FIRST DIVISION
October 30, 2017

No. 1-14-2481

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 JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of
	)	Cook County, Criminal Division
Plaintiff-Appellee,	)	
	)	
v.	)	No. 10 CR 19469
	)	
D'VONTE ALEXANDER,	)	Honorable Noreen Valeria Love
	)	Judge Presiding
Defendant-Appellant.	)	

JUSTICE SIMON delivered the judgment of the court.
Justices Harris and Mikva concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's jury waiver was not invalid. There was sufficient evidence introduced at trial to prove defendant guilty beyond a reasonable doubt. Defendant did not rebut the presumption that the trial court properly compartmentalized the testimony against each co-defendant when finding him guilty. Defendant's convictions for aggravated unlawful restraint must be vacated under the one act, one crime rule. The fines and fees assessed against defendant must be corrected.

¶ 2 Defendant was convicted of two counts of armed robbery and two counts of aggravated unlawful restraint after Joshua Cox and Trevel Washington were robbed by three men at gunpoint. Defendant waived his right to a jury trial, was convicted, and was sentenced to 21

years in prison. He appeals his convictions arguing that they should be reversed outright or that he should receive a new trial. We affirm, but we vacate his convictions for aggravated unlawful restraint and we order the circuit court to correct the fines and fees assessed against him.

¶ 3 BACKGROUND

¶ 4 On October 9, 2010, Joshua Cox and Trevel Washington were at a gas station filling up Washington's green van with gas when they met several young women in a silver Pontiac. They agreed with the women that the women would follow them back to Washington's mother's house. After Cox and Washington talked to the young women for a short while outside of the house, the women left, saying they would be right back. The women returned a couple minutes later, and a couple minutes after that, three black men carrying guns approached Cox and Washington. At that point, the women drove away in the silver car.

¶ 5 One of the armed men came up to Cox and the other two armed men approached Washington. The man in front of Cox was 18 inches in front of him, close enough that, according to Cox, they "could shake hands." The man said, "there ain't no phone calls for you church," as the man took Cox's cell phone from his pocket. The encounter was quick: the man took Cox's phone, took his earrings, and it was over.

¶ 6 The two men that approached Washington took his jewelry, consisting of two rosaries made of gold beads with a small cross. They also took his money, his wallet, and his cell phone from his pocket. The gun was nine inches from his face during the encounter. The men told Washington to lie on the ground, and they then took his earrings. The men told him to count to a thousand and go into the house. The men then ran away.

¶ 7 Cox and Washington went into the house and had Washington's sister call the police. They then returned to Washington's van to pursue the people that robbed them. They brought

Washington's sister's cell phone which was still connected with the police. Washington drove the van in the direction that the offenders had fled. They quickly saw a silver car come out of an alley that looked similar to the silver car the girls were in just before the robbery. The car then "took off," and Washington and Cox pursued it.

¶ 8 While Washington was driving, Cox was updating the police on the situation by phone. He was speaking with Denise McCafferey, a 911 dispatcher. He told her that they had been the victims of an armed robbery and that they were pursuing the offenders and he provided her with the license plate number of the silver vehicle. Maywood Police Officer Eric Dent was dispatched to investigate. Washington and Cox chased the car "all over." They could see that there were three individuals in the car. Officer Dent, following the directions given by Cox, entered the I-290 expressway driving east towards Chicago when he saw the taillights of two vehicles dodging in and out of traffic. The officer observed that it was a green van chasing a silver car.

¶ 9 At the Cicero Avenue off-ramp from the expressway, Officer Dent caught up to the two vehicles. Cox and Washington jumped out of their car and indicated that the silver car was the one in which the offenders were located. Officer Dent told Cox and Washington to get back in their vehicle and not to continue their pursuit. Cox and Washington did not abide and continued to follow behind the police car.

¶ 10 Officer Dent tried to get the silver vehicle to pull over by using his emergency lights and shining his spotlight into the vehicle, but the car would not pull over. The silver car ran a red light and turned southbound on Cicero Avenue. Officer Dent chased the vehicle into a parking lot for the Gatto Corporation where the silver car made a turn and crashed into a large truck. Three black males exited the crashed vehicle and fled on foot. Money was flying in the air as the men ran away. While Officer Dent had left the scene of the crashed car to apprehend the fleeing

suspects, Cox and Washington went to the vehicle and retrieved money from the back seat that Washington believed to be his. The fleeing suspects did not make it far as they ended up trapped between a building and a large fence. Officer Dent ordered the men to the ground and back up arrived shortly and the men were taken into custody. The men were defendant and co-defendants Raymone Addison and Darren Braxton.

