2017 IL App (1st) 151147-U

No. 1-15-1147

Fifth Division
March 17, 2017



IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>GARRY COLQUITT,<br><br>Defendant-Appellant. | ) | Appeal from the Circuit Court of Cook County.<br><br>YT-242-966, 967, and 968<br><br>The Honorable Donald R. Havis, Judge Presiding. |

PRESIDING JUSTICE GORDON delivered the judgment of the court.
Justices Lampkin and Reyes concurred in the judgment.

**ORDER**

¶ 1 *Held*: When the appellate court reviews a decision of the lower court based on a suppression hearing, the defendant cannot change the appellate decision after a trial on the merits under the law of the case doctrine.

¶ 2 After a stipulated bench trial, defendant Garry Colquitt was convicted of driving under the influence of alcohol (DUI) and sentenced to supervision for 12 months. On appeal, defendant claims: (1) that this court's previous opinion in *People v. Colquitt*, 2013 IL App (1st) 121138, ¶ 3, was mistakenly decided, where we found that "no seizure occurred when

[a] police vehicle pulled behind defendant's parked vehicle," and (2) that the fines, fees and costs order must be corrected. For the following reasons, we affirm defendant's conviction and correct the mittimus as to the fines, fees and costs.

¶ 3 BACKGROUND

¶ 4 Defendant Garry Colquitt was charged with driving under the influence of alcohol (625 ILCS 5/11-501 (West 2010)) and blocking the roadway (625 ILCS 5/11-1301(a) (West 2010)). At a bench trial, the parties stipulated to: (1) the transcript of the pretrial suppression hearing; (2) a video from the patrol vehicle dash camera; and (3) an audio recording of a conversation between the police officer and the dispatch operator.[1] The only additional evidence admitted at the bench trial was the result of the breathalyzer test which showed that defendant's blood-alcohol level was 0.169. No testimony was heard at trial. In this court's prior opinion, we described in detail the evidence and testimony at the suppression hearing, including the content of both the video and audio tapes. *Colquitt*, 2013 IL App (1st) 121138, ¶¶ 1-23. We will not repeat that detailed description here, but we incorporate that opinion by reference. We repeat here only the salient facts needed to understand the issues before us.

¶ 5 On June 21, 2011, defendant filed a motion to quash his arrest and to suppress the evidence obtained during the arrest, including the result of a breathalyzer test. Following the suppression hearing, the trial court granted defendant's motion to quash his arrest and suppress the evidence. The State moved to reconsider on February 22, 2012, and the trial court denied the State's motion. The State then filed a certificate of substantial impairment and a notice of appeal. Illinois Supreme Court Rule 604(a)(1) (eff. July 1, 2006) allows the State to appeal in a criminal case when a trial court grants a motion to quash arrest or

[1] Both tapes were admitted into evidence at the suppression hearing.

suppress evidence and "the substantive effect" of the order "results in dismissing a charge" against the defendant. In its certificate of substantial impairment, the State stated: "the order Denying the State's Motion to Reconsider the trial court's decision to grant the Defendant's Motion to Quash Arrest and Suppress Evidence *** substantially impairs the People's ability to prosecute said case[.]"

¶ 6 On September 20, 2013, this court reversed the trial court's decision in granting the motion to quash arrest and suppress evidence and remanded the case to the trial court. At the suppression hearing, the evidence established that defendant's vehicle was stopped in the roadway, blocking the right hand lane of 183rd Street, without hazard lights on. The police officer made a U-turn and parked behind defendant's vehicle. This court found:

> "In the case at bar, defendant was already voluntarily parked and did not stop because he observed Officer Wood's emergency lights. The officer activated his emergency lights only after defendant had parked in the roadway without his hazard lights on and while the officer was making a U-turn. A reasonable person would not have believed that he had to comply with Officer Wood's requests, simply because the officer activated his emergency lights while making a U-turn across four lanes of traffic at night. Officer Wood's conduct after exiting his vehicle, but before observing evidence of intoxication, did not rise to the level of a seizure where he did not draw his weapon, did not touch defendant, and did not use language or a tone of voice to indicate defendant must comply with his requests. [Citations.] Officer Wood parked behind defendant's vehicle and did not block defendant from exiting his vehicle. [Citation.]
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> ***

