2017 IL App (1st) 141487-U

Nos. 1-14-1487, 1-14-1491, 1-14-1493
(Consolidated)

Order filed November 13, 2017

FIRST DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
	)	Nos. 12 CR 5221
v.	)	12 CR 5222
	)	12 CR 5225
	)	
ARREDEUS GREEN,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Simon and Mikva concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in joining certain cases. Moreover, because the trial court did not abuse its discretion in joining the cases, defendant cannot establish that trial counsel's failure to object to the joinder deprived him of the effective assistance of counsel. When two of defendant's convictions are based upon the same physical act, one must be vacated pursuant to the one-act, one-crime rule.

¶ 2 Following a joint bench trial with codefendant James Mitchell,[1] defendant Arredeus Green was convicted of aggravated vehicular hijacking and armed robbery in case numbers 12 CR 5221 and 12 CR 5225. He was also convicted of the possession of a stolen motor vehicle in case number 12 CR 5222. He was sentenced to a total of 50 years in prison.

¶ 3 On appeal, defendant contends that the trial court erred when it joined case numbers 12 CR 5221 and 12 CR 5222 with case number 12 CR 5225 because there was no legal basis to do so. Defendant further contends that he was denied the effective assistance of counsel when counsel failed to object to the joinder. In the alternative, defendant contends that his conviction for armed robbery in case number 12 CR 5221 must be vacated pursuant to the one-act, one-crime rule because it was based upon the same physical act as his conviction for aggravated vehicular hijacking. Defendant finally contests the imposition of certain fines and fees. We affirm in part, vacate in part and correct the fines and fees orders.

¶ 4 In case number 12 CR 5221, defendant was charged by indictment with, *inter alia*, aggravated vehicular hijacking and armed robbery. Specifically, defendant was charged with aggravated vehicular hijacking in that he took a vehicle from the person or immediate presence of Joshua Barksdale on February 5, 2012 by the use of force or by threatening the imminent use of force and carried upon his person a dangerous weapon other than a firearm. Defendant was also charged with armed robbery in that he took property, that is, keys and a car title, from the person or immediate presence of Joshua Barksdale by the use of force or by threatening the imminent use of force while carrying a dangerous weapon other than a firearm.

[1] Codefendant's appeals are pending before this court. See *People v. Mitchell*, Nos. 1-14-1486, 1-14-1488, 1-14-1492 (cons.).

¶ 5 In case number 12 CR 5222, defendant was charged by indictment with, *inter alia*, the possession of a stolen motor vehicle in that he, not being entitled to the possession of a 2003 Impala, the property of Joshua Barksdale, sold the vehicle to Charles Freeman and Tanya Terner between February 5 and February 9, 2012, knowing that the vehicle had been stolen.[2] In case number 12 CR 5225, defendant was charged by indictment with, *inter alia*, aggravated vehicular hijacking in that he knowingly took a motor vehicle from the presence of Cristofer Franco on January 30, 2012, by the use of force or by threatening the imminent use of force while armed with a weapon other than a firearm.[3] Defendant was also charged with armed robbery in that he took property, that is, a wallet and cellular phone, from the person or immediate presence of Cristofer Franco by the use of force or by threatening the imminent use of force while carrying a dangerous weapon other than a firearm.

¶ 6 At a September 13, 2012 court date, the State indicated that it wished to consolidate case numbers 12 CR 5221, 12 CR 5222 and 12 CR 5226. The trial court asked if there was any objection to the consolidation. Defendant's counsel asked if she could "address that on a future court date," as she was "not prepared to address it at this point." The State then explained that the allegation was that defendant and codefendant "carjacked" the victim in case number 12 CR 5221 and that the vehicle was then sold in case number 12 CR 5222. The State further explained that defendant was arrested in the vehicle that defendant and codefendant were alleged to have carjacked in case number 12 CR 5226. The court then asked whether there was anything defense counsel needed to see or review first. Defendant's counsel stated that she "would like to review

[2] Terner is also referred to as Tonya Turner in the record.

[3] Franco is also referred to as Christopher Franco in the record.

those files *** and come back" to the court with a response. The trial court granted the motion to consolidate without prejudice.

¶ 7 At a subsequent court date, the State clarified for the record that there was an error on the State's part as to one of the case numbers given to the court regarding the cases being consolidated, that is, case number 12 CR 5225 was the case that should have been consolidated with case numbers 12 CR 5221 and 12 CR 5222.

