2017 IL App (1st) 142724-U

FIFTH DIVISION
JANUARY 27, 2017

No. 1-14-2724

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 19448
	)	
DELSHUN RUTLEDGE,	)	Honorable
	)	William O' Brien
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE GORDON delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's conviction for armed robbery affirmed over his contention that he was not proven guilty beyond a reasonable doubt. The trial court was not required to conduct a *Krankel* inquiry where defendant failed to sufficiently allege ineffective assistance of counsel at sentencing.

¶ 2 Following a bench trial, defendant Delshun Rutledge was convicted of armed robbery (720 ILCS 5/18-2(a)(2) (West 2012)) and sentenced to 21 years' imprisonment in the Illinois Department of Corrections (IDOC) and 3 years of mandatory supervised release (MSR). On

appeal, defendant contends that the State failed to prove his guilt beyond a reasonable doubt, and the trial court should have conducted an inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), after defendant claimed, during sentencing, that his trial counsel was ineffective for failing to present an alibi defense. Defendant further contends that the trial court improperly assessed various fees and failed to apply his $5-per-day presentence custody credit toward creditable fines. For the following reasons, we affirm defendant's conviction and order the fines and fees order corrected.

¶ 3 The State charged defendant and his co-offender, Dion Rutledge, with armed robbery.[1] At trial, the victim, Derek Ortiz, testified that, at approximately 11 p.m. on October 5, 2012, he was on his way home from work. The victim was carrying $200 in tips that night from his job at O'Hare airport and walking eastbound on Palmer Avenue. He observed two African American men walking towards him and put his head down as they approached. The two men walked on either side of the victim, grabbed his arms, and pushed him against a gate. There was a lamppost directly overhead that was unobstructed by trees. He had never observed the offenders prior to this incident.

¶ 4 The offenders were less than six to eight inches from the victim. The co-offender who was on the right side pulled out a two-tone handgun, which the victim identified in court, and held it against the victim's ribcage. The victim held up his hands when the co-offender brandished the gun. Defendant was on his left side. As the co-offender held the gun, defendant removed from the victim's pockets his wallet, house keys, work identification, state

[1] The co-offender pled guilty and is not a party to this appeal.

identification, student identification, and $200 in cash. The co-offender searched the victim and found his iPhone 4S in his chest pocket.

¶ 5 The victim had a good look at both offenders. A lamppost was above the victim and he was able to observe defendant's face and torso, and noticed that defendant had a moustache and was approximately 5'8", the same height as the victim. The victim also estimated that defendant was in his mid-20s and weighed approximately 140 pounds. Defendant had braided hair and was wearing a dark jacket, dark jeans, and tan shoes, while the co-offender wore a dark jacket with red lettering, dark jeans, and tan shoes. The co-offender was shorter than the victim, had a moustache like defendant, and was also in his mid-20s with a skinny build. After taking the iPhone, the co-offender waved the gun in the victim's face and instructed him to walk away in the opposite direction.

¶ 6 The entire occurrence took approximately two minutes. As the victim walked away from the offenders, he turned around and observed them turn down an alley at the end of the block. The victim flagged down a Chicago police vehicle driving down Cicero Avenue. He told the police officers that he was robbed approximately 30 seconds prior and gave a general description of the offenders. The victim described the offenders as two African American men that were approximately his size wearing jackets, and noted that one offender had a gun. The officers instructed the victim to "stay put" and left to search for the offenders.

¶ 7 The victim walked to a nearby Walgreens to call his brother. The police officers returned to the victim's location and his brother arrived shortly thereafter. Different police officers apprehended a suspect, but the victim informed them that he was not one of the offenders. The

victim then gave the police a more detailed description of the offenders before leaving the scene with his brother.

¶ 8 An application on the victim's iPhone allows the user to remotely enable "the GPS to be pinged." On October 6, 2012, the victim received two separate pings. The first ping showed the victim's phone at a phone shop on Cicero and Harrison, and he notified the police of the ping. At 4 p.m., the phone pinged at another phone shop, J and M International (J and M). After receiving the second ping, the victim and his father, Dixon Ortiz, went to J and M. The victim waited in the vehicle and Dixon entered the phone store. While he was waiting, the victim observed the co-offender enter J and M. Dixon called the police, who arrived a few minutes later.

