2018 IL App (1st) 153326-U

SIXTH DIVISION
June 8, 2018

No. 1-15-3326

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. RANDY DARRING, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Cook County. No. 14 CR 3401 Honorable Carol M. Howard, Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 ***Held:*** The circuit court properly denied defendant's motion to quash arrest and suppress evidence. The Armed Habitual Criminal statute is not facially unconstitutional. We correct defendant's fines and fees order. Affirmed as modified.

¶ 2 Following a bench trial, defendant Randy Darring was found guilty of being an armed habitual criminal (720 ILCS 5/24-1.7 (West 2014)) and sentenced to eight years' imprisonment. On appeal, defendant contends that (1) the court erred in denying his motion to quash arrest and suppress evidence, (2) the armed habitual criminal statute is facially unconstitutional, and (3) his "fines and fees order" should be corrected. We affirm as modified.

¶ 3 BACKGROUND

¶ 4 Defendant was charged with one count of being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2014)), one count of armed violence (720 ILCS 5/33A-2(a) (West 2014); 720 ILCS 570/402(C) (West 2014)), two counts of unlawful use of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2014)), two counts of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6 (West 2014)); and one count of possession of a controlled substance (720 ILCS 570/402(c) (West 2014)). Defendant filed a pretrial motion to quash arrest and suppress evidence. The following evidence was adduced at the hearing on the motion.

¶ 5 Chicago police officer Philip Strazzante testified that he and his partner, officer James Vizzini, were on patrol in their marked police car at around 10:43 a.m. on January 21, 2014. Vizzini was driving, and Strazzante was in the front passenger seat. Strazzante said that they were patrolling an area that was known for "high volume narcotics trafficking as well as shootings." They were driving south on South Springfield Avenue in Chicago. Strazzante described the street as a two-way road with a single lane going in either direction and one parallel parking lane on each side. As they approached 430 South Springfield, Strazzante saw a car parked in the southbound lane of travel at least three feet from the curb. Strazzante observed that the car's parked position required other southbound cars to "veer into the northbound lanes [*sic*] to go around the vehicle." Strazzante said that defendant was in the front passenger seat, and another individual identified as Jaime Villanueva was in the driver's seat. Strazzante noted that the car's parked position was a traffic violation, specifically for obstruction of a lane of traffic, so his partner pulled their car up next to defendant's car, coming to a stop parallel to defendant's vehicle facing southbound in the northbound lane.

¶ 6 Strazzante got out of the car and was "almost even" with the driver's door. As he approached the door, he saw Villanueva look in his direction, yell, "Oh fuck," and then put both hands toward his waistband, "forcing" Strazzante to run toward the vehicle. Strazzante, who was only "a few feet" from the vehicle, saw defendant lift his right leg up, place what appeared to be a blue-steel pistol under his right thigh, and bring his right hand back. Strazzante added that defendant's left hand remained "clenched in a fist" during the entire time.

¶ 7 Strazzante yelled, "Gun." Vizzini responded, "I see it," and ran to the passenger side of the vehicle. Strazzante stated that he tried to open the driver's door, but it would not open, so he opened the rear driver's-side door. When he opened that door, he saw Vizzini open the front passenger door and perform an "emergency handcuffing," *i.e.*, handcuffing defendant "in the front" to control defendant's hands and keep them away from the suspected pistol.

¶ 8 Vizzini then had defendant attempt to get out of the car by standing up. Strazzante testified that he heard "an audible clink that sounded like metal hitting the ground," and Vizzini stated that defendant dropped the gun. Vizzini could not get defendant out of the car because defendant's seatbelt was trapped between defendant's arms from the handcuffs, so Vizzini told defendant to sit back down in the car.

¶ 9 Strazzante then went around to the passenger side of the car and saw the gun on the ground. Strazzante cut defendant's seatbelt, Vizzini got defendant out of the car, and Strazzante recovered the gun. Strazzante agreed that the gun was "loaded with two rounds of .38 Special." In addition, Strazzante opened defendant's left hand and retrieved a tinfoil packet containing a crushed brown substance that looked like wet tobacco, which Strazzante suspected was phencyclidine (PCP). Strazzante placed defendant and Villanueva into custody, took them to the

police station, and issued traffic citations to Villanueva for "illegal parallel parking obstruction" and having an improper identification plate.

