

2010)). The trial court sentenced defendant to two years' probation and imposed a \$5 court system fee pursuant to section 5-1101(a) of the Counties Code Act (55 ILCS 5/5-1101(a) (West 2010)) and a \$30 Children's Advocacy Center fine pursuant to section 5-1101(f-5) of the Counties Code Act (55 ILCS 5/5-1101(f-5) (West 2010)). On appeal, defendant contends: (1) there was insufficient evidence to convict him of attempted burglary beyond a reasonable doubt where the arresting officers offered unconvincing and inconsistent testimony and had a motive to lie; (2) the \$5 court system fee should be vacated because the statute authorizes the fee solely for violations of the Illinois Vehicle Code; and (3) the Children's Advocacy Center fine should be offset by the 16 days defendant spent in custody prior to sentencing. For the following reasons, we vacate the \$5 court system fee, offset the Children's Advocacy Fee with a credit for time spent in pre-sentence custody, and otherwise affirm the judgment of the trial court.

¶ 3

BACKGROUND

¶ 4 On October 10, 2010, defendant was charged with burglary relating to an incident at a retail business called 'The Connection' at 2020 South Pulaski Road in Chicago, in which it was alleged defendant wrongfully removed items from the business and placed them into a U-Haul truck. On August 10 and August 11, 2011, the matter proceeded to a jury trial.

¶ 5 Sohyb Abdulla (Abdulla), the owner of 'The Connection,' testified at the trial. According to Abdulla, he sold "a little bit of everything" at his store, including cell phones and clothes. Abdulla closed his store at 9:00 p.m. on October 9, 2010, by locking both the front and back doors and activating the store's alarm system. When he left the store in the evening, the merchandise was properly organized in display cases and against the wall. On October, 10, 2010, after receiving a phone call from his alarm company, Abdulla arrived at his business at 7:30 a.m. Upon arriving, Abdulla noticed the "back door ripped out," electrical wires cut, and apparel

missing from inside the store. Abdulla further witnessed a U-Haul truck in the rear of the building with its rear roll-up door open. Abdulla observed “[e]verything * * * missing inside was in the truck” and that the walls of the store were stripped of any apparel. Abdulla additionally testified he did not give anyone permission to enter his store on the evening of October 9, 2010. On direct examination, Abdulla identified the skull cap and earrings recovered from defendant as items that were for sale in his store.

¶ 6 Chicago police officer Daniel Lenihan (Officer Lenihan), the arresting officer, testified that he and his partner, Officer Anthony Munizzi, were on patrol the morning of October 10, 2010, in a “squadrol,” which is “like a paddy wagon.” At approximately 7:00 a.m., the officers received a radio call of a burglary in progress at 2020 South Pulaski. Officer Lenihan testified it took approximately nine minutes to reach 2020 South Pulaski from the time they received the call. Officer Lenihan observed five or six men standing outside of a U-Haul truck at the rear of the building. Officer Lenihan identified defendant in court as one of the individuals he encountered near the U-Haul truck. Officer Lenihan further testified that defendant “had various clothing in his arms, and he was loading it on to the truck.” Officer Lenihan testified that he and his partner exited their squadrol, approached the men from opposite sides of the U-Haul truck, and announced their office. Upon announcing their office, the individuals, including defendant, threw whatever clothing they had “on the ground or towards the truck” and ran from the vehicle. Officer Lenihan testified that defendant “fled westbound through the vacant lot. Then [defendant] proceeded northbound in the west alley behind the location. At that time another subject actually pushed the [d]efendant down or out of the way.” When Officer Lenihan caught up to defendant, he grabbed defendant’s shirt, but defendant pushed the officer’s arm away, Officer Lenihan then “deployed [his] taser” on defendant who fell to the ground. While

defendant was on the ground, Officer Munizzi returned from pursuing another subject, handcuffed defendant, and placed him in custody. Officer Lenihan testified that Officer Munizzi performed a custodial search and recovered “one black skull cap with a retail tags attached to the top of the skull cap and 22 individual earrings.” Officer Lenihan confirmed defendant was wearing the black skull cap when standing outside of the U-Haul truck and while being placed in custody. After defendant was in custody, Officer Lenihan returned to the U-Haul truck where he observed clothing items inside.

¶ 7 On cross-examination, Officer Lenihan noted a few of the individuals near the U-Haul truck were wearing white t-shirts and blue jeans. Further, Officer Lenihan testified that defendant sustained injuries to his face upon falling to the ground after being tased. Office Lenihan acknowledged that whenever a taser is deployed, the responsible officer must report the circumstances and reasoning for using the taser. Officer Lenihan traveled with defendant to the hospital to have the taser barbs removed, which is required whenever an individual is tased, and then proceeded to process defendant at the police station.