¶ 9 The victim informed the police that the individual inside J and M robbed him the night before. The police confirmed that the phone inside J and M belonged to the victim by entering his passcode. Inside J and M, the co-offender pulled out the same gun used during the robbery when the police officers attempted to arrest him. The victim, who was familiar with guns, recognized the gun.

¶ 10 After leaving J and M, the victim went to a police station with Dixon. Around 8 p.m., he spoke with Detective Kischner and his partner Detective Velasquez and signed a photo spread advisory. The victim viewed the photo spread, which contained six photographs. However, the victim told detectives that he was unsure about the people in the spread and did not want to accidentally select the wrong person.

¶ 11 The following day, October 7, 2012, the detectives asked the victim to return to a different police station to view a lineup. At the police station, the victim signed a lineup advisory

form. The men in the lineup sat with their hands folded. Upon viewing the lineup, the victim immediately identified defendant as the other offender who robbed him.

¶ 12 On cross-examination, the victim admitted that, during the robbery, he was not looking at the gun most of the time; rather, the victim turned back and forth and observed the offenders' faces for approximately a minute each. The victim admitted that he did not mention to the initial officers that the offenders had any distinguishing features, but he did tell them that the offender without the gun had braided hair. Although the victim did not testify that the two offenders looked alike or could be related, he did testify that he told the police that they looked similar.

¶ 13 The person that the police brought to Walgreens as a possible suspect did not match the victim's description. Contrary to the victim's description, the potential suspect was shorter and skinnier than the victim, had a backpack, and was not wearing a jacket.

¶ 14 The victim further testified that the detectives told him they had a "possible lineup," rather than a "possible suspect." The victim acknowledged that of the six people in the photo spread, defendant was the only one also in the lineup. However, although he could discern only one person in both the spread and the lineup photographs while on the stand, the victim maintained that at the time of the identification procedures, he was unaware that there was one person who appeared in both. Additionally, the victim told the police that both offenders wore tan shoes, and he acknowledged that defendant was the only person wearing tan shoes in the lineup.

¶ 15 On redirect, the victim testified that he did not pick defendant out of the lineup because of the color of shoes; instead, he picked defendant because he recognized his face. The victim

was "100 percent sure" that defendant was one of the offenders. Further, although both offenders looked similar, the victim testified that he did not select defendant in the lineup because he looked like the other offender. After he flagged down the police, he did not tell them that the offenders had facial hair because his description was general and the police did not ask about facial hair. The police asked about the offenders' hair color and length, but did not ask about their hairstyles. However, the victim told officers later in the evening that one of the offenders had braided hair.

¶ 16 Officer Edward Stancin testified that, on October 5, 2012, he was working as a Chicago police officer with his partner on routine patrol. Around 11:41 p.m., the officers were in uniform driving a marked vehicle patrolling near the area of 2132 North Cicero Avenue. The victim flagged them down and told them he had just been robbed. The victim gave a brief description of the offenders, stating they were both African American males, approximately 5'8" to 5'11", and about 120 to 140 pounds. He also stated that one offender wore a black coat while the other wore a red coat.

¶ 17 The officers instructed the victim to stay where he was and then drove around unsuccessfully looking for people that matched the victim's general description. The officers broadcasted the description over the police radio, and other Chicago police officers apprehended a possible suspect. When the other officers brought the suspect back to the scene, the victim told them that the suspect was not one of the offenders. The police did not apprehend the offenders that evening. After returning to the scene, Officer Stancin continued to speak with the victim and

filled out a police report. During this discussion, the victim gave him a further description of the offenders, including their hair, eye, and skin color, and age.

¶ 18 On cross-examination, Officer Stancin testified that the victim's description of the offenders was two African American males, aged 18 to 25, 5'9" to 5'11", 140 to 160 pounds, with brown eyes, black hair, short hairstyles, and dark brown complexions. He did not remember the victim saying that one of the offenders had braids, but acknowledged that he would have included that detail in the report. Officer Stancin did not recall whether the victim said that the offenders had moustaches or looked similar. However, he acknowledged that the report did not state that the offenders looked similar.

