2011 IL App (1st) 091692-UB

FOURTH DIVISION
November 23, 2011

No. 1-09-1692

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 CR 3051
	)	
RICKY WATSON,	)	The Honorable
	)	Jorge Luis Alonso,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Pucinski and Sterba concurred in the judgment.

ORDER

Held: (1) The trial court properly limited cross-examination by not ordering the arresting officer to disclose his exact surveillance location; (2) there was no plain error where trial court failed to strictly comply with Supreme Court Rule 431(b); and (3) the trial court improperly assessed a $200 DNA analysis fee.

¶ 1 In this case, we consider the appeal of a man convicted of possession, sale, and intent to sell narcotics within 1,000 feet of a school. Following a jury trial, defendant Ricky Watson was found guilty and sentenced to two concurrent terms of 12 years imprisonment. On appeal, defendant contends that: (1) he was deprived of his right to a fair trial; (2) the trial court did not

comply with Supreme Court Rule 431(b) (Ill. S. Ct. R. 431(b) (eff. May 1, 2007)); and (3) the trial court improperly imposed a court system fee, a court services fee, and a DNA analysis fee.

¶ 2 On April 7, 2011, this court affirmed defendant's conviction and sentences, as well as the imposition of the court services and DNA analysis fee, but vacated the court system fee. *People v. Watson*, No. 1-09-1692 (2011) (unpublished order under Supreme Court Rule 23). On November 7, 2011, our supreme court denied defendant's petition for leave to appeal but issued a supervisory order directing this court to vacate and reconsider its judgment in light of *People v. Marshall*, 242 Ill. 2d 285 (2011). In accordance with the supervisory order, we vacated our original judgment and now consider whether the decision in *Marshall*, which addresses the propriety of the $200 DNA analysis fee, requires a different result. For the reasons discussed below, we affirm the defendant's convictions and sentences and the $25 court service fee. We now vacate the trial court's assessment of the $200 DNA analysis fee and $5 court system fee.

¶ 3 I. BACKGROUND

¶ 4 On the evening of January 16, 2008, Officer Leahy was conducting surveillance across the street from a house located at 3916 W. Grenshaw in Chicago. Officer Leahy testified that he was on the third floor of an empty building, approximately 75 feet from 3916 W. Grenshaw, and directly across the street from the house. It was nighttime, but there was artificial light, and he was using binoculars. He had been conducting surveillance since approximately 5:20 p.m. He recognized the defendant standing in front of the house and also saw another man (later identified as Mr. Jackson) yelling "blows, blows" to passing vehicles and pedestrians. A black male then

approached on foot and engaged the defendant in a brief conversation. The man gave the defendant money, the defendant went to the gangway and retrieved an item from a green cigarette box, and then returned the cigarette box to the ground in the gangway. The defendant then gave the black male the item. A few minutes later, a second black male, Quandell Washington, approached and the same sequence of events occurred. Officer Leahy radioed the enforcement officers that were waiting approximately two blocks north of the house and told them to detain the three black males. Officer Leahy continued to maintain surveillance and watched the officers arrive in squad cars.

¶ 5 Officer Zapata testified that he went to 3916 W. Grenshaw after Officer Leahy radioed the enforcement officers. When Officer Zapata arrived, he saw one of the men, Washington, walking eastbound, and he parked his car and walked toward him. When he was approximately five to ten feet away, Washington reached into his pocket and dropped something. Officer Zapata detained Washington and recovered the object, which was later determined to be a "Ziploc" bag containing heroin.

¶ 6 Officer Woods was also an enforcement officer on duty on the evening in question. He testified that he arrived at the house at approximately 5:40 p.m., and that he saw three black males being detained. Officer Leahy directed Officer Woods to the gangway to recover the green cigarette box. The cigarette box contained eight small Ziploc bags, later determined to contain heroin. Officer Woods testified that he looked in the gangway adjacent to the house and investigated the rear of the house, but never entered the building.

