

**NOTICE**

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2017 IL App (4th) 140888-U

NO. 4-14-0888

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

September 20, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
DEMECO D. HILL,	)	No. 11CF1257
Defendant-Appellant.	)	
	)	Honorable
	)	Scott B. Diamond,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.  
Justices Appleton and Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) The trial court did not err by denying defendant’s motion to vacate his conviction; (2) the trial court did not err by denying defendant’s motion to suppress his incriminating statements as involuntary; (3) defendant was entitled to additional credit for time served prior to being sentenced; and (4) fines imposed by the circuit clerk must be vacated.

¶ 2 In September 2011, Decatur, Illinois, police interviewed defendant, Demeco D. Hill, about the killing of Billy Rutherford. Defendant eventually told his interviewer that after Rutherford was shot, defendant moved the gun used in the shooting. Later that month, the State charged defendant with three counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2010)). In August 2012, the State added a charge of armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2010) (eff. July 1, 2010)).

¶ 3 In December 2012, defendant and the State entered into an “Agreement for Special Consideration” (Cooperation Agreement), under which defendant agreed to talk to police

and, if necessary, testify about the killings of Rutherford and another man, Caleb Witty. In exchange, the State would drop the four charges against defendant, and defendant would plead guilty to concealment of a homicidal death. The Cooperation Agreement provided that it would become “null and void” if it did not “lead to an arrest and charge of at least one person responsible for the homicide of” Witty.

¶ 4 In December 2013, defendant filed a motion to suppress the incriminating statements he made during the September 2011 interviews with police describing his possession of the gun used to kill Witty. He argued that those statements were involuntary because he made them while relying on the interviewer’s promise that no gun charges would be filed against him if he cooperated. The trial court denied that motion.

¶ 5 In January 2014, a jury trial was conducted on the charge of armed habitual criminal, which had been severed on the State’s motion from the first degree murder charges. The jury found defendant guilty.

¶ 6 In March 2014, defendant filed a motion to vacate his conviction, arguing that the State had violated the Cooperation Agreement. Defendant asserted that the State had charged another person with possessing the gun used to kill Witty. Defendant argued that the State had therefore charged someone who was likely “responsible for the homicide of” Witty. Under the Cooperation Agreement, defendant argued, the charges of murder and armed habitual criminal should have been dismissed. The trial court denied defendant’s motion and later sentenced him to 25 years in prison.

¶ 7 On appeal, defendant argues the following: (1) the trial court erred by denying his motion to vacate his conviction; (2) the court erred by denying his motion to suppress; (3) he is entitled to an additional 31 days of presentence credit; and (4) fines entered by the circuit clerk

must be vacated. For the following reasons, we affirm defendant's conviction, vacate his sentence in part, and remand the cause with directions.

¶ 8

## I. BACKGROUND

¶ 9

In September 2011, the State charged defendant with three counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2010)), alleging that he shot and killed Rutherford. The arrest warrant alleged that on August 29, 2011, defendant used a nine-millimeter handgun to shoot Rutherford outside a party at 1317 North Woodford Street, Decatur, Illinois. Another suspect was accused of shooting Rutherford with a shotgun following the alleged shooting by defendant.

¶ 10

In August 2012, the State added a charge of armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2010)). The trial court granted the State's motion to sever the armed habitual criminal charge from the first degree murder charges. (This appeal addresses only the proceedings on the armed habitual criminal charge.)

¶ 11

### A. Defendant's Motion To Suppress

¶ 12

In December 2013, defendant filed a motion to suppress incriminating statements he made to police during multiple interviews in September 2011. In those statements, he indicated that he possessed a gun on August 29, 2011. Defendant argued that his statements were involuntary because he made them while relying on a police officer's promise that no gun charges would be filed against him.

¶ 13

At a January 2014 hearing on defendant's motion to suppress, the State agreed not to introduce any evidence gathered from the interviews conducted on September 9 and 30, 2011. The State continued to seek to introduce evidence from defendant's September 7, 2011, recorded interview with Detective Bryan Kaylor. At the suppression hearing, Kaylor and defendant testi-

fied, and the State played the September 7, 2011, recorded interview between defendant and Kaylor.

