2016 IL App (1st) 133878-U

FIRST DIVISION
August 8, 2016

No. 1-13-3878

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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. 11 CR 11018
	)	
BERNARDO DUNBAR,	)	Honorable
	)	Dennis J. Porter,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court properly denied defendant's motion to suppress with respect to a stolen cellular phone recovered by the police where the evidence showed that sufficient exigent circumstances existed to justify the officer's intrusion into defendant's gated back yard; (2) The State presented sufficient evidence to sustain defendant's conviction for robbery beyond a reasonable doubt; and (3) We affirm the $60 State's attorney fee and vacate the $250 DNA analysis fee assessed against defendant.

¶ 2 After a bench trial, defendant Bernardo Dunbar was found guilty of robbery and sentenced to five years in prison. On appeal, defendant claims: (1) the trial court erred when it denied his motion to suppress; (2) the evidence presented was insufficient to convict him of

robbery; and (3) two fees assessed against him must be vacated.[1] For the following reasons, we affirm defendant's conviction and vacate one of the contested fees.

¶ 3 BACKGROUND

¶ 4 Defendant was charged by information with three counts of armed robbery (counts 1 through 3) and multiple additional counts of various weapons offenses (counts 4 through 21).

¶ 5 A. Suppression Hearing

¶ 6 At the pretrial hearing on defendant's motion to suppress, Bernardo Dunbar, Senior (Senior), defendant's father, testified that he lived at 8359 South Aberdeen Street and defendant lived at 1943 North Natoma Avenue (the Natoma house), both in Chicago, Illinois. Defendant lived with his mother, Lisa Adams, as well as Lisa's other son and her daughter. Senior said that he and Lisa had two children together and had been dating "[o]n and off" for 24 years. However, he said he never lived or paid household bills at the Natoma house, although he has spent nights there.

¶ 7 On June 9, 2011, Senior was at the Natoma house starting at approximately 4 p.m., "doing some work" with defendant and Lisa's other son in the basement. At about 9:55 or 10 p.m. that evening, Senior was still in the basement with "the boys" and heard "some noises going on, loud talking." Senior went upstairs and saw Lisa talking to a police officer. The officer asked where "Bernardo" was and whether Senior was "Bernardo." Senior asked the officer what his visit was about, but the officer did not explain why he was looking for "Bernardo" or that the officers were responding to a robbery. Because the officer did not explain why he was there, Senior walked away. The police officer entered the house. Senior told the officer "he wasn't allowed to come in," then Senior called 9-1-1 and requested a police supervisor. According to

[1] Although initially, in his opening brief, defendant also contended that he received ineffective assistance of trial counsel, he withdrew the argument in his response brief.

Senior, the police officer then "grabbed" him and "several other officers entered the house." One officer saw Senior's name on his work identification badge, and Senior was then told he was resisting arrest and was handcuffed. When Senior was being arrested, defendant and Lisa's other son were still in the basement.

¶ 8 Senior testified that the officers took him out of the house, onto the porch, and told him he was going to jail. Between five and fifteen minutes later, the officers escorted defendant and Lisa's other son out of the house, both in handcuffs, and took them to two separate squad cars. Senior remained on the porch and the same officer who told Senior he was going to jail now told Senior that "a robbery took place;" Senior told the officer he had not robbed anyone. At some point, the officers conducted a lineup in front of the Natoma house and defendant was identified by the accuser as the robber. Senior testified that he could not see who identified defendant during the lineup and that the police would not tell him the name of the individual his son had supposedly robbed.

¶ 9 Senior stated that he was not wearing his reading glasses at the time, but agreed to sign a consent-to-search form after the officers threatened him, telling him that he would be arrested and the house would be seized if he did not sign the form. Senior's handcuffs were removed and he signed the form although he was unable to read it in the dark without his reading glasses. Senior was never asked whether he owned or paid rent at the Natoma house. He denied that he told the officers he owned the house or that, when the police officers began to read him his *Miranda* rights, he told them he was an educated man who did not need the process explained to him. Senior testified that Lisa owned and paid the mortgage on the house and he did not pay her rent. After the consent-to-search form was signed, the police officers brought Senior back inside and searched the house.

¶ 10 Lisa Adams testified that defendant is one of her three children, and that she lived at and paid the mortgage on the Natoma house, which she bought in 1996. On June 9, 2011, at approximately 9:55 p.m., she was home in her bedroom on the first level of the house when she heard pounding on the door and saw flashlights shining through the window. At the time, defendant, Senior, and Lisa's other son were in the basement. After Lisa noticed the lights in the window, she looked through the peephole in the front door, saw the police, and opened the door. According to Lisa, the following exchange took place. The officer asked Lisa who was there with her, Lisa asked what he wanted, and the officer explained that they had "had an incident here and [they were] told that the person [was] in this house." Lisa asked the officer who they were looking for and, at that point, Senior came upstairs and asked what was going on. When asked for his name, Senior asked what the officer wanted, then walked away. The officer then "pulled the door" and "hit" Lisa's chin, pushing her out of the way as he approached Senior, who had picked up the telephone to call the police. Lisa stated that the officer then "grabbed" Senior and, noticing his identification card on the table, said: "Oh, you are Bernardo." According to Lisa, Senior did not resist when the officer attempted to handcuff him, but merely asked, "Why are you grabbing me? What you doing? What you doing?"

¶ 11 Lisa said that she never gave the police permission to enter her house and they never asked her to sign a consent-to-search form. Although she told them that they could not come inside, three additional officers entered the house, "grabbed" Senior, handcuffed him, and escorted him from the house. Eventually the officers also removed defendant and Lisa's other son from the house, also in handcuffs. When the officers returned, she said they asked for her permission to enter the house and she said no. One of the officers then said to her, "if you don't let us in this house, we are going to seize your house, and you will be held, you will lose your house." The officers, at least four of them, then proceeded to search the house. According to

Lisa, the police did not ask who owned or paid the mortgage on the house, they did not say that Senior had given them permission to enter the house, and they did not show Lisa the consent-to-search form that Senior had signed. Lisa stated that she and Senior had been in a dating relationship, on and off, for 25 years. Senior "spent the night sometimes" at her house, but kept no clothes there.

¶ 12 Sergeant Eric Olson testified that at approximately 9:50 or 9:55 p.m. on June 9, 2011, he received a call to relocate to 1943 North Natoma Avenue. He arrived within "[a] few minutes" and approached the front door of the house. Defendant had already been identified in a lineup and was in custody, handcuffed and seated in the rear of a police vehicle, when Sergeant Olson arrived. Sergeant Olson said that the officers present provided him with a summary of what had occurred, and he was told that defendant was in custody for armed robbery and that the officers believed the weapons used during the offense, two firearms, were inside the house.

