No. 122495

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- DENNIS CLARK Defendant-Appellant	)))))))))))	Appeal from the Appellate Court of Illinois, No. 1-15-0740. There on appeal from the Circuit Court of Cook County, Illinois, No. 13 CR 21421. Honorable Rickey Jones, Judge Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

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ORAL ARGUMENT REQUESTED

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SUPREME COURT CLERK

POINT AND AUTHORITIES Page

NATURE OF THE CASE

Dennis Clark was convicted of delivery of a controlled substance after a jury trial and was sentenced to 15 years' imprisonment.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

ISSUE PRESENTED FOR REVIEW

Whether the following charges are fines subject to offset by a defendant's $5 per day presentence incarceration credit: $2 Public Defender Records Automation; $2 State's Attorney Records Automation; $190 Felony Complaint Filed (Clerk); $15 Automation (Clerk); and $15 Document Storage (Clerk).

STATUTES AND RULES INVOLVED

725 ILCS 5/110-14. Credit for Incarceration on Bailable Offense.

> (a) Any 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. However, in no case shall the amount so allowed or credited exceed the amount of the fine.
>
> * * *

55 ILCS 5/4012. Public defender's fees in counties of 3,000,000 or more population.

> Public defender's fees in counties of 3,000,000 or more population. The Cook County Public Defender shall be entitled to a $2 fee to be paid by the defendant on a judgment of guilty or a grant of supervision for a violation of any provision of the Illinois Vehicle Code or any felony, misdemeanor, or petty offense to discharge the expenses of the Cook County Public Defender's office for establishing and maintaining automated record keeping systems. The fee shall be remitted monthly to the county treasurer, to be deposited by him or her into a special fund designated as the Public Defender

Records Automation Fund. Expenditures from this fund may be made by the Public Defender for hardware, software, research, and development costs and personnel related thereto.

55 ILCS 5/4-2002.1. State's attorneys fees in counties of 3,000,000 or more population.

This Section applies only to counties with 3,000,000 or more inhabitants.

* * *

(c) State's attorneys shall be entitled to a $2 fee to be paid by the defendant on a judgment of guilty or a grant of supervision for a violation of any provision of the Illinois Vehicle Code or any felony, misdemeanor, or petty offense to discharge the expenses of the State's Attorney's office for establishing and maintaining automated record keeping systems. The fee shall be remitted monthly to the county treasurer, to be deposited by him or her into a special fund designated as the State's Attorney Records Automation Fund. Expenditures from this fund may be made by the State's Attorney for hardware, software, research, and development costs and personnel related thereto.

* * *

705 ILCS 105/27.2a. Fees; counties of 3,000,000 or more population.

The fees of the clerks of the circuit court in all counties having a population of 3,000,000 or more inhabitants in the instances described in this Section shall be as provided in this Section. In those instances where a minimum and maximum fee is stated, the clerk of the circuit court must charge the minimum fee listed and may charge up to the maximum fee if the county board has by resolution increased the fee. The fees shall be paid in advance and shall be as follows:

* * *

(w) Criminal and Quasi-Criminal Costs and Fees.

(1) The clerk shall be entitled to costs in all criminal and quasi-criminal cases from each person convicted or sentenced to supervision therein as follows:

(A) Felony complaints, a minimum of $125 and a maximum of $190.

(B) Misdemeanor complaints, a minimum of $75 and a

maximum of $110.

(C) Business offense complaints, a minimum of $75 and a maximum of $110.

(D) Petty offense complaints, a minimum of $75 and a maximum of $110.

(E) Minor traffic or ordinance violations, $30.

(F) When court appearance required, $50.

(G) Motions to vacate or amend final orders, a minimum of $40 and a maximum of $80.

(H) Motions to vacate bond forfeiture orders, a minimum of $30 and a maximum of $45.

(I) Motions to vacate ex parte judgments, whenever filed, a minimum of $30 and a maximum of $45.

(J) Motions to vacate judgment on forfeitures, whenever filed, a minimum of $25 and a maximum of $30.

(K) Motions to vacate "failure to appear" or "failure to comply" notices sent to the Secretary of State, a minimum of $40 and a maximum of $50.

(2) In counties having a population of 3,000,000 or more, when the violation complaint is issued by a municipal police department, the clerk shall be entitled to costs from each person convicted therein as follows:

(A) Minor traffic or ordinance violations, $30.

(B) When court appearance required, $50.

(3) In ordinance violation cases punishable by fine only, the clerk of the circuit court shall be entitled to receive, unless the fee is excused upon a finding by the court that the defendant is indigent, in addition to other fees or costs allowed or imposed by law, the sum of a minimum of $112.50 and a maximum of $250 as a fee for the services of a jury. The jury fee shall be paid by the defendant at the time of filing his or her jury demand. If the fee is not so paid by the defendant, no jury shall be called, and the case shall be tried by the court without a jury.

* * *

(gg) Unpaid fees.

Unless a court ordered payment schedule is implemented or the fee requirements of this Section are waived pursuant to court order, the clerk of the court may add to any unpaid fees and costs under this Section a delinquency amount equal to 5% of the unpaid fees that remain unpaid after 30 days, 10% of the unpaid fees that remain unpaid after 60 days, and 15% of the unpaid fees that remain unpaid after 90 days. Notice to those parties may be made by signage posting or publication. The additional delinquency amounts collected under this Section shall be used to defray additional administrative costs incurred by the clerk of the circuit court in collecting unpaid fees and costs.

705 ILCS 105/27.3a. Fees for automated record keeping, probation and court services operations, and State and Conservation Police operations.

1. The expense of establishing and maintaining automated record keeping systems in the offices of the clerks of the circuit court shall be borne by the county. To defray such expense in any county having established such an automated system or which elects to establish such a system, the county board may require the clerk of the circuit court in their county to charge and collect a court automation fee of not less than $1 nor more than $25 to be charged and collected by the clerk of the court. Such fee shall be paid at the time of filing the first pleading, paper or other appearance filed by each party in all civil cases or by the defendant in any felony, traffic, misdemeanor, municipal ordinance, or conservation case upon a judgment of guilty or grant of supervision, provided that the record keeping system which processes the case category for which the fee is charged is automated or has been approved for automation by the county board, and provided further that no additional fee shall be required if more than one party is presented in a single pleading, paper or other appearance. Such fee shall be collected in the manner in which all other fees or costs are collected.

* * *

2. With respect to the fee imposed under subsection 1 of this Section, each clerk shall commence such charges and collections upon receipt of written notice from the chairman of the county board together with a certified copy of the board's resolution, which the clerk shall file of record in his office.

3. With respect to the fee imposed under subsection 1 of this Section, such fees shall be in addition to all other fees and charges of such clerks, and assessable as costs, and may be waived only if the judge specifically provides for the waiver of the court automation fee. The fees shall be remitted monthly by such clerk to the county treasurer, to be retained by him in a special fund designated as the court automation fund. The fund shall be audited by the county auditor, and the board shall make expenditure from the fund

in payment of any cost related to the automation of court records, including hardware, software, research and development costs and personnel related thereto, provided that the expenditure is approved by the clerk of the court and by the chief judge of the circuit court or his designate.

4. With respect to the fee imposed under subsection 1 of this Section, such fees shall not be charged in any matter coming to any such clerk on change of venue, nor in any proceeding to review the decision of any administrative officer, agency or body.

* * *

705 ILCS 105/27.3c. Document storage system.

(a) The expense of establishing and maintaining a document storage system in the offices of the circuit court clerks in the several counties of this State shall be borne by the county. To defray the expense in any county that elects to establish a document storage system and convert the records of the circuit court clerk to electronic or micrographic storage, the county board may require the clerk of the circuit court in its county to collect a court document fee of not less than $1 nor more than $25, to be charged and collected by the clerk of the court. The fee shall be paid at the time of filing the first pleading, paper, or other appearance filed by each party in all civil cases or by the defendant in any felony, misdemeanor, traffic, ordinance, or conservation matter on a judgment of guilty or grant of supervision, provided that the document storage system is in place or has been authorized by the county board and further that no additional fee shall be required if more than one party is presented in a single pleading, paper, or other appearance. The fee shall be collected in the manner in which all other fees or costs are collected.

(b) Each clerk shall commence charges and collections of a court document fee upon receipt of written notice from the chairman of the county board together with a certified copy of the board's resolution, which the clerk shall file of record in his or her office.

(c) Court document fees shall be in addition to other fees and charges of the clerk, shall be assessable as costs, and may be waived only if the judge specifically provides for the waiver of the court document storage fee. The fees shall be remitted monthly by the clerk to the county treasurer, to be retained by the treasurer in a special fund designated as the Court Document Storage Fund. The fund shall be audited by the county auditor, and the board shall make expenditures from the fund in payment of any costs relative to the storage of court records, including hardware, software, research and development costs, and related personnel, provided that the expenditure is approved by the clerk of the circuit court.

(d) A court document fee shall not be charged in any matter coming to the

clerk on change of venue or in any proceeding to review the decision of any administrative officer, agency, or body.

