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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of
	)	Cook County.
Plaintiff-Appellee,	)	
	)	No. 16 CR 12149
v.	)	
	)	Honorable Vincent M. Gaughan,
CALVIN MANN,	)	Judge presiding.
	)	
Defendant-Appellant.	)	

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JUSTICE GRIFFIN delivered the judgment of the court.  
Justices Pierce and Walker concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's conviction for possession of a controlled substance is affirmed and the fines, fees, and costs order is modified.

¶ 2 Following a jury trial, defendant Calvin Mann was convicted of possession of a controlled substance (720 ILCS 570/402(c) (West 2016)) and sentenced to 15 months' probation. Defendant was given credit for 209 days in custody and assessed a total of \$489 in fines and fees. On appeal, defendant contends that the order assessing fees and fines should be corrected to vacate an improperly assessed fee and to apply his monetary presentence custody credit to seven fees that are actually fines. We affirm and modify the fines, fees, and costs order.

¶ 3 Defendant was charged by indictment with one count of delivery of a controlled substance (720 ILCS 570/401(d) (West 2016)) and one count of possession of a controlled substance with intent to deliver (720 ILCS 570/401(d)(West 2016)). We set forth the facts of the instant case only to the extent necessary for the resolution of the issues on appeal.

¶ 4 Defendant was arrested on July 7, 2016, in the vicinity of 60th Street and Indiana Avenue after he gave undercover Chicago police officer Kevin Drumgoole two bags of heroin in exchange for \$20 of pre-recorded 1505 funds. Officer Kal Harris, who was acting as an enforcement officer, detained defendant until Drumgoole identified him via police radio. After the positive identification, defendant was arrested and searched. Harris recovered an additional bag of heroin from defendant's right front pants pocket and \$5 but did not recover the 1505 funds. The parties stipulated that the two bags of heroin that defendant sold Drumgoole tested positive for heroin in the amount of .3 grams and the one bag recovered by Harris tested positive for heroin in the amount of .2 grams.

¶ 5 The jury returned a verdict of not guilty of delivery of a controlled substance and guilty as to the lesser offense of possession of a controlled substance. Defendant's motion for new trial was denied. After hearing arguments in aggravation and mitigation, the court sentenced defendant to 15 months' intensive drug probation with 180 days in Cook County Jail time considered served. The court also assessed defendant \$489 in fines, fees, and costs and gave him credit for 209 days he spent in custody prior to sentencing.

¶ 6 On appeal defendant contends his fines, fees, and costs order must be amended. Defendant argues that he was improperly assessed a \$20 Probable Cause fee and that seven

charges that were labeled as fees totaling \$309 should have been offset by his presentence monetary credit.

¶ 7 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). Nevertheless, he urges this court to review his assessments under the plain error doctrine. The State acknowledges the forfeiture, but citing *People v Cox*, 2017 IL App (1st) 151536, ¶ 102, asserts that defendant's claims may be considered under the plain error doctrine.

¶ 8 Since the State has responded that defendant's claims regarding fines and fees are properly reviewed as plain error, the State has waived any forfeiture argument. *People v. Brown*, 2018 IL App (1st) 160924, ¶ 25; *People v. Smith*, 2018 IL App (1st) 151402, ¶ 7. As such, we will address defendant's claims. Our review of the propriety of the trial court's imposition of fines and fees is *de novo*. *Brown*, 2018 IL App (1st) 160924, ¶ 25, *Smith*, 2018 IL App (1st) 151402, ¶ 7.

¶ 9 Turning to the disputed fines and fees, the parties agree and we concur that the \$20 probable cause hearing fee (55 ILCS 5/4-2002.1(a) (West 2016)) must be vacated as that fee only applies to cases where a preliminary hearing was held. Here, defendant was charged by indictment and no preliminary hearing was held. Thus, we vacate the \$20 probable cause hearing fee and direct the clerk of the circuit court to amend the fines, fee and costs order accordingly. *People v. Guja*, 2016 IL App (1st) 140046, ¶ 69.

¶ 10 Next, defendant argues that the \$15 State Police Operations fee (705 ILCS 105/27.3a-1.5 (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)), the

\$190 Felony Complaint Filing fee (705 ILCS 105/27.2(w)(1)(A) (West 2016)), the \$25 Automation fee (705 ILCS 105/27.3a(1) (West 2016)), the \$25 Document Storage fee (705 ILCS 105/27.3c(a) (West 2016)), and the \$50 Court Systems fee (55 ILCS 5/5-1101(c)(1) (West 2016)) are all fines and therefore, are subject to be offset by his \$5-per-day presentence incarceration credit.

¶ 11 A defendant incarcerated on a bailable offense who does not supply bail, and against whom a fine is levied, is allowed a credit of \$5 for each day spent in presentence custody. 725 ILCS 5/110-14(a) (West 2014). Here, defendant received credit for 209 days in custody prior to sentencing for a total monetary credit of \$1045.

¶ 12 Defendant argues that he is entitled to use this credit to offset the applicable fines assessed against him. See *People v. Jones*, 223 Ill. 2d 569, 599 (2006) (“[T]he credit for presentence incarceration can only reduce fines, not fees.”). “Broadly speaking, a ‘fine’ is a part of the punishment for a conviction, whereas a ‘fee’ or ‘cost’ seeks to recoup expenses incurred by the State.” *Id.* at 582. A “fine” is punitive in nature and is imposed as part of a sentence on a person convicted of a criminal offense. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). A “fee” is a charge that seeks to recoup expenses incurred by the State in prosecuting the defendant. *Id.* The legislature’s label for a charge 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.*

¶ 13 The State concedes that the \$15 State Police Operations fee and the \$50 Court System fee are all fines subject to be offset. See *People v. Jones*, 223 Ill. 2d 569, 581-82 (2006) (holding the State Police Operations Assistance fee does constitute a fine that can be offset by defendant’s

presentencing incarceration credit); *People v. Brown*, 2017 IL App (1st) 150146, ¶ 37 (defendant may apply his presentence incarceration credit toward the \$50 Court System fee). We agree with the parties that these two charges, totaling \$65, should be offset by defendant's presentence incarceration credit.

¶ 14 As to the remaining assessments, defendant argues that a portion of his presentence custody credit should be applied to: the \$190 Felony Complaint Filing fee (705 ILCS 105/27.2a(w)(1)(A) (West 2012)); the \$15 Automation fee (705 ILCS 105/27.3a(1) (West 2012)); the \$25 Document Storage fee (705 ILCS 105/27.3c(a) (West 2012)); the \$2 State's Attorney Records Automation fee (55 ILCS 5/4-2002.1(c) (West 2012)); and the \$2 Public Defender Records Automation fee (55 ILCS 5/3-4012 (West 2016)). However, our supreme court has recently held that these five assessments are fees, not fines and therefore, not subject to presentence credit. *People v. Clark*, 2018 IL 122495, ¶¶ 22, 27, 34, 41, 49. Therefore, we find that these fees are not entitled to be offset by defendant's presentence credit.

¶ 15 In sum, the \$20 probable cause hearing fee is vacated; the \$50 Court System fee and the \$15 State Police Operations fee are offset by defendant's presentence custody credit. Defendant's amended total amount due should be reduced by \$85 for a total of \$404. We direct the clerk of the circuit court to modify the fines, fees and costs order accordingly. We affirm defendant's conviction and sentence in all other respects.

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