2017 IL App (1st) 143530-U

THIRD DIVISION
March 31, 2017

No. 1-14-3530

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 13CR15459
	)	
DARION GIBBS,	)	The Honorable
	)	Clayton J. Crane,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justice Lavin concurred in the judgment.
Justice Cobbs specially concurred.

ORDER

¶ 1 Held: Trial court affirmed where unsentenced, merged conviction was not properly before this court, and trial counsel was not ineffective for failing to file a motion challenging defendant's arrest where such motion would have not have been successful. Trial court affirmed; fines and fees modified.

¶ 2 After a bench trial, defendant Darion Gibbs was found guilty of vehicular hijacking and aggravated unlawful restraint. At sentencing, the trial court merged the aggravated unlawful

restraint conviction with his aggravated vehicular hijacking conviction, and sentenced defendant to five years and six months' incarceration. On appeal, defendant contends: (1) the State failed to prove him guilty of aggravated unlawful restraint; and (2) trial counsel provided ineffective assistance by failing to file a motion to suppress challenging the constitutionality of the traffic stop which led to defendant's arrest. Defendant also challenges various fines and fees levied against him. For the following reasons, we affirm as modified.

¶ 3 I. BACKGROUND

¶ 4 In August 2013, defendant was charged with one count of aggravated vehicular hijacking and one count of aggravated unlawful restraint. Specifically, as to aggravated vehicular hijacking, he was charged:

> "[Defendant] committed the offense of aggravated vehicular hijacking in that he, knowingly took a motor vehicle, to wit: 2002 Oldsmobile, from the person or immediate presence of Lanel Thompson, by the use of force or by threatening the imminent use of force, and he carried on or about his person, or was otherwise armed with a firearm, in violation of Chapter 720 Act 5 Section 18-4(a)(4), of the Illinois Compiled Statutes * * *."

As to the aggravated unlawful restraint charge, he was charged:

> "[Defendant] committed the offense of aggravated unlawful restraint in that he, knowingly without legal authority detained Lanel Thompson, while using a deadly weapon, to wit: a firearm, in violation of Chapter 720 Act 5 Section 10-3.1 of the Illinois Compiled Statutes * * *."

¶ 5 At trial, complaining witness Lanell Thompson testified that, a few days before July 14, 2013, he purchased a 2002 Oldsmobile Silhouette minivan for $1900 from a friend in Indiana. Thompson put Illinois license plates on both the front and back of the van.

¶ 6 In the early morning of July 14, 2013, Thompson was near 7258 South Lowe Avenue in Chicago, dropping a friend off after a party. After his friend went inside the house on Lowe Avenue, Thompson sat in the van for a few minutes, waiting for the friend to return.

¶ 7 While he was in the parked van listening to the radio with the windows partially open, he noticed four men approaching the vehicle. Two men approached on the driver's side and two men approached on the passenger's side. One of the men approaching on the driver's side had a t-shirt covering his face. When he noticed the man with the covered face, Thompson tried to grab his keys from the ignition. The keychain broke, leaving his van key in the vehicle ignition. He got out of the car and the man with the t-shirt covering his face, along with defendant, confronted him. Thompson identified defendant, who did not have his face covered during this episode, in court as one of the men who confronted him. Thompson testified the man with his face covered pulled a gun, pointed it at him, and said, "Let us get this." Thompson began backing away. He explained to the court that he backed away because "I'm not going to lose my life over a car." As Thompson backed up, he saw defendant, whom he again identified in court, get in the driver's side of the van. The armed man walked around to the passenger side and got in. The men then said, "Let's peel it up," which Thompson explained meant to steal the car. Thompson heard the car start up. The car came straight toward Thompson, and when Thompson jumped out of the way, he saw defendant was driving. Thompson called the police.

¶ 8 At trial, Thompson testified he neither knew defendant nor gave him or anybody else permission to drive away with his car. He also testified he would not turn over possession of his van for $40 or $50.

¶ 9 When the police eventually returned Thompson's van, there were Indiana license plates on it rather than Thompson's Illinois plates, and a spare tire on the rear driver's side.

¶ 10 Thompson testified that, while he was at the police station, he viewed a photograph of a lineup and did not identify anyone. At trial, he saw the same photograph and said he did recognize one person, but did not identify who that person was. Also at the police station, he viewed a second photograph of a lineup. He identified defendant in that lineup.

¶ 11 Chicago Police Officer Aloysius Reeves testified that, at approximately 8:40 a.m. on July 16, 2013, he was on-duty, working alone near 1934 West 57th Street. He was in uniform and driving a marked police vehicle. He noticed a minivan parked in an alley at 5732 West Winchester with Indiana plates. He identified a photograph of Thompson's van as the one he saw in the alleyway. He testified "The vehicle was parked in the alley at the address mentioned. And I ran the plates." When asked what information he received regarding the Indiana plates, he said, "It came back no information found." After receiving the "no information" report, Officer Reeves followed the vehicle northbound out of the alley and curbed the vehicle nearby at 57th and Winchester. He called for backup and then approached the driver on foot. Officer Reeves identified defendant in open court as the driver of the van he curbed. Another man, Zachary Hill, was sitting in the passenger seat.

