2018 IL App (1st) 152160-U
Order filed: June 29, 2018

FIRST DISTRICT
FIFTH DIVISION

No. 1-15-2160

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 19703
	)	
STEPHEN KNOX,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	and Dennis Porter,
	)	Judges Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Reyes and Justice Hall concurred in the judgment.

ORDER

¶ 1 ***Held***: We affirmed defendant's convictions for aggravated robbery and attempted robbery, finding that the trial court did not err in denying his motion for a substitution of judge and a mistrial based on the judge's comments to him during trial and that the court did not err in denying his motion on the day of trial for a behavioral clinical exam. We affirmed the 19-year sentence for aggravated robbery. We vacated the extended nine-year sentence for attempted robbery and remanded for resentencing. We modified the fines, fees and costs order.

¶ 2 Following a bench trial, the trial court convicted defendant, Stephen Knox, of attempted robbery, aggravated robbery, and aggravated battery and sentenced him to concurrent terms of 19 years' imprisonment on the aggravated robbery conviction and 9 years' imprisonment on the attempted robbery conviction. The trial court imposed $449 in fines, fees, and costs. On appeal,

defendant contends: (1) the trial court erred in denying his motion for substitution of judge for cause and denying his motion for a mistrial based on the judge's alleged prejudice against him; (2) the trial court erred by denying his request for a fitness examination on the day of trial after he had refused to cooperate with two previous fitness exams; (3) the trial court erred in sentencing him to an extended nine-year sentence for attempted robbery; (4) his 19-year sentence for aggravated robbery was excessive; and (5) the fines, fees, and costs order should be corrected. We affirm defendant's convictions and his sentence for aggravated robbery; vacate his sentence for attempted robbery and remand for resentencing; and modify the fines, fees, and costs order.

¶ 3 On October 21, 2013, defendant was charged with aggravated robbery, attempted robbery, and aggravated battery. On February 26, 2014, defense counsel requested a behavioral clinical exam (BCX), which the trial court ordered. On March 19, 2014, defense counsel informed the court that Forensic Clinical Services had been unable to evaluate defendant because he had been transferred from the Cook County Department of Corrections to the Illinois Department of Corrections. Defense counsel asked that defendant be remanded back to the Cook County Jail so that the BCX could be performed. The trial court continued the case for status and "BCX remand." On June 4, 2014, the trial court ordered defendant remanded to Cook County Jail for purposes of a BCX on July 14.

¶ 4 On July 14, 2014, defense counsel informed the court that neither the Cook County Department of Corrections nor the Illinois Department of Corrections knew where defendant was. The Deputy Sheriff then stated that defendant was "in the back." Defendant was brought out, and he informed the court that he was housed in the Cook County Department of Corrections. The trial court reordered the BCX and set the matter for August 21, 2014.

¶ 5 On August 21, 2014, defendant's new defense counsel withdrew the request for a BCX, stating: "After speaking to [defendant] I have no doubt to his sanity. Ever since I have met him he has been able to communicate with me and assist me in preparing his case." The BCX order was withdrawn and the case was set for trial on October 20.

¶ 6 On October 20, 2014, the bench trial began. Roger Hobby testified that at about 12:15 p.m. on September 19, 2013, he and a friend, Taliya Cikoja, were walking on Iowa Street toward Western Avenue. Defendant approached Mr. Hobby from the right side, put his left arm around Mr. Hobby's neck, and pressed what Mr. Hobby believed to be a gun against the back of his head. Defendant threatened to kill Mr. Hobby unless he gave him all his "stuff." Mr. Hobby instinctively pushed defendant's hand away from his head, and in doing so, realized that defendant was not holding a firearm, but that he had put his fingers against Mr. Hobby's head to make it feel like a gun.

¶ 7 Defendant and Mr. Hobby began to "tussle," and they fell to the ground. During the course of the fight, Mr. Hobby threw his cell phone into the street. Defendant got up, grabbed Ms. Cikoja's right wrist and shoulder bag, and tried to pull the bag off her. However, defendant was unable to pull the bag away from her.

¶ 8 Mr. Hobby got back up, grabbed defendant from behind, and pulled him off Ms. Cikoja. Defendant then went into the street to pick up Mr. Hobby's phone, and in doing so he slipped and fell. Mr. Hobby wrestled the phone away from defendant. At that point, an officer approached, grabbed defendant, and "immobilized him." The officer asked Mr. Hobby to go to his van and retrieve his police radio. Mr. Hobby retrieved the police radio and gave it to the officer. The officer radioed for assistance, and four or five officers arrived shortly thereafter.

¶ 9 One of the officers drove Mr. Hobby and Ms. Cikoja to the police station, where photographs were taken of their injuries. Mr. Hobby sustained injuries to his right cheek and neck where defendant had scratched and grabbed him. Mr. Hobby's right elbow was bruised and bloodied from tussling on the ground with defendant, and he also had abrasions on his right wrist and left knee.

¶ 10 Mr. Hobby identified a photograph of Ms. Cikoja showing abrasions to her right wrist caused by defendant's attack.

¶ 11 On cross-examination, Mr. Hobby testified that defendant was on foot at the time of the attack and was not in a motorized wheelchair. Mr. Hobby denied asking defendant for directions.

