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No. 3--09--0150
(Consolidated with No. 3--08--0896)

Order filed April 21, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit,
Plaintiff-Appellee,	)	La Salle County, Illinois.
	)	
v.	)	No. 05-CF-493
	)	
ALBERT FORD,	)	Honorable
	)	H. Chris Ryan,
Defendant-Appellant.	)	Judge, Presiding

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justice O'Brien concurred in the judgment.
Justice Wright dissented.

ORDER

Held: The fine imposed by the trial court was authorized under section 401(c)(2) of the Illinois Controlled Substances Act and section 5-9-1.1(a) of the Unified Code of Corrections.

After a bench trial, the defendant was convicted of unlawful possession of a controlled substance with intent to deliver. The trial court sentenced him to a five-year prison term and imposed $10,000 in fines and costs. In this appeal, the defendant challenges the court's

imposition of the fine. In the alternative, he argues that he should be awarded a $15 credit against any properly-imposed fine for the three days he served in custody prior to sentencing. We uphold the fine and modify the trial court's sentencing order to reflect a $15 credit against the fine.

BACKGROUND

The defendant was charged with unlawful possession with intent to deliver more than 1 but less than 15 grams of cocaine in violation of section 401(c)(2) of the Illinois Controlled Substances Act (the Act) (720 ILCS 570/401(c)(2) (West 2004)). He waived his right to a trial by jury. The evidence at the defendant's bench trial showed that the Streator police executed a search warrant at an apartment on South Third Avenue in Streator where the mother of the defendant's child resided. Inside the apartment, the police found five corner baggies of crack cocaine and a gas bill for the residence bearing the defendant's name. The parties stipulated that the substance found at the South Third Avenue apartment was cocaine and that it weighed 1.1 grams.

The defendant was arrested and brought to the Streator police department where he was mirandized and interviewed by Police Investigator Jason Clift. Officer Clift testified that the defendant admitted that the cocaine found at the South Third Avenue apartment belonged to him, that he had been "selling for a couple months," and that he was "addicted to selling drugs." According to Officer Clift, the defendant said that he sold the corner baggies of cocaine for $40 per bag.

The trial court found the defendant guilty. The court sentenced the defendant to five years imprisonment and awarded him credit for the three days that he was in custody prior to

sentencing. The court then noted that, "[a]s far as "fines and costs," it had decided to impose a $10,000 fine to be taken from the $22,500 in bonds that the defendant had posted.

Defense counsel objected to the fine, arguing that the amount of the fine exceeded the street value of 1.1 grams of cocaine. Defense counsel asserted that the State had "offered no evidence as to the value of one gram" of cocaine and suggested that the trial judge should know from his "vast experience on the bench" that "the going price of one gram is not $10,000." The trial court responded "I understand that. That would be a street value fine." Defense counsel then asked the court to reconsider the fine because the defendant had "relied on his bond to pay his attorney," and "his attorney will not get paid if the bond money gets used to satisfy all fines and costs."

The court rejected these arguments and upheld the fine. The court noted that it considered the defendant's five-year prison sentence, which was only one year over the statutory minimum, when imposing the fine. The court did not identify the statutory basis for the fine or further explain why it set the fines and costs in the amount of $10,000.

On the same day as the sentencing hearing, the court signed an amended sentencing order which stated that "the defendant shall pay a fine and costs in the amount of $10,000[.]" One day later, the court signed a drug fund order which confirmed that the defendant "shall pay fines and costs totaling $10,000." The drug fund order specified that the defendant shall pay costs totaling $165, and it allocated $6,258 in fines to three separate funds: $3,129 to the "ISP Task Force," $2,346.75 to the "La Salle County Fund 25," and $782.25 to the "Youth Drug Abuse Prevention Fund." The drug fund order did not designate how the rest of the $10,000 should be allocated.

This appeal followed.

