2019 IL App (1st) 161740-U

No. 1-16-1740

Order filed March 21, 2019

Fourth Division

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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
	)	
WILLIAM BATES,	)	Honorable
	)	Joan Margaret O'Brien,
Defendant-Appellant.	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: Defendant's convictions for aggravated battery with a firearm and 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 conviction for unlawful use of a weapon by a felon reversed. Defendant's fines, fees, and costs order is modified.

¶ 2 Following a joint bench trial with his codefendant Joshua Stanton, defendant William Bates was found guilty of one count of aggravated battery with a firearm, two counts of aggravated discharge of a firearm, one count of unlawful use of a weapon by a felon (UUWF)

and six counts of aggravated unlawful use of a weapon (AUUW).[1] He was sentenced to 11 years' imprisonment for aggravated battery with a firearm, 11 years' imprisonment for aggravated discharge of a firearm, and 7 years' imprisonment for UUWF, with all sentences to be served concurrently. The trial court merged the remaining counts. 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 under an accountability theory because there was "no evidence" establishing that he and codefendant Joshua Stanton shared a criminal intent or common criminal design. Defendant also contends that the State failed to prove him guilty of UUWF where there was no evidence he possessed the gun or that Stanton had previously been convicted of a felony. Finally defendant contends that his fines, fees, and costs order must be corrected. For the following reasons, we affirm in part, reverse in part, and order the fines, fees, and costs order corrected.

¶ 3 The State charged defendant and Stanton 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 ILCS 5/8-4, 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 one count of UUWF (count VIII) (720 ILCS 5/24-1.1(a) (West 2012)) and six counts of AUUW (counts IX-XIV) (720 ILCS 5/24-1.6 (West 2012)), while Stanton was charged separately with six counts of AUUW.

[1] Stanton is not a party to this appeal and his convictions were affirmed in a separate appeal. See *People v. Stanton*, 2018 IL App (1st) 160301-U.

¶ 4 Anthony Ray testified and acknowledged that he had two prior felony convictions. He had a "gun case" from 2008, and another gun case from 2010. During the daytime on July 21, 2013, as he was walking in the 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 where Owens had been standing, 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. She noticed Owens speaking with another man. She spoke to Owens and walked on to the gas station. After exiting the gas station, Looney walked southeast through a parking lot and noticed 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, away from a green truck or van Looney saw on the street.

¶ 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 Place, she could see the passenger's side and did not observe 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 observed 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 Place 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.[2] 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 observed 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 front-seat 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, the front-seat passenger 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 on the 700 block of 87th Place.

[2] The first names of Officer Goetz and Officer Montoya do not appear in the record.

Goetz, who could see through the rear window of the van, did not notice 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 did not notice anyone flee from the van. 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 Stanton as the two occupants inside the van. Defendant was in the driver's seat and Stanton was in the front passenger seat. There was a spent shell casing on the floor between the two front seats. The officers ordered defendant and Stanton 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 noticed a black Glock 10 millimeter handgun on the grassy parkway near 742 East 87th Place.

¶ 11 Goetz testified that People's exhibits 2 and 9 were photographs of the van he stopped on 87th Place. People's exhibit 2 depicts a green minivan with the driver's window open. Inside the van the driver's seat is reclined at approximately a 45 degree angle. The front passenger seat is not visible in the photograph.

¶ 12 On cross-examination, Goetz admitted he never noticed the driver at any time touch or handle any object thrown from the van. After the officers turned on their "mars lights" and alerted the van to stop, it stopped and never attempted to flee.

¶ 13 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.

¶ 14 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.

¶ 15 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 near the opening to an alley. On the south side of the street, across from 823 East 87th Place, there was a vehicle parked facing west with a bullet hole in its rear, passenger-side 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 Stanton were being held in separate interview rooms**.** Owens and Ray voluntarily traveled to the police station and answered questions.

¶ 16 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 and 845 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 Place and Cottage Grove. In the area of 821 and 823 East 87th Place, 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 Place. Jones testified that semiautomatic weapons eject shell casings after they are fired. A green van was curbed on the north side of the street facing west near 658 East 87th Place. Jones identified People's exhibit 2 as being an accurate photograph of the green van with the driver's side window down. There was a wallet and an identification card with Stanton'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.