¶ 19 The parties stipulated that if called, Hyo Sook Ko would testify that she was working at J and M on October 6, 2012. Around 4 p.m., a customer entered the store claiming that he forgot his passcode to unlock his iPhone. Ko told the customer that it would take 40 to 50 minutes. Ko subsequently asked the customer to fill out a service authorization form, and the customer identified himself on the form as Dion Rutledge, defendant's co-offender. The customer left the store and told Ko he would return 45 minutes later to pick up the phone.

¶ 20 Approximately 15 minutes after the customer left the store, a father and son arrived and informed her of the robbery. The father and son provided the passcode for the phone that the customer dropped off. After 20 minutes, the father and son left, and the same customer that identified himself as Dion Rutledge returned to pick up his phone. The father returned, looked at the co-offender, and then left again. The police arrived shortly thereafter and arrested the co-

offender. The court admitted into evidence a surveillance video from J and M depicting the co-offender's arrest.

¶ 21 Officer David Uting testified that on October 6, 2012, he was working as a Chicago police officer with his partner. The officers were in uniform in a marked squad vehicle. Around 5 p.m., they were called to 1719 West North Avenue where they met with the victim and his father. The officers learned the victim was robbed the night before and that he was tracking his cell phone and discovered that it was at a nearby phone store. The victim's father told Officer Uting that the offender was in the store attempting to retrieve the phone and that they arrived earlier to confirm that the phone was there.

¶ 22 Officer Uting and his partner entered the phone store and encountered the co-offender. He told the officers that he was at the phone store to have his phone repaired. However, when they pressed for more details, the co-offender became nervous and changed his explanation, claiming he was having his girlfriend's phone fixed. He stated that his girlfriend was outside and he would bring her into the store, but Officer Uting instructed him to remain in the store. The victim then confirmed that the co-offender robbed him the previous night. When Officer Uting and his partner attempted to arrest the co-offender, he reached into his waistband and pulled out a handgun. The officers grabbed the co-offender, secured the gun, and arrested him. The victim identified the gun as the same one used during the robbery.

¶ 23 Detective Bruce Kischner testified that on October 6, 2012, he was working as a Chicago police department Area North detective and received an assignment regarding an armed robbery that occurred the previous night. After speaking with the co-offender in custody, Detective

Kischner attempted to pull a picture of defendant from the ICLEAR computer system. He found a picture of defendant from 2005 and put it into a black and white six-picture photo spread. He instructed the victim to view the photo spread advisory and explained that the spread contained six photos. Out of fairness, Detective Kischner could not say whether the police had any suspects or anyone in custody, but instructed the victim to look at the spread to determine if he recognized anyone. The victim looked at the spread for several minutes but could not be 100% sure that he recognized anyone in the photos. Detective Kischner subsequently inventoried the photo spread and continued investigating the armed robbery. He knew that defendant was arrested that evening.

¶ 24 Detective Kischner requested that the victim return to the police department because he was assembling a physical lineup with defendant. On October 7, 2012, Detective Kischner selected four people in custody who resembled defendant and put them in the lineup with defendant. At around 8 p.m., he gave the victim a lineup advisory form to read and sign. Prior to conducting the lineup, Detective Kischner told the victim that the physical lineup was comprised of five men seated on a bench. He did not state whether the police had a suspect in custody. If the victim required, he could have requested that each individual come up to the glass during the lineup.

¶ 25 The lineup was conducted in a room with the lights shut off. The individuals in the lineup were seated with their hands at their sides, while the victim looked through a "two-way mirror." When the lights were turned on, the victim immediately selected defendant as one of the offenders who robbed him.

¶ 26 On cross-examination, Detective Kischner testified that he always conducts lineups with the individuals seated. He acknowledged that the victim did not tell him that he observed the offender sitting. He further acknowledged that defendant was the only individual in both the photo spread and the physical lineup. However, on redirect Detective Kischner testified that the victim did not tell him that he selected defendant because he was in both the photo spread and the lineup.

