

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

**FILED**

March 30, 2018  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2018 IL App (4th) 160002-U

NO. 4-16-0002

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
LASHAUN L. PETERSON,	)	No. 14CF958
Defendant-Appellant.	)	
	)	Honorable
	)	James R. Coryell,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.  
Justices DeArmond and Turner concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* (1) The statute under which defendant was convicted, section 11-401(b) of the Illinois Vehicle Code (625 ILCS 5/11-401(b) (West 2014)), does not violate the proportionate penalties clause of the Illinois constitution.
- (2) The fines imposed by the circuit clerk are void.
- (3) The circuit clerk improperly assessed a \$40 State’s Attorney fee, as only a \$30 fee was statutorily authorized.
- ¶ 2 In November 2014, after a jury trial, defendant, Lashaun L. Peterson, was convicted of aggravated leaving the scene of an accident resulting in personal injury (625 ILCS 5/11-401(b) (West 2014)), a Class 2 felony. Because defendant had been earlier convicted of two other felonies, he was sentenced as a Class X offender (730 ILCS 5/5-4.5-95(b) (West 2014)) to 6 years’ imprisonment.

¶ 3 Defendant appeals arguing (1) his sentence violates the proportionate penalties clause of the Illinois Constitution; (2) certain assessments imposed by the circuit clerk are fines that are void and should be vacated; and (3) the circuit clerk exceeded statutory authority in imposing a \$40 State's Attorney fee. We affirm in part, vacate in part, and remand the cause with directions.

¶ 4 I. BACKGROUND

¶ 5 At defendant's jury trial, Lavalas Richardson testified he was riding his bike on July 6, 2014, when he was involved in an accident with defendant. Defendant was driving a pickup truck. According to Richardson, defendant stopped his truck and confronted Richardson, who was bleeding from his nose and chin. Defendant left the scene without providing his name, address, or phone number. Richardson sought medical treatment at a hospital. He was treated for facial fractures and a separated shoulder.

¶ 6 The jury found defendant guilty. Because defendant had two previous Class 1 felonies, he was subject to mandatory Class X sentencing. The trial court sentenced defendant to six years' imprisonment with three years' mandatory supervised release. At the sentencing hearing, the court did not address fines and fees and did not enter an order imposing fines or fees. The circuit clerk, however, imposed fines and fees totaling \$1,382.

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 A. Proportionate Penalties

¶ 10 Defendant contends the statute under which he was convicted, section 401(b) of the Illinois Vehicle Code (625 ILCS 5/11-401(b) (West 2014)), violates the Illinois constitutional

guarantee of proportionate penalties. Defendant argues the legislature in section 11-401 defined his offense as a Class 2 felony, but it defined the same conduct in section 403 of the Illinois Vehicle Code (625 ILCS 5/11-403 (West 2014)) as a misdemeanor. According to defendant, because section 11-401 imposes a harsher penalty than section 11-403 for the same conduct, section 11-401 violates the proportionate penalties clause.

¶ 11 Our state constitution mandates criminal penalties be proportionate to the offenses. *People v. Christy*, 139 Ill. 2d 172, 177, 564 N.E.2d 770, 772 (1990). Section 11, the proportionate penalties clause (see *People v. Hauschild*, 226 Ill. 2d 63, 82-83, 871 N.E.2d 1, 12 (2007)), mandates “[a]ll penalties shall be determined \*\*\* according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.” Ill. Const. 1970, art. I, § 11. The clause provides a check on the individual sentencing judge and the legislature that initially determines statutory penalties. *People v. Clemons*, 2012 IL 107821, ¶ 29, 968 N.E.2d 1046.

¶ 12 A sentence is not proportionate to the offense when it is greater than a sentence for an offense with identical elements. See *Hauschild*, 226 Ill. 2d at 83. When a defendant challenges a sentencing scheme, Illinois courts employ the identical-elements test to determine whether the legislature satisfied the constitutional mandate of creating a penalty “according to the seriousness of the offense.” *Clemons*, 2012 IL 107821, ¶ 30, (quoting Ill. Const. 1970, art. I, § 11). When the legislature concludes the same elements warrant two distinct penalties, one of those penalties was not set according to the seriousness of the offense. *Id.* ¶ 30. Our review of this matter is *de novo*. *Hauschild*, 226 Ill. 2d at 83.

