No. 122325

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court
	)	of Illinois, Fourth District,
Plaintiff-Appellee,	)	No. 4-14-0576
	)	
	)	There on Appeal from the
	)	Circuit Court of the
v.	)	Eighth Judicial Circuit,
	)	Adams County, Illinois
	)	No. 13-CF-394
	)	
SHANE D. HARVEY,	)	The Honorable
	)	Scott H. Walden,
Defendant-Appellant.	)	Judge Presiding.

BRIEF AND APPENDIX OF PLAINTIFF-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS

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NATURE OF THE ACTION

Following a jury trial, defendant Shane D. Harvey was convicted of domestic battery; he was sentenced to serve a three-year term of imprisonment and a four-year term of mandatory supervised release and to pay restitution and various fines and fees. A40-43.[1]

Defendant appealed, and the Illinois Appellate Court, Fourth District, affirmed and remanded the case to the circuit court to apply defendant's presentence custody credits to one of his fines and to conduct an inquiry into defendant's claims of ineffective assistance of counsel pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984). *People v. Harvey*, 2017 IL App (4th) 140576-U, ¶¶ 28-29; A17. Defendant now appeals the judgment of the appellate court. No question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether defendant's challenge to the DNA identification fee that was not ordered by the circuit court but was erroneously listed in the circuit clerk's accounts receivable records is moot where the clerk corrected the error by removing the erroneous entry.

2. Whether defendant's challenge to the Crime Stoppers fine is moot where the fine was fully offset by his presentence custody credits.

[1] Citations to the common law record appear as "C__," to the report of proceedings for defendant's February 4, 2014 sentencing hearing as "RS__," to the report of proceedings for the June 25, 2014 hearing on defendant's motion reduce sentence as "RM__," to defendant's brief as "Def. Br. __," to the appendix to defendant's brief as "A__," and to the appendix to this brief as "Peo. A__."

3. Whether defendant's forfeited claim that the trial court erroneously imposed the Sheriff's fee is reviewable as second-prong plain error where the fee was substantively correct under 55 ILCS 5/4-5001 and Adams County Ordinance 2011-09-024-001, and its imposition did not deny defendant a fair sentencing process.

4. Whether the appellate court may grant relief on forfeited claims under Illinois Supreme Court Rule 615(b)(1) where the claims do not satisfy the plain-error test under Rule 615(a).

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612(b). On September 27, 2017, this Court allowed defendant's petition for leave to appeal.

STATEMENT OF FACTS

Following a jury trial, defendant was convicted of domestic battery. He was sentenced to serve a three-year term of imprisonment and a four-year term of mandatory supervised release and to pay restitution. A40-42. The circuit court also imposed a variety of fines and fees, including a $20 court appointed special advocate (CASA) fine, a $10 Crime Stoppers fine pursuant to 730 ILCS 5/5-6-3(13) (2013), and a $515 Sheriff's fee pursuant to 55 ILCS 5/4-5001 (2013). A43. The circuit court did not impose a DNA Identification fee. *See id.* The court ordered that defendant's $1,180 in presentence custody credits be applied to his eligible fines, A41, including the CASA and Crime Stoppers fines, A43 (sentencing order showing asterisks next to CASA and Crime Stoppers assessments and stating that assessments marked with asterisks are fines subject to presentence custody credit), but the clerk neglected to apply them to the CASA fine,

see A44 (Payment Status Sheet showing CASA fine as outstanding). Defendant did not object to any of the fines or fees. *See* RS14-18. Nor did defendant object to any of the fines or fees in his pro se motion to reduce sentence alleging ineffective assistance of counsel, C102-104, or at the hearing on that motion, RM2-7.

On appeal, defendant argued, *inter alia*, that the trial court erred by failing to conduct an inquiry into his allegations of ineffective assistance of counsel, *see* A10, that his presentence custody credits should be applied to the $20 CASA fine, A46-48, that the circuit court should not have imposed the Crime Stoppers fine, A51-52, and that the Sheriff's fee was greater than permitted by statute, A52-53. Defendant also challenged an entry for a $250 DNA Identification fee that appeared on a document entitled "Payment Status Information." A50-51. The Payment Status Sheet, which is dated September 29, 2014 (over three months after defendant's June 3, 2014 notice of appeal), appears to be a printout of the circuit clerk's electronic accounts receivable records for defendant's case. A44. It is not file-stamped, but instead bears a stamp identifying it as "[a] true and complete copy of the Original instrument filed and retained in [the circuit clerk's] office." *See id.*

The appellate court remanded for the trial court to conduct an inquiry into defendant's allegations of ineffective assistance of counsel and to apply his presentence custody credits against the $20 CASA fine. But the appellate court declined to review his forfeited claims regarding the Crime Stoppers fine, Sheriff's fee, and DNA Identification fee as plain error because they "d[id] not rise to the level affecting the fundamental fairness or integrity of the judicial process." A16.

