2018 IL App (1st) 160714-U

No. 1-16-0714

October 22, 2018

First Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 CR 10052
	)	
ANDRE CARROLL,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: There was no error at the trial court's preliminary inquiry hearing into defendant's posttrial *pro se* allegations of ineffective assistance of counsel because the State's participation at the hearing was *de minimis*. The fines, fees, and costs order is modified.

¶ 2 Following a bench trial, defendant Andre Carroll (defendant) was convicted of unlawful use or possession of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1(a) (West 2014)), aggravated unlawful restraint (720 ILCS 5/10-3.1(a) (West 2014)), and aggravated fleeing or

attempting to elude a peace officer (625 ILCS 5/11-204.1(a)(4) (West 2014)). He was sentenced to concurrent prison terms of 12 years for UUWF, 3 years for aggravated unlawful restraint, and 3 years for aggravated fleeing or attempting to elude a peace officer. On appeal, defendant contends the trial court's preliminary inquiry into his *pro se* posttrial ineffective assistance of counsel claims were improperly adversarial because the court allowed the State to participate in the hearing beyond a *de minimis* threshold. Defendant also challenges certain assessed fines and fees. For the reasons below, we affirm but order modification of the fines, fees, and costs order.

¶ 3 BACKGROUND

¶ 4 Defendant went to trial on charges of aggravated kidnapping and unlawful restraint of Genal Clinton (Clinton), UUWF, and aggravated fleeing or attempting to elude a peace officer.[1] At trial, Clinton testified that on June 2, 2015, she had been dating defendant for 16 or 17 years. That morning, defendant told Clinton he had to go to his mother's house to do some work, and she was going with him. Clinton could not recall whether, when they got to defendant's mother's house, defendant told her to get out of the car and hug his mother for the last time. Defendant fixed his mother's car, and he and Clinton went to the White Palace restaurant to eat. Clinton denied that on the way to the restaurant, defendant told her she was going to die that day. Clinton could not recall whether defendant took out a gun when they were in the car. Asked whether she saw a gun, Clinton testified she saw defendant put something black with a piece on top that slides in the center console area of the vehicle.

[1]The report of the trial proceedings shows Clinton spelled her first name as "Jenal," but in the charging documents and posttrial affidavits signed by Clinton, which were submitted as a supplement to the record on appeal, her name is spelled as "Genal." We will refer to her by her last name.

¶ 5 At the restaurant, Clinton and defendant argued. Clinton cried, and she was upset and emotional. Clinton could not recall the nature of their argument. She could not recall whether defendant told her she was not going to need any more water because she was going to die later, and he was going to kill her.

¶ 6 During the argument, Clinton went to the bathroom because they had been arguing a lot. Defendant was getting loud, and Clinton was afraid. In the bathroom, she called 9-1-1 because she did not want things to get out of hand. The parties stipulated that People's Exhibit Number 1 was an audio recording of Clinton's call to the 9-1-1 operator made on June 2, 2015, at about 2:27 p.m. The State played the audio recording at trial.

¶ 7 Clinton testified she told the operator she was afraid, a gun was in the car, and defendant was still inside the restaurant. She thought she also told the operator that defendant was going to kill her. Clinton asked the operator to send the police. When a police officer arrived in the bathroom, Clinton told the officer that defendant was in his car and directed the officer to where it was parked. The officer exited the door of the restaurant and defendant drove off.

¶ 8 Later at the police station, Clinton spoke with an assistant State's Attorney and agreed to give a handwritten statement. She identified her signature on each page of the statement. Asked about various statements in the handwritten statement, Clinton responded that, "[i]f it's in that statement that means I told her that," and that she could not recall that whole day. Clinton testified that after the incident, she visited defendant in jail three times and talked to him on the telephone about three times.

¶ 9 On cross-examination, Clinton testified that before she got into defendant's car to drive to his mother's house, he did not physically put her in the car or grab her. Defendant did not point a

gun or any other weapon at her or tell her she had to come to his mother's house. Clinton never indicated to defendant's mother that defendant was taking her somewhere against her will or kidnapping her. On the way to the restaurant, defendant pulled out a black metal object and did not point it at her. When they got to the restaurant at about 2 p.m., defendant did not grab her by the arm, point the gun at her, or make her go inside. Clinton never indicated to anyone at the restaurant that defendant was kidnapping her or that he was not letting her leave.