STATEMENT OF FACTS

Following the controlled purchase of cocaine by an undercover police officer in October 2014, Dennis Clark was charged with delivery of less than one gram of cocaine. (C. 21) After a jury trial, Clark was found guilty and sentenced to 15 years' imprisonment. (C. 111) The trial court also imposed various fines and fees, including the following charges: $2 Public Defender Records Automation; $2 State's Attorney Records Automation; $190 Felony Complaint Filed, (Clerk); $15 Automation (Clerk); and $15 Document Storage (Clerk). (C. 111-114, R. O9)

On appeal, Clark argued, *inter alia*, that the abovementioned assessments, though labeled fees, are actually fines subject to offset by his presentence credit. *People v. Clark*, 2017 IL App (1st) 150740-U, ¶ 21. Relying on previous appellate court decisions, and without analyzing the statutes authorizing the charges at issue, the appellate court rejected Clark's argument, finding that they are fees and therefore not subject to offset by his presentence incarceration credit. *Id.* at ¶¶22-22, 25, *citing People v. Warren*, 2016 IL App (4th) 120721-B, *People v. Bowen*, 2015 IL App (1st) 132046, *People v. Tolliver*, 363 Ill. App. 3d 94 (1st Dist. 2006), *People v. Bingham*, 2017 IL App (1st) 143150, and *People v. Brown*, 2017 IL App (1st) 142877.

No petition for rehearing was filed. This Court granted leave to appeal on September 27, 2017. [1]

[1] Upon further consideration, Appellant withdraws his challenge to the Court Services (Sheriff) fee.

ARGUMENT

The appellate court erroneously held the following charges are fees and are therefore not subject to offset by Dennis Clark's $5 per day presentence incarceration credit: $2 Public Defender Records Automation; $2 State's Attorney Records Automation; $190 Felony Complaint Filed, (Clerk); $15 Automation (Clerk); and $15 Document Storage (Clerk).

The appellate court erroneously held that the following charges are fees, which Dennis Clark was not entitled to have offset by his presentence incarceration credit: $2 Public Defender Records Automation; $2 State's Attorney Records Automation; $190 Felony Complaint Filed, (Clerk); $15 Automation (Clerk); and $15 Document Storage (Clerk). *People v. Clark*, 2017 IL App (1st) 150740-U, ¶¶21-23, 25. The appellate court simply relied on previous decisions finding the charges to be fees and failed to actually analyze the statutes at issue. An examination of the five authorizing statutes and legislative history reveals that the charges at issue in this case while labeled "fees," are actually fines. These charges are merely general revenue generators for the county or are related to maintaining and operating the court system as a whole, irrespective of specific violations of law, and do not reimburse the state for costs incurred as a result of the defendant's prosecution. Because the legislature intended these charges as fines, the appellate court erred in finding they are fees, and therefore not subject to offset by Clark's presentence credit.

Section 110-14(a) of the Code of Criminal Procedure, which authorizes presentence credit provides:

> Any 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. However, in no case shall the amount so allowed or credited exceed the amount of the fine.

725 ILCS 5/110-14(a) (2015). Clark was incarcerated on a bailable offense for 482 days prior to sentencing and was therefore entitled to a credit of up to $2,410. *Clark*, 2017 IL App (1st) 150740-U, ¶19. Credit under Section 110-14(a) only offsets fines, not fees; therefore, whether Clark is entitled to credit against the five charges at issue in this case turns solely on whether those charges are fines or fees.

The determination of whether a charge is a fine or a fee involves a question of statutory construction, which is a matter of law that is reviewed *de novo*. *People v. Jones*, 223 Ill. 2d 569, 580 (2006).

The fundamental rule of statutory construction is to ascertain and give effect to the legislature's intent. *Id*. "[C]ourts should consider the statute in its entirety, keeping in mind the subject it addresses, and the legislature's apparent objective in enacting it." *Id*. Statutory language, given its plain and ordinary meaning is the best indicator of legislative intent. *Id*. If the plain language of a statute is "capable of being understood by reasonably well-informed persons in two or more different senses," it is ambiguous. *In re Marriage of Goesel*, 2017 IL 122046, ¶13; See, *e.g., People v. Graves*, 235 Ill. 2d 244, 251 (2009) (finding a statute ambiguous where the charge was delineated as a "fee," but was characteristic of a fine). Where statutory language is unclear and ambiguous, the reviewing court can turn to further aids of statutory construction. *Jones*, 223 Ill. 2d at 580. To resolve ambiguity, this Court can examine legislative history and debates related to the statute, and consider the purposes and underlying policies of that statute. *Advincula v. Untied Blood Services*, 176 Ill. 2d 1, 19 (1997).

In *Jones*, 223 Ill. 2d 569 (2006), and then again in *People v. Graves*, 235 Ill. 2d 244 (2009), this Court clarified that fines and fees are distinguished based

on their purpose. *Jones*, 223 Ill. 2d at 581-582, 599-600*; Graves*, 235 Ill. 2d at 250. "Broadly speaking, a 'fine' is part of the punishment for a conviction, whereas a 'fee' or 'cost' seeks to recoup expenses incurred by the state – to 'compensate' the state for some expenditure incurred in prosecuting the defendant." *Jones*, 223 Ill. 2d at 582. A charge that is labeled a fee by the legislature may be a fine, notwithstanding the words actually used by the legislature. *Id*. at 599-600; *Graves*, 235 Ill. 2d at 250. "The legislature's label is strong evidence, but it cannot overcome the actual attributes of the charge at issue." *Jones*, 223 Ill. 2d at 599-600. "A charge is a fee if and only if it is intended to reimburse the state for some cost incurred in defendant's prosecution." *Jones*, 223 Ill. 2d at 600. Indeed, "[t]his is the *central* characteristic which separates a fee from a fine." *Id*. (emphasis in original). Additional factors considered by reviewing courts are whether the charge is only imposed after conviction and to whom the payment is made. *Graves*, 235 Ill. 2d at 251. However, as clarified by this Court in *Graves*, when deciding whether a particular assessment is a fine or a fee, "the most important factor is whether the charge seeks to compensate the state for costs incurred as the result of prosecuting the defendant." *Id*.

The five charges at issue in this case are referred to in their authorizing statutes as fees and/or costs, but their attributes are characteristic of fines. These statues are ambiguous and legislative intent cannot be determined by relying on the plain language alone. Applying the rules and principles summarized above, it is clear that the five charges in this case were intended to finance the court system as a whole, or simply generate revenue for the county, and were not intended to reimburse the state for an expense incurred as a result of the defendant's

prosecution. Accordingly, these charges, though labeled fees, are fines and are subject to offset by a defendant's presentence credit.

(a) Public Defender Records Automation

Clark was assessed a $2 Public Defender Records Automation Charge pursuant to 55 ILCS 5/3-4012, which provides:

> The Cook County Public Defender shall be entitled to a $2 fee paid by the defendant on a judgment of guilty or a grant of supervision for a violation of any provision of the Illinois Vehicle Code or any felony, misdemeanor, or petty offense to discharge the expenses of the Cook County Public Defender's Office for establishing and maintaining automated record keeping systems. The fee shall be remitted monthly to the county treasurer, to be deposited by him or her into a special fund designated as the Public Defender Records Automation Fund. Expenditures from this fund may be made by the Public Defender for hardware, software, research, and development costs and personnel related hereto.

55 ILCS 5/3-4012 (2015); (C. 113). The appellate court erroneously, and without analyzing the authorizing statute, found the Public Defender Records Automation charge to be a fee. *Clark*, 2017 IL App (1st) 150740-U, ¶¶21-22, *citing People v. Bowen*, 2015 IL App (1st) 132046, ¶¶63-65.

Although the legislature labeled this charge a "fee," that label is not controlling, and cannot overcome the attributes of the charge, which show that it is a fine. *Graves*, 235 Ill. 2d at 250; *Jones*, 223 Ill. 2d at 599-600. First, the Public Defender Records Automation charge is only assessed against defendants "on a judgment of guilty or a grant of supervision." 55 ILCS 5/3-4012. The fact that this charge is only assessed against defendants upon conviction indicates that it is a fine. See *Graves*, 235 Ill. 2d at 252 (that a charge is imposed only after conviction is an attribute of a fine); *Jones*, 223 Ill. 2d at 600 (same). Moreover,

the statute provides that the charge is mandatory: the "Cook County Public Defender *shall* be entitled to a $2 fee to be paid by the defendant." 55 ILCS 5/3-4012. The mandatory nature of this assessment further indicates that it is a fine. *People v. Jones*, 397 Ill. App. 3d 651, 660 (1st Dist. 2009) (fact that a charge is mandatory for convicted defendants indicates it is a fine); *People v. Price,* 375 Ill. App. 3d 684, 701 (1st Dist. 2007)(mandatory nature of a charge indicates that it is a fine).

Additionally, this charge is imposed on all defendants, regardless of whether the defendant was represented by the Public Defender. As the statute requires, this charge is imposed upon "a judgment of guilty * * * [for] *any* felony, misdemeanor, or petty offense." 55 ILCS 5/3-4012. By not limiting the imposition of this charge to defendants represented by the Public Defender, it is clear that the legislature did not intend for it to be compensatory. 55 ILCS 5/3-4012; *People v. Camacho,* 2016 IL App (1st) 140604, ¶51 ("If the assessment can be imposed against a defendant when the public defender had absolutely no involvement in his or her case, the assessment's purpose is not to compensate the state for costs associated with prosecuting a particular defendant.").

Clark acknowledges that some courts have vacated the Public Defender Records Automation charge, finding it inapplicable, where the defendant was represented by private counsel. See *People v. Jackson*, 2016 IL App (1st) 141448, ¶36 (vacating charge because defendant was represented by private counsel); *People v. Taylor*, 2016 IL App (1st) 141251, ¶30 (same); *People v. Brown*, 2017 IL App (1st) 142877, ¶78 (same); *cf Camacho*, 2016 IL App (1st) 140604, ¶51 (authorizing statute provides that the charge can be imposed against all defendants, irrespective of whether the defendant was represented by the Public Defender).