On January 18, 2018,[2] the clerk corrected its accounts receivable records, removing the erroneous reference to the DNA Identification fee from the Payment Status Information. Peo. A1.[3] The clerk subsequently corrected its records to reflect the reduction in the amount of the collection fee resulting from the removal of the erroneous DNA Identification fee. Peo. A2.

ARGUMENT

I. Standard of Review and Governing Principles

Whether a claim is moot is a question of law that the Court reviews de novo. *In re James W.*, 2014 IL 114483, ¶ 18.

The questions of whether the Sheriff's fee is proper and whether Illinois Supreme Court Rule 6156(b)(1) allows the appellate court to grant relief on forfeited claims where review of such claims is barred under Rule 615(a) are questions of law that this Court reviews de novo. *People v. Smith*, 2016 IL 119659, ¶ 15; *Lawrence v. Regent Realty Group, Inc.*, 197 Ill. 2d 1, 9 (2001); *People v. Tousignant*, 2014 IL 115329, ¶ 8.

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[2] On January 17, 2018, the undersigned counsel telephoned the Adams County Circuit Clerk and left a message that there appeared to be an error on defendant's Payment Status Information because it listed a $250 DNA Identification fee that had not been ordered by the circuit court. On January 18, 2018, the clerk returned counsel's call, informing him that the error had been corrected. 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 footnote are true and correct.

[3] This Court may take judicial notice of certified Payment Status Information sheets because they accurately reflect the circuit clerk's accounts receivable records as of the date of their printing. *See People v. Mata*, 217 Ill 2d 535, 539 (2005) (noting that Court "may take judicial notice of matters that are readily verifiable from sources of indisputable accuracy").

When interpreting a statute, ordinance, or rule, the primary objective is to give effect to the drafters' intent, and the best indicator of that intent is the plain language of the rule. *Smith*, 2016 IL 119659, ¶ 15; *Lawrence*, 197 Ill. 2d at 9; *Tousignant*, 2014 IL 115329, ¶ 8. "Words and phrases should not be considered in isolation; rather, they must be interpreted in light of other relevant provisions" and of the ordinance, statute, or rule as a whole. *Tousignant*, 2014 IL A115329, ¶ 8. "Courts are not at liberty to depart from the plain language and meaning" of an ordinance, statute, or rule, "by reading into it exceptions, limitations or conditions that the [drafters] did not express." *Ill. State Treasurer v. Ill. Worker's Comp. Comm'n*, 2015 IL 117418, ¶ 21 (citing *Solich v. George & Anna Portes Cancer Prevention Ctr. of Chi., Inc.*, 158 Ill. 2d 76, 83 (1994)). Finally, when interpreting an ordinance, statute, or rule, the Court "must presume that the drafters did not intend to produce absurd, inconvenient or unjust results." *Id.* at 167.

II. Defendant's Challenges to the DNA Identification Fee and Crime Stoppers Fine Are Moot.

"A question is said to be moot when no actual controversy exists or where events occur which render it impossible for the court to grant effectual relief." *People v. Lynn*, 102 Ill. 2d 267, 272 (1984). Respondent's challenges to the DNA identification fee and Crime Stoppers fine are moot because there is no effectual relief to be granted: defendant's DNA Identification fee does not exist, even as a scrivener's error in the clerk's electronic accounts receivable records, and his Crime Stoppers fine was entirely offset by presentence custody credits.

A. Defendant's challenge to the DNA Identification fee erroneously referenced in the circuit clerk's electronic accounts receivable records is moot.

Defendant challenges the DNA Identification fee as improperly assessed against him because he was already registered in the DNA database. Def. Br. 11. But the circuit court assessed no DNA Identification fee, *see* A43, and the circuit clerk has corrected its electronic accounts receivable records to remove the erroneous reference to the unassessed fee. *See* Peo. A1. Because there is no fee to vacate or even any clerical record to correct, there is no relief to be granted and defendant's claim is moot.

B. The circuit court erred by imposing the Crime Stoppers fine, but that error is moot.

The People concede, as they did below, A64-65, that the circuit court was not authorized to impose the Crime Stoppers fine,[4] 730 ILCS 5/5-6-3(b)(13) (2013), because defendant was sentenced to imprisonment rather than probation or conditional discharge. *People v. Jernigan*, 2014 IL App (4th) 130524, ¶ 48 (Crime Stoppers fine may be imposed only as condition of probation). But defendant's challenge to the fine is moot because no relief can be granted; the fine was entirely offset by respondent's presentence custody credits and thus has no effect on his outstanding liabilities. *People v. Wilson*, 2017 IL App (3d) 150165, ¶ 25 (challenge to improper Crime Stoppers fine moot where

[4] The charge authorized by subsection (b)(13) is a fine, not a fee. *See People v. Jernigan*, 2014 IL App (4th) 130524, ¶ 48 (construing charge under subsection (b)(13) as fine); *People v. Dowding*, 388 Ill. App. 3d 936, 948 (2d Dist. 2009) (same); *see also People v. Jones*, 223 Ill. 2d 569, 600 (2006) (explaining that "the *central* characteristic which separates a fee from a fine" is that "it is intended to reimburse the state for some cost incurred in defendant's prosecution") (emphasis original).

