

No. 1-10-0481

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CR 2913
)	
MILTON STEWART,)	Honorable
)	Kenneth J. Wadas,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE QUINN delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant was proved guilty beyond a reasonable doubt of official misconduct and theft after the gas company discovered a missing meter installed in defendant's apartment building and, further, determined that he was using natural gas from the meter absent the company's authorization. Defendant's convictions did not violate the one-act, one crime rule. This court affirmed the circuit court's judgment, but vacated certain monetary penalties.

¶ 2 Following a bench trial, defendant Milton Stewart was found guilty of forgery, identity theft, wire fraud, theft and official misconduct, then sentenced to three years' probation. On appeal, defendant contends the State failed to prove him guilty beyond a reasonable doubt of

theft and official misconduct and, in the alternative, that those convictions violate the one-act, one-crime rule. He also challenges certain fines and fees. We affirm.

¶ 3 Defendant was charged with the above-stated crimes after People's Gas Company discovered a missing meter installed in defendant's apartment building at 4709 South Indiana Avenue and, further, determined that he was using natural gas from the meter absent company authorization. The State introduced the following evidence to prove defendant, a Chicago firefighter, stole the meter from a different address while in the course of his official duties, then used the gas to heat his home.

¶ 4 Although People's Gas listed Lakita Strawder as the last-known account-holder for the Indiana Avenue address, evidence revealed that defendant had been both living there and claiming it as his residence. In July 2006, People's Gas locked the meter for that location because the gas bill had not been paid, and service was shut off. About four months later, People's Gas discovered that someone had tampered with the meter and turned the service back on. This scenario repeated itself several more times before People's Gas finally removed the meter from the Indiana Avenue address on November 9, 2007.¹

¶ 5 About three weeks later, on November 24, 2007, according to the stipulated evidence, defendant was on duty as a firefighter and responded to a house fire at 10139 South Beverly Avenue in Chicago. David Denham, an investigator of meter tampering for People's Gas, testified that as of November 24, 2007, People's Gas records showed that meter number 2573102 was affixed at the Beverly address. That meter, however, went missing.

¶ 6 On November 28, 2007, defendant filed an application for new service with People's Gas at the Indiana Avenue address. He attached a lease identifying Bethany Strawder as the lessor

¹ Although the transcript says November 9, 2000, given the context, the year 2000 is clearly a typographical error.

and himself as the lessee. People's Gas denied the application the next day after finding defendant had used the social security number of a deceased person.

¶ 7 On December 2, 2008, Gene Moreth, chief investigator for the fire department, testified that he contacted People's Gas representatives regarding an allegation that defendant was stealing natural gas and receiving it at the Indiana Avenue residence.

¶ 8 On December 17, 2008, Denham and Moreth gained access to the gas meter in the Indiana Avenue building. The meter, bearing identification number 2573102, was working and in use at that time. Denham testified that this was the same meter missing from the Beverly address, that no two gas meters were the same, and that each meter has its own signal. Records showed that meter number 2573102 had pulsed a signal from the Indiana Avenue address as early as December 4, 2007, roughly 11 days after defendant had responded to the fire. People's Gas had not authorized the removal of the meter from the Beverly address or its installation at the Indiana Avenue address. Denham determined that gas worth \$4,575.69 had been used absent authorization between December 4, 2007, and January 14, 2009.

¶ 9 After viewing the meter, Denham and Moreth knocked on the door of the first-floor apartment. Defendant answered the door wearing only shorts. They concluded that the gas was obviously on given the air blasting from the apartment and the 80-degree temperature inside. Defendant stated he had maintained gas service for a number of months and had been living there with Lakita Strawder.

¶ 10 Defendant was subsequently taken into police custody, and after being given *Miranda* warnings, he provided a statement. He stated that before joining the fire department, he had been a meter reader for Commonwealth Edison. He stated that he had been present for the fire at the Beverly address on November 24, 2007, and admitted telling police and other authorities that he lived at the Indiana Avenue address. In addition, he admitted sending an application to

People's Gas with a fake lease, wherein he forged the signature of Betty Strawder. Defendant further admitted that he had pasted a false social security number on the application because he had an outstanding debt due to People's Gas. The parties stipulated that this social security number belonged to a person who had died. Defendant's statement to the assistant State's Attorney was substantially the same.