¶ 7 At the 11th District police station, Officer Lesch performed a custodial search of the defendant and recovered $30 from his pants pocket. Officer Lesch then inventoried the narcotics recovered by Officer Zapata and the cigarette box recovered by Officer Woods.

¶ 8 Investigator Frank Argentine testified that he measured the distance between 3916 W. Grenshaw and the Frazier School as 515 feet.

¶ 9 Prior to trial, the defendant filed a motion to disclose Officer Leahy's exact surveillance location stating that the case rested exclusively on his ability to observe a purported transaction, and that the location was material on the issue of guilt. The State argued that Officer Leahy's location was a qualified privilege requiring the court to balance the public interest with the defendant's need to prepare a defense. The court held an *in camera* meeting with the State, where the prosecutor stated that for security reasons the exact location should not be disclosed. The prosecutor went on to explain that at the time of surveillance, the building was abandoned; however, it was currently occupied. The State was concerned for the current tenants' safety, as well as the landlord's safety, and did not want to discourage future cooperation for the use of private buildings for surveillance. The trial court determined that the State had a valid reason not to disclose the exact location; however, the trial court stated that the defense would be able to cross-examine Officer Leahy as to his elevation (how high), direction (north/south/east/west), and obstructions.

¶ 10 II. ANALYSIS

¶ 11 A. Disclosure of the Surveillance Location

¶ 12 The defendant first claims that he did not receive a fair trial because the trial court deprived him of his right to adequately cross-examine Officer Leahy by failing to order the State to disclose his exact surveillance location. "A defendant's right to confront a witness is not absolute, and the right to cross-examine is satisfied when the defendant is permitted to expose the fact-finder to facts from which it can assess credibility and reliability of the witness." *People v. Quinn*, 332 Ill. App. 3d 40, 43 (2002). "The trial court's determination regarding the latitude permitted on cross-examination will not be disturbed 'absent a clear abuse of discretion that resulted in manifest prejudice.' " *Quinn*, 332 Ill. App. 3d at 43 (quoting *People v. Criss,* 294 Ill. App. 3d 276, 279-80 (1998)).

¶ 13 The State enjoys a qualified privilege regarding the disclosure of a surveillance location. *Quinn*, 332 Ill. App. 3d at 43; *People v. Knight*, 323 Ill. App. 3d 1117, 1128 (2001). "The need for disclosure is decided on a case-by-case basis, balancing the public interest with the defendant's need to prepare a defense." *Quinn*, 332 Ill. App. 3d at 43. "Thus, the trial court should try to protect the public interest in keeping the exact surveillance location secret but also take the steps necessary to ensure accurate fact-finding. *Id*. The factors the court should consider regarding the public interest in nondisclosure are the crime charged, the possible defenses, and the potential significance of the privileged information." *Id*. at 43-44.

¶ 14 In *Knight*, two officers were conducting a narcotics surveillance when they received information that a man was selling narcotics somewhere in the area. After a bench trial, the defendant was convicted of possession of cocaine with intent to deliver. This court reversed, finding that it was reversible error to preclude the defendant, in violation of his right of

confrontation, from cross-examining the officer as to his exact surveillance location. *Knight*, 323 Ill. App. 3d at 1121. The appellate court ordered the trial court on remand to conduct an *in camera* inspection to weigh the defendant's need for the surveillance location against the public's interest in nondisclosure. *Id*. at 1127. The *Knight* court held that "at trial disclosure of a surveillance point will be compelled if the allegedly privileged information is material on the issue of guilt." *Id*. While *Knight* established that disclosure is almost always necessary in cases where there is only one eyewitness, *Knight*, 323 Ill. App. 3d at 1128, the courts following *Knight* have interpreted this requirement narrowly. See *i.e. Quinn*, 332 Ill. App. 3d 40; *People v. Bell*, 373 Ill. App. 3d 811 (2007).

