2017 IL App (1st) 150081-U

No. 1-15-0081

Order filed October 4, 2017

Third Division

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. 12 CR 8300
	)	
DERRICK REDMOND,	)	Honorable
	)	Joseph Michael Claps,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE COBBS delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for first degree murder and personally discharging a firearm proximately causing death affirmed where the State presented sufficient evidence to prove defendant guilty beyond a reasonable doubt. Fines, fees, and costs order modified.

¶ 2 A jury found defendant, Derrick Redmond, guilty of first degree murder and personally discharging a firearm proximately causing the death of David Gulley (Gulley). On appeal, defendant argues that the evidence presented at trial was insufficient to prove him guilty beyond a

reasonable doubt as the State's three witnesses were unreliable. He also argues that certain assessments should be vacated and that his fines, fees, and costs order should be modified to reflect credit for presentence custody against the fines imposed by the trial court. For the following reasons, we affirm.

¶ 3 At trial, Stefan Hart testified that he had known both Gulley and defendant, and Gulley "was like a family member" to him. He also knew Shavez Moody, who lived in the house with a red porch across the street from where Gulley lived. At around 4:30 p.m. on March 29, 2012, Hart was walking north on Michigan Avenue near 114th Street when a car passed him going south. The car stopped at 114th Street and defendant exited and walked around the corner. Ten minutes later, Hart heard gunshots and walked to 113th Place, where he saw emergency services were present and Gulley was on a stretcher.

¶ 4 Bernard Gulley (Bernard) testified that, at around 4:30 p.m. on March 29, 2012, he was watching television in his home at 16 East 113th Place.[1] His son Jason Gulley (Jason) left for the store and another son, Gulley, was moving his car from the rear of the house to the front. Bernard heard about nine shots of "small caliber gunfire" and went to the front porch. Jason was "ducked down" on the lawn and Gulley was "crouched down outside the driver's door" of his car parked directly across the street. Bernard asked Gulley where the shooting had come from, but he did not know. Bernard testified that the street was "wide open [and] clear" and "[i]t was like a mystery. We were all wondering where did the shooting come from." Gulley then got up slowly and walked around his car, looked at the front, and returned to stand near the driver's side door

¶ 5 Bernard turned to go back inside but heard more gunshots. He looked back and saw Gulley on the ground. He saw "the young man known as June-June in the neighborhood" standing on the red

[1] The victim, David Gulley, shares his last name with witnesses Bernard Gulley and Jason Gulley. We will therefore refer to these witnesses by their first names.

porch across the street with a rifle in his hands. The rifle was "point[ed] in the direction toward [Gulley]." Defendant was wearing a black hoodie, hood down, and was "paused as though he was observing the results of the incident." Bernard went to Gulley and observed defendant go back inside the house. Bernard stated June June was also known as Derrick Redmond and identified defendant in court. He had known defendant since 1994.

¶ 6 The police arrived and Bernard pointed to "the house with the red porch." He testified variously that he told police that "he is in there" and "they are in there." The police tried the front door and then went to the back of the house. After a few minutes, the police emerged from the back with defendant, who Bernard identified to police as the shooter. Bernard "tried to approach" defendant and "told him he better be glad that the police caught him first before I did." Bernard denied ever saying that defendant merely "looked like the shooter." Gulley did not survive.

¶ 7 Jason testified that, at around 4:30 p.m. on March 29, 2012, he was in front of 16 East 113th Place. Jason was leaving and observed that Gulley, his brother, had just parked across the street, on the North side of 113th Place. Jason heard gunshots, hit the ground, and looked in Gulley's direction. Bullets ricocheted off the windshield of Gulley's car. The shooting ended and Jason got up, looked around, and saw Gulley getting up. Gulley surveyed the damage to his car and then started toward the house. Jason had turned around and was climbing the front steps of the house when more gunshots rang out. He ran up the stairs and saw his father at the door facing him. Before entering the house, Jason stopped, turned, and noticed someone in the doorway of the house with the red porch across the street. The person was wearing a black hoodie, hood down, and was holding what appeared to be a weapon in his hands. He could not see the person's face or the rear portion of their body. Jason observed the person shooting and then saw Gulley had fallen to the ground. Jason ran to his brother and was joined by his father and sister. The police were "right there, when [they] all rushed over

