2017 IL App (1st) 151379-U

FOURTH DIVISION
August 24, 2017

No. 1-15-1379

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 4681
	)	
EDWARD CARREON,	)	Honorable
	)	William J. Kunkle and
Defendant-Appellant.	)	Joan M. O'Brien,
	)	Judges Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in denying defendant's motion to appoint a special prosecutor. The mittimus is corrected to reduce defendant's fines and fees order to $489.

¶ 2 Following a bench trial, defendant Edward Carreon was found guilty of solicitation of murder for hire and solicitation of murder of the assistant State's Attorney (ASA) who successfully prosecuted him for predatory criminal sexual abuse and aggravated criminal sexual abuse in an unrelated case. Defendant was subsequently sentenced to a term of 40 years. Prior to trial, defendant filed a motion to appoint a special prosecutor, arguing that the Cook County

State's Attorney's office (SAO) was interested in the outcome of this prosecution and there was an appearance of impropriety. Following a hearing, the trial court denied defendant's motion.

¶ 3 Defendant appeals, arguing that (1) the trial court abused its discretion in denying his motion to appoint a special prosecutor; and (2) the trial court erred in assessing several fines and fees.

¶ 4 In February 2013, defendant was found guilty of predatory criminal sexual abuse and aggravated criminal sexual abuse. See *People v. Carreon*, 2015 IL App (1st) 131221-U. Immediately following his conviction and prior to sentencing, defendant began making threats to his cellmate in the Cook County jail that he wanted to kill ASA Lisette Mojica, who prosecuted him in that case. His cellmate, Dwayne Reed, reported defendant's comments to the investigators at the jail. Defendant asked Reed to connect him with someone who would kill ASA Mojica. At the request of the sheriff's office, Reed gave defendant the phone number for Officer Andrew Gutter, who posed as "Marcus," Reed's hitman. Defendant subsequently called and later met with Officer Gutter as Marcus about the murder of ASA Mojica. During the investigation, ASA Mojica was informed of defendant's actions. ASA Mojica participated in staged photos of her in a courtroom. The photographs were shown to defendant to identify her as the target to "Marcus." Defendant was subsequently charged by indictment with solicitation of murder for hire and solicitation of murder.

¶ 5 In May 2013, defendant filed a motion to appoint a special prosecutor. In his motion, defendant argued that since the victim was an ASA, the SAO, including the Cook County State's Attorney and the ASAs that work for her, "have an interest in the case in that one of her employees, and one of their colleagues, was the subject of an alleged threat upon her life." Defendant further asserted that, "[a]t a minimum, there is an appearance of impropriety in

[defendant] being prosecuted by the [SAO] when the complaining witness in the case is an [ASA], requiring appointment of a special prosecutor." Following briefing and a hearing, the trial court denied the motion.

¶ 6 A different trial judge conducted defendant's February 2015 bench trial. Since defendant has not challenged the sufficiency of the evidence on appeal, we will set forth a summary of the evidence presented at the trial as necessary to understand the issues raised on appeal.

¶ 7 ASA Mojica testified at trial that she had prosecuted defendant in the sexual abuse case. After the conviction, but before sentencing, she was informed by officers from the Cook County Sheriff's department about defendant's threats on her life. She was interviewed about the sexual abuse case. She also participated in staged photographs that were later used for defendant to identify her.

¶ 8 On February 7, 2013, defendant was convicted in the unrelated sexual abuse case. Reed testified that defendant was "raged out" because defendant had believed that he would be found not guilty since he loved the victim. Defendant began to rant about the ASA, claiming that she was the reason he had been convicted and she called him a "predator." Defendant continued the following day and said that the "b**** had to die." Defendant asked Reed if he knew anyone that could kill her for him. Defendant repeatedly asked Reed to find someone to kill her. Defendant wrote a description of the ASA and what courtroom to find her in on a piece of paper for Reed to give his connection.

¶ 9 Reed subsequently contacted the investigators at the Cook County jail. Investigators Raher and Cisco were assigned to investigate Reed's claims. Reed showed them the note and a copy was made. Defendant continued to ask Reed to contact someone to execute the ASA. Reed contacted Investigator Raher, who gave Reed the name "Marcus," and a phone number.