¶ 11 When the officers returned to the crashed vehicle, they found a revolver on the rear passenger seat floorboard. They found a second weapon about 50 feet from the vehicle in the direction that the suspects fled. The officers later found a third gun 30-40 feet from the vehicle. Defendant's state identification card was recovered from the back seat. Evidence was also recovered from the suspects' persons including a silver chain with a cross, a diamond watch, and multiple sets of earrings.

¶ 12 Cox and Washington went to the police station a couple hours later. They separately identified co-defendant Raynice Paige in a photo array as one of the women they met at the gas station and that came to Washington's mother's house. They separately viewed physical lineups and identified defendant as one of the men that robbed them. And in a second lineup, they identified Braxton as another of the men that robbed them. Fingerprint evidence from the recovered firearms showed separate positive identifications for co-defendants Addison and Braxton. The third gun did not contain any marks suitable for analysis.

¶ 13 Detective Luis Vargas and an assistant state's attorney met with co-defendant Raynice Paige while she was in custody. Paige admitted that she was in the group of women that met Cox and Washington at the gas station and that another of the girls, "Serena," said that they should rob Cox and Washington because she observed that the men had lots of money and lots of jewelry. So, Paige told the detectives, she called her boyfriend, defendant, and told him to come

to Maywood to rob Cox and Washington. Paige recounted that when she and the other females briefly left Washington's mother's house, they were contacting defendant, and then they went and talked to the victims for a while waiting for defendant to arrive to commit the robbery. Paige said she knew there was going to be a robbery, but did not know that guns would be involved.

¶ 14 Defendants were indicted by a grand jury on several counts. The trial court granted a motion filed by co-defendant Paige to sever her case from her co-defendants. At a subsequent court date, the trial court told the attorneys, "what I'd like you to do is talk to your clients, find out what they're interested in, bench or jury. If we have to do a double jury, we'll do a double jury, but I want to try to try all four defendants at the same time." The trial court later granted defendant's motion for a severance.

¶ 15 More than a year later, when setting a trial date, the trial court inquired "And at this time bench is being indicated by all defendants?" Messrs Smith, Cary, and White and Ms. Nolan all answered, on behalf of their respective clients, "yes." After being tendered a jury waiver in open court signed by defendant, the trial judge asked him "Mr. Alexander, is this your signature, sir?" He responded in the affirmative. The trial court continued, "all right, and you understand by signing this jury waiver that you give up the right to have a trial by a jury now and forevermore on this case?" He responded in the affirmative. The trial court asked "do you know what a jury trial is?" And he responded in the affirmative. The trial court similarly admonished his co-defendants and they all indicated that they knew their rights and were waiving their right to a trial by a jury in this case.

¶ 16 Co-defendant Addison's attorney indicated that he had some reluctance about waiving his right to a jury trial at that point—three months before the trial date. Addison's counsel stated that although she fully believed they would be proceeding in a bench trial that she just did not "know

if Mr. Addison is going to forever give up his right to a jury trial." The court indicated that it was "not going to have this matter set and then have him come in and say, well, now I change my mind." Addison's counsel restated the point that she "just [didn't] know if he wants to waive a right to a jury trial at this time, several months before the trial date is set [to begin]." The trial court set a shorter date for Addison to deliberate and decide if he wanted to proceed with a bench trial or a jury trial. Addison ultimately also chose to proceed to a bench trial. None of the other defendants ever expressed any concern about waiving their right to a jury trial and being tried by the court at any time, including in posttrial motions.

¶ 17 While this case was pending and defendant was out on bail, defendant was arrested and charged with a drug offense. Before the trial in this matter, but after he executed his jury waiver in this case, defendant waived his right to a jury in that drug offense case, was found guilty by the trial judge, and was sentenced to two years probation.

¶ 18 A week before the trial, on April 17, 2014, the trial court confirmed with all defendants that the case would be a bench trial. The trial court asked "And this is going to be a bench, is that correct?" Counsel for defendant answered in the affirmative. The court also addressed the parties' motions to sever and agreed that the court was "capable of determining what information applies to which defendant" and that it was not "going to apply anything that is not appropriate to your client in this matter." The trial court then confirmed in the presence of all the defendants that "you are all going by agreement to the next date. It will be by agreement to 4-25, and it will be for trial. It is going to be a bench. I will mark this final as to each defendant."

