2016 IL App (1st) 140707-U

FIRST DIVISION
May 31, 2016

No. 1-14-0707

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. 13 CR 15428
	)	
ROBERT HUNTER,	)	Honorable
	)	Noreen Love,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Harris concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's conviction for aggravated kidnapping affirmed over his contention the evidence was insufficient to prove him guilty of the offense; multiple assessments imposed against defendant vacated and he is entitled to presentence custody credit toward his eligible fines.

¶ 2 Following a bench trial, defendant Robert Hunter was found guilty of aggravated kidnapping and two counts of unlawful use of a weapon by a felon. The trial court sentenced him to concurrent terms of 21 years and 5 years in prison, respectively, to be served concurrently. On appeal, he contends the State failed to prove him guilty beyond a reasonable doubt of aggravated

kidnapping where there was no evidence he intended to secretly confine his victim against her will, and he did not attempt to transport his victim to another place. Defendant also challenges multiples fines and fees imposed against him. We affirm defendant's conviction and order a correction of defendant's fines and fees order.

¶ 3 The State charged defendant with, and proceeded to trial against him on, one count of aggravated kidnapping, two counts of unlawful use of a weapon by a felon and one count of aggravated unlawful restraint.

¶ 4 Prior to trial, the trial court granted the State's written motion to admit proof of defendant's other crimes, allowing the victim in this case, Kimberly Hunter, to testify to an incident with defendant that occurred on December 20, 2007.

¶ 5 At trial, the evidence showed that Hunter had one child with defendant and had been married to him for approximately 11 years until their marriage ended on January 8, 2014. They, however, had been separated since December 20, 2007.

¶ 6 On December 20, 2007, around noon, Hunter was home because defendant had called her and asked her to come home during lunch. After eating together, they were in their bedroom when defendant grabbed a Crown Royal bag containing a silver revolver and shut the bedroom door. He proceeded to ask Hunter several "[a]ccusatory questions," such as with whom was she having an affair. While questioning Hunter, defendant pointed the revolver repeatedly at her head, chest and stomach. Eventually, defendant pointed the revolver down, pulled the trigger and shot Hunter in the left foot. Hunter said the police eventually arrived, found defendant with the revolver in his hand and arrested him.

¶ 7 From December 2007 to July 2013, Hunter and defendant had a "cordial" and "amicable" relationship "for [their] son." Defendant occasionally would come over to Hunter's house, and they occasionally talked on the telephone.

¶ 8 On July 2, 2013, defendant texted Hunter asking for a favor. Hunter called defendant, and he asked her if she would pick him up from the Firestone in Hillside the following morning because he was having car trouble and then drop him off at the Hines Veterans Administration Hospital. Hunter agreed to both and told defendant that she would pick him up at 7:30 a.m.

¶ 9 The following morning, Hunter drove to the Firestone located at 520 North Mannheim Road, parked her red Ford Explorer and saw defendant's black Ford Taurus to her left. She observed two other vehicles in the parking lot in addition to defendant's. Defendant proceeded to walk over to her vehicle, carrying a blue Union Pacific lunch bag, which Hunter thought was his lunch. After defendant entered Hunter's vehicle and shut the door, he pulled a black revolver out of the lunch bag, leaving the bag on the floor on the passenger side. Hunter opened the driver's door and tried to exit the vehicle, but defendant told her, "I don't want to hurt you but I will." Hunter closed the door, proceeded to reposition the vehicle by straightening it out and subsequently parked it, with the front of the vehicle facing the Firestone. Defendant began accusing Hunter of having an affair, even though the two had been separated for five years. The revolver remained in defendant's hand. Hunter asked defendant "[s]everal times" if she could leave and any time she tried to exit the vehicle, he "would raise the gun each time" just below the dashboard and tell her he wanted to talk with her. Hunter did not believe she could leave the vehicle because she "felt threatened" and because defendant had previously shot her. She also could not yell for help for fear of being shot.

¶ 10 While Hunter was in the vehicle with defendant, she tried to make eye contact with an individual who came near her vehicle, but he did not stop. Because it was warm in the vehicle, defendant allowed Hunter to open the window for some air. Later, Hunter asked defendant if she could open the door as well, which he allowed. As defendant was "rambling on" about the mistakes he had made in his life and Hunter's feelings toward him, Hunter "scoot[ed]" toward the edge of her seat. Around this time, a black SUV pulled up alongside her vehicle on the passenger's side. Hunter decided to exit the vehicle, and as she had her "entire body out," defendant grabbed her arm with his left hand and raised the gun in his right hand. She told defendant, "if you're going to shoot me, you're going to have to shoot me in front of this witness." Hunter then "snatched real hard," ran out of the vehicle and "scream[ed]" for help. As she ran, she saw the barrel of the revolver hanging out of the door and began running in a zigzag pattern until she reached a Family Dollar store. Hunter did not see what defendant did afterward. She was in her vehicle with defendant for approximately four hours.