¶ 12 Upon approaching the vehicle, Officer Reeves requested defendant's driver's license and proof of insurance. Defendant was unable to provide a driver's license. Officer Reeves asked defendant to exit the vehicle, defendant did so, and Officer Reeves took defendant into custody.

Officer Reeves then noticed an Illinois license plate in the backseat of the minivan within plain view. Officer Reeves called in the Illinois license plate number and discovered that it was "involved in a vehicle car jacking" on July 14.

¶ 13 Officer Reeves then took both defendant and Hill to the police station. He had the vehicle impounded, along with both the Illinois and Indiana license plates. No weapons were found in the vehicle.

¶ 14 Following the testimony by Officer Reeves, which took place June 10, 2014, the trial was continued until July 23, 2014, due to the unavailability of the next witness, Chicago Police Detective Murphy. On that date, however, the trial was again continued until September 12, 2014, because witnesses were not present. The trial resumed on September 12, 2014. On that day, the state mistakenly called Officer Reeves to testify again. Officer Reeves did so, the State tendered the witness, and the Public Defender had no questions on cross-examination. Then, the parties asked for a short recess and came back on record to announce that Officer Reeves had been called in error. The court stated:

> "THE COURT: The last witness that testified in this case, Officer Reeves, testified to the identical thing on June the 10th, and there was cross-examination at that time, a series of five questions."

The court then struck Officer Reeves' second testimony from the record, stating:

> "THE COURT: [Officer Reeves'] testimony from today is stricken."

The State rested. Defense counsel made a motion for a directed finding, which the court denied.

¶ 15 Defendant testified in his own defense that, on July 13, 2014, he rented a minivan from a man named Leonard Thomas at the intersection of 72nd Street and Green. He identified the complaining witness, Lanell Thompson, as the man from whom he rented the van.

¶ 16 Defendant explained that he and Zachary Hill were standing on the street corner along with two other men at approximately 1:00 a.m., when Thompson[1] pulled alongside in a red minivan. Thompson stopped at the nearby stop sign and asked them if they knew anybody who wanted to rent a van. Defendant testified Thompson wanted to trade crack cocaine for the van, but defendant gave him $40 instead. Defendant gave Thompson his telephone number, and Thompson "was to call [defendant] the day I was suppose to give his car back." Defendant explained he was supposed to return the car in two days, but Thompson never called defendant. Defendant denied he used a gun to obtain the vehicle. He also denied having switched license plates. He testified he never noticed what plates were on the vehicle at the time he rented it, and did not see the extra set of plates in the back of the van.

¶ 17 Regarding his arrest, defendant testified that he and Hill were sitting in the van, parked in an alley behind 57th and Winchester Avenue on July 16, 2014, when he noticed a police officer parked two houses away. Defendant decided to pull out of the alleyway. Defendant testified that the police officer followed him when he pulled out of the alley, and eventually curbed him.

¶ 18 The officer approached the van and requested defendant's driver's license. Defendant testified he gave the officer his state I.D. card instead, because he did not have a driver's license. Defendant testified that the officer asked him to step out of the vehicle, and then placed both him and Hill under arrest. Defendant saw the officer search the van before taking defendant and Hill to the police station.

¶ 19 The defense rested.

[1] To be clear, defendant identified complaining witness Lanell Thompson as the man he knew to be Leonard Thomas. Throughout his testimony, defendant refers to this man as Leonard Thomas. For clarity for the reader, we refer to this man as Thompson herein.

¶ 20 The parties then stipulated that defendant was previously convicted of the offense of burglary under case number 12 C 660759 on October 11, 2012.

¶ 21 In rebuttal, the State called Hill, who testified he had known defendant for three years and was with defendant on July 16, 2013. The day before, Hill was at a party at 72nd and Peoria when defendant arrived in a red van along with some women. Hill and defendant drank together through the night, eventually sleeping in the red van. Hill did not know the van was stolen; he assumed defendant had borrowed the van or come into some money with which to buy the van. Hill did not ask defendant how he got the van. Hill denied he had ever been approached about renting the van, and denied having been with defendant when defendant rented the van.

¶ 22 The next day, Hill and defendant were sitting in the van in an alley. Defendant drove away after a police officer pulled into the alley. The officer eventually arrested both Hill and defendant. Hill learned the van was stolen when he saw the police officer discover the other set of license plates in the van.

¶ 23 The State rested in rebuttal.

