2015 IL App (1st) 132214-U

SIXTH DIVISION
May 22, 2015

No. 1-13-2214

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. 11 C6 61358
	)	
JACQUES FUQUA,	)	Honorable
	)	Brian Flaherty,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justice Hall and Lampkin concurred in the judgment.

O R D E R

¶ 1 *Held*: Where State disproved defendant's affirmative defense of necessity, we affirmed his conviction of aggravated fleeing or attempting to elude a peace officer; but vacated the $2 public defender records automation charge as improperly imposed.

¶ 2 Following a bench trial, defendant Jacques Fuqua was convicted of aggravated fleeing or attempting to elude an officer based on his failure to obey two or more traffic control devices and sentenced to two years' probation. On appeal, defendant asserts that his conviction cannot stand where the State failed to disprove his affirmative defense of necessity. He also contends the trial court erred in imposing certain assessments. We affirm, as modified.

¶ 3 Defendant was charged with two counts of aggravated fleeing or attempting to elude an

officer based on fleeing at a rate of speed of at least 21 miles-per-hour over the legal speed limit (count 1), and failing to obey two or more official traffic control devices (count 2). These charges stemmed from a police chase which occurred on October 5, 2011, when defendant drove away after police stopped him for not wearing a seat belt.

¶ 4 During opening statements, defense counsel asserted the affirmative defense of necessity. Counsel argued that after police stopped defendant for not wearing a seat belt, they threatened to Taser him and attempted to break the window of his vehicle with a baton. According to his counsel, defendant, who was afraid for his safety, drove away from the scene and toward the Hazel Crest police station where he was stopped by a second police vehicle.

¶ 5 At trial, Officer Derrick Chambliss testified that he and his partner Officer Farkas were on patrol in their marked squad car near 16814 Head Street in Hazel Crest on October 5, 2011. Both officers were in full uniform. Officer Chambliss observed defendant driving without wearing a seat belt and pulled defendant over. Defendant was driving an SUV with running boards and a sunroof. Upon request, defendant produced his license and insurance. Officer Chambliss used his radio to call dispatch for a background check on defendant and learned he had a "non extraditable warrant." This information was relayed over an open radio.

¶ 6 As Officer Chambliss approached defendant's SUV to issue him a citation for failing to wear a seat belt, he observed defendant make a swift movement whereby defendant reached with his right arm toward the passenger side floorboard. Officer Chambliss felt threatened and asked defendant to exit his vehicle. Defendant responded that he had heard about his outstanding warrant, and asked Officer Chambliss to contact a supervisor because he would not exit his vehicle. Officer Chambliss again asked defendant to step out of the vehicle or he would be Tasered. Defendant rolled up the windows and locked the doors. Defendant drove away from

the traffic stop.

¶ 7 Officer Chambliss returned to his squad car and followed defendant down nearby alleys and streets with his police lights and sirens activated. During the chase through a residential neighborhood, defendant was driving at a high rate of speed and Officer Chambliss' vehicle reached a speed of 100 miles-per-hour. Defendant failed to make complete stops at the stops signs located at 169th Street and Western Avenue and 170th Street and Western Avenue. Another police vehicle eventually blocked defendant's path forcing him to stop as he travelled across the overpass at Western Avenue. After his arrest, defendant apologized to Officer Chambliss for placing his life, as well as his partner's life, in jeopardy. Defendant explained that he left the scene of the initial stop because he had bad experiences with police.

¶ 8 On cross-examination, Officer Chambliss testified that during the traffic stop he took out his night stick for safety reasons and threatened to break the window of defendant's vehicle. Officer Chambliss, however, never struck the window with his night stick. Officer Chambliss denied approaching defendant through his sunroof, or threatening to spray mace through defendant's sunroof.

¶ 9 Defense counsel asked Officer Chambliss if he remembered responding "[that's] correct" when asked at the preliminary hearing if he tried to break defendant's window with his night stick. Officer Chambliss stated that he did not recall giving that answer and may have misinterpreted the question. Officer Chambliss also stated that the overpass at Western Avenue is part of a route to the Hazel Crest police station.

¶ 10 On redirect examination, Officer Chambliss explained that although he never hit defendant's vehicle with his night stick, he retrieved it because he was going to attempt to break the window of defendant's vehicle and open the door. The officer did not want to give defendant

enough time inside of the vehicle to obtain whatever he had reached for on the floor.