¶ 11 At approximately 11:30 a.m., Gilbert Elam, an employee of the Firestone in Hillside, observed a woman open the driver's door of a red Ford truck in the parking lot and run toward the Family Dollar while screaming "help me, help me." He also noticed a man, whose face he could not really see, exit the red truck and run behind her with his right arm "down to his side." As the man was halfway through the parking lot, he stopped, went back and entered a black Ford Taurus. Elam did not see what happened after the man entered the Taurus. Approximately three minutes later, the police came through the Firestone's doors with their firearms drawn and told everyone inside to "get away from the doors."

¶ 12 Hillside Police Detective Dan Murphy spoke to Hunter and investigated the incident. He searched her vehicle and a blue bag he observed inside. In the bag, he found allergy medicine, a bottle of Tylenol, a bottle of Advil, a bottle of prescription pills with defendant's name on it, two scalpels inside their packaging, a flashlight, a small container of mace, a leather holster, a pair of handcuffs, duct tape and several rounds of ammunition, which was inside a smaller purple Crown Royal bag. Murphy photographed the bag and its contents. In court, he identified the photographs he took and the contents he found inside the blue bag.

¶ 13 Eventually, Hunter recovered her vehicle from the police station. In court, she identified exhibits which showed her vehicle and the bag that defendant brought inside it. On July 25, 2013, the police arrested defendant after he voluntarily came to the police station to turn himself in.

¶ 14 At the conclusion of the State's case, the parties stipulated that defendant had previously been convicted of aggravated battery with a firearm under case No. 08 CR 1610.[1]

¶ 15 Defendant moved for a directed finding, arguing the alleged firearm was never recovered and there was no evidence of any secret confinement because the incident occurred in a parking lot. The trial court denied the motion.

¶ 16 Defendant did not testify or present any evidence on his behalf.

¶ 17 After argument, the trial court found defendant guilty of all four counts. The court believed Hunter's testimony that defendant had a firearm, noting that she had previously been shot by him and remained in the vehicle with him for three to four hours, which she would not

[1] We note that the presentence investigation report, however, referred to defendant's prior conviction as "aggravated domestic battery," and it is the only prior conviction listed.

have done "unless she was being held there against her will." Concerning defendant's intent to secretly confine Hunter, the court observed that although Hunter was inside a vehicle, she was "outside of the public view" because "[p]eople don't know what's going on within the vehicle." The court further stated "here's a situation where actually nobody even realizes that she's being confined in this vehicle." Defendant filed a motion for a new trial, arguing in part the State failed to prove the "secret confinement" element of aggravated kidnapping, but the court denied the motion.

¶ 18 At sentencing, the trial court merged defendant's conviction for aggravated unlawful restraint into his conviction for aggravated kidnapping. It then sentenced him to 21 years in prison for aggravated kidnapping and two 5-year prison terms for both unlawful use of a weapon by a felon convictions, to be served concurrently. Defendant filed a motion to reconsider his sentence, which the court denied. This appeal followed.

¶ 19 Defendant contends the State failed to prove him guilty beyond a reasonable doubt of aggravated kidnapping where there was no evidence he intended to secretly confine Hunter in her parked vehicle in a public parking lot and never transported her to another location. He asserts that his actions and the circumstances surrounding them could only support a guilty finding of aggravated unlawful restraint, and therefore, he requests we remand the matter for resentencing on that conviction.

¶ 20 When a defendant challenges his conviction based upon the sufficiency of the evidence presented against him, we must ask whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could find all the elements of the crime proven beyond a reasonable doubt. *People v. Brown,* 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia,*

443 U.S. 307, 318-19 (1979)). All reasonable inferences must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42. The testimony of a single, credible witness may be sufficient to convict a defendant. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We will not overturn a conviction unless the evidence is "so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Brown*, 2013 IL 114196, ¶ 48. While we must carefully examine the evidence before us, we must give proper deference to the trier of fact who observed the witnesses testify (*id.*), because it was in the "superior position to assess the credibility of witnesses, resolve inconsistencies, determine the weight to assign the testimony, and draw reasonable inferences therefrom." *People v. Vaughn*, 2011 IL App (1st) 092834, ¶ 24.