¶ 24 Following closing arguments, the court made credibility determinations:

> "THE COURT: The Court had the ability to observe the witnesses here in this case. There are two essential questions in this case. Was Mr. Thompson in fact hijacked and if he was hijacked was the defendant among the group that hijacked him.
>
> I've listened very closely to the testimony in this case. One of the difficulties is it's a commenced and continued trial. Officer Reeves testified twice in this trial. I shall not take into consideration anything Officer Reeves said today.

His testimony of June 10th, 90 days ago, is the testimony that this Court shall consider in this case.

Mr. Thompson indicated the process of his hijacking. He indicated that the defendant was the individual who did it. He pointed him out. He indicated that it was in fact - - the weapon used in this case was a gun and the defendant was the guy that did it.

The defendant says, no, the story here is really much more complicated than that. I rented a car. I didn't give him his car back in time. One could infer based upon Mr. Thompson's actions he was using the police department as the repo man in this particular case. I had extreme difficulty with that explanation as outlined by [defendant] in this case.

I'm also not as confident as the State is about the weapon in this case. Under those circumstances on Count 1 it's a finding of guilty of vehicular hijacking under Section 18-3A, finding of guilty on Count 2."

¶ 25 At sentencing, the court heard arguments in mitigation and aggravation. The trial court merged defendant's aggravated unlawful restraint conviction with his vehicular hijacking conviction, and sentenced defendant to five years and six months' incarceration. The trial court credited defendant with 452 days of presentencing custody, and ordered two years' Mandatory Supervised Release. Defense counsel filed a motion to reconsider sentence, which the trial court denied.

¶ 26 Defendant appeals.

¶ 27 II. ANALYSIS

¶ 28 i. The Merged Count

¶ 30 On appeal, defendant first contends that this court should reverse his conviction for aggravated unlawful restraint where the State failed to prove the victim was detained, and the trial court determined that no deadly weapon was used in the hijacking. The State responds that defendant cannot appeal from the aggravated unlawful restraint conviction because he was not sentenced on that conviction, and there is no final judgment in a criminal case until the imposition of a sentence.

¶ 31 "[I]t is axiomatic that there is no final judgment in a criminal case until the imposition of a sentence, and, in the absence of a final judgment, an appeal cannot be entertained." *People v. Flores*, 128 Ill. 2d 66, 95 (1989); *People v. Baldwin*, 199 Ill. 2d 1, 5 (2002) ("Absent a sentence, a conviction is not a final and appealable judgment"). Here, no sentence was imposed on defendant's aggravated unlawful restraint conviction. Instead, the court merged that conviction into defendant's conviction for vehicular hijacking, and imposed sentence only on the vehicular hijacking conviction. As determined herein, we are not reversing defendant's vehicular hijacking conviction. Accordingly, defendant's challenge to his unsentenced conviction is not properly before us. See *People v. Sandefur*, 378 Ill. App. 3d 133, 142-43 (2007); *People v. Gwinn*, 366 Ill. App. 3d 501, 521 (2006); *C.f.*, *People v. Burrage*, 269 Ill. App. 3d 67 (1994); *In re T.G.*, 285 Ill. App. 3d 838 (1996). We decline to consider defendant's challenge to his nonfinal, unsentenced conviction.

¶ 32 ii. Ineffective Assistance of Trial Counsel

¶ 33 Next, defendant contends he was denied the effective assistance of trial counsel where counsel failed to file a motion to suppress challenging defendant's traffic stop. Specifically, defendant argues that, had counsel filed a motion to suppress the traffic stop, the motion would

have been successful because the record shows Officer Reeves had neither probable cause nor a reasonable suspicion of a traffic violation when he stopped defendant. Without the challenged evidence, defendant argues, the outcome of the trial would have been different because the vehicular hijacking case relied entirely on Officer Reeve's testimony[2] that defendant was in possession of Thompson's vehicle, as well as Thompson's testimony identifying defendant, both of which would have been suppressed as fruit of the poisonous tree if the motion were successful. Defendant asks that we reverse and remand for a suppression hearing. We decline to do so.

¶ 34 We begin by noting that our courts have long recognized three types of police-citizen encounters, including: (1) consensual encounters, involving no detention and therefore not implicating a citizen's fourth amendment rights; (2) brief investigatory stops, referred to as *Terry* stops, which must be supported by a reasonable, articulable suspicion of criminal activity; and (3) arrests, which must be supported by probable cause. *People v. Surles*, 2011 IL App (1st) 100068, ¶ 21 (citing *People v. Vasquez*, 388 Ill. App. 3d 532, 546-47 (2009) and *People v. Leudemann*, 222 Ill. 2d 530, 544 (2006)).

¶ 35 The latter two types of encounters are governed by the United States and the Illinois Constitutions, which explicitly prohibit the government from subjecting citizens to unreasonable searches and seizures. U.S. Const., Amends. IV, XIV; Ill. Const. 1970, art. I, § 6; *People v. Lopez*, 229 Ill. 2d 322, 345 (2008).

