

2017 IL App (1st) 150340-U  
No. 1-15-0340  
Order filed December 26, 2017

First Division

**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 DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Circuit Court of |
|                                      | ) | Cook County.                     |
| Plaintiff-Appellee,                  | ) |                                  |
|                                      | ) | No. 12 CR 8988                   |
| v.                                   | ) |                                  |
|                                      | ) | Honorable Arthur F. Hill, Jr.,   |
| MATTHEW KELLEY,                      | ) | Judge presiding.                 |
|                                      | ) |                                  |
| Defendant-Appellant.                 | ) |                                  |

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JUSTICE SIMON delivered the judgment of the court.  
Presiding Justice Pierce and Justice Mikva concurred in the judgment.

**ORDER**

*Held:* We reverse defendant's conviction for unlawful sale of a firearm where the evidence was insufficient to establish a transfer of ownership. We affirm defendant's conviction for illegal transfer of possession of a firearm, and modify the sentencing order and the fines and fees order.

¶ 1 Following a bench trial, defendant Matthew Kelley was found guilty of unlawful sale of a firearm (720 ILCS 5/24-3(A)(k) (West 2010)) and illegal transfer of a firearm (430 ILCS 65/3(a) (West 2010)). The trial court merged the findings of guilt and sentenced defendant to two years'

probation on the unlawful sale of a firearm count.<sup>1</sup> On appeal, defendant argues the evidence was insufficient to prove him guilty beyond a reasonable doubt and his fines and fees order should be corrected.<sup>2</sup> We reverse defendant's conviction for unlawful sale of a firearm, affirm defendant's conviction for illegal transfer of possession of a firearm, and modify the sentencing order and the fines and fees order.

¶ 2 Defendant was charged by indictment with two counts of unlawful sale of a firearm (Counts 1 and 3) and one count of illegal transfer of a firearm (Count 2) stemming from acts occurring on July 20, 2011. Count 1 charged unlawful sale of a firearm where defendant knowingly sold or transferred ownership of a firearm to a person who did not display a valid Firearm Owner's Identification (FOID) card. Count 2 charged illegal transfer of a firearm where defendant knowingly transferred a firearm to a person who did not display a currently valid FOID card. Count 3 charged unlawful sale of a firearm where defendant knowingly delivered a firearm that can be concealed, incidental to a sale, without withholding delivery of the firearm for at least 72 hours after application for its purchase had been made. At trial, the following evidence was presented.

¶ 3 The parties stipulated that, if Officer B. Smith were called to testify, he would testify that on October 2, 2011, he responded to a call of shots fired in the vicinity of 10315 South Vincennes Avenue. An individual named Tom James was stopped in an automobile, and a search recovered two guns, including a Ruger .380 caliber semi-automatic handgun with serial number

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<sup>1</sup> Defendant's name is spelled differently throughout the record and in the parties' briefs. We will adopt the spelling contained in his trial testimony and in the notice of appeal.

<sup>2</sup> In his opening brief, defendant challenged one conviction as violating the one-act, one-crime doctrine. See *People v. Johnson*, 237 Ill. 2d 81, 97 (2010). However, he has withdrawn the claim, stating in his reply brief he agrees with the State that the trial court merged the convictions.

374-35973. At that time, James did not possess a valid FOID card. The parties further stipulated that, if a representative from the Illinois State Police were called to testify, that individual would testify that a search of the Firearm Owner's Identification Section showed that James, with a birth date of August 28, 1988, did not possess a valid FOID card.

¶ 4 Chicago police detective Tom Lieber testified that, in the fall of 2011, he was assigned to a gun enforcement team. He received an assignment to investigate a Ruger .380 semi-automatic hand gun with Serial Number 374-35973 that was recovered from James. Lieber entered the gun's information into the Alcohol Tobacco and Firearms (ATF) database and received back a "trace sheet." This document, which was entered into evidence, reflected that the original purchaser of the firearm was defendant, who was later identified in court. Lieber sent this information to the State police, in what is called an "F tip," to determine how many firearms defendant had purchased. Lieber received back information that defendant had purchased one firearm from Chuck's Gun Shop in Riverdale, Illinois.

