

2018 IL App (1st) 152415-U

No. 1-15-2415

Order filed June 29, 2018

Sixth Division

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 4268
)	
WILLIE MULLEN,)	Honorable
)	Carol M. Howard,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Hoffman and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for first degree murder affirmed where the witnesses' combined testimony and identification of defendant was credible; fines and fees order amended.

¶ 2 Following a bench trial, defendant Willie Mullen was convicted of first degree murder and sentenced to 45 years' imprisonment. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt because its case hinged on the self-serving and unbelievable testimony of his codefendant, and the remaining evidence was based on two

identifications of defendant that were not believable. Defendant also contends that his fines and fees order must be amended. We vacate one assessment, amend the fines and fees order, and affirm defendant's conviction in all other respects.

¶ 3 Defendant and codefendant Anthony White were charged with two counts of first degree murder for the shooting death of Cecil Ward. Defendant was charged with four additional counts of that offense. At trial, White testified for the State and acknowledged that he was incarcerated. White was arrested on January 26, 2010, for possession of a controlled substance (PCS). When he initially discussed the shooting with police, he did not tell them the truth because he was trying to downplay his involvement. He repeatedly changed his story. White acknowledged that he had two prior convictions for PCS. He also had two cases pending for PCS, and PCS with intent to deliver. White entered into an agreement with the State's Attorney's Office that he would plead guilty to a lesser charge of conspiracy to commit murder and receive a sentence of 15 years' imprisonment in exchange for his truthful testimony against defendant in this case. The State would then dismiss the murder charges against him. White further agreed to plead guilty in the PCS and PCS with intent cases, and to receive sentences that would run concurrent with his sentence for conspiracy to commit murder.

¶ 4 On November 17, 2009, White was selling drugs. In the early afternoon, he was at the corner of Huron Street and Homan Avenue when defendant drove by with his son in the car. White and defendant grew up together and had been friends their entire lives. About 15 to 20 minutes later, White saw defendant and his son in front of the corner store across the street. White crossed the street and spoke with defendant. Defendant asked what was happening in the

neighborhood, and began talking about a man named Cecil. Defendant then said that he needed to drop off his son, but that he was going to return to speak with White.

¶ 5 Defendant returned 20 minutes later. Defendant said his girlfriend Keisha was cheating on him with Cecil (Ward), and he saw them leaving a hotel together. White knew of Ward from the neighborhood. Defendant talked about “getting down on him,” but did not say exactly what he was going to do to Ward. Defendant walked away and approached a man named Chub, who was sitting in a parked car. Defendant sat inside the car with Chub for about 10 minutes.

¶ 6 Defendant walked back to White, and White saw a gun in defendant’s waistband. Defendant asked White to go inside the store and ask the owner, Tony, to open the back door. White did so, but Tony refused. Defendant’s uncle, “V-Man,” was also inside the store. White told V-Man that defendant had a gun and was talking about doing something to Ward. V-Man did nothing. White exited the store and told defendant that Tony refused to open the back door.

¶ 7 Defendant told White to get in a car, drive around, then park in the middle of Huron Street and pretend he had engine trouble. Defendant instructed White to park a little before the stop sign so that if someone drove up, that person would not be able to pass the stopped car. It was about 3:40 p.m., and cars were parked on both sides of the street.

¶ 8 White got into his own car, which was red. He drove around the block and stopped on Huron, about five feet before the stop sign at Homan. White exited his car, raised the hood, and acted like he was working on something under the hood. White observed defendant coming out of the alley. Defendant approached a black car that was parked on Huron, about one car-length behind White’s car. Ward was sitting in the driver’s seat of the black car. White observed defendant shoot a gun through the driver’s window of the black car at least three or four times.

¶ 9 Defendant fled through the alley. White got in his car and drove around the block. He returned to the scene and saw a few men by Ward's car. White asked the men what happened and if the man in the car was dead. The men asked White if he was "crazy" and said "[y]ou were just right here." White drove away. He again returned to the scene and observed the activity with the police and paramedics. White then drove to his girlfriend's house at 15th and Cullerton Streets.

