2014 IL App (4th) 121024-U

NO. 4-12-1024

FILED
May 13, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
GEORGE ROBINSON,	)	No. 10CF277
Defendant-Appellant.	)	
	)	Honorable
	)	Mark A. Fellheimer,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Knecht and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's judgment as modified and remanded with directions, concluding (1) the trial court did not err in finding defendant was competent to stand trial in March 2011, (2) the trial court did not err in removing defendant from the trial proceedings, and (3) the circuit clerk lacked the authority to impose fines on defendant.

¶ 2 In October 2010, a grand jury indicted defendant, George Robinson, for aggravated battery against a correctional facility medical technician, a Class 2 felony. 720 ILCS 5/12-4(b)(18) (West 2010). In March 2011, the case proceeded to jury trial in defendant's absence after the trial court ordered defendant removed from the courtroom for continuously disrupting the proceedings. Following the trial, in September 2011, the court found defendant unfit for sentencing, relying on a report submitted by Dr. Robert Chapman. In February 2012, Dr. Nageswararao Vallabhaneni, a psychiatrist at Chester Mental Health Center (Chester), determined defendant was malingering. The court subsequently sentenced defendant to four

years in the Department of Corrections (DOC). The circuit clerk then imposed several fines and fees.

¶ 3 Defendant appeals, asserting (1) the trial court erred in finding him competent to stand trial, (2) the trial court erred in removing him from the courtroom during his trial, and (3) several fines imposed by the circuit clerk should be modified or vacated. We affirm the trial court's judgment as modified and remand with directions for the trial court to properly assess defendant's fines.

¶ 4 I. BACKGROUND

¶ 5 A. Pretrial Proceedings

¶ 6 In October 2010, the grand jury indicted defendant based on allegations defendant committed an aggravated battery against a correctional facility medical technician, a Class 2 felony. 720 ILCS 5/12-4(b)(18) (West 2010). At the time, defendant was serving an unrelated DOC sentence for criminal sexual assault.

¶ 7 On November 30, 2010, defendant appeared in trial court for arraignment and appointment of counsel. Defendant asked the court why it took so long for him to be brought to court following the indictment. When asked whether he wanted the court to appoint an attorney, defendant responded, "At this time I'm trying to figure out why I'm just now getting here." He then expressed confusion as to why the prison proceedings differed from the present charges. Specifically, defendant explained DOC did not pursue charges against him internally, so he did not understand how the State could pursue charges. Defendant was upset that his attorney had never previously addressed the court about his case or met with defendant, despite the fact that the court was still in the process of asking defendant whether he wished to have an attorney appointed. Throughout the proceedings, defendant interrupted the court numerous times,

indicating he did not understand, and asked various questions, despite the court's attempts to direct defendant to speak with his newly-appointed attorney.

¶ 8 As the trial court appointed counsel, defendant questioned the court about his attorney's skill. He also stated, "I know I'm not guilty because I don't steal." The court explained defendant had not been charged with stealing. The trial court then proceeded to admonish defendant as to the nature of the charges, his rights, and the possible penalties. The court noted defendant was eligible for an extended sentencing term of 3 to 14 years in DOC. Defendant demanded to know the statutory citation that permitted the court to sentence him to up to 14 years in DOC upon conviction, which the court supplied (720 ILCS 5/12-4(b)(18) (West 2010)).

¶ 9 At a January 2011 pretrial hearing, the parties announced they were ready for trial. Because defendant was due to be released from DOC in February 2011, the State asked the trial court to set defendant's bond at $50,000. Defendant asked the court why the proceedings were taking so long, when he allegedly committed the aggravated battery in March 2010. He also disputed that he had been convicted of the criminal-sexual-assault charge, for which he was serving a DOC sentence when he accrued the present case. Similarly, defendant complained the county jail never transported him to Peoria County for a postconviction hearing in his criminal-sexual-assault case. As he did in the previous hearing, defendant raised objections about the State proceeding on the charges when he had been "denied prison review access." The court then set defendant's bond at $40,000. Once the court set defendant's bond, defendant said he had seen no discovery and possessed no paperwork to "substantiate this charge." Defendant said he was not ready for trial. Moreover, defendant said DOC failed to produce transcripts of statements by the alleged victim and denied his right to be present at a hearing before the prisoner review board. Defendant's attorney indicated he spoke with defendant "at length" on January 13, 2011,

about the charges, the penalties, and the evidence. However, defendant denied speaking with his attorney in preparation for the case, stating, "[t]hey never took me out. The 13th and the 14th [defendant] never moved out of his cell." The State later provided verification to the court from DOC reflecting a January 13, 2011, phone call between defendant and his attorney.

