NO. 4-09-0781 Order Filed 3/10/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CARL E. HARVEY II, Defendant-Appellant.	)))))))	Appeal from Circuit Court of Macon County No. 09CF638 Honorable James R. Coryell, Judge Presiding.

JUSTICE TURNER delivered the judgment of the court. Presiding Justice Knecht and Justice Steigmann concurred in the judgment.

ORDER

Held: (1) Where the State presented the victim's eyewitness testimony identifying defendant as the person who committed the crimes and other evidence of identity, the State's identification evidence was sufficient for the jury to find defendant guilty beyond a reasonable doubt despite a judicial confession by another individual and an alibi witness.
(2) Where the trial court did not impose the fines assessed against defendant, this court vacated those fines and reimposed the fines that were mandatory and applicable to defendant.
(3) Where defendant had been in custody before sentencing, he was entitled to a $5 *per diem* credit up to the amount of his fines, for which the credit was available.

In April 2009, the State charged defendant, Carl E. Harvey II, with one count of burglary (720 ILCS 5/19-1(a) (West 2008)), one count of theft (720 ILCS 5/16-1(a)(1)(A) (West 2008)), and one count of criminal damage to property (720 ILCS

5/21-1(1)(a) (West 2008)). After a July 2009 trial, a jury found defendant guilty of all three charges. Defendant filed a motion for judgment notwithstanding the verdict. At a joint September 2009 hearing, the Macon County circuit court denied defendant's motion and sentenced defendant to concurrent terms of 7 years' imprisonment for burglary, 5 years' imprisonment for theft, and 364 days in jail for criminal damage to property. Defendant filed a motion to reconsider his sentence, which the court denied in October 2009.

Defendant appeals, (1) asserting the State failed to prove beyond a reasonable doubt he was the person that committed the crimes and (2) raising numerous errors related to his fines. We affirm as modified and remand with directions.

I. BACKGROUND

The following evidence was presented at defendant's July 16, 2009, jury trial.

From around noon to 3 p.m. on April 18, 2009, William Wilson was visiting his cousin, who lived at 2538 Illinois Circle in the Jasper Trailer Park. Around 1 p.m., Wilson was outside his cousin's trailer when defendant walked across the street and approached him. Defendant was wearing shorts and a red T-shirt. Wilson did not know defendant but had seen him two or three times. Defendant asked Wilson how much his car stereo was and if Wilson wanted to sell it. Wilson told defendant he had just

bought the stereo a couple of weeks earlier for about $400 and probably would not want to sell it. Defendant told him that was not bad for what it was and wanted to see Wilson again. Wilson told defendant where he lived, and defendant said he would come by later. The conversation lasted around 10 to 15 minutes. Wilson identified defendant in the courtroom as the person with whom he had talked.

Around 10:30 p.m., Wilson returned to his home on Andrews Street, which was around the corner from his cousin's residence in the same trailer park. Wilson laid down in bed and watched television. About 10 to 15 minutes later, Wilson heard a car with a loud exhaust. He looked outside and saw a Geo Tracker with a distinct mark on the passenger side's rear quarter panel. Wilson did not see who was in the vehicle. However, Wilson recognized the vehicle as he had seen it parked across the street from his cousin's house.

At 11:30 p.m., Wilson heard the sound of a window being broken and again looked outside his bedroom window. Wilson saw someone around his Jeep. Wilson went to the living room to get the telephone to call the police and a better view of the person. Wilson called the police and hung up when he was told the police had been dispatched. When he looked outside his living room window, the passenger side of the Jeep was facing him. Wilson observed the perpetrator first bust out his Jeep's back window,

then the smaller glass in the back door, and finally the little front window near the mirror. The perpetrator opened the front door, got inside, looked around the Jeep, moved the driver's seat all the way forward, got out, and opened the back door. The perpetrator then removed the speaker box, which contained Wilson's two subwoofers, and the amplifier. The speaker box weighed about 75 pounds, each subwoofer weighed 45 pounds, and the amplifier weighted 25 pounds. The perpetrator walked off carrying the amplifier in his left hand. The speaker box and subwoofers were sitting outside the car. Wilson again called the police when the perpetrator walked away.

