FIRST DIVISION
February 5, 2018

No. 1-15-3324

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. 12 CR 19911
	)	
QWANCHIVALOUS EDWARDS,	)	Honorable
	)	Erica L. Reddick,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Pierce and Justice Mikva concurred in the judgment.

ORDER

¶ 1 ***Held:*** We affirm the trial court's order denying defendant's motion to quash arrest and suppress evidence. We affirm defendant's convictions for aggravated unlawful use of a weapon. We reject defendant's claim that he was denied effective assistance of counsel. Finally, we order defendant's fines, fees, and costs corrected.

¶ 2 Defendant-appellant, Qwanchivalous Edwards, was arrested by Chicago Police while in possession of three firearms and several rounds of ammunition without a valid Illinois Firearm

Owners Identification Card (FOID card). After his arrest, defendant brought a motion to quash and suppress evidence arguing that the police lacked any cause to initiate the traffic stop that led to his arrest. After a hearing and argument, the trial court denied the motion. Following a bench trial, the trial court found defendant guilty of four counts of aggravated unlawful use of a weapon. After bringing a motion for a new trial, the trial court vacated two of the convictions (one of the gun convictions and the ammunition conviction) after agreeing with defendant that the State had failed to prove them beyond a reasonable doubt. The trial court then sentenced defendant on the two remaining counts.

¶ 3 Defendant raises several issues on appeal. Defendant argues (1) the trial court erred in denying his motion to quash arrest and suppress evidence, (2) the State failed to prove him guilty of the two-aggravated unlawful use of a weapon charges, (3) he was denied effective assistance of counsel, and (4) several fees and fines which were imposed should be vacated.

¶ 4 Based on the record before this court, we affirm the denial of the motion to quash and defendant's aggravated unlawful use of a weapon convictions. Defendant was not denied effective assistance of counsel. Finally, we order the correction of the fines, fees, and costs imposed.

¶ 5 JURISDICTION

¶ 6 On April 8, 2015, a trial judge found defendant guilty of four counts of aggravated unlawful use of a weapon for failing to have a valid FOID card. On May 8, 2015, defendant moved for a new trial, which the trial court denied. However, the trial court vacated two of the convictions. The trial court then sentenced defendant on September 25, 2015. A notice of appeal was filed on October 19, 2015. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 603 and 606, governing

appeals from a final judgment of conviction in a criminal case entered below. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013).

¶ 7 BACKGROUND

¶ 8 The following facts and testimony are taken from the motion to suppress hearing and the ensuing trial. On October 8, 2012, the defendant was visiting a friend who lived in an apartment building located at 62nd Street and South May Avenue in Chicago. Defendant left the apartment around 9:45 p.m. in his Ford truck. Within moments of pulling away from the apartment, defendant was curbed by a marked Chicago police car. Two officers approached defendant's truck. The officer on the passenger-side, utilizing his flashlight, noticed two handguns in plain view on the floorboard directly behind the passenger seat. Defendant was handcuffed and the officers then searched the truck. A third firearm was recovered along with multiple rounds of ammunition. Defendant did not have a FOID card with him, and admitted to police he did not have one.

¶ 9 Prior to trial, defendant filed a motion quash arrest and suppress evidence claiming that the police lacked probable cause to detain him and search his truck. On March 18, 2013 a hearing was held on the motion. Defendant testified that on October 8 he was visiting his friend's apartment, which was located at 62nd and South May. Defendant stated that he was visiting friends and family in Chicago before being deployed to Afghanistan as a member of the United States Army. As he was leaving the apartment, defendant heard an altercation coming from a different unit in the complex. Defendant did not know who was involved or the unit number. Defendant exited the building and entered his black Ford truck that was parked in front. Before driving away, defendant phoned his mother to inform her he was coming to her place.

