2013 IL App (4th) 120167-U

NO. 4-12-0167

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
October 17, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
JENNIFER A. BERNAL,	)	No. 08CF1251
Defendant-Appellant.	)	
	)	Honorable
	)	Peter C. Cavanagh,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Steigmann and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not err in denying defendant's request for a jury instruction on child endangerment.

(2) We vacate the fines improperly imposed by the circuit clerk and remand for the trial court to impose fines as appropriate.

¶ 2 In September 2011, a jury convicted defendant, Jennifer A. Bernal, of first degree murder (720 ILCS 5/9-1(a)(1) (West 2008)). In January 2012, the trial court sentenced her to 40 years' imprisonment.

¶ 3 Defendant appeals, arguing (1) the trial court erred in refusing to instruct the jury on the offense of child endangerment where child endangerment is a lesser-included offense of first degree murder and (2) she is entitled to monetary credit against her fines. We affirm as modified and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 As the parties are familiar with the facts of this case, we find it unnecessary to recount the trial testimony in detail. Instead, we will set forth only those facts necessary for the proper disposition of this appeal.

¶ 6 On December 9, 2008, emergency personnel responded to a 9-1-1 call and found 18-month-old Anthony Joseph Romanotto (Joseph) unresponsive in defendant's home. Defendant was Joseph's babysitter. Joseph was transported to the hospital, where doctors diagnosed him with a skull fracture. Following a surgery to reduce the swelling on his brain, he was pronounced dead.

¶ 7 That same day, police interviewed defendant. Defendant told police Joseph's mother, Crystal Cross, dropped him off at her home at approximately 9 a.m. At approximately 11 a.m., defendant fed Joseph and put him in a crib for a nap. She stated when she went to wake him 45 minutes later, she found him lying in the crib. He was limp and unresponsive but breathing. Defendant placed Joseph in the bathtub and splashed him with cold water to revive him. Once she realized Joseph was not responding, she called his mother. After his mother arrived, defendant called 9-1-1 at approximately 1:30 p.m. Defendant denied any knowledge of how Joseph could have sustained a skull fracture.

¶ 8 On December 10, 2008, police conducted a second interview of defendant. During that interview, defendant again stated she found Joseph lying on his back in the crib. Defendant told police she found Joseph in the same position she left him in when she put him down for his nap. Joseph's body was limp and he could not support his head. Defendant conceded Joseph must have fallen but denied knowing how he could have been injured while in her care.

Defendant again stated she placed him in the bathtub and splashed cold water on him to revive him. She also placed him on the floor and rubbed ice chips on him to try to revive him. When that did not work, she called his mother. After his mother arrived, she told defendant to call 9-1-1.

¶ 9 The result of the autopsy revealed Joseph had sustained a five-inch skull fracture, a residual subdural hematoma, a subarachnoid hemorrhage, a subgaleal hemorrhage, as well as swelling of the brain. The cause of Joseph's death was determined to have resulted from blunt force trauma to the head caused by multiple impacts.

¶ 10 On December 31, 2008, the State charged defendant with three counts of first degree murder, alleging defendant "inflicted blunt force trauma to the head of [Joseph], age 18 months;" (1) "with the intent to kill [Joseph] or do great bodily harm to [Joseph], thereby causing his death" (count I); (2) "knowing such act would cause the death of [Joseph], thereby causing his death" (count II); and (3) "knowing said act created the strong probability of death or great bodily harm to [Joseph], thereby causing his death" (count III).

¶ 11 During defendant's August 2011 trial, Dr. Nate Blaustein, a physician with St. John's Hospital in Springfield, testified he treated Joseph in the emergency room. According to Dr. Blaustein's testimony, Joseph's jaw was clenched shut, which indicates head and brain trauma. A computerized axial tomography (CAT) scan revealed an occipital skull fracture, an acute subdural hematoma, and swelling of the brain. Dr. Blaustein testified he had never seen an injury like Joseph's caused by a short fall and would not expect these injuries could be caused by a short fall. Because Joseph's brain continued to swell, Dr. Blaustein had him transferred to St. Francis Hospital in Peoria, which had a pediatric neurosurgeon on staff.