Investigator Raher told Reed not to give defendant the name and phone number unless defendant continued to ask for a contact. Defendant again asked Reed for a contact and Reed gave "Marcus's" name and phone number to defendant.

¶ 10 Shortly thereafter, defendant called "Marcus," who was Investigator Andrew Gutter. Investigator Gutter testified that calls from the jail are recorded. Investigator Raher subsequently retrieved the phone call between defendant and "Marcus." The recording was played at trial. Defendant asked "Marcus" if he was able to take care of that for him. "Marcus" told defendant that he did not like speaking over the telephone and asked when defendant's visiting days were. Reed testified that defendant returned to their cell smiling after the phone call and told him that it was done. A court-ordered consensual overhear was authorized, which allowed the conversations between "Marcus" and defendant to be recorded.

¶ 11 Investigator Gutter, as "Marcus," met with defendant on February 16, 2013. Prior to the meeting, Investigator Gutter was given undercover recording devices. He subsequently went to the jail to visit defendant under his undercover name of "Marcus." They spoke for several minutes. Investigator Gutter took notes, which included the courtroom number, the trial judge assigned, and a description of the ASA. The conversation was subsequently downloaded and presented at trial.

¶ 12 Following the meeting, defendant spoke to Reed and said Reed's "boy" came to visit. Defendant was happy, but scared. He told Reed that he was concerned that "Marcus" was speaking loudly. Later, defendant wrote a letter to "Marcus," which he gave to Reed to mail. Reed later gave the letter to Investigator Raher. The letter discussed their meeting, noting that "Marcus" had been "a little loud." The letter also discussed "Marcus" doing "that homework we

talked about. Two shots to the head is what I want." The letter included defendant's father's address as well as a description of the ASA.

¶ 13 Later, an investigator took a photograph of the ASA coming out of a courtroom. The photograph was supposed to look surreptitious, with it appearing that the ASA did not know the photograph was being taken. Investigator Gutter as "Marcus" visited defendant again in the jail and had undercover recording devices present. He showed defendant the photograph and defendant identified the ASA as the target. Investigator Gutter testified that he discussed with defendant that "Marcus" was going to receive $25,000 to kill the ASA. Defendant returned to his cell and Reed stated that defendant hugged him and was jumping around. Defendant told him that he was going to pay "Marcus" to get "rid" of the ASA.

¶ 14 A couple days later on February 22, 2013, defendant met with Investigator Raher and his partner at the jail. Defendant was given his *Miranda* rights. Defendant told them that he only spoke with his uncle and grandmother on the phone. When asked about a visitor on February 16, defendant said his father visited. He later told them he got a "mistake visit" from his cousin's boyfriend who threatened him. Investigator Raher played the recording of defendant's visit with "Marcus," and defendant denied that he was on the recording. When asked if defendant hired "Marcus" to kill the ASA, defendant said no, but then asked, "did he kill her?" When Investigator Raher said no, defendant responded, "Thank God," and stated that he did not want her to come to court.

¶ 15 Later that day, ASA John Brassil interviewed defendant. Defendant was given his *Miranda* rights, which he waived. When asked about recent visitors, defendant said he had been visited by a friend of his cellmate. He admitted that he lied to the investigator about the visitor. The recording of defendant's phone call with "Marcus" for defendant was played, and he

admitted that he initiated the call and identified his voice. He blamed Reed for making the call, told ASA Brassil that Reed forced him to make the call.

¶ 16 ASA Brassil testified that defendant continually brought up the facts of his sexual abuse case despite being told by the ASA that he did not want to discuss that case. Defendant complained about the prosecutor, stating that it was her fault that he was convicted. Defendant further complained that the prosecutor broke many laws, but he did not, he loved the victim. Defendant said he did not want the ASA to appear in court because he believed that he would get a new trial. Defendant wanted his case file and if he got his file, then he would get a new trial.

¶ 17 ASA Brassil stated that defendant referred to "Marcus" as a hitman throughout the interview. ASA Brassil confronted defendant with the handwritten note describing the ASA and the courtroom where she appeared, which defendant initially denied writing, but eventually he admitted to writing the note. ASA Brassil also showed defendant the handwritten letter to "Marcus." Defendant admitted that he wrote the letter, but denied writing the line, "two shots to the head is what I want." Defendant told him that he did not want the ASA to die, but he wanted the file. Defendant also initially denied ever seeing the photograph of the ASA, he admitted that he identified her to "Marcus." ASA Brassil testified that defendant would become angry when talking about the ASA, he pointed at the photograph and yelled about how it was her fault and she broke every law. Defendant said he would kill her if he "had a minute out." He wanted her to "beg for her life."

