2018 IL App (1st) 160301-U

No. 1-16-0301

Order filed October 18, 2018

Fourth Division

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. 13 CR 15888
	)	
JOSHUA STANTON,	)	Honorable
	)	Joan Margaret O'Brien,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice McBride and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's convictions for aggravated battery with a firearm and two counts of aggravated discharge of a firearm are affirmed over his argument that the State failed to prove him guilty beyond a reasonable doubt under an accountability theory. Defendant's fines, fees, and costs order is modified.

¶ 2 Following a joint bench trial,[1] defendant Joshua Stanton was found guilty, under an accountability theory, of one count of aggravated battery with a firearm, two counts of aggravated discharge of a firearm and six counts of aggravated unlawful use of a weapon (AUUW). He was sentenced to seven years' imprisonment for aggravated battery with a firearm, two terms of seven years' imprisonment for aggravated discharge of a firearm, and six terms of three years' imprisonment for AUUW, with all sentences to be served concurrently. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt of aggravated battery with a firearm and aggravated discharge of a firearm because there was insufficient evidence to establish that he was the shooter or that he was accountable for codefendant's actions. He does not contest his convictions for AUUW. Defendant also requests this court to correct his fines and fees order. For the following reasons, we affirm and correct the fines, fees, and costs order.

¶ 3 The State charged defendant and William Bates with 20 counts stemming from a July 21, 2013, drive-by shooting in which shots were fired at Darryl Owens and Anthony Ray. During the incident, Owens was shot in the leg. Defendants were jointly charged with seven counts: four counts of attempted first degree murder (counts I-IV) (720 ILC 5/9-1(a)(1) (West 2012)), one count of aggravated battery with a firearm (count V) (720 ILCS 5/12-3.05(e)(1) (West 2012)), and two counts of aggravated discharge of a firearm (counts VI-VII) (720 ILCS 5/24-1.2(a)(2) (West 2012)). Defendant was also charged with six counts of AUUW (counts XV-XX) (720 ILCS 5/24-1.6 (West 2012)), while Bates was charged with six counts of AUUW and one count of unlawful use of a weapon by a felon.

[1] Defendant was convicted following a joint bench trial with William Bates. Bates is not a party to this appeal and has a separate appeal pending before this court in case number 1-16-1740.

¶ 4 Anthony Ray testified that, during the daytime on July 21, 2013, as he was walking in the area of 800 block of East 87th Place, he stopped to have a conversation with his friend Owens, who at the time of trial was deceased. After speaking with Owens, Ray continued walking west on 87th Place toward Cottage Grove Avenue and Owens remained standing on the sidewalk. Ray was about six houses away from Owens when he heard gunshots. He looked back and noticed a green van near where Owens had been standing. The driver's side of the van was closest to the sidewalk and there was smoke coming from the van. Owens was no longer standing on the sidewalk and there was nobody else on the street. Ray ran west but, before reaching Cottage Grove, he turned left into an alley and ran south toward 88th Street. Ray was halfway through the alley when he heard gunshots fired at him from behind. He kept running and did not look to see where the gunshots came from.

¶ 5 Jennifer Looney testified that, about 8 p.m. on July 21, 2013, she was walking to the gas station on the northeast corner of Cottage Grove and 87th Place. On the way to the station, she spoke to Owens, who was standing on the sidewalk, and noticed him and Ray talking. After exiting the gas station, Looney walked southeast through a parking lot and saw Owens standing at the same place on the sidewalk. She then heard approximately five gunshots coming from Owens's direction. Owens grabbed his leg and limped away toward a gangway between nearby houses.

¶ 6 Looney believed the gunfire originated from the driver's side of the van because, from her vantage point on the north side of 87th, she could see the passenger's side and did not see movement or hear anything from the passenger's side of the vehicle. After the shooting, the van drove west on 87th Place, toward Cottage Grove and closer to Looney. Looney heard more

gunshots and saw Ray, who was across the street, run down an alley. There were two African-American males in the van. The van continued west on 87th Place, stopped at the stop sign at 87th and Cottage Grove, and then Looney lost sight of it. Looney walked home and encountered Owens, who had a gunshot wound to his leg.