Wilson described the perpetrator as white male, around six feet tall, with dark hair, and with "a little bit of muscle on him." Wilson did not notice any tattoos. Wilson could only "somewhat" see the individual's face over the top of the Jeep. Wilson testified the perpetrator was wearing a black shirt with a white design on the lower right side and dark pants. At trial, Wilson identified the front of a black shirt as the one defendant was wearing even though the shirt had a white design all over the front of it. Wilson explained he could not see the perpetrator's full left side of his body and never saw him from the back. Defendant's girlfriend, Brittany Johnson, identified the black shirt with the white design as one of defendant's but could not recall if he was wearing the night of April 18, 2009.

Wilson watched the perpetrator for 10 to 15 minutes. While observing him, Wilson recognized the perpetrator as the same person he had a conversation with earlier that day. As to the conditions at the time of the burglary, Wilson noted his porch light and a streetlight that was about 50 feet away were both on. There was also a light rain.

According to Wilson, the police did not arrive until 10 to 15 minutes after the perpetrator had left. Officer Stephen Kennedy was the first officer at Wilson's home. He talked with Wilson and gathered information about the suspect. Officer Kennedy testified Wilson did not mention the white design when he first described the perpetrator.

Based on the information Wilson provided, Officer Scott Gilman found a black Geo Tracker parked in front of 2538 Illinois Circle. Officer Gilman parked his squad car and watched the vehicle. He saw two people get into the Geo, one of which was a white male about six feet tall and weighing 200 pounds. Officer Gilman stopped the Geo at the intersection of Illinois and Jasper. Johnson was driving the Geo, and defendant was the passenger. Officer Gilman informed Officer Kennedy of the stop.

After learning the Geo had been stopped, Officer Kennedy drove Wilson over to Jasper Street and parked behind Officer Gilman's car. There, Wilson remained in the backseat of Officer Kennedy's squad car, and Officer Kennedy shined his

spotlight and "takedown lights" on the sidewalk. Officer Gilman asked defendant to exit the vehicle, and they stepped up onto the sidewalk. Officer Kennedy advised defendant he was going to conduct a showup with the victim. Officer Gilman stood next to defendant on the sidewalk. Wilson identified defendant as the person who broke into his Jeep and noted defendant was wearing the same black shirt with the white design. Wilson observed there was another person in the vehicle that was a female. After Wilson's positive identification, Officer Gilman handcuffed defendant. The police allowed Johnson to leave, and no one took her statement.

Officer Gilman assisted in the search of the Geo. Defendant had consented to the search. Nothing of evidentiary value was found. Officer Gilman also did not discover anything on defendant's person.

Officer Kennedy took photographs of the Jeep but was unable to dust the Jeep for fingerprints due to the weather. In his squad car, Officer Kennedy read defendant his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966). After receiving the *Miranda* warnings, defendant stated the following: "This is bullshit. I was just waiting for my girl. I didn't break into any car." At that time, Officer Kennedy had not told defendant anything about the crime and was unaware of anyone else telling him why he was being arrested. Officer Kennedy was unable to

search the residence at "2538" Illinois Circle for the missing amplifier because defendant stated he did know anyone who lived there. After booking defendant, Officer Kennedy was unable to go back to the residence due to the number of calls for service that night.

On May 18, 2009, Chad Wilbur, a longtime friend of defendant's, was arrested on a separate charge, for which he was eligible for Class X sentencing. On May 22, 2009, defendant and Wilbur became cellmates in the county jail. That same day, Johnson gave her written statement to defendant's investigator, stating defendant could not have burglarized the Jeep because he was with her all night.