The authorizing statute, however, does not expressly provide for this exception, and it is improper to read such an exception into the statute. See *Evanston Insurance Co. v. Riseborough*, 2014 IL 114271, ¶15 (absent express language in the statute providing an exception or limitation, courts should not depart from the plain language and read into the statute exceptions, limitations, or conditions that the legislature did not express). Had the legislature intended for this assessment to not be assessed against defendants represented by private counsel, then it would have included language to that effect, but it did not.

Even assuming *arguendo* that the Public Defender Records Automation charge cannot be assessed against defendants represented by private counsel, it still operates as a fine because it is not intended to reimburse for costs related to defendant's prosecution. The purpose of this assessment is to "discharge the expenses of the Cook County Public Defender's Office for establishing and maintaining automated record keeping systems." 55 ILCS 5/3-4012. As the statute explicitly states, money collected from this charge is used for "hardware, software, research, and development costs and personnel related thereto." 55 ILCS 5/3-4012. The cost of developing and researching automated record keeping systems within the Public Defender's Office is not a cost associated with the defendant's prosecution. *Camacho*, 2016 IL App (1st) 140604, ¶50. This charge simply finances the record keeping systems of the Public Defender's Office as a whole. See *Graves*, 235 Ill. 2d at 250 (in determining whether a charge is a fine or fee, "the most important factor is whether the charge seeks to compensate the state for any costs incurred as a result of prosecuting the defendant").

Had the legislature intended this charge to be compensatory, rather than

punitive, it would have designated that the funds be used to pay for expenses related to systems used to automate records specifically related to the prosecution of a defendant, not the record keeping systems of the Public Defender's Office generally. The absence of such a limitation on the use of funds collected from the Public Defender Records Automation charge indicates that the legislature did not intend for it to be compensatory, but to provide general funding for the technological advancement of the Public Defender's Office as a whole. It is therefore punitive and a fine.

Several cases have found this assessment to be a fee. See *People v. Bowen*, 2015 IL App (1st) 132046, ¶64 (relying on *People v. Rogers*, 2014 IL App (4th) 121088, which found the State's Attorney Records Automation charge to be a fee); *People v. Reed*, 2016 IL App (1st) 140498, ¶17 (relying on *Bowen*, finding that this charge is a fee because the public defender would have used record systems in representing the defendant); *People v. Green*, 2016 IL App (1st) 134011, ¶46 (relying on *Bowen*); *People v. Murphy*, 2017 IL App (1st) 142092, ¶¶18-21 (relying on *Bowen*, *Green, Reed,* and *People v. Maxey*, 2016 IL App (1st) 130698, ¶44) [2]; *People v. Brown*, 2017 IL App (1st) 150146, ¶¶75-76 (relying on *Murphy*, *Bowen*, and *Reed*, finding this charge is a fee because it is "designed to compensate [the Public Defender's Office] for expenses [it] incur[s] in updating their automated record-keeping systems while…defending criminal defendants"); *People v. Jones*,

[2] *People v. Maxey*, 2016 IL App (1st) 130698, was vacated by this Court in – N.E.3d – (2017), pursuant to its supervisory authority, directing the appellate court to reconsider its decision in light of *People v. Wright*, 2017 IL 119561, on the issue of whether defendant's waiver of counsel was invalid based on the Rule 401 (a) admonishments, and determine if a different result is warranted. The First District has not yet re-decided *Maxey*.

2017 IL App (1st) 143766, ¶53 (relying on *Bowen*, *Rogers*, and *People v. Taylor*, 2016 IL App (1st) 141251, ¶29). These cases, however, were wrongly decided, as the courts failed to independently analyze the statute authorizing the Public Defender Records Automation charge.

Moreover, none of these cases, with the exception of *Reed* and *Brown*, offered any analysis as to how this charge reimburses for a cost incurred as the result of a particular defendant's prosecution. The *Reed* Court found that counsel would have used the record systems of the Public Defender Office in representing the defendant, and the *Brown* Court found that the charge was designed to compensate the Public Defender's Office for expenses it incurs in updating their automated record keeping systems while defending criminal defendants. *Reed*, 2016 IL App (1st) 132046, ¶17; *Brown*, 2017 IL App (1st) 150146, ¶38. However, neither court considered the essential character of the charge, which mandates that it assessed against *all* defendants, regardless of whether they were represented by the Public Defender, and that the statute does not limit the use of funds collected to client related record keeping systems.

The language of the authorizing statute demonstrates that the legislature intended for this charge to finance the technological advancement of the Public Defender's Office as a whole. *Camacho*, 2016 IL App (1st) 140604, ¶50. As the appellate court in *Camacho* correctly found, "[i]t cannot be said that the costs associated with developing and researching automated record keeping systems is a cost associated with prosecuting a particular defendant." *Id.* *Jones* and *Graves* clearly establish "that for an assessment to be a fee, it must not merely compensate the state for any expense, but rather expenses incurred in the prosecution of the

defendant." *Id*. at ¶48, *citing Jones*, 223 Ill. 2d at 599-600, and *Graves*, 235 Ill. 2d at 250. Though the legislature has labeled this charge a "fee," the actual attributes of the Public Defender Records Automation charge establish that it is a fine, as it does not compensate the state for costs "incurred *as the result of* prosecuting the defendant." *Graves*, 235 Ill. 2d at 250 (emphasis added). For the reasons explained above, this Court should find the Public Defender Records Automation charge is a fine subject to offset by a defendant's presentence credit.

(b) State's Attorney Records Automation

Clark was also assessed the $2 State's Attorney Records Automation charge pursuant to 55 ILCS 5/4-2002.1(c), which provides:

> State's attorneys shall be entitled to a $2 fee to be paid by the defendant on a judgment of guilty or a grant of supervision for a violation of any provision of the Illinois Vehicle Code or any felony, misdemeanor, or petty offense to discharge the expenses of the State's Attorney's office for establishing and maintaining automated record keeping systems. The fee shall be remitted monthly to the county treasurer, to be deposited by him or her into a special fund designated as the State's Attorney Records Automation Fund. Expenditures from this fund may be made by the State's Attorney for hardware, software, research, and development costs and personnel related thereto.

55 ILCS 5/4-2002.1(c) (2015); (C. 113). The appellate court in this case failed to analyze the statute authorizing this charge and erroneously found it to be a fee. *Clark*, 2017 IL App (1st) 150740-U, ¶¶21-22, *citing People v. Warren*, 2016 IL App (4th) 120721-B, ¶¶114-116, and *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶63-65. Although the legislature has labeled the State's Attorney Records Automation charge a "fee," that label is not controlling, and cannot overcome the actual attributes of the charge. *Graves*, 235 Ill. 2d at 250; *Jones*, 223 Ill. 2d at

599-600.

Like the Public Defender Records Automation charge discussed in subsection (a), *supra*, the State's Attorney Records Automation charge, though labeled a fee, is actually a fine. It is only assessed upon conviction, which is indicative of it being a fine. See *Graves*, 235 Ill. 2d at 252; *Jones*, 223 Ill. 2d at 600. It is also mandatory in nature, further indicating that it is a fine. See *Jones*, 397 Ill. App. 3d at 660; *Price* 375 Ill. App. 3d at 701. Moreover, as the statute dictates, funds from this assessment are to be used for "hardware, software, research, and development costs and personnel related thereto." 55 ILCS 5/4-2002.1(c). Because these expenditures are not related to the defendant's prosecution, and are not costs incurred by the state in prosecuting the defendant, this assessment is punitive. See *Graves*, 235 Ill. 2d at 250; *Camacho*, 2016 IL App (1st) 140604, ¶50 (cost of developing and researching automated record keeping systems is not a cost associated with a defendant's prosecution).

Moreover, had the legislature intended that the State's Attorney Records Automation charge be compensatory, rather than punitive, then it would have specified that it can only be used to pay for expenses related to systems used in the automation of records related to the prosecution, not automated record keeping systems of the State's Attorney's Office generally. The absence of any such language indicates that it was not intended to be compensatory, but to provide general funding for the technological advancement of the State's Attorney's Office as a whole.

Several cases have found this assessment to be a fee. See *People v. Warren*, 2014 IL App (4th) 120721, ¶¶107-109 (finding that the plain language of the statute authorizing the State's Attorney Records Automation charge "evidences the

legislature's intent [that] the $2 assessment be compensatory in nature" as it is "is to be used to 'discharge the expenses of the State's Attorney's office for establishing and maintaining automated record keeping systems'")[3]; *People v. Rogers,* 2014 IL App (4th) 121088*,* ¶30 (rejecting the State's concession that the $2 State's Attorney Records Automation charge is a fine, relying on *Warren* to find that it is a fee); *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶63-65 (relying on *Rogers*); *People v. Reed,* 2016 IL App (1st) 140498, ¶16 (relying on *Rogers* and *Bowen*); *People v. Carter*, 2016 IL App (3d) 140196, ¶60 (finding the charge to be a fee without any analysis); *People v. Jackson*, 2016 IL App (1st) 141448, ¶35 (relying on *Reed* and *Rogers*); *People v. Taylor*, 2016 IL App (1st) 141251, ¶29 (same); *People v. Heller*, 2017 IL App (4th) 140658, ¶74 (relying on *Warren*); *People v. Murphy*, 2017 IL App (1st) 142092, ¶¶19-20 (relying on *Warren*, *Taylor*, *Reed*, and *Rogers*); *People v. Brown*, 2017 IL App (1st) 142877 (same); *People v. Brown*, 2017 IL App (1st) 150146, ¶¶75-76 (relying on *Brown*, *Murphy*, *Bowen*, and *Reed*); *People v. Jones*, 2017 IL App (1st) 143766, ¶53 (relying on *Taylor*, *Bowen*, and *Rogers*); and *People v. Maggio*, 2017 IL App (4th) 150287, ¶54 (relying on *Warren*). These cases, however, were wrongly decided.

