2017 IL App (1st) 150849-U

No. 1-15-0849

Order filed May 15, 2017

First Division



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. 13 CR 21769 |
| | ) | |
| WILL TAYLOR, | ) | Honorable |
| | ) | Matthew E. Coghlan, |
| Defendant-Appellant. | ) | Judge, presiding. |

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Connors and Justice Simon concurred in the judgment.

**ORDER**

¶ 1 *Held*: Defendant's conviction for residential burglary affirmed over his challenge to the sufficiency of the evidence; fines and fees order amended to apply monetary credit to two fines; contention that several fees are fines is without merit.

¶ 2 Following a bench trial, defendant Will Taylor was convicted of residential burglary and sentenced to seven years' imprisonment. On appeal, defendant contends that the State failed to

prove him guilty beyond a reasonable doubt because the evidence showed that he was in a convenience store at the exact time the victim observed the offender on her front porch ringing her doorbell. Defendant also contends that he is due monetary credit against several assessments which he asserts are fines rather than fees. We apply monetary credit to two of the challenged assessments, vacate one fee, and affirm defendant's conviction and sentence in all other respects.

¶ 3 Defendant was tried on charges of home invasion, residential burglary and aggravated unlawful restraint. At trial, Sherrie Sutton-Morgan testified that during the late morning of October 31, 2013, she was on the second floor of her home at 6144 South Sangamon Street when her doorbell rang. She went downstairs and looked out the window of her door, but did not open it because she did not recognize the man standing there. Her front entrance had two doors – a metal storm door with glass and small bars, and a wooden door with a "tall" glass window that allowed her to see the person standing outside from head to foot. The window was made of smoked glass, which allowed her to see out, but no one could see in. Nothing obstructed her view and she could see the man clearly. In court, she identified defendant as the man at her door.

¶ 4 Sutton-Morgan stood at her door for six or seven minutes while defendant stood on her porch. Defendant left her house and walked to the house next door, which belonged to her brother. Defendant walked up the stairs, rang the doorbell of her brother's house, and stayed on his porch for a second. Defendant then left her brother's house and walked to the next house, which belonged to her mother. Defendant walked up her mother's stairs, rang her doorbell, and left her house.

¶ 5 Defendant walked back to Sutton-Morgan's house and rang her doorbell again. As defendant stood on her porch, Sutton-Morgan stood in her hallway and "looked directly at him."

Defendant left her house, walked across the street, ascended the porch of another house and rang that doorbell. He left that house and walked to the adjacent alley. Defendant stopped in the alley and looked back at Sutton-Morgan's house, then continued walking through the alley. When defendant was out of sight, Sutton-Morgan returned upstairs. She testified that it was then "about 12:30, 12:35."

¶ 6 Sutton-Morgan was upstairs for "maybe ten minutes" when her Chihuahua dog began running back and forth at the top of the stairs. The dog was making a sound that indicated something was wrong. Sutton-Morgan grabbed a wooden baseball bat, went downstairs, and saw defendant in her kitchen fighting with her dog. The dog was tugging on defendant's pants leg and defendant was trying to swat him away. Defendant was holding a silver hammer with a black rubber handle in his hand. As Sutton-Morgan stood on the last stair, defendant's back was to her and she hit him with the baseball bat.

¶ 7 Defendant ran into the den, which was between the kitchen and the back door. Sutton-Morgan followed him into the den, and defendant turned around and pushed her in the chest, at which time she saw his face. Sutton-Morgan recognized him as the man who had been on her front porch. She took her phone from her pocket, called 911, and spoke with the operator over her earpiece. As she did so, defendant ran out the back door and down the outside stairs, followed by her dog. Sutton-Morgan ran after defendant, and while he was on the stairs, she hit him again with the bat.

¶ 8 In her backyard, defendant jumped on top of the garbage cans between her fence and her garage. Sutton-Morgan ran through her garage and into the alley. When defendant jumped over the fence, he landed where she was standing in the alley and she hit him again with the bat.

Defendant then ran through the vacant lot behind her garage. On the other side of the lot was Morgan Street. She told the 911 operator that he was getting away, and the operator told her not to follow him. Sutton-Morgan stood in the alley, saw defendant join a group of young men in front of a house on Morgan Street, and continued to watch him.