> For the reasons discussed above, we conclude that the officer's brief activation of his emergency lights and siren, as he crossed over four lanes of traffic at night to make a U-turn, was necessitated, as the trial court observed, by safety concerns and did not, by itself, constitute a seizure. We observe that the officer was not making a stop of a moving vehicle but rather was approaching to investigate the presence of an already stopped vehicle, in a roadway and without hazard lights." *Colquitt*, 2013 IL App (1st) 121138, ¶¶ 38, 40.

¶ 7 The officer testified that, when he approached defendant's vehicle, he noticed a strong odor of liquor, defendant's eyes were bloodshot and his speech was slurred. The officer "asked defendant to exit his vehicle and instructed defendant to complete various field sobriety tests." *Colquitt*, 2013 IL App (1st) 121138, ¶ 9. As part of these field sobriety tests, the officer "instructed defendant to follow an object with his eyes, complete the one-leg-stand test and the walk-and-turn test." *Colquitt*, 2013 IL App (1st) 121138, ¶ 16. Following completion of these tests, the officer placed defendant under arrest for DUI. *Colquitt*, 2013 IL App (1st) 121138, ¶ 16.

¶ 8 This court found: "Under these unique facts and circumstances, we cannot find a seizure for fourth amendment purposes. Defendant does not argue on appeal that the officer lacked probable cause to arrest at the point when the officer asked defendant to exit his vehicle, nor could he. Thus, we must affirm." *Colquitt*, 2013 IL App (1st) 121138, ¶ 40.

¶ 9 Defendant filed a petition of leave to appeal with the supreme court, which was denied. *People v. Colquitt*, No. 116867 (Jan. 29, 2014). Upon remand to the trial court, defense counsel stated that defendant requested a stipulated bench trial in order to appeal again the suppression issue:

> "I thought I was crystal clear that the reason I was doing a stipulated bench and asked the State, also, to stipulate to the prior motion testimony was for purposes of preserving that issue for appeal. *** It was suggested by the appellate attorney that I refile the motion for purposes of appellate law. There were some issues at the motion that either the appellate Court did not address or the appellate court did not follow appellate procedure."

¶ 10 Following the bench trial, the trial court found that the officer had reasonable grounds to believe that defendant was under the influence of alcohol when he was placed under arrest and found defendant guilty of DUI. On April 24, 2015, the trial court denied defendant's posttrial motion for a new trial, and sentenced defendant to supervision for 12 months. The court also ordered: an Alcohol and Drug Evaluation Services recommendation, attendance at a victim impact panel, and payment of all driver's license reinstatement fees. In addition, defendant was assessed costs of $1189.

¶ 11 On April 24, 2015, defendant filed a timely notice of appeal, and this appeal followed.

¶ 12 ANALYSIS

¶ 13 On appeal, defendant claims: (1) that this court's prior decision on the suppression hearing in *People v. Colquitt*, 2013 IL App (1st) 121138, ¶ 3, was mistakenly decided where we held that "no seizure occurred when the police vehicle pulled behind defendant's parked vehicle," and (2) that the fines, fees and costs order must be corrected. For the following reasons, we affirm defendant's conviction, and order the mittimus corrected.

¶ 14 I. The Law of the Case Doctrine

¶ 15 Defendant contends: (1) that the State waived its right, in the prior appeal, to argue that defendant was not seized or that the seizure was justified by the community caretaking

function; (2) that this court's prior decision in this case was palpably erroneous; and (3) that the trial court's prior decision to grant defendant's motion to quash arrest and suppress evidence was correct. These three contentions are an attempt by defendant to relitigate the prior decision of this court. *Colquitt*, 2013 IL App (1st) 121138. As discussed below, the law of the case doctrine requires this court to find that all three contentions are without merit.