¶ 18 ASA Brassil asked defendant if he was willing to make a handwritten statement, but defendant said he would not sign anything. ASA Brassil testified on cross-exaimination that he was not allowed to bring in recording devices into the jail when he questioned defendant.

¶ 19 A different ASA presented Reed before a grand jury. Reed admitted at trial that the ASA agreed to tell the trial judge in his case about Reed's cooperation. No other promises or deals were made in exchange for Reed's cooperation.

¶ 20 After the State rested, defendant moved for a directed finding, which the trial court denied. Initially defendant informed the court that he did not want to testify on his own behalf. The next day, defendant stated that he did want to testify.

¶ 21 Defendant testified that Reed was "kind of shady." He said he initially told "Marcus" about his intention to have the ASA killed, but he changed his mind. Defendant denied he signed a *Miranda* waiver form. On cross-examination, defendant stated that he did not think "Marcus" was a hitman when he first met with him until "Marcus" asked if he wanted the ASA killed. He claimed to know that "Marcus" was an undercover officer before the second meeting. He admitted to writing the letter to "Marcus," but continued to deny writing the line about "two shots to the head is what I want."

¶ 22 Following closing arguments and a review of the exhibits, the trial court found defendant guilty of solicitation of murder for hire and solicitation of murder. The trial court subsequently sentenced defendant to terms of 40 years and 30 years, respectively. The sentences merged, but were to be served consecutive to his sentence for predatory criminal sexual abuse. The trial court also imposed $539 in fines and fees.

¶ 23 This appeal followed.

¶ 24 Defendant first argues that the trial court abused its discretion in denying his motion for a special prosecutor. Specifically, he asserts that the SAO had an interest in the case where the charges stemmed from the solicitation to murder an ASA, and therefore, an appearance of impropriety existed that necessitated the appointment of a special prosecutor. The State

maintains that the trial court properly denied defendant's motion because no impropriety existed and the ASA victim had a very limited role in the investigation of this case.

¶ 25 Section 3-9008(a) of the Counties Code provides, in relevant part:

> "Whenever the State's attorney is sick or absent, or unable to attend, or is interested in any cause or proceeding, civil or criminal, which it is or may be his duty to prosecute or defend, the court in which said cause or proceeding is pending may appoint some competent attorney to prosecute or defend such cause or proceeding, and the attorney so appointed shall have the same power and authority in relation to such cause or proceeding as the State's attorney would have had if present and attending to the same." 55 ILCS 5/3-9008(a) (West 2014).

¶ 26 "The purpose of this provision is to prevent any influence upon the discharge of the duties of the State's Attorney by reason of personal interest." *People v. Lang*, 346 Ill. App. 3d 677, 681 (2004). "In general, there are three situations in which a special prosecutor may be appointed: (1) the prosecutor is interested as a private individual in the case, (2) the prosecutor is an actual party to the litigation, or (3) the prosecutor's continued participation in the case creates the appearance of impropriety." *People v. Weeks*, 2011 IL App (1st) 100395, ¶ 46. We review the trial court's decision on whether to appoint a special prosecutor for an abuse of discretion. *Id.*

¶ 27 Defendant bases his argument on the third situation, the appearance of impropriety. Defendant contends that the appearance of impropriety comes from the complainant being an ASA and that she was a key witness against defendant. In addition to testimony, ASA Mojica was interviewed as part of the investigation and participated in the taking of staged photographs

which were used to have defendant identify her to "Marcus." Defendant also claims there was an appearance of impropriety in ASA Brassil's testimony about his interview of defendant where defendant gave inculpatory statements. Defendant points out that ASA Brassil did not record the interrogation and did not make any contemporaneous notes during the interview.