¶ 9 Sutton-Morgan testified that at all times defendant was wearing a black hoodie zipped up with the hood on his head. He also wore blue jeans and black gym shoes, and a dirty white or gray headband. When defendant joined the group of men, he removed the hood from his head.

¶ 10 When the police arrived, Sutton-Morgan returned to her front porch and told them "this guy here broke into my home and he was right there on the corner." She described defendant's clothing, then bent over and pointed to him saying "there is he [*sic*] standing right there, right there." The police told Sutton-Morgan to go inside her house and calm down. Shortly thereafter, the police brought defendant in front of her house and Sutton-Morgan said "that's him."

¶ 11 The back door of Sutton-Morgan's house was damaged where it appeared that a hammer was used to pry the door open. The sliding lock was bent into a "U" shape, and paint was missing. Sutton-Morgan testified that defendant did not have permission to enter her house.

¶ 12 On cross-examination, Sutton-Morgan testified that defendant's hoodie was zipped to the middle of his chest, and she was able to see that he was wearing a black t-shirt. Although he was wearing the hood, she was able to see his entire face. The house that defendant ran to on Morgan Street was less than 100 feet from her property.

¶ 13 Sutton-Morgan estimated that when defendant first rang her doorbell, he was on her porch about five to seven minutes. He was on her brother's porch for two to three minutes and her mother's porch for one second. When defendant rang her doorbell the second time, he stayed

on her porch for two to three minutes. It took defendant about one minute to cross the street, ring the bell at that house and leave. Sutton-Morgan estimated that her confrontation with defendant inside her house lasted five or six minutes. Defense counsel said "let's just total it up" and asked "[u]p to the time you dialed 911, roughly 31 minutes after he first rang your bell, right?" She answered "[y]es." When defense counsel asked Sutton-Morgan if it was 11:52 when defendant rang her doorbell, she replied "I don't know what time it was." When counsel asserted that it was not after noon when he rang her bell, she replied "I believe it was a little after 12:00." She then acknowledged that it could have been noon or a little before.

¶ 14 Chicago police officer Schwarzer testified that about 12:23 p.m. on October 31, he and his partner were dispatched to a call about a burglary in progress. Sutton-Morgan told them that the offender was on the next street and was wearing a black hoodie, blue jeans, black gym shoes and had facial hair. The officers drove around the corner and saw defendant, who matched the description. Defendant's jacket was zipped up and he was wearing the hoodie on his head. They detained defendant and drove him to the front of Sutton-Morgan's house where she "emphatically" said "yes, that's him."

¶ 15 On cross-examination, defense counsel asked Officer Schwarzer if the 911 call was received at 12:22 p.m. The officer replied "[i]f that's what it says on the P-CAD display." The State then interjected that it would stipulate that was what the P-CAD indicated. Following the officer's testimony, the State rested.

¶ 16 Defendant initially acknowledged that he had two prior felony drug convictions. He then testified that he lived at 6139 South Morgan Street with his sister, Assica Fisher, and his niece and nephews, one of whom was Maurice Sanders. About 11:40 a.m. on October 31, Fisher asked

defendant to go to the store at 63rd and Morgan Streets to buy her a soda. Defendant and Sanders walked to the store, arrived there about 11:50 a.m., and left the store at 11:53 a.m. While walking home on Morgan Street, they ran into Fisher, gave her the soda, and spoke with her for a few minutes. They arrived home about 12:10 p.m. and stood in front of their house. A minute later, their neighbor, Shekena Allen, came to their house. While the three of them were talking, about 12:30 p.m., a police vehicle pulled up and an officer called them to the car. The police handcuffed defendant, placed him inside the vehicle, and drove around the corner to a lady's house on Sangamon Street. Defendant was wearing a black hoodie, but it was not zipped because the zipper was broken. Defendant denied that he entered anyone's house that day.

