2016 IL App (3d) 130504-U

Order filed September 30, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
	)	Peoria County, Illinois.
Plaintiff-Appellee,	)	
	)	Appeal No. 3-13-0504
v.	)	Circuit No. 12-CF-1302
	)	
CHARLES E. LINDSAY,	)	The Honorable
	)	Kevin Lyons,
Defendant-Appellant.	)	Judge presiding.

JUSTICE CARTER delivered the judgment of the court.
Justice Schmidt concurred in the judgment.
Justice Wright concurred in part and dissented in part.

ORDER

¶ 1 *Held*: (1) The State was not required to prove defendant was in actual possession of the firearm "on or about his person" to prove defendant was guilty of unlawful possession of a weapon by a felon in this case; (2) the State proved beyond a reasonable doubt that defendant was in constructive possession of the firearm to sustain defendant's conviction for unlawful possession of a weapon by felon in this case; (3) the DNA analysis fee and fines improperly assessed against defendant by the circuit clerk are hereby vacated; and (4) the trial court did not violate the one-act, one-crime doctrine where defendant was found guilty on two counts of the same crime but was only sentenced on one count.

¶ 2 Following a jury trial, defendant, Charles E. Lindsay, was found guilty of two counts of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)). Defendant was sentenced to eight years of imprisonment on Count I, and no sentence was entered on Count II. Defendant appeals, arguing: (1) the State was required to prove that he was in actual possession of the firearm beyond a reasonable doubt; (2) the State failed to prove beyond a reasonable doubt that he was in constructive possession of the firearm found in the south bedroom under a mattress because the State could not prove he was in exclusive and immediate control of the south bedroom; (3) this court should vacate the DNA analysis fee assessed against defendant and remand to the trial court for the proper entry of the other enumerated costs; (4) this court should vacate defendant's second "conviction" for unlawful possession of a weapon by a felon, despite the fact the trial court did not impose a sentence on the second conviction. We affirm in part, vacate in part, and remand for the trial court to modify the monetary assessments against defendant in accordance with this order.

¶ 3 FACTS

¶ 4 Defendant was charged with two counts of unlawful possession of a weapon by a felon, both of which were Class 2 felonies. In count I, the State alleged that defendant committed the offense of unlawful possession of a weapon by a felon in that he knowingly possessed on or about his person or on his own land or in his own abode a firearm having previously been convicted of a felony. In count II, the State alleged that defendant committed the offense of unlawful possession of a weapon by a felon in that he knowingly had in his possession a firearm at a time when he was on parole or mandatory supervised release (MSR) as part of his sentence for a prior felony conviction. The trial court granted defendant's pretrial motion *in limine* to exclude the State from

presenting any evidence or making any remarks in opening or closing statements that defendant had flushed some cannabis down the toilet during the execution of the search warrant.

¶ 5 At trial, the evidence showed that on December 13, 2012, about 15-20 police officers executed a search warrant at the home of Willie Dillard at 1927 West Proctor in Peoria, Illinois. Some officers entered through the front door. Defendant and several other individuals were in the home when the search warrant was executed. Defendant attempted to run out of the back door, but when he got to the porch, he encountered police officer Joshua Allenbaugh. Allenbaugh had his weapon drawn and instructed defendant to stop and lay down on the ground. Defendant ran back inside and slammed the back door so hard that glass in the door shattered.

¶ 6 Police officer Justin Sinks entered the home from the front door and saw defendant run back and forth from the dining room area, near where a bathroom was located, to the kitchen, where the back door was located. When defendant ran to the back of the house, Sinks heard officers command defendant to stop. Defendant returned to the dining room area and went into the bathroom where "several other subjects" were located. Sinks handcuffed defendant.

¶ 7 As the officers were entering the front door at the south, police officer Brendon Westart heard an officer say that they had been compromised and the persons inside knew police officers were approaching. Westart heard people scattering throughout the inside of the house. Westart heard Officer Allenbaugh, who was positioned at the back of the house, yell that someone was coming out of the back door. Westart went toward the back of the house and observed a male, later identified as Antonio Johnson, on the roof of the rear porch going into the house through the window of the north bedroom on the second floor of the residence. Westart ran back to the front of the home and, by that time, Johnson was exiting the home through a window of the south bedroom onto the roof of the front porch. Westart commanded Johnson not to move, but Johnson

went back into the house through the same window, into the south bedroom. Johnson was taken into custody by an officer in the south bedroom.