¶ 36 For constitutional purposes, a person is seized when he is placed under arrest. *Lopez*, 229 Ill. 2d at 346. Under the fourth amendment, an arrest must be accompanied by a warrant

[2] We note here that large swaths of defendant's argument regarding the motion to suppress rely on Officer Reeves' second day of testimony. As noted earlier, this testimony was presented at trial in error. The court recognized the error and, also as noted earlier, struck Officer Reeves' second day of testimony, and made clear it did not rely on the stricken testimony in rendering its opinion in this cause. In similar fashion, this court also does not rely on Officer Reeves' second day of testimony, presented in error, and stricken by the trial court.

supported by probable cause. *People v. Sorenson*, 196 Ill. 2d 425, 432 (2001); see also *People v. Robinson*, 167 Ill. 2d 397, 405 (1995) ("A warrantless arrest is unlawful absent probable cause."); *People v. Montgomery*, 112 Ill. 2d 517, 525 (1986) ("An arrest executed without a warrant is valid only if supported by probable cause.") "Probable cause to arrest exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime." *People v. Wear*, 229 Ill. 2d 545, 563-64 (citing *People v. Love*, 199 Ill. 2d 269, 279 (2002)). The existence of probable cause depends upon the totality of the circumstances at the time of the arrest. *Wear*, 229 Ill. 2d at 564 (citing *Love*, 199 Ill. 2d at 279). Under the fruit of the poisonous tree doctrine, a "fourth amendment violation is deemed the 'poisonous tree,' and any evidence obtained by exploiting that violation is subject to suppression as the 'fruit' of that poisonous tree." *People v. Henderson*, 2013 IL 114040, ¶ 33.

¶ 37 To establish a claim of ineffective assistance of counsel, a defendant must show that: (1) his attorney's representation fell below an objective standard of reasonableness; and (2) he was prejudiced by this deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *People v. Palmer*, 162 Ill. 2d 465, 475 (1994). Failure to make the requisite showing of either deficient performance or sufficient prejudice defeats the claim. *Palmer*, 162 Ill. 2d at 475-76.

¶ 38 The decision to file a motion to quash and suppress evidence is generally a matter of trial strategy that should be accorded great deference. *People v. Lundy*, 334 Ill. App. 3d 819, 830 (2002). In order to establish prejudice with regard to the failure to seek the suppression of evidence, the " 'defendant must show that a reasonable probability exists both that the motion would have been granted and that the outcome of the trial would have been different had the

evidence been suppressed.' [Citations.]" *Lundy*, 334 Ill. App. 3d at 830; *Henderson*, 2013 IL 114040, ¶ 12 (In order to establish prejudice with regard to the failure to seek the suppression of evidence, the defendant must show there is a reasonable probability both that the unargued suppression motion was meritorious and that the verdict would have been different without the excludable evidence); *People v. Little*, 322 Ill. App. 3d 607, 611 (2001) (To overcome the strong presumption that counsel's representation was effective, and "prevail on a claim of ineffectiveness based on counsel's failure to file a motion to quash and suppress, the defendant must show, first, a reasonable probability that the motion would have been granted and, second, that the outcome of the trial would have been different if the motion had been granted"); *People v. Rodriguez*, 387 Ill. App. 3d 812, 829 (2008). An attorney will not be deemed ineffective for failing to file a futile motion. *Lundy*, 334 Ill. App. 3d at 830.

¶ 39 Here, defendant's claim fails because he cannot overcome the presumption that his trial counsel rendered effective assistance of counsel where the record establishes that counsel acted reasonably in foregoing a motion to suppress evidence because such motion would not have been meritorious where the record clearly shows that Officer Reeves had sufficiently reasonable suspicion to stop defendant's vehicle. Pursuant to section 114-12 of the Code of Criminal Procedure, "the court shall not suppress evidence which is otherwise admissible in a criminal proceeding if the court determines that the evidence was seized by a peace officer who acted in good faith." 725 ILCS 5/114-12 (2014). Under the facts of this case, a motion to suppress evidence of defendant's traffic stop would have been futile because Officer Reeves conducted a proper *Terry* stop.

