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THIRD DIVISION
March 27, 2019

No. 1-15-3329 & 1-15-3330 (cons.)

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	Nos. 14 CR 11121 and
	)	14 CR 11122
ANTOINE GOLDEN,	)	
	)	The Honorable
Defendant-Appellant.	)	Domenica A. Stephenson,
	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court. Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held:* Evidence presented at defendant's trial for armed robbery was sufficient to establish that he was armed with a firearm while committing robbery; defendant's statement to court during his sentencing hearing did not require a Krankel inquiry; order assessing fines, fees, and costs modified.

¶ 2 Following a bench trial, defendant Antoine Golden was convicted of one count of armed robbery and one count of aggravated fleeing or attempting to elude a peace officer. He was sentenced to a 21-year term of imprisonment for the armed robbery charge and a concurrent one-

year term for the charge of aggravated fleeing or attempting to elude a peace officer. On appeal, the defendant contends that: (1) the evidence presented at his trial was insufficient to establish beyond a reasonable doubt that he was armed with a firearm during the robbery at issue; (2) the trial court failed to make a proper inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), based on statements the defendant made to the court at his sentencing hearing; and (3) certain fines, fees, and costs were improperly assessed against him upon his conviction. For the reasons that follow, we affirm the judgment of the trial court but modify the trial court's order assessing fines, fees, and costs.

¶ 3 I. BACKGROUND

¶ 4 The defendant was charged with two counts of armed robbery arising out of two separate incidents that occurred on June 4, 2014. The first charge, which is not at issue in this appeal, involved the alleged armed robbery of Deandre Bowman. The second charge, which is at issue, alleged that the defendant, along with two codefendants, Darnell Russ and Lekendrick Williams, committed armed robbery against Cedric Washington, in that they knowingly took property from him, including a wallet, mobile phone, and currency, by the use of force or by threatening the imminent use of force and "carried on or about their persons or were otherwise armed with a firearm." 720 ILCS 5/18-2(a)(2) (West 2014). Additionally, the defendant was charged with four counts of aggravated fleeing or attempting to elude a peace officer, arising out of an incident that occurred on June 7, 2014. All charges against the defendant were joined and tried in a single bench trial, which was conducted simultaneously with the severed cases of codefendants Russ and Williams.

¶ 5 On the day of trial, the trial court began by admonishing the defendant regarding his jury waiver. The trial court explained to the defendant the difference between a jury trial and a bench

trial, and the defendant confirmed that he understood the difference and wanted a bench trial. The defendant specifically stated to the trial court that the jury waiver form was explained to him before he signed it.

¶ 6 The trial began with the testimony of Officer Brian Costanzo of the Chicago Police Department. He testified that on June 7, 2014, he received information from his partner, Officer Murphy, concerning a robbery in the 4900 block of West Quincy Street. The victim, Deandre Bowman, had reported that his iPhone had been taken. The "Find my iPhone" feature of his phone indicated it was located near the 2700 block to 2900 block of South Dearborn Street. Officer Constanzo viewed video footage of the incident, and the vehicle observed in the video matched the description of a vehicle described in an "all call" concerning a separate armed robbery. Officers Costanzo and Murphy ultimately went to the area of 2700 South State Street. There, Officer Costanzo testified he spotted in a parking lot a blue minivan with a license plate number that matched the description of the vehicle involved in the "all call." An individual was sitting in the driver's seat, whom Officer Costanzo identified as the defendant. After the officers pulled into the parking lot, the minivan exited. The officers activated the sirens and lights on their vehicle, and a chase ensued. As they pursued the minivan, its route included driving the wrong way down a one-way street and driving over the sidewalk at the end of a dead-end street. It ultimately entered the Dan Ryan Expressway and exited at West 43rd Street. There it was involved in a collision with another vehicle. Officer Costanzo testified that after the collision occurred, several men ran from the minivan. Two of the men, whom he identified as Russ and Williams, were apprehended nearby. Officer Costanzo testified he put out a flash message concerning the defendant, although he did not see the defendant running from the scene. He testified that shortly thereafter, the defendant was brought back to the scene of the collision in a

police squad car. The defendant was arrested and taken into custody.