¶ 15 For instance, in *Quinn*, the defendant was convicted in a bench trial of possession of a controlled substance with intent to deliver within 1,000 feet of a church. The State's evidence revealed that an officer, using binoculars from a distance of 75 to 100 feet, observed the defendant conduct four narcotics transactions. The appellate court held that the trial court did not abuse its discretion in granting the State a qualified privilege regarding the disclosure of the officer's exact surveillance location. *Quinn*, 332 Ill. App. 3d at 44. The appellate court reasoned that the defense was allowed to cross-examine the officer extensively with respect to his surveillance, lighting conditions, and any possible obstructions. *Id*. The defense also elicited that the officer did not include in his police report or grand jury testimony the fact that he had used binoculars. *Id*. In distinguishing its case from *Knight*, the *Quinn* court emphasized that the identity of its offender was not contested, the officer stayed in radio contact until the defendant was arrested, and the defense was allowed to extensively cross-examine the officer. *Id*. at 45.

¶ 16 Similarly, in *Bell*, the defendant was convicted in a bench trial of possession of a controlled substance with intent to deliver. From a surveillance point, an officer observed the defendant standing alone in a vacant lot yelling "blows" to passing motorists and pedestrians. A short time later, the officer witnessed an automobile pull over in front of the defendant, where the driver and the defendant completed a hand-to-hand transaction. Believing that he had witnessed a drug transaction, the officer then left his surveillance location and went to the scene. At trial, the defense questioned the officer during cross-examination on his exact surveillance location in an effort to demonstrate that the officer was unable to see the hand-to-hand transaction since his view may have been blocked by the hood of the automobile. The appellate court found the trial court did not abuse its discretion in limiting the cross-examination of the officer and in not disclosing his location. *Bell*, 373 Ill. App. 3d at 818-19. The court reasoned that the defense was able to cross-examine the officer extensively with respect to his surveillance, the lighting conditions, any possible obstructions, the officer's familiarity with the area under surveillance, whether the officer used binoculars, whether the officer was in uniform, and the distance of the nearest individual to the defendant both during the surveillance and at the time of arrest. *Id*. at 819. Thus, the appellate court held that the defense was permitted to establish the officer's position sufficiently enough to allow the trial court to assess the officer's credibility and reliability. *Id*.

¶ 17 In this case, we conclude that the trial court did not abuse its discretion in granting the State a qualified privilege as to Officer Leahy's exact surveillance location. During an *in camera* hearing, the State informed the trial court that Officer Leahy conducted surveillance from an

abandoned building located across the street from the scene of the transaction. The abandoned building had since been inhabited, and the State expressed concern for the current residents' and the landlord's safety. The State also argued that the defense would have the opportunity to extensively cross-examine Officer Leahy without knowing his exact location. The trial court ruled that the defense was not entitled to know exactly where the officers were conducting surveillance because this was not an identification case, and there were security concerns with regard to the building's landlord and tenants. As in *Quinn*, the defendant's identity was not in question Officer Leahy never lost sight of the defendant between the time the drug transaction occurred and the time the other officers arrived to arrest him. The defense counsel in this case also stated that a pinpoint location was not necessary, but that he just needed an idea of where the officer was located. Considering the safety concern of the current residents and the relative insignificance of the exact point of surveillance, we conclude that the trial court did not abuse its discretion in granting the State a qualified privilege as to Officer Leahy's exact surveillance location.