¶ 10 White spoke with defendant on the phone shortly after 5 p.m. He then met defendant down the street from his girlfriend's house. Defendant asked White to hold on to the firearm, which was inside a bag on defendant's back seat. White refused, claiming that his girlfriend did not want it inside her house. Defendant drove away. Later that night, defendant and White returned to the crime scene together and observed that there were still a few officers there.

¶ 11 White testified that a police POD video recorded by a street camera accurately depicted the events that occurred on the day of the shooting. As the video played in court, White pointed out his and Ward's vehicles. White indicated when he exited his car in the middle of Huron and turned on his hazard lights. White identified defendant as he approached Ward's vehicle and fired multiple gunshots at Ward.

¶ 12 On cross-examination, White acknowledged that when he was arrested for the drug charges, he told police that he had knowledge about a murder. During his various stories, he placed himself in several locations that were away from the scene of the shooting. He initially told police that the red car was owned and driven that day by another drug dealer, Anthony Hoskins, falsely involving him in the murder. White also falsely said that his cousin was in the red car with Hoskins. When White returned to the scene after the shooting, the man in the car

with him was Terrell Owens, one of his “associates.” White denied that defendant was in the car with him at that time. White repeatedly testified that his testimony in court was the truth.

¶ 13 Hasan Michael Awwad testified that about 3:45 p.m. on November 17, he and his friend, Randy Novak, were in the area of Homan Avenue and Huron Street on the west side of Chicago. Novak was “dope sick” and Awwad had agreed to help him get some “stuff.” Novak made his purchase, and the men walked towards an abandoned house where Nowak was going to use the “stuff.” Awwad heard a loud bang and ducked behind the wall of a building. He heard two more gunshots. Awwad peeked his head out from behind the wall and saw a man wearing a hoodie standing next to a compact car. The man was pointing a gun at and shooting a man who was sitting in the driver’s seat. A red Buick with its hood up was stopped in front of the compact car, blocking its path. A man leaning into the red vehicle appeared to be working on that car.

¶ 14 After the shooting, the gunman turned, gave a “glimpse” at Awwad, and fled into the alley. As the gunman ran, his hoodie fell down and Awwad saw that his hair was in little cornrows. Awwad ran to the compact car and checked the man’s pulse, which was very light, then stopped. The red car drove around the block and returned to the scene. The driver asked Awwad what happened. Awwad replied “are you serious? You have been here and you saw the whole thing.” The driver asked Awwad if the man died, and Awwad replied “[o]f course, he is dead. You saw him die.” The man in the red car then fled the area.

¶ 15 Awwad called the police. He then followed Novak into the abandoned house where Novak used his purchase. Numerous police officers swarmed the area and took everyone inside the house to the police station.

¶ 16 On January 27, 2010, Awwad viewed a lineup and identified codefendant White. The police also showed Awwad a photo array. Awwad told police that the photos were not clear and that he would prefer viewing a lineup. The following day, Awwad viewed a lineup and identified defendant as the shooter. Awwad testified “I recognize the person with the cornrows from the shooting.” In court, Awwad identified both a photograph of the lineup, and defendant.

¶ 17 On cross-examination, Awwad acknowledged that Novak was a heroin addict, and that he was so “dope sick” that Awwad had to help him walk. Novak snorted some of the heroin prior to the shooting, and later “shot up” at the abandoned house. Awwad denied using any drugs on the day of the shooting. He informed the police that he had a pending case for PCS. He pled guilty to that charge in March 2010 and received probation.

