

No. 1-11-0901

**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. 10 CR 16327
	)	
LUIS DAMIEN,	)	Honorable
	)	Kenneth J. Wadas,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ROBERT E. GORDON delivered the judgment of the court.  
Justices Lampkin and Palmer concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where three assessments imposed on a defendant by the trial court are unauthorized by statute or where four assessments were required to be offset by monetary credit for time served and were not, those assessments must be vacated and offset.

¶ 2 On February 9, 2010, defendant Luis Damian, age 45 at the time, was convicted of robbery for taking a necklace, worn around the neck of the victim Maria Sinchi. After a bench trial, Damian was sentenced to two years probation, and the trial court imposed a number of fines and fees, including a \$25 Traffic Court Supervision fee, a \$20 Serious Traffic Violation fee, a \$5

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DUI Court System fee, a \$30 Children's Advocacy Center assessment, a \$10 Mental Health Court assessment, a \$5 Youth Diversion/Peer Court assessment, and a \$5 Drug Court fee.

¶ 3 On this direct appeal, Damian argues that the imposition of the \$25 Traffic Court Supervision fee, the \$20 Serious Traffic Violation fee, and the \$5 DUI Court System fee by the trial court were unauthorized by statute and must be vacated. Additionally, Damian argues that the \$30 Children's Advocacy Center assessment, the \$10 Mental Health Court assessment, the \$5 Youth Diversion/Peer Court assessment, and the \$5 Drug Court fee are subject to offset for monetary credit for time served and must also be vacated. The State agrees with both of defendant's arguments. Damian argues that the case should be remanded to the trial court to assess the remaining \$540 in assessments.

¶ 4 For the following reasons, we find that 1) the \$25 Traffic Court Supervision fee, 2) the \$20 Serious Traffic Violation fee, 3) the \$5 DUI Court System fee, 4) \$30 Children's Advocacy Center assessment, 5) the \$10 Mental Health Court assessment, 6) the \$5 Youth Diversion/Peer Court assessment, and 7) the \$5 Drug Court fee must be vacated.

¶ 5 **BACKGROUND**

¶ 6 The victim Maria Sinchi testified that, on August 29, 2010, at 7:15 PM, she was distributing flyers with her 16 year-old daughter, Eugenia, in the parking lot of a grocery store located near the intersection of Addison Street and Rockwell Street in Chicago. Sinchi was wearing a gold chain with an elephant medallion around her neck. Sinchi testified that defendant Luis Damian, an ice cream vendor, was with his ice cream cart and in the same parking lot in which she was distributing flyers. Sinchi testified that Damian walked over to her, to a point

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where he was standing two or three feet away from her, and asked Sinchi what she was doing. At this distance, Sinchi observed Damian's face and noticed that he was wearing a red hat. Sinchi handed Damian a flyer, and as Damian took the flyer from Sinchi with one hand, he grabbed the gold chain from around Sinchi's neck with the other hand. Damian then began to run towards a nearby park, pushing his ice cream cart and still wearing the red hat. Sinchi pointed out Damian to her daughter, Eugenia, and Eugenia ran after Damian with Sinchi following. However, the two lost sight of Damian.

¶ 7 Eugenia Sinchi, the victim's daughter, testified that she did not observe the robbery of the necklace but that her mother, Sinchi, identified a Hispanic man with a red hat in the parking lot, whom she and her mother chased. During the chase, Eugenia observed Damian's profile from ten to twenty feet away and identified Damian in court at the trial.

¶ 8 Eugenia testified that she subsequently called her father, who met Sinchi and Eugenia along with Eugenia's aunt and that the four drove around the neighborhood looking for Damian. Eugenia testified that about eight minutes after Eugenia and Sinchi lost sight of Damian, they observed him about six to eight blocks away from the grocery store, pushing his cart northbound on the sidewalk of California Avenue. He was still wearing the red hat. Eugenia then telephoned 911.

¶ 9 Officer Nestorowicz<sup>1</sup> testified that he was on duty with his partner, Officer Martin, in an unmarked squad car, when he received a call of a theft in the area of Addison Street and

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<sup>1</sup> The record did not disclose the first names of either Officer Nestorowicz or Officer Martin.

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California Avenue. Officer Nestorowicz testified that the officers received a follow-up message that the suspect was a male Hispanic wearing a white shirt and grey pants and was pushing an ice cream cart northbound on California Avenue. Officer Nestorowicz testified that he observed a man, who matched the description, walking with his ice cream cart along California Avenue.