fine was offset by presentence custody credits); *see People v. S.L.C.*, 115 Ill. 2d 33, 39 (1986) ("[W]here the only relief sought is to vacate a sentence, the question of the validity of its imposition becomes moot when the sentence has been served."). Vacating the extinguished ten-dollar fine would not free an additional ten dollars worth of presentence custody credits for application toward defendant's remaining outstanding fines because defendant has no outstanding fines to which credits could be applied — his $1,180 in presentence custody credits more than satisfied not only the $330 in undisputedly proper fines to which they could be applied,[5] but the erroneous $10 Crime Stoppers fine as well. Nor did the erroneous Crime Stoppers fine increase the eighty-dollar lump sum fine that defendant was ordered to pay regardless of presentence custody credits.[6] Because vacating the erroneous $10 Crime Stoppers fine would not reduce

[5] Not counting the $10 Crime Stoppers fine, defendant was ordered to pay a total of $330 in fines that could be offset by presentence custody credits: the $50 Court Fund fine, $15 Child Advocacy fine, $5 State Police Operations fine, $20 CASA fine, $30 Juvenile Records fine, $200 Domestic Violence fine, and $10 Domestic Battery fine. Neither the $80 lump sum fine nor the $100 Violent Crime Victims Assistance Fund fine could be offset by presentence custody credits. 730 ILCS 5/5-9-1(c) (2013) (providing that lump sum "shall not be considered a part of the fine for purposes of any reduction in the fine for time served either before or after sentencing"); 725 ILCS 240/10(b) (2013) (providing that VCVA "shall not be considered a part of the fine for purposes of any reduction made in the fine for time served either before or after sentencing").

[6] Under 730 ILCS 5/5-9-1(c), the circuit court was to impose "an additional $10 for each $40, or fraction thereof, of fine imposed." Including the Crime Stoppers fine, defendant had $440 of fines imposed (the $50 Court Fund fine, $15 Child Advocacy fine, $5 State Police Operations fine, $20 CASA fine, $10 Crime Stoppers fine, $30 Juvenile Records fine, $200 Domestic Violence fine, $10 Domestic Battery fine, and $100 VCVA fine). *See* A43. The lump sum fine based on $440 in fines is $110; $10 for each of the eleven forty-dollar increments ($440 ÷ 40 = 11; 11 x $10 = $110). Were the ten-dollar Crime Stoppers fine vacated, the total fines would reduce to $430, for which the lump sum fine would still be $110; $10 for each of the ten forty-dollar increments, plus an additional ten

respondent's outstanding liabilities by a single dollar, there is no effective relief to be granted and his claim is moot.

III. The Sheriff's Fee Was Not Reviewable as Plain Error Because It Was Not Erroneously Excessive and Its Imposition Did Not Deny Defendant a Fair Sentencing Process.

A. Claims of error involving fines and fees are reviewed for plain error under the second prong of the plain-error test.

A defendant forfeits his claim of error regarding any aspect of sentencing if he fails to preserve it in both a contemporaneous objection and a written post-sentencing motion. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010); *see* 730 ILCS 5/5-4.5-50(d) (2013) ("A defendant's challenge to the correctness of a sentence or to any aspect of the sentencing hearing shall be made by a written motion filed with the circuit court clerk within 30 days following the imposition of sentence."). The appellate court may grant relief on a forfeited claim "only if defendant has established plain error," which provides a "narrow and limited exception" to the forfeiture doctrine. *Hillier*, 237 Ill. 2d at 545; *see* Ill. S. Ct. R. 615(a) ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court."). To establish plain error, the defendant must first show that the error was "clear and obvious," then show "either that (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing." *Hillier*, 237

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dollars for the remaining fraction of a forty-dollar increment ($430 ÷ 40 = 10.75; 11 x $10 = $110). Thus, the eighty-dollar lump sum fine that the circuit court imposed was $30 too low regardless of whether the Crime Stoppers fine is included.

Ill. 2d at 545. If the defendant fails to bear his burden, forfeiture bars review of his claim. *Id.*

"Second prong plain error is analogous to structural error, or 'an error affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself." *People v. Adame*, 2018 IL App (2d) 150769, ¶ 19 (quoting *People v. Johnson*, 2017 IL App (2d) 141241, ¶ 51, and omitting internal quotation marks); *see People v. Clark*, 2016 IL 118845, ¶ 46. To satisfy the second prong, "the defendant must prove . . . the error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *People v. Herron*, 215 Ill. 2d 167, 187 (2005). In other words, a sentencing error constitutes second-prong plain error only if its imposition denied the defendant a fair sentencing hearing. *See People v. Lewis*, 234 Ill. 2d 32, 48 (2009); *Wilson*, 2017 IL App (3d) 150165, ¶ 24 (finding that erroneous imposition of Crime Stoppers fine against defendant sentenced to imprisonment was not second-prong plain error because it "did not deny defendant fair process" where statute governing fine "did not require the court to hold a hearing or make a factual determination before imposing the crimestopper's [sic] fine") (citing 730 ILCS 5/5-6-3(b)(13) (2014)).

