

COA Opinion: When a criminal defendant is ordered to pay the costs of prosecution the record must show that those costs were reasonably related to the expenses actually incurred in prosecuting the case.

26. January 2011 By Madelaine Lane

On Tuesday, January 25, 2010, the Court of Appeals published its opinion in [People v Dilworth](#), No. 294785. In *Dilworth*, the Court of Appeals held that when a trial court orders a defendant pay “costs of prosecution” the record must reflect that those costs are related to the actual expenses incurred in prosecuting the case.

After the defendant’s conviction, the trial court ordered him to pay \$1,235 for the prosecution of the case, in addition to the assessed costs and fees. Defendant appealed and the Court of Appeals reversed and remanded so that the trial court could make a record of what the costs are, determine whether they are permissible, and, if appropriate, impose or deny them. Although the Court of Appeals opined that the prosecutor’s costs are likely allowable, it stated that it had no way of knowing “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.” It noted that under the Michigan Supreme Court’s ruling in [People v. Teasdale](#), 335 Mich. 1, 5; 55 N.W.2d 149 (1952), the cost of prosecution 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.”