2019 IL App (1st) 153557-U

No. 1-15-3557

Order filed February 6, 2019

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 13669
	)	
PAUL TAYLOR,	)	Honorable
	)	Kenneth J. Wadas,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for criminal damage to government-supported property affirmed. Defendant failed to demonstrate that trial court's remarks resulted in bias and denied him fair and impartial trial.

¶ 2 Following jury trial, defendant Paul Taylor was convicted of criminal damage to government-supported property (720 ILCS 5/21-1.01(a)(1) (West 2014)) and sentenced to an extended term of six years in prison. On appeal, defendant contends (1) he was denied a fair and impartial trial because the trial court prejudiced the jury against him by repeatedly disparaging

him, and (2) the fines, fees and costs order requires correction. For the following reasons, we affirm and order the fines, fees, and costs order corrected.

¶ 3 Defendant was charged with criminal damage to government-supported property. He was initially appointed a public defender but elected to proceed *pro se* prior to trial. The trial court admonished defendant extensively regarding his right to represent himself. In addition to admonishing defendant pursuant to Supreme Court Rule 401, the court explained to defendant the disadvantages he would face by proceeding *pro se*. Specifically, the court told defendant that he would give up the benefits of his appointed counsel, who would prepare his defense, argue his position to the jury, and had the resources of the public defender's office, which included investigators to serve subpoenas and interview witnesses. Defendant acknowledged that he understood the admonishments, and the court found that he knowingly and intelligently waived his right to counsel.

¶ 4 Prior to trial, defendant filed numerous written and oral *pro se* motions, including two motions for substitution of judge, and motions (1) for preservation of video evidence, (2) to subpoena a doctor to testify on his behalf, (3) to quash his arrest and suppress evidence, (4) for an extension of time, (5) for photographs of his injuries, (6) to dismiss, (7) for a "handcuff hearing," (8) for an evidentiary hearing, (9) to request the Bill of Particulars, (10) to "suppress evidence for State's failure to comply with discovery," (11) for "trial and dismiss case at trial," (12) for subpoena *deuces tecum*, (13) "*in limine* to suppression of evidence," (14) for appointment of counsel other than the public defender, (15) for "suppression of any damage property," and (16) for "witness(se) relief sought demands/or jury trial by verdict." At several

pretrial hearings, the court explained various motions to defendant, including the purposes of motions to suppress evidence and motions to dismiss.

¶ 5 On the day of trial and after jury selection, defendant informed the court that he wanted Chicago police officer Daniel Murphy to testify. The court explained that defendant did not name or subpoena Officer Murphy as a witness, inform the State that he required Murphy's testimony, or mention Murphy at all when the court asked for his witness list prior to jury selection. Nevertheless, the court gave defendant the option to break his demand for trial and continue the case until Murphy became available or proceed to trial without Murphy as a witness. Defendant repeatedly told the court that it was unfair that he had to proceed to trial without Murphy but that he did not want to break his demand for trial. After lengthy arguments about his constitutional rights, defendant ultimately decided to proceed to trial.

¶ 6 Defendant's theory of the defense was that there was a cover-up by police officers who beat him after he was arrested and broke a window on a squad vehicle to cover up their misconduct. During defendant's opening statement, he argued the evidence would show that, based on racially-motivated reasons, police officers pulled over the vehicle in which he was an occupant, demanded he exit his vehicle, and arrested him "for supposedly having a bag of marijuana" in his vehicle. Defendant further argued that one officer beat him in the parking lot of the police station following his arrest, and videotape of the beating was "somehow" "destroyed." He asserted that he was "rushed to the hospital," and he had proof of the beating in the form of medical records. He additionally argued that the officer would perjure himself by lying about defendant's injuries.

¶ 7 Chicago police officer Christopher Stark testified that he was on duty on July 23, 2014 in in a marked squad car with his partner, Officer Daniel Murphy. At 5:45 p.m., the officers were in the vicinity of Marquette Road and California Avenue when Stark noticed an odor of marijuana emanating from a vehicle in front of their squad car. They curbed the vehicle, and Stark approached the driver's side, while Murphy approached the passenger side. The vehicle had four occupants. Stark identified defendant as the occupant in the front passenger seat.