¶ 10 Strazzante conceded that possession of a firearm in Illinois is not illegal and that he was unaware whether defendant had a valid Firearm Owner's Identification (FOID) card or a concealed-carry permit at the time of the stop. Strazzante further admitted that he did not know whether the gun was loaded before he recovered and examined it. Finally, when presented with the stipulated testimony from a prior hearing, Strazzante did not recall testifying that Vizzini ran to the rear driver's-side door and opened it. Strazzante suggested that he must have misspoken.

¶ 11 The State then moved for a directed finding, which the court granted. The court found that the officers were justified in approaching the car because it was blocking traffic and forced southbound traffic to veer into the oncoming lanes to go around the car. The court further noted that it was unrebutted that defendant had a gun in his hand when the officers approached, which the court found gave the officers the "basis for [a] reasonable articulable suspicion for detaining defendant" and performing a further investigation. The case then proceeded to trial.

¶ 12 At trial, Officer Strazzante testified substantially the same as he did during the hearing on defendant's pretrial motion. Chicago police detective Steven Suvada testified that, at around 3 p.m. that day, he interviewed defendant after advising him of his *Miranda* rights. Suvada was assigned to investigate Villanueva's accusation that defendant tried to rob Villanueva. Defendant, however, responded that he did not try to rob Villanueva. Defendant further added that he knew Villanueva and that the drugs and gun were his and not Villanueva's. At a second interview with Suvada at around 9 p.m., defendant repeated that the gun and drugs were his and he did not try to rob Villanueva.

¶ 13 Monica Kinslow, an employee with the Forensic Sciences Division of the Illinois State Police, testified as an expert witness in the field of drug chemistry. Kinslow testified that, within a reasonable degree of scientific certainty, the substance in the tinfoil packet that was recovered from defendant's left hand contained PCP. On cross-examination, Kinslow conceded that the substance also contained 0.4 gram of a plant substance that was not cannabis, but she could not otherwise identify it. She further admitted that her testing did not determine how much of the substance was plant material and how much was PCP.

¶ 14 The State next presented certified copies of a defendant's prior conviction for "manufacture/delivery of a controlled substance, a Class 1 [felony]," and for "a Class 2 [felony], other amount [of] narcotics, Schedule 1 and 2." The State then rested, and the court denied defendant's motion for a directed verdict. Defendant elected not to testify, and the defense rested without presenting evidence.

¶ 15 Following closing arguments, the circuit court found defendant not guilty of possession of a controlled substance and armed violence, but guilty of unlawful use of a weapon by a felon, aggravated unlawful use of a weapon, and being an armed habitual criminal. The court subsequently sentenced defendant to eight years' imprisonment (with 679 days of presentence custody credit) and imposed $509 in fines and fees. This appeal followed.

¶ 16 ANALYSIS

¶ 17 The Motion to Quash Arrest and Suppress Evidence

¶ 18 Defendant first contends that the circuit court erred in denying his motion to quash arrest and suppress evidence. Specifically, defendant argues that he was unlawfully seized because the basis for his arrest was that the officers saw him in possession of a gun, which does not constitute probable cause or a reasonable suspicion for an investigatory stop. Defendant relies

principally upon two cases in support of his contention: *People v. Horton*, 2017 IL App (1st) 142019, and *People v. Thomas*, 2016 IL App (1st) 141040. Defendant concludes that, since his illegal seizure led to the discovery of the handgun, that handgun should have been suppressed and defendant's resulting convictions should be reversed outright.

¶ 19 Both the fourth amendment to the United States Constitution (U.S. Const., amend. IV) and article I, section 6, of the Illinois Constitution (Ill. Const. 1970, art. I, §6) protect individuals from unreasonable searches and seizures. See also *Elkins v. United States*, 364 U.S. 206, 213 (1960) (noting that the fourth amendment applies to state officials through the fourteenth amendment). We interpret the search and seizure provision of the Illinois Constitution in "limited lockstep" with that of the United States Constitution. *People v. Caballes*, 221 Ill. 2d 282, 313-14 (2006). Under the fourth amendment, an individual is "seized" when an "officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen." *Florida v. Bostick*, 501 U.S. 429, 434 (1991).

