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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Kane County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 11-CF-254
	)	
JOE L. JONES, JR.,	)	Honorable
	)	Timothy Q. Sheldon,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE BIRKETT delivered the judgment of the court.  
Justices Zenoff and Hudson concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) Defendant's waiver of counsel was valid: although the trial court did not admonish him under Rule 401(a) on the date he waived counsel, it had substantially done so at a hearing only 20 days earlier; (2) defendant was entitled to full credit against his \$5 drug-court fine, his \$10 specialty-court fine, and his \$30 Children's Advocacy Center fine, to reflect the 141 days he spent in presentencing custody.

¶ 2 Following a jury trial in the circuit court of Kane County, defendant, Joe L. Jones, Jr., was found guilty of criminal damage to government-supported property (720 ILCS 5/21-5(a) (West 2010)), aggravated fleeing or attempting to elude a peace officer (625 ILCS 5/11-204.1(a)(3) (West 2010)), obstructing identification (720 ILCS 5/31-4.5(a)(2) (West 2010)), and driving while his

license was revoked (DWLR) (625 ILCS 5/6-303 (West 2010)). For those offenses, defendant was sentenced to concurrent prison terms of four years, two years, one year, and one year, respectively. Shortly after being arraigned, defendant was given leave to discharge his appointed attorney and he represented himself at trial. On appeal, defendant argues that the trial court failed to comply with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984), which governs waivers of counsel by criminal defendants. Defendant also argues that, as a result of time spent in custody before sentencing, he is entitled to a monetary credit toward certain fines. We affirm as modified.

¶ 3 On February 17, 2011, the trial court appointed the public defender's office to represent defendant. Prior to doing so, the trial court advised defendant of the charges against him and the possible punishment for each offense. Defendant was arraigned on March 25, 2011, at which time the trial court once more advised defendant of the charges and the possible penalties upon conviction. However, the trial court did not mention the DWLR charge at arraignment. During a court appearance on April 13, 2011, defendant's attorney advised the trial court that defendant had expressed his desire to represent himself. The trial court continued the matter until the following day, at which time the court told defendant, "[Y]ou and I need to talk pursuant to Supreme Court Rule to make certain that you understand what your request [to proceed *pro se*] means and some of the things that you will have to be aware of." The trial court informed defendant that he had the right to be represented by an attorney. The trial court further explained, *inter alia*, that an attorney would subpoena and interview witnesses; prepare a defense; help defendant decide whether to exercise or waive the right to a jury trial (and help defendant select jurors in the event he chose to exercise that right); object to improper evidence offered by the State; cross-examine the State's witnesses; advise defendant whether to testify; and assist defendant in presenting posttrial motions, if necessary.

Defendant acknowledged that he was aware that an attorney would provide these forms of assistance. However, he persisted with his request to represent himself.

¶ 4 In response to questioning by the court, defendant indicated that he was 46 years old, that his education included “[s]ome college,” that he was not taking any medication, that he had never received any psychological or psychiatric treatment, and that he had never represented himself in court before. Prior to accepting defendant’s waiver of counsel, the trial court told defendant, “it’s important that I make it abundantly clear to you that although you have a constitutional right to defend yourself in this case, this court would advise you it’s not a wise thing.” Defendant responded that he understood.

¶ 5 At trial, Elgin police officer Adam Green testified that, in the early morning hours of February 9, 2011, he conducted a traffic stop of a beige Saturn that had only one working headlight. Defendant was driving the vehicle. He displayed proof of insurance but did not produce a driver’s license. Defendant indicated that his name was Joseph Jones and that his date of birth was October 4, 1963. Another Elgin police officer, David Zierk, arrived at the scene. Green contacted a dispatcher to determine the status of defendant’s driver’s license and whether there were any outstanding warrants for defendant’s arrest. The dispatcher advised Green that there was no record of a Joseph Jones born on October 4, 1963. Green then asked defendant to provide his correct name and date of birth. Green also asked defendant whether he had a middle name or a middle initial. Defendant replied that he did not. When Green later ordered defendant to step out of the vehicle, defendant drove away. Zierk pursued defendant, and Green joined the pursuit. Upon learning that defendant had been apprehended at an apartment complex’s parking lot, Green proceeded to that location. When he arrived he saw that other officers had placed defendant in handcuffs. He also

observed that Zierk's squad car had sustained serious front-end damage that was not present when Zierk had arrived at the site of the original traffic stop. While booking defendant, Green retrieved an Illinois identification card for defendant that indicated that defendant's middle initial was "L" and that defendant's name included the suffix "Jr." The identification card indicated that defendant was born on October 14, 1964. On cross-examination, Green acknowledged that he had testified before the grand jury that the vehicle he had observed with only one operating headlight was silver, not beige. Green also acknowledged that he prepared a written report indicating that the vehicle in question was silver.

