2017 IL App (4th) 150372-U

NO. 4-15-0372

FILED
July 12, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
RAFAEL D. KENNEDY,	)	No. 14CF302
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas E. Griffith, Jr.,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Turner and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed defendant's conviction for attempt (first degree murder) over challenges that the trial court abused its discretion by (1) admitting expert testimony about the hierarchies of local gangs and (2) refusing defendant's request to have the jury instructed on a lesser-included offense. The appellate court ordered the trial court to vacate fines imposed by the circuit clerk and remanded the cause with directions.

¶ 2 In March 2015, defendant, Rafael D. Kennedy, was tried by a jury for attempt (first degree murder). The evidence presented showed that defendant drove a car to the Moundford Terrace apartments with his codefendant, Rajiv Rice, seated in the passenger seat. After arriving at the complex, Rice fired a .45-caliber firearm multiple times toward Katari Smith, who had stepped outside his girlfriend's home in the complex. One of the shots hit Smith in his left leg. (We recently affirmed Rice's conviction for attempt (first degree murder). *People v. Rice*, 2017 IL App (4th) 141081-U.)

¶ 3 During trial, the State introduced evidence—over defendant's objection—that de-

fendant and Rice were in a rival gang of Smith's and that the shooting at Moundford Terrace was in retaliation for a gang-related shooting earlier that day. After the close of evidence, defendant requested that the jury be instructed on aggravated battery with a firearm—a lesser-included offense of attempt (first degree murder). The trial court denied defendant's request, finding that the instruction was not supported by the evidence. The jury found defendant guilty of attempt (first degree murder). The court sentenced him to 27 years in prison.

¶ 4 Defendant appeals, arguing that (1) the trial court abused its discretion by allowing the State to present expert testimony about gang hierarchies, (2) the court abused its discretion by refusing defendant's request for a lesser-included offense jury instruction, and (3) the circuit clerk improperly imposed certain fines. We affirm defendant's conviction, order the trial court to vacate certain fines, and remand the cause with directions.

¶ 5 I. BACKGROUND

¶ 6 A. The Charge

¶ 7 In March 2014, the State charged defendant with attempt (first degree murder) (720 ILCS 5/8-4(a), (c)(1)(B) (West 2014); 720 ILCS 5/9-1(a)(1) (West 2014)), alleging that he shot Smith with the intent to kill.

¶ 8 B. The Jury Trial

¶ 9 1. *The State's Evidence*

¶ 10 In March 2015, the cause proceeded to a jury trial. Smith testified that on March 16, 2014, he was at the apartment of his girlfriend, Kearstyn Collins, located in the Moundford Terrace complex in Decatur, Illinois. Around 2 p.m., he heard a car window break in the parking lot. Smith looked outside and saw someone standing over his car. He ran outside to investigate. As he exited the apartment, he heard gunshots and dropped to the ground. Smith got up and tried

to run back inside the apartment but was shot in the "upper left knee." He fell back to the ground and crawled inside the apartment. Smith did not see who shot him.

¶ 11 Jennifer Morse testified that she lived in Moundford Terrace. On March 16, 2014, she was at home watching television when she heard approximately eight gunshots. She opened her front door and saw a "silverish gray" car with two front-seat passengers driving away.

¶ 12 Decatur police officer Cory Barrows testified that he responded to a call of a shooting at Moundford Terrace involving a gray, four-door vehicle with tinted windows. As Barrows drove toward Moundford Terrace, he saw a car matching the description driving at a high speed. Barrows activated his emergency lights and followed the gray car. As the car travelled south, Barrows saw a clump of glass and window tinting fall from the passenger-side window. The driver eventually pulled over. Defendant was driving, and Rice was in the front passenger seat. An inventory search of the vehicle recovered two spent .45-caliber shell casings in the rear seat.