¶ 13 Sergeant Olson testified that he then knocked on the front door of the house and Senior came outside. Sergeant Olson identified himself to Senior and asked whether Senior had requested a supervisor. Senior said that he had, "but that it was just a misunderstanding and everything was fine." Sergeant Olson then explained to Senior why defendant was in custody and, because Senior indicated he was the homeowner, presented him with the consent-to-search form, which Senior signed. Sergeant Olson said that he told Senior he believed that there were additional weapons in the house and that Senior "was very concerned *** due to his son's mental frailties or possible disability, that *** [his son] shouldn't be around any weapons, and he was actually quite grateful for [the] assistance." In addition, Sergeant Olson said that when he then started to advise Senior of his rights, Senior "said he was an intelligent man. He didn't need all that." Sergeant Olson told Senior to read the form to "be sure he knew what he was signing. [Senior] read the form over and signed it." Sergeant Olson testified that, although it was

nighttime, the form was illuminated with a flashlight and that Senior "never claimed he had any difficulties reading or comprehending" it. Senior was not handcuffed when Sergeant Olson discussed the consent-to-search form with him or when he signed the form. Sergeant Olson testified that he did not say anything to Senior in a threatening manner and that his "entire interaction" with Senior "was very pleasant."

¶ 14 After Sergeant Olson's interaction with Senior, he and other officers were directed to defendant's bedroom, where Sergeant Olson recovered "two 25 caliber handguns from under the mattress," suspect narcotics, a scale, and ziplock baggies. In addition, a knife was recovered from a search of defendant. To Sergeant Olson's knowledge, the police did not have a search warrant to enter the Natoma house.

¶ 15 Officer Craig Hammermeister testified that he was on duty at 9:55 p.m. on June 9, 2011, when he heard a radio call that "a known offender, Bernardo Dunbar" had just committed a robbery. Officer Hammermeister entered that name into the "I CLEAR" system which produced a photograph of defendant and the address of the Natoma house. Officer Hammermeister and his partner, Officer Staken, drove to that address and were the first to arrive. Officer Staken went to the back of the house while Officer Hammermeister went to the front door and either knocked or rang the doorbell, which was answered by Senior. Officer Hammermeister agreed that, in contrast to his testimony at trial, in the arrest report he wrote that he encountered defendant, Senior, and Lisa at the door simultaneously. He explained that the arrest report is "not a verbatim report, it's just a summary of the facts."

¶ 16 When Officer Hammermeister saw Senior at the front door, he believed Senior was the offender because Senior looked like the photograph provided by the "I CLEAR" system. Refusing to provide his name or answer Officer Hammermeister's questions, Senior attempted to close the door. Officer Hammermeister explained that he knew "the ticket came out that there

were weapons," that he believed he was talking to the offender, and that he "didn't want to let [Senior] out of [his] sight." Officer Hammermeister testified that he grabbed Senior's arm "to detain" him and, when he did, Senior "pulled into the house, which, in turn, pulled [Officer Hammermeister] into the house." Officer Hammermeister testified that he did not see Lisa until he was dragged inside by Senior and he did not have a conversation with Lisa. In addition, Officer Hammermeister said that he did not have a warrant to search the house or arrest defendant, he did not ask Senior or Lisa for permission to enter the house, and he also did not ask anyone to sign a consent-to-search form. He stated that, at this point, Lisa "became very irate, screaming, what's going on," and approached him, then Lisa's other son joined them, causing Officer Hammermeister to feel "almost surrounded." Officer Hammermeister attempted to detain Senior with handcuffs and called for backup. When backup arrived, the officers detained Senior and Lisa's other son, and both were placed in handcuffs. Defendant was also walked out of the house, but "was never placed in handcuffs." Once the men were out of the house, the police "determined that *** there were two Bernardo Dunbars," and removed the handcuffs from Senior and Lisa's other son. "Within five to ten minutes" the victim arrived on the scene and identified defendant as the person who had robbed him. Officer Hammermeister later learned that Officer Staken had recovered an iPhone from the backyard of the Natoma house that the victim identified as the phone which was stolen from him.

¶ 17 Officer David Calle testified that on June 9, 2011, he and two other officers went to the Natoma house because they received a call and "had heard that the offender resided at 1943 from an armed robbery, on Natoma." When Officer Calle arrived on the scene, he was met by Officer Staken, who said he had recovered a cell phone from the backyard. The officers then entered the house, where they saw Officer Hammermeister attempting to detain Senior. Officer Calle testified that he saw an identification card on a table in the living room that was issued to

"Bernardo Dunbar." Officer Calle testified that Senior was eventually handcuffed, at which time defendant "came out of, kind of, the rear kitchen area." Officer Calle asked defendant's name and, when defendant did not respond, asked defendant to accompany him outside to fill out a contact card. The two left the house and walked to Officer Calle's vehicle, where Officer Calle learned defendant's name, took him into custody, and stayed with him until the victim arrived on the scene and identified defendant as the offender.

¶ 18 Officer Calle testified that, in the interim, Senior was released and walked back into the house. "About five minutes, ten minutes later," Officer Calle explained "the situation" to Sergeant Olson, "that there was an armed robbery, and that weapons were used, such as handguns and a knife, and that they possibly could be in the house still," and suggested that they "do a consent to search." Sergeant Olson went back to the residence and returned with Senior to explain the consent-to-search form to him—"what the consent to search was about, and his rights, what he could do"—and Senior "appeared to" read the form and sign it. Officer Calle did not hear Senior ask to get his reading glasses or suggest he could not read the consent-to-search form. After the form was signed, the police searched the Natoma house and Officer Calle found a pocketknife in a pair of pants in the basement.

¶ 19 At the conclusion of the suppression hearing, the trial court made a number of findings of fact consistent with this testimony. The court concluded that the State failed to show exigent circumstances to justify a warrantless entry and that Senior did not have authority to give the police consent to search the house. The court ultimately granted defendant's motion to suppress as to the drugs, the drug packaging materials, the knife, and the two guns. However, the court denied the motion with respect to the victim's identification of defendant and the cell phone recovered by Officer Staken as the cell phone was "not part of the illegal search."