¶ 21 To sustain a conviction for aggravated kidnapping based on being armed with a firearm, the State had to prove that defendant committed a kidnapping while armed with a firearm. 720 ILCS 5/10-2(a)(6) (West 2012). Defendant does not dispute the aggravating factor of the offense, that he was armed with a firearm. However, he and the State disagree over which subsection of the kidnapping statute his case comes under. Defendant asserts it is section 10-1(a)(3) of the Criminal Code of 2012 (Code) (720 ILCS 5/10-1(a)(3) (West 2012)), while the State asserts it is section 10-1(a)(1) of the Code (720 ILCS 5/10-1(a)(1) (West 2012)). Contrary to both parties' positions, the indictment contains the language of both sections 10-1(a)(2) and 10-1(a)(3) of the Code (720 ILCS 5/10-1(a)(2), (3) (West 2012)). In relevant part, the indictment states that defendant committed the offense of aggravated kidnapping when he knowingly "by deceit or enticement, induced to go from one place to another with intent/by force or threat of imminent force carried Kimberly Hunter from one place to another with intent secretly to confine Kimberly Hunter against her will." Furthermore, the trial court did not restrict its finding of guilt

to any subsection of the kidnapping statute. Therefore, because, as discussed, defendant does not dispute he was armed with a firearm to support aggravated kidnapping, the pertinent question becomes whether the State proved that defendant kidnapped the victim under either section 10-1(a)(2) or 10-1(a)(3) of the Code (720 ILCS 5/10-1(a)(2), (3) (West 2012)).

¶ 22 To convict defendant of kidnapping under subsection (a)(2), the State had to prove defendant knowingly (1) carried Hunter from one place to another, (2) by force or threat of imminent force, and (3) with the intent to secretly confine Hunter (4) against her will. See 720 ILCS 5/10-1(a)(2) (West 2012). To convict defendant of kidnapping under subsection (a)(3), the State had to prove defendant knowingly (1) induced Hunter to go from one place to another, (2) by deceit or enticement, and (3) with the intent to secretly confine Hunter (4) against her will. See 720 ILCS 5/10-1(a)(3) (West 2012); see also *People v. Eyler*, 133 Ill. 2d 173, 195 (1989).

¶ 23 We will begin by addressing the first two elements of subsection (a)(2). Here, the evidence showed that once defendant arrived at the Firestone, he entered Hunter's vehicle and pulled out a firearm. Hunter opened her door and attempted to exit the vehicle, but defendant threatened her if she left. Once Hunter shut the door, defendant requested that she straighten out the vehicle, and subsequently Hunter repositioned the vehicle in the parking lot. Taking the foregoing evidence in the light most favorable to the State, a rational trier of fact could have found the State proved defendant carried Hunter from one place to another by the threat of imminent force when he ordered her to reposition the vehicle, with which she complied. See *Siguenza-Brito*, 235 Ill. 2d at 226 ("[A] kidnaping conviction is not precluded by the brevity of the asportation or the limited distance of the movement.") (Internal quotation marks omitted.)

¶ 24 Next we will address the first two elements of subsection (a)(3). Here, the evidence showed that defendant contacted Hunter the night prior to the incident and arranged to meet her at the Firestone under the guise that he needed a ride to a VA hospital because he was having car trouble. Consequently, Hunter drove to the Firestone parking lot, parked and waited for defendant. Taking the foregoing evidence in the light most favorable to the State, a rational trier of fact could have found the State proved defendant induced Hunter to go from one place to the Firestone by deceit.

¶ 25 Next we will address the last two elements of both subsections (a)(2) and (a)(3), as they are the same under both subsections, and we must determine whether there was sufficient evidence defendant intended to secretly confine Hunter against her will. "Intent must ordinarily be proved circumstantially, by inferences drawn from conduct appraised in its factual environment." *People v. Johnson*, 28 Ill. 2d 441, 443 (1963). Whether such proof is sufficient to prove kidnapping is generally a question of fact for the trier of fact. See *People v. Calderon*, 393 Ill. App. 3d 1, 7 (2009). Secret confinement "may be shown by proof of the secrecy of the confinement or the secrecy of the place of confinement." *Siguenza-Brito*, 235 Ill. 2d at 227. Secret confinement may also be shown through evidence that the defendant isolated his "victim from meaningful contact with the public." *People v. Gonzalez*, 239 Ill. 2d 471, 480 (2011). "Secret" means "concealed, hidden, or not made public." *Siguenza-Brito*, 235 Ill. 2d at 227. "Confinement" generally means to be enclosed "within something, most commonly a structure or an automobile." *Id.* " '[O]ne can be secretly confined in an automobile within the meaning of the statute whether the automobile is moving or parked.' " *People v. Reeves*, 385 Ill. App. 3d 716, 726 (2008) (quoting *People v. Kittle*, 140 Ill. App. 3d 951, 955 (1986)).