¶ 8 The matter proceeded to a joint bench trial. In its opening statement, the State stated that a motion to consolidate was granted because defendant and codefendant were involved in "a pre-organized and complicated business," that is, they were in the business of selling cars and "went about obtaining their supply of cars, *** by force, by attacking victims and by displaying guns to obtain cars."

¶ 9 Joshua Barksdale, who had two prior felony narcotics convictions, testified that in February 2012 he worked as a wholesale car dealer. On February 5, 2012, he received a phone call regarding a 2003 Impala, and set up a meeting with a potential buyer. He identified codefendant in court as the potential buyer. Codefendant and Barksdale went for a test drive with codefendant driving. At one point, codefendant pulled into an alley between 61st Street and California Avenue and "hit the brakes." A man then appeared from between the garbage cans in the alley. Barksdale identified defendant in court as this person. Defendant opened the passenger door and tried to swing something at Barksdale. Barksdale described the item as a sock with something heavy in it. He caught defendant's arm and pulled himself out of the car. The two men then "got to tussling." Codefendant exited the vehicle and pulled out a gun. Barksdale raised his hands, said "take the vehicle," and released defendant. Defendant then hit him twice on the head

with the sock. Barksdale described the blows "like somebody hit you in the head with a brick." He fell to the ground. Defendant and codefendant got into the vehicle and "took off." Inside the vehicle at this time were the title, a bill of sale and information about the vehicle.

¶ 10 Barksdale got up and ran "up the alley" while bleeding. He called the police and was taken to a hospital by an ambulance. There, he received three staples to close a wound on his head, and spoke to police officers. On February 13, 2012, officers came to his home and showed him certain photographs. He identified a photograph of codefendant. Later that day, he went to a police station and identified defendant and codefendant in line-ups.

¶ 11 Cristofer Franco testified through an interpreter that on January 30, 2012, he was driving his 2004 Chrysler Sebring down the 6100 block of California Avenue looking for a tire shop. At one point, two people were crossing the street "like normal people" when one man pulled out a gun. The man with the gun approached the driver's side of the vehicle and pointed the gun at Franco. He indentified codefendant in court as this person. The second person went to the passenger's side of the vehicle. Franco identified defendant in court as this person. Defendant entered the vehicle and began to hit Franco on the head. Franco was hit "[m]aybe like eight times" with something hard. Codefendant then pulled Franco out of the vehicle by his hoody. Once Franco was pulled out of the vehicle, defendant went through his pockets and took his wallet and phone. Defendant and codefendant then got into the vehicle and codefendant drove it away. After approximately 25 to 30 feet, the vehicle stopped, codefendant exited, pointed a gun at Franco and said "amigo." Franco ran away. He was able to borrow a phone and called his brother-in-law, who took him to a police station. He was then taken to a hospital where his head

wounds were treated with staples. Franco went to a police station on February 13, 2012, and was able to get his empty wallet back. He also identified defendant and codefendant in line-ups.

¶ 12 Tanya Terner, who at the time of trial had a pending retail theft case, testified that she had one prior felony theft conviction and two prior misdemeanor theft convictions. On February 7, 2012, defendant, who Terner knew as Mohammed, and codefendant came to her home to discuss the purchase of a used vehicle. Defendant returned later that afternoon with an Impala, and Terner bought the vehicle for $1,200. In connection with the purchase, Terner signed a "registered vehicle paper," and other documents. On February 13, 2012, Terner was involved in an accident while driving the Impala. During cross-examination, Terner denied telling officers that her husband, Charles Freeman, was driving the car at the time of the accident and admitted that she did not have a driver's license.

¶ 13 Officer John Stanley testified that on February 13, 2012, he responded to a vehicle accident. Once there, he observed a bronze Impala "crashed into a tree." Stanley ran the vehicle identification number (VIN), and the vehicle "came back stolen." He then spoke to Terner and Freemen, and received certain paperwork from Terner. The paperwork included a "reassignment of a vehicle by registered dealer," a bill of sale, and a Wisconsin certificate and title for the vehicle. During cross-examination, Stanley testified that at the scene of the accident, Terner stated that Freeman had suffered a fainting spell while driving the vehicle. During redirect, Stanley testified that Terner and Freeman indicated that they had purchased the vehicle from "Laylow" and Mohammed.