¶ 18 Furthermore, the defense was given the opportunity to extensively cross-examine Officer Leahy without eliciting his exact location. During cross-examination, the defense questioned Officer Leahy about the lighting conditions, time of day, visual obstructions, and his use of binoculars. The defense elicited that Officer Leahy was on the third floor of the abandoned building directly across the street from the alleged crime. The defense also impeached Officer Leahy by eliciting inconsistencies between his testimony and police report, the length of unaccounted for time that passed between the arrest and transport, and the length of time the

officers waited to obtain a report number. In addition, the defense was able to show that Officer Leahy did not make a notation on the police report as to what time any alleged buyers arrived or what direction they came from. The defense also established that the officers were only able to describe the defendant as a black male and could not provide any of the alleged participants' height, age, or clothing. In light of the specificity uncovered on cross-examination, the jury was able to evaluate Officer Leahy's testimony and assess his credibility and reliability. As a result, failing to provide Officer Leahy's exact pinpoint location did not manifestly prejudice the defendant. Accordingly, the trial court did not abuse its discretion in minimally limiting cross-examination.

¶ 19 B. Prejudicial Comments

¶ 20 The defendant next contends that he was prejudiced by several comments made during the State's closing arguments. On the subject of police reports, the prosecutor lamented, "I wish that I could give you those police reports. I wish that I could give them to you and just have them brought back with in [*sic*] the jury room and you could read them, deliberate, come back out and find the defendant guilty." The defense did not object to this statement. The prosecutor went on to say that the defense has the same subpoena powers as the State with regard to calling co-defendants Washington or Jackson to testify. The defense objected, which was sustained, and the jury was reminded that the State had the burden of proof. The State also characterized the standard of a reasonable doubt as, "The standard is not all doubt. It's not a shadow of doubt. It's reasonable." The objection by the defense was overruled and this was not included in the defendant's motion for a new trial.

¶ 21 "The State is afforded a great deal of latitude in presenting closing argument and is entitled to argue all reasonable inferences from the evidence." *People v. Moore*, 358 Ill. App. 3d 683, 693 (2005). "[I]mproper comments or remarks are not reversible error unless they are a material factor in the conviction or cause substantial prejudice to the accused." *People v. Sutton*, 316 Ill. App. 3d 874, 893 (2000). "[I]mproper comments can constitute reversible error only when they engender substantial prejudice against defendant such that it is impossible to say whether or not a verdict of guilty resulted from those comments." *Moore*, 358 Ill. App. 3d at 693. "In closing argument, the prosecution may base its argument on the evidence presented or reasonable inferences therefrom, respond to comments by defense counsel which clearly invite or provoked response, denounce the activities of defendant and highlight inconsistencies in defendant's argument." *People v. Graca*, 220 Ill. App. 3d 214, 221 (1991); *Johnson*, 208 Ill. 2d at 113 ("[a] prosecutor may respond to comments made by defense counsel in closing argument that clearly invite a response"). "Where alleged errors do not amount to reversible error on any individual issue, there is generally no cumulative error." *Moore*, 358 Ill. App. 3d at 695. "[T]he trial court's determination of the propriety of the argument will stand absent a clear abuse of discretion." *Sutton*, 316 Ill. App. 3d at 893.

¶ 22 With regard to the prosecutor's statement that the defense has the same subpoena powers as the State, we agree with the trial court that the statement may have been error; however, the error was remedied when the objection was sustained immediately and the jury was told that the State had the burden of proof. See *People v. Ward*, 371 Ill. App. 3d 382, 420 (2007) ("[N]ormally, the sustaining of an objection to an argument cures the error").

¶ 23 The other complained-of statements made by the prosecutor were not properly preserved for appeal. "In order to preserve an alleged error for review, both a trial objection and a written posttrial motion raising the error are required." *Sutton*, 316 Ill. App. 3d at 893. The defense failed to object to the State's comment regarding the police reports and the defense failed to include the categorization of the reasonable doubt standard in its post-trial motion. As a result, the defendant has forfeited these issues on appeal. Defendant argues that this court should apply the plain-error rule. This court will review unpreserved error when a clear and obvious error occurs and: (1) the evidence is closely balanced; or (2) that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. *People v. Bannister*, 232 Ill. 2d 52, 65 (2008). "Improper comment is plain error when it was either so inflammatory that the defendant could not have received a fair trial or so flagrant as to threaten a deterioration of the judicial process." *People v. Yonker*, 256 Ill. App. 3d 795, 798 (1994); *Johnson*, 208 Ill. 2d at 84 (plain-error rule applied where there was cumulative error and a pervasive pattern of unfair prejudice that stemmed from emotion-laden evidence and inflammatory arguments meant to exploit the evidence). In addressing the defendant's plain error contention, we must first determine whether there was any error at all. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). We find that there was no clear and obvious error regarding the propriety of closing arguments.

