

2017 IL App (1st) 150592-U

No. 1-15-0592

Order filed May 26, 2017

Fifth 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
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 8487
	)	
LEON BUCHANAN,	)	Honorable
	)	Vincent M. Gaughan,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Presiding Justice Gordon and Justice Reyes concurred in the judgment.

**ORDER**

¶ 1 *Held:* We find one labeled fee is actually a fine, subject to presentence incarceration credit and modify the fines and fees order.

¶ 2 Following a bench trial, defendant Leon Buchanan was convicted of aggravated battery (720 ILCS 5/12-3.05(a)(1) (West 2012)) and sentenced to 62 months' imprisonment and assessed fines and fees in the amount of \$465. On appeal, defendant argues several fees are actually fines, subject to offset by his presentence incarceration credit. We find one fee is

actually a fine subject to offset by presentence incarceration credit and modify the fines and fees order.

¶ 3 The evidence presented at trial established that defendant repeatedly punched and kicked the victim in the face and upper body area. After fleeing from the scene, defendant was arrested nearly a month after the incident. The victim was hospitalized for 30 days, having suffered from, *inter alia*, traumatic brain injury leading to some cognitive impairment and some mild hearing loss.

¶ 4 The trial court found defendant guilty of aggravated battery causing great bodily harm and sentenced him to 62 months' imprisonment. It also assessed fines and fees in the amount of \$465. Defendant filed a timely notice of appeal.

¶ 5 Defendant contends that five of the fees imposed against him are actually fines subject to offset by presentence incarceration credit. See *People v. Jones*, 223 Ill. 2d 569, 599 (2006) (“the credit for presentence incarceration can only reduce fines, not fees”). 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 2014).

¶ 6 Defendant did not raise this argument in the trial court. However, we may modify a fines and fees order without remand per Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999). See *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22. We review *de novo* the propriety of the fines and fees imposed by the trial court. *People v. Green*, 2016 IL App (1st) 134011, ¶ 44.

¶ 7 Defendant argues, and the State correctly concedes, the \$15 state police operations charge (705 ILCS 105/27.3a(1.5) (West 2014)) is a fine subject to presentence incarceration credit. We agree that this assessment is a fine subject to offset by presentence credit. See *People v. Maxey*,

2016 IL App (1st) 130698, ¶¶ 140-41 (“[s]ince the state operations charge under section 27.3a(1.5) is a fine, defendant is entitled to presentence credit toward it”); *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31.

¶ 8 Defendant next argues the \$190 felony complaint fee (705 ILCS 105/27.2a(w)(1)(1) (West 2014)), the \$15 clerk automation fee (705 ILCS 105/27.3a(1), (1.5) (West 2014)), the \$15 document storage fee (705 ILCS 105/27.3c(a) (West 2014)), and the \$25 court services fee (55 ILCS 5/5-1103 (West 2014)) are fines subject to presentence incarceration credit. This court has already considered challenges to these assessments and determined they are fees and thus, not subject to presentence incarceration credit. See *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006); *People v. Bingham*, 2017 IL App (1st) 143150, ¶¶ 41-42 (relying on *Tolliver* and finding the \$190 felony complaint fee to be a fee); *People v. Brown*, 2017 IL App (1st) 142877, ¶ 78 (finding clerk automation fee and document storage fee are fees not subject to offset by presentence incarceration credit).

¶ 9 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 disagree. *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, ¶ 78. We therefore hold that these charges are fees not subject to offset by presentence incarceration credit.

¶ 10 For the reasons set forth above, we find the \$15 state police operations charge is a fine subject to offset by presentence incarceration credit. However, the \$190 felony complaint fee, the \$15 automation fee, the \$15 document storage fee, and the \$25 court services fee are fees that cannot be offset by presentence incarceration credit. The fines and fees order lists a total balance of \$465. Applying defendant's presentence incarceration credit towards the fines (including the \$15 state police operations charge), the fines and fees order should reflect a new balance of \$450. Pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we direct the clerk of the circuit court to correct the fines and fees order accordingly.

¶ 11 Affirmed as modified.