¶ 7 James Gorman testified that he was a former police officer with the Chicago Police Department who now worked as a private attorney. He testified that on June 7, 2014, he was driving on West 43rd Street near the Dan Ryan Expressway when a collision occurred in front of him. He saw several men run out of one of the vehicles involved, and one of the men ran eastbound on West 43rd Street. Gorman observed that man carrying a revolver in his hand and pointing it at different cars as he did so. He testified he knew it was a real firearm because it looked like a revolver, which was a firearm that Gorman himself carried. Gorman returned to his vehicle and attempted to follow the individual. He testified that at Dearborn Street and 43rd Street, he saw the individual being detained by police officers. At trial, Gorman identified Russ as the individual whom he had seen running past his car. However, upon objection by counsel for Russ that this identification had not been tendered in discovery, the prosecutor stated that Gorman had misidentified Russ and had intended to identify the defendant as the individual he had seen running eastbound on 43rd Street.

¶ 8 Officer Daniel Prskalo of the Chicago Police Department testified that on June 7, 2014, he was dispatched to the area near 43rd Street and Dearborn Street concerning a vehicle wanted in a robbery. When he arrived, he observed on the sidewalk an individual matching the description he had been given, whom he identified in court as the defendant. He testified that when he identified himself and asked the defendant to come over to him, the defendant began running. Officer Prskalo then chased the defendant. Other officers arrived, and he observed the defendant being apprehended and placed in a police squad car in front of 4322 South Dearborn Street.

¶ 9 Deandre Bowman testified that shortly after 12:30 p.m. on June 4, 2014, he was walking on a sidewalk in the 4900 block of West Quincy Street, when an individual came up behind him

with a gun and robbed him of his coat, belt, and iPhone. He testified that several days later, he went to the police department to retrieve his belt, which had been recovered. He testified that he spoke with Detective O'Brien that day, who had shown him a photo array. However, at trial Bowman testified that he had not recognized any of the photographs shown to him in the photo array. Further, Bowman denied that anyone present in the courtroom was the individual who robbed him.

¶ 10 Detective O'Brien of the Chicago Police Department testified that he had been assigned to investigate a report of a robbery that occurred on June 4, 2014, in the 4900 block of West Quincy Avenue. As part of his investigation, he met with Bowman on June 7, 2014. He testified that during that meeting, Bowman had identified the defendant in a photo array as being the individual who had robbed him.

¶ 11 Jason Hatcher testified that on June 7, 2014, he was driving near the intersection of 43rd Street and the Dan Ryan Expressway when his car was struck by a blue minivan. He testified that after the collision, three black males had exited the minivan and ran away. He testified that he suffered minor injuries in the collision and was taken by ambulance to a hospital.

¶ 12 Cedric Washington testified that on the afternoon of June 4, 2014, he was with his brother Eric at a Shell gas station in the 200 block of West 31st Street. After going into the store to pay for the gas, Cedric was walking back toward the passenger-side door of his brother's car when an individual, whom Cedric identified in court as the defendant, grabbed him and pulled a gun out. He testified that the defendant pulled the gun from his waist. He did not know what type of gun it was, although it was black. He testified that he thought it was a gun because he saw the handle. He testified that as the defendant did this, a second individual went through his back pockets and took his phone, wallet, and money. The two men then got into a nearby van and drove away.

Several days later, he met with Detective Otero of the Chicago Police Department to review a photo array concerning the incident. Upon reviewing the photo array, he identified a photograph of the defendant as the individual with the gun who had grabbed him during the incident. On cross-examination, Cedric confirmed that he only saw the individual grabbing him and holding the gun for a split second. He confirmed he did not see a full gun. He saw only the handle, not the barrel. He stated he did not know if it was a toy gun. On redirect examination, Cedric confirmed that he saw the defendant's face in the split second he looked at him and that he believed the weapon in the defendant's possession was a gun.

¶ 13 Eric Washington testified that on June 4, 2014, he was with his brother Cedric at a Shell gas station near the 200 block of West 31st Street. Eric had gone inside the store and was walking back to his car when he noticed a blue van nearby with its door open. As Cedric was walking to the passenger door of the car, Eric saw an individual grab Cedric. Eric identified this individual in court as the defendant. Eric was about four or five feet away from them at this point. He explained that he saw the defendant show Cedric a gun while another man started going through Cedric's pockets. Eric testified that he knew the defendant had a gun because he "got a clear view of it." While he did not know what kind of gun it was, he explained that it was shaped like a gun. He described its color as "black, maybe." Eric stated that after the men took things out of Cedric's pockets, they went back to the van and Cedric went inside the gas station. Eric testified that on June 7, 2014, he also met with a detective from the Chicago Police Department and identified the defendant in a photo array as the individual who had a gun during the incident. On cross-examination, Eric stated he did not know if it was a toy gun or a real gun.