¶ 5 Lieber then requested the Federal Firearm's Transaction Sheets, commonly known as "4473's," from Chuck's gun shop through the ATF. Lieber obtained the 4473s that defendant filled out on June 10, 2011, when purchasing the Ruger with serial number 374-35973. Using this information, Lieber investigated whether defendant had reported the firearm lost, stolen, or missing. He did not find any record that the firearm was reported stolen.

¶ 6 In April 2012, Lieber and his partner, Officer O'Driscoll, went to defendant's residence in Homewood, Illinois, in order to conduct an interview with him. Defendant was not present, but his father gave Lieber defendant's phone number. Lieber and O'Driscoll arranged a meeting with defendant at a gas station. At the gas station, they indicated they wished to speak to him

regarding the recovery of his property. Defendant wished to speak in the presence of his father, so Lieber and O'Driscoll together proceeded separately from defendant to defendant's father's house in Homewood.

¶ 7 While at defendant's father's house, Lieber informed defendant that his firearm had been recovered and asked him what had happened to it. Defendant initially responded that the firearm had been stolen. However, after further questioning, defendant recanted his statement that the firearm was stolen and stated that he "transferred" it to James. Lieber asked defendant if he had kept a record of the transaction, and defendant was unable to produce a record. Defendant was then arrested.

¶ 8 At the police station, defendant was provided his *Miranda* rights, he signed a waiver form, and agreed to speak with Lieber. Defendant provided a statement which was written down by O'Driscoll. Defendant read the statement, made and initialed changes, and signed the statement.

¶ 9 In defendant's written statement dated April 17, 2012, which was read into the record by Lieber and entered into evidence, defendant stated that he purchased a Ruger Model LCP Caliber .380, serial number 374-35973 from Chuck's gun shop. Defendant identified the federal gun form that he filled out at the gun store on June 13, 2011, for the Ruger and further identified his signature on the form. Defendant identified a photograph of James as the individual he "gave" his Ruger to around July 20, 2011, at 11015 South Esmond Street, in Chicago. Defendant had known James for eight years and "left" his Ruger with him because he "trusted him."

¶ 10 Defendant stated he was aware that James had been arrested for drugs in the past and did not know he was required to fill out paperwork with respect to transferring the Ruger to James.

He also did not ask for or see a valid FOID card in James's name. Defendant later learned that James was arrested with the Ruger in the first week of October 2011. Defendant stated that he was treated well by police, and provided his signature on the written statement.

¶ 11 On cross-examination, Lieber testified that defendant stated he gave the Ruger to James because James "got in some trouble." However, Lieber admitted that information was not contained in the written statement. Lieber further admitted that the statement did not contain any information that the Ruger was exchanged for money.

¶ 12 Defense witness James testified that defendant was a friend of his and, in 2011, defendant brought his gun over to James's house. With respect to the gun, defendant told James that he had "got into it with his mother, his father, and he needed someplace to put it." Defendant further stated that he had no place to live and asked James if he could "house" the gun at James's mother's residence, where James lived, at 11015 South Esmond. James allowed defendant to leave the gun at his mother's residence but, after that, James "totally forgot about the gun." James testified that he did not know where defendant had put the gun. James denied that defendant had given him the gun and further denied paying him any money for it.

¶ 13 One night in October 2011, James arrived home and was confronted by his mother, who had found the gun underneath the porch. James recognized this gun as the one defendant had brought over to the house. He took this gun and his own .22 caliber firearm and drove to a friend's house but was stopped by police, who then recovered both guns. James testified that defendant did not give him permission to use the handgun and never transferred ownership to James.

