

No. 1-09-0519

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 Cook County, Illinois.
Plaintiff-Appellee,)	
)	
v.)	No. 07 CR 10937
)	
ALEX SULLIVAN,)	Honorable Sharon Sullivan,
)	Judge Presiding.
Defendant-Appellant.)	

JUSTICE MURPHY delivered the judgment of the court.

Presiding Justice Quinn and Justice Steele concurred in the judgment.

ORDER

HELD: The trial court's order for a fitness evaluation did not render the next court date a fitness hearing when, after defendant was found fit with medication, counsel indicated she did not have any fitness concerns and did not request a fitness hearing. When defendant's conviction for resisting a peace officer was based upon the same act as his conviction for aggravated battery, the conviction for resisting a peace officer must be vacated. This court also corrects defendant's fines and fees order.

After a bench trial, defendant Alex Sullivan was found guilty of aggravated battery and resisting a peace officer. He was sentenced to concurrent terms of seven-and-a-half and three years in prison. On appeal, he contends that the trial court failed to conduct an adequate fitness

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hearing when the court deferred to defense counsel's representations and adopted the expert's ultimate conclusion. He also correctly contends, and the State concedes, that his conviction for resisting a peace officer must be vacated pursuant to the one act, one crime doctrine, and the fines and fees order should be corrected.

At defendant's second appearance before the court, defense counsel requested a behavioral clinical examination (BCX). The court then ordered a fitness evaluation.

Dr. Jonathan Kelly evaluated defendant and found him fit to stand trial with medications. Dr. Kelly's report indicated that defendant had undergone psychiatric hospitalization in the past. Although defendant understood that he suffered from schizophrenia and knew that he needed to take his medications, he admitted that he usually stopped taking his medication when he ran out. In Dr. Kelly's opinion, defendant needed to continue his medications in order to maintain remission of defendant's Schizoaffective Disorder and his fitness for trial.

At a hearing in October 2007, the court tendered Dr. Kelly's report to the parties. The following colloquy then took place:

THE COURT: There's a BCX report *** from Dr. Kelly. He opined that the defendant is fit with medication. [Defendant] is currently taking certain medications, Risperidone and also Benadryl for side effects. Anything further on the issue of fitness?

DEFENSE COUNSEL: Your Honor --

THE COURT: Both sides stipulate to this report?

DEFENSE COUNSEL: Yes, your Honor.

ASA Brown: Yeah.

THE COURT: And do you have any fitness concerns?

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DEFENSE COUNSEL: No, I don't your Honor.

THE COURT: And is he taking his medications at the present time?

DEFENSE COUNSEL: Yes, your Honor.

THE COURT: I'll enter a finding of fitness.

At a subsequent hearing, before the court accepted defendant's jury waiver, the court indicated there had previously been a fitness evaluation, and asked defense counsel whether she had additional fitness concerns. Counsel denied having any fitness concerns and she confirmed that defendant was taking his medication. The court then asked defendant whether he had been receiving medication regularly in jail. After defendant answered in the affirmative, the court accepted defendant's jury waiver.

Officer Steven Lauretto testified that he was on patrol with Officer Frano when he saw defendant standing on the sidewalk holding an open 40-ounce Bud Ice Beer. Lauretto exited the car, approached defendant, and identified himself as a police officer. When he asked defendant to come toward the car, defendant responded "f**k that." Lauretto then tried to take defendant into custody for drinking on a public way. Defendant again responded "f**k that," and began to kick and punch. It took 20 seconds of struggle to handcuff defendant.

Once defendant was cuffed, Lauretto walked defendant to the car. Upon reaching the car, the two men were face-to-face. Lauretto saw defendant's body "tighten up," then defendant braced himself and headbutted Lauretto. As a result of the headbutt, Lauretto suffered a swollen knot above his right eyebrow.

Officer Frano testified consistently with Lauretto that defendant had an open bottle of

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beer in his hand, defendant began swearing when he was asked to come toward the officers, and defendant began kicking and flailing his arms when they attempted to take him into custody. Frano saw defendant kick and strike Lauretto. Although Frano identified himself as a police officer and told defendant to stop resisting, defendant continued to swear. As the officers attempted to put defendant into the car, defendant lunged his head forward into Lauretto.

Eddie Ferris testified when a police officer called to defendant, defendant "kept on walking." Officer Lauretto then grabbed defendant, spoke to him, and ultimately handcuffed him. Ferris did not see defendant strike or headbutt the officers.

