2017 IL App (1st) 150900-U

No. 1-15-0900

Order filed December 1, 2017

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 6183
	)	
WILLIAM SOBCZYK,	)	Honorable
	)	James M. Obbish,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for aggravated battery under count 1 is affirmed over his contention that the State was required to prove beyond a reasonable doubt that he was aware that the victim was 60 years of age or older. Defendant's conviction for aggravated battery under count 4 is vacated. Fines, fees and costs order modified.

¶ 2 Following a bench trial, defendant William Sobczyk was found guilty of seven counts of aggravated battery (720 ILCS 5/12.305(a)(4) (West 2014)) of Arnold Anderson. After merging its findings of guilty into count 1, the trial court sentenced defendant to five years' imprisonment

on that count. On appeal, defendant contends that the State failed to prove his guilt beyond a reasonable doubt on four of the aggravated battery counts (counts 1 – 4) because, under each of those counts, the State was required, but failed, to prove that he knew Anderson was 60 years of age or older at the time of the offense. Defendant also contends that the order assessing fines, fees and costs against him should be modified. We affirm defendant's conviction for aggravated battery under count 1, the only count on which he was sentenced. We vacate the finding of guilty under count 4 and modify the order assessing fines, fees and costs.

¶ 3 Defendant was charged by information with seven counts of aggravated battery of Anderson. Counts 1 through 3 alleged that defendant, in committing a battery, knowingly caused great bodily harm (count 1), permanent disfigurement (count 2), and permanent disability (count 3) to Anderson, who was 60 years of age or older. 720 ILCS 5/12-3.05 (a)(4) (West 2014). Count 4 alleged that defendant, in committing a battery, knowingly caused bodily harm to Anderson and knew that Anderson was 60 year of age or older. 720 ILCS 5/12-3.05(d)(1) (West 2014). Counts 5 through 7 alleged that defendant, in committing a battery, knowingly caused great bodily harm (count 5), permanent disfigurement (count 6), and permanent disability (count 7) to Anderson. 720 ILCS 5/12-3.05(a)(1) (West 2014). The State proceeded to trial on all counts.

¶ 4 At trial, Anderson testified that he was born on May 3, 1950, and that, on January 31, 2014, he was 63 years of age. Prior to January 2014, Anderson had known defendant for a few years from the neighborhood and considered him to be an acquaintance. On January 31, 2014, Anderson was at the Two Way Bar and Grill located on the North side of Chicago. Anderson arrived at the bar about 4:00 p.m. and was joined by his girlfriend Cheryl Denny. The couple had some beer and a "few shots." Anderson noticed defendant at the bar later in the evening and

approached defendant to discuss a job. About midnight, defendant came over to where Anderson was seated and began discussing money. Anderson asked defendant if he could borrow a few dollars. Defendant gave Anderson a hundred dollar bill which Anderson placed in his pocket. Defendant then suggested a game where he placed a hundred dollar bill on his forehead and told Anderson that, if he could grab the bill, Anderson could keep the money. Anderson, believing that defendant was joking, grabbed the money from defendant's forehead and placed it in his pocket. Defendant hugged Anderson and asked him to come outside so that defendant could tell him something. Once outside, defendant told Anderson that he was going to "kick his a**." Defendant began punching Anderson in the face. Anderson fell down and tried to cover his head while defendant began "stomping" on Anderson. Anderson testified that he did not punch defendant.

¶ 5 An ambulance arrived at the scene and removed Anderson to the hospital where he spent three days in intensive care. As a result of the incident, Anderson suffered a broken nose and jaw, and his eye socket was "caved in." All three injuries required surgery. Anderson also suffered a concussion and required 20 stitches to close his wounds. He spent a total of five days in the hospital. Anderson testified that, as a result of his injuries, he could barely see out of his left eye and the sun blinds him. He also suffers from dizzy spells and has problems with his memory. Anderson identified several photos taken of his injuries while he was at the hospital in intensive care.

¶ 6 On cross-examination, Anderson acknowledged that, during the course of the evening in question, he drank about four or five glasses of beer and had several shots of alcohol.