¶ 14 Officer Lule testified that in February 2012, he was assigned to "robbery missions," and that as part of this assignment, he was aware of vehicles that were the subject of certain vehicular

hijackings. On the evening of February 12, 2012, he and his partner were on patrol when Lule observed a Chrysler Sebring that matched the description of one of the vehicles that had been taken in a carjacking. When the vehicle failed to signal before turning, Lule curbed it. He then approached and asked the driver for a driver's license. Lule identified defendant in court as the driver. After defendant failed to produce a driver's license, Lule asked him to exit the car and took him into custody. Lule "ran" the vehicle's VIN and learned that "the vehicle had been taken in a vehicular hijacking." Defendant was taken to a police station and "processed." Lule learned that defendant's home address was 5751 South California. Lule searched a police database and learned that codefendant had previously been stopped in defendant's company and also lived at 5751 South California. Later, during a conversation with defendant, defendant stated that he obtained the Sebring from a friend named Gonzalez a week prior and knew that it was stolen, but that "he needed to get around."

¶ 15 Officer Durkin testified that on February 13, 2012, he received codefendant's name and address and information that codefendant was a suspect in an aggravated vehicular hijacking case. Durkin and his partner relocated to that address. There, Durkin observed codefendant on the sidewalk and took him into custody. Codefendant was transported to a police station. Durkin and other officers later conducted a search of the first floor of 5751 South California. During the search, officers recovered a sock containing a padlock, mail addressed to defendant and codefendant, and a wallet. Durkin observed what he believed was a handgun under a couch cushion. He subsequently learned that the handgun was not real. Later, at a police station, Durkin met with Franco and showed him the wallet. Franco identified the wallet as belonging to him.

¶ 16 Detective Gary Wisniewski testified that on February 13, 2012, he compiled a photographic array containing codefendant's photograph and showed it to Barksdale. Barksdale identified codefendant. He later assembled line-ups, one containing defendant and one containing codefendant. Barksdale and Franco both identified defendant and codefendant.

¶ 17 In announcing its findings, the trial court found that "the testimony of each of the victims *** with respect to the salient points to be credible." The trial court found defendant guilty of aggravated vehicular hijacking and armed robbery in case numbers 12 CR 5221 and 12 CR 5225. The court also found defendant guilty of possession of a stolen motor vehicle in case number 12 CR 5222.

¶ 18 In case number 12 CR 5221, defendant was sentenced to 30 years in prison for aggravated vehicular hijacking and to a consecutive 30-year sentence for armed robbery. In case number 12 CR 5222, defendant was sentenced to seven years in prison for the possession of a stolen motor vehicle. In case number 12 CR 5225, defendant was sentenced to 25 years in prison for aggravated vehicular hijacking and to a consecutive 25-year sentence for armed robbery. The sentences for each of the three cases were to be served concurrent to each other. Defendant filed a motion to reconsider sentences. After argument, the trial court reduced defendant's sentences in case number 12 CR 5221 to 25 years on each conviction, and in case number 12 CR 5225 to 21 years on each conviction.

¶ 19 On appeal, defendant first contends that the trial court improperly joined case number 12 CR 5225 to case numbers 12 CR 5221 and 12 CR 5222 because there was "no legal basis" to do so. Defendant argues that joinder of the cases was improper because case number 12 CR 5225, which involved the "alleged carjacking" of Franco "did not result from the same comprehensive

transaction" as the carjacking of Barksdale and subsequent sale of that vehicle. In other words, "neither Barksdale's nor Franco's testimony regarding their respective carjackings or the weapons used was relevant in the other's case or needed to prove the other's case." Defendant therefore concludes that because there was "no link" connecting the carjacking of Barksdale and the sale of that vehicle to the carjacking of Franco, the trial court erred when it granted the State's motion to join case number 12 CR 5225 to case numbers 12 CR 5221 and 12 CR 5222.

¶ 20 Defendant acknowledges that he has forfeited this issue on appeal because counsel failed to make a contemporaneous objection. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (both a trial objection and a written post-trial motion raising the issue are required to preserve an issue for appeal). Therefore, he asks this court to review his claim pursuant to the plain error doctrine. In the alternative, he contends that he was denied the effective assistance of counsel because counsel failed to object to the joinder.

