

NOTICE  
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2013 IL App (4th) 120145-U  
NO. 4-12-0145  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

FILED  
October 29, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
ROBERT SCHAEFFER,	)	No. 08CF1129
Defendant-Appellant.	)	
	)	Honorable
	)	Patrick W. Kelley,
	)	Judge Presiding.

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JUSTICE KNECHT delivered the judgment of the court.  
Presiding Justice Steigmann and Justice Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court (1) held (a) the State presented sufficient evidence defendant committed escape, (b) the trial court admonishment of potential jurors in compliance with Illinois Supreme Court Rule 431(b) (eff. May 1, 2007) did not require plain-error review, and (c) defendant is not entitled to statutory credit; (2) vacated fines imposed by the circuit clerk; and (3) remanded with directions for the trial court to amend the sentencing judgment and reimpose mandatory fines.

¶ 2 In November 2008, the State charged defendant, Robert Schaeffer, with two counts of escape (720 ILCS 5/31-6(a) (West 2008)) (counts I and II), and two counts of aggravated battery (720 ILCS 5/12-4(b)(18) (West 2008)) (counts III and IV). In October 2011, a jury found defendant guilty on all four counts. In February 2012, the trial court sentenced defendant to concurrent terms of five years' imprisonment for escape and three years' imprisonment for aggravated battery.

¶ 3 On appeal, defendant argues (1) the State failed to prove him guilty of escape

because he did not leave the building, (2) the trial court failed to properly admonish prospective jurors in compliance with Illinois Supreme Court Rule 431(b) (eff. May 1, 2007), (3) he is entitled to credit toward various fines, and (4) his Violent Crime Victims Assistance (VCVA) fund fine (725 ILCS 240/10(c)(1) (West 2008)) should be reduced from \$20 to \$4. We affirm in part, vacate in part, and remand with directions.

¶ 4

#### I. BACKGROUND

¶ 5 In November 2008, the State charged defendant in Sangamon County case No. 08-CF-1129 with two counts of escape (720 ILCS 5/31-6(a) (West 2008)) (counts I and II) and two counts of aggravated battery (720 ILCS 5/12-4(b)(18) (West 2008)) (counts III and IV).

Defendant was in custody in Sangamon County case No. 08-CF-241 at the time of the offenses.

¶ 6

#### A. Defendant's Fitness

¶ 7 The parties stipulated defendant was unfit to stand trial in May 2009 and again in March 2011. On September 2, 2011, the parties stipulated defendant's fitness was restored.

¶ 8

#### B. Defendant's Jury Trial

¶ 9 In October 2011, defendant's jury trial commenced. We summarize the testimony below:

¶ 10 Matt Ward, a court liaison officer with the Sangamon County sheriff's department, escorted inmates from the county jail to the courthouse on November 3, 2008. Defendant was an inmate in his charge. The courthouse has a holding cell behind the courtroom from which inmates are escorted into the courtroom and then returned to afterward. Inmates do not enter or exit through the main courtroom doors. Defendant was dressed in a standard black and white county-issued inmate uniform with flip-flops and handcuffed in the front. After defendant's

appearance before the trial court, he went to the clerk to sign for his next appearance. As he stood there, defendant looked over his shoulder and toward the main door. He kicked off his flip-flops and started running toward the main courtroom doors. Robert Kaylor, a bailiff with the Sangamon County sheriff's department and dressed in his uniform, was standing in front of the door. The State's evidence showed Kaylor, who has since died from unrelated causes, was 70 years old in November 2008. Defendant struck Kaylor with his shoulder in Kaylor's chest and shoulder area. Defendant proceeded out of the courtroom into the public hallway.