¶ 20 Not every encounter between the police and a private citizen, however, results in a seizure. *People v. Luedemann*, 222 Ill. 2d 530, 544 (2006) (citing *Immigration & Naturalization Service v. Delgado*, 466 U.S. 210, 215 (1984)). Among the three tiers of police-citizen encounters are brief investigative detentions, or *Terry*[1] stops, which must be supported by a reasonable, articulable suspicion of criminal activity. *Id.* (citing *United States v. Black*, 675 F.2d 129, 133 (7th Cir. 1982); *United States v. Berry*, 670 F.2d 583, 591 (5th Cir. 1982)). Pursuant to *Terry*, a police officer has authority under the fourth amendment to detain a suspect briefly and frisk him for weapons when the officer has a reasonable suspicion that, in light of his experience, "criminal activity may be afoot." *Terry v. Ohio*, 392 U.S. 1, 30 (1968). In determining the

[1] *Terry v. Ohio*, 392 U.S. 1 (1968).

reasonableness of the officer's conduct, the facts must be analyzed not in hindsight, but as they would have been evaluated by a reasonable officer in the performance of his duties. *In re S.V.*, 326 Ill. App. 3d 678, 683 (2001) (citing *People v. Smithers*, 83 Ill. 2d 430, 439 (1980)). The decision to make a *Terry* stop is a practical one based upon the totality of the circumstances. *Id.* (citing *People v. Sorenson*, 196 Ill. 2d 425, 439 (2001)).

¶ 21 Since an investigative *Terry* stop is brief and relatively unobtrusive, there are fewer fourth amendment concerns than with an arrest or a search incident to an arrest. Therefore, the "reasonable suspicion" standard is lower than the probable cause standard applicable to arrests or searches incident to an arrest. See *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000) (holding that the reasonable suspicion standard requires a showing "considerably less" than a preponderance of the evidence). In other words, "the Fourth Amendment requires at least a *minimal level* of objective justification for making the stop." (Emphasis added.) *Id.* (citing *United States v. Sokolow*, 490 U.S. 1, 7 (1989)). Nervous, evasive behavior is a pertinent factor in determining reasonable suspicion. *Id.* at 124. While an individual's mere presence in a "high crime area" is insufficient by itself to support a reasonable, particularized suspicion that the person is committing a crime, the Supreme Court has held that "the fact that the stop occurred in a 'high crime area' [is] among the relevant contextual considerations in a *Terry* analysis." *Id.* at 124 (citing *Adams v. Williams*, 407 U.S. 143, 144, 147-148 (1972)).

¶ 22 Although we will uphold the trial court's factual findings on a motion to suppress unless they are against the manifest weight of the evidence, the ultimate question of whether the evidence should be suppressed is reviewed *de novo*. *People v. Jones*, 215 Ill. 2d 261, 267-68 (2005). "A finding is against the manifest weight of the evidence only if the opposite conclusion

is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *People v. Deleon*, 227 Ill. 2d 322, 332 (2008).

¶ 23 In this case, the circuit court did not err in denying defendant's motion to quash arrest and suppress evidence. The evidence at the hearing established that Strazzante and Vizzini were on routine patrol in an area that was rife with shootings and a high volume of narcotics trafficking. They saw a car with defendant and another individual that was parked so far away from the curb that it was impeding traffic and forcing cars in that lane of travel to veer into the oncoming lane to go around them. This was a violation of state law. See 625 ILCS 5/11-1304(a) (West 2014) (providing that, in general, all vehicles parked on a two-way roadway must be parallel to and within 12 inches of the right-hand curb). Searches or seizures are commonly held to be reasonable where the police are acting in a community caretaking or public safety function. *People v. Luedemann*, 222 Ill. 2d 530, 548 (2006) (citing *Cady v. Dombrowski*, 413 U.S. 433, 447 (1973) (holding that "concern for the safety of the general public" is "constitutionally reasonable")). In addition, "the law clearly provides that a police officer does not violate the fourth amendment merely by approaching a person in public to ask questions if the person is willing to listen." *Id.* at 549 (citing *United States v. Drayton*, 536 U.S. 194, 200 (2002); *People v. Love*, 199 Ill. 2d 269, 278 (2002)). Since the parked car was impeding the flow of traffic and endangering public safety by forcing other cars to veer into the oncoming lane of travel, the officers were justified in approaching the vehicle.