As the *Camacho* Court held, reviewing courts have "simply relied on previous decisions without any meaningful analysis" of the authorizing statute, and *Warren* "is the seed from which all these decisions have stemmed." *Camacho*, 2016 IL

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[3] The appellate court's decision in *People v. Warren*, 2014 IL App (4th) 120721, was vacated by this Court in 45 N.E.3d 628 (2016), pursuant to its supervisory authority, directing the appellate court to reconsider its decision in light of *People v. Castleberry*, 2015 IL 116916. The appellate court re-decided the case in *People v. Warren*, 2016 IL App (4th) 120721-B, ¶¶114-116, which again held that the State's Attorney Records Automation assessment was a fee, using its verbatim language from the original *Warren* decision in 2014.

App (1st) 140604, ¶52. The *Warren* Court found that based on the plain language of the statute, the legislature intended the charge "be compensatory" because it is "used to 'discharge the expenses of the State's Attorney's office for establishing and maintaining automated record keeping systems[,]'" and because it is "intended to reimburse the State's Attorneys for their expenses related to automated record-keeping systems," "it is not punitive in nature." *Warren*, 2016 IL (4th) 120721-B, ¶115.

The *Warren* court, however, failed to conduct any meaningful analysis of statutory language and did not consider the actual attributes of the charge. The Court did not consider that the charge was imposed upon conviction and was mandatory, both of which are indicative of it being a fine. Additionally, *Warren* did not consider that expenditures from the fund can be used for "hardware, software, research, and development costs and personnel related thereto" – which are expenditures not resulting from the defendant's prosecution, and that the legislature chose to use language that did not limit the use of funds to automation of records related to the actual prosecution of a defendant. Contrary to the *Warren* Court's analysis, the plain language of the statute does not indicate that the assessment is compensatory in nature.

While the appellate court in *Reed* and *Brown* attempted to offer some explanation as to how this charge is compensatory, it did not consider the essential character of this charge. The *Reed* Court found that the "State's Attorney's office would have utilized its automated record keeping systems in the prosecution of the defendant when it filed charges with the clerk's office and made copies of discovery, which were tendered to the defense." *Reed*, 2016 IL App (1st) 132046,

¶16. The *Brown* Court found that the charge was "designed to compensate [the State's Attorney's Office] for the expenses they incur in updating their automated record-keeping systems while prosecuting...criminal defendants." *Brown*, 2017 IL App (1st) 150146, ¶38. *Brown* and *Reed* assume, apparently, that the funds collected are used to pay for automated systems related to records involved in the prosecution of a defendant. The authorizing statute, however, simply refers to the automated record keeping systems of the State's Attorney's Office generally. Without the legislature delineating that the charge is imposed to pay for expenses of the automation of records related to the prosecution of a defendant and the systems used to automate those same records, it cannot be assumed that it is. Like in *Warren*, the appellate court in *Reed* and *Brown*, failed to conduct any meaningful analysis of the statutory language authorizing the State's Attorney Records Automation charge.

As the *Camacho* Court correctly held, the language of the statute authorizing the State's Attorney Records Automation assessment demonstrates that its purpose and the legislature's intent was "to fund the technological advancement of...the State's Attorney's...[O]ffice." *Camacho*, 2016 IL App (1st) 140604, ¶50. Though labeled a "fee," the actual attributes of this charge establish it is not compensatory. For the above-stated reasons, this Court should find that the State's Attorney Records Automation charge is a fine subject to offset by a defendant's presentence incarceration credit.

(c) Felony Complaint Filed, (Clerk)

Clark was assessed the $190 Felony Complaint Filed (Clerk) charge pursuant to 705 ILCS 105.27.2(w)(1)(A), which provides:

> The fees of the clerks of the circuit courts in all counties having a population of 3,000,000 or more inhabitants in the instances described in this Section shall be provided in this Section. In those instances where a minimum and maximum fee is stated, the clerk of the circuit court must charge the minimum fee listed and may charge up to the maximum fee if the county board had by resolution increased the fee. The fees shall be paid in advance and shall be paid as follows:
>
> * * *
>
> (w) Criminal and Quasi-Criminal Costs and Fees
>
> > (1) The clerk shall be entitled to costs in all criminal and quasi-criminal cases from each person convicted or sentenced to supervision therein as follows:
> >
> > (A) Felony complaints, a minimum of $125 and a maximum of $190.

705 ILCS 105.27.2a(w)(1)(A) (2015); Cook County Code §18-31 (eff. Feb. 3, 1992) (directing that the Clerk of the Circuit Court "shall" collect the charges authorized under Section 27.2a). The appellate court erroneously found this charge to be a fee. *Clark,* 2017 IL App (1st) 150740-U, ¶¶21-23, *citing People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006), and *People v. Bingham,* 2017 IL App (1st) 143150, ¶¶41-42. For the reasons explained below, the Felony Complaint Filed charge, though labeled a "fee," is a fine.

The authorizing statute is ambiguous and cannot be analyzed according to the plain language alone. *See In re Marriage of Goesel*, 2017 IL 122046, ¶13; *Graves*, 235 Ill. 2d at 251; *Jones*, 223 Ill. 2d at 580; *Advincula*, 176 Ill. 2d at 19. The statute refers to this charge as a fee and a cost. 705 ILCS 105/27.2a(w)(1)(a). This charge, however, is mandatory and is imposed upon conviction, both of which are characteristic of it being a fine. 705 ILCS 105/27.2a(w)(1)(a);Cook County Code

§18-31; *Graves,* 235 Ill. 2d at 252; *Jones*, 223 Ill. 2d at 600; *Jones*, 397 Ill. App. 3d at 660; *Price*, 375 Ill. App. 3d at 701. Moreover, subsection (gg) of Section 27.2a has a built-in penalty provision for delinquent unpaid charges, which arguably supports the conclusion that it is a fine. See 705 ILCS 105/27.2a(gg) (authorizing the Clerk of the Circuit Court to add to any unpaid fees, a varying percentage of the unpaid fees, which increases based on the time that the fees remain unpaid).

The legislative history and debates regarding Section 27.2a, which authorizes the Felony Complaint Filed charge, reveal that it was not intended to recoup expenses incurred by the state or to compensate the state for some expenditure incurred in the defendant's prosecution.[4] See *Graves*, 235 Ill. 2d at 250. The Clerk of Courts Act was amended in 1991 adding Section 27.2a, which provided for higher assessments to be imposed by the Circuit Court Clerk in counties with a population of 3,000,000 or more. When initially enacted, the legislature stated that this was a "fee adjustment...based upon the approximate cost of handling the respective services." 87th Ill. Gen. Assem., Senate Proceedings, June 24, 1991, at 79-80 (statements of Senator Lechowicz). However, it was also referred to as "a way for the county to raise a few bucks," which indicates that the Felony Complaint Filed charge is not compensatory. 87th Ill. Gen. Assem., House Proceedings, June 28, 1991 (statements of Representative Lang).

An examination of the legislative debates regarding House Bill 1829, which increased this charge for the first time, clarifies that it was intended to finance

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[4] The legislative history and debates relate to all assessments in Section 27.2a and do not specifically reference the Felony Complaint Filed charge. However, for purposes of clarity, Appellant only refers to the Felony Complaint Filed charge, as it is the only assessment authorized under that Section that is at issue in this case.

the court system as a whole, generate general revenue for the affected counties, and reduce sales and real estate taxes in those counties – none of which is compensatory. Senator Dillard, the Senate sponsor of H. B.1829, repeatedly remarked that it was intended to support the court system as a whole. For example, he stated that the legislation authorized increased "filing fees... for certain expenses that would support the Judiciary" and that the cost to "run [the] judicial systems" in the affected counties had gone up. 92nd Ill. Gen. Assem., Senate Proceedings, November 15, 2001, at 10-11 (statements of Senator Dillard); 92nd Ill. Gen. Assem., Senate Proceedings, November 28, 2001, at 98. In fact, he specifically mentioned "security," "metal detectors," and "technology" in reference to the "ever-increasing cost of running these judicial systems...." 92nd Ill. Gen. Assem., Senate Proceedings, November 15, 2001, at 11 (statements of Senator Dillard). Similarly, Senator Phillip remarked that "the reason [they] needed a little extra money" was for security reasons, "to provide some protection for people who are judges, for people who are in the sheriff's department." 92nd Ill. Gen. Assem., Senate Proceedings, November 28, 2001, at 102-103 (statements of Senator Phillip). As these remarks make clear, the Felony Complaint Filed charge was intended to finance the court system as a whole, which is punitive.