¶ 12 Dr. Julian Lin, a pediatric neurosurgeon at St. Francis Hospital, testified he performed emergency surgery on Joseph. He initially assessed Joseph's chances of survival were 50%. However, during the night, the intracranial pressure built up, preventing fresh blood from reaching the brain. The next morning, the CAT scan revealed Joseph was brain-dead. The result of the autopsy revealed the cause of Joseph's death was blunt force trauma to the head. Dr. Lin agreed Joseph's injury was "traumatic" and "a severe amount of force would be required to create that." According to Dr. Lin's testimony, short falls typically do not cause that kind of injury. Dr. Lin would expect symptoms from such a traumatic injury to be immediate. The child would usually not be able to eat or drink and might even vomit. Dr. Lin opined an unbroken fall from a shopping cart onto a concrete floor could cause a skull fracture and bleeding on the brain. On cross-examination, Dr. Lin testified the amount of force necessary to cause an occipital fracture in an 18-month-old child would be "at least a four[-] or five[-] f[oo]t free fall with no break directly onto the head on a *** non-carpeted, most likely concrete floor." Dr. Lin opined such an injury was "remotely" possible if Joseph had fallen backward from a height of four or more feet and landed on a sparsely padded carpet. Dr. Lin testified while Joseph could have experienced a lucid interval of one hour between the injury and his symptoms, it was not likely. Based on his injuries, Joseph's symptoms would have been immediate.

¶ 13 Crystal Cross, Joseph's mother, testified she dropped Joseph off at defendant's home at 9 a.m. Cross testified when she dropped him off she did not notice anything wrong with him. She testified Joseph was not injured or hurt in any way. According to Cross, Joseph was in a good mood and giggling when they left her house that morning. Cross testified she received a phone call from defendant at approximately 1:24 p.m., who told her Joseph would not wake up

from his nap. Cross called defendant while on the way to defendant's house and asked if she had called 9-1-1. Defendant said "no" and told Cross to "Just get here." Cross testified she did not call 9-1-1 herself because she could not recall defendant's address. However, Cross did call St. John's Hospital and Joseph's pediatrician because, from what defendant said, Cross knew it was bad and Joseph would end up in the emergency room and she "wanted to get them ready." Cross testified once she arrived at defendant's house, defendant told her to "Take [her] shoes off" so the floors would not get dirty. Cross found Joseph lying "kind of upright" on some blankets on the living room floor. His teeth were clenched and his eyes were dilated and appeared swollen. Although Joseph had a pulse, he was otherwise unresponsive. Cross then told defendant again to call 9-1-1, which she "eventually" did after being told to do so a third time. Cross denied telling defendant she would take Joseph to the hospital herself. When the ambulance arrived, Cross ran out the front door to meet it. Cross testified when she opened the door, defendant told her, "Don't let the dog out." Once at the hospital, Cross was told Joseph's prognosis was not good. Joseph was placed on life support and declared brain-dead a short time later.

¶ 14 On August 26, 2011, the fifth day of defendant's trial, defendant's trial counsel moved for a mistrial, explaining defendant had disclosed new information which the jury would find prejudicial. Without referencing the specific information, counsel argued the following: "Our concern is that if this information is published to the jury in whatever way, shape, or form, that the jury would construe that evidence as being fabricated or contrived either by the Defendant or by defense counsel, and if that happens, I believe that the Defendant would be prejudiced and that she would not receive a fair trial from this particular jury." The trial court denied the motion.

¶ 15 Tish Carneghi, a computer evidence recovery specialist with the Illinois State Police, testified she reviewed the hard drive from defendant's computer. Carneghi found a keyword search had been performed at 3:25 p.m. on December 9, 2008, for bleeding on the brain. Searches for "skull fracture," "skull fracture in infant," and "shaken baby syndrome" were conducted later that evening. The next day, a search for "shaken baby syndrome, prosecution" was conducted. On cross-examination, Carneghi testified other searches for "shaken baby syndrome" plus "wrongly diagnosed" and "not guilty in shaken baby cases" were conducted on December 10, 2008.