ANALYSIS

A. The Fine

The defendant argues that the fine imposed by the court should be vacated because it was "not validly authorized" under any applicable statute. As a preliminary matter, we note that defendant forfeited this argument by failing to file a post-sentencing motion challenging the fine. The defendant concedes that he failed to preserve the issue but urges us to vacate the fine under the plain error doctrine. Inexplicably, however, the State has not argued that the defendant forfeited the issue and has chosen instead to argue the issue on the merits. "The rules of waiver are applicable to the State as well as the defendant in criminal proceedings," and the State may waive the argument that defendant waived an issue "by failing to argue waiver in a timely manner." *People v. Williams*, 193 Ill. 2d 306, 347-48 (2000); see also *People v. De La Paz*, 204 Ill. 2d 426, 433 (2003) ("It is well established that the State may waive waiver."); accord *People v. Chirchirillo*, 393 Ill. App. 3d 916, 922 (2009). Accordingly, we will address the defendant's arguments on the merits. See, *e.g.*, *Chirchirillo*, 393 Ill. App. 3d at 922 (considering the defendant's arguments on the merits where "the State d[id] not assert that defendant forfeited this argument and instead addresse[d] the merits of defendant's claim").

As noted above, the defendant argues that the trial court imposed a fine that was not authorized by statute. This presents a question of statutory interpretation, which we review *de novo*. *People v. Lewis*, 234 Ill. 2d 32, 44 (2009); *People v. Elcock*, 396 Ill. App. 3d 524, 538 (2009). However, if we determine that the fine could have been properly imposed pursuant to some statute, the trial court's imposition of a fine in an amount that is within the range specified by the statute is "entitled to great deference and will not be overturned absent an abuse of

discretion." *Makanda Township Road District v. Devils Kitchen Water District*, 379 Ill. App. 3d 1064, 1067-68 (2008); see also *People v. Reed*, 376 Ill. App. 3d 121, 127-28 (2007) ("Great deference is given to the trial court's sentencing decision because the trial court is in a better position than the reviewing court to determine the appropriate sentence."). Indeed, the trial court's sentencing decision "is presumed to be correct," and we will find an abuse of discretion "[o]nly where that presumption has been rebutted by an affirmative showing of error." *Reed*, 376 Ill. App. 3d at 128.

We hold that the fine or fines imposed by the trial court were authorized by two separate statutes. First, as the State notes, section 401(c) of the Act authorizes a trial court to impose a discretionary fine of up to $250,000 where, as here, a defendant is convicted of possession with intent to deliver between 1 and 15 grams of cocaine. 720 ILCS 570/401(c), (c)(2) (West 2004). The fines and costs imposed by the court here totaled only $10,000, which is well within the $250,000 limit prescribed by section 401(c).

In addition, under the facts presented in this case, a fine of $10,000 would also be authorized as a "street value" fine under section 5-9-1.1(a) of the Unified Code of Corrections (the Code). That section provides, in relevant part, that

> "When a person has been adjudged guilty of a drug related offense involving possession or delivery of *** a controlled substance as defined in the *** Illinois Controlled Substances Act, *** in addition to any other penalty imposed, a fine shall be levied by the court at not less than the full street value of the *** controlled substances seized." 730 ILCS 5/5-9-1.1(a) (West 2004).

Section 5/5-9-1.1(a) "requires only that the court impose a fine '*not less than* the full street value' of the controlled substance seized." *McCreary*, 393 Ill. App. 3d at 408, quoting *Otero,* 263 Ill. App. 3d at 285. Therefore, "as long as the trial court imposes a fine that is not less than the lowest street value evidenced, it has complied with the statute's mandate." *McCreary*, 393 Ill. App. 3d at 408, quoting *Otero*, 263 Ill. App. 3d at 285.

