2018 IL App (1st) 152587-U

No. 1-15-2587

Order filed May 9, 2018

Third Division



IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 13 CR 4759 |
| | ) | |
| MARKESE DICKERSON, | ) | The Honorable |
| | ) | Dennis J. Porter, |
| Defendant-Appellant. | ) | Judge Presiding. |

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Cobbs and Justice Howse concurred in the judgment.

**ORDER**

¶ 1 *Held*: Defendant's convictions for armed robbery and aggravated battery are affirmed over his contentions that (1) the State failed to prove him guilty beyond a reasonable doubt because an eyewitness's identification of him as one of the offenders was unreliable; (2) the State failed to prove beyond a reasonable doubt that he personally discharged a firearm during the armed robbery; and (3) he is entitled to remand for resentencing because section 5-4.5-105 of the Code of Corrections applies retroactively. Defendant's fines, fees, and costs order is modified.

¶ 2 Following a bench trial, defendant Markese Dickerson, who was 16 years old at the time of the offense, was convicted of armed robbery (720 ILCS 5/18-2(a)(3) (West 2012)) and aggravated battery (720 ILCS 5/12-3.05(e)(1) (West 2012)). He was sentenced to concurrent terms of 26 years' imprisonment for armed robbery and 5 years' imprisonment for aggravated battery. Defendant's 26-year sentence for armed robbery included a 20-year enhancement for personally discharging a firearm during the offense (720 ILCS 5/18–2(b) (West 2012)).

¶ 3 On appeal, defendant contends that: (1) the State failed to prove him guilty beyond a reasonable doubt because the eyewitness's identification of him as one of the offenders was unreliable; (2) the State failed to prove beyond a reasonable doubt that he personally discharged a firearm during the commission of the offense and thus the 20-year firearm enhancement for armed robbery should be reduced to 15 years; (3) due to the State's failure to prove that he personally discharged a firearm, his case should be remanded for sentencing under the Juvenile Court Act (Act) because, pursuant to the newly amended version of the Act (See 705 ILCS 405/5-130(1)(a) (West 2016)), he was not convicted of a crime that requires automatic transfer to adult court; (4) he should get the benefit of resentencing under section 5–4.5–105 of the Code of Corrections (730 ILCS 5/5–4.5–105 (West 2016)), which grants discretion in the imposition of firearm enhancements for defendants under the age of 18; and (5) his fines, fees, and costs order should be modified. We affirm and modify the fines, fees, and costs order.

¶ 4 On February 2, 2013, Robert Trice was robbed and shot in the foot while walking home from work. Defendant was arrested and charged with one count of armed robbery with a firearm (720 ILCS 5/18-2(a)(2) (West 2012)), one count of armed robbery while personally discharging a firearm (720 ILCS 5/18-2(a)(3) (West 2012)), two counts of armed robbery while personally

discharging a firearm that causes great bodily harm (720 ILCS 5/18-2(a)(4) (West 2012)), and one count of aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2012)).

¶ 5 The evidence at trial showed that on February 2, 2013, Trice left Norman's Bistro, where he worked, at approximately midnight and walked toward his home. He was in the 4600 block of Woodlawn Avenue, walking south, when he saw three men on the opposite side of the street walking north. Trice described Woodlawn Avenue as being lit by streetlights "down the street." One of the men crossed the street toward Trice, pulled out a "small black revolver," and pointed it at Trice. The man was wearing a "skull cap or beanie," but his face was not covered. The gunman got within an arm's length of Trice before pointing the gun at his head and telling him to look away. At this point, Trice raised his hands up and looked down from the gunman. Trice identified defendant, in open court, as the man who approached him with the gun.

¶ 6 As Trice looked away, another man approached from behind and took his phone, keys, and a blue iPod Touch. Trice did not see the face of the individual who took his property. After they took his property, defendant and the other individual ran back across the street. As all three men were running away, defendant turned around, shot Trice in the foot, and continued running. Trice walked to a gas station where he used a pay phone to call 9-1-1.

