

No. 1-11-3109

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IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court
Plaintiff-Appellee,)	of Cook County
)	
v.)	No. 10 CR 19685
)	
LAWRENCE CRANDLE,)	Honorable
)	Thomas V. Gainer, Jr.,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Presiding Justice Gordon and Justice McBride concurred in the judgment.

ORDER

¶1 *Held:* Circuit court's denial of defendant's request for a jury instruction on a lesser included offense is affirmed. However, in light of defendant's posttrial ineffective assistance of counsel claims, this matter is remanded for an inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984). The fees and fines order is modified in accordance with this order.

¶2 This appeal arises from orders of the circuit court entering judgment on a jury verdict finding defendant guilty of two counts of aggravated battery and denying defendant's posttrial motion for a new trial. Defendant argues on appeal that the court

erred in (1) refusing to instruct the jury on the offense of resisting a peace officer, (2) failing to inquire concerning defendant's *pro se* claims of ineffective assistance of counsel in violation of *People v. Krankel*, 102 Ill. 2d 181 (1984), and (3) imposing a \$200 DNA fee. We affirm in part and remand in part. Fines and fees order corrected.

¶3

BACKGROUND

¶4 On October 22, 2010, defendant was serving a mandatory supervised release. On that date, Illinois Department of Corrections parole agents Willie Fox (Fox) and Joseph Pate (Pate) went to defendant's residence for a parole visit. As a result of the visit, defendant was arrested and charged with two counts of aggravated battery of a peace officer (720 ILCS 5/12-4(b)(18) (West 2010)).¹

¶5 At trial, Fox testified that he and Pate went to defendant's home on October 22, 2010, to conduct a routine "face-to-face" parole visit. Fox had arranged the visit with defendant by phone the day before, letting defendant know that defendant had been assigned to Fox's parole supervision unit. The visit was "to do a compliance check, *** to verify no use of narcotics [through a urine test], to do a search of the residence and that was it." Fox stated that, when he and Pate arrived at defendant's home, they knocked on the door, identified themselves as parole agents to the woman who answered the door and asked for defendant. The woman called defendant and opened the door to allow the agents to enter the residence. Fox testified that, when he arrived at defendant's residence that day, it was not his intention to arrest defendant "for anything."

¶6 Fox testified that, as he was waiting, he saw defendant coming toward him "down

¹ The State had also charged defendant with resisting or obstructing a peace officer but *nolle prossed* those charges prior to trial.

the hallway"; "it was like [defendant] stormed at me in an aggressive manner." Fox stated he identified himself to defendant as a parole agent but defendant "continued to walk, and he walked right up on me. That's when I had to put my hand out and tell him to stop." Fox testified that he told defendant to stop "because of his demeanor. And it was a threatening demeanor. I didn't know what was going on there so I told him to stop at that time to get some type of control." Fox stated that defendant "became very irate at that time saying what the f*** is this and began to use other profanities. And at that time that's when I instructed him you need to turn around and cuff up."

¶7 Fox testified that he felt his and his partner's safety was threatened and he wanted to cuff defendant for the agents' safety. He stated that he was not planning on arresting defendant at that moment and his purpose in detaining defendant in handcuffs was for Fox's safety. Fox testified that defendant did not turn around as directed and, instead, pulled his hand back and pushed back from Fox with his hands on Fox's chest. Defendant then "swung" at Fox and hit Fox in the chest with his closed fist, knocking off Fox's lapel microphone.

¶8 Fox testified that he and Pate then approached defendant to detain him but defendant was "swinging, kicking, continued to flail his arms, punching [Fox and Pate] about the body as [they] continued to try to detain him." Fox stated that he and Pate "were telling [defendant] to calm down, stop resisting; but he continued." Fox testified that defendant "would not cuff up [and] *** just continued to fight, continued to lock up and wouldn't allow us to cuff him" and said "continued profanity." Fox stated he and Pate had defendant "against the wall" but defendant continued to resist them and the three of them "eventually fell to the floor because of his resistance." Pate was finally

able to call another agent for assistance.

¶9 Fox told the jury that he and Pate then got defendant off the floor but defendant was still resisting by not moving his feet, "locking up and just not complying." Defendant "continued to curse and just cussed." Fox stated that, despite defendant's resistance and refusal to walk on his own accord, Fox, Pate and a third agent were able to take him outside where, with the assistance of responding Chicago police officers, they were able to put defendant into a squad car. At that point, Fox noticed that he was bleeding from the area of his hand where he had previously felt a pinch, like a "bite", when he had first reached for defendant to cuff him. Fox testified that he had other abrasions to both his hands and received treatment at a hospital for abrasions, human bite mark and strained left hip.