¶ 21 The plain error doctrine permits this court to consider unpreserved error when (1) the evidence was so closely balanced that the error alone threatened to tip the scales of justice against the defendant; or (2) the error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. *People v. Herron*, 215 Ill. 2d 167, 178-79 (2005). The defendant has the burden of persuasion under both prongs of the plain error doctrine, and if he fails to meet the burden of persuasion, this court must honor his forfeiture. *People v. Naylor*, 229 Ill. 2d 584, 593 (2008). Before applying either prong of the plain error doctrine, we must first determine whether an error occurred. *People v. Cosby*, 231 Ill. 2d 262, 273 (2008). If there is no reversible error, there can be no plain error. *Id*.

¶ 22 The trial court has discretion to join charges against a defendant if the offenses are based on two or more acts that are part of the same comprehensive transaction, unless the defendant will be prejudiced by the joinder of separate charges. *People v. Patterson*, 245 Ill. App. 3d 586, 587 (1993). If the trial court, in its sound discretion, determines that the joinder will prejudice the defendant, the court can order separate trials or provide any other relief justice requires. *Id*. When joining cases, the factors to be considered are: (1) proximity in time and location; (2) the identity of evidence needed to demonstrate a link between the offenses and to establish elements of the offenses; and (3) whether there exists a common method of perpetrating the offenses. *Id*. at 588. A trial court's decision will not be overturned absent an abuse of discretion. *People v. Fleming*, 2014 IL App (1st) 113004, ¶ 38. A trial court abuses its discretion when its decision is arbitrary, fanciful, or where no reasonable person would take the trial court's view. *Id.*

¶ 23 Here, the trial court did not abuse its discretion by joining case number 12 CR 5225 with case numbers 12 CR 5221 and 12 CR 5222, as these cases were part of the same comprehensive transaction. The charges here were sufficiently related in location, time, method, and common evidence to support the trial court's decision in favor of joinder. "The 'most important factors' when determining whether offenses are part of a comprehensive transaction are their proximity in time and location and whether there is common evidence with respect to the offenses." *Fleming*, 2014 IL App (1st) 113004, ¶ 41 (quoting *People v. Harmon*, 194 Ill. App. 3d 135, 139-40 (1990)). The proximity of time and location support joinder. The offenses against Barksdale and Franco both took place near the intersection of 61st Street and California in Chicago less than a week apart.

¶ 24 "The second factor, common evidence, 'asks not whether evidence of the two crimes is similar or *identical* but rather whether the court can *identify* evidence linking the crimes.' " (Emphases in original.) *Fleming*, 2014 IL App (1st) 113004, ¶ 42 (quoting *People v. Walston*, 386 Ill. App. 3d 598, 605 (2008)). In case number 12 CR 5221, defendant and codefendant were alleged to have taken Barksdale's vehicle by force, that is, codefendant had a gun and defendant approached the passenger side of the vehicle and struck Barksdale on the head. In case number 12 CR 5225, defendant and codefendant were alleged to have taken a vehicle from Franco by force, that is, codefendant had a gun and defendant entered the passenger side of the vehicle and hit Franco on the head. A search of the home defendant and codefendant shared recovered a sock containing a padlock and an object that looked like a gun. In other words, evidence common to both cases was recovered from defendant's home.

¶ 25 "The third factor, 'common method,' asks 'whether the offenses were part of a "common scheme," so that each of the offenses supplies a piece of a larger criminal endeavor.' " *Fleming*, 2014 IL App (1st) 113004, ¶ 44 (quoting, *Walston*, 386 Ill. App. 3d at 606-07). In both case 12 CR 5221 and case 12 CR 5225, defendant and codefendant were alleged to have taken vehicles by force, one of which they then sold, and the other defendant retained for personal use. In each case, defendant approached the car from the passenger side and struck the victim around the head and codefendant pointed a gun at the victim and drove the vehicle away. Each of these offenses was part of a larger criminal endeavor, *i.e.*, the acquisition and use of stolen cars for defendant and codefendant's gain. We therefore conclude that the trial court did not abuse its discretion in joining the cases. *Fleming*, 2014 IL App (1st) 113004, ¶ 38. As there was no error, there can be no plain error (*Cosby*, 231 Ill. 2d at 273), and we must honor defendant's procedural default.