¶ 7 After being treated for a few hours for his gunshot wound, Trice spoke with detectives at Area Central, who asked him to view a lineup. Prior to viewing the lineup, Trice was provided a form informing him that the person who robbed and shot him may not be in the lineup. Trice signed the form at 5:45 a.m. After viewing the lineup, Trice identified defendant as the person who held him up and shot him. He then confirmed that the iPod recovered by police belonged to him. The State introduced photographs of the recovered iPod, which Trice identified.

¶ 8 On cross-examination, Trice acknowledged that, at the scene, Officer Darby asked him to describe the perpetrators. He admitted that he described the gunman as "somewhere" close to 5 feet 8 inches tall, but he denied that he told Darby that the individual weighed 170 pounds. Trice also denied that he described the gunman as being between the ages of 20 to 25 years old, insisting instead that he told Darby that the gunman was "younger." He further maintained that he told Darby that the gunman wore a "dark coat" and that the perpetrators wore "coats and hoodies and gym shoes." Trice also stated that the gunman did not have a moustache or a "goatee." Trice agreed that this encounter lasted a "matter of seconds" and that it was "dark" outside at the time of the robbery.

¶ 9 On redirect-examination, Trice reiterated that defendant was the person that put a gun to his head and robbed him.

¶ 10 Chicago police officer Hillard testified that, at approximately 12:30 a.m., on February 2, 2013, he and his partner responded to a call of an armed robbery. When they arrived on the scene, he spoke with Trice, who indicated that he had been robbed 10 to 15 feet from the gas station where they were speaking. Trice also indicated that there were footprints in the snow where the perpetrators ran after the robbery. Hillard located the footprints, which led to the front door of 1246 E. 46th Street. Hillard radioed in his findings and called for an assist car. The officers established a perimeter around the house, while officers from another team, including Officer Perez, entered the home.

¶ 11 On cross-examination, Hillard testified that he asked Trice for a description of the perpetrators. He acknowledged that the arrest report that he filled out for defendant indicated that Trice described the perpetrators as wearing all black clothing. Hillard could not recall whether

Trice provided him with additional details about the perpetrators, such as weight, height, age, or facial hair. Hillard testified that, while it was dark outside, there were lights on at the gas station and described the area as "well lit."

¶ 12 Chicago police officer Perez testified that, on February 2, 2013, he received a call indicating that potential robbery suspects were located at 1246 E. 46th Street. When he arrived at that address, which was a three story residence, other officers had already established a perimeter. Perez's team made the first entry into the rear of the residence, which opened into the kitchen. Perez entered a bedroom immediately to the right of the kitchen and he found defendant alone inside. After he placed defendant into custody, other officers took him to "another part of the room."

¶ 13 On cross-examination, Perez explained that there were other occupants found in the residence who were located on the higher floors. He acknowledged that, in addition to defendant, several other males who wore their hair in "dreadlocks" were taken to the police station from that home.

¶ 14 Chicago police officer Hooper testified that, on February 2, 2013, he was called to 1246 E. 46th Street because he was the weapons officer on duty that night. When he arrived at the scene, he helped to establish a perimeter around the property. After other officers entered the property and secured it, he made entry through the rear door that led into the kitchen. He proceeded to the rear bedroom on the first floor where he recovered a turquoise iPod resting on top of a dresser.

¶ 15 On cross-examination, Hooper conceded that more than two officers had been inside of the rear bedroom prior to his arrival.

¶ 16 After entering into evidence the lineup form and the photographs of the iPod, the State rested.

¶ 17 Chicago police officer Darby testified that, on February 2, 2013, he received a call that a robbery had occurred at 4628 South Woodlawn Avenue. There, Darby spoke with Trice, who told him that three offenders approached him from the opposite side of the street and two of the offenders went through his pockets. Trice provided Darby with a description of all three offenders. He described the gunman as being between the ages of 20 and 25 years old, weighing 170 pounds, and 5 feet 7 inches tall. Trice did not describe the gunman as wearing a coat or having a goatee.