Here, the defendant was convicted of possession with intent to deliver a controlled substance under section 401(c) of the Act, triggering a mandatory street value fine under section 5-9-1.1(a) of the Code. The evidence at trial showed that the defendant was in possession of five corner baggies of crack cocaine and that he sold baggies of that size for $40 each. This evidence supports the conclusion that the total street value of the cocaine at issue in this case was $200. Obviously, a fine of $10,000 would be "not less than" the street value of the drugs at issue here. The defendant conceded as much by objecting to the $10,000 fine on the ground that it exceeded the street value of the cocaine seized. Thus, given the evidence presented at trial, a fine of $10,000 would have been authorized under section 5-9-1.1(a). See, *e.g.*, *People v. Coleman*, 391 Ill. App. 3d 963, 978-79 (2009) (affirming fine of $1 million under section 5-9-1.1(a) where the street value of the drugs at issue was $92,600); *McCreary*, 393 Ill. App. 3d at 408 (affirming $1,500 fine under section 5-9-1.1(a) where the street value of the drugs at issue was $634.95). Section 5-9-1.1(a) would also justify a street value fine in an amount less than $10,000 so long as the fine was not less than $200, the street value of the drugs at issue.

In imposing the fine or fines at issue here, the trial court did not reference certain mandatory fines and costs that it was required to impose under other statutes. For example, section 411.2 of the Act provides that every person convicted of a Class 1 felony under the Act,

as the defendant was here, must be assessed a sum of $2,000 "in addition to and not in lieu of" any other fines or assessments required by law. 720 ILCS 570/411.2(a), (b) (West 2004). In counties with a population of less than 3,000,000, this assessment must be deposited in the Drug Treatment Fund. 720 ILCS 570/411.2(h) (West 2004). In addition, section 5-9-1.1 of the Code mandates an additional fine of $100 for deposit into the Trauma Center Fund, and an additional fee of $5 for deposit into the Spinal Cord Injury Paralysis Cure Research Trust Fund. 730 ILCS 5/5-9-1.1(b), (c) (West 2004). Moreover, section 5-9-1.4 of the Code mandates a $100 crime lab fee, 730 ILCS 5/5-9-1.4 (West 2004), and section 5-4-3 of the Code mandates a $200 DNA analysis fee. 730 ILCS 5/5-4-3(a), (j) (West 2004). The trial court's sentencing order and drug fund order did not reference any of these fines or costs. Rather, they simply provided a blanket figure of $10,000 and stated that this amount included all "fines and costs." Although the drug fund order allocated portions of the $10,000 to three State and local funds, it did not expressly allocate any amounts to the Drug Treatment Fund, the Trauma Center Fund, or the Spinal Cord Injury Paralysis Cure Research Trust Fund.

However, none of this changes our conclusion that the fines imposed by the trial court were statutorily-authorized. The total amount imposed—$10,000—was enough to include a valid street value fine plus all other mandatory fines, costs, and fees. This is true even when the $6,258 that the drug fund order allocated to the three State and local funds is subtracted.[1] This

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[1] $10,000 minus $6,258 equals $3,742. The drug fund order imposed $165 in costs. When that number is subtracted from $3,742, the remainder is $3,577. All of the mandatory fines, costs, and fees in this case add up to less than $3,577. As noted, the minimum mandatory street value fine in this case would be $200, the Trauma Center Fund fine is $100, the DNA

distinguishes the case at bar from cases in which our appellate court has reversed a trial court's order for failure to impose mandatory fines. See, *e.g.*, *People v. Montiel*, 365 Ill. App. 3d 601, 606 (2006) (declaring defendant's sentence void and remanding for the imposition of all mandatory fines and fees where the total fine imposed by the trial court was less than the amount required to be assessed against convicted drug offenders under section 411.2(a)(2) of the Act).

As we noted above, a trial court's imposition of a fine in an amount that is within the range specified by the statute is "entitled to great deference and will not be overturned absent an abuse of discretion." *Makanda Township Road District*, 379 Ill. App. 3d at 1067-68. Thus, a statutorily-authorized sentence "is presumed to be correct" and we will find an abuse of discretion "[o]nly where that presumption has been rebutted by an affirmative showing of error." *Reed*, 376 Ill. App. 3d at 128. As explained above, the $10,000 imposed by the trial court in this case was authorized by two separate statutory provisions and was large enough to include all mandatory fines, fees, and costs. We cannot conclude that the court's failure to specify how every portion of the $10,000 was allocated amounts to an abuse of discretion. To the contrary, given the deferential standard of review, we are required to presume that the trial court's sentencing decision was correct and that all mandatory fines, fees, and costs were assessed and properly allocated. Nothing in the court's sentencing order or drug fund order compels a different conclusion.