¶ 40 A police-conducted traffic stop of a motor vehicle, even for a brief and limited purpose, is a seizure under the law and, accordingly, is subject to the fourth amendment's reasonableness

requirement. *People v. Close*, 238 Ill. 2d 497, 504-05 (2010); *People v. Gaytan*¸ 2015 IL 116223, ¶ 20; *People v. Hackett*, 2012 IL 111781, ¶ 18. Because traffic stops are more analogous to a *Terry* investigative stop than to a formal arrest, they are analyzed under the principles of *Terry*. *Hackett*, 2012 IL 111781, ¶ 20; *Close*, 238 Ill. 2d at 505. Our supreme court has recently explained:

> "Generally, stopping a vehicle based on a suspected violation of the law constitutes a seizure, even if the stop is for a brief period and for a limited purpose. [Citations.] For a traffic stop to comport with the reasonableness requirement of the constitutional guarantees, the police officers must have at least ' "reasonable, articulable suspicion" ' that a violation of law has occurred. [Citation.] This means that police officers must have 'a particularized and objective basis for suspecting the particular person stopped' was violating the law. (Internal quotation marks omitted.) [Citation.] If reasonable suspicion is lacking, the traffic stop is unconstitutional and evidence obtained as a result of the stop is generally inadmissible. [Citation.]" *Gaytan*, 2015 IL 116223, ¶ 20.

¶ 41 A *Terry* stop is a recognized exception to the probable cause requirement of the fourth amendment which allows for an officer to detain a citizen without an arrest warrant and without probable cause where his observations create a reasonable, articulable suspicion that a crime has been or is about to be committed. *Terry v. Ohio*, 392 U.S. 1, 22 (1968) (codified in the Illinois Code of Criminal Procedure of 1963 as 725 ILCS 5/107-14 (West 2014)). Such a stop must, at its inception, be based on specific and articulable facts, which the officer can point to as a reasonable basis for such an intrusion. *People v. Thomas*, 198 Ill. 2d 103, 109 (2001). "The purpose of the stop is to allow the officer to briefly investigate the circumstances that provoke

suspicion and to either confirm or dispel that suspicion. [Citation.]" *People v. Little*, 2016 IL App (3d) 130683, ¶ 16. The Third District of this court recently described the parameters of these stops:

> "The officer's belief need not rise to the level of suspicion required for probable cause but must be more than an inarticulate hunch. *Hackett*, 2012 IL 111781, ¶ 20. In addition, a police officer is not required to rule out all possibility of innocent behavior before he initiates a *Terry* stop. *Close*, 238 Ill. 2d at 511-12. In judging a police officer's conduct, a court will apply an objective standard and will determine whether the facts available to the officer at the moment of the seizure would lead an individual of reasonable caution to believe that the action taken by the officer was appropriate. *People v. Colyar*¸ 2013 IL 111835, ¶ 40; *Hackett*, 2012 IL 111781, ¶ 20; *Close*, 238 Ill. 2d at 505." *Little*, 2016 IL App (3d) 130683, ¶ 16.

¶ 42 "When an officer has reason to believe an ordinance has been violated, a resulting stop is based upon specific and articulable facts which taken together with rational inferences from those facts, reasonably warrant that intrusion." *People v. Bivens*¸ 163 Ill. App. 3d 472, 480 (1987) (citing *Terry*, 392 U.S. 1; *People v. Ramsey*, 77 Ill. App. 3d 294 (1979)).

¶ 43 Here, Officer Reeves testified that he was in uniform and driving a marked police vehicle when he saw a van parked in an alley. Officer Reeves had a reasonable and articulable suspicion to stop defendant for being parked in the alley, as this was a potential violation of the City's municipal code (City Code) (Chicago Municipal Code § 9-64-130(b) (amended Jan. 12, 2000)), which states that "[i]t shall be unlawful to park a vehicle in an alley in such a manner or under such conditions as to leave available less than ten feet of the width of the roadway for the free

movement of vehicular traffic or to block the entrance to any abutting property." Chicago Municipal Code § 9-64-130(b) (amended Jan. 12, 2000). This was also a potential violation of section 9-40-130 of the City Code, titled "Obstruction of Traffic," which states, "[t]he operator of a vehicle shall not so operate the vehicle as to form an unreasonable obstruction to traffic." Chicago Municipal Code § 9-40-130 (added Coun. J. 7-12-90).

¶ 44 Although Officer Reeves would have been justified in stopping defendant at this point, he continued his investigation, running the van's license plates and receiving the response "no information found." After getting this "no information" report, Officer Reeves followed the van as defendant drove it out of the alley and curbed it nearby. It is a violation to operate a motor vehicle without a valid Illinois, or reciprocal, registration. See 625 ILCS 5/3-702(a) (West 2014). At this point, Officer Reeves had a reasonable and articulable suspicion to stop defendant for this series of violations, and he undertook a valid *Terry* stop.

¶ 45 When Officer Reeves requested defendant present his driver's license, defendant showed his identification card instead, explaining that he did not have a driver's license. Defendant's admission that he had no driver's license gave Officer Reeves probable cause to arrest defendant and continue his investigation. See *People v. Symmonds,* 18 Ill. App. 3d 587, 592-93 (1974); *People v. Moorman*, 369 Ill. App. 3d 187, 196 (2006) (defendant's statement that he could not produce a driver's license because it was revoked provided probable cause to arrest); *People v. Byrd*, 408 Ill. App. 3d 71, 79 (2011); 625 ILCS 5/6-101 (West 2014) (No person, except those with exemptions, shall operate a vehicle in Illinois unless they have a valid license). Officer Reeves then discovered the Illinois license plates in the backseat of the van, which were visible in plain sight through the window.