¶ 20 The State filed a motion to reconsider and, upon reconsideration, the trial court concluded that there were "exigent circumstances to enter the house initially." The court continued, however, that once defendant was in custody, any exigency had ceased: "They don't have a right to go back into the house. And once he is out in the police car, handcuffed, [defendant], the one that they're looking for, there are no more exigent circumstances." Because the police recovered the drugs, drug packaging material, knife, and guns after defendant had been arrested, but recovered the cell phone before his arrest, the court did not see a "reason to change [its] ruling."

¶ 21 B. Trial

¶ 22 Trial began in September 2013. The State presented testimony from the victim, Officer Robert Staken, and Detective Bruce Kirschner; defendant presented the testimony of his mother and father.

¶ 23 The victim, Jared Hatcher testified that, prior to June 9, 2011, he had known defendant "maybe four or five months." He knew defendant "through usual friends in the neighborhood," but had never been inside defendant's house. In April or May 2011, defendant and Jared were at a friend's house with two or three other individuals when defendant's wallet went missing. Jared testified that the next day defendant called and falsely accused him of stealing the wallet. Jared had spoken to defendant on the phone previously and had defendant's phone number in his phone, but he and defendant never called each other to hang out. Jared had hung out with defendant "a couple of times just as acquaintances," but Jared did not consider them to be friends. He also knew defendant's home address because, sometime in May 2011, after the incident with the wallet, defendant "got a disciplinary paper from the school he went to and he was showing it to [Jared] and *** other people bragging about how he fault some kid or something like that." Despite knowing defendant's address, Jared had "[n]ever" been inside the house, and said it was not true that he had talked with defendant's mother or father inside the

house. Jared put defendant's address in his phone because he "felt kind of like mistrust" about defendant since the theft accusation; "just in case he ever decided to do something [Jared] wanted to at least have his information on hand in case."

¶ 24 Jared testified that, at approximately 9:35 p.m. on June 9, 2011, he was walking in the area of 1858 North Normandy Avenue in Chicago, Illinois, listening to music on his mother's iPhone, when Jared saw defendant coming toward him. Jared asked defendant "what's up," and defendant "pulled a gun" on Jared, then "snatched" the iPhone from Jared's hand and put it in his pocket. Jared testified that the gun that defendant had pulled out of his pocket was a "very small gun[,] *** a .22 Caliber pistol." Defendant told Jared to hand over his wallet, saw that it contained nothing but Jared's identification card and a bus pass, and returned it to him. According to Jared, defendant then pulled another gun out of his pocket, of the same type but a different color, and pointed both guns at him "maybe a foot away" from Jared's face. Jared said defendant kept telling him "you know what you did." At some point, defendant put one of the guns back into his pocket and pulled out a knife while he kept the other gun aimed at Jared. Jared said that defendant was "kind of waving it about like trying to intimidate [Jared], and he kept telling [Jared] *** that [Jared] had taken the wallet." Then defendant told Jared to remove his shoes, even though they were "really crappy," "covered in mud," and "didn't have shoelaces in them or anything." Defendant looked at Jared's shoes, gave them back, put the gun and knife into his pockets, and walked away from Jared with Jared's mother's iPhone. Jared said he "ran in the opposite direction" and then, within "two, two and [a] half to three minutes" or "about 10 minutes," he called 9-1-1 from his own phone. Jared told the operator that he had been robbed at gunpoint and gave his location. Jared met the police nearby and, during his conversation with the officers, Jared identified defendant by name and told them where defendant lived. Jared rode in the back of a police vehicle to defendant's house where he identified defendant in a lineup as the

person who had robbed him. At some point, the police showed Jared his mother's iPhone, which he identified. Jared denied that he had failed to tell the police about defendant asking for his shoes.

¶ 25 Jared further testified that he had a G.E.D. and was recently hired for a retail job. He also had a felony conviction for unlawful restraint, for which he received two years' probation, and a conviction for failure to register as a sex offender, for which he was presently on probation. Jared admitted he had been taken into custody for violating his probation earlier the day of trial. Jared also agreed that no one had promised him anything in exchange for his testimony at trial. He was aware he could go to prison for anywhere from two to five years if the State prosecuted him for his violation of probation, but said that the matter was not going to be dealt with until after he had testified. Jared agreed that he was "of course" hoping the State would not proceed with the violation of probation charge. On a subsequent day of trial, approximately one month later, defense counsel asked the court to take judicial notice that Jared pled guilty to violation of probation "and got nine days credit and [it was believed] 30 days, off call."

¶ 26 Officer Robert Staken testified that on June 9, 2011, he was on patrol with his partner, Officer Hammermeister when he overheard a dispatch on the radio indicating a robbery had "just occurred" and the suspect's name was Bernardo Dunbar. He and his partner looked up and proceeded to the suspect's last known address at 1943 North Natoma Avenue. Officers Staken and Hammermeister were the first officers on the scene; Officer Hammermeister went to the front while Officer Staken went to the backyard. Officer Staken described the backyard as being "pretty dark" and "fenced in on one side, at least, a smaller yard, garage," and agreed that the property was completely fenced off. He testified that lights were turned on in the second floor of the house, and he saw defendant throw an object from the second story window into the yard.

Defendant was at the window "[v]ery briefly, maybe ten seconds," but Officer Staken was able to see his face. He then recovered the thrown item, which was an iPhone.

¶ 27 Detective Bruce Kischner testified that on June 10, 2011, he and his partner were assigned to investigate a robbery. He learned defendant was in custody and met with him. Defendant was read his *Miranda* rights and indicated that he understood them. Defendant then had a conversation with the detectives and said that he wished to give a statement. Detective Kischner explained that they "asked the defendant about the incident and what had happened," and Detective Kischner said that he "believe[d]" that defendant "related that he did take the guy's phone and that he threw it." Detective Kischner agreed that defendant had said his wallet had been taken and that he denied having weapons. The conversation defendant had with the detectives was not recorded or memorialized in writing and Detective Kischner did not take notes.

¶ 28 The parties stipulated that no general progress reports were generated by the Chicago Police Department during the interview of defendant on June 10, 2011. They also stipulated that, if called, Officer Hammermeister would testify that he met with Jared Hatcher on June 9, 2011, at approximately 9:40 p.m. "while investigating an armed robbery" and prepared a case incident report. Although he included the contents of his interview with Jared in the case report and arrest report, nowhere in the reports did he mention that defendant had attempted to take Jared's shoes.