The Supreme Court has consistently held that "some form of hearing is required before an individual is finally deprived of a property interest." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). But where a statute does not specify the extent of that hearing — that is, whether evidence may be presented or what form that evidence may take — due process requires only that the hearing afford an opportunity to be heard "at a meaningful

time and in a meaningful manner." *Id.* In the sentencing context, defendants are afforded three meaningful opportunities to contest the imposition of fines and fees: at the sentencing hearing, in a written post-sentencing motion, and at the hearing on that motion.

Because the assessment of fines and fees generally does not involve burdens of proof, forfeited claims of error regarding fines and fees are reviewed for plain error under the second prong. *See, e.g.*, *Lewis*, 234 Ill. 2d 32, 34 (2009) (reviewing imposition of street-value fine not based on evidence street value for plain error under second prong); *People v. Smith*, 2018 IL App (1st) 151402, ¶ 5 (finding that erroneously imposed electronic citation and DNA identification fees were not plain error where defendant "d[id] not claim that the trial court failed to provide a fair process for determining his fines and fees"); *Wilson*, 2017 IL App (3d) 150165, ¶¶ 22-24 (reviewing imposition of Crime Stoppers fine against defendant sentenced to imprisonment for plain error under second prong).

Although this Court has not addressed which prong of the plain-error test applies to claims of improperly assessed fees, its rationale for excusing forfeiture of an improperly imposed public defender fee in *People v. Love*, 177 Ill. 2d 550 (1997), while not expressly invoking plain error, is consistent with second-prong plain-error analysis. *Id.* at 564. *Love* concerned a forfeited challenge to the trial court's assessment of a public defender fee without first conducting the statutorily mandated hearing at which it was to consider evidence of the defendant's ability to pay. *Id.* at 564-65; *see* 725 ILCS 5/113-3.1(a) (1995). The Court declined to enforce defendant's forfeiture because, by "wholly

ignoring the statutory procedures mandated for a reimbursement order," the trial court "failed to conduct any hearing or to otherwise engage in any consideration of defendant's financial circumstances and failed to allow defendant any opportunity to present evidence or otherwise contest the imposition of a reimbursement order." *Love*, 177 Ill. 2d 550, 564 (1997). This basis — that forfeiture should not be enforced where a defendant was denied process to which he was entitled — parallels the second prong of the plain error test. *See Lewis*, 234 Ill. 2d at 48.

B. The Sheriff's fee was not reviewable as second-prong plain error.

1. The Sheriff's fee was not erroneously excessive.

Defendant fails to satisfy his initial burden of showing error — in this case, that the amount of the Sheriff's fee was clearly and obviously excessive. *See Hillier*, 237 Ill. 2d at 545. Although section 4-5001 sets a fee of $10 "[f]or serving or attempting to serve each witness," $5 "[f]or returning each process," and fifty cents "for each mile of necessary travel to serve any such process [which process includes service of subpoenas on witnesses] . . . each way," 55 ILCS 5/4-5001 (2013), it authorizes county boards to increase those fees by ordinance "if the increase is justified by an acceptable cost study showing that the fees allowed by this Section are not sufficient to cover the costs of providing the service." *Id.* In 2011, Adams County enacted an ordinance increasing the fee for "each civil process and return" to forty dollars (from the thirty dollars to which it had been increased in 2003), with "civil process" defined in the cost study attached to the ordinance "and made a part [t]hereof," A78, as service of all papers except tax notices and warrants, A79. Thus, the fee for service of each of the fifteen witness subpoenas in

defendant's case was forty-one dollars (forty dollars for service and return of process, plus one dollar for the one-mile round trip per subpoena), for a total of $615 (15 x $41). However, only five of the fifteen returns of service were submitted with fee calculations based on the proper rate of forty dollars for service and return of process, *see* A86, A89-90, A92-93; the remaining ten were submitted with fee calculations based on the previous thirty-dollar rate for service and return of process, *see* A80-85, A87-88, A91, A94.[7] As result, defendant was assessed a Sheriff's fee of $515 ((5 x $41) + (10 x $31)). Thus, defendant's claim that the Sheriff's fee was excessive did not present a clear and obvious error because the Sheriff's fee was not erroneously high; it was in fact erroneously low.

