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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 17934
	)	
WALTER LEFLORA,	)	Honorable
	)	William J. Kunkle,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE ROCHFORD delivered the judgment of the court.  
Justices Cunningham and Delort concurred in the judgment.

**ORDER**

¶ 1 *Held:* State's evidence proved beyond a reasonable doubt that defendant was in possession of a weapon for purposes of establishing that he was an armed habitual criminal. DNA fee of \$200 must be vacated because defendant was already in the DNA database. Trauma Center Fund fine of \$100 must be vacated because it is not authorized by statute for the offense of being an armed habitual criminal. Fines for State Police operations assistance fund (\$15), Children's Advocacy Center (\$30), drug court (\$5) and youth diversion/peer court (\$5) must be offset by defendant's \$3,070 credit at \$5 per day for the 614 days he spent in presentence custody.

¶ 2 Defendant, Walter Leflora, was charged with the offenses of being a habitual criminal pursuant to the habitual criminal statute (720 ILCS 5/24-1.7 (West 2010)), unlawful use of a weapon by a felon, and two counts of aggravated unlawful use of a weapon. Defendant was tried in a bench trial and was found guilty on all four counts. After merging the other counts, the trial judge entered judgment of conviction on the charge of being an armed habitual criminal pursuant to section 5/24-1.7(a) of the habitual criminal statute (720 ILCS 5/24-1.7(a) (West 2010)), and sentenced defendant

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to eight years in the Illinois Department of Corrections. Defendant was also assessed \$695 in fines, fees, and costs.

¶ 3 On appeal, defendant contends the State failed to prove beyond a reasonable doubt that he was in possession of a weapon—an element of the offense of being an armed habitual criminal. Defendant also asserts that the trial court incorrectly assessed fines and fees against him.

¶ 4 The State's evidence at trial established that on September 18, 2009, at approximately 11:53 p.m., Chicago Police Officers Haleem, Wagner, and Crisp were on routine patrol in an unmarked police car and were traveling northbound on Hoyne Avenue near 63rd Street in Chicago. Officer Wagner was the driver, Officer Haleem was seated in the front passenger seat, and Officer Crisp was seated in the backseat of the vehicle. Officer Haleem testified that as their unmarked car approached the address of 6347 South Hoyne Avenue, he saw defendant standing behind an Oldsmobile Cutlass (Cutlass) with the trunk open, and parked on the east side of the street. Officer Haleem also testified that he observed defendant throw a black steel handgun into the trunk, then close the trunk door. Officer Haleem further testified that the 6300 block of South Hoyne was lit by streetlights, that there were no other vehicles parked on the street behind defendant at that time, that there were no people standing in defendant's immediate vicinity, but that there were several people nearby on both sides of the street. Officers Crisp and Wagner testified that they also observed defendant standing at the rear of a vehicle parked on the east side of Hoyne Avenue. Officer Crisp testified at trial that he did not observe defendant throw a gun into the trunk. Officer Wagner testified at trial that he did observe defendant standing behind the Cutlass with the trunk open, then throw an object with his right hand into the trunk of the vehicle, and that the object resembled a gun.

¶ 5 After making such observations, the officers pulled their police car alongside defendant and exited their police car announcing their office with their guns drawn. Officer Haleem handcuffed defendant and detained him in the backseat of the police car. Officer Wagner searched defendant and found no weapons, no ammunition, nor any keys to the Cutlass. Additionally, the officers called

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out to the bystanders nearby on the street to approach for a pat down in the interest of officer safety. Officer Crisp testified that he proceeded to search the Cutlass and had to enter the vehicle through the passenger door without using a key. He then proceeded to the backseat of the Cutlass, pried open the backrest and gained entrance to the trunk. As he shined a flashlight into the trunk space, Officer Crisp discovered the gun inside. Officer Crisp observed that the only other item in the trunk was a spare tire. Officer Crisp recovered the gun which, he discovered, was loaded. Officer Haleem testified that the gun that Officer Crisp had recovered was the same gun he had seen in defendant's hand. The recovered gun was not admitted into evidence.

