SIXTH DIVISION
AUGUST 10, 2018

No. 1-16-0165

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. 14 CR 6402
	)	
CHARLES HARPER,	)	Honorable
	)	Joseph G. Kazmierski,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's statements and inquiries to potential jurors complied with Illinois Supreme Court Rule 431(b) and did not constitute error. Defendant's presentence custody credit can be applied to two fines imposed against him.

¶ 2 Following a jury trial, defendant-appellant, Charles Harper, was convicted of two counts of aggravated battery to a peace officer (720 ILCS 5/12-3.05(d)(4) (West 2012)). Due to his criminal background, defendant was subject to Class X sentencing, and the trial court imposed a term of eight years in prison. On appeal, defendant contends his case should be remanded for a

new trial because the court's inquiries to potential jurors during *voir dire* did not comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012). He asserts that, although this issue was not preserved in the trial court, it now can be considered under the first prong of the plain error doctrine. Defendant also argues that a portion of the monetary credit for the days he spent in custody prior to sentencing can be applied to offset several assessments imposed against him. For the following reasons, we affirm the judgment of the circuit court of Cook County and direct the clerk of the circuit court to modify the defendant's fines and fees order.

¶ 3 BACKGROUND

¶ 4 Defendant was charged with 13 counts of aggravated battery to a peace officer and two counts of resisting a peace officer. Defendant elected a jury trial.

¶ 5 At the beginning of jury selection, the trial court told the venire:

> "Under the law, the defendant is presumed to be innocent of the charges against him. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict. It is not overcome unless from all the evidence you are convinced beyond a reasonable doubt that the defendant is guilty.
>
> The State has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence, nor is he required to present any evidence on his own behalf."

¶ 6 The court made additional introductory remarks to the venire and assembled the first panel of 14 prospective jurors. After questioning each person, the court addressed that panel:

"My question[] to all of you individually, but in a group too, so I can get some indication where you're at on these things: Is there anything about the nature of the charge in this case that would affect any of your abilities to be a fair and impartial juror? Anybody?

Will each of you be able to follow the law as I give it to you, even if you personally disagree with it? I haven't given you the law yet, but we want to make sure you're open to that proposition. Because the parties have the right to know what law is going to be applied in this case, and that's the law I'm going to be giving you some time during the course of the trial, after, and before your deliberations.

I'm going to ask each of you individually if you can both understand and accept these following fundamental principles of our legal system and apply them to this particular case:

First, that a person accused of a crime is presumed to be innocent of the charge against him; that that presumption stays with the defendant throughout the trial and is not overcome unless, from all the evidence, you believe the State proved his guilt beyond a reasonable doubt; that the defendant does not have to prove his innocence; that the defendant does not have to present any evidence on his [own] behalf. That means, among other things, that the defendant does not have to testify, if he does not wish to.

> But if he does not testify, that fact must not be considered by you in any way in arriving at your verdict. And if the defendant does testify, you should judge his testimony the same way you would any other witness."

¶ 7 The court then asked: "Would each of you be able to apply those principles of law that I just talked to you about in this case?" The court addressed the first panel member by name and asked him, "[Can] you do that?" The panel member responded affirmatively, as did the other 11 panel members, addressed by the court by name. Jury selection was completed as to that panel.

¶ 8 As to the second and third panels, after the court conducted preliminary questioning of each person, the court told each panel that it would "ask each of you individually if you both understand and accept the following fundamental principles of our legal system." The court then recited the *Zehr* principles to the second and third panels in substantially the manner quoted above and subsequently asked: "Will each of you be able to both understand and accept these principles of law in our legal system and apply them to this case?" Each panel member responded affirmatively when addressed by the court by name.

¶ 9 Jury selection was completed and the case proceeded to trial. At trial, Chicago police detective Roger Murphy testified that on March 17, 2014, he and Chicago police detective Thomas Carr served a grand jury subpoena on defendant, who was a witness to a murder. When defendant did not appear to testify, an arrest warrant for indirect criminal contempt was issued.