¶ 12 Officer John Moravec testified that at about 12:15 p.m. on September 19, 2013, he was parked at the intersection of Iowa Street and Campbell Avenue in an unmarked Chrysler van, performing covert surveillance of a major marijuana dealer. Officer Moravec saw defendant walk northbound on Campbell Avenue, cross in front of his vehicle, and then walk westbound on Iowa Street until he was out of sight. About 30 or 40 seconds later, Officer Moravec heard a female screaming. Officer Moravec put his head out the window of the van, looked to the north side of Campbell Avenue, and saw defendant with his right arm around Mr. Hobby's neck. Defendant had two fingers from his left hand up against the back of Mr. Hobby's head. Officer Moravec testified that he thought that defendant was purporting to have a gun in order to rob Mr. Hobby.

¶ 13 Officer Moravec exited his van with his gun, and went toward defendant. As he approached, he saw defendant attempt to pull the shoulder bag from Ms. Cikoja, after which Mr. Hobby pulled defendant off her and wrestled him to the ground. Officer Moravec then pulled

Mr. Hobby away, rolled defendant over on to his back, placed his gun to the side of defendant's head, and announced that he was a Chicago police officer. Officer Moravec told Mr. Hobby to go to his vehicle and bring him the police phone. Mr. Hobby did so, and Officer Moravec called for assistance. Two other officers arrived within about 15 seconds.

¶ 14 After defendant was placed in custody, Officer Moravec noticed that Mr. Hobby had some scratches on his neck, and that Ms. Cikoja had also been scratched on her arm.

¶ 15 On cross-examination, Officer Moravec said that he never saw a motorized wheelchair at the scene.

¶ 16 The State rested and the trial was continued for one month, until November 21. On November 21, defense counsel informed the court that defendant was in Stroger Hospital after having undergone kidney surgery, and was unable to come to court. The trial was continued until January 26, 2015.

¶ 17 On January 26, 2015, defense counsel informed the court that defendant "has a new charge of aggravated battery to a police officer coming." Defense counsel also stated that she had a "*bona fide* doubt as to [defendant's] sanity at this moment," and asked for a BCX. The trial court ordered the BCX.

¶ 18 Forensic Clinical Services subsequently sent a letter to the court, dated February 5, 2015, stating that their psychologist had attempted to perform the BCX on that day, but that defendant was "uncooperative with the evaluation" and that his "lack of cooperation appeared volitional in nature." Therefore, the psychologist was unable to render an opinion as to defendant's fitness.

¶ 19 On March 12, 2015, the trial court questioned defendant as to why he had not cooperated with the BCX, and defendant responded that he did not remember. Defense counsel stated that she continued to have "a *bona fide* doubt as to his sanity at this moment" and asked for another

BCX order to give defendant a second chance to cooperate with the psychologist. The trial court stated that defendant "didn't have a problem answering [the court's] questions or responding." The following colloquy ensued:

"[Defense Counsel]: He hasn't been responding to my questions, Judge.

[The Court]: Well, just because he doesn't want to cooperate with his attorneys doesn't mean that *** there's a fitness problem. That's his decision. If he doesn't want his attorneys, the people who are trying to represent him, to have all of the best information and discussions with him, that's his problem. That's his right. Doesn't mean that he's crazy. Isn't that right, Mr. Knox?

[Defendant]: I don't know what you talking about.

[The Court]: Yeah, I bet."

¶ 20 The court ordered another BCX for defendant and also ordered him to submit for fingerprinting. The court then engaged in the following discussion with defendant:

"[The Court]: Mr. Knox, you're ordered to submit to fingerprints. You understand that? Mr. Knox? You don't understand that either? Now, all of a sudden, you don't understand anything.

[Defendant]: I have brain damage.

[The Court]: Oh yeah?

[Defendant]: They beat me my—

[The Court]: How do you know its brain damage?

[Defendant]: That's what the doctor told me.

[The Court]: Which doctor was that? What hospital?

[Defendant]: I don't know. I forgot they name."

¶ 21 The court stated that after the BCX was performed: "we'll see if he's cooperating or not. And if not, we know he's just fooling around. And we'll proceed to trial, and whatever what happens, happens."

¶ 22 At the next court date, on April 17, 2015, the court engaged in the following lengthy colloquy with defendant:

> "[The Court]: Mr. Knox, on the last court date, something very interesting happened. You see, every time you come out here, you talk as though you have some serious stroke that you can barely talk, and we can barely hear you, and you almost crippled. A funny thing happened though—
>
> [Defendant]: I'm severely injured.
>
> [The Court]: A funny thing happened though, when you went into the back the last time, talking out here like you were disabled, you can barely talk, all of a sudden you got into the back and I could hear your voice very clearly and plainly speaking and talking and acting about.
>
> Sir, you are a fraud. You are a fraud, and you need to stop it because we don't believe it any more. So let's get going with this case and move on with the resolution. But I'm not going to listen and deal with your foolishness and shenanigans any more.
>
> I also have a letter from Forensic Clinical Services indicating that they attempted to conduct the evaluation of you, and you were very uncooperative with the evaluation, and that your [lack of cooperation] appeared volitional in nature. That means, once again, sir, someone else has shown you to be a fraud."

¶ 23 The court inquired as to whether any motions were pending, and the State responded: "No, Judge. We're in the middle of a trial." The court then stated:

"Let's finish this trial. Let's get a date. There is nothing wrong with him. There is no *bona fide* doubt as to his fitness. And if so, I would put him on the first bus to the mental institution to sit there in padded walls for a year with other people who need medical treatment. It's disgusting. Let's get to trial."

¶ 24 The State informed the court that it had tendered additional discovery on a number of other cases involving defendant, prompting the following colloquy between defendant and the court:

"[Defendant]: Excuse me.

