

NOTICE

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

NO. 4-09-0227 Order filed 3/2/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

| | | |
|--------------------------------------|---|---------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from |
| Plaintiff-Appellee, |) | Circuit Court of |
| v. |) | McLean County |
| KEIAHTY K. JONES, |) | No. 08CF401 |
| Defendant-Appellant. |) | |
| |) | Honorable |
| |) | Charles G. Reynard, |
| |) | Judge Presiding. |

PRESIDING JUSTICE KNECHT delivered the judgment of the court.

Justices Turner and McCullough concurred in the judgment.

ORDER

Held: The following arguments by defendant lacked merit: (1) the State failed to prove him guilty beyond a reasonable doubt, (2) he was denied a fair trial when the court (a) failed to comply with Supreme Court Rule 431(b) (eff. May 1, 2007), and (b) allowed a witness to testify he lied in earlier testimony because he was afraid he and his family were in danger, and (3) his sentence was excessive. However, defendant was entitled to a \$235 credit toward his DNA-analysis, children's-advocacy-center, and drug-court assessments.

In August 2008, a jury convicted defendant, Keiahty K. Jones, of three counts of aggravated battery with a firearm (720 ILCS 5/12-4.2 (West 2008)). In December 2008, the trial court sentenced defendant to concurrent prison terms of 16 years on each count.

Defendant appeals, arguing (1) the State failed to prove him guilty beyond a reasonable doubt, (2) he was denied a

fair trial when the court (a) failed to comply with Supreme Court Rule 431(b) (eff. May 1, 2007) and (b) allowed a witness to testify he lied in earlier testimony because he was afraid he and his family were in danger, (3) his sentence is excessive, and (4) he is entitled to a \$235 credit toward his DNA-analysis, children's advocacy center, and drug-court assessments. We affirm as modified and remand with directions.

I. BACKGROUND

In April 2008, a grand jury returned an indictment charging defendant with three counts of aggravated battery with a firearm, alleging on April 6, 2008, defendant "or one for whose conduct he was legally responsible, knowingly and without legal justification caused injury to [Thyesha Jenkins (count I), Mindy Robbins (count II), and Dcamron King (count III)], by discharging a firearm in that he shot [Thyesha Jenkins, Mindy Robbins, and Dcamron King] with a shotgun."

In August 2008, the State presented evidence as follows. Earlier on the day of the shooting, a fight broke out in a parking lot on Market Street near Pop's Grocery and the Mt. Pisgah Church. Dcamron King punched "Little Mo" and knocked him unconscious. Dcamron left with his sister, Nadia King, who drove him and a friend to a tuxedo fitting before she returned home to the Evergreen Apartment complex in Bloomington, Illinois. Officer Kevin Raisbeck responded to a call concerning the fight

and arrived to see Eric Clark and Eddie Spice wielding pieces of wood.

Sixteen-year-old Nadia King testified, around 4 or 5 p.m., she was outside the front of her family's apartment. She observed three men near the back window: her cousin, Eric Clark; Little Mo; and someone she later learned was defendant. Nadia ran through the apartment and came out the back door. The men were walking back to the parking lot and Nadia engaged Little Mo in an argument, warning him her brother would soon return. Little Mo grabbed a broom handle from the back of a truck and pointed it at her, trying to keep her at bay. Nadia's mother, Thyesha Jenkins, came over and took Nadia back to the apartment. The men left in a white car with defendant driving.

Nadia's mother, Thyesha Jenkins, testified she was inside her home at 4:30 p.m. when three men walked past her window. She identified the men as her nephew, Eric Clark; Little Mo; and defendant. Defendant wore a multicolored zip-up jacket or "hoodie."

Detective John Atteberry testified, during a police interview a few days following the shootings, Thyesha Jenkins told him two, not three, black males were outside her apartment. She told him the men were there at approximately 4 p.m.

Thyesha Jenkins testified she watched out the window as the men walked to the end of the park where a white car was

parked. Her daughter, Nadia King, angrily came through the front door, grabbed a vase, and went out the back door. Thyesha chased her.

Detective Atteberry testified Thyesha Jenkins told him the driver of the car was wearing a multicolored hooded sweatshirt.

