2015 IL App (4th) 130267-U

NO. 4-13-0267

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 2, 2015
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
KATARIUS E. WOODLAND,	)	No. 12CF1546
Defendant-Appellant.	)	
	)	Honorable
	)	James R. Coryell,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court committed reversible error when it permitted the State to participate in an adversarial fashion during the preliminary *Krankel* hearing.

(2) We vacate fines imposed by the circuit clerk and remand to the trial court to reimpose mandatory fines.

(3) Defendant is not entitled to $5 *per diem* sentencing credit because he was convicted of criminal sexual assault.

¶ 2 Following a January 2013 jury trial, defendant, Kataruis E. Woodland, was found guilty of criminal sexual assault (720 ILCS 5/11-1.20 (West 2010)). Defendant filed a *pro se* motion for a new trial, alleging ineffective assistance of trial counsel. Pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), and its progeny, the trial court performed a preliminary inquiry into his allegations. The trial court found defendant's allegations meritless, declined to appoint new counsel, and denied defendant's request for a new trial. The court

sentenced defendant to 12 years' imprisonment and 3 years' mandatory supervised release (MSR). Defendant appeals, arguing we should remand for a new hearing on his *pro se* posttrial motion because the State's participation in the preliminary inquiry rendered the hearing adversarial. We affirm in part, vacate in part, and remand with directions.

¶ 3 I. BACKGROUND

¶ 4 In November 2012, the State charged defendant by information with criminal sexual assault (720 ILCS 5/11-1.20 (West 2010)), a Class 1 felony. The information alleged on or about July 18, 2012, defendant committed an act of sexual penetration with P.B. by use of force when he placed his penis in P.B.'s mouth.

¶ 5 A. Trial Evidence

¶ 6 In January 2013, the matter proceeded to a jury trial. P.B. testified on July 18, 2012, she was 17 years old and lived at home with her mother, her mother's boyfriend, and her two sisters. Around 2 or 2:30 a.m., P.B. snuck out of her house to meet her ex-boyfriend near 17th Street and Moore Street in Decatur, Illinois. While walking down Moore Street, P.B. noticed a gold Tahoe and recognized the driver as defendant. Although P.B. had no prior interaction with defendant, she testified he is friends with her best friend's boyfriend and goes by the nickname K.T. Defendant dropped off a passenger, backed up, and drove down Jasper Street. P.B. continued walking down Moore Street and, just before reaching 17th Street, she discovered someone was following her. At 17th Street, P.B. stood in the middle of the street and sent a text message to her ex-boyfriend to see where he was. She observed a man in all black walking toward her and asked what he was doing. The man grabbed P.B. around her neck, told her not to scream, and dragged her behind a house. P.B. testified, "he told me that all I had to do was suck his dick, and I told him I couldn't breathe, *** and he just kept on dragging me." As

she was being dragged, P.B. held her cell phone behind her back and attempted to dial 9-1-1, but defendant took her phone and put it in his pocket.

¶ 7 Behind the house, defendant forced P.B. to her knees and put his penis in her mouth. Defendant said, "How are you going to be a white girl that can't suck dick," and told P.B. he was "going to make [her] throw up." Defendant also forced P.B. to lie on her back and perform oral sex while he elevated himself, "with his crotch over [P.B.'s] face." Defendant brought P.B. back to her knees, ejaculated in her mouth and on her face, wiped the semen off her face, threw P.B.'s phone, and ran away. P.B. never saw defendant's face. After the attack, P.B. ran home, told her sister what happened, and her sister woke the rest of the family.

¶ 8 Shawna B. (P.B.'s mother) testified she went to bed around 12:30 a.m. on July 18, 2012. She was awakened by her middle daughter and they went to P.B.'s bedroom, where P.B. appeared "very upset." Shawna testified she, along with her boyfriend, daughters, and daughter's friend, went to a house on 17th Street to look for P.B.'s cell phone. Initially, no one told Shawna about the attack and Shawna did not understand why they were trying to locate P.B.'s cell phone. As they were searching for the cell phone, Shawna overheard P.B. talk about the attack and called the police.