¶ 8 Police officer Aaron Watkins searched the south bedroom and found a loaded automatic handgun on top of a letter between the mattress and the box spring of the bed. The handgun was loaded with a magazine. The letter was from the Department of Human Services addressed to defendant at 202 South Becker Lane. Under the bed Watkins found a pill bottle dated October 29, 2012, with defendant's name and the address of 202 South Becker Lane. Watkins also found a cellular phone on a nightstand next to the bed, which defendant later identified as his phone. Watkins recalled seeing a plate with residue, multiple baggies and cannabis seeds in the room.

¶ 9 Police offer Brian Grice collected and documented all the evidence seized under the search warrant executed at 1927 West Proctor on December 13, 2012. Other pieces of mail were located on the kitchen counter and were addressed to individuals other than defendant at the address of 1927 West Proctor. The only letter addressed to defendant that was found in the home was the letter found in the south bedroom under the mattress of the bed. The handgun, magazine, bullets, drugs, and drug paraphernalia (a plate, razor blade, and sandwich baggies) were tested for fingerprints. The pill bottle and defendant's letter were not submitted to be processed for fingerprints.

¶ 10 The parties stipulated that if Linda Yborra was called to testify she would testify that she is a forensic scientist with the Illinois State Police, she received the firearm evidence in this case for examination and found the firearm to be in firing condition.

¶ 11 Police officer Eric Ellis processed the firearm evidence (firearm, magazine, and the four cartridges) and the drug paraphernalia but was unable to develop any latent fingerprints. Ellis

testified that it was not uncommon to test a gun for fingerprints and not develop a suitable fingerprint. Ellis was not given a cellular phone or pill bottle to process for fingerprint evidence.

¶ 12 Officer Todd Leach testified that he was the lead officer of the investigation that led to the search warrant being executed. The search warrant was executed at 3:30 p.m., when officers made a forced entry into the home. Leach observed Johnson run up the stairs and observed defendant run from the south end of the house to the north of the house and out the backdoor. Defendant came right back into the house, slammed the backdoor, and went toward the living room and bathroom. There were approximately 10 people in the home. When Leach went upstairs to the south bedroom he observed Johnson entering the room through the window from the roof of the front porch. Leach and Mushinsky apprehended Johnson in the south bedroom.

¶ 13 Leach testified that he spoke with defendant on the back porch after reading defendant *Miranda* warnings. Defendant told Leach that the prior evening he had stayed over at the residence (Willie Dillard's house) and remained there for the rest of the day. Defendant told Leach that he slept in the living room on occasion. Later in the day, Leach questioned defendant again. Defendant identified the cellular phone that had been found in the south bedroom as his own. Defendant claimed that somebody had been using his cellular phone and that person must have left his phone upstairs. Defendant told Leach that he stayed at Willie's house from time to time, but he lives with his grandmother. Defendant said he did not know anything about a gun in the house or how his letter from the Department of Human Services got to be under the mattress next to the gun.

¶ 14 The parties stipulated that defendant was on parole at the time of the alleged offense in this case.[1] Defendant moved for a directed verdict, which the trial court denied. The jury found defendant guilty of unlawful possession of a weapon by a felon as charged in Count I and unlawful possession of a weapon by a felon as charged in Count II.

¶ 15 Defendant filed a motion for new trial, arguing the State did not prove him guilty beyond a reasonable doubt and the trial court erred in denying his motion for a directed verdict. The trial court indicated that the question of whether the gun found under the mattress was defendant's gun that defendant had left under the mattress was a factual issue for the jury to decide. The trial court denied defendant's motion for new trial. The trial court entered a written order, entitled "trial order", which indicated that the jury had found defendant "guilty of unlawful possession of a weapon by a felon x 2" and ordered the "verdict(s) of the jury" to be entered of record.

¶ 16 The trial court sentenced defendant to eight years of imprisonment and entered a written order entitled "Judgment – Sentence to Illinois Department of Corrections," which indicated a judgment and sentence was entered on count I but not on count II. The trial court also ordered defendant to pay an unspecified amount of costs and to submit his DNA and pay the DNA analysis fee if his DNA had not already been collected. The trial judge did not impose any monetary fines. The defendant filed a motion to reconsider the sentence, which the trial court denied. At some point after defendant was sentenced by trial court, the circuit clerk assessed costs, fines and fees against defendant, including a $250 DNA analysis fee even though defendant's DNA had previously been submitted.

[1] At the time of the alleged offenses in this case, defendant was on two years of parole from a 2011 conviction for possession with intent to deliver cocaine, a Class 1 felony, for which he served 120 days of "boot camp" (impact incarceration program) in lieu of an eight year sentence.