¶ 10 On March 27, 2014, detectives Murphy and Carr went to defendant's home to serve the warrant. They were dressed in plain clothes, bulletproof vests, gun belts and police stars. Murphy told defendant the purpose of their visit and asked him to put his hands behind his back. After Murphy placed a handcuff on defendant's right wrist, defendant began struggling, kicking

Murphy in the leg and knocking him to the floor. Murphy suffered a broken leg, tendon damage in his left hand, and required stitches to his left hand.

¶ 11 Carr testified consistently regarding the struggle. As Murphy placed one handcuff on defendant, defendant swung his arms, striking Murphy and Carr. Defendant struck Carr in the chest with his fist and with his elbow. Carr made a radio call for assistance. Defendant broke free from Murphy and ran outside and through a vacant lot before backup officers arrested him. Although Carr did not receive medical treatment, he testified he was "sore" from the incident.

¶ 12 Defendant and his girlfriend, Donna Boyd, both testified that the detectives attempted to handcuff defendant and kicked him in the groin. Defendant pulled away and ran from the house. Boyd never saw defendant strike the detectives or knock a detective to the ground. Defendant testified the detectives never showed him a warrant or told him that they had a warrant. Defendant denied punching or kicking the detectives or knocking them to the ground.

¶ 13 The jury found defendant guilty of one count of aggravated battery as to each officer. Defendant's motion for a new trial was denied. Defendant was subsequently sentenced to concurrent eight-year terms in prison. Defendant filed a motion to reconsider his sentence, which was denied. This appeal followed.

¶ 14 ANALYSIS

¶ 15 We note that we have jurisdiction to review this matter, as defendant filed a timely notice of appeal. Ill. S. Ct. R. 603 (eff. Feb. 6, 2013); R. 606 (eff. Dec. 11, 2014). Defendant presents the following two issues for our review: (1) whether the trial court failed to comply with Supreme Court Rule 431(b) when questioning prospective jurors; and (2) whether his fines and fees order should be corrected.

¶ 16 Defendant first contends the trial court failed to comply with Supreme Court Rule 431(b) in two instances. Defendant acknowledges he did not preserve this issue for review by objecting to the trial court's method during *voir dire* or raising the issue in his post-trial motion; however, he argues that the issue should be considered under the plain-error doctrine. Under that doctrine, a reviewing court may exercise its discretion and excuse the party's procedural default if a clear or obvious error has occurred and either: (1) the evidence is "so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error," or (2) the error is "so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Staake*, 2017 IL 121755, ¶ 31 (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007)).

¶ 17 Our supreme court recently reaffirmed in *People v. Sebby*, 2017 IL 119445, ¶ 72, that a "clear Rule 431(b) violation is cognizable under the first prong of the plain error doctrine." Invoking that principle, defendant argues the evidence in this case was closely balanced. However, the initial step in a plain-error analysis is to determine whether the claim presented actually amounts to a clear and obvious error, because without error, there can be no finding of plain error. *People v. Hood*, 2016 IL 118581, ¶ 18; *People v. Wooden*, 2014 IL App (1st) 130907, ¶ 10. Thus, we first determine whether a Rule 431(b) violation occurred here.

¶ 18 Rule 431(b), which codifies the principles set out in *People v. Zehr*, 103 Ill. 2d 472, 477-78 (1984), states:

> "The court shall ask each potential juror, individually or in a group, whether that juror understands and accepts the following principles: (1) that the defendant is presumed innocent of the

> charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that if a defendant does not testify it cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's decision not to testify when the defendant objects.
>
> The court's method of inquiry shall provide each juror an opportunity to respond to specific questions concerning the principles set out in this section." Ill. S. Ct. R. 431(b) (eff. July 1, 2012).

