2018 IL App (5th) 150159-U

NO. 5-15-0159

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Saline County.
	)	
v.	)	No. 12-CF-348
	)	
SHANNON LEE AGIN,	)	Honorable
	)	Walden E. Morris,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Chapman and Cates concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for aggravated battery is affirmed where defense counsel was not ineffective for not moving for a fitness evaluation or hearing and the trial court did not err in failing to order a fitness evaluation or hearing *sua sponte* because a *bona fide* doubt of defendant's fitness to stand trial did not exist. We vacate the imposition of eight fines and adjust and reduce the imposition of the States Attorney Collections fee from $187.80 to $136.20.

¶ 2 After a jury trial in the circuit court of Saline County, defendant, Shannon Lee Agin, was convicted of aggravated battery (720 ILCS 5/12-3.05(c) (West 2010)), sentenced to five years in the Department of Corrections, and ordered to pay "all statutorily mandated fines, fees and costs." A certified printout from the circuit clerk's

office shows $813.80 in fines/fees were imposed. The issues raised in this direct appeal are: (1) whether a *bona fide* doubt of defendant's fitness existed so that defense counsel was ineffective for failing to move for a fitness evaluation or hearing and/or the court committed plain error by failing to *sua sponte* order an evaluation or hearing; and (2) whether a number of fines imposed by the circuit clerk should be vacated. We affirm in part and vacate in part.

¶ 3 BACKGROUND

¶ 4 I. PRETRIAL

¶ 5 On October 17, 2012, defendant was charged by information with aggravated battery for acts which allegedly occurred on October 11, 2012. At his first appearance, on December 12, 2012, the judge advised defendant of unrelated misdemeanor charges of battery and resisting a peace officer. The judge appointed a public defender to represent him on both charges. The same public defender was already representing defendant on other unrelated charges, including battery. The trial court was also acquainted with defendant, specifically admonishing defendant, "You have got to stop this stuff. You are presumed to be innocent, but don't put yourself in those situations." Defendant was later charged with another, unrelated battery and a disorderly conduct charge after the current charges were filed.

¶ 6 Trial on the instant charges was set for August 27, 2014, but was continued on defendant's motion until October 29, 2014. After defendant failed to appear at the final pretrial conference scheduled for October 21, 2014, bench warrants were issued not only in this case, but four other pending cases. Defendant appeared on the trial date of October

29. When the trial judge asked if the defense was ready to proceed, defense counsel orally moved for a continuance and called defendant to testify in support of the motion. Defense counsel explained the motion was based on a matter which "just came to my attention this morning."

¶ 7 Defendant testified he had previously been diagnosed with paranoid schizophrenia and was being treated by doctors for the condition. Defense offered Exhibit A, a letter from Sabrina Stout-Mason, a nurse practitioner. The letter stated, "[Defendant] had an appointment with me on 10/13/2014, 10/21/2014 and 10/27/2014. If you have any questions regarding this patient's health, please feel free to contact my office. Thank you." Defendant testified he was taking medication (liquid Sinequan) for his schizophrenia, and the dosage was increased at his appointment on October 21, making him "[h]azy with dates. I'm just—it's got me a little bit confused." Defendant alleged the change in dosage affected his memory and recall of the events alleged in the instant case so that he was unable to assist in his defense.

¶ 8 Defendant did not offer any proof of his schizophrenia diagnosis other than his testimony. He testified he went to the doctor two other times in October 2014, in addition to the three times listed in Exhibit A. On cross-examination, the assistant state's attorney pointed out that it was the State's understanding defendant went to the doctor because of an infection in his knee due to a thorn. Defendant admitted he went to the doctor on October 21 because of a thorn, but said he also went for medication for his schizophrenia. Defendant said he could not assist with his defense because he was "confused in my mind, disoriented, unstable, you know." Nevertheless, defendant agreed with the

prosecutor that he (1) was aware he was presently in a courtroom, (2) followed the instructions to walk to the microphone and sit down, and (3) was sworn in. On redirect, defendant said he took other medications, including Klonopin, for his mental health diagnosis.

¶ 9 In ruling on defendant's motion, the trial court noted that "someone is unfit to stand trial or to plead if they are unable to understand the purpose of the proceeding or to assist in their defense." While recognizing that defendant testified he could not remember some dates or events, the trial court stated it was "not particularly persuaded by the testimony of [defendant]." The trial court pointed out it "had an opportunity to observe [defendant], to hear his testimony, to consider his interest, bias, prejudice as they might relate to this proceeding." The trial court also mentioned that a list of medications was not provided and no doctor or psychiatrist testified about defendant's medications or condition. The trial court denied defendant's motion, finding "a *bona fide* doubt has not been raised as to [defendant's] ability to understand the nature and the purpose of this proceeding and to assist in his defense." After ruling on some other pretrial matters, including quashing the warrants issued when defendant failed to appear on October 21, the trial proceeded.