Defendant argues that the Sheriff's fee is excessive because the 2011 ordinance, which raised the fees for service of all papers, *see* A78-79, did not specify that it was raising the fees for service of witness subpoenas. Def. Br. 13. But this Court has declined "to depart from the plain language and meaning of a statute by reading into it exceptions, limitations or conditions that the legislature did not express." *Ill. State Treasurer*, 2015 IL 117418, ¶ 21 (citing *Solich*, 158 Ill. 2d at 83). Here, departing from the language of the ordinance would defeat the county board's clear intent that the fees for service of all papers be raised to $40. *See People v. Boyce*, 2015 IL 117108, ¶ 15 (explaining that Court's "primary objective in construing a statutory scheme is to

[7] In the clerk's electronic accounts receivable records, the $515 Sheriff's fee ordered by the circuit court was apparently split into two entries, with the five subpoenas correctly returned at the current rate of forty dollars listed as a $205 "Sheriff" fee and the ten subpoenas incorrectly returned at the previous rate of thirty dollars listed as a $310 "Foreign Sheriff" fee.

ascertain and give effect to the intent of the legislature"). The ordinance was plainly enacted with the intent of raising fees for service of all papers in the county. *See* A78-79. Construing its deliberately general terms as excluding specific types of papers defeats this intent and is unsupported by the ordinance's language.

2. Even if the Sheriff's fee were excessive, its imposition was not reviewable as second-prong plain error.

Defendant challenges the Sheriff's fee on the basis that the amount is incorrect, not that its imposition denied him a fair sentencing hearing. In other words, defendant argues only "a simple mistake in setting the [fee]," not "a failure to provide a fair process for determining the [fee]" such as would constitute second-prong plain error. *Lewis*, 234 Ill. 2d at 48. Because Section 4-5001 does not prescribe a particular process for the assessment of the Sheriff's fee, defendant was constitutionally entitled only to an opportunity to contest the fee "at a meaningful time and in a meaningful manner." *Mathews*, 424 U.S. at 333. He received that opportunity. Although the Sheriff's fee was not discussed at the February 4, 2014 sentencing hearing, *see* RS 2-18, it appeared in the circuit court's written sentencing order entered the same day. A43. Defendant had an adequate opportunity to contest the imposition of the fee in a post-sentencing motion, but declined to take that opportunity. *See* C102-104; RM2-7. Thus, the imposition of the Sheriff's fee, even if it were erroneous, was not "so egregious as to deny the defendant a fair sentencing hearing," and so was not reviewable as second-prong plain error. *Hillier*, 237 Ill. 2d at 545.

C. Erroneous fines and fees are not reviewable as second-prong plain error simply because they are erroneous.

Defendant appears to make two main arguments regarding plain error: that all erroneous fees are reviewable *for* plain error and that all erroneous fees are reviewable *as* plain error. *See* Def. Br. 14-21. The People agree with the first proposition, for any forfeited claim, including a claim regarding a fee, may be reviewed for plain error — that is, the appellate court may review the forfeited claim to determine whether it satisfies one of the two prongs of the plain-error test. If, after reviewing the claim *for* plain error, the court finds that the defendant bore his burden of showing the error to be plain under one of the two prongs, it may then review the claim *as* plain error — that is, excuse the forfeiture and grant relief. *See Hillier*, 237 Ill. 2d at 545 (explaining that because defendant forfeited claim, "we may review this claim of error only if defendant has established plain error"); *Lewis*, 234 Ill. 2d 32, 34 (holding that because imposition of street-value fine without evidence of street value satisfied second prong of plain-error doctrine, it "is reviewable *as* plain error") (emphasis added). Indeed, the appellate court below reviewed defendant's forfeited fee claims for plain error, finding that "the claims do not rise to the level of errors affecting the fundamental fairness or integrity of the judicial process" such as would satisfy the second prong of the plain-error test. A9. Accordingly, the appellate court concluded that it could not proceed to review defendant's claims as plain error. A10.

Bur defendant's second argument — that all erroneous fees are reviewable *as* second-prong plain error — is contrary to the plain-error test. Defendant argues that the

appellate court erred in finding that his claims did not satisfy the second prong of the plain-error test not because he was denied an adequate opportunity to contest the challenged fines and fees, but because the fines and fees were erroneous. *See* Def. Br. 21. In support, defendant cites *Lewis* for the proposition that *all* improperly assessed fines may be treated as plain error simply because they are fines, Def. Br. 15, and applies the same reasoning to fees on the ground that they, too, are monetary assessments, Def. Br. 20. But *Lewis* rejected such a blanket exemption of fines from the ordinary rules of forfeiture, explaining that the improper imposition of a street-value fine without any evidence having been presented on street value was second-prong plain error not merely because it was an erroneous fine, but because it represented a denial of statutorily mandated process:

> The error here is more than a simple mistake in setting the fine. Rather, it is a failure to provide a fair process for determining the fine based on the current street value of the controlled substance. Plain-error review is appropriate because imposing the fine without any evidentiary support in contravention of the statute implicates the right to a fair sentencing hearing.