¶ 18 Awwad denied telling Detective Moreth that the shooter was wearing a black hoodie, skull cap, or black pants. He told Moreth that the shooter was skinny. Awwad told Detective Rios that the shooter’s hair was in cornrows or little twists, and Rios said he would relay that information to the other detectives. Awwad acknowledged that he did not immediately identify defendant in the lineup, and was considering two people. After further consideration, he choose defendant because his hairstyle was similar to the shooter. During the lineup, Awwad told Detective Swinkle that he saw little twists in the gunman’s hair as he fled. Awwad also described the gunman’s hairstyle when he gave a statement to assistant State’s Attorney Maureen O’Brien.

¶ 19 Randy Novak testified similar to Awwad that as they walked towards the corner of Homan and Huron, he heard a few gunshots. They walked down Huron, and Novak saw a man fire three more gunshots into a parked vehicle, striking the man sitting in the driver’s seat. Novak observed a red car parked in the middle of the street that appeared to be blocking the parked

vehicle. The hood of the red vehicle was up as though the car had broken down, and a man was sitting inside that car. After the shooting, the gunman ran through the alley and the red car left the scene. Novak called the police. Moments later, the red car returned with two men inside the vehicle. The men asked Awwad and Novak if the victim was dead. Awwad asked if they were serious. Novak testified that the men in the red car knew what was going on “[b]ecause they did it.” Novak recognized both of the men. In court, Novak identified defendant as the gunman.

¶ 20 On January 29, 2010, Novak was in prison when he viewed two photo arrays. In the first photo array, Novak identified White as the driver of the red car. In the second, he identified defendant as the gunman. Novak testified that on the day of the shooting, he went to the west side to buy drugs. He denied purchasing drugs before the shooting occurred. Novak acknowledged that he has prior felony convictions for retail theft and PCS.

¶ 21 On cross-examination, Novak acknowledged that at the time of the shooting, he was a heroin addict. He denied being “dope sick” that day. He further denied that Awwad helped him walk, and that he sniffed heroin before the shooting. He acknowledged using heroin in the abandoned building after the shooting. Novak told Detective Swinkle that the gunman was wearing a black skull cap, black jacket and blue jeans, and wore braids or dreads in his hair, which fell out of the skull cap. He could not recall if the gunman wore a hoodie, or if he had a scarf or clothing around his face.

¶ 22 Chicago police detective Gerald Swinkle testified that on January 27, Awwad viewed a lineup and identified White as the man who used a red car to block the victim’s car, then drove the red car around the block and spoke with Awwad. Swinkle also showed Awwad a photo array that included defendant’s photo. Awwad stated that the photos were not as clear as he would like,

and that he would prefer to view a physical lineup. The following day, defendant was arrested on an unrelated charge. Awwad then viewed a lineup and identified defendant as the shooter.

¶ 23 On cross-examination, Swinkle acknowledged that fingerprints on the exterior of the driver's door of Ward's vehicle were photographed and lifted. Neither Novak nor Awwad told Swinkle that Novak had used heroin prior to and after the shooting. Novak described the shooter as a black man in his late 20s, six feet tall, 175 pounds, wearing a black skull cap, black jacket, and dark jeans. Novak did not mention the shooter's hairstyle.

¶ 24 The State presented a stipulation that forensic investigator Donald Fanelli recovered four Winchester .45 auto-fired cartridge cases from the street and one from the parkway grass. He also retrieved an envelope from the medical examiner that contained bullets recovered during Ward's autopsy. Fanelli recovered two latent print lifts from the left rear quarter panel and six latent print lifts from the exterior of the driver's door of Ward's vehicle.

¶ 25 The State presented another stipulation that firearms identification expert Melissa Nally determined that the five fired cartridge cases were fired from the same firearm. The five bullets recovered by the medical examiner were also fired from the same firearm.

¶ 26 The State presented another stipulation that Michael Cox, an expert in latent fingerprint analysis and comparison, found that six of the eight lifted prints were not suitable for comparison. The two prints that were suitable for comparison did not match defendant or White.