¶ 7 Cheryl Denny, Anderson's girlfriend, testified that she knew defendant through Anderson. On the date in question, Denny met Anderson at the Two Way Bar and Grill at approximately 8:00 p.m. About midnight, she noticed that defendant was at the bar. As Denny and Anderson were drinking, defendant came over to where they were seated. Defendant started talking to Anderson about a job and how he was unhappy with the amount Anderson was going to pay him for the job. Anderson asked defendant how much he wanted. Defendant replied that he wanted fifty dollars to do the job. Anderson agreed to the new price. Defendant then began "flashing" money. Anderson asked defendant if he could borrow a hundred dollars. Defendant gave Anderson a hundred dollar bill. Defendant took out another hundred dollar bill, licked it and placed it on his forehead. Defendant told Anderson that if he could get it off defendant's forehead he could keep it. Anderson grabbed the bill from defendant's head. Anderson and defendant began laughing and joking and giving each other "high fives." Defendant then asked Anderson to step outside and they both left the bar.

¶ 8 About five or six minutes later, defendant came back into the bar alone holding money in his hand. Denny noticed that defendant's hand was bloody. Defendant told Denny to "go outside and look at your man now." Denny went outside and noticed that Anderson was lying on the ground. Denny and another person from the bar assisted Anderson to his feet. Denny stated that, due to the extent of Anderson's injuries, she did not recognize him. Denny could not see Anderson's eyes and there was blood everywhere. She thought he was dying. Another person from the bar handed Anderson towels for the blood. Denny waited with Anderson as the ambulance and police arrived.

¶ 9 On cross-examination, Denny acknowledged that she shared about two pitchers of beer and about three to four shots with Anderson. She admitted that she did not see what happened when Anderson and defendant went outside of the bar.

¶ 10 Asbel Santiago testified that, on the date in question, she was standing at a bus stop with her boyfriend Alex Velez. They were in the bus shelter which was located right in front of the Two Way Bar and Grill. Santiago heard a bang against the glass of the bus shelter. She turned and observed defendant punching Anderson several times in the face. Anderson fell to the ground and tried to roll over. He also attempted to cover his face with his arms, but was unsuccessful. Defendant punched Anderson a few more times then kicked him in the ribs. Defendant stomped Anderson twice in the face with "steel toe work boots." Santiago stated that Anderson was unable to defend himself. After defendant stopped hitting Anderson, he bent over and grabbed something from Anderson's pocket. Santiago testified that Anderson appeared to be unconscious as he lay on the ground.

¶ 11 Santiago observed two men from the bar come out and help Anderson to his feet. Defendant walked up to Anderson and pointed his finger in Anderson's face and said "next time it will be to the death." Santiago noticed that Anderson was bleeding, unconscious and unrecognizable. The ambulance arrived and Santiago saw Denny arguing with defendant.

¶ 12 On cross-examination, Santiago testified that she used to frequent the Two Way Bar and Grill, but had not been there for approximately three years. Santiago remembered defendant from the bar and that people used to call him "Billy." The police contacted Santiago about the incident on March 27, 2014. Santiago acknowledged that she never saw defendant and Anderson exit the bar and did not see defendant throw the first punch.

¶ 13 The State introduced into evidence two videos that were taken from both inside and outside of the bar depicting the events of that evening. The State also introduced photos of Anderson's injuries. The State then rested its case in chief.

¶ 14 Defendant testified that he resides on West Diversey and has known Anderson for over twenty years. Defendant considers Anderson to be his friend. Defendant and Anderson drank together hundreds of times and never fought before. On the date in question, defendant was at his father's restaurant and had two shots of tequila. Later in the evening, defendant's friend Gregory Borg drove defendant to the Two Way Bar and Grill. Defendant arrived at the bar about 11:30 p.m. and started talking to Anderson almost immediately upon entering the bar. After about ten minutes, the subject of money came up. Anderson asked defendant for twenty dollars, but defendant told Anderson that he only carried hundred dollar bills. Anderson then asked for a hundred dollars and told defendant that he would pay him back. Defendant gave Anderson a hundred dollar bill. Later, defendant took out his money to pay his bar bill. Defendant had a hundred dollar bill in his hand and was waving the bill trying to get the bartender's attention. Anderson grabbed the money from defendant's hand and said "f*** you bitch I'm taking all your money."