¶ 16 The law of the case doctrine raises a purely legal question which we review *de novo*. *Rommel v. Illinois State Toll Highway Authority*, 2013 IL App (2d) 120273, ¶ 14 ("As the application of the law-of-the-case doctrine is a question of law, our standard of review is *de novo*."). *De novo* consideration means we perform the same analysis that a trial judge would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011). Pursuant to the law of the case doctrine, "rulings made on points of law by a reviewing court are binding in the trial court upon remand and on subsequent appeals to the same reviewing court unless a higher court has changed the law." *People v. Anderson*, 2015 IL App (2d) 140444, ¶ 27; see also *People v. Wilson*, 257 Ill. App. 3d 670, 699 (1993). The doctrine generally prohibits the relitigation of any issues which this court decided on a previous appeal. *People v. Hopkins*, 235 Ill. 2d 453, 469 (2009); *People v. Sutton*, 233 Ill. 2d 89, 100 (2009).

¶ 17 There are two exceptions to the law of the case doctrine. The first exception occurs when a higher court rules contrary to a lower court on the same issue. *Alwin v. Village of Wheeling*, 371 Ill. App. 3d 898, 911 (2007). This exception does not apply to this case because a higher court has not ruled contrary to this court's ruling in the prior appeal. The second exception "'allows the reviewing court to depart from the doctrine of the law of the case if the court finds that its prior decision was palpably erroneous, but only when the court remanded the

case for a new trial on all issues.'" *Alwin*, 371 Ill. App. 3d at 911 (quoting *Martin v. Federal Life Insurance Co.*, 268 Ill. App. 3d 698, 701 (1994)).

¶ 18 The law of the case doctrine is used to ensure decisions are uniform and consistent within a single case, as well as to ensure the protection of the parties' settled expectations, and to end litigation as efficiently as possible. *Alwin*, 371 Ill. App. 3d at 911; *Radwill v. Manor Care of Westmont, Illinois, LLC*, 2013 IL App (2d) 120957, ¶ 8; *Norris v. National Union Fire Insurance Co. of Pittsburgh, Pennsylvania*, 368 Ill. App. 3d 576, 581 (2006). Keeping these goals in mind, courts have rarely chosen to use the palpably erroneous exception to reverse prior decisions. *People v. Anderson*, 2015 IL App (2d) 140444, ¶ 30; *Norris*, 368 Ill. App. 3d at 583 ("Not many Illinois decisions have applied the palpably erroneous standard to change the law of a specific case."); see also *Martin*, 268 Ill. App. 3d at 701 ("We do not believe that *Martin I* was palpably erroneous either at the time it was decided or under the current state of the law.").

¶ 19 Defendant contends that this court failed to acknowledge case law which indicates the case was wrongly decided, making the decision palpably erroneous. However, as long as an appellate court decides a case in a manner that is reasonably supported, it will not be considered palpably erroneous. *Martin*, 268 Ill. App. 3d at 702 (court determined the prior ruling was not palpably erroneous because it was supported by one other case and the current state of the law). This court's prior ruling certainly was not obviously or plainly wrong, nor did it create a manifest injustice. *Radwill*, 2013 IL App (2d) 120957, ¶ 12; *Rommel v. Illinois State Toll Highway Authority*, 2013 IL App (2d) 120273, ¶ 21.