¶ 10 B. Jury Trial

¶ 11 In March 2011, the case proceeded to jury trial. Prior to the commencement of the trial, defendant's attorney indicated he was ready to proceed with the trial; however, defendant stated he was not ready for trial. Defendant took exception to the trial court's recitation of the charge as having occurred in Livingston County, asserting the charges allegedly accrued at the Pontiac Correctional Facility (Pontiac). The court explained Pontiac was located in Livingston County, to which defendant said, "I understand that, but I call it what it is. What it is is [*sic*] [Pontiac]." Defendant then said he was not ready because "[t]he segregated nature of the segregated cell. You know that?" He then complained that he lacked (1) legal paperwork, (2) evidence for his defense, and (3) his reading glasses because they remained in DOC after he transferred to the county jail. Additionally, he accused jail personnel of denying him access to court on his postconviction case, which caused the denial of his postconviction relief.

¶ 12 Defendant repeatedly interrupted the trial court and attorneys throughout the pretrial preparations. After approximately nine interruptions and numerous admonishments by the court, the following exchange occurred:

> "THE COURT: "Sir, [defendant], one more time and you are out of here and we will have the trial without you."
>
> THE DEFENDANT: Huh?
>
> THE COURT: Yes, that is right.

THE DEFENDANT: You can have a trial without me?

THE COURT: If you are going to continue to be disruptive."

Defendant then interrupted again, at which time the court initiated the following dialogue:

"THE COURT: I will tell you when to speak. Until then, nothing out of your mouth.

THE DEFENDANT: How is the court reporter going to know what is in Pontiac and what's not there?

THE COURT: I am going to make a finding here that [defendant] is not following any instructions of the court. I have been giving him plenty of opportunity to speak.

THE DEFENDANT: I have a question.

THE COURT: He continues to interrupt myself. He is interrupting *** his attorney. I have told him on no more than five times this morning I will give him an opportunity to speak. He doesn't want to listen to any of my instructions.

[Defendant], do you understand if you interrupt somebody one more time, that is it; we will proceed in your absence. Do you understand that?

THE DEFENDANT: I—

THE COURT: Yes or no?"

¶ 13 Defendant never directly answered the question and instead continued interrupting and asking the trial court questions. The court then gave defendant an opportunity to explain which relevant documents he believed to be "missing" from discovery. Defendant responded, "This is the first time I have been in the courtroom. What are you talking about? This is the first time I—who are you?" He then asked the court to send him a letter in writing

indicating why he could not have discovery and requested a bond reduction. When defendant interrupted the court again, the court said, "[Defendant], that is it. One more time of interrupting me, we are going to proceed in your absence. Do you wish me to proceed in that fashion, sir?" Defendant indicated he did not wish the court to proceed in his absence.

¶ 14 After denying defendant's request and confirming the case for trial, the trial court noticed defendant wearing a jail uniform rather than street clothing. Defendant refused to change into street clothing for the trial, saying the clothes were too small and unseasonal. The court directed defendant to try on the clothing so the court could determine whether the clothes fit**.** Rather than complying with the court's directive, defendant repeatedly interrupted the court, stating the clothes did not fit. Upon being removed from the courtroom so he could try on the clothing, defendant failed to try on the clothing and was eventually returned to the courtroom. The trial court then made a finding that defendant was to be excused from trial, remarking that approximately 45 minutes had elapsed since the matter had been called for trial and defendant refused to follow the court's instructions. The court instructed the deputy to return the defendant to the county jail. While the court made its ruling, defendant continued to interject and interrupt, at which time the court excused him from the courtroom. As jail personnel removed defendant from the courtroom, the court noted on the record that defendant had interrupted the court approximately 15 to 20 times and exhibited no interest in following the court's instructions. The court also noted the size of the clothing on the record and found those clothes likely would have fit defendant. Defendant's attorney objected to defendant's removal from the courtroom.

