2018 IL App (5th) 140123-U

NO. 5-14-0123

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Christian County.
	)	
v.	)	No. 13-CF-44
	)	
TODD W. TONELLE,	)	Honorable
	)	Bradley T. Paisley,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Cates and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: Where the search of defendant's vehicle stemmed from the discovery of loose prescription narcotics found on his person in a search incident to an arrest, the search of his vehicle did not violate defendant's fourth amendment rights and we affirm the conviction. Where the trial court provided substantial compliance with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984), we find that defendant waived his right to counsel, and remand for a suppression hearing is not warranted. Where the appellate court lacks jurisdiction to consider any fines and fees entered by the circuit clerk, but not included in the trial court's final judgment, we do not address the fees and fines issue. Where the circuit clerk miscalculated defendant's presentence detention credits, we vacate that portion of the sentence and remand with directions.

¶ 2 Defendant directly appeals from his conviction for possession of less than 15 grams of cocaine. He argues that the conviction should be reversed on the basis that the

search of his vehicle was illegal. Defendant asks this court to remand his case to allow for a suppression hearing because at the time when the motion to suppress should have been filed, he was *pro se* and had not been properly admonished. Defendant also asks this court to vacate certain fines assessed at his sentencing and to recalculate his monetary credit for the time spent in jail before sentencing. For the reasons stated in this order, we find that the search was legal as incident to his arrest and thus suppression would not have been appropriate; that defendant validly exercised his constitutional right to proceed without legal counsel and therefore remand for a suppression hearing is not warranted; that we do not have jurisdiction to address defendant's claims of improper fees and fines entered by the Christian County circuit clerk because the fees and fines were not part of the trial court's judgment, and thus there is no order from which an appeal can be taken; and that defendant's claim regarding credit for time served raises a valid issue, and therefore we remand this matter to the trial court for recalculation and proper application of defendant's credit against fines.

¶ 3 FACTS

¶ 4 I. The Charges

¶ 5 Following Defendant's February 23, 2013, arrest, the State formally charged Defendant with unlawful possession of a controlled substance—hydrocodone, a Schedule II controlled substance—in violation of section 402 of the Illinois Controlled Substances Act (720 ILCS 570/402 (West 2010)). Defendant was eligible for an extended term of sentence because of a conviction stemming from a 2003 felony. On August 22, 2013, the State filed a second count against Defendant for unlawful possession of a controlled

substance—less than 15 grams of cocaine—in violation of section 402(c) of the Illinois Controlled Substances Act (*id.* § 402(c)).

¶ 6 On October 11, 2013, the State voluntarily dismissed count I—the charge for unlawful possession of hydrocodone.

¶ 7 II. The Trial

¶ 8 The facts leading up to the Defendant's arrest are taken from the testimony at trial on October 15, 2013. At all times during trial, Defendant represented himself. Prior to trial, the court barred the State from presenting testimony or evidence about the hydrocodone charge in order to protect Defendant from the possible prejudice. However, the court allowed the introduction of such evidence if the Defendant opened the door to this issue. In his opening statement, Defendant informed the jury that he had hydrocodone pills in his pocket at the time of his arrest, and that he had a valid prescription for those pills.

¶ 9 A. *Testimony of Deputy James David Pickett*

¶ 10 At approximately 1 a.m. on February 23, 2013, Deputy James Pickett of the Christian County Sheriff's Department was parked on a rural Taylorville Township road near Defendant's home. Deputy Pickett was familiar with the Defendant and his vehicle and also knew that his driver's license was suspended. Deputy Pickett testified that he had no specific reason to be on this rural road on the night of the arrest. He denied having been informed to be at that location. He witnessed a male driving the Defendant's vehicle and knew that driver to be the Defendant. Deputy Pickett pulled the vehicle over and called dispatch to advise of his current location and to provide information about the

vehicle he had stopped. Deputy Pickett testified that the county dispatch confirmed that Defendant's driver's license was suspended.

¶ 11 Immediately after being pulled over, the Defendant exited his vehicle, raised his arms, and asked what was going on. Deputy Pickett approached Defendant and advised him that he witnessed him driving his vehicle and that his driver's license was suspended. Deputy Pickett directed Defendant to return to his vehicle. Deputy Pickett made the decision to cite Defendant for driving while his license was suspended. Several other officers arrived on the scene. Deputy Pickett arrested Defendant. Based upon that arrest, he searched Defendant's vehicle. During this search, Taylorville Detective Evert Nation, one of the officers who had responded to the scene, found a powdery white substance on the middle console of Defendant's truck. Deputy Pickett read Defendant the *Miranda* warnings. Defendant told the officers that the substance was foot powder. After continued questioning, Defendant told the officers to test the substance for cocaine. Then, he repeated this suggestion.

¶ 12 Deputy Pickett conducted a field test of some of the powder to see if the substance was methamphetamine. The field test was negative. The field test utilized would not have tested for the presence of cocaine. He did not conduct any further field tests of the substance. Detective Nation collected the powdery substance in accordance with police evidentiary practice by placing it in a plastic bag. Deputy Pickett took control of the bag and upon return to the sheriff's office, he secured the bag in an evidence locker.

¶ 13 At trial, the State's Attorney asked Deputy Pickett about a conversation he had with the Defendant about one month after his arrest. During this conversation, Defendant

informed Deputy Pickett that he had purchased cocaine in Springfield earlier on the day of the arrest. Defendant told Deputy Pickett that he was with a man named Don Humphry when he purchased the cocaine. Deputy Pickett acknowledged that he did not have Defendant put this statement in a written form, and confirmed that there was no audio recording of Defendant's statements.