¶ 20 In addition, this court relied upon prior supreme court precedent in making the prior ruling. To support this court's prior ruling, this court followed the precedent set forth by the

Illinois Supreme Court in *People v. Luedemann*, 222 Ill. 2d 530 (2006). The following is an excerpt from our prior opinion showing our analysis of *Luedemann*:

> "In *Luedemann*, at 2:40 a.m., a police officer noticed the defendant, legally parked, sitting in his vehicle smoking a cigarette. *Luedemann*, 222 Ill. 2d at 534. The officer drove closer to the defendant's vehicle and observed the defendant reach toward the floorboard of his vehicle. *Luedemann*, 222 Ill. 2d at 534. As the officer drove past the defendant's vehicle, the defendant slumped down in his seat on the driver's side of the vehicle. *Luedemann*, 222 Ill. 2d at 534. The officer parked in the center of the street and approached the defendant's vehicle from the rear driver's side with a flashlight. *Luedemann*, 222 Ill. 2d at 534. As the officer approached, the defendant removed the keys from the ignition and the officer noticed an uncapped, brown bottle on the passenger-side floorboard of the defendant's vehicle. *Luedemann*, 222 Ill. 2d at 534. The officer asked the defendant what he was doing there and for his identification. *Luedemann*, 222 Ill. 2d at 534. The defendant indicated that he was waiting for his girlfriend to return home but he did not recall the address. *Luedemann*, 222 Ill. 2d at 534. The officer observed that the defendant's speech was slurred and his eyes were bloodshot and the officer could smell liquor on the defendant's breath. *Luedemann*, 222 Ill. 2d at 535. Having observed evidence that the defendant was under the influence of liquor, the officer radioed for another officer, asked the defendant to exit his vehicle and instructed the defendant to complete various field sobriety tests, which indicated to the officer that the defendant was under the influence of liquor. *Luedemann*, 222 Ill. 2d at 535. The defendant filed a motion to quash his arrest

and suppress the evidence, which the trial court granted and the appellate court affirmed. *Luedemann*, 222 Ill. 2d at 532-33.

The Illinois Supreme Court reversed and found that no seizure occurred until after the officer had a reasonable suspicion that the defendant was under the influence of liquor and had operated a motor vehicle. *Luedemann*, 222 Ill. 2d at 566. The court reasoned that, in viewing the officer's conduct objectively, he did not curtail the defendant's liberty through the use of physical force or a show of authority. *Luedemann*, 222 Ill. 2d at 565. The court reasoned that the officer approached the defendant's vehicle in a nonoffensive manner, meaning he did not have his weapon drawn, he did not touch the defendant, he did not use a tone of voice that indicated compliance was necessary, and he did not activate his overhead lights. *Luedemann*, 222 Ill. 2d at 554. The court also found that there was no seizure because the officer parked his vehicle in the middle of the street and did not block the defendant's vehicle from leaving. *Luedemann*, 222 Ill. 2d at 560. The court also found that the officer's use of a flashlight was not a seizure and was merely a practical necessity because it was dark. *Luedemann*, 222 Ill. 2d at 563. The court held the officer did not effectuate a seizure until after he observed evidence of the defendant being under the influence of liquor because no reasonable person would have felt that they had to comply with the officer's requests before that point.

***

In the case at bar, the totality of [the officer's] conduct, before he observed evidence that defendant was under the influence of liquor, was not objectively

> coercive. While unlike *Luedemann*, in this case, [the officer] did activate his emergency lights, he did so as he cut across four lanes of traffic at night. His use of emergency lights was similar to the use of a flashlight in *Luedemann*, in that both were prompted by necessity: the *Luedemann* officer's need to see at night; and the necessity of the officer in the case at bar to be seen by others at night. *Luedemann*, 222 Ill. 2d at 563 (use of flashlight at night was not a seizure but a practical necessity)." *Colquitt*, 2013 IL App (1st) 121138, ¶¶ 33-34, 37.

¶ 21 As this excerpt shows, a full and fair analysis was conducted regarding the facts of defendant's case as compared to prior supreme court precedent. Relying on the supreme court's ruling, this court found "no seizure occurred when the police vehicle pulled behind defendant's parked vehicle." *Colquitt*, 2013 IL App (1st) 121138, ¶ 3.

¶ 22 The law of the case doctrine bars defendant's request for a rehearing by this court. This finding still stands.