¶ 16 Dr. Channing Petrak, the medical director of the Pediatric Resource Center with the University of Illinois College of Medicine and an expert in the field of child abuse and pediatrics, testified Joseph had an occipital skull fracture on the back of his head and two subgaleal hemorrhages, one on the side of his head, and the other on the right side of the top of his head. It was Dr. Petrak's opinion Joseph's injuries were not accidental. Dr. Petrak opined the injuries were caused by an impact with a broad, flat surface. While Dr. Petrak agreed a child could suffer an occipital skull fracture from a fall of four feet or more, she denied Joseph's specific injuries could have been caused by a four-foot fall. Dr. Petrak testified she would not expect to see Joseph's injuries from even a 10-foot fall. According to Dr. Petrak's testimony, skull fractures "had a higher specificity for abuse" because of the thickness of the occipital lobe. Dr. Petrak testified she had seen children sustain significant falls, like falling down a flight of stairs, without sustaining severe brain injury. According to Dr. Petrak, a "red flag" for abuse arises when a child has a head injury and a person delays calling for help or tries to revive the child on their own.

¶ 17 Dr. John Denton, an expert in forensic pathology, testified he conducted Joseph's

autopsy. The autopsy revealed a five-inch skull fracture, a residual subdural hematoma, a subarachnoid hemorrhage, a subgaleal hemorrhage, and swelling of the brain. Dr. Denton noted multiple contusions on Joseph's upper neck, lower face, forehead, and the back of his head. The right side of Joseph's brain showed a hemorrhage against the surface of the brain, which Dr. Denton opined was from blunt force trauma. According to Dr Denton's opinion, Joseph would have been inconsolable when the injuries were sustained. He would have lost focus as well as the ability to eat or drink and then would have lost consciousness. It was Dr. Denton's opinion Joseph would not have had a lucid period after sustaining the injury because "the skull fracture would cause a severe amount of pain." Dr. Denton determined the cause of Joseph's death was skull and brain injuries due to blunt force trauma of the head caused by multiple impacts at multiple points. On cross-examination, Dr. Denton testified it was very unlikely a fall could cause these injuries because "you would have to land on something with three separate areas of impact." He also opined a four- or five- foot fall was too short a distance to cause the complex fracture and amount of bleeding sustained in this case.

¶ 18 The defense presented evidence from Dr. John Plunkett, an expert in forensic pathology, who testified he reviewed Joseph's hospital records, the autopsy report, and microscopic slides from the autopsy. Dr. Plunkett found Joseph had "an old dural injury," dating back to "at least a couple of months or so prior to the time he died." He also testified he found evidence of an "old retinal hemorrhage on one eye," which indicated Joseph had a brain injury "long before his death." However, Dr. Plunkett testified neither of these injuries had anything to do with Joseph's death. Dr. Plunkett also testified Joseph had an impact injury to the back of his head, which was likely in motion when it struck a solid surface, such as a floor or a wall.

According to Dr. Plunkett, the injury could have occurred as the result of a fall, an accidental or deliberate drop, or being thrown. Dr. Plunkett opined it was unlikely Joseph was struck with a moving object. Instead, it was possible Joseph's injuries were caused by a fall from his crib. While Dr. Plunkett denied a skull fracture from a fall of less than four or five feet was rare, he admitted it was "unusual."