[The Court]: You just wait. Now you want to talk.

[Defendant]: I shouldn't—

[The Court]: Whatever, whatever. It has nothing to do with these cases before me. Whatever. Because in those cases, I guarantee you, you will probably be found to be a fraud with that too—

[Defendant]: I had a head concussion.

[The Court]: There is nothing wrong with you.

[Defendant]: You a doctor?

[The Court]: Yes.

[Defendant]: They broke my neck and my nose.

[The Court]: Sorry to hear it.

[Defendant]: And raped me.

[The Court]: Whatever."

¶ 25 The court engaged in a short scheduling discussion with the State and defense, after which it resumed talking with defendant:

"[Defendant]: And I got a seizure disorder. I have a C5 fracture on my neck.

[The Court]: You just do the best you can—

[Defendant]: I'm a fraud on that too, huh—

[The Court]: Yes, but obviously your memory is not too bad. You know the anatomy of the body. It sounds like you might be the doctor."

¶ 26 At the next court date on May 4, 2015, defense counsel informed the court that defendant was in the hospital. The cause was continued to May 15 for status.

¶ 27 On May 15, 2015, defendant presented a motion for mistrial and a motion for substitution of judge for cause (SOJ), both arguing that the trial court's comments on April 17, 2015, showed that it was prejudiced against defendant such that defendant would not be able to receive a fair and impartial trial. Defendant filed a supporting affidavit as to the motion for SOJ, attesting that on April 17, 2015, he had informed the trial court that he was "severely injured," but that the court repeatedly referred to him as a "fraud." Defendant attested that the court's comments indicated that it had prejudged defendant's credibility.

¶ 28 On May 15, defense counsel asked the court to address the motion for a mistrial first. The trial court conducted a hearing, at which defense counsel argued that there was a "back and forth" between the court and defendant on April 17, 2015, during which the court made a determination of defendant's credibility that precluded him from having a fair and impartial trial.

¶ 29 The trial court denied the motion for a mistrial, stating:

"[T]he comments by the court during the interim in the middle of this trial were no comments with respect to the trial or the evidence. If I recall correctly, I indicated that we needed to get on and figure out the results of this case and then we can move on.

> And my comments to him actually were accurate, that he was faking and feigning his ability to speak. That he was coming out here for every court appearance in a wheelchair and looking as though he was totally crippled, and more specifically, that it appeared like his speech was that of someone with a massive stroke, for the court to only learn after one of his appearances that he was going immediately in the back, and I could hear him talking normally, loudly, freely, at will, and that's what the court was addressing.
>
> Indeed, during the colloquy afterward, he wanted to, then decided to defend himself or question the court; it was normal language, no more of this as though he was, could barely talk. He was defending himself quite freely and vigorously. That's what the court was addressing. The court didn't address the evidence of the case. The case and evidence will stand on its own. But the court stands by its position that we're going to stop the shenanigans with respect to any delay and move on and resolve the case on its merits. So your motion for a mistrial is denied."

¶ 30 The trial court then transferred the matter of defendant's SOJ motion to Judge Dennis Porter, the supervising judge, for an immediate hearing. At the hearing before Judge Porter, defense counsel explained that two BCXs had been ordered, but that defendant had been uncooperative during each of them and therefore that the psychologists were unable to render an opinion on defendant's fitness. Defense counsel further explained that on April 17, 2015, defendant appeared before the trial court, during which "words [were] exchanged." Judge Porter stated that he had read the transcript of the April 17 exchange.

¶ 31 Defense counsel proceeded to argue that the trial court's comments regarding defendant being a "fraud" who would be found to be a fraud in his other cases, as well as the court's

comments that there was no *bona fide* doubt of defendant's fitness, made it impossible for defendant to receive a fair trial "as his credibility is something that would be very important in his self-defense theory."

¶ 32 The State responded that the trial court's comments "were not related to items that had direct bearing on the trial" and did not demonstrate that it had prejudged defendant in any fashion. The State argued that the trial court made no comments about the evidence in this case or about defendant's theory of defense.

¶ 33 Defense counsel countered that the trial court's comments about defendant being a fraud "speaks specifically to [his] credibility *** [and] definitely goes to this case where [defendant] would be the witness."

¶ 34 Judge Porter denied the SOJ motion, stating:

> "[T]he reference *** that [the trial court] is making here is to him speaking or pretending that he can't speak. He can barely talk and all of a sudden in the back I can hear your voice very clearly and plain, speaking and talking and laughing about. It doesn't go to this case. It goes to the defendant's representation of himself to the court. And I think the State is correct. Nothing that is said goes to the merits of this case, and for those reasons I agree with the State."

¶ 35 Judge Porter transferred the case back to the trial court, and the trial proceeded again on May 15. At that time, defense counsel made another request for a BCX, stating that defendant was now "willing to cooperate" with the psychologist who would examine him. The trial court denied the request, stating: "There is no *bona fide* doubt as to the defendant's fitness."

¶ 36 Defendant testified on his own behalf that at about 12:15 p.m. on September 19, 2013, he was riding down the street in his motorized wheelchair going to his grandmother's house. Mr.

Hobby and Ms. Cikoja approached him and asked for directions. Defendant did not know what they were talking about, and Mr. Hobby "got mad" and began talking in "crazy," disrespectful language toward defendant. Defendant "started talking crazy" back to Mr. Hobby. Mr. Hobby then pulled defendant out of his wheelchair, onto the ground, and they began wrestling with each other.