Paul Bridges lived across from the Evergreen Apartments. On the afternoon of April 6, 2008, he saw a white four-door car park near his home. Four black males got out of the car and walked toward the complex. Later, Bridges watched a scuffle between a black teenaged girl and a black teenaged boy. The boy was very upset and he grabbed a broom handle from Bridges' truck and used it to keep the girl at bay. The girl told him, "Wait until my brother gets here." A heavysset adult black woman arrived and broke up the fight and the men got back in the white car and left. After the scuffle, Bridges saw 20 to 30 people arrive at the apartment complex and meet with the teenage girl and adult woman. They appeared to be waiting for someone.

Thirty to forty-five minutes later, Paul Bridges saw a white car drive down the street and park. The crowd of people began to move toward the white car. Four black men got out of the car. One man, wearing a black tank top, went to the trunk of the car, pulled out a black pump-action shotgun, and fired; once

into the crowd, and again into the air in the direction of the crowd. People began to flee and the four men got back in the car and drove away. Police arrived 10 minutes later.

On cross-examination, Bridges testified another car (different than the white car) was driving around the area and passengers in the car were yelling at the crowd while one black man held his arm out the window and made a "pistol" sign in the air with his hand.

Nadia King testified the white car returned 30 to 40 minutes after the first incident. Little Mo was not there. Another car full of people parked down the street. Defendant sat in the car until everything started to happen, then he got out and stood by the door. Eddie Spice got out, went to the trunk, and pulled out a gun. Eric Clark got out and stood at Spice's side. Nadia was almost "face-up" with them. Nadia froze and Spice started shooting toward the porch. According to Nadia, when Spice stopped shooting, he lowered the gun, turned, and walked away.

Mindy Robbins was a part of the crowd standing outside the Evergreen Apartments when shots were fired. She testified she was holding her infant son when she was struck by a pellet on her left side. The pellet did not break the skin.

At the time of the shooting, Robbins was standing back toward the apartments and was away from the shooters. Robbins

did not see defendant at the scene of the shooting.

Thyesha Jenkins and Dcamron King were taken to the hospital. Dr. David Gill removed two foreign bodies from Jenkins' right knee and lower left leg but could not remove one from her upper left leg. Dr. Ayoola Awofadeju treated Dcamron for multiple entry wounds in his legs and arm. Dr. Awofadeju removed nine pellets from Dcamron.

Officer Kevin Raisbeck received a call to respond to the scene of the shooting and, one minute later, he saw a white four-door car heading southbound on Morris Avenue. Raisbeck had been alerted by other officers stating Eric Clark, Eddie Spice, and Little Mo were the shooters. No officers mentioned defendant. Raisbeck knew "Little Mo" was a black teenager named Donnell Taylor. Raisbeck pulled the car over but Donnell Taylor was not present. Eddie Spice was sitting in the rear passenger seat, next to Michael McNabb in the middle backseat. Eric Clark was in the front passenger seat, and defendant was driving.

Paul Bridges was taken to the intersection of Locust Street and Morris Avenue and identified the man in the black tank top as the shooter. Bridges was unable to identify defendant as being present at either the scuffle or the shooting.

A few days after the shooting, Detective Atteberry told Thyesha Jenkins that Eddie Spice, Eric Clark, and Michael McNabb identified defendant as the driver of the car. Detective

Atteberry showed her a photo of defendant from a videotaped interview following his arrest where he was wearing a multicolored "hoodie" top. Thysha identified defendant as being present at the shooting.

Eric Clark appeared in court following the issuance of a bench warrant. Clark did not remember an incident near Pop's Grocery Store. Clark recalled speaking with his mother and a police officer and telling them he witnessed a shooting while with Eddie Spice and Little Mo. A fourth individual was in a white car and picked them up after they were running from the scene.

Outside the presence of the jury, the trial court found Clark to be a hostile witness and "interrupted" his testimony to allow the State to secure his prior statement.

Later in the day, the State informed the trial court Clark asked for "a second chance to take the stand." Clark testified he had lied during his previous testimony because he was afraid he and his family were in danger. According to Clark, the events of April 6, 2008, began on Market Street with a fight between Dcamron King and Clark's good friend, Donnell "Little Mo" Taylor. Defendant had nothing to do with the fight, and he had no disagreements with Dcamron King or the Jenkins family.