¶ 19 The case went to trial as four simultaneous but severed bench trials. After opening statements, the trial court briefly halted the proceedings with a concern. The trial judge noted that it only had written jury waivers for three of the defendants in the file and could not locate

the jury waiver for co-defendant Addison. Even though Addison's counsel represented that his client had indeed executed a jury waiver, the trial court exercised caution and had Addison execute another written waiver. The trial court also admonished Addison again that, by executing the waiver, he was giving up his right to a jury trial and made sure that Addison knew what a jury trial was.

¶ 20 The court also inquired of the attorneys whether they would accept testimony adopted from the other cases "for judicial expediency." Counsel reiterated that motions to sever had been filed, and the court confirmed that the matter was severed but stated, "I'm asking you for judicial expediency if you are going to be adopting testimony. The court will then apply what goes with whom." Each of the four attorneys said "yes." The presentation of evidence then began.

¶ 21 At trial, the testimony was basically consistent with the background stated above. However, neither Cox nor Washington identified defendant in open court as one of the perpetrators. Washington did identify co-defendant Addison as one of the perpetrators, but both Cox and Washington's in-court identification testimony was not very definitive. Detective Vargas, however, testified that Cox and Washington made solid identifications of defendant, Paige, and Braxton in his meeting with them just hours after the robbery. Detective Vargas produced evidence of the photo array initialed by Cox and Washington identifying Paige and confirmed that Cox and Washington identified defendant and Braxton in a physical lineup. Cox and Washington also testified that property recovered from the defendants that was depicted in police photos appeared to be their property, particularly Cox's earrings, which were returned to him by police following the incident.

¶ 22 The trial court found defendant guilty of two counts of armed robbery, two counts of unlawful restraint, and three counts of aggravated unlawful use of a weapon. The trial court

acquitted defendant of three other charged counts of aggravated unlawful use of a weapon. Defendant filed a post-trial motion arguing that the identification evidence was insufficient to prove him guilty beyond a reasonable doubt and that the trial court probably used inculpatory statements made by his co-defendants against him. The trial court denied defendant's motion and sentenced him to two concurrent terms of 21 years in prison for armed robbery and two concurrent terms of 5 years in prison for aggravated unlawful restraint, with all sentences to run concurrently. The trial court merged the aggravated unlawful use of a weapon convictions into one of the armed robbery convictions.

¶ 23 Defendant appeals arguing: (1) that his jury waiver was invalid; (2) that the State failed to prove him guilty beyond a reasonable doubt; (3) that the trial court improperly relied on an inculpatory statement made by a co-defendant; (4) that certain of his convictions must be vacated under the one act, one crime principle; and (5) that certain of his fines and fees must be corrected.

¶ 24 ANALYSIS

¶ 25 I. Jury Waiver

¶ 26 Defendant argues that his jury waiver was invalid. To support his claim, defendant contends that the trial court failed to ensure that he knowingly and voluntarily waived his constitutional right to a jury trial, so he is entitled to a reversal of his convictions and a new trial.

¶ 27 The right to a trial by jury is a fundamental right guaranteed by our federal and state constitutions. *People v. Bracey*, 213 Ill. 2d 265, 269 (2004). A defendant may, of course, waive the right to a jury trial, but any such waiver, to be valid, must be knowingly and understandingly made. 725 ILCS 5/103–6 (West 2012); *In re R.A.B.*, 197 Ill. 2d 358, 364 (2001). Whether an accused knowingly and understandingly waived his or her right to a jury trial, is based upon the

facts and circumstances of each particular case and not upon the application of any set formula. *People v. McGee*, 268 Ill. App. 3d 582, 585 (1994). We review whether defendant knowingly waived his right to a jury trial *de novo*. *People v. Reed*, 2016 IL App (1st) 140498, ¶ 7.

¶ 28 Defendant did not assert that his jury waiver was not knowing and voluntary before trial, during trial, or in postjudgment proceedings. For the first time on appeal, defendant argues that the court erred in failing to obtain a knowing and voluntary jury waiver. Defendant acknowledges that he did not raise this challenge below and that we must review the unpreserved challenge under the plain error doctrine. *People v. West*, 2017 IL App (1st) 143632, ¶ 11. In doing so, our initial step is to determine whether there was an error at all. *Id*. There was not.