¶ 14 B. *Testimony of Deputy Phillip Deal*

¶ 15 Deputy Phillip Deal testified that he was employed by the Christian County Sheriff's Office. On February 23, 2013, at 1 a.m., he was on patrol in Palmer. Deputy Deal testified that the sheriff's office had received notification that a male driver was operating Defendant's vehicle headed from Morrisonville towards Defendant's home in Taylorville. Deputy Deal knew that Defendant's driver's license was suspended. He observed the white powdery substance on the center console of Defendant's vehicle. While he and Deputy Pickett were deciding to field test the substance for methamphetamine, Defendant suggested that they should test the powder for cocaine.

¶ 16 In his case, Defendant recalled Deputy Deal to testify. Deputy Deal acknowledged that Defendant's statement suggesting that they test the substance for cocaine was only oral and that he had no written or taped statements to that effect.

¶ 17 C. *Testimony of Detective Evert Nation*

¶ 18 Detective Evert Nation testified that on February 23, 2013, at 1 a.m. he was on patrol on the west side of Taylorville. Upon hearing that Defendant had been stopped, he drove to that location. Deputy Pickett had placed Defendant under arrest because he was driving on a suspended license. Detective Nation testified that Deputy Pickett discovered

some pills in Defendant's pocket, and that they searched Defendant's vehicle incident to the discovery of the pills. He discovered the white powdery substance in the center console. Detective Nation collected the powdery substance in a small bag and handed the bag to Deputy Pickett. On cross-examination, Detective Nation testified that he never learned what the laboratory tests revealed about the substance collected from Defendant's vehicle.

¶ 19 D. *Testimony of Aaron Roemer*

¶ 20 Aaron Roemer, an Illinois State Police forensic scientist, testified that he tested the sample provided to him by the Christian County Sheriff's Department. The powder weighed less than a tenth of one gram and tested positive for cocaine. Roemer provided these opinions within a reasonable degree of scientific certainty.

¶ 21 E. *Testimony of Deputy James McWard*

¶ 22 Deputy McWard is employed by the Christian County Sheriff's Department. He testified that he backed up Deputy Pickett at the scene of the traffic stop. Deputy McWard noticed a powdery white substance in the center console of the vehicle. He photographed the substance. He was not involved in the collection of the sample.

¶ 23 III. Written and Oral Motions Filed by Defendant Before and During Trial

¶ 24 Initially, Defendant was represented by attorney Aaron D. Calvert, who entered his appearance on March 19, 2013. By August 16, 2013, the relationship had ended, and attorney Calvert sought and was granted leave to withdraw as Defendant's attorney. Defendant then filed various motions with the court *pro se* and repeatedly asked the court to allow him to present his motions in person. Finally, he asked the court for assistance to

put his prescription drug history into the record and to dismiss the hydrocodone possession charge because he had a 2008 prescription for the drug.

¶ 25 On September 6, 2013, Defendant filed a handwritten motion to suppress, stating "Officer Pickett stated reason for pulling me over was driving on suspension. I have a driver license so anything as result of being pulled over [illegible]. The State throw out the suspension ticket then should anything result of being pull over should be thrown out." At the September 12, 2013, hearing, the court explained that Defendant would need to call Deputy Pickett to give testimony in support of his motion. The court advised that Defendant could have Deputy Pickett testify, but because of procedural rules, the trial date would have to be continued. Defendant did not want to delay his trial date and asked the court to rule on the motion without witness testimony. The trial court complied and denied the motion.

¶ 26 On the same date, Defendant also argued that the case should be dismissed because his speedy trial rights were violated. He acknowledged that he was not really certain of the calculation. The trial court implored and admonished Defendant to allow an attorney to be appointed to represent him at trial. The court reminded Defendant of the plea offer the State had made, as well as the potential sentence range if a jury convicted him. Despite this information, Defendant insisted that he would represent himself at trial.

¶ 27 On October 11, 2013, the trial court held a hearing and thoroughly examined Defendant's decision to represent himself at trial. The court went through all elements mandated by Illinois Supreme Court Rule 401 before allowing Defendant's waiver of his right to counsel. Ill. S. Ct. R. 401(a) (eff. July 1, 1984). Defendant confirmed that he

understood the charges, the possible penalties, and his rights to an attorney. The court explained that Defendant would have to follow all of the standard courtroom rules, and that he would not receive any special treatment because of his status. The court allowed Defendant to access the county law library in order to prepare for trial and confirmed that Defendant's witnesses would all be available to testify. The court also explained Defendant's right to testify or not testify on his own behalf, the process of *voir dire*, giving an opening statement, presenting evidence, participating in a jury instructions conference, and making closing arguments. At the end, the Defendant stated: "I still want to represent myself. I definitely am going to beat this guy. Reasonable doubt and one juror … I definitely can do it. Definitely. I'm not scared on that." At the conclusion of the hearing, Defendant filed a written waiver of his right to counsel in which he acknowledged that he had been informed and understood the charges against him, the minimum and maximum sentence possible, and that he had a right to an attorney.

¶ 28 At this same hearing, the trial court heard all of Defendant's *pro se* motions. The trial court postponed ruling on Defendant's motion to dismiss the cocaine possession charge because Defendant requested the opportunity to research a legal issue. In this motion, Defendant argued that he had regained his driver's license after the arrest, that the basis for the initial stop was no longer valid, and that the court must dismiss the cocaine possession charge. The remainder of these motions were either withdrawn by Defendant or denied by the court.

¶ 29 During trial, after the State rested, Defendant verbally made a motion to suppress on various grounds. Defendant alleged that Deputy Pickett pulled him over when he was

in his driveway and on his property. He stated that he got out of his vehicle after being pulled over, only to be ordered to get back into his vehicle. Defendant argued that with this set of facts, the State was required to get a search warrant for his vehicle. The trial court denied Defendant's motion to suppress on the basis that the search was conducted incident to his arrest. Alternatively, Defendant argued that the basis for his traffic stop was invalid because he now has his driver's license, and that therefore all evidence resulting from this stop must be suppressed. The trial court denied the motion because witness testimony at trial established that Defendant's license was suspended at the time he was seen driving the vehicle.

