

No. 1-09-2124

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IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 07 CR 4186
)	
MICHAEL YOUNG,)	The Honorable
)	Dennis J. Porter,
Defendant-Appellant.)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Sterba and Pucinski concur in the judgment.

ORDER

¶ 1 *HELD: (1) The State properly proved defendant guilty beyond a reasonable doubt of leaving the scene of an accident involving death or personal injury where defendant fled the scene on foot and was apprehended in hiding, was capable of reporting the accident and failed to do so, and had opportunity to report the accident but failed to do so; (2) statute requiring that driver involved in motor vehicle accident involving death or personal injury is not an unconstitutional violation of an individual's privilege against self-incrimination; (3) trial court did not err in sentencing defendant to extended sentences where trial court properly found separate courses of conduct; and (4) defendant is not entitled to an offset credit to the \$200 DNA analysis charge.*

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¶ 2 After a bench trial, defendant was convicted of leaving the scene of an accident involving death/personal injury and two counts of reckless homicide. Defendant was sentenced to 11 years' imprisonment for leaving the scene of a motor vehicle accident involving death or personal injury and 6 years' imprisonment for each of the 2 reckless homicide convictions, to be served concurrent to one another but consecutive to the sentence for leaving the scene, for a total of 17 years' imprisonment. Defendant appeals, contending: (1) the state failed to prove him guilty beyond a reasonable doubt of leaving the scene of an accident involving death or personal injury; (2) the statute requiring a driver to stop and report a motor vehicle accident is an unconstitutional violation of an individual's privilege against self-incrimination; (3) the trial court erred in sentencing him to extended sentences; and (4) the trial court erred in assessing fines and fees against him. For the following reasons, we affirm.

¶ 3 **BACKGROUND**

¶ 4 On January 17, 2007, 53-year-old Graciela Moreno picked up her two granddaughters, 6-year-old Daniela Fuentes and 7-year-old Anais Ramirez Fuentes from school and began to walk them home.

¶ 5 This same day, defendant drove Heather Phothichak and a woman known as Chariot from Wisconsin to Chicago in a BMW. After arriving in Chicago, they stopped in front of some buildings and Young went inside. Heather and Chariot switched seats because Chariot wanted to lie down in the back seat. Heather testified that, when defendant returned to the car after 25 to 30 minutes, his demeanor had changed and he seemed agitated.

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¶ 6 Defendant began driving very quickly down residential streets. Heather was in the front passenger seat and Chariot was lying down in the backseat. Heather testified that defendant said he thought there was a "cop car or someone" following them. Heather told defendant that nobody was following them and asked him to take her home. Defendant told Heather to sit and be quiet. Defendant became increasingly agitated, increased his speed, and, according to Heather, "seemed kind of paranoid at that time." Defendant continued to increase speed as they drove through a residential area. Heather again told defendant to slow down. Defendant's driving became more erratic, and he wove in and out of traffic. Heather testified that, at some point, the speedometer read between 75 and 80 miles per hour, but she covered her face after defendant ignored her requests to slow down and did not know thereafter how fast they were traveling. Defendant ran two stop signs and continued to refuse to slow his speed. Heather was scared.

¶ 7 At this same time, Esteban Rivera was driving his Buick Century westbound on a residential section of 49th Street. Rivera stopped at the four-way stop sign at the intersection of 49th Street and Wood, where the speed limit was 30 miles per hour. Rivera checked for traffic from all sides. He testified that he was particularly careful, as there was a viaduct to his left. He did not see any cars, so he proceeded into the intersection.

¶ 8 As Rivera proceeded through the intersection at 4900 South Wood Street, he heard what sounded like a bomb from his car engine. Rivera testified that he was confused because he did not know what had happened. He never saw the other car hit him

¶ 9 At this same time, Heather felt a "tremendous crushing," heard a loud noise, and the car

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stopped.

¶ 10 Rivera's air bag deployed and his driver's seat collapsed. The car was smoking. Rivera escaped through the passenger rear door.

¶ 11 Heather testified that she was "dazed" and remembered that defendant climbed out of the car and began to run away. The car was on the sidewalk, wedged between the pedestrian viaduct wall and the viaduct support, facing southbound, and the wheels of the car were still turning.

There was smoke inside the car. Regarding exiting the vehicle, Heather testified:

"[STATE'S ATTORNEY] Q: And the defendant was still in the vehicle?

[HEATHER PHOTHICHAK] A: For a minute, and then I remembered him getting out of the car.