¶ 11 On recross examination, Officer Chambliss testified that when he first approached defendant's vehicle, defendant did not make any sudden movements toward the floorboard. Defense counsel asked Officer Chambliss if he recalled the following colloquy at the preliminary hearing:

> "Defense Counsel: Did you approach the vehicle?
>
> Officer Chambliss: Yes, I did.
>
> Defense Counsel: As you approached the vehicle, did you make observations?
>
> Officer Chambliss: Yes.
>
> Defense Counsel: What observations did you make?
>
> Officer Chambliss: I observed the driver make swift movements toward his passenger side floorboard.
>
> Defense Counsel: When you reached the driver, did you ask him anything?
>
> Officer Chambliss: Yes.
>
> Defense Counsel: What did you ask him?
>
> Officer Chambliss: I asked him for his license and proof of insurance."

Officer Chambliss acknowledged being asked those questions and providing those answers at the preliminary hearing, but testified at trial that defendant did not make any sudden movements before the officer asked for defendant's license and insurance.

¶ 12 Defendant testified that on the evening of October 5, 2011, he was driving home when police pulled him over for not wearing a seat belt as he was turning into his alley. Officer Chambliss requested his license and insurance, which defendant provided. The officers stood behind his vehicle for about a minute while they checked his license and insurance. While

defendant was waiting in his SUV, he heard the police radio dispatch that he had an outstanding warrant. The officers again approached defendant's vehicle and told him to exit the vehicle. Defendant asked Officer Chambliss why he wanted him to exit his vehicle, and the officer told him: "if [you] have anything, just go ahead and give it to [me] now, and we'll work it out." Defendant told Chambliss he did not understand, and then Officer Chambliss again instructed defendant to exit the vehicle. About two minutes later, defendant rolled up his window, locked his door, and asked Officer Chambliss to call his sergeant to the scene. Officer Chambliss became angry and pulled on the door handle of defendant's vehicle. Defendant testified that Officer Chambliss acted as if he was going to spray mace through the sunroof of defendant's vehicle, stated: "get the f*** out [of] the car," and threatened to Taser defendant. Defendant refused to exit his vehicle and again told Officer Chambliss to call his sergeant to the scene. Officer Chambliss took out his night stick and told defendant that if he did not get out of the vehicle he was going to break the vehicle window. Officer Chambliss struck the driver-side window with his night stick. Defendant became scared and drove away.

¶ 13 Defendant never used his cell phone to call the police, or 9-1-1 to report the incident. Although defendant did not use the most direct route, he drove toward the police station, disobeying stop signs along the way. Officer Chambliss followed him, and when defendant saw another police vehicle approaching, he pulled over, exited the vehicle, and put his hands in the air. Defendant explained that the second police vehicle made a "T" with his SUV, preventing him from proceeding any further.

¶ 14 During closing argument, defense counsel stated that the affirmative defense of necessity was applicable because defendant's rationale for driving away from police was reasonable where he faced greater harm if he stayed at the scene to face Officer Chambliss' aggressive behavior. In

rebuttal, the State argued that the reason defendant fled the police was because he was afraid of being arrested on his outstanding warrant.

¶ 15 Following closing argument, the trial court found defendant guilty of one count of aggravated fleeing or attempting to elude an officer based on his failure to obey two or more traffic control devices (count 2). In doing so, the court found that there was "some small impeachment" of Officer Chambliss, but concluded that defendant's refusal to exit the vehicle contributed to the events leading to his arrest. The court stated that it believed defendant did not want to be arrested on his outstanding warrant. The court further held that "everything [defendant] did was his own choosing," he acted irresponsibly, never used his cell phone to call 9-1-1 to report that he was being threatened by police, did not take a direct route to the police station, and only stopped his vehicle after police blocked his path.

¶ 16 Defense counsel filed motions to reconsider and for a new trial, arguing defendant's response to Officer Chambliss' conduct was necessary, and the evidence was insufficient to prove defendant guilty beyond a reasonable doubt where the facts demonstrated Officer Chambliss was the aggressor. In the motion to reconsider, defense counsel highlighted two incidents involving Officer Chambliss and defendant. In an incident prior to trial, defense counsel stated that he was on the phone with defendant when Officer Chambliss curbed defendant for another traffic stop at the entry of an alley by defendant's home and stated, "I've got my Sergeant now." In an incident after trial, defense counsel stated that defendant told him that Officer Chambliss stopped one of defendant's friends, Marvin Jones, and inquired about defendant's financial status. Counsel argued that these incidents undermined Officer Chambliss' credibility.

¶ 17 The trial court denied both motions noting that, at the time of the initial stop, the police

knew defendant had an outstanding warrant and made a simple request for him to exit the vehicle. Defendant refused to comply, resulting in a police chase that endangered the community.

¶ 18 After a sentencing hearing, the trial court imposed a sentence of two years' probation and assessed fines and fees of $519, including charges for the State's Attorney records automation, public defender records automation, and probation and court services operations. This appeal followed.

