

NOTICE

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2019 IL App (4th) 170075-U

NO. 4-17-0075

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

May 30, 2019

Carla Bender

4th District Appellate Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
KENNETH B. WILLIAMS,)	No. 15CF656
Defendant-Appellant.)	
)	The Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices DeArmond and Turner concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant appeals his conviction, arguing that the State introduced improper other-crimes evidence. The appellate court affirmed defendant’s conviction because the trial court did not abuse its discretion.
- ¶ 2 In May 2015, the State charged defendant, Kenneth B. Williams, with (count I) armed habitual criminal and (count II) unlawful possession of a weapon by a felon. 720 ILCS 5/24-1.7(a), 1.1(a) (West 2014). In November 2016, defendant filed a motion *in limine* to exclude other-crimes evidence. In December 2016, the trial court denied the motion, and the jury found defendant guilty of both counts. In January 2017, the court denied defendant’s motion for a new trial in which he argued, in pertinent part, that the State violated the motion *in limine*. The court sentenced defendant to 10 years in prison for count I and 3 years in prison for count II, and ordered the sentences to be served concurrently. The court also imposed various fines and fees.
- ¶ 3 Defendant appeals, arguing (1) the State introduced improper other-crimes evi-

dence and (2) he is entitled to *per diem* credit toward eligible fines. We affirm.

¶ 4

I. BACKGROUND

¶ 5

A. The Charges

¶ 6

In May 2015, the State charged defendant with (count I) armed habitual criminal and (count II) unlawful possession of a weapon by a felon. *Id.* In essence, the State alleged that defendant knowingly possessed a .38-caliber revolver and .38-caliber bullets. As related to count I, the State alleged that defendant had been previously convicted “of the offense of Unlawful Use of a Weapon by a Felon, a class 2 felony, *** and the offense of Unlawful Delivery of a Controlled Substance, a class 2 felony[.]” Although the trial court initially appointed the public defender’s office, defendant elected to proceed *pro se*.

¶ 7

B. The Motion *In Limine*

¶ 8

In November 2016, defendant filed a motion *in limine*. In pertinent part, defendant argued that the State was going to introduce evidence of prior bad acts and uncharged conduct that was not relevant to the State’s charges. Essentially, the motion *in limine* was intended to prevent the State from mentioning that Phillip Knee told the police that defendant had shot Terik Kendrick in the foot. Knee’s claims were a partial basis for the search warrant that led to defendant’s arrest and the subsequent discovery of the .38-caliber revolver and the .38-caliber bullets. However, the State never charged defendant with the shooting of Kendrick.

¶ 9

In December 2016, prior to the start of defendant’s jury trial, the following exchange occurred regarding defendant’s motion *in limine*:

“DEFENDANT: Your Honor, before the jury get here—

THE COURT: Yes.

DEFENDANT: I wonder *** will the uncharged crime be mentioned at

all?

THE COURT: What?

MR. LOZAR [(ASSISTANT STATE'S ATTORNEY)]: Judge, I think he's referring to a section of the motion *in limine* to [his] priors. He also refers to some statements made for other parts of the investigation. It would probably be appropriate to look at those (inaudible).

THE COURT: To do what?

MR. LOZAR: To look at what he's talking about, and I think he lays it out in his motion *in limine* I handed you.

* * *

THE COURT: Mr. Lozar, what—this is a little bit difficult to read, but are you intending to produce any information about other offenses other than what's charged?

MR. LOZAR: The Defendant gave a recorded statement to an officer that covered some stuff that is not in my opinion related to this case. I don't intend to go anywhere near that stuff, Judge. He did make some statements explaining why he had possession of the gun. He indicated that he was concerned about retaliation towards himself based on other things that had happened which he was not implicated in. He was worried, and he said essentially I've got the gun to protect my family. So to the extent the—to the extent the conversation related to that, yes. I do intend to talk about that but as to—

THE COURT: Any of the other—

MR. LOZAR: —some of the things he talked about was him shooting oth-

5, 2015, he assisted with the execution of a search warrant on defendant's residence. Prior to the execution of the search warrant, defendant returned to the residence in a vehicle he was driving. The police stopped the vehicle and ordered defendant and the three passengers to exit the vehicle. The police arrested defendant and searched him incident to the arrest. The police also searched the vehicle defendant was driving. Gaudio, who was responsible for collecting and documenting evidence from the scene, testified that the police found (1) .38-caliber bullets in defendant's pocket and (2) a .38-caliber revolver under the driver's seat of the vehicle. Gaudio elaborated that the bullets found in defendant's pocket could be used for the revolver found under the driver's seat.