¶ 10 II. TRIAL

¶ 11 The evidence showed that defendant asked Stephen Lollis, the victim, to give him a ride to the doctor. Lollis agreed, but said defendant would have to give him gas money. Lollis picked up defendant the following morning for the appointment, which was 20 to 30 minutes away. When defendant entered Lollis's vehicle, an older model Ford Explorer,

defendant was carrying a can of beer. Lollis described the can as "one of the bigger ones." Defendant drank from the can during the car ride. Lollis testified that he and defendant engaged in normal conversation during the car ride.

¶ 12 Upon arrival at the doctor's office, defendant gave Lollis $10 or $15 for gas money. Defendant left his beer in the vehicle and went to his appointment. While waiting for defendant to finish with the appointment, Lollis went to a gas station and used the money defendant gave him to buy gas and then went to a friend's house about a mile away where he spent 20 to 30 minutes. Lollis returned to pick up defendant. When he was a few blocks from the doctor's office, defendant called and said he was finished and ready to be picked up.

¶ 13 Defendant reentered the Explorer and sat in the passenger seat. Lollis testified defendant's demeanor was initially the same as it had been on the trip to the doctor, but after driving a few miles, defendant looked at Lollis's gas gauge and started yelling that the vehicle was using too much gas and began physically attacking Lollis. Defendant hit and punched the right side of Lollis's head and face, using both his hands and the can of beer to hit the victim. Lollis estimated defendant hit him between 12 and 20 times, despite Lollis's repeated requests for defendant to stop. Lollis said the attack hurt and made him drive erratically. He was forced to slam on his brakes several times.

¶ 14 Stephen Nuse, who was driving behind Lollis's Explorer, testified he saw the Explorer swerving. When he caught up with the Explorer, he witnessed the passenger hitting the driver. Nuse testified he saw the Explorer veer into the other lane and nearly collide with another car, and Nuse said he almost rear-ended the Explorer when the driver

slammed on the brakes. Nuse called 9-1-1 on his cell phone and reported the attack. Nuse remained on the line with the dispatcher and behind the Explorer until the police pulled over the Explorer. Nuse estimated during that time he saw the Explorer veer into the other lane of traffic "close to a dozen" times. Nuse also testified that the driver's face was swollen on the right side as he exited the Explorer.

¶ 15 Officer Williams of the Eldorado police department responded to the 9-1-1 call and stopped the Explorer. He testified that after the Explorer stopped, the passenger exited and approached his police car. Williams immediately smelled alcohol on defendant, who was "acting really nervous" and "jumping around." Williams pulled out handcuffs to detain defendant, but defendant fled. Defendant refused Williams' verbal requests to stop, causing Williams to resort to using a taser on defendant. Defendant hit his head when he fell after being tased. Williams noticed defendant's head was bleeding, so he called for back-up assistance and an ambulance. Williams handcuffed defendant. When medical assistance arrived, defendant refused medical treatment for his head injury, but allowed the taser probes to be removed.

¶ 16 Lollis said he was "relieved" when the police pulled him over. Lollis also testified that when defendant exited the Explorer and went back to talk to the police officer, defendant was "agitated and excited," but he refused to characterize defendant as "out of control." Lollis saw some blood on defendant's head after defendant was tased and fell, but said defendant refused medical assistance at the scene.

¶ 17 Defendant testified in his own defense. He said he could not remember any of the events of October 11, 2012. Defendant said he learned about what happened from talking

to other people. Defendant testified he was injured by the police that day and suffered an "FX blow-out." Defendant described his injury as something that "[k]ickboxers get [] from fighting in cages. The side of my eye socket was shattered behind, and ear drum busted, and nose." Defendant said he had still not recovered from the injury. Defendant could not recall going to the doctor on October 11, 2012, but knew he was being treated for mental illness at that time.

¶ 18 On cross-examination, defendant said while he could not remember the events of that day, he did remember receiving medical treatment for the injury inflicted by the police, explaining, "The police about killed me, okay, drug me in the cell, and I got—they waited until the next day to get me medical help. Yeah, more or less. You ain't going to forget what they do to you like that." Defendant went on to say, "I about died. How are you going to forget about dying?" The following colloquy then took place between the prosecutor and defendant:

"Q. So it's the police's fault that you were tased and fell down and injured that day; not your fault: Is that what you are telling the jury?

