2015 IL App (5th) 130236-U

NO. 5-13-0236

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Williamson County.
	)	
v.	)	No. 09-CF-392
	)	
CHANCE COULTER,	)	Honorable
	)	John Speroni,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Welch and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant was not entitled to either a new trial or an evidentiary hearing on his claim of juror misconduct where the only juror affidavit supporting his claim stated that the challenged juror "knew of" the defendant or his family and told fellow jurors that the defendant's brother was in prison for murder. The defendant is entitled to a credit of $5 per day against his fines. Anti-crime fund fine was not authorized where a prison sentence was imposed. Probation operations charge was properly construed as a fee not subject to *ex post facto* concerns.

¶ 2 The defendant, Chance Coulter, was convicted of aggravated battery. He filed a motion for a new trial which included an allegation of juror misconduct supported by an affidavit from one of the jurors. The court denied the defendant's motion for a new trial without holding an evidentiary hearing. The court subsequently sentenced him to five

years in prison and imposed various fees and fines. On appeal, the defendant argues that (1) the court erred in failing to conduct an evidentiary hearing into his allegation of juror misconduct; (2) he is entitled to a $5-per-day credit against the fines imposed on him; (3) the anti-crime fund fee charged to him must be vacated because it is only authorized in the case of a defendant sentenced to probation or court supervision; and (4) probation operations charge is a fine which violates principles of *ex post facto*. The defendant filed a motion to strike the appendix to the State's brief, arguing that it contained irrelevant and prejudicial material. We deny the motion to strike and affirm the defendant's conviction. However, we amend the mittimus to reflect a $5-per-day credit against the fines imposed and we vacate the anti-crime fund charge.

¶ 3 The defendant, Chance Coulter, was charged with one count of battery and one count of aggravated battery. A jury returned a verdict of not guilty on the charge of battery and a verdict of guilty on the aggravated battery charge. The defendant filed a motion for a new trial and a first amended motion for a new trial. In the amended motion, he alleged that after the verdict, one of the jurors approached defense counsel and informed him that a fellow juror, Frankie Craig, "related knowledge of or about the defendant or his family." The defendant further alleged that Craig's statements indicated that he held a bias or prejudice against the defendant and that he used his knowledge of the defendant's family to influence other jurors.

¶ 4 Attached to the motion was an affidavit from juror Kim Heibner. She averred that Craig told other jurors "that he knew of [the defendant] and his family and that he had a brother who was in prison because he killed a family in Zeigler. He went on to say that

he thought the whole family was scum. He said they were crazy." Heibner further averred, "Mr. Craig said, 'Are we going to let this a-hole off free to injure someone else?' " Heibner averred that she noticed other jurors beginning to waver. Finally, she stated that she felt pressure to vote to convict.

¶ 5 The State filed a motion to strike Heibner's affidavit, arguing that her statements related to the motive, method, or processes of the jury and were therefore not admissible. The court granted the State's motion to strike in a docket entry.

¶ 6 The defendant subsequently filed a second amended motion for a new trial. He once again alleged that Kim Heibner informed defense counsel that Frankie Craig told the other jurors that he "knew the defendant or knew of the defendant and his family." The defendant further alleged that during *voir dire*, Craig indicated that he did not know the defendant. Attached to the motion was another affidavit from Heibner. This time, she asserted only that Craig told the other jurors "that he knew of the defendant and/or knew of the defendant and his family."

¶ 7 The court held two hearings on the defendant's motions at which it heard the arguments of counsel; however, the court did not hold an evidentiary hearing. At the first hearing, the defendant argued that the statements in Heibner's affidavits raised a question concerning Craig's veracity during *voir dire*. The court granted the defendant's motion to appoint an investigator to contact other jurors. At the second hearing, the defendant noted that the investigator did not obtain any additional statements from other jurors that would support Heibner's claims. He argued, however, that Heibner's affidavit in support of his second amended motion for a new trial was sufficient to warrant a new trial. The

court found that the information before it was insufficient to warrant either an evidentiary hearing into the allegation of juror misconduct or a new trial. The court therefore denied the defendant's motion.