¶ 10 After talking with his mother, defendant drove to the stop sign at 62nd and South May and made a left turn on to 62nd Street. Defendant then took the next left, turning north onto Aberdeen Street. At this time defendant noticed flashing police lights behind him and curbed his truck.[1] Defendant stated he had only made it about a block to a block and half from his friend's apartment before noticing the police car. Two Chicago police officers exited the car with one approaching defendant on the driver side and the other approaching on the passenger side. One of the officers informed defendant to keep his hands where they could see them and exit the vehicle. According to defendant, he was unable to exit his truck because one of the officers was standing next to driver's door blocking him.

¶ 11 When he did exit his vehicle, defendant testified that he was immediately handcuffed searched, and placed into a police car. The police then proceeded to search the truck and recover three firearms and multiple rounds of ammunition. Defendant stated that he never gave the officers permission to search his truck. Defendant admitted that he did have three firearms and ammunition in the truck but claimed that they were locked in a removable safe underneath the driver's seat. The key to the safe was in the front seat cupholder. Defendant identified the firearms as a .44 caliber Magnum handgun, a .45 caliber Taurus handgun, and a .357 caliber Dan Wesson handgun. None of the guns were Army issued and defendant admitted he did not have a valid Illinois FOID card at the time of his arrest. Defendant stated that he had tried to obtain one but was denied because he did not reside in Illinois.

¶ 12 Officer Kasper of the Chicago Police Department also testified. He stated that on October 8, 2012 at around 9:45 p.m. he and his partner were on routine patrol in a marked police car

[1] The record is unclear as to the exact location of the traffic stop.

when they received a radio dispatch about a domestic disturbance at 6153 South May Street.[2] The call was then updated to a person with a gun. Given their current location, it only took the officers about 10 seconds to reach the location. As the officers were driving down South May Avenue[3] they noticed a pickup truck, the only vehicle parked in front of the apartment building, suddenly pull away from the curb and speed off. Based on their experience and the nature of the call, the officer's found the truck's actions to be suspicious and decided to follow. Officer Kasper testified that the truck they were following was grey.

¶ 13 The truck made a left at 62nd Street and then another left onto Aberdeen Street. While the officer could not recall at the time of his testimony, he stated that the truck failed to signal on at least one and perhaps both left hand turns. The officer claimed a traffic citation was issued for a failure to signal. The officer also stated that the truck "rolled" the stop sign at the corner of 62nd and South May. After curbing the truck, both officers exited their vehicle. Officer Kasper approached from the passenger side while his partner approached from the driver's side. As he approached the truck, Officer Kasper used his flashlight to illuminate the interior of the truck to see if anyone beside the driver was inside. The truck had dark tinted windows. His partner was talking to the driver of the truck and Officer Kasper did not hear their conversation. Officer Kasper identified defendant as the driver of the truck.

¶ 14 While looking inside the truck for other occupants, Officer Kasper observed in plain view two handguns on the floorboard behind the passenger seat. They were not cased. Officer Kasper notified the other officers at the scene and defendant was placed in handcuffs. Officer Kasper recovered the guns and noticed that both were loaded. Defendant informed the officers there was

[2] This is the address of the apartment building where defendant was visiting his friend.
[3] In this section of Chicago, South May Avenue is a one-way headed south.

another firearm located in a safe under the driver's seat. Officer Kasper also recovered this firearm. The defendant informed the officers that he did not have a FOID card.

¶ 15 After hearing arguments, the trial court denied defendant's motion to quash arrest and suppress evidence. The trial court specifically stated that it found the officer's version of events to be more credible then defendant's version. The court found defendant's failure to signal provided a legitimate basis for the stop and the two firearms were in plain sight of Officer Kasper.

