

2019 IL App (1st) 160617-U

No. 1-16-0617

Order filed July 26, 2019

Fifth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 13 CR 21096
)	
ROBERT SIMMONS,)	Honorable
)	Dennis J. Porter,
Defendant-Appellant.)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Rochford and Justice Hoffman concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) The trial court did not abuse its discretion by admitting, as other crimes evidence to show identity, testimony about a robbery defendant committed after the charged offense in this case.
(2) The prosecutor's closing argument was properly based on the evidence at trial and reasonable inferences drawn therefrom.
(3) We remand so that defendant may raise alleged errors in the imposition of fines, fees, and costs pursuant to Illinois Supreme Court Rule 472(e) (eff. May 17, 2019).

¶ 2 Following a jury trial where defendant Robert Simmons represented himself, the jury found him guilty of vehicular invasion and armed robbery with a firearm. The trial court sentenced him to a prison term of 35 years, merging the vehicular invasion offense into the armed robbery offense.

¶ 3 On appeal, defendant argues that (1) the trial court erroneously admitted, as other crimes evidence to show identity, testimony about a robbery defendant committed after the armed robbery and vehicular invasion offenses at issue in this appeal; (2) the State's closing argument mischaracterized the evidence and prejudiced the jury against defendant; and (3) the trial court improperly imposed a fee for a probable cause hearing and a fine for state police operations. The State has conceded the third argument.

¶ 4 For the reasons that follow, we remand the fines and fees issue to the trial court to allow defendant to raise that issue there and affirm the trial court's judgment in all other respects.¹

¶ 5 I. BACKGROUND

¶ 6 Defendant was already in custody for robbing Patricia Balos on March 29, 2012 (the Balos robbery), when the State charged him in the instant case for the March 23, 2012 robbery of Regina Distasio (the Distasio robbery). Specifically, the State charged defendant with one count of armed robbery with a firearm, one count of armed robbery with a bludgeon, and one count of vehicular invasion.

¶ 7 Before trial, the State moved *in limine* to allow the admission of the Balos robbery as other crimes evidence, arguing that it was relevant to show a common scheme or design and identity. In its written motion, the State argued that in both the Balos and Distasio robberies,

¹ In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal had been resolved without oral argument upon the entry of a separate written order.

defendant approached the female drivers as they sat in their parked cars, shattered the passenger side window to enter the car, and stole the victims' purses; both robberies were committed in the same area of the city on Hubbard Street; and the victims identified defendant as the offender that robbed them. Defendant filed a counter-motion to exclude the other crimes evidence, claiming that the State had delayed his indictment to gain a tactical advantage; the Balos robbery happened after the robbery at issue; and defendant had already pled guilty to the Balos robbery.

¶ 8 At the hearing on the motions *in limine*, the State argued that the facts showed a common scheme or design because the robberies occurred six days apart and on the same street, just a few blocks away from each other; defendant waited for both of the female victims; and when the victims were in their cars, he shattered the windows to take their property. The State argued that the facts also showed identity because defendant "committed a similar crime before. This is his trademark and he was identified in both of these cases." Defendant responded that he was already incarcerated for the Balos robbery, which happened after the robbery at issue here, and allowing the State to use the later Balos robbery to prove the earlier Distasio robbery was "contrary to the presumption of innocence."

¶ 9 The trial court denied defendant's motion to exclude the other crimes evidence and, citing *People v. Tipton*, 207 Ill. App. 3d 688 (1990), granted the State's motion to admit other crimes evidence to show identity and common scheme or design.

¶ 10 At trial in September of 2015, Distasio testified that on March 23, 2012, at 4:15 p.m., she left her employer's home on the 1200 block of West Hubbard Street in Chicago, where she worked as a nanny and had just been paid. She entered her car, which was parallel parked on the street. Her car was a two-door vehicle, and cars were parked closely in front of and behind her

car. As she tried to maneuver her car out of that tight spot, she noticed defendant standing to her right. She did not know him and had never seen him before.