¶ 18 On cross-examination, Darby admitted that he had no independent recollection of what Trice told him with regard to the description of the gunman. He acknowledged that, according to his case report, Trice described the gunman as being 5 feet 8 inches tall. The report also indicated that Trice described the gunman as being light complected with dreadlocks. Darby admitted that Trice approximated the gunman's height and weight.

¶ 19 Chicago police officer Goldie testified that he, and his partner Hillard, were involved with the arrest of defendant. Goldie prepared defendant's arrest report, which indicated that defendant was 16 years old, 6 feet tall, weighed 130 pounds, and was dark complected. He agreed that the photo included in the arrest report depicts defendant with a goatee. Goldie also acknowledged that at least two other males were taken from the residence at East 46th Street. The arrest report for the other two individuals indicated that one was 5 feet 7 and the other was 5 feet 9 inches tall. Darby also stated that when he and Hillard entered the residence, he saw defendant and the other two individuals escorted out of the same room.

¶ 20 On cross-examination, Goldie testified that he entered the residence after the individuals were detained and did not know where they were found when they were originally detained. He admitted that he did not measure the individuals himself, but rather he obtained the height and weight information for his arrest reports from the individual's previous arrest reports.

¶ 21 Defendant testified that, on February 1, 2013, he was at his friend's home located at 1246 East 46th Street and remained there the entire day, playing video games and watching television. At approximately 11 p.m., he and a female friend moved to a bedroom on the second floor of the residence to sleep. He awoke to the sound of people entering his room. He saw three people he recognized come inside the room. Shortly thereafter, the police arrived and entered the room. The police arrested defendant, his female friend, and the three individuals who had entered while defendant was asleep. Defendant denied that he ever left the house that night.

¶ 22 On cross-examination, defendant acknowledged that he was light complected, 5 feet 9 inches tall, weighed 132 pounds, and wore his hair in dreadlocks.

¶ 23 The parties stipulated that defendant and two other individuals who were taken from the residence at 1246 East 46th Street submitted to gunshot residue testing at the police station between 1:30 to 2 a.m. on February 2, 2013. The results show that those three individuals may not have discharged a firearm. If they did discharge a firearm, then the particles were removed by activity, not deposited, or not detected by the procedure.

¶ 24 Based on this evidence, the court found defendant guilty of armed robbery with a firearm, armed robbery while personally discharging a firearm, and aggravated battery with a firearm. In announcing its decision, the court stated that "[t]he evidence is that the victim identified defendant as being the individual with the gun." The court found this testimony corroborated by

the footprints at the scene leading to the residence and by Perez's testimony that defendant was found, alone, in the room where the proceeds were recovered. The court merged the armed robbery with a firearm (count 1) into armed robbery while personally discharging a firearm (count 2).

¶ 25 At sentencing, the court noted that defendant did not have a criminal record and stated that it believed the minimum sentence to be appropriate. The court sentenced defendant to a term of 6 years' imprisonment on the armed robbery charge with a firearm enhancement of 20 years' imprisonment for personally discharging a firearm during the commission of the offense. With regard to the sentencing enhancement, the court stated that it was "unclear who fired the weapon," but that it was "clear that a weapon was fired." The court also sentenced defendant to a concurrent term of five years' imprisonment on the aggravated battery charge. Defendant moved to reconsider his sentence, which the court denied. Defendant appealed.

¶ 26 On appeal, defendant first contends that the State failed to prove him guilty beyond a reasonable doubt of the charged offenses. Specifically, he argues that Trice's identification of him as the offender was unreliable. He also argues that the trial court erred in convicting him of armed robbery under section 18-2(a)(3) of the Criminal Code (720 ILCS 5/18-2(a)(3) (West 2012)) because the State failed to prove that he personally discharged a firearm "during the commission of the offense."