¶ 19 Defendant testified she met Cross through her church. Defendant began babysitting Joseph in the fall of 2008 for $20 a day. Defendant also took care of her own 11-month-old daughter. On December 9, 2008, Joseph's mother brought him over at 9 a.m. Defendant testified she was watching television with the children in her bedroom. She propped Joseph up on some pillows and fed him a jar of chicken vegetable dinner and some soy milk. Defendant testified she was instructed to feed Joseph every two hours. Defendant testified it was at that point she noticed two bruises on his head. After Joseph finished eating, defendant placed him on the floor and he played with her daughter. Defendant testified she then put the children down for their naps. Her daughter slept in a playpen in her room and Joseph slept in a crib in another room. Once the children were asleep, defendant went back into her room to watch television and fell asleep on her bed. Defendant could not recall how long she slept or what woke her up. Defendant testified when she went to check on Joseph, she found him lying "on the floor in front of the crib," moaning. (Presumably, this was the newly disclosed information defense counsel was referring to in his motion for a mistrial, as the theory Joseph fell out of the crib was not previously referenced by defendant or her trial counsel. Up until that point, defendant had maintained she found Joseph unresponsive inside the crib). Defendant testified she did not tell anyone she found Joseph on the floor outside the crib until she told her attorneys in the middle of

her trial. She testified she told them because she knew she was going to have to testify. Defendant testified she lied to the police in her interviews and did not tell them Joseph had fallen from the crib because she did not think the fall could have caused the skull fracture. She did not tell anyone else because she did not think they would believe her as she had already lied to the police. She testified she had seen her daughter try to lift her leg out of the crib and therefore should have known Joseph could try to climb out of the crib and fall.

¶ 20 Defendant testified she did not call 9-1-1 because she wanted to call Cross first and let her know what was going on. Defendant testified Cross told her she was going to take Joseph to the hospital. Defendant denied telling Cross to take her shoes off. She also denied telling Cross not to let the dog out because the dog was locked up in the bathroom by that point. Once Cross arrived, defendant called 9-1-1.

¶ 21 In rebuttal, the State recalled Dr. Denton, who testified Joseph could not have sustained his injuries in a fall from the crib because the floor was carpeted and the distance was insufficient to cause such a severe skull fracture.

¶ 22 During the jury instruction conference, defendant argued she should be permitted to submit a jury instruction on child endangerment as an alternative to first degree murder. The instruction was predicated on the theory placing the infant in the crib, while consciously aware he might attempt to climb out and fall, was child endangerment. The State objected, arguing the instruction was inappropriate where the elements of first degree murder and child endangerment are not similar. The trial court refused the instruction, finding child endangerment was not a lesser-included offense of murder as it required extra elements not also contained in first degree murder. Thereafter, the jury found defendant guilty of first degree murder.

¶ 23 On September 7, 2011, defendant filed a posttrial motion arguing, *inter alia*, the trial court erred in refusing to instruct the jury on the lesser-included offense of child endangerment. The court denied defendant's motion.

¶ 24 On January 31, 2012, the trial court sentenced defendant as stated. That same day, defendant filed a motion to reconsider sentence, which the court denied.

¶ 25 This appeal followed.

¶ 26 II. ANALYSIS

¶ 27 On appeal, defendant argues (1) the trial court erred in refusing to instruct the jury on the offense of child endangerment where child endangerment is a lesser-included offense of first degree murder and (2) defendant is entitled to sentence credit against her fines.

¶ 28 A. Lesser-Included-Offense Instruction

¶ 29 Defendant argues the trial court erred in refusing to instruct the jury on the lesser-included offense of child endangerment. Specifically, she contends the language in the charging instrument "roughly parallels" the language in the child endangerment statute. Defendant maintains the only difference between child endangerment which results in death and first degree murder as charged is defendant's degree of culpability. We disagree.

¶ 30 "A defendant generally may not be convicted of an offense for which the defendant has not been charged. However, in an appropriate case, the defendant is entitled to have the jury instructed on less serious offenses that are included in the charged offense." *People v. Ceja*, 204 Ill. 2d 332, 359, 789 N.E.2d 1228, 1246 (2003). In Illinois, courts determine whether an offense is a lesser-included offense using the two-tiered charging-instrument approach. *Ceja*, 204 Ill. 2d at 360, 789 N.E.2d at 1246. The first tier requires the reviewing court to determine whether the