¶ 11 Distasio heard a huge bang, and her passenger side window shattered. Defendant pointed a gun at her, told her to get down and swore at her, telling her that he would shoot her unless she “shut the f**k up.” Defendant started to come through the shattered window, holding a black handgun with a silver trigger. The gun barrel was seven or eight inches from Distasio’s head. She screamed and held her hands up while she stared at defendant. Defendant grabbed any items in the car within his reach. Meanwhile, Distasio’s car was still in reverse and hitting other cars parked near her. Ultimately, defendant took Distasio’s purse, which contained \$700, her Garmin GPS device and cord, and a shopping bag. He tried to take her cell phone but could not reach it. Distasio estimated that the incident lasted a few minutes.

¶ 12 Defendant fled the scene and Distasio called the police. She described defendant as a black male between 40 and 45 years old. His height was between six foot one and six foot two. His hair was partly black, with some gray hair in the front. His hairstyle was short and braided. He had a little bit of facial hair. He wore a black knit cap with a black hoodie, but the hood came off during the offense. He also wore black jeans with a chain wallet. Distasio identified defendant in court as the man who robbed her.

¶ 13 Chicago police detective John Jurek was assigned to investigate Distasio’s case. On March 29, Detective Jurek heard over the police radio that an offense occurred on the 800 block of West Hubbard Street and the suspect was taken into custody for smashing a car window and taking a purse. In furtherance of his Distasio investigation, Detective Jurek went to the police station, observed defendant, and noticed his resemblance to Distasio’s description of her offender. Based upon the matching description and the similarities between the two offenses,

Detective Jurek decided to conduct a physical line-up including defendant for Distasio to view. Defendant, however, was belligerent and refused to participate in the line-up. Consequently, in accordance with police procedure, Detective Jurek compiled a photo array that included defendant's image. Distasio identified defendant from the photo array as her offender, stating that she recognized him because she "can't forget his face."

¶ 14 During defendant's cross-examination of Detective Jurek, Jurek testified that defendant was not arrested after the photo array because he was already in custody for a similar offense. The trial court called a sidebar and asked defendant whether he objected to the jury receiving at that time a limiting instruction to consider the other crimes evidence only for identification purposes and preferred instead for the jury to receive the limiting instruction prior to deliberations. Defendant expressed no preference regarding the timing of the instruction, so the trial court instructed the jury that the other crimes evidence was received on the issue of defendant's identification, the jury could consider the other crimes evidence only for the limited purpose of identification, and it was the jury's role to decide whether defendant was involved in the other offense and, if so, the weight to give the other crimes evidence on the issue of identification.

¶ 15 Patricia Balos testified that on March 29, 2012, at about 12 p.m., she was on the 800 block of West Hubbard Street. She entered her vehicle, turned it on, and put her daughter in the back seat. Balos heard the sound of loud glass popping and saw defendant reach into her car, take her purse and run to a parked car. Defendant drove away from the scene and Balos drove after him. Defendant then crashed into a van. He exited his car, grabbed Balos's purse and fled on foot. Balos kept defendant in her view and yelled for help, telling people that defendant had robbed her. Defendant went into a gangway that was dead end. Balos and another person

followed defendant. As Balos approached defendant, a group of people gathered at the scene, watching. Balos and the other person exchanged words with defendant. Balos ordered defendant to hand over her purse, and defendant claimed that he did not have it. Ultimately, the purse was returned to Balos, and the police arrived and took defendant into custody.

¶ 16 The State's evidence also showed that about 9:50 p.m. on March 29, police officers went to defendant's apartment, where he lived with his girlfriend, Andria Dian. Dian testified that she owned the silver Chevy Malibu that defendant had been driving earlier that day, and she allowed the police to search that vehicle. She also testified that she allowed the police to search the apartment on March 30. The police recovered a Garmin GPS in a bedroom dresser, and Dian testified that defendant had brought that item into the apartment about one week ago. No other items were recovered.

¶ 17 The police noted that the recovered GPS contained Distasio's home address as a favorite location. Furthermore, Distasio's store receipt for the GPS purchase matched the GPS recovered from defendant's apartment. Distasio also identified the recovered GPS as her stolen property, noting that it contained her address and other addresses she recognized.

¶ 18 The jury found defendant not guilty of armed robbery with a bludgeon, but found him guilty of vehicular invasion and armed robbery with a firearm. Defendant was represented by counsel for posttrial proceedings, and his amended motion for a new trial argued that the court erred in admitting the other crimes evidence and the State made improper statements during closing argument. The trial court denied defendant's posttrial motion, merged the vehicular invasion offense into the armed robbery offense, and sentenced him to a prison term of 35 years.