¶ 26 Here, the evidence showed that defendant directed Hunter to park her vehicle in the public parking lot and forced her to remain in it for nearly four hours by threatening her multiple times with a revolver. Several times, Hunter asked defendant if she could leave, and each time, he raised the firearm just below the dashboard and prevented her from leaving. The fact that defendant did not raise his revolver above the dashboard demonstrates his intent to conceal her confinement. Hunter also testified she could not yell for help for fear of being shot, of which a reasonable inference can be made that defendant further intended to conceal her confinement. See *People v. Thomas*, 163 Ill. App. 3d 670, 676 (1987) (evidence that defendants prevented their victim from making known her distress was evidence of their secret confinement of her). Defendant's actions demonstrate that he intended to keep the confinement of Hunter a secret. See *Siguenza-Brito*, 235 Ill. 2d at 227. Additionally, his conduct during those four hours demonstrates that he also intended to prevent Hunter from having meaningful contact with the public. See *Gonzalez*, 239 Ill. 2d at 480-81. Therefore, taking the foregoing evidence in the light most favorable to the State, a rational trier of fact could have found defendant intended to secretly confine Hunter against her will.

¶ 27 Nevertheless, defendant maintains that the State failed to prove he intended to secretly confined Hunter because if he intended to do so, he "logically" would have used his firearm to threaten her and transport her to another location. Instead, defendant argues, his "words and actions indicated that he wanted to stay in the public parking lot to talk about their relationship." First, the recovery from defendant's lunch bag of a pair of handcuffs, duct tape, two scalpels and several rounds of ammunition belies the assertion that he merely wanted to remain in the parking lot and discuss his relationship with Hunter. Second, defendant threatened Hunter with his

firearm multiple times. Third, merely because defendant did not transport Hunter to a more secluded place from the parking lot does not mean a rational trier of fact could not have found he had the requisite intent to secretly confine her.

¶ 28 Next, defendant argues that because he confined Hunter in a parked vehicle "in a public parking lot, in plain view of any people or cars passing by," he could not have intended to secretly confine her. This assertion, however, directly contradicts the law. In *Gonzalez*, 239 Ill. 2d at 474-76, the defendant took a baby from a hospital and was eventually arrested two blocks away. The defendant and baby remained in public view at all times. *Id.* at 481. Our supreme court held that the secret confinement necessary to support kidnapping in the case occurred because the defendant "isolated the baby from meaningful contact with the public." *Id.* at 480-81. The court also rejected the defendant's argument that no secret confinement occurred because she and the baby remained in public view, noting it "long ago rejected any *per se* rule that a victim visible in a public place precludes a finding of secret confinement." *Id.* at 481-82. Although the facts of *Gonzalez* are clearly different than in the instant case, if secret confinement can occur despite the kidnapper and victim remaining in public view, so, too, can an intent to secretly confine occur despite the kidnapper and victim remaining in public view. Consequently, the fact that defendant and Hunter remained in public view does not mean defendant lacked the intent to secretly confine her where the evidence showed he intended to prevent Hunter from having meaningful contact with the public.

¶ 29 Lastly, in attempting to argue he did not intend to secretly confine Hunter, defendant relies on *Calderon*, 393 Ill. App. 3d 1, *People v. Cassell*, 283 Ill. App. 3d 112 (1996), *People v. Lamkey*, 240 Ill. App. 3d 435 (1992) and *People v. Hamil*, 20 Ill. App. 3d 901 (1974).

¶ 30 Both *Cassell* and *Hamil* were cases where the appellate court affirmed defendants' convictions for aggravated kidnapping based on the victims being actually secretly confined. See *Cassell*, 283 Ill. App. 3d at 121 (secret confinement found based on defendant taking victim from apartment by force, confining her in a vehicle by the use of, and threat of, force, and transporting her to a remote location while forcing her to sit and lie down in the vehicle away from public view); *Hamil*, 20 Ill. App. 3d at 908 (secret confinement found based on defendant driving victim through several alleys before parking in alley). Here, in contrast, the State had to prove defendant had the intent to secretly confine Hunter, and as such, both *Cassell* and *Hamil* are inapposite.