¶ 37 Defendant put Mr. Hobby in a headlock and tried to calm him down. Meanwhile, Ms. Cikoja began screaming. An officer then came over, grabbed defendant, threw him on the ground and put a gun to his head. Defendant told the officer that Mr. Hobby and Ms. Cikoja had been trying to rob or harm him, but the officer told him to shut up and hit him on the head with the gun.

¶ 38 The officer told Mr. Hobby to go to his police car and retrieve his badge, handcuffs, and phone. After Mr. Hobby returned with those items, defendant suffered a seizure and later woke up in Stroger Hospital.

¶ 39 Following defendant's testimony, the defense rested.

¶ 40 The State called Detective Steven Grzenia in rebuttal. Detective Grzenia testified that he spoke with defendant at the police station following the incident, and that defendant told him he was walking down the street (*not* riding in his motorized wheelchair), when he interacted with Mr. Hobby and Ms. Cikoja.

¶ 41 Cardell Perry, a correctional officer with the Cook County Sheriff's Department, testified that at about 1 p.m. on October 23, 2014, he was taking defendant from his jail cell to Cermak Hospital to receive treatment. Defendant stated that he needed to use the bathroom. Officer Perry accompanied defendant to the bathroom, where another inmate was taking a shower within three or four feet of the toilet area. Defendant and the other inmate "had some words," and then

defendant got up out of his wheelchair: "jogged" over to the inmate, and punched him a few times and kicked him. Defendant then returned to his wheelchair.

¶ 42 Officer Anthony Squeo testified that at about 7:15 p.m. on January 16, 2015, he accompanied defendant to the Cermak Hospital emergency room. Defendant spoke with the doctor, after which defendant jumped up out of his wheelchair and stood up against a wall and refused to move. Defendant then threw a liquid substance on Officer Squeo and his partner.

¶ 43 Following Officer Squeo's testimony, the court admitted two certified copies of defendant's prior felony convictions, one for robbery on June 29, 2009, and one for vehicular hijacking on February 1, 2013.

¶ 44 In sur-rebuttal, defendant testified that he has lupus and has good and bad days. On good days he is able to walk, and on bad days he cannot.

¶ 45 The trial court convicted defendant of attempted robbery, aggravated robbery, and aggravated battery.

¶ 46 Defendant filed a motion for a new trial, arguing in pertinent part that his earlier motions for mistrial and/or SOJ should have been granted. Defendant also argued that the trial court erred when it denied his motion for a BCX on May 15.

¶ 47 The court denied the motion for a new trial, stating:

> "With respect to the allegations regarding making any judgment based on the demonstrated and observed conduct of [defendant] and any statements regarding whether or not he was a fraud with respect to that, again, as I said previously, those statements were with respect to that conduct and that conduct only.

> As I stated previously, on almost every court date, the defendant came into court looking as though he was a severe stroke victim, that he could barely talk. We had to strain to hear him every single court appearance.
>
> And then one day as he *** goes into the back, the court hears him yelling and screaming obscenities. What happened to that person who could barely speak, that I could barely hear all these times? That's what the court was referring to."

¶ 48 The court further stated:

> "[I]t is charged and is required and does put aside all other pretrial arguments and rulings and listens to each case when it comes to trial on the facts, evidence of this case, and that's what I did here without regard to the defendant's conduct."

¶ 49 As to the motion for SOJ, the trial court noted that the matter "was sent out to [the] supervising judge, and he did whatever he did. I was not present for that, and the motion was denied."

¶ 50 As to the denial of the BCX on May 15, the trial court stated:

> "There is no *bona fide* doubt with respect to the defendant's fitness, none whatsoever. Again, the court has had an opportunity to see him and watch him, listen to him. There is nothing presented by any doctor, suggesting that there is a *bona fide* doubt as to his fitness."

¶ 51 The cause proceeded to sentencing. David Badali, the Director of Environmental Services and Plant Operations at Cermak Health Services at Cook County Jail, testified that defendant had thrown feces and urine around his cell, on the walls and windows, and outside of the dayroom and into the hallways. In a three-month period, Director Badali's special cleaning services were required 97 times, using power washers because "feces is inside the brick, the

walls, door jams." Director Badali testified that the jail is running out of places to house defendant because he has spread feces and urine all around and been very disruptive.

¶ 52 Sergeant Jose Barajas testified that he is one of defendant's supervisors. Defendant is housed alone due to his behavioral issues. He wears a red jumpsuit because it signifies that he "assaults staff." Defendant constantly questions and fights the deputies and brags about throwing urine and feces at the staff. He has a total disregard for authority. Defendant has to wear a spit mask because he constantly threatens to spit on staff members.

¶ 53 In aggravation, the State discussed defendant's criminal background for vehicular hijacking and robbery, which makes the current aggravated robbery conviction subject to mandatory Class X sentencing, with a sentencing range of 6 to 30 years. The State argued that defendant's conduct caused or threatened serious harm to the victims and that defendant has a prior history of criminal activity. The State argued that none of the factors in mitigation applied and therefore defendant should receive 30 years' imprisonment.

¶ 54 In mitigation, defendant argued that: he is in a wheelchair and has serious medical issues; his mother died in a car accident when he was eight years old; he graduated from high school with honors and attended some classes at Harold Washington College; and he has some psychiatric issues, but has not been receiving his medications. Defendant also argued that the victims did not seek medical treatment.