¶ 17 Maurice Sanders testified substantially the same as defendant that they arrived at the store about 11:52 a.m. and left at 11:53 a.m. He also testified that they ran into Fisher on the way home, arrived home at 12:10 p.m., and were standing in front of their house talking with Allen at 12:30 p.m. when a police vehicle pulled up. The officers searched defendant and Sanders and arrested defendant. Sanders testified that he was with defendant the entire time, defendant never rang any doorbells on Sangamon Street, and he never entered anyone's house. Sanders acknowledged that he never told the police that defendant could not have committed the burglary because he was with him the entire time.

¶ 18 The defense offered defendant's black hoodie as evidence, and the State agreed that it was missing the zipper pull. The State then presented a stipulation that defendant had two prior drug convictions for impeachment purposes.

¶ 19 In rebuttal, Chicago police detective Anthony Blake testified that during an interview, defendant told him that he was at a store at 63rd and Morgan Streets at the time of the burglary,

and that the police immediately grabbed him when he returned home. Defendant never mentioned talking with Shekena Allen, nor did he say that Sanders was with him the entire time.

¶ 20 Detective Blake viewed the store's video surveillance tape which showed that defendant was in the store for two to three minutes. The parties stipulated that the video showed defendant inside the store with Sanders from 11:50 to 11:52 a.m. The court viewed the video.

¶ 21 The trial court expressly stated that it considered the factors for eyewitness identification, listed those factors, and found that they all favored Sutton-Morgan's identification of defendant. The court also pointed out that the video of defendant inside the store showed that he was wearing a dirty white headband, which was consistent with the description given by Sutton-Morgan. Accordingly, the court concluded that her identification was reliable. The court also stated that it did not believe defendant's alibi. The court found defendant guilty of residential burglary, but acquitted him of home invasion and aggravated unlawful restraint.

¶ 22 In denying defendant's motion for a new trial, the court stated that Sutton-Morgan was a credible witness, that she had an excellent opportunity to observe defendant, that she watched him stand in front of his house and maintained eye contact with him, and that he fit her description perfectly. The court also pointed out that it was possible that defendant's zipper was damaged during the struggle while Sutton-Morgan was hitting him with the bat. Thereafter, the trial court sentenced defendant to seven years' imprisonment, awarded him 475 days of sentencing credit, and assessed him fines and fees totaling $409.

¶ 23 On appeal, defendant first contends that the State failed to prove him guilty beyond a reasonable doubt because the evidence showed that he was in a convenience store at the exact time Sutton-Morgan observed the offender on her front porch ringing her doorbell. Defendant

asserts that Sutton-Morgan testified that she called 911 31 minutes after the man rang her doorbell. He argues that if the 911 call was received at 12:22 p.m., her testimony shows that the man rang her bell at 11:51 a.m., which is the same time the video shows him inside the store. Defendant also argues that her identification of him was unreliable because she testified that the offender's hoodie was zipped up, but the zipper on his hoodie was broken.

¶ 24 The State responds that Sutton-Morgan's testimony was credible and that she positively identified defendant. The State argues that Sutton-Morgan had ample time to view defendant, she gave police an exact description of his clothing, and she immediately identified him as the offender. The State further argues that it is entirely possible that defendant was on her front porch immediately before or after going to the nearby store. The State asserts that the surveillance video does not exonerate defendant, but instead, corroborates Sutton-Morgan's description of him wearing the dirty headband.

¶ 25 When defendant claims that the evidence is insufficient to sustain his conviction, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48, citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). This standard applies whether the evidence is direct or circumstantial, and does not allow this court to substitute its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42.

¶ 26 In a bench trial, the trial court is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences from therein. *People v. Siguenza-Brito,* 235 Ill. 2d 213, 228 (2009). We will not reverse a criminal conviction based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt (*People v. Beauchamp,* 241 Ill. 2d 1, 8 (2011)), nor simply because defendant claims that a witness was not credible or that the evidence was contradictory (*Siguenza-Brito,* 235 Ill. 2d at 228).