¶ 16 The case then proceeded to a bench trial. Officer Kasper testified consistent with his testimony at the suppression hearing. The State also called Detective Krob of the Chicago Police Department. Detective Krob interviewed the defendant at the police station following the arrest. Defendant informed the detective that while at the apartment complex he saw a mother and daughter engaged in a fight. Defendant did not want any trouble since he was in the military, so he decided to leave the area. Defendant admitted that he pulled away from the apartment and noticed the police car shortly afterwards. He admitted to having firearms in the truck and one or maybe two were in the safe while the other was on the floorboard. Defendant informed the detective two of the guns were purchased in North Carolina, while a third was purchased in Indiana. At the close of its case-and-chief, the State introduced a self-authenticating document from the Illinois State Police which indicated that defendant did not possess a valid FOID card on October 8, 2012.

¶ 17 Defendant testified in his own defense and it was consistent with his testimony at the suppression hearing. Defendant explained that he was being deployed to Afghanistan and was transporting the firearms to his mother for safe keeping. Defendant admitted he did not have a FOID card.

¶ 18 At the conclusion, the trial court found defendant guilty of four counts of aggravated unlawful use of a weapon. Defendant then brought a motion for a new trial. After hearing argument on it, the trial court agreed with the defendant that the State had failed to prove two of the counts beyond a reasonable doubt (one firearm and the ammunition conviction). It vacated the guilty verdict on those two counts and entered not guilty verdicts. The trial court affirmed its finding of guilt as to the two firearms found on the floorboard. Defendant was then sentenced to 24 months felony probation, 30 days of community service, ordered to pay various fees and fines, engage in random urine tests, and a drug evaluation.

¶ 19 Defendant timely filed his notice of appeal.

¶ 20 ANALYSIS

¶ 21 Defendant raises four issues on appeal: (1) the trial court erred in denying in his motion to quash arrest and suppress evidence; (2) the State failed to prove him guilty of the two aggravated unlawful use of a weapon charges; (3) he was denied effective assistance of counsel; and (4) several fees and fines which were imposed should be vacated.

¶ 22 In his first issue, the defendant argues the trial court erred in denying his motion to suppress evidence and quash arrest because the Chicago police lacked either probable cause or reasonable suspicion to seize him. Defendant argues the police had no reason to believe that he had committed a crime or was involved in any criminal activity, and, therefore, were not justified in stopping his truck. The State responds that the police seizure of defendant was lawful. The State argues the police had reasonable suspicion to engage in an investigatory stop based on the call they received and the actions they observed upon arriving at the reported location. The State further argues that the police had probable cause to seize the defendant based on various traffic infractions they observed.

¶ 23 At a hearing on a motion to quash, the defendant bears the burden of establishing that the challenged search or seizure was unconstitutional and the evidence obtained as a result should be suppressed. 725 ILCS 5/114-12(b) (West 2016). Under Illinois law, a defendant makes out a *prima facie* case that a warrantless search or seizure was unreasonable by proving that he was doing nothing unusual to justify the intrusion. *People v. Hyland*, 2012 IL App (1st) 110966, ¶ 22. The State then has the burden of proving that the search was legally justified. *Id.*

¶ 24 On appeal, this court applies a two-part standard of review to rulings on a motion to quash and suppress evidence. *People v. Hopkins*, 235 Ill. 2d 453, 471 (2009). A trial court's factual findings are to be given great deference and should only be reversed if they are against the manifest weight of the evidence. *Id.* at 471. However, the trial court's decision to grant or deny the motion is subject to a *de novo* review. *Id.*

¶ 25 It is well established that the fourth amendment to the United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV; *People v. Sorenson*, 196 Ill. 2d 425, 432 (2001). Stopping an automobile and detaining the occupants constitutes a seizure under the fourth amendment. *People v. Garman*, 123 Ill. App. 3d 682, 684 (1984). While reasonableness under the fourth amendment generally requires a warrant supported by probable cause, limited exceptions do exist. *Terry v. Ohio*, 392 U.S. 1, 30 (1968). Pursuant to *Terry*, a police officer may briefly stop a suspicious person and make "reasonable inquiries" aimed at confirming or dispelling his suspicions. *People v. Marchel*, 348 Ill. App. 3d 78, 79 (2001). Suspicion means more than a "hunch." *People v. Ware*, 264 Ill. App. 3d 650, 654 (1994). The officer must observe unusual conduct that leads him to reasonably conclude in light of his experience that criminal activity may be afoot. *Marchel*, 348 Ill. App. 3d at 80.

