THIRD DIVISION
February 2, 2017

No. 1-14-3140

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 22303
	)	
ISMAEL VILLEGAS,	)	Honorable
	)	Vincent M. Gaughan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Pucinski concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant was found guilty of aggravated fleeing or attempting to elude a peace officer beyond a reasonable doubt when the evidence at trial established that while driving the wrong way down certain one-way streets, defendant disregarded stop signs. Because the trial court failed to conduct an adequate hearing into defendant's ability to pay the Public Defender reimbursement fee, the cause must be remanded in order that such a hearing may be held.

¶ 2 Following a bench trial, defendant, Ismael Villegas, was found guilty of aggravated fleeing or attempting to elude a peace officer, and sentenced to one year in prison. On appeal,

defendant contends that he was not proven guilty beyond a reasonable doubt because the evidence at trial did not establish that he disobeyed two or more traffic control devices. He further contends that the $250 Public Defender reimbursement fee should be vacated because the trial court failed to hold a hearing on his ability to pay for appointed counsel. Defendant finally contests the imposition of certain fines and fees. We affirm defendant's conviction, correct the fines and fees order, and remand with directions.

¶ 3 At trial, Officer Steven Findysz testified that on November 16, 2013, he and his partner were on patrol when he observed a white vehicle disregard a stop sign. Findysz got behind the vehicle and activated his squad car's lights and sirens. The white vehicle pulled over, so Findysz exited his vehicle and approached it. The white vehicle then drove away. Findysz got back into his vehicle and followed it.

¶ 4 As Findysz pursued the white vehicle, it turned onto a one-way street and proceeded down that street the "wrong way." As the chase continued, the white car went the wrong way down another one-way street. As the vehicle traveled, the "traffic control devices" were green. Although there were stop signs, the driver of the white car, who was "going the wrong way," would not have seen them. Eventually, the vehicle turned into an alley and slowed down. The driver of the vehicle exited and ran away. Findysz identified defendant as the driver of the white vehicle. Defendant ran about 15 feet and tried to hide under a parked car. However, he was taken into custody by other officers. As he chased the white car, Findysz observed that its lights were off and that the vehicle's speed varied from 20 to 40 miles per hour. However, the speed limit

ranged from 15 to 35 miles per hour. During cross-examination, Findysz testified that he could not see who was driving the white vehicle, however, he saw defendant exit the vehicle.

¶ 5 The parties then stipulated that Sergeant Nigro, if called to testify, would testify that after defendant was informed of the *Miranda* rights, defendant stated: "he was chilling with my boys, had some drinks. I was stupid, I ran because I took off my ankle bracelet and didn't want my holiday screwed up."

¶ 6 The State entered into evidence an abstract from the Secretary of State indicating that a check did not reveal a valid driver's license for anyone with defendant's name and date of birth.

¶ 7 The trial court found defendant guilty of aggravated fleeting or attempting to elude a peace officer and sentenced him to one year in prison. The State reminded the trial court that it had filed a motion for county fund reimbursement. The trial court asked defense counsel how many times he appeared in this case, and counsel responded 10. The court then assessed $250 in attorney fees.

¶ 8 On appeal, defendant argues that the State failed to prove him guilty beyond a reasonable doubt of aggravated fleeing or attempting to elude a peace officer. Specifically, defendant contends that the evidence was insufficient to prove the aggravating factor, that he disobeyed two or more traffic control devices after being given a signal by a peace officer, beyond a reasonable doubt. He requests that his conviction be reduced to the lesser-included non-aggravated offense.

¶ 9 The State responds that the testimony at trial established that defendant drove the wrong way down two one-way streets, and, therefore, defendant violated at least two traffic control

devices. In other words, "[t]he traffic violations that defendant committed involve driving down two, one-way streets in the wrong direction."

¶ 10 When reviewing a challenge to the sufficiency of the evidence, the relevant question is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. It is the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts. *People v. Bradford*, 2016 IL 118674, ¶ 12. Accordingly, a reviewing court will not substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses. *Id*. This court reverses a defendant's conviction only where the evidence is so unreasonable, improbable or unsatisfactory that a reasonable doubt of his guilt remains. *Id*.