¶ 27 When a defendant challenges his conviction based upon the sufficiency of the evidence presented against him, we must ask whether, after viewing the evidence in the light most favorable to the State, any rational trier-of-fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v.*

*Virginia*, 443 U.S. 307, 318-19 (1979)). All reasonable inferences from the record must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42. It is the responsibility of the trier-of-fact to resolve conflicts in the testimony, to weigh evidence, and to draw reasonable inferences from the facts. *Brown*, 2013 IL 114196, ¶ 48. We will not substitute our judgment for that of the trier-of-fact on issues involving the weight of the evidence or the credibility of the witnesses. *Brown*, 2013 IL 114196, ¶ 48. A defendant's conviction will not be overturned unless the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *Id.*

¶ 28 Defendant first challenges the reliability of Trice's identification of him as the shooter. A single witness's identification of the accused is sufficient to sustain a conviction if the witness viewed the accused under circumstances permitting a positive identification. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). In assessing identification testimony, we consider the following five factors set forth in *Neil v. Biggers*, 409 U.S. 188 (1972): (1) the witness's opportunity to view the defendant during the offense; (2) the witness's degree of attention at the time of the offense; (3) the accuracy of the witness's prior description of the defendant; (4) the witness's level of certainty at the subsequent identification; and (5) the length of time between the crime and the identification. *Slim*, 127 Ill. 2d at 307–08. None of these factors, standing alone, conclusively establishes the reliability of identification testimony; rather, the trier of fact is to take all of the factors into consideration. *Biggers*, 409 U.S. at 199–200.

¶ 29 After reviewing the five *Biggers* factors, we conclude that Trice' identification was reliable. First, the record shows that Trice had a sufficient opportunity to observe defendant. Trice testified that he saw defendant's face, unobstructed, from very close range. He also

testified that there were streetlamps "down the street." Hillard, likewise, testified that, while it was "dark out," the gas station adjacent to where Trice was robbed was "well lit." Second, Trice exhibited a high degree of attention during the robbery. He testified to specific details, such as that defendant wore a "skullcap or beanie" and that the gun was a "small black revolver." When police arrived, Trice provided Darby with a description of defendant, which was consistent with defendant's description of himself at trial. Trice also identified defendant, from a lineup, as the shooter a mere five hours after the robbery occurred. See *People v. Donahue*, 2014 IL App (1st) 120163, ¶ 95 (finding that an identification that took place three days after the offense was a short amount of time). Trice again identified defendant as the shooter in open court and the record does not indicate that he ever waivered in his confidence regarding the identification. As such, Trice's identification was reliable and sufficient to sustain defendant's convictions.

¶ 30 Defendant nevertheless argues that Trice's identification is unreliable because (1) he only viewed the gunman for a matter of seconds in the dark while under the stress of having a gun pointed at him; (2) he did not provide Hillard with a physical description of the gunman; and (3) his description to Darby overestimated defendant's age and failed to mention his facial hair.

¶ 31 We initially note that the accuracy of Trice's description and the circumstances impacting his opportunity to view defendant were fully explored at trial during cross-examination. Although Trice's credibility may have been affected by his inaccuracies and the limited opportunity he had to view defendant, it was the responsibility of the trier-of-fact to determine his credibility, the weight to be given to his testimony, and to resolve any inconsistencies and conflicts in the evidence. *People v. Starks*, 2014 IL App (1st) 121169, ¶ 51; *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). Given its decision, the court resolved these alleged

inconsistencies in favor of the State. In doing so, the court was not required to disregard the inferences that flow from the evidence or search out all possible explanations consistent with a defendant's innocence and raise them to a level of reasonable doubt. *People v. Alvarez*, 2012 IL App (1st) 092119, ¶ 51. We will not substitute our judgment for that of the trier of fact on these matters. *Sutherland*, 223 Ill. 2d at 242.