¶ 11 The State rested. Defendant filed a motion for a directed verdict, which was denied.

¶ 12 The defense presented evidence suggesting that it was not defendant who sent the fake application to People's Gas, but another individual.

¶ 13 After evidence and argument, the trial court found defendant guilty on all counts. The court found the evidence showed defendant was living at the Indiana Avenue address and "of course benefit[t]ing from the free gas ***." The court noted that although there was no direct evidence of official misconduct, there was "[s]trong circumstantial evidence" supporting such an offense. The court noted that defendant's presence as a firefighter at the scene where the gas meter was stolen and his admissions to forgery and identity theft supported an inference that he caused the removal of the meter in his official capacity as a firefighter. Following the guilty finding, the court sentenced defendant to three years' probation. Defendant appealed.

¶ 14 Defendant first challenges the sufficiency of the evidence to sustain his convictions of official misconduct and theft. The standard of review when assessing the sufficiency of evidence is, considering all the evidence in the light most favorable to the State, whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt. *Siguenza-Brito*, 235 Ill. 2d at 225.

¶ 15 A public employee commits misconduct when, in the public employee's official capacity, he knowingly performs an act he knows is forbidden by law. *People v. Williams*, 239 Ill.2d 119, 127 (2010). The purpose of the official misconduct statute is to prevent public officers and employees from using an official position in the commission of an offense. *Id.* The statute requires that the charging instrument specify the law allegedly violated by the officer. *Id.*

¶ 16 In this case, the State charged defendant with official misconduct; the predicate offense was defendant's theft of the gas meter or the theft of the gas meter by someone for whom defendant was accountable. To establish official misconduct as alleged in this case, then, the State was required to prove beyond a reasonable doubt that defendant, in his official capacity as a Chicago firefighter, performed an act in excess of his lawful authority with the intent of obtaining a personal advantage for himself or another, to wit: defendant caused the People's Gas meter to be unlawfully removed from the Beverly address, where he had responded to a fire, and caused the meter to be reconnected to the Indiana Avenue address, where he then obtained natural gas illegally for free. See 720 ILCS 5/33-3(c) (West 2008).

¶ 17 The State also filed a separate charge of theft against defendant for stealing natural gas from the gas company. To establish theft as alleged in this case, the State was required to prove beyond a reasonable doubt that defendant knowingly obtained by deception control over the natural gas with the intent to deprive the owner, People's Gas, permanently of the use or benefit of that property. See 720 ILCS 5/16-1(a)(2)(A) (West 2008).

¶ 18 Here, the evidence viewed in a light most favorable to the State, was sufficient to sustain defendant's convictions. The evidence showed that defendant, a former meter reader for Commonwealth Edison, lived at the Indiana Avenue address with Lakita Strawder who had not paid her gas bills. Evidence showed that to obtain free gas, someone had tampered with the meter a number of times until People's Gas eventually removed the meter in early November

2007. On November 24, 2007, defendant responded to a fire in his official capacity as a firefighter at the Beverly address. Four days later, defendant filed an application for new gas service with People's Gas at his Indiana Avenue address by admittedly using a fake lease and the social security number of a deceased person. Defendant's application was denied. Days later on December 4, 2007, the gas meter, number 2573102, that was previously affixed to the Beverly address pulsed its unique signal from defendant's Indiana Avenue address. On December 17, 2008, representatives from People's Gas and the fire department observed that the meter was working and in use. These observations were confirmed when they encountered defendant, clad in only shorts, in his heated apartment. Defendant admitted living there and having heat for a number of months. People's Gas did not authorize the removal of this meter or its installation for use at defendant's apartment. On this evidence, the trial court's determinations were not so unreasonable or unsatisfactory as to create a reasonable doubt of defendant's guilt.