Johnson testified that, from 9 p.m. until midnight on April 18, 2009, she and defendant were at 2523 Illinois Circle, which is across the street from 2538 and the home of Lisa Ledbetter. In addition to Lisa, Johnson, and defendant, the other people who were at the residence were Heather Ledbetter, Lisa's teenage daughter; Cozy Taylor; Darrell; and Wilbur. Johnson described the gathering as people just hanging out and talking. No one was drinking, and she was unsure if anyone was doing drugs. Johnson denied it was a party. According to Johnson, Wilbur was not there the entire time, but she could not recall the exact times of when he was there. She did remember seeing Wilbur behind Lisa's trailer. Both Wilbur and defendant

were wearing black shirts that night. When she and defendant left at midnight, Wilbur was not there, but Taylor and Darrell were. She and defendant left in defendant's uncle's purple Geo Tracker.

Johnson was driving the Geo when the police stopped the vehicle. The police officer first asked her and defendant for identification. The officer then asked defendant to exit the car. When defendant exited, the officer arrested defendant and put him in his squad. Johnson asked the police officer what happened, and the officer would not answer her questions. The officer told her she could go and did not take a statement. Johnson denied the officers put a spotlight on defendant, and a witness identified him. Johnson was pretty sure the police left at the same time she did or before her.

On May 26, 2009, Wilbur gave a written statement to defendant declaring he was the one who burglarized Wilson's Jeep on the night of April 18, 2009. At trial, he testified Lisa was his aunt and he lived at 2523 Illinois Circle. He was there all day on April 18, 2009. He had seen Wilson that day working on his car stereo. That evening, a party took place at 2523 Illinois Circle. Besides himself, Lisa, Heather, defendant, and Johnson were there. Everyone was drinking, and he was real high on cocaine. Between 10:30 and 11 p.m., Wilbur was getting ready to commit a crime. However, he could not recall what time it was

when he actually committed the crime. Wilbur believed defendant had left a couple of hours before he committed the burglary. Wilbur could recall he was wearing all black that night. When asked if the shirt was plain, Wilbur stated it had some kind of design that might have been white or tan.

Wilbur stated he went to Wilson's trailer. There, he broke the red Jeep's back window and driver's side window with a screwdriver and took an amplifier out of the back. Wilbur then brought the amplifier back to 2523 Illinois Circle and sold it the next morning on Edward Street for $50 and crack cocaine.

Wilbur stated he did not go to the authorities about the burglary because he was caught up in his drug addiction. When he got all of the drugs out of his system in jail, he confessed because he did not want somebody in jail for something he did. While in jail, Wilbur grew a goatee. He admitted it was common for him to have a goatee. Wilbur described himself at the time of his arrest as around six feet tall and weighing around 180 pounds. He had put on some weight in jail. Wilbur also explained he drove defendant's Geo all of the time and used to ride in it as well. Additionally, Wilbur testified he had nothing to gain from testifying, and his testimony could hurt him a great deal.

On July 3, 2009, Wilson met with Detective Pat Campbell. Detective Campbell showed Wilson two photograph lineups.

The first one contained a photograph of Wilbur. Wilson did not recognize anyone in that lineup. In the second lineup, Wilson recognized defendant as the person who broke into his Jeep and put his initials next to that photograph. The photograph depicted a tattoo on defendant's neck.

After hearing all of the evidence, the jury found defendant guilty of all three charges. Defendant filed a motion for judgment notwithstanding the verdict or, in the alternative, a motion for a new trial. At a joint September 2009 hearing, the trial court denied the motion and sentenced defendant as stated. Defendant filed a motion to reconsider his sentence, asserting the court abused its discretion in sentencing him. After an October 8, 2009, hearing, the court denied defendant's motion to reconsider his sentence.

The same day the trial court denied his motion to reconsider, defendant filed a notice of appeal that stated he was appealing his sentence and the denial of his motion to reconsider his sentence. On October 29, 2009, defendant filed a timely amended notice of appeal in accordance with Supreme Court Rules 606(d) (eff. Mar. 20, 2009) and 303(b)(5) (eff. May 30, 2008). The amended notice of appeal listed both defendant's convictions and sentences as the appealed orders and sufficiently complied with Rule 606 (eff. Mar. 20, 2009). A file-stamped copy of the amended notice of appeal is included in the appellate record.