¶ 17 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 Stanton, who were in separate rooms.

¶ 18 Chicago police detective Joseph Madden testified that he was at the police station when defendant and Stanton were brought in and placed in interview rooms. Both men were handcuffed with their hands behind their back. After Montoya and Goetz got his attention, he went into defendant's interview room and discovered that defendant's hands were now

handcuffed in front of his body. The officers uncuffed defendant and cuffed his hands behind his body once again. Madden secured defendant in the interview room. Five minutes later, Madden checked and defendant's hands were once again in front of his body. The police officers had no other way of restraining defendant so they left his hands there. Several hours later, the GSR test was performed on defendant's hands. Madden did not know what defendant did with his hands while waiting for the test.

¶ 19 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.

¶ 20 The trial court allowed the State to admit, without objection, a certification from the Illinois State Police that defendant had never been issued a firearm owner's identification (FOID) card or concealed carry license. Also admitted, without objection, were certified copies of convictions for defendant for delivery of cocaine and AUUW.

¶ 21 Defendant moved for a directed finding, arguing, *inter alia*, that there was no testimony "as to who the shooter was." The trial court denied defendant's motion. The parties presented closing argument, during which the State argued, *inter alia*, that the location of the shell casings demonstrated that defendant slowed the van near Owens so that Stanton could fire at him, drove after Ray, and slowed the van again so Stanton could fire at Ray. It argued "Stanton had the gun the whole time." The State further argued that defendant attempted to remove the GSR that was deposited on his hands when Stanton fired over him out the driver's side window. The State also argued that defendant reclined the driver's seat in the van so that Stanton would have a clear shot out the window.

¶ 22 The trial court found that each defendant was accountable for the actions of the other. The court found that they lacked a specific intent to kill, however, and found both defendants not guilty of attempted first degree murder (counts I-IV). The court found both defendants guilty of aggravated battery with a firearm of Owens (count V) and two counts of aggravated discharge of a firearm in the direction of Owens and Ray (counts VI and VII). The court also found defendant guilty of the UUWF and AUUW counts (counts VIII-XIV).

¶ 23 Defendant filed a motion for a new trial. The trial court allowed defendant and codefendant to reopen their cases, and the parties' stipulated to the admission of a photograph of the interior of the van taken by Jones. The photograph shows all four seats in the first two rows of the van reclined at a similar 45 degree angle. Defendant argued, *inter alia*, that the State had not proven accountability for the shootings and that the position of the driver's seat was not evidence of an intent to aid in the shooting. The trial court denied the motion. After a sentencing hearing, the trial court sentenced defendant to 11 years' imprisonment for aggravated battery with a firearm, 11 years for aggravated discharge of a firearm, and 7 years for UUWF with all sentences to be served concurrently and with the remaining counts merging. Defendant moved to reconsider his sentence, and the trial court denied the motion.

¶ 24 On appeal, defendant first 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, arguing that the State failed to prove he was accountable for Stanton's actions as the shooter where defendant merely drove the van.

¶ 25 The due process clause of the fourteenth amendment to the United States Constitution safeguards an accused from conviction in state court except upon proof beyond a reasonable

doubt of every fact necessary to constitute the crime charged. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 433 U.S. 307, 315-16 (1979)); see also *People v. Johnson*, 2018 IL App (1st) 150209, ¶ 18. The relevant inquiry under the *Jackson* standard 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. *Johnson*, 2018 IL App (1st) 150209, ¶ 18. This standard is the same whether we are reviewing a bench trial or a jury trial. *People v. Howery*, 178 Ill. 2d 1, 38 (1997). In applying this standard, we draw all reasonable inferences in favor of the State (*People v. Little*, 2018 IL App (1st) 151954, ¶ 36) and we do not retry the defendant (*People v. Jamison*, 2018 IL App (1st) 160409, ¶ 26). It is the trier of fact's function to assess witness credibility, weigh and resolve conflicts in the evidence, and draw reasonable inferences from the evidence. *Jamison*, 2018 IL App (1st) 160409, ¶ 26.