¶ 10 On re-direct, Clinton testified that, on the way to the restaurant, the gun was in the car. Clinton acknowledged she told the 9-1-1 operator that defendant had a gun, she believed she was going to die, and she needed someone to help her. In response to a question from the trial court, Clinton testified that she called 9-1-1 because defendant had a gun and she was scared.

¶ 11 Assistant State's Attorney April Gonzales testified that Clinton agreed to give a handwritten statement. The State published portions of the statement, which Gonzales read into the record. Gonzales then testified that Clinton stated defendant told Clinton that he needed to go to his mother's house to do some work and she was going with him. Clinton told defendant to go ahead without her but defendant told her she was going with him. Clinton stated that she got ready to go because she was emotionally drained from fighting with defendant and did not feel like arguing with him. Clinton stated that defendant told her to get out of the car and hug his mother for the last time.

¶ 12 Clinton's statement, which was admitted into evidence and contained in the record on appeal, also provided that Clinton stated as Clinton and defendant were driving to White Palace, defendant pulled out a gun, which was black and had a piece that slides on top of it. Clinton stated she had no idea defendant had a gun with him and that defendant left the gun in the car

when they went into the restaurant. Gonzales testified that Clinton did not have any problems or memory lapses relating the details of the incident and she was scared, upset, and crying.

¶ 13 Chicago police officer Akil Upchurch (Upchurch) testified that on June 2, 2015, at about 2:30 p.m., he and his partner responded to a call from a woman in a bathroom at the White Palace. The woman stated her boyfriend had a gun and was going to kill her. Upchurch, who was wearing plain clothes with a police vest and "stars," went to the bathroom of the White Palace and found Clinton. Clinton was frightened and directed Upchurch to a black vehicle outside. Upchurch ran outside, and the vehicle sped off. Upchurch and his partner activated their lights and sirens and followed the black vehicle. The vehicle did not stop at stop signs or stop lights and travelled about 30 to 40 miles per hour for several blocks. Eventually, the officers curbed the vehicle and Upchurch's partner retrieved the driver, identified in court as defendant. From the middle console of defendant's vehicle, Upchurch recovered a blue steel handgun loaded with six live rounds.

¶ 14 The court admitted into evidence a certified copy of defendant's prior felony conviction for delivery of between 1 and 15 grams of heroin for the purpose of proving he had the requisite prior felony conviction for UUWF. The court denied defendant's motion for a directed verdict.

¶ 15 Vertis Carroll (Vertis), defendant's mother, testified for defendant.[2] Vertis testified that on June 2, 2015, defendant and Clinton came to her house because defendant was going to look at her vehicle. Defendant checked her car, which took about 10 or 15 minutes. Clinton looked normal and never indicated to Vertis that defendant was giving her problems, forced her to come

[2] Vertis Carroll and defendant share the same last name. We will therefore refer to Vertis Carroll by her first name.

there, or was forcing her to go somewhere else. After defendant finished working on her car, defendant and Clinton drove off together, and defendant did not force Clinton to get into the car.

¶ 16 Defendant testified that on June 2, 2015, he and Clinton stopped at his mother's house and then went to the White Palace. When they sat down to eat, defendant and Clinton argued about cheating on each other. Clinton started crying and defendant told her that they could leave, and he would take her back home. Clinton told defendant she was going to the washroom. When he was halfway finished with his food, he looked up and saw the police come inside. As he was paying, he heard a voice over the officer's radio state that "[s]he's hiding in the washroom." Defendant walked outside and sat inside his truck. He never threatened Clinton with a gun and never pointed a gun at her.

¶ 17 On cross-examination, defendant testified that, to his knowledge, there was never a gun in the middle console area of his car, and he never put a gun there. Defendant walked outside when the police came inside the restaurant because he wanted to find out why Clinton called the police. The police came to his car, and after they walked away, defendant drove off. About two minutes after defendant started driving, the officers were behind him in a police vehicle, which had its lights and sirens on.

¶ 18 In rebuttal, the court admitted into evidence a certified copy of defendant's prior conviction for possession of a controlled substance with intent to deliver for the limited purpose of weighing defendant's testimony.

