2018 IL App (1st) 152638-U

FOURTH DIVISION
September 28, 2018

No. 1-15-2638

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 C6 60625-01
	)	
STANLEY WARD,	)	
	)	Honorable
Defendant-Appellant.	)	Michele Pitman,
	)	Judge Presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Gordon and Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not abuse its discretion in limiting cross-examination of a police officer based on speculative impeachment; (2) the trial court did not abuse its discretion in denying defendant's request for an *in camera* review of the officer's personnel records because defendant's claim was remote and uncertain; (3) defendant is entitled to an additional day of presentence credit; and (4) the mittimus is corrected to vacate improper fines and award credit to additional fines.

¶ 2 Following a bench trial, defendant Stanley Ward was convicted of being an armed habitual criminal. The trial court subsequently sentenced defendant to eight years in the Illinois Department of Corrections.

¶ 3 Defendant appeals, arguing that (1) the trial court erred in denying defense counsel the opportunity to cross-examine one of the arresting officers about the nature of his departure from the police department; (2) the trial court erred in denying defense counsel's request for an *in camera* review of the personnel records for one of the arresting officers after allowing a review of the second officer; (3) defendant is entitled to an additional day of presentence credit for time in custody; and (4) the trial court erred in assessing $694 in fines, fees, and costs.

¶ 4 In June 2013, defendant was charged by information with one count of being an armed habitual criminal, one count of unlawful possession of a weapon by a felon, and six counts of aggravated unlawful use of a weapon. Prior to trial, defendant filed a motion to reduce bail due to change of circumstances which included an argument that Officer Don Grayson, the arresting officer, had been initially suspended and later terminated from the Robbins police department after he "had engaged in repeated harassment of the defendant specifically defendant's sister, Charlotte Jones." Defendant attached to the motion two internal memorandums from the Robbins police department, discussing Officer Grayson's actions with defendant's sister and her complaint filed against him.

¶ 5 A bench trial was conducted in March and May 2015 at which the following evidence was presented.

¶ 6 Officer Don Grayson testified that in May 2013 he was employed by the Robbins police department, but at trial he was retired. At approximately 9 p.m. on May 20, 2013, Officer Grayson was in the area of 135th Street and Harding in Robbins, Illinois. He was working alone in uniform with a marked squad car. He was assisting with a traffic stop at that location with several officers, including Sergeant Eddie Robinson. While at that location, he observed defendant drive past the traffic stop northbound on Harding. According to the officer,

defendant's vehicle was speeding and "weaving from one side of the street to the other." The officer then proceeded after the vehicle with Sergeant Robinson following. He activated his emergency equipment and defendant stopped his vehicle after turning left onto Lincoln Lane.

¶ 7 Defendant then exited his vehicle and began to wave his arms. Officer Grayson exited his vehicle as did Sergeant Robinson. As defendant was shouting and waving his arms, he turned around and Officer Grayson observed "the butt of a revolver with a silver plate." Officer Grayson estimated that he was 15 feet from defendant at that time. Officer Grayson had his weapon drawn at that time. He asked defendant to turn around and place his hands on the vehicle where the officer could see them, but defendant did not comply. When defendant had his back turned, the officers took an opportunity and "tackled" defendant to the ground. Defendant continued to resist, but was placed in handcuffs. Officer Grayson then recovered the firearm, a silver-plated .22 caliber revolver with a wooden handle. The revolver remained in his custody until it was inventoried. He observed that the firearm was loaded with 8 rounds in the chamber. Officer Grayson identified the firearm in court over defense counsel's objection as to chain of custody.

¶ 8 On cross-examination, Officer Grayson admitted that he was terminated from the Robbins police department. He denied receiving a termination letter. Officer Grayson also denied knowing Charlotte Jones, defendant's sister. He also denied knowing defendant before that day. Officer Grayson was unsure if the street lights were in operation at the time of defendant's arrest, but the lights were on from his squad car. During cross-examination, defense counsel asked Officer Grayson if he recognized a woman that walked into the courtroom and Officer Grayson responded that she looked familiar, but he did not know her name. Counsel then asked if the

officer ever had an argument with this woman, the State objected and the trial court sustained the objection.

¶ 9 On redirect, Officer Grayson testified that he did not have any difficulty seeing the object in defendant's back pocket. Officer Grayson also stated that he recorded the serial number from the firearm recovered from defendant in his police report and the number from the police report matched the serial number on the firearm identified in court.

¶ 10 Sergeant Eddie Robinson testified that he was not currently working and was retired from the Robbins police department. Before he retired, he attained the rank of sergeant. At approximately 9 p.m. on May 20, 2013, Sergeant Robinson was in his sergeant uniform and working alone with a vehicle. He responded to the area of 135th and Harding after a report of shots fired. He observed Officer Grayson at that location. There was a traffic stop conducted at that location.