¶ 46 Defendant's violation of city ordinances followed by the fact that he was driving a vehicle with Indiana license plates that could not be linked to the vehicle being operated provided reasonable suspicion to stop defendant's vehicle and investigate the matter further. The traffic stop was proper under *Terry* and did not violate defendant's fourth amendment right against unlawful searches and seizures. Accordingly, with the police having a reasonable, articulable suspicion for the detention and probable cause for the arrest, we find that defendant suffered no prejudice as a result of trial counsel's failure to file a motion to quash arrest and suppress evidence, where the motion would not have been meritorious. See *People v. Givens*, 237 Ill. 2d 311, 343 (2010) (If a motion to suppress would have been futile, then counsel's failure to file that motion does not constitute ineffective assistance).

¶ 47 iii. Fines and Fees

¶ 48 Lastly, defendant contends that his fees order must be amended because several of the fines assessed against him were improperly imposed. Following defendant's conviction, the trial court imposed fines, costs, and fees totaling $499. These charges included: a $5 Electronic Citation Fee (705 ILCS 105/27.3e (West 2014)); a $10 Mental Health Court fine (55 ILCS 5/5-1101 (d-5) (West 2014)); a $5 Youth Diversion/Peer Court fine (55 ILCS 5/5-1101(e) (West 2014)); a $5 Drug Court fine (55 ILCS 5/5-1101(f) (West 2014)); a $30 Children's Advocacy Center fine (55 ILCS 5/5-1101(f-5) (West 2014)); a $30 Fine to Fund Juvenile Expungement (730 ILCS 5/5-9-1.17 (West 2014)); a $50 Court System fee (55 ILCS 5/5-1101(c) (West 2014)); a $190 Felony Complaint Filed (Clerk) fee (705 ILCS 105/27.2a(w)(1)(A) (West 2014)); a $60 felony complaint conviction fee (55 ILCS 5/4-2002.1(a) (West 2014)); a $20 probable cause hearing fee (55 ILCS 5/4-2002.1(a) (West 2014)); a $15 Automation (Clerk) fee (705 ILCS 105/27.3a-1 (West 2014)); a $15 State Police Operations fee (705 ILCS 105/27.3a-1.5 (West

2014)); a $2 Public Defender Records Automation fee (55 ILCS 5/3-4012) (West 2014)); a $2 State's Attorney Records Automation fee (55 ILCS 5/4-2002.1(a) West 2014)); a $15 Document Storage fee (705 ILCS 105/27.3c (West 2014)); and a $25 Court Services fee (55 ILCS 5/5-1103 (West 2014)).

¶ 49 Although defendant did not challenge the fines and fees order in the trial court, a reviewing court may modify fines and fees orders without remanding the case to the trial court. Ill. S.Ct.R. 615(b) (eff. Aug. 27, 1999). We review the imposition of fines and fees *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 50 Defendant first claims, the State properly concedes, and we agree, that the $5 Electronic Citation Fee was improperly assessed and must be vacated because the charge only applies to traffic, misdemeanor, municipal ordinance, and conservation cases, and is inapplicable to his felony conviction for vehicular hijacking. 705 ILCS 105/27.3e (West 2014); *People v. Moore*, 2014 IL App (1st) 112592-B, ¶ 46 ($5 electronic citation fee does not apply to felonies); *People v. Robinson*, 2015 IL App (1st) 130837, ¶ 115 (vacating the fee where the defendant's offense did not fall into an enumerated category). Accordingly, the $5 fee is vacated.

¶ 51 Defendant next contends that the $10 Mental Health Court charge imposed pursuant to 55 ILCS 5/5-1101 (d-5) (West 2014); the $15 State Police Operations charge imposed pursuant to 705 ILCS 105/27.3a-1.5 (West 2014); the $50 Court System charge imposed pursuant to 55 ILCS 5/5-1101(c) (West 2014); the $5 Youth Diversion/Peer Court Fine imposed pursuant to 55 ILCS 5/5-1101(e) (West 2014); the $5 Drug Court Fine imposed pursuant to 55 ILCS 5/5-1101(f) (West 2014); the $30 Children's Advocacy Center fine imposed pursuant to 55 ILCS 5/5-1101(f-5) (West 2014); and the $30 Fine to Fund Juvenile Expungement imposed pursuant to (730 ILCS 5/5-9-1.17 (West 2014) should be offset by the $5-per-day credit for days spent in

presentencing custody under section 110-14 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-14 (West 2014)). We agree.