¶ 55 Defendant spoke in allocution, claiming that prison officials had beaten and maced him, refused him medicine, and did not clean his room. Defendant apologized for any "wrong stuff" he had done.

¶ 56 The trial court merged the aggravated battery conviction into the aggravated robbery conviction and sentenced defendant to a Class X sentence of 19 years' imprisonment for

aggravated robbery. The court also sentenced defendant to a concurrent, extended 9-year term for attempted robbery.

¶ 57 Defendant appeals.

¶ 58 First, defendant contends that Judge Porter erred by denying his motion for SOJ. Section 114-5 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/114-5(d) (West 2016)) provides that defendant may "move at any time for substitution of judge for cause, supported by affidavit." However, the right to substitution of judge for cause is not absolute. *In re Moses W.*, 363 Ill. App. 3d 182, 185 (2006). Section 114-5 requires defendant to show actual prejudice, not just the possibility of prejudice. *Id*. Defendant must establish that the judge harbors animosity, hostility, ill will or distrust toward him. *Id*. Disqualifying a judge for cause is not a judgment to be lightly made as "[i]t will be viewed by some as reflecting unfavorably upon the judge, and it tends to disrupt the orderly functioning of the judicial system." *People v. Vance*, 76 Ill. 2d 171, 179 (1979). The required quantum of proof is preponderance of the evidence. *In re Moses W.*, 363 Ill. App. 3d at 185. We will not disturb the court's ruling on a SOJ motion unless it is against the manifest weight of the evidence. *Id*. at 186.

¶ 59 Defendant argues on appeal that the SOJ motion should have been granted because the trial court prejudged his credibility and showed its animosity and hostility toward him by its comments on April 17, 2015, when it repeatedly called him a "fraud," suggested that he would be found to be a fraud in his other pending cases, and sarcastically responded to his claims of physical injury. Defendant contends that the trial court's prejudice toward him bore directly on the issues at trial, where defendant argued that he acted in self-defense and was in a wheelchair and could not have committed the offenses charged.

¶ 60 In denying defendant's motion for SOJ, Judge Porter examined the April 17, 2015, transcript. Judge Porter determined that the trial court commented on defendant being a "fraud" with no physical injuries because defendant came into court on several occasions and spoke haltingly as if he had had a stroke, only to go in the back during a later court appearance and speak so loudly and clearly that the trial court determined that defendant had been faking his stroke symptoms. Judge Porter determined that the trial court's comments were limited to a denouncement of defendant's faking his stroke symptoms in court, and had nothing to do with the evidence at trial or whether defendant was guilty of the crimes charged.

¶ 61 We agree with Judge Porter and find no cause for reversal of his decision. Our review of the April 17, 2015, transcript clearly shows that the trial court was upset with defendant for faking his stroke symptoms (the slow, halting speech) in his prior court appearances and that the court's repeated denouncement of defendant as a "fraud" with no physical injuries related to that particular misrepresentation by defendant that he had suffered a stroke that had impacted his speech. The trial court's comments were narrowly related to defendant's isolated act of misrepresenting his speech patterns, and did not amount to a more sweeping generalization of defendant's character or credibility or a prejudgment of defendant's defense at trial. The trial court made clear on April 17 that it wanted no further trial delays, but it never commented on the evidence that had already been presented at trial or on any anticipated evidence that was to be put forward by defendant, including whether defendant was ill and in a motorized wheelchair at the time of the incident at issue here. Further, the trial court made no comments indicating that its isolated finding that defendant had faked his slow halting speech would impact its ability to consider the evidence at trial and impartially render a verdict based only on that evidence. Accordingly, Judge Porter's finding that defendant had failed to show by a preponderance of the

evidence that the trial court was so hostile to him as to deny him a fair and impartial trial was not against the manifest weight of the evidence.

¶ 62 Defendant argues for a contrary result based on the trial court's sarcastic responses on April 17 to his claims of having suffered a concussion, broken nose and neck, and a sexual assault while in prison. While we do not countenance the use of sarcasm when responding to defendant, the court's brief, disbelieving comments regarding defendant's injuries allegedly suffered in police custody came after a March 12 colloquy in which the court questioned defendant about his injuries and defendant was unable to identify the doctor who diagnosed him or the hospital at which he was treated. Thus, the trial court had given defendant the chance to substantiate his injury claims, but defendant was unable to do so. Further, the trial court's stated disbelief of defendant's claim of injuries suffered while in police custody did not relate to the evidence at trial or to defendant's defense and did not show such animosity, hostility, or ill will that would indicate an inability to provide defendant with a fair trial.

¶ 63 *People v. McDaniels*, 144 Ill. App. 3d 459 (1986), cited by defendant, is inapposite. In *McDaniels*, Tracy McDaniels was charged with aggravated battery for throwing hot grease on the victim while he was in her apartment, permanently disfiguring him. *Id.* at 460. Ms. McDaniels claimed she was defending herself because she believed that she could not induce the victim to leave without suffering a beating or being forced to submit to anal intercourse. *Id.* at 461. At trial, defense counsel was cross-examining the victim to elicit information from him concerning a prior altercation between him and Ms. McDaniels, when the State objected. *Id.* The trial court did not rule on the objection, but stated: "Seems to be pretty ridiculous to claim self-defense. You might do that before a jury, but this is a bench trial." *Id.* at 462. The appellate court reversed Ms. McDaniel's conviction and remanded for a new trial, holding that the judge's

remark clearly showed that he had evaluated the merits of the defense even before that defense had been presented and thus had denied her a fair and impartial trial. *Id*.