¶ 7 Officer Goetz testified that, about 8 p.m. on July 21, 2013, he and his partner, Officer Montoya, were on patrol near 87th Street and Cottage Grove. There, Goetz heard about four to seven gunshots coming from what sounded like a block to the southeast. The officers drove their unmarked vehicle south on Cottage Grove toward the gunshots. About five seconds after hearing the gunshots, Goetz heard a second series of approximately the same number of gunshots.

¶ 8 Goetz testified that it was daylight out and that, when the officers were halfway down the block between 87th Street and 87th Place, he saw a green van driving westbound on 87th Place, just east of Cottage Grove, which was the same area of the gunfire. The van drove through the stop sign at Cottage Grove at a high rate of speed, "fishtailed," and crossed Cottage Grove. The van passed in front of the officers' vehicle as it crossed Cottage Grove. The van then drove westbound on 87th Place. There were at least two occupants, a driver and a passenger, in the van.

¶ 9 The officers turned on 87th Place and followed the van. There were no vehicles in between the officers' vehicle and the green van. "Seconds" after the officers had turned on 87th Place, an occupant of the van threw a black object out of the van's front passenger's window. The object landed on the parkway on the north side of the street. Goetz, who could see through the rear window of the van, did not see the driver move or lean towards the passenger's side of the van before the object was thrown from the passenger's window.

¶ 10 The officers followed the van and curbed it on 87th Place, just after it crossed Langley Avenue. Goetz approached the passenger's side and Montoya approached the driver's side. Both of the van's front side windows were rolled down. Goetz identified defendant and codefendant Bates as the two occupants inside the van. Bates was in the driver's seat and defendant was in the front passenger's seat. There were shell casings on the floor between the two front seats. The officers ordered defendant and Bates out of the van and arrested them. Approximately two minutes after the black object was thrown out the passenger's window, Goetz walked back to the area and saw a black Glock 10 millimeter handgun.

¶ 11 On cross-examination, Goetz testified that the van's rear-facing windows were tinted. Goetz did not see who threw the black object through the front passenger's window. Goetz never radioed that a weapon was thrown from the van.

¶ 12 Chicago firefighter and paramedic Jason Colwell testified that, at 8:04 p.m. on July 21, 2013, he and his partner, Phillip Grooms, responded to a dispatch of a gunshot victim in need of assistance at 837 East 87th Place. Colwell and Grooms arrived in the area at 8:10 p.m., and encountered Owens, who had a gunshot wound to his left thigh. Colwell and Grooms bandaged Owens's wound and transported him to Christ Trauma Medical Center.

¶ 13 Doctor David McElmeel, a trauma surgeon at Christ, testified that, about 8:40 p.m., Owens was admitted to the hospital in stable condition with a gunshot wound to his left thigh. There was an entrance wound, but there was no exit wound. Owens was discharged from the hospital at approximately 10:55 p.m. that night.

¶ 14 Detective Douglas Livingstone testified that, shortly after 8 p.m. on July 21, 2013, he and his partner were assigned to investigate the shooting. Livingstone arrived at 845 East 87th Place.

There, he observed shell casings at three separate locations along 87th Place, including (from east to west), six casings near 841 East 87th Place, one shell casing in the street near 823 East 87th Place, and two shell casings in the street near 813 East 87th Place. On the south side of the street, across from 823 East 87th Place, there was a car parked facing west with a bullet hole in its rear window. Further west on 87th Place, across Cottage Grove, there was a Glock 10 millimeter handgun in the parkway in front of 742 East 87th Place. Further west, near 658 East 87th Place, there was a green van on the north side of the street. Livingstone and his partner relocated to the hospital and spoke with Owens. The detectives then went to the police station where defendant and Bates were being held in separate interview rooms**.** Owens and Ray voluntarily travelled to the police station and answered questions.