¶10 Pate's testimony was that he was next to Fox when Fox knocked on defendant's door, identified himself as a parole agent, asked for defendant before he entered the apartment and was let into the apartment by the woman. Pate denied that the agents "barged past" the woman who opened the door or that Fox used profanity to the woman.

¶11 Pate testified that he saw defendant walking toward Fox from the back of the apartment "very fast and aggressive, like almost in a threatening manner." Pate stated Fox identified himself again, put his hand out and told defendant to stop but defendant became verbally abusive, did not stop and was "so irate" that Fox told him to turn around and be cuffed. Pate stated that he was afraid for his safety.

Pate testified defendant pushed off Fox's chest, swung at Fox more than once and knocked his radio microphone off; Fox tried to "grab" defendant and Pate was trying to

help Fox. He stated defendant "is a big guy" and the agents were having "a real hard time controlling him" and could not "get a hold of him," that defendant "never complied" and "never calmed down."

¶12 Pate testified that he and Fox were "struggling all the way down this hallway" and defendant was flailing and kicking. Pate stated that defendant struck him with his hands and arms in the chest and that the struggle between defendant and the agents "just kept going. He asserted that defendant kept trying to get away from the agents, "pull away from" them and "swing his arms around" until the agents "were finally able to get him pinned up against the wall where we could get handcuffs on him." At some point, Pate was able to call for backup. Pate stated that, as he and Fox were trying to get defendant back to the front of the hallway, defendant was still resisting and "that's when we all there hit the floor because we got kind of tangled up." When the backup agent arrived, he and Fox were still trying to get defendant out of the hall but defendant had never calmed down. It was "extremely difficult" to get defendant out of the building because he was still resisting but with assistance of the other agent and responding police officers they were able to place defendant in Pate's squad car. Pate testified he saw Fox's hand bleeding and cuts and scratches on Fox's hands and arms. He stated that, at the time he and Fox went to meet with defendant, defendant was not in compliance with prison review board orders for counseling, drug treatment, and anger management.

¶13 Chicago Police Officer Anderson testified that he arrived at defendant's residence in response to a call. As he approached, he saw Fox and Pate pulling defendant to a car. Defendant was pulling away from the agents, acting aggressively, directing

profanities at the agents and occasionally being lifted off the ground. The agents were telling defendant to stop resisting and get into the car but he continued to resist. Officer Anderson then assisted the agents in placing defendant in the car.

¶14 Laressa Adams testified for the defense. She stated that she was living with her mother Cheryl Shelton (Shelton) at the time of the incident and defendant, her mother's boyfriend, lived with them. Adams testified that she was at home when the parole agents knocked at the door. She testified that she called to defendant to tell him his "people" were at the door and opened the door a crack to let the agents know defendant was on his way. Adams testified that one of the agents said "I'm coming in," pushed the door open and stepped inside. Defendant was in a back bedroom. Adams testified that, when the agents saw him coming out of the room, they approached him and one of the agents told him to "back the f*** up." The agent told defendant "you know what f***ing time it is. Turn the f*** around."

¶15 Adams testified that she saw defendant turn around with his back to the officers and one of the officers "grab" and bend one of defendant's arms. The agents "began to knock [defendant] down to the floor." She stated that she did not see much of the struggle because she was in the front room with her child. She did see the agents "knock [defendant] face first down to the floor real hard," with a "big boom" sound as defendant's head hit the kitchen floor. During the struggle, when the agent told defendant to "turn the f*** around," Adams heard defendant says "what did I do." She did not hear him say much or hear him cursing.

¶16 Adams testified that, while defendant was still on the ground, the agents lifted defendant by his arms and told him "you are going to walk down or we will beat you

down." The agents then lifted defendant up by his arms and defendant walked out of the apartment on his own, without struggling. Adams stated that the agents came looking for a fight, attacked defendant and swore "up a storm." She testified defendant was not struggling with the agents, did nothing to cause the attack, did not swear and "pretty much was quiet the whole time."