¶ 24 Upon their approach to the vehicle, the driver (Villanueva) saw Strazzante, yelled, "Oh, Fuck," and moved his hands toward his waistband. Strazzante then saw defendant place a firearm under his right thigh. Defendant's attempt to conceal the firearm under his thigh—in an area plagued with shootings and narcotics trafficking—would have led Strazzante to reasonably

believe that defendant was not only armed, but also in process of either actively committing a crime or concealing prior involvement in one. See *Wardlow*, 528 U.S. at 124 (holding that nervous, evasive behavior is pertinent in determining whether a suspicion is reasonable); see also *People v. White*, 221 Ill. 2d 1, 26 (2006) (holding that the defendant's attempt to conceal an object "suggested some consciousness of guilt" and supported a reasonable, articulable suspicion for officers to stop the defendant and investigate), *abrogated in part on other grounds, Luedemann*, 222 Ill. 2d at 551. As noted above, the reasonable suspicion standard requires a showing "considerably less" than a preponderance of the evidence. *Wardlow*, 528 U.S. at 123. On these facts, the officers' reasonable suspicion met that admittedly low standard. Defendant's contention of error is therefore without merit.

¶ 25 Moreover, defendant's citation to *Horton* and *Thomas* does not alter our conclusion. We note at the outset that our supreme court issued supervisory orders directing this court to vacate the judgments in both cases and to reconsider them in light of *People v. Holmes*, 2017 IL 120407, "on the issue of whether the trial court erred in denying defendant's motion to quash arrest and suppress evidence." *People v. Horton*, No. 122461 (Nov. 22, 2017), *People v. Thomas*, No. 121947 (Sept. 27, 2017). In addition, both cases are factually distinct. In *Horton*, the arresting officer observed the defendant with a "metallic object in his waistband" but without any other evidence of a crime. *Horton*, 2017 IL App (1st) 142019, ¶¶ 49-50. In *Thomas*, the arresting officers were acting on a tip that "merely mention[ed] a gun in [the] defendant's possession ***, without any more information regarding [the] defendant's criminal conduct." *Thomas*, 2016 IL App (1st) 141040, ¶ 30. The *Thomas* court further noted, *inter alia*, that the tip did not contain any information that the defendant was involved in other criminal activity, and

the officers did not testify that they observed the defendant committing a crime or reasonably believed he was connected with any other crime independent of his gun possession. *Id.* ¶ 31.

¶ 26 Here, by contrast, Strazzante saw defendant make a sudden, furtive movement to hide the firearm under his thigh, which has repeatedly supported an inference that the defendant had been involved in criminal activity. *Wardlow*, 528 U.S. at 124; *White*, 221 Ill. 2d at 26. *Horton* and *Thomas* do not alter our conclusion.

¶ 27 The Armed Habitual Criminal Statute

¶ 28 Defendant next contends that the Armed Habitual Criminal statute (Statute) is facially unconstitutional because it potentially criminalizes innocent conduct. Defendant notes that, although a twice-convicted felon may, under certain limited circumstances, legally obtain a FOID card, the Statute makes possession of a firearm a class X felony if the accused has two prior convictions from a list of enumerated offenses. In essence, defendant claims that only the possession of a firearm *without* a FOID card is illegal under Illinois law, but the Statute criminalizes possession of firearm by a repeat felon even if he possesses a valid FOID card. Defendant thus reasons that, under that scenario, the Statute makes possession of a firearm a criminal act regardless of whether the accused has been granted a FOID card, and therefore the statute violates substantive due process. Consequently, defendant asks that we reverse his armed habitual criminal conviction.

¶ 29 All statutes carry a strong presumption of constitutionality, and as such, we must uphold a statute whenever reasonably possible, resolving all doubts in favor of its validity. *People v. Pepitone*, 2018 IL 122034, ¶ 12. To rebut this presumption, a party challenging a statute must "clearly" establish that it violates the constitution. *Id.* The challenger's burden to establish a statute's unconstitutionality is "particularly heavy" where, as here, the party raises a facial

challenge, which requires that there be no circumstances under which the statute is valid. *Id.* In other words, the challenger must show that that is unconstitutional "under *any* imaginable set of circumstances." (Emphasis in the original.) *In re M.T.*, 221 Ill. 2d 517, 536 (2006). If there exists merely one situation in which a statute could be validly applied, a facial challenge necessarily fails. *Hill v. Cowan*, 202 Ill. 2d 151, 157 (2002). We review constitutional challenges *de novo*. *Pepitone*, 2018 IL 122034, ¶ 12.