¶ 15 Retired Chicago police officer Edwin Jones testified that, after 10 p.m. on July 21, 2013, he was working as an evidence technician and was assigned to the shooting on 87th Place. The crime scene spanned from 845 to 658 East 87th Place. Jones photographed the scene and collected evidence. He described the location of the shell casings that he recovered at the scene. All the casings were 10 millimeter in caliber. Jones collected: six shell casings, that were "spread out a little bit," from the south side of the street near 841 East 87th Place; a single shell casing near 821 East 87th Place; and two shell casings from the mouth of an alley near 813 East 87th Place. The alley was near the intersection of 87th and Cottage Grove. In the area of 821 and 823 East 87th, there was a vehicle parked on the south side of 87th Place with its rear window "shot out." An unloaded 10 millimeter semiautomatic Glock handgun was recovered in the parkway near 742 East 87th. A green van was curbed on the north side of the street facing west near 658 East 87th Place. There was a wallet and an identification card with defendant's name and

photograph on the driver's seat of the van. Two shell casings were recovered from inside the van, one on the floorboard of the driver's side, underneath the steering wheel, and the other between two seats in the van's second row.

¶ 16 Jones further testified that, about 12 a.m. on July 22, 2013, he arrived at the police station with the recovered items and placed them in the vault to be sent to the Illinois State Police Crime Lab for testing. He administered gunshot residue (GSR) tests on the hands of defendant and Bates, who were in separate rooms.

¶ 17 Illinois State Police forensic firearms examiner Jennifer Sher testified that she analyzed the recovered shell casings and the Glock 10 millimeter semi-automatic handgun and concluded that the Glock had fired the shell casings.

¶ 18 The trial court found defendant guilty of aggravated battery with a firearm, two counts of aggravated discharge of a firearm, and six counts of AUUW. It found defendant not guilty of the four counts of attempted first degree murder. In announcing its ruling, the court noted that "the crux of this case is the accountability." The court acknowledged the State's position that defendant was the shooter, but pointed out that the State was not required to "establish who was doing what." Rather, the State was required to show "whether or not the individuals were working together" or "whether they had a common design." After recounting the evidence, the court found each defendant accountable for the acts of the other.

¶ 19 Defendant filed a motion for a new trial. After a hearing, the court denied defendant's motion. In doing so, the court noted that the issue in this case is whether a defendant may be found guilty under an accountability theory even though the identity of the principal is unknown. In resolving this question in the affirmative, the court stated that to follow the defendant's

argument that "because it cannot be said [who] was the shooter, [who] was the principal, [who] was the accomplice means that they are both not guilty would be to ignore logic, reason and the evidence[.]"

¶ 20 The court sentenced defendant to eight concurrent sentences: one term of seven years' imprisonment for aggravated battery; two terms of seven years' imprisonment for aggravated discharge of a firearm, and six terms of three years' imprisonment for AUUW.

¶ 21 On appeal, defendant first challenges the sufficiency of the evidence supporting his convictions for aggravated battery with a firearm and aggravated discharge of a firearm.

¶ 22 On a challenge to the sufficiency of the evidence, we inquire " '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.' " (Emphasis omitted.) *People v. Davison*, 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In doing so, we draw all reasonable inferences in favor of the State (*Davison*, 233 Ill. 2d at 43) and we do not retry the defendant (*People v. Collins*, 106 Ill. 2d 237, 261 (1985)). The State must prove each element of an offense beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). We will not overturn a criminal conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 23 As relevant here, a person commits aggravated battery with a firearm when, in committing a battery, he discharges a firearm and causes any injury to another person. 720 ILCS 5/12-3.05(e)(1) (West 2012). A person commits aggravated discharge of a firearm when he knowingly and intentionally discharges a firearm in the direction of another person or in the

direction of a vehicle he or she knows or reasonably should know to be occupied by a person. 720 ILCS 5/24-1.2(a)(2) (West 2012).