¶ 14 Jodie Toney testified he was working as a manager at the Shell gas station at 215 West 31st Street on the afternoon of June 4, 2014. He testified that afternoon, a blue van pulled up to one of

the pumps. Three men were in the van. One of the men came into the store where Toney was working. After that man walked out of the store, Toney went outside to the area of the pumps and saw one of the men had a gun out. The man with the gun was between the van and another car, and a second man was with him. Asked if he saw the gun, Toney answered, "Yeah. It was a gun, but—it was a gun." Toney testified he was not far away when he saw the gun. He was able to see the face of the person who had the gun. He walked toward them, and he saw the two men were going through the pockets of another person. When Toney saw this, he went inside the store and called the police, reporting the license plate number and a description of the blue van. A few days later, Toney was asked to come to a police station to meet with Detective Otero. He reviewed a photo array and identified three photographs of men involved in the incident. Also during Toney's testimony, the surveillance video from the gas station was published to the court and ultimately admitted into evidence. Although at trial Toney identified the defendant, Russ, and Williams with reference to the surveillance video, his testimony on this issue is unclear in the record on appeal.

¶ 15 The parties then stipulated to the testimony that Detective Otero would have presented if called to testify. Detective Otero would have testified that in the course of his investigation into the incident of June 4, 2014, he prepared and presented photo arrays to Toney and Cedric and Eric Washington. He would testify that Toney, after viewing the photo array, identified the defendant as the individual he saw armed with the handgun during the robbery.

¶ 16 The prosecution then rested, and the defendant moved for a directed finding, which the trial court denied. The defendant then called Carnesha Jackson as a witness. Jackson testified that the defendant was the mother of her seven-year-old son. She testified they co-parent their son, and they have a schedule whereby the defendant visits him at Jackson's home on Mondays,

Wednesdays, and Fridays. She testified that on June 4, 2014, which was a Wednesday, the defendant was at her home with her and their son the entire day, playing video games, watching movies, and doing homework. She testified he arrived there late on June 3 and did not leave until the morning of June 5.

¶ 17 After extensively reviewing the evidence presented at trial, the trial court found the defendant not guilty of the first armed robbery charge concerning Bowman. It found him guilty of the charges of armed robbery of Cedric Washington and of one of the counts of aggravated fleeing and eluding a peace officer. Regarding the charge of armed robbery for which he was found guilty, the trial court found the testimony of Eric and Cedric Washington to be credible, as both had the opportunity to observe. The trial court noted that Eric in particular had a clear opportunity to observe, based on the fact that he was facing the defendant when the incident occurred at a distance of only four to five feet. The trial court found their testimony to be corroborated by the surveillance video and the testimony of Toney. It noted that both Washington brothers had identified the defendant in a photo array three days after the incident and had identified the defendant at trial.

¶ 18 At the sentencing hearing, the trial court offered the defendant the opportunity to make a statement in allocution. The defendant then stated the following:

> "I want to tell about how my trial went. I'm very disappointed of how it went because I didn't do anything. I was there—told me that, I wanted to go with the jury trial, but I was saying that if I go with a bench trial, that I could beat my case, or that you was going to find me guilty of a lesser charge. So I was led wrong.
>
> And if I would have knew this would have happened, I wouldn't a went like this, with a bench trial."

After the defendant finished speaking, the trial court asked him if there was anything else he wanted to say, to which he responded no. The trial court did not ask the defendant any further questions in response to his statement in allocution.

¶ 19 The trial court then sentenced the defendant to a 21-year term for the armed robbery conviction and a concurrent one-year term for conviction for aggravated fleeing and eluding a peace officer. The trial court further entered an order assessing fines, fees, and costs in the amount of $499, and credited the defendant with 495 days of pre-sentence incarceration credit to offset certain fines. The defendant then filed notices of appeal for his two convictions. These were consolidated for this direct appeal.