¶ 14 *1. Kaylor's Testimony*

¶ 15 Kaylor testified that on September 7, 2011, he interviewed defendant about the killing of Rutherford. At that time, defendant had not yet been charged with any offense. The interview took place in a room at the police station. Kaylor and defendant were the only people in the interview room, and the interview lasted approximately three hours.

¶ 16 *2. The Recorded Interview*

¶ 17 During the recorded interview, Kaylor informed defendant that other witnesses were blaming defendant for Rutherford's killing. In particular, defendant's girlfriend, Carla Brazier, had given the following statement to Kaylor. Brazier told Kaylor that on the night of August 29, 2011, she received a telephone call from defendant, asking her to pick him up from the Price Rite Food & Liquor store in Decatur. When she picked him up, defendant was wearing a gray, sleeveless shirt. Brazier drove defendant to 1317 North Woodford Street, Decatur, where defendant's truck was parked in the driveway. However, Brazier drove past the house without stopping because several police officers were present.

¶ 18 Instead, Brazier took defendant to the house of his cousin, Shamia Garry. Defendant exited Brazier's vehicle and went behind Garry's house, where Brazier could not see him. When defendant returned, he was no longer wearing his gray shirt. The shirt was instead balled up in his hands. Brazier could not tell whether something was concealed inside the shirt. Brazier drove defendant to Brazier's home. While Brazier waited in her vehicle, defendant entered Brazier's residence with the balled-up shirt, but he returned without it. Brazier then took defendant home.

¶ 19           When Brazier returned home, she found defendant's gray shirt in a closet. Wrapped inside the shirt was a handgun. Brazier put the gun and shirt in a bag and hid the bag in the bushes outside defendant's home. The next day, Brazier called defendant and told him where the gun was.

¶ 20           In the recorded interview, Kaylor told defendant that he was "looking at life" in prison unless he told Kaylor what he knew about Rutherford's death. At one point, defendant argued that Kaylor knew that defendant had not killed Rutherford. The following exchange occurred between Kaylor and defendant:

                  "KAYLOR: I'm with you on that. Okay, but we gotta prove that you didn't do it. Moving a gun isn't murder.

                  DEFENDANT: Touching a gun is going to the joint.

\* \* \*

                  KAYLOR: \*\*\* Yes, but Kadeem moved the same gun and we didn't charge him with anything.

\*\*\*

[Brazier] moved the gun and we're not charging them. We're not looking into charging people with moving guns. We're looking to charge people with murder.

\* \* \*

                  DEFENDANT: \*\*\* I need a guarantee that I'm not going down for this.

                  KAYLOR: \*\*\* I can't guarantee you that because I'm not an attorney.

\* \* \*

We want the murderers. We don't want after-the-fact stuff. We don't give a shit about that. We've never given a shit about that in cases. We never will. How did

you find out the gun was where it was at?

DEFENDANT: I need to know that I'm not going to be hit for that.

KAYLOR: Hit for what?

DEFENDANT: For this case. \*\*\*

KAYLOR: I'm telling you right now that you can tell me that you moved a gun, which [Brazier] has already basically implicated that you have, we're not going to go up and add to your charges, a gun charge.

DEFENDANT: I'm not talking about that. \*\*\*

\* \* \*

KAYLOR: \*\*\* I am not going to be able to guarantee 100 percent without question, say, if you tell me something, that there may or may not be implications because—

\* \* \*

[W]e want people who are responsible for a murder. That's what we're investigating. This is a homicide investigation. Okay. This is not a, 'Oh [defendant's] a felon and he happened to go get a gun behind a house where there was little kids and he moved it to some girl's house that he was fucking' case. \*\*\* That is not what we're looking into. If I was interested in [defendant] moving a gun, I pretty much got that wrapped up. \*\*\* So if we wanted to put you in prison for a gun charge—

DEFENDANT: I ain't talking about the gun charge.