¶ 27 Viewed in the light most favorable to the State, we find that the evidence was sufficient to allow the trial court to find defendant guilty of residential burglary. We recognize that the video established that defendant was inside the store from 11:50 to 11:52 a.m. However, the evidence did not establish that the "offender" rang Sutton-Morgan's doorbell at that exact time. Contrary to defendant's assertion, Sutton-Morgan did not testify that she called 911 precisely 31 minutes after he rang her doorbell, which would have placed defendant on her porch at 11:52. The record shows that it was defense counsel who created the 31-minute timeframe by roughly adding together several estimated time periods. The record further shows that Sutton-Morgan did not know what time it was when defendant first rang her doorbell. When counsel asked her if it was 11:52 a.m., she expressly replied "I don't know what time it was." Thereafter, she testified that she believed it was after noon, but acknowledged that it could have been noon or a little before. Based on these uncertain and estimated time periods, in addition to the close proximity of the store to Sutton-Morgan's house, it was reasonable for the trial court to reject defendant's alibi and conclude that defendant was at the store at 11:52 a.m., and that he also rang Sutton-Morgan's doorbell and entered her home shortly thereafter.

¶ 28 Defendant also claims that Sutton-Morgan's identification of him was not reliable, specifically because she testified that his hoodie was zippered, but at trial, he showed that his zipper was broken. Identification of defendant by a single witness is sufficient to sustain a conviction where the witness viewed defendant under circumstances that permitted a positive identification. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). Such identification is sufficient even where defendant presents contradictory testimony, as long as the witness had an adequate opportunity to view the offender and provided a positive and credible identification in court. *Id*.

¶ 29 In assessing identification testimony, the court considers: (1) the witness' opportunity to view the offender at the time of the offense; (2) her degree of attention; (3) the accuracy of the witness' prior description of the offender; (4) the witness' level of certainty at the identification confrontation; and (5) the length of time between the offense and the identification confrontation. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995).

¶ 30 Here, we find that the record overwhelmingly supports the trial court's finding that Sutton-Morgan's identification of defendant was reliable. Sutton-Morgan testified that she had a clear view of defendant from head to foot as he stood on her porch and she looked at him through the window of her door for several minutes. She watched defendant as he approached two other houses, and when he returned to her porch, she "looked directly at him." When she confronted him in her kitchen, she saw defendant's face and recognized him as the same man who had been on her porch. When defendant fled from her house, she followed him into her yard and the alley, striking him with the baseball bat. She then saw him run through the vacant lot behind her garage to a house on Morgan Street, and she kept watch on him until the police arrived. She gave the police a precise and accurate description of defendant's clothing, then

pointed at defendant and told the officers that he was "standing right there." Minutes later, the police brought defendant to her house for a show-up and she "emphatically" identified him as the offender saying "that's him."

¶ 31 The record thus shows that Sutton-Morgan had more than an ample opportunity to view defendant, that her degree of attention was very high, that her description of him was completely accurate, that her identification of him was absolutely certain, and that she identified him within minutes. We therefore find that the trial court correctly determined that all of the factors supported Sutton-Morgan's identification. We find no import in the fact that the zipper was broken on defendant's hoodie at trial. As the trial court noted, it is quite possible that the zipper broke at some point during the offense, either when Sutton-Morgan hit him with the bat or when he jumped over the fence, or anytime thereafter. Based on this record, we conclude that the evidence was sufficient to support the trial court's finding that defendant was proved guilty of residential burglary beyond a reasonable doubt.

¶ 32 Defendant next contends that his fines and fees order must be amended. He argues that he is entitled to have monetary credit for the days he spent in presentencing custody applied against several assessments that he claims are fines rather than fees.

¶ 33 Defendant acknowledges that he did not preserve this issue for appeal because he did not challenge the assessments in the trial court. He urges this court, however, to review his assessments under either the plain error doctrine or Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999). It is well settled that a defendant forfeits a sentencing issue that he or she fails to raise in the trial court through both a contemporaneous objection and a written postsentencing motion. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). However, the rules of forfeiture and waiver also

apply to the State, and where the State fails to argue that defendant has forfeited the issue, it waives the forfeiture. *People v. Reed*, 2016 IL App (1st) 140498, ¶ 13. Here, the State has not argued that defendant forfeited his challenges to the assessments. Accordingly, we address the merits of defendant's claims. Furthermore, defendant's statutory right to the *per diem* presentencing monetary credit is mandatory, not subject to the normal rules of waiver, and may be raised for the first time on appeal. *People v. Woodard*, 175 Ill. 2d 435, 457-58 (1997). The propriety of the imposition of fines and fees is a question of law which we review *de novo*. *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22.