¶17 Shelton testified that defendant was in the back bedroom with her when the agents arrived at her home. When Adams called to defendant that the agents had arrived, Shelton stood up and saw the agents in the hallway. Defendant walked past her into the hallway, walking toward Fox and stopped four feet from Fox. Shelton testified that the agents did not identify themselves to her or defendant. Instead, when defendant stopped, Fox told defendant to "back the [f***] up" and "turn the [f***] around." Shelton saw defendant take a few steps back and start to turn his back toward Fox. Fox reached out and "grabbed" defendant's arm. Shelton testified that defendant "was saying, oh, what did I do?" and Fox responded "you know what the [f***] you did." Fox had defendant's right arm bent up and defendant was "hollering and gesturing saying "what did I do?' " Pate then moved to defendant's left side and "grabbed him" from there.

¶18 Shelton testified that defendant could not move because each officer was holding one of his arms. At some point, she did not know how, defendant "landed on" the floor facedown with Fox and Pate on top of him. Defendant hit his head on the wall. Fox got up and put a knee in defendant's back. Shelton testified that she backed into her bedroom because she was astonished and afraid. She heard Fox saying something but could not hear the words. One of the officers called for backup. She then saw the

agents pull defendant off the floor, turn him around and walk down the hall.

¶19 Shelton testified that defendant did not reach out and bite anyone, kick anyone or strike anyone. She stated he could not do so "because he was flat down" on the floor and, after he had turned his back toward the agents, he was "never back face to face" with the agents again. Shelton testified that defendant did everything the agents asked him to do, listened to what they told him, never swore at the agents and never got physical with them.

¶20 At the close of evidence, defendant requested jury instructions for the offense of resisting or obstructing a peace officer (720 ILCS 5/31-1(a) (West 2010)), arguing that it was a lesser included offense of aggravated battery. The trial court refused to give the instructions, finding that there was "no way" the jury could find defendant resisted the arrest.²

¶21 The jury found defendant guilty of two counts of aggravated battery.

¶22 On August 30, 2011, the court first held a hearing on defense counsel's motion for a new trial. It denied the motion. Defense counsel then informed the court that, during his conversations with defendant, defendant had raised allegations of, arguably, ineffective assistance of counsel. He stated that defendant believed he should have been allowed to take the stand to testify that he had no bottom teeth, thus rebutting Fox's testimony that defendant bit him. The court stated the motion for a new trial was denied, noting that defendant (a) had told the court that he did not want to testify and (b) was not entitled to dual representation.

¶23 The court then conducted the sentencing hearing. It sentenced defendant to two

² The court also denied defendant's request for jury instructions on the lesser included offense of battery. Defendant does not challenge this decision on appeal.

concurrent terms of 12 years imprisonment and set September 22nd, 2011, for a hearing on defendant's motion to reconsider sentence.

¶24 At the end of the sentencing hearing, defendant asked the court whether he could file a supplemental posttrial motion. Defense counsel stated that he had looked at the motion, titled "supplemental motion for a new trial," and confirmed that it contained claims of ineffective assistance of counsel. The copy of defendant's *pro se* supplemental posttrial motion included in the record shows that defendant claimed he was prejudiced and denied a fair trial by defense counsel's inadequate representation. He asserted that defense counsel was ineffective because counsel failed to, *inter alia*, conduct a reasonable investigation of all plausible lines of defense, interview all necessary witnesses, meet with defendant more than once prior to trial, inform defendant of the possible sentence, explain mitigation factors, go to the crime scene to take photographs and interview witnesses, present pretrial motions to dismiss, object to the photo array or obtain expert witnesses. The court stated that it would look at this motion and review it and deal with it on the next court date.

¶25 At the next court date, on September 22, 2011, the court acknowledged that it was to consider defendant's supplemental posttrial motion that day but, because it did not have the court file, it continued the case to October 4, 2011. On that date, the court denied the motion to reconsider sentence. It made no mention of defendant's supplemental motion for a new trial. Defendant timely appealed.

¶26

ANALYSIS

¶27 Defendant raises three arguments on appeal: (1) the trial court's refusal to instruct the jury on the lesser included offense of resisting arrest was improper and

deprived defendant of a fair trial, (2) the trial court erred in failing to conduct an inquiry of defendant's claims of ineffective assistance of counsel in violation of *Krankel* and (3) he is entitled to a \$200 reduction in the fees imposed by the trial court for DNA analysis, because his DNA was already on file with the Illinois State Police.