¶ 19 On appeal, defendant argues that the evidence at trial was insufficient to prove him guilty of aggravated fleeing or attempting to elude an officer beyond a reasonable doubt. He specifically maintains that the evidence established an affirmative defense of necessity, which the State was unable to disprove.

¶ 20 In resolving a challenge to the sufficiency of the evidence, we must determine whether, when viewing the evidence in the light most favorable to the prosecution, "any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). On review, we will not retry defendant, and the trier of fact remains responsible for determining the credibility of witnesses and the weight to be given to their testimony. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). A defendant's conviction will be reversed only "where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Brown*, 2013 IL 114196, ¶ 48. "Testimony may be found insufficient under the *Jackson* standard but only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004).

¶ 21 As relevant to this appeal, a person commits aggravated fleeing or attempting to elude a

peace officer when the driver of a motor vehicle flees or attempts to elude a peace officer after being given a visual or audible signal by a peace officer and such flight or attempt to elude involves disobedience of two or more traffic control devices. 625 ILCS 5/11-204.1(a)(4) (West 2010).

¶ 22 Here, defendant admits that he fled from Officer Chambliss during a traffic stop, and that while he was fleeing he disobeyed two stop signs on Western Avenue. Defendant claims, however, that he sufficiently raised the defense of necessity and the State failed to disprove that defense beyond a reasonable doubt.

¶ 23 "Conduct which would otherwise be an offense is justifiable by reason of necessity if the accused was without blame in occasioning or developing the situation and reasonably believed such conduct was necessary to avoid a public or private injury greater than the injury which might reasonably result from his own conduct." 720 ILCS 5/7-13 (West 2010); *People v. Brown*, 341 Ill. App. 3d 774, 782 (2003). The defense of necessity applies when the threat of harm was immediate, and defendant's conduct was the sole option to avoid injury. *People v. Azizarab*, 317 Ill. App. 3d 995, 998-99 (2000). The defense of necessity "is viewed as involving the choice between two admitted evils where other optional courses of action are unavailable, and the conduct chosen must promote some higher value than the value of literal compliance with the law." (Internal citations omitted.) *People v. Janik*, 127 Ill. 2d 390, 399 (1989).

¶ 24 Where a defendant proves some evidence in support of the affirmative defense of necessity, the State has the burden of disproving the defense and establishing all elements of the charged offense. *People v. Scott*, 194 Ill. App. 3d 634, 639 (1990); see also *People v. Pegram*, 124 Ill. 2d 166, 173 (1988) (once a defendant has sufficiently raised an affirmative defense, the State must disprove that defense beyond a reasonable doubt). The State, on appeal, does not

dispute that defendant presented some evidence of the necessity defense, but argues that it met its burden of disproving the defense. We agree that the State disproved the necessity defense.

¶ 25 Viewing the evidence in the light most favorable to the prosecution, the evidence showed that Officer Chambliss lawfully stopped defendant for not wearing his seatbelt. During the stop, Officer Chambliss observed defendant make a furtive movement with his right arm toward the passenger floor and feared for his safety and learned of defendant's outstanding warrant. Officer Chambliss ordered defendant out of the vehicle, but defendant refused to exit his vehicle. See *People v. Gonzalez*, 184 Ill. 2d 402, 413-14 (1998) ("For over two decades it has been well established that following a lawful traffic stop, police may, as a matter of course, order the driver out of the vehicle pending completion of the stop without violating the protections of the fourth amendment" (citing *Pennsylvania v. Mimms*, 434 U.S. 106 (1977)). As the trial court found, any reaction by Officer Chambliss, including the use of vulgar language, displaying a Taser, night stick, or mace, was induced by defendant's failure to get out of the vehicle when asked by the police.

¶ 26 Furthermore, there was evidence to support the trial court's finding that defendant did not reasonably believe that Officer Chambliss posed a threat to his safety. Defendant's first contacts with Officer Chambliss were routine and nonconfrontational. After the officer returned to defendant's vehicle and asked defendant to exit the vehicle, defendant testified that he spoke to Officer Chambliss for two minutes about why he needed to get out of the vehicle. During that conversation, Officer Chambliss did not display a night stick, Taser, or mace. It was only after defendant rolled up his window, locked his doors, and refused to get out of his vehicle that Officer Chambliss took steps to remove defendant. Defendant only refused to cooperate and fled from the scene after hearing there was an active warrant for his arrest. Moreover, although he

testified he was headed to the police station for his own safety, defendant fled on a path that was not a direct route to the police station.

¶ 27 Additionally, defendant had options available to him other than fleeing from police. As discussed by the trial court, defendant could have called 9-1-1 on his cell phone to report being threatened by the officer, or could have simply abided by Officer Chambliss' request to exit the vehicle.