¶ 29 Lisa Adams testified that she was a director at the Westin Chicago River North, a position she has held since 1998. On June 9, 2011, she arrived home from work between 4 and 5 p.m. and, at that time, defendant, Senior, and Lisa's other son were all in the basement. She went down to see them, then began preparing food for the next day. At some point "[she] went into the bedroom, and [she] heard *** some banging on the door." Lisa testified that she was the sole owner of the Natoma house and she never gave the police permission to enter her backyard

that day. She explained that the backyard was completely fenced in with a locked gate, which was always locked. A key was needed to get through the back gate and out of the back door, and Lisa was the only person with a key. At trial, Lisa identified several photographs of her house and backyard from different angles; the photographs, which were entered into evidence, show a chain link fence on one side of the garage and a black metal gate on the other, through which the backyard, house, and second story window can be seen.

¶ 30 Lisa testified that she never saw defendant leave the residence that evening and, apart from stepping into the basement to say hello to Senior and her sons, she never left the first floor of her home. Lisa described her house as having an open floor plan, "living room, dining room, my bedroom off to the side, and then the kitchen. It just flows. You can see straight through." Lisa also said that if defendant had left the house, he would have needed a key to get back inside because the front door automatically locked and he did not have a key. She maintained that defendant did not leave the basement at any point on the evening of the robbery and disagreed that he could come and go from the house as he pleased. Lisa said she knew Jared because he was defendant's friend and had been to her house "several times." She had also had conversations with Jared at her home. She testified that Jared had been at her home in June 2011 prior to the evening of the robbery. She could not recall precisely what day Jared was last there but knew he had been over "because [Jared] and [defendant] help[ed her] bring groceries in."

¶ 31 Lisa said that Normandy Avenue is one block away from Natoma Avenue and agreed that it was fairly close to her house. Lisa was not aware of any conflict between Jared and defendant or that defendant's wallet had been stolen. Lisa agreed that she did not want anything to happen to defendant because he is her son; she also agreed that she wanted him to be successful and that she loved him.

¶ 32 Senior testified that he was 51 years old and had worked at customer service for Southwest Airlines for 13 years. On June 9, 2011, he was at Lisa's house with Lisa's other son, defendant, and Jared. Senior arrived at the house first, between approximately 1 and 2 p.m., and "shortly after that [Jared] had come over with [defendant]." Defendant rang the doorbell to get into the house after school because the front door was locked and defendant did not have a key. Senior had seen Jared at the Natoma house "about three times" in total. At some point before Lisa came home, Jared left, although Senior could not recall at what time this happened. Senior said Lisa came home at "probably around 4 or 5," although he was not sure about the time, and that defendant was in the basement when Lisa arrived home. When asked how he knew Lisa had arrived home, Senior said he "heard some shouting going on" and went upstairs "to see what was going on." Senior testified that the shouting he heard from the basement was Lisa shouting with the police officer. Senior did not remember whether Lisa went into the basement after she came home "because [he] was in another room in the basement." Senior agreed that defendant was his son, that he loved his son, and that he did not want to see anything bad happen to defendant.

¶ 33 Before closing arguments, defendant renewed his motion to suppress, upon which the trial court found that the backyard of the Natoma house was "entirely enclosed by a fence." Further, the court found that the evidence showed "that the offense under the [*sic*] investigation was recently committed, there was no deliberate or unjustified delay by the police during which a warrant might have been obtained, the offense [was] a grave one, it [was] armed robbery, [ ] a crime of violence." In addition, the court stated that the police "had knowledge that they reasonably believed this suspect could be armed" and "were acting on a clear showing of probable cause." Despite the court's finding that there was "no likelihood that the offender would escape if not apprehended swiftly, there was at least some reason to believe that the offender was still on the premises when that cell phone went out the back window." Finally, the

court noted that the police made their entrance peaceably, although they "were not in hot pursuit." Considering the evidence, the court found that the factors "militate[d] toward the officer having the right to enter the premises" and concluded that "Officer Staken was where he had a right to be" when he recovered the iPhone.

¶ 34 After closing arguments, the trial court found defendant guilty "on the lesser included offense of robbery" as to each of the first three counts, merging counts 2 and 3 into count 1, and not guilty for the remainder of the charges. The trial court also stated:

> "I would actually just comment on the credibility of the witnesses.
>
> I agree with [defense counsel] that there are some apparent oddities in the victim's testimony in this and that probably if there was no corroboration for the victim's testimony, my ruling would be quite different. However, as the State points out as they characterizes [*sic*] it, the Defense can't get over the fact that the defendant threw the proceeds of the alleged robbery out the window while the police were at the front door attempting to get in. And there's also the statement [made by Detective Kischner] that corroborates the witness's rendition of the fact that he was robbed.
>
> In addition, I saw the witness testify and he was unshaken in his testimony, despite a very vigorous cross-examination. So the fact is that his testimony is corroborated, at least in some respects."

¶ 35 The court denied defendant's motion for a new trial and sentenced him to five years in prison, with credit for 900 days served.

¶ 36 ANALYSIS

¶ 37 On appeal, defendant contends that: (1) the trial court erred in denying his motion to suppress with respect to the iPhone; (2) the State failed to prove him guilty of robbery beyond a reasonable doubt; and (3) two fees must be vacated because they were improperly assessed by the trial court.

¶ 38 A. Motion to Suppress

¶ 39 Defendant first contends that the trial court erred in denying his motion to suppress the iPhone, arguing that the court incorrectly concluded that exigent circumstances existed to justify the warrantless police search of his backyard.

¶ 40 A two-part standard of review is employed when reviewing a trial court's ruling on a motion to suppress. *People v. Johnson*, 237 Ill. 2d 81, 88 (2010). The trial court's factual findings are given deference and will only be rejected if they are against the manifest weight of the evidence. *Id.* "[A] judgment is against the manifest weight of the evidence when an opposite conclusion is apparent, or when the findings appear to be unreasonable, arbitrary or not based on the evidence." *People v. Urdiales*, 225 Ill. 2d 354, 433 (2007). The reviewing court, however, "remains free to undertake its own assessment of the facts in relation to the issues, and we review *de novo* the trial court's ultimate legal ruling as to whether suppression is warranted." (Internal quotation marks omitted.) *Johnson*, 237 Ill. 2d at 88-89. Testimony from both the suppression hearing and the trial may be considered by the reviewing court. *People v. Slater*, 228 Ill. 2d 137, 149 (2008).