¶ 14 Defendant testified that, in the year 2011, he applied for and received a FOID card. He went to Chuck's gun shop and purchased a .380 firearm for multiple reasons, including protection. Later that year, he was "kicked out of" his parent's house and decided to take his gun "somewhere safe." Defendant brought the gun to James's house and asked if he could keep it there but did not give James permission to use it. Defendant explained that, because his living situation was "unstable," he needed to put the gun somewhere until he "got stable." Defendant did not tell James where he had put the gun but testified he put it under the deck by the basement door. He denied transferring ownership of the weapon to James or accepting money from him for it. Defendant first discovered that his gun was recovered when he attended James's bond hearing. He testified that no one had stolen the gun and he had last seen it under the porch.

¶ 15 Defendant was contacted by Lieber and O'Driscoll, and spoke with them at his father's house. They later went to the police station where defendant stated he was told, prior to the written statement, the offense was misdemeanor transfer of a firearm. Defendant testified that he gave the statement because he was told the offense was a misdemeanor. He denied telling the police that he gave or transferred the gun to James. However, defendant admitted to leaving the gun at James's house because he trusted him to protect it. Defendant did not give James permission to use the gun and did not transfer ownership of it.

¶ 16 On cross-examination, defendant admitted that he never saw a valid FOID card from James. He gave the statement because he believed he was only being charged with a misdemeanor and was being "harassed" by the police.

¶ 17 In rebuttal, Lieber testified that at no time during the conversation he had with defendant did he or O'Driscoll tell defendant he was only being charged with a misdemeanor in this case.

Further, Lieber testified that defendant never told him he was homeless, and that is why defendant had to leave the gun with James.

¶ 18 The trial court found defendant guilty of one count of unlawful sale of a firearm (Count 1), which charged knowingly sold or transferred ownership of a firearm to a person who did not display a FOID card and illegal transfer of a firearm (Count 2). However, he was found not guilty of the other count of unlawful sale of a firearm (Count 3), which charged the delivery of a gun incidental to a sale of a firearm without waiting 72 hours. The court noted: “It’s clear based on the testimony here and looking at the totality of the circumstances that the defendant was transferring that gun to Tom James. Not necessarily for Tom James to go out and do something stupid, which is what he did, Mr. James did, but to have it – to control it, to keep it for whatever period of time, maybe until the defendant got back on his feet, if, in fact, that was the intent. But it certainly transferred the possession of and ownership of that gun to Tom James.”

¶ 19 The trial court denied defendant’s written motion for a new trial. It merged the convictions and stated, “I am going to sentence the defendant to two years’ probation.” It also assessed fines and fees in the amount of \$774. Defendant filed a timely notice of appeal.

¶ 20 On appeal, defendant argues the evidence was insufficient to prove him guilty beyond a reasonable doubt of unlawful sale of a firearm. Specifically, he contends that the State failed to prove that he transferred ownership of the gun to James where the evidence shows he merely stored the gun at James’s home. Defendant does not challenge his conviction for illegal transfer of a firearm. He further argues his fines and fees order should be corrected.

¶ 21 When a challenge is made to the sufficiency of the evidence, the standard of review is whether, after viewing the evidence in the light most favorable to the State, any rational trier of

fact could have found the essential elements of the offense proven beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. In a bench trial, the trial judge, as the trier of fact, is tasked with determining the credibility of witnesses, weighing the evidence and any inferences derived, and resolving any conflicts in the evidence. *People v. Brown*, 2017 IL App (1st) 142877, ¶ 39. “A reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of evidence or the credibility of witnesses.” *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). A conviction will not be overturned unless the evidence is so improbable, unsatisfactory, or inconclusive that a reasonable doubt of defendant's guilt exists. *People v. Belknap*, 2014 IL 117094, ¶ 67.