¶ 11 Sergeant Robinson identified defendant in court as the individual he observed drive his vehicle "at a high rate of speed and swerving side to side down the street." He observed Officer Grayson pursue the vehicle and activate his emergency lights. Sergeant Robinson then entered his vehicle, activated his lights, and joined Officer Grayson. Defendant stopped his vehicle on Lincoln Lane and then defendant exited "his vehicle waving his hands frantically – waving his hands in the air and using profanity and just yelling out." When Sergeant Robinson observed defendant's back, he noticed a firearm in defendant's right back pocket. Sergeant Robinson admitted that his weapon was drawn. Defendant was ordered to place his hands on the vehicle, but he did not comply. When defendant turned toward the vehicle, the officers "rushed him" and took him to the ground. Defendant was eventually placed in handcuffs and Officer Grayson recovered the firearm. Sergeant Robinson identified the firearm in court. He testified that his

headlights were on during the encounter and he had no difficulty seeing the object in defendant's back pocket.

¶ 12 On cross-examination, defense counsel asked Sergeant Robinson if he was terminated from the Robbins police department. The State objected and the trial court sustained the objection. Sergeant Robinson testified that he left the police department in December 2013. Sergeant Robinson stated that in addition to himself and Officer Grayson, there were two other police vehicles at the original traffic stop at 135th and Harding.

¶ 13 After Sergeant Robinson's testimony, the State presented certified copies of convictions from 2000 and 2002 to apply to the armed habitual criminal count as well as a conviction from 1998 to support to the counts of aggravated unlawful use of a weapon. The State then rested. Defendant moved for a directed verdict, which the trial court denied.

¶ 14 At the start of defendant's case, defense counsel asked to call Charlotte Jones as a "rebuttal witness," but the trial court pointed out that Jones was not listed as a witness. Defense counsel argued that she was being offered in rebuttal as an individual who had contact with the Robbins police department. The State objected, which the trial court sustained. Defense counsel continued to argue that Jones was referenced in prior motions in the case, including the motion to review and reduce bail which had an attachment indicating that Officer Grayson had been terminated and a disciplinary complaint had been filed by Jones. The State maintained its objection as Jones was not listed in discovery and the letters attached to the motion were hearsay. The trial court continued the case to allow the State time to interview Jones and to permit defendant to list her as a witness.

¶ 15 At the next court date, defense counsel informed the trial court that he had filed a supplemental and amended answer to discovery. Counsel indicated that he had issued a subpoena

for Chief Mitchell Davis, the chief of police for the Robbins police department. The State objected to any additional witnesses and believed that defendant had subpoenaed Chief Davis to obtain Officer Grayson's personnel records. Defense counsel asserted that the evidence was sought in response to Officer Grayson's testimony. The State objected that the personnel records were collateral, but if the trial court was to allow them, the State requested the court to review them *in camera* to determine if they were relevant.

¶ 16 Defense counsel maintained that the records went to impeachment, as well as Officer Grayson's credibility and surprise with the answers he gave. Specifically, he stated the records related to Jones and the officer's termination, discipline and reprimand. The State's position was that the records were not relevant to the trial. The trial court then agreed to review the records to determine relevancy.

¶ 17 The parties then began to discuss setting the next court date. The court asked Chief Davis to leave the files with its clerk. Chief Davis then informed the trial court that the subpoena was for two different officers. Defense counsel then stated for the first time that he also sought the personnel records for Sergeant Robinson because "both of them gave the same answer to the same question." Counsel stated the inquiry was related to a "query about their service." The State responded that this was irrelevant. The court asked what impeachment defense counsel was seeking for Sergeant Robinson, counsel responded, "his termination." The court then denied the records as "not relevant." The court observed that with Officer Grayson, "there were questions pertaining to a particular witness." The court allowed the *in camera* review of Officer Grayson's records.

¶ 18 After the parties had selected a date for the trial court's ruling on the record, defense counsel raised the review of Sergeant Robinson's records again. Counsel "believe[d] Sergeant

Robinson's records may be relevant upon the Court's review as to testimony that he gave, which may -- And I would ask that the Court minimally review the Robinson files." The court asked for what purpose, and counsel responded as to Sergeant Robinson's severance from the Robbins police department. The court found it was not relevant, stating "Any reason he was severed, it's not relevant, unless you're showing me some – The case law states clearly, there has to be a nexus between any – anything that's in those personnel file – in that personal [*sic*] files and the issues in this case." Defense counsel asserted that the question went to the credibility under the totality of the circumstances and whether it was "compromised by the disparity between what he says and what exists in the records." The court reiterated its ruling that counsel must show a nexus between the issues in the case and anything in the personnel files.

¶ 19 At the next court date on May 6, 2015, the trial court ruled on its *in camera* review of Officer Grayson's personnel records and continued the trial. Based on its review, the court found three documents relevant: a payroll status change indicating Officer Grayson was discharged, a police internal memorandum concerning an incident between Officer Grayson and Jones dated August 14, 2013, and a letter regarding the complaint filed by Jones against Officer Grayson dated June 13, 2013 and signed by the former police chief on August 17, 2013. The trial court did not find any other incidents relevant to the proceedings. The allowed documents were presented as exhibits in defendant's case-in-chief, but were not submitted with the record on appeal. The August 14, 2013 document appears to be one of the documents previously attached to the motion to reduce bail.

¶ 20 When the trial resumed later that day, Chief Davis testified for defendant's case-in-chief and stated that he was the keeper of records for the Robbins police department. Based on paperwork he reviewed, Chief Davis stated that Officer Grayson was terminated by the prior

police chief because Officer Grayson failed to complete his probationary period satisfactorily. He reviewed the subpoenaed personnel files for Officer Grayson and identified the records allowed into evidence. He identified a payroll status change document for Officer Grayson which indicated the status change as "discharged." Defendant then rested.