¶ 8 Stark observed a brown piece of cigar rolling paper sitting on the glove compartment, which was ajar. He also observed a small bag of suspected marijuana on the car seat directly next to defendant. Upon seeing the suspected drugs, the officers ordered the occupants out of the vehicle. Stark then recovered the rolling paper and small bag of suspected marijuana.

¶ 9 Although defendant was initially calm, he became irate "and used a few choice words to describe [the officers]." The officers placed defendant in handcuffs and in the back of their squad car for officer safety. Ultimately, the officers found no reason to further detain the other passengers and released them. They impounded the vehicle, and Murphy drove it to the police station.

¶ 10 Stark transported defendant to the police station. During transport, defendant was irate that he had been arrested for a misdemeanor marijuana charge and began to curse, yell, and spit at the partition in the squad car. When Stark pulled into the police station parking lot, his commander came outside because he heard defendant yelling from the vehicle. As Stark spoke with his commander, defendant struck the rear passenger window of the squad car several times and shattered the window.

¶ 11 On cross-examination, Stark testified that the other passengers in the vehicle were not handcuffed. Stark acknowledged that he could have issued defendant a ticket for the marijuana offense, but testified that it was within his discretion whether to ticket or arrest defendant. Stark arrested defendant because a Class B misdemeanor is an "arrestable offense," and defendant could not produce any identification. He ran a "check" on defendant based on his name and date of birth.

¶ 12 Defendant attempted to impeach Stark with a police report, and the State objected:

"[DEFENDANT]: Well, you don't have on the report that he spit or did any of this on the police report, our original affidavit of police report.

[STATE]: Objection.

[DEFENDANT]: He doesn't have it on here.

[THE COURT]: Ask him if he has it on there.

[DEFENDANT]: Did you put it on the report that the Defendant spit while he was in the back seat of the car?

[OFFICER STARK]: I would have to refer –

[STATE]: Objection. That is improper impeachment.

[THE COURT]: Sustained.

[DEFENDANT]: How is it improper, your honor? I am asking on the police report. He testified to something different. How can a jury see what kind of person he is –

[THE COURT]: Sustained. You are making statements with no basis in fact. Sustained.

[DEFENDANT]: It is a fact –

[THE COURT]: You are trying to argue facts that are not in evidence. Sustained."

¶ 13 Stark acknowledged that the arrest report did not specify that defendant spit on him, but later clarified that the case report specified, "Above stated to P.O. Stark, 'I am going to beat your m*** honky a***, you m***, and I am going to f*** you up,' while attempting to spit at P.O. Stark."

¶ 14 Stark denied both "putting his hands" on defendant and that any other officer struck defendant in the parking lot of the police station. Stark acknowledged that defendant was later transported to the hospital, but he did not accompany him. He did not recall whether defendant complained of injuries before getting into the squad car. To his knowledge, Stark did not give defendant a concussion or head injury, and he denied shoving defendant's head into steel bars inside the vehicle. When defendant asked Stark about his responsibility for people in custody, the record reflected the following:

"[DEFENDANT]: So, isn't it your responsibility to have—are you the custodial responsibility of the Defendant once you have him in your custody?

[STATE]: Objection.

[THE COURT]: Overruled. He can answer that.

[OFFICER STARK]: I would say so, yes.

[DEFENDANT]: Did he have—if I take somebody into custody, I should know if this person has been injured even if it is somebody else who took him to the hospital. He is my Defendant so he should be on my report.

[THE COURT]: Sustained to that rambling non-question."

* * *

[DEFENDANT]: Are you the custodial responsibility of the inmates as you brought them in?

[STATE]: Objection.

[THE COURT]: Sustained.

[DEFENDANT]: I don't understand that. He brings me in, but I can't ask is he responsible for bringing me in as a police officer. That is a legitimate question.

[THE COURT]: Sustained.

[DEFENDANT]: During the time that he was in your custody—are you responsible for me while in custody?

[STATE]: Objection.

[THE COURT]: Sustained.

[DEFENDANT]: Are you responsible for me while in your car?

[STATE]: Objection.

[THE COURT]: Sustained.

[DEFENDANT]: In other words, he can do whatever he wants to, and I can't ask him the question. This is the trial.

