

No. 1-16-2838

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 16 CR 3778
)	
DEVONTAE SMITH,)	Honorable
)	Charles P. Burns,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for armed robbery is affirmed and his fines, fees, and costs order is modified.

¶ 2 Following a bench trial, defendant Devontae Smith was convicted of armed robbery (720 ILCS 5/18-2(a)(1) (West 2016)) and sentenced to 10 years' imprisonment. The trial court also assessed defendant fines, fees and court costs totaling \$545. On appeal, defendant contends that the court made arithmetic errors in adding the fines and fees, and that five of the assessments labeled as fees were actually fines subject to offset by the statutory \$5-per-day presentence

incarceration credit. 725 ILCS 5/110-14(a) (West 2016). He requests that this court modify his fines, fees and costs order. We affirm defendant's conviction and modify the fines, fees, and costs order.

¶ 3 Defendant's conviction stems from the February 19, 2016, robbery of Chicago police officer Janelle Hamilton. The record shows that as Officer Hamilton was working undercover during a narcotics investigation, defendant and codefendant Jamar Wilson, who was armed with a metal pellet gun, robbed her of \$40 in prerecorded funds. Officer Hamilton radioed other officers, who arrested Wilson at the scene. Officer Hamilton identified defendant from a photo array and he was arrested the next day. The trial court found defendant guilty of armed robbery with a bludgeon and sentenced him to 10 years' imprisonment. The court also assessed a total of \$545 in fines, fees, and costs, after applying \$50 in presentence incarceration credit.

¶ 4 On appeal, defendant argues that the sum of fines and fees, before offsetting for presentence credit, totaled only \$199. Further, he argues that he is entitled to presentence custody credit against five assessments that are labeled as fees, but are actually fines. He contends that he owes only \$80 in fees, after offsetting.

¶ 5 As a threshold matter, defendant acknowledges that he did not preserve these issues for appeal because he did not challenge the assessments in the trial court. See *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). He argues, however, that we may review his claims under the plain error doctrine. The State acknowledges the defendant's forfeiture, but agrees with defendant that we may review his claims under the plain error doctrine.

¶ 6 We reject the parties' contention that we may address defendant's challenge to the amount of fines and fees under the plain error doctrine. See *People v. Griffin*, 2017 IL App (1st)

143800, ¶ 9, *pet. for leave to appeal granted*, No. 122549 (Nov. 22, 2017) (finding that the plain error doctrine is not appropriate to address clerical mistakes regarding fines and fees); but see *People v. Cox*, 2017 IL App (1st) 151536, ¶ 102 (“[S]ince the fines were not statutorily authorized and were a part of defendant’s sentence,” they affected substantial rights and were reviewable for plain error). Nevertheless, because forfeiture is a limitation on the parties and not the court and the State does not argue defendant’s forfeiture, we will address the merits of defendant’s argument. See *People v. Bridgeforth*, 2017 IL App (1st) 143637, ¶ 46 (when the State fails to argue the defendant’s forfeiture, it waives the forfeiture). The propriety of the fines and fees imposed by the trial court is reviewed *de novo*. *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22.

¶ 7 We initially agree with defendant that the fines, fees, and costs order incorrectly added the total owed by defendant. The sum of the imposed assessments actually totals \$199, before any credit is applied.

¶ 8 Under section 110-14 of the Code of Criminal Procedure of 1963 (Code), a defendant is entitled to a credit of \$5 for each day he is incarcerated, with that amount to be applied toward the fines levied against him as part of his conviction. 725 ILCS 5/110-14(a) (West 2016). Here, defendant spent 224 days in presentence custody. Therefore, at \$5 per day, he was entitled to up to \$1,120 of presentencing credit.

¶ 9 The credit under section 110-14 of the Code can only be applied to offset fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 580 (2006). To determine whether an assessment is a fine or a fee, we consider the nature of the assessment, rather than its statutory label. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). A “fine” is punitive in nature and is imposed as part of a sentence on

a person convicted of a criminal offense. *Id.* A “fee” is a charge that seeks to recoup expenses incurred by the State in prosecuting the defendant. *Id.* The legislature’s label is strong evidence of whether the charge is a fee or a fine, but the most important factor is whether the charge seeks to compensate the State for any cost incurred as a result of prosecuting the defendant. *Id.*

¶ 10 The parties agree, and we concur, that the \$15 State Police Operations Assistance fee (705 ILCS 105/27.3a(1.5) (West 2016)), despite being labeled a “fee,” is actually a fine. See *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31. Accordingly, it should be offset by defendant’s presentence incarceration credit.

¶ 11 Next, defendant argues that four additional assessments labeled as “fees” are actually fines subject to offset by his presentence custody credit, specifically: the \$15 Automation fee (705 ILCS 105/27.3a(1) (West 2016)), the \$2 State’s Attorney Records Automation fee (55 ILCS 5/4-2002.1(c) (West 2016)), the \$2 Public Defender Records Automation fee (55 ILCS 5/3-4012 (West 2016)), and the \$15 Document Storage fee (705 ILCS 105/27.3c(a) (West 2016)). However, this court has previously considered challenges to these four assessments and found them to be fees, not fines, and therefore they cannot be offset by the \$5-per-day presentence custody credit. *People v. Brown*, 2017 IL App (1st) 142877, ¶ 81 (finding that the Document Storage fee and Automation fee are fees not subject to offset by presentence incarceration credit); *People v. Brown*, 2017 IL App (1st) 150146, ¶ 38 (finding that the State’s Attorney’s and the Public Defender’s records automation fees are fees, not fines). We adhere to the reasoning in our prior decisions and find that these assessments are fees. As such, defendant is not entitled to offset these fees with his presentence custody credit.

¶ 12 For these reasons, we modify the fines, fees, and costs order to reflect a credit of \$15 to offset the \$15 State Police Operations Fee, in addition to the previous \$50 credit against his assessments for the Children's Advocacy Center, Mental Health Court, Youth Diversion/Peer Court and Drug Court fines. After reducing the total amount of the fines and fees (\$199) by the amount of fines subject to offset (\$65), the correct total owed by defendant is \$134.

¶ 13 We affirm the judgment of the circuit court of Cook County in all other respects.

¶ 14 Affirmed; fines, fees, and costs order modified.