

No. 1-16-2399

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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. 13 CR 19620
)
 UNTJUAN JACKSON,) Honorable
) Dennis J. Porter,
 Defendant-Appellant.) Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Pierce and Griffin concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to prove defendant guilty of robbery beyond a reasonable doubt. We order the trial court to modify the fines, fees, and costs order.

¶ 2 Following a bench trial, defendant Untjuan Jackson was found guilty of robbery (720 ILCS 5/18-1(a) (West 2012)) and battery (720 ILCS 5/12-3(a) (West 2012)) and sentenced to 7 years of imprisonment for the robbery and 364 days for the battery, to be served concurrently. On appeal, Mr. Jackson argues that the State did not prove him guilty beyond a reasonable doubt because the testimony of the State’s witnesses was implausible, contrary to human experience,

and contradictory. Mr. Jackson also challenges certain assessed fines and fees. We affirm but order the fines and fees order to be modified.

¶ 3

I. BACKGROUND

¶ 4 At trial, Sharon Bates testified that, on September 29, 2013, at about 10 p.m., she went into her detached garage, which was about 10 to 15 feet away from her residence, to pick up her car while her friend, Kenneth Hyde, waited inside his own vehicle in front of her house. When Ms. Bates opened the door to her garage, she noticed the light was on, the lock was not intact, and the side of the door to the garage had been pried open. After she entered the garage, someone came towards her, pushed an object into her side, and said “give it up.” Ms. Bates testified that she did not know what the object was but that it felt like a gun. Ms. Bates gave the individual, whom she identified in court as Mr. Jackson, her purse. He brushed past her and went down the gangway towards the front of her house. Ms. Bates screamed for help to Mr. Hyde. Ms. Bates saw Mr. Hyde run after Mr. Jackson but she lost sight of them. Ms. Bates went into her house to call the police and stayed there until the police arrived. Ms. Bates then left her house and went in the direction where she had seen Mr. Hyde and Mr. Jackson run. On the next block over, she saw the police, Mr. Jackson, Mr. Hyde, and other people she did not know. She then recovered her purse and saw Mr. Jackson being placed under arrest.

¶ 5 On cross-examination, Ms. Bates testified that when she got to her garage to get her car, she saw that the inside and outside lights were on. The man who approached her in the garage had a mustache and a dark hoodie over his head, but his face was not concealed. Ms. Bates’s interaction with the man was brief but long enough for him to take the purse and run. After the man took her purse, she did not see his face again in the garage.

¶ 6 Kenneth Hyde testified that, on September 29, 2013, at about 10 p.m., he parked in front

of Ms. Bates's house and waited for her to get her car from her garage. While he was waiting, he saw an individual, whom he identified in court as Mr. Jackson, come out of the garage and run towards the front of Ms. Bates's house. Ms. Bates then came out of the garage hollering, and Mr. Hyde saw that Mr. Jackson had her purse. Mr. Hyde jumped out of his vehicle and chased Mr. Jackson. Mr. Jackson ran across the street, through a gangway, and into an alley. When Mr. Hyde got to the alley, he saw Mr. Jackson get caught on a fence and fall. Mr. Hyde grabbed Mr. Jackson and the purse and struggled with Mr. Jackson. Mr. Jackson broke free and Mr. Hyde again ran after him. As Mr. Hyde was running, Ms. Bates came running towards the alley. Mr. Hyde gave Ms. Bates her purse and continued to chase after Mr. Jackson.

¶ 7 During the fight, Mr. Hyde noticed that Mr. Jackson had a screwdriver in his hand. Mr. Hyde also noticed that he had been stabbed. Mr. Hyde got the screwdriver out of Mr. Jackson's hand and started hitting him, after which the police came and arrested Mr. Jackson.

¶ 8 On cross-examination, Mr. Hyde testified that he could not remember what the individual was wearing but that he had nothing over or on his head. Asked whether the individual who exited the garage and ran towards him was wearing a hooded sweatshirt, Mr. Hyde testified that "no, not that I know of. No. He didn't have anything on his head." At some point when Mr. Hyde was chasing the individual, Mr. Hyde obtained Ms. Bates's purse and dropped it for Ms. Bates when he saw her coming towards him. Mr. Hyde acknowledged that, at a previous hearing, he testified that when he was in his vehicle waiting for Ms. Bates, he saw Ms. Bates walk up to the garage, attempt to enter, and then somebody, who he assumed was her son, came out and shoved her a little bit.