¶ 15 Defendant left the bar to get away from Anderson. As he was walking out, he felt something hit him on the back of the head. He turned around and saw Anderson throwing punches at him. Defendant hit Anderson a few times and the two fell to the ground with defendant on top of Anderson. The two wrestled on the ground for a few minutes. Afterwards, defendant felt someone tap him on the shoulder and tell him to get off Anderson. Defendant noticed that his hands were scraped and the side of his face was swollen.

¶ 16 After the fight, defendant sought medical treatment at the Veteran's Administration hospital on Damen. Defendant did not speak to the police until three to four weeks later. Defendant cooperated with the police and was not arrested until about two months after the incident. Defendant stated that he only hit Anderson because Anderson hit him first. Defendant testified he did not know Anderson was over 60 years old and that he thought they were the same age.

¶ 17 On cross-examination, defendant testified that he thought Anderson was highly intoxicated and was staggering. Defendant could not recall speaking to Denny after the altercation, but he remembered saying something to Denny. Defendant denied that he went through Anderson's pockets and did not recall taking anything from Anderson. Defendant did not wait at the bar for the police to arrive.

¶ 18 The parties stipulated that, if called, Doctor Jaime Sodikoff would testify that she was working in the emergency room of the Veteran's Administration hospital in the early morning hours of February 1, 2014. Dr. Sodikoff treated defendant for lacerations to his hand and he required a few stitches to his fingers. Defendant also had swelling to his left cheek and some tenderness to that area. Defendant left the hospital at about 6:00 a.m. before Dr. Sodikoff could complete her examination.

¶ 19 The parties also stipulated that, if called, Gregory Borg would testify that he and defendant were friends and they worked together. On January 31, 2014, just before 12:00 a.m., Borg stepped outside of the bar to use the phone. Borg observed defendant and Anderson leaving the bar with defendant first and Anderson behind him. Borg saw Anderson shove defendant from

behind, and then the two began hitting each other. Borg did not see defendant stomp or kick Anderson while he was on the ground. Borg and defendant left the bar before the police arrived.

¶ 20 After hearing closing arguments, the court found defendant guilty of aggravated battery, based on great bodily harm, as charged in count 1. The court merged all the other counts and entered sentence only on count 1. In announcing its decision, the court characterized the incident as a "beat down" and stated that the video from inside the bar corroborated both Anderson and Denny's testimony that defendant was playing a game with the hundred dollar bill. The video also showed defendant coming back into the bar after the beating and taunting Denny, thus further corroborating her testimony. The court found portions of defendant's testimony to be "garbage" and "baloney" and that the oath meant nothing to him. The court noted that defendant "beat the living daylights" out of Anderson as evidenced by the photographs which depicted the victim with "very, very serious injuries." Defendant's motion for new trial was denied, and he was sentenced to five years' imprisonment, and assessed fines, fees and costs. Defendant's motion to reconsider sentence was also denied.

¶ 21 On appeal defendant first contends that this court should reverse the findings of guilt on counts 1 through 4 because, per the aggravated battery statute underlying each of those counts, the State was required, but failed, to prove beyond a reasonable doubt that he knew that Anderson was over 60 years old at the time of the offense. Defendant argues that, because he was sentenced on count 1, a Class 2 felony, the case should be remanded for resentencing on counts five through seven, all Class 3 felonies, which did not require the State to prove beyond a reasonable doubt that he knew Anderson was 60 years old.

¶ 22 Counts 1 through 4 were all brought under section 12-3.05 of the Criminal Code of 2012 (Code) (720 ILCS 5/12-3.05 (West 2014)) (aggravated battery statute), which establishes the various forms of the offense of aggravated battery. Counts 1 through 3 were brought under subsection (a)(4) of the aggravated battery statute, titled "Offense based on injury." That subsection provides:

> (a) Offense based on injury. A person commits aggravated battery when, in committing a battery, other than by discharge of a firearm, he or she knowingly does any of the following:
>
> ***
>
> (4) Causes great bodily harm or permanent disability or disfigurement to an individual 60 years of age or older." 720 ILCS 5/12-3.05(a)(4) (West 2014)

Pursuant to that subsection, counts 1 through 3 charged defendant with knowingly causing great bodily harm (count 1), permanent disfigurement (count 2), and permanent disability (count 3) to Anderson, an individual 60 years of age or older. 720 ILCS 5/12-3.05 (a)(4) (West 2014).