¶28 (1) Jury Instruction

¶29 Defendant argues that he was denied a fair trial by the court's refusal to instruct the jury on the offense of resisting arrest, which he claims is a lesser included offense of aggravated battery. The State charged that defendant committed aggravated battery when he, knowing that Fox and Pate were peace officers, (1) intentionally or knowingly caused bodily harm to Fox by biting and striking him about the body and (2) intentionally or knowingly made physical contact of an insulting or provoking nature to Pate by striking him about the body. "A person commits battery if he intentionally or 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 2010). "In committing a battery, a person commits aggravated battery if he *** knows the individual harmed to be an officer or employee of the State of Illinois, a unit of local government *** engaged in the performance of his or her authorized duties as such officer or employee." 720 ILCS 5/12-4(b)(18) (West 2010).

¶30 Defendant requested that the jury be instructed on the lesser included offense of resisting arrest. A person commits the offense of resisting or obstructing a peace officer if he " knowingly resists or obstructs the performance by one known to the person to be a peace officer *** of any authorized act within his official capacity." 720 ILCS 5/31-1(a) (West 2010). The court denied defendant's request for an instruction on resisting a

peace officer.

¶31 We review a trial court's decision on whether to allow a jury instruction under an abuse of discretion standard. *People v. Mohr*, 228 Ill.2d 53, 65–66 (2008). "Both the State and the defendant are entitled to appropriate instructions which present their theories of the case to the jury when the evidence supports such theories." *People v. Pederson*, 195 Ill. App. 3d 121,126 (1990). "Very slight evidence upon a given theory of a case will justify the giving of an instruction." *Pederson*, 195 Ill. App. 3d at 127. "Once a lesser included offense is identified, however, it does not automatically follow that the jury must be instructed on the lesser offense." *People v. Hamilton*, 179 Ill. 2d 319, 324 (1997). "A defendant is entitled to a lesser included offense instruction only if an examination of the evidence reveals that it would permit a jury to rationally find the defendant guilty of the lesser offense yet acquit the defendant of the greater offense." *Hamilton*, 179 Ill. 2d at 324 (citing *People v. Jones*, 175 Ill. 2d 126, 135 (1997)). Here, defendant would be entitled to a lesser included offense instruction on resisting a peace officer only if the evidence presented at trial could rationally support a finding that defendant was guilty of resisting a peace officer but innocent of aggravated battery. *Hamilton*, 179 Ill. 2d at 327-28.

¶32 Based on the evidence presented at trial, no rational jury could find defendant guilty of the lesser included offense of resisting arrest but not guilty of the greater offense of aggravated battery. Adams and Shelton testified that the agents were the aggressors throughout the encounter and defendant was docile and compliant throughout. Fox and Pate testified that the defendant was aggressive from the moment he saw the agents and resisted Fox's attempts to handcuff him by pushing, biting and

kicking. Fox also testified that the handcuffs were intended to get some control over the situation for the agents' safety and not to arrest defendant.

¶33 As the trial court astutely as well as colorfully stated, the State's testimonial evidence presented through Fox and Pate was that defendant was the "provocateur" of the incident while the defense's testimonial evidence presented through Adams and Shelton was that "defendant did absolutely nothing" and was a victim, "set upon by two apparently out-of-control parole agents who came there for the explicit purpose of wuppin' him." If the jury believed Adams and Shelton's testimony, then defendant was not guilty of anything, including resisting arrest. If it believed Fox and Pate's testimony, then defendant was the aggressor and committed aggravated battery on the peace officers. The jury was presented with an "all or nothing" situation in which it could find either that (1) defendant was a passive agent, did not resist or attack the parole agents in any way and was innocent of any wrongdoing or (2) defendant was the aggressor and did attack the agents. The evidence presented would not allow the jury to find that defendant had committed the offense of resisting arrest without also finding that he had battered the officers.

¶34 As stated recently in *People v. Rebecca*, 2012 IL App (2d) 091259, the trial court does not err in refusing a jury instruction on a lesser included offense "where there was no evidence, even slight evidence, to support a jury rationally finding defendant guilty only of the lesser offense." *Rebecca*, 2012 IL App (2d) 091259, ¶ 61. In *Rebecca*, the appellate court held that the trial court properly refused an instruction on the lesser included offense of aggravated criminal sexual abuse where the evidence clearly showed that the defendant had committed the greater offense of criminal sexual

assault. *Rebecca*, 2012 IL App (2d) 091259, ¶ 61.