¶ 41 The fourth amendment of the United States Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV. The Illinois Constitution of 1970 similarly guarantees the right of the people "to be secure in their persons, houses, papers and other possessions" against

unreasonable searches and seizures. Ill. Const. 1970, art. I, § 6. "Warrantless searches are generally considered unreasonable unless they fall within a few specific exceptions." *People v. Pitman*, 211 Ill. 2d 502, 513 (2004). For example, "[t]he fourth amendment does not prohibit officers from entering a home without a warrant if exigent or compelling circumstances justify the entry." *People v. Foskey*, 136 Ill. 2d 66, 74-75 (1990). The State bears the burden of showing that exigent circumstances were present to justify a warrantless search or arrest. *Id.* at 75.

¶ 42 "In determining whether such circumstances exist, each case is evaluated by considering what the police knew at the time they acted and assessing whether their actions were reasonable under the prevailing circumstances." *People v. Payton*, 317 Ill. App. 3d 909, 913-14 (2000). The following factors may be considered:

> "(1) whether the offense under investigation was recently committed; (2) whether there was any deliberate or unjustifiable delay by the officers during which time a warrant could have been obtained; (3) whether a grave offense is involved, particularly one of violence; (4) whether the suspect was reasonably believed to be armed; (5) whether the police officers were acting upon a clear showing of probable cause; (6) whether there was a likelihood that the suspect would have escaped if not swiftly apprehended; (7) whether there was a strong reason to believe that the suspect was on the premises; and (8) whether the police entry, though nonconsensual, was made peaceably." *Foskey*, 136 Ill. 2d at 75.

Our supreme court has cautioned that "each case must be decided on the basis of the facts presented" and has noted that the "guiding principle is reasonableness under constitutional provisions governing searches and seizures." *People v. Abney*, 81 Ill. 2d 159, 173 (1980).

¶ 43 In the present case, the record shows the trial court properly denied defendant's motion to suppress with respect to Officer Staken's warrantless search of the backyard. The trial court specifically found that: the offense was recently committed; the police did not engage in any deliberate or unjustified delay during which time a warrant may have been obtained; the police reasonably believed that defendant could have been armed; the offense of armed robbery was a grave one; the police made their entry peaceably; and the police acted "on a clear showing of probable cause." These findings, favorable to a determination that exigent circumstances existed, are supported by the record and are not against the manifest weight of the evidence. That the offense had recently occurred is supported by the testimony of Officers Hammermeister and Staken, who both testified that the radio dispatch indicated a robbery had just been committed. Moreover, the victim, Jared, testified that he called 9-1-1 about the robbery within, at most, 10 minutes of the incident and identified defendant as the offender within 20 to 30 minutes after the offense occurred. The police officers testified that they proceeded to defendant's address after receiving it from the I CLEAR system, showing that they did not engage in deliberate or unjustified delay. The evidence also shows that the police had a reasonable belief that defendant was armed based on Officer Hammermeister's testimony that "the ticket came out that there were weapons" and Officer Calle's testimony that he heard that there was an armed robbery. Jared also testified that, when he called 9-1-1, he reported that he had been robbed at gunpoint. A robbery alleged to have been committed with two guns and a knife is unquestionably a grave offense. See *In re D.W.*, 341 Ill. App. 3d 517, 529 (2003) (observing that "[g]rave crimes are usually first degree murder, armed robbery and assault"); *People v. Wimbley*, 314 Ill. App. 3d 18, 29 (2000) (noting that armed robbery, first degree murder, and assault have been considered grave crimes); see also *People v. Hollingsworth*, 120 Ill. App. 3d 177, 180 (1983) ("It is difficult to overestimate the coercive power of a deadly weapon; once its presence is indicated to the

victim, nothing more need be communicated to the victim in order to generate a sense of terror"); but see *People v. Glover-El*, 102 Ill. App. 3d 535, 540 (1981) (stating that although armed robbery "is a grave offense, the gravity of the offense does not of itself create an exigent circumstance"). Although Officer Staken did not specifically testify about how he entered the fenced-in backyard, no testimony was presented that the fence or gate was broken or damaged. Based on this testimony, the court could reasonably conclude his entry was peaceable. Finally, the police had probable cause to arrest defendant based on Jared's report of being robbed at gunpoint by defendant and identifying defendant as the offender by name. See *Payton*, 317 Ill. App. 3d at 913 ("Probable cause exists when the facts and circumstances known to the officer are sufficient to warrant a reasonable person in believing the defendant committed an offense").

¶ 44 As to the other factors, there was no evidence presented that defendant was likely to escape if not swiftly apprehended or that there was a "strong reason to believe" that defendant was, in fact, at the Natoma house. However, considering the circumstances as a whole, the trial court properly found exigent circumstances existed to justify the warrantless search of the backyard. "Indeed, as some courts have indicated, exigent circumstances may well exist where there is only a serious crime coupled with a reasonable possibility of imminent danger to life, serious damage to property, destruction of evidence, or the likelihood of flight." *People v. Yates*, 98 Ill. 2d 502, 516 (1983). Here, where the police were informed that defendant had recently committed an armed robbery and reasonably believed that defendant was still armed, Officer Staken's entry into defendant's backyard and his recovery of the iPhone were justified by the exigency of the situation.

¶ 45 We find guidance from the concept of proportionality articulated by this court in *People v. Morrow*, 104 Ill. App. 3d 995 (1982). In that case, two female victims reported that they were instructed at gunpoint to get into defendants' car, driven down an alley and into a garage, and

sexually assaulted. *Id.* at 997-98. The police drove with the victims, who described to them the garage, the car, and the offenders, and attempted to retrace the route taken by the defendants. *Id.* at 998-99. The victims eventually recognized the alley and then the garage where they had been taken. *Id.* "The yard in which the garage was located had a fence at the rear lot line" and one of the investigators went through the gate, into the yard. *Id.* at 999. The trial evidence failed to "establish whether the gate was open or closed." *Id.* The investigator looked into the garage through "the open service door" which was "on the side of the garage, facing a sidewalk that led from the rear gate to a house near the front of the lot." *Id.* Inside the garage, the investigator saw a car that matched the victims' description, then entered the garage and searched the car, which contained evidence corroborating the victims' report. *Id.* Ultimately, the defendants were both convicted of rape and acquitted of the other charges. *Id.* at 997.

