

concerning the validity of his conviction or sentence, but solely challenges the imposition of several fines and fees.

¶ 2 Defendant first contends, and the State correctly agrees, that he was erroneously assessed a \$20 preliminary hearing fee because no preliminary hearing took place. See 55 ILCS 5/4-2002.1(a) (West 2008). Where, as here, no preliminary hearing takes place, a defendant need not pay the \$20 preliminary examination fee. See *People v. Smith*, 236 Ill. 2d 162, 174 (2010) (holding that where the defendant did not receive a probable cause hearing, he cannot be assessed a preliminary examination fee).

¶ 3 Next, defendant contests the \$200 DNA analysis fee, arguing that it cannot be imposed because he was assessed the fee upon a prior conviction. Defendant points to the mittimus of a 2005 felony conviction (04 CR 15455) which shows that he was previously assessed the \$200 DNA analysis fee. Defendant argues the fee now imposed is duplicative.

¶ 4 The supreme court in *People v. Marshall*, No. 110765, slip op. at 15 (May 19, 2011), recently held that section 5-4-3 of the Unified Code of Corrections (730 ILCS 5/5-4-3 (West 2008)), authorizes a trial court to order the taking, analysis and indexing of a qualifying offender's DNA, and the payment of the analysis fee, only once where that defendant is not currently registered in the DNA database. Here, the records, of which we may take judicial notice (*People v. Jimerson*, 404 Ill. App. 3d 621, 634 (2010)), reflect that defendant is already registered in

the DNA database. See *People v. Leach*, No. 1-09-0339, slip op. at 14-15 (May 31, 2011) (holding that to vacate a DNA charge under *Marshall*, a defendant need only show that he was convicted of a felony after the DNA requirement went into effect on January 1, 1998). We therefore agree with defendant that the \$200 DNA analysis fee is duplicative and must be vacated. See *Marshall*, No. 110765, slip op. at 15.

¶ 5 Defendant next contends, and the State agrees, that the \$25 traffic court supervision fee (625 ILCS 5/16-104c (West 2008)) and the \$20 serious traffic violation fee (625 ILCS 5/16-104d (West 2008)), should be vacated. We agree that these two fees must be vacated because the events necessary to trigger them were not present. The record does not show that defendant violated any relevant portion of the Illinois Vehicle Code, or was convicted or pled guilty to any serious traffic violation. See *People v. Price*, 375 Ill. App. 3d 684, 698 (2007) (vacating a fee authorized only for a violation of the Illinois Vehicle Code because defendant "did not commit any offense enumerated in the Vehicle Code").

¶ 6 Defendant lastly contends that the \$10 arrestee's medical costs fund fee (730 ILCS 125/17 (West 2008)) was unauthorized because there was no evidence that he suffered any injury during his arrest or that Cook County incurred any expense relating to any medical treatment for him.

¶ 7 We initially note that this issue is currently pending in our supreme court in two consolidated cases. See *People v.*

Jackson, No. 1-08-3464 (2010) (unpublished order under Supreme Court Rule 23), *appeal allowed*, No. 110615 (Sept. 29, 2010); *People v. Lee*, No. 1-09-0347 (2010) (unpublished order under Supreme Court Rule 23), *appeal allowed*, No. 110702 (Sept. 29, 2010) (oral argument held May 10, 2011).

¶ 8 Section 17 of the County Jail Act, which authorizes the arrestee's medical costs fee, was amended effective August 15, 2008. See 730 ILCS 125/17 (West 2008) (amended by P.A. 95-842, § 5, eff. Aug. 15, 2008). Prior to its amendment, section 17 provided that money in the fund was to be used "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." 730 ILCS 125/17 (West 2006). As amended, section 17 provides that money in the fund is to be used "for reimbursement to the county of costs for medical expenses and administration of the Fund." 730 ILCS 125/17 (West 2008).

¶ 9 This court has rejected defendant's interpretation of the pre-amended statute that the fee could not be assessed unless the particular defendant incurred medical expenses while he was in custody. See *People v. Unander*, 404 Ill. App. 3d 884, 889-90 (2010); *People v. Coleman*, 404 Ill. App. 3d 750, 754 (2010); *People v. Hubbard*, 404 Ill. App. 3d 100, 105-06 (2010); *People v. Evangelista*, 393 Ill. App. 3d 395, 400 (2009); *People v. Jones*, 397 Ill. App. 3d 651, 663 (2009).

¶ 10 Nevertheless, defendant relies on *People v. Cleveland*, 393 Ill. App. 3d 700, 714 (2009), which held that the fee only

applies when the arrestee actually incurred medical expenses. Defendant's reliance is flawed because the author of the *Cleveland* opinion subsequently disagreed with its holding in *Hubbard*. *Hubbard*, 404 Ill. App. 3d at 105-06.

¶ 11 Moreover, we conclude that under the amended statute defendant was properly assessed the \$10 arrestee's medical costs fund fee. The amended version provides that the fund may be spent on fund administration and "costs for medical expenses" (730 ILCS 125/17 (West 2008)). Thus, the amended version eliminated any link between the \$10 fee and the individual arrestee's medical expenses. This change undermines defendant's position that the fee was improper where he did not receive medical treatment as a result of his arrest or while he was in custody. See *Unander*, 404 Ill. App. 3d at 890 (finding, in *dicta*, that the amendment shows the legislature's intention that the fee be collected regardless of whether a defendant incurs any injury). After examining the pre-amended statute, the amended statute, and the relevant case law, we conclude that the \$10 fee authorized by section 17 of the County Jail Act was properly imposed.

¶ 12 For the foregoing reasons, we vacate the \$20 preliminary hearing fee, the \$200 DNA analysis fee, the \$25 traffic court supervision fee, and the \$20 serious traffic violation fee; and affirm the judgment in all other respects.

¶ 13 Affirmed as modified.