¶ 27 Officer Konior testified that he arrested defendant on October 7, 2012. During processing, defendant told Officer Konior that he was 5'8", 150 pounds, and had brown eyes, black hair, and cornrows.

¶ 28 On cross-examination, Officer Konior acknowledged that the police did not recover the robbery proceeds during defendant's arrest.

¶ 29 The court admitted into evidence the handgun used in the robbery, a photograph of the co-offender, the signed photo spread advisory form, the photo spread, the lineup advisory form, a photograph of the lineup, the cell phone authorization form filled out by the co-offender, and a photograph of defendant taken during processing.

¶ 30 Following closing arguments, the court found defendant guilty of armed robbery. Prior to sentencing defendant, the court asked if he had anything to say. Defendant responded,

> "I want to say, I am innocent. I don't see how the victim pointed me out in the lineup. I never seen him again in my life until the day of the trial. He had to be looking at the resemblance of me and my cousin, because I wasn't there. It wasn't me. I did have

evidence of my whereabouts. To my knowledge, two officers said, said is inadmissible. That is where I was. I have surveillance showing me at my home."

The court thereafter sentenced defendant to 21 years in the IDOC with credit for 660 days served and 3 years of MSR. The court also assessed $714 in various fines and fees. This appeal followed.

¶ 31 On appeal, defendant first contends that the State failed to prove his guilt beyond a reasonable doubt because the victim's identification of defendant was unreliable. On a challenge to the sufficiency of the evidence, we inquire " '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 omitted.) *People v. Davison,* 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In so doing, we draw all reasonable inferences in favor of the State (*Davison*, 233 Ill. 2d at 43) and we do not retry the defendant (*People v. Collins*, 106 Ill. 2d 237, 261 (1985)). The State must prove each element of an offense beyond a reasonable doubt. *People v. Siguenza-Brito,* 235 Ill. 2d 213, 224 (2009). We will not overturn a criminal conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 32 To prove defendant guilty of armed robbery, the State is required to show that he knowingly took property from the person or presence of the victim by the use of force, while armed with a firearm. See 720 ILCS 5/18-2(a)(2) (West 2012). The State may meet its burden of proving a defendant's guilt "through the testimony of a single, credible eyewitness, if the witness

viewed the offender under circumstances permitting a positive identification." *People v. Smith*, 299 Ill. App. 3d 1056, 1061 (1998). Further, in a bench trial, it is the duty of the trial court to determine the reliability of an eyewitness's identification and we will uphold that determination "unless it is so contrary to the evidence as to be unjustified." *Smith*, 299 Ill. App. 3d at 1061-62. In determining the reliability of eyewitness identifications, we look to the totality of the circumstances, focusing on (1) the witness's opportunity to observe the offender at the scene of the crime, (2) the witness's level of attention at the time of the crime, (3) the accuracy of any prior descriptions, (4) the witness's level of certainty at the identification confrontation, and (5) the time between the crime and the confrontation. *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972); *People v. Jackson*, 348 Ill. App. 3d 719, 737-38 (2004).

¶ 33 Turning to the first *Biggers* factor, the State argues that the victim had sufficient opportunity to view the offender, while defendant argues that his opportunity to view the offender was minimal because it was dark, the victim's attention was divided between two offenders, and the encounter lasted only two minutes. Moreover, defendant contends stranger-identifications during stressful situations are especially untrustworthy. See *People v. Tisdel*, 338 Ill. App. 3d 465, 467 (2003) (noting the "significant potential for eyewitness error" and the "effects of stress and weapon focus on the accuracy of identifications").

¶ 34 When determining whether a witness had sufficient opportunity to view an offender, we consider "whether the witness was close enough to the accused for a sufficient period of time under conditions adequate for observation." *People v. Carlton*, 78 Ill. App. 3d 1098, 1105 (1979). Here, the victim testified that the offender was illuminated by an unobstructed streetlight,

and the offender was less than eight inches from him. Although defendant contends that the victim's attention was split between two offenders, that does not mean that the victim did not have ample opportunity to view each offender. On the contrary, the victim testified that he had a clear view of defendant for at least a full minute. The trial court found the victim's testimony reliable, and "[t]he sufficiency of the opportunity to observe is for the trier of fact to determine." *People v. Wehrwein,* 190 Ill. App. 3d 35, 39-40 (1989). We therefore find that a rational trier of fact could have found that the victim had a sufficient opportunity to view his offender.