234 Ill. 2d at 48. *Lewis* held that there could be no *de minimis* exception to plain-error review for the same reason: "a *de minimis* exception is inconsistent with the fundamental fairness concerns of the plain-error doctrine," which "focuses on the fairness of a proceeding and the integrity of the judicial process" rather than the dollar amount of the substantive error. *Id.*

Defendant also is incorrect in asserting that courts "have consistently reviewed the unauthorized imposition of fines as plain error." Def. Br. 15. To the contrary, several

courts have followed *Lewis*'s instruction that erroneous fines are not second-prong plain error unless their imposition involves a denial of due process affecting the fairness of the sentencing hearing. *See Smith*, 2018 IL App (1st) 151402, ¶ 5 (finding that fines and fees were not second-prong plain error where defendant "d[id] not claim that the trial court failed to provide a fair process for determining his fines and fees"); *People v. Frazier*, 2017 IL App (5th) 140493, ¶ 34 (finding claim that $10 State Police Operations fine and $100 Violent Crime Victims Assistance were excessive by $5 and $20, respectively, did not satisfy second prong of plain-error test where error did not undermine essential fairness of trial); *Wilson*, 2017 IL App (3d) 150165, ¶ 24 (finding that erroneous imposition of Crime Stoppers fine against defendant sentenced to imprisonment was not second-prong plain error because it "did not deny defendant fair process" where statute governing fine "did not require the court to hold a hearing or make a factual determination before imposing the crimestopper's fine") (citing 730 ILCS 5/5-6-3(b)(13) (2014)).

Indeed, of the five cases that defendant cites in support of his assertion that courts consistently review erroneous fines as plain error, Def. Br. 15-16, three merely followed *Lewis* in holding that the imposition of a street-value fine without hearing the statutorily required evidence of street value is plain error. *People v. Galmore*, 382 Ill. App. 3d 531, 535-36 (4th Dist. 2008) (vacating street-value fine imposed based on prosecution's unsupported assertion of value because legislature intended that evidence be presented); *People v. Gonzalez*, 316 Ill. App. 3d 354, 364-65 (1st Dist. 2000) (vacating street-value fine imposed based on arrest report because authorizing statute requires presentation of testimony); *People v. Otero*, 236 Ill. App. 3d 282, 287 (2d Dist. 1994) (vacating street-

value fine imposed based on prosecution's unsupported assertion of value because legislature intended that evidence be presented). And the two remaining cases that defendant cites, *People v. Anderson*, 402 Ill. App. 3d 186, 194 (3d Dist. 2010), and *People v. Cox*, 2017 IL App (1st) 151536, engaged in minimal analysis. *Anderson* simply found, without explanation or analysis, that "imposition of a fine not authorized by statute challenges the integrity of the judicial process." 402 Ill. App. 3d at 194. *Cox* reasoned that unauthorized fines, as part of a defendant's sentence, "affect his substantial rights and may be reviewed under the second-prong of the plain error doctrine." 2017 IL App (1st) 151536, ¶ 102. But plain error "is not 'a general saving clause preserving for review all errors affecting substantial rights.'" *Herron*, 215 Ill. 2d at 178 (quoting *People v. Precup*, 73 Ill. 2d 7, 16 (1978)); *see People v. Pickett*, 54 Ill. 2d 280, 282-83 (1973) (explaining that Rule 615(a) "does not mandate that a reviewing court consider all errors involving substantial rights," but only errors "which deprived the accused of substantial means of enjoying a fair and impartial trial" or "in which the evidence is closely balanced") (quoting *People v. Burson*, 11 Ill. 2d 360, 370 (1957)).

Moreover, *Cox*'s holding relied on a misreading of this Court's statement in *People v. Fort*, 2017 IL 118966, that "'[t]he imposition of an unauthorized sentence affects substantial rights' and, thus, may be considered by a reviewing court even if not properly preserved in the trial court," *Cox*, 2017 IL App (1st) 151536, ¶¶ 98, 102 (quoting *Fort*, 2017 IL 118966, ¶ 19) (internal quotation marks from *Fort* omitted). Defendant offers this same statement in support of his argument that all erroneous fines and fees constitute second-prong plain error. Def. Br. 20 (citing *Fort*, 2017 IL 118966, ¶ 19). But when read in context, *Fort*'s apparently broad language stands for a

considerably narrower proposition. *Fort* concerned a claim that the trial court sentenced a juvenile as an adult where the governing provisions of the Juvenile Court Act required that he be sentenced as a juvenile. *Fort*, 2017 IL 118966, ¶¶ 1, 24. Thus, as with *Lewis* and *Love*, *Fort* concerned a denial of process — sentencing in adult rather than juvenile court — not merely a sentencing error. *See People v. Patterson*, 2014 IL 115102, ¶ 104 ("Whether a defendant is to be tried in juvenile or criminal court is purely a matter of procedure.").

