

¶ 4 At trial, three police officers testified that defendant sold "two clear plastic bags with white rock-like substance" to an undercover officer near 3515 West Crenshaw in Chicago on July 2, 2013. Stipulated testimony from a forensic scientist established that the "chunky substance" recovered by the officers tested positive for the presence of cocaine. An alibi witness testified she was with defendant at the time of the alleged drug transaction and she did not see him sell any drugs. Defendant testified he had no interaction with police that evening and did not participate in any drug transaction. The court found defendant guilty on both counts of delivery of a controlled substance. 720 ILCS 570/401(d)(i) (West 2012). It denied defendant's motion to reconsider sentence and his motion for a new trial. The court merged the counts and sentenced defendant to the minimum six years' imprisonment. It additionally imposed "fees and fines" totaling \$1,499.

¶ 5 On appeal, defendant contends that the electronic citation fee was improperly assessed against him and that seven other assessments are fines that should be offset by presentence custody credit. Although defendant did not challenge the fines and fees order in the trial court, a reviewing court may modify a fines and fees order without remanding the case to the trial court. Ill. S. Ct. R. 615(b) (eff. Aug. 27, 1999). Consequently, we need not consider defendant's alternative theories of plain error or ineffective assistance of counsel. "We review the propriety of a trial court's imposition of fines and fees *de novo*." *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 60.

¶ 6 Defendant first argues, and the State correctly concedes, that the \$5 electronic citation fee should be vacated because the charge applies only to traffic, misdemeanor, municipal ordinance, and conservation cases and is inapplicable to his felony conviction for delivery of a controlled

substance. 705 ILCS 105/27.3e (West 2012); *People v. Moore*, 2014 IL App (1st) 112592-B, ¶ 46 (\$5 electronic citation fee does not apply to felonies); *People v. Robinson*, 2015 IL App (1st) 130837, ¶ 115 (vacating the fee where the defendant's offense did not fall into an enumerated category). Accordingly, the \$5 electronic citation fee is vacated.

¶ 7 Defendant next argues, and the State concedes, that his \$15 State Police Operations Fee (705 ILCS 105/27.3a(1.5) (West 2012)) is a fine and should be offset by presentence credit. A defendant incarcerated on a bailable offense who does not supply bail and against whom a fine is levied is allowed a credit of \$5 for each day of presentence custody. 725 ILCS 5/110-14(a) (West 2014). Here, defendant spent 372 days in custody and therefore has accumulated \$1,499 worth of credit toward his eligible fees.

¶ 8 The presentence custody credit applies only to reduce fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 599 (2006). A "fine" is punitive in nature and is imposed as part of a sentence for a criminal offense. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). A fee, in contrast, seeks to recoup expenses incurred by the state, or to compensate the state for expenditures incurred in prosecuting the defendant. *Id.* The legislature's label for a charge is strong evidence of whether the charge is a fee or a fine, but the most important factor is whether the charge seeks to compensate the state for any costs incurred as the result of prosecuting the defendant. *Id.*

¶ 9 We agree that the \$15 State Police Operations fee is a fine and defendant is thus entitled to a pre-sentence incarceration credit toward it. *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 (State Police operations fee is a fine subject to credit). Accordingly, that charge is offset by defendant's presentence custody credit.

¶ 10 Defendant further contends that the \$2 Public Defender records automation fee (55 ILCS 5/3-4012 (West 2014)) and the \$2 State's Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2014)) are fines subject to offset. We agree with prior decisions holding these charges are fees as opposed to fines. *People v. Green*, 2016 IL App (1st) 134011, ¶ 46 ("the \$2 Public Defender Records Automation charge was a fee not a fine"); *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 63-65 ("both charges constitute fees"); *People v. Warren*, 2016 IL App (4th) 120721-B, ¶¶ 114-116 (State's attorney records automation assessment is compensatory rather than punitive and is, therefore, a fee); see *contra People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56 (the assessments do not compensate the state for the costs associated in prosecuting a particular defendant and, therefore, cannot be considered fees). Accordingly, neither records automation fee is offset by defendant's presentence custody credit.