¶ 9 Chicago police officer Armando Garza, Jr. testified that, when he arrived on the scene on September 29, 2013, he saw Mr. Hyde holding another person down, whom Officer Garza

identified in court as Mr. Jackson. Officer Garza spoke with Mr. Hyde and Ms. Bates at the scene and Ms. Bates identified Mr. Jackson as the robber. After Officer Garza's investigation, he arrested Mr. Jackson.

¶ 10 On cross-examination, Officer Garza testified that he spoke with Ms. Bates at her residence, and that this was the first time that he came in contact with her. After the incident, Ms. Bates told Officer Garza that the person who took her purse had a screwdriver and escorted her out of the garage by grabbing her arm. Officer Garza did not recall seeing Ms. Bates's purse that night. In Officer Garza's report after the incident, he indicated that Ms. Bates informed him that she had been pushed down to the ground by the offender.

¶ 11 Mr. Jackson testified in his own defense. He acknowledged that he had prior convictions for murder, armed robbery, and attempted murder. His version of the events was that, on September 28, 2013, at about 11 p.m., when he was sitting outside near his house, he saw two men walk by him, one of whom was Mr. Hyde. Mr. Jackson heard gunshots and called the police.

¶ 12 He testified that the next evening he saw lights outside his window and heard a loud noise. Mr. Jackson went outside with his tools, which he had been using to do work in his house. He saw Mr. Hyde and the other man from the shooting incident the previous night. They put a gun to the back of Mr. Jackson's head, made him get into the back seat of a truck, and hit him in the back of the head, after which Mr. Jackson "blanked out."

¶ 13 When Mr. Jackson came to, he was in an alley and Mr. Hyde and the other man were about five garages away from him talking to someone. Mr. Jackson climbed out of the truck and ran away but, when he tried to get over a gate, his pants got caught. Mr. Hyde approached Mr. Jackson and pulled on his leg. Mr. Jackson got down from the gate and eventually started

running again. Mr. Hyde ran behind him and dove on him, after which they started tussling. Mr. Hyde overpowered Mr. Jackson, so Mr. Jackson pulled out tools from his masonry belt and started swinging to defend himself. The other man came and started hitting Mr. Jackson in the head with a gun. Mr. Hyde knocked the gun away and said, “don’t you see people out here, we can’t do this right here.”

¶ 14 When the police came, Mr. Jackson told Officer Garza that he had been kidnapped at gunpoint and directed him to the other man from the shooting incident, who was standing nearby, and whom Officer Garza refused to apprehend. Mr. Jackson testified that “when the lady came up” she asked Mr. Hyde where her son was at and Mr. Hyde did not respond. Mr. Jackson testified that he did not take any property from Ms. Bates and that he acted in self-defense.

¶ 15 On cross-examination, Mr. Jackson testified that, when Officer Garza arrived, he told him that the man who was on top of him had kidnapped him earlier that night. He told Officer Garza that there was a light-skinned man nearby who had also kidnapped and pistol whipped him. Mr. Jackson testified that he told assistant State’s Attorney (ASA) Brian Whang after he was arrested that the man who was on top of him when the police arrived had kidnapped him. He did not give ASA Whang the names of any offenders and told ASA Whang that one of the men had pulled out a gun and kidnapped him, the light-skinned man put the gun to his head and threatened him, and the man without the gun beat him in the face and body. Mr. Jackson told ASA Whang that the light-skinned man was the same man he saw fire gunshots outside his home on September 28, 2013.

¶ 16 In rebuttal, Mr. Hyde testified that, on September 29, 2013, between 8:45 and 9 p.m., he did not kidnap Mr. Jackson with another man. He never saw Mr. Jackson escape from a vehicle and did not chase him over the fence. Mr. Hyde was never with a light-skinned African

American man on September 28, 2013, or September 29, 2013. Mr. Hyde never even saw Mr. Jackson on September 28, 2013.