there" and Jason pointed them to the house with the red porch across the street. Later, Jason saw the police "bringing the individual with the hoody, had him in handcuffs, [and were] bringing him to the squad car." He recognized the man as defendant, nicknamed June June, and identified him in court. He had known defendant since 1995. Jason went to the police station for questioning and then to the hospital, where he learned Gulley had died.

¶ 8 Moody testified that, at the time of trial, he was 19 years old and serving a one-year sentence for an unrelated unlawful use of a weapon conviction. He acknowledged that he had "a lot of cases" for which he had either been convicted or the charges were dismissed but could not recall specifics. He also acknowledged that he had previously been treated for drug addiction.

¶ 9 On March 29, 2012, he lived at his grandmother's home at 119 East 113th Street. At about 4:30 p.m., there was a shooting outside his house and his neighbor, Gulley, was shot and killed. But "[i]t was a long time ago" and he had "been through a lot" since then. Moody testified he was at home with Semaje Woods, Parish Smith, and Timothy Watson and that a man named "June June" arrived later. Moody did not know June June's real name and testified he was not in the courtroom at trial. Moody did not know who let June June into the house. He did not remember whether June June had anything with him when he arrived or what anybody was wearing. Moody acknowledged there were two guns in the house: he had a .38 revolver and he "remembered a nine. That was it."

¶ 10 Moody testified variously that he could not remember where June June went in the house and that June June was in the kitchen and in Moody's bedroom in the basement. He was unaware of what June June did in the basement because Moody was upstairs and never went into the basement. He did not remember June June ever being on the porch with a .22-caliber gun. He never saw defendant on the front porch with any item because he "[could not] see on the front porch." Moody did not recall

June June exiting through the front but "he was gone" and must have exited through the back door, which is through the basement. Police arrived and "kicked in the door."

¶ 11 When asked if he was arrested that day, Moody stated, "I don't think we got arrested." He recalled that he was taken to the police station where he was questioned by police in the presence of either his mother or grandmother. Moody could not remember if his grandmother was mad or yelling at him and could not remember what she said. He was not aware the interview was being videotaped. Asked whether he remembered police asking certain questions and confronted with his responses, Moody testified he could not remember. Moody was released after the interview. He testified that he was never charged with murder and never worried that he would be charged therewith. He did not recall whether any charges were brought that were dismissed later.

¶ 12 The prosecutor asked Moody to "stand up [and] take another look around the courtroom" for "Derrick Redmond or June June." Doing so, Moody stated, "I don't really remember how his face look. It be two, three years." He remembered what Smith, Watson, and Woods looked like because they "went to school together."

¶ 13 Chicago police detective Patrick Ford testified that, on March 29, 2012, he and his partner interviewed Moody at the police station. The interview was videotaped and the recording was admitted at trial. It was recorded because Moody was a "suspect in a homicide." Because Moody was a juvenile, his grandmother was present. Moody denied knowing anything at first. Ford "knew he was lying" and confronted him with evidence that had been found and with inconsistencies. He told Moody that police had found guns and ammunition in his room in the basement. Moody's grandmother became angry and confronted Moody during the interview.

¶ 14 Ford testified that, in the interview, Moody told him that he was at his house with his friends when June June, defendant, came over with a "crazy looking" .22-caliber gun. He, "Ray Ray, June

June, [Woods], [and Smith], were all in [Moody's], uh, front living room." Smith had a .38 and Woods had a 9 millimeter. Defendant was there about 10 minutes and then, "next thing you know, I guess [he] must have peeped the dudes they was into it with." Defendant yelled, "there they go, there they go." Everyone ran to the basement. Defendant started shooting from the front-basement window while Smith and Woods "hopped the gate" and were "shooting from the other yard," which was a vacant lot.