¶ 19

II. ANALYSIS

¶ 20 On appeal, defendant argues that (1) he was denied a fair trial due to the erroneous admission of the Balos robbery as other crimes evidence because it was not relevant on the issue of identity since it occurred after the offense at issue in this case; (2) the State improperly argued in rebuttal that the jury needed to send defendant a message, it was the jury's role to be there for Distasio, and defendant was a "professional" criminal who regularly cased crime scenes and disposed of evidence, despite the lack of any evidence to support those arguments or inferences; and (3) this Court should vacate the erroneous imposition of the \$20 probable cause hearing fee and should order presentence custody credit to apply to the \$15 state police operations fine.

¶ 21

A. Other Crimes Evidence

¶ 22 Defendant argues that he was denied a fair trial when the court erroneously allowed the State to present the Balos robbery as other crimes evidence because it was more prejudicial to defendant than probative of his guilt. Specifically, defendant argues that the Balos robbery was not relevant to identify him as the offender in the Distasio robbery because the Balos robbery happened several days after the Distasio robbery. Defendant contends that he might not have been convicted of robbing Distasio if the State had not reinforced a guilty image of him in the jurors' eyes by presenting Balos's testimony.

¶ 23 The State argues that defendant failed to preserve this claim for review because his posttrial motion merely asserted that the other crimes evidence was more prejudicial than probative and, thus, failed to raise the specific claim he makes on appeal that other crimes evidence of a subsequent crime is inadmissible.

¶ 24 In a criminal case, a defendant preserves an issue for review by raising it either in a motion *in limine* or a contemporaneous trial objection and by including it in a posttrial motion.

People v. Denson, 2014 IL 116231, ¶ 11. There is no dispute that defendant complied with the first requirement when he countered the State's motion *in limine* with his own, which sought to exclude the other crimes evidence. Furthermore, defendant's challenge in the trial court to the other crimes evidence as more prejudicial than probative encompasses his argument on appeal that the Balos robbery was not probative because it was committed after the Distasio robbery. *People v. Heider*, 231 Ill. 2d 1, 18 (2008) (a defendant preserves a claim for appeal where he provides the trial court with an opportunity "to review the same essential claim that was later raised on appeal"). The trial court had the opportunity to review the admissibility of the other crimes evidence, which is essentially the same claim that defendant now raises. We find that defendant sufficiently preserved his challenge to the admission of the other crimes evidence.

¶ 25 "The decision whether to admit or exclude evidence is left to the sound discretion of the trial court and will not be reversed absent a clear showing of abuse of that discretion resulting in manifest prejudice to the defendant." *People v. Barnes*, 2013 IL App (1st) 112873, ¶ 41. An abuse of discretion occurs when the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court. *Id.* We review the trial court's admission of other crimes evidence for an abuse of discretion. *People v. Thingvold*, 145 Ill. 2d 441, 452-53 (1991).

¶ 26 Other crimes evidence is admissible if it is relevant for any purpose other than to show the defendant's propensity to commit crime. *People v. Wilson*, 214 Ill. 2d 127, 135 (2005); *People v. Placek*, 184 Ill. 2d 370, 385 (1998) (the use of other crimes evidence to show a defendant's propensity to commit crime might lead a jury to convict the defendant not based on the evidence adduced at trial, but on the notion that the defendant deserves punishment). Other crimes evidence can be admitted to show intent, *modus operandi*, identity, motive, or absence of

mistake with respect to the crime with which the defendant is charged. *People v. Pikes*, 2013 IL 115171, ¶ 11. In fact, the Illinois Supreme Court has held that evidence of other crimes committed by the defendant may be admitted if relevant to establish any material question other than the propensity to commit a crime. *Thingvold*, 145 Ill. 2d at 452. However, even where relevant, the evidence should not be admitted if its probative value is substantially outweighed by its prejudicial effect. *People v. Moss*, 205 Ill. 2d 139, 156 (2001). When other crimes evidence is offered, the trial court “must weigh the relevance of the evidence to establish the purpose for which it is offered against the prejudicial effect the introduction of such evidence may have upon the defendant.” *Thingvold*, 145 Ill. 2d at 452.