¶ 64 In contrast to *McDaniels*, the trial court's comments at issue here did not relate to the evidence at trial or to the theory of defense and did not deprive defendant of a fair and impartial trial. Accordingly, we affirm Judge Porter's denial of the SOJ motion.

¶ 65 Next, defendant contends that the trial court erred in denying his motion for a mistrial. The trial court's denial of a motion for a mistrial will not be disturbed absent a clear abuse of discretion. *People v. Bishop*, 218 Ill. 2d 232, 251 (2006).

¶ 66 Defendant argues that when denying his motion for a mistrial, the trial court indicated that it did not believe that defendant needed to use a wheelchair, and, thus, effectively pre-judged and rejected his defense that at the time of the incident at issue, he was disabled and in a wheelchair and could not have precipitated the attack on Mr. Hobby and Ms. Cikoja.

¶ 67 Review of the trial court's comments when denying the motion for a mistrial show that it briefly referenced defendant's use of a wheelchair during prior court appearances and defendant's appearance of being "totally crippled," but it made no finding that defendant was faking the use of a wheelchair. Rather, the court stated that defendant was "faking and feigning his [in]ability to speak" and "that's what the court was addressing" when it commented on April 17 that defendant was a "fraud." The court reiterated that it "didn't address the evidence of the case," that "[t]he case and evidence will stand on its own," and will be resolved on its own merits.

¶ 68 As discussed earlier in this order, the trial court's comments on April 17 regarding defendant having faked his inability to speak properly due to a stroke did not amount to the type

of hostility and prejudice sufficient to deny defendant a fair and impartial trial. We find no clear abuse of discretion in the denial of the motion for a mistrial.

¶ 69 Defendant argues that *People v. Phuong*, 287 Ill. App. 3d 988 (1997), compels a different result. In *Phuong*, Muoi Phuong was convicted of misdemeanor retail theft following a bench trial. *Id*. at 990. During the trial, the court made numerous disparaging remarks about Ms. Phuong. For example, when defense counsel informed the trial court that Ms. Phuong had agreed to a bench trial, the court stated: "Nothing like a bench trial with a Chinese interpreter." *Id*. at 991. When defense counsel requested that defendant testify through her Chinese interpreter, the court stated: "Miss Public Defender, we're going to be here until the [F]ourth of July." *Id*. at 992. When Ms. Phuong shook her head no in response to a question, the court stated: "She's shaking her head in Chinese, no." *Id*. In finding her guilty, the court stated: "There's no question in my mind as to the guilt of the defendant with or without English." *Id*. at 993.

¶ 70 The appellate court reversed Ms. Phuong's conviction, holding in relevant part that "[b]ased on the numerous insulting remarks made by the trial court against defendant, we cannot be sure that defendant received a fair trial by an impartial arbitrator." *Id*. at 995.

¶ 71 Unlike in *Phuong*, the trial court here did not make numerous, derogatorily racist comments about defendant during trial but, rather, stated its frustration on April 17 at defendant's having previously faked his slow, halting speech indicative of a stroke. The trial court repeatedly indicated that despite its frustration with defendant for faking his speech patterns, it would consider only the evidence at trial when deciding defendant's guilt or innocence. Defendant was not denied a fair trial, and we affirm the denial of his motion for a mistrial.

¶ 72 Next, defendant argues that the trial court erred by denying his May 15 request for a BCX to aid in the determination of his fitness for trial.

¶ 73 The prosecution of a defendant who is not fit to stand trial violates due process. *People v. Easley*, 192 Ill. 2d 307, 318 (2000). In Illinois, a defendant is presumed fit to stand trial, and will be considered unfit only if, because of his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense. *Id*.

¶ 74 Defendant is entitled to a fitness hearing only when a *bona fide* doubt of his fitness is raised. *Id.*; 725 ILCS 5/104-11(a) (West 2016). Relevant factors that the trial court may consider when determining whether a *bona fide* doubt of fitness exists include a defendant's irrational behavior, his demeanor at trial, and prior medical opinions on defendant's competence to stand trial. *People v. Eddmonds*, 143 Ill. 2d 501, 518 (1991). The representation of defendant's counsel regarding the competence of her client, while not conclusive, is another factor to consider. *Id*. However: "there are 'no fixed or immutable signs which invariably indicate the need for further inquiry to determine fitness to proceed; the question is often a difficult one in which a wide range of manifestations and subtle nuances are implicated.' " *Id*. (quoting *Drope v. Missouri*, 420 U.S. 162, 180 (1975)).

¶ 75 Fitness speaks only to defendant's ability to function within the context of trial, and does not refer to sanity or competence in other areas. *People v. Murphy*, 72 Ill. 2d 421, 432-33 (1978). The trial court may, in its discretion, order a fitness examination (BCX) of the defendant to aid in determining whether a *bona fide* doubt of his fitness exists. *People v. Hanson*, 212 Ill. 2d 212, 217-18 (2004); 725 ILCS 5/104-11(b) (West 2016).