¶ 28 Defendant's act of fleeing posed a greater danger to defendant and the public than any perceived threat Officer Chambliss posed to defendant in his attempts to get him out of the vehicle. This is particularly true where the police pursued defendant at a high rate of speed (up to 100 miles-per-hour) in a residential area while defendant disobeyed traffic signals. A second police vehicle was needed to end the chase. Therefore, we find the State disproved the defense of necessity beyond a reasonable doubt.

¶ 29 In reaching this conclusion, we find defendant's reliance on *People v. Unger*, 66 Ill. 2d 333 (1977), misplaced. In *Unger*, our supreme court established several factors to be considered in determining whether a defendant has met the threshold of requisite evidence to justify giving the jury a necessity defense instruction to a charge of escape from prison. *Id*. at 431-42. Here, however, there is no question as to whether defendant met the minimum standard to raise a defense of necessity where defendant clearly presented his theory to the court in a bench trial. Defense counsel articulated the necessity theory during opening and closing arguments and presented evidence to support the defense. The trial court considered and rejected that theory, finding defendant did not need to flee from police. *Unger* is thus inapplicable to the case at bar.

¶ 30 We also find unpersuasive defendant's argument that Officer Chambliss' testimony lacked credibility where his actions belied the notion that he feared for his own safety, and he was

impeached by his prior testimony at the preliminary hearing. As stated above, the trier of fact is responsible for determining the credibility of the witnesses, weighing the testimony, resolving conflicts in the evidence, and drawing reasonable inferences therefrom. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). Here, the trial court found Officer Chambliss' testimony credible, despite the "small impeachment" presented at trial. We see no reason to disrupt the trial court's finding that Officer Chambliss was a credible witness, and further note that, despite defendant's contentions to the contrary, the State's decision not to call Officer Chambliss' partner to testify at trial is no reason for reversal.

¶ 31 Defendant next contends that the $2 State's Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2012)), the $10 probation and court services operations fee (705 ILCS 105/27.3a(1.1) (West 2012)), and the $2 Public Defender records automation fee (55 ILCS 5/3-4012 (West 2012)), should be vacated because they violate *ex post facto* principles as they became effective after the date of the offense.

¶ 32 The propriety of a trial court's imposition of fines and fees is reviewed *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007). "The prohibition against *ex post facto* laws applies only to laws that are punitive. It does not apply to fees, which are compensatory instead of punitive." *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30 (quoting *People v. Dalton*, 406 Ill. App. 3d 158, 163 (2010)).

¶ 33 Here, the $2 State's Attorney records automation fee and the $10 probation and court services operations fee are compensatory in nature and, thus, not subject to the prohibition against *ex post facto* laws. The Fourth District found that the State's Attorney records automation fee is compensatory because it reimburses the State for its expenses related to automated record-keeping systems. *Rogers*, 2014 IL App (4th) 121088, ¶ 30. The reasoning in

Rogers applies with equal force here where the office of the State's Attorney would have utilized its automated record keeping systems in the prosecution of defendant when it filed charges with the clerk's office and made copies of discovery, which were tendered to the defense. The Fourth District also found the probation and court services operations fee compensatory where the probation office conducted a presentence investigation and prepared a report for the trial court's use at the defendant's sentencing. *Id.* ¶ 37. Similarly, in this case, the probation department prepared a pretrial investigation report for use at sentencing, and defendant received two years' probation for the offense at issue.

¶ 34 We find defendant's argument that *Rogers* was wrongly decided unpersuasive. Defendant points to no authority where this court has treated the above assessments as fines in circumstances similar to the case at bar. Despite defendant's contentions to the contrary, the fact that the Fourth District treated the State police operations assessment as a fine has no bearing on this issue. See *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 (holding the State police operations fee is a fine because it was not used to reimburse the State for costs it incurred in prosecuting a specific defendant, but was instead remitted to the State Treasurer so that it may be deposited in a fund to be used by the State Police to finance any of its lawful purposes or functions).

¶ 35 We finally agree with the parties that, regardless of whether the $2 Public Defender records automation assessment is a fine or a fee, it must be vacated where defendant was represented at all times in the proceedings by private counsel. See 55 ILCS 5/3-4012 (West 2012) (stating that the Cook County Public Defender shall be entitled to a $2 fee to be paid by the defendant on a judgment of guilty to discharge the expenses of its office for establishing and maintaining automated record keeping systems).

¶ 36 For the foregoing reasons, we vacate the $2 Public Defender records automation fee, and affirm the trial court's judgment in all other respects.

¶ 37 Affirmed.