¶ 19 The trial court found defendant not guilty of aggravated kidnapping but guilty of UUWF, aggravated unlawful restraint, and aggravated fleeing or attempting to elude a peace officer. In doing so, it noted that it believed Clinton's statement to Gonzales was credible and "the

substantive evidence that I am concerned about is the fact that she states in her statement that defendant pulled out a gun while they were on their way to the [restaurant]." It stated that when the officers arrested defendant, they found a gun in the console. Defendant's statement that he knew nothing about the gun was "totally totally incredible." It further noted defendant's testimony was in conflict with all the evidence and was self-serving and unbelievable.

¶ 20 At the hearing on defendant's posttrial motion filed by defense counsel, counsel informed the court that he discussed the posttrial motion with defendant. Defendant wanted to add something to the motion that counsel could not adopt, and counsel could not take the strategy that defendant wanted. Defendant told the court he had a conflict of interest with defense counsel, specifically he had a letter from Clinton and two affidavits signed by her and counsel would not include them in his posttrial motion as defendant wanted. Defendant asserted Clinton alleged in the affidavits that he did not kidnap her, he had no knowledge of the gun, and she put the gun in the car. Defendant asserted he gave "the first one she signed" to counsel during trial but counsel did not present it during Clinton's testimony.

¶ 21 It is not clear to which of Clinton's two affidavits defendant was referring, but both affidavits contain similar allegations. Signed on September 28, 2015, and October 6, 2015, Clinton avers in the affidavits that defendant did not kidnap her and that he had no knowledge of the gun. The October 6, 2015 affidavit additionally states that Clinton placed the gun in the car. In the December 7, 2015 letter, Clinton states that the assistant State's Attorney told her that the State was going to offer defendant a plea deal and, if he did not take it, he was going to have to fight the kidnapping charges. She also stated there was no kidnapping involved.

¶ 22 The court conducted a hearing pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984). Defendant informed the court counsel refused to include Clinton's letter and affidavits with the posttrial motion as newly discovered evidence. With respect to Clinton's letter, defendant informed the court that Clinton's letter stated the State promised him a plea deal before trial. If defendant did not take it, he was going to trial on all counts. Defendant and defense counsel acknowledged, and the State confirmed, that the State never extended an offer to defendant. The Court then concluded "there's no offer extended. I don't see how he could be jeopardized by not receiving an offer, if there's no offer extended."

¶ 23 With respect to Clinton's affidavits, the court noted that it found defendant not guilty of kidnapping and questioned how Clinton's averment that the defendant did not kidnap her would help defendant. Defendant then pointed out Clinton averred that he did not have knowledge of the gun and Clinton placed the gun in the car. The court asked defense counsel whether he spoke with defendant about the affidavits. Counsel stated he did and explained Clinton's statement about the kidnapping was moot because defendant was not guilty of kidnapping and Clinton's statement about the gun had "a lot of issues," as the gun was recovered in the car and Clinton's statement would be contrary to "our strategy."

¶ 24 The court then asked whether it found constructive possession and defense counsel responded, "Well, it *** she testified ***." The court asked, "She testified?" Defense counsel and the State confirmed that Clinton testified at trial. The court noted that it did not realize Clinton testified, and the State stated:

> "She did, Judge. She testified. The State entered her original [9-1-1] call from the incident when she was hiding in the bathroom and discussing the gun that the defendant

had. She was not cooperative, but she was — there was a handwritten statement taken at the time of the offense that was introduced at trial as well. And at no time during the — either that statement or the testimony she gave before this Court did she ever say that it was her gun or that she placed it in the glove box or that the defendant had no knowledge of it."

¶ 25 The court informed defendant that Clinton testified and was questioned by both the Assistant State's Attorney and defense counsel. Defendant told the court that, when he asked counsel to present one of Clinton's affidavits during her testimony, counsel told him, "no one's going to believe that cropped-up story." Defendant also asserted counsel never cross-examined Clinton on her affidavit.

¶ 26 Later at the hearing, the following exchange occurred between the court, defense counsel, and the State, regarding the trial:

"THE COURT: *** Let me look at my notes here. The date of the trial was when?

[DEFENSE COUNSEL]: October 20th, your Honor.

THE COURT: Okay. If I recall, this occurred in one house and when the police responded, the defendant fled, did he not, in the car?

[ASSISTANT STATE'S ATTORNEY]: Correct, Judge.

THE COURT: And there was a high-speed chase?