¶ 31 We have also considered *Lamkey*, 240 Ill. App. 3d at 439-40, where the appellate court held that the State failed to prove either a secret confinement occurred or the defendant had the intent to secretly confine his victim. The court reasoned that the incident, an aggravated criminal sexual assault, "occurred in the vestibule of a building located only a couple of steps away from one of the busiest thoroughfares in Chicago," the victim could see people walking by on the sidewalk and cars driving, and the defendant remained within public view without attempting to move the victim into a more concealed location. *Id.* at 438-39. In fact, a witness in a car observed the defendant attacking the victim and sounded his car's horn, which caused the defendant to run away. *Id.* at 437. Thus, in *Lamkey*, none of the defendant's actions demonstrated an intent to keep either the place of confinement a secret or the confinement itself a secret. Here, in contrast, defendant's actions, including raising the firearm to just below the dashboard, demonstrated his intent to keep the confinement of Hunter in her vehicle a secret.

¶ 32 Lastly, in *Calderon*, 393 Ill. App. 3d at 3-4, 10, this court affirmed a defendant's conviction for aggravated kidnapping under subsection (a)(2) of the kidnapping statute where the defendant held his victim captive in a gas station parking lot for approximately two hours and then ordered the victim to drive to an apartment building. While the appellate court found sufficient evidence based on the drive to the apartment building, the court never stated that being parked in the gas station parking lot itself was insufficient evidence of an intent to secretly confine the victim. See *id.* at 7-11. Therefore, *Calderon* does not compel a different result in the instant case.

¶ 33 Accordingly, we affirm defendant's conviction for aggravated kidnapping.

¶ 34 Defendant next contends that the trial court improperly imposed several assessments against him and failed to give him $5 per day of presentence custody credit against his assessments which qualified as fines. Although defendant failed to raise the propriety of his assessments in the trial court, he argues that a sentencing order that does not conform to the statutory requirements is void, can be raised at anytime and is not subject to the forfeiture rule citing to *People v. Thompson*, 209 Ill. 2d 19, 24 (2004). However, the void-sentencing rule no longer applies in light of *People v. Castleberry*, 2015 IL 116916, ¶ 19. Nevertheless, a reviewing court may modify a fines and fees order without remand. Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999) ("On appeal the reviewing court may *** modify the judgment or order from which the appeal is taken."); see *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 68 (ordering clerk of the circuit court to correct fines and fees order without remand). We review the propriety of a trial court's imposition of fines and fees *de novo*. *Bowen*, 2015 IL App (1st) 132046, ¶ 60.

¶ 35 Defendant first argues, and the State correctly concedes, that the trial court improperly imposed the following assessments against him: a $5 electronic citation fee (705 ILCS 105/27.3e (West 2012)), a $250 state DNA identification system fee (730 ILCS 5/5-4-3(j) (West 2012)) and a $5 court system fee (55 ILCS 5/5-1101(a) (West 2012)).

¶ 36 The $5 electronic citation fee applies only to defendants "in any traffic, misdemeanor, municipal ordinance, or conservation case." 705 ILCS 105/27.3e (West 2012); *People v. Moore*, 2014 IL App (1st) 112592, ¶ 46 (noting the electronic citation fee does not apply to felonies). Here, defendant was convicted of aggravated kidnapping and unlawful use of a weapon by a felon, both felonies. See 720 ILCS 5/10-2(b), 24-1.1(e) (West 2012). Therefore, the trial court improperly imposed the $5 electronic citation fee, and we vacate it.

¶ 37 The $250 state DNA identification system fee applies only where a defendant is not currently registered in the state DNA database. *People v. Marshall*, 242 Ill. 2d 285, 303 (2011). To vacate the fee, a defendant need only show that he was convicted of a felony after the DNA requirement went into effect on January 1, 1998. *People v. Leach*, 2011 IL App (1st) 090339, ¶ 38. Here, defendant was convicted of aggravated domestic battery in 2008, a felony. See 720 ILCS 5/12-3.3(b) (West 2012). Therefore, the trial court improperly imposed the $250 state DNA identification system fee, and we vacate it.