¶ 34 Pursuant to section 110-14 of the Code of Criminal Procedure (725 ILCS 5/110-14 (West 2012)), a defendant is entitled to have a credit applied against his fines of $5 for each day he spent in presentence custody. Here, defendant spent 475 days in presentence custody, and is therefore entitled to a maximum credit of $2,375.

¶ 35 The parties agree that defendant is due full credit for the $50 Court System Fee (55 ILCS 5/5-1101(c) (West 2012)) and the $15 State Police Operations Fee (705 ILCS 105/27.3a(1.5) (West 2012)). Both parties point out that, although these two charges are labeled fees, this court previously held that they are fines because they do not compensate the State for expenses incurred in the prosecution of defendant, and thus, they are subject to offset by the monetary sentencing credit. *People v. Wynn*, 2013 IL App (2d) 120575, ¶¶ 13, 17. Pursuant to our authority under Rule 615(b)(1), we direct the clerk of the circuit court to amend the fines, fees and costs order to reflect a $50 credit for the Court System Fee and a $15 credit for the State Police Operations Fee.

¶ 36 Defendant next contends that he is entitled to credit against the $190 Felony Complaint Filed fee assessed pursuant to section 27.2a(w)(1)(A) of the Clerks of Courts Act (Act) (705 ILCS 105/27.2a(w)(1)(A) (West 2012)). Defendant argues that the purpose of this assessment is to recoup expenses for the clerk of the court, not to reimburse the State for any costs incurred as the result of prosecuting a particular defendant. He notes that there is no evidence in the record of any particular act performed by the clerk that costs $190. He therefore argues that it is an arbitrary amount imposed for the purpose of financing the clerk's mission as a whole rather than reimbursing for a cost specifically incurred by his prosecution. Defendant points out that this fee is only imposed on people who are convicted, and that the amount is directly correlated to the severity of the offense. Consequently, he argues that the assessment is punitive, not compensatory, and thus, is a fine rather than a fee.

¶ 37 The credit under section 110-14 can only be applied to offset fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 580 (2006). To determine whether an assessment is a fine or a fee we consider the nature of the assessment rather than its statutory label. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). Our supreme court has defined a "fine" as "punitive in nature" and "a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense." (Internal quotation marks omitted.) *Id.* (quoting *Jones*, 223 Ill. 2d at 581). A "fee," on the other hand, is "a charge that 'seeks to recoup expenses incurred by the state,' or to compensate the state for some expenditure incurred in prosecuting the defendant." *Id.* (quoting *Jones*, 223 Ill. 2d at 582).

¶ 38 Defendant acknowledges that in *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006), this court held that the Felony Complaint Filed fee is a fee, not a fine, because it is compensatory in nature and a collateral consequence of a defendant's conviction. Defendant asserts, however, that

*Tolliver* predates *Graves* and is not persuasive where its analysis is contrary to *Graves*, which held that a fee must reimburse the State for some cost incurred in prosecuting the defendant.

¶ 39 The analysis in *Tolliver* is not contrary to *Graves*. *Graves* states that pursuant to *Jones*, when determining whether a charge is a fine or a fee, "the most important factor is whether the charge seeks to compensate the state for *any costs incurred* as the result of prosecuting the defendant." (Emphasis added.) *Graves*, 235 Ill. 2d at 250. Quoting *Jones*, *Graves* further provides " '[t]his is the *central* characteristic which separates a fee from a fine. A charge is a fee if and only if it is intended to reimburse the state for some cost incurred in defendant's prosecution. [Citations.]' " (Emphasis in original.) *Id.* (quoting *Jones*, 223 Ill. 2d at 600). Similarly, *Tolliver* states that a fee is "a charge for labor or services, and is a collateral consequence of the conviction which is not punitive, but instead, compensatory in nature." *Tolliver*, 363 Ill. App. 3d at 97. Thus, both *Graves* and *Tolliver* applied the same reasoning that fees compensate for part of the overall costs incurred in the prosecution of a defendant.