¶ 9 Officer Gary McConnell testified at 3:30 a.m. on July 18, 2012, he was dispatched to the vicinity of 625 South 17th Street in response to a sexual assault. Upon arrival, he met P.B., who was "very upset" and was "crying and sobbing." Officer McConnell observed a white substance on P.B.'s neck and told her not to touch it. Shortly thereafter, an ambulance arrived and took P.B. to St. Mary's Hospital for examination. Officer McConnell located P.B.'s cell phone and drove to the hospital to interview P.B. At the hospital, he took pictures of the

white substance on P.B.'s neck and pictures of her knees, which were "very red" and "scratched up."

¶ 10 Jennifer Mahannah, a nurse, testified she was working in the emergency room at St. Mary's Hospital when P.B. arrived. Mahannah collected evidence from P.B., including swabs of the white substance on P.B.'s neck and P.B.'s "blood standard" for comparison. Mahannah sealed the evidence in a sexual-assault-evidence collection kit, signed it, and gave it to Officer McConnell.

¶ 11 In August 2012, defendant was arrested on an unrelated matter. Decatur police detective Jason Kuchelmeister testified he and Detective David Pruitt interviewed defendant regarding the July 18, 2012, incident. During the interview, defendant denied driving a gold sport utility vehicle and denied using the nickname K.T., but he later acknowledged he got the nickname in 2009. When shown a photograph of P.B., defendant denied knowing her or receiving oral sex from her, and he said there would be no reason for his deoxyribonucleic acid (DNA) to be on her face. Defendant consented to DNA testing and Detective Pruitt obtained a buccal swab containing defendant's DNA.

¶ 12 The parties stipulated forensic testing revealed the presence of defendant's DNA on P.B.'s neck. Defendant's profile is "expected to occur in approximately 1 in 5.3 quintillion African Americans, 1 in 26 quintillion Caucasians, or 1 in 70 quintillion southwest Hispanic persons." Following the stipulation, the State rested.

¶ 13 Defendant testified on July 18, 2012, around 2 a.m., he was driving home in a red van, when he noticed P.B. He testified as follows:

> "I was riding down the street in a red van, coming down Moore, and I seen [P.B.], but I didn't know who she was at first. I

> didn't know her at all. I stopped and seen her, asked her what—what she was doing. She said, nothing, she was going to meet an acquaintance. And I asked her what she was on, and she said, nothing. So she hopped in, and I told her I was paying her for oral sex, and she started giving me oral sex."

When asked what happened next, defendant testified, "she finished. I ejaculated. She asked me where the money was at, and I told her that I got her, and she said, all right. I got you, and got out of the car and walked away." Defendant testified he drove home and lay down. On cross-examination, defendant admitted he lied to the police about receiving oral sex from P.B. because he smokes a lot of marijuana and has memory loss. Defendant also testified he lied because the detectives informed him P.B. was a high school student and he did not want to admit receiving oral sex from a minor.

¶ 14 After the defense rested, the State entered in rebuttal a certified copy of defendant's 2008 conviction for obstruction of justice and 2009 conviction for unlawful possession of weapons by a felon.

¶ 15 Following deliberations, the jury found defendant guilty of criminal sexual assault. A sentencing hearing was set for March 1, 2013.

¶ 16 B. Posttrial Proceedings

¶ 17 In February 2013, defendant filed a *pro se* posttrial motion for a new trial, alleging his public defender, Steve Langhoff, was ineffective. The trial court directed defendant "to specifically set forth in writing his complaints about Mr. Langhoff" and set a date for defendant to file his written motion and return to argue his ineffective-assistance claim. Thereafter, defendant filed a handwritten letter asserting 13 claims of ineffective assistance of

counsel, alleging Langhoff (1) told defendant he was going to lose at trial; (2) failed to interview the owner of the red van; (3) failed to object to hearsay testimony; (4) failed to interview the victim about identifying defendant in a photo lineup; (5) failed to ask P.B. on cross-examination why she did not bite defendant's penis; (6) failed to ask P.B. why she was crying; (7) failed to impeach the detectives' testimony by introducing portions of his videotaped interrogation; (8) failed to ask P.B. why she waited to tell her mother about the attack; (9) failed to provide adequate representation; (10) failed "to give *** good opening [and] closing arguments"; (11) was unprepared for trial; (12) failed "to request a continuance to better prepare for trial"; and (13) failed to request a bench trial.