¶ 32 That said, a reliable identification can occur where the victim only has a matter of seconds to view the offender under less than ideal conditions. See *People v. Herrett*, 137 Ill. 2d 195, 204 (1990) (finding a sufficient opportunity to view the defendant where witness testified he observed "the assailant's face for several seconds when the robber reached down to cover his eyes with duct tape" and "his face was only two feet from the assailant's"); *People v. Moore*, 2015 IL App (1st) 141451, ¶ 23 (determining that a victim's testimony identifying the defendant as the perpetrator was sufficiently reliable where he saw the defendant's face from about three feet away, the defendant's face was not covered, and, although it was dark at the time, the street lights were on). Additionally, "[t]he presence of discrepancies or omissions in a witness' description of the accused do not in and of themselves generate a reasonable doubt as long as a positive identification has been made." *People v. Magee*, 374 Ill. App. 3d 1024, 1032 (2007) (citing *Slim*, 127 Ill. 2d at 309). Here, Trice made a positive identification.

¶ 33 Defendant further argues that the evidence that tied him to the proceeds of the robbery was "weak." Contrary to defendant's argument, it is undisputed that he was arrested in the residence where Trice's property was recovered. Specifically, the evidence shows that Trice alerted Hillard to footprints in the snow leading in the direction that the perpetrators fled. Hillard then followed those footprints to a residence located at 1246 E. 46th Street and called for

assistance. Perez, one of the first officers to enter the residence, testified that he found defendant alone in the only bedroom located near the kitchen. Shortly thereafter, Goldie entered the residence where he saw defendant and two other suspects being removed from a bedroom. It is unclear if that bedroom is the same one that Perez discovered defendant in, or if defendant was later moved to another bedroom in the house. After defendant was removed from the residence, Hooper entered the bedroom near the kitchen, where defendant was detained by Perez, and recovered Trice's iPod on a dresser.

¶ 34 In any event, even without this evidence, it is well settled that "[t]he testimony of a single witness, if positive and credible, is sufficient to sustain a conviction." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). Here, Trice testified that defendant pointed a gun at his head while another individual took his property and, as they fled, defendant shot him in the foot. This testimony alone was sufficient to sustain defendant's conviction for armed robbery, regardless of the strength of the evidence tying him to the proceeds of the robbery. Viewing the evidence in the light most favorable to the State, we conclude that the evidence was not so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of the defendant's guilt.

¶ 35 Defendant next contends that the trial court erred in convicting him of armed robbery under section 18-2(a)(3) of the Criminal Code (720 ILCS 5/18-2(a)(3) (West 2012)) because the State failed to prove that he personally discharged a firearm "during the commission of the offense." As a result, he asks that this court reduce his firearm sentencing enhancement from the 20 years required for a conviction under section (a)(3) to the 15 years required for a conviction under section (a)(2).

¶ 36 To prove defendant guilty of armed robbery under section 18-2(a)(3), the State must prove beyond a reasonable doubt that defendant took property from Trice by the use of force or by threatening the imminent use of force, and that he personally discharged a firearm "during the commission of the offense." 720 ILCS 5/18-2(a)(3) (West 2012). "Although the required force or threat of force must either precede or be contemporaneous with the taking of the victim's property * * *, use of a dangerous weapon at any point in a robbery will constitute armed robbery as long as it reasonably can be said to be a part of a single occurrence." (Internal citations omitted.). *People v. Dennis,* 181 Ill. 2d 87, 101–02 (1998); see also *People v. Runge,* 346 Ill. App. 3d 500, 505 (2004). An armed robbery is complete when force or threat of force causes the victim to part with custody or possession of the property against his or her will. *Dennis*, 181 Ill. 2d at 102. But, where defendant's flight or escape is effectuated by use of force, the accompanying force continues defendant's commission of the armed robbery. *Id.* at 103. Thus, the commission of an armed robbery ends when the two elements that constitute the offense, both force and taking, cease. *Id.*

¶ 37 Defendant first argues that the State failed to prove that he discharged the gun while committing an armed robbery because the robbery was complete and he was free to escape when he shot Trice. Defendant maintains that, as a result, he did not shoot Trice "during the commission" of the robbery, as required by section (a)(3), but rather shot Trice after the robbery had been completed.