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analysis fee is $200, the crime lab fee is $100, and spinal cord fee is $5. When these fines and fees are added to the $2,000 mandatory drug assessment, the total comes to $2,605. Thus, the trial court could have imposed all mandatory fines, fees, and costs in this case and still had almost $1,000 to spare.

Moreover, we reject the parties' arguments that the trial court did not impose or could not have imposed a street value fine under section 5-9-1.1(a) of the Code. The State asserts that the trial court did not impose a street value fine, arguing instead that the court fined the defendant $10,000 pursuant to section 401(c) of the Act. Although the State is correct that section 401(c) would authorize the entire amount of fines imposed in this case, there is a fatal flaw with the State's argument. The street value fine prescribed by section 5-9-1.1(a) is mandatory. If a defendant is convicted of possession with intent to deliver cocaine under the Act—as the defendant was here—the trial court *must* impose a street value fine under section 5-9-1.1(a). 730 ILCS 5/5-9-1.1(a) (West 2004). Accordingly, if the State were correct that the trial court did not impose a street value fine in this case, we would have no choice but to reverse and remand the matter so that the trial court could impose a proper street value fine. See *Montiel*, 365 Ill. App. 3d at 606 (declaring *sua sponte* that the defendant's sentence was void because the trial court did not impose a $2,000 fine required to be assessed against convicted drug offenders under section 411.2(a)(2) of the Act and remanding to the trial court for the imposition of all mandatory fines and fees).

We are not bound by the State's interpretation of the fine, however. See, *e.g.*, *People v. Lewis*, 234 Ill. 2d 32, 43 (2009) (ruling that "a reviewing court is not bound by a party's concession"); *People v. Schmidt*, No. 3-08-1037, slip op. at 28 (Ill. App. Ct. Oct. 27, 2010) (affirming the trial court's disposition of an issue although the State erroneously confessed error on that issue and ruling that "as a court of review, we are not bound by a party's concession" and "may affirm the trial court's ruling on any grounds evident in the record"); accord *People v. Horrell*, 235 Ill. 2d 235, 241 (2009). Thus, we must conduct our own independent analysis of the

fine imposed by the trial court. As noted above, the evidence established a street value of $200 and, as the trial court expressly recognized, the total amount of fines imposed exceeded this amount. On this record, we cannot conclude that no valid street value fine was imposed. Nothing in the record precludes the presumption that some portion of the $10,000 (but not less than $200) was imposed as a street value fine under section 5/5-9-1.1(a).[2] Given the presumption of correctness that applies on review of the trial court's order, we must assume that a valid street value fine was imposed.

The defendant argues that the court could not have validly imposed a street value fine because it "did not hear and consider evidence" regarding the street value of the drugs. We are not persuaded. Section 5-9-1.1(a) provides that

> " 'Street value' shall be determined by the court on the basis of testimony of law enforcement personnel and the defendant as to the amount seized and such testimony as may be required by the court

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[2] The State might have assumed that the trial court did not intend to impose a street value fine because of a comment that the trial court made in response to defense counsel's objections to the fine. Specifically, when defense counsel argued that State had "offered no evidence" of the street value of the cocaine seized and that the street value of one gram of cocaine was "not $10,000," the court responded "I understand that. That would be a street value fine." However, we do not read this statement as indicating that the court did not intend any portion of the $10,000 fine to serve as a street value fine under section 5-9-1.1(a). To the contrary, the statement merely suggests that the court understood that he could impose a street value fine that exceeded the actual street value of the drugs.

> as to the current street value of the cannabis or controlled substance seized." 730 ILCS 5/5-9-1.1(a) (West 2004).

Our supreme court has ruled that "the obvious purpose of the street-value fine is to discourage and impede illegal buying, selling, and use of drugs." *Lewis*, 234 Ill. 2d at 44. To achieve that purpose, the legislature intended for the fine to be set at the full amount that an offender could receive for the drugs on the street. *Lewis*, 234 Ill. 2d at 44. Thus, the "primary objective" of section 5-9-1.1(a) is "to ensure imposition of a fine at not less than full street value." *Lewis*, 234 Ill. 2d at 44.