¶ 23 Count 4 was brought under subsection (d)(1) of the aggravated battery statute, titled "Offense based on status of victim." That subsection provides:

> (d) Offense based on status of the victim. A person commits aggravated battery when, in committing a battery, other than by discharge of a firearm, he or she knows the individual battered to be any of the following:
>
> (1) A person 60 years of age or older." 720 ILCS 5/12-3.05(d)(1) (West

2014).

Pursuant to that subsection, count 4 charged defendant with knowingly causing bodily harm to Anderson and that he knew that Anderson was 60 year of age or older. 720 ILCS 5/12-3.05(d)(1) (West 2014).

¶ 24 In this court, defendant does not dispute that he caused great bodily harm to Anderson. Rather, he argues that under both subsection (a)(4) and (d)(1) of the aggravated battery statute the State was required, but failed, to prove beyond a reasonable doubt that he knew that Anderson was 60 years old or older at the time of the offense. The State responds that, with respect to counts 1 through 3, subsection (a)(4) does not include the defendant's knowledge of the victim's age as an element of the offense. The State agrees that, with respect to count 4, subsection (d)(1) does require it to prove that defendant knew of the victim's age.

¶ 25 An issue involving statutory interpretation is reviewed *de novo*. *People v. Tolbert*, 2016 IL 117846, ¶ 12. When construing a statute, the fundamental objective is to ascertain and give effect to the intent of the legislature. *People v. Johnson*, 2017 IL 120310, ¶ 15. The most reliable indicator of that intent is the language of the statute, given its plain and ordinary meaning. *Id.* In determining the plain meaning of the statutory terms, we consider the statute in its entirety, keeping in mind the subject it addresses and the apparent intent of the legislature in enacting it. *People v. Douglas*, 381 Ill. App. 3d 1067, 1070 (2008) (citing *People v. Cordell*, 223 Ill. 2d 380, 389 (2006)).

¶ 26 Here, defendant claims that subsections (a)(4) and (d)(1) of the aggravated battery statute must be construed together and invites this court to follow the doctrine of *in pari materia* to bring, what he believes as the otherwise ambiguous aggravated battery statute subsections, to a

harmonious whole. See *People v. McCurry*, 2011 IL. App. (1st) 093411 ¶ 14 ("if a statute contains ambiguous language a court may utilize tools of interpretation such as the doctrine of *in pari materia* to ascertain the meaning of the provision" (citing *People v. Taylor*, 221 Ill. 2d 157,163 (2006)). We decline defendant's invitation to do so since the language of the statute is not ambiguous.

¶ 27 Our review of the aggravated battery statute as a whole makes it clear that subsection (a)(4) does not require proof of defendant's knowledge of the victim's age. In Section (a), the legislature placed the word "knowingly" before listing several different forms of injury that elevate a battery to an aggravated battery. For example, subsection (a)(3) provides that a defendant commits aggravated battery when he or she: "causes great bodily harm or permanent disability or disfigurement to an individual whom the person knows to be a peace officer, fireman or other individual involved in law enforcement or community safety." 720 ILCS 5/12-3.05 (a)(3) (West 2014). The insertion of the knowledge requirement in subsection (a)(3), but not in subsection (a)(4), makes it apparent that the legislature did not intend to require knowledge of the victim's status for a conviction under subsection (a) generally and did not intend to require knowledge of a victim's age under subsection (a)(4). See *People v. Edwards*, 2012 IL 111711 ¶ 27 ([w]here language is included in one section of a statute but omitted in another section of the same statute, we generally presume the legislature acted intentionally and purposely in the inclusion or exclusion).

¶ 28 The conclusion that subsection (a)(4) of the aggravated battery statute does not require knowledge of the victim's age is further supported by subsection (d)(1) of the statute. Subsection (d)(1), as conceded by the State, specifically requires proof of defendant's knowledge of the

victim's age. Subsection (d)(1) provides that a person commits aggravated battery "based on the status of the victim" and requires that the person "knows the individual battered to be * * * [a] person 60 years of age or older." 720 ILCS 5/12-3.05(d)(1) (West 2014)). The contrast between subsection (a) and (d) shows that the legislature did not intend to require knowledge of the victim's age as an element of aggravated battery under subsection (a)(4).