¶ 11 Fleeing or attempting to elude a peace officer is defined in the Illinois Vehicle Code (625 ILCS 5/1-100 *et seq*. (West 2012)), as:

> "Any driver or operator of a motor vehicle who, having been given a visual or audible signal by a peace officer directing such driver or operator to bring his vehicle to a stop, willfully fails or refuses to obey such direction, increases his speed, extinguishes his lights, or otherwise flees or attempts to elude the officer, is guilty of a Class A misdemeanor. The signal given by the peace officer may be by hand, voice, siren, red or blue light. Provided, the officer giving such signal shall be in police uniform, and, if driving a vehicle, such vehicle shall display illuminated oscillating, rotating or flashing red or blue lights which when

used in conjunction with an audible horn or siren would indicate the vehicle to be an official police vehicle." 625 ILCS 5/11-204(a) (West 2012).

¶ 12 Aggravated fleeing or attempting to elude a peace officer "is committed by any driver *** who flees or attempts to elude a peace officer, after being given a visual or audible signal by a peace officer in the manner prescribed in subsection (a) of section 11-204 of this Code, and such flight or attempt to elude *** involves disobedience of 2 or more official traffic control devices." 625 ILCS 5/11-204.1(a) (West 2012). A stop sign is a traffic control device. See, *e.g.*, *People v. Grandadam*, 2015 IL App (3d) 150111, ¶¶ 26, 27 (affirming conviction for disobeying traffic control device where driver failed to stop at a stop sign).

¶ 13 Here, viewing the evidence at trial in the light most favorable to the State as we must (*Brown*, 2013 IL 114196, ¶ 48), there was sufficient evidence at trial to establish that defendant disobeyed two or more traffic control devices when Officer Findysz testified that the white vehicle drove the wrong way down two different one-way streets, and disregarded the stop signs on those streets.

¶ 14 We are unpersuaded by defendant's reliance upon Officer Findysz's testimony that because the driver of white vehicle was going the wrong way down one-way streets the driver would not have been able to see the stop signs for the conclusion that the State failed to establish that defendant disobeyed two or more traffic control devices. First, defendant's position ignores the fact that the officer recognized the stop signs as such as he pursued the white vehicle. Second, the officer testified that the white vehicle drove the wrong way down two different one-way streets. Based upon this testimony, this court cannot say that no rational trier of fact could

have found that the driver of the white vehicle disregarded two or more traffic control devices. Based upon its verdict, the trial court concluded that because the officer observed and recognized one-way street signs and stop signs as he drove the wrong way down two one-way streets, so too could defendant. See *Bradford*, 2016 IL 118674, ¶ 12 (it is for the trier of fact to draw reasonable inferences from the facts presented at trial). This court reverses a defendant's conviction only when the evidence is so unreasonable or unsatisfactory that a reasonable doubt of his guilty remains (*id.*), this is not one of those cases. Accordingly, we affirm defendant's conviction for aggravated fleeing or attempting to elude a peace officer.

¶ 15 Defendant next contends that the trial court improperly assessed a $250 Public Defender reimbursement fee without holding a hearing to consider his ability to pay the fee, and, consequently, the assessment must be vacated. The State responds the trial court did not sufficiently comply with the hearing requirement of section 113-3.1(a) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/113-3.1(a) (West 2012)), before imposing the assessment, and therefore, the proper remedy is to remand the cause so that a hearing may be conducted in accordance with the statute.

¶ 16 Pursuant to section 113-3.1(a) of the Code, if the trial court appoints counsel for a defendant, the court may then order the defendant "to pay to the Clerk of the Circuit Court a reasonable sum to reimburse either the county or the State for such representation." 725 ILCS 5/113-3.1(a) (West 2012). Section 113-3.1(a) directs the trial court to conduct a hearing "to determine the amount of the payment," and that during this hearing "the court shall consider the

affidavit prepared by the defendant under Section 113-3 of this Code and any other information pertaining to the defendant's financial circumstances which may be submitted by the parties." *Id*.