A. I'm not sure. I don't know about that day. I don't remember that day.

Q. But you just said it was the police's fault?

A. Yes.

Q. So why do you think it was the fault of the police, if you don't remember?

A. That's what I was told.

Q. If you don't remember it—

A. That's what I was told after.

Q. Who was—who told you that afterwards?

A. The rumor floated around two towns, or way towns over, for awhile."

Defendant admitted that hitting somebody in the face could cause serious bodily injury and it would be dangerous to hit someone who was driving because they could have a car accident.

¶ 19 During closing arguments, the State argued (1) defendant had a motive to say he did not remember the attack, and (2) defendant knowingly caused bodily injury to the victim because the victim told defendant that defendant was hurting him. Defense counsel argued that based upon the evidence showing defendant was being treated for mental illness at the time of the alleged attack and the evidence showing defendant's behavior changed dramatically over the course of the day, the State failed to meet its burden of proof that when defendant attacked Lollis, defendant was consciously aware of what he was doing.

¶ 20 After deliberations, the jury found defendant guilty of aggravated battery. The trial court ordered a presentence investigation, which shows numerous felony and misdemeanor convictions and includes defendant's records of mental health diagnoses and treatment. Records indicate defendant first sought treatment for extreme anxiety and depression on February 26, 1999. On July 22, 1999, defendant underwent a psychiatric evaluation and consultation with Egyptian Mental Health Department (Egyptian) after experiencing paranoia and "had more difficulty functioning since he was in prison where he saw disturbing things." He was diagnosed with schizophrenia and prescribed two

milligrams of Risperdal. In August 1999, a treatment plan was developed. Defendant was taken off Risperdal and prescribed Zyprexa and Sinequan. A discharge sheet from Egyptian dated October 20, 1999, shows defendant was initially admitted for anxiety disorder, behavior control and depression. Defendant refused further treatment and his prognosis was listed as poor.

¶ 21 Defendant presented for services again with Egyptian on October 21, 2005, when he was 33 years old. After a comprehensive exam, defendant was diagnosed with (1) major depressive disorder, recurrent, moderate, (2) generalized anxiety disorder, (3) delusional disorder, unspecified, and (4) paranoid personality disorder with antisocial traits. Defendant attended a few counseling sessions. The records do not indicate that any medication was prescribed at that time. He was discharged on April 4, 2006, and again his prognosis was listed as poor.

¶ 22 The only other mental health records in the presentence report are from 2014, when defendant treated with Sabrina Stout-Mason. Her records from January 9, 2014, show defendant was experiencing dental problems and "anxiety over court, next trial set for [F]ebruary." The records also indicate that defendant's anxiety was "improving with recent medication increases." Defendant was treated for panic disorder by restarting Klonopin and doxepin (doxepin is the generic name for Sinequan).

¶ 23 Stout-Mason's reports from February 7, March 7, and April 21, 2014, list the same diagnosis of anxiety, defendant's increased anxiety over impending court proceedings, and the same medications of Klonopin and doxepin. Defendant continued to treat with Stout-Mason as discussed during the trial. Her reports from May and June 2014 note that

defendant was planning to go back to school in the fall if his court cases went well. Defendant received a general equivalency diploma (GED) and had previously taken some college courses. Stout-Mason's August 15, 2014, report shows that Klonopin was discontinued and Xanax was prescribed for treatment of panic disorder after defendant complained about the efficacy of Klonopin. Doxepin was continued for treatment of depression.

¶ 24 Stout-Mason's final report is dated September 12, 2014, with no change in defendant's diagnoses. Xanax was discontinued and Klonopin restarted. Doxepin was also continued. With regard to anxiety, Stout-Mason again reported that defendant was "[s]till undergoing court dates."

¶ 25 Stout-Mason referred defendant to Elana Floyd-Kennett, a licensed clinical social worker, "to help with anxiety and panic" defendant was experiencing. Floyd-Kennett's report from November 18, 2014, notes defendant has an "acquired brain injury and acquired post traumatic stress injury from many experiences of physical violence started by him and by others." She went on to note that defendant suffered from "no obvious deficit at this first meeting. Sequential thinking, remote long term and short term memory grossly intact."