¶ 26 In order to make an investigatory "Terry" stop, "the officer must have a reasonable and articulable suspicion that the person has committed, or is about to commit, a crime." *Id.* The facts supporting the officer's suspicion "should be considered from the perspective of a reasonable officer at the time the situation confronted him rather than viewed with analytical hindsight." *Ware*, 264 Ill. App. 3d at 654. "[D]ue weight must be given to the specific reasonable inferences that the officer is entitled to draw from the facts in light of his experience." *Marchel*, 348 Ill. App. 3d at 80. A stop is proper if the facts available to the officer would warrant a man of reasonable caution to believe that the action taken was appropriate. *People v. Martinez*, 129 Ill. App. 2d 145, 156 (1984).

¶ 27 Given the facts and testimony presented to the trial court at defendant's suppression hearing, we conclude that the police officers had adequate facts to warrant an investigatory stop of defendant's truck. We note that the trial court specifically found defendant to not be a credible witness and that Officer Kasper provided credible testimony. On the night in question, Officer Kasper and his partner received a police dispatch around 9:45 p.m. of a domestic disturbance at 6153 South May Street. This dispatched was immediately updated to a "person with a gun."[4] Officer Kasper testified that he and his partner arrived at the stated location within 10 seconds of receiving this dispatch. While traveling down South May, the officers observed defendant's truck pull away from the front of the building at what Officer Kasper called a "high rate of speed." Officer Kasper also observed defendant's truck to be the only vehicle parked in front of the subject location. Based on the radio dispatch, his experience as police officer, and the actions observed as they approached the subject location seconds after a "person with a gun" call was received, Officer Kasper believed the "person with a gun" maybe in the truck. Given the

[4] In its brief the State says the second dispatch was for "a man with gun," however the record clearly shows the officer testified the call was for a "person with a gun."

information they received and the actions they observed, we do not find it unreasonable for the officers to infer the driver of the truck may be the "person with a gun." See *People v. Bujdud*, 177 Ill. App. 3d 396, 402 (1988) (noting that it is not unreasonable for an officer to infer a suspect would flee the general vicinity in a vehicle despite no mention of a vehicle in the initial dispatch). Accordingly, the officers had a reasonable basis to initiate a stop of defendant's vehicle.

¶ 28 However, even if the above was not sufficient to justify an investigatory stop, Officer Kasper's observations of the truck following its departure from the apartment complex demonstrated the officers had probable cause to believe traffic violations had occurred. After seeing the truck speed off, Officer Kasper observed the truck "roll" a stop sign and then fail to signal on two left turns. It is well established that the observance of the commission of a crime meets the probable cause standard. *People v. Watkins*, 98 Ill. App. 3d 889 (1981). Accordingly, the officers' observations of the truck's traffic infractions represented a sufficient basis to pull it over.

¶ 29 Defendant at length briefs several factual issues including: the speed of his truck, the use of turn signals, and the number of cars and pedestrians who may or may not have been on the street at the time. These were factual questions for the trial court to reject or accept based on the testimony it heard from the witnesses. Given the testimony it heard, the trial court found no one disputed the fact that defendant failed to use a turn signal for one of the left hand turns. Again, these are questions of fact reviewed for clear error and will only be reversed if they are against the manifest weight of the evidence. *Luedemann*, 222 Ill. 2d at 542. Based on our own review of the testimony, the trial court's factual findings were not against the manifest weight of the evidence and we reject defendant's attempt to substitute his view for that of the trial court.

¶ 30 Defendant next argues that even if the stop was initially justified, the nature of the stop exceeded its scope. When conducting a *Terry* stop analysis, a reviewing court not only asks if the initial stop was justified but also whether the officer's actions after the initial stop were reasonably related in scope to the circumstances which justified the interference in the first place. *People v. Bunch*, 207 Ill. 2d 7, 13-14 (2003). A traffic stop that is initially justified can become unlawful if it is prolonged beyond the time reasonably required to complete the purpose of the stop. *Id.* at 15-16.