¶ 11 Court security officers Michelle Bartolazzi and Melissa Childress pursued defendant into the hallway, ordering him to stop. Karen Tharp, an assistant State's Attorney, was standing in a hallway when she heard a loud commotion coming from courtroom 7-D. Defendant came running down the hallway. No security officers were with him. (Bartolazzi testified she lost sight of defendant for 8 to 10 seconds when he rounded a corner toward the elevators.) Defendant turned toward the door leading to the judges' chambers. Finding them locked, defendant pounded on the doors. A nearby elevator opened and defendant entered. Tharp pressed the button to keep the doors from shutting. Bartolazzi and Childress arrived. Bartolazzi stuck her foot in the door to keep it from closing and Tharp pressed the button to open the doors. When the doors opened, Bartolazzi deployed her Taser.

¶ 12 The jury found defendant guilty of all four counts.

¶ 13 C. Sentencing

¶ 14 On February 15, 2012, the trial court held a sentencing hearing. The State introduced a presentencing investigation report (PSI). The PSI stated in June 2002 defendant was convicted of second-degree theft in Iowa and sentenced to 10 years' imprisonment.

Defendant introduced a psychological evaluation report used in his fitness proceedings.

¶ 15 The trial court merged counts I and II and counts III and IV. The court found defendant was entitled to 1,200 days' presentencing credit. The court sentenced defendant as stated. As a part of its judgment, the court ordered defendant to pay court costs. The State requested defendant remain in the county jail pending resolution of Sangamon County case No. 08-CF-241. The court reserved issuing the sentencing judgment and remanded defendant into the sheriff's custody.

¶ 16 On April 11, 2012, the trial court held a sentencing hearing in Sangamon County case No. 08-CF-241. We take notice of the record in No. 08-CF-241, our case No. 4-12-0375, where the trial court entered a written sentencing judgment stating defendant was "entitled to receive credit for time actually served in custody of 1257 days as of the date of this order for Sangamon County Circuit Court cases 08-CF-241 and 08-CF-1129." The court ordered defendant's sentences in No. 08-CF-241 be served consecutively to the sentence here. (As we note below, defendant's sentence in this case should be consecutive to the sentence in No. 08-CF-241.) A copy of the written judgment does not appear in the instant record.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 On appeal, defendant argues (1) the State failed to prove him guilty of escape because he did not leave the building, (2) the trial court failed to properly admonish prospective jurors in compliance with Illinois Supreme Court Rule 431(b) (eff. May 1, 2007), (3) he is entitled to credit toward various fines, and (4) his Violent Crime Victims Assistance (VCVA) fund fine (725 ILCS 240/10(c)(1) (West 2008)) should be reduced from \$20 to \$4. We address

defendant's contentions in turn.

¶ 20 A. Defendant's Sufficiency-of-the-Evidence Claim

¶ 21 Defendant asserts the State failed to prove he escaped because he "did not succeed" in exiting the courthouse and "at most his action amounted to an attempt (escape)." Defendant acknowledges he ran out of the courtroom and down the hall, tried to get into the judges' chambers, and then got into an elevator, but he asserts since his "flight took place within the courthouse" he was still in the custody of the sheriff. We are not persuaded.

¶ 22 "When considering an argument regarding the sufficiency of the evidence to convict, we will affirm if, '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.'" *People v. Scott*, 2012 IL App (4th) 100304, ¶ 18, 966 N.E.2d 340 (quoting *People v. Smith*, 185 Ill. 2d 532, 541, 708 N.E.2d 365, 369 (1999)).

¶ 23 Defendant's failure to physically exit the courthouse is irrelevant to whether he escaped custody. See 720 ILCS 5/31-6(a) (West 2008) (person commits escape when he escapes from the custody of a penal institution employee); *People v. Campa*, 217 Ill. 2d 243, 259, 840 N.E.2d 1157, 1168 (2005) ("[E]scape is the unauthorized departure from custody."). As the State points out, defendant's assertion he was in custody because he was still in the courthouse conflicts with *People v. Howell*, 388 Ill. App. 3d 338, 902 N.E.2d 797 (2009). In *Howell*, the defendant was being escorted from a sixth-floor courtroom by a court-security officer. *Id.* at 340, 902 N.E.2d at 798-99. The defendant broke away from the officer and started down the stairwell. *Id.* Other officers apprehended the defendant on the third floor. *Id.* at 341, 902 N.E.2d at 799. The defendant appealed and asserted the State failed to prove her guilty of escape because the