¶ 21 On May 14, 2015, the trial court found defendant guilty of all charged offenses. The other offenses subsequently merged with the conviction for armed habitual criminal. In its findings, the trial court made the following statements regarding the credibility of both officers.

> "It turns out based on the testimony that I heard from the chief as well as the impeachment that was presented to this Court that Officer Grayson was in fact terminated from the Robbins Police Department. So he was not truthful with this Court, and he was impeached by [defense counsel] on that issue. He was also questioned pertaining to a Charlotte Jones which [*sic*] is a relative of the defendant. Officer Grayson was impeached on that as well in that, first, Officer Grayson indicated he didn't recognize Charlotte Jones. He didn't have any idea what [defense counsel] was referring to when he was asking about an incident between Ms. Jones and Officer – and himself, Officer Grayson.
>
> Simply put, the Court did not believe Officer Grayson. He was impeached on other issues and that goes to his credibility with this Court. I did not believe Officer Grayson's testimony once he was impeached. His credibility comes into question. It's very important that witnesses testify in a truthful manner before a court.

> And I find that he was not truthful on other questions. Therefore, his credibility comes into question with this Court.
>
> However, the State had a second witness, that being Officer Robinson. Officer Robinson testified before this Court. He was not impeached with regards to any truthfulness.
>
> ***
>
> The Court does find Officer Robinson was a credible witness. If the State was relying totally on Officer Grayson, since he was impeached by [defense counsel], the Court's ruling would be different. But Officer Robinson was a credible witness. Officer Robinson testified in a credible manner to this Court. Therefore, the Court is going to make a finding of guilty with regards to the charges that are in front of the Court."

¶ 22 Subsequently, defendant filed a motion for a new trial, arguing, among other issues, that the trial court erred in not allowing cross-examination of Sergeant Robinson as well as not conducting an *in camera* review of Sergeant Robinson's personnel records. The trial court denied defendant's motion. The court pointed out that there was a good faith basis for defense counsel to ask the court for an *in camera* inspection of Officer Grayson's records. However in contrast, the trial court found with regard to Sergeant Robinson:

> "[T]here was no basis to ask that this court review [Sergeant Robinson's] personnel records [*in camera*.] There was no reason to ask this. There was no indication that he was not being truthful on the witness stand. The Court made that determination because of a

> lack of a basis to review his records *in camera*. The Defense did give, the Court found, a good reason to review Officer Grayson's, and over the State's objection I did that. But Officer Robinson there was no basis, therefore, the Court denies that."

¶ 23 Defendant later filed a motion to reconsider the denial of his motion for a new trial, raising the same arguments, which the trial court denied. Following a sentencing hearing, the trial court sentenced defendant to 8 years in the Illinois Department of Corrections, awarded presentence credit for 769 days, and imposed $694 in fines, fees, and costs.

¶ 24 This appeal followed.

¶ 25 Defendant first argues that the trial court improperly denied his right to cross-examine Sergeant Robinson regarding his separation from the Robbins police department. Specifically, he contends that he should have been permitted to ask Sergeant Robinson if he was terminated after the officer testified on direct examination that he had retired in December 2013.

¶ 26 A defendant's right to confront witnesses against him, including cross-examination for the purpose of showing any interest, bias, prejudice or motive to testify falsely is guaranteed by both the federal and state constitutions. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, §8. A defendant's right to confrontation includes the right to cross-examine. *People v. Blue*, 205 Ill. 2d 1, 12 (2001); *Douglas v. Alabama*, 380 U.S. 415, 418 (1965). Such cross-examination may concern any matter that goes to explain, modify, discredit or destroy the testimony of the witness. *People v. Averhart*, 311 Ill. App. 3d 492, 497 (1999). Although any limitation on the right to cross-examine requires scrutiny, a defendant's rights under the confrontation clause are not absolute. *Id*. The confrontation clause guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way and to whatever extent the

defense desires. *Delaware v. Fensterer*, 474 U.S. 15, 20 (1985). While a defendant in a criminal prosecution has the right to cross-examine a witness regarding his bias, interest, or motive to testify falsely, the evidence used to impeach the witness must give rise to the inference that the witness has something to gain by his testimony. *People v. Johnson*, 2018 IL App (1st) 140725, ¶ 91; see also *People v. Coleman*, 206 Ill. 2d 261, 278 (2002). "Thus, the evidence used to establish bias must be timely, unequivocal and directly related, and may not be remote or uncertain." *Id*. "Rulings concerning the scope of cross-examination are within the sound discretion of the trial court and will not be disturbed absent an abuse of that discretion resulting in manifest prejudice to the defendant." *People v. Campbell*, 2012 IL App (1st) 101249, ¶ 56 (citing *People v. Williams*, 161 Ill. 2d 1, 43 (1994)). " 'Further, the trial court enjoys wide latitude in limiting the cross-examination of a witness to prevent repetitive or minimally relevant questioning, harassment, prejudice, or confusion of the issues.' " *Id*. (quoting *People v. Britt*, 265 Ill. App. 3d 129, 146 (1994)).