¶ 31 The defendant concedes in his brief that "the length of the detention was never established." Given this concession and the absence of facts in the record to guide us, we find the issue has been forfeited by defendant. It is well established that "[w]ithout facts in the record to support arguments raised in the instant appeal, such arguments amount to no more than bare contentions, which do not merit consideration and are deemed forfeited." *People v. Edwards*, 2012 IL App (1st) 091651, ¶ 29. This court cannot determine if the length of the stop exceeded its scope if the length of the stop itself is not established in the record. Accordingly, this issue has been forfeited and we decline to address it.

¶ 32 In the next issue, defendant argues that his convictions should be overturned because the State failed to prove beyond a reasonable doubt that the firearms were "immediately accessible" to him. Defendant argues that "immediate accessibility" is an element of the offense for which he was convicted – aggravated unlawful use of a weapon. The State argues "immediate accessibility" represents an exemption to the offense and not an element it is required to prove beyond a reasonable doubt. Whether "immediately accessible" is an element of the offense is a question of statutory interpretation which is reviewed *de novo*. *People v. Tolbert*, 2016 IL 117846, ¶ 12.

¶ 33 Defendant was charged and found guilty of violating section 24-1.6(a)(1)/(3)(C) in that he had in his vehicle two handguns without a valid FOID card. 720 ILCS 5/24-1.6 (West 2016). The aggravated unlawful use of a weapon statute states in relevant part:

> "a) A person commits the offense of aggravated unlawful use of a weapon when he or she knowingly:
>
> (1) Carries on or about his or her person or in any vehicle or concealed on or about his or her person except when on his or her land or in his or her abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm; or
>
> (2) Carries or possesses on or about his or her person, upon any public street, alley, or other public lands within the corporate limits of a city, village or incorporated town, except when an invitee thereon or therein, for the purpose of the display of such weapon or the lawful commerce in weapons, or except when on his or her own land or in his or her own abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm; and
>
> (3) One of the following factors is present:
>
> ***
> (C) the person possessing the firearm has not been issued a currently valid Firearm Owner's Identification Card." 720 ILCS 5/24-1.6(a)/(3)(C) (West 2016).

The statute further states in subsection (c):

> (c) This section does not apply to or affect the transportation or possession of weapons that:
>
> ***
>
> (ii) are not immediately accessible. 720 ILCS 5/24-1.6(c)(ii) (West 2016).

After reviewing the above, we agree with the State that "not immediately accessible" is an exemption and not an element of aggravated unlawful use of a weapon. Defendant's argument that because the legislature did not specifically designate (c)(ii) as an exemption means it must be an element does not comport with our supreme court's jurisprudence on the issue.

¶ 34 In *People v. Tolbert*, our supreme court explained that whether an exemption is an element which must be proven beyond a reasonable doubt, a court "must determine more generally whether the legislature intended the exception to be 'descriptive' of the offense, or whether the legislature intended only to withdraw, or exempt, certain acts or persons from the operation of the statute." 2016 IL 117846, ¶ 15 (citing *People v. Close*, 238 Ill. 2d 497, 508 (2010)). In *Tolbert*, the court found the language "not apply to or affect" demonstrated a "clear statement from the General Assembly indicating its intent to withdraw or exempt" invitees from the reach of section 24-1.6(a)(1). 2016 IL 117846, ¶ 16.