¶ 15 *2. Jordan Hagemann*

¶ 16 Officer Jordan Hagemann of the Champaign Police Department stated that on May 5, 2015, he assisted with the execution of a search warrant. Hagemann stated that a vehicle that defendant was driving arrived on the scene, and the police detained everyone inside the vehicle. Defendant was placed under arrest, and Hagemann searched defendant's person incident to the arrest. Hagemann testified that he found five .38-caliber bullets in defendant's pocket.

¶ 17 *3. Mark Strzesak*

¶ 18 Detective Mark Strzesak of the Champaign Police Department stated that on May 5, 2015, he searched defendant's vehicle. Strzesak testified that as he "approached the vehicle to do the search, I noticed that the floorboard mat on the driver's side had been pulled up" and that there "appeared to be a gun tucked under the driver's seat."

¶ 19 *4. Robert Sumption*

¶ 20 Detective Robert Sumption of the Champaign Police Department testified that he interviewed defendant following his arrest. Sumption noted that this was a "fairly lengthy inter-

view” but that only “a very small portion of [the interview] actually relates to this case.”

Sumption stated that “there had been an ongoing dispute in Champaign County which ultimately resulted in the murder of [defendant’s] brother. His brother was murdered by a man—a man by the name of David Beverly.” Defendant objected to this testimony, and the trial court sustained this objection.

¶ 21 Regarding the firearm found in the vehicle, Sumption testified as follows:

“Q. He indicated he had some—some reason to be in possession of the firearm?

A. Yes, he did.

Q. Generally speaking, the general concern was what?

A. His safety as well as the safety of a female occupant of the vehicle he was in.

* * *

Q. All right. Did he indicate his motivation with regard to those females as to why he might want to be in possession of a firearm?

A. To keep them safe.”

¶ 22 Sumption also testified that he “spoke [with defendant] about the firearm as it relates to a separate incident.” Regarding this “separate incident,” Sumption stated that defendant “invited me to have it forensically tested. At that point, he said that the forensic analysis would show that [the] gun was not related to the separate incident.”

¶ 23 During cross-examination, Sumption conceded that he never specifically asked defendant whether the gun was his. During the State’s redirect examination, Sumption stated that there were “several inferences made *** by [defendant] acknowledging the gun, acknowledging

the possession of the gun. I didn't feel that during that interview based on the ammunition in his pocket and the gun underneath the seat that *** I needed to specifically ask him 'is that your gun.' ”

¶ 24 On defendant's further cross-examination, Sumption testified as follows:

“Q. You stated that there was acknowledgments about [the] history of the firearm.

A. Uh-huh.

Q. Would those acknowledgements become because [*sic*] something else transpired?

A. Yes.

* * *

Q. And earlier you stated with [the assistant state's attorney] that about [*sic*] the firearm being fired. *** Am I correct?

A. Yes. And I can specifically state what those inferences were if you would like me to.

Q. Yes. Please state one for me.

A. Okay. During our conversation—

Q. Yes.

A. —you invited me to in your words 'go out and shoot the gun.'

Q. Yes.

A. You told me at that point that if I went out and shot the gun—

Q. Yes.

A. —that I could compare it to evidence from a separate event.

Q. You don't have to go any further.

A. Okay.

Q. So the—the other event. If I'm not even nowhere connected to the other event, I should know that I had nothing to do with it, am I correct? And if you questioning me about another event shouldn't I be able to let you know if I had any involvement in that event?

A. Yes. The questioning involved—we did talk about your involvement or lack thereof *** in the previous event.”

¶ 25 During further redirect examination of Sumption, the State elicited the following testimony:

“Q. ***[Defendant] asked you a few moments ago about the other incidents that he says he knows the gun was not involved in, correct?

A. That's correct.

Q. You indicated he specifically invited you to take the gun out and fire it. *** He invited you to go out and test the firearm for what purpose?

A. To compare it to any evidence that was recovered in the—

Q. The other cases?

A. Yes.

Q. And he opined that he knew that this firearm was not used in anything else?

A. That's correct.

Q. And he was inviting you to test it for that purpose?

A. He was. And further—

Q. And you took that to indicate that he knew the history of the firearm, that he knew where it had been and what it might have been involved in?

A. That's correct.

Q. No other questions on [this] issue."

¶ 26

6. The Defense

¶ 27

Defendant then called his wife, Felicia Williams, to the witness stand. Felicia stated that she was the owner of the revolver and the vehicle in which the revolver was found. She testified that she placed her gun under the driver's seat of her car. She testified that she originally told the police that the gun was hers. On cross-examination, Felicia noted that she was married to defendant and had children with him. Felicia denied that she originally told the police that defendant possessed the gun.

¶ 28

Defendant testified that he believed the gun was in Felicia's apartment. Although he admitted that he knowingly possessed the ammunition, defendant stated that he did not know that the gun was in the car. Defendant stated that if he "would have known that the firearm was in the car, I would have put it on my person instead of have it sitting under there. How can I protect myself or the people I'm around with a firearm on the floor? It's impossible." He stated that he wanted his wife to have a gun for her own protection and that he had purchased the ammunition for her.