The trial court must have some "concrete evidentiary basis" for current street value "to ensure imposition to a fine at least equal to that amount." *Lewis*, 234 Ill. 2d at 44, 45. This evidentiary basis "may be provided by testimony at sentencing, a stipulation to the current value, *or reliable evidence presented at a previous stage of the proceedings*." (Emphasis added.) *Lewis*, 234 Ill. 2d at 46; see also *Otero*, 263 Ill. App. 3d at 287. Thus, if there is reliable evidence in the trial record to support a street value, the trial court may impose a street value fine based on that evidence without considering additional evidence of street value during the sentencing hearing. *People v. Watkins*, 387 Ill. App. 3d 764, 767 (2009). Evidence of the price at which the defendant sold the drugs is sufficient to establish street value under section 5-9-1.1(a). *McCreary*, 393 Ill. App. 3d at 407-08; see also *People v. Watkins,* 387 Ill. App. 3d 764, 767 (2009) (holding that "the best evidence of the value of the cocaine rock in this case is the price agreed to by [the undercover police officer] and the defendant," and basing determination of street value on that evidence alone); *People v. Beavers*, 141 Ill. App. 3d 790, 796 (1986)

(holding that the street value of the drugs at issue was the price that the undercover agent paid defendant for the drugs).

In this case, Officer Clift testified during the trial that the defendant admitted to selling corner baggies of cocaine for $40 per bag. It is undisputed that five corner baggies were seized in this case. Based on this evidence alone, the trial court could have justifiably concluded that the street value of the drugs seized was $200. *Watkins*, 387 Ill. App. 3d at 767; *McCreary*, 393 Ill. App. 3d at 407-08. As noted above, the primary purpose of the evidentiary requirements prescribed by section 5-9-1.1(a) is to ensure that the trial court does not impose a fine that is lower than the actual street value of the drugs. *Lewis*, 234 Ill. 2d at 44. Officer Clift's testimony provided a "concrete evidentiary basis" establishing a street value that was well below the $10,000 fine imposed by the court. Moreover, the defendant argued before the trial court that the $10,000 fine exceeded the street value of the drugs. Thus, the trial court was not required to hear any additional evidence of street value before imposing a $10,000 fine (or any street value fine of $200 or greater). See *Watkins*, 387 Ill. App. 3d at 767 (determining the street value of the drugs based solely on undercover officer's testimony regarding the price at which the defendant sold the cocaine and noting that "it not clear what further testimony would be required to establish" street value).

The defendant also argues that a street value fine would be invalid because the trial court imposed the fine before considering the defendant's ability to pay it. We disagree. Although trial courts must determine a defendant's ability to pay before imposing *discretionary* fines for general felonies and other offenses under 730 ILCS 5/5-9-1(a) and (d)(1) (West 2004), our appellate court has repeatedly held that courts need not make such a determination before

imposing *mandatory* fines for drug offenses. See, *e.g.*, *People v. Coleman*, 391 Ill. App. 3d 963, 979 (2009) (affirming trial court's imposition of mandatory $1 million street value fine under 730 ILCS 5/5-9-1.1 without first determining the defendant's ability to pay the fine, and noting that "we are aware of no authority for the general proposition that a fine must be affordable for its recipient"); *People v. Ruff*, 115 Ill. App. 3d 691, 695 (1983) (ruling that "a defendant's financial resources and ability to pay are irrelevant considerations when imposing a [street value] fine pursuant to section 5-9-1.1," because that section "calls for the mandatory imposition of a fine"); *People v. Fort*, 373 Ill. App. 3d 882, 889 (2007) (affirming trial court's imposition of mandatory $2,000 assessment under section 411.2(a)(3) of the Act without remanding to determine the defendant's ability to pay because the assessment is "mandatory" upon conviction for certain drug offenses).

