2018 IL App (1st) 161093-U

No. 1-16-1093

Order filed on November 13, 2018.

Second 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 1818 |
| | ) | |
| JOSE SOSA, | ) | The Honorable |
| | ) | Timothy Joseph Joyce, |
| Defendant-Appellant. | ) | Judge Presiding. |

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Mason concurred in the judgment.
Justice Hyman concurred in part and dissented in part.

**ORDER**

¶ 1 *Held*: The evidence was sufficient to prove defendant guilty beyond a reasonable doubt of aggravated discharge of a firearm in the direction of a peace officer. We reject defendant's contention that, under the one-act, one-crime doctrine, we should vacate two of his convictions for aggravated discharge of a firearm. The fines, fees, and costs order is modified.

¶ 2 Following a bench trial, defendant Jose Sosa was convicted under an accountability theory of four counts of aggravated discharge of a firearm towards a peace officer (720 ILCS

5/24-1.2(a)(3) (West 2012); (720 ILCS 5/5-2(c) (West 2012)). The court merged the counts and sentenced defendant to 10 years in prison on one count. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt because it did not prove codefendant Giovanni Velez knew the individuals he shot at were police officers.[1] Defendant also contends we should vacate two of his convictions under the one-act, one-crime doctrine and challenges various assessed fines and fees. We affirm, but order modification of the fines, fees, and costs order.

¶ 3 BACKGROUND

¶ 4 Defendant's conviction arose from a shooting incident on December 18, 2012, in which Velez shot at Chicago police officers Ricky Rivera and Ramon Salcedo. Defendant was charged with six counts of attempted first degree murder and four counts of aggravated discharge of a firearm towards a peace officer. Defendant and Velez were tried in separate but simultaneous bench trials.[2]

¶ 5 At trial, Officer Rivera testified that, on December 18, 2012, at about 7:50 p.m., he and his partner, Salcedo, were assigned to gather information about a recent shooting. They were driving in the area of the shooting in an unmarked minivan with windows up and were not in uniform. Rivera was dressed in "civilian dress" with a badge around his neck, vest underneath his clothes, and a duty belt. He identified photographs showing how he and Velez were dressed that night.

[1]Velez is not a party to this appeal.

[2]The trial court found Velez guilty of aggravated discharge of a firearm towards a peace officer and sentenced him to 12 years in prison. We affirmed, with directions to correct the fines and fees order. *People v. Velez*, 2018 IL App (1st) 161332-U.

¶ 6 Rivera saw two men, identified at trial as defendant and Velez, standing in front of a gangway. The streetlights were on because it was dark. The men looked in the officers' direction. Velez walked into the gangway and defendant approached the minivan and yelled gang slogans. Rivera started to back up his vehicle for safety because, given the recent shooting, he wanted to give the officers "some distance." Defendant, who was about 25 feet away, screamed, "Pop 'em. Pop 'em." Velez was about 100 feet away from defendant. Rivera immediately parked his vehicle, exited within seconds, and he and Salcedo announced their office, yelling "Chicago police. Let me see your hands. Chicago police." Rivera approached the sidewalk and saw Velez step out of the gangway and fire a gunshot in the officers' direction. Velez was within 100 feet of Rivera. Velez and defendant ran away. Rivera pursued Velez and Salcedo chased defendant. Both defendants were arrested by other responding officers.

¶ 7 Rivera testified he had announced his office at least 8 to 10 times before the gunshot was fired. Asked whether he was inside his vehicle when defendant said, "Pop 'em," Rivera testified that he was "inside and exiting, so yes." He narrated a video taken from a camera at the scene of the shooting. He stated that the video showed defendant walk towards him, Velez come out to the sidewalk and go back into the gangway, and Velez reemerge from the gangway and fire the gunshot. We note that the video is dark and grainy and the officers are not visible, but a person can be seen emerging from an alley and pointing a gun.

¶ 8 Chicago police officer Ramon Salcedo testified that, on December 18, 2012, he and Rivera were driving in an unmarked covert minivan in the area of a recent shooting. Salcedo was wearing a hoody, duty belt, badge around his neck, and vest underneath his hoody. At about 7:50 p.m., he saw defendant and another man, whom he did not identify, loitering in front of a building in the area of the shooting. The men turned and looked in the officers' direction. While

the other man retreated into a gangway, defendant came towards the officers, approached their vehicle, and flashed gang signs.