¶ 24 While the defendant contends that the prosecutor improperly referenced the police reports during rebuttal argument, the record indicates that defense counsel clearly invited the State to respond by continuously referencing the supposedly inadequate police reports in his closing

argument. In addition, the prosecutor's comment in characterizing the reasonable doubt standard also does not constitute error. Similar statements made by the State in characterizing the reasonable doubt standard have been upheld in previous cases. In *People v. Jones*, 241 Ill. App. 3d 228, 234 (1993), the appellate court found that it did not constitute plain error when the prosecutor stated, "Beyond a reasonable doubt does not mean beyond all doubt. It does not mean beyond a shadow of a doubt. It means beyond a reasonable doubt, the same standard in every criminal case in every county in this country." See also *Ward*, 371 Ill. App. 3d at 419 (characterizing the reasonable doubt standard in a similar manner and finding no reversible error). Finally, "[a] statement made during closing argument constituting alleged prejudice to the defendant will be cured when the trial court subsequently instructs the jury that closing arguments are not evidence and that they should disregard any argument not based on the evidence." *Graca*, 220 Ill. App. 3d at 221. Here, the trial court properly instructed the jury to consider only the evidence and stated that closing arguments were not evidence. As a result, any alleged prejudice was cured. Accordingly, the trial court did not abuse its discretion in the manner in which it presided over closing arguments.

¶ 25 C. Trial Court's Compliance with Supreme Court Rule 431(b)

¶ 26 Defendant next contends that the trial court did not comply with Supreme Court Rule 431(b) because it failed to ask if the jurors understood the rule's requirements. The State cites our supreme court's recent decision on this matter in *People v. Thompson*, 238 Ill. 2d 598 (2010), arguing that the issue was forfeited and the plain error rule does not apply unless the defendant can show jury bias. We agree with the State. The defendant forfeited this issue because he failed

to object at trial and did not include the issue in his posttrial motion. While the defendant argues that it would be contrary to the spirit of the rule to require the defense to object, the *Thompson* court specifically stated that the issue can be forfeited. *Id*. at 10. Defendant also asks this court to review the issue under the plain error rule. As previously discussed, this court will review unpreserved error when a clear and obvious error occurs and: (1) the evidence is closely balanced; or (2) that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. *Bannister*, 232 Ill. 2d at 65. "In plain-error review, the burden of persuasion rests with the defendant." *Thompson*, 238 Ill. 2d at 613.

¶ 27 In addressing the defendant's plain error contention, we must first determine whether there was any error at all. *Piatkowski*, 225 Ill. 2d at 565. Rule 431(b) is a codification of our supreme court's decision in *People v. Zehr*, 103 Ill. 2d 472 (1984), which held that the trial court erred by refusing the defendant's request to ask the venire about four fundamental principles of law. *Id*. at 476-78. The four *Zehr* principles are that (1) the defendant is presumed innocent; (2) the defendant must be proved guilty beyond a reasonable doubt; (3) the defendant is not required to produce any evidence; and (4) the defendant's failure to testify cannot be held against him. *Id*. at 477. Pursuant to Rule 431(b), the trial court must address the *Zehr* principles, even in the absence of a specific request by the defendant and "shall ask each potential juror, individually or in a group, whether the juror understands and accepts" those principles. (Ill. S. Ct. R. 431(b) (eff. May 1, 2007)). In addition, "the court's method of inquiry shall provide each juror an opportunity to respond to specific questions concerning the principles set out in this section." *Id*. Our supreme court held in *Thompson*, "The trial court must ask each potential juror whether he

or she understands and accepts each of the principles in the rule. The questioning may be performed either individually or in a group, but the rule requires an opportunity for a response from each prospective juror on their understanding and acceptance of those principles." *Thompson*, 238 Ill. 2d at 607.