Q: How did the defendant get out of the vehicle?

A: If I remember right - - I'm not positive, but I thought for sure he climbed out the window of the - - of his - - on his side. But I can't really say for sure. But I remember him running.

Q: Did you get out of the vehicle?

A: I was the last one to get out of the vehicle. I was in the front seat.

Q: And the woman that was in the back seat got out?

A: She climbed out of the back passenger's side, and then I had climbed over the seat to get out.

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Q: And what side of the vehicle did you get out of?

A: Same side, the passenger back seat door."

When Heather climbed out of the car, she saw Chariot sitting on the curb. She also saw another car in the road which had been badly hit, as well as an older woman and two young girls on the sidewalk. Heather sat down on the curb. The police arrived soon after.

¶ 12 Heather admitted that she had been drinking alcohol earlier in the day while still in Madison, Wisconsin. She did not consume more alcohol after departing for Chicago. Heather also admitted that she had two prior convictions for forgery and one for bail jumping, and, at the time of trial, was on unsupervised probation for driving under the influence of alcohol. She also admitted that she lied previously when talking with the police and at the grand jury, stating that she had come to Chicago on January 17, 2007, to visit a friend named Emily Watson. Heather explained that she told the police and the Grand Jury about Emily because, when defendant returned to the car and was agitated, he told her that, if they got pulled over, she should make something up about being in Chicago to visit somebody.

¶ 13 Chicago police officers Haggerty and Valtierra were on patrol nearby when they saw people yelling and pointing toward the south end of the block. As they approached the area, Officer Haggerty saw a white plume of smoke coming from near the 49th Street intersection, and bodies on the sidewalk and in the street. An older woman was lying on the sidewalk, as was a small child, and another small child was lying in the street near the curb. One of the girls, Anais, was dead, and the other, Daniela, was non-responsive. The officers presumed the victims had been ejected from the Buick, which was 30 to 40 feet south of the intersection, facing westbound

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on Wood Street. Officer Valtierra saw a confused Rivera standing near the Buick.

¶ 14 Officer Haggerty saw Heather and another female walk away from the BMW and sit down on the sidewalk. He approached and spoke to the women. Officer Valtierra saw the women and noticed people yelling "police" and pointing to the viaduct. It was then that he saw the BMW wedged between the viaduct and the support.

¶ 15 Officer Valtierra testified that he saw defendant trying to get out of the driver's seat, then slide toward the passenger side. Officer Valtierra testified:

"[OFFICER VALTIERRA] A: I observed a male black attempting to get out of the driver's seat and slide towards the passenger's seat, and then he proceeded out of the passenger front window.

[STATE'S ATTORNEY] Q: And how close were you to this when you saw it?

A: I was about 25 feet away.

Q: All right. Did he get out of the vehicle?

A: Yes. He maneuvered his way out of the vehicle through the passenger side window, up over the vehicle, on to the trunk of the vehicle, and then proceeded to walk southbound down Wood Street."

Officer Valtierra identified defendant in court as the person he saw climbing out of the BMW. After watching defendant climb out of the vehicle, Officer Valtierra yelled for him to stop. Defendant turned, looked at Officer Valtierra, and quickly limped away. Defendant, limping,

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jogged southbound on Wood Street. Officer Valtierra chased after him. He found defendant crouched down, hiding under an evergreen tree at 4923 South Wood Street. Officer Valtierra arrested defendant. Officer Valtierra testified that at no time thereafter did defendant report the accident to him. On cross-examination, Officer Valtierra admitted that he and his partner were in an unmarked police car, dressed in plain clothes, and the scene following the accident was chaotic. He also admitted that, in the arrest report prepared shortly after the accident, he stated that he saw defendant emerge from the passenger's side before fleeing southbound, rather than moving from the driver's side to the passenger's side.

¶ 16 Officer Haggerty testified that he saw a man, whom he identified in court as defendant, exit the rear passenger side of the car, jump over the trunk, and down onto the sidewalk. He testified that he was "100 percent certain[]" that he saw defendant exit the car.

¶ 17 Graciela and Anais both died at the scene. Daniela was transported to the hospital with bruises and broken bones. An autopsy performed on Graciela determined that her death was due to multiple injuries sustained while she was a pedestrian struck by an automobile. The autopsy performed on Anais determined that she also died due to multiple injuries sustained as a pedestrian struck by an automobile.