¶ 26 Although defendant suggests that a *de novo* standard of review is appropriate because he is not challenging witness credibility (see *People v. Smith*, 191 Ill. 2d 408, 411 (2000)), we find that defendant's arguments attack the inferences which the trial court drew from the evidence, an area in which we must give deference (see *Jamison*, 2018 IL App (1st) 160409, ¶ 26). Therefore, we will apply the *Jackson* standard.

¶ 27 To prove defendant guilty of aggravated battery with a firearm, the State had to prove that defendant, or someone for whom he was accountable, knowingly discharged a firearm and caused any injury to Owens. 720 ILCS 5/12-3.05(e)(1) (West 2012). To prove defendant guilty of the aggravated discharge of a firearm counts, the State had to prove that defendant, or someone for whom he was accountable, knowingly discharged a firearm in the direction of Owens and Ray. 720 ILCS 5/24-1.2(a)(2) (West 2012). Defendant does not deny that someone in

the van, necessarily Stanton, committed both acts. Instead, defendant argues that the State failed to prove that he ever handled the firearm, and failed to prove that he was accountable for Stanton's actions.

¶ 28 A person is 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 2012). To prove that a person had the requisite intent to promote of 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. *People v. Fernandez*, 2014 IL 115527, ¶ 13.

¶ 29 "Under the common-design rule, if 'two or more persons engage in a common criminal design or agreement, 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 the further acts.' " *People v. Fernandez*, 2014 IL 115527, ¶ 13 (quoting *In re W.C.*, 167 Ill. 2d 307, 337 (1995)). The State is not required to present evidence of a preconceived plan, if the evidence indicates involvement by the defendant in the spontaneous acts of the group. *People v. Cooper*, 194 Ill. 2d 419, 435 (citing *In re W.C.*, 167 Ill. 2d at 338). A defendant may be found guilty under an accountability theory even though the identity of the principal is unknown. *Cooper*, 194 Ill. 2d at 435 (citing *People v. Banks*, 260 Ill. App. 3d 464, 468 (1994)).

¶ 30 The trier of fact may consider the following factors when determining whether a defendant is legally accountable: (1) that the defendant was present during the commission of the

offense; (2) that the defendant maintained a close affiliation with his companions after the commission of the offense; (3) that defendant fled from the scene; and (4) that he or she failed to report the offense. *People v. Perez*, 189 Ill. 2d 254, 267 (2000) (citing *People v. Taylor*, 164 Ill. 2d 131, 141 (1995)). " '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 prove and establish a defendant's guilt.' " *People v. Willis*, 2013 IL App (1st) 110233, ¶ 79 (quoting *People v. Foster*, 198 Ill. App. 3d 986, 993 (1990)).

¶ 31 The evidence at trial established that shots were fired from a green van in which defendant was the driver and Stanton was the passenger and that there were no other occupants of the vehicle. Ray testified that when Owens was shot, the driver's side of the van was closest to where Owens was standing. Looney also believed that the gunfire originated from the driver's side. After firing at Owens, the van drove to where Ray was running down the alley and additional shots were fired at him. Officer Goetz, who was on duty nearby, heard shots and noticed the green van traveling at a high rate of speed and the weapon thrown out of the passenger's side window. When the van was stopped, defendant's driver's side window was rolled down and his seat reclined. Shell casings were recovered from within the van. In addition, shell casings found on the street were grouped together where the witnesses reporting seeing shots fired at the victims. Further, prior to a gunshot residue test being administered to defendant, he twice managed to move his handcuffed hands from the back to the front of his body. This evidence, and the reasonable inferences there from, were sufficient to conclude that defendant and Stanton acted together in the shooting of Owens and Ray. Accordingly, we cannot conclude

that no rational trier of fact could have found defendant accountable for aggravated discharge of a firearm and aggravated battery with a firearm.

¶ 32 Defendant argues that the location of the shell casings is insufficient evidence to conclude that defendant slowed the van near Owens. Defendant notes that, although Jones photographed the casings, the State did not introduce these photographs at trial. Defendant also notes that the testimony of Livingstone and Jones varies slightly in their descriptions of where the casings were recovered. We do not believe the lack of photographs or the distinction between the casings being located in front of one residence or spread out "a little" in front of two residences is enough to defeat the inference that defendant slowed the van. More importantly, this is a matter of the weight of the evidence and rational inferences to be drawn therefrom, and therefore this is a matter in which we must defer to the trial court. See *Jamison*, 2018 IL App (1st) 160409, ¶ 26.