¶ 20 II. ANALYSIS

¶ 21 A. Sufficiency of the Evidence

¶ 22 The defendant's first argument on appeal pertains to the sufficiency of the evidence presented at trial that he was armed with a firearm during the robbery of Cedric Washington. When considering a challenge to the sufficiency of the evidence in a criminal case, this court's inquiry 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 offense beyond a reasonable doubt. *People v. Lloyd*, 2013 IL 113510, ¶ 42. This standard of review does not allow this court to substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of witnesses. *People v. Hardman*, 2017 IL 121453, ¶ 37. A criminal conviction will not be reversed unless the evidence is so unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *Id.*

¶ 23 The defendant argues that the evidence presented at trial was insufficient to establish beyond a reasonable doubt that, during the robbery, he carried on his person or was otherwise

armed with a "firearm." 720 ILCS 5/18-2(a)(2). For purposes of criminal offenses including armed robbery, "firearm" is defined to mean "any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas," excluding devices such as pneumatic guns, spring guns, paint ball guns, B-B guns, certain safety signaling guns, certain antique guns, and other excluded devices. 430 ILCS 65/1.1 (West 2014); 720 ILCS 5/2-7.5 (West 2014). The defendant argues that the State failed to prove beyond a reasonable doubt that he carried an object that satisfied this statutory definition. He points out that, as no gun was recovered and the surveillance video was unclear, the only evidence presented on this element was the eyewitness testimony of Toney and the two Washington brothers. The crux of the defendant's argument is that no testimony was elicited that any of them had familiarity with firearms, which would be necessary for a trier of fact to have a reasonable basis to infer from their testimony that they had identified an actual firearm meeting the statutory definition. He argues no other "objective" evidence was presented to establish that the object they saw had characteristics consistent with a firearm and inconsistent with a non-firearm, such as testimony that they observed ammunition or saw or hear the gun being loaded.

¶ 24 Preliminarily, the defendant makes clear that he is not disputing the holdings of the supreme court that eyewitness testimony is sufficient to permit a trier of fact to infer that a defendant was armed with a "real gun" during a robbery. *People v. Wright*, 2017 IL 119561, ¶¶ 76-77; *People v. Washington*, 2012 IL 107993, ¶ 36. However, he argues that such eyewitness testimony must still provide an objective basis for the conclusion that a real firearm was used, which the State did not present in his case. Rather, he argues that the only evidence that was presented was the witnesses' subjective belief that the object defendant had was a firearm.

¶ 25 In support of his argument, the defendant cites *People v. Skelton*, 83 Ill. 2d 58 (1980), and

People v. Ross, 229 Ill. 2d 255 (2008), in which the supreme court held that the question of whether a defendant was armed during a robbery cannot turn on the victim's subjective belief on the matter. In *Skelton*, 83 Ill. 2d at 60-61, the defendant was convicted of armed robbery despite the evidence showing that the weapon he carried on his person was a plastic toy revolver. It did not fire and was too small and light to be used as a bludgeon. *Id.* at 66. The question before the court was whether this toy gun could nevertheless constitute the "dangerous weapon" required under the then-applicable armed robbery statute to sustain a conviction. *Id.* at 61. In its analysis, the supreme court rejected the use of a subjective test for a weapon's dangerousness, in which the question of whether armed robbery has occurred is based on whether the offender intended to instill in the victim the belief and fear that he or she had a dangerous weapon, and whether the victim in fact believed this. *Id.* at 62-63. Rather, the court held that it was a question for the fact finder whether a particular object was sufficiently susceptible to being used in a manner likely to cause serious injury so as to qualify as a "dangerous weapon" for purposes of an armed robbery charge. *Id.* at 66. However, it found that the only conclusion that could be drawn from the evidence before it was that the toy gun at issue could not be a dangerous weapon as a matter of law. *Id.* Thus, the evidence was insufficient to sustain the defendant's armed robbery conviction. *Id.* at 67.

¶ 26 In *Ross*, 229 Ill. 2d at 274-77, the supreme court relied on *Skelton* in holding that an armed robbery conviction had been improperly based on the victim's subjective belief that the defendant had a dangerous weapon. There, the arresting police officer testified that, immediately after the robbery at issue, the victim had pointed out the defendant to him as the perpetrator. *Id.* at 258. As the officer approached the defendant, he observed the defendant throw some items into a bush, including the victim's wallet and a gun, which the victim identified as the one used

in the robbery. *Id.* The gun was not offered into evidence, but the officer testified it was a " '4.5 BB caliber gun with a three inch barrel.' " *Id.* The victim testified that the defendant had robbed him using " 'a black, very portable gun,' " which was " 'small' " and " 'something you can conceal.' " *Id.* The defendant was convicted of armed robbery. *Id.* The trial court denied the defendant's posttrial motion, citing the fact that the victim observed the gun and " 'clearly believed it to be a dangerous weapon.' " *Id.* at 258-59. On a postconviction petition, the supreme court held that the evidence was insufficient to prove that the gun used in the robbery was a "dangerous weapon." *Id.* at 277. It discussed its holding in *Skelton* and reiterated that "the trier of fact may make an inference of dangerousness based on the evidence." *Id.* at 274-76. However, it held in the case before it that the trial court had "incorrectly based its ruling on the subjective feelings of the victim, rather than the objective nature of the gun." *Id.* at 277.