¶ 9 Rivera reversed the officers' vehicle. As he was doing so, defendant, who was about 25 feet away, yelled "Pop 'em. Pop 'em." Salcedo jumped out of the vehicle yelling "Police. Police. Police" because he believed they were going to get "fired upon." He yelled "Police. Police. Police" as loudly as he could, took cover behind a parked vehicle, and heard a gunshot. Salcedo testified, "I was in fear of my life, and that's when I heard a gunshot coming from that direction." When the shot was fired, defendant retreated into a gangway and Salcedo pursued him. Eventually Salcedo saw defendant being arrested by another officer.

¶ 10 Chicago police officer Ramiro Gonzalez testified that, on December 18, 2012, at about 7:50 p.m., he saw defendant jumping over a fence and placed him into custody. Gonzalez found Velez in a nearby apartment sitting on the couch in the living room. Velez was wearing a t-shirt and shorts and appeared to be in shock. Jogging pants and a black hooded sweatshirt were on the floor next to him. Gonzalez placed Velez into custody. Gonzalez found a loaded handgun in the apartment bathroom.

¶ 11 Sarey Roman testified that she was at an apartment when she heard gunshots. Velez came into the apartment wearing a black sweater and pants. He went to the living room, took off his clothes, and sat down. Police then arrived.

¶ 12 Chicago police forensic investigator Paul Presnell testified that he recovered a revolver with four live rounds and one spent round from the apartment bathroom and a black hooded sweatshirt from the floor in the living room. Forensic scientist Scott Rochowicz testified that samples taken from defendant and Velez's hands were negative for the presence of gunshot residue, but the left cuff of the black hooded sweatshirt was positive for gunshot residue.

¶ 13 The trial court found defendant guilty, under an accountability theory, of four counts of aggravated discharge of a firearm towards a peace officer for knowingly discharging a firearm in the direction of Rivera and Salcedo knowing them to be police officers engaged in execution of their official duties (Counts 9 and 11) and to prevent them from performing their official duties (Counts 10 and 12). It found defendant not guilty of attempted first degree murder.

¶ 14 The court found that Rivera and Salcedo testified in a straight forward, credible, and truthful manner. It found it was clear from Rivera and Salcedo's testimony that, "when they got out of the car before the shot was fired, they were screaming, 'Police, police, police.'" It also found that there was no question that, "at the time the shot is fired, I should say before the shot is fired, Officer Rivera and Officer Salcedo are screaming police as loud as they can, yet notwithstanding the manner in which they identified themselves, Mr. Velez fired that gun at them, knowing that they were police officers."

¶ 15 The trial court subsequently denied defendant's motion for a new trial, merged Counts 10, 11, and 12 into Count 9 and sentenced defendant to 10 years in prison on Count 9. It imposed $689 in fines, fees, and costs.

¶ 16 ANALYSIS

¶ 17 On appeal, defendant first contends that the State did not prove him guilty of aggravated discharge of a firearm in the direction of a peace officer because the State did not prove that, when Velez fired his gun, he knew Rivera and Salcedo were police officers.

¶ 18 When we review the sufficiency of the evidence, the question 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." (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). The fact finder, the trial court here, has the

responsibility to assess the credibility of the witnesses, to weigh the evidence and draw reasonable inferences from it, and to resolve any conflicts in the evidence. *People v. Johnson*, 2014 IL App (1st) 120701, ¶ 21. As a reviewing court, we will not retry a defendant or substitute our judgment for that of the fact finder. *People v. Collins*, 214 Ill. 2d 206, 217 (2005). We will only reverse a conviction if the evidence is so improbable or unsatisfactory as to create reasonable doubt of the defendant's guilt. *People v. Hall*, 194 Ill. 2d 305, 330 (2000).

¶ 19 A person commits the Class 1 felony offense of aggravated discharge of a firearm if the person knowingly or 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 24-1.2(a)(2), (b) (West 2012). However, aggravated discharge of a firearm is a Class X felony if the defendant knowingly or intentionally discharges a firearm in the direction of a person he or she knows to be a peace officer. 720 ILCS 24-1.2(a)(3), (b) (West 2012). To prove defendant guilty of aggravated discharge of a firearm in the direction of a peace officer, as charged here, the State had to prove that he knowingly discharged a firearm in the direction of a person he knew to be a peace officer while the officer was engaged in the execution of any of his official duties or to prevent the officer from performing his official duties. 720 ILCS 24-1.2(a)(3) (West 2012).