Little Mo and Eric Clark got a ride from defendant to Evergreen Apartments in defendant's white car. Clark and Little

Mo went to Dcamron's home looking for revenge while defendant waited in the car.

Defendant dropped Eric Clark and Little Mo off near Market Street. They met Eddie Spice and some others for a few minutes and Little Mo got into another car. Clark and Spice went to a "spot," but eventually got back in the car with defendant. On Market Street, they met a friend of Spice's who needed a ride to the fight, Michael McNabb, who sat in the front seat. Clark and Spice sat in the back and Clark called Dcamron King on his cell phone. They returned to Evergreen Apartments to fight.

When they arrived, Eric Clark, Eddie Spice, and Michael McNabb got out of the car. Clark did not see defendant get out. Before he knew it, Clark heard shots coming from behind him. Spice was firing a gun. Clark did not turn around, he just ran. Clark ran up the street, along with Spice. Spice hid the gun somewhere, but Clark kept running. They hopped back in the car near Blackstone Street. They were soon pulled over by police a short distance away at the intersection of Locust Street and Morris Avenue.

On cross-examination, Eric Clark stated defendant did not do or say anything to him to cause him to fear testifying. Following his testimony, Clark was released from custody.

Fifteen-year-old Michael McNabb testified, on April 6, 2008, he asked for a ride home and Eddie Spice and Eric Clark

told him they were going by Evergreen. Defendant was driving. They stopped at the intersection of Forrest Street and Western Avenue, near the Evergreen Apartments where a crowd had gathered.

Michael McNabb received a call from his father and got out of the car. He was walking away when Eric Clark and Eddie Spice said, "pop the trunk." When the trunk opened, Spice grabbed a gun, cocked it, and pointed it at Nadia King who was 10 to 15 feet away. Everyone got back in the car a short distance down the street after Spice ditched the gun in an alley. They were stopped by police approximately five minutes later near Morris Avenue and Locust Street. McNabb showed police where Spice hid the gun.

Defendant testified, on April 6, 2008, he owned a white, 1996 Chrysler LS. Defendant saw Eric Clark come around the corner of West Empire Street and Morris Avenue. He knew Clark and recognized him as a friend of Little Mo. Clark asked for a ride and defendant agreed. Two other young black men defendant did not know came around the corner and Clark asked defendant to give them a ride, too. Jones later learned the two young men were Eddie Spice and Michael McNabb. They were stopped by police a few seconds later.

Based on this evidence, the jury convicted defendant of three counts of aggravated battery with a firearm and the trial court sentenced him as stated, giving him credit for 258 days of

presentence custody. The court also assessed various "fees" against defendant, including a \$200 DNA-analysis fee, (2) \$15 children's-advocacy-center fee, and (3) \$10 drug-court fee.

This appeal followed.

II. ANALYSIS

A. Reasonable-Doubt Challenge

Defendant argues he was not proved guilty beyond a reasonable doubt because the evidence was "confused, self-serving, and contradictory." We disagree.

When reviewing the sufficiency of the evidence, we will not reverse a conviction where, when viewing the evidence in the light most favorable to the State, any rational finder of fact could have found the defendant guilty beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272, 891 N.E.2d 865, 876 (2008). "The weight to be given the witnesses' testimony, the credibility of the witnesses, resolution of inconsistencies and conflicts in the evidence, and reasonable inferences to be drawn from the testimony are the responsibility of the trier of fact." *People v. Sutherland*, 223 Ill. 2d 187, 242, 860 N.E.2d 178, 217 (2006).

"A person commits aggravated battery with a firearm when he, in committing a battery, knowingly or intentionally by means of the discharging of a firearm (1) causes any injury to another person[.]" 720 ILCS 5/12-4.2(a)(1) (West 2008). A person is legally accountable for another's criminal conduct when

"[e]ither before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2008). "To prove that the defendant possessed the intent to promote or facilitate the crime, the State must present evidence which establishes beyond a reasonable doubt that either: (1) the defendant shared the criminal intent of the principal, or (2) there was a common criminal design." *People v. Perez*, 189 Ill. 2d 254, 266, 725 N.E.2d 1258, 1264-65 (2000). Intent may be inferred from the defendant's acts as well as the circumstances surrounding the criminal act. *Perez*, 189 Ill. 2d at 266, 725 N.E.2d at 1265.