¶ 46 On appeal, one of the defendants, Willie Morrow, argued that the warrantless search of his garage and car was unconstitutional. *Id.* at 1003. The appellate court disagreed:

> "The circumstances of the instant case compel us to focus on the 'reasonable' element of the 'reasonable expectation of privacy.' The enforceability of an individual's expectation of privacy has always been tempered by compelling necessity. [Citation.] While it is true that the case at bar does not demonstrate the sort of exigency presented by hot pursuit [citation] or a burning building [citation], we nevertheless believe that the overall situation must be taken into account. The police here, although not in hot pursuit, were certainly engaged in a 'warm' pursuit. [The victims], released by their abductors only a few hours earlier, had led the officers to what the victims believed was the scene of the

crime. If the two women were correct, the officers had an important new lead to follow. If the women were proved wrong in their identification of the garage, the police needed to know that fact as soon as possible in order to continue their investigation without delay. Under the circumstances, the most reasonable course of action was for one of the officers to venture about 20 feet into the yard and look through the open door.

If an intrusion into an individual's zone is of privacy is justified by exigency, the 'moderate' exigency of the instant case justified only the most petty intrusion. The entry into the yard through an unlocked (and possibly unclosed) gate was of such a character. We must stress the triviality of the first search: the service door was already open (a condition visible from the alley), the officers touched nothing (except possibly the gate), there was no intrusion on a dwelling and the search lasted only a few seconds. We cannot find that defendant Morrow's expectation of privacy could reasonably bar such a search.

We note that the concept of balancing an individual's rights against the exigencies of the situation is not novel. *People v. Abney*[, 81 Ill. 2d 159 (1980)], and the appellate court cases following it have elucidated the factors that establish exigency and excuse the requirement of a warrant for the arrest of a suspect in his home. These 'exigency factors' need only be satisfied on balance. [Citation.] Implicit in this schema is the premise that great

> necessity may justify a tumultuous warrantless entry, and 'moderate exigency' may justify only a limited or peaceable intrusion. [Citations.] We hold that the limited intrusion of the first search was justifiable and defendant Morrow's constitutional rights were not violated by that search." *Id.* at 1003-04.

The court, however, found that only the first search was justified. It then went on to find the second search, the search of the car's interior, was justified by "[n]either exigency nor any other exception to the warrant requirement." *Id.* at 1004.

¶ 47 Similarly here, the police were involved in a "warm" pursuit of defendant: the offense had occurred a short time before they arrived at defendant's house and they believed defendant to be armed. Even if the exigency in the present case was only moderate, it certainly justified Officer Staken's limited intrusion into the gated backyard. Although the evidence indicated that, unlike the gate in *Morrow*, the gate here was locked, it was not opaque, as evidenced by the photographs presented at trial; the expectation of privacy was minimized by the fact that the yard it enclosed was clearly visible from the alley. In addition, comparable to the *Morrow* court's finding that the search of the car's interior was improper, we agree with the trial court's determination here that the subsequent search of the Natoma house, a far greater intrusion of defendant's privacy, was unjustified by the circumstances of this case. *Id.* at 1004. Under the totality of the circumstances presented here, sufficient exigent circumstances existed to justify the warrantless search of the backyard.

¶ 48 We find the case defendant relies on to be distinguishable. See *People v. Davis*, 398 Ill. App. 3d 940 (2010). The defendant in *Davis* moved to suppress evidence "obtained as a result of the illegal [warrantless] entry into and search of [his] apartment." *Id.* at 941. At the hearing, a deputy testified that, according to the victim, the defendant, his girlfriend, and an unidentified

third person followed the victim in a car, cornered her, and attacked her through the windows of her vehicle. *Id.* The victim provided the deputy with the location of the girlfriend's apartment, and said that "one could go to [her] apartment at any time of day or night to purchase any sort of illegal drug, including cocaine." *Id.* at 942. When the police arrived, the door was locked and the girlfriend came outside. *Id.* The officers detained her and "entered the [apartment] staircase through the door, which an unknown individual had propped open with a newspaper, and proceeded upstairs to a common hallway shared by the two apartments located in the building." *Id.* The deputy stood outside the apartment and heard the defendant talking inside. He testified that the door then opened and the defendant attempted to flee but was detained and arrested four feet inside the threshold of the apartment. *Id.* at 942-43. Inside the apartment, the deputy saw a "digital scale with white powder on top of it" in the master bedroom. *Id.* When he informed the defendant's girlfriend of what he found, she consented to a search of the apartment, from which the police recovered and seized a handgun, the digital scale, the white powder which tested positive for cocaine, 100 additional grams of cocaine, cannabis, and two bottles of pills. *Id.* The trial court denied the motion to suppress. *Id.* at 946.

¶ 49 On appeal, the appellate court concluded that the evidence presented by the State at the suppression hearing did not support a finding of exigent circumstances "because it [did] not suggest an immediacy or real threat of current danger or likelihood of flight." *Id.* at 949. The court noted that although the battery "certainly involved a form of violence," "[n]othing in the record indicate[d] *** that this offense was particularly grave." *Id.* In addition, the court found no evidence showing that the defendant was armed, that the police believed the defendant was armed, that a weapon had been involved during the offense, or that the defendant was likely to flee unless he was swiftly apprehended. *Id.* Ultimately, the court found that despite the police not engaging in an unjustifiable delay, having probable cause to arrest the defendant and a reason to

believe the defendant was in the apartment, and entering the apartment peaceably, there was "no immediate and clear danger to the police or others" to justify a warrantless search. *Id.* at 950.

¶ 50 In contrast, here defendant was alleged to have been armed with two guns and a knife when he robbed Jared and the officers had information that weapons were involved in the offense. Moreover, armed robbery is recognized as a grave offense while the battery in *Davis* was not "particularly grave." *Id.* at 949. As we noted above, "each case must be decided on the basis of the facts presented." *Abney*, 81 Ill. 2d at 173. Based on the multitude of distinguishing factors between the present case and *Davis*, the result in *Davis* does not alter our conclusion that the trial court properly denied defendant's motion to suppress the iPhone.

¶ 51 B. Sufficiency of the Evidence

¶ 52 Defendant next contends that the evidence was insufficient to support his conviction for robbery beyond a reasonable doubt.