¶ 22 As charged here, in order to sustain the conviction for unlawful sale of a firearm, the State must prove that defendant knowingly sold or transferred ownership of a firearm to an individual “who does not display to the seller or transferor of the firearm a currently valid FOID card that has previously been issued in the transferee’s name by the Department of State Police under the provisions of the Firearm Owner’s Identification Card Act.” 720 ILCS 5/24-3(A)(k) (West 2010). Defendant argues the evidence failed to show he “transferred ownership” of the firearm to James where it instead shows he merely transferred possession to James.

¶ 23 In order to address the issue, we must examine the statutory language to determine the meaning of “ownership.” In cases involving statutory interpretation, the intent of the legislature is given primary concern. *In re Shelby R.*, 2013 IL 114994, ¶ 32. Courts analyze the statute in its entirety, providing the statutory language its plain and ordinary meaning. *People v. Beachem*, 229 Ill. 2d 237, 243 (2008). “We do not view words and phrases in isolation but consider them in light of other relevant provisions of the statute.” *People v. Campa*, 217 Ill. 2d 243, 252-53



(2005). Where a term is not defined in the statute, it is presumed the legislature intended the term's plain and ordinary meaning to control, which we can ascertain through the use of dictionaries. *Beacham*, 229 Ill. 2d at 244-45.

¶ 24 Black's Law Dictionary defines "ownership" as "[t]he bundle of rights allowing one to use, manage, and enjoy property, including the right to convey it to others. Ownership implies the right to possess a thing, regardless of any actual or constructive control. Ownership rights are general, permanent, and heritable." Black's Law Dictionary 1215 (9th ed. 2009); see *Detrana v. Such*, 368 Ill. App. 3d 861, 868 (2006) (quoting Black's Law Dictionary seventh edition's definition of "ownership"). Based on this definition, the transfer of the firearm to James must have instilled in James a permanent right to the firearm and the ability to convey it to others.

¶ 25 Moreover, only section 5/24-3(A)(k) explicitly references transferring ownership, while the remaining subparts under section 5/24-3 make no mention of it. See generally 720 ILCS 5/24-3(A)(a)–(j) (West 2010) (prohibiting certain behavior where an individual "sells," "gives," or "delivers" a firearm in violation of the statutory subparts). "[T]he legislature intended different results where it uses certain words in one instance and different words in another." *Board of Education of Park Forest Heights School District No. 163, Cook County, Illinois. v. State Teacher Certification Board*, 363 Ill. App. 3d 433, 444 (2006); see also *Chicago SMSA Ltd. Partnership v. Illinois Department of Revenue*, 306 Ill App. 3d 977, 983 (1999). Therefore, evidence of a transfer of ownership, or evidence indicative of James now having ownership, must have been presented in order to sustain the conviction under section 5/24-3(A)(k).

¶ 26 Here, viewing the evidence in the light most favorable to the State, we find that it is insufficient to establish that defendant transferred ownership to James as required by the statute.

In construing a different statute, this court has explained with respect to transfer of ownership or possession of firearms, “[t]here is an obvious difference between the two; there may be a transfer of ownership with or without a transfer of actual possession, and there may be a transfer of actual possession with or without a transfer of ownership.” *People v. Robinson*, 33 Ill. App. 3d 24, 35 (1975) (analyzing Ill. Rev. Stat. 1971, ch. 38, ¶ 83-3(b)). Because that statute was silent as to a transfer of ownership or possession, this court held that either type of transfer would apply. *Id.* However, as discussed, section 5/24-3(A)(k) explicitly requires a transfer of ownership.

¶ 27 The evidence presented at trial established that, after James was found with a Ruger .380 caliber semi-automatic handgun with serial number 374-35973 and no FOID card, an investigation of the Ruger led to defendant. Defendant stated that he “gave” the gun to James because he had known James for eight years and “trusted him.” He also was not aware that he needed to see a valid FOID card in James’s name or of any other legal requirements in order to legally transfer the Ruger. Given this evidence, the State is only able to prove defendant transferred possession of the gun to James and not that he transferred ownership. Although we will not speculate about what evidence might be sufficient in another case, here, there certainly were no documents, statements, or other evidence, either direct or circumstantial, of a transfer of ownership to James presented at trial. There was no evidence presented that James now had a permanent right to possess the firearm with the right to convey it to others. Accordingly, there is no evidence from which to conclude defendant transferred anything beyond simple possession.