¶ 28 In this case, although the trial court asked the venire if it could follow the *Zehr* principles, the trial court failed to comply with Rule 431(b) by not asking the venire if it understood the *Zehr* principles. As in *Thompson*, the trial court's failure to ask whether the potential jurors both understood and accepted each of the enumerated principles constitutes noncompliance with Rule 431(b). *Thompson*, 238 Ill. 2d at 607. This error, however, does not constitute a structural error requiring automatic reversal. *Id*. The *Thompson* court declined to adopt a bright-line rule of reversal for every violation of Rule 431(b). *Id*. at 616. Accordingly, we consider whether the error here rises to plain error.

¶ 29 Under the first prong of the test, we must determine if the evidence was closely balanced. The defendant argues in his brief that the evidence was closely balanced because Officer Leahy's testimony was inconsistent and incredible. The defendant similarly relies on the inconsistencies between the officers' testimonies and their police reports. The defendant also points to the testimony of Veda Barnes, which further undermined the officers' version of events regarding whether her son was detained. On the other hand, among the State's overwhelming evidence was Officer Leahy's testimony that he watched the defendant conduct two drug transactions and directed his enforcement team to detain the defendant and his co-defendants. The officers recovered the Ziploc bag containing heroin dropped by co-defendant Washington, as well as the

cigarette box in the gangway containing eight Ziploc bags containing heroin. The jury had the opportunity to weigh the credibility of both the State's and the defendant's witnesses. After our careful review of the record, we find that the evidence was not sufficiently close to constitute plain error.

¶ 30 Under the second prong of the plain error test, we must determine whether the claimed error is serious, regardless of the closeness of the evidence. The *Thompson* court determined, "Rule 431(b) does not indicate that compliance with the rule is now indispensable to a fair trial." *Thompson*, 238 Ill. 2d at 614. Bias will not be presumed merely because the trial court erred in performing the Rule 431(b) questioning; rather, defendant carries the burden of showing that the jury was biased. *Id*. at 614.

¶ 31 After our review of the record, we are unable to find any meaningful deficiency in the court's communication of the *Zehr* principles to the jury. Each *Zehr* principle was addressed in some fashion. The prospective jurors were questioned if they accepted each of those principles. Defendant has not established that the trial court's noncompliance with Rule 431(b) resulted in a biased jury that affected the fairness of his trial and challenged the integrity of the judicial process. We therefore cannot find that the trial court's failure to comply with Rule 431(b) constitutes plain error warranting reversal. We are unpersuaded that " 'the error caused a severe threat to the fairness' " of the trial. *Herron*, 215 Ill. 2d at 187, quoting *People v. Hopp*, 209 Ill. 2d 1, 12 (2004). Accordingly, no reversal is required here under the circumstances.

¶ 32 D. Fees

¶ 33 1. $200 DNA Analysis Fee

The defendant next claims that the trial court's assessment of the $200 DNA analysis fee is void because he had already paid the fee after a prior conviction. The State counters that the claim is forfeited because it was not raised in a post-sentencing motion. Section 5 4 3(a)(3.5) of the Criminal Code of 1961 (the Code) states in pertinent part:

> "'Any person *** 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 in accordance with the provisions of this Section, provided such person is: convicted or found guilty of any offense classified as a felony under Illinois law *** on or after August 22, 2002." 730 ILCS 5/5 4 3(a)(3.5) (West 2008).

Further, "Any person required by subsection (a) to submit specimens of blood, saliva, or tissue to the Illinois Department of State Police for analysis and categorization into genetic marker grouping, in addition to any other disposition, penalty, or fine imposed, shall pay an analysis fee of $200." 730 ILCS 5/5 4 3(j) (West 2008).