The man was not wearing the red hat at this time. Because the officers were traveling southbound on California Avenue, they made a U-turn. As Officer Nestorowicz turned his vehicle towards Damian, Damian changed direction and began to rush across California Avenue, heading west on Berteau Street. The officers stopped Damian near 2812 West Berteau Street. Officers Nestorowicz and Martin detained Damian and searched his ice cream cart. Officer Nestorowicz found a red baseball hat inside the ice cream cart but not the necklace, which was never recovered. The officers then brought Damian to Sinchi for a show up, and she identified Damian as the person who had taken her necklace.

¶ 10 On February 9, 2010, the trial court found Damian guilty of robbery and sentenced him to two years' probation. The court credited Damian with 197 days of time served while in custody and imposed on Damian a number of monetary assessments amounting to a total of \$635, including a \$25 Traffic Court Supervision fee, a \$20 Serious Traffic Violation fee, a \$5 DUI Court System fee, a \$30 Children's Advocacy Center assessment, a \$10 Mental Health Court assessment, a \$5 Youth Diversion/Peer Court assessment, and a \$5 Drug Court fee.

¶ 11 On March 10, 2011, Damian filed a motion for a new trial, which the trial court denied.

¶ 12 Damian now appeals.

¶ 13

## ANALYSIS

¶ 14 On this direct appeal, Damian does not contest either his conviction or his sentence. He appeals only certain fines and fees imposed by the trial court, which he claims were either unauthorized by statute or offset by monetary credit for time served.

¶ 15 For the following reasons, we find that 1) the \$25 Traffic Court Supervision fee, 2) the \$20 Serious Traffic Violation fee, 3) the \$5 DUI Court System fee, 4) \$30 Children's Advocacy Center assessment, 5) the \$10 Mental Health Court assessment, 6) the \$5 Youth Diversion/Peer Court assessment, and 7) the \$5 Drug Court fee must be vacated.

¶ 16

### I. Standard of Review

¶ 17 The facts in this appeal are undisputed. The issue is the application of law to these undisputed facts; therefore, the standard of review is *de novo*. *People v. Smith*, 191 Ill. 2d 408, 411 (2000). Under the *de novo* standard of review, the reviewing court does not need to defer to the trial court's judgment or reasoning. *People v. Vincent*, 226 Ill. 2d 1, 14 (2007). *De novo* review is completely independent of the trial court's decision. *U.S. Steel Corp. v. Illinois Pollution Control Board Illinois Environmental Protection Agency*, 384 Ill. App. 3d 457, 461 (2008). *De novo* consideration means that the reviewing court performs the same analysis that a trial judge would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011).

¶ 18 Additionally, a defendant's request for monetary credit for time served may be addressed for the first time on appeal. *People v. Caballero*, 228 Ill. 2d 79, 87 (2008); *People v. Woodard*, 175 Ill. 2d 435, 457 (1997); *People v. Beech*, 202 Ill. App. 3d 576, 580 (1990) (emphasizing that credit could have been raised on appeal); *People v. Bates*, 179 Ill. App. 3d 705, 709 (1989)

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(credit could have been raised on appeal).

¶ 19 II. Trial Court's Imposition of Various Assessments

¶ 20 Damian was charged with: (1) a \$25 Traffic Court Supervision Fee imposed pursuant to section 5/16-104c of the Illinois Vehicle Code (625 ILCS 5/16-104c (West 2010)), (2) a \$20 Serious Traffic Violation fee imposed pursuant to section 5/16-104d of the Illinois Vehicle Code (625 ILCS 5/16-104d (West 2008)), and (3) a \$5 DUI Court System fee imposed pursuant to section 5/5-1101(a) of the Illinois Counties Code (55 ILCS 5/5-1101(a) (West 2008)). Damian argues that the three relevant statutory provisions specify that these assessments apply only in cases where a defendant violated the Illinois Vehicle Code. Therefore, since Damian did not commit an offense in violation of the Vehicle Code, he argues that these three fees must be vacated as unauthorized by statute.