¶ 29 Defendant acknowledges that he signed and delivered a written jury waiver to the court. He acknowledges that he was represented by counsel. He acknowledges that the trial court addressed the individual defendants directly and ensured that the signature on the jury waiver belonged to each defendant, that each defendant understood the waiver meant that the defendant was giving up the right to a trial by jury now and forevermore. He acknowledges that he responded "yes" when the court asked him if he knew what a jury trial was.

¶ 30 At the same court appearance, counsel for co-defendant Addison expressed some reluctance about executing a jury waiver with three months to go until trial. Defendant raised no such concerns, even while his co-defendant raised them openly in his presence.

¶ 31 Between the time that defendant waived his right to a jury trial and the time the trial began, defendant was brought to trial for a drug offense that he committed while on bail in this case. In that case, defendant waived his right to a jury trial and then actually went through a bench trial and was found guilty. Even after that experience, defendant did nothing to raise a

concern about his waiver in this case despite several subsequent opportunities where the bench versus jury trial issue came up in open court.

¶ 32 In the lead up to the trial, there were several indications that defendant's waiver was knowing and voluntary. The trial court confirmed on multiple occasions, with defendant in open court, that all of the defendants wanted a bench trial. One week before trial, after addressing each defendant individually about the fact that none of them would be presenting any witnesses in their case in chief, the trial court confirmed the trial date with the defendants and informed them that "you are all going by agreement to the next date. It will be by agreement to 4-25, and it will be for trial. It is going to be a bench. *I will mark this final as to each defendant*." Again, defendant raised no issue.

¶ 33 Even after trial began, the court believed that it did not have a written jury waiver from co-defendant Addison. The trial court prudently had Addison execute another written waiver in open court and re-admonished him about his rights and what he was giving up. Defendant made no indication that he wanted a jury trial. Not until this point on appeal has defendant ever conducted himself in a manner to indicate that he wanted a jury trial rather than a bench trial even though he informed the trial court that he knew what a jury trial was.

¶ 34 Defendant makes several attacks on the waiver in an attempt to discredit it. Defendant argues that the waiver is invalid because it was executed eight months before trial, before discovery was completed, and after only perfunctory admonishments. Defendant points out, among other things, that he had little experience with the criminal justice system and was just 21 years old at the time he waived his right to a jury trial. The arguments fail singularly and cumulatively.

¶ 35 The first specifically developed attack on the jury waiver in defendant's brief is the

argument that the waiver was invalid because discovery was not complete when the waiver was made. Defendant explains that, after the jury waiver was executed and accepted by the court, the State was permitted to perform additional fingerprint testing (or, really, inter-digital ink testing) on the weapons. Defendant claims that the change in circumstances renders his jury waiver invalid (citing *People v. Smith*, 11 Ill. App. 3d 423 (1973); *People v. Norris*, 62 Ill. App. 3d 228 (1978)). However, none of the evidence subject to the relevant discovery extension implicated defendant or was offered against him in any way. In fact, there was no fingerprint evidence offered against defendant at all. There was no change in circumstances. The extension had no bearing on his decision to waive his right to a jury trial.

¶ 36 Moreover, defendant continually committed to a jury trial after this discovery extension. He never raised any concern or attempted to revoke his waiver, instead remaining silent while the trial court confirmed time and again that all parties had chosen a bench trial. The *Smith* and *Norris* cases relied upon by defendant are both inapposite and do nothing to further defendant's argument. In both of those cases the defendant tried to withdraw a jury waiver. Also in both of those cases there was a significant change of circumstances between the waiver being made and the beginning of the trial. At the time defendant made his knowing and voluntary waiver in this case, he had access to all of the evidence that would end up being used against him, including knowledge of the evidence the State did not have against him.

¶ 37 Tying in with the discovery extension argument, defendant points out that an inculpatory statement made by co-defendant Paige was admitted during their simultaneous trial, exposing the trial court to it. Defendant maintains, that with the discovery that there was no fingerprint evidence that would have tied him to the weapons, weighed alongside the fact that a jury would not have heard Paige's incriminating statement if he had a separate jury trial, his prior waiver

cannot be considered valid. But nothing changed. There was no fingerprint evidence against him when he chose to waive his right to a trial by jury. There was no fingerprint evidence against him when he went to trial. His transparent attempt to capitalize on a non-event is insufficient to show that the waiver was not knowing and voluntary.