¶ 38 In setting forth this argument, defendant maintains that we should review this issue *de novo* because there is no dispute as to the underlying facts and no assessment of witness credibility. See *People v. Smith*, 191 Ill. 2d 408, 411 (2000) (where the facts are undisputed,

defendant's guilt is a question of law that is reviewed *de novo*). We disagree. Defendant disputes whether, given the particular circumstances of the encounter, the armed robbery was complete at the time he discharged the firearm. As such, the issue presents a mixed question of law and fact, and thus, *de novo* review is not appropriate. See *People v. Salinas*, 347 Ill. App. 3d 867, 879–80 (2004) (in all criminal cases, reasonable doubt standard should be applied in reviewing sufficiency of evidence).

¶ 39 Viewing the evidence in the light most favorable to the State, we find that a rational trier of fact could conclude that defendant shot Trice in an effort to effectuate his escape. The record shows that defendant and the other offender had just made their way to the other side of the street when defendant turned around and shot Trice. Our supreme court has recognized that "[i]n many instances, flight or an escape is effectuated by use of force." *Dennis*, 181 Ill. 2d at 102, 103 (agreeing with appellate court cases construing the element of force to "include not only the force used in the taking, but also the force used to effectuate the defendant's departure"). Thus, this court has upheld convictions for robbery where the defendant's " 'departure [was] accomplished by the use of force.' " *People v. Merchant*, 361 Ill. App. 3d 69, 74 (2005) (quoting *People v. Brooks*, 202 Ill. App. 3d 164, 170 (1990)). Given this record, we find that the evidence was sufficient to show that defendant used force to effectuate his escape, and, therefore, he discharged a firearm during the commission of the robbery.

¶ 40 Defendant nevertheless argues that the State did not prove beyond reasonable doubt that he "personally discharged" a firearm. In support of this argument, defendant claims that the trial court "clarified" its factual findings when, during the sentencing hearing, it stated that it was "not clear" who had fired the gun. This clarification, according to defendant, reveals that the State

failed to prove beyond a reasonable doubt that he personally discharged a firearm, as required by section 18-2(a)(3). We disagree.

¶ 41 Although during sentencing the trial court stated that it was "not clear" who had fired the gun, a review of the record shows that there was sufficient evidence to support the trial court's decision to find that defendant fired the gun. The record shows that after hearing the evidence, the trial court found defendant guilty on count 2, which alleged that, while defendant robbed Trice, he personally discharged a firearm. Trice testified that defendant approached him with a gun and pointed it at his head while another individual took Trice's property. As the perpetrators made their way across the street, Trice saw defendant turn around and fire a shot that struck him in the foot. As mentioned, the testimony of one eyewitness is enough to sustain a conviction if, as here, the witness viewed the accused under circumstances permitting a positive identification. *Starks*, 2014 IL App (1st) 121169, ¶ 48. Therefore, notwithstanding the court's comments during the sentencing hearing, the evidence that defendant personally discharged a firearm was not so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of his guilt.

¶ 42 Because we have concluded that the evidence was sufficient to prove beyond a reasonable doubt that defendant personally discharged a firearm, we decline defendant's invitation to reduce his firearm sentencing enhancement. We also need not address defendant's related argument that his case should be remanded for sentencing under the Juvenile Court Act because, pursuant to the newly amended version of the Act, he was not convicted of an offense that is eligible for automatic transfer to adult court. See 705 ILCS 405/5-130(1)(a) (West 2016).

¶ 43 Defendant argues, alternatively, that this court should remand his case for resentencing because the legislature recently enacted section 5-4.5-105 of the Code of Corrections (730 ILCS

5/5-4.5-105 (West 2016)) that requires trial courts to consider an offender's age and maturity when conducting a sentencing hearing for an offender 18 years of age or younger. Defendant maintains that section 5-4.5-105 applies retroactively to cases such as this one that was on direct appeal at the time that section was enacted.