¶ 17 Defendant appealed.

¶ 18 ANALYSIS

¶ 19 On appeal, defendant argues: (1) the State failed to prove, as a matter of law, he possessed the handgun "on or about his person"; (2) the State failed to prove beyond a reasonable doubt that defendant possessed the handgun found in the south bedroom where the State failed to prove defendant had exclusive and immediate control of the south bedroom; (3) this court should vacate the duplicate DNA analysis fee and remand this case for the proper entry of the other enumerated costs; and (4) this court should vacate defendant's second "conviction" for UPWF, despite the fact the trial court did not impose a sentence on the second conviction.

¶ 20 I. Possession of the Handgun

¶ 21 First, defendant contends that, as a matter of law, the State failed to prove he had the handgun "on or about his person" where the handgun was recovered in someone else's home and on a different floor from defendant's location within the home. He argues that the language of section 24-1.1(a) of the Criminal Code of 2012 (Criminal Code) (720 ILCS 5/24-1.1(a) (West 2012)) requires the State to prove that he was in actual possession under the "on or about his person" language of the statute because the firearm was not found on defendant's land or abode. In response, the State argues that under section 24-1.1(a) of the Criminal Code, it is a crime for a felon to possess any firearm in any situation and that proof that a defendant was in constructive possession of a firearm is sufficient to show a violation of the statute. See 720 ILCS 5/24-1.1(a) (West 2012).

¶ 22 Defendant claims that the issue of whether he possessed the handgun "on or about his person" is one of statutory construction, for which a *de novo* standard of review is applicable. See *People v. Davis*, 199 Ill. 2d 130, 135 (2002) (whether the trial court has correctly interpreted

a statute is a question of law, which is reviewed *de novo*). Section 24-1.1(a) of the Criminal Code provides:

> "(a) It is unlawful for a person to knowingly possess on or about his person or on his land or in his own abode or fixed place of business any weapon prohibited under Section 24-1 of this Act or any firearm or any firearm ammunition if the person has been convicted of a felony under the laws of this State or any other jurisdiction." 720 ILCS 5/24-1.1(a) (West 2012).

¶ 23 The primary rule of statutory construction is to give effect to the intent of the legislature. *People v. Allen*, 382 Ill. App. 3d 594, 600 (2008). To do so, we must look to the language used in the statute and give it its plain and ordinary meaning. *Id.* A plain reading of section 24-1.1(a) indicates that for the State to sustain a conviction for unlawful possession of a weapon by a felon, the State must prove the defendant: (1) knowingly possessed a weapon prohibited by section 24-1 of the Criminal Code, a firearm, or firearm ammunition; and (2) was previously convicted of a felony. 720 ILCS 5/24–1.1(a) (West 2012); see also *People v. Gonzalez*, 151 Ill. 2d 79, 85, 87 (1992). "There is no requirement in section 24-1.1 that the offender be using or possessing any particular type of firearm or that he be doing so in any particular place or manner." *Gonzalez*, 151 Ill. 2d at 87. In enacting section 24-1.1 of the Criminal Code, the legislature determined that it is a crime for a felon to possess any firearm, in any situation, so that it is always a felony offense for a felon to possess a firearm." *Id.* When a defendant is not found in actual possession of a weapon, the State must prove defendant was in constructive possession of the weapon—that defendant had knowledge of the presence of the weapon and exercised immediate and exclusive control over the area where the firearm was found. *People v. Sam*, 2013 IL App (1st) 121431, ¶ 10; *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003).

¶ 24 The State has a legitimate purpose of public safety in keeping firearms from convicted felons, and section 24-1.1 deters felons from possessing firearms. *Allen*, 382 Ill. App. 3d at 603. Section 24-1.1 prohibits felons from possessing firearms, either actually or constructively, even if the felon is on his or her own land or in his or her own abode. See 720 ILCS 5/24-1.1(a) (West 2012). Therefore, we agree with the State that proof that defendant—a convicted felon—was in constructive possession of a firearm, even if he was not on his own land or in his own abode, is sufficient to sustain a conviction under section 24-1.1(a) of the Criminal Code.

¶ 25 II. Proof Beyond a Reasonable Doubt

¶ 26 Defendant also argues the State failed to prove beyond a reasonable doubt that he was in constructive possession of the firearm found under a mattress in the south bedroom on the second floor. The State responds it proved beyond a reasonable doubt that defendant was in constructive possession of the firearm found under the mattress.