¶ 23 II. Fines and Fees

¶ 24 Defendant claims: (1) that the trial court incorrectly added the fines and fees and that the sum should be changed to $1100; (2) that the trial court should have awarded defendant a $5-per-day credit for the time he spent in presentence custody; (3) that the trial court improperly assessed defendant a $20 Violent Crime Victims Assistance Fund fine, a $5 Court System fee, a $30 Misdemeanor Complaint Conviction fee, a $2 Public Defender fine, and a $2 State's Attorney Records Automation fine. We review the trial court's imposition of fines and fees *de novo*. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 60. *De novo* consideration means we perform the same analysis that a trial judge would perform. *Khan v. BDO*

*Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011). For the following reasons, we order the mittimus corrected, as described below.

¶ 25 Both parties and this court agree that the trial court incorrectly added the fines and fees. The correct addition is $1164, rather than $1189.

¶ 26 A. Presentence Credit Toward Fines

¶ 27 A presentence credit of $5 per day is allowed against defendant's fines for every day defendant spent incarcerated on a bailable offense pursuant to section 110-14 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-14(a)(West 2010)). Defendant spent one day in jail before posting bail, and therefore he is allowed a $5 credit against his total fines. However, this credit can be applied only once, not to every applicable fine. See *People v. Pohl*, 2012 IL App (2d) 100629, ¶ 5; *People v. Wacker*, 257 Ill. App. 3d 728, 735 (1994) ("Although defendant claims he is entitled to $275 credit toward each of his fines, he cites no authority for this proposition. Rather, where a defendant is convicted of multiple offenses [and multiple fines are imposed], he is entitled to only one credit."); *People v. Dale*, 137 Ill. App. 3d 101, 107 (1985) (the legislative intent was to allow the credit to be applied only once to the total amount of fines, rather than to each applicable fine). For this reason, defendant will be credited $5 against his total applicable fines.

¶ 28 B. Violent Crime Victims Assistance Fund Fine

¶ 29 1. Subsection (c)

¶ 30 Defendant claims that the $20 fine assessed pursuant to the Violent Crimes Victims Assistance Act (Act) (725 ILCS 240/10(c) (West 2010)) was levied in error because this fine may be imposed only when "no other fine is imposed." However, the State argues that this fine should have been imposed pursuant to subsection (b) of the Act, rather than subsection

(c), which was marked on defendant's "Order Assessing Fines, Fees and Costs" form. Subsection (c)(2) allows the imposition of a $20 fine for any felony or misdemeanor that does not fall into subsection (c)(1) as long as no other fine is imposed. 725 ILCS 240/10(c) (West 2010). However, subsection (b) allows "an additional penalty collected from each defendant upon *** conviction of or disposition of supervision for any offense under the Illinois Vehicle Code[.]" 725 ILCS 240/10(b) (West 2010). Subsection (b) states that the penalty shall be "$4 for each $40, or fraction thereof, of fine imposed." 725 ILCS 240/10(b) (West 2010). Unlike subsection (c), subsection (b) does not have the restriction that it may be imposed only when no other fines are imposed. Subsection (c), which was marked on defendant's mittimus, would not allow the $20 fine. However, subsection (b) would allow it.

¶ 31 It is clear that the selection of subsection (c) on the form was incorrect. The trial court mistakenly placed the fine amount on the incorrect line on the form. The form at the time of defendant's sentencing had been redesigned to reflect a change in the law, as discussed below. Because the form had been updated to reflect a change in the law, it may have been confusing as to where to place the fine on the current form. Thus, the misplacement of the fine was clearly a clerical error. As such, this court has the authority under Illinois Supreme Court Rule 615(b)(1) (formerly 725 ILCS 5/121-9) to adjust the mittimus and correct the clerical error. See *People v. Andrews*, 365 Ill. App. 3d 696, 699 (2006) (appellate court has the authority pursuant to Illinois Supreme Court Rule 615(b)(1) to modify the trial court's order to correct a clerical error). This court corrects the mittimus to reflect that the fine is imposed under subsection (b) rather than subsection (c).