¶ 15 The trial proceeded with *voir dire* and opening arguments in defendant's absence. Prior to the presentation of evidence, the trial court brought defendant back into the courtroom outside the presence of the jury. Defendant stated he wanted to be present for his trial. He then

reiterated he needed his legal paperwork that he left behind at Pontiac. The court said it heard defendant's argument and previously denied it; however, defendant persisted. When the court refused to reopen arguments, defendant interrupted and continued to assert he needed his paperwork from Pontiac. The court ruled to continue excluding defendant from the trial due to defendant's inability to follow the court's instructions. Nonetheless, the court noted defendant had a right to testify and asked jail personnel to ensure defendant dressed for trial. The State then proceeded with its evidence.

¶ 16 John Birkel testified he was a correctional medical technician at Pontiac. His duties included working in the hospital, assisting doctors, and delivering medication to inmates. According to Birkel, on March 26, 2010, he was assigned to distribute medication to the gallery in which defendant was housed. Birkel stated when he opened the small hatch (approximately one foot wide and six inches tall) on defendant's cell door and gave defendant his medication, defendant reached his hand out and asked if Birkel had any more medication for him. When Birkel replied he did not, defendant attempted to grab the medication box from Birkel's hand. Birkel testified, as he turned away, defendant grabbed his left wrist and shirt. Defendant then attempted to pull Birkel's arm through the hatch as Birkel struggled to free himself. Birkel said a nearby correctional officer, Brian Maier, came over to assist him. Officer Maier testified similarly to Birkel.

¶ 17 After the State rested, the trial court asked jail personnel to bring defendant to the courtroom. By that time, defendant was dressed in street clothes. Defendant indicated to the court that he wished to testify. The court ordered defendant restrained and made detailed findings for its reasoning. The court specifically noted the jury would be unable to see

defendant's restraints. Defendant then argued he was uncomfortable, saying, "I am a free man. I ain't got [*sic*] to be uncomfortable."

¶ 18 The trial court attempted to admonish defendant about his right to testify or not testify. Each time the court asked defendant a question, defendant refused to answer and, instead, asked his own questions or made irrelevant statements. The court said it would accept the representations from defendant's attorney that defendant had been apprised of his rights regarding whether to testify. Defendant then continued interrupting, asking the court to "call the judge." He continued discussing his unrelated postconviction case as the jury entered the courtroom.

¶ 19 Defendant testified, on March 26, 2010, he was incarcerated at Pontiac. He indicated he did not receive any medication from Birkel on that date, nor did he grab Birkel's shirt or arm. Defendant then offered unresponsive commentary, forcing the trial court to take a recess. Defendant continually interrupted the court, to which the court said, "I am simply not going to go forward with him on the stand with his ramblings that he is doing." The court went on to state, "He's not *** paying attention to anything I'm saying. He is continuing to interrupt me now." When defendant's attorney represented he asked the "essential elements" he wished to cover and the State had no interest in cross-examining defendant, the court asked jail personnel to once again remove defendant from the courtroom. No additional witnesses were called. Defendant was not present during the jury-instruction conference or closing arguments. Defendant was present when the jury returned its verdict.

¶ 20 On this evidence, the jury returned a guilty verdict.

¶ 21 C. Posttrial Motion and Fitness Proceedings

¶ 22 On March 30, 2011, defendant's attorney filed a posttrial motion asserting, among other things, the trial court erred by removing defendant from the proceedings on two occasions. Shortly thereafter, another attorney, Maureen Williams, entered her appearance in defendant's case and filed a motion to determine defendant's fitness pursuant to section 104-11(a) of the Code of Criminal Procedure of 1963 (Criminal Code) (725 ILCS 5/104-11(a) (West 2010)). In support of her argument, Williams noted she and defendant had difficulty communicating, describing their discussions as a "power struggle." Defendant acknowledged Williams as his attorney and stated he thought he came to court in order to meet with her. He also told the court he did not recall any aspect of the trial. He believed he was incarcerated due to a warrant for missing a court date in Peoria.

¶ 23 In considering defendant's motion alleging a *bona fide* doubt as to defendant's competency, the trial court referenced the presentence report, which summarized defendant's mental health records from DOC. The records indicated a history of mental illness and suicide attempts. Dr. Jose Matthews, who previously evaluated defendant, opined defendant sought a major psychotic diagnosis in order to obtain disability status. He diagnosed defendant with adjustment disorder and "probably malingering psychiatric symptoms."