¶ 28 "In order to determine whether a State's Attorney's office should be removed in order to alleviate the appearance of impropriety, a court must weigh the concern about the appropriateness of the office's prosecuting the case against 'countervailing considerations' that include '(1) the burden that would be placed on the prosecutor's office if the entire prosecutor's office had to be disqualified; (2) how remote the connection is between the State's Attorney's office and the alleged conflict of interest; and (3) to what extent the public is aware of the alleged conflict of interest.' " *People v. Bickerstaff*, 403 Ill. App. 3d 347, 352 (2010) (quoting *Lang*, 346 Ill. App. 3d at 683).

¶ 29 Defendant argues that these considerations weigh in favor of appointing a special prosecutor. First, defendant notes that the motion was filed three months after he was indicted in the instant case and approximately two years prior to his bench trial, which limited the burden placed on the SAO. Next, defendant asserts that the connection between the SAO and conflict of interest "cannot be deemed remote" because of ASA Mojica's employment and role as prosecutor in his prior case. Third, he contends that public was aware of the alleged conflict of interest due to articles discussing the case. In support, defendant relies on two cases, *Sommer v. Goetze* and *Lang*, which the trial court found distinguishable from the instant case.

¶ 30 In *Sommer v. Goetze*, 102 Ill. App. 3d 117 (1981), an assistant State's Attorney was both the complaining witness and the assigned prosecutor in an administrative misconduct case against a sheriff's deputy. There, a sheriff's deputy "exchanged heated words" with a Tazewell

County ASA. The ASA made a complaint and an investigation of the incident was begun by the county sheriff. The investigation resulted in charges of misconduct against the deputy and following a merit hearing, the deputy was dismissed. On appeal, the deputy argued that it was improper to have the county sheriff represented by the office of the Tazewell County State's Attorney, as the ASA "not only the complaining party but also a key eyewitness to the events which transpired" in the tavern. *Id.* at 117-18. The Third District concluded that it was an abuse of discretion to deny appointment of a disinterested attorney "where the Assistant State's Attorney was the complainant and key eyewitness." *Id.* at 120.

¶ 31 In *Lang*, following a hearing related to the defendant's allegedly driving with a revoked license, the ASA followed the defendant out of court, saw him drive away from the courthouse, and contacted police to inform them that the defendant was driving without a license. *Lang*, 346 Ill. App. 3d at 678-79. The ASA then continued to prosecute the case up until trial, when another attorney from the Lake County State's Attorney's office prosecuted the case. The ASA who witnessed the alleged crime was the State's chief witness at trial. *Id.* at 679. On appeal, the Second District found that the State's prosecution of the defendant created an appearance of impropriety where the ASA surreptitiously followed the defendant until he observed the defendant commit a crime, resulting in charges from the ASA observations. At trial, the reporting ASA questioned by another ASA about the defendant's alleged criminal conduct. *Id.* at 684. The reviewing court believed that

> "these facts created an improper appearance that the State was too involved with the underlying case to be fair in its prosecution of the defendant. Although the assistant State's Attorney's pursuit of the defendant was not wrong in itself, his aggressive behavior

> toward the defendant created the appearance that the State's Attorney's office was obsessed with finding evidence against the defendant to obtain a conviction against him at all costs. Such an appearance was improper." *Id.*

¶ 32 In distinguishing these cases from the instant case, the trial court stated

> "I absolutely agree that a Lake County case [*sic*] is absolutely not on point. This was a complete investigation carried out by the individual assistant who followed the defendant out of the courtroom out to see that even though he was there on a 6303, in fact, driven himself to the courtroom and parked in the lot and so forth and made himself the key witness in the case.
>
> In the Tazewell County case, same situation. The prosecutor is a substantive, important and the State argues and perhaps the only witness in the case. That's not true here. ***
>
> So both sides are in a perfect position to tell me if I am wrong, and I expect them to, but my very limited understanding of the facts of this matter, are that this was a situation where, yes, the Assistant State's Attorney prosecuted the original case, but that assistant had no knowledge whatsoever that anything was going on in the mind or any actions being taken by this defendant when they were occurring.
>
> If she is a witness at this trial at all, it would seem to me it would be solely for the purpose of saying 'Yes, I prosecuted him.

> This was the case. This was the charge. This was the judge. This was the sentence.' End of story. That is not the situation that existed in either the Lake County case or the Tazewell County case. She is not a party or has any -- has no knowledge of the actual actions or acts that are allegedly committed by this defendant which brings him before this court."