¶ 27 Illinois Rule of Evidence 404(b) (Ill. R. Evid. 404(b) (eff. Jan. 1, 2011)) provides that, with certain specified exceptions, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. *Id.*

¶ 28 “Evidence of a defendant’s other crimes need not satisfy a test of exact, rigorous identity with the charged offense to be admissible as proof on the issue of identification [citation], for some dissimilarity will always exist between independent crimes [citation].” *People v. Maxwell*, 148 Ill. 2d 116, 131 (1992). In *Maxwell*, the defendant was tried and convicted of a murder and attempted armed robbery committed on October 26, 1986. The court held that the trial court did not abuse its discretion when it allowed the State to present, as other crimes evidence on the issue of identity, testimony that the defendant committed three separate offenses (two armed robberies and one attempted armed robbery) over the course of several hours during the evening

of November 3, 1986, and in each instance the defendant and the same two accomplices approached the intended robbery victims outdoors and displayed a weapon, and two of the three victims specifically identified the defendant as the gunman. *Id.* at 130-31.

¶ 29 Applying these principles to the case at bar, we conclude that the trial court did not abuse its discretion by admitting as other crimes evidence the Balos robbery that defendant committed on March 29. The trial judge found that the challenged testimony was relevant because the information tended to show defendant's identity as the offender in the present case. The record demonstrates sufficient similarities between the Balos robbery and the offense charged here to sustain the introduction of that evidence on the issue of identity. The two robberies occurred only six days apart and only four blocks away from each other on West Hubbard Street. Both victims were inside their vehicles, with the engines turned on. In each instance, defendant attacked when the female drivers were distracted, either maneuvering out of a tight parking space or tending to a small child in the back seat. Furthermore, defendant struck by suddenly smashing the glass windows of the victims' cars, grabbing items within his reach, and quickly fleeing the scene. In addition, both victims positively identified defendant as the offender.

¶ 30 At the trial, defendant challenged Distasio's ability to accurately describe her offender and identify him from a photo array. Specifically, defendant claimed that Distasio had too little time to view the offender considering that she was distracted and threatened with a gun while her car was moving and the offender was in her car grabbing her property. However, when Detective Jurek observed defendant in custody on March 29, Jurek found that Distasio's description of her offender matched defendant so closely that Jurek called Distasio to come to the police station to make an identification from a physical line-up. Despite defendant's refusal to participate in the

line-up, Distasio still positively identified him as her offender from a photo array. This evidence was relevant because it tended to show defendant's identity as an offender in the present case.

¶ 31 Furthermore, we cannot say that the probative value of the evidence was outweighed by the risk of unfair prejudice to defendant. We note that the jury received instructions on the limited purpose for which the other crimes evidence had been introduced; the jury was told to consider this evidence only as proof of defendant's identification. Such an instruction limited and substantially reduced any prejudicial effect created by the admission of the other crimes evidence; "faith in the ability of a properly instructed jury to separate issues and reach a correct result is the cornerstone of the jury system." *People v. Foster*, 76 Ill. 2d 365, 378 (1976).

¶ 32 Finally, we reject defendant's argument that the admission of the Balos robbery as other crimes evidence was reversible error based on defendant's assertion that *People v. Rosado*, 2017 IL App (1st) 143741, stands for the broad proposition that a subsequent offense cannot be used as other crimes evidence. Illinois law is clear that the "term 'other-crimes evidence' encompasses misconduct or criminal acts that occurred *either before or after* the allegedly criminal conduct for which the defendant is standing trial." (Emphasis added.) *People v. Spyrès*, 359 Ill. App. 3d 1108, 1112 (2005); see also *Maxwell*, 148 Ill. 2d at 130 (three offenses committed several days after the offense for which the defendant was standing trial were properly admitted other crimes evidence to show identity); *People v. Bartall*, 98 Ill. 2d 294, 312-13 (1983) (evidence of subsequent criminal acts may be used as other crimes evidence); *People v. Colin*, 344 Ill. App. 3d 119, 126 n.2 (2003) (the term "other crimes evidence" encompasses prior and subsequent bad acts).