¶ 26 Alternatively, defendant argues that his counsel was ineffective for failing to object to the joining of the cases. "To show ineffective assistance of counsel, a defendant must demonstrate that 'his attorney's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different.' " *People v. Simpson*, 2015 IL 116512, ¶ 35 (quoting *People v. Patterson*, 192 Ill. 2d 93, 107 (2000)). A reasonable probability is defined as " 'a probability sufficient to undermine confidence in the outcome.' " *Id.* (quoting *Strickland v. Washington*, 466 U.S. 668, 694 (1984)). A defendant must satisfy both prongs of *Strickland* test, and a failure to satisfy either prong is fatal to a claim of ineffective assistance of counsel. *Id.*

¶ 27 Defendant's ineffective assistance claim fails, as he cannot satisfy the prejudice prong of the *Strickland* test. An attorney will not be deemed ineffective for the failure to file a futile motion. *People v. Stewart*, 365 Ill. App. 3d 744, 750 (2006). As we have determined that the trial court did not abuse its discretion when joining the cases, defendant cannot establish that he was prejudiced by his counsel's failure to object to the joinder. Accordingly, defendant's claim of ineffective assistance of counsel must fail.

¶ 28 Defendant next contends that his convictions for aggravated vehicular hijacking and armed robbery in case number 12 CR 5221 violate the one-act, one-crime rule. Defendant argues that the conviction for armed robbery should be vacated because it arose out of the same act, the taking of a vehicle by use of force or the threat of force from Barksdale, as the conviction for aggravated vehicular hijacking. Defendant acknowledges that he failed to raise this issue before the trial court and asks this court to review it pursuant to the plain error doctrine.

¶ 29 Although defendant failed to preserve this claim of error for review, plain-error review is appropriate. See *People v. Artis*, 232 Ill. 2d 156, 167-68 (2009) (quoting *People v. Harvey*, 211 Ill. 2d 368, 389 (2004)) (" 'an alleged one-act, one-crime violation and the potential for a surplus conviction and sentence affects the integrity of the judicial process, thus satisfying the second prong of the plain error rule' ").

¶ 30 Under the one-act, one crime rule, a defendant may not be convicted of more than one offense "carved from the same physical act." *People v. King*, 66 Ill. 2d. 551, 566 (1977). The one-act, one-crime doctrine involves a two-step analysis. *People v. Miller*, 238 Ill. 2d 161, 165 (2010). First, the court must determine whether the defendant's conduct constituted a single act or multiple acts. *Id*. The one-act, one-crime doctrine prohibits multiple convictions when they are carved from precisely the same physical act. *Id.* In this context, an "act" is "any overt or outward manifestation which would support a different outcome." *King*, 66 Ill. 2d at 566. If the defendant's conduct involved multiple acts, the court must then determine whether any of the offenses are lesser-included offenses. *Miller*, 238 Ill. 2d at 165. If any of the offenses are lesser-included offenses, multiple convictions are improper. *Id.* We review *de novo* whether a defendant's convictions violate the one-act, one-crime doctrine. *People v. Johnson*, 237 Ill. 2d 81, 97 (2010).

¶ 31 First, we must decide whether defendant's conduct consisted of a single physical act or multiple acts. *Miller*, 238 Ill. 2d at 165. In *King*, our supreme court defined an "act" as "any overt or outward manifestation which will support a different offense." *Id.* at 566. Interrelated acts, however, may give rise to multiple acts. *People v. Dixon*, 91 Ill. 2d 346, 355-56 (1982) (finding that individual blows with a mop handle during a beating constituted multiple acts under

King); *People v. Crespo*, 203 Ill. 2d 335, 342-43 (2001) (noting that each of the victim's three stab wounds from a single attack could potentially support individual charges).

¶ 32 In the case at bar, we conclude that defendant's convictions for aggravated vehicular hijacking and armed robbery were based on the same physical act, *i.e.*, taking the vehicle from Barksdale. At trial, Barksdale testified that when codefendant exited the vehicle and pulled out a gun, he raised his hands and said "take the vehicle." At this point, defendant and codefendant entered the vehicle and drove away. Barksdale further testified the vehicle's title was inside the vehicle at this time. Thus, the act of taking the vehicle and the act of taking the title and keys were not separate or overt manifestations. See *King*, 66 Ill. 2d at 566. Rather, the act of taking the vehicle also served to simultaneously take the keys and title which were located inside the vehicle. See *People v. Depner*, 89 Ill. App. 3d 689, 694 (1980) (pursuant to the one-act, one-crime doctrine, the defendant could not be convicted of two counts of felony theft of a boat and a trailer when defendant committed "a single physical act in taking the trailer with the boat on it"). *People v. Thomas*, 163 Ill. App. 3d 670, 681 (1987) ("Because the armed robbery and theft convictions here were founded on a single act of defendants' taking the van and its contents, the judgment finding defendant guilty of theft must be vacated.")