Accordingly, we have jurisdiction over defendant's convictions and sentences under Supreme Court Rule 603 (eff. July 1, 1971).

II. ANALYSIS

A. Sufficiency of the Evidence

Defendant alleges the State failed to prove beyond a reasonable doubt he was the person that broke into Wilson's Jeep and stole the amplifier.

In its appellee brief, the State asserted this court lacked jurisdiction over defendant's conviction and did not address the merits of defendant's sufficiency-of-the-evidence argument. In its supplemental brief, the State again asserted this court lacked jurisdiction but also addressed the merits of defendant's argument. After the filing of the State's supplemental brief, defendant supplemented the record on appeal with the filed, amended notice of appeal, and thus jurisdiction is no longer an issue.

Defendant now contends we should disregard the portion of the State's supplemental brief addressing the sufficiency of its evidence because the State forfeited that contention by not raising in its appellee brief as required by Supreme Court Rules 341(h)(7) (eff. Sept. 1, 2006), 341(i) (eff. Sept. 1, 2006), and 612(i) (eff. Sept. 1. 2006). While it is true the aforementioned rules provide that points not argued in the appellee's brief are forfeited, the forfeiture rule is an admonition to the parties

rather than a limitation on the reviewing court. *Halpin v. Schultz*, 234 Ill. 2d 381, 390, 917 N.E.2d 436, 442 (2009). Reviewing courts may look beyond considerations of forfeiture "to maintain a sound and uniform body of precedent or where the interests of justice so require." *Halpin*, 234 Ill. 2d at 390, 917 N.E.2d at 442. We granted the State leave to file its supplemental brief and will consider all of the arguments raised in that brief in the interests of justice.

When presented with a challenge to the sufficiency of the evidence, a reviewing court's function is not to retry the defendant. *People v. Givens*, 237 Ill. 2d 311, 334, 934 N.E.2d 470, 484 (2010). Rather, we consider "'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 in original.) *People v. Davison*, 233 Ill. 2d 30, 43, 906 N.E.2d 545, 553 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Under that standard, a reviewing court must draw all reasonable inferences from the record in the prosecution's favor. *Davison*, 233 Ill. 2d at 43, 906 N.E.2d at 553. Additionally, we note a reviewing court 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." *Givens*, 237 Ill. 2d at 334, 934 N.E.2d at 484.

At issue here is the identity of the person who broke into Wilson's Jeep and stole his amplifier. As with the elements of the crime, the State must prove the offender's identity beyond a reasonable doubt. *People v. Stanley*, 397 Ill. App. 3d 598, 610, 921 N.E.2d 445, 455 (2009). Defendant argues the State failed to prove his identity as the perpetrator beyond a reasonable doubt due to (1) Wilber's testimony confessing to committing the crime, (2) Johnson's alibi testimony, (3) the suggestive show-up shortly after the crime, and (4) the weakness of Wilson's testimony.

1. *Wilber's Confession*

Wilbur testified he, not defendant, committed the crime at issue, which was an admission against interest. See *People v. Halliman*, 266 Ill. App. 3d 602, 606, 640 N.E.2d 28, 30 (1994). Judicial confessions are regarded as highly probative since they are statements damaging to the declarant's interests. *Halliman*, 266 Ill. App. 3d at 606, 640 N.E.2d at 30. "However, judicial confessions are not flawless, and thus, they are not considered conclusive proof of every statement made therein." *Halliman*, 266 Ill. App. 3d at 606, 640 N.E.2d at 30. Although voluntary, judicial confessions may be motivated by a self-serving purpose rather than out of a sense of guilt. *Halliman*, 266 Ill. App. 3d at 606, 640 N.E.2d at 30. Judicial confessions are weighed in the same manner as other evidence. *People v. Uselding*, 85 Ill.

App. 2d 323, 325, 230 N.E.2d 1, 2 (1967).