¶ 35 Turning to the second *Biggers* factor, the degree of attention, defendant argues that the victim's attention was likely focused on the gun pointed at him and was compromised by the stress of the robbery. Conversely, the State argues that the victim testified that he paid "extremely close attention" to the offender. Defendant cites to *State v. Henderson,* 208 N.J. 209 (2011), to support his contention that stressful situations undermine the accuracy of witness identifications. We note that we are not bound by this case, although Illinois courts have acknowledged the inherent flaws in eyewitness identifications. *People v. Starks,* 2014 IL App (1st) 121169, ¶¶ 90-91; *People v. Lerma,* 2016 IL 118496, ¶ 28. Here, however, contrary to defendant's assertion, the victim testified that his focus was on the offenders, rather than the gun. He stated that he looked at each offender for a full minute and that a streetlight illuminated the scene. The trial court noted that although it was an "excitable event," the victim's testimony was reliable because he faced the offenders, observed them throughout the robbery, and gave a brief but sufficient description of the offenders to police shortly after the robbery. It was the trial court's duty, as the trier of fact, to resolve issues of witness reliability. See *People v. Jackson,*

232 Ill. 2d 246, 281 (2009). Based on the victim's testimony, a rational trier of fact could have found the victim's degree of attention sufficient to make a reliable identification.

¶ 36 As to the third *Biggers* factor, defendant asserts that the victim initially did not give police a detailed description of the offenders, and the description was too general to be reliable. The State responds that the victim hastily gave a general description immediately after the robbery and later gave a more detailed description to police, which was accurate and consistent with his trial testimony. The victim explained that he initially gave police a general description of two African American men wearing jackets that were approximately his size. He did not mention the offender's facial hair or braids because the initial officers did not ask about those details. The victim later gave police a more detailed description and mentioned defendant's braids and facial hair. However, "[t]he presence of discrepancies or omissions in a witness'[s] description of the accused do not in and of themselves generate a reasonable doubt as long as a positive identification has been made." *People v. Magee*, 374 Ill. App. 3d 1024, 1032 (2007) (citing *People v. Slim,* 127 Ill. 2d 302, 309 (1989)). The trial court, as trier of fact, was in the best position to determine the victim's credibility and the weight to be given to his testimony. *Jackson*, 232 Ill. 2d at 281. The trial court explicitly found the victim's description credible and noted that the victim was accurate enough to inform police that the suspect that they returned with was not one of the offenders based on his prior description. Thus, we cannot say that discrepancies between the victim's general initial description and more detailed later description undermined the reliability of his identification.

¶ 37 In regard to the fourth *Biggers* factor, the State argues that the victim was absolutely certain in his identification, while defendant argues that any reliability is diminished because the victim did not pick defendant's photo out of the photo spread, and defendant was the only person in both the photo spread and the lineup. While defendant is correct that he was the only person in both the photo spread and the lineup, the victim testified that he was not aware of that when he selected defendant from the lineup. Further, the victim testified that he was "100 percent" certain that defendant was one of the offenders and that he identified defendant because he recognized him from the robbery, not because he recognized him from the photo spread.

¶ 38 Moreover, the trial court reasoned that the victim's failure to identify defendant in the photo spread may have been because the photograph was eight years old and showed defendant with a different hairstyle. Illinois courts have repeatedly held that a witness's failure to identify a defendant in a photo spread does not make the witness's later identification of the defendant in a lineup incompetent or inadmissible. See *People v. Maloney*, 201 Ill. App. 3d 599, 609 (1990); see also *People v. Flint*, 141 Ill. App. 3d 724, 729-30 (1986); *People v. Rosa*, 93 Ill. App. 3d 1010, 1014 (1981); *People v. Woods*, 114 Ill. App. 2d 348, 355 (1969) (noting that a photograph may not accurately depict the defendant at the scene). Thus, this factor does not necessarily weigh against the reliability of the identification.