¶ 6 Zierk corroborated Green's testimony that defendant drove off from the site of the original traffic stop after being asked to step out of his vehicle. Zierk returned to his squad car and followed defendant. Defendant eventually brought his vehicle to a halt. Believing that defendant was going to flee on foot, Zierk started to exit his vehicle. At that point, however, defendant's vehicle began backing up and it crashed into the front end of Zierk's vehicle. Defendant then pulled forward and drove away. Zierk resumed the pursuit of defendant, following him into a parking lot, where he was apprehended.

¶ 7 The State also presented evidence of the cost of repairing the damage to Zierk's vehicle and evidence that defendant's driver's license had been revoked and that the revocation was in effect on February 9, 2011.

¶ 8 A criminal defendant "may engage in self-representation only if he voluntarily, knowingly, and intelligently waives his right to counsel." *People v. Black*, 2011 IL App (5th) 080089, ¶ 11. Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) helps safeguard a defendant's right to counsel. That rule provides:

“Any waiver of counsel shall be in open court. The court shall not permit a waiver of counsel by a person accused of an offense punishable by imprisonment without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:

(1) the nature of the charge;

(2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences; and

(3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court.” *Id.*

¶ 9 For a waiver of counsel to be effective, there must be at least substantial compliance with Rule 401(a). *People v. Vasquez*, 2011 IL App (2d) 091155, ¶ 14. Defendant argues that there was no substantial compliance in this case because, on the date defendant waived counsel, he was not advised of the nature of the charges or the minimum and maximum sentences for the charged offenses. The State responds that there was substantial compliance with the rule inasmuch as those subjects had been addressed at two prior hearings, including one that took place only 20 days earlier. We agree with the State.

¶ 10 Initially, we note defendant’s concession that, during the proceedings below, he failed to raise the issue of the validity of his waiver of counsel. Ordinarily, the failure to raise an issue in a posttrial motion results in forfeiture and the issue will not be considered on appeal. See generally *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). However, it would be patently unfair to deprive a criminal defendant of counsel without a proper waiver and then insist that the defendant, without the benefit

of counsel, recognize the invalidity of the waiver and adhere to the procedural requirements necessary to preserve the error for review. In any event, Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967) provides, in pertinent part, that “[p]lain errors or defects affecting substantial rights may be noticed [on appeal] although they were not brought to the attention of the trial court.” As the State acknowledges, the deprivation of the right to counsel, in the absence of an effective waiver, is plain error. *People v. Vernón*, 396 Ill. App. 3d 145, 150 (2009). Thus, “[b]ecause the right to counsel is fundamental, an appellate court may review a failure to substantially comply with Rule 401(a) under the plain-error doctrine despite a defendant’s failure to properly preserve such an error.” *Vasquez*, 2011 IL App (2d) 091155, ¶ 14.

¶ 11 With respect to the merits, the State relies principally on *People v. Haynes*, 174 Ill. 2d 204 (1996). In *Haynes*, Judge Locallo admonished the defendant in accordance with Rule 401(a) on December 14, 1993. *Id.* at 240. In prior court appearances, the defendant had vacillated about whether he wished to be represented by counsel. In addition, questions about the defendant’s fitness had been raised. Judge Locallo did not accept a waiver of counsel on December 14, 1993. Instead, he indicated that, if there were no further requests for fitness examinations, the question of whether the defendant would be represented by counsel would be taken up later. A fitness hearing was held before Judge Strayhorn at the beginning of March 1994. On March 4, 1994, Judge Strayhorn found the defendant fit. The defendant then moved to proceed without counsel, and Judge Strayhorn granted the motion without repeating the admonitions pursuant to Rule 401(a). Our supreme court rejected the defendant’s arguments that the prior admonitions were insufficient. The court reasoned as follows:

“Under the specific circumstances of this case, the admonishments given by Judge Locallo were sufficient to comply with Rule 401(a). Judge Locallo’s admonishments, though given a number of weeks prior to the defendant’s waiver, were given at a time when the defendant had indicated a desire to waive counsel. Moreover, Judge Locallo’s comments reveal that he specifically contemplated that the defendant would not make a decision on the waiver issue immediately, but would take time to consider the decision. Judge Locallo stated that he was admonishing the defendant so that the defendant could consider all the pertinent information while he pondered his decision, which would be made at a later date. Thereafter, at the earliest time the issue of the defendant’s representation could be revisited (after the defendant’s fitness was resolved), the defendant informed the court that he had made the decision to waive counsel. Given these circumstances, we find it reasonable to conclude that the defendant had fully considered the admonishments given by Judge Locallo and was relying on those admonishments when he made his decision to waive counsel.” *Id.* at 241.