¶ 44 In the interim, however, our supreme court, in *People v. Hunter*, 2017 IL 121306, ¶ 55, held that section 5-4.5-105 does not apply to a defendant who was sentenced prior to the statute's effective date of January 1, 2016. Here, defendant was sentenced on August 13, 2015, for offenses that occurred on February 2, 2013. As a result, pursuant to the holding in *Hunter*, he is not entitled to a new sentencing hearing under section 5-4.5-105.

¶ 45 Defendant's final argument on appeal is that the assessed fines, fees, and costs should be reduced from $749 to $645. He contends that the trial court erroneously assessed him with charges for which he did not qualify. He also argues that the trial court failed to give him $5 per day of credit for the 922 days he spent in presentence custody pursuant to section 110-14 of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2014)). Lastly, he insists that several of his assessments are labeled as "fees," but are actually fines, which should be offset by his presentence credit.

¶ 46 Initially, we note that defendant did not raise these challenges at trial and they are, therefore, arguably forfeited. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). He requests that we review his claims under either the plain-error doctrine (citing *People v. Lewis*, 234 Ill. 2d 32, 47-49 (2009)) or our authority under Illinois Supreme Court Rule 615(b). This we cannot do. See *People v. Griffin*, 2017 IL App (1st) 143800, ¶ 9, *pet. for leave to appeal granted*, No. 122549 (Nov. 22, 2017) (finding that the plain-error doctrine is not the appropriate vehicle for addressing

the clerical mistakes raised in the "majority of [fines and fees] cases"); *People v. Grigorov*, 2017 IL App (1st) 143274, ¶¶ 13-15 (finding that Rule 615 should be read as a "harmonious whole," and that fines and fees errors that are mere simple mistakes are not "defects affecting substantial rights"). However, the rules of forfeiture and waiver also apply to the State, and where, as here, the State fails to argue that defendant has forfeited the issue, it waives the forfeiture. *People v. Bridgeforth*, 2017 IL App (1st) 143637, ¶ 46. We review *de novo* the propriety of a court-ordered fine or fee. *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22.

¶ 47 First, the parties correctly agree that the $5 electronic citation fee (705 ILCS 105/27.3e (West 2014)), and the $5 court system fee (55 ILCS 5/5-1101(a) (2014)) must be vacated as those fees do not apply to defendant's felony convictions for armed robbery and aggravated battery. 705 ILCS 105/27.3e (West 2014) (fee imposed in any traffic, misdemeanor, municipal ordinance, or conservation cases); 55 ILCS 5/5-1101(a) (2014) (fee imposed for violation of the motor vehicle code). Additionally, the parties agree that a $25 fine imposed by the trial court under the heading "Other as Ordered by the Court" should be vacated because it did not list the statutory authority under which the fine was assessed. Accordingly, we vacate the erroneous charges for the $5 electronic citation fee, the $5 court system fee, and the unattributed $25 fine.

¶ 48 Defendant next asserts that seven of the assessments imposed against him are fines subject to offset by his presentence incarceration credit. See *People v. Jones*, 223 Ill. 2d 569, 599 (2006) ("[T]he credit for presentence incarceration can only reduce fines, not fees."). "Broadly speaking, a 'fine' is a part of the punishment for a conviction, whereas a 'fee' or 'cost' seeks to recoup expenses incurred by the State." *Id.* at 582. The most important factor, therefore, is whether the charge seeks to compensate the State for any costs incurred as a result of prosecuting

the defendant. See *People v. Graves*, 235 Ill. 2d 244, 250 (2009); see also *Jones*, 223 Ill. 2d at 600 ("A charge is a fee if and only if it is intended to reimburse the State for some cost incurred in defendant's prosecution.").