¶ 20 Defendant was convicted under a theory of accountability, but is not challenging the court's finding him accountable for Velez's act of firing a gun at two police officers. Nor is he arguing the evidence was insufficient to prove that, when Velez fired the gun, Rivera or Salcedo were engaged in the execution of any of their official duties or that Velez fired the gun to prevent them from performing their official duties. Defendant argues only that we should reduce his

Class X conviction to Class 1 felony aggravated discharge of a firearm because the State did not prove that, when Velez fired the gun, he knew he was firing in the direction of police officers.

¶ 21 Under the Criminal Code of 2012, "a person knows, or acts knowingly or with knowledge of the nature or attendant circumstances of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that his or her conduct is of that nature or that those circumstances exist." 720 ILCS 5/4-5(a) (West 2012). Knowledge of a material fact includes awareness of the substantial probability that the fact exists. *Id.* Knowledge is a question of fact for the fact finder to determine. *People v. Frazier*, 2016 IL App (1st) 140911, ¶ 23. Direct proof of a defendant's knowledge is unnecessary. *People v. Monteleone*, 2018 IL App (2d) 170150, ¶ 26. Rather, knowledge may be inferred from the surrounding facts and circumstances and is ordinarily proven by circumstantial evidence. *Monteleone*, 2018 IL App (2d) 170150, ¶ 26.

¶ 22 Viewing the evidence as a whole and in the light most favorable to the State, we conclude that the evidence was sufficient for the trial court to conclude that, before Velez fired the gunshot, he knew that Rivera and Salcedo were police officers. Rivera, whom the trial court found credible, testified that, after defendant yelled "Pop 'em. Pop 'em," he immediately exited his vehicle and yelled, "Chicago police. Let me see your hands. Chicago police." Rivera was approaching the sidewalk, lit by streetlights, wearing a badge around his neck and his duty belt, when he saw Velez step out of the gangway 100 feet away and fire the gun. Rivera testified that he announced his office at least 8 to 10 times before Velez fired the gun. Salcedo, whom the trial court found credible, testified that he also jumped out of the vehicle yelling "Police" several times "[a]s loud as I could make my voice." He was taking cover behind a parked vehicle when he heard the gunshot. From this evidence, a fact finder could reasonably infer that Velez was

aware of the substantial probability that Rivera and Salcedo were police officers before he fired his gun when the men at whom he fired exited their vehicle loudly and repeatedly yelling that they were the police.

¶ 23 Defendant asserts that there was no evidence that Velez heard the officers announce their office or that the surrounding circumstances were conducive to hearing, deciphering, or understanding the officers' words. We are unpersuaded by defendant's argument. Both officers testified that they repeatedly yelled when they announced their office and Salcedo testified that he yelled "[a]s loud as I could make my voice." Rivera testified that the officers were 25 feet from defendant when defendant yelled, "Pop 'em. Pop 'em" and Velez was 100 feet of defendant. Velez fired the gun after defendant yelled "pop 'em." The trial court could reasonably infer from this evidence that, since Velez heard defendant yell "pop 'em" from 100 feet away and fired the gun at his command, he also heard the officers who were only 25 feet further away when they yelled as loudly as they could that they were the police.

¶ 24 Defendant claims that, when the officers approached defendant and Velez, their identity as police officers was concealed and their verbal claim to be "police" was, without more, insufficient to prove he had actual knowledge that the men were police officers. He asserts anyone can claim to be police officers, and he could have reasonably concluded Rivera and Salcedo were not police officers but were rather armed civilians or rival gang members.

¶ 25 As previously discussed, the evidence showed that Rivera approached the sidewalk after exiting his vehicle and that Rivera and Salcedo announced that they were the police loudly and repeatedly before Velez fired the gunshot in their direction. The trial court expressly found that, before Velez fired the shot, the officers screamed as loudly as they could that they were the police. The court was not required to raise to reasonable doubt the possibility that Velez did not

know Rivera and Salcedo were police officers simply because they were driving in an unmarked minivan and were not wearing their full police uniforms. See *People v. Siguenza-Brito*, 235 Ill. 2d 213, 229 (2009) ("the trier of fact is not required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt"). We are therefore unpersuaded by defendant's argument that the evidence was insufficient to prove that Velez knew that the Rivera and Salcedo were police officers rather than armed civilians.

