FIFTH DIVISION
August 19, 2016

No. 1-14-1496

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. 12 CR 9119
	)	
ANGEL LAURENZANA,	)	Honorable
	)	James M. Obbish,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes and Justice Burke concurred in the judgment.

O R D E R

¶ 1 *Held*: We affirm the judgment of the circuit court where the State proved beyond a reasonable doubt that defendant did not act in self-defense; and modify the fines and fees order.

¶ 2 Following a bench trial, defendant Angel Laurenzana was convicted of second degree murder and sentenced to seven years' imprisonment. On appeal, defendant contends the evidence was insufficient to find him guilty beyond a reasonable doubt where the State did not sustain its

burden to disprove his affirmative defense of self-defense. Defendant also challenges certain pecuniary penalties assessed against him. We affirm as modified.

¶ 3 Defendant was charged with two counts of first degree murder, including Count 2 which alleged that he without lawful justification stabbed and killed David Lopez with a knife, knowing that such act created a strong probability of death or great bodily harm to Lopez. 720 ILCS 5/9-1(a)(2) (West 2010). Defendant asserted the affirmative defense of self-defense.

¶ 4 At trial, Susy Robles, the mother of defendant's then 10-month-old son, testified that her sister, Yesenia, drove her, her son, and defendant to Susy's mother's apartment at 2700 South Spaulding Avenue in Chicago during the early morning hours of June 23, 2011. The apartment was located in territory controlled by the Latin Kings street gang, which was a rival of defendant's gang, the Two-Sixers. When they arrived, Susy saw Lopez approaching them on a bike. Susy had seen Lopez with the Latin Kings before, and knew his nickname "DK" meant that he was a "disciple killing another gang." Susy entered the apartment with her son and defendant. She heard Lopez screaming for her to return outside and she was worried other Latin Kings might arrive. Susy told defendant to come outside with her, and, although defendant was reluctant, she forced him to go. Defendant took a knife with him, which he hid behind his back.

¶ 5 Susy further testified that when she returned outside with defendant, Lopez told her that he was going to kill her, her baby and defendant that night, and that he was going to burn her house down. She never called the police and continued talking to Lopez, while defendant was about 20 feet away from Susy. Susy tried to calm Lopez down, telling him that defendant was a Latin King from another neighborhood. Lopez pushed Susy, who hit her head on the side of the building and fell to the ground. Defendant, who had sore ribs from being hit by a car the week prior, and Lopez started arguing and pushing each other. Susy never saw a weapon in Lopez's

hand, but he was reaching for his pocket as if he was trying to get a weapon. Defendant swung Lopez around in order to prevent him from accessing his pocket. After Lopez put his hand in his pocket, defendant took out the knife and stabbed Lopez. Lopez ran away and defendant gave Susy the shirt he had across his shoulder, which had blood on it. Susy later burned the shirt. Defendant entered Yesenia's car and they drove away from the scene. Yesenia called the police later that morning, and defendant subsequently relocated to Texas.

¶ 6 Manuela Robles, Susy's mother, testified that she lived in an apartment at 2700 South Spalding Avenue on the date in question. An argument outside woke her up at approximately 1:30 a.m., and, when she looked out of her window, she saw defendant and Lopez pushing each other. Manuela went outside and stood next to Yesenia. Manuela never saw Lopez with a weapon and went back upstairs to her apartment. Following the altercation, Manuela saw Susy holding a bloody shirt.

¶ 7 Yesenia Rivera, Susy's sister, testified that she gave Susy, Susy's son, and defendant a ride to 2700 South Spaulding Avenue during the early morning of June 23, 2011. Yesenia, who was outside, saw Lopez riding his bike on the street. Susy and defendant, who had entered the apartment, returned outside and an argument ensued between Susy, defendant, and Lopez. Lopez told them "somebody's going to die tonight." Yesenia never saw Lopez with a weapon. After Lopez pushed Susy, defendant and Lopez moved closer to a nearby alley, which was out of Yesenia's sight. Approximately 10 minutes later, defendant ran toward her and told her to take him home. She dropped defendant off at a gas station and called the police.

¶ 8 Maria Ayala testified that at approximately 1:35 a.m. on June 23, 2011, she heard two people arguing near Christiana and Spaulding Avenues. She then saw Lopez running toward her

holding his stomach and collapsing. A car pulled up and its occupants placed Lopez inside before driving away.

¶ 9 Daniel Rodriguez, a member of the Latin Kings, testified that he received a phone call from Lopez on January 23, 2011 at about 1:30 a.m. Lopez stated that a "shady" man was outside with two girls. Rodriguez arrived at 27th Street and Christiana Avenue where he found Lopez bleeding. He placed Lopez inside his car and drove him to the hospital.