¶ 24 The trial court stated it believed defendant was malingering but ordered a fitness evaluation based on the totality of the circumstances. Specifically, the court noted defendant had sufficient understanding of the legal system to condition his attorney's continued representation on her filing motions on his behalf. The court ordered Dr. Chapman to complete defendant's fitness evaluation. Dr. Chapman's August 2011 report indicated defendant was "too disturbed, dangerous, and uncooperative" for a face-to-face evaluation. Instead, defendant remained in his

cell while Dr. Chapman conducted the assessment. Dr. Chapman's examination was therefore "limited to observation and attempts to solicit [defendant's] cooperation." Dr. Chapman observed (1) defendant's cell to be in "disheveled condition," (2) defendant's communication with jail staff revealed "bizarre verbalization," (3) defendant exhibited dangerous behavior that included biting a staff member, and (4) defendant demonstrated "behavior consistent with auditory hallucinations and verbalizations compatible with delusional thinking."

¶ 25 Dr. Chapman noted defendant had a long history of mental illness, beginning with the onset of depressive disorder in 1991. Defendant was found guilty but mentally ill in his criminal sexual assault case, which resulted in numerous contacts with the mental-health clinic at DOC. At the time of the evaluation, defendant was taking no psychotropic medications. Based on defendant's behaviors, Dr. Chapman made a "probable diagnosis" of depressive disorder, psychotic type. He further determined defendant was unfit for sentencing but, with treatment, Dr. Chapman opined defendant could attain fitness within one year.

¶ 26 Based on Dr. Chapman's report, the trial court found defendant unfit and ordered defendant into treatment at a secure DOC facility. Defendant was transferred to Chester, a maximum-security DOC facility, for treatment. In October 2011, Dr. Vallabhaneni submitted a treatment plan to the trial court. The plan outlined defendant's criminal history, which consisted of (1) a prior conviction for criminal sexual assault for which defendant was found guilty but mentally ill and sentenced to DOC, (2) the present case, (3) a 2011 aggravated-battery case defendant accrued after battering a correctional officer during a transfer, and (4) an outstanding warrant for a 2003 criminal sexual assault in South Carolina. Defendant had a history of mental illness that included at least one psychiatric admission and a diagnosis of bipolar disorder. During the initial interview, the report indicated defendant told the team his treatment was

"political red tape" that was "past the 'statute of limitations.' " The team finally terminated the interview when defendant continuously made nonresponsive statements and refused to answer the team's questions.

¶ 27 A November 2011 evaluation by Dr. Vallabhaneni noted defendant (1) refused to acknowledge the trial court's order for treatment and (2) demanded to be released. Dr. Vallabhaneni diagnosed defendant with schizophrenia and paranoia. Following the evaluation, Dr. Vallabhaneni obtained authorization to administer psychotropic medicine to defendant. Dr. Vallabhaneni determined defendant was unfit to face sentencing but believed defendant could be restored to fitness.

¶ 28 In February 2012, Dr. Vallabhaneni filed another report indicating he believed defendant to be fit, stating defendant was not psychotic; rather, defendant was "coherent, lucid, and articulate." Dr. Vallabhaneni stated defendant "[p]resented himself as fully alert and aware of his legal status but intentionally avoided cooperating and following recommendations pertaining to his legal problems and his behavior problems." He further indicated defendant purposefully misled the treatment team so he could avoid returning to the county jail. Dr. Vallabhaneni opined defendant was capable of cooperating with defense counsel but might intentionally choose not to do so. He found defendant fit to be sentenced, though he noted defendant could benefit from medication to control his aggression, paranoia, and anger outbursts.

¶ 29 Based on Dr. Vallabhaneni's February 2012 report, the trial court found defendant fit to be sentenced and ordered the Livingston County jail to continue defendant on his prescribed psychotropic medications.

¶ 30 D. Supplemental Motion for New Trial and Sentencing Hearing

¶ 31 In June 2012, prior to the sentencing hearing, defendant's attorney filed a supplemental motion for a new trial, asserting, in part, defendant was not fit to stand trial in March 2011. Following an October 2012 hearing, the trial court denied both the initial and supplemental posttrial motions and sentenced defendant to four years in DOC. Additionally, the circuit clerk's office imposed various assessments, including (1) a $100 Violent Crimes Victims Assistance (VCVA) fine, (2) a $10 probation operations assistance assessment, and (3) a $5 State Police operations assessment.