¶ 17 Officer Garza testified that he did not recall Mr. Jackson telling him that Mr. Hyde kidnapped him earlier in the evening, placed him in a car, and beat him, and that Mr. Jackson never told him that there was a light-skinned African American man standing close to the scene who had participated in the kidnapping and beating. On cross-examination, Officer Garza acknowledged that he did not recall having any conversation with Mr. Jackson on September 29, 2013.

¶ 18 ASA Brian Whang testified that, when he spoke with Mr. Jackson after the incident, Mr. Jackson never said Mr. Hyde's name and did not tell him that Mr. Hyde had kidnapped him earlier that day, placed him in a vehicle, and beat him. Mr. Jackson never stated that a victim or witness in this case was the person who had kidnapped him. If Mr. Jackson had told ASA Whang that the person who was on top of him when the police arrived was actually the person who had kidnapped him, ASA Whang would have documented it.

¶ 19 On cross-examination, ASA Whang testified that Mr. Jackson told him that when he tried to escape, the man with a gun put the gun to his head and threatened him because he said that he was a snitch. Mr. Jackson told ASA Whang that the other man without a gun beat him with his fist and that, when the police arrived, the man with the gun was no longer there.

¶ 20 In sur-rebuttal, Mr. Jackson testified that, before September 29, 2013, he did not know the individuals who had kidnapped him and did not know their names. Mr. Jackson was present at the preliminary hearing and trial when Mr. Hyde testified about the case.

¶ 21 In closing, defense counsel argued that Ms. Bates and Mr. Hyde's "recollection of what was occurring was very different," "their story doesn't always match up," and they presented

inconsistent versions. Defense counsel also argued that Ms. Bates testified that the individual who approached her was wearing a hood and that Mr. Hyde did not testify that the individual was wearing a hood and in fact could not recall what type of clothing he had on. The trial court found Mr. Jackson guilty of robbery and battery. In doing so, it found the “credibility of the witnesses lies with the State’s witnesses” and concluded that Mr. Jackson’s story was “preposterous.” The court subsequently denied Mr. Jackson’s motion for a new trial and sentenced him to concurrent prison terms: 7 years for robbery and 364 days for battery. The court imposed \$449 in assessed fines, fees, and costs.

¶ 22

II. JURISDICTION

¶ 23 Mr. Jackson was sentenced on August 8, 2016, and timely filed his notice of appeal that same day. This court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 603 and 606, governing appeals from final judgments of conviction in criminal cases (Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013)).

¶ 24

III. ANALYSIS

¶ 25

A. Sufficiency of the Evidence

¶ 26 Mr. Jackson’s primary claim on appeal is that the State did not prove him guilty of robbery beyond a reasonable doubt. He argues that the testimony of Ms. Bates and Mr. Hyde was implausible, contrary to human experience, and contradictory. Mr. Jackson contends that Ms. Bates and Mr. Hyde provided contradictory narratives and it is impossible to reconcile their accounts of what occurred after the robbery. He also claims that Ms. Bates’s version of the incident is incredible in light of the testimony of the other witnesses. He asserts that Officer Garza’s testimony shows that Ms. Bates’s account of the incident changed between what she initially told the police and her testimony at trial.

¶ 27 When we review the sufficiency of the evidence on appeal, the question is whether, “after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). We must take all reasonable inferences from the evidence in favor of the State. *People v. Martin*, 2011 IL 109102, ¶ 15. It is the responsibility of the fact finder—here, the trial court—to resolve inconsistencies in the evidence and determine the credibility of the witnesses and the weight to be given to their testimony. *People v. Leak*, 398 Ill. App. 3d 798, 818 (2010). We will not retry a defendant (*People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011)) and will only reverse a conviction if the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of the defendant’s guilt (*Leak*, 398 Ill. App. 3d at 815).

¶ 28 To prove Mr. Jackson guilty of robbery, as charged here, the State had to prove that he knowingly took property from the person or presence of another by the use of force or by threatening the imminent use of force. 720 ILCS 5/18-1(a) (West 2012).