A review of the record shows Wilbur's confession was suspicious. Wilbur had been friends with defendant for 10 years. Wilbur did not admit he committed the crime until several days after he became cellmates with defendant, which was over a month after the crime. Moreover, Wilbur never confessed to the police but, instead, wrote a statement for defendant to give to his lawyer.

In addition to Wilbur and defendant's relationship and the timing and manner of the confession, Wilbur's recount of the evening was different from Johnson's. Wilbur described the gathering at Lisa's trailer as a party with everyone drinking. Wilbur testified Heather, Lisa, Johnson, defendant, and himself were the only ones at the party. On the contrary, Johnson testified it was not a party, just talking, and no one was drinking. She further testified Taylor and Darrell were also at Lisa's trailer. Moreover, Wilbur testified defendant left the party a couple of hours before Wilbur committed the crime. While Wilbur could not recall what time he committed the crime, Wilson testified the crime occurred at around 11:30 p.m. Johnson testified she and defendant where at Lisa's trailer from 9 p.m. to midnight.

Wilbur's description of the crime is also inconsistent with Wilson's account. Wilson testified the perpetrator broke

the back window, the small glass in the back door, and the small driver's side window near the mirror. The person then opened the door, got into the car, and moved the seat forward. After that, the person exited the car, opened the back door, and removed the speaker box and amplifier. The offender left with only the amplifier. Wilbur testified he broke the back window and the driver's side window with a screwdriver and took an amplifier out of the back. He denied taking anything else and did not mention removing the speaker box.

Additionally, while Wilbur testified the confession put him at risk of great personal harm, he was in jail on a charge that he believed subjected him to Class X sentencing. Thus, Wilbur was already at risk of going to the Department of Corrections for a long time, and a sentence on this crime would likely have resulted in concurrent prison sentences. See 730 ILCS 5/5-8-4(b) (West 2008) (text of section effective until July 1, 2009). Accordingly, Wilbur likely would not have served additional prison time for a conviction in this case. Moreover, if Wilbur was not charged for this offense, it is unlikely this offense would have much impact on the length of his sentence in the other case as he already had a couple of felony convictions.

Last, we note the photograph lineups that Wilson viewed contained photographs of both Wilbur and defendant, and Wilson identified defendant, not Wilbur, as the perpetrator.

2. *Johnson's Alibi*

Besides Wilbur's judicial confession, defendant also presented the alibi testimony of Johnson, his live-in girlfriend. We note "the trier of fact is not required to accept alibi testimony over positive identification of an accused, particularly where the alibi testimony is provided by biased witnesses." *People v. Mullen*, 313 Ill. App. 3d 718, 729, 730 N.E.2d 545, 554-55 (2000). Moreover, in assessing credibility, the trier of fact may consider the fact an alibi witness did not come forward at the time of the initial investigation. *Mullen*, 313 Ill. App. 3d at 729, 730 N.E.2d at 555.

While Johnson was at the scene when defendant was arrested on April 19, 2009, she did not provide a statement until May 22, 2009, which was the day Wilbur and defendant became cellmates. In addition to the inconsistencies with Wilbur's testimony, Johnson's testimony was inconsistent with the State's witnesses. Johnson testified she left the scene of defendant's arrest either at the same time as the police or a little afterwards. She further stated no other police officer arrived at the scene, no light was shone on defendant, and no witness identified defendant. That testimony is contrary to Wilson's, Officer Kennedy's, and Officer Gilman's testimony about the showup shortly after the burglary. Moreover, Johnson's statement that she and defendant were together at Lisa's trailer for three hours

is contrary to Officer Kennedy's testimony that defendant said he had been "waiting for his girl."

Thus, Johnson's testimony had bias concerns and contained significant inconsistencies.