¶ 11 Defendant argues that the \$190 felony complaint filing assessment (705 ILCS 105/27.2(w)(1)(A) (West 2012)), the \$15 clerk automation fee (705 ILCS 105/27.3a(1) (West 2014)), the \$15 document storage fee (705 ILCS 105/27.3c(a) (West 2012)), and the \$25 court services (sheriff) charge (55 ILCS 5/5-1103) (West 2014)) constitute fines that should be offset by presentence custody credit. Defendant observes, *inter alia*, that as the felony complaint charge appears in an "ascending schedule" of eleven assessments that correlates the amount charged to the severity of the offense, its apparent purpose is to recoup expenses for the clerk, not to reimburse the state for "cost incurred as the result of prosecuting the defendant" as required in *Graves*. *Graves*, 235 Ill. 2d at 250-51. He argues similarly that the clerk automation charge and the document storage charge are fines rather than fees as they did not result from his prosecution. He asserts these charges finance a component of the court system rather than seek to compensate

the state for costs incurred in prosecuting him. Finally, he argues that, as the purpose of the court services (sheriff) charge is to "defray court security expenses incurred by the sheriff," the charge does not compensate the state for a cost incurred as a result of prosecuting defendant and is thus a fine and not a fee.

¶ 12 Defendant's arguments have been previously disposed of in *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006), in which this court held that the charges for felony complaint filing, clerk automation, clerk document storage, and court services (sheriff) are all fees. The court reasoned that these assessments are compensatory in nature and merely a collateral consequence of the defendant's conviction. *Id.*

¶ 13 Defendant acknowledges the holding of *Tolliver*, but asserts that *Tolliver* predates *Graves* and thus fails to acknowledge that, for an assessment to be a fee, it must be intended to reimburse the state for some cost from defendant's prosecution. See *Graves*, 235 Ill. 2d at 250. However, in *Tolliver*, we specifically held the charge for filing a felony complaint, clerk automation, clerk document storage assessment, and court services (sheriff) are fees rather than fines because they are "compensatory and a collateral consequence of defendant's conviction." *Tolliver*, 363 Ill. App. 3d at 97. Thus, although *Tolliver* was decided before *Graves*, it nonetheless considered what *Graves* termed "the most important factor" in determining whether an assessment is a fee: whether the charge was intended to reimburse the State for any costs incurred in defendant's prosecution. *Graves*, 235 Ill. 2d at 250.

¶ 14 Defendant cites to the dissent in *People v. Breeden*, 2014 IL App (4th) 121049 (Appleton, P.J., concurring in part and dissenting in part), which found all four assessments should be considered fines because they do not compensate the state for the costs of prosecuting

a particular defendant but rather are intended to finance the circuit clerk's operations and other components of the court system. *Breeden*, 2014 IL App (4th) 121049, ¶¶ 128-29, 132, 142-47, 151-52. The *Breeden* majority did not address whether these assessments were fines or fees. We acknowledge the dissent in *Breeden*, but as the State correctly argues, a dissent is not binding authority. Further, *Breeden* has been vacated by our supreme court with directions to reconsider in light of *People v. Castleberry*, 2015 IL 116916. *People v. Breeden*, No. 118880 (Ill. Jan. 20, 2016), (supervisory order). The *Breeden* decision filed after remand, *People v. Breeden*, IL App (4th) 121049-B, again does not address whether these assessments are fines or fees and there is no dissent. We decline to depart from the holding of *Tolliver*. Therefore, defendant is not entitled to presentence custody credit toward the felony complaint filing fee, clerk automation fee, document storage fee, or court services (sheriff) fee. Accordingly, these charges are not offset by defendant's presentence custody credit.

¶ 15 For the foregoing reasons, we find that \$5 electronic citation fee was improperly assessed and vacate it. Additionally, the \$15 state police operations fee is offset by presentence custody credit. The \$2 Public Defender records automation fee, \$2 State's Attorney records automation fee, \$190 felony complaint fee, \$15 clerk automation fee, \$15 document storage fee, and \$25 court services (sheriff) fee, however, are not offset by presentence custody credit. Pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we order the clerk of the circuit court to correct the fines and fees order accordingly. The judgment of the trial court is affirmed in all other respects.

¶ 16 Affirmed as modified.