¶ 15 Moody told Ford that he was standing next to defendant and saw him firing the gun out of the basement window. Smith and Woods came back into the basement. Defendant ran upstairs and Moody followed him. Moody told Ford, "I guess [defendant] seen him fall or something, and he go on the porch and get to shooting." Moody heard a "bunch more shots." When defendant came back in, he "run to the basement again and go out the back door." Smith and Woods were still in the basement and Moody was in his grandmother's room.

¶ 16 Ford testified that the vacant lot had been "processed" and no evidence of shooting was found. He acknowledged that Moody said he was "a hundred percent positive" that Smith and Woods were shooting from the other lot. Furthermore, Ford testified that the .38 and 9 millimeter guns recovered from Moody's bedroom had never been fired that day.

¶ 17 Testimony from Chicago police officers Gardener McFadden and Ricky Washington established that, at around 4:30 p.m. on March 29, 2012, they were in an unmarked car at 113th Place and State Street when "small caliber" gunshots rang out. After a pause, there was a second series of gunshots. The officers observed two men half a block to the east of their location on 113th Place, one of whom, later identified as Gulley, fell to the ground. The officers immediately responded to the location and Bernard pointed to a house with a red porch located at 19 East 113th Place, stating that "they" ran in there. The officers saw the front door of the house close shut. They went around the

house from opposite sides. They heard a sound and saw a man wearing a black hoodie, identified in court as defendant, run out of the back. McFadden testified that he only saw defendant run out of the house. Washington testified that he saw a second man, wearing a gray and white hoodie, run out. McFadden testified that they chased defendant and the police eventually found him in the rear of 18 East 114th Street, where McFadden took him into custody. The officers testified that defendant was taken back to 113th Place to put him into a police vehicle for transport. There, Bernard "had to be restrained when he seen [*sic*] defendant," told police that "he did it," and "was shouting out several other things."

¶ 18 Testimony from Chicago police officers Matthew O'Brien and Michael Baker established that, on March 29, 2012, the police made a forced entry into 19 East 113th Place after a report of a shooting. There, in the basement, police detained two juveniles, Smith and Watson, and recovered a ".38 or .357-[caliber]" revolver, a rifle, and a semiautomatic handgun, along with spent shell casings on the floor near the basement's front window.

¶ 19 Chicago police officer Timothy Karn testified that on March 29, 2012, he was one of the two evidence technicians assigned to the crime scene at East 113th Place. The technicians videotaped and photographed the scene. There were bullet holes in the windshield and hood of Gulley's car as well as in the lattice work beneath the porch. The two technicians collected one fired nine millimeter casing from the front steps, four fired casings of an unknown caliber on the porch, and two fired casings of an unknown caliber below the porch. The technicians went to the basement, which had a bed, some chairs, a television, and a drier in the back corner. Karn noted that, "when you look out that [basement] window, you can see through the lattice towards the victim's vehicle on the street." They collected evidence from the basement, including five fired cartridge cases of an unknown caliber, a box of ammunition under the basement window, a loaded revolver, a loaded semiautomatic

handgun, and a rifle containing both live and fired cartridges. There was also a box of ammunition containing 81 rounds in the rafters. The technicians inventoried all the evidence from the scene and sent swabs taken from the firearms to the Illinois State Police crime lab for DNA testing.

¶ 20 Assistant medical examiner Denika Means testified that she reviewed the findings of the March 2012 autopsy of Gulley's body and determined Gulley's death was caused by a gunshot wound to the head. A bullet fragment was recovered from the right side of the skull and provided to the police.

