

No. 1-15-0864

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 12090
	)	
XAVIER RUSSELL,	)	Honorable
	)	Timothy J. Chambers,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Justices Cunningham and Mikva concurred in the judgment.

**O R D E R**

- ¶ 1 *Held:* The fines and fees order in defendant's case is corrected. Two charges imposed against defendant as part of his conviction were erroneously assessed and therefore are vacated. Moreover, a portion of defendant's pre-sentence custody credit can be applied to two fines, thus lowering his total amount owed.
- ¶ 2 Following a bench trial, defendant Xavier Russell was convicted of unlawful use or possession of a weapon (UW) by a felon based on the act of possessing firearm ammunition

(720 ILCS 5/24-1.1(a) (West 2012)). Defendant was sentenced to three years in prison and was assessed various fines and fees, which are the sole subject of this appeal. On appeal, defendant contends that the \$5 electronic citation fee and the \$5 court system fee were erroneously imposed in his case. He further argues that a portion of his monetary credit for time spent in custody should apply to several other assessments that he contends are fines. For the reasons set out below, we order that the fines and fees order in his case be corrected.

¶ 3 The evidence at trial established that on June 3, 2012, a police officer executing a search warrant at 4628 North Central Park Avenue in Chicago arrested defendant after seeing the butt of an ammunition magazine protruding from defendant's rear pants pocket. The State presented a certified copy of defendant's 2011 conviction for aggravated UUV in case No. 11 CR 101401.

¶ 4 According to the mittimus, defendant's conviction for the instant offense is a Class 2 felony, based on the circumstances of his prior conviction. The mittimus further indicates that defendant should receive credit for 461 days in custody. Defendant was assessed \$524 in fines and fees.

¶ 5 On appeal, this court reviews the propriety of the trial court's imposition of fines and fees *de novo*. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 68. Although defendant did not challenge his fines and fees in the trial court, he correctly asserts that a reviewing court may review these charges and, if necessary, modify the trial court's order in this case without remand pursuant to Illinois Supreme Court Rule 615(b) (eff. Aug. 27, 1999). *Id.* ¶ 60.

¶ 6 Defendant first asserts, and the State agrees, that two charges were erroneously imposed against him: the \$5 electronic citation fee (705 ILCS 105/27.3e (West 2012)) and the \$5 court system fee (55 ILCS 5/5-1101(a) (West 2012)). The statute setting out the \$5 electronic citation fee specifies that charge only applies to defendant is "any traffic, misdemeanor, municipal

ordinance or conservation case." 705 ILCS 105/27.3e (West 2012). The \$5 court system fee applies only to defendants who violate the Illinois Vehicle Code or a similar provision of a county or municipal ordinance. 55 ILCS 5/5-1101(a) (West 2012). Neither fee applies in this proceeding, where defendant was convicted of a Class 2 felony in a weapons-related case. See 720 ILCS 5/24-1.1(e) (West 2012). Because the \$5 electronic citation fee and \$5 court system fee were improperly imposed, those charges are vacated.

¶ 7 Defendant's remaining arguments involve the application of presentence custody credit to several other monetary assessments imposed in this case. A defendant is entitled to a credit of \$5 for each day he is incarcerated, with that amount to be put toward the fines levied against him as part of his conviction. 725 ILCS 5/110-14(a) (West 2012). Here, defendant spent 461 days in custody and, accordingly, has accumulated \$2,305 worth of credit toward his eligible fees. Defendant was assessed \$524 in fees, fines and other charges, and we have vacated \$10 of those fees. We thus consider how much of defendant's ample presentence custody credit can be applied toward the remaining \$514 owed by defendant.

¶ 8 Before considering the individual charges challenged by defendant, we note that the credit at issue here can be applied only to fines, and we note the difference between a "fine" and a "fee." A "fee" is defined as "a charge that seeks to recoup expenses incurred by the state or to compensate the state for some expenditure incurred in prosecuting the defendant." (Internal quotations omitted.) *People v. Graves*, 235 Ill. 2d 244, 250 (2009), citing *People v. Jones*, 223 Ill. 2d 569, 582 (2006). In contrast, a "fine" is "punitive in nature" and is "a pecuniary punishment imposed as a part of a sentence on a person convicted of a criminal offense." (Internal quotations omitted.) *Graves*, 235 Ill. 2d at 250, citing *Jones*, 223 Ill. 2d at 581, quoting *People v. White*, 333 Ill. App. 3d 777, 781 (2002).