Further examination of the legislative debates reveals that the objective of this assessment was also to generate revenue for the affected counties and to lower their sales and real estate taxes. While this assessment was characterized as a "user fee" that would support the county court systems, Senator Dillard "admit[ted]...that perhaps not all of th[e money] is going to go back to the Judiciary." 92nd Gen. Assem., Senate Proceedings, November 28, 2001, at 100 (statements

of Senator Dillard). The decision of how the money would be used was left to the county boards. 92nd Gen. Assem., Senate Proceedings, November 28, 2001, at 99 (statements of Senator Dillard). But as Senator Dillard explained, the legislature was "just trying to give local governments the tools to hold down real estate taxes, primarily, in their counties." 92nd Ill. Gen. Assem., Senate Proceedings, November 15, 2001, at 10-11, 14 (statements of Senator Dillard).

Because the money collected from this assessment is intended to support the court system as a whole and to reduce taxes in the affected counties, it is a fine. The punitive nature of this charge was clearly expressed in Senator Link's remark that the money from this assessment "could be used for everything but the court system. But those in the court system that are filing would...end up paying for it." 92nd Ill. Gen. Assem., Senate Proceedings, November 28, 2001, at 100 (statements of Senator Link). If this charge was intended to be compensatory, the legislature would have limited the use of funds collected and would not have allowed them to be used for any reason the county board deemed appropriate.

Insofar as this assessment was intended to fund the court system as a whole, it is a fine. See, *e.g., People v. Wynn*, 2013 IL App (2d) 120575, ¶17 (finding that the Court System "fee," which is used to finance the county court systems is a fine because it does not reimburse the state for costs incurred as a result of prosecuting the defendant); *People v. Smith*, 2013 IL App (2d) 120691, ¶21 (same); *People v. Ackerman*, 2014 IL App (3d) 120585, ¶30 (same). Given that a charge that finances the court system as a whole is a fine, it is only logical to conclude that a charge intended to generate general revenue for counties and to reduce those counties' sales and real estate taxes is also a fine.

Several cases have found the Felony Complaint Filed charge to be a fee. *People v. Tolliver*, 363 Ill. App.3d 94, 97 (1st Dist. 2006); *People v. Brown,* 2017 IL App (1st) 150146, ¶39 (relying on *Tolliver*); and *People v. Bingham*, 2017 IL App (1st) 143150, ¶¶41-42 (relying on *Tolliver*). These cases, however, were wrongly decided. In *Tolliver*, the appellate court simply noted that the assessment order imposing the Felony Complaint Filed charge indicated that the defendant was assessed "costs and fees," and then concluded it is a fine because it is "compensatory and a collateral consequence of defendant's conviction...." *Tolliver*, 363 Ill. App. 3d at 97. Although the Felony Complaint Filed charge is labeled a "fee," and filing fees have generally been referred to as "costs," *Jones*, 223 Ill. 2d at 581 (internal citation omitted), it is clear that the legislature intended this charge to be a general revenue generator for the county, to reduce sales and real estate taxes, and to fund the court system as a whole.

Because the legislative intent in exacting the Felony Complaint Filed charge upon convicted defendants was not to recoup expenses incurred by the state or compensate the state for some expenditure incurred in the prosecuting the defendant, this Court should find that it is a fine subject to offset by a defendant's presentence incarceration credit.

(d) Automation (Clerk)

Clark was also assessed the $15 Automation (Clerk) charge pursuant to 705 ILCS 105/27.3a, which provides:

> (1) The expense of establishing and maintaining automated record keeping systems in the offices of the clerks of the circuit court shall be borne by the county. To defray such expense in any county having established such an automated system or which elects to establish such a system, the county board may require the clerk of the circuit

> court in their county to charge and collect a court automation fee of not less than $1 nor more than $25 to be charged and collected by the clerk of the court. Such fee shall be paid at the time of filing the first pleading, paper or other appearance filed by each party in all civil cases or by the defendant in any felony, traffic, misdemeanor, municipal ordinance, or conservation case upon a judgment of guilty or grant of supervision, provided that the record keeping system which processes the case category for which the fee is charged is automated or has been approved for automation by the county board, and provided further that no additional fee shall be required if more than one party is presented in a single pleading, paper or other appearance. Such fee shall be collected in the manner in which all other fees or costs are collected.
>
> * * *
>
> (3) With respect to the fee imposed under subsection 1 of this Section, such fees shall be in addition to all other fees and charges of such clerks, and assessable as costs, and may be waived only if the judge specifically provides for the waiver of the court automation fee. The fees shall be remitted monthly by such clerk to the county treasurer, to be retained by him in a special fund designated as the court automation fund. The fund shall be audited by the county auditor, and the board shall make expenditure from the fund in payment of any cost related to the automation of court records, including hardware, software, research and development costs and personnel related thereto, provided that the expenditure is approved by the clerk of the court and by the chief judge of the circuit court or his designate.

705 ILCS 105/27.3a(1), (3) (2015); Cook County Code §18-33 (amended Sept.20, 2005) (directs that the Clerk of the Circuit Court shall charge and collect the Automation (Clerk) charge); (C. 113). The appellate court erroneously found that the Automation (Clerk) assessment was not subject to offset by Clark's presentence credit because it is a fee. *Clark*, 2017 IL App (1st) 150740-U, ¶¶22-23, *citing People v. Tolliver*, 363 Ill. App. 3d 94, 97 (1st Dist. 2006), and *People v. Brown*, 2017 IL App (1st) 142877, ¶78. Proper review of the authorizing statute and its legislative

history reveals, however, that the Automation (Clerk) charge, while labeled a "fee," is actually a fine. See *Graves*, 235 Ill. 2d at 250; *Jones*, 223 Ill. 2d at 599-600.

The authorizing statute is ambiguous because it refers to the charge as a "fee" and states that it is assessable as a cost, yet this charge is characteristic of a fine as it is assessed and collected upon a judgment of guilty. *Graves*, 235 Ill. 2d at 251; *Jones*, 223 Ill. 2d at 580. While the Automation (Clerk) charge is assessed in cases where the record keeping system has been automated, it is also assessed when automation of the record keeping system for that case category is not yet in place, but has been approved for automation by the county board, which indicates that it is not compensatory. Additionally, this charge is mandatory, which further indicates that it is a fine. 705 ILCS 105/27.3a(3); Cook County Code §18-33; *Jones*, 397 Ill. App. 3d at 660; *Price*, 375 Ill. App. 3d at 701. Finally, the money collected from the charge is imposed "[t]o defray [the] expense" of "establishing and maintaining automated record keeping systems in the offices of the clerks of the circuit court" and can be used to fund "*any* cost" related to the automation of court records, not specifically records related to the defendant's prosecution, which is indicative of it being a fine, as it funds a component of the court system as a whole.705 ILCS 105/27.3a(1), (3) (emphasis added); See *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶47-57 (applying *Graves* to similar assessments – the $2 State's Attorney and $2 Public Defender Records Automation charges – and finding that they are fines because they do not compensate the state for expenses incurred in prosecuting a particular defendant).

The legislative history related to the statute authorizing the Automation (Clerk) charge illustrates that it is not compensatory, but is imposed to finance

the court system generally. When initially enacted, this charge was not assessed against defendants convicted of felony offenses.[5] However, the legislative debates on House Bill 2892, through which the Automation charge was added, provide insight into the legislative purpose behind the assessment. Representative Stezco, the house sponsor of H. B. 2892, referred to the charge as a "filing fee" and "user fee" "only imposed when the category of lawsuit [wa]s covered by the automated system." 83rd Ill. Gen. Assem., House Proceedings, June 30, 1984, at 57, 115, 117 (statements of Representative Steczo). However, the legislative objective was not to actually reimburse the state for costs resulting from a defendant's prosecution, but was meant to "streamline and modernize those offices" with automated record keeping systems. 83rd Ill. Gen. Assem., House Proceedings, June 30, 1984, at 57 (statements of Representative Steczo).

The debates regarding House Bill 2327, which provided for an increase in the Automation (Clerk) charge, clarifies that this charge was intended to finance various automation activities – and not costs resulting from the defendant's prosecution. Senator Hutchinson, the Senate sponsor for the bill, stated that the reason for the increased charge was the "sheer number of records that need to be digitalized." 98th Ill. Gen. Assem., Senate Proceedings, November 7, 2013, at 40 (statements of Senator Hutchinson). As Senator Hutchinson explained,

> proponents argue that... the fee increase is necessary to keep up with the ever-increasing digitalization of the legal process; new electronic innovations coming to courthouses, including allowing officers to issue electronic citations, which are sent automatically

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[5] Public Act 85-0237, effective January 1, 1988, amended 705 ILCS 105/27.3a, adding felonies to the category of convictions upon which the automation charge could be imposed.

> to the courthouse database; the expansion of e-filing; and interactive systems that allow judges and lawyers to look at electronic documents on screens placed throughout the courtroom rather than passing around paper copies....

98th Ill. Gen. Assem., Senate Proceedings, November 7, 2013, at 40 (statements of Senator Hutchinson). The reasons delineated by Senator Hutchinson establish that the Automation (Clerk) charge was not intended to be compensatory, but to finance the automated record keeping systems of the Circuit Court Clerk's Office as a whole.

Senator Harmon's remarks echoed the same with respect to the purpose of the Automation (Clerk) charge. As Senator Harmon explained,

> the ever-expanding electronic world requires more systems. Those systems need to be developed. There are more records being processed in different ways and all of that comes out of the same fee. This is simply recognizing that as we expand the electronic digital world in the courts, there's much more work to be done. And in a county like Cook County, the fee needs to be increased in order to pay for all those new electronic record keeping systems.

98th Ill. Gen. Assem., Senate Proceedings, November 7, 2013, at 41 (statements of Senator Harmon).