evidence did not demonstrate she escaped from the custody of a penal institution or an employee of a penal institution. *Id.* at 343, 902 N.E.2d at 801. This court concluded the court-security officer was an employee of a penal institution for purposes of the escape statute. *Id.* at 344, 902 N.E.2d at 801-2. We also held the evidence was sufficient to show the defendant escaped from the officer's custody. *Id.*

¶ 24 Here, defendant fled the courtroom, refused to comply with demands to stop, entered the public hallway, and successfully entered a public elevator. In so doing, he refused to submit to the officers' authority and placed members of the public at risk. The evidence supports his conviction.

¶ 25 B. Defendant's Rule 431(b) Claim

¶ 26 Defendant asserts the trial court violated Rule 431(b) by failing to admonish prospective jurors that defendant's failure to testify cannot be held against him. Defendant acknowledges he did not raise this argument in the trial court and asserts plain-error review applies.

¶ 27 1. *Plain Error*

¶ 28 The plain-error rule bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved claims of error in limited circumstances. *People v. Thompson*, 238 Ill. 2d 598, 613, 939 N.E.2d 403, 413 (2010). "The plain-error doctrine allows errors not previously challenged to be considered on appeal if either: (1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant; or (2) the error was so fundamental and of such magnitude that it affected the fairness of the trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v.*

*Wilmington*, 2013 IL 112938, ¶ 31, 983 N.E.2d 1015. The first step of plain-error review is to determine whether any error occurred. *Id.*

¶ 29 *2. Rule 431(b)*

¶ 30 Illinois Supreme Court Rule 431(b) (eff. May 1, 2007) requires the trial court to admonish each prospective juror whether that juror understands: "(1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that the defendant's failure to testify cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's failure to testify when the defendant objects."

¶ 31 *3. The Trial Court's Admonishments*

¶ 32 Defendant does not find error with the trial court's admonishments on principles (1), (2), and (3). He asserts the court failed to make clear a criminal defendant does not have to testify and his choice cannot be held against him.

¶ 33 During *voir dire*, the trial court collectively asked prospective jurors whether they understood "that if [defendant] chooses not to present evidence, you cannot hold that against him in any way?" The State argues the trial court's question is broader than the principle set forth in the rule and "if a defendant chooses not to present evidence, he necessarily fails to testify." This is logical as not presenting evidence includes not presenting testimony. But, as defendant points out, Rule 431(b) separates these principles into separate inquires and the supreme court has specifically required a statement about a defendant's "failure to testify." The State's interpretation would make principle (4) superfluous in light of principle (3). As the court did not admonish

about defendant's choice not to testify, error occurred. We note we are not interpreting Rule 431 as requiring strict compliance. See *People v. Zirko*, 2012 IL App (1st) 092158, ¶ 62, 976 N.E.2d 361 ("Rule 431(b) does not dictate a precise methodology for establishing a potential juror's understanding or acceptance of the principles, and the precise language of Rule 431(b) need not be used."); *Thompson*, 238 Ill. 2d at 614-15, 939 N.E.2d at 414 ("A violation of Rule 431(b) does not implicate a fundamental right or constitutional protection, but only involves a violation of [the supreme] court's rules.").

¶ 34 Defendant argues the first prong of plain-error review applies. He asserts the evidence was closely balanced because "the only person who could refute the State's case" was defendant, and he could have testified he did not intend to hit Kaylor on his way out of the courtroom. As discussed above, the evidence overwhelmingly shows defendant escaped the sheriff's custody when he fled the courtroom. The undisputed evidence shows defendant made physical contact with Kaylor, who was identified by his uniform as a bailiff, as he ran out of the courtroom. See 720 ILCS 5/12-4(b)(18) (West 2008). The evidence defendant committed aggravated battery is not closely balanced.