¶ 52 A defendant is entitled to credit for time spent in custody as a result of the offense for which a sentence is imposed. *People v. Williams*, 239 Ill. 2d 503, 507 (2011); *People v. Jones*¸ 223 Ill. 2d 569, 580 (2006) (Section 110-14 of the Code allows for a $5-per-day credit for days spent in presentencing custody, but this credit offsets only fines, not fees). Defendant was incarcerated on a bailable offense for 452 days before sentencing. The State concedes, and we agree, that these charges should be offset by the $5-per-day credit in the amount of $145.

¶ 53 Defendant next claims that he is entitled to pre-sentence incarceration credit toward the $190 Felony Complaint Filed (Clerk) charge imposed pursuant to 705 ILCS 105/27.2a(w)(1)(A) (West 2014); the $15 Automation (Clerk) charge imposed pursuant to (705 ILCS 105/27.3a-1 (West 2014); the $15 Document Storage charge imposed pursuant to 705 ILCS 105/27.3c (West 2014)); the $25 Court Services charge imposed pursuant to 55 ILCS 5/5-1103 (West 2014); the $2 State's Attorney Records Automation charge imposed pursuant to 55 ILCS 5/4-2002.1(a) West 2014)); and the $2 Public Defender Records Automation charge imposed pursuant to 55 ILCS 5/3-4012) (West 2014). Defendant argues these charges are "fines" and not "fees," thus entitling him to offset the charges with pre-sentence credit.

¶ 54 The presentence custody credit applies only to reduce fines, not fees. *People v. Jones*¸ 223 Ill. 2d 569, 599 (2006); *People v. Tolliver*, 363 Ill. App. 3d 94, 96-97 (2006) (The $5 per day presentence incarceration credit does not apply to "fees"). A "fine" is punitive in nature and is imposed as part of a sentence for a criminal offense. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). A fee, in contrast, seeks to recoup expenses incurred by the state, or to compensate the state for expenditures incurred in prosecuting the defendant. *Graves*, 235 Ill. 2d at 250; *Tolliver*,

363 Ill. App. 3d at 97 (A "fee" "is a charge for labor or services, and is a collateral consequence of the conviction which is not punitive, but instead, compensatory in nature"). The legislature's label for a charge is strong evidence of whether the charge is a fee or a fine, but the most important factor is whether the charge seeks to compensate the state for any costs incurred as the result of prosecuting the defendant. *Graves*, 235 Ill. 2d at 250.

¶ 55 A. The $2 Public Defender and State's Attorney Records Automation fees

¶ 56 Defendant contends that the $2 Public Defender Records Automation fee and the $2 State's Attorney Records Automation fee are both fines subject to offset. This court has previously held that these charges are fees, as opposed to fines, and thus these charges are not subject to being offset by defendant's presentence custody credit. *People v. Green*, 2016 IL App (1st) 134011, ¶ 46 ("the $2 Public Defender Records Automation charge was a fee not a fine"); *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 47-56 (finding "no reason to distinguish between the two statutes" given their nearly identical language, and concluding that those charges are intended to reimburse those offices for expenses); *People v. Warren*, 2016 IL App (4th) 120721-B, ¶¶ 114-116 (State's attorney records automation assessment is compensatory rather than punitive and is, therefore, a fee); see also *People v. Maxey*, 2016 IL App (1st) 130698, ¶ 144; *People v. Reed*, 2016 IL App (1st) 140498, ¶¶ 16-17.

¶ 57 Although the opposite result was reached in *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 52-56, which found that the charges do not compensate the State for costs imposed in prosecuting any particular defendant and, therefore, are not fees, we agree with the analysis in *Warren* and the numerous cases cited herein that, when a charge does not include a punitive aspect, it is a fee, not a fine. Therefore, we find that neither records automation fee is subject to offset.

¶ 58 B. The $190 Felony Complaint charge, the $15 Automation (Clerk) charge, the $15 Document Storage charge, and the $25 Court Services charge

¶ 59 Finally, defendant maintains that four additional charges assessed against him are fines subject to offset. Specifically, defendant asserts that the following charges are actually fines: the $190 Felony Complaint Filed (Clerk) charge (705 ILCS 105/27.2a(w)(1)(A) (2014); the $15 Automation (Clerk) charge (705 ILCS 105/27.3a-1 (West 2014); the $15 Document Storage charge (705 ILCS 105/27.3c (West 2014); and the $25 Court Services charge (55 ILCS 5/5-1103 (West 2014).

¶ 60 This court has already considered challenges to these assessments and found they are fees, not fines. In *People v. Tolliver*, 363 Ill. App. 3d 94, this court held that these four charges were fees, as they are compensatory and represent a "collateral consequence" of a defendant's conviction. *Tolliver*, 363 Ill. App. 3d at 97.

