

**NOTICE**

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2014 IL App (4th) 120722-U

NO. 4-12-0722

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

January 24, 2014

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.	)	Macon County
JOHNATHON L. MACLIN,	)	No. 10CF1164
Defendant-Appellant.	)	
	)	Honorable
	)	Lisa Holder White,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.  
Justices Knecht and Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) The trial court did not abuse its discretion by admitting Rasheena Graves's testimony, (2) fines and fees assessed by the circuit clerk are vacated and remanded with directions, and (3) defendant is entitled to credit against his creditable fines for time served.

¶ 2 In May 2012, a jury found defendant, Johnathon L. Maclin, guilty of first degree murder. 720 ILCS 5/9-1(a)(3) (West 2010). (Although the charging instrument and Department of Corrections records spell defendant's name Jonathon, we spell defendant's name Johnathon, as defendant's signature is rendered as Johnathon in the record.) In August 2012, the trial court sentenced defendant to 35 years in prison. Defendant appeals, claiming (1) the court improperly admitted Rasheena Graves's testimony as to defendant's statements on the day of the robbery; and (2) defendant's fines and assessments were improperly imposed, the court was not authorized to impose the \$10 "Anti-Crime Fund" fine against defendant, and defendant was

entitled to credit against his creditable fines for time served prior to sentencing. The State argues the court did not abuse its discretion by admitting Graves's testimony, but it concedes fines imposed should be vacated and defendant is entitled to credit for his creditable fines for time served. We conclude the trial court properly admitted Graves's testimony and accept the State's concession as to defendant's fines and fees. We affirm in part, vacate in part, and remand with directions.

¶ 3

## I. BACKGROUND

¶ 4 On August 4, 2010, the State charged defendant with two counts of armed robbery (720 ILCS 5/18-2(a) (West 2010)) and first degree murder, under various theories, including felony murder. 720 ILCS 5/9-1(a)(3) (West 2010). The jury found defendant guilty on all charges. We summarize the evidence relevant to this appeal as follows.

¶ 5

### A. Ishmael Adams's Murder

¶ 6 In the early morning hours of July 30, 2010, Ishmael Adams and his friend Keshawn McGee had driven to Adams's mother's house and were sitting in a parked car in the driveway outside the home. Two men approached the car, pointed guns at Adams and McGee, and demanded money and drugs. McGee and Adams gave the men all their money, approximately \$50. During the robbery, one of the men shot Adams in the chest, killing him.

¶ 7

McGee identified Michael Guise as the shooter. Guise testified he and defendant robbed McGee and Adams "for crack money." Guise also told Detective Pruitt he fired his gun and believed he shot Adams.

¶ 8

Ryan Walker, a friend of defendant, testified Brian Young, an older acquaintance of Walker, Guise, and defendant, recruited the younger men for a robbery, targeting Adams.

Walker testified he called defendant, asking if he wanted to "hit a lick," because Young "had a lick for him to hit." Defendant indicated agreement, responding "he was down." Walker explained "hitting a lick" meant robbing someone or burglarizing a home.

¶ 9 B. Rasheena Graves's Testimony

¶ 10 At trial, the State also presented Rasheena Graves's testimony, after the court overruled defendant's motion *in limine* to exclude it and his contemporaneous trial objection. Graves testified she worked with defendant on a gardening crew and, on the day of the shooting, heard defendant state he needed to "hit a lick" because he "needed money bad" and "the job wasn't cutting it." Graves testified the term "hit a lick" means "going to rob someone," although she admitted the term can have other meanings. Graves also testified defendant was not at work the day after the shooting.

¶ 11 C. Defendant's Argument at Trial

¶ 12 Defendant did not testify. At closing argument, defendant argued the State had not proved he was legally responsible for Guise's conduct. Defense counsel pointed out defendant told the police he did not know Guise planned to rob Adams and ran away as soon as he realized Guise was going to rob Adams and McGee. Defense counsel suggested defendant had been honest with the police officer and the State's witnesses were less credible. Specifically, Walker and Guise had reasons to lie and had frequently changed their stories and Graves did not come forward to the police until a few days before the trial, approximately two years after she overheard defendant's statements.