[THE COURT]: I don't want to hear another rambling attempt at testifying without you under oath and on the witness stand, so do not do that. You may cross-exam this witness to your heart's content with proper questions.

[DEFENDANT]: Well, I don't think this is a fair trial, and I don't think the jury believes it is a fair trial.

[THE COURT]: If you keep persisting in arguing these objectionable types of things, I am going to hold you in direct contempt during this trial on this occasion. You may have unlimited cross-examination of this officer, but do not attempt to testify from that table.

[DEFENDANT]: Okay. If I ask a question, how is it testifying when I am asking a question did he have any knowledge of this and it is objectionable.

[THE COURT]: I am not teaching law school here. The ball is in your court."

¶ 15 Stark acknowledged that defendant's handcuffs were too tight and they were eventually removed. He further acknowledged that there was "one or two" cameras outside of the police station, but he was unaware of their exact locations. Stark was also unaware about whether any surveillance footage from the parking lot on the date of arrest was captured or saved. Defendant continued to cross-examine Stark about surveillance footage:

"[DEFENDANT]: So, speaking of saved, how long do you save a video?

[OFFICER STARK]: I don't know. You would have to—

[THE COURT]: Sustained.

[DEFENDANT]: He answered a question, but if he says they saved—

[THE COURT]: There is no video in this case, correct?

[STATE]: Correct.

[THE COURT]: Sustained. How long they keep video is not relevant.

[DEFENDANT]: I have the law here. Is that for closing arguments that I can quote the law through the chain of custody? You can't just make a videotape disappear.

[THE COURT]: That is enough of that argument. Sustained. Ask your next and, hopefully, final question of the officer.

[DEFENDANT]: I have no further questions."

¶ 16 Thomas Wilhelm testified that he was an accident adjuster employed by the City of Chicago to estimate damages to city vehicles due to accident and criminal damage. He assessed the damages to the squad car in this case, and prepared a written evaluation assessing the damage to the shattered window at $329.24.

¶ 17 At the close of the State's case, the court *sua sponte* made a motion for a directed verdict on defendant's behalf "to protect [his] interests," and denied the motion. Defendant did not testify or present evidence. During closing arguments, defendant argued that the police did not have a valid reason to stop the vehicle or arrest him. He repeatedly argued that he was not allowed to present evidence of Officer Murphy's testimony from a pretrial hearing or his medical records from his hospital visit on the date of his arrest. Defendant further argued:

"[DEFENDANT]: Why should I be ashamed when there is not a video. Each and every one of you knows somebody with a video, not a video but a camera outside of your house to protect your house while you are here doing the jury. You probably have a home camera in your garage. If you don't have one, you have a person that you know that has a video. Outside of the Police Department when a beating happened, it is not a tape. If it is not a tape, he will not testify to it unless it is right there on tape and he can't say anything about it. The point is the Defendant didn't want to take the stand because he believed when he—he mailed the Judge evidence and pictures of his hand cut and bruises and concussions, and at least the testimony of the doctor—

[STATE]: Judge, objection.

[THE COURT]: Sustained. There is no evidence of any of that.

[DEFENDANT]: In order to put it together, I have to take the stand. I asked for evidence that you denied. I still don't know why you denied an evidentiary hearing when I—I have no defense. Everything is cut off.

[THE COURT]: That line of argument is objectionable, not appropriate and false, so—

[DEFENDANT]: False that I asked for an evidentiary hearing?

[THE COURT]: You may argue the evidence. You may not argue what you are trying to argue."

¶ 18 After attempting to argue facts not in evidence, the following colloquy ensued.

"[DEFENDANT]: He testified that there was three girls in the car, your Honor. He testified to that, so it was girls in the car and the driver wasn't [defendant] to begin with. I have testimony here. That since the witness is not here, the officer disputes it by stating there was nothing in plain view. I had a hearing with you here. Officer Daniel Murphy was in the car, and I asked that he be here.

[STATE]: Objection.

[THE COURT]: Sustained.

[DEFENDANT]: Your honor, if a person can make a testimony just like if a person was accusing me of a crime and the State picks it up, even if he doesn't come, the State picks up the case, and his testimony will still be entered—

[THE COURT]: There is no testimony. There is testimony of an officer and the fellow from the City of Chicago. That's it.