B. *Per-diem* Credit

The defendant also argues that he is entitled to $15 credit against any "properly-imposed fine" for the three days that he spent in custody prior to sentencing. Section 110-14 of the Code of Criminal Procedure of 1963 provides that "[a]ny person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of $5 for each day so incarcerated upon application of the defendant," provided that the amount of the credit does not exceed the amount of the fine. 725 ILCS 5/110-14 (West 2004). Even if the defendant ultimately posts bail and is released from custody pending trial, the defendant is entitled to receive the $5 *per diem* credit under the statute for each day that he was held in custody prior to sentencing. *People v. Smith*, 258 Ill. App. 3d 261, 267-68 (1994). A defendant's entitlement to this *per diem* credit is mandatory under the statute, and a defendant

may be awarded the $5-per-day credit on appeal even when he fails to raise the issue before the trial court. See, *e.g.*, *People v. Woodard*, 175 Ill.2d 435, 457-58 (1997); *People v. Scott*, 277 Ill App. 3d 565, 566 (1996).

Here, the defendant was incarcerated for three days before he posted bail, and he was later fined $10,000 for the drug offense. Accordingly, as the State concedes, the defendant is entitled to a $15 credit against the fine under the statute even though he never raised the issue before the trial court.

CONCLUSION

For the foregoing reasons, we affirm the fines imposed by the La Salle County circuit court and modify the sentencing order to reflect a credit of $15 for the time that the defendant spent in presentence custody, as required by 725 ILCS 5/110-14 (West 2004). As part of our judgment, we grant the State's request that the defendant be assessed $50 as costs for this appeal. See *People v. Williams*, 235 Ill. 2d 286 (2009).

Affirmed as modified.

JUSTICE WRIGHT, dissenting:

Our lawmakers have entrusted one person, the judge, with a statutory duty to order convicted individuals to pay certain financial penalties such as the Street Value fine, the Trauma Center Fund fee, and other fees which help fund programs deemed worthy by our lawmakers. The statutes require a *judge*, not a deputy circuit clerk or some other person, to determine or calculate the amount of a street value fine and to also impose a small number of other mandatory financial penalties. This was not done in this case, and for that reason, I dissent because I believe

the court's error results in a void sentence. *People v. Montiel*, 365 Ill. App. 3d 601, 606 (2006), (citing *People v. Arna*, 168 Ill. 2d 107, 113 (1995)).

A brief review of the statutory fines of concern to me may be of assistance. Following every conviction for a limited number of specific drug related offenses set out by statute, the Street Value fine "shall be levied" and must be "determined by the court" after considering evidence of *current* street value. 730 ILCS 5/5-9-1(a) (West 2004). Thus, a street value fine is not a finite amount set forth by statute, but is instead wholly determined by the court's factual findings based on the evidence of current street value presented in each particular case.

Here, defendant was convicted of unlawful possession of a controlled substance with intent to deliver more than 1 but less than 15 grams of cocaine in violation of section 401(c)(2) of the Illinois Controlled Substances Act (720 ILCS 570/401(c)(2) (West 2004)). In addition to sentencing defendant to five years imprisonment, the trial court stated at the sentencing hearing, "[a]s far as the fines and costs, the Court is going to impose a fine of $10,000 to come from bail."

After the trial court ordered a *singular* lump sum "fine" in the amount of $10,000, defense counsel asked the court to reconsider the fine imposed in light of the fact that defendant possessed only one gram of cocaine with the intent to deliver and noted to the court that the "going price of one gram is not $10,000." The court responded, "I understand that. That would be a street value fine." To me, this indicates the court did not intend any amount of the $10,000 assessment to include the street value fine.

Later, the court also stated:

> "One of the things the Court will reconsider to this extent, let me explain, Mr. Komie [defense counsel].

> The Department of Corrections and fine are options either way. So the 5 years was taken into consideration when the fine was also imposed. So I have reconsidered it and it will stand."

Again, this comment indicates to me that the court intended the optional or discretionary fine it imposed to equal the balance of funds remaining from bail after costs were subtracted.