¶ 33 Furthermore, *Rosado* is inapposite to the case at bar. In *Rosado*, the defendant was arrested and charged for selling or delivering drugs to an undercover police officer on March 18,

23, and 29, 2011. *Id.* ¶ 3. The March 29 offense was prosecuted first, and the defendant, who argued that his brother had sold the drugs, was acquitted. At the trial for the March 23 offense, the court allowed the State to admit evidence of the March 29 offense as other crimes evidence to show identity. *Id.* ¶ 5. Specifically, four undercover police officers testified that one of them met the defendant at a restaurant on March 23 and purchased cocaine from him; and six days later, on March 29, that same officer purchased drugs from the defendant in a transaction that occurred in the officer's car outside the same restaurant. *Id.* ¶ 11.

¶ 34 On appeal, the court rejected the State's argument that the March 29 evidence was admissible to lend credibility to the officers' identification of the defendant; show that a relationship was established between the parties; and give a more complete picture of the crime charged. *Id.* ¶ 23. The court held that the trial court abused its discretion because the March 29 testimony was not proper other crimes evidence; it could not bolster the State's identification of the defendant as the seller, had no other relevance, and also was more prejudicial than probative. *Id.* ¶¶ 1, 26. The court noted, *inter alia*, that the undercover officers did not explain how their ability to recognize the defendant on March 23 in person and in a photo array (and thereby distinguish him from his similar-looking brother) was somehow increased based on what they saw six days later on March 29. *Id.* ¶ 25.

¶ 35 The situation in *Rosado* involved the same four undercover officers identifying the defendant as a drug dealer based on those officers' familiarity with him due to their encounters with him on two dates. Moreover, the court's holding rejecting the March 29 testimony as other crimes evidence to show identity was based on the officers' failure to explain how their ability to recognize the defendant and distinguish him from his similar-looking brother on the earlier date of March 23 was somehow increased based on their later drug transaction with him on March 29.

Here, in contrast, the other crimes evidence showed how two different victims of separate, distinct and disconnected but very similar robberies positively identified defendant as the offender. Specifically, when Detective Jurek, while investigating Distasio's case, heard that defendant was in custody for committing a similar smash and grab robbery on Balos, and then noted the strong resemblance between defendant and Distasio's description of her offender, Detective Jurek attempted to arrange a physical line-up for Distasio to view. Even though defendant's belligerent behavior derailed the line-up identification procedure, Distasio identified defendant as her offender from a photo array.

¶ 36 The Balos robbery evidence was not used to show defendant's bad character or propensity to commit crime. In the circumstances presented, we find no abuse of discretion in the trial court's decision to admit the Balos robbery as other crimes evidence for the limited use on the issue of identity.

¶ 37 **B. The State's Closing Argument**

¶ 38 Defendant argues that the State's improper remarks during rebuttal closing argument deprived him of a fair trial. Specifically, defendant contends that the prosecutor's arguments improperly appealed to the jurors' emotions by attempting to align their feelings against defendant and in solidarity with the victim and by showing that defendant had a propensity to commit criminal offenses. Defendant concedes that he forfeited review of this issue but urges this court to review this issue for plain error because the serious errors undermined the fairness of the trial.

¶ 39 In general, a defendant preserves an issue for review by timely objecting to it and including it in a posttrial motion. *People v. Denson*, 2014 IL 116231, ¶ 11. However, we may review claims of error under the plain error rule (Ill. S. Ct. R. 615(a)), which is a narrow and

limited exception to forfeiture (*People v. Hillier*, 237 Ill. 2d 539, 545 (2010)). To obtain relief under this rule, a defendant must show that a clear or obvious error occurred. *Id.* The defendant bears the burden of persuading the court that either (1) the evidence at the hearing was so closely balanced (regardless of the seriousness of the error) as to severely threaten to tip the scales of justice against the defendant, or (2) the error was so serious (regardless of the closeness of the evidence) as to deny the defendant a fair trial and challenge the integrity of the judicial process. *People v. Herron*, 215 Ill. 2d 167, 187 (2005). In order to determine whether the plain error doctrine should be applied, we must first determine whether any error occurred. *Id.*

¶ 40 A prosecutor is allowed wide latitude during closing arguments. *People v. Nieves*, 193 Ill. 2d 513, 532-33 (2000). A prosecutor may comment on the evidence presented at trial, as well as any fair, reasonable inferences therefrom, even if such inferences reflect negatively on the defendant. *People v. Nicholas*, 218 Ill. 2d 104, 121 (2005). A prosecutor may reflect upon the credibility of witnesses and urge the fearless administration of the law if it is based on facts in the record or inferences fairly drawn from the facts elicited. *People v. Bryant*, 94 Ill. 2d 514, 524 (1983). Remarks made during closing arguments must be examined in the context of those made by both the defense and the prosecution, and must always be based upon the evidence presented or reasonable inferences drawn therefrom. *People v. Coleman*, 201 Ill. App. 3d 803, 807 (1990).