¶ 21 Testimony from Illinois State Police forensic scientists Aimee Stevens and Joseph Wohrstein established that they received for examination "a rifle, a handgun, both magazines and unfired cartridges, a number of fired cartridge cases[,] and one fired bullet fragment." The semiautomatic nine millimeter was determined to have fired the recovered cartridge case of the same caliber. The .22-caliber semiautomatic long rifle had fired the other recovered cartridge cases. The bullet fragment was from a .22-caliber bullet but may or may not have been fired from the recovered rifle. Fingerprints from Smith and Watson were recovered from the underside of the revolver and rifle barrels, respectively.

¶ 22 Testimony from Chicago police officer John Heneghan and forensic scientist Mary Wong established that gunshot residue samples taken from defendant, Moody, Smith, Watson, and Woods were tested and that all the tests indicated that the they "may not have discharged a firearm with either hand."

¶ 23 It was stipulated that on March 29, 2012, Moody, Woods, Smith, and Watson—all 15-year-old males at the time—were present at 19 East 113th Place. Moody and Woods were upstairs and Smith and Watson were downstairs. All four were taken into police custody.

¶ 24 It was further stipulated that the State's Attorney's investigator would testify that he took a buccal swab from defendant, it was inventoried, and it was transported to the crime lab for analysis. A forensic biologist for the Illinois state police would testify that she received the .22-caliber rifle, swabbed it, and preserved the swab for DNA analysis. Another forensic biologist would testify that he analyzed the DNA from defendant's buccal swab and the swab from the .22-caliber rifle. The swab from the rifle contained a mixture of at least three individuals' DNA and was not suitable for comparison.

¶ 25 Defendant filed a "motion for a directed finding," which was denied.

¶ 26 Chicago police detective John Otto testified for the defense that Bernard stated defendant looked like the shooter, not that he was the shooter.

¶ 27 The jury found defendant guilty of first degree murder (720 ILCS 5/9-1(a)(1) (West 2012)) and personally discharging a firearm that proximately caused the death of Gulley (730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2012)). Defendant's motion for a new trial was denied. The trial court sentenced defendant to 55 years' imprisonment: 30 years' imprisonment for first degree murder and 25 years' imprisonment for the firearm add-on. This timely appeal followed.

¶ 28 On appeal, defendant argues that the evidence presented at trial was insufficient to prove him guilty of murder beyond a reasonable doubt as the State's eyewitnesses were unreliable and no physical evidence tied him to the shooting. Defendant also asks that we vacate two assessments and correct his fines and fees order to apply presentence custody credit against eligible fines.

¶ 29 Defendant's first contention on appeal is that the State failed to prove him guilty beyond a reasonable doubt. Specifically, he argues that the only evidence connecting him to the offense was the unreliable identification testimony of eyewitnesses Bernard, Jason, and Moody, which was insufficient to establish his guilt beyond a reasonable doubt.

¶ 30 When reviewing the sufficiency of the evidence, the relevant inquiry 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. *People v. Washington*, 2012 IL 107993, ¶ 33. The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on these issues. *People v. Jackson*, 232 Ill. 2d 246, 280 (2009). We will not reverse a conviction unless " 'the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of [the] defendant's guilt.' [Citation]." *Washington*, 2012 IL 107993, ¶ 33.

¶ 31 The State bears the burden of proving beyond a reasonable doubt the identity of the person who committed the charged offense. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995). Identification evidence which is vague or doubtful is insufficient to support a conviction. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). However, a single witness's identification of the accused is sufficient to sustain a conviction if the witness viewed the accused under circumstances permitting a positive identification. *Id.* In assessing identification testimony, we consider the following five factors set forth in *Neil v. Biggers*, 409 U.S. 188 (1972): (1) the witness's opportunity to view the defendant during the offense; (2) the witness's degree of attention at the time of the offense; (3) the accuracy of the witness's prior description of the defendant; (4) the witness's level of certainty at the subsequent identification; and (5) the length of time between the crime and the identification. *Slim*, 127 Ill. 2d at 307-08. None of these factors, standing alone, conclusively establishes the reliability of identification testimony; rather, the trier of fact is to take all of the factors into consideration. *Biggers*, 409 U.S. at 199-200.

