No. 1-09-3208

FIFTH DIVISION
January 28, 2011

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 14117
	)	
WILLIAM FORD,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Howse and Epstein concurred in the judgment.

O R D E R

HELD: Where defendant was convicted of a felony, he could be properly assessed the $200 DNA analysis fee, the $25 court services fee and the $10 Arrestee's Medical Costs Fund fee.

After a bench trial, defendant William Ford was convicted of delivery of a controlled substance and sentenced as a Class X offender to seven years in prison. The court also assessed

various fines and fees. On appeal, defendant contends that three of the fees entered on the fines and fees order must be modified.

During a drug surveillance by police officers, defendant was seen selling cocaine in two separate transactions on June 27, 2008. The trial court found defendant guilty of two counts of delivery of a controlled substance, a Class 2 felony, and based on his criminal history, imposed a seven-year prison term. Defendant now challenges the assessment of three fees only.

First, defendant asserts that the trial court was not authorized to assess the $200 DNA analysis fee. 730 ILCS 5/5-4-3(j) (West 2008). He argues that the statute provides the fee may only be assessed once, and because he was assessed the fee for a previous conviction, the court may not assess the fee a second time.

Whether the trial court was authorized to assess the $200 DNA analysis fee is a question of statutory interpretation which will be reviewed *de novo*. *People v. Richards*, 394 Ill. App. 3d 706, 709 (2009).

Section 5-4-3(a) of the Unified Code of Corrections provides that "[a]ny person *** convicted or found guilty of any offense classified as a felony under Illinois law *** shall" be required to submit a sample for DNA analysis. 730 ILCS 5/5-4-3(a) (West 2008). Additionally, the statute provides that any person

required to submit a sample for DNA analysis "shall pay an analysis fee of $200." 730 ILCS 5/5-4-3(j) (West 2008).

In *People v. Evangelista*, 393 Ill. App. 3d 395 (2009), the appellate court held that the DNA analysis fee cannot be assessed more than once. However, because the State conceded that the fee should be vacated, the court provided only a brief analysis and did not discuss the language of the statute. *Evangelista*, 393 Ill. App. 3d at 399.

In *People v. Willis*, 402 Ill. App. 3d 47 (2010), this division followed *Evangelista* and vacated the fee, rejecting the State's argument that the record did not show defendant was previously assessed the fee. *Willis*, 402 Ill. App. 3d at 61. Our analysis was confined to the arguments made by the parties and did not specifically address the language of the statute.

After *Evangelista* and *Willis* were decided, however, the third district issued its decision in *People v. Marshall*, 402 Ill. App. 3d 1080 (2010), *appeal allowed*, No. 110765 (Sept. 29, 2010). There, the State asserted that it had wrongly confessed error in *Evangelista*, and argued that multiple DNA samples are allowed. In agreeing with the State, the *Marshall* court observed that there was no analysis of the statute's express language in *Evangelista*, and found that "[n]owhere in the statute did the legislature provide that a convicted felon should be excused from the statute's mandates if his DNA is already in the database."

Marshall, 402 Ill. App. 3d at 1083. The court also noted that the statute has an expungement provision, which supports the need for taking another sample. *Marshall*, 402 Ill. App. 3d at 1083.

In *People v. Grayer*, 403 Ill. App. 3d 797 (2010), this district agreed with the rationale of *Marshall*, and noted additional circumstances that would support the taking of another DNA sample from the same defendant. *Grayer*, 403 Ill. App. 3d at 801-802. Since *Grayer*, the taking of multiple DNA samples has been upheld in *People v. Adair*, No. 1-09-2840 (Ill. App. Dec. 10, 2010), *People v. Williams*, No. 1-09-1667 (Ill. App. Dec. 2, 2010), and *People v. Bomar*, No. 3-08-0985, 3-08-0986 (Ill. App. Oct. 15, 2010). *Contra*, *People v. Rigsby*, No. 1-09-1461 (Ill. App. Dec. 3, 2010) (one-time submission sufficient based on Administrative Code provisions pertaining to collection of DNA samples by Illinois State Police).

Based on the weight of authority as it now exists, we hold that the $200 DNA analysis fee may be assessed more than once, and that the fee was properly assessed against defendant.

Second, defendant asserts that the $25 court services fee (55 ILCS 5/5-1103 (West 2008)) was improperly imposed because he was not convicted of one of the statute's enumerated offenses. The State contends that the plain language of the statute clearly intends for the fee to apply to all criminal cases. We agree with the State.

Section 5-1103 of the Counties Code provides that:

> "A county board may enact by ordinance or resolution a court services fee dedicated to defraying court security expenses incurred by the sheriff in providing court services or for any other court services deemed necessary by the sheriff to provide for court security. *** Such fee shall be paid in civil cases by each party at the time of filing the first pleading, paper or other appearance. *** In criminal, local ordinance, county ordinance, traffic and conservation cases, such fee shall be assessed against the defendant upon *** findings of guilty, resulting in a judgment of conviction, or order of supervision, or sentence of probation without entry of judgment pursuant to [various enumerated criminal statutes.]" 55 ILCS 5/5-1103 (West 2008).

This court has interpreted this statute to mean that the court services fee can be assessed for any criminal conviction. *Adair*, No. 1-09-2840, slip op. at 20; *Williams*, No. 1-09-1667, slip op. at 10. We reasoned that the clear purpose of the $25 fee is to defray the costs of court security, and in light of the

clear purpose, we have explicitly rejected defendant's interpretation of the wording. *Adair*, No. 1-09-2840, slip op. at 21-22. We see no reason to depart from the holdings in *Adair* and *Williams*, and find the $25 court services fee was properly assessed against defendant.

Lastly, defendant contends that the $10 Arrestee's Medical Costs Fund fee (730 ILCS 125/17 (West 2006)) was unauthorized because he required no medical care while in custody and the county jail incurred no medical costs from him.

Defendant directs attention to the portions of the relevant statute as it existed at the time of defendant's offense in June 2008. The statute then provided that the county was entitled to a $10 fee for each conviction and the money collected in this fund must be used "for medical expenses relating to the arrestee while he or she is in the custody of the sheriff and administration of the Fund." 730 ILCS 125/17 (West 2006).

The State points to the amended version of the statute, effective after August 15, 2008, as it existed when defendant was sentenced in August 2009. The amended version provided that the $10 fees collected must be used "for medical expenses and administration of the Fund." 730 ILCS 125/17 (West 2008). Accordingly, the amended version eliminated any link between the $10 fee and the individual arrestee's medical expenses.

This court has rejected defendant's interpretation of the preamended statute that the fee could not be assessed unless the particular defendant incurred medical expenses while he was in custody. *People v. Coleman*, No. 1-09-0067, slip op. at 6 (Ill. App. Sept. 24, 2010); *People v. Hubbard*, No. 1-09-0346, slip op. at 8-9 (Ill. App. Sept. 17, 2010); *Evangelista*, 393 Ill. App. 3d at 400; *People v. Jones*, 397 Ill. App. 3d 651, 663 (2009)

Notwithstanding this authority, defendant relies on *People v. Cleveland*, 393 Ill. App. 3d 700, 714 (2009), which held that the fee only applies when the individual arrestee actually incurs medical expenses. Defendant's reliance is fundamentally flawed because the author of the *Cleveland* opinion subsequently and expressly abrogated its holding in *Hubbard*. *Hubbard*, No. 1-09-0346, slip op. at 8-9.

For the foregoing reasons, we affirm the judgment of the circuit court.

Affirmed.