[ASSISTANT STATE'S ATTORNEY]: High-speed chase across several blocks. Prior to the defendant and Ms. Clinton arriving at the Palace Grill, there was testimony

— I don't remember exactly what she testified to on the stand, but the contents of her statement that were admitted was that the gun came out before they got to the restaurant.

That as they were driving towards the [W]hite Palace Grill, [defendant] *** pulled out a gun from his right side.

States that the gun was black and had a piece that slides on top of it. [Clinton] states that she was shocked and had no idea that [defendant] had a gun with him.

[Defendant] pulled out the gun, said he didn't want his mother to see it, and that he put it in the center console between the two of them.

THE COURT: And this is in the handwritten statement —

[ASSISTANT STATE'S ATTORNEY]: Yes.

THE COURT: — is that correct?

[ASSISTANT STATE'S ATTORNEY]: Yes.

THE COURT: And it was introduced substantively?

[ASSISTANT STATE'S ATTORNEY]: Yes.

And in that center console is where the officers, after the high-speed chase across several city blocks, after the defendant was stopped in the alley and was detained in that center console is where the gun was recovered."

¶ 27 After this exchange, the court asked defense counsel for his position with respect to the affidavits. Defense counsel explained, *inter alia*, that any knowledge he had of the affidavits at the time of trial would not have been beneficial to "trial strategy" and Clinton's "testimony wasn't necessarily consistent with anything that I knew regarding any affidavits that [Clinton] had given [defendant]." Defense counsel also informed the court that he thought any sort of

introduction of discussions that defendant had with Clinton was going to show additional pressure that defendant was putting on her at that time, and he thought "it would be a really poor trial strategy."

¶ 28 Following the hearing, the court found the affidavits would not have changed anything about the trial, "it was sound trial strategy," and that its *Krankel* hearing revealed no *Strickland* violations. It also found the statement in Clinton's affidavits that defendant did not kidnap her was moot because defendant was found not guilty of aggravated kidnapping. With respect to Clinton's averments that the gun was hers and defendant did not know about it, the court stated that if Clinton had testified that she placed the gun in the car, that would have been contrary to substantive evidence that defendant placed the gun inside the car, which was introduced through impeachment and Clinton's handwritten statement that defendant placed the gun in the car. The court also noted that defendant's "acts subsequent to the police arriving on the scene responding to a call where an individual was being threatened and held against her will, defendant's actions that he is totally innocent ***, no knowledge of a gun inside the car relies [*sic*] common sense."

¶ 29 The court subsequently denied defendant's motion for a new trial filed by counsel and sentenced him to concurrent prison terms of 12 years for UUWF, 3 years for aggravated unlawful restraint, and 3 years for aggravated fleeing or attempting to elude a peace officer. The court imposed $504 in mandatory fines, fees, and charges, awarded him 203 days of presentence custody credit, and credited $80 toward his fines, reducing his total charges to $424.

¶ 30 ANALYSIS

¶ 31 Defendant contends on appeal that the trial court's preliminary inquiry into his *pro se* ineffective assistance of counsel claims was improperly adversarial in nature, as the State's

participation in the hearing exceeded a *de minimis* threshold and forced him to litigate as a *pro se* defendant against both the State and defense counsel. Defendant argues the State's extensive participation exceeded the mere offering of concrete and easily verifiable facts and amounted to improper adversarial argument. He argues we should remand for a preliminary inquiry into his *pro se* claims without the State's adversarial participation.

¶ 32 When a defendant raises a *pro se* posttrial claim of ineffective assistance of counsel, the court must conduct a preliminary hearing pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984). *People v. McGath*, 2017 IL App (4th) 150608, ¶ 51. The hearing should "operate as a neutral and nonadversarial proceeding." *People v. Jolly*, 2014 IL 117142, ¶ 38. The trial court should examine the factual basis of the defendant's claim. *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). If the court determines the claim lacks merit or pertains only to matters of trial strategy, then it need not appoint new counsel and may deny the *pro se* motion. *Moore*, 207 Ill. 2d at 78. If, however, the court finds the allegations show possible neglect of the case, then the court should appoint new counsel for the defendant. *Moore*, 207 Ill. 2d at 78. The goal of a *Krankel* hearing is to "facilitate the trial court's full consideration of a defendant's *pro se* claims of ineffective assistance of trial counsel and thereby potentially limit issues on appeal." *Jolly*, 2014 IL 117142, ¶ 29.