¶ 33 Defendant further argues that, even if he did slow the van near Owens, that the "record lacks evidence to infer that he did so to assist with the shooting." Instead, defendant posits that defendant could have slowed for any number of lawful reasons unrelated to the shooting, such as to talk to a pedestrian or park the van. To the contrary, as we observed above, there was ample evidence of intent to facilitate the crimes. Defendant slowed the van not just once, but twice, near each of the two victims with the driver's side window open and his seat reclined. Defendant was in the van before, during and after the commission of the offenses and never attempted to exit or otherwise distance himself from the criminal activity. There were two separate shootings and defendant reported neither to the police. Therefore, we conclude that the inference that defendant acted with the intent to facilitate the shooting was not unreasonable.

¶ 34 Finally, defendant argues that that his case should be decided like the case of *People v. Taylor*, 186 Ill. 2d 439 (1999). In *Taylor*, the defendant was driving an automobile. *Id.* at 442. The defendant stopped the car following a traffic altercation; the defendant's passenger exited the vehicle, and fired shots in the direction of another driver. *Id.* at 443. The passenger reentered the defendant's automobile, and the defendant drove away. *Id.* Our supreme court found that the defendant merely aided the passenger's escape and that escape was not an element of aggravated discharge of a firearm. *Id.* at 449. The court also found that the defendant had neither knowledge that his passenger intended to fire his gun nor made any effort to aid the passenger in doing so. *Id.* at 448. Our supreme court concluded that because the only evidence of intent related to actions taken after the shooting this "possible intent" did not support an inference of intent to facilitate a crime. We note that when interpreting *Taylor*, it is important to recognize that, the case involved only specific intent not the common-design rule. See *People v. Fernandez*, 2014 IL 115527, ¶ 21 (discussing *Taylor*).

¶ 35 Defendant argues that he, like the defendant in *Taylor*, at worst, merely aided his passenger's escape, and that he should likewise have his convictions reversed. We disagree. Defendant's comparison of his case to *Taylor* is unpersuasive because, in making the comparison, defendant ignores the significant evidence outlined above which supports his accountability. The weight of the evidence of an intent to aid or facilitate the offenses before and during their commission clearly distinguishes this case from *Taylor*.

¶ 36 Defendant next contends that he cannot be convicted of UUWF on an accountability theory where there was no evidence that Stanton, who the State argued possessed the gun, was a convicted felon. The State concedes this issue and we accept the State's concession. In order to

establish guilt by accountability, the State must first establish a *prima facie* case against the principal. *People v. McIntyre*, 2011 IL App (2d) 100889, ¶ 12. Here, the State did not do so. In order to prove UUWF, the State had to prove that Stanton (1) knowingly possessed a firearm, and (2) that he had been convicted of a felony. 720 ILCS 5/24-1.1(a) (West 2012). The State presented no evidence that Stanton had been convicted of a felony. Therefore, defendant could not be accountable for the offense. See *McIntyre*, 2011 IL App (2d) 100889, ¶ 13. Accordingly, we reverse defendant's conviction for UUWF and vacate the corresponding seven-year sentence.

¶ 37 Finally, defendant contends that several corrections should be made to the fines, fees, and costs order. The State agrees, in part. We will address each argument in turn.

¶ 38 Initially, defendant acknowledges that he failed to preserve the fines and fees issue by objecting at the trial level and raising the issue in a postsentencing motion. See *People v. Bridgeforth*, 2017 IL App (1st) 143637, ¶ 46 (citing *People v. Hillier*, 237 Ill. 2d 539, 544 (2010)). Defendant argues we can address the issues under plain error or under our authority under Supreme Court Rule 615(b) (eff. Jan. 1, 1967). See *Hillier*, 237 Ill. 2d at 545 (discussing plain error); *People v. Murphy*, 2017 IL App (1st) 142092, ¶ 22 (citing Rule 615(b)). However, the rules of waiver and forfeiture are also applicable to the State. *People v. Reed*, 2016 IL App (1st) 140498, ¶ 13. The State agrees that defendant is entitled to review of these issues, and has therefore waived the issue of forfeiture. *Id.*

¶ 39 The parties correctly agree that the $5 electronic citation fee (705 ILCS 105/27.3e (West 2012)) should be vacated. The $5 electronic citation fee was improperly assessed as defendant was not convicted of a traffic, misdemeanor, municipal ordinance, or conservation offense. See

705 ILCS 105/27.3e (West 2012); see also *People v. Moore*, 2014 IL App (1st) 112592-B, ¶ 46. Accordingly, we vacate the fee.