Alexis Sullivan, defendant's twin sister, testified that when the officers said that defendant was drinking on a public way, defendant pulled the beer bottle out of a bag to show that it was empty. The officers again told defendant to come toward them, so he dropped the bottle and walked in their direction. When an officer told defendant to put his hands behind his back, defendant asked what he had done. Although defendant moved his hands, he did not hit or kick.

Alexis testified that by the time defendant was handcuffed, their mother and aunt had come outside. Their mother was angry and asked what defendant had done. An officer poked her mother in the chest and said officers can do what they wanted. The officer then turned around and his head collided with defendant's head.

In rebuttal, Officer Frano testified that he did not remember speaking to defendant's mother and did not poke his finger into the chest of any female. He was not approached by anyone identifying herself as a member of defendant's family, and did not see anyone approach

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Lauretto.

In finding defendant guilty of aggravated battery and resisting a peace officer, the court stated that it did not find Alexis's testimony that the headbutt happened accidentally to be credible in light of the officers' testimony that defendant was already in custody when he stiffened up, leaned forward, and headbutted Lauretto. The trial court sentenced defendant to seven-and-a-half years in prison for the aggravated battery and to a concurrent term of three years for resisting a peace officer.

Defendant's first contention on appeal is that his due process rights were violated when the trial court failed to conduct a sufficient fitness hearing. The State responds that the mere fact that the trial court granted the defense's request for a BCX did not raise a *bona fide* doubt as to defendant's fitness to stand trial, and thus, no fitness hearing was required.

A defendant is presumed fit to stand trial and will be considered unfit only when, because of his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his own defense. *People v. Easley*, 192 Ill. 2d 307, 318 (2000). A defendant is entitled to a fitness hearing only when there is a *bona fide* doubt of his fitness. *Easley*, 192 Ill. 2d at 318. A defendant may be fit for trial although his mind may be otherwise unsound, *i.e.*, merely because a defendant suffers from a mental disturbance or requires psychiatric treatment does not necessarily create a *bona fide* doubt regarding his ability to understand the proceedings and to assist his counsel. *People v. Eddmonds*, 143 Ill. 2d 501, 519 (1991).

Here, there is no indication in the record that defense counsel ever requested a fitness

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hearing. Thus, the question before this court is whether the trial court's grant of counsel's request for a fitness evaluation automatically rendered the next pretrial hearing a fitness hearing.

Our supreme court's decision in *People v. Hanson*, 212 Ill. 2d 212 (2004), is instructive. In *Hanson*, defense counsel filed a written motion requesting that the defendant be examined in order to determine his fitness to stand trial. *Hanson*, 212 Ill. 2d at 215. The motion also indicated defense counsel's concerns that a *bona fide* doubt existed regarding the defendant's ability to understand the proceedings and assist in his own defense. *Hanson*, 212 Ill. 2d at 215. The trial court granted the motion. After the examination, defense counsel withdrew the motion, as the defendant had been found fit. The defendant was subsequently found guilty of aggravated battery and resisting a peace officer.

The issue before our supreme court was whether a trial court's grant of defense counsel's request for a fitness examination "implicitly signaled" the court's belief that a *bona fide* doubt of the defendant's fitness to stand trial existed, thus necessitating a fitness hearing. *Hanson*, 212 Ill. 2d at 216. In that case, our supreme court noted that the defense motion had requested that the defendant be examined in order to determine his fitness to stand trial; the motion did not request a fitness hearing. *Hanson*, 212 Ill. 2d at 221. Our supreme court declined to read a request for a fitness hearing into a motion that only requested an evaluation. *Hanson*, 212 Ill. 2d at 221.

The court then determined that the mere act of granting a defendant's motion for a fitness examination, by itself, could not be construed to mean that the trial court had a *bona fide* doubt regarding a particular defendant's fitness. *Hanson*, 212 Ill. 2d at 222. To find otherwise would render irrelevant the factors a trial court should consider when deciding whether further inquiry

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into a defendant's fitness is necessary as previously enumerated in *People v. Eddmonds*, 143 Ill. 2d 501 (1991). *Hanson*, 212 Ill. 2d at 222; see also *Eddmonds*, 143 Ill. 2d at 518 (while there are no fixed signs which always indicate the need for additional inquiry into a defendant's fitness, the court may consider the defendant's irrational behavior and demeanor at trial, prior medical opinions regarding the defendant's fitness, and the representations of the defendant's counsel).