¶ 21 Defendant is correct with respect to all three fees. First, section 5/16-104c of the Illinois Vehicle Code states that, "any person who receives a disposition of court supervision for a violation of any provision of this Code or a similar provision of a local ordinance shall pay an additional fee." 625 ILCS 5/16-104c (West 2010). Second, section 5/16-104d of the Vehicle Code states that, "any person who is convicted of, pleads guilty to, or is placed on supervision for a serious traffic violation, as defined in Section 1-187.001 of this Code, a violation of Section 11-501 of this Code, or a violation of a similar provision of a local ordinance shall pay an additional fee." 625 ILCS 5/16-104d (West 2008). Third, section 5/5-1101(a) of the Illinois Counties Code states that:

"A \$5 fee to be paid by the defendant on a judgment of guilty or a

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grant of supervision for violation of the Illinois Vehicle Code other than Section 11-501 or violations of similar provisions contained in county or municipal ordinances committed in the county, and up to a \$30 fee to be paid by the defendant on a judgment of guilty or a grant of supervision for violation of Section 11-501 of the Illinois Vehicle Code or a violation of a similar provision contained in county or municipal ordinances committed in the county.” 55 ILCS 5/5-1101(a) (West 2008).

¶ 22 Damian was convicted of robbery, which is a violation of the Illinois Criminal Code. 720 ILCS 5/18-1(a) (West 2010). Robbery is not a violation of the Illinois Vehicle Code or a similar municipal ordinance, nor is it a traffic offense. Therefore the trial court’s imposition of the Traffic Court Supervision Fee, the Serious Traffic Violation fee, and the DUI Court System Fee must be vacated.

¶ 23 Additionally, Damian was charged a \$30 Children’s Advocacy Center assessment imposed pursuant to section 5/5-1101(f-5) of the Illinois Counties Code (55 ILCS 5/5-1101(f-5) (West 2008)), a \$10 Mental Health Court assessment imposed pursuant to section 5/5-1101(d-5) of the Illinois Counties Code (55 ILCS 5/5-1101(d-5) (West 2008)), a \$5 Youth Diversion/Peer Court assessment imposed pursuant to section 5/5-1101(e) of the Illinois Counties Code (55 ILCS 5/5-1101(e) (West 2008)), and a \$5 Drug Court fee imposed pursuant to section 5/5-1101(f) of the Illinois Counties Code (55 ILCS 5/5-1101(f) (West 2008)). Damian argues that, because the trial court credited him with 197 days of time served, he is entitled to \$5 per day of

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monetary credit, amounting to a total of \$985, towards the fines imposed against him. See *People v. Paige*, 387 Ill. App. 95, 104-05 (2007) (holding that the trial court improperly failed to credit the defendant \$5 per day for the time he spent in presentence custody). Section 110-14(a) of the Code of Criminal Procedure states: “Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of \$5 for each day so incarcerated upon application of the defendant. However, in no case shall the amount so allowed or credited exceed the amount of the fine.” 725 ILCS 5/110-14(a) (West 2010).

¶ 24 The Illinois appellate court has previously held that each of these four assessments imposed on Damian are subject to offset for credit for time served. See, respectively, *People v. Jones*, 397 Ill. App. 3d 651, 660-61 (2009) (\$30 Children’s Advocacy Center assessment is a fine subject to offset for credit for credit for time served); *People v. Price*, 375 Ill. App. 3d 684, 702 (2007) (\$10 Mental Health Court charge and \$5 Youth Diversion/Peer Court charges are fines subject to offset for credit for time served); *People v. Unander*, 404 Ill. App. 3d 884, 886 (2010) (\$5 Drug Court assessment is a fine subject by offset for credit for time served). The State agrees with Damian’s arguments.

¶ 25 Therefore, after combining the credit for time served and vacating the aforementioned unauthorized fees, Damian is entitled to a credit of \$95, leaving a balance of \$540 to be assessed. The State agrees.

¶ 26 CONCLUSION

¶ 27 For the foregoing reasons, we find that 1) the \$25 Traffic Court Supervision fee, 2) the

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\$20 Serious Traffic Violation fee, 3) the \$5 DUI Court System fee, 4) \$30 Children's Advocacy Center assessment, 5) the \$10 Mental Health Court assessment, 6) the \$5 Youth Diversion/Peer Court assessment, and 7) the \$5 Drug Court fee must be vacated. The balance of fees assessed in the amount of \$540 shall be a credit on time towards time considered served. We order the assessment of fees so corrected. *People v. Jones*, Ill. App. 3d 651, 664 (2009).

¶ 28 Affirmed as modified.