¶ 28 The State argues reasonable inferences may be drawn from the evidence to show that defendant transferred ownership of the gun. Specifically, it notes that defendant gave the gun to his trusted friend to use as protection and the fact that he never retrieved it or otherwise sought

its whereabouts establishes that he had transferred ownership. However, “[a] reasonable inference within the purview of the law must have a chain of factual evidentiary antecedents. If an alleged inference does not have a chain of factual evidentiary antecedents, then with the purview of the law it is not a reasonable inference but is instead mere speculation.” *People v. Davis*, 278 Ill. App. 3d 532, 540 (1996). Here, the facts that the State highlights—that James was a trusted friend and defendant never sought to retrieve the gun—do not lead to an inference of a transfer of ownership, but show that a trusted friend was simply allowed to hold on to the weapon.

¶ 29 The State points out the trial court found defendant had “certainly transferred the possession of and ownership of that gun to Tom James.” Although the determinations of the trier of fact are afforded great deference, they are not conclusive. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). Here, there was no evidence presented regarding any transfer of ownership of the weapon to James, such that we may defer to the trial court’s determination that this had occurred.

¶ 30 While we have found the evidence to sustain defendant’s conviction for unlawful sale of a firearm insufficient, defendant was also found guilty of illegal transfer of a firearm. As charged here under Count 2, illegal transfer of a firearm provides that “no person may knowingly transfer, or cause to be transferred, any firearm \*\*\* to any person within this State unless the transferee with whom he deals displays a currently valid [FOID] card which has previously been issued in his name by the Department of State Police \*\*\*.” 430 ILCS 65/3(a) (West 2010).

¶ 31 The State argues we should amend the sentencing order to reflect a conviction under Count 2 for illegal transfer of a firearm under 430 ILCS 65/3(a)(1). It further argues that, although the trial court did not explicitly state it was merging the convictions, “it is clear the trial

court properly merged Count 2 into Count 1 and sentenced defendant to probation on Count 1” where the sentencing order reflects only a conviction under Count 1.

¶ 32 Defendant, in his reply brief, argues that because the trial court merged Count 2 into Count 1, the “effect of a trial court merging one conviction into another conviction is *vacatur* of the merged conviction,” quoting *People v. Betance-Lopez*, 2015 IL App (2d) 130521, ¶ 61. However, a conviction refers to a sentence imposed upon a finding of guilt. See 730 ILCS 5/5-1-5 (West 2010); *People v. Robinson*, 267 Ill. App. 3d 900, 907 (1994). Further, a “ ‘judgment’ means an adjudication by the court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.” 730 ILCS 5/5-1-12 (West 2010). The court in *Betance-Lopez* did not vacate any findings of guilt. See *Betance-Lopez*, 2015 IL App (2d) 130521, ¶ 61. Rather, the court recognized that, by merging the “convictions,” there was no one-act, one-crime violation. *Id.* Further, our supreme court “has ‘always held’ that under the one-act, one-crime doctrine, sentence should be imposed on the more serious offense and the less serious offense should be vacated.” *People v. Artis*, 232 Ill. 2d 156, 170 (2009) (quoting *People v. Lee*, 213 Ill. 2d 218, 226-27 (2004)).

¶ 33 Moreover, generally, “there is no final judgment in a criminal case until the imposition of sentence, and, in the absence of a final judgment, an appeal cannot be entertained.” *People v. Flores*, 128 Ill. 2d 66, 95 (1989). However, “our supreme court has also held that this court should entertain jurisdiction where a greater conviction is vacated so that a nonfinal, unsentenced conviction can be reinstated.” *People v. Neely*, 2013 IL App (1st) 120043, ¶ 14 (citing *People v. Dixon*, 91 Ill. 2d 346, 353-54 (1982)). Therefore, we conclude that “merging” the convictions did

not, as defendant suggests, work a vacatur of the merged conviction (Count 2) such that it cannot be reinstated following reversal of the conviction into which it was merged (Count 1).