¶ 33 The trial court's method of inquiry at a *Krankel* hearing is flexible. *People v. Fields*, 2013 IL App (2d) 120945, ¶ 40. As stated by our supreme court, "some interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the allegedly ineffective representation is permissible and usually necessary in assessing what further action, if any, is warranted on a defendant's claim." *Moore*, 207 Ill. 2d at 78. The trial court may inquire

with trial counsel about the facts and circumstances surrounding the defendant's allegations and may briefly discuss the allegations with the defendant. *Jolly*, 2014 IL 117142, ¶ 30. Because a defendant is not appointed new counsel at a *Krankel* hearing, it is critical that the State's participation at the hearing, if any, be *de minimis*. *Jolly*, 2014 IL 117142, ¶ 38. We review the manner in which a trial court conducted a preliminary inquiry *de novo*. *Fields*, 2013 IL App (2d) 120945, ¶ 39.

¶ 34 Defendant argues on appeal the State's participation at the hearing with respect to the portions at the hearing discussing a plea deal and the allegations in Clinton's affidavits regarding kidnapping and the gun was more than *de minimis*. He also asserts the State's participation at the portion of the hearing where the State discussed Clinton's handwritten statement and whether the case involved a high-speed chase was more than *de minimis*. Defendant further claims the State presented inaccurate information at the hearing on the issue of constructive possession and whether the case involved a high-speed chase.

¶ 35 From our review of the hearing as a whole, we conclude the State's participation was minimal, not adversarial, and limited to responding to the trial court's questions by providing verifiable facts about the evidence and trial. See *Fields*, 2013 IL App (2d) 120945, ¶ 40 (There are situations when the State "may be asked to offer concrete and easily verifiable *facts* at the hearing." (Emphasis in original.)).

¶ 36 With respect to the discussion regarding the allegation in Clinton's affidavits that defendant did not kidnap her, the record shows the State did not participate in the discussion of this issue.

¶ 37 As to the plea deal, the court asked the State if there was an offer conveyed to defendant on the day of trial, and the State responded that it "talked about the possibility of an offer on all counts but the aggravated kidnapping" but that an offer was not ultimately extended. The trial court then specifically asked the State: "So there was no offer extended?" and the State responded, "Correct." The State's participation was limited to providing the court with concrete and verifiable facts about whether the State offered defendant a plea deal, and therefore, was *de minimis*.

¶ 38 Similarly the State's participation in the discussion regarding Clinton's averments that defendant knew nothing about the gun was *de minimis*. Specifically, after the State informed the court that Clinton testified at trial, it told the court that Clinton's 9-1-1 call was admitted into evidence, Clinton was not cooperative, Clinton's handwritten statement was introduced into evidence, and Clinton did not state in her statement or testify at trial that she placed the gun in the glove box or that defendant did not have knowledge of the gun. The State's comments were limited to providing verifiable facts about the evidence and Clinton's testimony and were supported by the trial record. It did not provide the court with any new or adversarial information that had not been established at trial, offer argument to support defense counsel's decision, or provide counter-argument on defendant's allegations regarding counsel's decisions. *Cf. Fields*, 2013 IL App (2d) 120945, ¶ 41 (the State's participation was not *de minimis* where the court allowed the State to comment and provide counter arguments on the defendant's claims and where the State offered an explanation for defense counsel's decision).

¶ 39 Finally, with respect to the State's statement that the case involved a high-speed chase, we again find that the State's participation was limited to providing concrete and verifiable facts.

Specifically, after the court indicated that it was taking out its notes and confirmed the trial date of the case with defense counsel, it asked whether "there was a high-speed chase." The State responded that there was a "[h]igh-speed chase across several blocks." The State then stated that it did not remember Clinton's testimony. However, in Clinton's statement, she admitted that the "gun came out before they got to the restaurant." The State then read parts of Clinton's handwritten statement, which had been admitted into evidence and was a part of the trial record. The trial court asked the State whether the statements it had read were in the handwritten statement and whether the statement was introduced substantively, and the State responded, "Yes" to both questions.