¶ 26 Accordingly, the evidence was sufficient for a rational trier of fact to conclude that, when Velez fired the gun, he knew Rivera and Salcedo were police officers. The evidence was therefore sufficient to prove defendant guilty of aggravated discharge towards a peace officer.

¶ 27 Defendant next contends that we should vacate two of his four convictions for aggravated discharge of a firearm in the direction of a peace officer under the one-act, one-crime doctrine. He asserts that the four convictions were based on the same physical act of firing a handgun one time in the direction of two individuals, Rivera and Salcedo. He argues therefore that, because Velez fired one single gunshot at two separate victims, only two of his convictions may stand, one for each officer.

¶ 28 As an initial matter, defendant acknowledges that he did not raise his challenge in the trial court and thus did not preserve the issue, but asserts that we may review his claim under the plain error doctrine. See *People v. Bridgeforth*, 2017 IL App (1st) 143637, ¶ 46 (to preserve a claim for review, a defendant must raise a contemporaneous objection in the trial court and include the issue in a written postsentencing motion). We agree that we may review defendant's claim under the second prong of the plain-error doctrine. See *People v. Hardin*, 2012 IL App (1st) 100682, ¶ 23 (a claim under the one-act, one-crime doctrine may be reviewed under the second prong of the plain-error doctrine "because the potential for an unwarranted conviction

and sentence threatens the integrity of the judicial process"). However, before we apply the plain error rule, we must first determine whether any error occurred at all. See *Hardin*, 2012 IL App (1st) 100682, ¶ 23.

¶ 29 Here, as previously discussed, the trial court found defendant guilty of four counts of aggravated discharge of a firearm towards a peace officer: two counts for firing at Officer Rivera while Rivera was engaged in the execution of his official duties (Count 9) and to prevent him from performing his official duties (Count 10) and two counts for firing at Salcedo while he was engaged in his official duties (Count 11) and to prevent him from performing his official duties (Count 12).

¶ 30 However, at sentencing, the trial court merged Counts 10, 11, and 12 into Count 9 and entered sentence only on Count 9, noting that, although there were two victims, "there's one act of shooting the gun."[3] The mittimus correctly reflects the court's oral pronouncement, as it states that Counts 10, 11, and 12 merged into Count 9 and defendant was sentenced only on Count 9.

¶ 31 Under the one-act, one-crime doctrine, multiple convictions based on precisely the same physical act are prohibited. *People v. Akins*, 2014 IL App (1st) 093418-B, ¶ 17. When multiple convictions are based on a single offense, sentence may be imposed only on the most serious offense. *People v. Smith*, 233 Ill. 2d 1, 20 (2009); *People v. Artis*, 232 Ill. 3d 156, 170 (2009). When a criminal act is directed at two people, a defendant can be convicted of two crimes. *Hardin*, 2012 IL App (1st) 100682, ¶ 37.

¶ 32 Here, there was a single shooting at two victims, but defendant was found guilty of two counts of aggravated discharge of a firearm for each victim. He therefore argues two of his four

[3]We note that, as Velez fired one gunshot at two victims, the court could have imposed sentence on two counts of aggravated discharge of a firearm, one each for Rivera and Salcedo. See *People v. Shum*, 117 Ill. 2d 317, 363 (1987) ("separate victims require separate convictions and sentences").

convictions, one each for Rivera and Salcedo, must be vacated. However, defendant does not have four convictions.

¶ 33 A "conviction" is a "a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury." 720 ILCS 5/2-5 (West 2012). A "judgment" is an "adjudication by the court that the defendant is guilty or not guilty *and if the adjudication is that the defendant is guilty it includes the sentence pronounced by the court*." (Emphasis added.) 725 ILCS 5/102-14 (West 2012). Thus, a conviction is the trial court's formal entry of judgment and imposition of sentence, not its finding of guilt. *People v. Woods*, 193 Ill. 2d 483, 488 (2000) ("date of conviction" means "date that sentence was entered, because that date includes the sentence pronounced by the court"); *People v. Cruz*, 196 Ill. App. 3d 1047, 1052 (1999) ("In the absence of a judgment formerly [*sic*] entered or sentence imposed, there is no 'conviction.' ").