¶ 24 In Illinois, a person is legally accountable for the conduct of another when "either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense." 720 ILCS 5/5-2 (c) (West 2014). Our supreme court has "long recognized that the underlying intent of this statute is to incorporate the principle of the common-design rule." *People v. Fernandez*, 2014 IL 115527, ¶ 13. "[T]o prove that a defendant possessed the intent to promote or facilitate the crime, the State may present evidence that either (1) the defendant shared the criminal intent of the principal, or (2) there was a common criminal design." *Id.*

¶ 25 Defendant argues that the State failed to prove him guilty beyond a reasonable doubt of aggravated battery with a firearm and aggravated discharge of a firearm under a theory of accountability. He maintains that there was insufficient evidence to prove that he shared Bates's criminal intent to commit the offenses or that he was part of a common criminal design. We disagree.

¶ 26 The "common design rule" provides that if two or more persons engage in a common criminal design, any acts in the furtherance of that common design committed by one party are considered to be the acts of all parties to the design or agreement and all are equally responsible for the consequences of such further acts. *People v. Cooper*, 194 Ill. 2d 419, 434-35 (2000). "Words of agreement are not required to prove a common design or purpose between codefendants; a common design may be inferred from the circumstances surrounding the crime."

People v. Fleming, 2014 IL App (1st) 113004, ¶ 52. Absent other circumstances indicating a common design, presence at the scene and flight therefrom do not constitute *prima facie* evidence of accountability; however, they do constitute circumstantial evidence which may tend to establish a defendant's guilt. *People v. Cowart*, 2017 IL App (1st) 113085-B, ¶ 34. Accountability may be established through a person's knowledge of and participation in the criminal scheme, even when there is no evidence that he directly participated in the overt criminal act itself. *People v. Perez*, 189 Ill. 2d 254, 267-68 (2000). In determining defendant's legal accountability, the trier of fact may consider his presence during the offense, his flight from the scene, his continued affiliation with his companions, and his failure to report the crime. *Id.*

¶ 27 After viewing the evidence in the light most favorable to the prosecution, we conclude that there was sufficient evidence for a rational trier of fact to find a common criminal design, and, thus, find defendant guilty under an accountability theory. The record shows that defendant and Bates drove to the scene together in a green van. Bates drove and defendant sat beside him in the passenger's seat. The van pulled up next to where Owens was standing on the south side of the street with its driver's side window facing Owens. Ray heard gunshots, saw smoke emanating from the driver's side of the van, and ran toward the alleyway before Cottage Grove. The van drove west after Ray and, seconds after the shots were fired at Owens, gunshots were fired at Ray as he ran down the alleyway.

¶ 28 After the shooting, Goetz and his partner drove their unmarked car toward the gunshots and encountered the van as it sped across Cottage Grove and continued driving west on 87th Place. Goetz saw the van had a driver and passenger. They turned directly behind the van and, on the block to the west of Cottage Grove, observed a gun thrown out of the passenger's window.

Goetz and his partner stopped the van moments later, found Bates in the driver's seat and defendant in the passenger's seat, and placed them under arrest. Police recovered a Glock 10 millimeter handgun from where the gun had been ejected along with 11 spent shell casings from inside the van and at various locations along 87th Place where the shootings occurred. A ballistics expert tested the firearm and 11 casings recovered and determined that the firearm had fired all of the casings.

¶ 29 This evidence, and the reasonable inferences therefrom, was sufficient to prove beyond a reasonable doubt that defendant shared a common criminal design with Bates and, thus, supports his convictions of aggravated battery with a firearm and aggravated discharge of a firearm under a theory of accountability. See *People v. Ivy*, 2015 IL App (1st) 130045, ¶ 41 (Where there is a common criminal design to a shooting, the State does not need to prove the shooter's identity; the State must only prove that the shooter was among the group of individuals with whom the defendant shared a common criminal design).

¶ 30 Nevertheless, defendant argues that there was no evidence that defendant and Bates shared a criminal design because the only evidence of his conduct during the shootings merely showed that he was present.