¶ 8 The court subsequently held a sentencing hearing. Prior to imposing sentence, the court stated that it found the following factors in aggravation: (1) the fact that the defendant had an extensive criminal history, and (2) the need to deter others. As a factor in mitigation, the court found that the defendant was going to make restitution to the victim. In ordering restitution, the court noted that although the victim incurred over $90,000 in medical bills related to the battery, most of this was excused by the hospital. However, the court noted that she had a $1,068 bill outstanding, and ordered restitution in this amount. The court found that probation would not be appropriate because a prison term was necessary to protect the public and sentenced the defendant to five years in prison. The court also imposed a $1,000 general fine and a $25 anti-crime fund fine (see 730 ILCS 5/5-6-3(b)(12), (13) (West 2012); 730 ILCS 5/5-6-3.1(c)(12), (13) (West 2012)), and ordered the defendant to pay "court costs." The court entered a judgment of conviction the same day. A payment status information document reflects that the court costs charged to the defendant pursuant to the court's order included a $50 court systems fee (see 55 ILCS 5/5-1101(c)(1) (West 2012)), a $5 State Police operations fee (see 705 ILCS 105/27.3a(1.5), (5) (West 2012)), and a $10 probation operations fee (see 705 ILCS 105/27.3a(1.1) (West 2012)). Although the judgment reflects a sentence credit of 250 days for time spent in custody prior to sentencing, the defendant did not receive credit against his fines.

¶ 9 The defendant subsequently filed this appeal. After briefing was complete, the defendant filed a motion to strike the appendix to the State's brief. The appendix contains only color copies of two photographs showing the injuries sustained by the victim as a result of the battery. As the defendant correctly points out, neither the severity of the victim's injuries nor the sufficiency of the evidence at trial is at issue in this appeal. As such, the photographs are not relevant to any issue we are called upon to resolve. Nevertheless, the photographs are part of the record on appeal. Moreover, this court is capable of determining what is relevant and basing our decision solely on matters that are relevant. For these reasons, we deny the defendant's motion to strike the State's appendix. We turn now to the merits of the defendant's contentions.

¶ 10 The defendant first argues that the court abused its discretion by not at least allowing an evidentiary hearing on his claim of juror misconduct. We disagree.

¶ 11 As a general rule, the testimony or affidavits of jurors are not admissible to impeach the verdict. *People v. Hobley*, 182 Ill. 2d 404, 457 (1998). However, this rule is not absolute. Statements of a juror that relate to the "motive, method, or process by which the jury reached its verdict" are not admissible. *People v. Holmes*, 69 Ill. 2d 507, 511 (1978). By contrast, juror statements *are* admissible if they relate to improper extraneous influences on the jury. *Hobley*, 182 Ill. 2d at 457-58; *Holmes*, 69 Ill. 2d at 512-14. Even if the statements of a juror establish that the jury was exposed to extraneous information, however, a new trial is only warranted if the defendant can show that he was prejudiced as a result. *People v. Willmer*, 396 Ill. App. 3d 175, 181 (2009). To make this showing, the defendant must demonstrate that the extraneous information

before the jury "relates directly to something at issue in the case" and "involved such a probability of resulting prejudice that the verdict must be deemed inherently lacking in due process." *Willmer*, 396 Ill. App. 3d at 181.

¶ 12 The testimony or affidavit of a juror may also be admissible to prove that a juror's responses during *voir dire* were false. This exception is applicable only if those responses related to a potential bias or prejudice on the part of the juror. *People v. Nitz*, 219 Ill. 2d 400, 423 (2006). To be entitled to a new trial on the basis of this type of statement, a defendant must show that (1) the juror answered falsely; and (2) prejudice resulted. *Nitz*, 219 Ill. 2d at 423. We will not reverse a trial court's ruling on a motion for a new trial unless the court abused its discretion. *Willmer*, 396 Ill. App. 3d at 181.

¶ 13 The defendant acknowledges that Heibner's first affidavit contains statements related to the jury's motive, method, and process of deliberations. He argues, however, that it also contains statements that were admissible because they showed that (1) jurors were exposed to extraneous information about the defendant's family, and (2) juror Craig "at least concealed information, if not outright lied, during *voir dire*." He argues that, as such, the court should have held an evidentiary hearing to more adequately assess his claims of misconduct. We are not persuaded.

¶ 14 The only extraneous piece of information arguably put before the jury by Craig was the fact that the defendant's brother was serving a prison sentence for the murder of a family in Zeigler. This information does not relate to anything at issue in the defendant's trial, nor is it the type of revelation that carried "such a probability of resulting prejudice that the verdict must be deemed inherently lacking in due process." See *Willmer*, 396 Ill.

App. 3d at 181. The information was not even about the defendant himself. We also note that during the hearings on the defendants motion for a new trial, the trial judge explained that he asked prospective jurors only whether they knew the defendant–and not whether they knew of the defendant's family–because he thought it was likely that many of them would be familiar with the defendant's brother or father, who apparently also has at least one previous conviction.

¶ 15 The defendant also contends that statements in Heibner's affidavits showed that Craig was not honest during *voir dire*. He does not point to any specific false answers. However, he points out that Craig did not reveal his familiarity with the defendant's family either when he was asked if he knew the defendant or when he and other prospective jurors were subsequently asked if there was anything else that "might have some bearing" on their ability to "serve as a fair and impartial juror in this case." The defendant argues that it "would have been natural" for him to volunteer this information in response to these questions and the fact that he did not do so indicates an attempt to conceal a potential bias. In support of this argument, the defendant calls our attention to *People v. Gaston*, 125 Ill. App. 3d 7 (1984), and *People v. Cravens*, 375 Ill. 495 (1941). We find both cases distinguishable.