¶ 34 Here, the court made four guilty findings but merged the counts and imposed sentence on only one of those findings. Defendant therefore was convicted of only one offense, as judgments were never imposed on the guilty findings on the other three counts. See *Cruz*, 196 Ill. App. 3d at 1052. Thus, because the trial court merged the counts and convicted defendant only on one count, there was no one-act, one-crime violation. See *People v. Lucious*, 2016 IL App (1st) 141127, ¶¶ 59-60 (where the trial court found defendant guilty of aggravated robbery and unlawful restraint and orally sentenced him only on the aggravated robbery count, the reviewing court found that the court's oral pronouncement reflected a sentence for the greater offense, which is what should have occurred under the one-act, one-crime doctrine). Accordingly, no error occurred, the plain error doctrine does not apply, and defendant's claim remains forfeited.

¶ 35 Finally, defendant contends that the $689 assessed in fines, fees, and costs should be reduced to $445. He argues that he was improperly assessed two fees and is entitled to presentence custody credit against certain assessed "fees" that are actually considered "fines."

¶ 36 Defendant acknowledges that he did not properly preserve these challenges by raising them in the trial court. See *Bridgeforth*, 2017 IL App (1st) 143637, ¶ 46. He however argues that we may review his challenge to the improperly assessed fees under Illinois Supreme Court Rule 615(b)(1) and that his request for presentence custody credit not only cannot be forfeited but is reviewable under the plain error doctrine. The State recognizes defendant's forfeiture of these issues but agrees they are reviewable. As the State does not argue forfeiture, it therefore forfeited any forfeiture argument. See *Bridgeforth*, 2017 IL App (1st) 143637, ¶ 46 (rules of waiver and forfeiture also apply to the State). Thus, we will review defendant's claims. The propriety of court-ordered fines and fees is reviewed *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 37 Defendant first contends, and the State correctly concedes, that the $5 electronic citation fee (705 ILCS 105/27.3e (West 2016)) was improperly assessed. The $5 electronic citation fee does not apply to felonies. *People v. Moore,* 2014 IL App (1st) 112592-B, ¶ 46. Defendant was convicted of aggravated discharge of a firearm in the direction of a peace officer, which is a Class X felony (720 ILCS 5/24-1.2(b) (West 2012)). We therefore vacate the $5 electronic citation fee.

¶ 38 Similarly, the parties are correct that the $5 court system fee (55 ILCS 5/5-1101(c) (West 2016)) was improperly imposed. The fee is imposed upon conviction or placement on supervision for either a violation of the Illinois Vehicle Code, municipal ordinance, or a serious traffic violation. *People v. Williams,* 2011 IL App (1st) 091667-B, ¶ 17. Defendant was not

convicted of violating a provision in the Illinois Vehicle Code, municipal ordinance, or a serious traffic violation. We therefore vacate the $5 court system fee.

¶ 39 Defendant next contends that he is entitled to presentence custody credit against various "fees" that are actually "fines." Under section 110-14(a) of the Code of Criminal Procedure of 1963, a defendant is entitled to a $5 credit against his fines for each day spent in presentence custody. 725 ILCS 5/110-14(a) (West 2016); *People v. Tolliver*, 363 Ill. App. 3d 94, 96 (2006). Presentence credit applies only to fines imposed after a conviction and does not apply to other assessed costs or fees. *Tolliver*, 363 Ill. App. 3d at 96. A fine is considered to be part of a defendant's punishment for a conviction. *People v. Jones*, 223 Ill. 2d 569, 582 (2006). A fee is a charge for labor or services and is a "collateral consequence" of a conviction which is compensatory, not punitive. *Tolliver*, 363 Ill. App. 3d at 97. Even if a charge is labeled a fee, it still may be considered a fine. *Jones*, 223 Ill. 2d at 599. To determine whether an assessment is a fine or a fee, "the most important factor is whether the charge seeks to compensate the state for any costs incurred as the result of prosecuting the defendant." *People v. Graves*, 235 Ill. 2d 244, 250 (2009). Here, defendant accumulated 1189 days of presentence custody credit and is therefore entitled to up to $5945 of credit to be applied toward his fines.