¶ 17 To satisfy the requirements of section 113-3.1(a), a trial court cannot "simply impose the fee in a perfunctory manner." *People v. Somers*, 2013 IL 114054, ¶ 14. Rather, the court must provide the defendant with notice that the fee is under consideration and must allow the defendant "the opportunity to present evidence regarding his or her ability to pay and any other relevant circumstances." *Id*. Notice is required so that the defendant can prepare evidence regarding his ability to pay the reimbursement costs. *People v. McClendon*, 2015 IL App (3d) 130109, ¶ 11. Notice is proper when the court alerts the defendant in open court before the hearing of (1) its intention to conduct a hearing, (2) the consequences of the hearing and (3) that the defendant will have the opportunity to present evidence and be heard on the issue. *People v. Johnson*, 297 Ill. App. 3d 163, 165 (1998). The hearing is mandatory (*People v. Williams*, 2013 IL App (2d) 120094, ¶ 13), and "must focus on the costs of representation, the defendant's financial circumstances, and the foreseeable ability of the defendant to pay." *Somers*, 2013 IL 114054, ¶ 14. The court also "must consider, among other evidence, the defendant's financial affidavit." *Id.*, citing 725 ILCS 5/113-3.1(a) (West 2010). Whether or not the trial court properly conducted a hearing on the public defender fee presents a question of law, which we review *de novo*. *Williams*, 2013 IL App (2d) 120094, ¶ 13.

¶ 18 In *Somers*, the trial court asked the defendant three questions related to his ability to pay the fee: "whether [defendant] thought he could get a job when he was released from jail, whether he planned on using his future income to pay his fines and costs, and whether there was any

physical reason why he could not work." *Somers*, 2013 IL 114054, ¶¶ 4, 15. Our supreme court found "that the trial court's few questions to defendant about his employment status were insufficient to satisfy the statute." *Id*. ¶ 14.

¶ 19 Here, the record reveals after the State reminded the trial court that it had filed a motion for reimbursement, the trial court asked defense counsel how many times he appeared and counsel answered 10. The trial court then imposed a $250 Public Defender reimbursement fee. The hearing was insufficient because the only question the trial court asked was about defense counsel's services. See *Somers*, 2013 IL 114054, ¶ 14. The court did not ask defendant any questions, there is no mention of defendant's financial affidavit (see 725 ILCS 5/113-3.1(a) (West 2012)), and the trial court did not give defendant notice of the hearing (see *Johnson*, 297 Ill. App. 3d at 165). Therefore, we conclude the trial court failed to comply with the requirements of section 113-3.1(a) of the Code (725 ILCS 5/113-3.1(a) (West 2012)).

¶ 20 Because we have determined the court failed to conduct an adequate hearing pursuant to section 113-3.1(a) of the Code, we must determine the proper remedy. The State argues that because the hearing failed to comply with section 113-3.1(a), the correct remedy is to remand the cause to the trial court for a proper hearing. Defendant responds that the assessment should be vacated outright because the court did not have a hearing on his ability to pay.

¶ 21 A hearing is broadly defined as "a 'judicial session, usu[ally] open to the public, held for the purpose of deciding issues of fact or law, sometimes with witnesses testifying.' " *Williams*, 2013 IL App (2d) 120094, ¶ 20 quoting *Black's Law Dictionary* 788 (9th ed. 2009). Therefore, the trial court did conduct a hearing, albeit an insufficient one, because the brief questioning of

defense counsel occurred during a judicial session open to the public, where the purpose was to decide the issue of the public defender fee. *Id*. ¶ 20 Accordingly, because the trial court held a hearing, we vacate the $250 Public Defender reimbursement fee and remand the cause to the trial court for a hearing that complies with section 113-3.1(a) of the Code. See *Somers*, 2013 IL 114054, ¶¶ 17-20; *Williams*, 2013 IL App (2d) 120094, ¶¶ 24-25.

¶ 22 Defendant finally challenges the imposition of certain fines and fees. Although defendant has forfeited review of this claim because he did not challenge the fines and fees order in a postsentencing motion (see *People v. Enoch*, 122 Ill. 2d 176, 186 (1988)), on appeal a reviewing court may modify the fines and fees order without remanding the case back to the circuit court. See Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999); *People v. Rivera*, 378 Ill. App. 3d 896, 900 (2008). We review the imposition of fines and fees *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 23 Defendant first contends that the $250 DNA analysis fee must be vacated because he was previously convicted of a felony and has already submitted a DNA sample. Based on our supreme court's decision in *People v. Marshall*, 242 Ill. 2d 285, 303 (2011), the State agrees that a DNA analysis fee is authorized only where the defendant is not currently registered in the DNA database. We therefore vacate the $250 DNA assessment.