¶ 27 The supreme court has discussed and distinguished its holding in *Ross* in its subsequent cases of *Washington*, 2012 IL 107993, ¶¶ 29-35, and *Wright*, 2017 IL 119561, ¶¶ 74-76. In *Washington*, it reversed the appellate court's decision, which had relied upon *Ross* to conclude that insufficient evidence had been presented that the defendant was armed with a "dangerous weapon." *Washington*, 2012 IL 107993, ¶ 25. The supreme court noted that the defendant had argued on appeal that the evidence was insufficient because no weapon was recovered or introduced in evidence and no testimony was presented concerning its size, weight, or metallic nature. *Id.* at ¶ 24. However, the victim testified that the defendant had pointed a gun at him, forced him into a truck, and held the gun to his head while he sat between the defendant and his accomplice in the front of the truck. *Id.* at ¶ 35. In holding this evidence sufficient, the supreme court noted that it showed for several minutes, the victim had an unobstructed view of the weapon the defendant had in his possession, and he testified it was a gun. *Id.* It held that given

the victim's "unequivocal testimony and the circumstances under which he was able to view the gun, the jury could have reasonably inferred that defendant possessed a real gun." *Id.* at ¶ 36.

¶ 28 In *Wright*, 2017 IL 119561, ¶¶ 68-77, the supreme court again distinguished *Ross* and relied on its holding in *Washington* to conclude that the evidence was sufficient to establish that a defendant committed robbery while armed with a "firearm," as defined by the current statute. The evidence consisted of the testimony of three of three eyewitnesses that a codefendant had carried a gun during a robbery. *Id.* at ¶ 76. The first witness testified that the codefendant told him " 'this is a robbery' " and lifted up his shirt to reveal what " 'looked like a black automatic, black gun.' " *Id.* He testified he thought it was a semiautomatic and stated he had experience firing such guns. *Id.* He stated he was " '100% sure' " that the weapon he saw was an actual firearm. *Id.* A second witness testified the codefendant told her she was being robbed, and she saw the handle of a gun in the waistband of his pants. *Id.* A third witness testified that he had seen guns before and believed the codefendant's gun was a " '9 millimeter pistol.' " *Id.* Citing its holding in *Washington* that, for purposes of establishing that a robbery was committed using a "dangerous weapon," the testimony of a single eyewitness was sufficient to permit a trier of fact to infer from the testimony that a defendant possessed a "real gun," the court held that the same rationale controlled its disposition in the case before it.[1] *Id.* (citing *Washington*, 2012 IL 107993, ¶¶ 35-36). Thus, it held the testimony of the eyewitnesses was sufficient to permit a rational trier of fact to conclude that the codefendant was armed with a firearm during the commission of the robbery at issue. *Id.* at ¶¶ 76-77.

[1] In the defendant's opening brief, which was filed before the supreme court issued its decision in *Wright*, the defendant argued that this court should "eschew" this holding of *Washington* as being contrary to the holdings of *Skelton* and *Ross*. This court has no authority to decline to follow the decisions of our supreme court, which are binding on all lower courts of this state. *People v. Davis*, 388 Ill. App. 3d 869, 880 (2009). For this reason, and because the supreme court in *Wright* has specifically reaffirmed the holding of *Washington*, we reject the defendant's argument on this point.

¶ 29 Having reviewed all the evidence presented at the defendant's trial, we conclude the evidence was similar to that which was held sufficient in *Wright* and *Washington,* and those cases must control. We reject the defendant's argument that the evidence consisted entirely of the subjective beliefs of the witnesses that the defendant was armed with an actual firearm. Cedric Washington testified that the defendant grabbed him and pulled a gun from his waist while another man took items from his back pockets. He testified he believed it was a gun because he saw the handle, although he confirmed he did not see a full gun. Although Cedric did not know what kind of gun it was, he testified it was black. Eric Washington testified that, from a distance of about four or five feet away, he saw the defendant show Cedric a gun while another man went through his pockets. He testified he knew the defendant had a gun because he "got a clear view of it." Although he did not know what kind of a gun it was, he testified that it was shaped like a gun. He described its color as "black, maybe." Finally, Toney similarly testified that he saw one of the men had a gun out during the incident, and he was not far away when he saw it. Asked if he saw the gun, Toney answered, "Yeah. It was a gun, but—it was a gun." We find no equivocation in these witnesses' testimony that the object defendant had was a gun. We hold that this testimony by three eyewitnesses, under circumstances in which they were able to view the weapon used, was sufficient to permit the trier of fact to conclude that the defendant was armed with an actual firearm during the robbery.