¶ 40 Defendant argues that he is entitled to presentence custody credit to be applied toward the $190 felony complaint filing fee (705 ILCS 105/27.2a(w)(1)(A) (West 2016)), $15 State Police operations fee (705 ILCS 105/27.3a(1.5) (West 2016)), $2 public defender records automation fee (55 ILCS 5/3-4012 (West 2016)), $2 State's Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2016)), $15 document storage fee (705 ILCS 105/27.3c(a) (West 2016)), and $25 court services fee (55 ILCS 5/5-1103 (West 2016)). The State concedes that the $15 State

Police operations fee is a fine subject to be offset by defendant's presentence custody credit but argues that the remaining charges are fees.

¶ 41 We agree that the $15 State Police operations fee is a fine. See *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 (concluding that the State Police operations charge is a fine, as it "does not reimburse the State for costs incurred in defendant's prosecution"). Thus, the $15 State police operations assessment must offset by defendant's presentence custody credit.

¶ 42 The $15 document storage, $190 felony complaint filing, and $25 court services charges are fees, not fines subject to be offset by presentence custody credit. See *Tolliver*, 363 Ill. App. at 97 (finding that the felony complaint filing, document storage, and court services charges are fees, stating that they are "compensatory and a collateral consequence" of a conviction); *Brown*, 2017 IL App (1st) 142877, ¶ 81 (concluding *Tolliver* is consistent with *Graves* and that the document storage charge is a fee); *People v. Heller*, 2017 IL App (4th) 140658, ¶ 74 (concluding that the court services charge is a fee, not a fine).

¶ 43 The $2 public defender records automation and the $2 State's Attorney records automation charges are also fees, not fines subject to offset. *People v. Brown*, 2017 IL App (1st) 142877, ¶¶ 75-78. We recognize that, in *People v. Camacho*, 2016 IL App (1st) 140604, ¶ 56, a division of this court found that the State's Attorney and public defender records automation assessments are fines because they "do not compensate the state for the costs associated in prosecuting a particular defendant." However, the court in *Camacho* acknowledged "that every published decision" has determined that these assessment are fees. *Camacho*, 2016 IL App (1st) 140604, ¶ 52. We agree with the weight of authority that these charges are fees, not fines. See *People v. Mullen*, 2018 IL App (1st) 152306, ¶¶ 47-48; *People v. Murphy*, 2017 IL App (1st) 142092, ¶¶ 18-20; *Brown*, 2017 IL App (1st) 142877, ¶¶ 75-78 (collecting cases). Accordingly,

as the State's Attorney records automation assessment is a fee, defendant is not entitled to presentence custody credit toward this charge. However, as defendant was represented by private counsel at trial, we vacate the public defender records automation fee. See *Brown*, 2017 IL App (1st) 142877, ¶ 78.

¶ 44 In sum, we vacate the $5 electronic citation, $5 court system, and $2 public defender records automation fees. Defendant is entitled to $5 per day of presentence custody credit toward the $15 State Police operations assessment. We order the clerk of the circuit court to correct the fines, fees, and costs order accordingly.

¶ 45 CONCLUSION

¶ 46 For the reasons explained above, we order modification of the fines, fees, and costs order and affirm the circuit court's judgment in all other respects.

¶ 47 Affirmed; fines, fees, and costs order corrected.

¶ 48 JUSTICE HYMAN, concurring in part and dissenting in part:

¶ 49 I concur in the majority's decision to affirm the trial court's judgment and to vacate certain assessments. But, I disagree with the majority's conclusion that the $2 Public Defender Records Automation assessment and the $2 State's Attorney Record Automation assessment are fees rather than fines. As we held in *People v. Camacho*, 2016 IL App (1st) 140604, ¶ 50, because the costs associated with developing and maintaining automated record keeping systems for the State's Attorney and Public Defender's offices are not related to the prosecution of a specific defendant, they are fines rather than fees. *Id*. ¶ 56. I would continue to follow *Camacho* in determining whether the defendant is entitled to *per diem* credit for those assessments.

¶ 50 As the defendant was represented by private counsel at trial, I agree with the majority's decision to vacate the $2 Public Defender Records Automation assessment. But, in light of

*Camacho*, I respectfully dissent from the majority's conclusion that the defendant is not entitled to *per diem* credit for the $2 State's Attorney Records Automation assessment.