¶ 18 Defendant was taken to the hospital where he underwent several tests after complaining of tenderness to his shoulder, knee, hip, and chest. All tests were negative. Defendant was administered morphine and discharged with prescriptions for Tylenol and ibuprofen. Trauma surgeon Dr. Frederick Starr testified that defendant's injuries consisted of soft tissue injuries consistent with being in a high speed motor vehicle crash.

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¶ 19 Chicago police detective Lewis testified that he and his partner, Detective Adams, interviewed defendant on January 18, 2007. At that time, defendant had still not reported the accident. During the interview, Detective Lewis asked defendant about the accident, and defendant responded that he wished to remain silent.

¶ 20 Chicago police traffic specialist David Nigro testified that he responded to the scene following the accident. He noted that a "no parking" sign was originally mounted near the southwest corner of the intersection. It was struck by the BMW and was found 92 feet from where it belonged.

¶ 21 Officer John Delanty, an expert in accident reconstruction, testified that, upon investigating a gouge mark, tire marks, and skid marks at the location of the accident, he determined the point of impact between the BMW and the Buick. No tire marks were visible before the point of impact between the two vehicles, and there was no indication that the BMW braked before impact. Officer Delanty testified that the lowest possible speed the BMW could have been traveling at the time of impact was 45 to 49 miles per hour. That speed estimate, however, was based on a vehicle that did not impact another object. Had the vehicle impacted another object, which it did, it may have been traveling 20 miles faster. Officer Delanty testified that no snow, ice, or potholes were present that day on the road surface in question.

¶ 22 Defendant did not testify at trial. The defense theory was that the state could not prove beyond a reasonable doubt defendant was the driver of the vehicle.

¶ 23 The trial court found defendant guilty of leaving the scene of a motor vehicle accident involving death or personal injury and reckless homicide. It specifically found that the State

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established beyond a reasonable doubt that defendant was the driver. Although the court did not find Heather to be a credible person, it noted that her testimony regarding the fact that defendant was the driver was corroborated by at least three things: (1) the police officer's testimony that he saw defendant sliding over from the driver's side of the car; (2) the fact that the "two passengers in the car got out first because everybody had to get out the passenger side because you couldn't get out the driver's side the way car was wedged under the viaduct. And they got out. The reason they got out first is because they were the ones on the passenger side;" and (3) after defendant exited the vehicle and heard the police officer calling to him to stop, he left the scene and hid from the officers.

¶ 24 Regarding the failure to report the accident, the court found that defendant was arrested very shortly after the accident, but that defendant had a duty to report the accident regardless of whether he was in custody. The court said, "it's not the job of the police to ask him about these things. It's his job to report them, whether he is in custody or not." He found that defendant failed to report that he was in an accident and failed to give his registration number and the names and addresses of the people in the car.

¶ 25 The trial court sentenced defendant to extended term sentences. Defendant was sentenced to 11 years' imprisonment for leaving the scene of a motor vehicle accident involving death or personal injury and 6 years' imprisonment for each of the 2 reckless homicide convictions, to be served concurrent to one another but consecutive to the sentence for leaving the scene.

¶ 26 Defendant timely appealed.

¶ 27

ANALYSIS

¶ 28

I. Sufficiency of the Evidence

¶ 29 First, defendant contends that the State failed to prove him guilty beyond a reasonable doubt of leaving the scene of an accident. Specifically, defendant argues that this court should reverse his conviction where he did not actually leave the scene, but remained "as close as possible;" the police prevented him from complying with the mandatory reporting requirements by arresting him before he could report the accident and before the expiration of the statutory grace period; and he was physically and mentally incapable of assisting those who were injured at the scene. We disagree.

¶ 30 The issue to be resolved is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004). The trier of fact determines the credibility of witnesses and the weight to be given to their testimony, resolves conflicts in the evidence, and draws reasonable inferences from the evidence. We will not substitute our judgment for that of the trier of fact. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). A reviewing court must construe all reasonable inferences from the evidence in favor of the prosecution. *People v. Bush*, 214 Ill. 2d 318, 326 (2005). We will not set aside a criminal conviction unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *Ortiz*, 196 Ill. 2d at 259.

¶ 31 Section 11-401 of the Illinois Vehicle Code requires, in relevant part:

"Motor vehicle accidents involving death or personal

injuries.

(a) The driver of any vehicle involved in a motor vehicle accident resulting in personal injury to or death of any person shall immediately stop such vehicle at the scene of such accident, or as close thereto as possible and shall then forthwith return to, and in every event shall remain at the scene of the accident until the requirements of Section 11-403 have been fulfilled. Every such stop shall be made without obstructing traffic more than is necessary.