charging instrument describes the lesser offense. *Ceja*, 204 Ill. 2d at 360, 789 N.E.2d at 1246. The instrument charging the greater offense must, at a minimum, contain a broad foundation or main outline of the lesser offense. *People v. Miller*, 238 Ill. 2d 161, 166, 938 N.E.2d 498, 502 (2010) (citing *People v. Kolton*, 219 Ill. 2d 353, 361, 848 N.E.2d 950, 954-55 (2006)). "The indictment need not explicitly state all of the elements of the lesser offense as long as any missing element can be reasonably inferred from the indictment allegations." *Miller*, 238 Ill. 2d at 166-67, 938 N.E.2d at 502. Thus, "an offense is a lesser-included offense under the charging instrument approach if every element of the uncharged offense is contained in the indictment or if any element not listed in the indictment can be reasonably inferred from the indictment allegations." *People v. Kennebrew*, 2013 IL 113998, ¶¶ 30, 32-51, 990 N.E.2d 197.

¶ 31 If the charging instrument describes the lesser offense, the court moves to the second tier and determines whether the evidence adduced at trial rationally supports the conviction on the lesser-included offense. *Ceja*, 204 Ill. 2d at 360, 789 N.E.2d at 1247. Under the second tier analysis "[the] court must examine the evidence presented and determine whether the evidence would permit a jury to rationally find the defendant guilty of the lesser-included offense, but acquit the defendant of the greater offense." *Ceja*, 204 Ill. 2d at 360, 789 N.E.2d at 1247. While the question of whether a defendant has met the evidentiary minimum standard entitling him to a lesser-included-offense instruction is a question of law (*People v. Tijerina*, 381 Ill. App. 3d 1024, 1030, 886 N.E.2d 1090, 1097 (2008)), a trial court's refusal to issue a specific jury instruction is reviewed for abuse of discretion. *People v. Couch*, 387 Ill. App. 3d 437, 444, 899 N.E.2d 618, 624 (2008).

¶ 32 In this case, the State charged defendant by information with three counts of first

degree murder in that she "inflicted blunt force trauma to the head of [Joseph], age 18 months, with the intent to kill or do great bodily harm to [Joseph], thereby causing his death" (count I); "inflicted blunt force trauma to the head of [Joseph], age 18 months, knowing such act would cause the death of [Joseph], thereby causing his death" (count II); and "inflicted blunt force trauma to the head of [Joseph], age 18 months, knowing said act created the strong probability of death or great bodily harm to [Joseph], thereby causing his death" (count III).

¶ 33 The child endangerment statute provides:

> "It is unlawful for any person to willfully cause or permit the life or health of a child under the age of 18 to be endangered or to willfully cause or permit a child to be placed in circumstances that endanger the child's life or health ***." 720 ILCS 5/12-21.6(a) (West 2008).

¶ 34 Defendant's tendered instructions stated, in relevant part, the following:

> "A person commits the offense of endangering the life or health of a child when he has the care or custody of a child and wilfully [*sic*] causes or permits the life of that child to be placed in such a situation that the child's life or health may be endangered." Illinois Pattern Jury Instructions, Criminal, No. 11.29, modified (4th ed. 2000).
>
> "To sustain the charge of endangering the life or health of a child, the State must prove the following propositions:

First Proposition: That the defendant had the care or custody of [Joseph]; and

Second Proposition: That the defendant wilfully [*sic*] caused or permitted the life of [Joseph] to be endangered or wilfully [*sic*] caused or permitted [Joseph] to be placed in such a situation that endangered the life or health of [Joseph]." Illinois Pattern Jury Instructions, Criminal, No. 11.30, modified (4th ed. 2000).

¶ 35 Defendant argues she placed Joseph in danger when she put him in the crib knowing he could climb out and fall. Defendant also argues she did not call 9-1-1 in a timely manner, which placed Joseph's health in danger. However, defendant was not charged with endangering Joseph's life or failing to help Joseph. Instead, defendant was charged with causing Joseph's death by inflicting blunt force trauma to his head. We cannot say the charges, even broadly construed, describe the offense of child endangerment. Moreover, under defendant's theory of the case, the jury would have to find defendant willfully placed Joseph in danger by either placing him in a crib, knowing he could climb out and fall, or by failing to promptly call 9-1-1 after discovering he fell. However, neither of these elements was contained in the greater offense of first degree murder as charged. Further, those elements cannot be reasonably inferred from the allegations contained in the charging instrument. Defendant's request for a lesser-included-offense instruction was therefore based on separate and distinct conduct from which she was charged. Under these circumstances, a child endangerment instruction would have allowed the jury to find defendant guilty of a separate offense and not a lesser included one. Accordingly, defendant was not entitled to a jury instruction on child endangerment as a lesser-included

offense of first degree murder.