¶ 19 Rule 431(b) requires "trial courts to address each of the enumerated principles" and "mandates a specific question and response process." *People v. Thompson*, 238 Ill. 2d 598, 607 (2010). The court is required to ask each juror if he or she understands and accepts each of the principles set out in the rule. *Id*. As the rule indicates, that questioning can be performed individually or as a group, but the venire members must be afforded the opportunity to respond regarding their understanding and acceptance of those principles. *Id*. This court has also noted that since *Thompson*, Rule 431(b) does not " 'prescribe a precise formula for trial judges to use in ascertaining jurors' prejudices or attitudes.' " *People v. Morris*, 2013 IL App (1st) 110413, ¶ 83 (quoting *People v. Emerson*, 122 Ill. 2d 411, 427 (1987)). The construction of a supreme court rule is a question of law to be reviewed *de novo*. *Thompson*, 238 Ill. 2d at 606.

¶ 20 Defendant first argues that the trial court did not comply with the rule in its questioning of the first panel. Defendant points out that the court told the first panel of prospective jurors it

was "going to ask each of [them] individually if [they] can both understand and accept these following fundamental principles" and the court then enunciated the *Zehr* principles, but when the court polled each venire member individually, it asked: "Would each of you be able to *apply* those principles of law that I just talked to you about in this case?" (Emphasis added.) Defendant argues that this combination of statements and the use of the word "apply" did not allow any individual in the first panel to respond to the court's initial statement about the understanding and acceptance of the four enunciated principles.[1]

¶ 21 In support of his argument, defendant directs us to *People v. Wilmington*, 2013 IL 112938, and *People v. Belknap*, 2014 IL 117094, in which our supreme court found error occurred because the trial courts in those cases did not comply with Rule 431(b). In *Wilmington*, the trial court enunciated the four *Zehr* principles and asked potential jurors if any of them "disagree[d]" with three of the four "fundamental principles of law." *Wilmingoton*, 2013 IL 112 938, ¶ 28. The supreme court noted that Rule 431(b) "requires that the trial court ask potential jurors whether they *understand* and *accept* the enumerated principles[.]" (Italics in original.) *Id*. ¶ 32.

¶ 22 In finding error in *Wilmington*, the supreme court stated:

> "While it may be arguable that the court's asking for disagreement, and getting none, is equivalent to juror *acceptance* of the principles, the trial court's failure to ask jurors if they *understood* the four Rule 431(b) principles is error in and of itself. Moreover, the trial court did not even inquire regarding the jury's

[1] Defendant does not raise a similar claim of error as to the court's inquiries to the second and third panels.

> understanding and acceptance of the principle that defendant's failure to testify could not be held against him." (Emphasis in original.) *Id.*

¶ 23 A similar situation arose in *Belknap*, where the trial court described the principles and asked the first panel of potential jurors to speak out if "there's anyone who doesn't agree with that," "anyone who can't accept that principle," "anyone who has any quarrel with that principle," or using other comparable phrasing. *Belknap*, 2014 IL 117094, ¶¶ 42-43. In finding those inquiries did not comply with Rule 431(b), the supreme court cited the language of the rule that the trial court "shall ask" whether potential jurors understand and accept the four principles in the rule, and that the failure to do so "constitutes error." *Id.* ¶ 45 (also citing *Thompson*, 238 Ill. 2d 598, 607 (2010)). Moreover, in *Belknap*, the State conceded in the supreme court that the trial court committed error by failing to ask the prospective jurors whether they understood the principles. In the *Belknap* and *Wilmington* cases, what occurred was either: (1) one of the *Zehr* principles was omitted entirely; or (2) the trial court did not ask whether the venire understood the principles.

¶ 24 Here, in contrast to *Wilmington* and *Belknap*, the trial court explicitly told the first panel that it would be required to indicate its *understanding* and *acceptance* of the *Zehr* principles. Defendant's claim of error is based on the trial court's use of the word "apply" in its questioning of the first panel, arguing that the use of this word does not reflect that the jurors *understood* the principles. We are not persuaded by this argument. Even though the court ultimately asked each individual on the first panel if he or she could *apply* those principles, the court had already directed the panel members that they were required to both *understand and accept* the principles. Moreover, as defendant points out, the plain meaning of "apply" is to "put into operation or

effect" and thus, applying the law, or giving effect to the law in question, must be preceded by an understanding and acceptance of the law. Read in context, we find that the use of the word "apply" in this situation was defined for the venire as understanding and accepting the law in accordance with Rule 431(b). Therefore, no error occurred in the trial court's questioning of the first panel of prospective jurors.