¶ 27 When a defendant challenges the sufficiency of the evidence, the reviewing court must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). It is not the role of the reviewing court to retry the defendant, and a conviction will not be set aside unless the evidence is so unreasonable or unsatisfactory that it creates a reasonable doubt of defendant's guilt. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). The determination of the weight to be given to a witness's testimony and credibility, the resolution of inconsistencies and conflicts in the evidence, and the reasonable inferences to be drawn from testimony are the responsibility of the trier of fact. *Id.*

¶ 28 Proof of constructive possession is often circumstantial. See *McCarter*, 339 Ill. App. 3d at 879. Constructive possession is established when the prosecution proves that defendant had

knowledge of the presence of the firearm and exercised immediate and exclusive control over the area where the firearm was found. *Id.* In deciding whether constructive possession has been shown, the trier of fact may rely on reasonable inferences of knowledge and possession, absent other facts that might create reasonable doubt as to defendant's guilt. *Id.*

¶ 29 Knowledge may be shown by evidence of a defendant's acts, declarations, or conduct from which it can be inferred that he knew the contraband existed in the place where it was found. *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17. Control is established when a person has the intent and capability to maintain control and dominion over an item, even though he lacks personal present dominion over it. *Id.* Habitation on the premises where contraband is discovered is sufficient evidence of control to constitute constructive possession. *Id.*

¶ 30 In this case, there is no dispute that the defendant was not in actual possession of the handgun. Thus, the burden was on the State to establish, beyond a reasonable doubt, that defendant had constructive possession of the handgun—he had knowledge of the presence of the firearm and he exercised immediate and exclusive control over the area where it was found. Defendant's knowledge of the gun can be inferred from the fact that his mail and the firearm were found together, which suggests defendant hid the mail containing his identity and the gun.

¶ 31 The evidence also supports an inference that defendant had control over the area where the firearm was found. Defendant admitted to staying at the residence occasionally but he had been released on parole to his grandmother's home, making it reasonable for the fact finder to infer that defendant likely would not admit to regularly staying at Willie Dillard's home. It would have also been reasonable for the jury to infer that defendant would not have changed his mailing address when he was supposed to be living with his grandmother while on parole. Thus, a reasonable inference could have been made from the evidence that defendant stayed in Willie

Dillard's home more than "occasionally" and that defendant likely stayed in the upstairs, south bedroom where his mail, phone, and pill bottle were found. The evidence also showed defendant's mail was found directly next to the handgun under the mattress. Viewing all the evidence in the light most favorable to prosecution, we conclude that a rational trier of fact could have found that defendant constructively possessed the firearm found under the mattress.

¶ 32 III. Fines, Fees, and Costs

¶ 33 Defendant argues that he was improperly assessed fines by the circuit *clerk* because the trial *judge* did not order the fines. He also contends the clerk improperly assessed a duplicate $250 DNA analysis fee against him. Defendant requests that this court vacate the duplicate DNA analysis fee and all other improper fines and assessments imposed by the circuit clerk and remand this cause for the proper imposition of authorized fines by the trial judge. The State agrees that this court should remand this case for an entry of an order for the proper imposition of fines and costs.

¶ 34 Initially, we note that despite the parties' agreement that this court should remand this matter for the proper imposition for fines, we disagree that any fines can be imposed on remand where no fines had been imposed by the trial court in the first instance. After the parties filed their briefs in this case, our supreme court issued its opinion in *People v. Castleberry*, 2015 IL 116916. Prior to *Castleberry*, based on the rule that a sentence that does not conform to a statutory requirement is void, a reviewing court could increase a sentence that did not conform to a minimum statutory requirement in order to conform with the minimum statutory requirements without running afoul of Illinois Supreme Court Rule 615(b)(4) (authorizing the appellate court to reduce a punishment imposed by the trial court. See *People v. Arna*, 168 Ill. 2d 107, 113 (1995) (abrogated by *People v. Castleberry*, 2015 IL 116916). However, in *Castleberry*, our

supreme court held that the appellate court does not have the authority to increase a sentence at the request of the State pursuant to Supreme Court Rule 604(a) (eff. July 1, 2006) (providing for specific situations where the State may appeal in a criminal case), and the appellate court cannot increase a defendant's sentence under Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967) (providing the appellate court with authority to "reverse, affirm, or modify" a judgment) because Rule 615(b)(b) is limited to reduction of a punishment imposed by the trial court. *Castleberry*, 2015 IL 116916, ¶ 24.