¶ 36 Because we have found child endangerment is a separate offense from first degree murder as charged in this case, it is unnecessary to engage in the second-tier analysis of whether the evidence presented would permit a rational jury to find defendant guilty of child endangerment but acquit her of first degree murder. See *Kolton*, 219 Ill. 2d at 361, 848 N.E.2d at 955 ("second step–examining the evidence adduced at trial–should not be undertaken unless and until it is first decided that the uncharged offense is a lesser-included offense of a charged crime"). Assuming, *arguendo*, the test under the first tier was met, defendant's claim would still fail as the evidence presented was insufficient to permit a rational jury to find defendant guilty of child endangerment but acquit her of first degree murder. The evidence which defendant argues would support a finding she was guilty of child endangerment is not the same evidence upon which the jury would base its determination she committed first degree murder by inflicting blunt force trauma to Joseph's head. The trial court did not err in denying defendant's request for an instruction on child endangerment.

¶ 37 B. Fines and Fees

¶ 38 Defendant argues she is entitled to apply her $5-per-day monetary credit against the $5 drug-court and $5 child-advocacy-center fines imposed. The State, however, argues this court should vacate all of defendant's fines and fees and remand the matter for determination of whether, and in what amount, any fines or fees should be imposed. Defendant does not object to the State's position.

¶ 39 The State concedes the trial court did not impose any fines. Indeed, no mention was made at sentencing by the trial court or the parties regarding costs, fines, or fees. The

January 31, 2012, docket entry shows the following notation: "Cost Only Fee $285." On appeal, defendant supplemented the record with a computer printout, dated December 31, 2012, showing the following four assessments, which the State concedes are fines: a $5 child-advocacy-center fine; a $5 drug-court fine; a $15 "ISP OP ASSISTANCE" fine; and a $25 Violent Crime Victims Assistance Act (VCVA) fine. Fines may only be calculated and imposed by the trial court. See *People v. Isaacson*, 409 Ill. App. 3d 1079, 1085, 950 N.E.2d 1183, 1189 (2011). The circuit clerk has no such authority. See *People v. Scott*, 152 Ill. App. 3d 868, 873, 505 N.E.2d 42, 46 (1987) (as imposition of a fine is a judicial act, the circuit clerk has no authority to levy fines). These assessments were not imposed by the trial court. We therefore vacate them as they were improperly imposed by the circuit clerk.

¶ 40 The State next raises the issue of whether, and in what amount, these fines can be imposed on remand. The State argues the $15 "ISP OP ASSISTANCE" fine was improperly imposed because the statutory provision creating it did not exist at the time of the offense in this case. As a result, its imposition violates the general prohibition against *ex post facto* penalties. We agree. "The imposition of a fine that does not become effective until after a defendant commits an offense violates *ex post facto* principles." *People v. Carreon*, 2011 IL App (2d) 100391, ¶ 12, 960 N.E.2d 665 (citing *People v. Dalton*, 406 Ill. App. 3d 158, 164, 941 N.E.2d 428, 435 (2010)). Here, the offense was committed on December 9, 2008. However, the effective date of the statute creating the state police operations assistance fund and providing for the corresponding fine was July 13, 2010. 705 ILCS 105/27.3a(1), (1.5), (5) (West 2010); Pub. Act 96-1029, §6 (eff. July 13, 2010) (creating state police operations assistance fund and fine). This fine should not be imposed on remand.