¶ 13 Decatur police officers Jeff McAdam and Amber Patient responded to the area where Barrows saw glass fall from the window of the gray car. They found two semiautomatic handguns on the ground nearby—a .40-caliber and a .45-caliber. The .40-caliber was loaded; the .45-caliber was not. On cross-examination, McAdam testified that the guns were located in a position as if they had been thrown from the passenger side of a vehicle travelling southbound.

¶ 14 Detective James Wrigley investigated the crime scene at Moundford Terrace. He found two different groups of shell casings. In the Moundford Terrace roadway, he found four .45-caliber shell casings. On the other side of the apartment's privacy fence, he found 12 .380-caliber shell casings. The fence had 10 holes in it that appeared to be caused by bullets. Inside Collins' apartment, Wrigley found an empty box of .380-caliber ammunition. In the attic,

Wrigley found two .380-caliber handguns. Based on the evidence recovered from the scene, Wrigley opined that two groups of people had fired at each other.

¶ 15 Forensic scientist Mary Wong testified that gunshot residue analyses were conducted on defendant, Rice, and the sweatshirt defendant was wearing that day. The samples taken from defendant's and Rice's persons were inconclusive. The sample taken from defendant's sweatshirt tested positive for gunshot residue. Wong clarified that the positive result did not mean that defendant had fired a gun but merely that he had recently been in the vicinity of a gun being fired.

¶ 16 Forensic scientist Beth Patty testified that she tested the firearms and shell casings discovered by police. The testing revealed that all the .45-caliber shell casings were fired from the .45-caliber handgun recovered by McAdam and Patient, located where defendant and Rice had recently driven. Patty testified further that the .380-caliber shell casings found at the scene were fired by the two .380-caliber handguns found in the attic of Collins' apartment.

¶ 17 The State made an oral motion to introduce "gang-related evidence." The State explained that it wished to call Decatur police officer Matt Daniels to present testimony that defendant and Rice, on the one hand, and Smith on the other, were members of rival gangs. Daniels would testify further that defendant and Rice were retaliating against Smith in response to a gang-related shooting that had happened earlier that day. Defendant objected, arguing that his alleged gang affiliation and the alleged gang-related connection between the two shootings were merely speculation. The trial court granted the State's motion to introduce the gang-related evidence on the limited issues of motive and identity.

¶ 18 The State called Daniels to testify. Defendant renewed his objection to Daniels' testimony about "gang-related" evidence. The trial court overruled that objection and read the

following instruction to the jury:

> "Evidence has been received on the defendant's gang affiliation. The evidence has been received on the issue of the defendant's identification and motive and may be considered by you only for that limited purpose. It is for you to determine what weight should be given to this evidence on the issues of identification and motive."

(The same instruction was given to the jury after the close of evidence.)

¶ 19 Daniels testified that he had worked as a patrol officer in Decatur for six years, where he was assigned to the anti-crime team and the bike-patrol unit. Daniels explained that during his time as an officer, he learned of an ongoing rivalry between Decatur's east-side and west-side gangs. Daniels testified that the west-side gang referred to itself variously as "Mob Squad," "U-block," and "Union Street Murder Gang." The east-side gang called itself the "Blood Gang." Daniels described the areas of town where the gangs congregated, along with the hand-signals they used and their common gang tattoos.

¶ 20 Daniels testified further that through his investigation of the Decatur gangs, he was aware of the gang affiliations of several gang members. Daniels stated, "If I think you are an affiliate [and] I see you hanging out in the area, I'm going to do some investigation. *** I'm going to try to determine your role." Daniels testified that defendant, Rice, and Tyheim Johnson were west-side gang members. Smith was a member of the east-side gang. On cross-examination, Daniels explained that gangs in Decatur had a looser hierarchy than those in, for instance, Chicago, where there was a strictly established hierarchy. Daniels testified that he was unaware of the process by which a person became a member of the Decatur gangs. Daniels explained that the east-side gang's color was red but that the west-side gang did not wear a particu-

lar color.