3. *Wilson's Identification Testimony*

Along with highlighting the testimony he presented, defendant challenges Wilson's identification of him. Specifically, he (1) argues the police's initial showup was suggestive and tainted the identification and (2) questions the reliability of Wilson's identification in general.

a. Showup

Defendant argues Wilson's identification of him cannot sustain his conviction because the initial showup was suggestive and tainted the subsequent lineup and in-court identification. However, he does not argue his due-process right was violated by the State's introduction of testimony regarding the police showup.

"Illinois courts have long held that an immediate showup identification near the scene of the crime is proper police procedure." *People v. Ramos*, 339 Ill. App. 3d 891, 897, 791 N.E.2d 592, 597 (2003) (citing *People v. Lippert*, 89 Ill. 2d 171, 188, 432 N.E.2d 605, 612 (1982)). Courts have explained the following:

"'Although one man show-ups are gener-

> ally condemned, they have been consistently upheld when they are justified by the circumstances. One of the circumstances in which a show-up has been justified by the court is when it is necessary to facilitate a police search for the real offender, and the Supreme Court has consistently upheld prompt identification of a suspect by a witness or victim near the scene of the crime where they foster the desirable objectives of a fresh, accurate, identification, which may lead to the immediate release of an innocent suspect and at the same time enable the police to resume the search for the fleeing offender while the trail is still fresh.'" *Ramos*, 339 Ill. App. 3d at 897, 791 N.E.2d at 597 (quoting *People v. Hicks*, 134 Ill. App. 3d 1031, 1036, 481 N.E.2d 920, 923 (1985)).

Moreover, the trier of fact determines the weight to be given identification evidence. *Ramos*, 339 Ill. App. 3d at 897, 791 N.E.2d at 597. Only when the pretrial encounter results in an identification that is "unnecessarily suggestive or impermissibly suggestive so as to produce a very substantial likelihood of irreparable misidentification is evidence of that and any subse-

quent identifications excluded by operation of law" pursuant to the fourteenth amendment's due-process clause. (Internal quotation marks omitted.) *Ramos*, 339 Ill. App. 3d at 897, 791 N.E.2d at 597 (quoting *People v. Moore*, 266 Ill. App. 3d 791, 796-97, 640 N.E.2d 1256, 1260 (1994)).

Since defendant does not raise a due-process violation, he has not provided a basis for the exclusion of the identification evidence. As to the weight of the evidence, the police's actions were justified by the circumstances. Wilson watched the person break into his vehicle, take his amplifier, and leave the scene. When Officer Kennedy arrived around 15 minutes after the person left, Wilson supplied the officer with a description of the suspect and a vehicle. Shortly thereafter, Officer Gilman stopped a vehicle that matched the vehicle's description and contained a passenger that matched the suspect's description. The vehicle was close to the scene of the crime. Officer Kennedy took Wilson to the scene to view the passenger of the vehicle. Wilson promptly identified defendant as the person he saw breaking into his Jeep. Thus, the initial showup was proper. Wilson's mention of the white design on the black shirt only after the showup goes to the weight of his testimony and does not make the showup improper.

b. Reliability of Wilson's Identification

Defendant also generally challenges the reliability of

Wilson's identification. "Vague or doubtful identification testimony is patently insufficient to meet that quantum of proof." *Stanley*, 397 Ill. App. 3d at 610-11, 921 N.E.2d at 455. However, positive testimony from a single, credible witness sufficiently supports a conviction. *Stanley*, 397 Ill. App. 3d at 611, 921 N.E.2d at 455.

Illinois courts assess identification testimony by applying the factors set forth in *Neil v. Biggers*, 409 U.S. 188 (1972). *Stanley*, 397 Ill. App. 3d at 611, 921 N.E.2d at 455. Those factors are the following:

> "'(1) the opportunity the victim had to view the criminal at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the criminal; (4) the level of certainty demonstrated by the victim at the identification confrontation; and (5) the length of time between the crime and the identification confrontation.'" *Stanley*, 397 Ill. App. 3d at 611, 921 N.E.2d at 455 (quoting *People v. Lewis*, 165 Ill. 2d 305, 356, 651 N.E.2d 72, 96 (1995)).