¶ 34 Although we originally affirmed the imposition of this fee, our supreme court addressed this issue in a subsequent decision in *People v. Marshall*, 242 Ill. 2d 285 (2011). There, the supreme court held that section 5 4 3 "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 where that defendant is not currently registered in the DNA database." *Id.* at 303. Because defendant in this case has already submitted DNA and paid the fee following previous convictions, the trial court's

order imposing the $200 DNA analysis fee is void and is vacated. Although the State argues that defendant has forfeited this issue by failing to raise it before the trial court in a postsentencing motion, "[a] challenge to a void order is not subject to forfeiture." *Id.* at 302.

¶ 35 The State also argues that it is defendant's burden to demonstrate that he has previously been convicted of a felony and was assessed and paid the DNA analysis fee following that conviction. However, the record demonstrates that defendant was previously convicted of several felonies, including numbers 04 CR 2864102, 04 CR 1113801, 02 C441452, 00 C 440013, and 98 C440525, all in the circuit court of Cook County. Although the record does not indicate whether the fee was assessed in any of these cases, the DNA analysis and fee requirement was added by a 1997 amendment to section 5 4 3 of the Unified Code of Corrections (Pub. Act 90 130 (eff. Jan. 1, 1998) (amending 730 ILCS 5/5 4 3 (West 1996)). Accordingly, the requirement was in effect when defendant was first convicted of a felony on March 10, 1998, in case number 98 C 440525. Because section 5 4 3 mandates that anyone convicted of a felony must submit a DNA sample and be assessed the DNA analysis fee, we presume that the circuit court imposed this requirement as part of defendant's sentence following at least one of his prior convictions. See *People v. Gaultney*, 174 Ill. 2d 410, 420 (1996) ("We ordinarily presume that the trial judge knows and follows the law unless the record indicates otherwise."). Because the record demonstrates that defendant was convicted of at least one previous felony after section 5 4 3 became law, it is sufficient for the limited purpose of demonstrating that the fee has previously been assessed against defendant.

¶ 36 2. Court Services Fee

¶ 37 Defendant next claims that the $25 court services fee was assessed in error because the statute does not specifically list the crime the defendant was charged with. The State responds that the defendant has read the statute incorrectly. Section 5 1103 of the Code provides, in pertinent part:

> "In criminal, local ordinance, county ordinance, traffic and conservation cases, [the court services fee] shall be assessed against the defendant upon a plea of guilty, stipulation of facts or findings of guilty, resulting in a judgment of conviction or order of supervision, or sentence of probation without entry of judgment pursuant to [certain enumerated criminal statutes]." 55 ILCS 5/5 1103 (West 2008).

"It is clear that the statute permits assessment of this fee upon any judgment of conviction [and] also permits such assessment for orders of supervision or probation, made without entry of a judgment of conviction, for certain limited and enumerated criminal provisions." *People v. Williams*, 405 Ill. App. 3d 958, 965 (2010). Based on a plain reading of the statute, the $25 court services fee was properly assessed, even though the defendant's crime is not specifically enumerated in the statute.

¶ 38 3. Court System Fee

¶ 39 As a final matter, the parties have agreed that the court system fee should not have been assessed. The Code only imposes this fee for violations of the Illinois Vehicle Code and similar provisions. 55 ILCS 5/5 1101(a) (2008). The defendant was found guilty of possession of a controlled substance with intent to deliver within 1,000 feet of a school and delivery of a controlled substance within 1,000 feet of a school. Neither charge is a violation of the Illinois

Vehicle Code or a similar provision. As a result, this fee is vacated.

¶ 40 III. CONCLUSION

¶ 41 For the aforementioned reasons, we affirm the defendant's convictions and sentences, and the $25 court service fee. We vacate the $5 court system fee and the $200 DNA analysis fee.

¶ 42 Affirmed.