¶ 39 Finally, turning to the fifth *Biggers* factor, defendant asserts first, that the victim was able to identify him 48 hours after the robbery only because he had previously observed defendant's picture in the spread, and second, that no physical evidence was recovered to connect defendant to the robbery. The State contends that two days is well within the accepted range for a reliable

identification. We addressed defendant's first contention and agree with the State that the two day lapse between the robbery and identification weighs in favor of the reliability of the identification. See, *e.g.*, *Biggers*, 409 U.S. at 201 (a seven month time lapse between the initial incident and subsequent confrontation was not substantial enough to create likelihood of misidentification under the totality of the circumstances); see also *Slim*, 127 Ill. 2d at 313 (finding identification credible where there were 11 days between the crime and identification). We additionally reject defendant's second contention because, although there was a lack of physical evidence, a single witness's identification is sufficient to sustain a conviction (*People v. Herron*, 2012 IL App (1st) 090663, ¶ 23) and here, the trial court found the victim's testimony and identification credible.

¶ 40 Accordingly, we cannot say that the totality of the circumstances weighed against the reliability of the witness's identification when viewed in the light most favorable to the State. We therefore decline to substitute our judgment for that of the trial court with respect to the reliability of the witness's identification (*Jackson*, 232 Ill. 2d at 281) and conclude that a rational trier of fact could have found defendant guilty of armed robbery beyond a reasonable doubt.

¶ 41 Defendant next contends that the trial court erred by failing to inquire into the factual basis of his ineffective assistance of counsel claim. Defendant argues that his statement during sentencing regarding the surveillance video implicitly argued that defense counsel was ineffective for failing to investigate and present evidence of his alibi. He requests that we remand the case for the trial court to conduct a proper inquiry under the standard set forth by *Krankel*,

102 Ill. 2d 181. The State responds that defendant's statement was "wholly insufficient" to trigger a *Krankel* inquiry, and therefore the trial court was under no duty to inquire further.

¶ 42 When a defendant files a *pro se* posttrial motion for a new trial based on ineffective assistance of counsel, the trial court must inquire into the factual basis behind the defendant's claim. *People v. McCarter*, 385 Ill. App. 3d 919, 940 (2008). If the defendant's claim indicates possible neglect, the trial court must appoint new counsel to argue the claim of ineffective assistance, pursuant to *Krankel*. *McCarter*, 385 Ill. App. 3d at 940. If, however, the defendant's claim lacks merit or strictly concerns matters of trial strategy, "then the court may deny the motion without appointing new counsel." *McCarter*, 385 Ill. App. 3d at 940.

¶ 43 To determine whether the trial court met its burden under *Krankel*, the reviewing court asks, "whether the trial court conducted an adequate inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel." *People v. Moore*, 207 Ill. 2d 68, 78 (2003). Generally, an adequate inquiry requires "some interchange between the court and trial counsel regarding the complained-of conduct." *McCarter*, 385 Ill. App. 3d at 940-41. However, to actually trigger a *Krankel* inquiry, the defendant must "at least make *some* allegation of ineffective assistance of counsel for the court to consider and must provide some factual specificity of the reason for the allegation." (Emphasis in original.) *People v Cunningham*, 376 Ill. App. 3d 298, 304 (2007); *People v. Washington*, 2015 IL App (1st) 131023, ¶ 11. Whether defendant sufficiently alleged ineffective assistance of counsel to trigger a *Krankel* inquiry is a question of law that we review *de novo*. *People v. Taylor*, 237 Ill. 2d 68, 75 (2010).