¶ 8 Officer Munizzi testified that as he and Officer Lenihan approached 2020 South Pulaski on the morning of the burglary, he observed a U-Haul truck in the back lot of the store and witnessed “several males and [possibly a] female loading what appeared loading merchandise.” Officer Munizzi identified defendant in court as one of the individuals he observed outside of the U-Haul truck “holding various items.” Officer Munizzi testified he engaged in a pursuit of defendant for a short time once the individuals scattered from the scene. During the pursuit of defendant, Officer Munizzi observed another individual leaving the store whom he then proceeded to pursue instead. Officer Munizzi testified that after being unable to catch the individual, he returned to his partner’s location where he witnessed defendant on the ground.

Officer Munizzi proceeded “to handcuff the individual and perform a protective pat down search on the [defendant].” Officer Munizzi observed defendant “had a black winter skull cap on with a price tag still attached.” Officer Munizzi continued to perform a custodial search where he recovered “22 individually packed earrings” from defendant’s right jean pocket. Officer Munizzi testified that he kept the skull cap and the recovered earrings on his person until he returned to the police station where he inventoried them.

¶ 9 On cross-examination, Officer Munizzi acknowledged he and Officer Lenihan had been in the police academy together and had been partners “off and on” since they began their employment. Contrary to Officer Lenihan’s account, Officer Munizzi testified that it only took approximately a minute to arrive at the scene of the burglary from the time they received the call. Officer Munizzi testified that he returned to Officer Lenihan fifteen seconds after Officer Lenihan had deployed the taser.

¶ 10 The State then submitted, by way of stipulation, the testimony of Jose Gonzalez (Gonzalez), an evidence technician of the Chicago police department. In the stipulation, the parties agreed that if called, Gonzalez would testify “he was assigned to cross a crime scene for a burglary committed at 2020 South Pulaski Road Chicago, Illinois.” Further he would testify “[h]e also processed the scene for fingerprints. He checked glass counters, the metal door, the U-Haul truck, and miscellaneous articles and determined that there were no readable finger ridge impressions that would be suitable for comparison.”

¶ 11 Defendant testified in his own defense that on the morning of October 10, 2010, he was at a friend’s residence located at 2135 West 21st Street, which was approximately four buildings away from the scene of the burglary. Defendant testified that at 6:45 a.m., he left his friend’s residence to return to his vehicle when he encountered six men running from a police officer.

Defendant continued to testify that once the six men ran past him, the police officer instructed defendant to freeze, shot defendant with a taser on his side and shoulder, and defendant fell to the ground into a “lot full of woodchucks and bricks” and hit his head. Defendant denied ever being searched by Officer Munizzi or having the skull cap and earrings in his possession.

¶ 12 On cross-examination, defendant asserted he was “pushed out the way” by the group of men running towards him. Defendant testified that he believed Officer Lenihan was attempting to shoot the taser at the other men and not defendant, but defendant could not recall how he was standing in relation to the officer when he was tased. Defendant testified that a mark on his back, as displayed in People’s Exhibit Number 15, was not from the taser, but from a previous wound. Defendant acknowledged he met with Detective Gall after being taken into custody, but denied ever making any statements to Detective Gall other than his request to speak with his attorney. At the conclusion of defendant’s testimony, the defense rested.

¶ 13 In rebuttal, the State called Detective Anna Gall (Detective Gall) of the Chicago police department. Detective Gall was the officer assigned to the investigation of the burglary at 2020 South Pulaski. Detective Gall made an in-court identification of defendant as an individual she spoke with at the 10th District police station regarding the burglary. Detective Gall testified that after she read defendant his *Miranda* rights, defendant agreed to speak with her. Defendant then informed her he found three or four pairs of earrings on the ground outside his friend’s residence when he was leaving on the morning of October 10, 2010, and picked them up. Further, defendant informed Detective Gall that one of the men running from the police “pushed [defendant] toward a policeman” and defendant was then tased in the back by the police officer. Detective Gall further testified that defendant denied ever being in the building at 2020 South Pulaski or being inside the U-Haul truck.

¶ 14 After the trial court issued the jury instructions, the jury commenced deliberations. After multiple notes from the jury, the trial court declared a hung jury and a mistrial. Defendant requested and was granted a new jury trial.