¶ 18 On March 1, 2013, the trial court held a hearing pursuant to *Krankel*, to investigate defendant's claims of ineffective assistance of counsel. Defendant proceeded *pro se* at the hearing. At the hearing, the court's procedure was to go through each claim, allowing defendant an opportunity to explain or elaborate. The court periodically interjected and asked defendant for additional information. The court then asked the State and defense counsel for their positions.

¶ 19 The State did not respond or otherwise participate in the *Krankel* hearing as to five of defendant's claims of ineffectiveness. As to the remaining eight claims, the State argued they did not raise any issue of ineffective assistance for a variety of reasons. For example, the following exchange occurred regarding defendant's claim defense counsel was ineffective for advising him he would lose at trial:

> "THE COURT: So your first thing is that your lawyer told you that he didn't think a jury would believe your story, *** and he didn't think the State would believe it?

DEFENDANT WOODLAND: Yes, sir.

* * *

THE COURT: Okay. Mr. Langhoff [(assistant public defender)], is there anything you want to say about that? I don't have any idea what you told him.

MR. LANGHOFF: No, Judge.

THE COURT: Okay. ***

Is there anything you want to say, Ms. Dobson [(assistant State's Attorney)]?

MS. DOBSON: It's clearly a tactical decision for an attorney to discuss with his client what the possibility—possible outcomes are, and the fact that counsel's advice was that he didn't think that anyone was going to believe the defendant's story, that simply falls in the area of giving him advice about whether its—it would be preferable to take a trial or not."

The trial court found no merit to defendant's claim, stating lawyers "should give you a realistic—his realistic assessment of what he believes is going to happen, rather than what [defendant] want[s] to hear."

¶ 20 As to defendant's claim defense counsel was ineffective for failing to interview the owner of a red van, the following colloquy transpired:

"THE COURT: How would finding semen in the van help your case?

DEFENDANT WOODLAND: Because I was—this is what had happened. I was in the red van when this supposed to have occurred.

THE COURT: Thank you.

Mr. Langhoff or Ms. Dobson, is there anything you want to say about that allegation?

MS. DOBSON: Well, I do. I—I don't think that there's any way that it's counsel, defense or state's responsibility to be looking in the van to see if there's semen in there. That's an investigative decision. That's a police purview to do something, and as the Court will recall, this defendant lied about what he was doing to the police. They would [have] had no reason to know about the red van or the possibility of evidence preserved there, so that has nothing to do with counsel's effectiveness or ineffectiveness.

THE COURT: Okay. Anything you want to say, Mr. Langhoff?

MR. LANGHOFF: I'm not sure of the name of the owner of the red van, Your Honor.

* * *

THE COURT: *** I think, the … inspecting the red van, we didn't know about the semen. There was no mention of the

semen issue in the red van until far into the case, so I don't think there's anything to that ***."

¶ 21 The court next asked defendant to address his claim regarding counsel's failure to object to hearsay testimony. The following transpired:

"DEFENDANT WOODLAND: That you know, basically, that was just I don't see why her mother would have to get on the stand if she, the victim, didn't directly tell her that she was attacked. She went home and woke up her sister's girlfriend and her sister's girlfriend told—told 'em that, and the police wasn't called until the victim found her phone—until after the victim found her phone.

THE COURT: Okay. How would—how would that affect the outcome?

DEFENDANT WOODLAND: I have no—I don't know, Your Honor.

THE COURT: Okay. Mr. Langhoff, I don't quite follow this but *** [d]o you have any recollection of that?

MR. LANGHOFF: No.

THE COURT: Ms. Dobson?

MS. DOBSON: Reaching, Your Honor, I would suggest that what the defendant is referring to is the fact that in this case when the victim came home, she did report it to another person in the home—

THE COURT: Right.

MS. DOBSON: —but not to her mother. However, her mother then received information that something had happened. We certainly did not go into the specifics of it, and then the mother went out to assist the victim in looking for her cell phone. So I don't think there was any prior consistent statement or hearsay introduced at all and the only evidence about what the mother heard was to explain why she then went out to look for her phone at that time of morning with her daughter.

