertaining to the defendant's financial circumstances which may be submitted by the parties. Such hearing shall be conducted on the court's own motion or on motion of the State's Attorney at any time after the appointment of counsel but no later than 90 days after the entry of a final order disposing of the case at the trial level." 725 ILCS 5/113-3.1(a) (West 2014).

The hearing on the public defender fee cannot be conducted in a "perfunctory manner." *People v. Somers*, 2013 IL 114054, ¶ 14, 984 N.E.2d 471. Instead, "the court must give the defendant notice that it is considering imposing the fee, and the defendant must be given the opportunity to present evidence regarding his or her ability to pay and any other relevant circumstances." *Id.* This is a question of law that we review *de novo*. *Hardman*, 2017 IL 121453, ¶ 50.

¶ 50 Even if a reviewing court finds that the hearing on the public defender reimbursement fee was inadequate, it must also determine whether a remand is appropriate. Recently, our supreme court held that where the trial court conducts "some sort of a hearing" (internal quotation marks omitted) within the statutory time period but the hearing is insufficient to comply with the requirements of section 113-3.1(a), the "proper remedy *** is to remand for a proper hearing." *Id.* ¶ 70. In *Hardman*, before imposing a public defender fee, the trial court asked defense counsel how many times she had appeared in court and noted the case had gone to trial. *Id.* ¶ 65. On review, our supreme court found that the hearing was insufficient for purposes of section 113-3.1(a). However, it further determined that "some sort of a hearing" had transpired because a judicial session had occurred, the parties were present, and the issue of whether a public defender fee should be assessed was considered. (Internal quotation marks omitted.) *Id.* ¶ 66. Thus, the court affirmed the vacatur of the public defender fee and remanded

the matter for a proper hearing. *Id.* ¶ 73.

¶ 51 In this case, after advising defendant of his appeal rights, the trial court conducted the following inquiry before imposing a public defender fee:

> "THE COURT: *** [Y]ou must file a [n]otice of [a]ppeal within 30 days from the date of the entry of the order disposing of the motion to reconsider the sentence of any challenge to the sentencing hearing.
>
> MISS KECK [(Prosecutor):] Your Honor, we don't have a position either way, but I would note that [defendant] did have, I believe, significant bond that was transferred from the case that was dismissed.
>
> THE COURT: Is there restitution in this?
>
> THE STATE: There is not, Your Honor. If the [c]ourt wanted to have a [p]ublic [d]efender reimbursement hearing [*sic*].
>
> THE COURT: Ms. Henze?
>
> MISS HENZE [(Defense Counsel):] Your Honor, I had 29 hours in the case.
>
> THE COURT: Based on that, I'm going to order a $5,000 reimbursement for the [p]ublic [d]efender. And I believe he owes money on other cases, doesn't he? So those will be applied to the newest of the other cases."

¶ 52 Here, we find that the hearing was inadequate for purposes of assessing a public defender reimbursement fee. The trial court failed to provide defendant with adequate notice that it was considering imposing such a fee and the opportunity to present evidence of his financial circumstances. See *Somers*, 2013 IL 114054, ¶ 14. However, like in *Hardman*, the trial court in

this case conducted "some sort of a hearing" because a judicial session occurred, the parties were present, and the issue of whether defendant should be assessed a public defender fee was discussed. (Internal quotation marks omitted.) *Hardman,* 2017 IL 121453, ¶ 66. Accordingly, we vacate the public defender fee and remand the matter for a proper hearing.

¶ 53 D. The Crime Stoppers Fine

¶ 54 Defendant argues—and the State concedes—the trial court improperly imposed a $10 Crime Stoppers fine. We agree.

¶ 55 The Crime Stoppers fine, also known as the "Anti-Crime Fund" assessment, is a fine that can only be imposed as a condition of probation or conditional discharge. *People v. Hible*, 2016 IL App (4th) 131096, ¶ 18, 53 N.E.3d 319; 730 ILCS 5/5–6–3(b)(13) (West 2014). Because defendant in this case was sentenced to prison, this fine is inapplicable to him. Accordingly, this assessment must be vacated. *Hible*, 2016 IL App (4th) 131096, ¶ 18.

¶ 56 III. CONCLUSION

¶ 57 For the reasons stated, we vacate count III and remand the matter to the trial court for a recalculation of fines, fees, and costs. We vacate the $5000 public defender reimbursement fee and remand for a hearing to determine whether a public defender fee is appropriate. We vacate the Crime Stoppers assessment imposed against defendant. We otherwise affirm the trial court's judgment. As part of our judgment we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2014).

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