¶ 6 Defendant testified on his own behalf that on September 18, 2009, at 11:53 p.m., he was heading to a party given by a friend at 6348 South Hoyne Avenue while walking southbound on the east side of Hoyne Avenue. Defendant began to cross the street to approach that address when he observed two men closing the trunk of a car, and who proceeded to walk behind defendant. Defendant then observed a car approaching him with its headlights on. Three police officers jumped out of the car and put the two men that had been walking behind defendant up against the police car. Defendant remarked that he had never seen the officers before. As defendant entered the gate to the residence where the party was being held, the officers stopped him at gunpoint and ordered him to walk toward their car. Defendant testified that he never threw a weapon into the trunk of a vehicle and, that he did not own a vehicle.

¶ 7 The parties stipulated that the gun was examined for fingerprints. Smudges and overlays were found, but there were no suitable prints found for comparison. The parties also stipulated to the admission of records of defendant's two prior felony convictions for aggravated discharge of a firearm under indictment number 06 CR 2476, and aggravated robbery under indictment number 04 CR 24728.

¶ 8 The trial court found defendant guilty of being a habitual criminal pursuant to the habitual criminal statute (720 ILCS 5/24-1.7 (West 2010)), for unlawful use of a weapon by a felon, and for

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two counts of aggravated unlawful use of a weapon. The trial court found that defendant's testimony was not credible. By contrast, the trial court found the testimony of the officers to be credible. The trial court sentenced defendant to eight years in prison.

¶ 9 We first consider defendant's claim that he was not proven guilty beyond a reasonable doubt. When considering the sufficiency of the evidence, we must determine whether, after reviewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). We will reverse a conviction only where the evidence is so unreasonable, improbable, or unsatisfactory that reasonable doubt of the defendant's guilt remains. *Id.* When questioning the weight of the evidence or the credibility of witnesses, we cannot substitute our judgment for that of the fact finder. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009).

¶ 10 A person violates the habitual criminal statute when he possesses a weapon and has previously been convicted of two of certain enumerated crimes, including a forcible felony and aggravated discharge of a firearm. 720 ILCS 5/24-1.7 (West 2010). The parties stipulated that defendant had previously been convicted of aggravated discharge of a firearm and aggravated robbery, which is a forcible felony. 720 ILCS 5/2-8, 18-5) (West 2010). Defendant does not dispute that these are predicate offenses for the offense of being an armed habitual criminal. The sole disputed issue in this case was whether defendant was in possession of a gun that evening. Officers Haleem and Wagner testified that they saw defendant throw an object into the open trunk of a car. Officer Haleem said this object was a gun, and that the same gun was retrieved by Officer Crisp. Officer Wagner testified that he saw defendant throw an object which looked like a gun into the trunk. Officer Crisp testified that he searched the trunk of the car and found a loaded gun, which he retrieved. He also testified that the only other object he recalled being in the trunk was a spare tire. Defendant denied having a gun that evening.

¶ 11 Citing *In re Brown*, 71 Ill. 2d 151 (1978), defendant contends that the evidence was

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insufficient because no physical evidence linked defendant to the crime. But in *Brown*, the reviewing court placed primary emphasis on the fact that the sole eyewitness to identify the defendant as the assailant was someone who himself had previously been accused of the crime. *Id.* at 155-56. The court found that this eyewitness could be viewed as an accomplice, whose testimony was to be viewed with caution. *Id.* at 156. There was no similar impeachment of the State's witnesses in this trial. Defendant notes that the gun in question was not admitted into evidence and no fingerprints were found on the gun. However, there was no issue at trial about the gun itself, that its production at trial was not necessary, and that the absence of fingerprints was explained by the stipulated testimony that the gun was smudged.