¶ 26 At sentencing, the State argued defendant was eligible for an extended term based upon his prior convictions and asked for the maximum sentence of 10 years in the Department of Corrections. Defendant stated in allocution "that the impact on the pavement has caused me not to be able to recollect nothing that happened." In sentencing defendant, the trial judge specifically stated:

> "[Y]ou've been here since I have over and over and over. When I first came here in 2006 you had lots of difficulties. I have tried my best as a judge to help you through those difficulties and it just doesn't seem to help. It doesn't seem to work. You come back and you come back."

The trial court sentenced defendant to five years in prison. The trial court also ordered defendant to pay "the costs of this action, those costs being all statutorily mandated fines, fees and costs." The circuit clerk's office later imposed $813.80 in fines and fees. Defendant now appeals.

¶ 27 ANALYSIS

¶ 28 I. FITNESS

¶ 29 The first issue raised in this appeal is whether a *bona fide* doubt as to defendant's fitness existed. Defendant insists there was a *bona fide* doubt as to his fitness so that defense counsel was ineffective for failing to move for either a fitness evaluation or hearing and the trial court committed plain error by failing to *sua sponte* order a fitness hearing or evaluation. We are unconvinced.

¶ 30 In setting forth his appeal, defendant recognizes he forfeited his fitness argument on appeal by failing to raise the issue in the trial court. See *People v. Enoch*, 122 Ill. 2d 176, 189 (1988), which holds that both a trial objection and a written posttrial motion raising the issue are required to preserve an issue for appeal. However, defendant argues, and we agree, that the alleged error regarding his fitness to stand trial involves a fundamental right that may be reviewed as ineffective assistance or under the plain error doctrine.

¶ 31 The Illinois Supreme Court has held that in order to determine whether a defendant was denied his or her right to effective assistance of counsel we must apply the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Colon*, 225 Ill. 2d 125, 135 (2007) (citing *People v. Albanese*, 104 Ill. 2d 504 (1984) (adopting *Strickland*)). Under *Strickland*, a defendant must prove not only (1) that his attorney's performance was deficient, but also (2) that the deficient performance prejudiced the defendant. *Colon*, 225 Ill. 2d at 135; *People v. Evans*, 209 Ill. 2d 194, 219-20 (2004); *Strickland*, 466 U.S. at 687-94. Under the first prong of the *Strickland* test, a defendant must prove that his counsel's performance fell below an objective standard of reasonableness "under prevailing professional norms." *Colon*, 225 Ill. 2d at 135; *Evans*, 209 Ill. 2d at 220. Under the second prong, a defendant must show that, "but for" his counsel's deficient performance, there is a reasonable probability that the result of the proceeding would have been different. *Colon*, 225 Ill. 2d at 135; *Evans*, 209 Ill. 2d at 220. "[A] reasonable probability that the result would have been different is a probability sufficient to undermine confidence in the outcome—or put another way, that counsel's deficient performance rendered the result of the trial unreliable or fundamentally unfair." *Evans*, 209 Ill. 2d at 220; *Colon*, 225 Ill. 2d at 135. In other words, the defendant must have been prejudiced by his attorney's performance. To prevail, a defendant must satisfy both prongs of the *Strickland* test. *Colon*, 225 Ill. 2d at 135; *Evans*, 209 Ill. 2d at 220. "That is, if an ineffective-assistance claim can be disposed of because the defendant suffered no prejudice, we need not determine whether counsel's performance was deficient." *People v. Graham*, 206 Ill. 2d 465, 476 (2003). Similarly, in conducting a

plain error analysis, we must first determine whether an error occurred because "without reversible error, there can be no plain error." *People v. McGee*, 398 Ill. App. 3d 789, 794 (2010).

¶ 32 It is well-settled that " 'due process bars the prosecution of an unfit defendant.' " *People v. Washington*, 2016 IL App (1st) 131198, ¶ 70 (quoting *People v. Brown*, 236 Ill. 2d 175, 186 (2010)). In Illinois, a defendant is presumed fit to stand trial, unless, due to a mental or physical condition, he is unable to understand the nature and the purpose of the proceedings against him or to assist in his defense. *Brown*, 236 Ill. 2d at 186; 725 ILCS 5/104-10 (West 2012). Fitness involves a defendant's ability to function at trial, not his sanity or competence in other contexts. *People v. Taylor*, 409 Ill. App. 3d 881, 896 (2011). If a *bona fide* doubt of a defendant's fitness is raised, a trial court must order a fitness hearing. *Brown*, 236 Ill. 2d at 186; 725 ILCS 5/104-11(a) (West 2012). "Whether a *bona fide* doubt exists is within the discretion of the trial court, which is in the best position to observe the defendant and evaluate his or her conduct." *Washington*, 2016 IL App (1st) 131198, ¶ 72. A trial court abuses its discretion only if no reasonable person would take the trial court's view or if its ruling is arbitrary, fanciful, or unreasonable. *People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 53.