¶ 32 This appeal followed.

¶ 33 II. ANALYSIS

¶ 34 On appeal, defendant asserts (1) the trial court erred in finding him competent to stand trial, (2) the trial court erred in removing him from the courtroom during his trial, and (3) several fines imposed by the circuit clerk should be modified or vacated. We address defendant's contentions in turn.

¶ 35 A. Defendant's Competency To Stand Trial

¶ 36 Defendant first argues the trial court erred in finding he was competent at the commencement of his trial. "The due process clause of the fourteenth amendment bars prosecuting a defendant who is not fit to stand trial." *People v. Shum*, 207 Ill. 2d 47, 57, 797 N.E.2d 609, 615 (2003). Section 104-10 of the Criminal Code states "[a] defendant is presumed to be fit to stand trial or to plead, and be sentenced. A defendant is unfit if, because of his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense." 725 ILCS 5/104-10 (West 2010). When the court receives evidence that raises a *bona fide* doubt as to a defendant's competency, due process

requires the court to order a competency hearing. *People v. Weeks*, 393 Ill. App. 3d 1004, 1009, 914 N.E.2d 1175, 1180 (2009). In deciding whether a defendant is unfit, the trial court may consider irrational behavior exhibited by defendant, his demeanor in court, and any prior medical opinion assessing defendant's competency to stand trial. *Id.* The court's determination of whether a *bona fide* doubt exists will not be overturned absent an abuse of discretion. *Id.*

¶ 37 In this case, no one suggested the existence of a *bona fide* doubt as to defendant's competency during the trial proceedings. It was not until the sentencing phase that his attorney asserted the presence of a *bona fide* doubt as to defendant's competency. Defendant relies on *People v. Johnson*, 121 Ill. App. 3d 859, 861, 460 N.E.2d 336, 338 (1984), in support of his contention that his lack of fitness at sentencing could demonstrate a lack of fitness at the time of trial. Specifically, defendant asserts his continuing lack of cooperation and difficulty with counsel, similar to that in *Johnson*, demonstrated he was unfit throughout the trial proceedings.

¶ 38 After the trial court reluctantly found a *bona fide* doubt as to defendant's fitness, Dr. Chapman evaluated defendant and determined defendant was unfit to stand trial. Because defendant notes his behavior was unchanged throughout the case, he argues Dr. Chapman's finding of unfitness should extend back to his trial. Under the circumstances, we disagree. While defendant was undergoing treatment at Chester, Dr. Vallabhaneni initially agreed with Dr. Chapman's assessment; however, Dr. Vallabhaneni later determined defendant was malingering and, hence, was never incompetent at all. Given that defendant's behavior remained constant from the time of trial and throughout his treatment at Chester, Dr. Vallabhaneni's conclusion that defendant was malingering at Chester supports a reasonable inference that defendant was malingering at all relevant times of this case.

¶ 39 Defendant asserts his long history of mental illness proves his lack of competence. Since 1991, defendant has made multiple suicide attempts and received diagnoses for bipolar disorder, depressive disorder, and schizophrenia. However, defendant also has a history of suspected malingering. In 2011, Dr. Matthews suspected defendant of malingering in an attempt to obtain disability benefits. Dr. Vallabhaneni also suspected malingering when the prescribed medications had no effect on defendant's mental state. Dr. Vallabhaneni found defendant understood the legal proceedings but remained uncooperative to avoid returning to jail.

¶ 40 Moreover, the trial court also had the opportunity to observe defendant's behavior on multiple occasions. The trial court is in the best position to determine the credibility of individuals before the court, and that includes a defendant who claims to be incompetent. *People v. Murphy*, 72 Ill. 2d 421, 431, 381 N.E.2d 677, 682 (1978). The court observed defendant acknowledge his attorneys on some occasions and even condition Williams' continued representation on filing particular motions on his behalf. Defendant highlighted the importance of the court reporter transcribing his statements and later had the wherewithal to request transcripts because he was taking the case to the Supreme Court. These statements are indicative of a person who understands the legal system. Moreover, the record also reveals defendant managed to act appropriately during some of his court proceedings, specifically, on the dates in which (1) his attorney raised a *bona fide* doubt as to defendant's competence and (2) the court found defendant unfit for sentencing. Notably, in both of those instances, defendant obtained the result Dr. Vallabhaneni later determined defendant wanted—he delayed his case and undermined the justice system. Though defendant failed to cooperate with his attorneys, Dr. Vallabhaneni noted that defendant's lack of cooperation and focus on irrelevant matters were not necessarily

indicative of mental illness but of attempts to undermine the justice system. Thus, we conclude the court did not abuse its discretion in (1) adopting the findings of Dr. Vallabhaneni and (2) finding defendant was competent to stand trial in March 2011, especially in light of its own observations which led it to believe defendant was malingering.