¶ 53 On a challenge to the sufficiency of the evidence, the standard of review is whether, after 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. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). The trier of fact has the responsibility to fairly resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts. *Id.* at 228. It is not the function of the reviewing court to retry the defendant and a reviewing court will not substitute its judgment for the trier of fact on issues of witness credibility or the weight of the evidence. *Siguenza-Brito*, 236 Ill. 2d at 224-25, 228. A conviction will only be reversed on appeal if the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 54 The evidence presented at trial was sufficient to sustain defendant's conviction for robbery. Robbery occurs when a person "knowingly takes property *** from the person or presence of another by the use of force or by threatening the imminent use of force." 720 ILCS 5/18-1(a) (West 2012). Here, Jared testified that defendant approached him on the street and "pulled a gun" on him then "snatched" Jared's mother's iPhone out of Jared's hand. Jared further testified that defendant demanded Jared's wallet, returned it, pointed a second gun at Jared, put one of the guns in his pocket, then pulled out a knife which he was "kind of waving [ ] about like trying to intimidate" Jared. Defendant then walked away with Jared's mother's iPhone. Jared testified that he knew defendant by name, had spent time with defendant and other friends, identified defendant by name to the police, and identified defendant, in person, as the person who had robbed him. Further supporting Jared's testimony, Officer Staken testified that shortly after he and Officer Hammermeister arrived at defendant's home, Officer Staken saw defendant throw an iPhone out of the second story window into the house's backyard. When the police showed Jared the iPhone, he identified it as his mother's iPhone. Finally, Detective Kischner testified that defendant told the detective that "he did take the guy's phone and that he threw it." This testimony, taken together and viewed in the light most favorable to the State, supports the conclusion that defendant knowingly took the iPhone from Jared by force or threat of imminent force. See *Hollingsworth*, 120 Ill. App. 3d at 180 (finding that the presence of a gun handle in the defendant's pants could have lead the victim to "plausibly conclude[ ] that the defendant carried a gun," and therefore supported a finding that the defendant threatened the imminent use of force when he took money from the victim).

¶ 55 We are cognizant of the discrepancies and inconsistencies in the testimony which defendant has focused on in his appeal. However, "[d]iscrepancies, omissions and bias go to the weight of the testimony to be evaluated by the trier of fact." *People v. Rodriguez*, 2012 IL App

(1st) 072758-B, ¶ 47. Moreover, in making these arguments, defendant is essentially asking us to reweigh the evidence, which is not our function upon review. *Siguenza-Brito*, 236 Ill. 2d at 224-25, 228. Our supreme court has explained:

> "[T]he mandate to consider all the evidence on review does not necessitate a point-by-point discussion of every piece of evidence as well as every possible inference that could be drawn therefrom. To engage in such an activity would effectively amount to a retrial on appeal, an improper task expressly inconsistent with past precedent. [Citation.] Indeed, this court has stated that even 'the trier of fact is not required to disregard inferences which flow normally from the evidence and to search out all possible explanations consistent with innocence and raise them to the level of reasonable doubt.' [Citation.] *** Accordingly, this court is not required to search out all possible explanations consistent with innocence or be satisfied beyond a reasonable doubt as to each link in the chain of circumstances." *People v. Wheeler*, 226 Ill. 2d 92, 117-18 (2007).

¶ 56 Two versions of what occurred on June 9, 2011, were presented at trial: the State's version that Jared was robbed by defendant and the version presented by defendant, supported by his parents' testimony, that defendant never left home that evening. The trial court was in the best position to determine witness credibility, weigh the evidence, and draw any reasonable inferences (*People v. Hernandez*, 319 Ill. App. 3d 520, 532-33 (2001)). It was aware of the inconsistencies and discrepancies presented by the testimony and was nonetheless persuaded by the State's version of events. The trial court was not obligated to accept the version from defendant's parents just because their version of events was not directly impeached. See *People v. Rouse*, 2014 IL App (1st) 121462, ¶ 46 (the "trier of fact is free to accept or reject as much or

as little of a witness's testimony as it likes" (internal quotation marks omitted)). 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." *Siguenza-Brito*, 235 Ill. 2d at 229.

¶ 57 Defendant claims that no reasonable person could accept Jared's testimony because Jared was a convicted felon, had a violation of probation charge pending against him, and admitted that, although he had not been promised anything in exchange for his testimony, he was hoping the State would not proceed with the charge. The case on which defendant primarily relies, *People v. Williams*, 65 Ill. 2d 258 (1976), is distinguishable as it involved the credibility of testimony by an accomplice, not a victim as Jared was in the present case. See *id.* at 259, 267. More significantly, the witness in *Williams* had actually received a promise from the State in exchange for his testimony and "he admitted to making several material statements under oath on prior occasions which were patently inconsistent with his testimony at trial." *Id.* at 267. Here, in contrast, Jared simply admitted his hope that the State would be lenient in exchange for his testimony and never admitted to making previous statements under oath that were "patently inconsistent" with his testimony. Furthermore, the trial court was aware of Jared's potential biases and the inconsistencies in his testimony, but noted that he was "unshaken in his testimony, despite a very vigorous cross-examination." Although defendant's concerns certainly affect the weight to be given to Jared's testimony (*Rodriguez*, 2012 IL App (1st) 072758-B, ¶ 47), they do not nullify it.

¶ 58 Defendant also calls into question the veracity of Detective Kischner's testimony that defendant admitted that he had taken "the guy's phone and that he threw it," because the statement was not memorialized. According to defendant, it is unlikely the detective would remember the statement two years later and that "only one reasonable inference can be drawn from Kischner's failure to memorialize [defendant's] statement—that [defendant] never made

such a statement." Defendant does not offer support for his conclusion beyond his opinion. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (stating that the argument section of a party's brief "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities *** relied on"). Moreover, we are unconvinced that the inference he presents is the only reasonable one. An equally reasonable inference to draw from Detective Kischner's testimony is that he did recall defendant saying he had taken a phone and thrown it. See *Siguenza-Brito*, 235 Ill. 2d at 229 (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"). No testimony was presented to the contrary and the trial court, being in the best position to make credibility determinations, accepted the detective's testimony. We see no reason to question this conclusion. Under the circumstances presented in this case, taking the evidence as a whole and viewing it in the light most favorable to the State, as we must, we cannot say that evidence was so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt.

¶ 59 C. Fines and Fees

¶ 60 Finally, defendant claims that this court should vacate two fees he was assessed after his conviction: (1) a $250 DNA analysis fee (see 735 ILCS 5/5-4-3 (West 2012)); and (2) a $60 State's attorney fee (see 55 ILCS 5/4-2002.1(a) (West 2012)).