¶ 21 On redirect, the State asked Daniels if he knew where the individuals involved in this case fit in their respective gangs' hierarchies. Defendant objected, arguing that a foundation was laid for Daniels' *general* knowledge of Decatur gangs but not specifically for his knowledge of those gangs' *hierarchies*. The court overruled defendant's objection. Daniels went on to testify that defendant and Rice were among the leaders of the west-side gang and that Smith was a leader of the east-side gang.

¶ 22 Decatur police officer Todd Cline testified that earlier on March 16, 2014—around 11 a.m.—he responded to a shooting on East Lincoln Street in Decatur. When he arrived, he observed a car with an apparent bullet hole in its door. There was blood on the inside and outside of the car and blood leading up to a nearby house. Cline found several shell casings in the road and on the ground beside the house. Police officer Troy Kretsinger testified that the shell casings in the street were fired from one of the .380-caliber guns found in the apartment of Smith's girlfriend. The victim of the shooting on East Lincoln Street was Tyheim Johnson.

¶ 23 Police extracted text messages from defendant's cellular telephone. The following text exchange occurred between 12:49 p.m. and 1:07 p.m. on March 16, 2014:

> "INCOMING MESSAGE: 'what is going on out here'
>
> OUTGOING MESSAGE: 'what you mean'
>
> INCOMING MESSAGE: 'Tyheim got shot and my dump [*sic*] son try and retaliate'
>
> OUTGOING MESSAGE: 'Yeah. It's come serious.'
>
> INCOMING MESSAGE: 'Why and what's it all about. I don't get it. I thought it was over.'

OUTGOING MESSAGE: 'Me too.' "

¶ 24 The State introduced an audio- and video- recorded interview with defendant taken at the police station on the day of the incident. Defendant stated that earlier that day, he and Rice were visiting a friend's apartment near Moundford Terrace. Defendant left the friend's home in a gray Crown Victoria, and Rice got in the passenger seat. Rice wanted a ride somewhere, but defendant could not remember where. As defendant drove past Moundford Terrace, two men started shooting at the car. Defendant heard the passenger side front window shatter and then accelerated away. Defendant stated that he did not fire a gun and was unaware if Rice had. Defendant explained that when he and Rice began taking fire, he drove away as fast as possible and could not tell whether Rice fired any shots. Defendant said that after driving away, his ears were ringing. Defendant stated further that he failed to pull over immediately after Barrows activated his emergency lights because he was not sure if Rice had been shot and wanted to get him to the hospital as soon as possible. When defendant realized that Rice was not shot, he stopped the car. Defendant said he did not know why anyone would want to shoot at him and Rice. Defendant explained that he did not know Johnson and was unaware of any shooting that had happened earlier that day.

¶ 25 Defendant presented no evidence.

¶ 26 2. *The Jury-Instruction Conference*

¶ 27 At the jury-instruction conference, defendant requested the trial court to instruct the jury on the lesser-included offense of aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2014)). The trial court rejected defendant's request, finding that no evidence was presented to support the instruction. The court explained that it expected defendant to argue during closing argument that he "had absolutely no involvement in this shooting," and he had

merely arrived in his vehicle at the scene of an ongoing crime.

¶ 28 The State proposed, and the jury was given, an instruction on accountability. Illinois Pattern Jury Instructions, Criminal, No. 5.03 (4th ed. 2000).

¶ 29 3. *Closing Arguments*

¶ 30 During closing arguments, the State argued that defendant was guilty under a theory of accountability for having driven Rice to and from Moundford Terrace. Defendant argued that the State had not proved its case beyond a reasonable doubt, focusing on the lack of evidence that defendant had shot at Smith.

¶ 31 4. *The Jury's Verdict and the Trial Court's Sentence*

¶ 32 The jury found defendant guilty of attempt (first degree murder). After a May 2015 sentencing hearing, the trial court sentenced defendant to 27 years in prison.