A further indication that the Automation (Clerk) charge is not compensatory and seeks to finance a component of the court system as a whole is that the legislature designated the use of funds collected from this charge to pay for the "automation of court records" generally, *i.e.*, in both civil and criminal cases. 705 ILCS 105/27.3a(3) (emphasis added); See*, e.g.,* 35 ILCS 200/21-245 (limiting the use of funds from the "automation fee" collected in the sale of *property* for delinquent taxes for costs related to "the automation of *property* tax collections and delinquent *property* tax sales," and "providing electronic access to *property* tax collection records

and delinquent tax sale records" (emphasis added); 35 ILCS 516/180 (limiting the use of funds from the "automation fee" collected in the sale of a *mobile home* for delinquent taxes to "costs related to the automation of *mobile home* tax collections and delinquent *mobile home* tax sales...." (emphasis added)).[6] By not limiting the use of the Automation (Clerk) charge collected in criminal cases to the automation of criminal court records, the statute requires a defendant to subsidize automation expenses entirely unrelated to his prosecution. In this way, the charge is not compensatory; it is punitive.

Several cases have found this charge to be a fee. See*, e.g., People v. Tolliver*, 363 Ill. App. 3d 94, 97 (1st Dist. 2006) (noting that the automation charge was assessed in the section "costs and fees" of the assessment order, and finding that the automation charge is "compensatory" and a "collateral consequence of the defendant's conviction")*; People v. Brown*, 2017 IL App (1st) 142877, ¶¶79, 81 (relying on *Tolliver* to find automation charge to be a fee because it is compensatory and a collateral consequence of conviction, and finding *Tolliver's* analysis to be consistent with *Graves*); *Brown*, 2017 IL App (1st) 150146, ¶39 (relying on *Tolliver* to find automation charge to be a fee); *People v. Heller*, 2017 IL App (4th) 140658, ¶74 (same). Neither *Tolliver*, nor any of the cases relying on *Tolliver* meaningfully analyzed the authorizing statute or reviewed the legislative history of the automation charge to determine whether it is a fine or fee. As the legislative history reveals, this charge is not compensatory and actually serves to finance a component of the court system as a whole.

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[6] Appellant cites to 35 ILCS 200/21-245 and 35 ILCS 516/180 to illustrate that when money is deposited into a single fund, it can be designated for more than one use.

For the foregoing reasons, this Court should find that the Automation (Clerk) charge is a fine subject to offset by a defendant's presentence credit.

(e) Document Storage (Clerk)

Clark was assessed the $15 Document Storage (Clerk) charge pursuant to 705 ILCS 105/27.3c, which provides:

> (a) The expense of establishing and maintaining a document storage system in the offices of the circuit court clerks in the several counties of this State shall be borne by the county. To defray the expense in any county that elects to establish a document storage system and convert the records of the circuit court clerk to electronic or micrographic storage, the county board may require the clerk of the circuit court in its county to collect a court document fee of not less than $1 nor more than $25, to be charged and collected by the clerk of the court. The fee shall be paid at the time of filing the first pleading, paper, or other appearance filed by each party in all civil cases or by the defendant in any felony, misdemeanor, traffic, ordinance, or conservation matter on a judgment of guilty or grant of supervision, provided that the document storage system is in place or has been authorized by the county board and further that no additional fee shall be required if more than one party is presented in a single pleading, paper, or other appearance. The fee shall be collected in the manner in which all other fees or costs are collected.
>
> * * *
>
> (c) Court document fees shall be in addition to other fees and charges of the clerk, shall be assessable as costs, and may be waived only if the judge specifically provides for the waiver of the court document storage fee. The fees shall be remitted monthly by the clerk to the county treasurer, to be retained by the treasurer in a special fund designated as the Court Document Storage Fund. The fund shall be audited by the county auditor, and the board shall make expenditures from the fund in payment of any costs relative to the storage of court records, including hardware, software, research and development costs, and related personnel, provided that the expenditure is approved by the clerk of the circuit court.

705 ILCS 105/27.3c(a), (c) (2015); Cook County Code §18-34 (amended Sept. 20, 2005) (directs that the Clerk of the Circuit Court shall charge and collect the Document Storage (Clerk) charge); (C. 113). The appellate court in this case erroneously found the Document Storage (Clerk) charge to be a fee. *Clark*, 2017 IL App (1st) 150740-U, ¶¶22-23, *citing Tolliver*, 363 Ill. App. 3d 94, 97 (1st Dist. 2006), and *People v. Brown*, 2017 IL App (1st) 142877, ¶78. For the reasons explained below, this charge is a fine.

Again, this statute is ambiguous and cannot be analyzed according to the plain language alone. *In re Marriage of Goesel*, 2017 IL 122046, ¶13; *Graves*, 235 Ill. 2d at 251; *Jones*, 223 Ill. 2d at 580; *Advincula*, 176 Ill. 2d at 19. The statute refers to the charge as a fee and states that it is assessable as a cost, but it is also characteristic of a fine as it is charged and collected upon a judgment of guilty and it finances the court system as a whole. *Graves*, 235 Ill. 2d at 251; *Jones*, 223 Ill. 2d at 580. While this charge is assessed in cases where the document storage system is in place, it is also assessed when the document storage system has been authorized by the county board, but is not yet in place, which demonstrates that it is not compensatory. Pursuant to §18-34 of the Cook County Code, this charge is mandatory, which also indicates that it is a fine. Cook County Code §18-34; *Jones*, 397 Ill. App. 3d at 660; *Price*, 375 Ill. App. 3d at 701. Additionally, the money collected from the charge is imposed "[t]o defray [the] expense" of "establishing and maintaining a document storage system in the offices of the circuit court" and can be used to fund "*any* costs relative to the storage of court records, including hardware, software, research and development costs, and related personnel," which indicates that it a fine. 705 ILCS 105/27.3c (emphasis added)*;* See *Camacho*, 2016

IL App (1st) 140604, ¶¶47-57, *supra* at 27.

The legislative history related to the Document Storage charge establishes that it was intended to benefit the court system as a whole. During the House debates of House Bill 3843, and specifically regarding Amendment 2, which authorized the Document Storage charge, Representative McCracken, who offered the amendment, referred to the Document Storage charge as a "user fee." 86th Gen. Assem., House Proceedings, May 11, 1990, at 48 (statements of Representative McCracken). He explained, however, that "we're in the 20th Century and some of these fees are necessary in order to provide the services that the public... and the court system needs." 86th Gen. Assem., House Proceedings, May11, 1990, at 48 (statements of Representative McCracken). Although the Document Storage charge was described as a "user fee," it is clear that the rationale for this assessment is not to reimburse for costs incurred in the defendant's prosecution. Rather, it furthers the state's interest in financing the court system as a whole.

Indeed, the statute provides that the funds collected by this charge could be used for payment of "*any* costs relative to the storage of *court records*...." 705 ILCS 105/27.3c (emphasis added). Like the Automation (Clerk) fee, this charge is imposed in both civil and criminal cases. If the legislature intended for this assessment to be compensatory then the proceeds of that Document Storage (Clerk) charge imposed in criminal cases would have been designated to pay for expenditures related to the storage of criminal court documents – not for "*any* cost relative to the storage of court records" generally. 705 ILCS 105/27.3c (emphasis added); See, *e.g.,* 35 ILCS 200/21-245; 35 ILCS 516/180, *supra* at 29-30. The lack of any such designation requires a defendant to subsidize document storage expenses

entirely unrelated to his prosecution, which is punitive.

While several courts have found the Document Storage charge to be a fee, those cases were wrongly decided. See *Tolliver*, 363 Ill. App. 3d at 97; *Brown*, 2017 IL App (1st) 142877, ¶¶80-81 (relying on *Tolliver,* and finding *Tolliver's* analysis to be consistent with *Graves*); *Brown*, 2017 IL App (1st) 150146, ¶39 (relying on *Tolliver*); and *Heller*, 2017 IL App (1st) 140658, ¶74 (same). Neither *Tolliver*, nor its progeny actually analyzed the statute authorizing the Document Storage assessment and its related legislative history, which establishes that it was intended to finance the Circuit Court Clerk's Office as a whole.

For the foregoing reasons, this Court should find that the Document Storage (Clerk) charge is a fine subject to offset by a defendant's presentence credit.

(f) Conclusion

As explained in detail above, review of the statutes authorizing the charges at issue in this case and their legislative reveals that they are fines, despite being labeled as "fees.". Because these charges are merely revenue generators for the county generally, or are related to maintaining and operating the court system as a whole, irrespective of specific violations of law, and do not reimburse the state for costs incurred as a result of the defendant's prosecution, this Court should find that the following assessments are fines, subject to offset by a defendant's presentence credit: $2 Public Defender Records Automation; $2 State's Attorney Records Automation; $190 Felony Complaint Filed, (Clerk); $15 Automation (Clerk); and $15 Document Storage (Clerk).

CONCLUSION

For the foregoing reasons, Dennis Clark, defendant-appellant, respectfully requests that this Court reverse the appellate court's decision and find that the following assessments are fines, subject to offset by Clark's presentence incarceration credit: $2 Public Defender Records Automation; $2 State's Attorney Records Automation; $190 Felony Complaint Filed (Clerk); $15 Automation (Clerk); and $15 Document Storage (Clerk).

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Sharifa Rahmany, certify that this brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this brief, excluding pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 35 pages.

/s/Sharifa Rahmany
SHARIFA RAHMANY
Assistant Appellate Defender

No. 122495

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- DENNIS CLARK Defendant-Appellant	)	Appeal from the Appellate Court of Illinois, No. 1-15-0740. There on appeal from the Circuit Court of Cook County, Illinois , No. 13 CR 21421. Honorable Rickey Jones, Judge Presiding.