¶ 49 The parties agree on the correct characterization of some, but not all, of the assessments. The State concedes, and we agree, that the $15 state police operations fee (705 ILCS 105/27.3a(1.5) (West 2014)) should be offset by presentence credit. See *People v. Maxey*, 2016 IL App (1st) 130698, ¶¶ 140–41 ("Since the state operations charge under section 27.3a(1.5) is a fine, defendant is entitled to presentence credit toward it.").

¶ 50 The parties' dispute is thus limited to the following six charges: the $10 mental health court fine (55 ILCS 5/5-1101(d-5) (West 2014)), the $5 youth diversion fine (55 ILCS 5/5-1101(e) (West 2014)), the $30 Children's Advocacy Center fine (ILCS 5/5-1101(f-5) (West 2014)), and the $5 drug court fine (ILCS 5/5-1101(f) (West 2014)), the $2 State's Attorney records automation fee (55 ILCS 5/42002.1(c) (West 2014)); and the $2 public defender records automation fee (55 ILCS 5/3–4012 (West 2014)).

¶ 51 As an initial matter, the State does not dispute that the $10 mental health court charge (55 ILCS 5/5-1101(d-5) (West 2014)), the $5 youth diversion charge(55 ILCS 5/5-1101(e) (West 2014)), the $30 Children's Advocacy Center charge (ILCS 5/5-1101(f-5) (West 2014)), and the $5 drug court charge (ILCS 5/5-1101(f) (West 2014)) are all assessments that should be offset by a defendant's presentence credit. Rather, the State contends that these four assessments were already offset and defendant, therefore, is not entitled to any further offset. The costs order, however, does not reflect that those fines were ever offset. Accordingly, we will modify defendant's costs order so that his presentence credit offsets these fines.

¶ 52 With regards to the final two assessments, we note that this court has already considered challenges to the State's attorney and public defender records automation assessments and determined that they are fees and, therefore, not subject to presentence incarceration credit. See *Brown*, 2017 IL App (1st) 142877, ¶¶ 73, 75 (finding the State's Attorney records automation fee and Public Defender records automation fee to be fees); *People v. Reed*, 2016 IL App (1st) 140498, ¶¶ 16–17 (same); *Bowen*, 2015 IL App (1st) 132046, ¶¶ 6265 (finding the State's Attorney records automation assessment and the public defender records automation assessment are both fees because they are meant to reimburse the State for expenses related to automated record-keeping systems).

¶ 53 In reaching this conclusion, we acknowledge that, in *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47–56, we found that the State's Attorney and public defender records automation fees were, in fact, fines that should be offset by the presentence credit. However, we follow the prevailing authority in *Brown*, *Reed*, and *Bowen* and determine that the State's Attorney records automation charge and the public defender records automation charge are fees, and, therefore, not subject to offset by presentence custody credit.

¶ 54 In sum, we affirm defendant's convictions for armed robbery and aggravated battery. We vacate the erroneous assessed charges for the $5 electronic citation fee (705 ILCS 105/27.3e (West 2014)), the $5 court system fee (55 ILCS 5/5-1101(a) (West 2014)), and the unattributed $25 fine; we also find that the $15 state police operations fee (705 ILCS 105/27.3a(1.5) (West 2014)), $10 mental health court charge (55 ILCS 5/5-1101(d-5) (West 2014)), the $5 youth diversion charge(55 ILCS 5/5-1101(e) (West 2014)), the $30 Children's Advocacy Center charge (ILCS 5/5-1101(f-5) (West 2014)), and the $5 drug court charge (ILCS 5/5-1101(f) (West

2014)), are fines subject to presentence incarceration credit. However, the $2 State's Attorney records automation charge (55 ILCS 5/42002.1(c) (West 2014)) and the $2 public defender records automation charge (55 ILCS 5/3–4012 (West 2014)) are fees not subject to presentence incarceration credit. The fines, fees, and costs order should reflect a new total due of $649. Pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967), we direct the clerk of the circuit court to modify the fines, fees, and costs order accordingly.

¶ 55 Affirmed in part; modified in part.