¶ 35 C. Defendant's Assessments Claim

¶ 36 Defendant requests we order the circuit clerk to apply his statutory credit toward various assessments and reduce his VCVA fine from \$20 to \$4. The State concedes defendant is entitled to his statutory credit. We cannot accept the State's concession.

¶ 37 Whether fines are properly imposed raises a question of statutory interpretation, and is reviewed *de novo*. *People v. Adair*, 406 Ill. App. 3d 133, 142-43, 940 N.E.2d 292, 301 (2010). Our review of the record reflects several errors.

¶ 38

1. *Defendant's Credits*

¶ 39

A criminal defendant can receive both credit for time served and a \$5 *per diem* credit toward creditable fines. Under section 5-4.5-100 of the Unified Code of Corrections (730 ILCS 5/5-4.5-100 (West 2012)), an offender is entitled to sentencing credit "for the number of days spent in custody as a result of the offense for which the sentence was imposed." This means the offender is entitled to sentencing credit from the date of arrest to the date before sentencing. *People v. Roberson*, 212 Ill. 2d 430, 439, 819 N.E.2d 761, 766 (2004) ("once a defendant is arrested for an offense he or she is clearly 'in custody' for that offense"); *People v. Williams*, 239 Ill. 2d 503, 509, 942 N.E.2d 1257, 1261 (2011) (date of sentencing is counted as day of sentencing and not as presentence custody). Pursuant to section 110-14 of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2012)), defendant is entitled to a statutory \$5-per-day credit for time spent in presentence custody toward certain creditable fines. See *People v. Vlahon*, 2012 IL App (4th) 110229, ¶ 33, 977 N.E.2d 327 ("Such credit may only be applied to offset eligible fines, not fees.").

¶ 40

At the February 2012 sentencing hearing, the trial court found defendant was entitled to receive 1,200 days' credit toward his sentence in this case (the court did not specify the dates). Then, at the April 2012 sentencing hearing, the court found defendant was entitled to receive 1,257 days' credit toward his sentence in both this case and Sangamon County case No. 08-CF-241 (again, the court did not specify the dates in custody). In reverse order of what the trial court ordered, his sentence in this case is to be served mandatorily consecutive to his sentence in No. 08-CF-241. See 730 ILCS 5/5-8-4(d)(8), (8.5) (West 2012); *People v. Schaeffer*, 2013 IL App (4th) 120375-U, ¶ 28. In *People v. Latona*, 184 Ill. 2d 260, 271, 703 N.E.2d 901,

907 (1998), our supreme court rejected the defendant's contention he was entitled to double sentencing credit where a consecutive sentence is imposed. Under section 5-8-4(g) of the Unified Code of Corrections, the Department of Corrections is entitled to treat consecutive sentences as a "single term." 730 ILCS 5/5-8-4(g) (West 2012). The court stated, "[s]ince consecutive sentences are to be treated as a single term of imprisonment, it necessarily follows that defendants so sentenced should receive but one credit for each day actually spent in custody as a result of the offense or offenses for which they are ultimately sentenced." *Latona*, 184 Ill. 2d at 271, 703 N.E.2d at 907. The court added, "to allow an offender sentenced to consecutive sentences two credits—one for each sentence—not only contravenes the legislative directive that his sentence shall be treated as a 'single term' of imprisonment, but also, in effect, gives that offender a double credit, when the sentences are aggregated, for each day previously served in custody." *Id.* Under *Latona*, defendant is not entitled to receive the benefit of the presentencing credit for time served in this case while he was in simultaneous custody in No. 08-CF-241.