¶ 27 Finally, the State presented a stipulation that assistant Cook County medical examiner Tera Jones performed the autopsy on Ward and found that he suffered six gunshot wounds. Ward's death was due to multiple gunshots wounds, and the manner of death was homicide.

¶ 28 All of the State's exhibits, including the POD video, were admitted into evidence, and the State rested. Defendant moved for a directed verdict, which was denied by the trial court.

¶ 29 Reginald Minor testified for the defense that about 3:45 p.m. on November 17, he was driving on Homan and stopped at the stop sign at the intersection of Homan and Huron. To his right, he saw a red car stalled on Huron just before the intersection. A man was standing in front of that car with the hood up. The man's back was to Minor, so he could not see the man's face.

¶ 30 Minor saw another man exit a building and enter a car. Almost simultaneously, a third man came out of the alley or the building immediately after the second man. Minor could not see the third man's face because the man had a white t-shirt or piece of clothing pulled up, covering his face from his nose on down. Minor did not know if the man was wearing a hood or a hat. The only part of the man's face Minor could see was his eyes.

¶ 31 The third man stood outside of the car in which the second man was sitting. Minor heard a popping sound and saw a flash, and realized the third man was shooting a gun at the man inside the car. Minor heard five or six gunshots. When the shooting started, the man with the red car drove away. After the shooting, the gunman turned and ran through the alley. Minor did not see a hood or hat fall off of the shooter, nor did he observe the shooter's hairstyle.

¶ 32 Minor drove through the intersection, parked his car, and ran to the victim's car. Minor did not see two other men at the victim's car. Minor called 911 and tried to comfort the victim, who was trying to breathe. The victim took a final breath and died. Other people arrived at the scene. Minor never observed the red car return to the scene, but acknowledged it could have done so.

¶ 33 Minor spoke with police at the scene and gave a statement at the police station. He told police that he could not see the shooter's face or hair. He could only describe the shooter as a black man. On January 29, Minor viewed two separate lineups, but could not identify anyone. Minor could not identify defendant in court, stating "I couldn't see his face when it happened."

¶ 34 Vashon Woolridge, defendant's uncle, whose nickname is V-Man, denied that he was in the corner store on November 17, and denied speaking with White that day. He further denied that White told him that defendant had a gun and was going to "get down on" or shoot someone.

¶ 35 Defendant recalled Detective Swinkle who testified that neither Awwad nor Novak described the gunman's hairstyle. Nor did Awwad state that the gunman's hoodie fell down. On cross-examination, Swinkle acknowledged that Minor never told him that the gunman's face was covered with a white t-shirt or cloth, or that he was only able to see the shooter's eyes. Minor did not state that he would be unable to identify the gunman or the man with the red car.

¶ 36 Chicago police detective Patrick O'Donovan testified that on January 29, Minor was shown a photo array that included White's photo, but Minor did not identify White. Later that night, Minor viewed a lineup that included defendant, but he did not identify defendant. On cross-examination, O'Donovan acknowledged that on January 29, Minor initially declined to go to the police station. Minor told O'Donovan that he would not be able to identify anyone in a photo array or lineup. O'Donovan left Minor's residence, but returned later that night with an assistant State's Attorney and a photo array. Minor again said that he would not be able to identify anyone, but eventually viewed the photo array and lineup, and did not identify anyone. Minor explained to O'Donovan that the gunman's face was covered with clothing, and he only saw the back of the man who was standing by the red car.

¶ 37 Defendant presented a stipulation that Novak's written statement did not include any information that the shooter wore braids or had a braided hairstyle. Defendant presented another stipulation that Awwad told Detective Moreth that the shooter was wearing a skull cap. Finally, defendant presented a stipulation that Detective Rios would testify that he had no recollection of speaking with Awwad, nor did Awwad tell him that the shooter had a particular hairstyle.