¶ 10 The parties entered into several stipulations, including that Dr. Hilary McElligot would testify that she discovered seven stab wounds, two puncture wounds, two incised wounds, three bruises and five abrasions after performing an autopsy on the body of Lopez. In particular, six stab wounds were inflicted to Lopez's "back area." She concluded that Lopez died of multiple stab wounds and that the manner of death was homicide.

¶ 11 Detectives Mary Nanniga and Greg Jacobson would testify that they went to the hospital and inspected the garments worn by Lopez on the date of the incident. They observed Lopez's bloody clothes and that he was in possession of a set of keys and a cigar. Detective Ryan Miller would testify that he was also at the hospital and recovered a cell phone, a State ID, and a dollar bill that were in Lopez's possession. No weapons were recovered.

¶ 12 After the State rested, defendant testified in his case-in-chief that he and Susy were kicked out of his mother's house on June 23, 2011. Yesenia picked them up and drove to Susy's mother's apartment, which was in Latin Kings territory. Defendant did not want to go there as he was a member of the Two-Sixer street gang, but relented when Susy pleaded. When they arrived at Susy's mother's apartment and exited the car, defendant saw Lopez riding his bike. He was "saying gang slogans" and "representing" the Latin Kings. Defendant and Susy entered the apartment. While defendant was inside, he heard yelling and arguing. Susy told defendant to go

outside and tell Lopez that he was a member of the Latin Kings from a different neighborhood. Defendant was reluctant because he was afraid Lopez had a weapon or that other Latin Kings were nearby, particularly where he saw Lopez on the phone. However, defendant complied when Susy insisted, placing a knife in his pocket for protection.

¶ 13 When defendant was outside, he tried to convince Lopez he was a Latin King. Lopez asked defendant if he wanted to smoke, and defendant replied negatively, stating that he wanted to return to the apartment. Lopez told defendant to wait and entered a nearby alley. He returned holding his waistband, and defendant believed that Lopez was possibly armed. Lopez told defendant to reveal a tattoo particular to Latin King members, or he would "shoot [him] where [he] stand[s]." Defendant replied that he had just become a Latin King and did not yet have the tattoo. Lopez repeated that he would kill defendant, Susy, and their son, specifically stating, "someone [is] going to f*cking die tonight." Susy approached Lopez repeating that defendant was a Latin King. Lopez told defendant to enter the alley with him, but defendant refused because he thought Lopez would shoot him.

¶ 14 Lopez then pushed Susy against the apartment building and punched defendant in the face. Defendant held Lopez to prevent him from removing anything from his waistband. Lopez used his knee and elbow to strike defendant, and repeated that defendant was going to die tonight. Defendant stated that he had sore ribs, trouble breathing, and a swollen hand from being hit by a car a few days before the incident. Defendant reached for his knife because he was "going down," Lopez had knocked the wind out of him, and he believed Lopez had a gun. Defendant swung the knife and Lopez knocked it out of his hand. The two men struggled over the knife, but defendant recovered it and stabbed Lopez seven times. The two men separated and ran in opposite directions. After the incident, Yesenia drove defendant away from the scene

because he was afraid more Latin Kings were on route. Defendant threw the knife out of the car window. A few weeks later, the Latin Kings killed one of defendant's friends, and defendant moved to Texas. Defendant returned to Chicago and was arrested by police in April of 2012.

¶ 15 On cross-examination, defendant testified that he spoke to a detective after being advised of his *Miranda* rights on April 19, 2012. He did not recall telling the detective that Lopez said he would shoot defendant where he stood, that Lopez was going to kill defendant and his family, that Lopez asked him if he had a Latin King tattoo, or that Lopez "knocked the wind out of him." He also stated that he did not tell the detective that he thought Lopez would shoot him in an alley. However, defendant testified that he did tell a detective that Lopez said he was going to kill his "shorty," that he thought Lopez had a gun, that he hid behind a car because he thought Lopez had a gun, that Lopez punched him before he stabbed Lopez, that he "hugged" Lopez, and that he gestured to show the detective where he stabbed Lopez.

¶ 16 The parties also stipulated that defendant received medical treatment on June 19, 2011, for injuries he sustained after he was hit by a car.

¶ 17 In rebuttal, the State played a portion of the videotaped interview Detective Pietryla conducted with defendant after he was arrested. The portion of the video played in court showed defendant telling the detective that he tried to convince Lopez that he was a fellow member of the Latin Kings gang. He also stated that Lopez entered a nearby alley and when he returned he punched defendant. The two men struggled and defendant was in pain from being hit. Defendant thought Lopez was trying to reach for something but did not see a weapon. Defendant pulled out his knife and stabbed Lopez. Lopez fled and defendant was driven to a nearby street corner.