¶ 29 Viewing the evidence as a whole and in the light most favorable to the State, we conclude that the evidence was more than sufficient to prove Mr. Jackson guilty of robbery. Ms. Bates, whom the trial court found credible, testified that, when she entered her garage, Mr. Jackson came towards her, pushed an object that she thought was a gun into her side, and told her “give it up.” Ms. Bates gave Mr. Jackson her purse and ran out of the garage. This testimony was sufficient for the trial court to reasonably conclude that Mr. Jackson was guilty of robbery. See *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009) (“the testimony of a single witness, if positive and credible, is sufficient to convict, even though it is contradicted by the defendant”). Further, Ms. Bates’s testimony about the robbery was largely corroborated by Mr. Hyde, who

recovered her purse from Mr. Jackson.

¶ 30 Mr. Jackson asserts that (1) Ms. Bates and Mr. Hyde provided opposite descriptions of Mr. Jackson, (2) Ms. Bates and Mr. Hyde's accounts of what occurred after the robbery were contradictory because Mr. Hyde testified that Ms. Bates approached him and Mr. Jackson when they were struggling near the fence but Ms. Bates testified that she called 9-1-1 from her house and did not arrive at the scene of the arrest until the police showed up, and (3) Ms. Bates's testimony was incredible when considered in light of the testimony of the other witnesses, including Officer Garza, and her account of events changed between the date of the arrest and trial.

¶ 31 As the fact finder, it was the trial court's responsibility to resolve any conflicts and inconsistencies in the testimony and to assess the credibility of the witnesses. *Siguenza-Brito*, 235 Ill. 2d at 228. The trial court here heard all of the evidence and the alleged inconsistencies in the testimony. It also heard defense counsel's arguments that Ms. Bates and Mr. Hyde's recollections of what occurred were very different, they presented inconsistent versions, and their testimony about whether Mr. Jackson was wearing a hood was different. After the trial court observed the witnesses testify and heard and weighed the evidence, it specifically found that the State's witnesses, *i.e.*, Ms. Bates, Mr. Hyde, ASA Whang, and Officer Garza, were credible. This was the court's role as the fact finder. See *People v. Moody*, 2016 IL App (1st) 130071, ¶ 52. We will not substitute our judgment for that of the fact finder on questions concerning the weight of the evidence or the credibility of the witnesses. *People v. Brown*, 2013 IL 114196, ¶ 48. We reject Mr. Jackson's contention that we should reverse his conviction for robbery because the testimony of the State's witnesses was implausible, contradictory, or contrary to human experience.

¶ 32

B. Fines and Fees

¶ 33 Mr. Jackson's other argument is that the \$449 assessed fines, fees, and costs should be reduced by \$309. He argues that he is entitled to an additional \$309 in presentence custody credit, to be applied against certain assessed "fees" that are actually "fines."

¶ 34 Mr. Jackson acknowledges that he did not properly preserve his challenge to the assessed fines and fees in the trial court but argues that we may review the issue under the plain error doctrine. See *Mullen*, 2018 IL App (1st) 152306, ¶¶ 25-26, 38. The State agrees. The propriety of court-ordered fines and fees is reviewed *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 35 Mr. Jackson contends that he is entitled to presentence custody credit to be applied against various "fees" that are legally "fines." Section 110-14(a) of the Code of Criminal Procedure of 1963 provides that a defendant is entitled to a credit of \$5 for each day spent in presentence custody. 725 ILCS 5/110-14(a) (West 2016); *People v. Tolliver*, 363 Ill. App. 3d 94, 96 (2006). However, presentence credit applies only to fines imposed after a conviction and does not apply to other assessed costs or fees. *Tolliver*, 363 Ill. App. 3d at 96. A fine is considered to be part of a defendant's punishment for a conviction. *People v. Jones*, 223 Ill. 2d 569, 582 (2006). A fee is a charge for labor or services and is a "collateral consequence" of a conviction which is compensatory and not punitive. *Tolliver*, 363 Ill. App. 3d at 97. Even if an assessment is labeled a fee, it still may properly be considered a fine. *Jones*, 223 Ill. 2d at 599. To determine whether an assessment is a fine or a fee, "the most important factor is whether the charge seeks to compensate the state for any costs incurred as the result of prosecuting the defendant." *People v. Graves*, 235 Ill. 2d 244, 250 (2009). Here, Mr. Jackson accumulated 1041 days of presentence custody credit and is therefore potentially entitled to up to \$5205 of credit to be applied toward

his fines.