¶ 27 "The constitutional guarantee and the common law right are separate, and the discretionary authority of the trial court to restrict the scope of cross-examination comes into play after the court has permitted, as a matter of right, sufficient cross-examination to satisfy the confrontation clause." *Averhart*, 311 Ill. App. 3d at 497. "A defendant states a confrontation clause violation 'by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness.' " *Blue*, 205 Ill. 2d at 14 (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 680 (1986)).

¶ 28 Defendant contends that he sought to defend himself by challenging the credibility of the arresting officers, Officer Grayson and Sergeant Robinson. While he was permitted to impeach Officer Grayson, defendant asserts that the trial court "undermined" his strategy by sustaining

the State's objection to defense counsel's question regarding Sergeant Robinson's departure from the police department. Defendant claims he was prejudiced by his ruling because (1) the State raised the question on direct, (2) defense counsel successfully impeached Officer Grayson and he should have been permitted to cross-examine Sergeant Robinson, and (3) defense counsel stated he had a basis to believe Sergeant Robinson was being untruthful and proffered evidence to support his assertion. We reject defendant's claims of prejudice for the reasons that follow.

¶ 29 The entire basis for defendant's argument is from introductory employment testimony on direct examination. This colloquy between the prosecutor and Sergeant Robinson forms the crux of defendant's argument.

"Q: And are you currently working?

A: No.

Q: You're retired?

A: Yes, I'm retired from the Robbins Police Department."

¶ 30 The prosecutor then asked Sergeant Robinson how long he worked for the Robbins police department, with a response of 9 years, and his highest rank was sergeant. The prosecutor asked Sergeant Robinson how long he had been police officer in his career and Sergeant Robinson answered twenty years. The prosecutor then turned to questions about the date of defendant's arrest.

¶ 31 The cross-examination at issue on appeal proceeded as follows:

"Q: Mr. Robinson, you indicated you are retired?

A: Yes, sir.

Q: Was Robbins the last police department you were affiliated with?

A: Yes.

Q: Now, was Robbins Police Department disbanded or were you terminated?

PROSECUTOR: Objection.

TRIAL COURT: Sustained.

Q: Well, when you left the Robbins Police Department, was the Robbins Police Department being disbanded?

A: No.

PROSECUTOR: Objection.

TRIAL COURT: Objection is overruled. The answer – what was the answer?

A: No.

Q: Okay. When did you leave the Robbins Police Department?

A: In December of 2013."

¶ 32 We observe that the prosecutor used the term "retired," and the officer answered in the affirmative, repeating the word. No further discussion occurred relating to his employment history or status. He did not indicate he was "unemployed," a term used by defendant, nor did he indicate that he was seeking employment, which defendant has asserted to support his speculative contention of bias or motive by Sergeant Robinson. Further, no argument was advanced in the trial court to suggest that Sergeant Robinson had a motive to testify falsely to seek new employment with the State.

¶ 33 Defendant has failed to set forth a constitutional violation of the right to cross-examination. He has not shown what "prototypical" bias he was denied to cross-examine Sergeant Robinson regarding. Rather, the crux of defendant's argument is the questionable assumption that because Officer Grayson was impeached and shown to be untruthful, then Sergeant Robinson must have been untruthful as well. However, defendant fails to provide any support for his speculation and minimizes the key basis that supports the impeachment of Officer Grayson, *i.e.*, the officer's prior interaction with defendant's sister and her subsequent complaint against him. Additionally, defendant had documentation to support his claims relating to Officer Grayson's termination and his negative interaction with defendant's sister. These documents were attached in a pretrial motion to reduce bail. While Officer Grayson admitted on cross-examination that he had been terminated, the weight of the impeachment related to the officer's untruthful testimony about the complaint. No such complaint or interaction exists against Sergeant Robinson. Defendant's argument amounts to only remote and uncertain claims of bias or motive without any support in the record.

¶ 34 In *Coleman*, the defendant sought to have cross-examination of one of the police officers involved in his arrest reopened to allow postconviction counsel to question him regarding allegations of misconduct in other cases. The supreme court held the complaints against the officer did not provide any inference that the officer had a motive to testify favorably to the State or to perjure himself at the evidentiary hearing. The defendant had not alleged any abuse by this officer. The supreme court distinguished the defendant's claim from cases in which defendants had alleged the officers had a motive to testify falsely, observing that relevance of the proposed cross-examination contrasted "sharply" with the defendant's desired cross-examination. *Coleman*, 206 Ill. 2d at 280-82 (citing *People v. Phillips*, 95 Ill. App. 3d 1013 (1981) (where the

evidence at trial indicated the officer was intoxicated and the officer had 15 prior suspensions, the officer could have been motivated to testify falsely to avoid another suspension or to retain medical insurance); *People v. Robinson*, 56 Ill. App. 3d 832 (1977) (the appellate court held the defendant should have been allowed to introduce evidence that the officer had been suspended at time of trial for committing an act of violence and was due to resume active duty shortly); *People v. Adams*, 259 Ill. App. 3d 995 (1993) (reviewing court found that the defendant should have been allowed to question an officer about his illegal drug use, suspension, and pending civil suit against him)). The *Coleman* court found the trial court did not abuse its discretion in refusing to allow cross-examination on irrelevant matters. *Id*. at 283.