[DEFENDANT]: But you know there was testimony of Daniel Stark, and Daniel Stark said no marijuana was in plain view.

[STATE]: Objection.

[THE COURT]: The jury is instructed to disregard all of this extraneous, non-relevant, and false information that the Defendant is now giving you.

[DEFENDANT]: If it is false—

[THE COURT]: I am going to cut that argument off unless you start to argue the evidence in the case and not all the non-evidence in the case.

[DEFENDANT]: Your honor, the evidence is not that the officer made prejudiced testimony? That is not evidence at all that he made a statement saying the opposite, that it wasn't no marijuana? I can't use that as evidence? These jurors must hear that. They must hear that the other officer said something that he said, and the State didn't bring that. You are frauding these people. They are going to make a decision, and then they are going to find out this officer said something else. Let's hear his testimony, and if this officer says something different, he gets to go to jail—

[THE COURT]: Sustained. The jury is instructed to disregard once again non-evidence. Consider only the evidence in the case."

¶ 19 Following arguments, the court instructed the jury, among other things, not to consider the court's rulings on the admissibility of evidence. The jury found defendant guilty of criminal

damage to government-supported property. Defendant requested appointment of counsel for posttrial motions and sentencing, and the court reappointed the public defender's office.

¶ 20 Counsel filed a motion for a new trial on defendant's behalf, arguing that the court made various erroneous comments to defendant in the presence of the jury and erred by sustaining "the State's innumerable objections" to defendant's questions on cross-examination and during closing argument. The court denied the motion, and sentenced defendant, based on his criminal background, to an extended term of six years' imprisonment. The court also imposed various fines and fees totaling $749.[1]

¶ 21 On appeal, defendant first argues that he was denied a fair and impartial trial due to the trial court's comments in front of the jury which demonstrated judicial bias. He contends that the court prejudiced the jury against him by (1) sustaining the State's objection during defendant's cross-examination of Officer Stark and commenting defendant's statement was "a rambling non-question"; (2) threatening to hold defendant in contempt if he "persist[ed] in arguing these objectionable type of things"; (3) stating, "That is enough of that argument. Sustained. Ask your next, and hopefully, final question of the officer"; (4) describing defendant's closing argument as false; and (5) making numerous disparaging comments about defendant representing himself. Defendant does not argue that the trial court's ruling were erroneous; rather, defendant's contention is that the court's comments in making the rulings prejudiced the jury.

[1] While this appeal was pending, defendant filed a *pro se* petition for relief pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2016)), which was summarily dismissed by the trial court. He untimely appealed the trial court's denial of his motion to reconsider the summary dismissal of his petition, and this court granted the State Appellate Defender's motion to withdraw as counsel pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and dismissed the appeal for lack of jurisdiction. *People v. Taylor*, No. 1-16-2434 (summary order).

¶ 22 A criminal defendant has a fundamental due process right to a fair trial protected by both federal and state constitutions. U.S. Const., amend. XIV; Ill. Const.1970, art. I, & 2. "A trial judge 'must not interject opinions or comments reflecting prejudice against or favor toward any party.' " *People v. Lopez*, 2012 IL App (1st) 101395, ¶ 57 (quoting *People v. Williams*, 209 Ill. App. 3d 709, 718 (1991)). Comments reflecting disbelief in a defense witness's testimony, confidence in the credibility of a prosecution witness, or an assumption of the defendant's guilt may be improper. *Id.* Hostility toward defense counsel or " 'remarks that defense counsel has presented his case in an improper manner may also be prejudicial and erroneous.' " *Lopez*, 2012 IL App (1st) 101395, ¶ 57 (quoting *Williams*, 209 Ill. App. 3d at 718). Although a trial judge is afforded wide latitude when presiding over a trial, that latitude is not without limits, and an abuse of discretion will be found if the judge abandoned his role of impartial arbiter and adopted the role of advocate for one of the parties. *People v. Jackson*, 409 Ill. App. 3d 631, 647 (2011).