NOTICE AND PROOF OF SERVICE

Lisa Madigan, Attorney General, 100 W. Randolph St., Chicago, IL 60601, mglick@atg.state.il.us;

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On January 10, 2018, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

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APPENDIX TO THE BRIEF

Dennis Clark No. 122495

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Volume II					
December 8, 2014					

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Exhibits ("1")				

Rehearing

2017 IL App (1st) 150740-U
Order filed: June 16, 2017

SIXTH DIVISION

No. 1-15-0740

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DENNIS CLARK, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County. No. 13 CR 21421 Honorable Rickey Jones, Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held*: We affirmed defendant's conviction for delivery of a controlled substance where the State proved all the elements of the offense beyond a reasonable doubt; we modified defendant's fines and fees order.

¶ 2 Following a jury trial, defendant Dennis Clark was convicted of delivery of a controlled substance (cocaine) in violation of 720 ILCS 570/401(d)(i) (West 2012), and sentenced to 15 years' imprisonment. Defendant was also assessed $1,549 in fines, fees, and costs. On appeal, defendant contends that his conviction should be reversed because the State did not prove beyond a reasonable doubt that he delivered cocaine. He also contests the various fines and fees assessed by the trial court. We affirm defendant's conviction and modify the fines, fees, and costs order.

¶ 3 Defendant was arrested on October 17, 2013, as a result of a Chicago police narcotics investigation and surveillance near the intersection of St. Louis Avenue and Grenshaw Street. He was subsequently charged with delivery of less than one gram of cocaine within 1,000 feet of a school (count I), and delivery of less than one gram of cocaine (count II). Prior to trial, the State nol-prossed count I.

¶ 4 At trial, Chicago police officer, Steven Leveille, testified that, on October 17, 2013, at approximately 1:40 p.m., he was dressed in plain clothes and driving an unmarked police vehicle as part of a narcotics surveillance team—surveillance officers, enforcement officers, and a supervisor—who were dispatched to investigate "an ongoing narcotics complaint" at the intersection of St. Louis Avenue and Grenshaw Street. Officer Leveille's role on the team was to make an undercover narcotics purchase with Chicago Police Department prerecorded funds. Officer Leveille had participated in narcotics transactions "over a hundred" times and estimated that, approximately "70% of the time," he has recovered prerecorded funds when making narcotics transactions.

¶ 5 Officer Leveille was on foot when he first encountered defendant in a vacant lot near the intersection of St. Louis Avenue and Grenshaw Street. Chicago police surveillance officer Laura Pagan observed from an unmarked police vehicle nearby. Defendant stood with five or six individuals, and he wore a New York Mets baseball cap, a black jacket, and blue jeans. Defendant approached Officer Leveille and asked: "Where you be?" Officer Leveille replied: "I have been south." Defendant then asked: "How many do you want today?" Officer Leveille replied: "Let me get two." In exchange for $20 in prerecorded funds, defendant gave Officer Leveille two clear Ziploc bags containing a white rock-like substance of suspect crack cocaine which he held on his person. The entire transaction took place with "less than an arm's length"

of distance between Officer Leveille and defendant. Defendant did not conceal his face during the entire drug transaction. About five minutes following the transaction, Officer Leveille returned to his vehicle and radioed the surveillance team that he had made a positive narcotics transaction from defendant and that he had used $20 in prerecorded funds to make the purchase. He gave a physical description of defendant and informed the team that the last location where contact was made was near 3507 West Grenshaw Street. Approximately 10 minutes later, Officer Leveille was notified that defendant had been detained. Officer Leveille reported to the location and identified defendant as the person who sold him the suspect crack cocaine. Defendant was wearing a New York Mets baseball cap, black jacket, and blue jeans. After defendant was arrested, Officer Leveille inventoried the suspect crack cocaine.

¶ 6 Immediately after Officer Leveille was notified that defendant had been detained, he drove to the last known location where he had contact with defendant near 3507 West Grenshaw Street. There, Officer Leveille positively identified defendant as the person who had sold him narcotics. Officer Leveille was able to identify defendant from "half a cars length" away while driving "two or three miles an hour." Nothing obstructed the officer's view of defendant or defendant's face when he made the positive identification.

¶ 7 Officer Pagan testified that, on October 17, 2013, at 1:47 p.m., she was part of a surveillance team assigned to make a narcotics purchase in the vicinity of St. Louis Avenue and Grenshaw Street. On that day, she had observed Officer Leveille and defendant "engage in brief conversation, and then engage in a brief hand-to-hand transaction." It was a bright and sunny day and cars were sporadically parked on the street. She observed the entire narcotics transaction from her covert vehicle, which was parked a distance of "five or six car lengths" from the area of the transaction. Officer Pagan observed others in the area, but observed only defendant engaging

in conversation with Officer Leveille. None of the other individuals in the lot wore a black New York Mets baseball cap.

¶ 8 "A couple of seconds" after the narcotics transaction, Officer Leveille gave Office Pagan a nonverbal signal which indicated that a positive narcotics transaction had taken place. Afterward, Officer Pagan watched Officer Leveille walk eastbound and then southbound, away from the area, but defendant remained in the area. Upon receiving a nonverbal signal, Officer Pagan radioed the other surveillance team members that a positive narcotics transaction had taken place. Officer Pagan maintained her surveillance of the area for approximately six minutes after Officer Leveille left the area, and then observed enforcement officers arriving at the location to detain defendant. Officer Pagan described defendant as "a male black with New York Mets baseball cap, black jacket, and blue jeans." Officer Pagan identified defendant in court as the man who engaged in the narcotics transaction with Officer Leveille. Officer Pagan acknowledged that no prerecorded funds were recovered from defendant.

¶ 9 The parties stipulated that Officer Leveille kept the two bags of cocaine recovered on October 17 in his control from the time of recovery until he inventoried those items. The parties further stipulated that, if called as a witness, Illinois State Police Crime Lab forensic chemist, Laneen Blount, would testify that the items inventoried by Officer Leveille tested positive for less than 0.1 grams of cocaine.

¶ 10 Based on this evidence, the jury found defendant guilty of delivery of a controlled substance.

¶ 11 The court denied defendant's motion for a new trial and sentenced him as a Class X offender to 15 years' imprisonment. Defendant was awarded 482 days of presentence custody

credit and assessed a total of $1,549 in fines, fees, and costs. The court denied defendant's motion to reconsider sentence. Defendant timely appealed.

¶ 12 On appeal, defendant first contends that the State failed to prove, beyond a reasonable doubt, that he delivered a controlled substance arguing that, because police did not recover the prerecorded funds from his person, the evidence was insufficient to establish that he participated in a narcotics transaction with Officer Leveille.

¶ 13 When a defendant challenges the sufficiency of the evidence, the standard of review is whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. On review, all reasonable inferences from the evidence are drawn in favor of the State. *People v. Martin*, 2011 IL 109102, ¶ 15. The reviewing court may not substitute its judgment for that of the trier of fact. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009). A defendant's conviction will be reversed only if the evidence is so improbable or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *Id.* "[W]here the finding of guilt depends on eyewitness testimony, a reviewing court must decide whether, in view of the record, a fact finder could reasonably accept the testimony as true beyond a reasonable doubt." *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004).

¶ 14 In order to sustain a conviction for delivery of a controlled substance, the State must prove that the defendant knowingly delivered a controlled substance. 720 ILCS 570/401 (West 2012); *People v. Brown*, 388 Ill. App. 3d 104, 108 (2009).

¶ 15 In the present case, the evidence established that defendant knowingly delivered 0.1 grams of cocaine. During a narcotics surveillance, defendant approached Officer Leveille and asked: "How many do you want today?" Officer Leveille replied that he wanted two and

defendant, in exchange for $20 of prerecorded funds, tendered to the officer two Ziploc bags containing a white, rock-like substance that tested positive for cocaine. Shortly after the transaction, Officer Leveille described and identified defendant as the person from whom he purchased the narcotics. See *People v. Smith*, 185 Ill. 2d 532, 541 (1999) ("The testimony of a single witness, if it is positive and the witness credible, is sufficient to convict"). Officer Pagan, a surveillance officer, also identified defendant as the person from whom Officer Leveille purchased the cocaine. This evidence was sufficient to prove, beyond a reasonable doubt, that defendant knowingly delivered the cocaine.

¶ 16 Defendant, nevertheless, argues that his conviction should be reversed because the officers did not recover the prerecorded funds used by Officer Leveille when he purchased the cocaine. Defendant maintains that, if he delivered the cocaine to Officer Leveille, the funds should have been recovered where Officer Pagan testified that defendant remained under surveillance "the entire time" until he was detained.

¶ 17 Contrary to defendant's argument, the absence of this additional incriminating evidence does not raise a reasonable doubt of his guilt. Although Officer Pagan testified that defendant remained under surveillance from the time of the transaction until he was detained, she did not testify that he remained in her view "the entire time," as defendant suggests. This aside, both Officers Leveille and Pagan testified that there were several other individuals at the vacant lot near defendant. In addition, Officer Leveille estimated that, in his extensive experience using prerecorded funds to make controlled narcotics purchases, he recovered the prerecorded funds approximately "70% of the time." As mentioned, it is the responsibility of the fact finder to resolve inconsistencies and draw reasonable inferences from the evidence. See *People v. Phillips*, 2015 IL App (1st) 131147, ¶ 16. Based on the jury's verdict, it is clear that this alleged

inconsistency was resolved in favor of the State. In doing so, the jury was not required to disregard the inferences that flow from the evidence, or search out all possible explanations consistent with a defendant's innocence and raise them to a level of reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 71 (citing *People v. Wheeler*, 226 Ill. 2d 92,117 (2007)). We will not substitute our judgment for that of the trier of fact on these matters. *Siguenza-Brito*, 235 Ill. 2d at 225. We will reverse a defendant's conviction only when the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *Id.* This is not one of those cases.