¶ 30 IV. Verdict and Sentence

¶ 31 After deliberations, the jury returned a verdict of guilty on the charge of unlawful possession of cocaine. At sentencing on November 21, 2013, the court sentenced Defendant to four years of imprisonment followed by one year of mandatory supervised release. Defendant was given credit for 114 days served. He was fined $500 and ordered to pay court costs totaling $1455.30.

¶ 32 LAW AND ANALYSIS

¶ 33 Defendant appeals, raising three issues in this appeal. He argues that the search of his vehicle was invalid as "incident to his arrest" because he was arrested before the search and could not gain access to the truck in order to obtain a weapon or destroy evidence. Furthermore, he contends that because the arrest was based on driving while his license was suspended, there was no reasonable expectation that evidence related to his suspended license would be discovered in his vehicle. If we find that this first

argument is meritless, Defendant next asks us to remand the case to the trial court for a suppression hearing because he did not have an attorney before or during trial. Finally, Defendant asks us to vacate certain fines and to remand for proper monetary credit to be given.

¶ 34 I. Motion to Suppress—Search Incident to Arrest

¶ 35 On appeal from a denial of a motion to suppress, we use a bifurcated standard of review. A reviewing court will not reverse factual findings unless the court concludes that they are contrary to the manifest weight of the evidence. *People v. Gherna*, 203 Ill. 2d 165, 175, 784 N.E.2d 799, 805 (2003). In reviewing the facts of the case on appeal, the court is allowed to conduct "its own assessment of the facts in relation to the issues presented and may draw its own conclusions when deciding what relief should be granted." *Id.* at 175-76. Ultimately, the determination of whether or not suppression was factually appropriate is a legal question and is reviewed on a *de novo* basis. *People v. Pitman*, 211 Ill. 2d 502, 512, 813 N.E.2d 93, 101 (2004).

¶ 36 Our federal and state constitutions guarantee freedom from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970 art. I, § 6; *Maryland v. Buie*, 494 U.S. 325, 331 (1990). The fourth amendment's primary purpose is to apply a standard of reasonableness "upon the exercise of discretion by law enforcement officers to safeguard the privacy and security of individuals against arbitrary invasions." *People v. McDonough*, 239 Ill. 2d 260, 266-67, 940 N.E.2d 1100, 1106 (2010). The fourth amendment guarantee even applies to seizures of the person that involve only a brief stop. *People v. Thomas*, 198 Ill. 2d 103, 108, 759 N.E.2d 899, 902 (2001). By extension

then, "stopping a vehicle and detaining its occupants" is a fourth amendment seizure. *People v. Jones*, 215 Ill. 2d 261, 270, 830 N.E.2d 541, 549 (2005). Therefore, stops of vehicles must be reasonable. *People v. Hackett*, 2012 IL 111781, ¶ 20, 971 N.E.2d 1058 (citing *Whren v. United States*, 517 U.S. 806, 810 (1996)).

¶ 37 Typically, a reasonable search and seizure involves a warrant obtained with probable cause. *People v. Long*, 99 Ill. 2d 219, 227-28, 457 N.E.2d 1252, 1255 (1983). A warrantless search and/or seizure incident to an arrest is only proper if the arrest itself was constitutionally sound. *Johnson v. United States*, 333 U.S. 10, 17 (1948). A warrantless arrest can be constitutional if the officer has reasonable grounds to believe that the person is committing or is about to commit a crime. 725 ILCS 5/107-2(c) (West 2010); *People v. Robinson*, 167 Ill. 2d 397, 405, 657 N.E.2d 1020, 1025 (1995); *People v. Flowers*, 179 Ill. 2d 257, 262, 688 N.E.2d 626, 629 (1997) (citing *Terry v. Ohio*, 392 U.S. 1, 22 (1968)). To determine if the underlying arrest is constitutional, the court must analyze the evidence in its totality. *People v. Adams*, 131 Ill. 2d 387, 396-97, 546 N.E.2d 561, 565 (1989).

¶ 38 A violation of a traffic statute provides a reasonable basis for stopping the vehicle involved. *People v. Perez*, 258 Ill. App. 3d 465, 471, 631 N.E.2d 240, 244 (1994) (citing *People v. Guerrieri*, 194 Ill. App. 3d 497, 501, 551 N.E.2d 767, 769 (1990)). Additionally, if the officer observes a driver violate a traffic law, the stop is deemed valid at its inception. *People v. Moss*, 217 Ill. 2d 511, 527, 842 N.E.2d 699, 709 (2005).

¶ 39 A. *The Stop*

¶ 40 Initially, we must determine if Deputy Pickett's traffic stop was valid. From the testimony at trial, Deputy Pickett knew that Defendant's license was suspended. He saw Defendant drive his vehicle past him. He stopped Defendant and confirmed that Defendant's license was suspended before placing Defendant under arrest.

¶ 41 Whether a traffic stop is reasonable is judged objectively by the facts known to the officer at the time of the stop. *People v. Linley*, 388 Ill. App. 3d 747, 749, 903 N.E.2d 791, 795 (2009). If a police officer has probable cause to believe that a traffic statute has been violated, then the decision to stop the vehicle is generally construed as reasonable. *McDonough*, 239 Ill. 2d at 267 (citing *Whren*, 517 U.S. at 810); *Perez*, 258 Ill. App. 3d at 471.

¶ 42 Here, given the totality of the factual circumstances, we find that Deputy Pickett's decision to stop Defendant for driving while his license was suspended was a reasonable decision. Deputy Pickett believed that Defendant's license was suspended, observed Defendant driving his vehicle, and upon stopping this vehicle confirmed both that Defendant was driving the vehicle and that his license was suspended. The trial court's finding that the stop was reasonable was correct. *People v. Cosby*, 231 Ill. 3d 262, 271, 898 N.E.2d 603, 609 (2008).