¶ 38 The second specifically developed attack on the jury waiver in defendant's brief is an attack on the admonishments themselves as insufficient. Defendant characterizes the admonishments as "perfunctory." The trial court admonished defendant regarding his signed waiver on August 26, 2013.

> The Court (to defendant): Is this your signature, sir?
>
> Defendant: Yes.
>
> The Court: Alright. And you understand by signing this jury waiver, that you give up the right to have a trial by jury now and forevermore in this case?
>
> Defendant: Yes.
>
> The Court: Do you know what a jury trial is?
>
> Defendant: Yes.

Defendant claims error on the basis that all the trial court did was inquire "whether he knew what a jury trial was and that he was giving up his right to such a trial." Defendant complains that "the court did not even ask [him] if he actually *wanted* to give up his right to a jury trial." (Emphasis in original).

¶ 39 Defendant's argument is unavailing. As defendant acknowledges, there is no special set of words or specific admonition that must be used for a jury waiver to be valid. *People v. Bannister*, 232 Ill. 2d 52, 66 (2008). The fact that defendant "wanted" to give up his right to a jury was obviously implied from the circumstances where he signed a written waiver and

presented it to the court for the purpose of waiving his right. Defendant presents no evidence or even a convincing theory to show that he did not actually want to waive his right to a jury trial. All of the evidence and indications are to the contrary. Defendant was represented by counsel and continually acted consistent with wanting to waive his right to a jury trial. His opening brief on appeal is the first ever expression of anything other than defendant's desire to be tried by the court. He does not argue that his counsel was ineffective.

¶ 40 Defendant relies on several decisions of this court and the Illinois Supreme Court in an attempt to show that the trial court failed to adequately explain the nature of the rights defendant was giving up. Defendant claims that the trial court "did not explain what either a bench or jury trial would entail" nor did it explain "the constitutional nature of the right, nor who sits on a jury, nor how a jury is selected, nor the different roles of a jury and a judge during a jury trial, nor that a jury must unanimously agree that the State proved he committed the charged offense beyond a reasonable doubt." However, what defendant ignores is that the court asked him directly, in the presence of counsel, if he knew what a jury trial was, and defendant said "yes." See *People v. Maxey*, 2016 IL App (1st) 130698, ¶¶ 122-124.

¶ 41 On a cumulative level, defendant has failed to establish that the jury waiver was invalid as he failed to make a showing that it was not knowing or not voluntary. He points out that, at the time he made the waiver, he was only 21 years old and had no prior convictions. However, defendant was arrested while out on bail in this case for a drug offense. He waived his right to a jury trial in that case, just months before this trial began, and he was tried by the court and found guilty. He knew the effect of waiving a jury trial and having a bench trial. Defendant also argues that the fact that he was represented by counsel should not lead to a presumption that the waiver was made knowingly. A jury waiver is generally valid where defense counsel waives that right in

open court and the defendant does not object to the waiver. *West*, 2017 IL App (1st) 143632, ¶ 10. The defendant bears the burden of establishing that his jury waiver was invalid. *Id*. It is not as if this case requires a presumption to be applied against defendant; defendant has done nothing to show that the waiver was invalid.

¶ 42 II. Sufficiency of the Evidence

¶ 43 Defendant argues that the State did not prove beyond a reasonable doubt that he was guilty of the charged offenses because the only evidence against him was the victims' inconsistent and weak identifications and his presence in a vehicle that the victims assumed contained the offenders. Defendant points out that the victims admittedly lost sight of the offenders on multiple occasions and that there was no physical evidence that tied defendant to the offense.

¶ 44 The State must prove each element of an offense beyond a reasonable doubt. *People v. Sams*, 2013 IL App (1st) 121431, ¶ 9. The standard of review on a challenge of the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Ross,* 229 Ill. 2d 255, 272 (2008). It is not the reviewing court's function to retry the defendant. *People v. Betance-Lopez*, 2015 IL App (2d) 130521, ¶ 40. The trier of fact assesses the credibility of the witnesses, determines the appropriate weight of the testimony, and resolves conflicts and inconsistencies in the evidence. *People v. Johnson*, 2015 IL App (1st) 123249, ¶ 21.