¶ 23 The burden is on the defendant to demonstrate that comments by the trial judge were so prejudicial as to constitute reversible error. *Lopez*, 2012 IL App (1st) 101395, ¶ 57. "Where it appears that the comments do not constitute a material factor in the conviction, or that prejudice to the defendant is not the probable result, the verdict will not be disturbed." *Williams*, 209 Ill. App. 3d at 718-19. Improper remarks, therefore, may be harmless error. *Id.* at 719. When evaluating the effect of a trial court's remarks on the jury, we consider the comments " 'in the light of the evidence, the context in which they were made and the circumstances surrounding the trial.' " (Internal quotation marks omitted.) *Lopez*, 2012 IL App (1st) 101395, ¶ 57 (quoting *Williams*, 209 Ill. App. 3d at 719).

¶ 24 After carefully reviewing the comments in the context of the entire record, we are not persuaded by defendant's claim that the trial court's various comments deprived him of a fair trial. Throughout the trial, defendant repeatedly attempted to improperly insert inadmissible or irrelevant evidence, even after the court had made its rulings. Additionally, defendant repeatedly attempted to improperly argue during the State's case in chief and interject his own testimony in the form of questions to Officer Stark, despite the trial court's frequent admonishments to phrase questions properly. One such instance occurred when defendant asked Stark whether he was responsible for defendant when he was in custody. Stark answered affirmatively, and defendant went on, "Did he have—if I take somebody into custody, I should know if this person has been injured even if it is somebody else who took him to the hospital. He is my Defendant so he should be on my report." The court sustained the objection, ruling it was a "rambling non-question."

¶ 25 Defendant went on to repeatedly pursue whether Stark was responsible for detainees while in custody, and the court continued to sustain the State's objections, and eventually admonished him not to testify while cross-examining the witness. When defendant still continued to argue with the court and stated before the jury that he did not believe he was receiving a fair trial, the court told him that he would hold him in contempt for persisting in arguments on which it had previously ruled.

¶ 26 Defendant attempts to argue that the court's comments associated with its rulings demonstrated hostility towards or bias against him. We disagree. A *pro se* defendant is required to comply with the rules of procedure required of those represented by counsel and is not entitled to more lenient treatment because he is proceeding *pro se*. *People v. Jennings*, 279 Ill. App. 3d

406,413 (1996). Under these circumstances, it was not improper for the court to elaborate further on its evidentiary rulings. It is clear from the record that defendant continually disregarded the court's rulings, argued with the court over its rulings, and insisted on impermissibly interjecting his own testimony and improper questions in contravention of the rules of evidence. Moreover, we note that the record is replete with instances of the court attempting to accommodate defendant prior to and throughout the trial, such as explaining the purpose of various motions, allowing defendant on the day of trial to choose whether to proceed or get a continuance to subpoena Officer Murphy, and raising a motion for directed verdict on defendant's behalf.

¶ 27 With respect to defendant's closing arguments, in an attempt to support his theory of the defense, defendant repeatedly referenced his medical records, a videotape from the police station, and Murphy's pretrial testimony, none of which were evidence at trial. See *People v. Johnson*, 208 Ill. 2d 53, 115 (2003) (during closing argument it is improper to argue assumptions or facts not based upon evidence in record). The trial court sustained the State's objections, and defendant proceeded to argue with the court about what he could argue during his closing argument and what evidence he could introduce. Although the court was eventually required to admonish the jury to disregard defendant's arguments based on facts not in evidence, it was again only after defendant continued to challenge the court's rulings. Given defendant's unwillingness to accept the court's rulings, we do not agree that the trial court's admonishments about improper arguments amounted to displays of hostility towards defendant.

¶ 28 The record reveals at most that the trial court may have become frustrated with defendant's pattern of eschewing the rules of evidence during the trial and unwillingness to accept the court's rulings. However, the court's frustration alone is insufficient to demonstrate

judicial bias. See, *e.g.*, *Lopez*, 2012 IL App (1st) 101395, ¶ 97. And the evidence established that officers pulled over defendant's vehicle, found suspected marijuana, and arrested defendant after he became irate and could not produce identification. Defendant thereafter continued to yell and eventually struck the squad vehicle until the window shattered. Thus, even if the court's comments were improper, defendant's claim that he was deprived a fair trial based on the court's comments fails, as he cannot establish that those comments were a material factor in his conviction in light of this evidence against him. See, *e.g.*, *People v. Jimerson*, 404 Ill. App. 3d 621, 633 (2010) (rejecting defendant's claim of judicial bias, as defendant could not establish that trial judge's allegedly improper conduct was material factor in his conviction).