¶ 29

During the State's cross-examination, defendant stated as follows:

"Q. Mr. Williams [(defendant)], you want to start with the proposition that you were in possession of the ammunition in your pocket?

A. I was.

Q. You said that you got that specific ammunition for your wife?

A. Yup. From a friend.

* * *

Q. So you knew of the .38 revolver?

A. I knew she had one. I didn't know it was under the seat.

* * *

Q. When you come out of the car, the officers go back, they search, and they find that firearm tucked under there, correct?

A. Yes.

Q. Now when you talked with Detective Sumption later during your interview, he talked with you about that specific firearm, didn't he?

A. Yes, he did. Well, yes. I think so.

Q. He talked with you about a lot of things.

A. Yes, he did.

Q. But with regard to that particular firearm, you talked about your knowledge of it.

A. Yes.

Q. And you guys talked about why you would feel the need to protect yourself.

A. Yes.

Q. And you talked about how that particular firearm you knew that it would not be involved in other crimes because you were aware of the history of it, correct?

A. Yeah, because my wife ain't involved in anything.

Q. You even talked about him going out and firing it to test the barrel to make sure it wasn't involved in anything else, didn't you?

A. Because my wife is not involved in anything.”

¶ 30

7. Rebuttal

¶ 31 Following defendant's testimony, the State called Sumption as a rebuttal witness. Sumption testified that he interviewed Felicia after defendant's arrest and she told him that defendant was in possession of the gun and that he carried that gun for protection. During cross-examination, Sumption agreed that he did not record his interview with Felicia. During this cross-examination, Sumption testified as follows:

“Q. But—but Felicia Williams is the only witness that you *** have or had that was able to put the firearm in the hands of the defendant by eye, seeing eye to eye like I put the pencil in my hand.

A. That's not accurate. I don't know that—there was another individual that put that gun in your hand not on that specific date but dates prior.

Q. Well, I don't know nothing about that incident but—

A. It's documented.

THE COURT: Mr.—all right, Officer. That's—

MR. WILLIAMS [(DEFENDANT)]: I don't know anything about that incident.”

¶ 32

8. Closing Arguments

¶ 33 In closing, the State argued that it had proved defendant guilty of both counts beyond a reasonable doubt. The State highlighted that the police found defendant in possession of .38-caliber bullets and a .38-caliber revolver was found under his seat. Defendant conceded that

he knowingly possessed the ammunition, but argued he did not knowingly possess the revolver.

¶ 34

D. The Verdict and Sentence

¶ 35

Ultimately, the jury found defendant guilty of (count I) armed habitual criminal and (count II) unlawful possession of a weapon by a felon. In January 2017, defendant filed a motion for a new trial in which he argued, in pertinent part, that the State violated the motion *in limine*. At a hearing on that motion, the trial court stated as follows:

“All right. I have considered [your motions]. And as far as the record is concerned, you have raised—and this is to your credit, each and every one of these motions, either at pretrial or during the course of the trial. The Court ruled on them at that point. You have appropriately re-requested them to be heard in a post-trial motion, which is necessary for the Appellate Court to review these matters. Again, I have reviewed them. I believe that the decisions the Court made initially were correct, and I’m going to deny the post-trial motions.”

¶ 36

The trial court then sentenced defendant to 10 years in prison for count I and 3 years in prison for count II, and ordered the sentences to be served concurrently. The court also imposed various fines and fees.

¶ 37

This appeal followed.

¶ 38

II. ANALYSIS

¶ 39

Defendant appeals, arguing (1) the State introduced improper other crimes evidence and (2) he is entitled to *per diem* credit toward eligible fines. We affirm.

¶ 40

A. Other-Crimes Evidence

¶ 41

Defendant first argues that the State introduced improper other-crimes evidence. We conclude that the trial court did not abuse its discretion.

¶ 42 “Other-crimes evidence encompasses misconduct or criminal acts that occurred either before or after the alleged criminal conduct for which the defendant is standing trial.” *People v. Johnson*, 2013 IL App (2d) 110535, ¶ 61, 991 N.E.2d 396. “Evidence of other crimes is admissible if it is relevant for any purpose other than to show the defendant’s propensity to commit crime.” *People v. Pikes*, 2013 IL 115171, ¶ 11, 998 N.E.2d 1247. Accordingly, other crimes evidence may be admissible for purposes “such as proof of motive, opportunity, intent, preparation, plan, *knowledge*, identity, or absence of mistake or accident.” (Emphasis added.) Ill. R. Evid. 404(b) (eff. Jan. 1, 2011). “However, even where relevant, the evidence should not be admitted if its probative value is substantially outweighed by its prejudicial effect.” *Pikes*, 2013 IL 115171, ¶ 11.