¶ 38 The $5 court system fee applies only to defendants found guilty of violating "the Illinois Vehicle Code other than Section 11-501 or violations of similar provisions contained in county or municipal ordinances committed in the county." 55 ILCS 5/5-1101(a) (West 2012); *People v. Paige*, 378 Ill. App. 3d 95, 105 (2007) (finding the court system fee did not apply to defendant found guilty of possession of a controlled substance). Here, defendant's convictions violated the

Criminal Code of 2012 (720 ILCS 5/10-2, 24-1.1 (West 2012)), not the Illinois Vehicle Code or similar provisions of a municipal ordinance. Therefore, the trial court improperly imposed the $5 court system fee, and we vacate it.

¶ 39 Defendant next argues, and the State correctly concedes, that he is entitled to $5 per day of presentence custody credit against the following assessments: a $50 court system assessment (55 ILCS 5/5-1101(c) (West 2012)) and a $15 State Police operations assessment (705 ILCS 105/27.3a(1.5) (West 2012)).

¶ 40 A defendant is entitled to a $5 credit for each day incarcerated toward the fines levied against him. 725 ILCS 5/110-14(a) (West 2012). Here, defendant accumulated 225 days of presentence custody credit, and thus, he is entitled to $1,125 worth toward his eligible fines. The court system assessment and State Police operations assessment are fines despite their statutory label as fees. See *People v. Smith*, 2013 IL App (2d) 120691, ¶¶ 17-21 (court system assessment is a fine); *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 (State Police operations assessment is a fine). Therefore, defendant must receive $5 per day of presentence custody credit toward these fines.

¶ 41 Defendant next argues that he must also receive $5 per day of presentence custody credit against the following assessments: a $2 State's Attorney records automation assessment (55 ILCS 5/4-2002.1(c) (West 2012)), a $2 Public Defender records automation assessment (55 ILCS 5/3-4012 (West 2012)), a $10 probation and court services operations assessment (705 ILCS 105/27.3a(1.1) (West 2012)) and a $25 court services sheriff assessment (55 ILCS 5/5-1103 (West 2012)). Defendant asserts these assessments are actually fines despite their statutory

labels as fees because they do not seek to reimburse the state for the costs of prosecuting a particular defendant. The State responds that they are properly labeled as fees.

¶ 42 The first three assessments are all fees, and this court has previously considered and rejected the identical arguments made by defendant in the instant case. See *Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65 (State's Attorney and Public Defender records automation assessments are fees); *People v. Rogers*, 2014 IL App (4th) 121088, ¶¶ 30, 36-39 (probation and court services operations assessment, and State's Attorney records automation assessments are fees). Despite these holdings, in defendant's reply brief, he further argues the State's Attorney and Public Defender records automation assessments are fines because they can be imposed against a defendant regardless of whether the State's Attorney's office prosecutes him, such as when a special prosecutor is appointed, and regardless of whether the public defender's office represents him. We see no reason to depart from the holdings of *Bowen* and *Rogers*, or to reach an issue not presented by the facts of the current case. Therefore, defendant is not entitled to presentence custody credit toward these fees.

¶ 43 Concerning the $25 court services sheriff assessment, defendant argues that it is a fine "because its stated purpose is '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' " quoting section 5-1103 of the Counties Code (55 ILCS 5/5-1103 (West 2012)). As such, defendant asserts the assessment does not compensate the state for the actual costs of prosecuting him. We disagree.

¶ 44 In *People v. Adair*, 406 Ill. App. 3d 133, 144 (2010), this court held the court services sheriff assessment by its plain language was a fee applicable to all criminal cases upon findings

of guilt and in all civil cases upon each party filing its first pleading or appearance. Therefore, the assessment is a fee, and defendant is not entitled to presentence custody credit toward it.

¶ 45 Accordingly, pursuant to our authority under Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999) and our ability to correct a fines and fees order without remand (see *Bowen*, 2015 IL App (1st) 132046, ¶ 68), we order the clerk of the circuit court to: (1) vacate defendant's $5 electronic citation fee, $250 state DNA identification system fee and $5 court system fee; and (2) award defendant $5 per day of presentence custody credit toward his $50 court system fine and $15 State Police operations fine. We, however, affirm the imposition of defendant's $2 State's Attorney records automation fee, $2 Public Defender records automation fee, $10 probation and court services operations fee and $25 court services sheriff fee, finding them, as fees, not subject to presentence custody credit.

¶ 46 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed in all other respects.

¶ 47 Affirmed; fines and fees order corrected.