\* \* \*

Can you talk to the State's Attorney and have him write down, give me something in writing that I'm not going to be prosecuted on murder? If they find out every-

thing that happened.

KAYLOR: I don't know if the State's Attorney will do that or not.

\* \* \*

I can assure you that by doing the right thing by getting me my missing pieces, is the greatest opportunity you're going to have to go back to your family \*\*\*.

DEFENDANT: But you can't guarantee me that?

KAYLOR: You're right. I can't."

¶ 21 Defendant eventually told Kaylor that after the shooting of Rutherford, defendant learned that the gun used to shoot Rutherford was at Garry's house. Brazier drove defendant to Garry's house, where defendant picked up the gun and wrapped it in his shirt. Defendant gave the gun to Brazier, who took it to her home. Defendant said that he did not see Rutherford get shot and did not know why he was shot.

¶ 22 *3. The Trial Court's Decision*

¶ 23 Defendant argued that Kaylor promised not to charge him with a gun crime if defendant told Kaylor what he knew about Rutherford's death. The State argued that Kaylor never made any such promise and that defendant's statement was therefore voluntary.

¶ 24 At the conclusion of the hearing, the trial court denied defendant's motion to suppress. The court found that "Kaylor minimized the gun charge," but that "it's clear from the conversation that [defendant] understands that that [sic] Kaylor really can't guarantee him anything."

¶ 25 *B. The January 2014 Jury Trial*

¶ 26 Later in January 2014, the armed habitual criminal charge proceeded to a jury trial.

¶ 27 Kaylor testified regarding defendant's statements admitting that he had taken the gun from Garry's house, wrapped it in his shirt, and given it to Brazier to hide in her house. An edited version of Kaylor's interview with defendant was played for the jury.

¶ 28 Brazier testified that she drove defendant to Garry's house, where defendant exited her vehicle and returned with something wrapped in his shirt. Brazier drove defendant to her house and waited in her vehicle. Defendant entered the house with his balled-up shirt and returned to the vehicle without it. Later that night, Brazier found defendant's shirt in her house; wrapped inside the shirt was a gun.

¶ 29 The State presented evidence to establish defendant's prior convictions for burglary and home invasion.

¶ 30 The jury found defendant guilty of armed habitual criminal.

¶ 31 C. Motion To Vacate His Conviction

¶ 32 In March 2014, defendant filed a "Motion to Vacate Conviction and Enforce Plea Agreement." Attached to that motion was a December 2012 Cooperation Agreement between defendant and the Macon County State's Attorney's office. In the motion, defendant argued that he had performed as required by the Cooperation Agreement. Defendant therefore argued that the trial court should vacate his conviction for armed habitual criminal and allow him to plead guilty instead to concealment of a homicidal death (720 ILCS 5/9-3.4 (West 2010)), as contemplated by the Cooperation Agreement.

¶ 33 1. *The Contents of the Cooperation Agreement*

¶ 34 In the Cooperation Agreement, the State agreed to dismiss all pending charges against defendant, if defendant would agree to plead guilty to concealment of a homicidal death, for which he would receive an eight-year prison sentence. In exchange, defendant was required

to comply with the following conditions: (1) to provide the State with recorded statements describing defendant's knowledge of the homicides of Rutherford and Witty, a homicide victim who police suspected had been killed by the same gun used to kill Rutherford; and (2) to testify in accordance with those statements.

¶ 35 The Cooperation Agreement provided further that it would become “null and void” if defendant's information did “not lead to an arrest and charge of at least one person responsible for the homicide of [Witty].” In addition, the Cooperation Agreement stated that if defendant provided “false, incomplete or misleading testimony or information,” the State “may unilaterally revoke [the Cooperation Agreement].”