¶ 35 *Castleberry*'s holding applies in this case because this case was pending on direct appeal when *Castleberry* was decided. See *People v. Granados*, 172 Ill. 2d 358, 365 (1996) ("As a general rule *** this court's decisions apply to all cases that are pending when the decision is announced, unless this court directs otherwise."); see also *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987) ("We therefore hold that a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final ***."). Thus, in following the holding in *Castleberry*, this court will no longer remand a cause to the trial court for the imposition of an increased sentence, even if the sentence given by the trial court was void for falling below statutory minimums. See *Castleberry*, 2015 IL 116916, ¶¶ 20-26 (holding that the appellate court was without authority to add a 15-year firearm enhancement to the defendant's sentence pursuant to Illinois Supreme Court Rule 615(b)(4) even though the sentence was illegally low without the enhancement). Accordingly, in this case, we will not remand this cause for the proper imposition of applicable fines, even though the fines that were statutorily mandated were not imposed by the trial court, because doing so would improperly increase defendant's punishment. See *People v. Jones*, 223 Ill. 2d 569, 582 (2006) (a fine is a part of the punishment for a conviction, whereas a fee or cost seeks to recoup expenses incurred

by the State). Instead, we will merely vacate as void any improperly assessed fines imposed by the circuit clerk. See *People v. Rexroad*, 2013 Ill App (4th), ¶ 52 ("The circuit clerk has no authority to impose fines"); *People v. Montag*, 2014 IL App (4th) 120993, ¶ 37 (the circuit clerk has no authority to levy fines against a criminal defendant, and any fine imposed by the clerk must be vacated).

¶ 36 In deciding which monetary assessments levied by the circuit clerk to vacate, we must determine which, if any, of the assessments were fines because only the fines assessed by the clerk must be vacated. *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 92; *People v. Jones*, 2015 IL App (3d) 130601, ¶ 9 (a circuit clerk has the authority to impose fees but not fines). Despite their label as a fee, some monetary assessments imposed pursuant to a criminal conviction are actually a fine. *Warren*, 2016 IL App (4th) 120721-B, ¶ 93. A fee is a charge that seeks to recover expenses incurred by the State or to compensate the State for an expenditure resulting from prosecuting the defendant, whereas a fine is punitive in nature and is a pecuniary punishment imposed as part of a sentence. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). We examine the language of the applicable statute or ordinance to determine whether an assessment is a fine or a fee. *Warren*, 2016 IL App (4th) 120721-B, ¶ 99. Because the issue presented is one of statutory construction, our review is *de novo*. *Id*.

¶ 37 In the record before us, the only evidence of the monetary assessments imposed against defendant is a history payment sheet identifying each fine, fee, or cost by a four-letter code and a document included in the appendix of defendant's appellate brief providing the meaning of those four-letter codes, of which defendant requests we take judicial notice. The State does not oppose this request for judicial notice. Our review of the record indicates that following assessments were fees that were properly imposed by the circuit clerk and not fines requiring vacatur: (1)

$100 CLRK (clerk's fee) (705 ILCS 105/27.1a(w) (West 2012); *Jones*, 2015 IL App (3d) 130601, ¶¶ 8-9); (2) $140 STAT (State's Attorney fee) (55 ILCS 5/4-2002 (West 2012); *Warren*, 2016 IL App (4th) 120721-B, ¶ 111); (3) $2 STAU (State's Attorney automation fee) (55 ILCS 5/4-2002(a) (West 2012); *Warren*, 2016 IL App (4th) 120721-B, ¶¶ 114-115); (4) $25 CRTP (court security fee) (55 ILCS 5/5-1103 (West 2012); *Warren*, 2016 IL App (4th) 120721-B, ¶ 106); (5) $15 AUTO (automation fee) (705 ILCS 105/27.3a (West 2012); *Warren*, 2016 IL App (4th) 120721-B, ¶ 103); (6) $15 DOCS (document storage fee) (705 ILCS 105/27.3c(a) (West 2012); *Warren*, 2016 IL App (4th) 120721-B, ¶ 101); and (7) $567 SHER (sheriff's processing fee) (725 ILCS 5/124A-5 (West 2012)).

¶ 38 Next, we address the $250 DNA analysis fee assessed against defendant. The $250 DNA analysis fee was improperly imposed because defendant previously provided a DNA sample as a result of a prior conviction. "[S]ection 5-4-3 [of the Unified Code of Corrections (730 ILCS 5/5-4-3 (West 2008))] authorizes a trial court to order the taking, analysis and indexing of a qualifying offender's DNA, and the payment of the analysis fee only where that defendant is not currently registered in the DNA database." *People v. Marshall*, 242 Ill. 2d 285, 303 (2011). Accordingly, we vacate the $250 DNA fee assessed in this case, as defendant had already submitted a DNA specimen. See *Marshall*, 242 Ill. 2d at 296-97 (holding that a one-time submission of DNA to the police database is sufficient to satisfy the purpose of the statute).