¶ 33 The circuit clerk later imposed various monetary assessments.

¶ 34 This appeal followed.

¶ 35 II. ANALYSIS

¶ 36 Defendant argues that (1) the trial court abused its discretion by allowing Daniels to testify about gang hierarchies, (2) the court abused its discretion by refusing defendant's request for a lesser-included offense jury instruction on aggravated battery with a firearm, and (3) the circuit clerk improperly imposed certain fines. We affirm defendant's conviction and vacate various fines.

¶ 37 A. Gang Hierarchy Testimony

¶ 38 Defendant first argues that the trial court abused its discretion by allowing Daniels to testify as an expert witness on the topic of "gang hierarchy." Defendant does not contest that Daniels was qualified to present expert testimony on Decatur gangs in general. Instead, defend-

ant argues that the State failed to provide a foundation that Daniels was qualified as an expert on the specific subissue of Decatur gang *hierarchies*. We reject defendant's argument.

¶ 39 1. *Law and Standard of Review*

¶ 40 Illinois Rule of Evidence 702 (eff. Jan. 1, 2011) governs testimony by experts. The rule provides, in pertinent part, the following:

> "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." *Id.*

¶ 41 To testify as an expert, a witness must have "experience and qualifications [that] afford him knowledge that is not common to laypersons." *Thompson v. Gordon*, 221 Ill. 2d 414, 428, 851 N.E.2d 1231, 1240 (2006). Practical experience can be sufficient to qualify a witness as an expert; formal training or degrees are not necessary. *Id.* at 428-29, 851 N.E.2d at 1240. An expert witness "need only have knowledge and experience beyond that of the average citizen." *Id.* at 429, 851 N.E.2d at 1240. The decision to admit expert testimony is within the sound discretion of the trial court. *Id.* at 428, 851 N.E.2d at 1240.

¶ 42 2. *This Case*

¶ 43 Defendant's focus on the law concerning expert witness qualifications is somewhat perplexing. At trial, the State did not tender Daniels as an expert witness in any capacity. Accordingly, the trial court did not determine whether Daniels was qualified as an expert. Instead, the State made a motion to admit evidence of defendant's gang membership as it related to the issues of motive and identification. In support of its motion, the State made the following statement, which implied the tendering of an expert witness: "[Daniels] would testify as to his

specialized experience putting him beyond the knowledge of a normal patrol officer ***." Despite that language, the State never requested the court to qualify Daniels as an expert. Nor did defendant raise an objection that Daniels' proposed testimony required him to be qualified as an expert. Instead, defendant objected on grounds that gang evidence was not relevant to this case.

¶ 44 Later, when Daniels attempted to testify to the hierarchical positions of defendant, Rice, and Smith within their respective gangs, defendant objected, stating, "I don't know how he knows about hierarchy." Again, defendant did not frame his objection in terms of expert witness qualifications. Nobody—not the defendant, the State, or the trial court—used the word "expert." Defendant did not object on the ground that Daniels was unqualified as an expert but, instead, on the ground that the State had failed to provide a foundation for Daniels' knowledge of gang hierarchies.

¶ 45 As a result, defendant has forfeited his argument that Daniels was not qualified to testify as an expert on the topic of Decatur gang hierarchies. *People v. Thompson*, 238 Ill. 2d 598, 611, 939 N.E.2d 403, 412 (2010) ("To preserve a claim for review, a defendant must both object at trial and include the alleged error in a written posttrial motion."). However, the State on appeal does not argue that defendant forfeited his claim. The State has therefore forfeited its forfeiture argument. See *People v. Williams*, 193 Ill. 2d 306, 347, 739 N.E.2d 455, 477 (2000) (holding that the State can forfeit a forfeiture argument).