¶ 16 In *Gaston*, the trial judge asked approximately two-thirds of the potential jurors if they had any close friends or family members who were police officers or were otherwise "affiliated with police work." *Gaston*, 125 Ill. App. 3d at 8. The court also asked some potential jurors if they themselves worked as police officers. However, the court did not ask these questions of all of the potential jurors. *Gaston*, 125 Ill. App. 3d at 8.

Unbeknownst to the defendant, one of the potential jurors was a part-time police officer. He was selected to serve on the jury and act as its foreman. *Gaston*, 125 Ill. App. 3d at 8. During *voir dire*, the juror was not asked whether he or anyone he knew was involved in police work. He was, however, asked his occupation. In response, the juror stated only that he worked as an engineering assistant and did not mention that he also worked part-time as a police officer. *Gaston*, 125 Ill. App. 3d at 8. The trial court denied the defendant's motion for a new trial.

¶ 17 On appeal, the court first considered whether the fact that the juror was a police officer was itself sufficient to entitle the defendant to a new trial. *Gaston*, 125 Ill. App. 3d at 9. The court noted that there was "some support" for this position, but found that the weight of authority "reject[ed] a *per se* disqualification rule." *Gaston*, 125 Ill. App. 3d at 10. Nevertheless, the court found it necessary to remand the matter for an evidentiary hearing on the defendant's claim of juror bias. The court explained that "the juror's failure to disclose his employment with the police department under circumstances where it would have been natural to volunteer that information raises some question as to his motivation." *Gaston*, 125 Ill. App. 3d at 11.

¶ 18 The circumstances that led the *Gaston* court to question whether the juror was deliberately concealing information are not present in this case. There, the juror heard other prospective jurors being asked about any police affiliation. This should have given him some inkling that his status as a police officer was relevant. In addition, he was specifically asked about his profession and gave an incomplete answer. Here, by contrast, jurors were asked if they knew the defendant and if there was anything not

covered earlier in *voir dire* that might impede their ability to be fair and impartial. We do not believe there was anything about either of these questions or the surrounding circumstances that should have suggested to Craig that he needed to inform the court that he knew the defendant's brother was convicted of murder or anything else about the defendant's family or its reputation.

¶ 19 *Cravens* similarly involved circumstances not present in the instant case. There, a juror named Iddings provided an affidavit describing an exchange between him and another juror, Burton. The two were previously acquainted. Iddings averred that prior to *voir dire*, Burton told him that he "knew of [the defendant]" and said of the defendant, " 'It is coming to him sooner or later.' " *Cravens*, 375 Ill. at 496. Iddings further averred that he replied to this comment by telling Burton, " 'I don't suppose they will accept you on the jury.' " *Cravens*, 375 Ill. at 496. During *voir dire*, however, Burton stated that he knew nothing of the defendant and that he had no opinion regarding the defendant's guilt or innocence. *Cravens*, 375 Ill. at 496. On appeal, the supreme court held that the trial court should have granted the defendant a new trial on the basis that a juror who was not fair and impartial served on the jury. The court explained that Burton's statements during *voir dire* were "at least lacking in frankness" and indicated "a desire to conceal" the strong opinions he had expressed to Iddings prior to *voir dire*. *Cravens*, 375 Ill. at 498.

¶ 20 Here, Heibner asserted that Craig voiced some strong opinions regarding the defendant's family. As discussed previously, however, it was the defendant, not his father or brother, who was on trial. Although she also averred that Craig told his fellow jurors that the defendant was "no good" and an "a-hole" who should not be allowed to go

free so he could injure anyone else, it is not clear from either affidavit that he held any opinion on the defendant or his guilt or innocence prior to hearing the evidence in the trial.

¶ 21 Moreover, despite the *Cravens* court's statement that Burton was "at least lacking in frankness" during *voir dire*, Iddings' affidavit established that he did more than just omit information. Instead, he affirmatively represented to the court that he did not know anything about the defendant and had no opinion concerning his guilt or innocence. These statements were directly contradicted by what he told Iddings prior to *voir dire*. Thus, the question in *Cravens* was not whether Burton should have volunteered information it would have been natural for him to reveal under the circumstances; the issue was whether the answers he gave were false. As noted earlier, the defendant in this case does not point to any specific statements or responses given by Craig that were untrue. We find both *Gaston* and *Cravens* distinguishable, and we find no abuse of the trial court's discretion in denying the defendant's motion for a new trial.