¶ 43 B. *Search of Defendant's Person*

¶ 44 We next turn to the search of Defendant's person. Defendant's oral motion to suppress at the close of the State's case did not specifically challenge the search of his person. Furthermore, because of the timing of Defendant's motion, the State had no

opportunity to prepare a response to his motion. The timing of Defendant's motion to suppress was problematic because the State's presentation of its case against Defendant was complete. The State's use of evidence via witness testimony was structured with the goal of convicting Defendant of unlawful possession of cocaine—not specifically towards justifying the stop itself. Therefore, the testimony at trial did not directly address the issues Defendant chose to raise in his oral motion to suppress. Similarly, Defendant's cross-examination of these witnesses did not shed light on the issues raised in his oral motion. To the extent that there is a lack of evidence on the direct and indirect issues raised in the motion to suppress—as Defendant filed the motion and appealed from the order denying his motion—Defendant bears the responsibility to preserve a sufficiently complete record. *People v. Ramirez*, 242 Ill. App. 3d 954, 959, 613 N.E.2d 1230, 1233 (1993). If there are any doubts due to the incomplete record, those doubts are construed against the defendant, and the court is presumed to have ruled correctly. *Id.*

¶ 45 Because Defendant made his oral motion to suppress after the State rested, and the issues Defendant raised were not fully addressed by the direct and cross-examination testimony, the factual evidence elicited did not support his motion. Furthermore, as noted in the paragraph above, Defendant did not challenge the search of his person, and thus the record on that issue is limited. However, whether the search of Defendant's person was proper is an important issue. Detective Nation testified that the search of Defendant's vehicle was tied to Deputy Pickett's discovery of five hydrocodone pills when he searched Defendant's person incident to his arrest. Therefore, we address the issue of the search of Defendant's person with the facts available in the record.

¶ 46 The primary purpose of a search incident to arrest is to prevent the individual arrested from obtaining a weapon or destroying evidence. *Chimel v. California*, 395 U.S. 752, 762-63 (1969). Historically, a search incident to arrest could only extend to the arrestee's person and the area in his immediate control. *Id.* at 763. This exception to the search warrant requirement is based upon officer safety and evidence preservation. *Arizona v. Gant*, 556 U.S. 332, 338 (2009). Our supreme court has held that officers have the authority to search an arrestee incident to a lawful arrest in order to possibly disarm the arrestee and/or to discover evidence. *People v. Hoskins*, 101 Ill. 2d 209, 216, 461 N.E.2d 941, 944-45 (1984).

¶ 47 Defendant argues that neither situation applies in this case—that the officers were not in danger and that there was no evidence about his suspended license that needed to be preserved. However, the law does not support Defendant's argument. We find that *People v. Hoskins*, although factually different, provides legal guidance on the issue of searches incident to arrest. In *Hoskins*, the court stated that the authority to search the person arrested incident to that arrest:

> " 'does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a "reasonable" search under that Amendment.' " *Id.* (quoting *United States v. Robinson*, 414 U.S. 218, 235 (1973)).

¶ 48 In *Hoskins*, the defendant was arrested for prostitution. *Id.* at 211. When the officers advised that they intended to arrest her, she fled on foot and in doing so either dropped or threw her purse to the ground. *Id* at 213. Defendant was ultimately caught and her hands cuffed behind her back. *Id.* The officers searched Defendant's purse, finding an envelope. *Id.* Inside the envelope, the officers discovered a hypodermic syringe and a white powdery substance stuck to a metal lid. *Id.* The officers conducted a field test and the substance tested positive for cocaine. *Id.* Defendant filed a motion to suppress the envelope and its contents. *Id.* Defendant conceded that her arrest for prostitution was correct. *Id.* She argued that the search was improper both because she was handcuffed and could not possibly reach a weapon and because the officers' search could not have turned up evidence of the prostitution charge. *Id.* The trial court granted the motion and the appellate court affirmed. *Id.* The supreme court reversed, holding that the search was proper pursuant to *United States v. Robinson*, a case that involved a warrantless search of an arrestee incident to an arrest for a traffic violation. *Id.* at 216. The court stated that the search of the defendant's purse was proper as incident to her lawful arrest for prostitution. *Id.* at 217. The court stated that "*Robinson* authorizes a warrantless search of the defendant's purse, which is immediately associated with defendant's person, simply on the lawful, custodial arrest." *Id.*

¶ 49 In this case, Deputy Pickett had probable cause to stop Defendant and to arrest him on the basis of the statutory traffic violation. Although Defendant was standing outside of his vehicle when arrested, he was not then handcuffed. Certainly Deputy Pickett had the right and duty to search Defendant's person for possible weapons.

Defendant's argument that the officers were not in danger is subjective. While he may have known that he was not carrying a weapon at the time he was arrested, officer safety dictates a more objective approach. As part of that arrest, Deputy Pickett was not required to have additional justification to conduct a search of Defendant's person incident to the arrest. Accordingly, we find that Deputy Pickett's warrantless search of Defendant's person incident to his arrest for driving on a suspended license was a reasonable search and that Defendant's fourth amendment rights were not violated.

¶ 50 C. *Search of Defendant's Vehicle*

¶ 51 Detective Nation testified that the search of Defendant's vehicle was based upon the potential illegality of Defendant's possession of hydrocodone pills. At that time, however, Defendant had only been arrested for driving on a suspended license. The illegal possession charge was filed later and was ultimately dropped by the State just before trial.

¶ 52 To comply with the fourth amendment after a traffic stop, the officers must only engage in conduct " 'reasonably related in scope to the circumstances which justified the interference in the first place.' " *People v. Juarbe*, 318 Ill. App. 3d 1040, 1052, 743 N.E.2d 607, 618 (2001) (quoting *Terry*, 392 U.S. at 19-20). Therefore, as this court stated in *People v. Lomas*, "unless the officers possess, or subsequently develop, reasonable, articulable suspicions that some kind of other criminal activity is afoot, they must attend to the business of charging a traffic offense and confine their investigation to the minimal inquiries attendant to it." *People v. Lomas*, 349 Ill. App. 3d 462, 471, 812 N.E.2d 39, 46 (2004).