¶ 25 Defendant's second claimed error as to *voir dire* involves the manner in which the court described the *Zehr* principles to each panel. He contends the judge "conflated" the principles by stating them in succession in a "broad statement of the law," as opposed to stating each tenet individually.

¶ 26 This court has previously rejected various claims of error where the *Zehr* principles have been explained in combination. "Rule 431(b) has no requirement that the trial court ask separate questions of the jurors about each individual principle." *People v. Willhite*, 399 Ill. App. 3d 1191, 1196-97 (2010). It is not a violation of Rule 431(b) to combine a statement of the four *Zehr* principles as opposed to stating each principle and then questioning each juror. *People v. Smith*, 2012 IL App (1st) 102354, ¶¶ 104-05; see also *People v. Ware*, 407 Ill. App. 3d 315, 356 (2011) ("[t]he fact that one principle was explained at the same time as another does not invalidate the court's statement of those principles").

¶ 27 Defendant compares the court's statement of the *Zehr* principles in this case to the trial court's admonition in *People v. Hayes*, 409 Ill. App. 3d 612, 627 (2011), in which this court found that the court erred when it morphed the first three principles into one statement:

> "Do all of you know or understand that the defendant is presumed innoc[ent] of these charges and he do[es] not have to offer any evidence in his own behalf, but must be proven guilty beyond a

> reasonable doubt by the State? If you all know that or understand that principal [*sic*] of law, please raise your right hand."

¶ 28 Defendant's reliance on *Hayes* is misplaced. In *Hayes*, the court described the presumption of innocence, the absence of a burden on defendant to present evidence, and the reasonable doubt standard as a *single principle* of law. *Id*. Moreover, unlike the instant case, the trial court in *Hayes* also did not ask the venire members if they accepted those principles. *Id*. at 627-28. Here, the trial court recited the principles in succession and repeatedly referred to them as "principles" of law, using the plural noun. Although defendant argues the court's use of the plural term was insignificant, the court's reference to "principles" of law clearly demarcated them as multiple ideals.

¶ 29 In conclusion as to defendant's entire argument, the trial court described the four *Zehr* principles to each panel of venire members, asked if they could understand and accept those tenets, and allowed each potential juror an opportunity to respond. Because no error occurred here, the plain error doctrine does not apply in this case. See *Wooden*, 2014 IL App (1st) 130907, ¶ 10.

¶ 30 Defendant's remaining contentions on appeal involve the trial court's order imposing various fines and fees. Defendant argues that the order should be corrected because several of the assessments are fines that can be offset by his presentence custody credit.

¶ 31 Although defendant did not challenge these charges in the trial court, he asserts he can raise the issue now because under *People v. Woodard*, 175 Ill. 2d 435, 444-48 (1993), the credit that a defendant may receive under section 110-14 cannot be forfeited by the failure to seek it at the trial court level. The State agrees the issue of presentence custody credit cannot be forfeited. We therefore address defendant's claims.

¶ 32 A defendant is entitled to a credit of $5 for each day he is incarcerated, with that amount to be put toward the fines levied against him as part of his conviction. 725 ILCS 5/110-14(a) (West 2014). In this case, the trial court granted defendant credit for 327 days spent in custody. Thus, at $5 per day, defendant has accumulated $1,635 worth of credit that potentially could be applied toward his eligible fines.

¶ 33 Before considering whether the individual charges challenged by defendant can be offset by his presentence custody credit, we note that credit can be applied only to fines, and we set out the difference between a "fine" and a "fee." A "fee" is defined as "a charge that seeks to recoup expenses incurred by the state or to compensate the state for some expenditure incurred in prosecuting the defendant." (Internal quotations omitted.) *People v. Graves*, 235 Ill. 2d 244, 250 (2009) (quoting *People v. Jones*, 223 Ill. 2d 569, 582 (2006)). In contrast, a "fine" is "punitive in nature" and is "a pecuniary punishment imposed as a part of a sentence on a person convicted of a criminal offense." (Internal quotations omitted.) *Jones*, 223 Ill. 2d at 581 (quoting *People v. White*, 333 Ill. App. 3d 777, 781 (2002)). The labeling of a charge as a "fee" or a "fine" by the legislature is not dispositive. *Graves*, 235 Ill. 2d at 250-51 ("the most important factor is whether the charge seeks to compensate the state for any costs incurred in prosecuting the defendant").