¶ 35 More recently, in *People v. Collins*, 2013 IL App (2d) 110915, the defendant was convicted of delivery of a controlled substance within 1,000 feet of a park. Prior to trial, the defendant subpoenaed the personnel records of the arresting officer. The trial court conducted an *in camera* review and found five pages to be discoverable. These pages indicated that four years prior to the defendant's arrest, the officer received a one-day suspension for providing inaccurate information to another police department. *Id*. ¶¶ 3-5. Later, the State filed a motion *in limine* to bar impeachment of the officer with the information in the subpoenaed records, which the trial court granted. *Id*. ¶ 6.

¶ 36 On appeal, the defendant argued that he should have received the entire personnel file and that the court erred in granting the State's motion *in limine*. First, the reviewing court examined the officer's personnel file and concluded that the trial court did not abuse its discretion because no other information was relevant to the officer's credibility or motive to testify falsely. *Id*. ¶ 14. Second, the reviewing court also found that the trial court did not abuse its discretion in barring the impeachment based on the personnel files. The court observed that

the evidence in the file was "not in any way" related to the officer's ability to conduct undercover drug transactions and did not raise an inference that the officer had anything to gain or lose in his testimony. *Id.* ¶ 19. The court found the defendant's argument that the officer would testify falsely to avoid further discipline as "unsupported speculation that is remote and uncertain." *Id*.

¶ 37 Contrary to defendant's arguments on appeal, no offer of proof was made in the trial court. "It is well recognized that the key to saving for review an error in the exclusion of evidence is an adequate offer of proof in the trial court." *People v. Andrews*, 146 Ill. 2d 413, 420-21 (1992). "The purpose of an offer of proof is to disclose to the trial judge and opposing counsel the nature of the offered evidence and to enable a reviewing court to determine whether exclusion of the evidence was proper." *Id*. at 421. "Where an objection is sustained to the offered testimony of a witness, an adequate offer of proof is made if counsel makes known to the trial court, with particularity, the substance of the witness' anticipated answer." *Id*. An offer of proof consisting of a conclusory summary of the witness's testimony or the unsupported speculation of trial counsel is inadequate. *Id*. "Rather, in making the offer of proof, counsel must explicitly state what the excluded testimony would reveal and may not merely allude to what might be divulged by the testimony." *Id*. Defendant contends that a proffer of evidence was presented in the trial court. However, defendant's claim is supported by citations in the record for defendant's motion for a new trial, amended motion for a new trial, and his motion for reconsideration and this claim of an offer of proof is not well taken. We point out that the subpoenaed personnel records for Sergeant Robinson are not part of the record on appeal.

¶ 38 Further, we point out that defendant has not challenged the sufficiency of the evidence on appeal. While we recognize the impeachment of Officer Grayson, the testimony of both officers

was substantially similar and supported defendant's conviction for armed habitual criminal. The officers had responded separately to a call at 135th and Harding in Robbins. While at that location, both officers observed defendant driving erratically by weaving back and forth and speeding. After turning left on Lincoln Lane, defendant pulled over, exited his vehicle, and began to yell and wave his arms. Defendant refused to yield to requests for him to place his hands on the vehicle. When he turned, each of the officers observed a firearm in defendant's back pocket. The officers subdued defendant and the firearm was inventoried. The serial number entered on the police report matched the serial number of the firearm presented as evidence at trial. The State presented certified copies of two of defendant's prior felony convictions.

¶ 39 Because defendant has not set forth a constitutional violation of his right to cross-examine Sergeant Robinson based on uncertain speculation regarding his employment, we find that the trial court did not abuse its discretion in limiting defense counsel's cross-examination of Sergeant Robinson.

¶ 40 Defendant also contends that the trial court erred in denying his request for the trial court to review Sergeant Robinson's personnel records *in camera*. Specifically, defendant argues that the trial court had a duty to conduct an *in camera* review of Sergeant Robinson's records after trial counsel made a preliminary showing that Sergeant Robinson was not truthful and the court's ruling denied defendant his due process right to present a defense. Defendant asks this court to remand the case to the trial court for an *in camera* review of Sergeant Robinson's personnel records to ascertain if the records contradict his testimony and order a new trial if there is a contradiction. The State responds that the trial court did not err because defendant failed to present any potential material evidence to indicate Sergeant Robinson had an interest, bias, or motive to testify falsely.

¶ 41 A trial court's decision regarding discovery requests is reviewed for an abuse of discretion. *People v. Williams*, 209 Ill. 2d 227, 234 (2004). However, when a defendant has been denied due process, our review is *de novo*. *People v. K.S.*, 387 Ill. App. 3d 570, 573 (2008).

¶ 42 "Generally, employment records are subject to subpoena if there is a showing that the records are relevant." *People v. Collins*, 2013 IL App (2d) 110915, ¶ 14 (citing *People v. Williams*, 267 Ill. App. 3d 82, 87-88 (1994); *People v. Freeman*, 162 Ill. App. 3d 1080, 1098 (1987)). "An *in camera* inspection of documents is required if the State refuses disclosure when defendant has made a specific demand for the document and has made a preliminary showing of the document's relevancy to a witness's trial testimony." *People v. Slayton*, 363 Ill. App. 3d 27, 32 (2006) (citing *People v. Szabo*, 94 Ill. 2d 327, 345 (1983)). "A defendant has a fundamental, constitutional right to confront the witnesses against him, which includes a reasonable right of cross-examination to inquire into a witness's bias, interest, or motive to testify falsely." *People v. Nelson*, 235 Ill. 2d 386, 420-21 (2009). "However, the evidence used to impeach must raise an inference that the witness has something to gain or lose by his testimony; the evidence must not be remote or uncertain." *Id*. at 421.