¶ 53 As stated earlier, warrantless searches are generally unconstitutional. Typically, a reasonable search and seizure involves a warrant obtained with probable cause. *People v. Long*, 99 Ill. 2d 219, 227-28, 457 N.E.2d 1252, 1255 (1983). However, there are a few exceptions to the warrant requirement. *Gant*, 556 U.S. at 338.

¶ 54 One of the exceptions authorizing a warrantless search is a search incident to arrest. *Gant*, at 338. The *Gant* case began with an anonymous tip that a home was being used as a place to buy drugs. *Id.* at 335. The officers went to the home and the defendant answered the door. *Id.* at 335-36. Later, the officers conducted a records check and discovered that the defendant's driver's license was suspended. *Id.* at 336. That evening, the officers returned to the house and witnessed the defendant driving a car into the driveway. *Id.* The officers arrested the defendant for driving on a suspended license. *Id.* The officers handcuffed him and locked him in the back seat of a patrol car. *Id.* After the defendant was secured in the patrol car, the officers searched the interior of his vehicle and discovered cocaine in a pocket of a jacket on the backseat. *Id.* The State charged the defendant with two drug-related offenses. *Id.* The Arizona Supreme Court held that the search of the defendant's vehicle was unreasonable and in violation of the fourth amendment. *Id.* at 337-38.

¶ 55 On appeal to the Supreme Court, the *Gant* Court was concerned with the expansion of its earlier ruling in *New York v. Belton*, 453 U.S. 454 (1981). *Gant*, 556 U.S. at 344-45. In *Belton*, the Supreme Court held that "when an officer lawfully arrests 'the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of the automobile' and any containers therein." *Gant*, 556

U.S. at 340-41 (quoting *Belton*, 453 U.S. at 460). The rationale for the Court's holding in *Belton* was that the small area of a vehicle's passenger compartment is within " 'the area into which an arrestee might reach.' " *Belton*, 453 U.S. at 460 (quoting *Chimel*, 395 U.S. at 763). The *Gant* Court also concluded that a vehicle stop and resulting arrest was unique and justified a search incident to the arrest when " 'reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.' " *Gant*, 556 U.S. at 343 (quoting *Thornton v. United States*, 541 U.S. 615, 632 (2004) (Scalia, J., concurring)).

¶ 56 In *Gant*, the Supreme Court concluded that the facts did not support a vehicle search under either possibility—the arrestee's access to the vehicle or discovery of offense-related evidence. *Id.* at 344.

¶ 57 Although the Supreme Court did not side with the State of Arizona to expand upon its holding in *Belton*, the Court noted that *Belton* and *Thornton* allow an officer to search a vehicle if the arrestee is able to reach the vehicle or if the officers believe that the vehicle contains evidence of the offense. *Gant*, 556 U.S. at 346. Additionally, the Court noted that a warrantless search of a vehicle is allowed when safety is at issue when the officer believes that the arrestee could access the vehicle to " 'gain immediate control of weapons.' " *Id.* at 346-47 (quoting *Michigan v. Long*, 463 U.S. 1032, 1049 (1983), citing *Terry*, 392 U.S. at 21). Furthermore, a search of the interior of a vehicle is allowed if probable cause exists to believe that a vehicle contains evidence of a crime. *United States v. Ross*, 456 U.S. 798, 820-21 (1982). If the officers conclude that the vehicle could contain evidence of a crime, the officers are allowed to search any area of the vehicle in which the evidence could be located. *Id.* The holding in *Ross* broadly allows searches for

evidence that is tied to offenses other than the crime with which the arrestee was originally charged. *Id.*

¶ 58 In *United States v. Ross*, a confidential informant provided information that a dealer known as "Bandit" was selling narcotics out of the trunk of a vehicle at a certain location. *Id.* at 800. The informant provided a detailed description of "Bandit." *Id.* The informant's description of the vehicle was similarly detailed, and the officers found a vehicle matching that description at the specified address. *Id.* A computer check revealed that the vehicle was registered to the defendant, and that he used the alias "Bandit." *Id.* The officers searched the area but found no one matching the informant's description of "Bandit." *Id.* Shortly after the initial search of the area, the officers returned and saw the vehicle being driven by an individual matching the informant's description. *Id.* at 801. The officers stopped the car, ordered the defendant out of the car, searched him, saw a bullet on the front seat of the car, and thereafter searched the car's interior and located a pistol in the glove compartment. *Id.* The defendant was placed under arrest and handcuffed. *Id.* Then, the officers searched the trunk and found a brown paper bag that was closed. *Id.* One of the officers opened the bag and found a number of glassine bags containing a white powder. *Id.* The officer then seized the vehicle and drove it to headquarters where it was more thoroughly searched. *Id.* At the police headquarters, a zippered red leather pouch was discovered which contained a large sum of cash. *Id.* The white powder was tested in a laboratory and found to be heroin. *Id.* The defendant was charged with possession of heroin with intent to distribute; he filed a motion to suppress which was denied; and after trial, he was convicted. *Id.*

¶ 59 On appeal, the court of appeals in *Ross* reversed, finding that although the officers could lawfully search the entire vehicle without a warrant, and that they could also open the paper bag, they could not open the zippered red leather pouch. *Id.* at 801-02. The court of appeals held that the constitutionality of a warrantless search depended upon whether the owner possessed a reasonable expectation of privacy in its contents. *Id.* at 802. The entire court of appeals then reheard the case *en banc* and concluded that the durability of the closed container should not matter—that the reasonable expectation of privacy applied no matter the "worthiness" of the container. *Id.*