¶ 34 As to the specific charges at issue, defendant first argues, and the State correctly concedes, that this court has found the $15 State Police operations charge (705 ILCS 105/27.3a (1.5) (West 2014)) and the $50 Court System charge (55 ILCS 5/5-1101(c)(1) (West 2014)) are both fines to which the credit can be applied. See *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 147 (State Police operations charge is a fine); *People v. Blanchard*, 2015 IL App (1st) 132281, ¶ 22 (Court System charge is a fine). The Court System charge was deemed to be a fine because it was imposed upon the conviction of each defendant found guilty of a felony,

regardless of what transpired in the particular case and did not compensate the State for prosecuting that particular defendant. *People v. Wynn*, 2013 IL App (2d) 120575, ¶ 17; see also *Graves*, 235 Ill. 2d at 253 (costs assessed under section 5-1101 of the Counties Code are "monetary penalties to be paid by a defendant" upon a judgment of guilty). Accordingly, defendant's presentence custody credit should be applied to offset those two charges.

¶ 35 Defendant also challenges several additional charges that the State asserts are not fines and thus cannot be offset by defendant's sentencing credit. Those charges include: the $190 felony complaint fee (705 ILCS 105/27.2a(w) (West 2014)); the $15 clerk automation fee (705 ILCS 105/27.3a(1), (1.5) (West 2014)); the $15 document storage fee (705 ILCS 27.3c(a) (West 2014)); the $2 State's Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2014)); and the $2 Public Defender records automation fee (55 ILCS 5/3-4012 (West 2014)).

¶ 36 Numerous appellate court decisions have addressed these assessments and found them to be fees. *People v. Smith*, 2018 IL App (1st) 151402, ¶¶ 15-16 (felony complaint charge and clerk's automation and document storage charges, along with the State's Attorney and Public Defender automation fund assessments, are fees, not fines, because they "represent part of the costs incurred for prosecuting a defendant" and compensate departments for expenses incurred while prosecuting and defending cases). See also *People v. Brown*, 2017 IL App (1st) 150146, ¶ 38 (collecting cases); *People v. Larue*, 2014 IL App (4th) 120595, ¶¶ 62-68 (felony complaint filing, clerk's automation and document storage charges are fees); *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65 (finding "no reason to distinguish" between the State's Attorney and Public Defender automation fund charges and concluding they are fees that reimburse those offices for expenses); *contra People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56 (the State's Attorney and Public Defender assessments are fines because they do not compensate the

State for any costs associated in prosecuting a particular defendant). The Illinois Supreme Court has granted leave to appeal in a case in which this court has held that those charges are fees and therefore are not subject to offset by a defendant's presentence custody credit. *People v. Clark*, 2017 IL App (1st) 150740-U, ¶¶ 21-23, *appeal allowed*, No. 122495 (Sept. 27, 2017). We follow *Clark*, *Smith* and the other cases that have found the felony complaint charge, the clerk's automation and document storage charges, and the State's Attorney and Public Defender assessments to be fees that cannot be offset by defendant's presentence custody credit.

¶ 37 CONCLUSION

¶ 38 In conclusion, no error occurred where the trial court's questioning of potential jurors complied with Rule 431(b), and thus, there can be no plain error and we affirm the judgment of the circuit court of Cook County. Two assessments, the $15 State Police operations charge and the $50 Court System charge, are fines that should be offset by defendant's presentence custody credit. The clerk of the circuit court is ordered to modify the fines and fees order accordingly.

¶ 39 Affirmed; fines and fees order corrected.