¶ 29 Other decisions of this court also support this interpretation of the aggravated battery statute. In *People v. Jasoni*, 2012 IL App (2d) 110217, ¶ 16, this court noted that, under subsection (d)(1), as it read prior to 2006 when it was amended to include the element of the defendant's knowledge of the victim's age, the word "knowingly" modified "cause[d] bodily harm." The amended version of the statute featured the term "knows" directly before the phrase "the individual battered to be a person 60 years of age or older." *Jasoni*, 2012 IL App (2d), ¶ 16. In *People v. Harris*, this court, in interpreting the aggravated vehicular hijacking statute, rejected the defendant's contention that the State was required to prove his knowledge of the victim's age or physical handicap. *People v. Harris*, 2017 IL App (1st) 140777, ¶¶ 27, 44. In doing so, this court noted that the phrasing of the statute in question was comparable to the prior form of the aggravated battery statute discussed in *Jasoni* and concluded that "upon commission of the ordinary form of the offense *** the presence of the additional circumstances *** proves the aggravated form of the offense, regardless of the defendant's knowledge of aggravating circumstances." *Harris*, 2017 IL App (1st) 140777, ¶ 47. As such, the State was not required to prove that defendant knew Anderson was 60 year of age or older at the time of the offense.

¶ 30 Because defendant does not dispute that he knowingly caused great bodily harm to Anderson, we affirm his conviction with respect to count 1, the only count on which he was sentenced.

¶ 31 That said, we note that the State acknowledges that it was required to prove defendant's knowledge of the victim's age as an element under the offense as charged in count 4, which was brought pursuant to subsection (d)(1) of the aggravated battery statute. See *Jasoni*, 2012 IL App (2d) 110217, ¶ 18. Defendant challenges the court's finding of guilt under this count. However, the finding of guilt on count 4, like the findings of guilt for counts 2, 3, 5, 6 and 7, was merged into count 1 and no sentence was imposed on that count.

¶ 32 It is well-established that, generally, when a sentence is not imposed on a finding of guilt, the judgment of guilty cannot be appealed because it is not a final judgment. *People v. Dixon*, 91 Ill. 2d 346, 352 (1982); see also *People v. Flores*, 128 Ill. 2d 66, 95 (1989); *In re T.G.*, 285 Ill. App. 3d 838, 845 (1996). However, existing precedent on whether a reviewing court may address a defendant's challenge to merged, unsentenced convictions varies significantly. In some cases, Illinois courts have declined to address merged, unsentenced guilty findings, citing the lack of a final, appealable order. See *e.g.*, *People v. Flores*, 128 Ill. 2d 66, 95 (1989); *People v. Sandefur*, 378 Ill. App. 3d 133, 142 (2007); *People v. Gwinn*, 366 Ill. App. 3d 501, 521 (2006). In other cases, the Illinois Supreme Court has indicated that the absence of a sentence is not necessarily a jurisdictional defect that "preclude[s] action" by a reviewing court. See *Dixon* 91 Ill. 2d at 352 (citing *People v. Lilly*, 56 Ill. 2d 492 (1974) and *People v. Scott*, 69 Ill. 2d 85 (1977)).

¶ 33 Illinois courts have carved out an exception to the rule that a reviewing court may not entertain an appeal from a conviction without a sentence. See *Dixon*, 91 Ill. 2d at 352-54; see also *In re T.G.*, 285 Ill. 2d at 845-46; *People v. Burrage*, 269 Ill. App. 3d 67, 72 (1994). The exception provides that, where, as here, a defendant has properly appealed the final judgment of another offense, the reviewing court may also review an appealed conviction of an offense for which no sentence was imposed. See *Lilly*, 56 Ill. 2d at 496; *In re T.G.*, 285 Ill. 2d at 845-46; *Burrage*, 269 Ill. App. 3d at 72; C.f. *People v. Neely*, 2013 IL App (1st) 120043, ¶ 14 (acknowledging the exception but narrowly construing it to provide for review of a merged, unsentenced guilty finding only where the sentenced count has been reversed and vacated). Because we ultimately conclude that the evidence was insufficient as to count 4, we elect to review defendant's challenge to the sufficiency of the evidence as to that count.