We reject defendant's argument that counsel's request for a BCX combined with Dr. Kelly's report, *i.e.*, the fact that defendant had been diagnosed with schizophrenia and hospitalized in the past, created a *bona fide* doubt as to defendant's fitness.

The facts that defendant had been diagnosed with a mental illness and was on medication did not necessarily raise a *bona fide* doubt regarding his fitness. See *Eddmonds*, 143 Ill. 2d at 519; see also *People v. Wilson*, 124 Ill. App. 3d 831, 837 (1984) (a mental illness or a prior commitment, by themselves, does not raise a *bona fide* doubt of the defendant's fitness at the time of trial because fitness only addresses a defendant's ability to function at trial, not his sanity).

Here, defense counsel requested a BCX. At the next hearing, the parties stipulated to the report and the trial court asked counsel whether she had any fitness concerns. Counsel answered in the negative and confirmed that defendant was taking his medications. Defense counsel did not request a fitness hearing, and we decline to read such a request into the record. See *Hanson*, 212 Ill. 2d at 221. As in *Hanson*, the fact that the trial court ordered a fitness examination cannot be construed as a definitive showing that the court had a *bona fide* doubt as to defendant's fitness, and, thus, no fitness hearing was necessary. See *Hanson*, 212 Ill. 2d at 222.

Defendant next contends, and the State concedes, that his conviction for resisting a peace

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officer must be vacated because this conviction arose from the same act as his conviction for aggravated battery.

Here, defendant was charged with, and convicted of, aggravated battery and resisting a peace officer based on his headbutt of Officer Laretto. Since convictions for more than one offense cannot be carved from the same criminal act (*People v. Szabo*, 94 Ill. 2d 327, 350 (1983)), we vacate defendant's conviction for resisting a peace officer.

Defendant further contends that certain fines and fees assessed by the trial court should be modified. We review the imposition of fines and fees *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

Defendant first argues, and the State concedes, that this court should vacate his \$5 Court System Fee (55 ILCS 5/5-1101(a) (West 2006)), and his \$30 Children's Advocacy Center Fine (55 ILCS 5/5-1101(f-5) (West 2008)). Here, as defendant was not convicted of a vehicle offense, he should not have been assessed the \$5 Court System Fee (see 55 ILCS 5/5-1101(a) (West 2006)). Additionally, as section 5-1101(f-5) of the Counties Code (see Pub. Act 95-103, ' 5, eff. Jan. 1, 2008 (adding 55 ILCS 5/5- 1101(f-5))), was not in effect at the time of the offense, the \$30 Children's Advocacy Center Fine should be vacated. Accordingly, we vacate the \$5 Court System Fee and the \$30 Children's Advocacy Center Fine. See *Price*, 375 Ill. App. 3d at 697.

Defendant next contends, and the State agrees, that he was improperly assessed a \$20 fine pursuant to section 10(c)(2) of the Violent Crime Victims Assistance Act (Act), when he was assessed another fine. See 725 ILCS 240/10(c)(2) (West 2006). Here, defendant was assessed the \$10 Mental Health Court Fee, which our supreme court has held is a fine. See *People v.*

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Graves, 235 Ill. 2d 244, 253-54 (2009). As another fine was imposed, defendant fell under section 10(b) of the Act (725 ILCS 240/10(b) (West 2006)), and should have been assessed a \$4 fine. Accordingly, we vacate the \$20 fine imposed pursuant to section 10(c)(2), and impose a \$4 fine pursuant to section 10(b). See *Price*, 375 Ill. App. 3d at 697.

Defendant also contests the \$200 assessment for DNA analysis pursuant to section 5-4-3 of the Unified Code of Corrections (730 ILCS 5/5-4-3 (West 2006)). He argues that because he provided a DNA sample and was assessed this fee under a prior conviction, he has satisfied the requirements of the statute.

This court's recent decision in *People v. Grayer*, 403 Ill. App. 3d 797 (2010), is instructive. In *Grayer*, the defendant argued that section 5-4-3 required only one submission of a DNA sample and one assessment of the analysis fee. *Grayer*, 403 Ill. App. 3d at 798. This court then analyzed the language of section 5-4-3 and determined that "nothing in the statutory language limits the taking of DNA samples or the assessment of the analysis fee to a single instance." *Grayer*, 403 Ill. App. 3d at 801; see also 730 ILCS 5/5-4-3(a) (West 2008) (anyone "convicted or found guilty of any offense classified as a felony under Illinois law *** shall, regardless of the sentence or disposition imposed, be required to submit specimens of blood, saliva, or tissue to the Illinois Department of State Police"); 730 ILCS 5/5-4-3(j) (West 2008) (anyone required to submit specimens shall pay an analysis fee of \$200). We also noted that although the legislature is "keenly aware of recidivism," the legislature did not address the issue of successive qualifying convictions in the language of section 5-4-3. *Grayer*, 403 Ill. App. 3d at 801. Thus, we concluded that "the DNA analysis fee may be assessed upon any qualifying