¶ 38 Following arguments, the trial court found that Minor was a very credible witness who truthfully testified that he was not in a position to identify the shooter. The court found that Novak was not credible because his perception was altered by the drugs he consumed and his "dope sickness." The court further found that Awwad's observation of the shooting was clear and that he got a glimpse of defendant's face. The court noted, however, that Awwad did not view the lineup until two months later, and questioned whether Awwad had enough time to observe defendant's face to make a positive identification. The court pointed out that Awwad was considering two men during the lineup, then chose defendant because his hair was in cornrows, and Awwad recalled that the gunman wore cornrows. The court found that Awwad's testimony alone did not constitute proof beyond a reasonable doubt, and it would therefore need to consider his testimony coupled with White's testimony.

¶ 39 The trial court found that White was trying to talk himself out of a drug case when he talked himself into a murder case. Nevertheless, the court found "that doesn't necessarily mean that he is lying about who the shooter was." The court noted that there was no physical evidence connecting defendant to the offense, nor any inculpatory statement by defendant. However, the court concluded that the combined testimony of White and Awwad proved defendant guilty beyond a reasonable doubt.

¶ 40 Defendant filed a motion for a new trial. During the hearing on that motion, the court stated that, other than identifying defendant as the shooter, Minor's testimony "did basically corroborate" White's testimony in many ways. The court again stated that in finding defendant guilty, it gave no credence to Novak's testimony, but based its ruling on the combined testimony of White, Awwad and Minor. The court denied defendant's motion. It then sentenced defendant to 45 years' imprisonment and assessed him \$629 in fines and fees.

¶ 41 On appeal, defendant first contends that the State failed to prove him guilty beyond a reasonable doubt because its case hinged on the self-serving and unbelievable testimony of White, and the remaining evidence was based on identifications by Awwad and Novak that were not believable. Defendant argues that there was no forensic evidence connecting him to the murder, and he never gave an inculpatory statement.

¶ 42 When defendant claims that the evidence is insufficient to sustain his conviction, this court must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the offense proved beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). This standard applies whether the evidence is direct or circumstantial, and does not allow this court to substitute its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42.

¶ 43 In a bench trial, the trial court is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable

inferences from therein. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We will not reverse a criminal conviction based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt (*People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011)), nor simply because defendant claims that a witness was not credible or that the evidence was contradictory (*Siguenza-Brito*, 235 Ill. 2d at 228).

¶ 44 To prove defendant guilty of first degree murder in this case, the State was required to show that he intentionally or knowingly shot and killed Cecil Ward while armed with a firearm, and that he personally discharged the firearm that caused Ward's death. 720 ILCS 5/9-1(a)(1) (West 2008).

¶ 45 Defendant first argues that White's testimony was not credible because White gave police several conflicting stories in which he did not initially identify defendant. However, after Awwad and Novak identified White as being at the scene, White then implicated defendant to escape prosecution for the murder. Defendant points out that White received a very generous plea deal in exchange for his testimony implicating him.

¶ 46 The testimony of an accomplice witness has inherent weaknesses as it comes from a confessed criminal and may be based on motives such as threats and fear, malice towards the accused, or promises or hopes of leniency and benefits from the prosecution. *People v. Holmes*, 141 Ill. 2d 204, 242 (1990). Consequently, accomplice testimony must be carefully scrutinized. *Id.* However, the inherent weaknesses affect the weight of the evidence and the credibility of the witness, and are therefore matters within the province of the trier of fact. *Id.* "Material corroboration of an accomplice's testimony is entitled to great weight." *Id.* The testimony of an

accomplice is sufficient to sustain a conviction when it convinces the fact finder that the defendant is guilty beyond a reasonable doubt. *Id.*

¶ 47 Here, the record shows that White's trial testimony was corroborated by the testimony of Awwad. White testified that pursuant to defendant's instructions, he stopped his red car in the middle of Huron Street, raised his hood, and pretended that he was having engine trouble. White purposely stopped five feet before the stop sign so that no one would be able to pass him. While White pretended to be working under the hood of his car, he observed defendant come out of the alley, approach Ward's car, and fire multiple gunshots at Ward through the driver's window. Defendant fled through the alley while White drove around the block. White returned to the scene and asked Awwad and Novak what happened and if Ward was dead. White testified that the men asked him if he was "crazy" and said "[y]ou were just right here."