¶ 31 We find that defendant's argument that he was merely present during the shootings is belied by the evidence of his conduct before, during, and after the shootings *i.e.* defendant was present during the shootings, he did not attempt to part ways with Bates after the shootings, and he helped dispose of the gun used in the crimes.

¶ 32 Even if defendant was not the shooter, the record contained evidence that defendant was not only present in the van during the shootings, but that he continued to affiliate with Bates and

fled the scene. The evidence showed the van stopped or nearly stopped when shots were fired at Owens where: six shell casings were found grouped together in the street in front of where Owens was shot and Goetz testified there was a five second pause after the first shooting. Defendant remained in the van with Bates as the van drove towards Ray and shots were fired at Ray. He also did not exit the van when it stopped at the stop sign at the Cottage Grove intersection. Instead, defendant remained in the van and fled with Bates. Additionally, a trier of fact could have inferred from Goetz's testimony that defendant threw the gun used in the shootings out of the passenger's side window to conceal evidence connecting him to the shootings.

¶ 33 Defendant also argues that, because each of these offenses expressly requires the State to prove beyond a reasonable doubt that he discharged a firearm, the State's failure to prove that he fired the gun warrants reversal of his convictions. Defendant maintains that to find otherwise would be to overlook the State's burden to prove each element of the offense beyond a reasonable doubt. In support of this argument, defendant relies on *People v. Peterson*, 273 Ill. App. 3d 412 (1995).

¶ 34 We initially note that, in setting forth this argument defendant seems to ignore the fact that here, unlike in *Peterson*, the State pursued the theory of accountability at trial. The State does not need to prove the shooter's identity in an accountability case; rather, the State must prove that the shooter was among the group of individuals with whom the defendant shared a common criminal design. See *Ivy*, 2015 IL App (1st) 130045, ¶ 41 (and cases cited therein). As mentioned, the evidence presented established that defendant and Bates shared a common criminal design. Moreover, in this case, unlike in *Peterson*, defendants were not acting at cross

purposes by shooting at each other when one of them accidentally shot the victim. *Id.* at 420. Instead, here, the evidence shows that defendants were acting in concert where defendant accompanied Bates to the scene of the shootings, did not attempt to disassociate himself from Bates, and attempted to separate himself from the shootings by disposing of the weapon through the van window.

¶ 35 We are also not persuaded by defendant's reliance on *People v. Taylor*, 186 Ill. 2d 439 (1999) and *People v. Lopez*, 72 Ill. App. 3d 713 (1979), where those cases are factually distinguishable from the case at bar.

¶ 36 In *Taylor*, the defendant was driving with a passenger whom he knew to be carrying a handgun. *Id.* at 443. As defendant drove around a vehicle on a narrow street, the passenger of his automobile and the driver of the other vehicle exchanged words. *Id.* at 443-44. The defendant's passenger exited and fired two shots toward the other driver. *Id.* The passenger reentered defendant's vehicle and defendant drove away. *Id.* at 444. Our supreme court reversed defendant's conviction for aggravated discharge of a firearm under a theory of accountability, finding defendant "neither had knowledge that [the passenger] intended to fire his [weapon] upon exiting the vehicle nor made any effort to aid [him] in the discharge of the weapon. Furthermore, there is no evidence that defendant knew of, or facilitated, the shooting in the direction of the [occupants of the other car]." *Id.* at 448. In doing so, the court found that the "unforeseeable, spontaneous" nature of the traffic incident giving rise to the shooting negated any inference that the defendant knew his passenger intended to commit a crime. *Id.*

¶ 37 In *Lopez*, the defendants, identical twin brothers, arrived in a vehicle and parked across the street from the victims. *Id.* at 715-16. The twins both exited the automobile, but one stayed

near the vehicle while the other ran across the street with a firearm, fired multiple shots, and returned to his brother by the vehicle. *Id.* The twins reentered the automobile and drove away. *Id.* Although there was no evidence as to which twin was the shooter and which twin remained by the vehicle, both twins were convicted of attempted murder based on accountability. *Id.* at 716. On appeal, we reversed defendants' convictions for aggravated battery and attempted murder, finding there was insufficient evidence that the twin who stood by the vehicle had knowledge a crime was going to be committed or voluntarily attached himself to the other twin with the knowledge the other twin would commit illegal acts. *Id.* at 717. We noted that evidence of one twin's arrival with the shooter, presence during the offense, and flight from the scene with the shooter were insufficient to prove accountability. *Id.* at 716-17.