¶ 41 B. Defendant's Removal from the Courtroom

¶ 42 Defendant next asserts the trial court erred in removing him from the courtroom during his trial, except for the brief portion in which he testified. The parties contest the standard of review. Defendant contends we review the court's decision to remove him from the courtroom *de novo* pursuant to *People v. O'Quinn*, 339 Ill. App. 3d 347, 354, 791 N.E.2d 1066, 1071 (2003). The State argues we should review the court's decision for an abuse of discretion pursuant to *Illinois v. Allen*, 397 U.S. 337 (1970). We begin by noting *O'Quinn*, a Fifth District case, is not binding on this court. Additionally, unlike the matter before this court, *O'Quinn* involved the review of an alleged constitutional speedy-trial violation. *O'Quinn*, 339 Ill. App. 3d at 350, 353-58, 791 N.E.2d at 1068, 1071-74. The language contained within *Allen* clearly states the court "must be given sufficient discretion to meet the circumstances of each case" in determining whether to remove a defendant from trial proceedings. *Allen*, 397 U.S. at 343. It would make no sense for the reviewing court to conduct a *de novo* review that affords the trial court no discretion. Based on this reasoning, we conclude the abuse-of-discretion standard applies in this situation.

¶ 43 A criminal defendant has the right to be present at every stage of his trial. *Id.* at 338. Nevertheless, "a defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and

disrespectful of the court that his trial cannot be carried on with him in the courtroom." *Id.* at 343. The defendant can reclaim his right to be present at trial once the defendant indicates his willingness to conduct himself with decorum and respect toward the court and the judicial proceedings. *Id.* Courts "confronted with disruptive, contumacious, stubbornly defiant defendants must be given sufficient discretion to meet the circumstances of each case. No one formula for maintaining the appropriate courtroom atmosphere will be best in all situations." *Id.*

¶ 44 Defendant asserts that his disruptions were an attempt to be heard about his legal concerns and that they did not rise to the level that required his removal from the trial. We disagree. Even as early as arraignment, defendant demonstrated an unwillingness to adhere to the court's attempt at an orderly proceeding. This lack of cooperation continued on the day of trial, when the court spent approximately 45 minutes attempting to address pretrial issues. During this time period, defendant constantly interrupted the court. The court told defendant several times not to interrupt and made fruitless attempts to focus defendant's attention on relevant legal issues, to no avail. The court then admonished defendant on three occasions that further disruptions would result in defendant's removal from the courtroom during trial. Defendant acknowledged at least one of the court's admonishments, so the record clearly reflects defendant heard the court.

¶ 45 Defendant remained uncooperative despite the court's admonishments, even refusing to try on street clothing for trial, ignoring the court's directive that he try on the clothing. At that point, the court ordered defendant removed from the courtroom. Though defendant's initial outbursts were not made in front of the jury, defendant's behavior clearly demonstrated an unwillingness to conduct himself appropriately in court, as evidenced by his continued disruptions during his testimony in front of the jury. Defendant contends his outbursts did not

require his removal from the courtroom because his attempts at clarification were not intended to be disrespectful and he was not, for example, "screaming obscenities" or "spitting on the jury." Just because defendant's behavior fails to rise to such an extreme level of misconduct does not mean the court should allow defendant's continued disruptions, whether defendant intended to be disrespectful or not. Defendant's behavior was so egregious the court could scarcely finish a sentence with defendant in the room; thus, we conclude the court did not err in removing defendant from the courtroom prior to the start of trial proceedings.

¶ 46 The trial court appropriately afforded defendant another opportunity to be present for his trial. Following *voir dire* and opening statements, the court instructed an officer to bring defendant over from the county jail and attempted to discern whether defendant would conduct himself with decorum and respect for the court. Again, defendant made nonresponsive statements, interrupted the court, and refused to answer the court's questions, which left the court little choice but to have defendant removed from the courtroom.