¶ 45 A positive identification of the accused even by a single witness is sufficient to sustain a conviction, provided that the witness had an adequate opportunity to view the accused under conditions permitting a positive identification. *People v. Slim,* 127 Ill. 2d 302, 307 (1989). Of

course, identification evidence is stronger when multiple eyewitnesses identify the defendant as the perpetrator. *People v. Standley*, 364 Ill. App. 3d 1008, 1014-15 (2006). In evaluating the reliability of an identification, we look to the following five factors: (1) the witness's opportunity to view the offender; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the criminal; (4) the witness's degree of certainty; and (5) the length of time between the crime and the confrontation. *Slim*, 127 Ill. 2d at 307-08. A trier of fact's assessment of the witnesses' identification testimony, like its resolution of all factual questions, will be upheld so long as, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have come to the same conclusion the trier of fact did beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985).

¶ 46 Cox and Washington had a significant opportunity to view the perpetrators. The robbery took place in front of Washington's mother's house where there was a light. The interaction between the victims and the perpetrators took place at a very close range. Cox testified that he was face to face with the man who robbed him, about 18 inches away—close enough that he could have shaken the man's hand. Washington stated that he was "almost face to face" with the men that robbed him. Although the encounter had a relatively short duration, there was nothing adduced at trial that could be construed to show that the victims had anything other than ample time to reliably view and remember the perpetrators' faces. Defendant's contention that the victims did not have an opportunity to view the offenders because of "weapon focus"—that they were distracted by the guns—has no basis in the record.

¶ 47 What we are presented with here is a classic question that is to be answered by the trier of fact. Just hours after the robbery, both victims were at the police station and separately identified defendant in a lineup. Defendant did not challenge the admissibility of the lineup identification

evidence in a motion to suppress, at trial, or in a posttrial motion. Defendant points to no convincing evidence to suggest the identifications made from the lineups were unreliable in any way. Instead, defendant challenges those identifications on other grounds, but none that convincingly show any unreliability in the identifications.

¶ 48 One of the ways defendant argues that the identification evidence was insufficient to prove him guilty beyond a reasonable doubt is that the victims did not identify him as a perpetrator again at trial. But a successive identification at trial is not required. *People v. Herrett*, 137 Ill. 2d 195, 204 (1990). Defendant also argues that the lineup identifications were unreliable because the witnesses "had a limited opportunity to see the offenders and were under extreme stress when they did." But defendant offers no evidence to support those self-serving contentions. Defendant argues that the lineup identifications are also invalid because the victims saw defendant as he was placed into custody. But the evidence showed that the victims identified defendant to the police *as someone that robbed them*.

¶ 49 Moreover, in addition to the evidence demonstrating the reliability of the identification, there was other circumstantial evidence to support a positive identification so as to establish that a rational trier of fact could have come to the same conclusion that the trial court did here. Defendant was found by Officer Dent following a car chase, following flight. He was in a car with his two co-defendants, Addison and Braxton. After the car crashed and a brief foot chase ensued, all three defendants were detained. Three guns were recovered from the scene. While defendant is correct to point out that none of the physical evidence from the weapons forensically tied him to them, he neglects the circumstantial implication of his involvement derived from the physical evidence tying his two co-defendants to the firearms. The victims both maintained right from the beginning that there were three perpetrators, and three suspects were

detained. Defendant's state identification card was recovered from the back seat of the vehicle. The victims' property was recovered from the defendants on the scene and later identified by the victims as their property that had been taken in the robbery.

¶ 50 In short, there was more than just defendant's presence at the crash scene to prove that he took part in the robbery, contrary to his arguments. None of the case law cited by defendant counsels or demands a different conclusion. In consideration of the satisfactory opportunity the victims had to observe the perpetrators, the unqualified and decisive lineup identifications made in close temporal proximity to the crime, and the evidence corroborating the identifications, all when viewed in a light most favorable to the prosecution, we conclude that a rational trier of fact could find as the trial court did.

¶ 51 III. Inculpatory Statements Made by Co-Defendants

¶ 52 Defendant was tried at the same time as his co-defendants in severed bench trials. All parties agreed to the arrangement before trial. Now, defendant argues that he was denied his right to a fair trial because an inculpatory statement made by his co-defendant Paige was offered against her, so "it is thus reasonable to conclude that the trial court erroneously relied on Paige's incriminating statement when finding [defendant] guilty."