¶ 48 Similar to White, Awwad testified that he observed a red car stopped in the street with its hood up, blocking the path of another car. Awwad saw a man he later identified as White, leaning under the hood of the red car, working on it. Awwad heard gunshots and saw a man standing next to the other car, shooting a gun at the man sitting in the driver's seat of that car. Awwad observed the gunman flee through the alley. He also observed White drive the red car around the block and return to the scene. Awwad testified that White asked him what happened and if the man died. Awwad asked White if he was serious and replied "[y]ou have been here and you saw the whole thing." Awwad viewed lineups and identified White as the man with the red car, and defendant as the gunman. The record thus shows that Awwad's testimony materially corroborated White's testimony regarding the details of the shooting, and White's identification of defendant as the gunman.

¶ 49 In addition, the record shows that White's testimony was corroborated by the POD video. This court viewed the video, which was recorded by a police camera mounted atop the street sign at the corner of Huron and Christiana, at the opposite end of the block from the shooting. The video shows a red car with its hazard lights on, stopped in the middle of Huron Street slightly before the stop sign at Homan. The driver, whom White identified as himself, exits the car, raises the hood, and leans under the hood of the car. Ward's car is parked against the left curb of the street about one car length behind White's car. The video then shows a man wearing dark clothing, and either a hat or a hood, walking out of the alley. There is something white in color near his neck area. In court, White identified this man as defendant. The camera loses sight of the man for about 10 seconds as it zooms in on a garbage dumpster. When the camera zooms out, the man is standing immediately outside the driver's door of Ward's car. His arm is extended towards the driver's door. The man takes about three steps back from the car door with his arm still extended. The red car is still in the middle of the street. The camera then rotates slowly, panning down the adjacent streets. Two minutes later, as the camera faces the opposite direction on Huron, a red car comes around the corner and drives west on Huron towards the scene of the shooting. The camera returns to the scene a minute and a half later, three minutes after the shooting. A few people are standing near the driver's door of Ward's vehicle. The video therefore substantially corroborated the material elements of White's testimony.

¶ 50 The record further reveals that even defendant's witness, Minor, corroborated essential elements of White's testimony. Minor testified that while he was stopped at the corner of Homan and Huron, he saw a red car stalled on Huron just before the intersection. Minor observed a man standing in front of the red car with the hood up. Minor saw another man exit a building and

enter a car, and saw a third man exit the alley immediately after the second man. Similar to White and Awwad, Minor testified that the third man stood outside the car and fired five or six gunshots at the man inside the car. Minor also observed the gunman flee through the alley as the man in the red car drove away. Although Minor was unable to identify defendant or White, and was called by the defense to challenge the identification of defendant, his testimony substantially corroborated that of White and Awwad regarding the details of the shooting.

¶ 51 The trial court considered the combined testimony of White and Awwad, and determined that their identification of defendant as the gunman was credible. The court further found that Minor's testimony was credible and "did basically corroborate" White's testimony. The court expressly stated that it based its guilty finding on the combined testimony of White, Awwad and Minor. These determinations were within the province of the trial court, and we find no reason to disturb its decision. *Siguenza-Brito*, 235 Ill. 2d at 228; *Holmes*, 141 Ill. 2d at 242.

¶ 52 Defendant also contends that Awwad's identification of him was unreliable because Awwad had little time to observe the gunman and only caught a glimpse of him as he fled the scene. Defendant claims that Awwad's attention would have been distracted by the sudden gunfire. He argues that Awwad could not identify him in the photo array. He further argues that during the lineup, Awwad was considering both defendant and another man, then chose defendant because he had a hairstyle that was similar to the gunman.