¶ 13 D. Sentencing

¶ 14 After the jury found defendant guilty of all charges, defendant filed a posttrial motion preserving several issues, including challenges to Graves's testimony and the jury

instructions for first degree murder, under *People v. Smith*, 233 Ill. 2d 1, 28, 906 N.E.2d 529, 544-45 (2009) (holding a defendant charged with multiple counts of intentional, knowing, and felony murder who requests separate verdict forms is entitled to them and the appropriate remedy for denial of separate forms is to interpret a general verdict as a finding of felony murder). As the jury was given a general verdict form and defendant had requested separate forms, defendant argued under *Smith* sentencing for the armed robbery convictions should merge with the first degree murder charge. The court agreed and entered judgment only on count V, the first degree murder charge, sentencing defendant to 35 years in prison.

¶ 15 E. Assessment of Fines and Fees Against Defendant

¶ 16 The record on appeal does not include a judge's order authorizing fines against defendant. The circuit clerk imposed several fines and financial assessments against defendant, including a \$10 "Anti-Crime Fund" fine. The trial court awarded defendant credit for time served in custody, from August 1, 2010, to July 31, 2012; but, as the trial court imposed no fines, it awarded defendant no credit against creditable fines for time served.

¶ 17 II. ANALYSIS

¶ 18 A. Graves's Testimony

¶ 19 1. *Standard of Review*

¶ 20 "Challenges to a trial court's evidentiary rulings are subject to an abuse-of-discretion standard of review." *People v. Graves*, 2012 IL App (4th) 110536, ¶ 16, 965 N.E.2d 546. " 'An abuse of discretion occurs where the trial court's decision is arbitrary, fanciful or unreasonable [citation] or where no reasonable person would agree with the position adopted by the trial court [citations].' " *Id.* at ¶ 31, 965 N.E.2d 546 (citing *People v. Becker*, 239 Ill. 2d 215, 234, 940 N.E.2d 1131, 1142 (2010)).

¶ 21

2. Admissibility of Graves's Testimony

¶ 22

Defendant admits Grave's testimony relayed statements by defendant disclosing his intent to commit a robbery. He further recognizes the general principle "[a] statement of intent made by a party offered as an admission is admissible to prove the doing of the act intended," citing M. Graham, *Graham's Handbook of Illinois Evidence*, § 801.14 (10th ed. 2010). Defendant then argues even if Grave's testimony relaying defendant's admission was relevant, the trial court should have excluded it as highly inflammatory and prejudicial. Of course, if we adopted defendant's position, no confession to any crime should ever be admitted because it is certainly prejudicial.

¶ 23

Graves's testimony helped establish defendant's state of mind hours before the robbery and defendant's motive. The statements were evidence of defendant's motive because they showed he needed money badly and would be willing to commit robbery in order to get money. Further, "statements of intent are admissible \*\*\* to establish the declarant's intent and that the declarant acted in conformity with that stated intent." *People v. Hansen*, 327 Ill. App. 3d 1012, 1023, 765 N.E.2d 1033, 1043 (2002). In other words, defendant's statement indicating he intended to commit a robbery on the day Adams was killed was evidence both of his intent when he made the statement and evidence he later acted on this intent and, in fact, took part in the robbery.

¶ 24

Both facts were material to the outcome of this case. Defendant claimed he was not legally responsible for Guise's conduct because he did not know Guise was planning a robbery and ran away as soon as he realized Guise planned to rob McGee and Adams. Graves's testimony directly challenged defendant's theory of the case while making the State's claim defendant understood a robbery was about to take place and took an active part in the robbery

more probable. Thus, Graves's testimony was highly relevant as evidence of defendant's mental state and motive.

¶ 25 Defendant argues Graves's testimony was unfairly prejudicial because it cast defendant in a negative light, by encouraging the jury to base its finding on an emotional aversion to defendant's statements. Defendant also argues the term "hit a lick" became overly inflammatory due to its repeated use. We disagree.