¶ 40 Section 27.2a of the Act is entitled "Fees" and enumerates the numerous "fees of the clerks of the circuit court." 705 ILCS 105/27.2a (West 2012). Section 27.2a(w)(1)(A) states that the clerk is "entitled to costs in all criminal and quasi-criminal cases from each person convicted or sentenced to supervision therein," including a maximum of $190 for felony complaints. 705 ILCS 105/27.2a(w)(1)(A) (West 2012).

¶ 41 The Felony Complaint Filed fee compensates the clerk of the circuit court for the costs associated with filing the felony complaint against a defendant. The filing of the felony complaint is a necessary act required to initiate the prosecution of every defendant charged with a felony offense. Accordingly, we adhere to our reasoning in *Tolliver*, which is consistent with

*Graves*, and find that this assessment is a fee that compensates for an expense incurred in the prosecution of a defendant. Thus, defendant is not entitled to offset this fee with his presentence custody credit.

¶ 42 Defendant next contends that he is entitled to credit against the $15 Automation fee assessed pursuant to section 27.3a(1) of the Act (705 ILCS 105/27.3a(1) (West 2012)) and the $15 Document Storage fee assessed pursuant to section 27.3c of the Act (705 ILCS 105/27.3c (West 2012)). Defendant argues that these assessments are fines rather than fees because they do not reimburse the State for the costs incurred in prosecuting a defendant, but instead, finance a component of the court system for the general costs of litigation. He again acknowledges that *Tolliver* held that these assessments are fees, but maintains that *Tolliver* is contrary to *Graves*.

¶ 43 Section 27.3a(1) of the Act states that the Automation fee provides for "[t]he expense of establishing and maintaining automated record keeping systems in the offices of the clerks of the circuit court." 705 ILCS 105/27.3a(1) (West 2012). Section 27.3c of the Act states that the Document Storage fee provides for "[t]he expense of establishing and maintaining a document storage system in the offices of the circuit court clerks." 705 ILCS 105/27.3c (West 2012).

¶ 44 It is axiomatic that during the prosecution of every defendant, automated records of the entire process are maintained by the clerk's office. In addition, numerous documents, including charging instruments, motions and orders, are stored in the court files, which are also maintained by the clerk's office. The Automation fee and the Document Storage fee compensate the clerk's office for the costs associated with maintaining these systems which are not only necessary, but crucial to the process of prosecuting a defendant. Accordingly, we adhere to our reasoning in *Tolliver*, which is consistent with *Graves*, and find that these assessments are fees that

compensate for expenses incurred in the prosecution of a defendant. As such, defendant is not entitled to offset these fees with his presentence custody credit. See also *People v. Heller*, 2017 IL App (4th) 140658, ¶ 74 (citing *Tolliver* and finding the automation and document storage fees are fees rather than fines).

¶ 45 Defendant next contends that he is entitled to credit against the $25 Court Services (Sheriff) fee assessed pursuant to section 5-1103 of the Counties Code (Code) (55 ILCS 5/5-1103 (West 2012)). Defendant points out that the assessment applies to all defendants who are found guilty of an offense, and argues that it therefore constitutes a penalty. He further notes that the purpose of the assessment is to defray court security expenses incurred by the sheriff. Consequently, he argues that the assessment does not compensate the State for the costs of prosecuting a particular defendant, and thus, it is a fine rather than a fee.

¶ 46 Section 5-1103 of the Code states that the Court Services fee is "dedicated to defraying court security expenses incurred by the sheriff in providing court services or for any other court services deemed necessary by the sheriff to provide for court security." 55 ILCS 5/5-1103 (West 2012). This court has previously found that the Court Services fee is a fee rather than a fine. In *Tolliver*, we held that the charge was a fee because it was compensatory and a collateral consequence of the defendant's conviction. *Tolliver*, 363 Ill. App. 3d at 97. Similarly, in *People v. Adair*, 406 Ill. App. 3d 133, 144 (2010), we found that the plain language of the statute indicated that the charge was a fee assessed to defray the expenses incurred by the sheriff for providing court security during the defendant's court proceedings. Accordingly, we concluded that the charge could not be offset by the presentence custody credit. *Id.* at 145. See also *Heller*,