¶ 33 We are unpersuaded by the State's reliance on *People v. Almond*, 2015 IL 113817. In that case, the defendant argued that his convictions for the offense of armed habitual criminal (AHC), based upon the possession of a firearm and unauthorized use or possession of a weapon by a felon (UUWF), based upon the possession of the ammunition inside that firearm, violated the one-act, one-crime rule.

¶ 34 Our supreme court explained, however, that " 'one-act, one-crime principles apply only if the statute is construed as permitting multiple convictions for simultaneous possession.' " *Id.* ¶ 33 (quoting *People v. Carter*, 213 Ill. 2d 295, 301 (2004)). The court noted that the UUWF statute provided that " '[t]he possession of each firearm or firearm ammunition in violation of this Section constitutes a single and separate violation.' " *Id.* ¶ 35 (quoting 720 ILCS 5/24-1.1(e) (West 2008)). Relying on that language, the court found that the UUWF statute "unambiguously authorizes separate convictions when a felon possesses a loaded firearm, a conviction based on the firearm and a conviction based on the ammunition inside that firearm." *Id.* ¶ 36. The court further noted that the statute "clarifies that the possession of *each* firearm or firearm ammunition by a felon constitutes *a single and separate violation*." (Emphases in original.) *Id.* Therefore, the court determined that the UUWF statute authorized "separate convictions for the simultaneous possession of a firearm and ammunition in a single loaded firearm." *Id.* ¶ 43. The court further determined that the statute indicated that "the act of possession of a firearm is materially different from the act of possession of firearm ammunition, even if both items are possessed simultaneously." *Id.* ¶ 48 Finding that the defendant "committed two separate acts—possession of a firearm and possession of firearm ammunition," the court concluded that the defendant's convictions for AHC based on his possession of a firearm and UUWF based on his possession of firearm ammunition did not violate the one-act, one-crime rule. *Id.* ¶¶ 45, 48. In other words, the multiple convictions were supported by separate acts as defined by the statute and, therefore, no one-act, one-crime violation had occurred. *Id.* ¶ 50.

¶ 35 Our supreme court has interpreted the UUWF statute to permit separate convictions for the simultaneous possession of a firearm and ammunition in a single loaded firearm because the

plain language of the statute "unambiguously treats each possession as a separat[e] violation." *Id.* ¶ 43. Consequently, separate convictions do not violate the one-act, one-crime rule because, although a defendant's possession of a firearm and ammunition are simultaneous, the items are two separate and distinct items of contraband as defined by the statute. *Id*. ¶ 48 (citing 720 ILCS 5/24-1.1(a) (West 2008)).

¶ 36 In the case at bar, however, defendant's taking of the vehicle and the items inside the vehicle are not defined by statute as interrelated, yet separate acts, which support two different convictions. See *Almond*, 2015 IL 113817, ¶¶ 48, 50. Although the State is correct that the legislature "separated" the offense of vehicular hijacking from the general robbery statute, the legislature did not include specific language stating that the taking of any items inside a vehicle at the time that the vehicle is taken supports a separate robbery conviction. If, as the State appears to argue, the legislature intended that a defendant who commits a vehicular hijacking simultaneously commits the offense of robbery in those cases where items are inside the vehicle at the time that the vehicle is taken, it stands to reason that the legislature would have said so unambiguously. See *Id.* ¶ 39 ("the legislative intent to permit separate convictions for simultaneous possession of a firearm and ammunition under the UUW by a felon statute could not be clearer"). The State's argument must therefore fail.

¶ 37 In finding that defendant's convictions for aggravated vehicular hijacking and armed robbery in case number 12 CR 5221 violate the one-act, one-crime rule, we must vacate the less serious offense. Our supreme court has held that when a defendant is convicted of more than one offense arising from the same physical act, "sentence should be imposed on the more serious offense and the less serious offense should be vacated." *Artis*, 232 Ill. 2d at 170. When

evaluating which offense is more serious, this court is "instructed to consider the plain language of the statutes, as common sense dictates that the legislature would prescribe greater punishment for the offense it deems the more serious." *In re Samantha V.*, 234 Ill. 2d 359, 379 (2009).

