

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JIMMY DILWORTH,

Defendant-Appellant.

FOR PUBLICATION

January 25, 2011

9:05 a.m.

No. 294785

Oakland Circuit Court

LC No. 2009-224828-FH

Before: METER, P.J., and M. J. KELLY and RONAYNE KRAUSE, JJ.

RONAYNE KRAUSE, J.

Defendant appeals by right his jury convictions for third-degree fleeing and eluding, MCL 257.602a(3)(a), and driving while license suspended, MCL 257.904(1). The trial court sentenced defendant as an habitual offender, fourth offense, MCL 769.13, to three years' probation and 365 days' imprisonment, with credit for 22 days, for third-degree fleeing and eluding, and 365 days' imprisonment for driving while license suspended, with credit for 22 days. In addition to the costs and fees assessed, the trial court ordered defendant to pay \$1,235 for the cost of the prosecution as a term of his probation. On appeal, defendant argues the trial court did not have the authority to order him to pay \$1,235 in prosecution costs. We reverse and remand.

The trial court must have statutory authority to order a criminal defendant to pay costs associated with the trial. *People v Lloyd*, 284 Mich App 703, 707; 774 NW2d 347 (2009). Neither of the statutes that defendant was convicted of violating provide any such authority, but the Legislature has the "authority to enact a general cost provision." *Id.* at 710 n 3. We review de novo questions of statutory interpretation, such as whether a statute authorizes imposition of costs. *People v Martin*, 271 Mich App 280, 286-287; 721 NW2d 815 (2006), aff'd 482 Mich 851 (2008).

There are several statutes under which trial courts *may* impose costs. MCL 771.3 authorizes the trial court to order defendant to pay costs as a condition of probation; specifically, it authorizes assessment of costs "*incurred in prosecuting the defendant or providing legal assistance to the defendant and supervision of the probationer*" (emphasis added). See *People v Brown*, 279 Mich App 116, 138; 755 NW2d 664 (2008). Under MCL 769.1k(1)(b)(iii), the trial court may impose "[t]he expenses of providing legal assistance to the defendant." Under MCL 769.34(6), the trial court may order costs as part of the sentence. Therefore, the trial court does

generally have the discretionary authority to order a criminal defendant to pay “costs of prosecution.”

Nevertheless, when authorized, costs of prosecution “must bear some reasonable relation to the expenses actually incurred in the prosecution.” *People v Wallace*, 245 Mich 310, 314; 222 NW 698 (1929). Furthermore, those costs may *not* include “expenditures in connection with the maintenance and functioning of governmental agencies that must be borne by the public irrespective of specific violations of the law.” *People v Teasdale*, 335 Mich 1, 5; 55 NW2d 149 (1952).

In this case, the prosecutor offered to provide the trial court with details of the expenses that were claimed to justify the \$1235 in costs, but that information was never placed into the record. Furthermore, it appears from the transcript of the proceedings that defendant may not have been afforded the opportunity to challenge those costs. We have no way to know the extent to which those costs were based on appropriate charges, such as expert witness fees, *People v Brown*, 279 Mich App 116, 139; 755 NW2d 664 (2008), or impermissible charges, such as the prosecutor’s wages, which are set by a board of supervisors pursuant to a statute and independent of any particular defendant’s case. See MCL 49.34. The prosecutor’s costs are likely all allowable, but as a court of record without the benefit of a record, we cannot so determine.

We therefore reverse the trial court’s imposition of the costs of prosecution, and we remand this matter to the trial court to make a record of what the costs are, determine whether they are permissible, and, if appropriate, impose or deny them. We do not retain jurisdiction.

/s/ Amy Ronayne Krause
/s/ Patrick M. Meter
/s/ Michael J. Kelly