2017 IL App (4th) 140658, ¶ 74 (citing *Tolliver* and finding the court services fee is a fee rather than a fine).

¶ 47 Similar to the clerk's fees discussed above, during the prosecution of every defendant, the sheriff provides security in the courtroom. In this case, defendant was in the custody of the sheriff throughout all of his proceedings. Consequently, the sheriff transported defendant to and from the courthouse for all of his proceedings, held him in the holding cell while he waited for his case to be called on each court date, escorted him in and out of the courtroom, and remained in the courtroom to provide security throughout all of defendant's proceedings. The Court Services fee compensates the sheriff for the costs incurred in providing the security and services that are absolutely vital to the process of prosecuting a defendant. Accordingly, we adhere to our reasoning in *Tolliver* and *Adair*, and continue to hold that the Court Services fee is a fee rather than a fine. Therefore, defendant is not entitled to offset this fee with his presentence custody credit.

¶ 48 Finally, defendant contends that he is entitled to credit against the $2 State's Attorney Records Automation fee assessed pursuant to section 4-2002.1(c) of the Code (55 ILCS 5/4-2002.1(c) (West 2012)) and the $2 Public Defender Records Automation fee assessed pursuant to section 3-4012 of the Code (55 ILCS 5/3-4012 (West 2012)). Defendant points out that these assessments apply to all defendants who are found guilty of an offense, and that the purpose of the assessments is to discharge the expenses associated with establishing and maintaining automated record keeping systems. He argues that the assessments therefore do not compensate the State for prosecuting a particular defendant, and thus, they constitute fines rather than fees.

¶ 49 This court has repeatedly found that the $2 State's Attorney Records Automation fee and the $2 Public Defender Records Automation fee are compensatory in nature because they reimburse the State for its expenses related to maintaining its automated record-keeping systems. *Reed*, 2016 IL App (1st) 140498, ¶¶ 16-17; *People v. Green*, 2016 IL App (1st) 134011, ¶ 46 (Public Defender assessment is a fee, not a fine); *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65; *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30 (State's Attorney assessment is a fee, not a fine). In *Reed*, we explained that the State's Attorney's Office would have utilized its automated record-keeping systems in prosecuting the defendant when it filed charges with the clerk's office and made copies of discovery that were tendered to the defense. *Reed*, 2016 IL App (1st) 140498, ¶ 16. We further explained that because the defendant was represented by a public defender, counsel would have used the public defender's office record systems in representing the defendant. *Id.* at ¶ 17. Consequently, we concluded that the assessments were fees, not fines, and thus, not subject to offset by the *per diem* credit. *Id.* at ¶¶ 16-17; *Green*, 2016 IL App (1st) 134011, ¶ 46; *Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65; *Rogers*, 2014 IL App (4th) 121088, ¶ 30. *Contra People v. Camacho*, 2016 IL App (1st) 140604, ¶ 56 (finding the assessments are fines because they do not compensate the State for the costs associated with prosecuting a particular defendant).

¶ 50 We agree with the holdings in *Reed*, *Green*, *Bowen* and *Rogers*, and in this case, similarly conclude that the State's Attorney Records Automation fee and the Public Defender Records Automation fee are fees, not fines. Accordingly, defendant is not entitled to offset these fees with his presentence custody credit.

¶ 51 Nonetheless, although not noted by the parties, the record reveals that defendant was not represented by the public defender in this case, but instead, by private counsel. Consequently, the Public Defender Records Automation fee is inapplicable here and we vacate that fee. *People v. Brown*, 2017 IL App (1st) 142877, ¶ 75; *People v. Taylor*, 2016 IL App (1st) 141251, ¶ 30. We therefore direct the clerk of the circuit court to further amend the fines, fees and costs order by vacating this fee.

¶ 52 For these reasons, we vacate the $2 Public Defender Records Automation fee from the Fines, Fees and Costs order. We direct the clerk of the circuit court to further amend that order to reflect a credit of $65 to offset the $50 Court System Fee and the $15 State Police Operations Fee. Defendant's adjusted total assessment should be $342. We affirm defendant's conviction and sentence in all other respects.

¶ 53 Affirmed as modified.