(b) Any person who has failed to stop or to comply with the requirements of paragraph (a) shall, as soon as possible but in no case later than one-half hour after such motor vehicle accident, or, if hospitalized and incapacitated from reporting at any time during such period, as soon as possible but in no case later than one-half hour after being discharged from the hospital, report the place of the accident, the date, the approximate time, the driver's name and address, the registration number of the vehicle driven, and the names of all other occupants of such vehicle, at a police station or sheriff's office near the place where such accident occurred. No report made as required under this paragraph shall be used, directly, or indirectly, as a basis for the prosecution of any

violation of paragraph (a)." 625 ILCS 5/11-401 (West 2008).

¶ 32 Section 11-403 of the Illinois Vehicle Code requires, in relevant part:

"Duty to give information and render aid.

The driver of any vehicle involved in a motor vehicle accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give the driver's name, address, registration number and owner of the vehicle the driver is operating and shall upon request and if available exhibit such driver's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying or the making of arrangements for the carrying of such person to a physician, surgeon or hospital for medical or surgical treatment, if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

If none of the persons entitled to information pursuant to this Section is in condition to receive and understand such information and no police officer is present, such driver after rendering reasonable assistance shall forthwith report such motor vehicle accident at the nearest office of a duly authorized police

authority, disclosing the information required by this Section." 625

ILCS 5/11-403 (West 2008).

¶ 33 Here, viewing the evidence in the light most favorable to the prosecution, the evidence adduced at trial clearly shows that defendant did not remain "as close as possible" to the accident scene as he argues, but rather, that he fled the scene and was thereafter apprehended by police. Officer Valtierra testified that he saw defendant climb out of the vehicle. Officer Valtierra ordered defendant to stop, yelling "hey, stop, police." Defendant turned toward Officer Valtierra, then hurried in the opposite direction. Defendant ran, limping, away from the accident scene. Officer Valtierra chased defendant down Wood Street, where defendant tried to hide, crouching in a fetal position, beneath an evergreen tree. Officer Valtierra then apprehended defendant. We refuse to interpret hiding from police beneath a bush as stopping "as close as possible" to the accident scene. Rather, like the trial court before us, we believe defendant was fleeing the scene. That Officer Valtierra was able to catch up to defendant within a short distance and find his hiding place does not show that defendant was attempting to stay close to the accident scene, but simply that Officer Valtierra was successful in giving chase.

¶ 34 Defendant's insistence that he ran from the scene because he was afraid the vehicles were going to explode is unpersuasive. When he fled the scene, Officer Valtierra was immediately behind him, calling for him to stop. Defendant did not ask for help, and did not express his alleged fear that the cars were going to explode. He did not call out to Officer Valtierra to call the fire department because the vehicles might explode. He simply fled the scene.

¶ 35 Defendant also argues that the law should not require him to render reasonable assistance

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to the three victims he hit with his car because he, himself, was injured. Even if he was not injured, he argues, the police prevented him from rendering assistance to the victims by arresting him before he was able to do so. We disagree.

¶ 36 Defendant, who was sufficiently mobile to run from Officer Valtierra, was certainly not so injured that he was prevented from approaching the victims to ascertain their injuries. The statute requires drivers of vehicles involved in a motor vehicle accident resulting in injury or death to provide reasonable assistance to any injured person, including the "carrying or the making of arrangements for the carrying of such person to a physician, surgeon, or hospital for medical or surgical treatment [.]" 625 ILCS 5/11-403 (West 2008). Defendant failed to do so here, where he simply fled the scene. There is no evidence that defendant was too injured himself to render assistance. Rather, defendant was well enough to climb out of the car, onto the trunk, jump down, and run from the police after being commanded to stop. Although defendant was taken to the hospital after complaining of tenderness to his shoulder, knee, hip, and chest, all tests performed showed he sustained only soft tissue injuries in the accident. Defendant, who was healthy enough to run and hide from the police, was certainly well enough to have approached the victims to render aid, including asking somebody to call an ambulance.

¶ 37 Nor are we persuaded by defendant's argument that the police prevented him from rendering aid by arresting him. Defendant was clearly not trying to render aid when he fled from police, running down the street and hiding.