¶ 46 Turning to the merits of defendant's argument on appeal, we reject the argument on multiple grounds. First, Daniels testified that he had worked as a Decatur police officer for six years, during which time he investigated Decatur gangs and gang members, which fell into two general groups: the east-side gang and the west-side gang. Daniels testified further as to the territory, dress, tattoos, and membership of those gangs. He explained that when he suspected some-

one was a member of either gang, he investigated that person to determine what role they inhabited within the gang. We conclude that, had Daniels been tendered as an expert on Decatur gangs, a sufficient foundation was laid to qualify him as such.

¶ 47 Second, we reject the distinction defendant attempts to draw between Daniels' expertise about Decatur gangs in general and his expertise about those gangs' hierarchies in particular. The subject of Decatur gang hierarchies was subsumed within the topic of Decatur gangs; the latter was not a separate subject from the former. Daniels' qualifications as an expert about Decatur gangs authorized him to opine on the characteristics of those gangs—their territory, habits, history, language, dress, tattoos, membership, and hierarchy. We further note that Daniels was readily able to testify about the roles of defendant, Rice, and Smith in the hierarchies of the gangs, which would have been difficult if, as defendant claims, Daniels had lacked expertise in that area.

¶ 48 The trial court did not abuse its discretion by allowing Daniels to testify about the hierarchies of Decatur gangs.

¶ 49 B. The Lesser-Included Offense Jury Instruction

¶ 50 Next, defendant argues that the trial court abused its discretion by denying defendant's request to instruct the jury on the lesser-included offense of aggravated battery with a firearm. We disagree.

¶ 51 1. *Law and Standard of Review*

¶ 52 A defendant is entitled to a jury instruction on a lesser-included offense when "there is some evidence in the record that, if believed by the jury, will reduce the crime charged to a lesser offense." (Emphasis omitted.) *People v. McDonald*, 2016 IL 118882, ¶ 25. In other words, "[a] defendant is entitled to a lesser[-]included offense instruction only if the evidence

would permit a jury rationally to find the defendant guilty of the lesser[-]included offense and acquit him or her of the greater offense." *People v. Novak*, 163 Ill. 2d 93, 108, 643 N.E.2d 762, 770 (1994) *abrogated on other grounds*, *People v. Kolton*, 219 Ill. 2d 353, 362-65, 848 N.E.2d 950, 955-57 (2006). In deciding whether there exists some evidence to support a lesser-included offense instruction, the trial court should not consider the credibility of that evidence. *McDonald*, 2016 IL 118882, ¶ 25. Determining credibility is a role of the jury that the trial court should not usurp. *Id.*

¶ 53 In *McDonald*, the supreme court recently clarified the standard of review when reviewing a trial court's decision to deny a defendant's proposed lesser-included offense instruction. The supreme court wrote that "when the trial court, after reviewing all the evidence, determines that there is insufficient evidence to justify the giving of a jury instruction, the proper standard of review of that decision is abuse of discretion." *Id.* ¶ 42. The court reached that conclusion after analyzing several of its previous opinions that arguably applied *de novo* review. The court held that previous cases had applied *de novo* review only as to actual questions of law and not to the issue of whether there was some evidence to support a lesser-included offense instruction. *Id*. ¶¶ 33-37.

¶ 54 Despite holding that trial courts have discretion when determining whether to give a lesser-included offense instruction, the *McDonald* majority cited—seemingly with approval—*People v. Crane*, 145 Ill. 2d 520, 526, 585 N.E.2d 99, 102 (1991), for the proposition that if there is "some evidence" to support a lesser-included offense instruction, then a trial court abuses its discretion by refusing to give that instruction. *McDonald*, 2016 IL 118882, ¶ 38. Thus, in accordance with *McDonald*, when we review a trial court's decision that there is insufficient evidence to justify the giving of a lesser-included offense instruction, we must ask whether there is