¶ 13 Both sections 11-401 and 11-403 of the Illinois Vehicle Code create mandates and

penalties for individuals driving a vehicle involved in a motor vehicle accident resulting in personal injury. Section 11-401 provides the following, in part:

§ 11-401. Motor vehicle accidents involving death or personal injuries.

(a) The driver of any vehicle involved in a motor vehicle accident resulting in personal injury to or death of any person shall immediately stop such vehicle at the scene of such accident, or as close thereto as possible and shall then forthwith return to, and in every event shall remain at the scene of the accident until the requirements of Section 11-403 have been fulfilled. Every such stop shall be made without obstructing traffic more than is necessary.

(b) Any person who has failed to stop or to comply with the requirements of paragraph (a) shall, as soon as possible but in no case later than one-half hour after such motor vehicle accident, or, if hospitalized and incapacitated from reporting at any time during such period, as soon as possible but in no case later than one-half hour after being discharged from the hospital, report the place of the accident, the date, the approximate time, the driver's name and address, the registration number of the vehicle driven, and the names of all other occupants of such vehicle, at a police station or sheriff's office near the place where such accident occurred. No

report made as required under this paragraph shall be used, directly or indirectly, as a basis for the prosecution of any violation of paragraph (a).

(b-1) Any person arrested for violating this Section is subject to chemical testing of his or her blood, breath, other bodily substance, or urine for the presence of alcohol, other drug or drugs, intoxicating compound or compounds, or any combination thereof, as provided in Section 11-501.1, if the testing occurs within 12 hours of the time of the occurrence of the accident that led to his or her arrest. The person's driving privileges are subject to statutory summary suspension under Section 11-501.1 if he or she fails testing or statutory summary revocation under Section 11-501.1 if he or she refuses to undergo the testing.

*For purposes of this Section, personal injury shall mean any injury requiring immediate professional treatment in a medical facility or doctor's office.*

\* \* \*

(d) Any person failing to comply with paragraph (b) is guilty of a Class 2 felony if the motor vehicle accident does not result in the death of any person.” (Emphasis added.) 625 ILCS 5/11-401 (West 2014).

¶ 14

In comparison, section 11-403 provides the following:

“§ 11-403. Duty to give information and render aid. The driver of any vehicle involved in a motor vehicle accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give the driver's name, address, registration number and owner of the vehicle the driver is operating and shall upon request and if available exhibit such driver's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying or the making of arrangements for the carrying of such person to a physician, surgeon or hospital for medical or surgical treatment, if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

If none of the persons entitled to information pursuant to this Section is in condition to receive and understand such information and no police officer is present, such driver after rendering reasonable assistance shall forthwith report such motor vehicle accident at the nearest office of a duly authorized police authority, disclosing the information required by this Section.

Any person failing to comply with this Section shall be guilty of a Class A misdemeanor.” 625 ILCS 5/11-403 (West 2014).

¶ 15 A plain reading of these sections establishes the elements are not identical. Section 11-401 defines “personal injury” for its purposes, while section 11-403 does not: “For purposes of this Section, personal injury shall mean any injury requiring immediate professional treatment in a medical facility or doctor’s office.” 625 ILCS 5/11-401 (West 2014). This sentence, not included by defendant when he quotes section 11-401 and not identified by the State, is key to the proportionate-penalties analysis. To be convicted and sentenced of a Class A misdemeanor under section 11-403, the personal injury involved need only be slight and not require professional medical treatment. To be convicted and sentenced of a Class 2 felony under section 11-401, however, the severity of the personal injury is such that treatment in a medical facility or doctor’s office is required. Because the elements of the offenses are not identical, the penalties for violating section 11-401 and section 11-403 are not unconstitutionally disproportionate. Defendant’s sentence is affirmed.

¶ 16 B. Fines and State’s Attorney Fee

¶ 17 Defendant next contends this court should vacate the fines imposed by the circuit clerk and correctly calculate the State’s Attorney fee. Defendant asks this court to vacate the following assessments, totaling \$285: \$17 “Clerk Op Add-Ons,” \$15 “State Police Ops,” \$4.75 “Drug Court,” \$0.25 “Clerk Op Deduction,” \$50 “Court,” \$5 “Youth Diversion,” \$28.50 “Child Advocacy Fee,” \$9.50 “Nonstandard,” \$10 “Medical Costs,” \$20 “Lump Sum Surcharge,” \$100 “Violent Crime,” \$10 “State Police Svcs,” and \$15 “CASA.” Defendant further asks the court to lower the \$40 assessment for the State’s Attorney fee to \$30.