¶ 60 The Supreme Court in *Ross* began its analysis by reiterating that in order for the automobile exception to apply to a warrantless search, the officers must have probable cause to believe that a vehicle contains contraband. *Id.* at 807-08 (citing *Carroll v. United States*, 267 U.S. 132, 156 (1925)). The probable cause conclusion must be based on objective facts that would otherwise justify the issuance of a warrant to search. *Id.* at 808. Good faith alone is insufficient. *Id.* The Supreme Court ultimately concluded that if a legitimate search of a vehicle is undertaken with supportive probable cause, the officers must be allowed to search every part of the vehicle that could contain the object of the search. *Id.* at 821. As the Court explained: "[a] warrant to open a footlocker to search for marijuana would also authorize the opening of packages found inside." *Id.* The Court explained that "an individual's expectation of privacy in a vehicle and its contents may not survive if probable cause is given to believe that the vehicle is transporting contraband." *Id.* at 823. In conclusion, the Court held that the scope of an officer's warrantless search of a vehicle is not defined by the type of container in which

contraband might be found, but "is defined by the object of the search and the places in which there is probable cause to believe that it may be found." *Id.* at 824.

¶ 61 Although *Belton*, *Ganz*, and *Ross* involved searches of containers found in vehicles, the legal foundation of the ability to search these containers applies equally to the search of a vehicle's interior. The search of an interior of a vehicle is allowed if there is probable cause to believe that the vehicle could contain evidence of a crime. *Ross*, 456 U.S. at 820-21. And *Ross* applies in cases where the evidence search varies from the original bases for the traffic stop.

¶ 62 In *People v. Smith*, our supreme court held a warrantless search of a vehicle legal pursuant to the automobile exception. *People v. Smith*, 95 Ill. 2d 412, 447 N.E.2d 809 (1983). The defendant was stopped for a traffic violation. *Id.* at 415. The defendant exited the vehicle upon being stopped. *Id.* While obtaining the defendant's driver's license, the officer noted the odor of alcohol on the defendant's breath. *Id*. at 416. The officer approached the defendant's vehicle and saw an open bottle in a brown paper bag on the floor of the passenger compartment. *Id.* The officer also saw inside the vehicle a "one-hitter" box commonly used to carry marijuana. *Id.* The officer then searched the defendant's vehicle and found a hypodermic syringe, a plastic bag containing a white powdery substance later identified as cocaine, and marijuana. *Id.* The supreme court held that the warrantless search was legal pursuant to the automobile exception. *Id.* at 417. The court found that the defendant was validly stopped for a traffic violation, that the officer then smelled alcohol on the defendant's breath, and that the officer then saw the open bottle of suspected alcohol in the defendant's vehicle. *Id*. at 419. With that

information, the court held that the officer had probable cause to search the vehicle to determine if the open bottle contained alcohol. *Id.* With the discovery of the "one-hitter" box, the court held that the officer had probable cause to search the entire vehicle for drugs. *Id.*; see also *People v. Wolsk*, 118 Ill. App. 3d 112, 454 N.E.2d 695 (1983) (warrantless search of the defendant's vehicle was constitutional after the defendant was arrested for driving while under the influence of an intoxicating substance and controlled substances were found on his person during a search incident to that arrest; the officers had probable cause to search his vehicle for further evidence of the controlled substances).

¶ 63 At issue in this case is whether the officers had probable cause to search Defendant's vehicle for drugs because of the discovery of undocumented prescription pills during his pat-down. Unlike *Ross* and *Smith*, this case does not involve the search of containers of any sort, as the white powdery substance was clearly visible on the center console of his vehicle once the officers looked inside his vehicle. Defendant was properly arrested for driving on a suspended license. Deputy Pickett conducted a legal search of his person incident to that arrest. The search resulted in the discovery of loose hydrocodone pills. Once these pills were discovered, we conclude that the officers had probable cause to search defendant's vehicle for further evidence of this drug-related crime. Therefore, the discovery of the white powdery substance, later identified as cocaine, was a legal discovery. Accordingly, we find that the trial court's denial of Defendant's motion to suppress was correct.

¶ 64 II. Defendant's *Pro Se* Representation

¶ 65 Defendant next asks this court to remand this case for a suppression hearing because Defendant did not have an attorney at a time when a motion to suppress should have been filed and he had not been properly admonished under Illinois Supreme Court Rule 401(a) (eff. July 1, 1984).

¶ 66 There is no question that a defendant has a constitutional right to legal representation. U.S. Const., amend. VI; *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963). The sixth amendment right to counsel attaches when adversarial judicial proceedings begin—when an indictment or information is filed. *Rothgery v. Gillespie County*, 554 U.S. 191, 198 (2008). Additionally, Illinois statutory law provides the right to counsel. 725 ILCS 5/113-3(b) (West 2010).

¶ 67 Although the constitution guarantees a defendant the right to counsel, a defendant has the right to waive this right if the waiver is knowing, voluntary, and intelligent. *Iowa v. Tovar*, 541 U.S. 77, 81 (2004). Our review of a waiver of counsel is *de novo*. *People v. Wright*, 2015 IL App (1st) 123496, ¶ 46, 33 N.E.3d 781.

¶ 68 Illinois Supreme Court Rule 401(a) sets forth the procedure for obtaining a valid waiver of counsel. Rule 401(a) provides:

> "Any waiver of counsel shall be in open court. The court shall not permit a waiver of counsel by a person accused of an offense punishable by imprisonment without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:
>
> (1) the nature of the charge;

> (2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences; and
>
> (3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court." Ill. S. Ct. R. 401(a) (eff. July 1, 1984).

¶ 69 Here, the trial court repeatedly advised Defendant about his need to utilize his constitutional right to counsel. On October 11, 2013, the court extensively admonished Defendant and fully adhered to the requirements of Rule 401(a). Additionally Defendant executed a written waiver of counsel.