¶ 9 In light of those definitions, the labeling of a charge as a "fee" or a "fine" by the legislature is not dispositive. *Graves*, 235 Ill. 2d at 250. Our supreme court stated in *Graves* that "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.* at 250-51, citing *Jones*, 223 Ill. 2d at 600 (noting that other factors include whether the charge is only imposed after the defendant's conviction and to whom the payment is made).

¶ 10 With those guidelines in mind, defendant argues, and the State correctly concedes, that the following assessments that the legislature has labeled as "fees" are, in fact, fines to which credit should be applied: a \$15 State Police operations fee (705 ILCS 105/27.3a (1.5) (West 2012)) and a \$50 court system fee (55 ILCS 5/5-1101(c)(1) (West 2012)). See *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 147 (State Police operations charge is a fine); *People v. Blanchard*, 2015 IL App (1st) 132281, ¶ 22 (Court System charge is a fine). The Court System charge, among other assessments, was found to be a fine because it was imposed on every defendant found guilty of a felony upon conviction, regardless of what transpired in the particular case and because it did not compensate the State for prosecuting that defendant. *People v. Wynn*, 2013 IL App (2d) 120575, ¶ 17. See also *Graves*, 235 Ill. 2d at 253 (costs assessed under section 5-1101 of the Counties Code are "monetary penalties to be paid by a defendant" upon a judgment of guilty).

¶ 11 Next, defendant asserts that he can apply his presentence custody credit toward the \$2 State's Attorney and \$2 Public Defender records automation charges. The statute enacting the State's Attorney records automation charge indicates that amount is:

"to be paid by the defendant on a judgment of guilty or a grant of supervision for a violation of any provision of the Illinois Vehicle Code or any felony, misdemeanor, or

petty offense to discharge the expenses of the State's Attorney's office for establishing and maintaining automated record keeping systems. \* \* \* Expenditures from this fund may be made by the State's Attorney for hardware, software, research, and development costs and personnel related thereto." 55 ILCS 5/4-2002.1(c) (West 2014).

The statute authorizing the \$2 Public Defender records automation fee uses the same language as quoted above in regard to the Public Defender's office. 55 ILCS 5/3-4012 (West 2014).<sup>1</sup>

¶ 12 We agree with prior decisions that have held those charges are fees, as opposed to fines, and thus are not subject to being offset by defendant's presentence custody credit. See *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65 (finding "no reason to distinguish between the two statutes" given their nearly identical language of the statutes and concluding that those charges are intended to reimburse those offices for expenses); see also *People v. Green*, 2016 IL App (1st) 134011, ¶ 46; *People v. Reed*, 2016 IL App (1st) 140498, ¶¶ 16-17.

¶ 13 Defendant raises challenges to four additional charges that were assessed. He contends that the \$190 charge imposed for filing a felony complaint (705 ILCS 105/27.2a (w)(1)(A) (West 2012)) constitutes a fine, not a fee, because it is top of a sliding scale of similar assessments based on the severity of the offense and is meant to reimburse the clerk for its expenses. See 705 ILCS 105/27.2a (w)(1)(A)-(K) (West 2012). He argues the amount of the charge does not relate to the costs incurred in his prosecution. Defendant raises similar arguments as to the clerk's \$15 automation charge and the \$15 document storage charge. 705 ILCS 105/27.3a (1), (1.5) (West 2012); 705 ILCS 105/27.3c (a) (West 2012). Likewise, defendant argues that the \$25 Court Services (Sheriff) assessment (55 ILCS 5/5-1103 (West 2012)) is a fine because it helps to

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<sup>1</sup> Both of those statutes took effect two days before defendant committed this offense. See Public Act 97-673 (eff. June 1, 2012).

reimburse the sheriff for costs incurred in providing court services, and therefore funds a portion of the court system, as opposed to compensating the State for a cost incurred in his particular prosecution.

¶ 14 This court has held in *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006), that the felony complaint filing charge, the clerk's automation and document storage charges and the court services sheriff's charge are all fees because they are compensatory and represent "a collateral consequence" of a defendant's conviction. Defendant acknowledges *Tolliver* but asserts that since that decision, the supreme court clarified in *Graves* that to be correctly designated as a fee, a charge must reimburse the State for a cost that was incurred in the defendant's prosecution. *Graves*, 235 Ill. 2d at 250.