¶ 18 The State concedes defendant’s arguments regarding the fines and the State’s Attorney fee. The State notes, however, the question of whether the fines should be vacated or

whether the cause be remanded for resentencing is currently before the Illinois Supreme Court (see *People v. Vara*, 2017 WL 1192504, 80 N.E.3d 6 (granting the petition for leave to appeal)).

The State urges this court to follow that opinion.

¶ 19 We agree with the parties the following are fines: \$17 “Clerk Op Add-Ons” (*People v. Williams*, 2013 IL App (4th) 120313, ¶ 19, 991 N.E.2d 914); \$15 State Police operations assessment (*People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31, 979 N.E.2d 1030); \$4.75 “Drug Court” assessment, as the State does not dispute defendant did not participate in drug court (*People v. Sulton*, 395 Ill. App. 3d 186, 193, 916 N.E.2d 642, 647-48 (2009)); \$0.25 “Clerk Op Deduction,” as the reason for this deduction is unclear and the State does not dispute its status as a fine (see generally *Williams*, 2013 IL App (4th) 120313, ¶ 19; \$50 court finance assessment (*People v. Smith*, 2014 IL App (4th) 121118, ¶ 54, 18 N.E.3d 912); \$5 “Youth Diversion” (*People v. Graves*, 235 Ill. 2d 244, 255-56, 919 N.E.2d 906, 912-13 (2009)), \$28.50 “Child Advocacy” (*People v. Jones*, 397 Ill.App.3d 651, 660, 921 N.E.2d 768, 775 (2009)); \$9.50 “Nonstandard” assessment (see *Williams*, 2013 IL App (4th) 120313, ¶ 17); \$10 medical costs assessment (*People v. Larue*, 2014 IL App (4th) 120595, ¶ 57, 10 N.E.3d 959); \$20 “Lump Sum Surcharge” (*People v. Warren*, 2016 IL App (4th) 120721–B, ¶ 131, 55 N.E.3d 117); \$100 “Violent Crime” fine (*id.* ¶ 142, 55 N.E.3d 117); and \$10 “State Police Svcs” and \$15 “CASA” assessment, as the State is not challenging defendant’s assertion they are fines. Given the case law and the State’s concessions, we find the assessments were improperly imposed by the circuit clerk.

¶ 20 As to the State’s request, the Illinois Supreme Court has not yet issued an opinion in *Vara*. We therefore follow this court’s precedent in *People v. Daily*, 2016 IL App (4th)



150588, ¶ 30, 74 N.E.3d 15, and vacate the circuit-clerk-imposed fines.

¶ 21 We further agree with the parties and find the circuit clerk exceeded the statutorily authorized amount in imposing the State’s Attorney fee on defendant. Statutory law authorizes the imposition of a \$30 fee for the State’s Attorney for each felony conviction. See 55 ILCS 5/4-2002(a) (West 2014). Here, the circuit-court clerk imposed a \$40 fee. On remand, the trial court should amend the sentencing judgment to reduce the State’s Attorney fee to \$30.

¶ 22 In his brief, defendant further argued he was entitled to \$5 per day credit against his fines. Defendant asserts however, if this court vacates the challenged fines, we need not award *per diem* credit. This argument is thus rendered moot.

¶ 23 III. CONCLUSION

¶ 24 We vacate the imposition of the following assessments: \$17 “Clerk Op Add-Ons,” \$15 “State Police Ops,” \$4.75 “Drug Court,” \$0.25 “Clerk Op Deduction,” \$50 “Court [finance fee],” \$5 “Youth Diversion,” \$28.50 “Child Advocacy Fee,” \$9.50 “Nonstandard,” \$10 “Medical Costs,” \$20 “Lump Sum Surcharge,” \$100 “Violent Crime,” \$10 “State Police Svcs,” and \$15 “CASA.” We affirm the trial court’s judgment in all other respects and remand for issuance of an amended sentencing judgment consistent with this order. As part of our judgment, we award the State its \$75 statutory assessment against defendant as costs of this appeal.

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