¶ 41 This presents a unique situation where a criminal defendant is in simultaneous pretrial custody in two separate cases and is not permitted the benefit of double sentencing credit because one sentence is consecutive to the other. This raises a question of whether *Latona* prevents the defendant from receiving the \$5 *per diem* credit or if it is determined differently. In *Latona*, the supreme court noted the legislature sought to punish certain offenses more harshly by enacting provisions relating to consecutive sentencing, and to allow an offender "sentenced to consecutive sentences a double credit for each day of actual custody would frustrate the legislature's clearly expressed intent." *Id.* at 271, 703 N.E.2d at 907. Here, defendant's sentences for escape and battery are mandatorily consecutive to his sentence for aggravated discharge of a

firearm. See 730 ILCS 5/5-8-4(d)(8), (8.5) (West 2012). We conclude to allow defendant to receive a \$5 *per diem* credit for days spent in simultaneous custody in No. 08-CF-241 would be inconsistent with *Latona* and would create a split where he was not entitled to benefit for sentencing credit under section 5-4.5-100 but he would benefit from the credit against creditable fines under section 110-14. Our conclusion is consistent with *Latona* and stands for a more straightforward approach to when an offender is eligible for these types of sentencing credit.

¶ 42

## 2. Defendant's Assessments

¶ 43 Defendant asserts he was erroneously assessed: (1) a \$5 "Drug Court" assessment; (2) a \$5 "Child Advocacy" assessment; (3) a \$15 "ISP Op Assistance" assessment; and (4) a \$20 VCVA fine. Defendant acknowledges these assessment were improperly assessed by the circuit clerk and the "State Police Ops" fine was not in effect when defendant committed this offense (see Pub. Act 96-1029, § 6 (eff. July 13, 2010)). Defendant does not request this court to vacate these void fines and remand to the trial court for reimposition of mandatory fines. Rather, he requests this court to order the circuit clerk to properly apply his statutory credit. The State concedes.

¶ 44

The parties' concessions are ill-advised. This court has consistently held the circuit clerk does not have the power to impose fines. *People v. Swank*, 344 Ill. App. 3d 738, 747-48, 800 N.E.2d 864, 871 (2003); *People v. Shaw*, 386 Ill. App. 3d 704, 711, 898 N.E.2d 755, 762 (2008); *People v. Alghadi*, 2011 IL App (4th) 100012, ¶ 20, 960 N.E.2d 612 ("any fines imposed by the circuit clerk's office are void from their inception"); *People v. O'Laughlin*, 2012 IL App (4th) 110018, ¶ 8, 979 N.E.2d 1023; *People v. Williams*, 2013 IL App (4th) 120313, ¶ 16, 991 N.E.2d 914 (observing "such actions by the clerks flagrantly run contrary to the law"). See

also *People v. Gutierrez*, 2012 IL 111590, ¶ 24, 962 N.E.2d 437 (circuit clerk does not have authority to impose public defender fee). We vacate the circuit clerk's imposition of these fines and remand to the trial court for reimposition of the mandatory fines. We likewise expressly reject defendant's concession not to vacate the \$15 "State Police Ops" fine. This fine was not effective at the time of the offense and its imposition is not authorized by law.

¶ 45 We vacate the fines imposed by the circuit clerk. We remand with directions for the trial court to (1) reimpose the mandatory fines as required (this includes only those fines authorized at the time of the offense) and (2) direct the circuit clerk to apply defendant's statutory credit to the creditable fines.

¶ 46 III. CONCLUSION

¶ 47 We affirm in part, vacate in part, and remand with directions. We vacate the fines imposed by the circuit clerk. We remand with directions for the trial court to (1) amend the judgment to reflect his sentence in this case is consecutive to the sentence in No. 08-CF-241, (2) reimpose the mandatory fines as required (this includes only those fines authorized at the time of the offense), and (3) direct the circuit clerk to apply defendant's statutory credit to the creditable fines. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2012).

¶ 48 Affirmed in part, vacated in part, and remanded with directions.