In this case, the State presented evidence (1) Eddie Spice pulled a shotgun from the trunk of a car and opened fire on a crowd of people at Evergreen Apartments, (2) Spice struck three people with birdshot, and (3) defendant drove the car bringing Spice to Evergreen Apartments. Nadia King, Thysha Jenkins, Eric Clark, and Michael McNabb each identified defendant as the driver of the car. Although all four of these witnesses' testimony varied to some degree, their testimony was consistent on the following points: (1) four black men were present in the white four-door vehicle, (2) Spice and Clark walked to the trunk and Spice pulled out a shotgun, (3) Spice fired into the crowd, and

(4) defendant drove the vehicle.

Moreover, Raisbeck testified he received a call to respond to the scene of the shooting and less than one minute later, he saw a white four-door car heading southbound on Morris Avenue. Raisbeck pulled the car over and defendant was driving. Eddie Spice, Michael McNabb, and Eric Clark were present in the vehicle.

The jury was fully aware of these witnesses' background and potential motives; and was in a position to competently judge their credibility and draw reasonable inferences therefrom. Thus, as the evidence was sufficient to establish Eddie Spice committed aggravated battery with a firearm, defendant could be found guilty of the same conduct on the basis of accountability. See *In re Matthew M.*, 335 Ill. App. 3d 276, 283, 780 N.E.2d 723, 729 (2002) (to prove a defendant guilty on an accountability basis, the State is required to show the defendant, with the requisite intent, aided or abetted his companions prior to or during the commission of the crime).

B. *Voir Dire*

Defendant next contends the trial court erred by failing to comply with the mandates of Supreme Court Rule 431(b). Specifically, defendant argues the court failed to "advise the jurors of the legal propositions and contemporaneously question whether they understood and accepted those propositions."

1. *Forfeiture*

In this case, defendant's trial counsel did not object at the time of the trial court's error. In addition, defendant's posttrial motion did not allege the court failed to comply with Rule 431(b). As a result, the issue has been forfeited. See *People v. Hestand*, 362 Ill. App. 3d 272, 279, 838 N.E.2d 318, 324 (2005). Defendant, however, argues the court's failure to comply with Rule 431(b) constitutes plain error affecting his substantial right to a fair trial by an impartial jury.

2. *Plain-Error Analysis*

A reviewing court may disregard a defendant's forfeiture and review the issue under the plain-error doctrine to determine whether reversal is required. *People v. Lewis*, 234 Ill. 2d 32, 42, 912 N.E.2d 1220, 1226 (2009). The plain-error doctrine allows a reviewing court to consider forfeited error when (1) the evidence is closely balanced or (2) the error is so serious it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Walker*, 232 Ill. 2d 113, 124, 902 N.E.2d 691, 697 (2009). Under either prong of the plain-error analysis, however, the defendant has the burden of persuasion. *Lewis*, 234 Ill. 2d at 43, 912 N.E.2d at 1227.

However, before we can determine whether defendant was deprived of a fair trial, we must first determine whether any

error occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 411 (2007).

3. *Standard of Review*

"The supreme court's rules are not aspirational; rather, they have the force of law." *People v. Young*, 387 Ill. App. 3d 1126, 1127, 903 N.E.2d 434, 435 (2009) (citing *Bright v. Dicke*, 166 Ill. 2d 204, 210, 652 N.E.2d 275, 277-78 (1995)). We review the court's compliance with a supreme court rule *de novo*. *People v. Suarez*, 224 Ill. 2d 37, 41-42, 862 N.E.2d 977, 979 (2007).