¶ 41 Whereas a reviewing court applies an abuse of discretion analysis to the trial court's determinations about the propriety of a prosecutor's remarks during argument (*People v. Blue*, 189 Ill. 2d 99, 128 (2000); *People v. Hudson*, 157 Ill. 2d 401, 441 (1993)), a court reviews *de novo* the legal issue of whether a prosecutor's misconduct, like improper statements at closing argument, was so egregious that it warrants a new trial (*People v. Wheeler*, 226 Ill. 2d 92, 121

(2007)). Specifically, the reviewing court asks whether the misconduct “engender[ed] substantial prejudice against a defendant such that it is impossible to say whether or not a verdict of guilt resulted from them.” *Id.* at 123. “Misconduct in closing argument is substantial and warrants reversal and a new trial if the improper remarks constituted a material factor in a defendant’s conviction.” *Id.*

¶ 42 First, defendant argues that the prosecutor improperly told the jury that its role was to send a message to defendant that his conduct was wrong by rendering a verdict that vindicated the victim, Distasio. According to the record, defendant, who proceeded *pro se*, argued that there was no video or photographs of the alleged broken car window and robbery; Distasio gave “totally different descriptions” of the offender and could not distinguish a revolver from a semiautomatic handgun; and the police mistreated defendant when he was taken into custody and wrongfully charged him with the Distasio robbery due to their animosity and vindictiveness. Defendant also argued that the police intimidated his girlfriend to testify falsely against him. Then defendant concluded, saying, if the jury found that the evidence of his guilt proved that he should be convicted of armed robbery and vehicular invasion, then the jury should “do so without a hesitation.”

¶ 43 In response, the prosecutor said, “Do so, please. My partner *** and I, we are asking you to do so. In the name of justice, do so.” The prosecutor told the jurors that they had the ability and privilege to send defendant a message that what he did was wrong, and defendant had received a fair trial and was treated with respect. The prosecutor also said, “And it is time for you to do so, to do something about what happened to Regina Distasio on that day. Justice demands

it, folks. She was alone that day. She is not alone now. She has the 12 of you, and the 12 of you have the ability to render a verdict, to do so.”

¶ 44 Reviewed in context, we find that the prosecutor was not appealing to the jurors’ emotions by attempting to align their feelings against defendant and with Distasio. Rather, the prosecutor was properly calling for justice and arguing that defendant had received a fair trial and the evidence met the burden of proof for the jury to render a verdict of guilty. See *People v. Johnson*, 208 Ill. 2d 53, 79 (2003) (“limited prosecutorial exhortations are proper where it is made clear to the jury that its ability to effect general and specific deterrence is dependent solely upon its care consideration of the specific facts and issues before it”).

¶ 45 Next, defendant argues the prosecutor improperly implied that defendant was a seasoned criminal who scouted scenes to plan his crimes and regularly hid the fruits and instrumentalities of his crimes right under his girlfriend Dian’s nose, despite nothing in the record to support such inferences.

¶ 46 According to the record, defendant had argued that the jury could not find him guilty because the State had not presented any video or audio evidence or physical evidence that the jurors could touch. In response, the prosecutor argued that the judge would instruct the jury on the law, which did not require the State to recover a firearm to convict a defendant of armed robbery. The prosecutor explained that the law did not require the State to present evidence that jurors could see or hold because “criminals control the crime scene. There was no audio he says. There was no video he says. There was no type of recording. There were no type of photographs. He [defendant] knew the scene. He is a professional.” At that point, defendant objected and the trial court sustained his objection.