¶ 38 Finally, defendant argues that he was "stripped of the protection of the statutory grace period from the moment [Officer] Valtierra arrested him, which was within minutes of the

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accident." We disagree. Subsection (b) provides a second chance to a driver who has left the scene of a motor vehicle accident without reporting it:

"(b) Any person who has failed to stop or to comply with the requirements of paragraph (a) shall, as soon as possible but in no case later than one-half hour after such motor vehicle accident, or, if hospitalized and incapacitated from reporting at any time during such period, as soon as possible but in no case later than one-half hour after being discharged from the hospital, report the place of the accident, the date, the approximate time, the driver's name and address, the registration number of the vehicle driven, and the names of all other occupants of such vehicle, at a police station or sheriff's office near the place where such accident occurred. No report made as required under this paragraph shall be used, directly, or indirectly, as a basis for the prosecution of any violation of paragraph (a)." 625 ILCS 5/11-401(b) (West 2008).

¶ 39 Here, defendant was arrested after fleeing the scene on foot. Thereafter, he was taken to the hospital, where he remained in police custody. He was then released from the hospital. It is unclear from the record what time defendant was released from the hospital, but defendant claims it was at 4:00 a.m.¹ Detective Lewis interviewed defendant at 10:30 the following morning and

¹Dr. Starr testified that the "last note" on the nursing flow sheet was at 4:00 a.m., and that he believed defendant was released in the early morning.

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defendant chose to remain silent. He did not report the accident. Under the statute, defendant should have reported the accident to the police officers at the scene. 625 ILCS 5/11-401(a) (West 2008). He did not do so. Nonetheless, defendant was provided yet another opportunity by statute to report the accident when he was released from the hospital. 625 ILCS 5/11-401(b) (West 2008). At that time, he had a 30 minute grace period within which to report the accident. He chose not to do so.

¶ 40 Defendant relies on *People v. Young*, 92 Ill. 2d 236 (1982), *Cesena v. DuPage County*, 145 Ill. 2d 32 (1991), and *People v. LaDew*, 160 Ill. App. 3d 506 (1987), to argue that "[o]nce an individual is in police custody, the statutory grace period no longer applies and, therefore, any statements the individual makes can be used against him in a criminal prosecution." These cases, however, do not support defendant's argument, as none of them hold that a driver no longer enjoys subsection (b) privileges once taken into custody.

¶ 41 In *Young*, the defendant driver left the scene of a car accident. The police subsequently contacted defendant and asked him to come to the police station for questioning. The defendant then went to the police station within the proscribed time period and made statements about the accident. Our supreme court held that the privilege attached to reports of accidents made at police stations and sheriff's offices pursuant to section 11-401 of the Illinois Vehicle Code extended to both those statements made by people who came into the stations voluntarily as well as those who came into the station at the request of law enforcement officers. *Young*, 92 Ill. 2d at 241. The *Young* court noted the importance of the grace period protections:

"The [reporting] statute's purpose is to inform those who

have been injured or damaged by a hit-and-run driver of the driver's identity. This is accomplished by encouraging such drivers to take advantage of a second chance to come forward and reveal their identity. Those who do come forward will not be prosecuted for a felony, and their statements will not be used against them if they are prosecuted for the misdemeanor of leaving an accident scene." *Young*, 92 Ill. 2d at 240.

¶ 42 Defendant's reliance on *LaDew* is equally unpersuasive. In *LaDew*, the defendant driver drove away from the scene of a fatal vehicle accident. Soon thereafter, a police officer responding to a description of the involved vehicle came upon a vehicle matching the description of the one that left the scene of the accident. The officer questioned the defendant, who was standing near the vehicle. The question on appeal was whether the subsection (b) privilege extended to violators of subsection (a) "in response to questioning by law enforcement officers at places other than police stations or offices." The *LaDew* court found that a defendant's statements in response to police questioning while not in a police station or sheriff's office regarding the vehicle accident in question was not protected by subsection (b) privilege. *LaDew*, 160 Ill. App. 3d at 508. The *LaDew* court then briefly discussed *Young* and noted that *Young* "possibly inferr[ed] that those who come to the police station in custody are not intended by the statute to acquire the privilege." *LaDew*, 160 Ill. App. 3d at 509. Defendant urges us to interpret this comment to foreclose, via *Young* and *LaDew*, any privilege under subsection (b) for offenders who come to the police station in police custody. We decline to expand the *Young* and

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LaDew holdings in this manner.