¶ 15 On the date set for retrial, two of the witnesses were unavailable. The trial court held the case on call for the following day. On the following day, September 27, 2011, defendant waived his right to a jury trial and requested a bench trial. Both parties agreed to incorporate by reference all of the previous testimony of the jury trial and neither side presented any new evidence. The trial court proceeded to find defendant guilty of the lesser included offense of attempted burglary. On October 28, 2011, the trial court sentenced defendant to two years of probation, and imposed fines and fees totaling \$610, including a \$5 court system fee and a \$30 Children's Advocacy Center fine. On October 31, 2011, defendant timely filed the notice of appeal.

¶ 16 ANALYSIS

¶ 17 On appeal, defendant contends: (1) there was insufficient evidence to convict him of attempted burglary beyond a reasonable doubt where the arresting officers offered unconvincing and inconsistent testimony and had a motive to lie; (2) the \$5 court system fee should be vacated because the statute authorizes the fee solely for violations of the Illinois Vehicle Code; and (3) the Children's Advocacy Center fine should be offset by the 16 days defendant spent in custody prior to sentencing. We discuss each argument in turn.

¶ 18 Reasonable Doubt

¶ 19 Defendant first argues the State failed to prove him guilty beyond a reasonable doubt. Defendant asserts he was not part of the group of individuals committing the burglary in question, but instead was simply returning to his vehicle and, therefore, the evidence was

insufficient to convict him of attempted burglary. When reviewing the sufficiency of the evidence in a criminal case, we must consider whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Smith*, 185 Ill. 2d 532, 541 (1999). A conviction will be overturned where the evidence is “so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of defendant’s guilt.” *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007). The reviewing court does not retry the defendant or substitute its judgment in place of the trial court in regard to the credibility of witnesses, the weight to be given to each witness’s testimony, and the reasonable inferences to be drawn from the evidence. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). “The standard gives ‘full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.’” *People v. Campbell*, 146 Ill. 2d 363, 375 (1992) (quoting *Jackson*, 443 U.S. at 319). Testimony may be deemed insufficient only when the evidence “compels the conclusion that no reasonable person could accept it beyond a reasonable doubt.” *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). Although a defendant is not required to explain his presence near the scene of a crime, if he does, “the trier of fact is not required to accept any possible explanation compatible with the defendant’s innocence and elevate it to the status of reasonable doubt.” *People v. Siguenza-Brito*, 235 Ill. 2d 213, 229 (2009).

¶ 20 Here, defendant was convicted of attempted burglary. A person commits the offense of burglary when “he or she knowingly enters or without authority remains within a building, house trailer, watercraft, aircraft, motor vehicle, railroad car, or any part thereof, with intent to commit therein a felony or theft.” 720 ILCS 5/19-1(a) (West 2010). To sustain a charge for

attempted burglary, the State must demonstrate that defendant, with intent to commit burglary, performed a substantial step toward the commission of the burglary. 720 ILCS 5/8-4(a) (West 2010).

¶ 21 Defendant contends that the testimony of the officer should not be believed because: (1) a large “paddy wagon” would not have gone unnoticed by a group of burglars; (2) the officers’ testimony alleges that they observed the suspects discard the clothing items when the officers approached, but defendant had some of the stolen merchandise in his possession when he was arrested; (3) the skull cap worn by defendant was not soiled or dirtied despite defendant falling to the ground and sustaining facial injuries; (4) defendant was dressed differently than the other suspects; (5); the police officers had a motive to lie in order to justify tasing defendant and (6) the prior mistrial was a result of eight jurors’ belief that reasonable doubt existed.

¶ 22 Identification of defendant by a single witness is sufficient to sustain a conviction where the witness viewed defendant under circumstances that permitted a positive identification. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). Such identification is sufficient even where defendant presents contradicting testimony, as long as the witness had an adequate opportunity to view the offender and provided a positive and credible identification in court. *Id.* In assessing identification testimony, the court considers: (1) the witness' opportunity to view the offender at the time of the offense; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the offender; (4) the level of certainty demonstrated by the witness at the identification confrontation; and (5) the length of time between the offense and the identification confrontation. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995).

¶ 23 Here, the record reveals that Officer Lenihan made a strong, positive identification of defendant as the man who was with five or six other men standing outside of a U-Haul truck at