¶ 76 Defendant argues on appeal that the trial court abused its discretion when it denied his request for a BCX on the day of trial, May 15, 2015, as it failed to consider that a BCX would be

helpful to the ultimate determination of his fitness. We disagree. The trial court had ordered a BCX on three prior occasions at defense counsel's request, none of which had been completed because defense counsel withdrew her request on one occasion, stating that defendant was assisting her in the preparation of his defense, and because defendant volitionally refused to cooperate with the treating psychologist on two other occasions. In making a fourth request for a BCX on May 15, defense counsel did not state her belief that defendant was currently unfit to understand the proceedings against him or to assist in his defense; rather, she only stated that defendant was now willing to cooperate with the examination. However, as the treating psychologist had already tried and failed on multiple occasions to administer a BCX to the uncooperative defendant, the trial court was under no obligation to order yet another BCX on the day of trial in order to determine defendant's fitness. See 725 ILCS 5/104-11(b) (West 2016) (providing that the court "may," at its discretion, order a BCX to assist in the determination of whether a *bona fide* doubt of fitness exists, but does not *require* that the court order a BCX).

¶ 77 As discussed, a medical opinion as to defendant's competence is only one of several factors a court may consider in determining whether a *bona fide* doubt of defendant's fitness exists; the court may also consider defendant's behavior and demeanor at trial, as well as counsel's representation regarding defendant's fitness. *Eddmonds*, 143 Ill. 2d at 518. In requesting the May 15 BCX, defense counsel made no representations that defendant was currently unfit to stand trial, and she did not repeat her assertion from two months earlier that she had a *bona fide* doubt of his sanity. The court considered defendant's behavior and demeanor at trial, noting that defendant had appeared in court on multiple prior occasions and feigned an inability to speak clearly due to a stroke, but after one of those appearances, the court heard defendant in back "talking normally, loudly, freely, at will." When the court subsequently

questioned defendant on April 17 about how he had feigned his inability to speak clearly on prior occasions, the court noted that defendant "defend[ed] himself quite freely and vigorously", questioned the court, and used "normal language." As such, when defense counsel requested a BCX on May 15, the court denied it because the court had determined from its conversation with defendant on April 17 that there were no physical or mental conditions preventing him from understanding the nature and purpose of the proceedings against him or preventing him from assisting in his defense and, thus, that he was fit to stand trial. We find no abuse of discretion.

¶ 78 Defendant argues, though, that the trial court should have granted the May 15 request for a BCX because he stated that he was not receiving his psychotropic medication in prison for the various ailments he claimed to suffer from, which included ADHD, bipolar disorder, schizophrenia, depression, anxiety, and hallucinations. Defendant also contends that his disruptive behavior in jail was further evidence of the need for a BCX.

¶ 79 As discussed, the trial court had ordered multiple BCXs prior to May 15, one of which had been withdrawn, while defendant volitionally failed to comply with the other two. The trial court was under no statutory or other obligation to order any further BCXs, but could determine defendant's fitness based on other factors, including his demeanor and behavior at trial. The trial court determined from these other factors that defendant was fit for trial and that no BCX was needed. We find no abuse of discretion. See *Hanson*, 212 Ill. 2d at 224-25 (the existence of a mental disturbance or the need for psychiatric care does not necessitate a finding of *bona fide* doubt where defendant demonstrates his competence to participate at trial even though his mind is otherwise unsound).

¶ 80 Next, defendant argues that the trial court erred by imposing an extended nine-year sentence for attempted robbery, where the court had already imposed a Class X sentence on the

more serious aggravated robbery conviction. Defendant forfeited review by failing to object at trial. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). We review defendant's claim under the plain-error doctrine to determine whether the court committed an error affecting his substantial rights. *People v. Sumler*, 2015 IL App (1st) 123381, ¶ 65.

¶ 81 Our supreme court has held that a defendant who has been convicted of multiple offenses may be sentenced to an extended term only for the offense that falls within the most serious class. *People v. Jordan*, 103 Ill. 2d 192, 205-06 (1984). An exception arises, allowing for the imposition of extended terms on differing class offenses, if they are separately charged and arise from unrelated courses of conduct. *People v. Coleman*, 166 Ill. 2d 247, 257 (1995).

¶ 82 The State concedes that the offenses here arose from the same course of conduct, and that the extended term sentence was only allowable on the aggravated robbery conviction. Accordingly, the trial court committed plain error in imposing an extended nine-year term on the attempted robbery conviction. We vacate defendant's extended nine-year sentence for attempted robbery and remand for resentencing.

¶ 83 Next, defendant argues that the trial court abused its discretion by sentencing him to 19 years' imprisonment for aggravated robbery.

¶ 84 "A trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference. That is because the trial judge, having observed the defendant and the proceedings, is in a much better position to consider factors such as the defendant's credibility, demeanor, moral character, mentality, environment, habits, and age than the reviewing court, which must rely on the cold record on appeal. Where the sentence chosen by the trial court is within the statutory range permissible for the pertinent criminal offense for which the defendant has been tried and charged, a reviewing court may only disturb the sentence

if the trial court abused its discretion in the sentence it imposed. An abuse of discretion will only be found where the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. Where mitigating evidence is presented to the trial court, it is presumed, absent some indication other than the sentence itself to the contrary, that the court considered it. When determining the propriety of a particular sentence, we cannot substitute our judgment for that of the trial court simply because we would weigh the sentencing factors differently." (Internal citations and quotation marks omitted.) *People v. Cole*, 2016 IL App (1st) 141664, ¶ 55.

¶ 85 In the present case, the trial court read the presentence investigation report and considered the evidence in aggravation that defendant's conduct threatened or caused serious harm to the victims and that he has a prior history of criminal activity, as well as the evidence in mitigation regarding defendant's home life, educational background, and medical issues. The court also heard and considered the officers' testimony regarding defendant's disruptive behavior in prison. Defendant's 19-year sentence was within the 6 to 30 year statutory range for a Class X offender and did not constitute an abuse of discretion.

