

NOTICE

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FILED

January 8, 2019

Carla Bender

4th District Appellate Court, IL

2019 IL App (4th) 160588-U

NO. 4-16-0588

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
GREGORY M. HOUSE,)	No. 13CF1007
Defendant-Appellant.)	
)	The Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.

Presiding Justice Holder White and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court (1) affirmed defendant's conviction for domestic battery and (2) concluded that defendant is entitled to a \$5 credit for his time spent in presentence incarceration.

¶ 2 In June 2013, the State charged defendant, Gregory House, with domestic battery with a prior domestic battery conviction. 720 ILCS 5/12-3.2(a)(2) (West 2012). In January 2016, a Champaign County jury found defendant guilty of this offense. In May 2016, the trial court sentenced defendant to 68 months in prison and 4 years mandatory supervised release. The court assessed various fines against defendant, but did not credit him \$5 for his time spent in presentence incarceration. 725 ILCS 5/110-14(a) (West 2016).

¶ 3 Defendant appeals, arguing (1) the State failed to prove him guilty beyond a reasonable doubt and (2) his fines should be reduced for his time spent in presentence incarceration. We conclude that (1) the State proved defendant guilty beyond a reasonable doubt and (2) de-

fendant is entitled to a \$5 credit for his time spent in presentence incarceration.

¶ 4

I. BACKGROUND

¶ 5 In June 2013, the State charged defendant with domestic battery. 720 ILCS 5/12-3.2(a)(2) (West 2012). Following a bench trial, the trial court found defendant guilty of this offense. However, the court later granted defendant's motion for a new trial.

¶ 6 In January 2016, defendant's case proceeded to a jury trial. S.H., defendant's daughter, who was 14 years old at the time of the trial, testified that she moved in with her father in July 2012. She stated that on June 24, 2013, defendant came into her room, grabbed her by the head, and threw her to the floor. She also testified that defendant hit her twice in the head. She stated that her stepmother, Lori House, and stepsister, H.A., witnessed the attack. S.H. testified that (1) Lori told defendant to stop and (2) H.A. was crying. S.H. stated that, after the incident, she ran to a neighbor's house for help. She stated that she did not know this neighbor. S.H. stated that on the day of the alleged attack, she did not want to live with her father and she had been grounded for misbehaving.

¶ 7 Kimberly Theis, who was a neighbor of defendant, testified that S.H. arrived at her house on June 24, 2013. Theis stated that S.H., who was shoeless and crying, begged to use Theis' phone so that S.H. could call the police. Theis noted that she did not know S.H. or her father prior to this incident.

¶ 8 Officer Jonathan Priest testified that he arrived at Theis house shortly after S.H. called. He stated that S.H. had two "reddish-purplish" marks on her head—one on the forehead and another near her left temple.

¶ 9 H.A., born June 2002, testified that on June 24, 2013, she scratched S.H.'s arm and hit S.H.'s head. H.A. testified that defendant did not attack S.H. Lori also testified that de-

fendant did not attack S.H.

¶ 10 Following closing argument, the jury found defendant guilty of domestic battery.

¶ 11 In May 2016, the trial court conducted a sentencing hearing. The State noted that this was an extended term eligible class 4 felony and requested that defendant be sentenced to six years in prison. After noting defendant's prior criminal history, which included four domestic battery convictions, the court sentenced defendant to 68 months in prison and 4 years mandatory supervised release. The court also assessed various fines against defendant, but did not credit him \$5 for his time spent in presentence incarceration. 725 ILCS 5/110-14(a) (West 2016).

¶ 12 This appeal followed.

II. ANALYSIS

¶ 14 Defendant appeals, arguing (1) the State failed to prove him guilty beyond a reasonable doubt and (2) his fines should be reduced for his time spent in presentence incarceration. We conclude that (1) the State proved defendant guilty beyond a reasonable doubt and (2) defendant is entitled to a \$5 credit for his time spent in presentence incarceration.

A. Sufficiency of the Evidence

¶ 16 Defendant argues that the State failed to prove him guilty beyond a reasonable doubt. We disagree.