¶ 44 Although in his brief on appeal defendant correctly states that an implicit claim of ineffective assistance may suffice under certain circumstances (*Taylor*, 237 Ill. 2d at 76), here, his statement falls short of alleging ineffective assistance of counsel. Defendant's statement did not criticize his counsel's performance or claim that counsel failed to investigate the alleged surveillance tape. Importantly, defendant's statement did not mention his attorney at all. Additionally, we disagree with defendant's contention that the only logical inference from his statement was that defense counsel was deficient for failing to investigate and present the surveillance tape as evidence. His statement claimed that "officers" informed him of the tape's inadmissibility and offered no indication that his attorney knew of the tape's existence. Thus, there was nothing in defendant's statement to alert the court that defendant was complaining about his counsel's performance. *Taylor*, 237 Ill. 2d at 77. Accordingly, we conclude that defendant's statement is insufficient to constitute a claim for ineffective assistance of counsel so as to trigger a *Krankel* inquiry. See *People v. Ward*, 371 Ill. App. 3d 382, 432-33 (2007) (defendant's assertion that he "had signed affidavits and a lot of other things that was not submitted" held to be insufficient). We therefore decline to remand this case.

¶ 45 Next, defendant asserts that this court must correct the fines and fees order to vacate the $60 Felony Complaint Conviction fee and apply his presentence incarceration credit to various creditable fines. Defendant did not contest the fines and fees in the trial court; however, a reviewing court may modify the fines and fees order without remanding the case back to the trial court. See Ill. S. Ct. R. 615(b)(1) (eff. Jan. 1, 1967). We review a trial court's imposition of fines and fees *de novo*. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 60.

¶ 46 Defendant first asserts that the $60 Felony Complaint Conviction fee was improperly assessed because he was not charged by way of indictment, while the State contends the fee is proper. Pursuant to section 4-2002.1(a) of the Counties Code (55 ILCS 5/4-2002.1(a) (West 2012)) the State's Attorney in Cook County is entitled to the following fee:

> "For each conviction in prosecutions on indictments for first degree murder, second degree murder, involuntary manslaughter, criminal sexual assault, aggravated criminal sexual assault, aggravated criminal sexual abuse, kidnapping, arson and forgery, $60. All other cases punishable by imprisonment in the penitentiary, $60."

¶ 47 Defendant contends that the statute's plain language imposes a $60 fee only when a defendant is charged by grand jury indictment. Because he was charged by information, he asserts that the fee is inapplicable. The State argues that the second sentence of the statute is a catch-all provision that entitles the State to a $60 fee for all criminal cases punishable by imprisonment in the penitentiary, not just those charged by indictment.

¶ 48 "As this is a question of statutory interpretation and does not involve disputed facts, our review is *de novo.*" *People v. Beachem,* 229 Ill. 2d 237, 243 (2008). "Statutory language must be given its plain and ordinary meaning." *Murray v. Chicago Youth Center,* 224 Ill. 2d 213, 235 (2007). A statute "should be read as a whole and construed so that no part of it is rendered meaningless or superfluous." *People v. Jones,* 214 Ill. 2d 187, 193 (2005).

¶ 49 Here, we find that the statute in the present case is unambiguous and entitles the State to the $60 for (1) prosecutions on indictments for nine particular crimes, or (2) "all other cases" that are punishable by imprisonment in the penitentiary. The second part of the statute does not

specify that it applies only when charges for non-enumerated crimes are brought by way of indictment. We decline to read defendant's alleged limitation into a statute when it is not there. *People v. Glisson*, 202 Ill. 2d 499, 505 (2002) ("[W]here a statute is clear and unambiguous, courts cannot read into the statute limitations, exceptions, or other conditions not expressed by the legislature.") Since defendant was charged with an offense punishable by imprisonment in the penitentiary, the trial court properly assessed the $60 Felony Complaint Conviction fee. We therefore decline to vacate the fee.

¶ 50 We next turn to defendant's contention that various assessments are not fees, but are instead fines to which his presentence incarceration credit should apply. Defendant was incarcerated for 660 days and under section 110-14(a) of the Code of Criminal Procedure is entitled to $5-per-day presentence custody credit applied toward his fines. 725 ILCS 5/110-14(a) (West 2012). Fines and fees differ according to their purpose. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). Fees are "intended to reimburse the state for a cost incurred in a defendant's prosecution," while a fine is punitive and "part of the punishment for conviction." *Bowen*, 2015 IL App (1st) 132046, ¶ 63 (citing *People v. Jones*, 223 Ill. 2d 569, 582 (2006)).

