

No. 1-16-0988

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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. 12 CR 20504
)	
OSCAR HERNANDEZ,)	Honorable
)	James Michael Obbish,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Hoffman and Justice Connors concurred in the judgment.

ORDER

¶ 1 *Held:* The fines, fees, and costs order is modified.

¶ 2 Following a bench trial, defendant Oscar Hernandez was convicted of attempt first degree murder and sentenced to 14 years in prison. On appeal, the defendant challenges certain assessed fines and fees but does not contest his conviction or sentence. For the reasons below, we order modification of the fines, fees, and costs order.

¶ 3 The defendant was charged with attempt first degree murder and three counts of aggravated battery. At trial, the evidence established that the defendant rented an apartment and garage from Douglas Danby. On October 5, 2012, the defendant arranged to meet Danby at the garage so he could pay Danby his overdue rent. When Danby arrived in the alleyway near the garage, defendant lured him into the garage under the pretext that he could not find the key to the glove box containing rent money. When Danby started to walk back towards his vehicle, the defendant, who was wearing rubber gloves, approached Danby from behind, grabbed his head, and slit his throat with a knife. Danby and the defendant struggled, and Danby was able to escape.

¶ 4 Police recovered a knife from the alley and a bloody glove from the garage floor. The State offered testimony that, after the defendant received *Miranda* warnings, he gave a written statement that, on October 5, 2012, “he knew he was going to do something wrong” and he “grabbed the knife out of the car, came up to [Danby] from behind, grabbed [Danby], and slit [Danby’s] throat from behind.”

¶ 5 Following argument, the trial court found the defendant guilty of attempt first degree murder and stated that the other counts merged with that count. The court subsequently denied defendant’s motion for a new trial and sentenced him to 15 years in prison and imposed \$644 in mandatory fees and costs. It amended the sentence on the defendant’s motion to reconsider, to 14 years’ imprisonment.

¶ 6 The defendant contends on appeal that the assessed fines, fees, and costs should be reduced from \$644 to \$310. He argues that (1) we should vacate the \$20 probable cause hearing

fee and (2) he is entitled to presentence custody credit for certain assessments that are labeled as “fees” but are actually “fines.”

¶ 7 The defendant concedes that he did not challenge the assessed fines and fees in the trial court but argues that we may review the issue under the plain error doctrine. Although the State acknowledges that the defendant did not raise this challenge in the trial court, it asserts that the defendant “can apply for presentence custody credit at any time” and it concedes that the \$20 probable cause hearing fee was improperly assessed. We disagree with the defendant’s claim that his challenge to the assessed fines and fees is reviewable under the plain error doctrine. See *People v. Griffin*, 2017 IL App (1st) 143800, ¶ 9. Nevertheless, because the State does not dispute our authority to review the defendant’s challenge to the assessed fines and fees, it has forfeited any forfeiture argument. *People v. Bridgeforth*, 2017 IL App (1st) 143637, ¶ 46 (rules of waiver and forfeiture also apply to the State). Thus, although the defendant did not properly preserve his challenge to the assessed fines and fees in the trial court, we will review his claims. Our review of the propriety of court-ordered fines and fees is *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 8 The defendant first contends, and the State concedes, that we should vacate the \$20 probable cause hearing fee (55 ILCS 5/4-2002.1(a) (West 2016)) as it was improperly imposed. We agree. The fee “applies in cases where a preliminary hearing is held to determine the existence of probable cause to believe that the accused has committed an offense.” *Bridgeforth*, 2017 IL App (1st) 143637, ¶ 47. Here, there was no probable cause hearing and the defendant was charged by indictment. Therefore, we vacate the \$20 probable cause hearing fee. See *id.*

¶ 9 The defendant next contends that he is entitled to a credit of \$5 for each day he spent in presentence custody to be applied against certain “fees” that are legally 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 2012); *People v. Tolliver*, 363 Ill. App. 3d 94, 96 (2006). However, the presentence credit applies only to “fines” imposed pursuant to a conviction and does not apply to other assessed costs or fees. *Tolliver*, 363 Ill. App. 3d at 96.

¶ 10 A “fine” is considered to be “part of the punishment for a conviction.” *People v. Jones*, 223 Ill. 2d 569, 582 (2006). However, “a ‘fee’ is a charge for labor or services, and is a collateral consequence of the conviction which is not punitive, but instead, compensatory in nature. [Citation.]” *Tolliver*, 363 Ill. App. 3d at 97. Even if the authorizing statute labels the assessment a “fee,” it still may be considered a “fine,” as the “label attached by the legislature is not necessarily definitive.” *Jones*, 223 Ill. 2d at 599. To determine whether an assessment is considered a “fine” or a “fee,” our supreme court has held that “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).

¶ 11 The defendant argues that he is entitled to presentence custody credit to be applied toward the \$190 “Felony Complaint Filed (Clerk)” fee (705 ILCS 105/27.2a(w)(1)(A) (West 2016)), \$15 automation fee (705 ILCS 105/27.3a(1), (1.5) (West 2016)), \$15 State Police operations fee (705 ILCS 105/27.3a(1.5) (West 2016)), \$2 public defender records automation fee (55 ILCS 5/3-4012 (West 2016)), \$2 State’s Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2016)), \$15 document storage fee (705 ILCS 105/27.3c(a) (West 2016)), \$25

court services (sheriff) fee (55 ILCS 5/5-1103) (West 2016)), and \$50 court system fee (55 ILCS 5/5-1101(c)(1) (West 2016)). 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 be offset by the defendant's presentence custody credit. However, the State maintains that the remaining contested charges are "fees" and not "fines."