¶35 Similarly, in *People v. Allgood*, 242 Ill. App. 3d 1082 (1993), the court found the trial court properly refused an instruction on the lesser included offense of criminal sexual assault where the evidence at trial showed defendant committed aggravated criminal sexual assault. The evidence "rationally precluded the possibility of finding defendant guilty of criminal sexual assault rather than [the greater offense of] aggravated criminal sexual assault." *Allgood*, 242 Ill. App. 3d at 1089. The court found the evidence showed the defendant was either guilty of the greater offense of aggravated criminal sexual assault or not guilty at all. *Allgood*, 242 Ill. App. 3d at 1089. Because the evidence presented here would not allow the jury to find that defendant had committed the offense of resisting arrest without also finding that he had battered the officers, the court did not err in refusing defendant's tendered instruction on the lesser included offense of resisting or obstructing a peace officer.

¶36 As he did below, defendant relies on *People v. Pederson*, 195 Ill. App. 3d 121 (1990), to support his argument. In *Pederson*, as here, the defendant was charged with aggravated battery and the trial court refused his request for a jury instruction on the offense of resisting a peace officer. The appellate court reversed, finding that the court erred in denying the instruction.

¶37 In *Pederson*, the State's witnesses testified that the defendant verbally inserted himself into a conversation two police officers were having with the defendant's wife regarding a traffic ticket. They claimed that the defendant began to yell at one officer and call him names. Told to desist, the defendant initially stopped his interruptions but then started yelling again and began to approach the officer. The second officer then

told the defendant that he was under arrest and started to turn him around. The defendant began to argue, spun around and pushed the officer away from him. He and the officer fell to the ground, where defendant kicked and bit, and refused to be handcuffed. He had to be restrained by both officers and was dragged to a squad car.

¶38 Defendant's wife testified that the defendant's manner was calm throughout his discussion with the police officers. She stated that an officer told him to stay out of the conversation and, when the defendant continued to talk, one of the officers told him that unless he was quiet, he would be placed under arrest. The defendant continued to discuss the speeding ticket, refused the officer's admonition to leave and was placed under arrest. Told to give the officer his hands, the defendant told him to "get them," at which point the officer threw him to the ground.

¶39 The defendant was charged with aggravated battery, namely that he, without legal justification, caused bodily harm to one of the officers in that he kned the officer in the groin and bit him in the finger knowing that the officer was a peace officer engaged in the execution of his official duties. The court refused to give a jury instruction on resisting arrest and the jury found defendant guilty of aggravated battery. The *Pederson* court found that, while the State's charge did not state in precise language that the defendant knowingly committed an act that would resist or obstruct the police officer [*i.e.*, committed resisting arrest], "it is implicit in the acts defendant is accused of, namely, knowingly kneeling and biting [the officer], that [the officer] would be 'obstructed' from carrying out his duties as a police officer." *Pederson*, 195 Ill. App. 3d at 129.

¶40 Defendant asserts that, as in *Pederson*, the jury could have concluded, based on

the evidence, that he simply resisted the agents' attempts to take him into custody rather than committed aggravated battery. He argues that, taking Adams and Shelton's testimony that he did nothing to justify the parole agent's decision to handcuff him in combination with the agents' testimony that no physical contact occurred until after Fox told defendant that he was going to handcuff him, the evidence supported a finding that he resisted arrest. We disagree.

¶41 First, in *Pederson*, the crucial question was whether resisting arrest was a lesser included offense of aggravated battery. The parties here agree that resisting arrest is a lesser included offense of aggravated battery and that question is, therefore, not at issue in this appeal.

¶42 Second, in *Pederson*, the State's evidence supported a determination that the defendant committed aggravated battery as well as resisting arrest. The defendant's wife's testimony, however, supported a finding that defendant did not commit aggravated battery but merely resisted the police. She claimed that he did not submit to arrest, telling the officers to "get them" when ordered to present his hands. The defendant's theory that he only committed resisting arrest was supported by the defense evidence.

¶43 Here, the State's evidence similarly showed that defendant committed both aggravated battery and resisting arrest. However, in contrast to *Pederson*, the defense evidence only supported a finding that defendant committed no crime. Therefore, unlike in *Pederson*, there was no evidence to support a jury finding that the defendant was guilty of resisting arrest but not guilty of aggravated battery. The court did not err in refusing to give the jury instructions for resisting or obstructing a peace officer.