¶ 47 When defendant exercised his right to testify, the trial court attempted to control defendant's focus, yet again to no avail. After defense counsel asked defendant several questions, defendant began giving nonresponsive answers and making unsolicited statements. As before, defendant needed to be removed from the courtroom to preserve order in the courtroom.

¶ 48 We conclude the trial court gave defendant the opportunity to conduct himself with decorum and respect and gave defendant sufficient warning that defendant's inability to conduct himself accordingly would lead to his removal from the trial. Therefore, we hold the court did not abuse its discretion in removing defendant from the courtroom.

¶ 49 C. Assessments Imposed by the Circuit Clerk

¶ 50 Defendant next argues two assessments added by the circuit clerk, the VCVA fine (725 ILCS 240/10(b) (West 2010)) and the probation operations assistance assessment (705 ILCS 105/27.3a(1.1) (West 2012)), should be vacated. Moreover, defendant asserts he is entitled to *per diem* credit toward the State Police operations charge (705 ILCS 105/27.3a(1.1) (West 2010)) assessed by the circuit clerk. The State concedes the issue and we accept the State's concession in part. Because the imposition of fines and fees raises a question of statutory interpretation, we review the imposition of any fines and fees *de novo*. See *People v. Price*, 375 Ill. App. 3d 684, 697, 873 N.E.2d 453, 465 (2007).

¶ 51 We begin by noting this court has previously held the VCVA and State Police operations assessments constitute fines. *People v. Chester*, 2014 IL App (4th) 120564, ¶ 32, 5 N.E.3d 227 (VCVA assessment is a fine, and cases cited therein); *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31, 979 N.E.2d 1030 (State Police operations assessment is a fine). The circuit clerk lacks the authority to impose fines; the trial court must impose any fines at the time of sentencing. *Chester*, 2014 IL App (4th) 120564, ¶ 32, 5 N.E.3d 227. Thus, "any fines imposed by the circuit clerk's office are void from their inception." *People v. Alghadi*, 2011 IL App (4th) 100012, ¶ 20, 960 N.E.2d 612. Therefore, we are required to vacate the VCVA and State Police operations fines and remand the case to the trial court to assess any mandatory fines and to apply any applicable *per diem* credit.

¶ 52 The State concedes the probation operations assistance assessment constitutes a fine and we accept the State's concession. An assessment constitutes a fine when "it is not intended to reimburse the State for costs incurred in prosecuting the defendant." *Id.* ¶ 18, 960 N.E.2d 612. The probation operations assistance assessment does not serve to reimburse

probation for any services incurred during defendant's prosecution; thus it constitutes a fine that the clerk lacked the authority to impose.

¶ 53 Moreover, the probation operations assistance assessment did not come into effect until July 2012, long after the date of defendant's March 2010 offense. See 705 ILCS 105/27.3a(1.1) (West 2012). Because the circuit clerk applied the statute retroactively and disadvantaged defendant by imposing an assessment he otherwise would not have been required to pay, imposing the probation operations assistance assessment constituted an *ex post facto* application of the law and, thus, the assessment must be vacated. See *People v. Malchow*, 193 Ill. 2d 413, 418, 739 N.E.2d 433, 438 (2000) ("A law is *ex post facto* if it is both retroactive and disadvantageous to the defendant.").

¶ 54 Therefore, we vacate the circuit clerk's imposition of the VCVA fine, State Police operations assessment, and the probation operations assistance assessment and remand with directions for the trial court to impose any mandatory fines as authorized at the time of the offense and to apply the previously calculated *per diem* credit toward any imposed fines to which the credit properly applies.

¶ 55 III. CONCLUSION

¶ 56 For the foregoing reasons, we affirm the trial court's judgment as modified and remand with directions for the trial court to properly assess defendant's fines. As part of our judgment, because the State successfully defended a portion of this appeal, we award the State its $50 statutory assessment against defendant as costs of this appeal. See *People v. Smith*, 133 Ill. App. 3d 613, 620, 479 N.E.2d 328, 333 (1985) (citing *People v. Nicholls*, 71 Ill. 2d 166, 178, 374 N.E.2d 194, 199 (1978)).

¶ 57 Affirmed as modified; cause remanded with directions.