¶ 40 The parties also correctly agree that the $5 court system fee (55 ILCS 5/5-1101(a) (West 2012)) was improperly assessed. According to section 5-1101(a) of the Counties Code (55 ILCS 5/5-1101(a) (West 2012)), the $5 fee is to be assessed only upon a judgment of guilty or grant of supervision for violation of the Illinois Vehicle Code (625 ILCS 5/1-100 *et seq.* (West 2012)). As defendant was convicted only of felonies not governed by the Vehicle Code, the fee was improperly assessed. Therefore, we vacate the $5 court system fee.

¶ 41 Defendant next claims he is entitled to presentence custody credit against certain fines that have been incorrectly labeled as fees. Under section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2012)), any person incarcerated on a bailable offense is entitled to a credit of $5 per day against his or her fines. The court awarded defendant 852 days of presentence custody credit, entitling him to up to $4260 in monetary credit toward his fines. The $5 per day credit of section 110-14(a) applies, however, only to fines, not fees. See *People v. Jones*, 397 Ill. App. 3d 651, 663 (2009). The central characteristic that separates a fee from a fine is whether the assessment is intended to reimburse the State for some cost incurred in prosecution or whether it is punitive in nature and intended to punish. *People v. Clark*, 2018 IL 122495, ¶ 11 ("Fines and fees are distinguished based on their purpose."); see also *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 63. A fee reimburses the State and a fine punishes the defendant. *Bowen*, 2015 IL App (1st) 132046, ¶ 63. We review *de novo* whether an assessment constitutes a fine or fee. *Clark*, 2018 IL 122495, ¶ 8.

¶ 42 The parties correctly agree that defendant is entitled to apply his $5 per day credit against the $50 court system fee (55 ILCS 5/5-1101(c)(1) (West 2012)). This fee is actually a fine because its stated purpose is to finance the court system. See *People v. Smith*, 2013 IL App (2d) 120691, ¶ 21. Therefore, defendant is entitled to use his $5 per day credit to offset this assessment.

¶ 43 Defendant argues that the $190 felony complaint filed fee (705 ILCS 105/27.2a(w)(1)(A) (West 2012)) and the $15 document storage fee (705 ILCS 105/27.3c(a) (West 2012)) are both, in fact, fines. We disagree. This court has long held that these assessments are fees because they reimburse the State, in part, for costs incurred in prosecuting defendant. See *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006); see also *People v. Smith*, 2018 IL App (1st) 151402, ¶ 15. The supreme court has recently reached the same conclusion. *Clark*, 2018 IL 122495, ¶¶ 34, 49. Therefore, we find that these assessments are fees not subject to offset.

¶ 44 Defendant also argues that the $2 State's Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2012)) is, in fact, a fine. Defendant relies on *People v. Camacho*, 2016 IL App (1st) 140604, ¶ 56, which found that this assessment does not compensate the State for costs associated with prosecuting a particular defendant. However, our supreme court has recently overruled *Camacho* and found the assessment is a fee not subject to offset. *Clark*, 2018 IL 122495, ¶ 27.

¶ 45 For the foregoing reasons, we affirm defendant's convictions for aggravated battery with a firearm and aggravated discharge of a firearm. In accordance with the State's concession, we reverse defendant's conviction for UUWF and vacate the sentence. We order the clerk of the circuit court to correct defendant's mittimus to reflect our disposition. We further order the clerk

of the circuit court to correct the fines, fees, and costs to reflect vacation of the $5 electronic citation fee (705 ILCS 105/27.3e (West 2012)) and $5 court system fee (55 ILCS 5/5-1101(a) (West 2012)), and credit toward the $50 court system fee (55 ILCS 5/5-1101(c)(1) (West 2012)).

¶ 46 Affirmed in part and reversed in part; fines, fees, and costs order corrected.