¶ 34 The standard of review in a reasonable doubt case is 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. Wheeler*, 226 Ill. 2d 92, 114 (2007). This standard is applicable in all criminal cases regardless whether the evidence is direct or circumstantial. *People v. Herring*, 324 Ill.App.3d 458, 460 (2001); *People v. Campbell*, 146 Ill. 2d 363, 374-75 (1992). The trier of fact is responsible for assessing the credibility of the witnesses, weighing the testimony, and drawing reasonable inferences from the evidence. *People v. Hutchinson*, 2013 IL. App (1st) 102332 ¶ 27; *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). When considering the sufficiency of the evidence, it is not the reviewing court's duty to retry the defendant. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). A reviewing court will only reverse a criminal conviction when the evidence is

so improbable or unsatisfactory that there remains a reasonable doubt as to the defendant's guilt. *Beauchamp,* 241 Ill. 2d at 8; *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 35 In order to sustain a finding of guilt under count 4, the State was required to prove both the commission of a battery and the presence of an additional factor aggravating that battery. *People v. Cherry*, 2016 IL 118728, ¶16. "A person commits battery if he or she knowingly without legal justification by any means (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual." 720 ILCS 5/12-3(a) (West 2014). As mentioned, under subsection (d)(1) of the aggravated battery statute a person commits aggravated battery when in committing the offense of battery, he or she "knows the individual battered to be *** [a] person 60 years of age or older" 720 ILCS 5/12-3.05(d)(1) (West 2014).

¶ 36 In this court, defendant does not dispute that he battered Anderson. Rather, he solely contends that the State failed to prove beyond a reasonable doubt that he knew Anderson was 60 years of age or older.

¶ 37 After viewing the evidence in the light most favorable to the State, we find that no rational trier of fact could have found that defendant knew that Anderson was 60 years of age or older. The record demonstrates that, aside from Anderson's testimony that he was 63 years of age at the time of the battery, the State failed to present any other evidence that defendant knew Anderson's age. Although defendant and Anderson were familiar with each other and drank together this evidence is insufficient to establish that defendant knew Anderson was over 60 years old. See *People v. Smith*, 2015 IL App (4th) 131020, ¶¶ 45-46 (despite evidence that the defendant and the victim had a long-term friendship, were roommates, and the defendant was the

victim's caregiver, the evidence was insufficient to establish that the defendant knew that the victim was over 60 years of age). Moreover, defendant testified that he did not know that Anderson was over 60 years old and thought they were the same age. Given this record, the State failed to prove beyond a reasonable doubt that defendant knew Anderson was over 60 years of age at the time of the offense. Accordingly, we vacate the finding of guilty under count 4.

¶ 38 Defendant next contends that the $394 in fines and fees imposed against him was erroneous because several of the assessments labeled as fees were actually fines that are subject to the $5-per-day presentence incarceration credit. Defendant is not contending that the trial court erred is assessing the fines and fees in question, rather he claims that he should receive credit toward the assessed charges. Thus, defendant requests this court to reduce the fines and fees order assessed against him to $80. The State agrees that defendant is entitled to some presentence incarceration credit, but not all the credit that defendant is requesting. The State believes that defendant should only be credited $65, leaving him owing $329.

¶ 39 In setting forth his argument, defendant admits he did not object to the imposition of the fines and fees at the time of sentencing nor was the issue preserved in his motion to reconsider sentence. As such, defendant is raising the issue for the first time on direct appeal. In doing so, defendant acknowledges that the issue has been forfeited but suggests we review the matter under the second prong of the plain error doctrine or under Illinois Supreme Court Rule 615(b). In the alternative, defendant alleges that his trial counsel was ineffective for failing to object to the fees and fines.

¶ 40 The State does not argue that the issue has been forfeited, but instead argues the merits. The State has therefore, forfeited the claim that the issues raised by defendant are forfeited. See

People v. Whitfield, 228 Ill.2d 502, 509 (2007) (the State may forfeit the claim that an issue defendant raises is forfeited if the State does not argue forfeiture on appeal). We will therefore review this issue of law *de novo*. See *People v. Green*, 2016 IL. App (1st) 134011 ¶ 44.