¶44

(2) *Krankel* Hearing

¶45 Defendant next argues the trial court erred in failing to make any inquiry into his posttrial claims of ineffective assistance of counsel pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984). In *Krankel*, our supreme court found that the failure to appoint new counsel to argue the defendant's *pro se* posttrial motion alleging ineffective assistance of counsel was error and remanded the case for a new hearing on the ineffective assistance of counsel claim. *Krankel*, 102 Ill. 2d at 189. Subsequent cases interpreting *Krankel* compel a fairly narrow reading of the case. In *People v. Nitz*, 143 Ill. 2d 82 (1991), our supreme court clarified that there is no *per se* rule that new counsel must be appointed every time a defendant presents a *pro se* motion for a new trial alleging ineffective assistance of counsel. *Nitz*, 143 Ill. 2d at 134. Rather, the trial court should first examine the factual matters underlying the defendant's claim to determine whether new counsel should be appointed. *Nitz*, 143 Ill. 2d at 134.

¶46 The court should examine the factual basis of the defendant's claim and, if it determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion. *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). Although the court must conduct an adequate inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel, it can base its evaluation of the allegations on its knowledge of defense counsel's performance at trial and the insufficiency of the defendant's allegations on their face. *Moore*, 207 Ill. 2d at 78-79.

¶47 At the conclusion of the hearing on defense counsel's posttrial motion for a new trial, defense counsel brought to the court's attention defendant's initial ineffective

assistance of counsel claim, in which defendant asserted that he should have been allowed to take the stand to testify that he could not have bitten Fox because he has no lower teeth and he was prejudiced as a result. The court acknowledged the claim, noting that, because defendant was not entitled to dual representation, "the only way" the claim was admissible was to term it as an ineffective assistance of counsel claim. The court confirmed that defendant chose not to testify. It recalled that it had spoken to defendant personally about his right to testify and defendant had told the court he had freely and voluntarily given up his right to testify. The court also examined the photograph of the bite mark on Fox's hand. It determined that "anybody that is looking at this picture would realize that that kind of bite mark could have been made by simply a person with a set of front teeth and no bottom teeth, just a gum." The court denied the oral motion.

¶48 Then, at the conclusion of the sentencing hearing, defendant brought to the court's attention his *pro se* motion for a new trial. Defense counsel informed the court that the *pro se* supplemental posttrial motion asserted ineffective assistance of counsel claims. Defendant filed the motion the same day. The copy of the motion in the record shows defendant raised numerous ineffective assistance of counsel claims. The trial court recognized that the motion concerned ineffective assistance of counsel claims and stated that it "[would] review it and *** deal with it on the next court date." On the next court date, the court acknowledged that it was to review the supplemental posttrial motion but continued the case because it did not have the relevant case file. On the final court date, the court denied defense counsel's motion to reconsider sentence but did not mention defendant's *pro se* posttrial motion alleging ineffective assistance of

counsel nor conduct any inquiry in that regard.

¶49 On this record, it appears that the trial court did not examine the factual basis of the ineffective assistance of counsel claims defendant raised in his posttrial motions. Accordingly, as the court did not adequately address defendant's posttrial motions alleging ineffective assistance of counsel, we remand to the trial court for the requisite *Krankel* inquiry with regard to all of defendant's ineffective assistance of counsel claims.

¶50 (3) Fines and Fees

¶51 Defendant argues, and the State concedes, that the court erred in assessing a \$200 DNA analysis fee. Given that defendant is already registered in the DNA database, he is not required to resubmit a DNA sample and cannot be assessed the DNA analysis fee again. *People v. Marshall*, 242 Ill. 2d 285, 303 (2011). Therefore, we vacate the DNA analysis fee.

¶52 Pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), and our authority to correct a mittimus without remand (*People v. Rivera*, 378 Ill. App. 3d 896, 900 (2008)), we order that the fines and fees order be corrected to reflect vacation of the \$200 DNA fee.

¶53 CONCLUSION

¶54 For the reasons stated above, we affirm the court's denial of the jury instruction on resisting arrest, remand for a *Krankel* hearing on defendant's allegations of ineffective assistance of counsel stated in his *pro se* posttrial motion and order that the fines and fees order be corrected.

¶55 Additionally we note, in the event that the *Krankel* hearing results in the appointment of new counsel and, ultimately, the granting of a new trial, the issue of

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appropriate jury instructions, including a lesser included offense instruction, will be determined based on the evidence adduced at this second trial.

¶56 Affirmed in part; remanded in part; fines and fees order corrected.