

No. 1-09-0346

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 08 CR 12832 |
| |) | |
| FRANK HUBBARD, |) | Honorable |
| |) | Charles P. Burns, |
| Defendant-Appellant. |) | Judge Presiding. |

PRESIDING JUSTICE ROBERT E. GORDON delivered the judgment of the court.
Justices J. Gordon and McBride¹ concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's \$200 DNA analysis fee must be vacated because he provided a DNA sample and was assessed the fee in an earlier case. His \$10 fee for the Arrestee Medical Costs Fund was properly assessed despite the lack of evidence that he received medical services while in custody.

¹ Justice Robert Cahill originally sat on the panel of this appeal and participated in its disposition. Justice Cahill passed away after the Illinois Supreme Court issued its supervisory order in this matter. Therefore, Justice McBride now serves in his stead and has reviewed the briefs, record and the original decision.

¶ 2 Following a bench trial, defendant Frank Hubbard was convicted of possession of a controlled substance (less than 15 grams of heroin) and sentenced to 18 months' imprisonment with fines and fees. On appeal, he contends that his \$200 DNA analysis fee was improper because he provided a DNA sample and was assessed the fee in a prior case. He also contends that his \$10 fee for the Arrestee Medical Costs Fund (Fund) (730 ILCS 125/17 (West 2006)) was erroneously assessed because there was no evidence that he was injured, or that the county incurred medical expenses for him, while he was in the custody of the county.

¶ 3 Since neither of these contentions concerns the facts underlying defendant's conviction, we will dispense with a recitation of those facts.

¶ 4 The record on appeal shows that defendant was assessed the DNA analysis fee in the instant case and an earlier felony case and that his DNA sample was taken pursuant to the earlier case. Our supreme court has recently determined² that the DNA analysis fee may not be assessed under such circumstances. *People v. Marshall*, 242 Ill. 2d 285 (2011). The fee is thus vacated.

¶ 5 As to defendant's challenge to his \$10 Fund fee, our supreme court recently held that this fee is properly assessed upon every criminal conviction or order of supervision regardless of whether the defendant received medical services while in custody. *People v. Jackson*, 2011 IL 110615 (September 22, 2011).

¶ 6 Accordingly, pursuant to Supreme Court Rule 615(b)(2) (eff. Aug. 27, 1999), the \$200 DNA analysis fee is vacated. The judgment of the circuit court is affirmed in all other respects.

¶ 7 Affirmed in part and vacated in part.

²We initially found that the assessment of the DNA analysis fee was proper. However, in denying defendant leave to appeal, the supreme court has ordered us to vacate our opinion of September 17, 2010, and reconsider in light of *Marshall*. *People v. Hubbard*, No. 111240 (September 28, 2011).

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