¶ 53 Defendant also argues that Novak's identification was unreliable because he was a drug addict and used heroin immediately before and after the shooting. However, as pointed out by the State, the trial court expressly found Novak's testimony not credible due to his drug use. We therefore give no further consideration to Novak's testimony.

¶ 54 In general, identification of a defendant by a single witness is sufficient to sustain a conviction where the witness viewed the defendant under circumstances that permitted a positive identification. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). Such identification is sufficient even where the defendant presents contradictory testimony, as long as the witness had an adequate opportunity to view the offender and provided a positive and credible identification in court. *Id.*

¶ 55 In assessing identification testimony, the court considers: (1) the witness' opportunity to view the offender at the time of the offense; (2) his degree of attention; (3) the accuracy of the witness' prior description of the offender; (4) the witness' level of certainty at the identification confrontation; and (5) the length of time between the offense and the identification confrontation. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995).

¶ 56 Here, the record shows that the trial court found that Awwad got a glimpse of defendant's face as defendant turned and fled from the shooting. However, the court noted that Awwad did not view the lineup and identify defendant until two months later, and questioned whether Awwad had enough time to observe defendant's face to make a positive identification. The court also was concerned that Awwad was considering two men during the lineup, then chose defendant because his hair was styled in cornrows, as was the gunman's. Based on these concerns, the court expressly found that Awwad's identification testimony alone was not sufficient to prove defendant guilty beyond a reasonable doubt, and that the court would need to consider Awwad's testimony coupled with White's testimony. As discussed above, the court concluded that their combined testimony proved defendant guilty beyond a reasonable doubt.

¶ 57 The record thus reveals that the trial court gave proper consideration to the relevant factors and determined that Awwad's identification of defendant was questionable and not

sufficient alone. However, when coupled with White's testimony, the identification of defendant as the gunman was sufficient. It was the trial court's responsibility to weigh all of the evidence and determine whether it was sufficient to find that defendant was positively identified as the gunman beyond a reasonable doubt. *Siguenza-Brito*, 235 Ill. 2d at 228. Viewing the evidence in the light most favorable to the State, we find that the evidence was sufficient for the trial court to find defendant guilty.

¶ 58 Defendant next contends that his fines and fees order must be amended. He argues that one of the fees was improperly assessed and must be vacated. He also argues that he is entitled to have additional presentence monetary credit applied against three assessments that are labeled as fees, but are actually fines.

¶ 59 Defendant acknowledges that he did not preserve this issue for appeal because he did not challenge the assessments in the trial court. It is well settled that a defendant forfeits a sentencing issue that he fails to raise in the trial court through both a contemporaneous objection and a written postsentencing motion. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). He argues, however, that this court may modify the fines and fees order pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), and urges this court to review his request under the second prong of the plain error doctrine. The State acknowledges the forfeiture, but asserts that this court may consider defendant's claims under the plain error doctrine or Rule 615(b)(1), and addresses the merits of his claims.

¶ 60 Defendant's request for the *per diem* monetary credit is not merely requesting credit that is due against his fines, but rather, is raising a substantive issue regarding whether the assessments labeled as fees are fines, and therefore, is subject to forfeiture. See *People v. Brown*,

2017 IL App (1st) 150203, ¶¶ 40-41. Defendant's challenges are not reviewable under the plain error doctrine. *People v. Griffin*, 2017 IL App (1st) 143800, ¶ 9, *pet. for leave to appeal granted*, No. 122549 (Nov. 22, 2017). Nor can we reach the merits of his claims under Rule 615(b). *People v. Grigorov*, 2017 IL App (1st) 143274, ¶¶ 13-14. However, the rules of forfeiture and waiver also apply to the State, and where the State fails to argue that defendant has forfeited the issue, it waives the forfeiture. *People v. Bridgeforth*, 2017 IL App (1st) 143637, ¶ 46. Here, although the State acknowledges the forfeiture, it asserts that this court may reach the issues, thereby waiving the forfeiture. We therefore address the merits of defendant's claims. The propriety of the imposition of fines and fees is a question of law which we review *de novo*. *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22.