¶ 30 Section 24-1.7(a)(3) of the Criminal Code of 2012 provides in relevant part that an accused commits the offense of being an armed habitual criminal "if he *** possesses *** any firearm after having been convicted a total of 2 or more times of *** any violation of the Illinois Controlled Substances Act ***." 720 ILCS 5/24-1.7(a)(3) (West 2014).

¶ 31 Under section 8(c) of the Firearm Owners Identification Card Act (FOID Card Act), a convicted felon may have either his FOID card revoked and seized or his FOID card application denied. 430 ILCS 65/8(c) (West 2014). Under section 10(c), however, a convicted felon who is prohibited from acquiring a FOID card may apply to the Director of State Police or the circuit court, as applicable, requesting relief from that prohibition. 430 ILCS 65/10(c) (West 2014).

¶ 32 The director or court may grant the requested relief in specific enumerated instances, including where "the circumstances regarding a criminal conviction, *** the applicant's criminal history[,] and his reputation are such that the applicant will not be likely to act in a manner dangerous to public safety" and where "the applicant has not been convicted of a forcible felony *** within 20 years of the applicant's application for a [FOID] Card, or at least 20 years have passed since the end of any period of imprisonment imposed in relation to that conviction." *Id.* In other words, section 10 provides guidelines for the individual review of a felon's application for a FOID card. Based on this individual review, defendant contends that a person convicted

under the Statute could still lawfully possess a FOID card. Thus, defendant claims that the Statute criminalizes potentially innocent conduct and has no rational relationship to the Statute's intended purpose.

¶ 33 A facial unconstitutionality challenge to the Statute on grounds identical to those that defendant raises has been previously considered and rejected by four different panels of this court. See *People v. Johnson*, 2015 IL App (1st) 133663, *appeal denied*, No. 120137 (Jan. 20, 2016); *People v. Fulton*, 2016 IL App (1st) 141765, *appeal denied*, No. 120690 (Sept. 28, 2016); *People v. West*, 2017 IL App (1st) 143632, *appeal denied*, No. 121815 (Mar. 29, 2017); *People v. Brown*, 2017 IL App (1st) 150146, *appeal denied*, No. 122379 (Sept. 27, 2017). All of these decisions held that a twice-convicted felon's possession of a firearm is not wholly innocent, and that the statute's criminalization of that activity was rationally related to the purpose of protecting the public from the heightened threat of violence that arises when repeat offenders possess firearms. *Fulton*, 2016 IL App (1st) 141765, ¶ 31 (quoting *Johnson*, 2015 IL App (1st) 133663, ¶ 27); *West*, 2017 IL App (1st) 143632, ¶ 22 ("adopting" the decisions in *Johnson* and *Fulton*); *Brown*, 2017 IL App (1st) 150146, ¶ 30.

¶ 34 Despite the substantial weight of this authority, defendant asks that we disregard these holdings because they allegedly failed to address the individualized consideration of a person's right to possess a firearm that was recognized in *Coram v. State of Illinois*, 2013 IL 113867, ¶ 58. *Fulton*, however, held that *Coram* was distinguishable because it did not address the constitutionality of the Statute. *Fulton*, 2016 IL App (1st) 141765, ¶ 24. In addition, *Johnson* and *Fulton* noted that *Coram* analyzed a prior version of the FOID Card Act in upholding the individualized consideration of a person's right to possess a firearm. *Johnson*,

2015 IL App (1st) 133663, ¶ 29; *Fulton*, 2016 IL App (1st) 141765, ¶ 24. We agree with these holdings that *Coram* does not advance defendant's claim.