the rear of the building that was being burglarized. Officer Lenihan identified defendant in court as one of the individuals he encountered near the U-Haul truck. Officer Lenihan also testified that defendant "had various clothing in his arms, and he was loading it onto the truck." In addition, Officer Lenihan testified that he and his partner exited their squadrol, approached the men from the opposite sides of the U-Haul truck, and announced their office. Upon announcing their office, the individuals, including defendant, threw whatever clothing they had "on the ground or towards the truck" and ran from the vehicle. Officer Lenihan further testified that defendant "fled westbound through the vacant lot. Then [defendant] proceeded northbound in the west alley behind the location. At the time another subject actually pushed the [d]efendant down or out of the way." When Officer Lenihan caught up to defendant, he grabbed defendant's shirt, but defendant pushed the officer's arm away, Officer Lenihan then "deployed [his] taser" on defendant who fell to the ground. While defendant was on the ground, Officer Munizzi returned from pursuing another subject, handcuffed defendant, and placed him into custody. Officer Lenihan testified that Officer Munizzi performed a custodial search and recovered "one black skull cap with retail tags attached to the top of the skull cap and 22 individual earrings." Officer Lenihan confirmed defendant was wearing the black skull cap when standing outside the U-Haul truck and while being placed in custody. After defendant was in custody, Officer Lenihan returned to the U-Haul truck where he observed clothing items inside.

¶ 24 Although defendant testified that he was not involved in the burglary and was merely an innocent person in the area visiting a friend, it was the trial court's duty, sitting as the trier of fact, to assess the credibility of the witnesses, and here the trial court found the police officer's identification testimony positive and credible. The credible identification testimony of a single eyewitness is sufficient to support a conviction beyond a reasonable doubt. *People v. Little*, 322

Ill. App. 3d 607, 618 (2001).

¶ 25 When viewing the totality of the evidence in the light most favorable to the State, we find defendant's arguments are not sufficient to create reasonable doubt. Defendant's first four contentions relate to inferences made by the trier of fact and would be inappropriate for this court to review. See *Campbell*, 146 Ill. 2d at 375. The testimony of the officers was not unreasonable, improbable, or incredible and does not lend any credible support to defendant's contention that the officers possessed a motive to lie in their testimony. See *Wheeler*, 226 Ill. 2d at 115. It is not the responsibility of this court to substitute its judgment for that of the trier of fact on issues relating to the weight of the evidence or the credibility of the police officers. See *Ross*, 229 Ill. 2d at 272.

¶ 26 While defendant also attempts to rely on the result of the original jury trial, defendant's brief does not provide any authority to support the claim that the hung jury should be treated as evidence of reasonable doubt, particularly where the defendant was convicted at a bench trial, not a jury trial. Ill. S. Ct. R. 341(h)(7) (eff. Feb 6, 2013). Citation to relevant authority is required when making arguments in appellate briefs. *Vancura v. Katris*, 238 Ill. 2d 352, 370 (2010). Consequently, the issue is forfeited on appeal. *People v. Kraybill*, 2014 IL App (1st) 120232, ¶ 66. Moreover, we observe in passing that "disagreements among jurors or judges do not themselves create a reasonable doubt of guilt." *Tibbs v. Florida*, 457 U.S. 31, 42 n. 17 (1982).

¶ 27 In short, we conclude defendant has failed to demonstrate that the testimony and evidence elicited at trial was such that no reasonable person could accept it beyond a reasonable doubt. See *Cunningham*, 212 Ill. 2d at 280. Consequently, we find a rational trier of fact, when viewing the evidence in the light most favorable to the State, could have found defendant guilty beyond a reasonable doubt. See *Smith*, 185 Ill. 2d at 541.

¶ 28 Court System Fee

¶ 29 Defendant also contends that the \$5 court system fee should be vacated because he was not convicted of a vehicular violation pursuant to Section 5/5-1101(a) of the Counties Code Act 55 ILCS 5/5-1101(a) (West 2010). This statute provides that a fee will be imposed when a violation of the Illinois Vehicle Code occurs. The State and defendant are in agreement that the fee should be vacated because defendant was not charged with a violation of the Illinois Vehicle Code. *People v. Williams*, 2011 IL App (1st) 091667-B, ¶ 17. Because defendant was not convicted of a violation of the Illinois Vehicle Code, we vacate the \$5 court system fee.

¶ 30 Children's Advocacy Center Fine

¶ 31 Finally, defendant contends, and the State agrees, that he is entitled to a \$5 credit for each day of presentence incarceration to offset any fines imposed by the trial court pursuant to Section 5/5-1101(f-5) of the Counties Code Act 55 ILCS 5/5-1101(f-5) (West 2010). Because fines are subject to reduction, defendant is entitled to a presentence incarceration credit to offset the fine. *People v. Jones*, 223 Ill. 2d 569, 580-582 (2006). The sixteen days defendant spent in presentence custody, are sufficient to offset defendant's fine. Accordingly, we find defendant is entitled to a \$5 per day custody credit sufficient to offset the \$30 Children's Advocacy Center fine.

¶ 32 CONCLUSION

¶ 33 For the reasons stated above, the judgment is affirmed in part and vacated in part.

¶ 34 Affirmed in part; vacated in part.