¶ 43 Defendant relies on the United States Supreme Court's decision in *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987), to support his request that the matter be remanded to the trial court for review of Sergeant Robinson's personnel records. In *Ritchie*, the Supreme Court considered "whether a defendant has a constitutional right to review statutorily privileged information about a witness so he can argue the relevancy and admissibility of the information to the court." *People v. Bean*, 137 Ill.2d 65, 97 (1990) (citing *Ritchie*, 480 U.S. at 58-61). The defendant in *Ritchie* subpoenaed a state welfare agency's records concerning his daughter, whom he was accused of sexually abusing. Based on confidentiality, the agency refused the defendant's request and he

was convicted. The Supreme Court held that under the due process clause of the fourteenth amendment, the defendant was entitled to an *in camera* review of the records by the trial court to determine whether they contained evidence that probably would have changed the outcome of the case. *Ritchie*, 480 U.S. at 43-44, 58. The Supreme Court set forth a process that balanced a defendant's rights to a fair trial with the State's interest in confidentiality by submitting the requested files to the trial court for an *in camera* review. *Id*. at 60. After its review, if the trial court determines that information contained within the file is material, then the court must turn over that information to the defendant. *Id*. As the Illinois Supreme Court explained, "[a] defendant has no right to cast his ' "advocate's eye" ' over statutorily privileged records. But if a defendant knows of any particular information contained in the privileged records, 'he is free to request it directly from the court, and argue in favor of its materiality.' " *Bean*, 137 Ill. 2d at 99 (quoting *Ritchie*, 480 U.S. at 60).

¶ 44 Here, defendant contends that the court should have conducted an *in camera* review of Sergeant Robinson's personnel records because the records were relevant for two reasons: (1) whether he retired, which was raised by the State on direct examination, and (2) whether he had a motive to testify falsely in exchange for renewed employed with the State. Defendant maintains there was no principled reason for the court to review the records of Officer Grayson, but not Sergeant Robinson. We disagree.

¶ 45 The record establishes that there was a clear difference between the requests to review Officer Grayson's records compared to Sergeant Robinson's records. First, Officer Grayson admitted on cross-examination that he was terminated from the police department. Second, and most significantly, he denied knowing who Charlotte Jones was or that a complaint had been filed against him by her. Jones is defendant's sister. Documents supporting defendant's claim

regarding this interaction between Jones and Officer Grayson were previously attached to a pretrial motion to reduce bail. No such connection has been alleged between Sergeant Robinson and defendant or his family.

¶ 46 Further, the contention that defense counsel made a preliminary showing that Sergeant Robinson was being untruthful is a misrepresentation of the trial proceedings. Defense counsel argued extensively regarding the request for an *in camera* review of Officer Grayson's records, which the trial court allowed. Then, as the court was arranging for its receipt of the records, Chief Davis indicated to the court for the first time that defense counsel had subpoenaed the records for both officers. No argument or mention had been made regarding Sergeant Robinson. At that point, defense counsel admitted the request had been for both officers and contended that the basis for Sergeant Robinson's records was because "both of them gave the same answer to the same question." Defense counsel's argument was simply that Sergeant Robinson must have been lying because Officer Grayson had been impeached on the question. This basis amounted to speculation. Further, the argument advanced in this court speculating that Sergeant Robinson's testimony was untruthful because he had a motive to testify falsely to regain employment with the State was never made before the trial court and again amounts to speculation. There was no testimony that Sergeant Robinson was seeking new employment with the State or any form of employment at all. Defendant has not presented any evidence other than such remote and uncertain evidence to show any motive for Sergeant Robinson to testify falsely.

¶ 47 We also find the cases cited by defendant to be distinguishable from the circumstances present in this case. In *People v. K.S.*, 387 Ill. App. 3d 570 (2008), the minor defendant was adjudicated delinquent based upon a finding that he had committed the offense of aggravated criminal sexual abuse. Prior to trial, the defendant sought to subpoena the school records for his

three friends who testified against him as eyewitnesses to the offense. The defendant sought the records to challenge their competency, ability to observe and recollect, and to impeach them with information to show bias and a motive to lie. The evidence had established that the defendant and the witnesses attended a therapeutic day school and the defendant argued that it was reasonable to assume the witnesses had mental or cognitive impairments. The trial court denied the request. *Id*. at 571-72.

¶ 48 On appeal, the reviewing court held that the trial court should have conducted an *in camera* review of the school records where there was evidence one of the witnesses was placed in a psychiatric institution shortly after the offense and the record supported the defendant's assertion that school personnel interviewed the witnesses regarding the incident. *Id*. at 576.

¶ 49 In *People v. Escareno*, 2013 IL App (3d) 110152, the defendant was convicted of aggravated criminal sexual abuse. During discovery, the defendant issued a subpoena for statements and records made by witnesses related to the Department of Children and Family Services (DCFS) investigation against him. The defendant also filed a demand for discovery related to police and DCFS reports associated with a previous allegation made by the victim against another individual who was never criminally charged. The State sought to quash the subpoena, which the trial court granted without an *in camera* review of the subject records. *Id*. ¶¶ 3-4. The reviewing court on appeal concluded that the trial court should have reviewed the DCFS records requested by the defendant *in camera* and disclosed any material information therein. *Id*. ¶ 21.