THE COURT: Right. I don't—I agree with that. I don't think there's anything to this. I mean, it's—it's … I don't—I don't recall any such statement, and if there was, the mother found out—essentially, what he's saying is the mother found out from someone other than the victim what had happened to her, but that is what happened. There's nothing Mr. Langhoff can do about that."

¶ 22 The trial court next inquired about defendant's allegation Langhoff failed to interview P.B. regarding her identification of defendant. The court noted P.B. never identified defendant as the perpetrator, but instead identified him as a person connected to the gold Tahoe. The court asked the State and defense counsel if its recollection was correct, and both confirmed it was. The court concluded defendant's allegation was not supported by the record.

¶ 23 Regarding defendant's claim defense counsel failed to ask P.B. why she did not bite defendant's penis, the following colloquy occurred:

"THE COURT: So [Mr. Langhoff] was supposed to cross-examine [P.B.] about why she didn't bite, is that what you're saying?

DEFENDANT WOODLAND: Yes, sir.

THE COURT: Any comment you want to make on that, Mr. Langhoff.

MR. LANGHOFF: No.

THE COURT: Ms. Dobson?

MS. DOBSON: Well, I'm sure counsel is aware of the law as I am that indicates that a victim does not have to fight back when someone is in a position to exert force over them, and we already had testimony concerning her being held in a chokehold indicating this defendant was quite willing to use force. He doesn't have to threaten her verbally. He doesn't have to display a weapon. He has to use force in an effort to subjugate her. And then she does not have to fight back to put herself in harm's way, that's the state of the law.

* * *

THE COURT: I can also see how it would be a valid exercise of trial strategy not to ask someone in this position why they didn't do certain things, so I don't think there's any merit to the fifth allegation."

¶ 24 Defendant also alleged defense counsel was negligent for failing to impeach Detective Kuchelmeister by introducing portions of the videotaped interrogation. The trial court noted the videotape is a "two-edged sword" because it has "all kinds of other crimes evidence in it." The State added:

> "MS. DOBSON: Your Honor, may I also just say that counsel did address the Court and the State prior to the commencement of trial about this video recording—
>
> THE COURT: Right.
>
> MS. DOBSON: —and—and we did discuss the fact with the Court that there were the two detectives talking about two different incidents with this defendant, and the decision was made in order not to prejudice the defendant in any way that this recording was not going to be played, but the detectives would be asked specific questions about the questions asked and answered.
>
> THE COURT: Right. I mean, his lawyer is given access to the video prior to the trial—
>
> MS. DOBSON: Yes.
>
> THE COURT: —and I think Mr. Langhoff talked about things he saw on the video, and he didn't want the video played to the jury, and you didn't—and you went along with that because the video has other crimes—all kinds of other crimes evidence in it, which I think is a valid exercise of trial strategy."

¶ 25 The trial court asked defense counsel to address defendant's remaining claim involving counsel's failure to request a continuance to prepare for trial. Defense counsel clarified: "I did request a continuance of one day, Your Honor, that was to interview a witness that was provided to me, I believe, on the morning of trial." The State added it did not object to the continuance because "[w]e felt that was the best way to address the problem when the defendant turns over information at the last second as he did in this case."

¶ 26 The trial court, in denying the motion, addressed each of defendant's allegations and explained why each lacked merit. The court found no colorable claim of ineffective assistance of counsel and proceeded to the sentencing hearing.

¶ 27 At the March 2013 sentencing hearing, the trial court sentenced defendant to 12 years' imprisonment and 3 years' MSR following his prison term. The court imposed a $500 sex-offender fine and "all other mandatory fines and fees," and it awarded defendant a $955 *per diem* sentencing credit.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 Defendant argues the trial court failed to conduct a proper preliminary *Krankel* hearing because the State's participation transformed the proceeding into an adversarial evidentiary hearing. The State responds by arguing its participation was limited and any error was harmless beyond a reasonable doubt. We agree with defendant.