¶ 12 We agree with the parties that the \$15 State Police operations fee and the \$50 court system fee are "fines." These charges do not reimburse the State for the expenses incurred during the defendant's prosecution. *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 (concluding that "despite the statutory label" the State Police operations fee is a fine, as it "does not reimburse the State for costs incurred in defendant's prosecution"); *People v. Ackerman*, 2014 IL App (3d) 120585, ¶ 30 (holding that the court systems fee is actually a fine). Therefore, because the \$15 State Police operations and the \$50 court system assessments are considered "fines," the defendant is entitled to presentence custody credit against these two charges.

¶ 13 The defendant also contends that the \$190 felony complaint filing fee, the \$15 automation fee, and the \$15 document storage charges are actually "fines." The defendant claims that these charges are fines because they do not reimburse the State for expenses incurred to prosecute the defendant. He contends that the purpose of the felony complaint filing fee is to "recoup expenses for the clerk" who has "no prosecutorial function," the automation storage fee "finances a component of the court system," and the document storage fee defrays "the general cost of the court system," but is not prosecutorial in nature.

¶ 14 We conclude that these charges are fees. As the State points out, this court previously concluded that these three charges are fees rather than fines, as they are "compensatory and a

collateral consequence of defendant's conviction." *Tolliver*, 363 Ill. App. 3d at 97. The defendant argues that *Tolliver* is not persuasive because it was decided three years before our supreme court's decision in *Graves*, which stated: " 'A charge is a fee if and only if it is intended to reimburse the state for some cost incurred in defendant's prosecution.' " *People v. Graves*, 235 Ill. 2d 244, 250 (2009) (quoting *Jones*, 223 Ill. 2d at 600). The defendant claims *Tolliver* is contrary to *Graves*.

¶ 15 We are unpersuaded by the defendant's argument. As this court recently explained in *People v. Brown*, 2017 IL App (1st) 142877, ¶ 81, *Tolliver* is consistent with our supreme court's decision in *Graves*, because it "used the same framework as was set forth in *Graves* for determining whether a charge is a fee or fine." Consistent with *Brown* and *Tolliver*, we conclude that the felony complaint filing, automation, and document storage charges are fees. *Id.* at 81; *Tolliver*, 363 Ill. App. 3d at 97. The defendant is therefore not entitled to presentence incarceration credit against these assessments.

¶ 16 The defendant next contends that the \$2 public defender records automation fee and the \$2 State's Attorney records automation fee are actually fines. The defendant cites *People v. Camacho*, 2016 IL App (1st) 140604, ¶ 56, where this court concluded that these assessments are fines because they "do not compensate the state for the costs associated in prosecuting a particular defendant."

¶ 17 However, more recently in *Brown*, this court found that the \$2 public defender records automation and the \$2 State's Attorney records automation assessments are fees. *Brown*, 2017 IL App (1st) 142877, ¶¶ 76-78. In *Brown*, the court specifically recognized the holding in *Camacho* but concluded that the \$2 State's Attorney records automation charge is a fee, stating that it

would “follow the weight of authority” that has previously held that this assessment is a fee. *Id.* ¶76 (citing *People v. Taylor*, 2016 IL App (1st) 141251, ¶ 29; *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 115; *People v. Reed*, 2016 IL App (1st) 140498, ¶ 16; *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30). With respect to the \$2 public defender records automation fee, the *Brown* court found that, “except for the name of the organization,” this fee was “identical” to the \$2 State’s Attorney records automation fee and there was “no reason to distinguish between the two.” 2017 IL App (1st) 142877, ¶ 78. The court therefore concluded that the public defender assessment is a fee. *Id.*

¶ 18 Similarly, here, we follow *Brown* and the “weight of authority” concluding that these charges are fees, not fines. *Id.* ¶¶ 76-78. The defendant is therefore not entitled to presentence custody credit against the \$2 public defender records automation fee or the \$2 State’s Attorney records automation fee.

¶ 19 Finally, the defendant contends that the \$25 court services (sheriff) charge (55 ILCS 5/5-1103 (West 2016)) is a fine subject to presentence custody credit. He claims that “security guards are not aligned with either the prosecution or the defense” and “provide a neutral service that benefits everyone in the courtroom.” The defendant asserts that the assessment compensates the “overall court system” but does not compensate the State for the costs incurred during the defendant’s prosecution.

¶ 20 We disagree. During the course of the defendant’s prosecution, court security services were necessarily used to prosecute him. Thus, court security expenses are “compensatory and a collateral consequence” of the defendant’s conviction. *Tolliver*, 363 Ill. App. 3d at 97. We therefore conclude that the \$25 court services (sheriff) charge is a fee and the defendant is not

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entitled to presentence custody credit against this assessment. See *People v. Heller*, 2017 IL App (4th) 140658, ¶ 74 (concluding that the \$25 court services (sheriff's) charge is a fee, not a fine).

¶ 21 In sum, we vacate the \$20 probable cause hearing fee and find that 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 circuit court to correct the fines, fees, and costs order accordingly. The judgment of the circuit court is affirmed in all other respects.

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