Ultimately, defendant's argument appears to be that an erroneous fine or fee is necessarily second-prong plain error because it erroneously deprives a defendant of property. *See* Def. Br. 19, 23. But this argument confuses second-prong plain error, which "focuses on the fairness of a proceeding and the integrity of the judicial process," *Lewis*, 234 Ill. 2d at 48, with simple error, which focuses on whether a decision was correct. Defendant's argument also confuses denial of due process with simple error. For example, defendant argues that all statutorily unauthorized fines and fees, by dint of being erroneous financial assessments, infringe on defendants' Fourteenth Amendment protection against deprivation of life, liberty, or property without due process of law. Def. Br. 19. But due process "concern[s] the constitutionality of the specific procedures employed to deny a person's life, liberty, or property," not the mere fact of erroneous deprivation. *Segers v. Indus. Comm'n*, 191 Ill. 2d 421, 434 (2000). Similarly, defendant misconstrues *Nelson v. Colorado*, 137 S. Ct. 1249 (2017), as standing for the proposition that "[e]xacting and retaining a criminal defendant's funds, to which the government has no legal right, violates due process." Def. Br. 19. But *Nelson* held that when a defendant's conviction is invalidated, procedural due process prohibited Colorado from

conditioning its return of fees, court costs, and restitution upon the defendant's showing by clear and convincing evidence that he is actually innocent of the offense. *Nelson*, 137 S. Ct. at 1255-58. As *Nelson* explained, the presumption of innocence was restored upon the invalidation of the conviction, so that Colorado's retention of the proceeds from the conviction unless a defendant proved his innocence amounted to a presumption of guilt with respect to monetary exactions. *Id.* at 1256. If second-prong plain error excused forfeiture of any claim of error affecting a defendant's liberty or property interests as "adversely impact[ing] the fairness of the sentencing hearing," Def. Br. 19, regardless of the fairness of the sentencing procedures, then forfeiture would effectively no longer apply to claims of sentencing error at all, for all non-harmless claims of sentencing error affect defendants' property or liberty interests.

Contrary to defendant's assertion, it is not "axiomatically unfair to require a defendant to pay a fine or fee that the law does not require him to pay," Def. Br. 23; it is axiomatically erroneous. What would be unfair would be to require a defendant to pay a fine or fee that the law does not require him to pay without giving him an opportunity to contest it. *See Mathews*, 424 U.S. at 333. That unfairness is the focus of second-prong plain-error analysis. *See Lewis*, 234 Ill. 2d at 48.

D. Judicial economy is not served by exempting all routine fines and fees claims from forfeiture.

Defendant argues that "[t]he interests of judicial economy are best served by reviewing courts addressing unauthorized fees for the first time on direct appeal," Def. Br. 26. In support, he relies on *People v. Caballero*, 228 Ill. 2d 79 (2008), to assert that "this Court has consistently allowed fines and fees claims to be raised for the first time on appeal in collateral proceedings." Def. Br. 27. But *Caballero* is inapposite: it did not

concern a claim of error regarding fines or fees at all, but rather whether an application for presentence custody credits could be made in a post-conviction proceeding where the governing statute set no limit "concerning any time frame or procedural stage during which such application either must or can be made." *Caballero*, 228 Ill. 2d at 87-88. The Court concluded that a statutory application for presentence custody credits may be raised at any time in any stage of court proceedings, at which point it may be granted in a simple ministerial act if the basis to do so is clear from the record. *Id.* at 88.

Rather than serving the interests of judicial economy, allowing defendants to ignore their monetary assessments until they are before the appellate court wastes scarce judicial resources on matters that could have been readily corrected had they been brought to the attention of the trial court. *See People v. Marker*, 233 Ill. 2d 158, 168-69 (2009) (quoting *People v. Robins*, 33 Ill. App. 3d 634, 636 (4th Dist. 1975)) ("'Public policy clearly favors correction of errors at the trial level.'"). Although it may be more efficient for the appellate court to correct forfeited fines and fees errors in an individual case after time and resources have already been spent briefing them and considering those briefs, "in the long run, judicial economy would best be served if fines-and-fees issues were resolved expeditiously at the trial court level, rather than requiring the time and expense of an appeal in the first place." *See People v. Griffin*, 2017 IL App (1st) 143800, ¶ 5, *leave to appeal allowed*, No. 122549 (Nov. 22, 2017). The volume of routine fines and fees claims raised for the first time on appeal represents a systemic drain on appellate resources. *See id.* (noting that "[t]his case is but one of hundreds of criminal appeals involving fines-and-fees issues that were overlooked in the trial court level and raised for the first time on appeal" and that "[a] Westlaw search reveals that in

2016 alone, there were 137 cases in this court where a defendant challenged the imposition of fines and/or fees . . . , all for the first time on appeal"). "Copious amounts of time, effort, and ink are spent resolving these issues at the appellate level when many of them are more appropriately resolved at the trial level through (i) routine review of judgment orders after their entry — a task that would at most take minutes — and (ii) cooperation between the parties to correct any later-discovered errors by means of agreed orders." *Id.* at ¶ 7 (citing *In re Derrico G.*, 2014 IL 114463, ¶ 107 (State's Attorney has duty to see that justice is done for both public and defendant)); *see People v. Williams*, 2013 IL App (4th) 120313, ¶ 25 ("Additionally, we emphasize the tremendous amount of appellate resources expended in this case and many others just like it to correctly determine and assess the myriad of fines and fees our legislature has created."). Requiring defendants to seek correction of routine fines and fees errors in the circuit court before appealing those errors promotes efficiency, in keeping with this court's policies. *See Marker*, 233 Ill. 2d at 169 ("[T]his court has . . . espoused the efficacy of providing the opportunity for an expeditious method to correct error short of an appeal.").