¶ 53 Defendant relies on *Bruton v. United States*, 391 U.S. 123, 135–36 (1968) and its progeny for the principle that, during a joint trial, the prosecution cannot use an incriminating statement made by a non-testifying co-defendant against the defendant.[1] *Bruton*, however, was a jury trial. See *Bruton*, 391 U.S. at 136. This case was a bench trial, and a severed one at that. In a bench trial, it is "presumed the judge, as trier of fact, has refused to consider the damaging confession in determining defendant's guilt." *People v. Pettis*, 104 Ill. App. 3d 275, 278 (1982);

[1] In his posttrial motion, defendant also argued that the court improperly considered co-defendant Braxton's statement inculpating defendant to find defendant guilty. However, defendant does not re-raise that issue on appeal.

see also *People v. Schmitt*, 131 Ill. 2d 128, 137(1989) (when a trial court is confronted with an incriminating statement by one codefendant in a separate but simultaneous bench trial, the court is presumed "capable of compartmentalizing its consideration of evidence.")

¶ 54 Defendant acknowledges this presumption, but claims that he has rebutted it because, like in *Pettis*, "[t]o find defendant guilty, the trial court had to rely on the co-defendant's statement which was not admissible to prove defendant's guilt." *Id.* In conjunction with that argument, defendant returns to his position that the lineup identifications were unreliable and that there was otherwise insufficient evidence to prove defendant guilty beyond a reasonable doubt—arguments we have already rejected. Defendant characterizes co-defendant Paige's statement as damning, but regardless, the trial court did not have to rely on the statement to find defendant guilty and there is no indication that it did in fact rely on it.

¶ 55 The statement was specifically admitted during the State's part of the case against Paige. The State did not refer to the statement in any part of its general argument, nor did the court mention it when finding defendant guilty. Defendant raised this argument in his posttrial motion and the trial court rejected the assertion that it had relied on the statement when finding defendant guilty. Just before trial, the court reiterated that it was "capable of determining what information applies to which defendant" and that it was "obviously not going to apply anything that is not appropriate to your client in this matter." There is absolutely no indication in the record that the trial court relied on Paige's statement to find defendant guilty. Defendant's rank conjecture and wholly unsupported suggestion that it is "reasonable to conclude" that the trial court improperly applied the statement to defendant is insufficient to rebut the precedentially-operative presumption that the trial court did just the opposite.

¶ 56 IV. One Act, One Crime Rule

¶ 57 The State concedes that defendant was improperly convicted of multiple crimes arising from singular physical acts. Defendant's convictions on counts 3 and 4 for aggravated unlawful restraint of Cox and Washington are for the same conduct giving rise to his convictions on counts 1 and 2 for armed robbery of Cox and Washington. In accordance with the State's concession, and under the proper application of the rule, defendant's convictions for aggravated unlawful restraint must be vacated.

¶ 58 V. Fines and Fees

¶ 59 The trial court assessed $457 in fines and fees against defendant. The State agrees that certain of the fines and fees should be vacated or should be offset by presentence credit.

¶ 60 Defendant challenges the $5 electronic citation fee assessed against him. That fee does not apply to felony cases and the State agrees it should be vacated.

¶ 61 Defendant argues that he should be able to use his $5 per diem presentence credit to offset a number of other "fines." The State agrees that the $15 State Police Operations Fee is a fine and that the $50 Court Systems fee is a fine thereby entitling defendant to use his presentence credit to offset the assessment.

¶ 62 The State, however, disagrees with defendant and argues that the $15 Automation Fee, the $15 Document Storage Fee, the $25 Court Services (Sheriff) Fee, and the $2 State's Attorney Records Automation Fee are properly characterized as "fees" not subject to setoff by presentence credit. Both parties cite authority to support their respective arguments about each assessment and whether it should be considered a "fee" or a "fine." The State supplied specific authority to support its positions, and we find its positions on these fees to be persuasive and proper for this case.

¶ 63 CONCLUSION

¶ 64 Accordingly, we: (1) affirm defendant's convictions for armed robbery (counts 1 and 2); (2) vacate his convictions for aggravated unlawful restraint (counts 3 and 4) and direct the circuit court to correct the mittimus reflecting that those convictions are vacated; and (3) order that the fees and fines assessed against defendant be reduced from $457 to $387 in accordance with part V of this order.

¶ 65 Affirmed as modified.