¶ 30 We reject the defendant's argument that the state presented insufficient "objective" evidence that the object in the defendant's possession during the robbery was an actual firearm. In *Washington*, 2012 IL 107993, ¶ 24, the supreme court noted the defendant's argument before the appellate court that no testimony had been presented concerning the size, weight, or metallic nature of the weapon used. Nevertheless, the supreme court held that the victim's testimony that

the defendant used a gun in the crime was sufficient to permit the jury to conclude a "real gun" was used. *Id.* at ¶ 36. Further, this court has observed that "reviewing courts have upheld trial court determinations that the defendant possessed a firearm even where very little description of the weapon was presented," and that case law does "not establish a minimum requirement for showing a defendant possessed a gun." *People v. Jackson*, 2016 IL App (1st) 141448, ¶ 17. Here, the witnesses described the gun as "black" and "shaped like a gun." This is similar to descriptions of firearms that this court has found sufficient in other cases. *People v. Charles*, 2018 IL App (1st) 153625, ¶¶ 4, 30 (victim described gun as a black gun and noted barrel was pointed at her from a few feet away); *People v. Fields*, 2017 IL App (1st) 110311-B, ¶¶ 6, 37 (victim testified she saw defendant holding a " 'black gun' " at his side pointed at her); *People v. Malone*, 2012 IL App (1st) 110517, ¶ 51 (victim testified she saw a " 'whole gun' " and " 'it was black' ").

¶ 31 We further reject the defendant's argument that we should find the evidence insufficient on the grounds that no testimony was elicited from Toney or the Washington brothers concerning their familiarity with firearms. The defendant points out that in many cases, evidence is presented that an eyewitness who saw a weapon had prior familiarity with firearms. See *e.g.*, *Jackson*, 2016 IL App (1st) 141448, ¶¶ 5, 18; *People v. Hunter*, 2016 IL App (1st) 141904, ¶¶ 4, 9, 17. He argues that the fact that such testimony was presented and discussed by the court in *Wright*, 2017 IL 119561, ¶ 76, supports his argument that evidence of a witness' familiarity with firearms is necessary to provide an evidentiary basis from which the trier of fact could reasonably conclude that the witness was capable of correctly identifying an actual firearm. However, this court has previously concluded that "nothing in *Wright* suggests that familiarity with firearms and the ability to distinguish among various types of firearms is necessary to find a

witness's testimony that a defendant possessed a firearm sufficient." *Charles*, 2018 IL App (1st) 153625, ¶ 29. In *Charles*, we stated that we saw no reason to depart from our previous decisions upholding the sufficiency of convictions for firearm offenses based on eyewitness testimony, despite the fact that the eyewitness did not have prior familiarity with firearms. *Id.* For example, in *Malone*, 2012 IL App (1st) 110517, ¶¶ 51-52, this court held that the evidence sufficiently established that the defendant was armed with a firearm during a robbery, even though the victim of the robbery testified that she had never seen a gun prior to the incident.

¶ 32 In summary, we find that the testimony presented at trial provided a sufficient basis upon which a rational trier of fact could have found it proven beyond a reasonable doubt that the defendant was armed with a firearm during the robbery of Cedric Washington.

¶ 33 B. Requirement of a *Krankel* Hearing

¶ 34 The defendant next argues that, during his sentencing hearing, he made a claim of ineffective assistance of counsel, and the trial court improperly failed to conduct an inquiry into his claim pursuant to the procedure that developed following *Krankel*, 102 Ill. 2d at 189. At that hearing, the defendant was given the opportunity to make a statement to the trial court, and he said the following:

> "I want to tell about how my trial went. I'm very disappointed of how it went because I didn't do anything. I was there—told me that, I wanted to go with the jury trial, but I was saying that if I go with a bench trial, that I could beat my case, or that you was going to find me guilty of a lesser charge. So I was led wrong.
>
> And if I would have knew this would have happened, I wouldn't a went like this, with a bench trial."