¶ 38 In the case at bar, both aggravated vehicular hijacking and armed robbery are class X felonies. See 720 ILCS 5/18-4(a)(3), (b) (West 2012); 720 ILCS 5/18-2(a)(1), (b) (West 2012). However, the sentencing range for armed robbery is between 6 and 30 years in prison (730 ILCS 5/5-4.5-25(a) (West 2012)), whereas the sentencing range for aggravated vehicular hijacking while armed with a dangerous weapon other than a firearm is between 7 and 30 years (see 720 ILCS 5/18-4(a)(3), (b) (West 2012)). Therefore, because the minimum sentence for aggravated vehicular hijacking in this case is greater than the minimum sentence for armed robbery, armed robbery is the less serious offense and must be vacated. *In re Samantha V.*, 234 Ill. 2d at 379. We therefore vacate defendant's conviction and sentence for armed robbery in case number 12 CR 5221.

¶ 39 Defendant finally contests the imposition of certain fines and fees. He acknowledges that he failed to preserve these issues for appeal because he did not challenge the fines and fees orders in the trial court and requests that this court review his claim pursuant to the plan error doctrine.

¶ 40 It is well settled, however, that a defendant forfeits a sentencing issue that he fails to raise in the trial court through both a contemporaneous objection and a written postsentencing motion. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). Moreover, the plain error doctrine is not "an appropriate vehicle for review in cases where the complained-of error does not stem from the failure to provide a fair process for determining the imposition of the fine or fee at issue but [is] a

mere clerical mistake." See *People v. Griffin*, 2017 IL App (1st) 143800, ¶ 9 (quoting Ill. S. Ct. R. 615(a) (" 'Plain errors or defects *affecting substantial rights* may be noticed although they were not brought to the attention of the trial court.' " (Emphasis in original.)).

¶ 41 Although defendant did not challenge the fines and fees orders before the trial court, the State does not argue that he forfeited appellate review of his challenge to the fines and fees orders, and has therefore forfeited any forfeiture argument. See *People v. Williams*, 193 Ill. 2d 306, 347-48 (2000) (rules of waiver and forfeiture apply to the State). Therefore, although defendant did not raise these issues in the trial court, we will consider his claims. The propriety of court-ordered fines and fees is reviewed *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 42 Defendant first contends, and the State concedes, that the $5 Electronic Citation fee must be vacated because defendant's offense is a felony but the fee applies only in traffic, misdemeanor, ordinance and conservation cases. 705 ILCS 105/27.3e (West 2012). We agree, and order that $5 Electronic Citation fee be vacated in all three of defendant's cases.

¶ 43 Additionally, defendant's 782 days of presentence custody entitle him to up to $3,910 credit against his fines. 725 ILCS 5/110-14(a) (West 2012) ($5 credit against fines for each day of presentencing custody). The parties correctly agree that defendant is due credit for the $15 State Police Operations Fee in each of his three cases. See 705 ILCS 105/27.3a(1.5) (West 2012). We so order.

¶ 44 Finally, defendant contends that despite the fact that his three cases were joined and tried together, the State's Attorney trial fee was imposed against him in each case. 55 ILCS 5/4-2002.1(a) (West 2012). The State concedes, and we agree, that only a single $100 trial fee should

have been assessed for the two days of trial, $50 for each day. See *People v. Gilliam*, 2013 IL App (1st) 113104, ¶ 58. We therefore vacate the $100 State's Attorney trial fees in case numbers 12 CR 5222 and 12 CR 5225.

¶ 45 For the foregoing reasons, we vacate defendant's conviction and sentence for armed robbery in case number 12 CR 5221. We direct the clerk of the circuit court to correct the fines and fees order in case number 12 CR 5221 to reflect the vacation of the $5 Electronic Citation fee, and that the $15 State Police Operations Fee is offset by defendant's presentence custody credit for a new total due of $409. We further direct the clerk of the circuit court to correct the fines and fees order in case numbers 12 CR 5222 and 12 CR 5225 to reflect the vacation of the $5 Electronic Citation fee and the $100 State's Attorney Per Day of Trial Fee, and that the $15 State Police Operations Fee is offset by defendant's presentence custody credit for a new total due of $309 in each case. We affirm the judgment of the circuit court of Cook County in all other aspects.

¶ 46 Affirmed in part; vacated in part; fines and fees orders corrected.