¶ 40 We find that the State's participation was limited to responding to the trial court's specific question about facts of the case, *i.e.* whether there was a high speed chase, and to providing concrete and verifiable facts to the court about the evidence established at trial, *i.e.*, Clinton's handwritten statement. It did not attempt to offer argument, rebut defendant's claims, question defense counsel as a witness, or in any way suggest defense counsel was correct in not including the affidavits and letter in the posttrial motion. *Cf. Jolly*, 2014 IL 117142, ¶¶ 19-20, 40 (the State's participation was improperly adversarial where the trial court offered the State the opportunity to rebut the defendant's claims and the State called the defendant's trial counsel as a witness).

¶ 41 Notwithstanding defendant's assertion to the contrary, when the State affirmatively responded to the court's specific question about whether the case involved a "high speed chase," it was not attempting to offer argument or inaccurate information on the facts to rebut defendant's claims. Rather, it provided the court with facts that were supported by the trial

record, *i.e.*, that defendant fled at 30 to 40 miles per hour from a police vehicle that had lights and sirens activated and went through stop signs and stop lights while doing so.

¶ 42 Further, contrary to defendant's claim, the State did not incorrectly tell the court it found that defendant had constructive possession of the gun. The record shows neither the State nor defense counsel responded to the court's question about whether it found constructive possession and, in fact, the State never mentioned constructive possession. Moreover, when the court issued its ruling at trial, it specifically found: "[t]here is no doubt in my mind defendant knew that the gun was there. There is no doubt in my mind that he even directly or constructively possessed that weapon." Thus, even if the State mentioned the court's constructive possession finding, it would have been correct.

¶ 43 We conclude that the State's participation at the *Krankel* hearing was *de minimis* and limited to responding to the trial court's questions and providing the court with concrete and verifiable facts that were established at trial. We therefore conclude that there was no error.

¶ 44 Defendant's second contention is that the assessed fines, fees, and costs should be reduced from $424 to $110. He argues that he is entitled to an additional $314 in presentence custody credit for certain assessments that are denominated as "fees" but are actually considered "fines."

¶ 45 Defendant acknowledges he did not preserve his challenge to the assessed fines and fees in the trial court but argues that we may review the issue under the plain error doctrine. See *People v. Bridgeforth*, 2017 IL App (1st) 143637, ¶ 46 (A defendant forfeits an issue if he fails to raise a contemporaneous objection in the trial court and include the issue in a written

postsentencing motion). The State acknowledges defendant's forfeiture of the issue, but agrees his challenge is reviewable under the plain error doctrine.

¶ 46 As the State does not argue that we do not have authority to review defendant's challenge to the assessed fines and fees, it has forfeited any forfeiture argument. *Bridgeforth*, 2017 IL App (1st) 143637, ¶ 46 (rules of waiver and forfeiture also apply to the State). We will therefore review defendant's claims. Our review of the propriety of court-ordered fines and fees is *de novo*. *People v. Smith*, 2018 IL App (1st) 151402, ¶ 7.

¶ 47 Defendant contends he is entitled to a credit of $5 for each day he spent in presentence custody to be applied against various "fees" that are actually considered "fines." Section 110-14(a) of the Code of Criminal Procedure of 1963 provides that a defendant is entitled to a credit of $5 for each day spent in presentence custody. 725 ILCS 5/110-14(a) (West 2014); *People v. Tolliver*, 363 Ill. App. 3d 94, 96 (2006). However, presentence credit applies only to fines imposed after a conviction and does not apply to other assessed costs or fees. *Tolliver*, 363 Ill. App. 3d at 96.

¶ 48 A fine is considered to be part of a defendant's punishment for a conviction. *People v. Jones*, 223 Ill. 2d 569, 582 (2006). A fee however is a charge for labor or services and is a "collateral consequence" of a conviction which is compensatory in nature, not punitive. *Tolliver*, 363 Ill. App. 3d at 97. Even if the authorizing statute labels the assessment a fee, it still may be considered a fine. *Jones*, 223 Ill. 2d at 599. To determine whether an assessment is considered 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." *People v. Graves*, 235 Ill. 2d 244,

250 (2009). The court awarded defendant 203 days of credit and, therefore, he is entitled to up to $1015 of credit to be applied toward his fines.[3]