¶ 35 Finally, defendant cites numerous cases in which our supreme court held that certain statutes unconstitutionally criminalized wholly innocent conduct. See *People v. Madrigal*, 241 Ill. 2d 463, 471 (2011) ("the statute as it currently reads would criminalize such innocuous conduct as someone using the internet to look up how their neighbor did in the Chicago Marathon"); *People v. Carpenter*, 228 Ill. 2d 250, 269 (2008) (statute criminalizes "anyone who owns or operates a vehicle *** contain[ing] a false or secret compartment," but the contents of the compartment do not have to be illegal "for a conviction to result"); *People v. Wright*, 194 Ill. 2d 1, 28 (2000) ("an individual who knowingly fails to record the color of a single vehicle could be convicted of failure to keep records, even if that failure were caused by a disability, family crisis, or incompetence"); *People v. Zaremba*, 158 Ill. 2d 36, 38-39 (1994) (noting the defendant's example that the statute at issue criminalized the lawful receipt of stolen goods by a police employee); and *People v. Wick*, 107 Ill. 2d 62, 66 (1985) ("a farmer who demolishes his deteriorated barn to clear space for a new one is liable for a Class X penalty if a fireman standing by is injured at the scene"). All of those cases, however, are distinguishable.

¶ 36 The wholly innocent conduct described in *Madrigal*, *Carpenter*, *Wright*, *Zaremba*, and *Wick* cannot reasonably be extended to include a twice-convicted felon's possession of a firearm. The legislature was seeking to "help protect the public from the threat of violence that arises when repeat offenders possess firearms" (*Johnson*, 2015 IL App (1st) 133663, ¶ 27), and the enactment of the Statute is rationally related to that purpose. Furthermore, the Supreme Court stated in *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008), that nothing in its opinion "should be taken to cast doubt on longstanding prohibitions on the possession of firearms by

felons." Defendant provides no persuasive argument against following the substantial authority upholding the constitutionality of the Statute. Accordingly, we reject defendant's facially constitutional challenge to the Statute.

¶ 37 Defendant's Fines and Fees

¶ 38 Finally, defendant contends that his fines and fees order is incorrect. Defendant first argues that we should vacate the trial court's assessment of a $5 electronic citation fee (705 ILCS 105/27.3e (West 2014)). In addition, defendant claims that his presentence custody credit should offset the following charges: (1) a $50 "Court System" assessment (55 ILCS 5/5-1101(c)(1) (West 2014)); (2) a $15 "State Police Operations Fee" (705 ILCS 105/27.3a(1.5) (West 2014)); (3) a $190 "Felony Complaint Filed" charge (705 ILCS 105/27.2a(w)(1)(A) (West 2014)); (4) a $15 "Automation" assessment (705 ILCS 105/27.3a(1) (West 2014)); (5) a $15 "Document Storage" fee (705 ILCS 105/27.3c(a) (West 2014)); (6) a $25 "Court Services (Sheriff)" charge (55 ILCS 5/5-1103 (West 2014)); (7) a $2 "Public Defender Records Automation Fee" (55 ILCS 5/3-4012 (West 2014)); and (8) a $2 "State's Attorney Records Automation Fee" (55 ILCS 5/4-2002.1(c) (West 2014)). Defendant is entitled to $5 per day for the 619 days he spent in custody, or $3,095.[2] 725 ILCS 5/110-14(a) (West 2014). We review the propriety of a trial court's imposition of fines and fees *de novo*. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 60.

¶ 39 A panel of this court recently made the following observations regarding criminal fines and fees:

> "This court has previously noted Illinois's labyrinthine system of criminal fines and fees. See [*People v.*] *Grigorov*, 2017

[2] At sentencing, the trial court gave defendant 60 days' additional presentence custody credit for having completed the "West Care Program." Defendant does not claim that he is entitled to a $5 per day credit for these additional days.