¶ 50 In *Slayton*, the defendant was charged with armed robbery. The defendant made a pretrial motion for an *in camera* review of the State's felony review folder based on reports that the State initially chose not to charge the defendant following a second interview with the victim. The trial

court denied the motion, finding the defendant failed to present sufficient facts to warrant the inspection. *Slayton*, 363 Ill. App. 3d at 28-29. On appeal, the reviewing court observed that the defendant's motion triggered a discovery rule requiring an *in camera* review. *Id*. at 32 (citing Ill. S. Ct. R. 412(a)(i) (eff. March 1, 2001)). The court found the trial court erred in refusing to examine the folder, but after an *in camera* review, the appellate court concluded the error was harmless because there was nothing in the folder helpful to the defense. *Id*. at 32-33.

¶ 51 We find the Second District's decision in *People v. Williams*, 267 Ill. App. 3d 82 (1994), more analogous to the instant case. There, the defendant was convicted of resisting arrest and criminal battery following a traffic stop. One of the issues raised on appeal was that the defendant was improperly denied the opportunity to present evidence on the arresting officer's training and disciplinary record because she claimed the officer behaved oddly before and during the stop and he may have been motivated to testify falsely to avoid a disciplinary problem. *Id*. at 86-87.

¶ 52 The reviewing court reasoned that the issue in the case was not whether the officer told the truth about the manner in which he conducted the stop, but rather whether the defendant committed the charged offenses. *Id.* at 87. The court pointed out that the defendant did not explain how the officer's veracity about the procedures followed in the stop were relevant to the question of her guilt or innocence. *Id*. "Absent a showing of relevance, an order compelling discovery of the information sought by defendant would have amounted to nothing more than a fishing expedition." *Id*. The court found no abuse of discretion in the denial of the defendant's request. *Id*.

¶ 53 We also note the decision in *People v. Freeman*, 162 Ill. App. 3d 1080, 1098-99 (1987), where the defendant filed a motion to subpoena the employment records of police officers, but

the trial court denied the motion. On appeal, the State argued that the defendant failed to establish the records were material or relevant. The reviewing court held that the trial court properly denied the motion where the relevancy was not shown.

¶ 54 The requests in *Escareno* and *Slayton* were based on direct evidence showing potentially relevant evidence involving a witness or the victim of the offenses. In contrast, defendant has not established any connection between Sergeant Robinson's personnel records and his case. Unlike Officer Grayson, no evidence was presented that Sergeant Robinson has any prior interaction with defendant or his family. Defendant's speculation that Sergeant Robinson was untruthful merely because Officer Grayson had been lacks any basis in the record. Defendant offered nothing more than remote speculation before the trial court and again in this court. Since defendant failed to present any basis for the *in camera* review beyond speculation, we cannot say that the trial court abused its discretion in denying defendant's request.

¶ 55 Next, defendant asserts that he is entitled to an additional day of presentence credit. The trial court awarded defendant 769 days of time in custody prior to trial, but defendant maintains that he was entitled to 770 days of credit. The State responds that defendant was correctly awarded 769 days of credit because defendant was not entitled to receive credit for the day he was sentenced. In his reply brief, defendant does not contest that he was entitled to the day of sentencing, but rather the calculation of the eligible days to awarded for presentence credit totals 770. Defendant included a calculation showing how he reached the figure. We agree with defendant.

¶ 56 It is well settled that a defendant is not entitled to credit for the day of sentencing. Rather, the day of sentencing is the beginning of defendant's sentence. See *People v. Williams*, 239 Ill. 2d 503, 509-11 (2011). Here, defendant was arrested on May 20, 2013 and was sentenced on

June 29, 2015. Therefore, the dates in which was entitled to presentence credit was May 20, 2013 to June 28, 2015. Two years passed between May 20, 2013 and May 19, 2015, which totaled 730 days. The remainder of May 2015, May 20 to 31, equals 12 days. 28 days elapsed from June 1 to 28, 2015. Thus, the total from May 20, 2013 to June 28, 2015 is 770. Accordingly, defendant is entitled to an additional day of presentence credit.

¶ 57 Finally, defendant argues that the trial court erred in assessing $694 in fines, fees, and costs. Specifically, defendant contends that (1) he was improperly assessed three charges that are statutorily inapplicable and should be vacated, and (2) three of the fees imposed are properly classified as fines and entitled to be offset by his presentencing credit. Defendant admits that he did not raise any issue regarding his fines and fees before or after sentencing, but maintains that the issue may be properly raised on appeal. The State agrees that defendant can properly raise this issue on appeal.

¶ 58 Section 110-14(a) provides in pertinent part: "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." 725 ILCS 5/110-14(a) (West 2014). The Illinois Supreme Court has held that "the *per diem* monetary credit allowed upon application by the defendant under section 110-14 is mandatory, it cannot be waived and it can be raised for the first time on appeal." *People v. Caballero*, 228 Ill. 2d 79, 83 (2008) (citing *People v. Woodard*, 175 Ill. 2d 435, 457-58 (1997)). Therefore, defendant can properly challenge the assessment by the trial court.