¶ 24 Defendant next contends, and the State agrees, that pursuant to section 110-14(a) of the Code (725 ILCS 5/110-14(a) (West 2012)), he is entitled to a $1,435 credit based on 287 days of presentence custody.

¶ 25 The parties also agree that defendant was assessed certain fines that may be offset by the presentence custody credit: the $10 mental health fine (55 ILCS 5/5-1101(d-5) (West 2012)); the $5 youth division/peer court fine (55 ILCS 5/5-1101(e) (West 2012)); $5 drug court fine (55 ILCS 5/5-1101(f) (West 2012)); the $30 Children's Advocacy Center fine (55 ILCS 5/5-1101(f-5) (West 2012)); and the $50 Court Systems fee (55 ILCS 5/5-1101(c) (West 2012)). Therefore, pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we order that the $10 mental health fine, the $5 youth division/peer court fine, the $5 drug court fine, the $30 Children's Advocacy Center fine, and the $50 Court Systems fee be offset by defendant's presentence custody credit.

¶ 26 The parties, however, dispute whether the $2 Public Defender Records Automation Fee (55 ILCS 5/3-4012 (West 2012)), and the $2 State's Attorney Records Automation Fee (55 ILCS 5/4-2002.1(c) (West 2012)), are actually fines that should be offset by defendant's presentence custody credit.

¶ 27 In *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30, the Fourth District appellate court determined that the State's Attorney records automation assessment was compensatory in nature, and, therefore, a fee. The court found that the assessment was a fee because it was intended to reimburse the State's Attorneys for expenses related to automated record systems. *Id*. See also *People v. Bowen*, 2015 IL App (1st) 132046 ¶ 65 ("because the statutory language of both the Public Defender and State's Attorney Records Automation fees is identical except for the name of the organization, we find no reason to distinguish between the two statutes, and conclude both

charges constitute fees"); *People v. Green*, 2016 IL App (1st) 134011, ¶ 46 (relying on *Bowen*); *People v. Reed*, 2016 IL App (1st) 140498, ¶¶ 16-17 (relying on *Bowen* and *Rogers*).

¶ 28 However, in *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56, a panel of this court recently held that these assessments are fines because they do not compensate the State for the costs associated with prosecuting a particular defendant. Rather, they "demonstrate a prospective purpose," that is, the establishment and maintenance of automated record keeping systems. *Id.* ¶ 50.

¶ 29 In *People v. Graves*, 235 Ill. 2d 244, 250 (2009), our supreme court stated that a fee is intended to compensate the State for the costs of prosecuting the defendant, while fines are punitive in nature. We believe that the Fourth District correctly interpreted our supreme court's holding in *Graves* when deciding *Rogers*. The statutory language of section 5/4-2002.1(c) of the Counties Code sets forth that the assessment is intended to compensate the State for the costs of prosecuting a defendant by offsetting the State's costs in establishing and maintaining automated record keeping systems (55 ILCS 5/4-2002.1(c) (West 2012)), and, as such, is a fee, which may not be offset by presentence custody credit (see *People v. Jones*, 397 Ill. App. 3d 651, 664 (2009)). Although the use of the word "establishing" in relation to an automated record keeping system suggests only future use of such a system, we believe that the language of the statute is broad enough to encompass the current use of such systems and we continue to follow *Rogers* and *Bowen*. It therefore follows that the $2 Public Defender records automation fee is intended as a fee to compensate the Office of the Public Defender for costs incurred in defending defendant, and may not be offset by defendant's presentence custody credit.

¶ 30 Accordingly, pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we order the clerk of the circuit court to correct defendant's fines and fees order to reflect (1) the vacation of the $250 DNA assessment and (2) that the $10 mental health fine, the $5 youth division/peer court fine, the $5 drug court fine, the $30 Children's Advocacy Center fine, and the $50 Court Systems fee be offset by defendant's presentence custody credit for a new total due of $349. We remand this cause to the circuit court for an attorney fees hearing pursuant to section 113-3.1(a) of the Code.

¶ 31 Affirmed; fines and fees order corrected, remanded with instructions.