¶ 18 Following closing arguments, the trial court found defendant guilty of the lesser-included offense of second degree murder, stating that defendant made a conscious decision to arm

himself with a knife before returning outside, knowing there was a potential for violence, other gang members might have been on route, and Lopez might have been armed. The court also stated it was clear that the only deadly weapon present at the scene was defendant's knife as no evidence was presented that Lopez was armed. The court further found that this was a "classic case" of second degree murder in that defendant thought he was acting in self-defense, but his belief was unreasonable in light of the fact that he brought a deadly weapon and was never in danger of death or great bodily harm.

¶ 19 Defendant filed a motion for a new trial, which the trial court denied. In doing so, the court stated that Lopez threatened defendant, but defendant was not acting reasonably to resolve the matter when he stabbed Lopez. The court sentenced defendant to seven years' imprisonment and assessed $624 in fines and fees against him.

¶ 20 On appeal, defendant contends that the State failed to prove him guilty of second degree murder beyond a reasonable doubt. In particular, defendant contends that the State failed to disprove his affirmative defense of self-defense where he had a reasonable belief that his life was in imminent danger as Lopez was the initial aggressor and repeatedly threatened to kill defendant and his family.

¶ 21 When a defendant challenges the sufficiency of the evidence to sustain a conviction, the standard of review is 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. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). It is the responsibility of the trier of fact to resolve any inconsistencies and conflicts in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A

criminal conviction will be reversed only if the evidence is so unsatisfactory as to raise a reasonable doubt of guilt. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001).

¶ 22 In order to raise the affirmative defense of self-defense, the defendant must establish some evidence of each of the following factors:

> " ' (1) force is threatened against a person; (2) the person threatened is not the aggressor; (3) the danger of harm was imminent; (4) the threatened force was unlawful; (5) he actually and subjectively believed a danger existed which required the use of the force applied; and (6) his beliefs were objectively reasonable.' " *People v. Spiller*, 2016 IL App (1st) 133389, ¶ 22 (citing *People v. Jeffries*, 164 Ill. 2d 104, 127-28 (1995)).

Self-defense is an affirmative defense, and, once it is raised, the State must prove, beyond a reasonable doubt, the elements of the charged offense and that the defendant did not act in self-defense. *People v. Lee*, 213 Ill. 2d 218, 224 (2004). Whether a defendant acted in self-defense is a question for the trier of fact to determine. *People v. Felella*, 131 Ill. 2d 525, 533 (1989).

¶ 23 Imperfect self-defense is a form of second degree murder. *Jeffries*, 164 Ill. 2d at 113. It occurs when a defendant commits first degree murder and, at the time of the killing, believes the circumstances to be such that, if they existed, would justify or exonerate the killing, but his belief that he was acting in self-defense is objectively unreasonable. 720 ILCS 5/9-2(a)(2) (West 2010); *Jeffries*, 164 Ill. 2d at 113; *People v. Harmon*, 2015 IL App (1st) 122345, ¶ 84.

¶ 24 Here, viewing the evidence in the light most favorable to the State, we find ample evidence supports the trial court's finding that defendant's belief that he was acting in self-defense was unreasonable. The record shows that when defendant arrived at Susy's mother's apartment, he saw Lopez riding his bike toward him and Susy and threatening them. Defendant entered the apartment, but returned outside shortly thereafter with a knife secreted on his person.

Lopez pushed Susy and pushed and punched defendant. A struggle ensued between Lopez and defendant, and while Susy and defendant testified that they saw Lopez reaching for his pocket or waistband leading them to believe he was armed, Lopez never revealed a weapon. In fact, no weapon was recovered from Lopez at the hospital. The fight concluded when defendant stabbed Lopez with his knife seven times, including six stab wounds to his back. Although Lopez threatened defendant and his family, and defendant testified that he felt he was "going down," nothing in the record shows that Lopez was capable of inflicting serious bodily harm on defendant. See *People v. Hawkins*, 296 Ill. App. 3d 830, 837 (1998) (stating that while the law does not require the aggressor to be armed for self-defense to be justified, "it must appear that the aggressor is capable of inflicting serious bodily harm without the use of a deadly weapon, and is intending to do so").

¶ 25 Moreover, defendant was impeached, at least in part, by his testimony on cross-examination that he could not recall whether he told a detective that Lopez said he would shoot defendant where he stood, that Lopez was going to kill defendant and his family, that Lopez asked him if he had a Latin King tattoo, or that Lopez "knocked the wind out of him." It is also noteworthy that defendant fled to Texas and discarded the knife and bloody shirt, which are actions that are inconsistent with a defense of self-defense. See *Harmon*, 2015 IL App (1st) 122345, ¶ 59 (stating that evidence of flight and discarding a weapon are circumstantial evidence refuting that the defendant acted in self-defense); *People v. Wilburn*, 263 Ill. App. 3d 170, 178-79 (1994) (the defendant's claim that she acted in self-defense was belied by her actions where she fled from the scene, instructed her friend not to say anything, and disposed of the murder weapon).