¶ 35 The defendant argues this exchange demonstrates a sufficient claim of ineffective

assistance to warrant further inquiry by the trial court. He characterizes this statement as an assertion that his trial counsel had been ineffective for misleading him prior to his waiver of the right to a jury trial. He argues that his trial counsel misadvised him that a bench trial would lead either to an outright acquittal or to convictions only for lesser offenses, and that based on this erroneous advice he unknowingly waived his right to a jury trial. He argues that, despite his assertion, the trial court never made any inquiry of the defendant or his trial counsel and instead ignored the claim. He argues the case should be remanded to the trial court for a proper inquiry into his claim.

¶ 36 The common law procedure that developed following *Krankel* is triggered when, following a trial, a defendant raises a *pro se* claim of ineffective assistance of trial counsel. *People v. Jolly*, 2014 IL 117142, ¶ 29. The purpose of the procedure is to allow the trial court to decide whether to appoint independent counsel to argue the defendant's *pro se* ineffective assistance claims. *People v. Ayres*, 2017 IL 120071, ¶ 11. When a defendant presents a *pro se* claim of ineffective assistance of counsel following trial, the trial court should first examine the factual basis of the defendant's claim. *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). If the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion. *Id.* at 78. By contrast, if the allegations show possible neglect of the case, new counsel should be appointed. *Id.* Whether a trial court has properly conducted a *Krankel* inquiry is reviewed *de novo*. *Jolly*, 2014 IL 117142, ¶ 28.

¶ 37 To trigger a trial court's duty to conduct a *Krankel* inquiry, a defendant must make some posttrial statement that constitutes a claim of ineffective assistance of counsel. *People v. Taylor*, 237 Ill. 2d 68, 75-77 (2010); *People v. King*, 2017 IL App (1st) 142297, ¶ 15. The statement does not need to include factual support for the claim or cite specific examples, as the purpose of

the inquiry is to ascertain the claim's factual basis. *Ayers*, 2017 IL 120071, ¶ 19. Instead, the supreme court has held that "when a defendant brings a clear claim asserting ineffective assistance of counsel, either orally or in writing, this is sufficient to trigger the trial court's duty to conduct a *Krankel* inquiry." *Id.* at ¶ 18.

¶ 38 Thus, the question becomes whether the defendant's statement to the trial court at his sentencing hearing amounts to a "clear claim asserting ineffective assistance of counsel." This court concludes that it does not. Most significantly, the defendant did not even mention his attorney while making this statement. A defendant's failure to mention his or her attorney has been a factor in cases where reviewing courts have concluded a particular statement was not a clear enough statement of ineffective assistance to trigger a trial court's duty to conduct a *Krankel* inquiry. *Taylor*, 237 Ill. 2d at 77; *People v. Thomas*, 2017 IL App (4th) 150815, ¶¶ 27-28. While the defendant in his statement expressed regret or dissatisfaction about having chosen a bench trial instead of a jury trial, he did not express this in the context of a criticism of his trial counsel. As his statement to the trial court was subject to differing interpretations, no *Krankel* inquiry was required. *People v. Jindra*, 2018 IL App (2d) 160225, ¶ 19 (quoting *Thomas*, 2017 IL App (4th) 150815, ¶ 26); see also *Taylor*, 237 Ill. 2d at 77 (defendant's statement, which did not mention his attorney and could be subject to multiple interpretations, including regret over rejection of a plea deal, was insufficient to trigger a *Krankel* inquiry).

¶ 39 The defendant cites us to several cases in support of his argument that this case should be remanded for a *Krankel* inquiry. However, all of those cases involved clear statements to the trial court mentioning trial counsel and expressing dissatisfaction for something counsel had done or failed to do. In *People v. Sanchez*, 329 Ill. App. 3d 59, 66 (2002), the defendant at his sentencing hearing "said that his attorney failed to investigate his case." He further "said he was framed and

that he could have proved that if his attorney had investigated his case." *Id.* In *People v. Pence*, 387 Ill. App. 3d 989, 992 (2009), the defendant said to the court at sentencing, "I feel my defense did not thoroughly represent me." He further told the court that "there were issues of facts that my defense looked [*sic*] and omitted," and said, "You were denied the full picture for which you[r] verdict may have changed." *Id.* Finally, in *People v. Friend*, 341 Ill. App. 3d 139, 143 (2003), the defendant's attorney brought to the trial court's attention the defendant's statements in his presentence report, asserting that his defense counsel had charged him $10,000 for motions that were never filed, leaving the defendant without funds to sufficiently defend the case at trial.