¶ 32 Here, Bernard identified defendant at the scene and at trial as the man in the black hoodie on the porch pointing a rifle at Gulley. With respect to the first *Biggers* factor, defendant argues that Bernard did not have a good opportunity to view the shooter because he "only viewed the shooter once, from the side, and for a matter of mere seconds." We disagree. This court has previously held that a positive identification need not be based upon perfect conditions for observation, nor does the observation have to be of a prolonged nature. *People v. Williams*, 143 Ill. App. 3d 658, 662 (1986). Bernard heard gunshots, turned around to see Gulley had fallen to the ground, and then spotted defendant on the porch across the street. It was the middle of the afternoon, thus daylight, and Bernard saw defendant long enough to note that he was wearing a black hoodie, holding a gun, and was "paused as though he was observing the results of the incident." Furthermore, Bernard had known defendant for approximately 18 years and recognized him. Based upon these facts, a rational trier of fact could have found that Bernard had ample opportunity to view and recognize defendant at the time of the shooting.

¶ 33 With respect to the second *Biggers* factor, defendant claims that Bernard's degree of attention could have been affected by the high-stress situation of the shooting and his focus on Gulley's welfare, which weighs against finding that Bernard made a reliable identification. We disagree. Although Bernard was undoubtedly concerned for Gulley's condition, there was no evidence presented to suggest that the stress of the situation affected Bernard's degree of attention or ability to observe defendant across the street. After the first series of shots, Bernard's attention was already on the events unfolding outside. He scanned the street to check on his sons and saw the street was empty. After the second series of shots, Bernard turned, saw Gulley on the ground and was concerned for his welfare, but his attention was drawn to defendant on the red

porch across the street. Bernard's degree of attention to the shooter was demonstrated by his ability to recall that defendant was across the street on the red porch, that he stood holding a rifle, and that he "paused as though he was observing the incident." Bernard's attention was further demonstrated by his ability to describe defendant's clothing. Accordingly, a rational trier of fact could have found that the second factor weighs in the State's favor regarding Bernard's reliability.

¶ 34 The third *Biggers* factor—the accuracy of the witness's prior description of the offender—is inapplicable as Bernard did not provide any prior description of the shooter before he identified defendant to the police at the scene, after defendant was already in custody.

¶ 35 Nevertheless, defendant argues that "Bernard's failure to identify [defendant] in his initial utterances further renders his identification doubtful." He asserts that it would have been natural for Bernard to identify the shooter immediately to the police as June June—someone he had known for "almost two decades"—rather than merely pointing to the house with the red porch and stated "he's in there." 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 *Slim*, 127 Ill. 2d at 309). The jury, as trier of fact, was in the best position to determine Bernard's credibility and the weight to be given to his testimony. *Jackson*, 232 Ill. 2d at 281. Thus, Bernard's initial failure to name defendant to police did not undermine the reliability of his later identification of defendant as the man who shot his son.

¶ 36 Defendant argues Bernard's identification of defendant as the shooter at the scene was unreliable because "seeing [defendant] handcuffed in police custody clearly implied that he was

the shooter." We disagree. Even if this were a so called "show-up," and not a coincidental, unprompted identification, our supreme court has found that a prompt show-up identification near the crime scene is proper police procedure. *People v. Lippert*, 89 Ill. 2d 171, 188 (1982) (citing *People v. Ramos*, 339 Ill. App. 3d 891, 897 (2003)). Even if the show-up identification was unduly suggestive, the court must still consider whether, under the totality of the circumstances, the identification was reliable. *Biggers*, 409 U.S. at 199. Here, Bernard saw defendant, a man he had known for almost two decades, and spontaneously yelled out that he was the shooter. Thus, we cannot say Bernard's identification was unreliable merely because he failed to name defendant when police arrived or because he identified defendant while he was in custody at the scene.