Here, Wilson was able to view the perpetrator for 10 to 15 minutes. While he could not see the full left side of the

person's body and his back, Wilson was able to see a portion of his face; estimate his height and weight; and observe his hair color, build, and clothing. Wilson testified his porch light was on and a street light was 50 feet away. Thus, Wilson did have an opportunity to observe the suspect. As to the degree of attention, Wilson was watching the burglary closely except for when he changed rooms to call the police and get a better view.

Besides defendant's tattoo and the design on his shirt, Wilson's initial description of the suspect matched defendant's appearance. We note Illinois courts have consistently stated a witness is "not expected or required to distinguish individual and separate features of a suspect in making an identification." *People v. Slim*, 127 Ill. 2d 302, 308-09, 537 N.E.2d 317, 320 (1989). Moreover, "discrepancies and omissions as to facial and other physical characteristics are not fatal, but simply affect the weight to be given the identification testimony." *Slim*, 127 Ill. 2d at 308, 537 N.E.2d at 319. "Such discrepancies and omissions do not in and of themselves generate a reasonable doubt as long as a positive identification has been made." *Lewis*, 165 Ill. 2d at 357, 651 N.E.2d at 96.

As to the fourth and fifth factors, Wilson always unequivocally stated defendant was the perpetrator, and the time between the crime and the identification was very short. Accordingly, a consideration of the *Neil* factors shows Wilson's identi-

fication evidence was not so unsatisfactory as to justify a reasonable doubt as to defendant's guilt.

4. *Other Evidence of Identification*

In addition to Wilson's identification testimony, the State presented other identification evidence. Thus, this is not a case where the only evidence of identity is the testimony of a single eyewitness. Officer Kennedy testified that, after he gave defendant the *Miranda* warnings, defendant stated the following: "This is bullshit. I was just waiting for my girl. I didn't break into any car." Officer Kennedy stated he had not told defendant anything about the crime and was unaware of anyone else telling him why he was being arrested.

Moreover, identity may also be established by circumstantial evidence. See *People v. Waters*, 260 Ill. App. 3d 969, 975, 636 N.E.2d 763, 768 (1994). Wilson testified defendant had inquired about the amplifier earlier in the day, and Wilson had told him how much he paid for it and told defendant where he lived. Wilson also noted he was familiar with defendant's vehicle because it was often parked across from his cousin's house and saw defendant's vehicle drive by his residence about an hour before the burglary. Defendant was also in the area of the burglary around 15 minutes after it occurred.

5. *Summary*

When, as in this case, conflicting evidence is pre-

sented, assessments of witness credibility are particularly significant. *People v. Houston*, 151 Ill. App. 3d 102, 110, 502 N.E.2d 1111, 1116 (1986). The jury was not obligated to accept the testimony of defendant's witnesses over the identification testimony of the State's witnesses. See *Mullen*, 313 Ill. App. 3d at 729, 730 N.E.2d at 554. The jury could have reasonably rejected the alibi testimony and judicial confession as the witnesses had close ties to defendant and failed to come forward right away. Moreover, their testimony was fraught with inconsistences and contradictions. While Wilson did not observe a tattoo on the suspect during the burglary and did not initially mention a design on the black shirt, his description of the suspect was very similar to defendant's appearance. Additionally, other evidence existed that showed defendant was the perpetrator in this case. Accordingly, we conclude the State's evidence was sufficient for the jury to find beyond a reasonable doubt defendant was the person that burglarized Wilson's Jeep.

B. Fines

Defendant raises several arguments as to the fines imposed upon him. Specifically, he asserts (1) the circuit court clerk erred by imposing the fines; (2) he is not subject to an anti-crime fund fine (730 ILCS 5/5-6-3(b)(13), 5-6-3.1(c)(13) (West 2008) (text of sections effective until June 1, 2009)); (3) the amount of the Violent Crime Victims Assistance Act (725 ILCS

240/10 (West 2008)) is incorrect; and (4) he did not receive his *per diem* credit against his fines (725 ILCS 5/110-14(a) (West 2008)). The State concedes the errors and our ability to address the issues despite defendant's failure to raise them in the trial court. We agree with the parties.