¶ 39 We now turn to the issue of improperly assessed fines imposed by the circuit clerk requiring vacatur. Defendant argues that the circuit clerk improperly imposed three separate $10 fines for the State Police Services fund under the acronyms: CADF, SAOJ, and SPFS. On the sheet assigning meaning to each of the four-letter acronyms, CADF, SAOJ, and SPFS all have

the meaning of "State Police Services Fund." Section 5-9-1.17 of the Unified Code of Corrections (Code of Corrections) provides:

> "(a) There shall be added to every penalty imposed in sentencing for a criminal offense an additional fine of $30 to be imposed upon a plea of guilty or finding of guilty resulting in a judgment of conviction.
>
> (b) Ten dollars of each such additional fine shall be remitted to the State Treasurer for deposit into the State Police Services Fund to be used to implement the expungement of juvenile records as provided in Section 5-622 of the Juvenile Court Act of 1987, $10 shall be paid to the State's Attorney's Office that prosecuted the criminal offense, and $10 shall be retained by the Circuit Clerk for administrative costs associated with the expungement of juvenile records and shall be deposited into the Circuit Court Clerk Operation and Administrative Fund." 730 ILCS 5/5-9-1.17 (West 2012).

¶ 40 Section 5-9-1.17 of the Code of Corrections specifically indicates that the $30 sum consisting of $10 each to the State Police, State's Attorney's Office, and the Circuit Clerk is an "additional fine" added to a defendant's sentence. 730 ILCS 5/5-9-1.17 (West 2012). As the imposition of a fine is a judicial act and the circuit clerk has no authority to levy fines, the $10 CADF, $10 SAOJ, and the $10 SPFS assessments against defendant are void and must be vacated. See *People v. Larue*, 2014 IL App (4th) 120595, ¶ 56 (any fines imposed by the circuit clerk are void from their inception).

¶ 41 We also find the following fines were improperly assessed by the circuit clerk without the trial court's authorization and are therefore void: (1) $50 CRTU (court fund fee) (55 ILCS 5/5-1101(c)(1) (West 2012); *Graves*, 235 Ill. 2d at 253-54); (2) $10 DRGO (drug court operation

fee) (55 ILCS 5/5-1101(d-5) (West 2012); *Graves*, 235 Ill. 2d at 253); (3) $.25 CADM (clerk operation/ administrative fund) and $4.75 DCRT (drug court fund) (55 ILCS 5/5-1101(f) (West 2012); *Graves*, 235 Ill. 2d at 253); (4) $30 CACR (children's advocacy center fee) (55 ILCS 5/5-1101(f-5) (West 2012); *People v. Wynn*, 2013 IL App (2d) 120575, ¶ 10); (5) $15 SPOA (state police operations assistance fee) (705 ILCS 105/27.3a(1.5) (West 2012); *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31); (6) $10 MEDI (medical fee) (730 ILCS 125/17 (West 2012); *Warren*, 2016 IL App (4th) 120721-B, ¶¶ 118-19), and (7) $57.50 SCHG (surcharge) (730 ILCS 5/5-9-1(c) (West 2012); *Jones*, 223 Ill. 2d at 584-87. We, therefore, vacate these fines as well.

¶ 42 We also vacate the assessment of $10 PROP—the probation operations assistance fee. See 705 ILCS 105/27.3a(1.1) (West 2012) (mandating the probation operations assistance fee be assessed against all criminal defendants "upon a judgment of guilty or grant of supervision" regardless of whether probation services were actually utilized). The probation operations assistance assessment was created to generate a fund to support probation and court services, even if defendant did not use probation services. See 705 ILCS 105/27.3a(1.1) (West 2012). As such, we conclude the probation operations assistance assessment qualifies as a fine. See *Jones*, 223 Ill. 2d at 582 (a 'fine' is a part of the punishment for a conviction, whereas a 'fee' or 'cost' seeks to recoup expenses incurred by the State in order to compensate the State for some expenditure incurred in prosecuting the defendant); *Graves*, 235 Ill. 2d at 250-51 (the most important factor in determining whether a charge is a fine or fee is whether the charge seeks to compensate the State for any costs incurred as the result of prosecuting the defendant, with other factors being whether the charge is only imposed after conviction and to whom the payment is made); *cf. People v. Rogers*, 2014 IL App 4th 121088, ¶¶ 36-39 (holding the probation operations assistance fee is compensatory and, therefore, a fee rather than a fine where defendant

received probation and the probation office prepared the presentence investigation report but the assessment is a fine if the probation office was not utilized).