¶ 49 Defendant argues he is entitled to presentence custody credit to be applied toward the $15 automation fee (705 ILCS 105/27.3a(1) (West 2014)), $15 State Police operations fee (705 ILCS 105/27.3a(1.5) (West 2014)), $2 public defender records automation fee (55 ILCS 5/3-4012 (West 2014)), $2 State's Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2014)), $15 document storage fee (705 ILCS 105/27.3c(a) (West 2014)), $25 court services (sheriff) fee (55 ILCS 5/5-1103) (West 2014)), $50 court system fee (55 ILCS 5/5-1101(c)(1) (West 2014)), and $190 Felony Complaint Filed (Clerk) fee (705 ILCS 105/27.2a(w)(1)(A) (West 2014)). The State concedes that two of these charges, the $15 State Police operations fee and the $50 court system fee, are considered fines subject to offset by presentence custody credit but disagrees with defendant's remaining contentions.

¶ 50 We agree with the parties that the $15 State Police operations fee and the $50 court system fee are "fines." See *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 (concluding that the State Police operations fee is a fine, noting it "does not reimburse the State for costs incurred in defendant's prosecution"); *People v. Ackerman*, 2014 IL App (3d) 120585, ¶ 30 (concluding that the court systems fee is a fine). Accordingly, because the $15 State police operations fee and $50 court system charges are fines, they should be offset by defendant's presentence custody credit.

[3] We note that the fines, fees, and costs order provides that defendant was awarded 202 days of credit but, at sentencing, the court orally awarded him 203 days of credit. The trial court's oral pronouncement controls. See *People v. Jones*, 376 Ill. App. 3d 372, 395 (2007).

¶ 51 Defendant contends the $15 automation fee, $15 document storage, $190 felony complaint filing fee, and $25 court services fee should be considered "fines" subject to be offset by presentence custody credit. This court has previously decided that these assessments are fees. See *Tolliver*, 363 Ill. App. 3d 94, 97 (2006) (finding that the felony complaint filing, automation, document storage, and sheriff's court services charges are fees); *People v. Smith*, 2018 IL App (1st) 151402, ¶ 15 (citing *Tolliver* and *Graves* and finding that the felony complaint filing, automation, document storage, and court services charges are fees and not fines, as the charges represent part of the costs incurred for prosecuting a defendant); *People v. Bingham*, 2017 IL App (1st) 143150 ¶ 42 (citing *Tolliver* and concluding that the felony complaint filing charge is a fee); *People v. Brown*, 2017 IL App (1st) 142877, ¶ 81 (finding *Tolliver* is consistent with *Graves* and concluding that the automation and document storage assessments are fees); *People v. Heller*, 2017 IL App (4th) 140658, ¶ 74 (concluding that the court services charge is a fee). Accordingly, we conclude that the automation, document storage, felony complaint filing, and court services charges are fees and defendant is not entitled to offset these fees with presentence custody credit.

¶ 52 Defendant contends the $2 public defender records automation fee and the $2 State's Attorney records automation fee are actually fines even though they are labeled as fees. Defendant cites *People v. Camacho*, 2016 IL App (1st) 140604, ¶ 56, where a division of this court concluded that these assessments are fines because they "do not compensate the state for the costs associated in prosecuting a particular defendant." However, in reaching this conclusion, *Camacho* recognized "that every published decision on this matter has determined that both the State's Attorney and public defender records automation assessments are fees." *Camacho*, 2016

IL App (1st) 140604, ¶ 52. We agree with the authority recognized in *Camacho* that has previously concluded that these assessments are fees. See *People v. Mullen*, 2018 IL App (1st) 152306, ¶¶ 47-48; *People v. Murphy*, 2017 IL App (1st) 142092, ¶¶ 18-20; *People v. Brown*, 2017 IL App (1st) 142877, ¶¶ 75-76, 78; *People v. Reed*, 2016 IL App (1st) 140498, ¶¶ 16-17; *People v. Green*, 2016 IL App (1st) 134011, ¶ 46; *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 115; *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 64-65; *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30. Accordingly, defendant is not entitled to presentence custody credit toward these charges.

¶ 53 CONCLUSION

¶ 54 We find defendant is entitled to $5 per day of presentence custody credit toward the $15 State Police operations and the $50 court system assessments. We order the clerk of the circuit court to correct the fines, fees, and costs order accordingly. The judgment of the circuit court is affirmed in all other respects.

¶ 55 Affirmed; fines, fees, and costs order corrected.