¶ 43 Nor is *Cesena* persuasive to us. In *Cesena*, the defendant driver also left the scene of an accident. However, he then voluntarily came forward and attempted to take advantage of the statutory grace period by reporting the accident in question by having his lawyer file a report on his behalf. The court found that the reporting requirements were met when the attorney, on behalf of the driver, attempted to timely file the necessary report with the local sheriff's office, but the sheriff erroneously refused to accept it. *Cesena*, 145 Ill. 2d at 43.

¶ 44 It was defendant's burden to report the accident. He could have done so at the scene of the accident, but chose to flee instead. He then had numerous opportunities to do so, including once he was released from the hospital within the subsection (b) grace period, but he chose not to do so. The statute requires a driver to report the accident, and does not provide an exception for when police arrive on the scene. We find no error here, where a rational trier of fact could have found defendant, who chose to ignore the mandates of the statute, guilty beyond a reasonable doubt.

¶ 45 II. As-Applied Challenge to Section 11-401 on Fifth Amendment Grounds

¶ 46 Next, defendant contends that section 11-401 of the Illinois Vehicle Code is unconstitutional as applied to the facts of this case because compliance with the statute would have compelled defendant to provide self-incriminating information to police in violation of his constitutional privilege against self-incrimination under both the United States Constitution and the Illinois Constitution. Specifically, defendant argues that the reporting requirements would

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expose him to criminal liability for failing to divulge incriminating information that could be used against him. These disclosures, defendant argues, would have been particularly harmful here, where defendant's theory of defense at trial was that he was not the driver. We disagree, as the second division of this court has rejected an identical "as applied" challenge to this statute in *People v. Brady*, 369 Ill. App. 3d 836 (2007), and we see no reason to depart from this precedent.²

¶ 47 The fifth amendment to the United States Constitution states that "[n]o person * * * shall be compelled in any criminal case to be a witness against himself." U.S. Const., amend. V. A communication must be testimonial, incriminating, and compelled in order to qualify for the fifth amendment protection. *Hiibel v. Sixth Judicial District Court of Nevada*, 542 U.S. 177, 189 (2004). The privilege against compulsory self-incrimination "protects against any disclosures that the witness reasonably believes could be used in a criminal prosecution or could lead to other evidence that might so be used." *Hiibel*, 542 U.S. at 190. Our supreme court has interpreted article I, section 10, of the Illinois Constitution in "lockstep" with the Supreme Court's construction of the fifth amendment. *People v. Caballes*, 221 Ill. 2d 282, 301 (2006).

¶ 48 Defendant was convicted under section 11-401(b) of the Illinois Vehicle Code. Section 11-401(b) requires drivers involved in a vehicular collision to report the accident to the police

²The State argues that we should not review this issue due to forfeiture and because defendant lacks standing to raise the issue on appeal. Because this issue has previously been decided in *Brady*, and we see no need to depart from the *Brady* precedent, we herein address *Brady* as it pertains to the case at bar. *Brady*, 369 Ill. App. 3d 836.

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and requires the disclosure of the following information: the name of the driver, the driver's address, the vehicle registration number, the names of the passengers, and the place, date, and time of the accident. 635 ILCS 5/11-401 (West 2008).

¶ 49 In *Brady*, the defendant driver was drag racing with another vehicle when the other vehicle crashed, killing the driver. *Brady*, 369 Ill. App. 3d at 839. The defendant driver left the scene of the accident and did not report the accident to the police within the statutory time frame. *Brady*, 369 Ill. App. 3d at 840. The defendant was eventually convicted of drag racing and leaving the scene of a motor vehicle accident involving death. *Brady*, 369 Ill. App. 3d at 842. On appeal, the defendant argued, in relevant part, that section 11-401(b) was unconstitutional, as applied to his conduct, because it violated his constitutional privilege against self-incrimination. *Brady*, 369 Ill. App. 3d at 849-50. He argued that compliance with section 11-401(b) would have been tantamount to an acknowledgment that he was involved in an accident, which in turn could have led to a reckless driving charge for drag racing. *Brady*, 369 Ill. App. 3d at 850-51.

¶ 50 Like defendant here, the *Brady* defendant directed the court to *Hiibel*, wherein the Supreme Court rejected an as-applied challenge to a Nevada law requiring subjects of *Terry* stops to state their names. *Hiibel*, 542 U.S. at 190. The Court held that *Hiibel*'s "refusal to disclose his name was not based on any articulated real and appreciable fear that his name would be used to incriminate him, or that it "would furnish a link in the chain of evidence needed to prosecute him." ' " *Brady*, 369 Ill. App. 3d at 850-51, quoting *Hiibel*, 542 U.S. at 190, quoting *Hoffman v. United States*, 341 U.S. 479, 486 (1951).