¶ 43 The admissibility of other-crimes evidence is entrusted to the sound discretion of the trial court. *People v. Null*, 2013 IL App (2d) 110189, ¶ 43, 991 N.E.2d 875. “We review the trial court’s admission of other-crimes evidence under an abuse of discretion standard and will not reverse the trial court’s decision unless the decision is arbitrary, fanciful or unreasonable or where no reasonable man would take the view adopted by the trial court.” (Internal quotation marks omitted.) *People v. Arze*, 2016 IL App (1st) 131959, ¶ 86, 52 N.E.3d 746. The appellate court may affirm the trial court’s evidentiary rulings upon any basis that is supported by the record. *People v. Davis*, 2018 IL App (1st) 152413, ¶ 37, 109 N.E.3d 281. “Further, a posttrial motion for a new trial is a matter for the trial court’s discretion” and will not be reversed “absent a showing that the trial court abused its discretion.” *Arze*, 2016 IL App (1st) 131959, ¶ 86.

¶ 44 “Evidence of other offenses may also be admissible if the evidence is procured, invited, or acquiesced to by the defendant.” *People v. Liner*, 356 Ill. App. 3d 284, 292, 826 N.E.2d 1274, 1283 (2005). “Moreover, when a defendant procures, invites, or acquiesces in the

admission of evidence, even though the evidence is improper, she cannot contest the admission on appeal.” *People v. Bush*, 214 Ill. 2d 318, 332, 827 N.E.2d 455, 463 (2005).

¶ 45 In this case, defendant filed a motion *in limine* to exclude the State from introducing evidence about uncharged conduct. In essence, the motion *in limine* was intended to prevent the State from mentioning that Phillip Knee claimed that defendant had shot Terik Kendrick in the foot. At a hearing on the motion, the prosecutor stated that he would not discuss “the Phillip Knee situation” and that he would only introduce evidence that “goes to the Defendant’s state of mind as to why he was in possession of the firearm.” Based upon this representation, the trial court apparently denied defendant’s motion *in limine*. Following the jury’s guilty verdict, defendant filed a motion for a new trial in which he argued that the State violated the motion *in limine*. The trial court denied this motion, concluding that “the decisions the Court made initially were correct, and I’m going to deny the post-trial motions.”

¶ 46 The expected testimony of the State’s witnesses went to defendant’s state of mind and whether he knowingly possessed the weapon. Ill. R. Evid. 404(b) (eff. Jan. 1, 2011) (other-crimes evidence is admissible to show knowledge). Further, the State explicitly stated that it would not discuss “the Phillip Knee situation.” Accordingly, the trial court’s denial of defendant’s motion *in limine* was not an abuse of discretion.

¶ 47 At trial, the State never discussed that defendant was suspected of shooting Terik Kendrick in the foot. Further, the State took great effort to guide its witnesses so that they never explicitly mentioned this shooting. However, throughout the testimony elicited at trial, there were discussions of a “separate incident” involving a gun. We note that this testimony was limited to defendant’s knowledge of the .38-caliber revolver found under his seat and his knowledge of this gun’s history. Ill. R. Evid. 404(b) (eff. Jan. 1, 2011) (other-crimes evidence admissible to

show knowledge). Likewise, much of the testimony regarding this “separate incident” was introduced as a result of defendant’s questioning. *Liner*, 356 Ill. App. 3d at 292. Thus, the trial court’s denial of defendant’s motion for a new trial was not an abuse of discretion. In passing, we thank the Office of the State Appellate Prosecutor for informing this court that harmless error review—as opposed to plain error review—applied to this issue.

¶ 48 B. Fines and Fees

¶ 49 Defendant next argues that he is entitled to *per diem* credit toward eligible fines. However, after the briefs in this case were submitted, the Illinois Supreme Court promulgated Illinois Supreme Court Rule 472 (eff. Mar. 1, 2019). This rule provides that in criminal cases, the trial court “retains jurisdiction” even during “the pendency of an appeal” to correct “[e]rrors in the imposition or calculation of fines, fees, assessments, or costs[.]” Ill. S. Ct. R. 427(a)(1) (eff. Mar. 1, 2019). Accordingly, we decline to address this matter because the trial court still has jurisdiction to correct any error. See *People v. Sturgeon*, 2019 IL App (4th) 170035, ¶ 120.

¶ 50 III. CONCLUSION

¶ 51 For the reasons stated, we affirm defendant’s conviction. We also grant the State its \$50 statutory assessment against defendant as the costs of this appeal. 55 ILCS 5/4-2002 (West 2016).

¶ 52 Affirmed.