4. *Rule 431(b)*

Rule 431(b) (eff. May 1, 2007) was principally adopted to ensure trial-court compliance with the Supreme Court of Illinois's decision in *People v. Zehr*, 103 Ill. 2d 472, 469 N.E.2d 1062 (1984). Ill. S. Ct. R. 431(b), Committee Comments (adopted May 1, 1997). In *Zehr*, the supreme court held a trial court erred during *voir dire* by refusing to ensure jurors understood the following four principles: (1) the State bears the burden of proof, (2) the defendant need not present evidence on his own behalf, (3) the State must prove the defendant's guilt beyond a reasonable doubt, and (4) the defendant's decision not to testify must not be held against him. *Zehr*, 103 Ill. 2d at 477-78, 469 N.E.2d at 1064.

Prior to its 2007 amendment, Rule 431(b) required

defendants to request the trial court to question jurors regarding their understanding of the *Zehr* principles. See Ill. S. Ct. R. 431(b) (eff. May 1, 1997). In 2007, the supreme court amended Rule 431(b), "plac[ing] an affirmative *sua sponte* duty on the trial courts to ask potential jurors in each and every case whether they understand and accept the *Zehr* principles." *People v. Graham*, 393 Ill. App. 3d 268, 273, 913 N.E.2d 99, 103 (2009). Following amendment, Rule 431(b) now states as follows:

"The court shall ask each potential juror, individually or in a group, whether that juror understands and accepts the following principles: (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that the defendant's failure to testify cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's failure to testify when the defendant objects.

The court's method of inquiry shall

provide each juror an opportunity to respond to specific questions concerning the principles set out in this section." Ill. S. Ct. R. 431(b) (eff. May 1, 2007).

The committee comments provide as follows:

"The new language is intended to ensure compliance with the requirements of *People v. Zehr*, 103 Ill. 2d 472[, 469 N.E.2d 1062] (1984). It seeks to end the practice where the judge makes a broad statement of the applicable law followed by a general question concerning the juror's willingness to follow the law." Ill. Sup. Ct. R. 431(b), Committee Comments (adopted May 1, 1997)..

Compliance with Rule 431(b) is mandatory. *People v. Owens*, 394 Ill. App. 3d 147, 152, 914 N.E.2d 1280, 1284 (2009). As the *voir dire* in this case occurred in August 2008, after the amendment became effective, the court was required to comply with the rule as amended May 1, 2007.

5. *Admonitions and Instructions*

The record shows the prospective jurors entered the courtroom at 10:02 a.m. Near the beginning of *voir dire*, the trial court addressed the entire venire as follows:

"There are certain general propositions

of law which are applicable to criminal cases, and it's necessary for each juror to be willing to accept and to follow these basic principles of law; and I will inquire of you about your willingness to accept and follow these basic principles of law if you're called in to [sic] the jury box.

One, the Defendant is presumed innocent of the charges against him; two, before a Defendant can be convicted, the State must prove the Defendant guilty beyond a reasonable doubt; three, the Defendant is not required to offer any evidence on his own behalf; four, the Defendant's failure to testify cannot be held against him."

The trial court then read "a list of potential witnesses." The clerk called 14 prospective jurors to the jury box, and the trial court asked whether any of them knew defendant, the attorneys or witnesses, and if they had ever served as a juror. The court then asked the prospective jurors collectively, "Are each of the 14 of you willing to accept and follow the propositions of law that I've described to you earlier?" and each shook his or her head "yes." The court then stated, "If any of you think you cannot, if you have a 'no'

answer in your mind, if you could raise your hand," and no prospective juror raised his or her hand. The court stated:

"I'm seeing no hands. The bottom line, again, which is a little bit repetitious, but which is so important to us, do you believe that you can give both sides in this case a fair trial? And other than what was mentioned to me earlier, does anybody have any concerns about that? If you do have some concerns, please raise your hand."

One individual raised his hand expressing concern he had "heard this on a scanner." The trial court addressed the concern and then asked if there were other concerns "about being able to give a fair trial?" No prospective juror responded.

After the trial court provided these instructions, the attorneys questioned the prospective jurors. The parties accepted eight jurors.