¶ 47 We find no abuse of discretion when the trial court properly sustained defendant's challenge to the prosecutor's statements that defendant knew the scene and was a professional. The evidence did not establish defendant's familiarity with the location of the Distasio robbery and the "professional" reference alluded to defendant's propensity to commit crimes. Furthermore, we conclude that the prosecutor's argument was not so egregious that it warrants a new trial because the trial court promptly sustained defendant's timely objection and the jury was instructed that it could not consider anything to which the trial court had sustained an objection. *People v. Taylor*, 166 Ill. 2d 414, 438 (1995) (the jury is presumed to follow the law and instructions as provided).

¶ 48 Finally, defendant challenges the prosecutor's remark:

“Now you [the jurors] heard Mrs. [Dian]. She appeared to be a very nice lady. She probably was a little embarrassed to be here. [Unusual] circumstances, but a good woman, a woman that probably wouldn't be hiding firearms or would[n't] permit that type of conduct. He gets rid of things.”

Defendant argues that there was no evidence about Dian's character or criminal history and the State again improperly raised defendant's propensity to commit crimes by implying that he regularly hid the fruits and instrumentalities of his regularly committed crimes right under Dian's nose.

¶ 49 Reviewed in context, we conclude that the prosecutor's remarks were not improper. It is the jury's responsibility to weigh the evidence and draw reasonable inferences therefrom (*People v. Pearson*, 2018 IL App (1st) 142819, ¶ 40), and the jury determines the credibility of the witnesses, the weight to give their testimony, and the resolution of any conflicts in the evidence

(*People v. Brooks*, 187 Ill. 2d 91, 131 (1999)). Accordingly, the prosecutor properly argued that Distasio and Dian were credible witnesses whereas defendant's testimony was rendered unbelievable by the presence of Distasio's GPS in his home. Specifically, the prosecutor argued, based on the evidence and reasonable inferences drawn therefrom, that defendant had six days to get rid of the gun he used in the Distasio robbery, Distasio's Marc Jacobs purse, and her \$700. The prosecutor also argued that defendant made a mistake when he kept Distasio's GPS device because he was caught red-handed where Dian, who appeared to be a very nice lady and a good person, testified that defendant brought that device into their home near the time of the Distasio robbery and the data on that device included the addresses of Distasio and others she recognized.

¶ 50 After reviewing in context defendant's challenges to the prosecutor's remarks during closing argument, we conclude that defendant has failed to meet his burden to establish that a clear and obvious error occurred. Therefore, we hold defendant to his forfeiture of this issue.

¶ 51 C. Erroneous Fines, Fees, and Costs

¶ 52 Finally, defendant asserts and the State concedes that (1) the trial court improperly imposed a \$20 fee for a probable cause hearing because defendant was indicted and, thus, was not subject to a probable cause hearing (see *People v. Guja*, 2016 Il App (1st) 140046, ¶ 69); and (2) defendant is entitled to apply presentence credit to offset the \$15 charge for state police operations because it was not a fee but rather a pecuniary punishment imposed on him due to his conviction of a crime (see *People v. Graves*, 235 Ill. 2d 244, 251-52 (2009)).

¶ 53 On February 26, 2019, while this appeal was pending, the Illinois Supreme Court adopted Illinois Supreme Court Rule 472, which sets forth the procedure in criminal cases for correcting sentencing errors in, as relevant here, the "imposition or calculation of fines, fees, and

assessments or costs” and “application of *per diem* credit against fines.” Ill. S. Ct. R. 472(a)(1), (2) (eff. Mar. 1, 2019). Subsequently, on May 17, 2019, Rule 472 was amended to provide that “[i]n all criminal cases pending on appeal as of March 1, 2019, or appeals filed thereafter in which a party has attempted to raise sentencing errors covered by this rule for the first time on appeal, the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule.” Ill. S. Ct. R. 472(e) (eff. May 17, 2019). “No appeal may be taken” on the ground of any of the sentencing errors enumerated in the rule unless that alleged error “has first been raised in the circuit court.” Ill. S. Ct. R. 472(c). Therefore, pursuant to Rule 472, we “remand to the circuit court to allow [defendant] to file a motion pursuant to this rule,” raising the alleged errors regarding fines and fees and *per diem* credit. Ill. S. Ct. R. 472(e).

¶ 54

III. CONCLUSION

¶ 55 Accordingly, the fines and fees issue is remanded pursuant to Rule 472(e), and the judgment of the circuit court of Cook County is affirmed in all other respects.

¶ 56 Affirmed and remanded as to fines, fees, and costs.