¶ 61 1. The DNA Analysis Fee

¶ 62 Section 5-4-3(a) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-4-3(a) (West 2012)) requires that any person convicted of certain offenses "submit specimens of blood, saliva, or tissue to the Illinois Department of State Police." In addition, that person is required to pay a $250 DNA analysis fee. 730 ILCS 5/5-4-3(j) (West 2012). Our supreme court has held that the DNA analysis fee may not be imposed on a defendant where that defendant has already

submitted a DNA sample for "entry in the DNA database maintained by the Illinois Department of State Police" pursuant to a prior conviction. *People v. Marshall*, 242 Ill. 2d 285, 297, 301-02 (2011). Accordingly, a reviewing court will vacate the DNA analysis fee where the defendant can show that he was convicted of an offense that required payment of the DNA analysis fee after the fee requirement went into effect on January 1, 1998. See *People v. Leach*, 2011 IL App (1st) 090339, ¶ 38 (vacating the DNA analysis fee because the record showed "that [the] defendant was convicted of at least one previous felony after section 5-4-3 became law").

¶ 63 Defendant claims that he was improperly assessed the $250 DNA analysis fee because he was previously convicted of an offense that required submission of a DNA sample and payment of the fee. The State concedes that the fee was improperly assessed against defendant. Although both parties agree that defendant is not required to pay the fee, they both rely on convictions of defendant that do not support their conclusion. Defendant relies on his 2011 conviction for possession of cannabis pursuant to section 4(b) of the Cannabis Control Act (720 ILCS 550/4(b) (West 2010)), a misdemeanor conviction that would not have required him to submit a DNA sample or pay the DNA analysis fee. See 730 ILCS 5/5-4-3(a), (j) (West 2010). In contrast, the State relies on defendant's November 2013 conviction for robbery, his conviction in the present case. However, if defendant's first qualifying conviction was the present conviction, he would then be required to submit his DNA sample and pay the contested fee. See *id.*; see also *Marshall*, 242 Ill. 2d at 303 (holding that trial courts may "order the taking, analysis and indexing of a qualifying offender's DNA, and the payment of the analysis fee only where that defendant is not currently registered in the DNA database").

¶ 64 Nonetheless, the record shows defendant was adjudicated delinquent of robbery in December 2008 and was sentenced to 29 days in juvenile detention and five years' probation, a finding and sentence which would have required him to submit a DNA sample and pay the DNA

analysis fee. See 720 ILCS 5/18-1 (West 2008) (outlining the offense of robbery); 730 ILCS 5/5-4-3(a)(1.1) (West 2008) (requiring a person found guilty under the Juvenile Court Act of 1987[2] of certain qualifying offenses on or after January 1, 1997, to submit a DNA sample)); 730 ILCS 5/5-4-3(g)(1.5) (West 2008) (listing section 18-1 of the Criminal Code of 1961,[3] the robbery statute, as a qualifying offense for a DNA sample submission); 730 ILCS 5/5-4-3(j) (West 2008) (requiring any person who is required to submit a DNA sample to also pay an analysis fee). Because defendant was previously adjudicated delinquent in connection with an offense that would have required him to submit a DNA sample and pay the fee,[4] we vacate the $250 DNA analysis fee assessed in the present case.

¶ 65 2. The State's Attorney Fee

¶ 66 Section 4-2002.1(a) of the Counties Code (55 ILCS 5/4-2002.1(a) (West 2012)) provides, in pertinent part, that State's attorneys "shall be entitled" to various fees, including:

> "For each conviction in prosecutions on indictments for first degree murder, second degree murder, involuntary manslaughter, criminal sexual assault, aggravated criminal sexual assault, aggravated criminal sexual abuse, kidnapping, arson and forgery, $60. All other cases punishable by imprisonment in the penitentiary, $60."

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[2] 705 ILCS 405/1-1 *et seq.* (West 2008).

[3] 720 ILCS 5/18-1 (West 2008).

[4] The record shows that, before trial, defendant's trial counsel notified the court that defendant's adjudication of juvenile delinquency was vacated by the appellate court (see *In re B.D.*, No. 1-09-0013 (2010) (unpublished order pursuant to Illinois Supreme Court Rule 23)), and that the State had then chosen not to re-prosecute the case. Pursuant to the statute, however, defendant was required to submit a DNA sample and pay the analysis fee regardless of the subsequent vacation of the adjudication. 730 ILCS 5/5-4-3(a), (j) (West 2008). This fact does not alter our analysis where there is no indication on the record that defendant subsequently expunged his DNA sample from the system (see 730 ILCS 5/5-4-3(f-1) (West 2008) (detailing the procedure required to expunge a DNA record from the DNA identification index)) or was refunded the fee.

¶ 67 The parties dispute the plain meaning of the statute. Defendant argues that he was improperly assessed a fee because only a defendant who was charged by a grand jury indictment must pay the fee, while he was charged by information. The State claims that the fee applies to any case involving an offense punishable by imprisonment in the penitentiary. "As this is a question of statutory interpretation and does not involve disputed facts, our review is *de novo*." *People v. Beachem*, 229 Ill. 2d 237, 243 (2008).

¶ 68 "The primary objective of statutory interpretation is to ascertain and give effect to the intent of the legislature." *Id.* We begin by looking at the language of the statute, as it is the "surest and most reliable indicator of legislative intent." *Id.* We must construe a statute "as a whole and afford the language of the statute its plain and ordinary meaning" (*id.*), to "avoid rendering any part of it meaningless or superfluous" (*Marshall*, 242 Ill. 2d at 292). "In addition, where a statute is clear and unambiguous, courts cannot read into the statute limitations, exceptions, or other conditions not expressed by the legislature." *People v. Glisson*, 202 Ill. 2d 499, 505 (2002). "Only where the language of the statute is ambiguous may the court resort to other aids of statutory construction." *Id.* Accordingly, we turn to the language of the State's attorney fees statute.

¶ 69 The language of the statute is unambiguous and we accord it its plain meaning. The State is entitled to a $60 fee under two circumstances: (1) when a defendant is charged by a grand jury indictment for one of the nine offenses enumerated in the first sentence; or (2) in all other cases for offenses punishable by imprisonment in the penitentiary, regardless of how the charges were brought. We reject defendant's suggestion that we import the requirement of an indictment from the first to the second sentence, as this would render the first sentence superfluous. *Marshall*, 242 Ill. 2d at 292. If the legislature intended for the second sentence to apply only in cases where the defendant was charged by indictment, it could have easily added language to make such an

intention clear, and we will not read a limitation into a statute when it is not there. *Glisson*, 202 Ill. 2d at 505. In the present case, because defendant was charged with an offense that was punishable by imprisonment in the penitentiary, he was properly assessed the $60 State's attorney fee. Accordingly, we decline to vacate the fee.

¶ 70 CONCLUSION

¶ 71 For the foregoing reasons, we vacate the $250 DNA analysis fee and affirm the judgment of the trial court in all other respects.

¶ 72 Affirmed in part; vacated in part.