¶ 12 Defendant also argues that the officers' testimony was not credible. He notes that Officer Haleem, who said he saw defendant throw a gun into the car's trunk, also testified that he saw it from about 25 feet away under streetlights, and that all he saw was the barrel of the gun. Defendant also notes that Officer Crisp responded affirmatively when asked on direct examination whether the gun recovered from the car was the same one he saw defendant holding. On cross-examination, Officer Crisp corrected this testimony, stating that although he saw defendant behind the car, he did not see him throw a weapon into the car. These facts go to the weight and credibility of the officers' testimony, which were primarily matters for determination by the trial judge. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). Even the positive and credible testimony of a single eyewitness is sufficient to convict. *People v. Morehead*, 45 Ill. 2d 326, 329-30 (1970); *People v. Dunmore*, 389 Ill. App. 3d 1095, 1101 (2009). Viewing the totality of the evidence in the light most favorable to the State, we find it to be a sufficient basis for any rational trier of fact to find defendant guilty beyond a reasonable doubt. *Beauchamp*, 241 Ill. 2d at 8.

¶ 13 Defendant was assessed fines, fees, and costs totaling \$695. He challenges a number of these on appeal, and the State concurs as to all of these challenges. Defendant was assessed a \$200 DNA analysis fee. 730 ILCS 5/5-4-3(j) (West 2010). The records of the Illinois State Police DNA

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Indexing Laboratory, which defendant has furnished to this court, establish that defendant's DNA profile was submitted to the DNA database in 2005. *People v. Jimerson*, 404 Ill. App. 3d 621, 634 (2010) (reviewing court may take judicial notice of public records). Because defendant's DNA was already in the State database, the \$200 DNA fee should not have been assessed pursuant to his current conviction. *People v. Marshall*, 242 Ill. 2d 285, 303 (2011). Accordingly, this fee should be vacated.

¶ 14 Defendant was also assessed a \$100 Trauma Center Fund fine. 730 ILCS 5/5-9-1.10 (West 2010). Because the statute authorizes this fine only for certain offenses, not including the offense of being an armed habitual criminal (720 ILCS 5/24-1.7 (West 2010)), this fine should be vacated. *People v. Williams*, 394 Ill. App. 3d 480, 483 (2009).

¶ 15 Finally, as an offset for his remaining fines, defendant was entitled to receive \$5 per day credit for every day he spent in presentence custody. 725 ILCS 5/110-14 (West 2010). Defendant was credited with 614 days of pretrial custody, so he was entitled to a credit of \$3,070 against his remaining fines. His remaining fines are a \$30 Children's Advocacy Center fine (55 ILCS 5/5-1101(f-5) (West 2010)); a \$15 State Police operations assistance fund fine<sup>1</sup> (705 ILCS 105/27.3a (1.5) (West 2010)); a \$5 drug court fine (55 ILCS 5/5-1101(d-5) (West 2010)); and a \$5 youth diversion/peer court fine (55 ILCS 5/5-1101(d-5), (e)(2) (West 2010)). These fines total \$55. Defendant is entitled to have them entirely offset by his \$3,070 credit.

¶ 16 For these reasons, we vacate defendant's \$200 DNA analysis fee and his \$100 Trauma Center Fund fine. We direct the clerk of the circuit court to amend the fines, fees, and costs order to reflect these vacatur, as well as full credit against defendant's \$30 Children's Advocacy Center fine, his \$15 State Police operations assistance fund fine, his \$5 drug court fine, and his \$5 youth diversion/peer court fine. We affirm defendant's conviction and sentence in all other respects.

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<sup>1</sup>Defendant argues and the State does not contest that although the statute designates this assessment as a fee, it is a fine because it does not compensate the State for costs incurred in prosecuting the defendant. *People v. Graves*, 235 Ill. 2d 244, 250 (2009).

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¶ 17 Affirmed as modified.