IL App (1st) 143274, ¶ 19; *People v. Johnson*, 2015 IL App (3d) 140364, ¶ 11 (calculation of fines and fees "has become a very complex process"); *People v. Williams*, 2013 IL App (4th) 120313, ¶ 25; *People v. Folks*, 406 Ill. App. 3d 300, 308 (2010) (referring to "morass of fines, fees, and costs created by the legislature"); see also Statutory Court Fee Task Force, *Illinois Court Assessments: Findings and Recommendations for Addressing Barriers to Access to Justice and Additional Issues Associated With Fees and Other Court Costs in Civil, Criminal, and Traffic Proceedings* 7 (June 1, 2016), http://www.illinoiscourts.gov/2016_Statutory_Court_Fee_Task_Force_Report.pdf ("Over the years, more and more costs have been passed on to court patrons through an elaborate web of fees and fines that are next to impossible to decipher and severely lacking in uniformity and transparency."). The current fines and fees order used in the circuit court of Cook County contains more than 90 categories of assessments, divided into categories of (i) fines offset by the presentence credit, (ii) fines that, by statute, are not offset by the presentence credit, and (iii) fees and costs not offset by the presentence credit. The enormous amount of attorney and judicial time and energy devoted to fines and fees issues undoubtedly dwarfs the collection rate (see *People v. Rexroad*, 2013 IL App (4th) 110981, ¶ 56), although we are unaware of any study

undertaken to determine what percentage of assessed fines and fees is actually collected. Add to that the failure of the Clerk of the Circuit Court of Cook County to change the fines and fees order to reflect years of consistent decisions from this court that have repeatedly determined that certain assessments categorized as fees on that form are, in fact, fines as to which defendants are entitled to presentence credit, and you have a recipe for limitless reinvention of the wheel. See, *e.g.*, *People v. Blanchard*, 2015 IL App (1st) 132281, ¶ 22 (court system fee ***); *People v. Smith*, 2013 IL App (2d) 120691, ¶ 21 (court system fee ***); *People v. Maxey*, 2016 IL App (1st) 130698, ¶ 141 (*** state police operations fee), *vacated on other grounds*, No. 121137 (Ill. Nov. 22, 2017) (supervisory order); *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 (state police operations fee ***). And the State regularly concedes these errors, although not typically until the matter is fully briefed. Of course, despite the inaccuracies in the clerk's form, the parties, as noted, could easily stipulate to presentence credit against these assessments.

Although the law applicable to the issues presented in this appeal is well settled, we are nevertheless publishing this decision as an opinion to call attention to this needless waste of scarce resources." *People v. Smith*, 2018 IL App (1st) 151402, ¶¶ 10-11

We fully agree with these observations and add our voice to the chorus encouraging all those involved to resolve this persistent problem. We now turn to the merits of this claim.

¶ 40 We agree with the parties that the $5 electronic citation fee must be vacated in this felony case because that fee only applies in traffic, misdemeanor, ordinance, and conservation cases. See 705 ILCS 105/27.3e (West 2014). We also agree that defendant's presentence custody credit should be applied to fully offset the $50 Court System fee and the $15 State Police Operations fee. See *Smith*, 2018 IL App (1st) 151402, ¶ 14 (citing *People v. Ackerman*, 2014 IL App (3d) 120585, ¶ 30; *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31). Therefore, pursuant to Illinois Supreme Court Rule 615(b)(1), we correct defendant's fines and fees order to reflect both the removal of the $5 electronic citation fee and a $65 credit.

¶ 41 We reject, however, defendant's assertion that he is entitled to presentence custody credit against the remaining charges: the $190 felony complaint filing fee, the $15 automation fee, the $15 document storage fee, the $25 court services fee, the $2 Public Defender Records Automation Fund fee, and the $2 State's Attorney Records Automation Fund fee. This court has repeatedly held that those assessments are fees not subject to an offset for presentence custody credit. *Id.* ¶¶ 15-16; see also *People v. Graves*, 235 Ill. 2d 244, 250 (2009); *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006); *People v. Brown*, 2017 IL App (1st) 150146, ¶ 38 (collecting cases). Although the court in *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56, held that the State's Attorney and Public Defender Records Automation Fund fees were actually fines (and thus subject to a credit for presentence incarceration), we nevertheless decline defendant's invitation to deviate from the weight of established precedent and hold that the records automation fees are fines. *People v. Jones*, 2017 IL App (1st) 143766, ¶ 53.

¶ 42 CONCLUSION

¶ 43 The circuit court correctly denied defendant's motion to quash arrest and suppress evidence. The Armed Habitual Criminal statute is not facially unconstitutional. We modify the fines and fees order to reflect both the removal of the $5 electronic citation fee and a $65 credit.

¶ 44 Affirmed as modified.