¶ 40 In all of these cases, the defendant made some statement to the trial court specifically referencing the defendant's trial counsel in the context of some expression of dissatisfaction with counsel's conduct. Here, by contrast, the defendant's statement includes no mention of his attorney and no indication that his complaints about having a bench trial were tied to his attorney's conduct. The trial court did not err in failing to conduct a *Krankel* inquiry.

¶ 41 C. Fines, Fees, and Costs

¶ 42 The defendant's final argument on appeal challenges the trial court's order assessing certain fines, fees, and costs against him upon his conviction. Although the defendant acknowledges that he did not challenge the propriety of these assessments in the trial court, this could has held that it may nonetheless review the propriety of such assessments on appeal where, as here, the state does not raise the issue of forfeiture. *People v. Brown*, 2017 IL App (1st) 142877, ¶ 70. Also, pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967), we may modify a fines and fees order without remand. *Id.* Our review of the propriety of an order assessing fines and fees is *de novo*. *Id.*

¶ 43 The defendant first argues, and the state agrees, that the $5 electronic citation fee was

improperly assessed and should be vacated. 705 ILCS 105/27.3e (West 2014). The electronic citation fee does not apply to felonies, and this court agrees it is inapplicable to the defendant's felony conviction in this case. *People v. Smith*, 2018 IL App (1st) 151402, ¶ 12. We thus direct the clerk of the circuit court to vacate this charge from the order assessing it.

¶ 44 The defendant next argues that various other monetary charges ordered by the trial court to be assessed against him were improperly denominated as "fees," but are actually "fines." The distinction is that fines levied on conviction are subject to credit of $5 for each day of pre-sentence incarceration, whereas fees are not subject to such credit. 725 ILCS 5/110-14(a) (West 2014). A fine is considered part of the punishment for a conviction, whereas a fee is assessed to compensate the state for some expenditure incurred in prosecuting the defendant. *Smith*, 2018 IL App (1st) 151402, ¶ 13.

¶ 45 The parties agree that one of the fees assessed, the $15 state police operations fee (705 ILCS 105/27.3a(1.5) (West 2014)), constitutes a fine that should be offset by pre-sentence credit. This court has held the same in prior cases. *Smith*, 2018 IL App (1st) 151402, ¶ 14; *People v. Robinson*, 2017 IL App (1st) 161595, ¶ 135. We direct the clerk of the circuit court to modify the order assessing this charge, so that it is offset by presentence incarceration credit.

¶ 46 With one exception, all of the remaining assessed charges that the defendant challenges in this case as being fines have been held by the supreme court to be fees. In *People v. Clark*, 2018 IL 122495, the supreme court held as follows:

> "We find that the $2 Public Defender Records Automation Fund fee (55 ILCS 5/3-4012 (West 2014)), the $2 State's Attorney Records Automation Fund fee (*id.* § 4-2002.1(c) [(West 2014)]), the $15 Court Document Storage Fund fee (705 ILCS 105/27.3a (West 2014)), the $190 'Felony Complaint Filed, (Clerk)' fee (*id.* §

> 27.2a(w)(1)(A) [(West 2014)]), and the $15 court automation fee (*id.* § 27.3a [(West 2014)]) are all fees that compensate the State for a cost related to the defendant's prosecution. They are therefore not subject to defendant's presentence incarceration credit." *Id.* at ¶ 51.

The holding in *Clark* resolves against the defendant any argument in this case that these charges constitute fines instead of fees. The only charge that the defendant challenges in this case that was not addressed in *Clark* is the $25 "Court Services (Sheriff)" fee. 55 ILCS 5/5-1103 (West 2014). In *Clark*, the supreme court noted that the defendant had withdrawn his challenge to that charge as being a fine instead of a fee. *Clark*, 2018 IL 122495, ¶ 7. This court has previously and repeatedly held that this charge to be a fee, not a fine. *Smith*, 2018 IL App (1st) 151402, ¶ 15 (citing *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006)); *People v. Braden*, 2018 IL App (1st) 152295, ¶¶ 47-48. We thus reject the defendant's argument that this constitutes a fine.

¶ 47 III. CONCLUSION

¶ 48 The judgment of the trial court is affirmed. The clerk of the circuit court is directed to vacate the imposition of the $5 electronic citation fee in the order assessing fines, fees, and costs entered on October 15, 2015, and to modify that order so that the $15 state police operations fee is offset by presentence incarceration credit. The total amount of fines, fees, and charges assessed against the defendant, before offsets, should thus be modified to $494.

¶ 49 Affirmed; order assessing fines, fees, and costs modified.