¶ 51 Defendant contends, and the State concedes, that defendant's presentence incarceration credit should apply to the $30 Child's Advocacy fine (55 ILCS 5/5-1101(f-5) (West 2012)), the $15 State Police Operations fine (705 ILCS 105/27.3a(1.5) (West 2012)) and the $50 Court System fine (55 ILCS 5/5-1101(c)(1) (West 2012)). These charges have all been previously determined to be creditable fines. See *People v. Jones*, 397 Ill. App. 3d 651, 660-61 (2009); see also *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31; *People v. Ackerman*, 2014 IL App (3d)

120585, ¶ 30. Accordingly, we conclude that defendant's presentence incarceration credit should be applied to these fines. *People v. Tolliver,* 363 Ill. App. 3d 94, 97 (2006).

¶ 52 Defendant next asserts that his presentence incarceration credit should apply to the $190 Felony Complaint Clerk charge (705 ILCS 105/27.2a(w)(1)(A) (West 2012)), as it is intended to recoup the clerk's expenses, rather than reimburse the State for costs relating to prosecuting defendant. The State maintains that the $190 assessment is a fee, according to precedent, and is therefore not eligible to be offset by defendant's credit. Defendant's argument was previously disposed of in *People v. Tolliver,* 363 Ill. App. 3d 94 (2006), which determined that the Felony Complaint Clerk assessment is a fee rather than a fine. *Tolliver,* 363 Ill. App. 3d at 97 (felony complaint charge is a fee). Accordingly, defendant's presentence incarceration credit does not apply to the $190 Felony Complaint Clerk fee.

¶ 53 Defendant also contends that the $15 Clerk Automation fee (705 ILCS 105/27.3a(1) (West 2012)) imposed by the trial court is a creditable fine. The State counters that in *Tolliver* this court concluded the $15 Clerk Automation charge is a fee, rather than a fine. We agree with the State and find that *Tolliver* controls, as the court determined the automation fee was "compensatory and a collateral consequence of defendant's conviction," and consequently, is classified as a fee rather than a fine. *Tolliver,* 363 Ill. App. 3d at 97. Thus, defendant is not entitled to apply his presentence incarceration credit to the automation fee.

¶ 54 Defendant next argues that his presentence incarceration credit should apply to the $2 Public Defender and $2 State's Attorney's Records Automation fees because they are fines, rather than fees intended to reimburse the State and public defender's office for costs associated with

prosecuting and defending defendant. The States responds that the two $2 fees were properly assessed because they are compensatory in nature, and therefore fees, not fines.

¶ 55 Both the State's Attorney and Public Defender Records Automation fees require defendant to pay $2 to discharge the expenses of the respective offices "for establishing and maintaining automated record keeping systems." See 55 ILCS 5/4-2002.1(c) (West 2012); see also 55 ILCS 5/3-4012 (West 2012). This court has previously determined that both assessments are fees. See *Bowen*, 2015 IL App (1st) 132046, ¶¶ 63-65; but see *People v. Camacho*, 2016 IL App (1st) 140604, ¶ 56 (finding that the State's Attorney and Public Defender Records Automation assessments are fines).

¶ 56 However, in this case, the public defender's office did not represent defendant, and accordingly, the $2 assessment could not be a fee intended to reimburse the public defender's office for the costs associated with defending defendant. Under these facts, we conclude that the $2 Public Defender Records Automation assessment is inapplicable and must be vacated because defendant was represented at all times in the proceedings by private counsel. *People v. Taylor*, 2016 IL App (1st) 141251, ¶ 30. Thus, we affirm the trial court's assessment of the State's Attorney Records Automation fee, but we vacate the Public Defender Records Automation fee.

¶ 57 For the foregoing reasons, we find that the $30 Children's Advocacy Center, $50 Court System, and $15 State Police Operations assessments are fines that defendant is entitled to offset with presentence custody credit, and we vacate the $2 Public Defender Records Automation fee. Pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Aug.27, 1999), we order the clerk of the

circuit court to correct the fines and fees order accordingly, reducing the order to $617. The judgment of the circuit court of Cook County is affirmed in all other respects.

¶ 58 Affirmed; fines and fees order corrected.