¶ 33 The test of whether a *bona fide* doubt exists is objective and examines whether the facts raise a "real, substantial, and legitimate doubt" of the defendant's mental capacity to meaningfully participate in his defense. *People v. Eddmonds*, 143 Ill. 2d 501, 518 (1991). While there is no fixed or immutable sign that indicates the need for further inquiry on a defendant's fitness, our supreme court has identified relevant factors a court may consider

in determining whether a *bona fide* doubt exists. *Id.* These factors include: (1) the rationality of defendant's behavior and demeanor at trial; (2) any representations by defense counsel on the defendant's competence; and (3) any medical opinion on the issue of defendant's fitness. *Id.*

¶ 34 Defendant contends his counsel was ineffective for failing to request a fitness hearing based on his testimony at his pretrial motion to continue, the evidence at trial, and the information contained in the presentence investigation. Defendant also asserts the trial court committed plain error by not *sua sponte* ordering a fitness evaluation or hearing based upon the same information. However, after reviewing the record in light of the above factors, we cannot say the trial court abused its discretion in finding that a *bona fide* doubt of defendant's fitness to stand trial did not exist.

¶ 35 On the day of trial, defense counsel made an oral motion for a continuance, asserting that a matter "just came to my attention this morning." Defendant claimed he was a paranoid schizophrenic and was being treated for that condition, and, as a result, was unable to assist in his defense. Based on defense counsel's assertion that the matter just came to his attention that morning, there was obviously nothing in defendant's demeanor or actions to alert defense counsel that defendant might not be able to assist in his defense. We point out that in addition to the instant charge, defense counsel represented defendant on other nonrelated charges, giving him the opportunity to observe defendant on other occasions. Despite this fact, defense counsel never mentioned any concern about defendant's fitness to stand trial.

¶ 36 Defendant testified that he had been previously diagnosed as a paranoid schizophrenic, and his medication was adjusted at a doctor's appointment on October 21, 2014. Because of the increased dosage, he was "[h]azy with dates." Defendant described himself as "confused" and "disoriented" due to the change in dosage. However, the only medical evidence offered was a letter from a nurse practitioner which indicated defendant had appointments with her on October 13, 21, and 27, 2014. The letter failed to state what defendant was treated for at any of those appointments. When the prosecutor pointed out that it was the State's understanding that defendant sought treatment on October 21, 2014, for an infection caused by a thorn in his knee, defendant agreed, but said his medication for paranoid schizophrenia was also adjusted on that date.

¶ 37 Defendant's mere statement that he was unable to assist in his defense was not enough to prove defendant was unable to assist in his defense. Furthermore, the note from a nurse practitioner that defendant had three appointments with her in October 2014, without more, did not show that further inquiry was warranted, especially in light of the State's cross-examination that defendant actually sought medical treatment on October 21, 2014, due to an infection caused by a thorn. We also point out that the trial court made a specific finding that defendant's testimony was not credible before declaring there was no *bona fide* doubt of defendant's fitness and denying defendant's motion to continue.

¶ 38 At trial, defendant expounded upon claims made during the hearing on the motion to continue concerning injuries he sustained during his arrest on the instant charge when he fell and injured his head after being tased. Defendant said he could not remember the

incidents which led to his arrest, but he recalled that the police "about killed" him, "drug" him into a cell and then "waited until the next day" to get him medical assistance. And even though the record does show that defendant was released from jail for medical reasons the day following the alleged incident, defendant's ability to remember certain events while not remembering others runs contrary to his claim of memory loss.

¶ 39 Defendant also insists that a fitness hearing or evaluation was warranted due to his behavior and mental health status at the time of the alleged incident. Defendant points to medications he was taking and the fact that the attack occurred suddenly, like a flip just switched. However, defendant forgets the victim's testimony which was that although defendant could be classified as "agitated and excited" at the time of the attack, defendant was not "out of control." And while defendant insists the presentence investigation report contains evidence of mental health issues showing a *bona fide* doubt as to his fitness, our review of the report shows little to support defendant's argument.