¶ 61 Defendant acknowledges *Tolliver*, but argues it was decided before our supreme court's decision in *People v. Graves*, 235 Ill. 2d 244, and its analysis is no longer persuasive. We disagree. In *Graves*, our supreme court held that, to be correctly designated as a fee, a charge must reimburse the State for a cost that was incurred in the prosecution of the defendant. *Graves*, 235 Ill. 2d at 250. However, *Tolliver* employed the same reasoning as later employed in *Graves*, finding that the charges do represent a portion of the overall costs incurred to prosecute a defendant. *Tolliver*, 363 Ill. App. 3d at 97 ("We find that all of these charges are compensatory and a collateral consequence of defendant's conviction and, as such, are considered 'fees' rather than 'fines' "). Further, numerous cases decided after *Graves* have treated these four charges as fees. See *People v. Larue*, 2014 IL App (4th) 120595, ¶¶ 29-38; *People v. Smith*, 2014 IL App

(4th) 121118, ¶¶ 25-31; *People v. Martino*, 2012 IL App (2d) 101244, ¶¶ 29-38. Thus, we hold that these assessments are fees not subject to presentence incarceration credit.

¶ 62 III. CONCLUSION

¶ 63 For the foregoing reasons, we vacate the $5 Electronic Citation Fee, and we modify defendant's fines to reflect presentencing incarceration credit for: (1) the $10 Mental Health Court fee; (2) the $15 State Police Operations fee; (3) the $50 Court System charge; (4) the $5 Youth Diversion/Peer Court fine; (5) the $5 Drug Court Fine; (6) the $30 Children's Advocacy Center fine; and (7) the $30 Fine to Fund Juvenile Expungement. Pursuant to our authority under Supreme Court Rule 615(b)(1), we order the clerk of the circuit court to enter a modified fines, fees, and costs order to reflect $145 presentence custody credit toward defendant's fines. Ill. S. Ct. R. 615(b)(1); *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995). The judgment of the trial court is affirmed in all other respects.

¶ 64 Affirmed as modified.

¶ 65 Justice Cobbs, specially concurring.

¶ 66 I join in the majority's judgment, but I write separately to express my disagreement with its reasoning regarding the justification underlying Officer Reeve's *Terry* stop of defendant. The majority concludes that Reeves held a reasonable and articulable suspicion that a crime was committed or was about to be committed because defendant parked the van in an alley in potential violation of sections 9-64-130(b) and 9-40-130 of the Chicago Municipal Code. I agree that *People v. Bivens*, 163 Ill. App. 3d 472, 480 (1987), supports the proposition that when an officer has reason to believe that an ordinance has been violated, a resulting stop is justified under the *Terry* standard. However, the facts in the present case are readily distinguishable. In *Bivens*, the arresting officer testified that he saw the defendant driving with a broken tail light

and then attempted to stop him for the traffic violation. *Id*. at 479. In contrast, Officer Reeves never mentioned either of the ordinances relied upon by the majority and did not indicate that he attempted to stop the van because it had been parked in the alley.

¶ 67 Moreover, one cannot infer that Reeves stopped defendant for such a violation because there is no evidence in the record to support a belief that defendant was potentially in violation of either ordinance. Reeves merely testified that defendant was parked in an alley; yet, neither of the cited statutes is violated solely by parking in an alley. Section 9-64-130(b) of the City Code states that it is unlawful "to park a vehicle in an alley in such a manner or under such conditions as to leave available less than ten feet of the width of the roadway for the free movement of vehicular traffic or to block the entrance to any abutting property." Chicago Municipal Code § 9-64-130(b) (amended Jan. 12, 2000). Nothing in the record indicates that defendant's van left less than 10 feet of alley open or blocked any entrance. Section 9-40-130 of the City Code states that a driver "shall not so operate the vehicle as to form an unreasonable obstruction to traffic." Chicago Municipal Code § 9-40-130 (Added Coun. J. 7-12-90). Reeves offered no testimony suggesting that the van created "an unreasonable obstruction to traffic" or that it obstructed traffic at all. Thus, I disagree with the majority's reliance on sections 9-64-130(b) and 9-40-130 of the City Code.

¶ 68 I agree with the majority, however, that Officer Reeves's actions were justified by subsection 3-702(a) of the Illinois Vehicle Code (625 ILCS 5/3-702(a)(West 2014)), which prohibits the operation of a vehicle without a valid Illinois or reciprocal registration. Reeves testified that he ran the license plate of the parked van, prior to the stop, and received a report of "no information found" and then stopped the van. The report was sufficient to give the officer a reasonable and articulable suspicion that defendant was driving a vehicle without valid

registration and thus justify a traffic stop to address the potential infraction. Accordingly, I concur in the majority's ultimate holding that a motion to quash arrest would have been futile and, consequently, that defendant suffered no prejudice as a result of counsel's decision not to file such a motion.