¶ 41 The State also questions the trial court's ability to impose the drug-court and child-advocacy-center assessments on remand because it found no Sangamon County ordinance or resolution authorizing those fines. See, *e.g.*, *People v. Blalock*, 2012 IL App (4th) 110041, ¶ 21, 976 N.E.2d 643 (McLean County ordinance providing for a $10 drug-court fee and a $15 children's-advocacy-center fee). Section 5-1101 of the Counties Code grants counties the authority to enact by ordinance (1) a $10 "fee" to be paid by the defendant on a judgment of guilty to be used to finance the county mental health court, county drug court, or both (55 ILCS 5/5-1101(d-5) (West 2008)) and (2) a mandatory children's-advocacy-center "fee" of between $5 and $30 to be paid by the defendant on a judgment of guilty (55 ILCS 5/5-1101(f-5) (West 2008)). The State requests remand for a determination of whether the Sangamon County Board has enacted an ordinance or resolution providing for either charge. Defendant does not object. Accordingly, we remand for a determination of whether these fines are authorized and, if so, their assessment.

¶ 42 We note, if the drug-court assessment and child-advocacy-center fines are assessed on remand, defendant should be allowed to use her $5-per-day credit against those charges. Pursuant to section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2010)), defendant is entitled to a statutory $5-per-day credit for time spent in presentence custody toward certain creditable fines. See *People v. Vlahon*, 2012 IL App (4th) 110229, ¶ 33, 977 N.E.2d 327 ("Such credit may only be applied to offset eligible fines, not fees."). Here, the record shows the trial court awarded defendant presentencing credit for 1,162 days. Thus, defendant is entitled to $5,810 of available credit toward creditable fines. The State concedes the drug-court and child-advocacy-center assessments are fines. We agree. See *People v. Paige*, 378

Ill. App. 3d 95, 102, 880 N.E.2d 675, 682 (2007) ($5 drug-court assessment is a fine because it was not sought to reimburse the State for prosecution costs); *People v. Jones*, 397 Ill. App. 3d 651, 660, 921 N.E.2d 768, 775 (2009) (children's-advocacy-center charge is a fine rather than a fee).

¶ 43 Finally, if on remand the trial court declines to impose both the drug-court and child-advocacy-center fines, it should assess defendant a $25 VCVA fine because it did not impose any other fines. See 725 ILCS 240/10(c)(1) (West 2010) ($25 VCVA fine is proper where no other fine is imposed). If, however, the court imposes either or both fines, the court should then impose a $4 VCVA fine. See 725 ILCS 240/10(b) (West 2010) (the VCVA fine is $4 for each $40 or fraction thereof of fine imposed); *People v. Jake*, 2011 IL App (4th) 090779, ¶¶ 32, 34, 960 N.E.2d 45 (modifying $25 VCVA fine to $4 where another fine was imposed). We note the circuit clerk has no authority to impose a VCVA fine. *People v. Alghadi*, 2011 IL App (4th) 100012, ¶ 21, 960 N.E.2d 612. We further note the VCVA assessment is not subject to offset by defendant's $5-per-day credit. 725 ILCS 240/10(b) (West 2010); *People v. Brown*, 388 Ill. App. 3d 104, 115, 904 N.E.2d 139, 149 (2009).

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we affirm the trial court's judgment as modified. We vacate the $15 "ISP OP ASSISTANCE" fine, $5 drug-court fine, $5 child-advocacy-center fine, and $25 VCVA fine. We remand for (1) the court to determine whether the drug-court and child-advocacy-center assessments are authorized by Sangamon County ordinance or resolution and, if authorized, their imposition by the court; (2) the court's imposition of the appropriate VCVA fine; and (3) issuance of an amended sentencing judgment so reflecting. Because the

State successfully defended a portion of the criminal judgment, we grant the State its $50 statutory assessment against defendant as costs of this appeal. See *People v. Smith*, 133 Ill. App. 3d 613, 620, 479 N.E.2d 328, 333 (1985) (citing *People v. Nicholls*, 71 Ill. 2d 166, 178, 374 N.E.2d 194, 199 (1978)).

¶ 46 Affirmed as modified; cause remanded with directions.