¶ 70 On appeal, Defendant acknowledges that the court's October 11, 2013, admonishment was in full compliance with Rule 401(a), but contends that the trial court's admonishments were untimely because of the October 15, 2013, trial date.

¶ 71 We disagree with the Defendant's argument and find that by reviewing the totality of the case history, the earlier court admonishments were sufficiently compliant with Rule 401(a). Defendant was represented by counsel from March through August 2013. Defendant fired his attorney in early August 2013.

¶ 72 On August 22, 2013, Defendant advised the court that he was not hiring new counsel. He reminded the court that he had represented himself before and that the court had previously determined that he was capable in doing so. Despite the court's recommendations to the contrary, Defendant confirmed that he did not want appointed counsel.

¶ 73 On August 29, 2013, Defendant was brought to court and informed that he was eligible for extended-term sentencing. The court advised Defendant that representing

himself was unwise. Defendant asked the trial court to dismiss the hydrocodone charge, and the court declined to do so because the valid prescription at issue allegedly dated from 2008.

¶ 74 On September 6, 2013, the Defendant asked the court to rule on his motion to suppress. The court told Defendant that he was raising legal issues, that he was not familiar with how to present these issues, and that he did not know how to protect the record for appeal. The court asked Defendant to prepare the motion in writing and to allow the State the opportunity to respond.

¶ 75 On September 12, 2013, Defendant returned to court. Defendant contends that the court's admonishments on that date were insufficient to comply with Rule 401(a). We disagree. The court extensively addressed the charge Defendant faced and all of the evidence that the State would use against him. He was advised that he had the right to a court-appointed attorney. He was advised that the applicable sentence range was between three and six years. Defendant was asked if he understood all of these admonishments, and he replied in the affirmative. Strict technical compliance with the elements of Rule 401(a) is not always required, so long as compliance is substantial. *People v. Haynes*, 174 Ill. 2d 204, 236, 673 N.E.2d 318, 334 (1996).

¶ 76 We find that the record amply supports a finding that Defendant was fully informed of the nature of the charges, the minimum and maximum applicable sentences, that he had the right to counsel, and that he was aware of the possible pitfalls of representing himself. See *People v. Siler*, 154 Ill. App. 3d 102, 108, 506 N.E.2d 756, 760 (1987). We conclude that the court substantially complied with Rule 401(a) on

September 12, 2013. As Defendant's jury trial began on October 15, 2013, he had ample time to consult with a lawyer and prepare a proper motion to suppress. Instead, he chose to represent himself. Defendant repeatedly told the court that he was stubborn, and that he would have no trouble defeating the State's charge against him.

¶ 77 We acknowledge that a defendant not only has a constitutional right to have an attorney appointed for representation, but a defendant also has a constitutional right to represent himself. *People v. Scott*, 2015 IL App (4th) 130222, ¶ 38, 25 N.E.3d 1257. And, counsel should not be forced upon an unwilling defendant. *Faretta v. California*, 422 U.S. 806, 820 (1975).

¶ 78 Accordingly, we find that the trial court complied with Rule 401(a) and that Defendant properly waived his right to appointed counsel. We decline Defendant's request to remand this case to allow Defendant another opportunity to present a motion to suppress.

¶ 79 III. Fees and Fines

¶ 80 Defendant next asks this court to vacate certain "fees" assessed by the circuit clerk that were in actuality "fines" that could only be assessed by the circuit court. Defendant argues that these "fines" are invalid because they were not specifically included in the trial court's judgment. At sentencing, the trial court imposed a $500 fine plus court costs. Thereafter, the circuit clerk entered its fee book entries which included the $500 fine and $1455.30 for various stated "court costs." Defendant was charged the following fees and fines: "Fine" ($500); "Clerk" ($525); "State's Atty" ($30); "Sheriff" ($253.30); "Court" ($50); "Automation" ($15); "Violent Crime" ($100); "Judicial Security" ($25);

"Document Storage" ($15); "Lab Analysis" ($95); "Trauma Center" ($100); "Medical Costs" ($10); "Lump Sum Surcharge" ($130); "Clerk Op Deduction" ($0.25); "Drug Court" ($4.75); "Clerk Op Add-Ons" ($5); "State Police Ops" ($15); "FTA Warrant Fee" ($70); "SA Automation Fee" ($2); and "Probation Ops Fee" ($10). Notably, the Christian County circuit clerk did not individually or collectively label the listed "court costs" as fees or fines. Therefore, each assessed "cost" would require analysis to determine its statutory foundation in order to determine whether each cost is a "fee" or a "fine." Legal research would also be required because oftentimes the legislature labeled "costs" as "fees," but in actuality, they are "fines."

¶ 81 Our Illinois Constitution grants jurisdiction over final judgments in the appellate court. Ill. Const. 1970, art. VI, § 6. The trial court is charged with the judicial task of entering its judgment. *People v. Vara*, 2018 IL 121823, ¶ 13, ___ N.E.3d ___ (citing *In re Estate of Young*, 414 Ill. 525, 533, 112 N.E.2d 113, 117 (1953)). "In a criminal case, the final judgment is the sentence." *Id.* ¶ 14 (citing *People v. Allen*, 71 Ill. 2d 378, 381, 375 N.E.2d 1283, 1284 (1978)). A fine imposed at sentencing by the trial court is a monetary punishment. *Id.* (citing *People v. Graves*, 235 Ill. 2d 244, 250, 919 N.E.2d 906, 909 (2009), and *People v. Jones*, 223 Ill. 2d 569, 581, 861 N.E.2d 967, 975 (2006)). Only a judge of the trial court may impose a fine as part of a criminal sentence because the fine is part of the sentence and the imposition of a sentence is a judicial act. *Id.* (citing *Allen*, 71 Ill. 2d at 381 and *People v. Moran*, 342 Ill. 478, 480, 174 N.E. 532, 533 (1930)).