¶ 26 First, Graves's testimony itself did not unfairly appeal to emotion. Evidence is prejudicial if " 'the evidence in question will somehow cast a negative light upon a defendant for reasons that have nothing to do with the case on trial,' " essentially by encouraging the jury to decide " 'the case on an improper basis, such as sympathy, hatred, contempt, or horror.' " *People v. McSwain*, 2012 IL App (4th) 100619, ¶ 37, 964 N.E.2d 1174 (quoting *People v. Pelo*, 404 Ill. App. 3d 839, 867, 942 N.E.2d 463, 487 (2010)). While defendant's statements do cast defendant in a negative light, they did so for reasons directly connected to disputed material facts, specifically defendant's motive and mental state on the day of the robbery. Further, Graves's testimony as to these statements did not appeal to emotion, but was a simple explanation of defendant's statements to her, as she remembered them. Specifically, on direct examination, Graves testified as follows:

"Q. What, if anything, did defendant say about whether or not he needed money at that time?

A. He needed money and about hitting a lick and things like that. Needed money bad. The job wasn't cutting it.

Q. Okay. He said the job wasn't cutting it?

A. Right.

Q. And he needed to hit licks?

A. Yes.

Q. And what does that phrase, [']hit licks['] or [']hit a lick['] mean?

A. Out going to rob someone."

Defendant's statements to Graves were clearly admissible. While all evidence that tends to show a defendant committed an offense is prejudicial, it does not follow such evidence is *unfairly* prejudicial. There was nothing unfair about the admission of defendant's statements.

¶ 27 Second, the repeated use of the term "hit a lick" did not render Graves's testimony so inflammatory as to become unfairly prejudicial. The record indicates various lawyers and witnesses repeated the term "hit a lick" throughout the trial. Although the term may be a callous way to refer to a robbery or burglary, there is nothing overly inflammatory about the term itself. Moreover, Graves's use of the term in her testimony was highly probative because she remembered defendant having used the term himself. Thus, any danger of prejudice due to the term itself or the repeated use of the term would not substantially outweigh the highly probative value of Graves's testimony.

¶ 28 Defendant's reliance on *People v. Walker*, 211 Ill. 2d 317, 338-39, 812 N.E.2d 339, 351 (2004), is misplaced. In *Walker*, the court was addressing the potential of unfair prejudice when admitting evidence of a defendant's prior conviction. The danger is that a jury might decide a defendant is of bad character if he committed a prior felony and, therefore, he is more likely to have committed the current charge. *Id.* at 331, 812 N.E.2d at 347.

¶ 29 We conclude *Walker* has no application here. Graves's testimony related to statements defendant made indicating an intent to commit a robbery on the very day the robbery occurred. The statements were not admitted as other-crimes evidence but as evidence of the very crime with which defendant was charged.

¶ 30 Nor are we persuaded by defendant's general claim Guise's and Walker's testimony provided such definitive proof of defendant's mental state and motive that Graves's testimony became unnecessarily redundant. Walker's testimony provided some evidence defendant intended to rob Adams because defendant indicated to him over the telephone prior to the robbery he "was down" to "hit a lick." Also, Guise provided evidence of joint motive saying they planned to rob Adams "for crack money." However, as defendant pointed out at trial, both Guise and Walker had provided statements inconsistent with their testimony at trial and received negotiated plea agreements partly in exchange for their testimony. Their testimony would need to be considered with great caution. See Illinois Pattern Jury Instructions, Criminal No. 3.17 (4th ed. Supp. 2009) (testimony of accomplice is subject to suspicion and is to be considered with caution). By contrast, Graves was an unrelated third party, a coworker, and she received nothing for testifying. The jury could have found Guise's and Walker's testimony not credible, but Graves's testimony credible.

¶ 31 Graves's testimony, even considered in context alongside Guise's and Walker's similar testimony, was still highly probative evidence of defendant's motive and mental state. It was not unnecessarily cumulative. The court properly admitted Graves's testimony into evidence.

¶ 32 B. Defendant's Fines and Fees

¶ 33 Defendant also argues fines were improperly assessed, requesting this court to (1)

vacate the circuit clerk's imposition of the \$10 Anti-Crime Fund fine without remand because the trial court is not authorized to assess it against a defendant sentenced to prison; (2) vacate all other fines and assessments against defendant, as they were improperly assessed by the circuit clerk rather than the court, and remand for reimposition; and (3) award him a \$5-per-day credit against his creditable fines for time served prior to sentencing. The State concedes error. We accept the State's concession.