¶ 59 Defendant first asserts that the trial court erred in assessing the $25 violent crime victim assistance fund fine, the $100 trauma fund fine, and a $2 public defender records automation fee. The State agrees that all three were incorrectly assessed and should be vacated. First, he was

properly assessed a $100 fine under section 10(b)(1) of the Code of Criminal Procedure of 1963 for "any felony" conviction. 725 ILCS 240/10(b)(1) (West 2014). However, he was improperly assessed a $25 fine under a prior version of section 10(c)(1), which was no longer in effect at the time of defendant's trial or sentencing hearing. See Pub. Act. 97-816 (eff. July 16, 2012) (amending 725 ILCS 240/10(c)(1) (West 2010)). Therefore, we vacate the imposition of the $25 violent crime victim assistance fund fine.

¶ 60 Second, the $100 trauma fund fine was improperly assessed because section 5-9-1.10 of the Unified Code of Corrections (730 ILCS 5/5-9-1.10 (West 2014)) shall only be imposed for specific firearm offenses, but the armed habitual criminal statute is not included as a specified applicable offense. See *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 21. Accordingly, we vacate the assessment of the $100 trauma fund fine.

¶ 61 Third, defendant contends the $2 public defender records automation fee was inapplicable because he was represented by private counsel in the trial court. Defendant is correct and we vacate the imposition of this fee.

¶ 62 Next, defendant contends that three of the fees imposed by the trial court are properly classified as fines and must be offset by his presentence credit. Specifically, he argues that the $15 state police operations fee, the $50 court system fee, and the $10 probation and court services operations fee are, in operation, fines and he is entitled to offset their imposition. The State agrees that the state police operations fee and court system fee are classified as fines, but maintains that the probation and court services operations fee is a fee and cannot be offset.

¶ 63 "A 'fee' is defined as a charge that 'seeks to recoup expenses incurred by the state,' or to compensate the state for some expenditure incurred in prosecuting the defendant." *People v. Graves*, 235 Ill. 2d 244, 250 (2009) (quoting *People v. Jones*, 223 Ill. 2d 569, 582 (2006)). "A

'fine,' however, is ' "punitive in nature" ' and is ' "a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense." ' " *Id*. (quoting *Jones*, 223 Ill. 2d at 581, quoting *People v. White*, 333 Ill. App. 3d 777, 781 (2002)). Additionally," a charge labeled a fee by the legislature may be a fine, notwithstanding the words actually used by the legislature." *Id*. "[T]he most important factor is whether the charge seeks to compensate the state for any costs incurred as the result of prosecuting the defendant." *Id*.

¶ 64 This court has already observed that "[t]he appellate court has previously, and repeatedly, held that both the $15 State Police operations fee and the $50 court systems fee are actually fines, and the State agrees that this precedent applies." *People v. Robinson*, 2017 IL App (1st) 161595, ¶ 135 (citing *People v. Jones*, 2017 IL App (1st) 143766, ¶ 52 (court systems fee and State Police operations fee); *People v. Blanchard*, 2015 IL App (1st) 132281, ¶ 22 (court systems fee); *People v. Ackerman*, 2014 IL App (3d) 120585, ¶ 30 (court systems fee); *People v. Moore*, 2014 IL App (1st) 112592, ¶ 46 (State Police operations fee); *People v. Wynn*, 2013 IL App (2d) 120575, ¶¶ 13, 17 (State Police operations fee and court systems fee); *People v. Smith*, 2013 IL App (2d) 120691, ¶¶ 16-17 (State Police operations fee and court systems fee); *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 (State Police operations fee). Accordingly, we order that defendant's presentencing credit must be applied against these two charges.

¶ 65 Finally, we agree with the State that the $10 probation and court services operations charge is a fee. Defendant acknowledges the appellate court's holding in *People v. Rogers*, 2014 IL App (4th) 121088, ¶¶ 37-38, where the reviewing court discussed the compensatory nature of probationary charges and held that when a probation officer is involved in the defendant's prosecution, this assessment constitutes a fee. Here, pursuant to the trial court's order, the probation office was used to create a presentence investigation report which the trial court

considered during sentencing. Thus, this assessment is reimbursing the State for charges incurred in defendant's prosecution. We decline to depart from our holding in *Rogers* and conclude that the $10 probation and court services operations charge is a fee which may not be offset by presentence incarceration credit.

¶ 66 Pursuant to Supreme Court Rule 615(b)(1) (Ill. S. Ct. R. 615(b)(1) (eff. Jan. 1, 1967)) and our authority to correct a mittimus without remand (*People v. Bowen*, 2015 IL App (1st) 132046, ¶ 68), we direct the clerk of the circuit court to correct the mittimus to reflect that defendant is to be credited with 1 additional day for a total credit of 770 days of presentence credit; we vacate the imposition of the $25 violent crime victim assistance fund fine, the $100 trauma fund fine, and a $2 public defender records automation fee (reducing the total of assessments to $567); and apply the $5 per diem credit for presentence custody served to offset the $15 State Police Operations charge and $50 Court System charge, thus reflecting a total assessment of $502. We order the clerk of the circuit court to modify the fines and fees order accordingly.

¶ 67 Based on the foregoing reasons, we affirm defendant's conviction and mittimus is corrected as ordered.

¶ 68 Affirmed; mittimus corrected.