¶ 43 We do not vacate the assessments of $100 WEAP, $15 SPMB, or $25 CRIS. Defendant does not argue with any specificity whether these three assessments are fines improperly imposed by the circuit clerk or properly assessed fees, nor does he argue or indicate what would be the possible statutory provisions for these assessments for us determine whether those assessments are fines or fees. Given that the basis of these assessments is unclear from the record and the four-letter codes for these assessments are not referenced on the sheet providing the meaning of the fines and fees acronyms, we presume the assessments were proper. See *People v. Carter*, 2015 IL 117709, ¶ 19 (appellant has the burden to present a sufficiently complete record such that the court of review may determine whether there was the error claimed); *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984) ("[a]ny doubts which may arise from the incompleteness of the record will be resolved against the appellant").

¶ 44 IV. One Act, One-Crime

¶ 45 As his final contention, defendant argues that his second "conviction" for unlawful possession of a weapon by felon must be vacated under the one-act, one-crime doctrine, even though the trial court did not impose a sentence on both guilty verdicts. In its brief on appeal, the State indicated, "[t]he People agree that the defendant's conviction for unlawful possession of a weapon by a felon under Count II of the indictment should be vacated."

¶ 46 Whether a conviction must be vacated under the one-act, one-crime rule is a question of law reviewed *de novo*. *People v. Dryden*, 363 Ill. App. 3d 447, 453 (2006). Under the One-Act, One-Crime doctrine, where a defendant is found guilty of multiple offenses carved from the same physical act or where the lesser charge is included in the greater offense as charged, the

defendant will be subject to conviction and sentencing only upon the greater charge. *People v. King*, 66 Ill. 2d 551 (1977). Under the one-act, one-crime rule, a sentence should be imposed on the most serious offense and convictions on the less serious offenses should be vacated. *People v. Garcia*, 179 Ill. 2d 55, 71 (1997).

¶ 47 A conviction is defined as a judgment of conviction or sentence entered upon a verdict, finding, or plea of guilty to an offense. 730 ILCS 5/5-1-5 (West 2012). Judgment means an adjudication by the court that defendant is guilty or not guilty, and if the adjudication is that defendant is guilty, it includes the sentence pronounced by the court. 730 ILCS 5/5-1-12 (West 2012). A jury verdict does not equate to a judgment of conviction. *People v. Cruz*, 196 Ill. App. 3d 1047, 1052 (1990) (in the absence of a judgment formerly entered or sentenced imposed, there is no conviction).

¶ 48 In this case, defendant was charged with unlawful possession of a weapon by a felon in both Count I and Count II, and the jury found defendant guilty on both counts. However, the trial court only sentenced defendant on Count I of the indictment and the remaining jury verdict alone on Count II does not constitute a conviction which must be vacated under the one-act, one-crime doctrine. See *Cruz*, 196 Ill. App. 3d at 1052.

¶ 49 CONCLUSION

¶ 50 The judgment of the circuit court of Peoria County is affirmed in part and vacated in part, and this cause is remanded for the circuit court to modify the monetary assessments against defendant in accordance with this order.

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

¶ 52 JUSTICE WRIGHT, concurring in part and dissenting in part.

¶ 53 I concur in the majority's decision on all issues, with the exception of the majority's decision to reduce the clerk's unofficial balance concerning court costs. Respectfully, I disagree with the majority's statement that we should "vacate as void" improperly assessed fines imposed by the circuit clerk (*supra* ¶ 35).

¶ 54 I agree the clerk cannot impose fines. However, based on this record, I respectfully conclude the clerk *did not* impose fines in the case at bar. Rather, four months after the sentencing hearing, the circuit clerk simply miscalculated court costs by including amounts judicially determined to be fines rather than costs. I emphasize that the court's written sentencing order is unaffected because the court did not adopt the clerk's calculations. Our job is to review court orders.

¶ 55 At last, reviewing courts may now begin focusing our limited judicial resources on properly preserved sentencing issues that are ripe for our review. This is the beauty of the holding in *Castleberry.* Based on the rationale embodied in *Castleberry,* I believe our reviewing courts may now stop indulging the unending requests from defendants to audit and correct the circuit clerk's work for the first time on appeal.