¶ 32 2. Statute in Effect

¶ 33 Although no party mentions it, we observe that the Violent Victims Assistance Act was amended between the date of defendant's offense and the date of his sentencing. The Act was changed in July 2012 to allow for a flat fine. Pursuant to the amended Act, the fines are: (1) $100 for any felony; (2) $50 for any offense under the Illinois Vehicle Code; and (3) $75 for any misdemeanor, excluding a conservation offense. 725 ILCS 240/10(b) (West 2012). Neither party argues that the amended statute applies, and we agree for the following reasons.

¶ 34 The statute in effect at the time of defendant's offense is the statute used to determine fines. To hold otherwise would violate the *ex post facto* doctrine, which does not allow the imposition of punitive fines that were not in effect at the time of defendant's offense. *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30 (the court lacked authority to assess a $15 State Police operations fine which took effect after the date that the defendant's offense occurred, because it violated *ex post facto* principles); *People v. Devine*, 2012 IL App (4th) 101028, ¶ 10 ("The imposition of a fine that does not become effective until after a defendant commits an offense violates *ex post facto* principles.").

¶ 35 Therefore, this court applies the version of the Act which was in effect in 2011. This version imposed a fine of "$4 for each $40, or fraction thereof, of fine imposed." 725 ILCS 240/10(b) (West 2010). Defendant received $419.50 in fines, including a $30 Children's Advocacy Center fine, $30 Juvenile Expungement fine, $9.50 Traffic Court Supervision fine and the $350 DUI Law Enforcement fine. The total of the fines are $419.50. Dividing $419.50 by 40 equals $10.48. $10.48 is rounded out to the nearest whole number, which is 10. Next, this court multiplies 10 by 4, which totals $40. As a result, defendant's fine pursuant to the Violent Crimes Victims Assistance Act is $40.

¶ 36 C. Court System Fee

¶ 37 In contrast to the Violent Crimes Victims Assistance Act fine, the Court System fee is imposed based on the statute in effect at the time of defendant's sentencing. Fees are not subject to the restrictions of the *ex post facto* doctrine because of the compensatory, rather than punitive, nature of fees. *People v. Higgins*, 2014 IL App (2d) 120888, ¶ 19 ("Fees, which are compensatory instead of punitive, are not subject to the prohibition against *ex post facto* laws, but fines, which are punitive, are."). Therefore, the statute applied in the assessment of fees is the statute in effect at the time of sentencing rather than the statute in effect at the time of defendant's offense.

¶ 38 Defendant contends that the Court System fee assessed pursuant to section 5-1101(a) of the Counties Code (55 ILCS 5/5-1101(a) (West 2014)) does not apply to him because he was convicted of driving while under the influence of alcohol, which is a violation of section 11-501 of the Illinois Vehicle Code (625 ILCS 5/11-501 (West 2014)). However, this is a misstatement of the statute. The statute states: "A $5 fee [is] to be paid by the defendant on a judgement of guilty or a grant of supervision for violation of the Illinois Vehicle Code other than Section 11-501 *** and *up to a $30 fee* [is] to be paid by the defendant on a judgment of guilty or a grant of supervision for violation of Section 11-501 of the Illinois Vehicle Code ***." (Emphasis added.) 55 ILCS 5/5-1101(a) (West 2014). Although the first clause of the statute does not apply to defendant, the second clause, referring to violations of driving while under the influence of alcohol (625 ILCS 5/11-501(West 2014)), does apply to him. The second clause allows *up to* a $30 fee for a violation of section 11-501, driving under the influence of alcohol. A $5 fee does indeed qualify as "up to" a $30 fee; therefore, a $5 fee is allowed and is correct.