¶ 34

1. *Anti-Crime Fund Fine*

¶ 35 The \$10 Anti-Crime Fund fine (730 ILCS 5/5-6-3(b)(12), (13), 5-6-3.1(c)(12), (13) (West 2010)), imposed by the circuit clerk in this case, is not authorized against a defendant sentenced to prison, rather than probation. See *People v. O'Laughlin*, 2012 IL App (4th) 110018, ¶ 16, 979 N.E.2d 1023 (vacating \$10 Anti-Crime Fund fine because it was not applicable to a defendant sentenced to prison). Here, the trial court sentenced defendant to 35 years in prison. Consequently, the Anti-Crime Fund fine is inapplicable and must be vacated.

¶ 36

2. *Other Fines Assessed By the Circuit Clerk*

¶ 37 As "[t]he imposition of a fine is a judicial act," the circuit clerk has no authority to levy fines. *People v. Swank*, 344 Ill. App. 3d 738, 747, 800 N.E.2d 864, 871 (2003). When the circuit clerk imposes a fine without authority, the fine should be vacated and the cause remanded to the trial court for the proper imposition of mandatory fines. *People v. Shaw*, 386 Ill. App. 3d 704, 710, 898 N.E.2d 755, 762 (2008). While the court ordered defendant to pay "court costs," the record on appeal does not contain a trial judge's order authorizing fines. Multiple fines and assessments were imposed by the circuit clerk against defendant.

¶ 38

We conclude fines were improperly assessed by the circuit clerk. We decline to

reimpose mandatory assessments, as requested by the State, as the State has not adequately briefed which fines were mandatory in Macon County on July 30, 2010, when the offense was committed. See *People v. Folks*, 406 Ill. App. 3d 300, 306, 943 N.E.2d 1128, 1133 (2010) (holding the "court may reimpose mandatory fines"). We vacate all fines and remand to the trial court for a proper assessment by the court. See *People v. Williams*, 2013 IL App (4th) 120313, app. A, 991 N.E.2d 914. Proper assessment of fines will include all mandatory fines authorized at the time of the offense. *People v. Blalock*, 2012 IL App (4th) 110041, ¶ 21, 976 N.E.2d 643 (imposing fines not authorized by statute when the defendant committed the offense violates constitutional protections against *ex post facto* laws).

¶ 39                    3. *Credit Against Defendant's Creditable Fines for Time Served*

¶ 40                    Defendant argues he is entitled to a \$5-per-day credit against creditable fines for the time he spent in custody awaiting sentencing. Under section 110-14 of the Code of Criminal Procedure of 1963, defendants are entitled to a \$5-per-day credit for time spent in prison pending sentencing. 725 ILCS 5/110-14 (West 2012). "[T]he \$5-per-day credit provision of section 110-14 \*\*\* is available to defendants who also receive jail-time credit against their prison terms" (*People v. Hare*, 119 Ill. 2d 441, 452, 519 N.E.2d 879, 883 (1988)) and is not subject to forfeiture and may be raised for the first time on appeal. *People v. Woodard*, 175 Ill. 2d 435, 457-58, 677 N.E.2d 935, 946 (1997). The State concedes error, and we agree.

¶ 41                    The trial court awarded defendant credit against his sentence for time served from August 1, 2010, until July 31, 2012. This period of time totaled 731 days, as 2012 was a leap year, entitling defendant to \$3,655 in available credit against his creditable fines. Our record does not indicate the court awarded defendant credit against his fines under section 110-14.

Therefore, on remand, we direct the trial court to apply this credit against defendant's creditable fines. See generally *Williams*, 2013 IL App (4th) 120313, app. A, 991 N.E.2d 914.

¶ 42

### III. CONCLUSION

¶ 43

This court (1) affirms the trial court's ruling to admit Graves's testimony; (2) vacates fines assessed by the circuit clerk; and (3) remands with directions for the trial court to impose the appropriate fines, which will not include the \$10 Anti-Crime Fund fine, and award defendant credit under section 110-14 for time served prior to his sentencing against creditable fines. As part of this judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2012).

¶ 44

Affirmed in part and vacated in part; cause remanded with directions.