¶ 41 Defendant was assessed a total of $394 of fines and fees. Defendant first argues that the $15 State Police Operations fee, the $2 Public Defender Records Automation fee, the $2 State's Attorney Records Automation fee, the $190 Felony Complaint Filing fee, the $15 Clerk Automation fee, the $15 Document Storage fee, the $25 Sheriff's Court Service fee, and the $50 Court Systems fee are all fines and therefore, are subject to the $5-per-day presentence incarceration credit. Thus, defendant requests that we reduce the total of his unpaid fees, from $394, to $80. The State agrees with defendant in so much as the $15 State Police Operations fee and the $50 Court Systems fee are fines.

¶ 42 A defendant is entitled to credit of $5 for each day he is incarcerated, with that amount to be applied toward the fines levied against him as part of his conviction. 725 ILCS 5/110-14(a) (West 2014). Defendant received credit for 348 days in custody prior to sentencing. Therefore, at $5-per-day, he was entitled to $1,740 of presentencing credit. A "fine" is punitive in nature and is imposed as part of a sentence on a person convicted of a criminal offense. *People v. Graves*, 235 Ill.2d 244, 250 (2009). A "fee" is a charge that seeks to recoup expenses incurred by the State in prosecuting the defendant. *Id*. The legislature's label for a charge is strong evidence of whether the charge is a fee or a fine, but the most important factor is whether the charge seeks to compensate the State for any cost incurred as a result of prosecuting the defendant. *Id*.

¶ 43 First, defendant argues and the State agrees that the $50 court system fee and the $15 State Police operations fee are fines subject to be offset. 55 ILCS 5/5-1101(c)(1) (West 2014);

705 ILCS 105/27.3a(1.5) (West2014); *People v. Ackerman*, 2014 IL. App (3rd) 120585 ¶ 30 ("the court systems fee *** was actually a fine"); *People v. Millsap*, 2012 IL. App (4th) 110668 ¶ 31 ("the State Police operations assistance fee is also a fine"). Accordingly, both charges should be offset by defendant's presentence incarceration credit.

¶ 44 Next, defendant argues that a portion of his presentence custody credit should be applied to the $2 State's Attorney records automation and $2 Public Defender records automation charges because these assessments are fines and not fees as they do not reimburse the State for costs incurred in prosecuting a particular defendant. 55 ILCS 5/4-2002.1(c) (West 2014); 55 ILCS 5/3-4012 (West 2014). While defendant recognizes this court's holding in *People v. Warren*, 2016 IL. App (4th) 120721-B, ¶ 115 (finding the $2 State's Attorney charge to be a fee because it's compensatory in nature and not punitive) he nevertheless argues that he is entitled to reimbursement. However, the $2 State's Attorney records automation fee and the $2 Public Defender automation fee are not fines. "[T]he bulk of legal authority has concluded that both assessments are fees rather than fines because they are designed to compensate those organizations for the expenses they incur in updating their automated record-keeping systems while prosecuting and defending criminal defendants." *People v. Brown*, 2017 IL. App (1st) 150146 ¶ 38 (consolidating cases); see contra *People v. Camacho*, 2016 IL. App (1st) 140604 ¶¶ 47-56 (finding the assessments are fines, not fees). Accordingly, defendant is not entitled to presentence custody credit toward these assessments.

¶ 45 Lastly, defendant contends that the $190 felony complaint filing fee (705 ILCS 105/27.2a(w)(1)(A) (West 2014)), the $15 automation fee (705 ILCS 105/27.3a(1),(1.5) (West 2014)), the $15 document storage fee (705 ILCS 105/27.3c(a) (West 2014)), and the $25 court

services fee (55 ILCS 5/5-1103 (West 2014)) are all fines subject to presentence incarceration credit. This court has already considered challenges to these assessments and found that they are fees as they "are compensatory and a collateral consequence of defendant's conviction." *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006). These charges represent part of the costs incurred for prosecuting a defendant and are, therefore, not fines subject to offsetting presentence custody credit. See *People v. Graves*, 235 Ill.2d 244, 250 (2009); *Tolliver*, 363 Ill. App. 3d at 97.

¶ 46 For the reasons set forth above, we find that the $50 court system fee and $15 State Police operations fee are offset by defendant's presentence credit. We direct the clerk of the circuit court to modify the fines, fees and costs accordingly.

¶ 47 Affirmed in part; vacated in part; fines, fees and costs order modified.