¶ 56 I celebrate the brilliant light *Castleberry* sheds on a more accurate definition of "void" in the context of a criminal proceeding. Our supreme court has now clarified that the "void" label should be sparingly used and has been much too broadly cast about in past decisions.

¶ 57 I agree that *Castleberry* reiterates the long-standing proposition that a reviewing court cannot correct an erroneous sentence by increasing punishment. In my opinion, this is not the significance of *Castleberry.* I submit *Castleberry* stands for the proposition that sentencing mistakes by the court and clerical mistakes by the clerk are subject to forfeiture and cannot be salvaged for review by simply labeling or categorizing mistakes as "void" endeavors.

¶ 58 In *Castleberry*, the term of incarceration was too low and did not involve over-estimated court costs as calculated by the circuit clerk. However, like *Castleberry*, defendant seeks to *enforce* the court's written order that includes erroneously low sentencing consequences.

¶ 59 As the majority notes, the fines included in the clerk's tally sheet have not been incorporated into the order signed by this particular judge. Similar to the facts in *Castleberry*, the sentence imposed by the judge in the case at bar is too low, but not void. What part of the court's order would defendant like us to reverse or modify on appeal? In essence, defendant wishes for this court to affirm the low sentence limiting the financial consequences of his sentence to costs without mandatory fines.

¶ 60 I conclude, under these circumstances, the incorrect balance due in the tally sheet for costs is both unofficial and unenforceable. Moreover, no one is attempting to enforce the clerk's balance due at this time. In essence, defendant wants us to issue an advisory opinion regarding the maximum amount to be collected as costs. Defendant would like to know whether this court will *enforce* the illegally low sentence imposed by the trial court. *Castleberry* provides a clear answer to this question and our advisory opinion on that issue is unnecessary.

¶ 61 Following the *Castleberry* decision, I respectfully suggest that all defendants must begin utilizing different tactics to remedy clerical errors that have *not* been ratified by the court. The new approach should not involve merely labeling clerical or judicial mistakes as "void" and sitting back for the reviewing court to engage in a lengthy analysis as required before erasing the clerical errors.

¶ 62 In fact, in *Castleberry*, the court provides helpful guidance suggesting a new approach to remedy purported sentencing errors. The *Castleberry* court suggests that a mandamus action in the trial court is a useful tool to bring sentencing mistakes to the trial court's attention. This

suggestion involves an efficient solution to the problem in the case at bar. The approach suggested by our supreme court allows the trial court the first opportunity to timely correct unintended mistakes. If the trial judge simply included a balance due for costs in the written sentencing order, defendant could have raised a timely challenge to that amount, if necessary.

¶ 63 In this case, as previously stated, I am confident the circuit clerk was not disobeying the court's directive to assess costs by slipping in amounts judicially recognized as punitive fines. Instead, I believe the clerk misunderstood what constitutes costs. This misunderstanding is easily corrected in the trial court without our intervention at this point.

¶ 64 In an attempt to assist trial courts, this court has provided published guidance emphasizing that there are approximately 10 monetary charges, authorized by statute, that qualify as true court costs. When the judge orders "costs" without defining that term, the clerk is limited to assessing the handful of costs listed below. See *People v. Johnson*, 2015 IL App (3d) 140364 (appendix) (bond cost (725 ILCS 5/110-7(f) (West 2014)); clerk filing cost (705 ILCS 105/27.1a(w) (West 2014)); drug crime lab analysis cost (730 ILCS 5/5-9-1.4(b) (West 2014)); sheriff costs-extradition (725 ILCS 5/124A-5 (West 2014)); sheriff costs (55 ILCS 5/4-5001 (West 2014)); court security (services) cost (55 ILCS 5/5-1103 (West 2014)); clerk automation cost (705 ILCS 105/27.3a(1) (West 2014)); clerk document storage cost (705 ILCS 105/27.3c(a) (West 2014)); State's attorney's costs (55 ILCS 5/4-2002 (West 2014)); DNA analysis cost (730 ILCS 5/5-4-3(j) (West 2014)).

¶ 65 My interpretation of the holding in *Castleberry* is stubbornly inflexible. I believe our supreme court wisely clarified that errors, such as the well-intentioned clerical errors in this case, which have not been ratified or approved by the circuit court, do not magically create a "void" component of the sentence. The court announced in *Castleberry* that a truly "void" sentence is

now limited to directives resulting from a circuit court that lacked jurisdictional authority. *Id.* ¶ 19.

¶ 66 Therefore, I respectfully dissent and await further clarification from our supreme court.