¶ 39 D. Misdemeanor Complaint Conviction Fee

¶ 40 Defendant argues that the $30 fee assessed pursuant to section 4-2002.1(a) of the Counties Code (55 ILCS 5/4-2002.1(a) (West 2014)) was levied in error because the trial judge was an associate judge rather than an elected judge. Section 4-2002.1(a) reads that the fee "[f]or each conviction in other cases tried before judges of the circuit court [is] $30; *except that if the conviction is in a case which may be assigned to an associate judge, *** [then] the fee shall be $20*." (Emphasis added.) 55 ILCS 5/4-2002.1(a) (West 2014). Based on the language of the statute, this case was assigned to an associate judge on a case that may be assigned to an associate judge, and was so assigned; therefore, the fee pursuant to this section is $20 rather than $30. The mittimus shall be corrected accordingly.

¶ 41 E. State's Attorney and Public Defender Record Automation Fees

¶ 42 Defendant contends that the State's Attorney Record Automation fee (55 ILCS 5/4-2002.1(a) (West 2014)) and Public Defender Record Automation fee (55 ILCS 5/3-4012 (West 2014)) are actually fines rather than fees and, therefore, the *ex post facto* doctrine would require this court to hold them inapplicable here. However, defendant is mistaken because the State's Attorney Record Automation fee and the Public Defender Record Automation fee are, in fact, fees.

¶ 43 A fine is a pecuniary punishment imposed as part of a criminal sentence. *People v. Bishop*, 354 Ill. App. 549, 562 (2004); *People v. White*, 333 Ill. App. 3d 777, 781 (2002). By contrast, a fee is not "punitive in nature" but rather, compensatory for labor or services. *Bishop*, 354 Ill. App. 3d at 562. The State's Attorney Record Automation fee and the Public Defender Record Automation fee are intended to reimburse the State's Attorney's and the public defender's offices for the expenses incurred for the maintenance and use of their

automated record systems. *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30. For this reason, these fees are compensatory in nature, rather than punitive.

¶ 44 We acknowledge that one division of this court found the opposite of this conclusion (*People v. Camacho*, 2016 IL App (1st) 140604, ¶ 52); however, we respectfully disagree and concur instead with the majority of our courts on this issue. *Rogers*, 2014 IL App (4th) 121088, ¶ 30 ("The assessment is a fee because it is intended to reimburse the State's Attorneys for their expenses related to automated record-keeping systems." (Internal quoation marks omitted)); *People v. Warren*, 2014 IL App (4th) 120721, ¶ 27; *People v. Reed*, 2016 IL App (1st) 140498, ¶ 17 ("the assessment clearly compensates the State for the costs of representing defendant and constitutes a fee."); *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 65 ("because the statutory language of both the Public Defender and State's Attorney Records Automation fees is identical except for the name of the organization, we find no reason to distinguish between the two statutes, and conclude both charges constitute fees"). Therefore, the $2 State's Attorney Record Automation fee does apply.

¶ 45 However, the State concedes, and we agree, that the Public Defender Record Automation fee does not apply to defendant because defendant was not represented by the public defender's office in his criminal proceedings. Therefore, the Public Defender Record Automation fee does not apply to defendant and is vacated, and the mittimus is corrected.

¶ 46 CONCLUSION

¶ 47 On appeal, defendant claims: (1) that this court's prior decision in *People v. Colquitt*, 2013 IL App (1st) 121138, ¶ 3, was mistakenly decided, where we found, in an appeal of a suppression hearing, that "no seizure occurred when the police vehicle pulled behind defendant's parked vehicle," and (2) that the fines, fees and costs must be corrected. For the

reasons discussed above, we affirm defendant's conviction. However, we order the mittimus corrected as to the fines, fees and costs as follows: (1) provide a $5 presentence credit against defendant's total fines; (2) change the Violent Victims Assistance Fund fine from $20 to $40 in accord with the statute in effect at the time of the offense; (3) affirm the $5 Court System fee; (4) reduce the Misdemeanor Complaint Conviction fee from $30 to $20 in accord with the statute; (5) affirm the $2 State's Attorney Record Automation fee; and (6) vacate the $2 Public Defender Record Automation fee. These changes result in a total fines and fees of $1167.

¶ 48 Affirmed; mittimus corrected as to fines, fees and costs.