¶ 61 Pursuant to section 110-14 of the Code of Criminal Procedure (725 ILCS 5/110-14 (West 2012)), a defendant is entitled to have a credit applied against his fines of \$5 for each day he spent in presentence custody. Here, defendant spent 1,952 days in presentence custody, and is therefore entitled to a maximum credit of \$9,760. The record shows that defendant was assessed \$679 in fines and fees, given credit of \$50 against his fines, and has a remaining balance of \$629.

¶ 62 The credit under section 110-14 can only be applied to offset fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 580 (2006). To determine whether an assessment is a fine or a fee, we consider the nature of the assessment rather than its statutory label. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). 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.) *Id.* (quoting *Jones*, 223 Ill. 2d at 581). A "fee," on the other hand, is "a

charge that ‘seeks to recoup expenses incurred by the state,’ or to compensate the state for some expenditure incurred in prosecuting the defendant.” *Id.* (quoting *Jones*, 223 Ill. 2d at 582).

¶ 63 First, the parties agree, and we concur, that the \$5 Electronic Citation Fee (705 ILCS 105/27.3e (West 2012)) must be vacated as that fee only applies to traffic, misdemeanor, municipal ordinance and conservation violations, and does not apply to defendant’s felony offense. We vacate the \$5 Electronic Citation Fee and direct the clerk of the circuit court to amend the fines, fees and costs order accordingly.

¶ 64 Next, the parties agree that defendant is due full credit for the \$15 State Police Operations Fee (705 ILCS 105/27.3a(1.5) (West 2012)) and the \$50 Court System Fee (55 ILCS 5/5-1101(c) (West 2012)). Defendant points out that, although these two charges are labeled fees, this court previously held that they are fines because they do not compensate the State for expenses incurred in the prosecution of defendant, and thus, they are subject to offset by the monetary sentencing credit. *People v. Wynn*, 2013 IL App (2d) 120575, ¶¶ 13, 17. We direct the clerk of the circuit court to amend the fines, fees and costs order to reflect a \$15 credit for the State Police Operations Fee and a \$50 credit for the Court System Fee.

¶ 65 Finally, defendant contends that he is entitled to credit against the \$190 Felony Complaint Filed Fee (705 ILCS 105/27.2a(w)(1)(A) (West 2012)), Defendant argues that this assessment is a fine rather than a fee because it does not reimburse the State for the cost incurred in prosecuting a defendant, but instead, finances a component of the court system for the general costs of litigation.¹

¹ Whether the Felony Complaint Filed, Automation, Document Storage, Public Defender Records Automation, and State’s Attorney Records Automation assessments are fees or fines is currently pending before the Illinois Supreme Court in *People v. Clark*, No. 122495.

¶ 66 This court has already considered challenges to this assessment and has determined that it is a fee, not a fine, and therefore, not subject to presentence incarceration credit. See *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006); *People v. Bingham*, 2017 IL App (1st) 143150, ¶¶ 41–42 (relying on *Tolliver* and finding the \$190 Felony Complaint Filed fee to be a fee), *pet. for leave to appeal granted*, No. 122008 (May 24, 2017). We adhere to the reasoning in our prior decisions and find that this assessment is a fee that compensates the clerk’s office for expenses incurred in the prosecution of a defendant. As such, defendant is not entitled to offset the fee with his presentence custody credit.

¶ 67 For these reasons, we vacate the \$5 Electronic Citation Fee from the fines, fees and costs order. We direct the clerk of the circuit court to further amend that order to reflect a credit of \$65 to offset the \$15 State Police Operations Fee and the \$50 Court System Fee. Defendant’s amended total assessment should be \$559. We affirm defendant’s convictions and sentences in all other respects.

¶ 68 Affirmed in part and vacated in part; fines and fees order corrected.