¶ 86 Defendant argues that the victims suffered only minor scratches and cuts and, thus, that his sentence should be reduced because his conduct did not cause serious harm. We disagree. The trial court may consider in aggravation that defendant's conduct "caused or *threatened*" serious harm. (Emphasis added.) 730 ILCS 5/5-5-3.2 (West 2016). Here, defendant grabbed Mr. Hobby around the neck, wrestled him to the ground, threatened to kill him unless he handed over his "stuff," attempted to pull the shoulder bag off Ms. Cikoja, and inflicted injuries on both Mr. Hobby and Ms. Cikoja. Clearly, defendant's conduct threatened serious harm to the victims and, thus, was an aggravating factor supporting the 19-year sentence.

¶ 87 Defendant also argues that the trial court failed to give adequate consideration to the financial costs of incarcerating him for so many years in the Illinois Department of Corrections. See 730 ILCS 5/5-4-1(a)(3) (West 2016) (requiring the court to consider the financial impact of incarceration when sentencing defendant). The record belies defendant's argument, where the court expressly stated that it had considered the financial impact of incarceration when imposing sentence.

¶ 88 Next, defendant argues that his fines, fees, and costs order must be corrected to vacate an improperly imposed fee and to apply his *per diem* presentence credit to several assessments that were denominated "fees," but are actually fines. Defendant failed to raise this issue in the trial court, but the State does not argue that defendant has forfeited review. The State has therefore forfeited any forfeiture argument. See *People v. Williams*, 193 Ill. 2d 306, 347-48 (2000) (rules of waiver and forfeiture apply to the State). We will, therefore, review defendant's claims. We review the propriety of a circuit court's imposition of fines and fees *de novo*. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 60.

¶ 89 Defendant first argues, and the State correctly agrees, that the $5 electronic citation fee must be vacated because it only applies to traffic, misdemeanor, municipal ordinance, and conservation cases, and does not apply to his felony conviction. See *People v. Moore*, 2014 IL App (1st) 112592-B, ¶ 46 (electronic citation fee does not apply to felonies). Accordingly, we vacate defendant's $5 electronic citation fee and direct the clerk of the circuit court to correct the fines, fees, and costs order accordingly.

¶ 90 Next, defendant argues that several assessments denominated as "fees" are actually fines subject to offset by presentence incarceration credit. Pursuant to section 110-14 of the Code (725 ILCS 5/110-14 (West 2016)), defendant is entitled to have a credit applied against his fines

of $5 for each day he spent in presentence custody. The credit under section 110-14 can only be applied to fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 580 (2006). Our supreme court has defined a "fine" as "punitive in nature" and "a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense." (Internal quotation marks omitted.) *People v. Graves*, 235 Ill. 2d 244, 250 (2009) *(*quoting *Jones*, 223 Ill. 2d at 581). A "fee" is "a charge that 'seeks to recoup expenses incurred by the [S]tate,' or to compensate the [S]tate for some expenditure incurred in prosecuting the defendant." *Id*. (quoting *Jones*, 223 Ill. 2d at 582). Even if a statute labels a charge as a "fee," it may still be considered to be a "fine." *People v. Smith*, 2018 IL App (1st) 151402, ¶ 13.

¶ 91 Defendant contends, and the State correctly concedes, that the $50 court system fee and $15 state police operations fee are actually fines that should be offset by presentence credit. See *People v. Brown*, 2017 IL App (1st) 150146, ¶ 36 (state police operations fee is a fine); *People v. Reed*, 2016 IL App (1st) 140498, ¶ 15 (court system fee is a fine). Accordingly, defendant is entitled to offset the court system fee and state police operations fee with presentence custody credit. We direct the clerk of the circuit court to correct the fines, fees, and costs order to reflect this credit.

¶ 92 Next, defendant contends that the $190 felony complaint filing fee, the $15 automation fee, the $15 document storage fee, and the $25 court services fee are all fines subject to presentence incarceration credit. This court has already considered challenges to these assessments and found that they are fees, not fines, and thus are not subject to offsetting presentence custody credit. See *People v. Smith*, 2018 IL App (1st) 151402, ¶ 15.

¶ 93 Similarly, defendant is not entitled to presentence custody credit against the $2 Public Defender Records Automation fee and the $2 State's Attorney Records Automation fee. The

overwhelming majority of legal authority holds that they are fees not subject to offset. See *e.g.*, *id*. ¶ 16; *People v. Brown*, 2017 IL App (1st) 150146, ¶ 38 (collecting cases); but see also *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56 (finding that these two assessments are fines, not fees). In keeping with precedent, we conclude that these two assessments are fees and, therefore, may not be offset by defendant's presentence credit.

¶ 94 For all the foregoing reasons, we affirm defendant's convictions and his 19-year sentence for aggravated robbery; vacate defendant's sentence for attempted robbery and remand for resentencing; vacate the $5 electronic citation fee; and find that the $50 court system fee and the $15 state police operations fee are fines that are offset by defendant's presentence custody credit. Thus, the total amount of fines, fees, and costs is reduced by $70. We direct the clerk of the circuit court to modify the fines, fees, and costs order accordingly.

¶ 95 Fines, fees, and costs order modified; sentence for attempted robbery vacated and cause remanded for resentencing; judgment of the circuit court is affirmed in all other respects.