¶ 26 Nevertheless, defendant maintains that his belief that the use of deadly force against Lopez was reasonable where Lopez threatened to kill him and his family, other Latin King gang members were on their way to the scene, and Lopez reached for his pocket numerous times, which signaled that he might be armed.

¶ 27 However, Lopez's threats do not show that defendant's life was in imminent danger. "Imminent" is defined as reasonably probable, not merely possible, and refers not to future threats but to an immediate one. 720 ILCS 5/7-1 (West 2010); *People v. Robinson*, 375 Ill. App. 3d 320, 336 (2007). In addition, mere threats of personal injury or death made by abusive or foul language do not justify taking the life of the person making the threats when he is doing nothing to execute them. *People v. Lewis*, 2015 IL App (1st) 122411, ¶ 63 (citing *Felella*, 131 Ill. 2d at 534). In his briefs on appeal, defendant makes much of the fact that Lopez threatened to harm him and his family "that night." However, the record is void of any indication that defendant's use of the phrase "that night" showed his intent to make a threat of immediate and not future harm, particularly where he never brandished a weapon or attempted to execute his threats. Furthermore, the fact that Lopez's fellow gang members arrived at the scene shortly *after* Lopez was stabbed, does not show that defendant's life was in imminent danger *before or during* the altercation. Most importantly, in arguing that his life was in imminent danger and that he had a reasonable belief that Lopez was armed, defendant is essentially requesting that we reweigh the evidence, which we decline to do in light of the fact that the evidence was not so unsatisfactory as to raise a reasonable doubt of guilt. See *People v. Balaj*, 265 Ill. App. 3d 1070, 1075 (1994) (stating that it was not this court's right to substitute our judgment for the trial court regarding whether the defendant acted in self-defense). We thus find that the State proved beyond a reasonable doubt that defendant was not acting in self-defense.

¶ 28 Defendant next contends that certain pecuniary penalties assessed against him by the trial court are actually fines, and, as he spent time in custody before sentencing, he is entitled to a $5 per-day custody credit to offset them pursuant to section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2014)). The assessments at issue are the $50 court system assessment (55 ILCS 5/5-1101(c) (West 2014)), $15 State Police operations assessment (705 ILCS 105/27.3a(1.5) (West 2014)), $2 State's Attorney records automation assessment (55 ILCS 5/4-2002.1(c) (West 2014)), and the $2 Public Defender records automation assessment (55 ILCS 5/3-4012 (West 2014)).

¶ 29 Defendant failed to raise the propriety of these assessments in the trial court, but argues that a fines and fees order not authorized by statute is void and may be challenged at any time. However, in light of *People v. Castleberry*, 2015 IL 116916, ¶ 19, the void sentencing rule no longer applies. Nevertheless, we may modify a fines and fees order without remand pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), which states that "[o]n appeal the reviewing court may *** modify the judgment or order from which the appeal is taken." See *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 68 (ordering the clerk of the circuit court to correct fines and fees order without remand). We review the propriety of a trial court's imposition of fines and fees *de novo*. *Id*. ¶ 60.

¶ 30 Defendant maintains, and the State correctly concedes, that his $50 court system assessment and $15 State Police operations assessment are both fines subject to offset. Despite their statutory label as fees, the court system and State Police operations assessments are both fines because they are not intended to compensate the State for the costs of prosecuting the defendant. See *People v. Reed*, 2016 IL App (1st) 140498, ¶ 15 (court system assessment is a fine); *People v. Moore*, 2014 IL App (1st) 112592-B, ¶ 46 (State Police operations assessment is

a fine). Accordingly, as defendant spent a total of 736 days in custody prior to the imposition of his sentence, he was entitled to a credit of $3,680, thus satisfying the $50 and $15 charges.

¶ 31 Defendant finally argues that his $2 State's Attorney records automation assessment and $2 Public Defender records automation assessment are also fines. However, this court has rejected the identical argument made by defendant in the instant case. *Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65 (State's Attorney and Public Defender records automation assessments are fees) (citing *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30). We see no reason to depart from the reasoning of *Bowen* and *Rogers*, and similarly conclude that the State's Attorney Records automation and Public Defender records automation assessments are compensatory fees and, therefore, may not be offset by defendant's presentence custody credit.

¶ 32 For the foregoing reasons, we order the clerk of the circuit court to correct the fines, fees, and costs order to reflect that defendant is entitled to a $5 per-day presentence custody credit to offset the $50 court system assessment and $15 State Police operations assessment. We affirm the judgment of the trial court in all other respects.

¶ 33 Affirmed as modified.