¶ 36 *2. The March 2014 Hearing on Defendant's Motion To Vacate His Conviction*

¶ 37 Later that month, the trial court conducted a hearing on defendant's “motion to vacate conviction and enforce plea agreement.” Defendant claimed that earlier in March 2014, he discovered that the State had successfully prosecuted Daniel C. Jones for unlawful possession of weapons by a felon. Defendant argued that the weapon Jones was convicted of possessing was the same weapon defendant was convicted of possessing and the same weapon the State suspected had been used to kill Rutherford and Witty. Defendant therefore reasoned that the information he provided led to the charging of a “person responsible for the homicide of [Witty].” According to defendant, Jones' conviction for possessing the gun allegedly used to kill Witty established that “there was at least some responsibility on his part, whether he pulled the trigger or not, under the theory of accountability.”

¶ 38 Detective David Pruitt testified that the homicide investigation of Witty remained unsolved. Jones was not a suspect in that investigation. Instead, defendant remained the prime suspect. Pruitt testified further that defendant had provided police with “false, incomplete, and

misleading information” about the killing of Witty. According to Pruitt, defendant gave at least three separate statements to police about how he came into possession of the firearm in question. Each statement contained additional details absent from the prior statements. Pruitt therefore concluded that defendant had not been “honest and forthwith [*sic*]” when speaking with Pruitt. Pruitt thought that defendant was adding information “to steer the investigation” and “to assist himself.” In addition, defendant failed a polygraph examination while being questioned about the death of Witty and the origin of the firearm used to kill him.

¶ 39 Pruitt testified further that defendant’s statements “led to” the arrest of Jones. Pruitt believed that the weapon Jones was convicted of possessing was the same weapon used to kill Witty.

¶ 40 Defendant testified that he gave his statements to Pruitt approximately two years after the events in question. Because of the two-year time gap, defendant did not remember every detail the first time he spoke to Pruitt. When defendant later recalled additional details, he passed them along to Pruitt as soon as possible. According to defendant, he told police that he knew nothing about the killing of Witty but did know who had previously possessed the gun used to kill Witty. Defendant thought that by telling the State who had possessed the gun, he would meet his obligations under the Cooperation Agreement.

¶ 41 At the conclusion of the hearing, the trial court denied defendant’s motion, finding that the State did not breach the Cooperation Agreement and, instead, had properly revoked it.

¶ 42 Immediately thereafter, the trial court conducted a sentencing hearing, after which it sentenced defendant to 25 years in prison.

¶ 43 This appeal followed.

¶ 44

## II. ANALYSIS

¶ 45 Defendant argues that (1) the trial court erred by denying his motion to vacate his conviction and enforce the plea agreement; (2) the court erred by denying his motion to suppress the statements he made during the September 7, 2011, interview with Kaylor; (3) he is entitled to an additional 31 days of presentence credit; and (4) fines entered by the circuit clerk must be vacated.

¶ 46

### A. Motion To Vacate the Conviction

¶ 47 Defendant argues that the trial court erred by denying his motion to vacate the conviction and enforce the plea agreement. The State responds that the court correctly denied the motion for two reasons: (1) defendant provided “false, incomplete or misleading testimony or information”; and (2) the information defendant provided did not “lead to an arrest and charge of at least one person responsible for the homicide of [Witty].” We agree with the State.

¶ 48

#### 1. Case Law and the Standard of Review

¶ 49 “Courts construe cooperation agreements under contract principles.” *People v. Stapinski*, 2015 IL 118278, ¶ 47, 40 N.E.3d 15. “Such agreements are construed strictly against the government and courts should not hesitate to scrutinize the government’s conduct to ensure it comports with the highest standard of fairness.” *Id.*

¶ 50

When “construing a contract, the primary goal is to ascertain and give effect to the intention of the parties.” *Matthews v. Chicago Transit Authority*, 2016 IL 117638, ¶ 77, 51 N.E.3d 753. “Where no ambiguity exists, the intent of the parties at the time the contract was entered into must be ascertained from the language of the contract itself.” *Id.* “A contract must be construed as a whole, viewing particular terms or provisions in the context of the entire agreement.” *Id.* The interpretation of a contract is an issue of law, to be reviewed *de novo*. *Richard W.*

*McCarthy Trust v. Illinois Casualty Co.*, 408 Ill. App. 3d 526, 534, 946 N.E. 2d 895, 902 (2011).