In *People v. Swank*, 344 Ill. App. 3d 738, 747-48, 800 N.E.2d 864, 871 (2003), this court explained the proper roles of judicial and nonjudicial members in imposing statutory fines as follows:

> "The imposition of a fine is a judicial act. The clerk of a court is a nonjudicial member of the court and, as such, has no power to impose sentences or levy fines. [Citation.] Instead, the circuit clerk has authority only to collect judicially imposed fines. [Citation.]" (Internal quotation marks omitted.)

In this case, the trial court did not impose any fines in its oral pronouncement of defendant's sentence or in its written sentencing judgment. Defendant has supplemented the record on appeal with a list of fines and fees he owes in his case. The lists includes the following fines: (1) $10 anti-crime fund, (2) $5 youth diversion (55 ILCS 5/5-1101(e)(2) (West 2008)), and (3) $20 Violent Crime Victims Assistance Act. (We

note defendant does not argue his $10 arrestee's medical costs fund assessment (730 ILCS 125/17 (West 2008)) is a fine). The circuit clerk did not have authority to impose those fines. However, when presented with mandatory fines assessed by the clerk, we may vacate the fines and reimpose them ourselves. *People v. Schneider*, 403 Ill. App. 3d 301, 305, 933 N.E.2d 384, 389 (2010). Thus, we vacate the three aforementioned fines and address reimposition.

As defendant points out, sections 5-6-3(b)(12) and 5-6-3.1(c)(12) of the Unified Code of Corrections (730 ILCS 5/5-6-3(b)(12), 5-6-3.1(c)(12) (West 2008) (text of sections effective until June 1, 2009)) provide for the imposition of fines for the purpose of reimbursing local anti-crime programs where the defendant is sentenced to probation, conditional discharge, or supervision. No similar provisions authorize imposition of such a fine when the trial court imposes a sentence of incarceration. *People v. Beler*, 327 Ill. App. 3d 829, 837, 763 N.E.2d 925, 931 (2002). Accordingly, we will not reimpose the anti-crime fund fine.

As to the $5 youth-diversion assessment, it is a mandatory fine that is applicable to defendant (see *People v. Graves*, 235 Ill. 2d 244, 255, 919 N.E.2d 906, 912 (2009); 55 ILCS 5/5-1101(e) (West 2008)), and thus we reimpose it. When another fine has been imposed, section 10(b) of the Violent Crime Victims

Assistance Act (725 ILCS 240/10(b) (West 2008)) requires the court to order an additional fine of $4 for every $40 of other fines, or fraction thereof, imposed. Accordingly, the proper mandatory fine under the Violent Crime Victims Assistance Act is $4. Thus, we also impose a $4 Violent Crime Victims Assistance Act fine.

Defendant last asserts he is entitled to a $5 *per diem* credit against his fines under section 110-14(a) of the Code of Criminal Procedure of 1963 (Procedure Code) (725 ILCS 5/110-14(a) (West 2008)) for his 137 days in presentence custody. Section 110-14(a) expressly limits the credit to the amount of the defendant's fines. 725 ILCS 5/110-14(a) (West 2008). Defendant's $4 Violent Crime Victims Assistance Act fine is not subject to setoff under section 110-14 of the Procedure Code. See 725 ILCS 240/10(b) (West 2008). The *per diem* credit is available for defendant's $5 youth diversion fine. See *People v. Williams*, ___ Ill. App. 3d ___, ___, 940 N.E.2d 95, 101 (2010). Accordingly, defendant is entitled to a $5 credit against his youth-diversion fine.

III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment as modified and remand the cause to the Macon County circuit court for an amended sentencing judgment, reflecting a $5 youth-diversion fine, a $4 Violent Crime Victims Assistance Act

fine, and a $5 *per diem* credit. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

Affirmed as modified and remanded with directions.