¶ 18 Defendant next contends that various assessments imposed against him are fines that should be offset by his presentence custody credit. Although defendant did not challenge these assessments in the trial court, the State does not argue forfeiture and, therefore, has forfeited any claim that the issue has been forfeited. *People v. Whitfield*, 228 Ill. 2d 502, 509 (2007). Further, "a defendant may raise the issue of credit on appeal even if not raised in the trial court." *People v. Vasquez*, 368 Ill. App. 3d 241, 261 (2006) (citing *People v. Woodard*, 175 Ill. 2d 435, 457-58 (1997)).

¶ 19 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 of presentence custody. 725 ILCS 5/110-14(a) (West 2014). A "fine" is punitive in nature and is imposed as part of a sentence for a criminal offense. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). A fee, in contrast, seeks to recoup expenses incurred by the state, or to compensate the state for expenditures incurred in prosecuting the defendant. *Id.* The presentence custody credit applies only to reduce fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 599 (2006). Here, defendant spent 482 days in custody and, therefore, has accumulated a $2,410 credit toward his eligible fees.

¶ 20 Defendant contends, the State concedes, and we agree that the $10 Mental Health Court fee; the $5 Youth Diversion/Peer Court assessment; the $5 Drug Court fee; the $30 Children's Advocacy Center assessment; the $1,000 Controlled Substances assessment; the $15 State Police Operations fee; and the $50 court system fee imposed by the trial court are fines subject to offset by presentence custody credit. See *People v, Price*, 375 Ill. App. 3d 684, 700-02 (2007) (finding both the $10 Mental Health Court fee and the $5 Youth Diversion/Peer Court assessment, are fines); *People v. Unander*, 404 Ill. App. 3d 884, 886 (2010) ("the $5 [Drug Court] 'fee' is actually a fine"); *People v. Jones*, 397 Ill. App. 3d 651, 660-61 (2009) ("the Children's Advocacy Center charge is a fine rather than a fee;" "the drug assessment has consistently been construed as a fine subject to reduction for presentencing incarceration"); *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 ("the State Police [O]perations assistance fee is also a fine"); *People v. Blanchard*, 2015 IL App (1st) 132281, ¶ 22 ("the $50 Court System fee *** is a fine"). Accordingly, the $10 Mental Health Court fee; the $5 Youth Diversion/Peer Court assessment; the $5 Drug Court fee; the $30 Children's Advocacy Center assessment; the $1,000 Controlled Substances assessment; the $15 State Police Operations fee; and the $50 court system fee imposed by the trial court should be offset by defendant's presentence custody credit.

¶ 21 Defendant next argues that the $2 State's Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2014)); the $2 Public Defender records automation fee (55 ILCS 5/3-4012 (West 2014)); the $15 document storage fee (705 ILCS 105/27.3c(a) (West 2014)); the $190 felony complaint fee (705 ILCS 105/27.2a(w)(1)(1) (West 2014)); the $25 court services fee (55 ILCS 5/5-1103 (West 2014)); and the $15 clerk automation fee (705 ILCS 105/27.3a(1), (1.5) (West 2014)), are fines which should be offset by defendant's presentence incarceration credit.

¶ 22 Contrary to defendant's argument, this court has previously considered challenges to these assessments and found them to be fees, not fines. See *People v. Warren*, 2016 IL App (4th) 120721-B, ¶¶114-116 (State's Attorney records automation assessment is not punitive and is, therefore, a fee); *Bowen*, 2015 IL App (1st) 132046, ¶¶ 63-65 ("both, the [S]tate's [A]ttorney and the [P]ublic [D]efender records automation assessment constitute fees"); see *contra People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56 (the automation assessments do not compensate the State for the costs associated in prosecuting a particular defendant and, therefore, cannot be considered fees); *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006); *People v. Bingham*, 2017 IL App (1st) 143150, ¶¶ 4142 (relying on *Tolliver* and finding the $190 felony complaint filing fee to be a fee not subject to presentence incarceration credit); *People v. Brown*, 2017 IL App (1st) 142877, ¶ 78 (finding clerk automation fee and document storage fee are fees not subject to offset by presentence incarceration credit). Accordingly, the $2 State's Attorney records automation fee; the $2 Public Defender records automation fee; the $15 document storage fee; the $190 felony complaint fee; the $25 court services fee; and the $15 clerk automation fee are not offset by defendant's presentence custody credit.

¶ 23 Defendant, relying on *Graves*, argues that the $15 document storage fee; the $190 felony complaint fee; the $25 court services fee; and the $15 clerk automation fee, are actually fines because they do not reimburse the State for costs incurred in prosecuting him. See *Graves*, 235 Ill. 2d at 250. However, in *Tolliver*, we rejected this argument and found that the charges are fees as they do represent a part of the cost incurred in prosecuting a defendant. See *Tolliver*, 363 Ill. App. 3d at 97 ("We find that all of these charges are compensatory and a collateral consequence of defendant's conviction and, as such, are considered 'fees' rather than 'fines.' "); *Brown*, 2017 IL App (1st) 142877, ¶ 78. We see no reason here to depart from our holding in *Tolliver*.

¶ 24 Finally, defendant argues, the State concedes, and we agree that the $5 electronic citation fee assessed pursuant to section 27.3e of the Clerk of the Courts Act (705 ILCS 105/27.3e (West 2012)), was erroneously assessed and must be vacated as that fee only applies to traffic, misdemeanor, municipal ordinance, and conservation violations, and does not apply to defendant's felony conviction for delivery of a controlled substance. *Id.*; *People v. Robinson*, 2015 IL App (1st) 130837, ¶ 115 (vacating the fee where the defendant's offense did not fall into an enumerated category). Accordingly, we direct the clerk of the circuit court to vacate the $5 electronic citation fee from defendant's fines, fees, and costs order.

¶ 25 In sum, we find that the $10 Mental Health Court fee; the $5 Youth Diversion/Peer Court assessment; the $5 Drug Court fee; $30 Children's Advocacy Center assessment; the $1,000 Controlled Substances assessment; the $15 State Police Operations fee; and the $50 court system fee are offset by defendant's presentence custody credit. However, the $2 State's Attorney records automation fee; the $2 Public Defender records automation fee; the $15 document storage fee; the $190 felony complaint fee; the $25 court services fee; and the $15 clerk automation fee are not offset by defendant's presentence custody credit. Finally, the $5 electronic citation fee was erroneously assessed and is, therefore, vacated. Pursuant to Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999), we direct the clerk of the circuit court to correct the fines and fees order accordingly. The judgment of the trial court is affirmed in all other respects.

¶ 26 Affirmed as modified.

PEOPLE OF THE STATE OF ILLINOIS)
)
-vs-)
)

No.: **13 CR 2142101**
Trial Judge: **RICKEY JONES**
Attorney: **ANTHONY THOMAS & DAVE DUNNE**

DENNIS CLARK

NOTICE OF APPEAL

An Appeal is taken from the order of judgment described below:

APPELLANT'S NAME: DENNIS CLARK
IR# 508324 DOB: AUGUST 29, 1960
APPELLANT'S ADDRESS: ILLINOIS DEPARTMENT OF CORRECTIONS
APPELLANT'S ATTORNEY: OFFICE OF THE STATE APPELLATE DEFENDER
ADDRESS: 203 NORTH LASALLE STREET, 24th FLOOR, CHICAGO, ILLINOIS 60601
OFFENSE: DELIVERY OF A CONTROLLED SUBSTANCE W/IN 1000 FT.
JUDGMENT: GUILTY
DATE OF JUDGEMENT & SENTENCE: FEBRUARY 10, 2015; 15 years Illinois Department of Corrections

Anthony Thomas, vb
APPELLANT or ATTORNEY

VERIFIED PETITION FOR REPORT OF PROCEEDINGS
COMMON LAW RECORD AND FOR APPOINTMENT OF COUNSEL ON APPEAL

Under Supreme Court Rules 605-608, appellant asks the Court to order the Official Court Reporter to transcribe an original and copy of the proceedings, file the original with the Clerk and deliver a copy to the appellant; order the Clerk to prepare the Record on Appeal and the Appoint Counsel on Appeal. Appellant, being duly sworn, says that at the time of his/her conviction he/she was and is unable to pay for the Record or to retain counsel for appeal.

Anthony Thomas, vb
APPELLANT or ATTORNEY

ORDER

IT IS ORDERED the STATE APPELLATE DEFENDER is appointed as counsel on appeal and Record and Report of Proceedings be furnished to Appellant without cost.
Dates to be transcribed:

PRE-TRIAL MOTIONS:
JURY WAIVER DATE:
TRIAL DATE(S): 12/8/2014 – 12/9/2014
SENTENCING DATE(S): 1/9/2015 which was continued to 2/10/2015
OTHER: MOTION FOR A NEW TRIAL: 2/10/2015

ORDER DATE: 2-11-15 ENTER 1705
JUDGE: RICKEY JONES

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