Following a break for lunch, two prospective jurors from the morning returned to the jury box, and the clerk called 12 new prospective jurors to the jury box. The trial court asked whether any of them knew defendant, the attorneys, or witnesses, and if they had ever served as a juror. The court then asked the prospective jurors collectively, "Are each of you willing to accept and follow the propositions of law that I mentioned to you

earlier?" and each shook his or her head "yes." The court then asked, "Is anybody unable to do that?" and all said "no." The court then asked the prospective jurors collectively, "Finally, this is a very related question. Do you believe you can give both sides a fair trial in this case?" and each responded "yes." After the court provided these instructions, the attorneys questioned the prospective jurors. The parties accepted four jurors, and selected two alternate jurors.

In this case, the trial court failed to comply with the requirements of Supreme Court Rule 431(b). The length of time between the court's recitation of the four principles, approximately midmorning, and its putting to the afternoon panel of potential jurors the general question of whether they were "willing to accept and follow the propositions of law *** mentioned *** earlier" greatly reduced whatever usefulness the question otherwise would have had. When the afternoon panel of jurors was questioned, the record reflects 84 pages of transcript had been recorded and the court had adjourned for a lunch recess since informing the jurors about the 431(b) principles. This court has held the questioning on a principle from Rule 431(b) must occur soon after the court's statement of the principle to the potential jurors. *People v. Wrencher*, 399 Ill. App. 3d 1136, 1144, 929 N.E.2d 1124, 1131 (2009); see also *People v. Wheeler*, 399 Ill. App. 3d 869, 873-74, 927 N.E.2d 829, 833-34 (2010).

"Reciting the four principles and then, an hour or so later, asking the potential jurors if they understood the principles and would follow them tends to defeat the purpose of the questioning and reduces it to a *pro forma* exercise." *Wrencher*, 399 Ill. App. 3d at 1144, 929 N.E.2d at 1131. We note further the court's question as to whether the jurors would "accept and follow the propositions of law *** mentioned *** earlier" was "a general question concerning the juror[s'] willingness to follow the law," which is a practice the rule sought to prohibit. Ill. S. Ct. R. 431(b), Committee Comments (adopted May 1, 1997).

We next determine whether we may review this forfeited error by determining whether (1) the evidence is closely balanced or (2) the error is so serious it affected the fairness of defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *Walker*, 232 Ill. 2d at 124, 902 N.E.2d at 697. "In plain-error review, the burden of persuasion rests with the defendant." *People v. Thompson*, 238 Ill. 2d 598, 613, ___ N.E.2d ___, ___ (2010).

Defendant challenges the trial court's Rule 431(b) error under both prongs of plain error. We first address defendant's second-prong attack in light of *Thompson*, 238 Ill. 2d 598, ___ N.E.2d ___. The jury was admonished and instructed on the Rule 431(b) principles. Defendant has not presented any evidence demonstrating the jury was biased. As a result, defendant failed

to meet his burden of establishing the trial court's error affected the fairness of his trial and challenged the integrity of the judicial process. See *Thompson*, 238 Ill. 2d at 615, ___ N.E.2d at ___. Therefore, no second-prong plain error occurred.

Turning to defendant's first-prong attack, defendant contends the evidence was closely balanced and refers this court to "Argument I" of his brief, where defendant argues the State failed to prove him guilty beyond a reasonable doubt. "The question of whether the evidence is closely balanced is distinct from a challenge to the sufficiency of the evidence." *People v. Johnson*, 238 Ill. 2d 478, 486, ___ N.E.2d ___, ___ (2010). After reviewing the evidence, we find defendant failed to meet his burden of demonstrating the evidence was closely balanced.

Four eyewitnesses, Nadia King, Thysha Jenkins, Eric Clark, and Michael McNabb, identified defendant as the driver of the car. Moreover, Raisbeck testified he received a call to respond to the scene of the shooting and less than one minute later, he saw a white four-door car heading southbound on Morris Avenue. Raisbeck pulled the car over and defendant was driving. Eddie Spice, Michael McNabb, and Eric Clark were present in the vehicle. We conclude defendant's forfeiture may not be excused based on the first prong of plain error.

C. Witness Intimidation

Defendant next claims the trial court erred in allowing

Eric Clark to testify he lied in earlier testimony because he was afraid he and his family were in danger. We disagree.