¶ 12 Here, unlike in *Haynes*, defendant had not expressed a desire to waive counsel when he was advised of the nature of the charged offenses and the penalties for those offenses, and the admonitions were not given for the purpose of enabling defendant to make an informed decision about whether to proceed without counsel. Thus, *Haynes*’s value as precedent in this case is limited. A different case, *People v. Bobo*, 33 Ill. App. 3d 274 (1975), is considerably closer to the mark. In *Bobo*, the trial court advised the defendant at her February 4, 1974, arraignment that she had been charged with the theft of clothing and sunglasses from a retail business; that the offense was a Class 3 felony; that she was subject to a prison term of 1 to 10 years and a fine not to exceed \$10,000; and that she was entitled to counsel. *Id.* at 276. The trial court inquired whether the defendant had

spoken with an attorney. After the defendant responded that she had been in contact with an attorney, the trial court continued the matter. On February 20, 1974, the trial court inquired whether the defendant had secured counsel. She indicated that she had not and did not intend to do so. The trial court informed the defendant that, if she did not have the funds to retain an attorney, the trial court would appoint an attorney to represent her. The defendant responded, however, that she preferred to represent herself. On March 1, 1974, the trial court “further extensively admonished defendant of her constitutional rights and those under Rule 401(a).” *Id.* at 278. Significantly, however, although the opinion in *Bobo* includes somewhat lengthy excerpts from the transcripts of the proceedings on February 4, 1974, and February 20, 1974, the court indicated that a detailed description of what transpired on March 1, 1974, “would serve no useful purpose.” *Id.* Therefore, we can conclude only that whatever admonitions were given on March 1, 1974, added nothing of significance to those previously administered.

¶ 13 In holding that the defendant’s waiver of counsel conformed to the requirements of Rule 401(a), the *Bobo* court observed that the trial court advised the defendant of her rights on more than three occasions and warned her that waiving counsel would be unwise. The *Bobo* court concluded that the defendant “waived her right to counsel in a clear manner and proceeded to defend herself, as the record indicates, in an intelligent manner.” *Id.* For similar reasons, we conclude that defendant’s waiver of counsel in this case was valid. Defendant was advised of the charges against him and the penalties associated with those charges at both his March 25, 2011, arraignment and an earlier court appearance. The 20-day interval between the admonitions at arraignment and the subsequent waiver of counsel on April 14, 2011, is comparable to the corresponding interval—16 days—in *Bobo*. In this respect, this case and *Bobo* stand in sharp contrast to cases where, due to the

passage of time, information conveyed during arraignment could not be relied upon to augment deficient Rule 401(a) admonitions. See *People v. Jiles*, 364 Ill. App. 3d 320, 329-30 (2006) (interval of over three months between arraignment and waiver); *People v. Langley*, 226 Ill. App. 3d 742, 749-50 (1992) (seven-month interval between arraignment and waiver). The trial court here also outlined the advantages of having an attorney to submit the State's case to adversarial testing at trial and, like the trial court in *Bobo*, the trial court advised defendant that it would be unwise to proceed without counsel. Furthermore, from our review of the record, we are persuaded that defendant, like his counterpart in *Bobo*, mounted an intelligent defense at trial, exercising peremptory challenges to three prospective jurors, subjecting the State's witnesses to extensive cross-examination, and offering a lucid closing argument. Under these circumstances, there was substantial compliance with Rule 401(a).

¶ 14 We are aware that, at arraignment, defendant was not advised about the DWLR charge. However, given the severity of the other charges, we fail to see how an admonition on this charge could have affected defendant's decision to proceed without counsel. Accordingly, the omission does not alter our conclusion that defendant was admonished in a manner sufficient to facilitate a voluntary, knowing, and intelligent waiver of the right to counsel.

¶ 15 Defendant also argues that he is entitled to monetary credit toward his fines. Section 110-14(a) of the Code of Criminal Procedure of 1963 provides:

“Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of \$5 for each day so incarcerated upon application of the defendant. However, in no case shall the amount so allowed or credited exceed the amount of the fine.” 725 ILCS 5/110-14(a) (West 2010).

A defendant may apply for the credit for the first time on appeal. *People v. Caballero*, 228 Ill. 2d 79, 88 (2008).

¶ 16 The trial court ordered defendant to pay \$300 in costs. The clerk of the court's itemization of the costs shows that defendant was charged the following "fees" provided for in section 5-1101 of the Counties Code (55 ILCS 5/5-1101 (West 2010)): a \$5 drug court "fee" (55 ILCS 5/5-1101(f) (West 2010)), a \$10 "specialty" court "fee" (55 ILCS 5/5-1101(d-5) (West 2010)), and a \$30 Children's Advocacy Center "fee" (55 ILCS 5/5-1101(f-5) (West 2010)). Although these items are statutorily designated to be fees, they are properly categorized as fines. *People v. Graves*, 235 Ill. 2d 244, 255 (2009) ("fee" under section 5-1101(d-5) is a fine); *People v. Jake*, 2011 IL App (4th) 090779, ¶ 29 (drug court "fee" is a fine); *People v. Jones*, 397 Ill. App. 3d 651, 660 (2009) (Children's Advocacy Center "fee" is a fine).

¶ 17 It is undisputed that defendant spent 141 days in custody prior to sentencing and has therefore accumulated a credit of \$705. The State concedes that defendant is entitled to the credit he claims.

¶ 18 Accordingly, the mittimus is modified to reflect a credit of \$705, satisfying defendant's drug court fine, "specialty" court fine, and Children's Advocacy Center fine. In all other respects, the judgment of the circuit court of Kane County is affirmed.

¶ 19 Affirmed as modified.