¶ 82 While a fine is intended as punishment, a fee "seeks to recoup expenses incurred by the State—to 'compensat[e]' the State for some expenditure incurred in prosecuting

the defendant." *Jones*, 223 Ill. 2d at 582 (citing Black's Law Dictionary 647, 664 (8th ed. 2004)). Circuit clerks have "authority only to collect judicially imposed fines" associated with criminal cases. *People v. Swank*, 344 Ill. App. 3d 738, 748, 800 N.E.2d 864, 871 (2003) (citing 730 ILCS 5/5-9-1(c) (West 2000)). Illinois law requires circuit clerks to maintain a fee book and to "perform all other duties pertaining to their offices, as may be required by law or the rules and orders of their courts." 705 ILCS 105/16(5), 13 (West 2010). Clerks are also "entitled" to collect specific costs in criminal cases pursuant to section 27.1a(w) of the Clerks of Courts Act. *Id.* § 27.1a(w). However, circuit clerks are not allowed to impose sentences or fines because the clerks are nonjudicial members of the courts. *People v. Jackson* 2013 IL App (3d) 120205, ¶ 45, 2 N.E.3d 374 (citing *People v. Scott*, 152 Ill. App. 3d 868, 873, 505 N.E.2d 42, 46 (1987)); Ill. Const. 1970, art. VI, § 18; *Vara*, 2018 IL 121823, ¶¶ 18-19. Any action taken by a circuit clerk to alter the trial court's judgment by adding fines not included in that judgment is invalid. *Vara*, 2018 IL 121823, ¶ 19.

¶ 83 In *Vara*, the supreme court concluded that an appellate court has no jurisdiction to review a circuit clerk's incorrect recordation of assessed fees or the invalid recordation of fines if those fees and/or fines were not part of the trial court's judgment order. *Id.* ¶¶ 23, 60. In reaching the conclusion that the appellate court did not have jurisdiction to address fees or fines improperly imposed by the circuit clerk, the supreme court began with the affirmation that the appellate court only has jurisdiction to review a trial court's final judgment. *Id.* ¶ 23. A circuit clerk's recorded order containing fees and fines is not a final judgment. *Id.* The circuit clerk merely enters a judgment, *i.e.*, engages in " 'the

ministerial act of *** preserving the record of that decision.' " *Id.* ¶ 17 (quoting *Williams v. BNSF Ry. Co.*, 2015 IL 117444, ¶ 39, 25 N.E.3d 646); see also *Moran*, 342 Ill. at 480. Conversely, "rendering" a judgment is the court's judicial act in " 'pronouncing its ruling or finding in the controversy.' " *Vara*, 2018 IL 121823, ¶ 17 (quoting *Williams*, 2015 IL 117444, ¶ 39). Because the circuit clerk has no statutory or constitutional authority to independently assess fines, they must be imposed in the trial court's judgment. *Id.* ¶ 25. If the trial court does not formalize the fees and fines by inclusion in the final judgment, the defendant has no judgment order from which he can appeal and the appellate court does not have jurisdiction to consider the merits of the issues the defendant seeks to present. *Id.* (citing *People v. Hardman*, 2017 IL 121453, ¶ 55, 104 N.E.3d 372). "Therefore, the improper recording of a fine is not subject to direct review by the appellate court." *Id.* ¶ 23.

¶ 84 As previously stated, the trial court's sentencing order merely referenced a "$500 fine" and "court costs." The circuit clerk then made its recordation of costs, fees, and fines assessed to Defendant, totaling $1,455.30. Because the trial court did not enter a judgment that included the specifics of the circuit clerk's assessment as to fees or fines, under the holdings of *Vara* and *Hardman*, this court does not have appellate jurisdiction to review those assessments. *Vara*, 2018 IL 121823, ¶¶ 23, 60; *Hardman*, 2017 IL 121453, ¶ 55.

¶ 85 We note that here, the Defendant only attacked assessments that he contended were improperly assessed fines—he paid the $500 fine imposed by the court, and did not contest several other of the circuit clerk's assessed entries (presumably because he

believed these assessments were in fact recoverable court costs and fees). However, under our reading of the *Vara* holding, and in consideration of Justice Karmeier's and Justice Thomas's dissents, we question whether the appellate court can review any circuit clerk assessed costs or fees labeled correctly or incorrectly that are not clearly referenced in the trial court's judgment. We have trouble reconciling the *Vara* holding with the clear language of section 16(5) of the Clerks of Courts Act, stating that the circuit clerk's fee book costs and fees assessments "shall be considered a part of the record and judgment, subject, however, at all times to be corrected by the court." 705 ILCS 105/16(5) (West 2016). Our quandary is compounded by the well-known fact that our circuit clerks and legislature are not always consistent or accurate in labeling fees and fines.

¶ 86 Finally, although the appellate court lacks jurisdiction to void fees and fines improperly imposed by the circuit clerk, an aggrieved party can potentially obtain relief from these fees and fines in one of two ways: by cooperation of the parties with the circuit clerk or by filing a writ of *mandamus* in the trial court. *Vara*, 2018 IL 121823, ¶ 31.

¶ 87 IV. Pretrial Detention Credit

¶ 88 Finally, Defendant alleges that he did not receive all pretrial detention credit to which he was entitled. A defendant incarcerated for a bailable offense is entitled to a $5 credit for each day incarcerated prior to sentencing. 725 ILCS 5/110-14(a) (West 2010). The $5 credits can be applied towards any fine imposed by the court. *Id.*

¶ 89 The State concedes that Defendant is entitled to seven extra days of credit. Accordingly, we remand this matter to the trial court for recalculation and application of Defendant's statutory credit against fines.

¶ 90 CONCLUSION

¶ 91 For the foregoing reasons, we affirm the judgment of the Christian County circuit court and remand for further proceedings for calculation and application of proper statutory credit against fines.

¶ 92 Affirmed in part; remanded with directions.