¶ 35 Subsection (c)(ii) of section 24-1.6 contains exactly the same language the *Tolbert* court examined - "**does not apply to or affect.**" (emphasis added) 720 ILCS 5/24-1.6(c)(ii) (West 2016). Based on the language of the applicable statute and the reasoning in *Tolbert*, subsection (c)(ii) of section 24-1.6 represents an exemption to the offense of aggravated unlawful use of a weapon and not an element. Accordingly, the defendant had the obligation to raise and prove the firearms were not "immediately accessible" and the State had no obligation to allege and disprove such a fact. See *People v. Smith*, 71 Ill. 2d 95, 105-06 (1978) (concluding the State need never negate any exemption).

¶ 36 Defendant next contends that even if subsection (c)(ii) is an exemption, the evidence showed the two firearms were not "immediately accessible." Whether or not a firearm is "immediately accessible" is a question of fact for the trier of fact to decide. *People v. Smith*, 71 Ill. 2d 95, 102 (1978). As a sufficiency of the evidence question, the relevant question on appeal is whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Reviewing courts "must allow all reasonable

inferences from the record in favor of the prosecution." *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). We will not reverse defendant's conviction unless the evidence is so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of defendant's guilt. *Collins*, 106 Ill. 2d at 261.

¶ 37 In finding defendant guilty on two of the four weapons charges, the trial court clearly believed Officer Kasper's version of where the guns were located. "So long as the weapon in question is in such proximity to the accused as to lie within easy reach so that the weapon is readily available for use, it is 'immediately accessible.' " *Smith*, 71 Ill. 2d at 102. Defendant argued at trial that all three firearms where locked in a safe, while Officer Kasper testified that two of the firearms were in plain view on the floorboard of the back seat and not secured. Officer Kasper admitted the third gun was secured in the safe. Given this conflicting testimony, the trial court was free to accept either version. In accepting Officer Kasper's version, the trial court concluded the unsecured weapons were "immediately accessible" to the defendant even though the exact distance was never established. Viewing this evidence in a light most favorable to the State, we cannot say the evidence is unreasonable or unsatisfactory as to raise a reasonable doubt concerning defendant's guilt.

¶ 38 In his next issue, defendant claims he was denied effective assistance of counsel because his trial attorney failed to argue that his conduct fell within the exemption found at 430 ILCS 65/2(b)(10) (West 2016). Section 65/2(b)(10) provides an exemption to the FOID card requirement to a nonresident who is "currently licensed or registered to possess a firearm in [his] resident state." 430 ILCS 65/2(b)(10) (West 2016). Defendant also raises two constitutional challenges based on his out-of-state residency.

¶ 39 A criminal defendant has a constitutional right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 690-91 (1984). In order to establish a valid claim of ineffective assistance of counsel, the defendant must meet a two-prong test: "(1) that his counsel's performance was deficient by having made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the sixth amendment and (2) that his counsel's deficiencies prejudiced the defendant." *People v. Chandler*, 129 Ill. 2d 233, 242 (1989) (citing *Strickland*, 466 U.S. at 687). "To prove this, a defendant must show that his counsel's errors were so serious that they deprived the defendant of a fair trial, a trial whose result is reliable." *Id.* A court may adjudicate a claim of ineffective assistance of counsel on the lack of prejudice without addressing whether counsel's performance was constitutionally deficient. *Strickland*, 466 U.S. at 697; *People v. Steward*, 141 Ill. 2d 107, 119 (1990).

¶ 40 We agree with the State that defendant has failed to meet his burden demonstrating that his counsel's trial performance was deficient. While defendant claims he could invoke the exemption found in section 65/2(b)(10) because he is not a resident of Illinois, we agree with the State that the record is unclear whether defendant is or is not a resident of the State of Illinois. The State points out that the record contains several instances where defendant's home state is shown to be Illinois. Defendant's pre-sentence report noted he lived with his mother and his half-brother in Chicago, Illinois. Defendant's driver's license was issued in Illinois. Moreover, during mitigation defense counsel stated the defendant was a resident of the City of Chicago. While the record shows defendant was in the military and stationed at a base in Kentucky prior to his arrest, the record contains nothing as to how a soldier's residency is determined by the military. In his brief, defendant also does not provide any legal support for the conclusion that he is a resident of Kentucky simply because he is stationed there. See *Edwards*, 2012 IL App (1st) 091651, ¶ 29