¶ 37 Regarding the fourth *Biggers* factor, the witness's level of certainty, Bernard unwaveringly and consistently identified defendant as the man who shot Gulley, both at the scene and at trial. Nothing in the record suggests, nor does defendant dispute, that Bernard's on-scene identification or in-court identification were less than certain. However, defendant emphasizes the "low correlation between a witness'[s] confidence in an identification and the accuracy of that identification." While defendant cites social science research that may discredit the fourth factor as a matter of policy, all five *Biggers* factors are the law in Illinois for the purpose of assessing the reliability of a witness. *People v. Polk*, 407 Ill. App. 3d 80, 109 (2010). Accordingly, a rational trier of fact could have found that the fourth *Biggers* factor weighs in the State's favor.

¶ 38 As to the fifth *Biggers* factor—the length of time between the occurrence and the identification—defendant claims that "although Bernard's identification occurred on the scene, it

was the biased result of seeing defendant in police custody immediately after the offense. Therefore the timing of his identification was merely circumstantial, not an indicator of reliability." We have already addressed defendant's claim of bias in Bernard's in-custody identification at the scene and found it did not render the identification unreliable. As there is no dispute that Bernard identified defendant on the scene, the fifth factor does not undercut the sufficiency of Bernard's identification as evidence in support of defendant's conviction. In fact, the fifth factor supports the reliability of Bernard's identification where it occurred mere minutes after the offense. See *Slim*, 127 Ill. 2d at 313-14.

¶ 39 After reviewing the *Biggers* factors, we cannot say that Bernard's eyewitness testimony was so deficient that no rational juror could accept his identification of defendant as the shooter. Therefore, we find that Bernard's testimony was sufficient to prove beyond a reasonable doubt that defendant was the man who was shooting a rifle from the red porch across the street from his house in the direction of Gulley when Gulley was shot to death.

¶ 40 Defendant also argues that Jason's testimony was insufficient to identify defendant beyond a reasonable doubt and "fails to support [defendant's] conviction." Jason's testimony corroborates Bernard's testimony that he saw defendant wearing a black hoodie on the red porch across the street with a rifle in his hands. As with Bernard's testimony, Jason's identification of defendant as the shooter was certain and consistent. As he testified at trial, when defendant was brought back to the transport car in custody, he was wearing the same hoodie Jason had seen on the shooter. Jason testified that when he heard a second round of gunshots, he turned and saw someone wearing a black hoodie in the doorway of the house with the red porch. Although he did not see the person's face, he testified that it seemed like the person was "holding something

with two hands" and "probably *** firing shots." When police later brought "the individual with the hoody" to the front of the house, Jason recognized him as June June and identified defendant in court. Although Jason did not immediately recognize the shooter when he stood on the porch, his identification of defendant as the shooter based on his clothing was unequivocal.

¶ 41 Defendant next argues that Moody's unreliable testimony was insufficient to support his conviction. We disagree. At trial, Moody admitted being interviewed by police but denied seeing defendant shooting a .22-caliber rifle. However, Detective Ford testified that, in the interview, Moody told him that he saw defendant shooting a .22-caliber rifle from the basement and then again from his porch. Ford's interview of Moody was memorialized in a video recording admitted at trial. While Moody disavowed these statements at trial, they were admitted as prior inconsistent statements.

¶ 42 Defendant asserts that no rational trier could have found Moody's prior inconsistent statement identifying defendant as the shooter reliable, because Moody was an accomplice with a motive to shift blame onto defendant and a known liar. It was for the jury as the finder of fact to determine the weight of his testimony and statement. If a prior inconsistent statement is properly admitted, "a finding of reliability and voluntariness is automatically made. *** Accordingly, no additional analysis is needed. *** [I]t is the jury's decision to assign weight to the statement and to decide if the statement was indeed voluntary." (Internal quotation marks omitted.) *People v. Morrow*, 303 Ill. App. 3d 671, 677 (1999) (citing *People v. Pursley*, 284 Ill. App. 3d 597, 609 (1996)).