¶ 38 Here, unlike in *Taylor*, the evidence presented does not show that the shootings in question were "unforeseeable" or "spontaneous." Rather, unlike in *Taylor* and *Lopez,* this case involved two separate shootings, in between which defendant failed to avail himself of opportunities to disassociate from Bates. Moreover, defendant not only continued his association with Bates after both shootings, but there was evidence he attempted to conceal the crime by disposing of the weapon used in the shootings. We thus find the facts in this case to be distinguishable from *Taylor* and *Lopez* and sufficient to prove beyond a reasonable doubt that defendant shared a common criminal design with Bates. Accordingly, the evidence presented was sufficient to sustain defendant's convictions for aggravated battery with a firearm and aggravated discharge of a firearm under a theory of accountability.

¶ 39 Defendant next argues that the trial court improperly assessed the $5 electronic citation fee, $5 court system fee, and an unattributed $20 fine assessed against him and that it failed to

give him $5 per day of presentence custody credit against the $50 court system fee, which qualified as a fine.

¶ 40 Initially, we note that defendant forfeited review of this issue by failing to object during sentencing. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). 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.

¶ 41 First, the parties correctly agree that the $5 electronic citation fee (705 ILCS 105/27.3e (West 2012)), and the $5 court system fee (55 ILCS 5/5-1101(a) (2012)) must be vacated as those fees do not apply to defendant's felony convictions for aggravated battery, aggravated discharge of a firearm, or AUUW. 705 ILCS 105/27.3e (West 2012) (fee imposed in any traffic, misdemeanor, municipal ordinance, or conservation cases); 55 ILCS 5/5-1101(a) (2012) (fee imposed for violation of the motor vehicle code). Additionally, the parties agree that a $20 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 those three erroneous charges.

¶ 42 Defendant also contends, and the State agrees, that he is entitled to presentence custody credit against his $50 Court System Fee.

¶ 43 A defendant is entitled to a $5 credit toward the fines levied against him for each day he is incarcerated prior to sentencing. 725 ILCS 5/110-14(a) (West 2012). The credit applies only to fines imposed pursuant to conviction and not to any other court costs or fees. *People v. Tolliver*,

363 Ill. App. 3d 94, 96 (2006). A fine is a part of the punishment for a conviction, whereas a fee or cost seeks to recoup expenses incurred by the State. *People v. Jones*, 223 Ill. 2d 569, 582 (2006). Here, defendant accumulated 852 days of presentence custody credit, and, therefore, he is entitled to as much as $4,260 of credit toward his eligible fines.

¶ 44 The parties agree that the $50 Court System Fee (55 ILCS 5/5-1101(c)(1) (West 2012)) is really a fine, not a fee, and should be offset by defendant's presentence custody credit. See *People v. Smith*, 2013 IL App (2d) 120691, ¶ 21 (awarding defendant credit for court system fee imposed under section 5-1101(c) of Counties Code because "the assessment is not intended or geared to compensate the State (or the county) for the cost of prosecuting a defendant"). We so order.

¶ 45 In sum, we affirm defendant's convictions for aggravated battery, aggravated discharge of firearm, and AUUW. We vacate the erroneous assessed charges for the $5 electronic citation fee (705 ILCS 105/27.3e (West 2012)), the $5 court system fee (55 ILCS 5/5-1101(a) (West 2012)), and the unattributed $20 fine; we also find that the $50 Court System Fee (55 ILCS 5/5-1101(c)(1) (West 2012)) is a fine subject to offset by defendant's presentence incarceration credit. 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.

¶ 46 Affirmed; fines, fees and costs order modified.