(noting unsupported arguments amount to no more than bare contentions). Based on the lack of support both in the record and his brief, defendant is unable to demonstrate he would qualify for the nonresident exemption and his claim of ineffective assistance of counsel is rejected.[5]

¶ 41 Finally, defendant contends the State improperly imposed various fines and fees which should not have been imposed based on his convictions. Although defendant did not challenge these assessments in the trial court, a reviewing court may modify the imposition of fines and fees without remanding under Illinois Supreme Court Rule 615(b)(1) (*People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22)). We review the propriety of the trial court's imposition of fines and fees *de novo*. *Bryant*, 2016 IL App (1st) 140421, ¶ 22.

¶ 42 Defendant challenges the imposition of several fees and we address each one in turn. Defendant argues the $25 Court Services fee (55 ILCS 5/5-1103 (West 2016)) should not have been imposed because it does not apply to his conviction for aggravated unlawful use of a weapon (720 ILCS 5/24-1.6 (West 2016)). In his Reply, defendant concedes the fee was correctly imposed. Accordingly, we find no error in the assessment of the $25 Court Services fee.

¶ 43 The Defendant next contends that the $5 Electronic Citation fee (705 ILCS 105/27.3e (West 2016)) and the $2 Public Defender Records Automation fee (55 ILCS 5/3-4012 (West 2016)) were wrongly imposed. The State agrees. We therefore vacate the imposition of these two fees.

¶ 44 Defendant also challenges the $20 fine assessed pursuant to the Violent Crime Victim Assistance (725 ILCS 240/10(c) (West 2012)) because the statute authorizes its imposition only when "no other fine is imposed." The State responds that the language "no other fine is imposed"

[5] Given this outcome, we decline to address the constitutional arguments raised by defendant based on his out-of-state residency. *Bender v. City of Chicago*, 58 Ill. 2d 284, 287 (1974).

is from an obsolete version of the statute and the new version, which was amended effective July 16, 2012 (before defendant committed the instant crime), does not contain this language. The State further points out that the amended version calls for a $100 fine for a felony conviction. 725 ILCS 240/10(b)(1) (West 2016). The State does not dispute that defendant was fined under the prior version, that such fine could be imposed only when "no other fine is imposed," and that the trial court did impose other fines on defendant. Given these facts and the State's concessions, we vacate the $20 fine imposed under the prior version and decline the State's invitation to impose the correct $100 fine.

¶ 45 Defendant next contends, and the State agrees, the $100 Trauma Fund fine (730 ILCS 5/5-9-1.10 (West 2016)) should be vacated. This fine is vacated.

¶ 46 Finally, the defendant argues he is entitled to a $5 per day presentence incarceration credit toward the fines levied against him. 725 ILCS 5/110-14(a) (West 2016). However, a review of the record shows that defendant received a greater reduction than he was actually entitled. See *Id.* at §110-14(a) (noting that in no case shall the amount allowed or credited exceed the total fines). Defendant contends he has $145 worth of fines eligible to be off-set, however, the record shows he received $225 in credits not only to his fines but also toward his fees. Accordingly, we find no merit to defendant's contention.

¶ 47 Based on the above, we vacate the $5 Electronic Citation fee (705 ILCS 105/27.3e (West 2016)), the $2 Public Defender Records Automation fee (55 ILCS 5/3-4012 (West 2016)), $100 Trauma Fund fine (730 ILCS 5/5-9-1.10 (West 2016)), and the $20 Violent Crime Victim Assistance fine (725 ILCS 240/10(c) (West 2012)). Defendant's fines, fees, and costs should reflect a total of $597.

¶ 48 CONCLUSION

¶ 49 For the foregoing reasons, we affirm defendant's convictions for aggravated unlawful use of a weapon but order a correction to the fines, fees, and costs imposed.

¶ 50 Affirmed.