¶ 36 Mr. Jackson argues that he is entitled to presentence custody credit to be applied toward the \$15 State Police operations fee (705 ILCS 105/27.3a(1.5) (West 2016)), \$2 public defender records automation fee (55 ILCS 5/3-4012 (West 2016)), \$2 State's Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2016)), \$25 document storage fee (705 ILCS 105/27.3c(a) (West 2016)), \$50 court system fee (55 ILCS 5/5-1101(c)(1) (West 2016)), \$190 felony complaint filing fee (705 ILCS 105/27.2a(w)(1)(A) (West 2016)), and \$25 automation fee (705 ILCS 105/27.3a(1) (West 2016)). The State concedes that two of these assessments, the \$15 State Police operations fee and the \$50 court system fee, are fines subject to be offset by Mr. Jackson's presentence custody credit. However, the State maintains that the remaining charges are fees and not fines.

¶ 37 We agree that the \$15 State Police operations fee and the \$50 court system fee are fines. See *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 (concluding that the State Police operations charge is a fine, stating that it "does not reimburse the State for costs incurred in defendant's prosecution"); *People v. Ackerman*, 2014 IL App (3d) 120585, ¶ 30 (concluding that the court systems fee is a fine). Accordingly, the \$15 State police operations and \$50 court system charges are fines subject to be offset by Mr. Jackson's presentence custody credit.

¶ 38 Mr. Jackson contends that the \$2 public defender records automation fee and the \$2 State's Attorney records automation fee are fines despite their label. Mr. Jackson cites *People v. Camacho*, 2016 IL App (1st) 140604, ¶ 56, where a division of this court concluded that these assessments are fines. However, in reaching this conclusion, *Camacho* recognized "that every published decision on this matter has determined that both the State's Attorney and public defender records automation assessments are fees." *Camacho*, 2016 IL App (1st) 140604, ¶ 52.

We agree with the weight of authority, recognized in *Camacho*, concluding that these assessments are fees. See *Mullen*, 2018 IL App (1st) 152306, ¶¶ 47-48; *People v. Murphy*, 2017 IL App (1st) 142092, ¶¶ 18-20; *People v. Brown*, 2017 IL App (1st) 142877, ¶¶ 75-76, 78; *People v. Reed*, 2016 IL App (1st) 140498, ¶¶ 16-17; *People v. Green*, 2016 IL App (1st) 134011, ¶ 46; *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 115; *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 64-65; *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30. Accordingly, Mr. Jackson is not entitled to presentence custody credit to be applied toward the \$2 public defender records automation fee and \$2 State's Attorney records automation fee.

¶ 39 Mr. Jackson contends that the automation, document storage, and felony complaint filing charges are fines subject to be offset by presentence custody credit. However, this court has already considered challenges to these charges and concluded that they are fees, not fines. See *Tolliver*, 363 Ill. App. at 97 (finding that the felony complaint filing, automation, and document storage charges are fees, noting that the charges are “compensatory and a collateral consequence of defendant’s conviction”); *People v. Bingham*, 2017 IL App (1st) 143150 ¶ 42 (citing *Tolliver* and concluding that the felony complaint filing charge is a fee); *Brown*, 2017 IL App (1st) 142877, ¶ 81 (finding *Tolliver* is consistent with *Graves* and concluding that the automation and document storage charges are fees). Accordingly, we conclude that the automation, document storage, and felony complaint filing charges are fees. Mr. Jackson is therefore not entitled to offset these charges with his presentence custody credit.

¶ 40

IV. CONCLUSION

¶ 41 In sum, we find that Mr. Jackson is entitled to \$5 per day of presentence custody credit toward the \$15 State Police operations and \$50 court system assessments. We order the trial court to correct the fines, fees, and costs order accordingly. The judgment of the trial court is

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affirmed in all other respects.

¶ 42 Affirmed; fines, fees, and costs order to be corrected by the trial court.