¶ 17 An individual is guilty of domestic battery when “he or she knowingly without legal justification *** [m]akes physical contact of an insulting or provoking nature with any family or household member.” 720 ILCS 5/12-3.2(a)(2) (West 2012). The State bears the burden of proving each element of this offense beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224, 920 N.E.2d 233, 240 (2009). When a criminal conviction is challenged based on insufficient evidence, a reviewing court must determine whether any rational trier of fact

could have found the essential elements of the crime beyond a reasonable doubt. *People v. Steele*, 2014 IL App (1st) 121452, ¶ 20, 19 N.E.3d 1084. A reviewing court evaluates the evidence in the light most favorable to the State. *Siguenza-Brito*, 235 Ill. 2d at 224. A reviewing court will not substitute its judgment for that of the trier of fact on matters involving the weight to be given to the evidence or the credibility of the witnesses. *Id.* at 224-25. A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt. *Id.* at 225.

¶ 18 S.H. testified that defendant is her father and that she resided with him during June 2013. She further stated that on June 24, 2013, defendant pulled her hair, threw her to the ground, and hit her twice in the head. Theis testified that on June 24, 2013, S.H. ran to her house and begged for help. She further stated that she did not know S.H. and that S.H. was crying. Priest testified that S.H. had two "reddish-purplish" marks on her head. The evidence in this case is not so improbable or unsatisfactory as to create a reasonable doubt of defendant's guilt. Accordingly, we reject defendant's argument that the State failed to prove him guilty beyond a reasonable doubt.

¶ 19 B. Presentence Incarceration Credit

¶ 20 Last, defendant argues that he is entitled to \$5 of presentence incarceration credit against each fine the trial court imposed. The State concedes that defendant is eligible for \$5 of presentence incarceration credit but rejects defendant's argument that the \$5 credit applies to each levied fine. We reject defendant's argument and accept the State's concession.

¶ 21 The Criminal Code of 1963 (Code) provides as follows:

"Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of the 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.” (Emphasis added.) 725 ILCS 5/110-14(a) (West 2016).

¶ 22 A claim for presentence incarceration credit pursuant to section 110-14 of the Code may be raised “at any time and at any stage of court proceedings, even on appeal[.]” *People v. Caballero*, 228 Ill. 2d 79, 88, 885 N.E.2d 1044, 1049 (2008). The appellate court may grant this request in “the interests of an orderly administration of justice[.]” (Internal quotation marks omitted.) *Id.* Whether a defendant is entitled to presentence incarceration credit is a question of law reviewed *de novo*. *Id.* at 82.

¶ 23 Defendant’s argument that he is entitled to a \$5 credit against *each fine* imposed against him is contradicted by the plain language of the statute. 725 ILCS 5/110-14(a) (West 2016); see *People v. Jones*, 397 Ill. App. 3d 651, 663, 921 N.E.2d 768, 778 (2009) (“Because defendant has accumulated 212 days worth of presentencing credit, defendant may apply up to \$1,060 of credit against his fines.”). Thus, we reject defendant’s argument.

¶ 24 However, the record is clear that defendant was in presentence incarceration for one day and that the trial court did not credit him \$5 against the fines it later imposed. 725 ILCS 5/110-14(a) (West 2016). Accordingly, we accept the State’s concession and grant defendant a \$5 credit for his one day spent in presentence incarceration. *Caballero*, 228 Ill. 2d at 88. We direct the trial court to amend the “order for fines” and “supplemental sentencing order imposing fines” to reflect defendant’s \$5 credit for his presentence incarceration. *Id.*; *People v. Mullen*, 2018 IL App (1st) 152306, ¶ 60, 100 N.E.3d 532.

¶ 25 **III. CONCLUSION**

¶ 26 For the reasons stated, we affirm defendant’s conviction. We direct the trial court

to amend the “order for fines” and “supplemental sentencing order imposing fines” to reflect defendant’s \$5 credit for his presentence incarceration. 725 ILCS 5/110-14(a) (West 2016). We also grant the State its \$50 statutory assessment against defendant as the costs of this appeal. 55 ILCS 5/4-2002 (West 2016).

¶ 27 Affirmed in part and reversed in part.