¶ 31 A. Defendant's *Pro Se* Posttrial Motion

¶ 32 The issue of whether the trial court conducted a proper preliminary *Krankel* inquiry is subject to *de novo* review. *People v. Jolly*, 2014 IL 117142, ¶ 28, __ N.E.3d __.

¶ 33 Under the rule developed from *Krankel* and its progeny, a defendant raising *pro se* posttrial claims of ineffective assistance of counsel is entitled to have those claims heard by the trial court. New counsel is not automatically appointed when a defendant alleges ineffective assistance of counsel. *Jolly*, 2014 IL 117142, ¶ 29, __ N.E.3d __. Rather, "the trial court should first examine the factual basis of the defendant's claim." *People v. Moore*, 207 Ill. 2d 68, 77-78, 797 N.E.2d 631, 637 (2003). If, after a preliminary investigation into the allegations, the court concludes defendant's claims are facially insufficient, contradicted by the record, or pertain merely to matters of trial strategy, the court may deny the claim. *Id.* at 78, 797 N.E.2d at 637. However, if defendant's allegations show possible neglect of the case, the court should appoint new counsel to argue the defendant's claim. *Id*.

¶ 34 In conducting the *Krankel* inquiry, our supreme court explained:

> " '[D]uring this evaluation, some interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the allegedly ineffective representation is permissible and usually necessary in assessing what further action, if any, is warranted on a defendant's claim.' [Citation]. Thus, the trial court may inquire with trial counsel about the facts and circumstances surrounding the defendant's allegations. [Citation]. The court may also briefly discuss the allegations with defendant. [Citation]. Finally, the trial court is permitted to base its evaluation of the defendant's *pro se* allegations of ineffective assistance of counsel on its knowledge of defense counsel's performance at trial. [Citation]." *Jolly*, 2014 IL 117142, ¶ 30, __ N.E.3d __.

Where defendant appears *pro se* at the preliminary *Krankel* inquiry, it is critical the State's participation at that proceeding, if any, be *de minimis*. *Id.* ¶ 38, __ N.E.3d __. Indeed, "the State should never be permitted to take an adversarial role against a *pro se* defendant at the preliminary *Krankel* inquiry." *Id.*

¶ 35 In this case, defendant asserts he was deprived of a fair preliminary inquiry into his *pro se* allegations of ineffective assistance of counsel because both the State and defense counsel presented arguments against his claims. Defendant contends anything beyond *de minimis* participation by the State at the inquiry stage creates a risk it will morph into an adversarial proceeding. Defendant cites *People v. Fields*, 2013 IL App (2d) 120945, 997 N.E.2d 791, in support of his argument. The State asserts the hearing was not adversarial and its participation was limited. Alternatively, the State contends even if the hearing was flawed due to its participation, any error was harmless beyond a reasonable doubt. In support of its argument, the State cites our decision in *People v. Jolly*, 2013 IL App (4th) 120981, 999 N.E.2d 735.

¶ 36 While this appeal was pending, the Illinois Supreme Court reversed our decision in *Jolly* and found *Fields* to better comport with its *Krankel* jurisprudence. *Jolly*, 2014 IL 117142, ¶ 38, __ N.E.3d __.

¶ 37 In *Jolly*, 2014 IL 117142, ¶ 10, __ N.E.3d __, defendant filed a *pro se* motion alleging ineffective assistance of counsel. At the preliminary *Krankel* hearing, the trial court allowed the defendant to explain, but not argue, his claims. *Id.* ¶ 18, __ N.E.3d __. When the trial court finished questioning defendant about his claims, the court allowed the State to question defendant and solicit testimony from trial counsel to rebut defendant's allegations of ineffective assistance. Ultimately, the trial court found no basis for any of the claims and denied the defendant's request to appoint counsel. On appeal, the supreme court held the trial court

conducted an improper *Krankel* hearing. *Id.* ¶ 41, __ N.E.3d __. The supreme court reasoned the purpose of *Krankel* is best served by having a neutral trier of fact evaluate the claims, creating an objective record for review. As such, "the State should never be permitted to take an adversarial role against a *pro se* defendant at the preliminary *Krankel* inquiry." *Id.* ¶ 38, __ N.E.3d __. The supreme court determined:

> "Here, the circuit court permitted the State to question defendant and his trial counsel extensively in a manner contrary to defendant's *pro se* allegations of ineffective assistance of counsel and to solicit testimony from his trial counsel that rebutted defendant's allegations. In other words, the circuit court allowed the State to confront and challenge defendant's claims directly at a proceeding when defendant was not represented by counsel. The State also presented evidence and argument contrary to defendant's claims and emphasized the experience of defendant's trial counsel. Thus, as in *Fields*, the State and defendant's trial counsel effectively argued against defendant at a proceeding when he appeared *pro se*. As we explained above, this is contrary to the intent of a preliminary *Krankel* inquiry. Cognizant of the rationale of *Krankel* and its progeny, we cannot conclude that the circuit court's error in this case was harmless beyond a reasonable doubt." *Id.* ¶ 40, __ N.E.3d __.

Since the State participated in an adversarial fashion during the preliminary *Krankel* inquiry, the supreme court reversed and remanded for a new preliminary inquiry before a different judge and without the State's adversarial participation. *Id.* ¶ 46, __ N.E.3d __.

¶ 38 Similarly, here, the trial court committed reversible error when it permitted the State to participate in an adversarial fashion during the first-stage preliminary *Krankel* inquiry. The trial court invited at least equal participation by the State and allowed it to comment on and argue against defendant's ineffective-assistance claims. Although the State did not cross-examine or present any evidence, the State gave its position, arguing defendant's claims were not supported by the record, concerned matters of trial strategy, or the law did not require defense counsel to do what defendant alleged he should have done. Thus, as in *Jolly*, the State effectively argued against defendant at a proceeding where he appeared *pro se*. By allowing the State to advocate against defendant, the proceeding transformed into an adversarial hearing, which is contrary to the intent of a preliminary *Krankel* inquiry.

¶ 39 We also reject the State's assertion any error was harmless beyond a reasonable doubt. See *id*. ¶¶ 42-44, __ N.E.3d __.

¶ 40 Since the State's participation at the preliminary *Krankel* inquiry thwarted the purpose of having a neutral trier of fact evaluate the claims, we remand for a new preliminary *Krankel* hearing before a different judge, without the State's adversarial participation.

¶ 41 B. Fines

¶ 42 The State argues we should vacate void fines imposed by the circuit clerk and remand the case to the trial court for the judicial imposition of statutorily mandated fines. Since we have jurisdiction to act on void orders of the circuit clerk (*People v. Arna*, 168 Ill. 2d 107, 113, 658 N.E.2d 445, 448 (1995)), we vacate the following four fines identified in the State's

brief: $10 arrestee's medical, $15 State Police operations, $140 traffic/criminal-surcharge, and $100 Violent Crime Victims Assistance Act assessment. *People v. Warren*, 2014 IL App (4th) 120721, ¶¶ 113, 122, 135, 140, 16 N.E.3d 13. We remand for the trial court to impose statutorily mandated fines. *People v. Montag*, 2014 IL App (4th) 120993, ¶ 37, 5 N.E.3d 246. Both the traffic/criminal surcharge and Violent Crime Victims Assistance Act assessment will have to be recalculated based on the reimposed fines. See *People v. Williams*, 2013 IL App (4th) 120313, ¶ 21, 991 N.E.2d 914.

¶ 43 Finally, defendant is not entitled to the $5 *per diem* sentencing credit because he was convicted of criminal sexual assault. See 725 ILCS 5/110-14(b) (West 2010); *People v. Smith*, 2014 IL App (4th) 121118, ¶ 92, 18 N.E.3d 912. Accordingly, we direct the trial court to enter a modified sentencing judgment removing the sentencing credit.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, the cause is remanded to the trial court for a new preliminary *Krankel* inquiry before a different judge, without the State's adversarial participation. We remand for the trial court to impose mandatory fines vacated herein and to correctly impose all other fines mandated by statute in effect at the time of the offense. We direct the trial court to remove the $5 *per diem* sentencing credit against defendant's fines. We otherwise affirm defendant's conviction. We direct our Clerk to provide an extra copy of our disposition directly to the attention of the clerk of the circuit court. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2012).

¶ 46 Affirmed in part and vacated in part; cause remanded with directions.