"some evidence" to support giving that instruction. We note that the *McDonald* dissent quoted approvingly from the opinion of this court in *People v. Willett*, 2015 IL App (4th) 130702, ¶ 88, 37 N.E.3d 469, in which we concluded that a standard of review that purports to give the trial court discretion to decide what the evidence does or does not show invites the trial court to substitute its own credibility determination for that of the jury. As the dissent wondered, if a trial court is not to make credibility determinations when evaluating the evidence in this area, "what justification is there for the majority's holding that abuse of discretion is the proper standard of review?" *McDonald*, 2016 IL 118882, ¶ 78. Despite our affinity for the dissent's position, the majority opinion controls, which we follow faithfully to determine whether the trial court abused its discretion in this case.

¶ 55 "An abuse of discretion occurs when the trial court's decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court." *Seymour v. Collins*, 2015 IL 118432, ¶ 41, 39 N.E.3d 961. "The question is not whether the reviewing court would have made the same decision if it were acting as the lower tribunal." *McDonald*, 2016 IL 118882, ¶ 32. Reviewing a trial court's decision denying a lesser-included offense instruction is not perfunctory—"for a reviewing court to determine whether the trial court abused its discretion, it must undertake a review of the relevant evidence." *Id.* But "[i]t is not the province of the trial court to weigh the evidence when deciding whether a jury instruction is justified." *Id.* ¶ 25. Nor should the a reviewing court " 'reweigh' " the evidence. *Id.* ¶ 38 (quoting *People v. Kite*, 153 Ill. 2d 40, 46, 605 N.E.2d 563, 566 (1992)).

¶ 56 2. *The Offenses at Issue*

¶ 57 a. Attempt (First Degree Murder)

¶ 58 Defendant was charged with attempt (first degree murder) (720 ILCS 5/8-4(a),

(c)(1)(B), 9-1(a)(1) (West 2014)). First degree murder, as charged in this case, provided the following:

> "A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death[,] he either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to the individual or another." 720 ILCS 5/9-1(a)(1) (West 2014).

"A person commits the offense of attempt when, with intent to commit a specific offense, he or she does any act that constitutes a substantial step toward the commission of that offense." 720 ILCS 5/8-4(a) (West 2014).

¶ 59 b. Aggravated Battery with a Firearm

¶ 60 To commit aggravated battery with a firearm, a person must commit battery, which occurs:

> "[I]f he or she knowingly without legal justification by any means (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual." 720 ILCS 5/12-3(a) (West 2014).

Simple battery is elevated to aggravated battery with a firearm when, in committing a battery, a person knowingly "[d]ischarges a firearm *** and causes any injury to another person." 720 ILCS 5/12-3.05(e)(1) (West 2014).

¶ 61 c. Accountability

¶ 62 As relevant to this case, a person is legally accountable for the conduct of another when the following occurs:

> "[E]ither before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or at-

tempts to aid that other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2014).

¶ 63 3. *This Case*

¶ 64 To resolve defendant's claim, we must determine whether the trial court abused its discretion by determining that there was not "some evidence" that would reduce the offense from attempt (first degree murder) to aggravated battery with a firearm.

¶ 65 Again, we stress that the issue here is not whether there was some evidence to establish that defendant committed aggravated battery with a firearm—certainly, in this case there was. Instead, the issue is whether there was some evidence on which the jury could rely to rationally acquit defendant of attempt (first degree murder) while still finding him guilty of aggravated battery with a firearm. See *Novak*, 163 Ill. 2d at 108, 643 N.E.2d at 770.

¶ 66 In this case, the State proceeded on a theory of accountability—that defendant was accountable for the actions of Rice. Therefore, we analyze the evidence from the perspective of Rice's actions to determine whether the evidence supported a jury instruction on aggravated battery with a firearm.