¶ 29 Defendant next challenges the $250 DNA analysis, $15 state police operations, and $50 court system assessments. Although he did not preserve any fines and fees issues below, defendant asks that we review them pursuant to the second prong of the plain error doctrine. The State acknowledges defendant's forfeiture of these issues, but agrees erroneous fines and fees should be reviewed. Accordingly, we address the issues relating to defendant's fines, fees and costs order. See *People v. Williams*, 193 Ill. 2d 306, 347-48 (2000) (rules of waiver and forfeiture apply to the State).

¶ 30 The parties agree that defendant was erroneously assessed the $250 DNA analysis fee because he previously submitted a DNA sample and paid that fee pursuant to a 2009 felony conviction for theft of property.

¶ 31 Sections 5-4-3(a) and (j) of the Unified Code of Corrections (730 ILCS 5/5-4-3(a) and (j) (West 2014)) require that any person convicted of certain offenses submit to DNA analysis and pay a $250 fee. However, the fee may not be reassessed on a defendant who has already

submitted a DNA sample based on a prior conviction. *People v. Marshall*, 242 Ill. 2d 285, 297, 301-02 (2011). Here, defendant has a prior felony conviction from 2009, and therefore we presume he submitted a DNA sample and payment of the fee as a result. See *People v. Leach*, 2011 IL App (1st) 090339, ¶ 38 (court will presume DNA analysis and fee requirement was imposed as part of defendant's sentence following at least one prior conviction occurring after January 1, 1998, the effective date of the requirement). Therefore, the $250 DNA analysis fee was erroneously assessed, and we vacate that fee.

¶ 32 Next, defendant argues that certain assessed fees are instead fines that should be offset by his $5 per day presentence incarceration credit.

¶ 33 The trial court imposed on defendant $749 in fines, fees and costs. Section 110-14 of the Code of Criminal Procedure of 1963 (the Code) provides that a defendant is entitled to a credit of $5 toward his fines for each day he was incarcerated prior to sentencing. 725 ILCS 5/110-14(a) (West 2014). Under the plain language of the Code, "the credit applies only to 'fines' that are imposed pursuant to a conviction, not to any other court costs or fees." *People v. Tolliver*, 363 Ill. App. 3d 94, 96 (2006).

¶ 34 Whether an assessment is a fine or a fee depends on its purpose. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). Fees are "intended to reimburse the state for a cost incurred in the defendant's prosecution," whereas fines are punitive in nature and "part of the punishment for a conviction." *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 63 (citing *People v. Jones*, 223 Ill. 2d 569, 582 (2006)). The fines, fees and costs order reflects that defendant was entitled to credit for 464 days for presentence incarceration. He therefore has $2,320 (464 days multiplied by $5) credit available toward his fines.

¶ 35 Defendant argues, and the State concedes, that the $15 State Police operations charge (705 ILCS 105/27.3a(1.5) (West 2014)) and the $50 court system charge (55 ILCS 5/5-1101(c)(1) (West 2014)) are actually fines that should be offset by defendant's presentence incarceration credit. We agree that both of these assessments are fines because they do not reimburse the State for expenses incurred in defendant's prosecution. See *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 ("the State Police Operations Assistance fee does not reimburse the State for costs incurred in defendant's prosecution"); *People v. Smith*, 2013 IL App (2d) 120691, ¶ 21 (awarding defendant credit for court system fee imposed under section 5-1101(c) of Counties Code, stating, "Most important, the assessment is not intended or geared to compensate the State (or the county) for the cost of prosecuting a defendant."). They should therefore be offset by defendant's presentence incarceration credit.

¶ 36 In sum, we affirm the judgment of the circuit court of Cook County, and we order the clerk of the circuit court to vacate the $250 DNA analysis fee, for a new total of $499. The $15 State Police operations and $50 court systems assessments are creditable fines that should be offset by defendant's presentence custody credit, a total of $65. Accordingly, the total fines, fees and costs due from defendant is $434.

¶ 37 Affirmed; fines, fees and costs order modified.