IV. The Appellate Court May Not Grant Relief on a Forfeited Claim Under Rule 615(b) Where Review of that Claim Is Barred Under Rule 615(a).

Finally, defendant argues that, even if Rule 615(a)'s forfeiture rule prohibited review of his claims, the appellate court nonetheless court could grant relief on those claims under Rule 615(b), Def. Br. 34-35, which provides that a reviewing court has the power to "reverse, affirm, or modify the judgment," Ill. S. Ct. R. 615(b). But Rule 615(b) "provides no stand-alone basis for modification of the fines and fees order" where review of those fines and fees is prohibited under Rule 615(a). *People v. Smith*, 2018 IL App (1st) 151402, ¶ 5; *People v. Grigorov*, 2017 IL App (1st) 143274, ¶ 14 (explaining that

"Rule 615(b) sets forth the kinds of relief that a reviewing court may grant, but not the kinds of issues that a reviewing court may address," and "certainly does not purport to override the forfeiture rule set forth in Rule 615(a)"). Defendant's construction of Rule 615(b) as allowing appellate review of forfeited claims regardless of whether they satisfy Rule 615(a)'s plain-error test would eliminate forfeiture as a bar to appellate review. Accordingly, "[i]t makes most sense to view Rule 615 as a harmonious whole: subsection (a) prescribes the kinds of errors that are reviewable, while subsection (b) prescribes potential remedies for error (but only if review is proper under (a))." *Grigorov*, 2017 IL App (1st) 143274, ¶ 14.

CONCLUSION

For these reasons, the People of the State of Illinois respectfully request that this Court affirm the judgment of the appellate court.

March 7, 2018

Respectfully submitted,

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People of the State of Illinois

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the 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 twenty-two pages.

/s/ Joshua M. Schneider
JOSHUA M. SCHNEIDER
Assistant Attorney General

PROOF OF FILING AND SERVICE

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 March 7, 2018, the foregoing **Brief and Appendix of Plaintiff-Appellee People of the State of Illinois** was (1) filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and (2) served by transmitting a copy from my e-mail address to the e-mail address of the person named below:

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Additionally, upon its acceptance by the Court's electronic filing system, the undersigned will mail thirteen copies of the brief to the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois, 62701.

/s/ Joshua M. Schneider
JOSHUA M. SCHNEIDER
Assistant Attorney General

APPENDIX

Case number 2013CF000394D 001

Litigant HARVEY, SHANE D

Agency County Crm & Juv

Due date 7/28/2015

	Due	Paid	Balance
Clerk	100.00	.00	100.00
State's Atty	30.00	.00	30.00
Sheriff	205.00	.00	205.00
Automation	5.00	.00	5.00
Violent Crime	100.00	.00	100.00
Judicial Security	25.00	.00	25.00
Restitution	1,012.14	.00	1,012.14
Document Storage	15.00	.00	15.00
Foreign Sheriff	310.00	.00	310.00
Medical Costs	10.00	.00	10.00
Lump Sum Surcharge	80.00	.00	80.00
SA Collections	652.24	.00	652.24
SA Automation Fee	2.00	.00	2.00
Probation Ops Fee	10.00	.00	10.00
CASA	20.00	.00	20.00
Total	2,576.38	.00	2,576.38

CERTIFICATE

I, Lori R. Geschwandner, Clerk of the Circuit Court of the Eighth Judicial Circuit of Illinois, Adams County, do hereby certify that this is a true and complete copy of the Original instrument filed and retained in this office.

WITNESS,

Clerk of the Circuit Court

SEAL By Deputy

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PO BOX 499
HILLSBORO IL 62049-0000

Case number 2013CF000394D 001

Litigant HARVEY, SHANE D

Agency County Crm & Juv

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Foreign Sheriff	310.00	.00	310.00
Medical Costs	10.00	.00	10.00
Lump Sum Surcharge	80.00	.00	80.00
SA Collections	577.24	.00	577.24
SA Automation Fee	2.00	.00	2.00
Probation Ops Fee	10.00	.00	10.00
CASA	20.00	.00	20.00
Total	2,501.38	.00	2,501.38

CERTIFICATE

I, Lori R. Geschwandner, Clerk of the Circuit Court of the Eighth Judicial Circuit of Illinois, Adams County, do hereby certify that this is a true and complete copy of the Original instrument filed and retained in this office.

WITNESS, February 27, 2018
Lori R. Geschwandner
Clerk of the Circuit Court
SEAL By Kim Goodwin Deputy

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