¶ 67 As the parties both point out, the relevant difference in this case between attempt (first degree murder) and aggravated battery with a firearm was the issue of intent. First degree murder requires intent "to kill or do great bodily harm" to the victim. 720 ILCS 5/9-1(a)(1) (West 2014)). However, the offense of attempt (first degree murder) requires proof of intent to kill; intent to do great bodily harm is insufficient. *People v. Hopp*, 209 Ill. 2d 1, 13, 805 N.E.2d 1190, 1197 (2004). In contrast, aggravated battery with a firearm requires a defendant to knowingly cause bodily harm by knowingly discharging a firearm. 720 ILCS 5/12-3(a) (West 2014); 720 ILCS 5/12-3.05(e)(1) (West 2014). The only issue in this case distinguishing attempt (first

degree murder) from aggravated battery with a firearm was whether Rice intended to kill Smith.

¶ 68 "Intent can rarely be proved by direct evidence[.]" *People v. Dorsey*, 2016 IL App (4th) 140734, ¶ 34, 66 N.E.3d 914. Instead, it may be proved by circumstantial evidence and inferred from the surrounding circumstances. *Id.* "[T]he very act of firing a gun at a person supports the conclusion that the shooter manifested an intent to kill." *People v. Lopez*, 245 Ill. App. 3d 41, 47, 614 N.E.2d 329, 334 (1993).

¶ 69 In this case, the evidence tended to show that Rice fired several shots at Smith and that one of those shots hit Smith in his knee. That evidence supported the conclusion that Rice intended to kill Smith. See *id.* (reasoning that shooting a gun at a person supports the inference that the shooter intended to kill). No evidence in the record rationally supports the conclusion that Rice was firing at Smith without intending to kill him.

¶ 70 Defendant argues that the location of Smith's wound near his left knee constitutes some evidence that Rice did not intend to kill Smith. Had Rice intended to kill Smith—according to defendant—Rice would have shot Smith in the torso or head instead of the leg. Defendant's argument is not persuasive. The evidence showed that Rice fired at Smith from a sufficient distance to diminish Rice's ability to accurately aim at a particular body part. Indeed, only one of Rice's shots hit Smith. Had Rice shot Smith at point blank range, a shot to the leg might show a lack of intent to kill. But in this case, the location of the bullet is not significantly probative.

¶ 71 Under the particular facts of this case, we conclude that the trial court did not abuse its discretion by determining that there was not some evidence that defendant committed aggravated battery with a firearm instead of attempt (first degree murder). The court's decision was not arbitrary, fanciful, or unreasonable.

¶ 72 C. Fines and Fees

¶ 73 Defendant argues that the circuit clerk improperly imposed the following fines without authority: (1) $15 State Police operations assessment; (2) $5 drug court assessment; (3) $50 court assessment; (4) $5 youth diversion assessment; (5) $28.50 child advocacy assessment; (6) $10 medical costs assessment; (7) $20 lump sum surcharge assessment; (8) a $100 violent crime assessment; and (9) $30 juvenile expungement fine. In addition, defendant argues that the clerk failed to award defendant his $5-per-day credit for time spent in presentence custody.

¶ 74 The State concedes that all nine fines listed above should be vacated. See *People v. Smith*, 2014 IL App (4th) 121118, ¶ 18, 18 N.E.3d 912 (circuit clerk lacks authority to impose fines).We accept the State's concession and order the trial court to vacate the nine assessments at issue.

¶ 75 III. CONCLUSION

¶ 76 For the foregoing reasons, we affirm the trial court's judgment in part and vacate in part. We order the trial court to vacate the following fines imposed by the circuit clerk: (1) $15 State Police operations assessment; (2) $5 drug court assessment; (3) $50 court assessment; (4) $5 youth diversion assessment; (5) $28.50 child advocacy assessment; (6) $10 medical costs assessment; (7) $20 lump sum surcharge assessment; (8) a $100 violent crime assessment; and (9) $30 juvenile expungement fine.

¶ 77 As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2016).

¶ 78 Affirmed in part and vacated in part; cause remanded with directions.