¶ 40 The presentence investigation contains only one reference to schizophrenia, which was made on July 22, 1999, when defendant was diagnosed with "schizophrenia." The records fail to show that defendant was ever diagnosed as paranoid schizophrenic or with bipolar disorder. The one reference to schizophrenia in 1999 is never repeated. However, even if defendant is diagnosed as a paranoid schizophrenic, the mere existence of a mental disturbance or the need for psychiatric care does not require a finding of a *bona fide* doubt because " '[a] defendant may be competent to participate at trial even though his mind is otherwise unsound.' " *People v. Hanson*, 212 Ill. 2d 212, 224-25 (2004) (quoting *Eddmonds*, 143 Ill. 2d at 519).

¶ 41 Over the course of the next 15 years, following the diagnosis of schizophrenia, defendant was diagnosed with other conditions, including depression, anxiety, and posttraumatic stress disorder (PTSD). Sabrina Stout-Mason, who was treating defendant in 2014, never mentioned schizophrenia. While Stout-Mason prescribed doxepin, Klonopin, and Xanax for defendant, her records indicate those medications were to treat anxiety, depression, and/or panic disorder. Section 104-21(a) of the Code of Criminal Procedure of 1963 specifically provides that "[a] defendant who is receiving psychotropic drugs shall not be presumed to be unfit to stand trial solely [because he takes such] medications." 725 ILCS 5/104-21(a) (West 2014).

¶ 42 Nothing in Stout-Mason's records indicate that defendant was suffering from any type of debilitating brain injury or show any concerns over memory loss, but they do show defendant was anxious about his five pending criminal cases. Defendant discussed his anxiety over the pending criminal matters with Stout-Mason and told her he was planning to go back to school if everything went well with his pending criminal matters. Stout-Mason referred defendant to a licensed clinical social worker to help him with anxiety and panic attacks. While the social worker's report lists an "acquired brain injury," the social worker specifically stated that that she found defendant's long term and short term memory were grossly intact. Under these circumstances, we cannot say defense counsel was ineffective for failing to request a fitness evaluation or hearing, nor can we say the trial court committed plain error in failing to order a fitness evaluation or hearing.

¶ 43 Finally, even assuming *arguendo* that defendant met his burden of showing that the circuit court should have found a *bona fide* doubt of fitness, the record here does not show that defendant meets the additional burden of proving that after a fitness hearing, there would have been a reasonable probability that the trial court would have found him unfit. The trial judge was well acquainted with defendant. At sentencing, the judge noted that defendant appeared before him numerous times since the judge took the bench in 2006. The trial judge also stated that he tried to help defendant over the course of time, to no avail. The trial court simply did not find defendant credible. The trial court was in a better position than us to observe the actions and demeanor of defendant and evaluate whether there were any major changes to defendant over the course of time that would raise a *bona fide* doubt as to defendant's fitness for trial. Under these circumstances, we find there is no reasonable probability that defendant would have been found unfit after a hearing or an evaluation.

¶ 44 II. FINES/FEES

¶ 45 The other issue raised in this appeal is whether a number of the fines imposed by the circuit clerk should be vacated. The State concedes the following eight fines were improperly imposed and should be vacated: (1) $50 court fine; (2) $10 medical costs; (3) $25 lump sum surcharge; (4) $5 drug court; (5) $10 child advocacy fee; (6) $25 state police ops; (7) $15 ISP merit board; and (8) $30 CASA. The State also concedes that the "SA Collections" fee should be reduced, but contends that it should be reduced to 30% of $456, not 30% of $429 argued by the defendant. In its reply brief, the defense concedes it inadvertently omitted the uncontested $25 judicial security fee from its calculation of fees

that remain after the vacation of fines. Thus, the only contested assessment that remains is the $2 State's Attorney records automation charge. We agree with the State that this is a fee, not a fine. *People v. Brown*, 2017 IL App (1st) 142877, ¶ 76. Therefore, the total is $454, with 30% of that being $136.20. That fee is set by statute at 30% of all fines, fees, and costs (730 ILCS 5/5-9-3(e) (West 2012)), and we adjust the "SA Collections" fee accordingly.

¶ 46 CONCLUSION

¶ 47 For the foregoing reasons, we affirm the conviction and sentence of defendant, but vacate the imposition of eight fines listed above and adjust and reduce the imposition of SA Collections fee from $187.80 to $136.20. Pursuant to our authority under Illinois Supreme Court Rule 615(b)(1) and our ability to correct a fines/fees order without remand, we order the clerk of the circuit court of Saline County to adjust the order accordingly.

¶ 48 Affirmed in part; vacated in part.