¶ 33 We agree with the trial court that *Sommer* and *Lang* are distinguishable from the circumstances of the present case. ASA Mojica was the victim, but she was not a key witness to prove the charges of solicitation of murder for hire and solicitation of murder. She had no substantive knowledge of the investigation. She was simply informed of the threats and participated in staged photographs.

¶ 34 We find the circumstances in this case to be analogous to the Second District decision in *People v. VanderArk*, 2015 IL App (2d) 130790. In that case, the defendant had been sentenced in 2010 to 22 years in prison for aggravated driving while his license was revoked and aggravated driving while under the influence. In 2011, an inmate sent a letter to the trial judge who sentenced the defendant informing her that the defendant had a " 'hit list' " which named several people, including the judge and the ASA who prosecuted the case. The letter was turned over to the sheriff's department who investigated the case with the DuPage County State's Attorney's office. Following the investigation, the defendant was charged with solicitation of murder for hire for the judge, the ASA, and other individuals. *Id.* ¶¶ 3-11.

¶ 35 Thereafter, the defendant filed a motion for the appointment of special prosecutor, arguing, as defendant does in this case, that "the DuPage County State's Attorney's office was interested in the case and must be disqualified from prosecuting the case, because [an ASA] was

one of the alleged intended victims." *Id*. ¶ 12. The trial court denied the motion. Later, following a jury trial, the defendant was found guilty of soliciting the murders of the judge, the ASA, and another individual. *Id.* ¶ 27.

¶ 36 On appeal, the defendant contended that the trial court abused its discretion in denying his motion to appoint a special prosecutor because "there was an appearance of impropriety, because [the ASA] worked for the prosecuting agency and was a coworker of the prosecuting attorneys." *Id.* ¶ 36. The Second District held that the trial court did not abuse its discretion in denying the defendant's motion. "The defendant provides no reason why a new special prosecutor should have replaced the Du Page County State's Attorney's office, other than that [the victim ASA] was an ASA herself. The defendant argues that that fact created an appearance of impropriety. However, that standing alone is not a reason to disturb the trial court's decision." *Id.* ¶ 39. The reviewing court quoted the reasoning stated in *People v. Morley*, 287 Ill. App. 3d 499, 505 (1997).

> " 'The State's Attorney's responsibilities are not limited to representing the people of the State who are not employed by the State of Illinois or some other governmental entity. These prosecutorial responsibilities will occasionally include prosecuting cases where victims and witnesses are employed by a state, county, or local agency, including, but not limited to, the State's Attorney's office. Furthermore, the State's Attorney does not represent individuals or specific witnesses during the course of criminal prosecutions. Criminal prosecutions are commenced in the name of and on behalf of the people of the State of Illinois. To

> hold that a special prosecutor must always be appointed whenever a victim or witness is employed by a state, county, or local agency would be an illogical, as well as impractical, encroachment upon the authority of a constitutional officer.' " *Id.* (quoting *Morley*, 287 Ill. App. 3d at 505).

¶ 37 The court further observed that "it is not necessarily improper for an ASA to testify as a witness in a case that her office is prosecuting." *Id.* ¶ 40 (citing *People v. Tracy*, 291 Ill. App. 3d 145, 150-51 (1997)). The reviewing court set forth the elements to solicitation of murder for hire and pointed out that the victim ASA's testimony could not establish any of the elements of the offense, and therefore, was not a complaining witness against the defendant. *Id*. ¶ 41. Finally, the *VanderArk* court distinguished its case from the facts present in *Lang*, finding that "unlike the primary witness in *Lang*, [the ASA] did not demonstrate any aggressive behavior toward the defendant that suggested she was obsessed with obtaining a conviction against him at all costs. Further, she was not involved in the defendant's instant prosecution. Additionally, as noted above, her testimony was not even needed to prosecute the defendant." *Id*. ¶ 44.

¶ 38 In his reply brief, defendant attempts to distinguish *VanderArk* from the instant case. Specifically, he asserts that there was no indication that the ASA in *VanderArk* participated in the investigation like ASA Mojica did here. He points only to her participation in the staged photographs as her involvement in the investigation. He also notes that in *VanderArk*, the sheriff's investigator conducted the videotaped interview where the defendant inculpated himself, whereas in the present case, ASA Brassil conducted the interview and it was not recorded. We are not persuaded.