¶ 34 Even though we reverse the conviction under Count 1, the conviction under Count 2 stands. Both Count 1 and Count 2 are class 4 felonies. Defendant's sentence of two years probation, therefore, stands. His sentence has already been discharged. Therefore, the sentencing order is amended to indicate that defendant was sentenced to probation under Count 2 rather than under Count 1.

¶ 35 Defendant next argues six fees on his fines and fees order are actually fines, subject to presentence incarceration credit. See *People v. Jones*, 223 Ill. 2d 569, 599 (2006) ("the credit for presentence incarceration can only reduce fines, not fees"). Defendant did not raise this argument regarding the improper imposition of fines and fees in the trial court and admits that the issue is forfeited. However, defendant argues we may review this issue under the plain-error doctrine, under Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967), or as an ineffective assistance of counsel claim. We reject the assertion that we may address defendant's challenge to the fines and fees order under the plain-error doctrine or Rule 615. *People v. Grigorov*, 2017 IL App (1st) 143274, ¶¶ 13-14; *People v. Griffin*, 2017 IL App (1st) 143800, ¶ 9, *pet. for leave to appeal granted*, No. 122549 (Nov. 22, 2017); *contra People v. Cox*, 2017 IL App (1st) 151536, ¶ 102 (holding the improper imposition of fines and fees affect "substantial rights" and therefore may be reviewed under the second prong of the plain-error doctrine).

¶ 36 However, because the State fails to argue against defendant's forfeiture of the issue, we will address the merits of defendant's challenge to his fines and fees order. See *People v. Reed*, 2016 IL App (1st) 140498, ¶ 13 ("By failing to timely argue that a defendant has forfeited an

issue, the State waives the issue of forfeiture”). We review *de novo* the propriety of a court-ordered fine or fee. *Id.*

¶ 37 Defendant argues, and the State concedes, the \$15 state police operations charge (705 ILCS 105/27.3a(1.5) (West 2012)) and the \$50 court system fee (55 ILCS 5/5-1101(c)(1) (West 2010)) are fines subject to presentence incarceration credit. We agree with the parties that these fees are actually fines. See *People v. Brown*, 2017 IL App (1st) 150146, ¶ 36 (finding the \$15 state police operations charge to be a fine subject to offset by presentence incarceration credit); see *People v. Blanchard*, 2015 IL App (1st) 132281, ¶ 22 (“we hold that the \$50 Court System fee imposed in this case pursuant to section 5-1101(c) is a fine for which defendant can receive credit for the \*\*\* days he spent in presentence custody”).

¶ 38 Defendant next contends the \$15 clerk automation fee (705 ILCS 105/27.3a(1) (West 2010)), the \$15 document storage fee (705 ILCS 105/27.3c(a) (West 2010)), and the \$25 court services fee (55 ILCS 5/5-1103 (West 2010)) are fines subject to presentence incarceration credit. This court has already considered challenges to these assessments and determined they are fees and, therefore, not subject to presentence incarceration credit. See *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006); *Brown*, 2017 IL App (1st) 142877, ¶ 81 (finding clerk automation fee and document storage fee are fees not subject to offset by presentence incarceration credit); *People v. Heller*, 2017 IL App (4th) 140658, ¶ 74 (relying on *Tolliver* and finding the \$25 court services charge is a fee not subject to offset by presentence incarceration credit).