¶ 51 For clarity, we note that defendant does not claim that the State violated Illinois Rule of Evidence 410 (eff. Jan. 1, 2011), which prohibits admitting plea discussions between a defendant and the State.

¶ 52 *2. This Case*

¶ 53 In this case, the trial court did not err by denying defendant’s motion to vacate his conviction. According to the plain language of the Cooperation Agreement, the agreement “is null and void” if the information provided by defendant “does not lead to an arrest and charge of at least one person responsible for the homicide of [Witty].”

¶ 54 Defendant argues that Jones’ being charged with unlawful possession of weapons by a felon prevented the Cooperation Agreement from becoming null and void because Jones was a person “responsible for the homicide” of Witty. We disagree.

¶ 55 Construing the language of the Cooperation Agreement, we determine that someone “responsible for the homicide” of Witty meant someone who was criminally responsible for Witty’s killing. Black’s Law Dictionary 1314 (7th ed. 1999) defines “responsibility” as follows:

“*n.* 1. LIABILITY (1). 2. *Criminal law.* A person’s mental fitness to answer in court for his or her actions. See COMPETENCY. 3. *Criminal law.* Guilt.

— Also termed (in senses 2 & 3) *criminal responsibility*. — responsible, *adj.*”

The language of the Cooperation Agreement would therefore become null and void if defendant’s information did not lead to the arrest and charging of someone criminally responsible for Witty’s death.

¶ 56 The language of the Cooperation Agreement did not expressly require that a person responsible for Witty’s death be charged with *killing* Witty. That is, the Cooperation Agree-

ment would become null and void if a person responsible for Witty's death was charged and arrested; the Cooperation Agreement did not specify what offense the person must be arrested for and charged with. But, applying common sense, how else would a court determine whether a person charged with an offense was responsible for Witty's death, unless they were charged with killing Witty?

¶ 57 Even if we were to agree with defendant that charging a person with any offense was sufficient to preclude the null-and-void clause—so long as the person was responsible for the death of Witty—in this case, defendant has not established that Jones was criminally responsible for Witty's death. Instead, defendant argues that it was sufficient that Jones *might have* been responsible for Witty's death. In his brief, defendant argues “it is possible that” Jones possessed the gun that killed Witty on the same day that Witty was killed; Jones “could not be affirmatively excluded” as someone responsible for Witty's death; Jones “could have been” responsible for Witty's death under an accountability theory; and “it is possible” that Jones could have prevented Witty's killing.

¶ 58 We reject defendant's argument. The Cooperation Agreement became null and void unless someone responsible for Witty's death was arrested or charged, not someone who *might have been* responsible for Witty's death. Defendant has provided nothing more than speculation to suggest that Jones was criminally responsible for Witty's death.

¶ 59 B. Defendant's Motion To Suppress His Involuntary Confession

¶ 60 Defendant argues that the trial court erred by denying his motion to suppress the confession he made to Pruitt during the September 7, 2011, interview. Defendant claims that his confession was involuntary because it was induced by Kaylor's false promises that defendant would not be charged with a gun crime. As a result, defendant asks that we vacate his conviction

and remand for further proceedings.

¶ 61 *1. Case Law and the Standard of Review*

¶ 62 The due process clauses of the fifth and fourteenth amendments to the United States Constitution (U.S. Const., amends. V, XIV) prohibit the State's use of involuntary confessions. *People v. Richardson*, 234 Ill. 2d 233, 252, 917 N.E.2d 501, 513 (2009). "[T]he test of voluntariness is whether the defendant made the statement freely, voluntarily, and without compulsion or inducement of any sort, or whether the defendant's will was overcome at the time he or she confessed." *People v. Gilliam*, 172 Ill. 2d 484, 500, 670 N.E.2d 606, 613 (1996). Voluntariness is determined by evaluating the totality of the circumstances, including the defendant's "age, intelligence, background, experience, education, mental capacity, and physical condition at the time of questioning," along with the duration and legality of the detention." *People v. Hughes*, 2015 IL 117242, ¶ 31, 69 N.E.3d 791 (quoting *People v. Murdock*, 2012 IL 112362, ¶ 30, 979 N.E.2d 74). "No single factor is dispositive." *Id.*

¶ 63 A trial court's factual findings will not be reversed unless they are against the manifest weight of the evidence. *Murdock*, 2012 IL 112362, ¶ 29, 979 N.E.2d 74. The court's ultimate decision whether the confession was voluntary is reviewed *de novo*. *Id.*

¶ 64 *2. This Case*

¶ 65 In this case, defendant's argument that his statements were involuntary focuses almost entirely on the supposed promise by Kaylor that defendant would not be charged with a gun crime.