¶ 15 Again, a "fee" seeks to recover the State's costs, in whole or in any part, for prosecuting the defendant, whereas a "fine" is imposed as punishment and as part of a sentence. *Graves*, 235 Ill. 2d at 250. As to the felony complaint filing charge, defendant argues, citing *People v. Smith*, 2013 IL App (2d) 120691, ¶¶ 17-21, that assessment is made using a flat rate, based on the classification of the case at issue, and aids in the funding of the clerk's office, and thus is not related to the "actual expenses" of prosecuting the defendant. The statute authorizing the felony complaint charge states that assessment is imposed as part of the clerk's costs. 705 ILCS 105/27.2a (w)(1) (West 2012). Similarly, the automation and document storage charges help to fund the maintenance of those systems. *People v. Martino*, 2012 IL App (2d) 101244, ¶¶ 29-30. The statute authorizing the Court Services (Sheriff) assessment indicates that charge is assessed to defray court expenses in criminal, local and county ordinance, traffic and conservation causes. 55 ILCS 5/5-1103 (West 2012). Those costs include the cost of the county sheriff in providing

court security. See *People v. Pohl*, 2012 IL App (2d) 100629, ¶¶ 11-12 (finding that only one such fee can be imposed against a defendant in a particular case).

¶ 16 We agree with *Tolliver* that the felony complaint filing charge, the automation and document storage charges and the court services sheriff assessment all more closely meet the definition of a fee, as opposed to a fine. Even under the definition in *Graves*, which defendant urges us to use, all of those charges compensate the State for costs incurred in prosecuting the defendant. Cases issued since *Graves* have found the four charges discussed above to be fees. See *People v. Larue*, 2014 IL App (4th) 120595, ¶¶ 62-68 (felony complaint filing, clerk automation and document storage and court services sheriff assessment are fees); *People v. Smith*, 2014 IL App (4th) 121118, ¶¶ 25-31; *Martino*, 2012 IL App (2d) 101244, ¶¶ 29-38 (same).

¶ 17 Defendant argues that those cases merely refer to the charges at issue as fees without engaging in any substantive analysis. He relies on the dissent in *People v. Breeden*, 2014 IL App (4th) 121049, ¶¶ 121-52 (Appleton, P.J., concurring in part and dissenting in part), opinion vacated in light of *People v. Castleberry*, No. 118880 (Jan. 20, 2016), which concluded that those charges are fines. The dissent in *Breeden* found that the felony complaint filing assessment, the clerk automation and document storage assessments, and the court services sheriff assessment are fines because they are meant to finance the operations of the clerk of the circuit court and other parts of the court system and do not compensate the State for the costs of prosecuting a particular defendant. *Id.*

¶ 18 While we recognize that contrary view, we find those charges are fees. As defendant notes, the charge of \$190 for the filing of a felony complaint is at the top of the range for felony complaints (\$125 to \$190) and is part of a sliding scale that is based on the type of filing (felony,

misdemeanor, business offense, petty offense, minor traffic, court appearance required, different types of motions to vacate). See 705 ILCS 105/27.2a (w)(1)(A)-(K) (West 2012). That charge, as with the automation and document storage charges and the court services sheriff charge, represents a portion of the overall costs incurred in the defendant's prosecution. Although defendant argues that those charges are imposed against any defendant regardless of what occurred in a case, the fact that such charges are not tailored to each individual case does not overcome the fact that the costs of filing a complaint, the clerk's systems of automation and document storage and the use of court security are incurred in all criminal cases. See *Graves*, 235 Ill. 2d at 250 (a fee recovers the State's costs, *in whole or in any part*, for prosecuting the defendant); compare *People v. Jernigan*, 2014 IL App (4th) 130524, ¶ 37-38 (a \$10 charge for "medical costs" (730 ILCS 125/17 (West 2012)) is a fine because it applies regardless of whether the defendant received any medical treatment). Accordingly, the charges set out above are fees, not fines, and defendant is not entitled to additional credit relating to those charges.

¶ 19 In conclusion, the \$5 electronic citation fee and the \$5 court system fee imposed against defendant are vacated. Defendant thus owes a total of \$514 in fines and fees, as opposed to the \$524 originally ordered. Next, defendant is entitled to have two charges (the \$15 State Police operations fee and the \$50 court system fee, which are in fact fines) offset by a portion of his pre-sentence incarceration credit. Applying that offset, the \$514 amount owed by defendant is reduced by another \$65 to \$449.

¶ 20 Pursuant to Supreme Court Rule 615(b)(1), we correct the fines and fees order to reflect a total amount due of \$449. The judgment of the trial court is affirmed in all other respects.

¶ 21 Affirmed in part; vacated in part; fines and fees order corrected.