Clark appeared in court following the issuance of a bench warrant. Clark did not remember an incident near Pop's Grocery Store. Clark recalled speaking with his mother and a police officer and telling them he witnessed a shooting while with Spice and Little Mo. A fourth individual was in a white car who picked them up after they were running from the scene.

Outside the presence of the jury, the trial court found Clark to be a hostile witness and "interrupted" his testimony to allow the State to secure his prior statement.

Later in the day, the State informed the trial court Clark asked for "a second chance to take the stand." Clark testified he had lied during his previous testimony because he was afraid he and his family were in danger.

The admission of evidence is within the discretion of the trial court. *People v. Davis*, 322 Ill. App. 3d 762, 765, 751 N.E.2d 65, 67 (2001). "'An abuse of discretion occurs when the [court's] ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view.'" See *People v. Sharp*, 391 Ill. App. 3d 947, 955, 909 N.E.2d 971, 978 (2009), quoting *People v. Robertson*, 312 Ill. App. 3d 467, 469, 727 N.E.2d 404, 406 (2000).

"[T]estimony that witnesses were made to fear for their

safety if they testified against a defendant may be admitted to explain inconsistent statements by the witnesses." *People v. Thigpen*, 306 Ill. App. 3d 29, 39, 713 N.E.2d 633, 641 (1999). In this case, the admission of such evidence did not constitute an abuse of discretion, especially in light of the fact Clark testified on cross-examination the fear "wasn't from [defendant] *** [h]e didn't do anything or say anything to me."

Given our resolution of the aforementioned alleged errors, defendant's contention cumulative errors deprived him of a fair trial necessarily fails as well.

D. Excessive Sentence

Defendant next contends his sentence is excessive in light of his participation in the offense, his lack of a prior criminal record, and his rehabilitative potential. We disagree.

In sentencing defendant, the trial court noted:

"[T]he essential, the operative circumstances were the banding together of these individuals to retaliate for some manner of insult that had been attributed to earlier interactions of two groups of mutually aggressive individuals' attitudes; and this [d]efendant does not evidence the kind of change of attitude that would serve as insurance that such circumstances would be unlikely to recur in

his future experience."

Further, the court found defendant committed an offense related to organized gang activities; defendant "was the driver of the vehicle, he popped the trunk, and he drove the shooter away." The court concluded defendant "ought be incarcerated in order to protect the public from him and his attitude, which is unrepentant, and[] essentially[] remorseless."

This court will not disturb a sentence absent an abuse of discretion. *People v. Illgen*, 145 Ill. 2d 353, 379, 583 N.E.2d 515, 526 (1991).

Aggravated battery with a firearm is a Class X felony, carrying a prison term of 6 to 30 years. 720 ILCS 5/12-4.2(b) (West 2008); 730 ILCS 5/5-8-1(a)(3) (West 2008). The trial court sentenced defendant to concurrent prison terms of 16 years on each count. Defendant's prison term is within the permissible range. The record demonstrates the court considered aggravating and mitigating factors in fashioning defendant's sentence. There is no evidence the trial court abused its discretion.

E. Monetary Credit Against His Fines

Defendant next argues he is entitled to a \$235 credit toward his DNA-analysis, children's-advocacy-center, and drug-court assessments. The State concedes defendant is entitled to the credit. "Whether a defendant received proper credit against his fine is a question of law that we review *de novo*." *People v. Sulton*, 395 Ill. App. 3d 186, 189, 916 N.E.2d 642, 644

(2009).

The trial court awarded defendant 258 days' credit toward his prison term and, accordingly, he is entitled to up to \$1,290 in credit toward fines pursuant to section 110-14 of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2008)). We agree with the State defendant is entitled to the credit. Thus, on remand, the court should amend the sentencing judgment to reflect a credit under section 110-14(a) against the (1) \$200 DNA-analysis assessment, (2) \$15 children's-advocacy-center assessment, and (3) \$10 drug-court assessment.

III. CONCLUSION

For the reasons stated, we affirm as modified and remand this cause to the trial court for issuance of an amended sentencing judgment to reflect the application of defendant's monetary credit to the (1) \$200 DNA-analysis assessment, (2) \$15 children's-advocacy-center assessment, and (3) \$10 drug-court assessment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

Affirmed as modified; cause remanded with directions.