¶ 19 Regarding the official misconduct conviction, defendant nevertheless argues that there is no evidence that he, himself, "removed the gas meter from the Beverly address and installed it in his apartment building." However, the State was not necessarily required to prove that defendant did the deed, but rather that he caused it to be done. The inferences flowing from the totality of the evidence support that defendant observed the Beverly meter while responding to a fire at that address, then later used knowledge gained from his official position as a firefighter to cause the meter to be removed, or stolen, and installed for his own and his family's use at the Indiana Avenue address. See *People v. Bush*, 214 Ill. 2d 318, 326 (2005); *People v. Brogan*, 352 Ill. App. 3d 477, 492 (2004). The evidence overwhelmingly established that defendant committed or was accountable for theft of the meter, which was the predicate offense for official misconduct. Defendant's claim fails.

¶ 20 Defendant next challenges the validity of his convictions under the one-act, one-crime rule. Although defendant did not raise this claim below, thus forfeiting it, our supreme court has held that "forfeited one-act, one-crime arguments are properly reviewed under the second prong of the plain-error rule because they implicate the integrity of the judicial process." *People v. Nunez*, 236 Ill. 2d 488, 493 (2010). Accordingly, we proceed in our review.

¶ 21 It is well-established that multiple convictions are improper if they are based on precisely the same physical act. *Nunez*, 236 Ill. 2d at 494. However, multiple convictions and concurrent sentences are allowed where a defendant has committed several acts, despite the interrelationship of those acts. *Nunez*, 236 Ill. 2d at 494. An "act" means any overt or outward manifestation which will support a different offense. *Nunez*, 236 Ill. 2d at 494.

¶ 22 Defendant argues that the offenses of official misconduct and theft, as alleged, were based on the same physical act "of moving the gas meter." We disagree.

¶ 23 As detailed above, defendant's conviction of official misconduct was predicated on his act of stealing or causing the theft of the gas meter with the intent of gaining the personal advantage of free natural gas. Defendant's conviction of theft was predicated on his act of actually stealing the natural gas to heat his home. As the State notes, defendant committed official misconduct the moment he used his official position as a firefighter to steal the gas meter from the Beverly address with the intent of gaining a personal advantage, regardless of whether he actually received that advantage. There is no lesser-included offense here. As such, defendant's one-act, one-crime claim fails.

¶ 24 Defendant next challenges the imposition of certain fines and fees. Defendant contends, and the State correctly concedes, that the following monetary penalties were improperly assessed because they are not related to his convictions: a \$5 court system fee for individuals who violate the Illinois Vehicle Code or a similar local provision (55 ILCS 5/5-1101(a) (West 2008)) and a

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\$25 court supervision fee for individuals who violate the Illinois Vehicle Code or a similar local provision (625 ILCS 5/16-104c (West 2008)). None of defendant's convictions resulted from Vehicle Code violations. Accordingly, we vacate these monetary penalties.

¶ 25 Defendant also contends that he was improperly assessed the \$10 Arrestee's Medical Costs Fund fee (fund fee) because there is no evidence that he was injured, or that the county incurred medical expenses for him, while he was in the custody of the county (730 ILCS 125/17 (West 2008)). The State responds that the amended fund fee statute does not support defendant's contention.

¶ 26 After the parties filed their briefs in this case, the supreme court issued its decision in *People v. Jackson*, 2011 IL 110615. The court in *Jackson* held that whether the preamended or amended fund fee statute applies, both authorize the \$10 medical cost assessment against all defendants regardless of whether they actually received medical services. *Jackson*, 2011 IL 110615, ¶23. In light of *Jackson*, defendant is not entitled to vacatur of his fund fee.

¶ 27 Based on the foregoing, we affirm the judgment of the circuit court of Cook County. We vacate the \$5 court system fee and the \$25 court supervision fee and order the clerk of the circuit court to correct the fines and fees order accordingly.

¶ 28 Affirmed in part; vacated in part; fines and fees order corrected.