¶ 39 Defendant argues *Tolliver* was decided before our supreme court’s decision in *People v. Graves*, 235 Ill. 2d 244 (2009), and its analysis is contrary to that of our supreme court and thus no longer persuasive. We reject this contention. The court in *Graves* held that, for a charge to be

characterized as a fee, it must reimburse the State for some costs incurred in prosecuting the particular defendant. *Graves*, 235 Ill. 2d at 250. We used the same reasoning in *Tolliver* that the charges are fees as they do represent a part of the cost incurred in prosecuting a defendant. See *Tolliver*, 363 Ill. App. 3d at 97 (“[w]e find that all of these charges are compensatory and a collateral consequence of defendant’s conviction and, as such, are considered ‘fees’ rather than ‘fines’ ”); see also *Brown*, 2017 IL App (1st) 142877, ¶ 81 (finding *Tolliver* is consistent with *Graves*). We therefore hold that these charges are fees not subject to offset by presentence incarceration credit.

¶ 40 Defendant next argues the \$2 State’s Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2012)) is a fine because it does not compensate the State for prosecuting defendant.

¶ 41 This court has previously found the \$2 State’s Attorney records automation fee is not a fine and thus, not subject to presentence custody credit. See generally *Brown*, 2017 IL App (1st) 142877, ¶¶ 75-76 (finding the State’s Attorney records automation fee to be a fee); *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65 (finding the State’s Attorney records automation assessment is a fee because it is meant to reimburse the State for expenses related to automated record-keeping systems); *Reed*, 2016 IL App (1st) 140498, ¶ 16 (agreeing with *Bowen* and finding the State’s Attorney records automation assessment is a fee). Although we recognize that *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56, found this assessment to be a fine, we

follow *Brown, Bowen, and Reed* and determine the State's Attorney records automation charge is a fee, not subject to offset by presentence custody credit.<sup>3</sup>

¶ 42 A defendant incarcerated on a bailable offense who does not post bail and against whom a fine is imposed is allowed a \$5 credit for each day spent in presentence custody. 725 ILCS 5/110-14(a) (West 2010). Here, defendant spent 25 days in presentence custody and is therefore entitled to \$125 credit to offset the imposed fines. Applying this credit to his fines, which include the \$30 children's advocacy center assessment as well as the recharacterized \$15 state police operations charge and \$50 court system fee, defendant's new total should reflect a balance due of \$557.<sup>4</sup>

¶ 43 For the reasons set forth above, we reverse defendant's conviction for unlawful sale of a firearm under Count 1. We affirm defendant's conviction for unlawful transfer of possession of a firearm under Count 2. The sentencing order is corrected to reflect a sentence of probation on Count 2. We find the \$15 state police operations charge and the \$50 court system fee are fines subject to presentence incarceration credit. However, the \$15 clerk automation fee, the \$15 document storage fee, and the \$25 court services fee, and the \$2 State's Attorney records automation charge are fees not subject to presentence incarceration credit. We further vacate the \$100 trauma fine, the \$20 violent crime victim assistance fine, and the \$2 public defender records automation fee. The fines and fees order should reflect a new total due of \$557. Pursuant

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<sup>3</sup> The \$2 State's Attorney records automation charge came into effect in 2012, after defendant committed the offenses. However, defendant does not argue this assessment violates the prohibition on *ex post facto* laws and, in any event, as we have already determined this charge to be fee, it does not implicate *ex post facto* principles. See *People v. Murphy*, 2017 IL App (1st) 142092, ¶ 21.

<sup>4</sup> The State, on its own initiative, argues the \$100 trauma fine (730 ILCS 5/5-9-1.10 (West 2012)), the \$20 violent crime victim assistance fine (725 ILCS 240/10(c) (West 2010)), and \$2 public defender records automation fee (55 ILCS 5/3-4012 (West 2012)) are inapplicable to defendant and should be vacated. We agree and vacate these improperly-assessed charges.



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to Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967), we direct the clerk of the circuit court to modify the fines and fees order accordingly.

¶ 44 Affirmed in part and reversed in part; sentencing order and fines and fees order corrected.