¶ 66 During the September 7, 2011, interview between Kaylor and defendant, Kaylor made some statements that, standing alone, support defendant's claim that Kaylor promised defendant that gun charges would not be filed if defendant cooperated. For example, Kaylor said,

“We’re not looking into charging people with moving guns. We’re looking to charge people with murder.” Similarly, Kaylor said, “We don’t want after-the-fact stuff. We don’t give a shit about that. We’ve never given a shit about that in cases. We never will.” And, “[Y]ou can tell me that you moved a gun, \*\*\* we’re not going to go up and add to your charges, a gun charge.” We also note that Kaylor explained to defendant that Brazier’s statements already established that defendant illegally possessed a gun, so Kaylor did not need further statements by defendant to file a gun charge.

¶ 67            However, those statements by Kaylor must be considered within the context of the entire, lengthy interview. That context establishes that defendant was concerned about murder charges, not a gun charge. When Kaylor was explaining that the State was not interested in filing gun charges against defendant, defendant replied, “I ain’t talking about the gun charge.” Shortly thereafter, defendant asked Kaylor, “Can you talk to the State’s Attorney and have him write down, give me something in writing that I’m not going to be prosecuted on murder?” Kaylor did not agree to speak with the State’s Attorney and reiterated that he could not guarantee that the State would cooperate with defendant.

¶ 68            Defendant’s statements reveal that he was not relying on a promise by Kaylor. First, Kaylor made it clear that he could not guarantee defendant any protection. Second, defendant explicitly stated that his focus in his discussion with Kaylor was the potential for murder charges, not a gun charge. Therefore, Kaylor’s statements about the likelihood of the State filing gun charges did not induce defendant to speak. As a result, his statements were not involuntary. Defendant does not point to any other factors that would have overcome his will and made his statements involuntary.

¶ 69

### C. Sentencing Credit

¶ 70 Defendant argues that he is entitled to an additional 31 days of presentence credit. See 730 ILCS 5/5-4.5-100(b) (West 2010) (providing that a defendant shall be given credit for any time spent in custody). The State concedes that defendant is entitled to an additional 31 days of credit because he served 940 days of presentence custody but received credit for only 909 days. We order the trial court to amend the written sentencing judgment and award defendant an additional 31 days of credit toward his sentence.

¶ 71

### D. Fines Imposed by the Circuit Clerk

¶ 72 Defendant argues that the following fines were imposed by the circuit clerk and must be vacated: (1) \$30 juvenile-expungement-fund assessment; (2) \$10 arrestee's medical assessment; (3) \$5 drug-court assessment; (4) \$15 State Police operations assessment; (5) \$20 traffic/criminal surcharge assessment; (6) \$50 court-finance assessment; (7) \$100 violent crime victims assistance assessment; (8) \$30 child-advocacy-center assessment; and (9) \$5 youth-diversion assessment.

¶ 73

The State concedes that these fines must be vacated because a circuit clerk lacks the authority to impose fines. See *People v. Smith*, 2014 IL App (4th) 121118, ¶ 18, 18 N.E.3d 912. The State likewise concedes that those assessments may not be imposed by the trial court on remand. We accept the State's concessions and order the court to vacate the nine assessments listed above.

¶ 74

### III. CONCLUSION

¶ 75

For the foregoing reasons, we affirm the trial court's judgment in part, vacate in part, and remand the cause with directions.

¶ 76

As part of our judgment, we award the State its \$75 statutory assessment against

defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2016).

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