¶ 43 Here, it is undisputed that Moody's prior inconsistent statement was properly admitted. Further, the jury was properly instructed that it could consider a witness's prior inconsistent

statement and determine the weight to be given to the statement. Lastly, defendant argued extensively in closing that Moody's testimony was unreliable. On this record, there is no basis to assume that the jury did not follow the instructions. *People v. Barney*, 111 Ill. App. 3d 669, 677-78 (1982) (the jury is presumed to follow the trial court's instructions). We will not substitute our judgment for that of the jury on "questions involving the weight of the evidence or the credibility of the witnesses" *People v. Bradford*, 2016 IL 118674, ¶ 12.

¶ 44 Lastly, we reject defendant's contention that he was not proven guilty beyond a reasonable doubt because the State produced no physical evidence connecting him to the shooting. The lack of physical evidence linking a defendant to a shooting does not raise a reasonable doubt where an eyewitness positively identifies the defendant as the perpetrator of the crime. *People v. Rouse*, 2014 IL App (1st) 121462, ¶ 58. The State is not required to present physical evidence to corroborate eyewitness testimony. *People v. Herron*, 2012 IL App (1st) 090663, ¶ 23. Here, Bernard positively identified defendant as the man standing on the porch and shooting at Gulley. Jason corroborated that identification and Moody also identified defendant as shooting from the porch. This eyewitness testimony alone was sufficient evidence that defendant was the shooter.

¶ 45 In sum, after viewing the evidence in the light most favorable to the State, we conclude that the evidence was sufficient to establish that defendant committed first degree murder and personally discharged a firearm proximately causing the death of Gulley.

¶ 46 Defendant argues next that the trial court improperly assessed the $5 court system fee and the $5 electronic citation fee against him and that it failed to give him $5 per day of presentence custody credit against other monetary assessments which qualified as fines. The State agrees that

the $5 court system fee and the $5 electronic citation fee should be vacated and that defendant is owed presentence credit against all the enumerated assessments except for the $15 automation fee, $15 document storage fee, $2 State's Attorney records automation fee, and $2 public defender records automation fee, which it argues are not fines.

¶ 47 Defendant did not challenge these assessments at trial and acknowledges his claims are, therefore, forfeit. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). He contends that we may review his claims under plain error or ineffective assistance of counsel. However, since the State does not argue forfeiture on appeal, it has thus forfeited that argument and we will address the merits of defendant's claims. See *People v. Brown*, 2017 IL App (1st) 142877, ¶ 70 (rules of waiver and forfeiture apply to the State). We review the propriety of a trial court's imposition of fines and fees *de novo*. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 60.

¶ 48 Defendant first claims, and the State properly concedes, that the $5 electronic citation fee (705 ILCS 105/27.3e (West 2012)) was improperly assessed and must be vacated because it only applies to traffic, misdemeanor, municipal ordinance, and conservation cases, and is inapplicable to his felony conviction. See *People v. Moore*, 2014 IL App (1st) 112592-B, ¶ 46 ($5 electronic citation fee does not apply to felonies); *People v. Robinson*, 2015 IL App (1st) 130837, ¶ 115 (vacating the fee where the defendant's offense did not fall into an enumerated category). Accordingly, we vacate the electronic citation fee.

¶ 49 Defendant also claims, and the State again concedes, that the $5 court system fee (55 ILCS 5/5-1101(a) (West 2012)) was improperly assessed and must be vacated because it only applies to violations of the Illinois Vehicle Code and similar county and municipal ordinances. As defendant was not found guilty of a violation of the Illinois Vehicle code, the $5 court system

fee was erroneously assessed against him. See *People v. Price*, 375 Ill. App. 3d 684, 698 (2007). Accordingly, we vacate the $5 court system fee.