¶ 51 The *Brady* court also found that compliance with section 11-401(b) would not have

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incriminated defendant in a criminal proceeding on a separate offense, as that statute "does not concern itself with how the accident came about" and does not require a defendant to make any statement to the police regarding the cause of the accident or the events surrounding it. *Brady*, 369 Ill. App. 3d at 852-53, quoting *People v. Bennett*, 329 Ill. App. 3d 502, 517 (2002). The *Brady* court rejected the idea that a person who admits involvement in an accident also admits to causing the accident. *Brady*, 369 Ill. App. 3d at 852. Moreover, the *Brady* court, citing *Hiibel*, held that the information sought under subsection (b) was neither testimonial nor communicative, two requisites to trigger fifth amendment protection. *Brady*, 369 Ill. App. 3d at 853. As such, the *Brady* court found that no fifth amendment privilege was implicated. *Brady*, 369 Ill. App. 3d at 852.

¶ 52 Defendant argues that *Brady* conflicts with *Hiibel* and, as such, should "not be given any weight at all." He also argues that, even if *Brady* were soundly reasoned and not in conflict with *Hiibel*, the decision is so factually distinguishable from the case at bar that, again, it should be given "no weight" by this court. We disagree, and find no reason to depart from the *Brady* precedent. Defendant's argument that *Brady* is inapposite because the *Brady* defendant was not arrested until three days after the accident, whereas he was arrested immediately after the accident, is unpersuasive. Defendant argues that, unlike the *Brady* defendant, he actually had a "reasonable fear of incrimination because he was under arrest and faced a very real and appreciable risk of criminal prosecution." Subsection (b), however, requires only identification information, not factual disclosures. Complying with subsection (b) requirements would not have put defendant in the position of admitting fault. See *Brady*, 369 Ill. App. 3d at 851-52,

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quoting *People v. Kerger*, 191 Ill. App. 3d 405, 410-11 ("a person can be 'involved in a motor vehicle accident' even where he or she was not a cause of the accident. It is unnecessary to determine, for purposes of deciding whether a defendant was involved in a motor vehicle accident, whether the defendant caused or was at fault for the accident"). Simply identifying himself as a driver involved in a fatal accident, as required by the statute, would not have been a "link in the chain of evidence needed to convict" him of a separate offense, where mere driving and identity did not form the basis of any criminal charges in this case.

¶ 53 Section 11-401 requires only that identification information be provided following an accident. Accordingly, defendant has failed to establish that, under the circumstances of this case, his compliance with section 11-401 would have provided the State with incriminating information in violation of his fifth amendment protection from compulsory self-incrimination.

¶ 54 III. Defendant's Extended Term Sentences

¶ 55 Next, defendant contends that the trial court erred when it imposed extended term sentences. Specifically, defendant argues that the trial court lacked authority to impose extended term sentences for the reckless homicide convictions because those offenses were not the most serious offenses of which defendant was convicted and they consisted of but one single act. We disagree.

¶ 56 Defendant concedes that he forfeited this issue by failing to object at sentencing and in the motion to reconsider sentence. *People v. Byrd*, 285 Ill. App. 3d 641, 651 (1996) (to preserve a sentencing issue, a defendant must file a written post-sentencing motion and object to any

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sentencing issues at the time of the sentencing hearing), *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). However, a sentencing error that affects substantial rights may be analyzed under the plain error doctrine. *People v. Tye*, 323 Ill. App. 3d 872, 887 (2001). The plain error rule permits consideration of errors even though technically waived for review where the evidence is closely balanced or where the claimed error is of such magnitude that there is a substantial risk that the defendant was denied a fair and impartial trial. 134 Ill. 2d R. 615; *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005). We first consider whether any error occurred at all. *People v. Durr*, 215 Ill. 2d 283, 299 (2005). If an error is deemed to have occurred, we turn to the prongs of the plain error analysis.