In fact, the day after the sentencing hearing, the trial court signed a separate "DRUG FUND ORDER," which specified court costs to total $165, leaving an unaccounted balance of bail in the amount of $9835.[3] Yet, this written drug fund order, signed by the judge the day after sentencing, designated fines to equal $6,258 and provided the amount of $6,258 should be distributed, to three separate funds identified in the street value statute.

No where in the record did this court find that the current street value fine should be $6,258 based on the evidence. Instead, it appears a conscientious deputy clerk or some other dutiful person did his or her best to carry out the intentions of the legislature regarding mandatory fines to be levied by the judge and prepared an order for the court's signature. This drug fund order listed a street value fine in the amount of $6,258 and contained a directive for the clerk to remit the fine to certain funds set out by statute.

However, the statute requires a street value fine to be based on evidence presented to the trial court alone. 730 ILCS 5/5-9-1.1 (a) (West 2004). Here, the record suggests that the amount of the street value fine was based not on the evidence, but on the amount of bail remaining after the clerk subtracted routine court costs. Even the majority's discussion set forth above is

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[3]The precise amount of the discretionary fine is important since the amount of this fine is used to calculate certain surcharges to be collected by the circuit clerk as costs. 730 ILCS 5/5-9-1 (West 2004).

necessarily amorphous regarding the precise amount for the street value and other mandatory fines which should have been directly levied by the trial judge in this case.

I cannot adopt the majority's view that a fine may be upheld by this court so long as it is not less than the total amount of the street value of the drugs seized, along with the amount of other mandatory fines and penalties. I suggest the street value fine must be levied by the judge consistent with the evidence and cannot *exceed* the current street value established by the evidence presented to the court. Here, there is no evidence in this record to support a street value fine in the amount of $6,258.

As acknowledged by the majority, unlike street value fines, our lawmakers have also enacted other fixed fees. These addition financial penalties do not fluctuate based on evidentiary considerations presented to the trial judge and are to be ordered by the court in the finite amounts set out by statute. However, again, the court must impose these fines, and the clerk collects and distributes the penalties in the amounts ordered by the court. For example, in *addition* to a street value fine discussed above, the mandatory drug assessment of $2,000 (720 ILCS 570/411.2 (West 2004)) must be assessed "in addition to and not in lieu of" any other fines or assessments required by law, which would seem to include the street value fine. [4]

Further, section 5/5-9-1.1 of the Uniform Code of Corrections (730 ILCS 5/5-9-1.1 (West 2004)) requires that a $100 trauma center fee "shall be levied by the court" in addition to a street value fine, and this additional fine must be collected by the clerk and then directed into the State Trauma Center Fund. 730 ILCS 5/5-9-1.1 (West 2004). This statute, assigns the *court,* the task

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[4]Moreover, the record does not include any order verifying that the court ordered the mandatory $100 crime lab fee (730 ILCS 5/5-9-1.4 (West 2004)) or the $200 DNA fee (730 ILCS 5/5-4-3(a), (j) (West 2004)).

of ordering the $100 trauma center fee. After assigning this task to the court, the statutory language directs the clerk to collect and then remit the fee. Here, the written court order did not mention, acknowledge, or articulate the *mandatory* trauma center fee set out in section 5-9-1.1 (730 ILCS 5/5-9-1.1 (West 2004)).

A court's failure to specifically order the imposition of a street value fine or, for that matter any other statutorily mandated penalty assigned by statute for the court to levy, results in a void sentence. *People v. Montiel*, 365 Ill. App. 3d at 606, (citing *People v. Arna*, 168 Ill. 2d at 113). For this reason alone, judges in the trial court must remain vigilant and order all mandatory, statutory fines, fees and assessments required by the legislature, *in addition to* the other discretionary penalties also available to the court for purposes of punishment, or risk the possibility that the entire sentence will be set aside as void.

Since I respectfully conclude the court intended to impose a lump sum discretionary fine in this case without regard to any mandatory street value fine, I would vacate the sentence and remand to the trial court for a new sentencing order which levies a street value fine of no more than $200 and imposes all other mandatory fines as required by statute.

Finally, I respectfully disagree with the majority's decision to grant the State's request that defendant be assessed $50 as costs for this appeal.