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conviction or disposition, whether or not it was previously assessed." *Grayer*, 403 Ill. App. 3d at 802. Accord *People v. Adair*, No. 1-09-2840 (Dec. 10, 2010); *People v. Hubbard*, No. 1-09-0346 (Sept. 17, 2010); *People v. Williams*, No. 1-09-1667 (December 2, 2010); but see *People v. Rigsby*, No. 1-09-1461, slip op. at 5 (December 3, 2010) (holding that a one time submission to the police DNA database is sufficient to satisfy the statute, and, thus, only one analysis and fee is needed per qualifying offender). Here, relying on *Grayer*, *Adair*, *Hubbard*, and *Williams*, we affirm the imposition of the \$200 DNA analysis fee.

Defendant finally contends that he was improperly assessed the \$10 Arrestee's Medical Costs Fee (see 730 ILCS 125/17 (West 2006)), when there were no medical costs associated with his arrest. Defendant relies on this court's decision in *People v. Cleveland*, 393 Ill. App. 3d 700, 714 (2009).

However, in *People v. Jones*, 397 Ill. App. 3d 651 (2009), this court's examination of the language of section 17 of the County Jail Act led us to conclude "that the moneys in the fund may be used for something other than medical expenses occurred by the arrestee." *Jones*, 397 Ill. App. 3d at 662. See 730 ILCS 125/17 (West 2006) ("Moneys in the Fund shall be used solely for reimbursement of costs for medical expenses relating to the arrestee while he or she is in the custody of the sheriff and administration of the Fund"). Accordingly, a county may use the \$10 fee either for the reimbursement of medical expenses incurred by a defendant while he was under arrest or for the costs related to the administration of the Fund itself. *Jones*, 397 Ill. App. 3d at 662. As the Fund served as a health insurance policy for the defendant while he was in custody, he received a benefit even though he did not have medical expenses during that period, and,

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consequently, the county was entitled to use the \$10 collected from the defendant to pay for the administration of the Fund. *Jones*, 397 Ill. App. 3d at 662.

In *Jones*, this court acknowledged that a contrary result had been reached in *Cleveland*, but declined to follow that case's reasoning and held that the \$10 fee was properly assessed. *Jones*, 397 Ill. App. 3d at 662-63; accord *People v. Hubbard*, No. 1-09-0346, slip op. at 6-8 (Sept. 17, 2010). See also *People v. Elcock*, 396 Ill. App. 3d 524, 539-40 (2009) (all convicted defendants are required to contribute to the Fund because an arrestee is only required to reimburse the county to the extent that he or she is reasonably able to do so, and the Fund is responsible for payment of the remainder).

Thus, in the instant case, relying on *Jones* and *Hubbard*, we affirm the \$10 Arrestee's Medical Costs Fund Fee.

Defendant finally contends, and the State concedes, that he is entitled, pursuant to section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2006)), to a \$5 per day credit for the 656 days he spent in custody before sentencing, for a total of \$3,280. Accordingly, defendant has \$3,280 in available credit against his fines. See 725 ILCS 5/110-14(a) (West 2006) (credit is applied against fines only and in no case shall the amount credited exceed the amount of the fine). Defendant has one fine against which he can apply this credit, the \$10 Mental Health Court Fee. See *People v. Graves*, 235 Ill. 2d 244, 253-54 (2009) (holding the \$10 Mental Health Court Fee is a fine). We therefore order that the \$10 Mental Health Court Fee be offset by defendant's presentencing credit.

Pursuant to Supreme Court Rule 615(b)(2) (eff. Aug. 27, 1999), we vacate defendant's

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conviction for resisting a peace officer. We also vacate the \$5 Court System Fee, the \$30 Children's Advocacy Center Fine, and the \$20 fine imposed pursuant to section 10(c)(2) of the Act. We further order the fines and fees order to be corrected to reflect a \$4 fine pursuant to section 10(b) of the Act and that the \$10 Mental Health Court Fee is offset by defendant's presentencing credit. We affirm the judgment of the circuit court in all other aspects.

Affirmed in part, vacated in part; fines and fees order corrected.