¶ 50 Defendant next argues, and the State agrees, that he is entitled to presentence custody credit toward the following fines: a $30 children's advocacy center fine (55 ILCS 5/5-1101(f-5) (West 2012)); a $10 mental health court fine (55 ILCS 5/5-1101 (d-5) (West 2012)); a $5 youth diversion/peer court fine (55 ILCS 5/5-1101(e) (West 2012)); a $5 drug court fine (55 ILCS 5/5-1101(f) (West 2012)); $15 State Police operations fee (705 ILCS 105/27.3a(1.5) (West 2012)); and $50 Court System fee (55 ILCS 5/5-1101(c) (West 2012)).

¶ 51 A defendant is entitled to a $5 credit toward the fines levied against him for each day he is incarcerated prior to sentencing. 725 ILCS 5/110-14(a) (West 2012). The credit applies only to fines imposed pursuant to conviction and not to any other court costs or fees. *People v. Tolliver*, 363 Ill. App. 3d 94, 96 (2006). A fine is a part of the punishment for a conviction, whereas a fee or cost seeks to recoup expenses incurred by the State. *People v. Jones*, 223 Ill. 2d 569, 582 (2006). Here, defendant accumulated 961 days of presentence custody credit, and, therefore, he is entitled to as much as $4,805 of credit toward his eligible fines.

¶ 52 We agree with the parties that the children's advocacy center fine, mental health court fine, youth diversion/peer court fine, $5 drug court fine, State Police operations fee, and court system fee are all fines subject to presentence custody credit. See *People v. Lattimore*, 2011 IL App (1st) 093238, ¶ 107 (children's advocacy center assessment is a fine); *People v. Graves*, 235 Ill. 2d 244, 251-55 (mental health court and youth diversion program assessments are fines); *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 138 (drug court assessment is a fine); *People v. Moore*, 2014 IL App (1st) 112592-B, ¶ 46 (State Police operations assessment is a fine); *People v. Reed*, 2016 IL App

(1st) 140498, ¶ 15 (court system fee is a fine). Accordingly, defendant is entitled to offset those assessments with presentence custody credit.

¶ 53 The parties disagree with respect to the five remaining assessments that defendant challenges on appeal. Defendant argues, and the State disagrees, that the $15 automation assessment (705 ILCS 105/27.3a-1 (West 2012)), the $15 document storage assessment (705 ILCS 105/27.3c (West 2012)), and the $25 court services assessment (55 ILCS 5/5-1103 (West 2012)) imposed by the trial court are fines and, therefore, subject to offset. This court has previously rejected a defendant's characterization of these charges and has determined that they are fees rather than fines because they are compensatory and the collateral end result of a defendant's conviction. *Brown*, 2017 IL App (1st) 150146, ¶ 39 (citing *Tolliver*, 363 Ill. App. 3d at 97). Accordingly, the assessments imposed for automation, document storage, and court services constitute fees that are not subject to offset by presentence incarceration credit.

¶ 54 Defendant also argues, and the State disagrees, that the $2 State's Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2012)) and the $2 public defender records automation fee (55 ILCS 5/3-4012 (West 2012)) are fines against which presentence credit may be applied. We agree with the State that these assessments are fees, not fines. "[T]he bulk of legal authority has concluded that both assessments are fees rather than fines because they are designed to compensate those organizations for the expenses they incur in updating their automated record-keeping systems while prosecuting and defending criminal defendants." *Brown*, 2017 IL App (1st) 150146, ¶ 38. Accordingly, we conclude that the State's Attorney records automation and the public defender records automation assessments are fees not subject to offset by defendant's presentence custody credit.

¶ 55 For the foregoing reasons, we vacate the $5 court system fee and $5 electronic citation fee and find defendant is entitled to presentence custody credit to offset the $30 children's advocacy center fine, $10 mental health court fine, $5 youth diversion/peer court fine, $5 drug court fine, $15 State Police operations fee and the $50 court system fee—a total reduction of $125. We order the clerk of the circuit court to correct fines and fees order accordingly. We affirm the judgment in all other respects.

¶ 56 Affirmed; fines and fees order modified.