¶ 57 Generally, when a defendant has been convicted of multiple offenses of differing classes, an extended-term sentence may be imposed only on the conviction within the most serious class. *People v. Thompson*, 209 Ill. 2d 19, 23 (2004). However, a trial court may impose an extended term for a felony conviction if the defendant has been previously convicted in Illinois of the same or greater class felony, the present conviction has occurred within 10 years of the prior conviction, and the charges arose out of different series of acts and were separately brought and charged. See 730 ILCS 5/5-5-3.2(b)(1) (West 2000); *People v. Coleman*, 166 Ill. 2d 247, 253-55 (1995); *People v. Strickland*, 283 Ill. App. 3d 319, 325 (1996). The two courses of conduct can be close in proximity, yet be distinct enough to allow the imposition of an extended term sentence on the lesser class conviction. *Strickland*, 283 Ill. App. 3d at 325. Our supreme court has held:

"We hold that, in determining whether a defendant's

multiple offenses are part of an 'unrelated course of conduct' for the purpose of his eligibility for an extended-term sentence under section 5-8-2(a), courts must consider whether there was a substantial change in the nature of the criminal objective. If there was a substantial change in the nature of the defendant's criminal objective, the defendant's offenses are part of an 'unrelated course of conduct' and an extended term sentence may be imposed on differing class offenses." *People v. Bell*, 196 Ill. 2d 343, 354-55 (2001).

¶ 58 Here, we find no plain error where the trial court did not err in the imposition of extended terms. The trial court convicted defendant of two counts of reckless homicide, which are Class 3 felonies. 720 ILCS 5/9-3 (West 2008). Class 3 felonies are punishable by a sentence of 2 to 5 years' imprisonment. 730 ILCS 5/5-4.5-40 (West 2008). Defendant was also convicted of failure to report a motor vehicle accident involving injury or death, which is a Class 2 felony. 625 ILCS 5/11-401(b) (West 2008). Defendant received extended term sentences of six years' imprisonment for each of the two reckless homicide convictions, to run concurrent with one another, and consecutive to his 11-year sentence for failure to report a motor vehicle accident involving injury or death.

¶ 59 At sentencing, the trial court specifically found that there were separate courses of conduct. It sentenced defendant to extended term sentences for each act, stating:

"[THE COURT]: I do this based upon there is one act of leaving

the accident and one act of driving."

¶ 60 The trial court's determination that there were two separate and distinct acts, "one act of leaving the accident and one act of driving," was not error. Defendant's act of driving the vehicle was wholly independent and had nothing in common with his act of fleeing the scene after the collision. Prior to the collision, defendant's objective was to drive the vehicle. He could not have formed the objective to escape until after the collision. Although these events were close in time proximity, the objectives behind the acts were mutually exclusive.

¶ 61 Accordingly, defendant here was eligible for an extended term sentence under the Code. The record fully supports the extended prison term the court chose to impose upon him. Therefore, we will not disturb the propriety of this sentence on review, nor remand this cause for a new sentencing hearing on this conviction.

¶ 62 IV. Defendant's Fines and Fees

¶ 63 Next, defendant contends that his fines and fees order must be amended because he was entitled to a statutory \$5 per day credit against the DNA analysis charge which he was assessed pursuant to section 5-4-3(j) of the Unified Code of Corrections (730 ILCS 5/5-4-3(j) (West 2008)). Defendant was given 903 days of credit for pretrial incarceration and ordered to pay a total of \$530 in fines and fees, including a DNA assessment fee under section 5-4-3(j) of the Unified Code of Corrections (730 ILCS 5/5-4-3(j) (West 2008)). Pursuant to section 110-14(a) of the Illinois Code of Criminal Procedure, when an individual is incarcerated on a bailable offense but chooses not to supply bail, that individual is given a \$5 per day credit toward any

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fines assessed against him for each day of incarceration. 725 ILCS 5/110-14(a) (West 2008).

According to defendant, the DNA analysis charge is actually a "fine" and, therefore, should be included in those fines which are offset by section 110-14(a).

¶ 64 Our supreme court recently decided this issue in *People v. Johnson*, 2011 IL 111, 817 (2011), holding:

"[W]e conclude the DNA analysis charge is not punitive. It is a one-time charge intended to cover the cost of analyzing the DNA sample submitted by the qualifying offender (see *People v. Marshall*, 242 Ill. 2d 285, 296-97 (2011) and is therefore compensatory. Though imposed at sentencing, it does not serve to punish a defendant in addition to the sentence he received. The \$200 DNA charge is not a fine, and therefore it is not subject to offset by the section 110-14 presentence incarceration credit." *Johnson*, 2011 IL 111, 817 at 28.

Accordingly, defendant is not entitled to an offset credit to the \$200 DNA analysis charge.

¶ 65 CONCLUSION

¶ 66 For all of the foregoing reasons, we affirm the decision of the circuit court of Cook County.

¶ 67 Affirmed.