¶ 39 First, we find ASA Mojica's participation in staged photographs to be minimal, and as in *VanderArk*, her testimony did not go to the elements of the charged offenses. Her testimony was limited to her prior prosecution, her notification of the threats made against her, and the staged photographs. Her participation is analogous to *VanderArk*, and distinguishable from both *Sommer* and *Lang*. Second, we find no suggestion of impropriety in the interview conducted by ASA Brassil. Defendant's only suggestion is the lack of a recording, but ASA Brassil was cross-examined about the lack of a recording and he answered that recording devices were not allowed in the Cook County jail. We believe the circumstances of this case are analogous to those presented in *VanderArk* and find that the reasoning for finding the denial of the motion to appoint a special prosecutor applies here.

¶ 40 Since ASA Mojica's involvement in the case limited, she had no substantive involvement in the investigation, and her testimony could not establish any of the elements of the offenses, we conclude that the trial court did not abuse its discretion in denying defendant's motion to appoint a special prosecutor.

¶ 41 Next, defendant contends that the trial court erred in assessing several inapplicable fines and fees. According to defendant, the trial court improperly assessed a $20 probable cause hearing fee, a $25 violent crime victim assistance fee, and a $5 electronic citation fee. Defendant asks this court to amend his sentencing order to reflect the proper amount of fines and fees. Defendant also admits that he failed to preserve this issue in the trial court, but asks this court to review the issue under the second prong of the plain error rule.

¶ 42 To preserve an issue for review, defendant must object both at trial and in a written posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Failure to do so operates as a forfeiture as to that issue on appeal. *People v. Ward*, 154 Ill. 2d 272, 293 (1992). Supreme

Court Rule 615(a) provides that "[a]ny error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). The plain error rule "allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007) (citing *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005)).

¶ 43 The State agrees with defendant that this issue is reviewable under the second prong of plain error. Illinois courts have "recognized that a sentencing error may affect defendant's substantial rights, and thus can be reviewed for plain error." *People v. Akins*, 2014 IL App (1st) 093418-B, ¶ 20 (citing *People v. Black*, 394 Ill. App. 3d 935, 939 (2009), citing *People v. Hicks*, 181 Ill. 2d 541, 544-45 (1998)). "The propriety of court-ordered fines and fees raises a question of statutory interpretation, which we review *de novo*." *Id.*

¶ 44 The State concedes that all three contested fines and fees were improperly assessed. First, the probable cause hearing fee is not authorized where a defendant does not have a probable cause hearing. *People v. Smith*, 236 Ill. 2d 162, 174 (2010). No probable hearing was conducted in this case, and thus, we vacate the fee.

¶ 45 Second, defendant contends that he was improperly charged with two violent crime victim assistance fines. He was properly assessed a $100 fine under section 10(b)(1) of the Code of Criminal Procedure of 1963 for "any felony" conviction. 725 ILCS 240/10(b)(1) (West 2014).

However, he was improperly assessed a $25 fine under a prior version of section 10(c)(1), which was no longer in effect at the time of defendant's trial or sentencing hearing. See Pub. Act. 97-816 (eff. July 16, 2012) (amending 725 ILCS 240/10(c)(1) (West 2010)). Therefore, we vacate the imposition of the $25 violent crime victim assistance fund fine.

¶ 46 Third, the $5 electronic citation fee "shall be paid by the defendant in any traffic, misdemeanor, municipal ordinance, or conservation case upon a judgment of guilty or grant of supervision." 705 ILCS 105/27.3e (West 2014). Since defendant was charged with a felony, and not one of the listed citations, the assessment was in error. See *People v. Robinson*, 2015 IL App (1st) 130837, ¶ 115. We vacate this fee.

¶ 47 Under Supreme Court Rule 615(b)(1), this court has the authority to order a correction of the mittimus. Ill. S. Ct. R. 615(b)(1) (eff. Jan. 1, 1967). We order that the mittimus be corrected in accordance with our order vacating these three fines and fees, reducing defendant's monetary judgment from $539 to $489.

¶ 48 Based on the foregoing reasons, we affirm defendant's conviction and mittimus is corrected as ordered.

¶ 49 Affirmed; mittimus corrected.