¶ 22 The defendant next argues that he is entitled to a credit of $5 per day against his fines for the time he spent in custody prior to sentencing. He also argues that the $50 court assessment and the $5 State Police operations charge are properly characterized as fines and are therefore subject to the $5-per-day credit for time spent in custody prior to sentencing. The State concedes that both charges are, in substance, fines. See *People v. Ackerman*, 2014 IL App (3d) 120585, ¶ 30 (court assessment charge is actually a fine); *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 (State Police operations charge constitutes a fine). The State further concedes that the defendant is entitled to a $5-per-

day credit against his $1,000 general fine and both of these charges. See 725 ILCS 5/110-14 (West 2012). We agree and accept the State's concessions. We note that because the three fines total $1,055 and the defendant is entitled to a credit of $1,250 for 250 days in custody, this credit completely offsets the fines. Pursuant to our authority under Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994), we amend the mittimus accordingly.

¶ 23 The defendant next argues that the $25 anti-crime fund charge must be vacated because the statutes authorizing this charge are applicable only to cases involving sentences of probation or court supervision. See 730 ILCS 5/5-6-3(b)(12), (13) (West 2012) (authorizing the fine in cases involving sentences of probation); 730 ILCS 5/5-6-3.1(c)(12), (13) (West 2012) (authorizing the fine in cases involving sentences of court supervision). The State concedes that the charge must be vacated on this basis, and we agree. See *People v. Beler*, 327 Ill. App. 3d 829, 837 (2002). Thus, pursuant to our authority under Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994), we vacate this charge and amend the mittimus to reflect our ruling.

¶ 24 Finally, the defendant argues that the probation operations fee must also be vacated. He argues that, despite being labeled a fee, this charge is, in substance, a fine. He points out that the statutory amendment authorizing the charge went into effect nearly three years after the offense at issue was committed–the offense took place in October 2009 and the statutory amendment became effective in July 2012. See 705 ILCS 105/27.3a(1.1) (West 2012); Pub. Act 97-761 § 5 (eff. July 6, 2012) (adding subsection (1.1) to 705 ILCS 105/27.3a). As such, he contends, imposition of this fine violates the

constitutional prohibition against *ex post facto* laws. Because we find that the charge is properly construed as a fee, we disagree.

¶ 25 As the defendant correctly asserts, the fact that the charge at issue is labeled a fee is not dispositive. *People v. Jones*, 223 Ill. 2d 569, 599 (2006); *Carter v. City of Alton*, 2015 IL App (5th) 130544, ¶ 28. The key distinction between a fee and a fine is the purpose the charge is intended to serve. "A fee is intended to recoup the costs incurred in providing a service, while a fine is intended to be punitive or act as a deterrent." *Carter*, 2015 IL App (5th) 130544, ¶ 37 (citing *Jones*, 223 Ill. 2d at 581-82).

¶ 26 The defendant argues that, because he received a prison sentence rather than a sentence of probation, the probation office was not involved in his prosecution and, as such, did not incur any expenses to be offset by the charge. The Fourth District recently considered–and rejected–an identical argument.

¶ 27 In *People v. Rogers*, as in this case, the defendant argued during sentencing that he should be sentenced to probation. There, as here, however, the trial court disagreed and imposed a prison sentence. *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 14. Although the court there did not impose a general fine, the circuit clerk assessed various charges, including the $10 probation operations charge that is at issue here. *Rogers*, 2014 IL App (4th) 121088, ¶ 14.

¶ 28 On appeal, the defendant argued that this charge is actually a fine. *Rogers*, 2014 IL App (4th) 121088, ¶ 25. In rejecting this argument, the Fourth District first explained that a charge labeled as a fee "still operates as a fine if it fails to reimburse the State for actual costs incurred in prosecuting the defendant." *Rogers*, 2014 IL App (4th) 121088,

¶ 35 (citing *People v. Graves*, 235 Ill. 2d 244, 254-55 (2009)). The court then explained that the defendant there "was eligible for (and requested) probation as his sentence and the trial court ordered the probation office to conduct a presentence investigation and prepare a report of its findings." *Rogers*, 2014 IL App (4th) 121088, ¶ 37. Under these circumstances, the *Rogers* court found that the probation operations charge reimbursed the State for costs it actually incurred prosecuting the defendant. The court therefore concluded that the charge was "compensatory in nature" and properly characterized as a fee. *Rogers*, 2014 IL App (4th) 121088, ¶ 37.

¶ 29 The court noted that a different result would be warranted if the same charge were assessed in a case where the probation office did not provide any services. *Rogers*, 2014 IL App (4th) 121088, ¶ 38. However, because the charge reimbursed that office for costs incurred preparing the presentence investigation report, the *Rogers* court found that the charge was a fee and, as such, was not subject to *ex post facto* concerns. *Rogers*, 2014 IL App (4th) 121088, ¶ 39.

¶ 30 We find the Fourth District's analysis persuasive. In this regard, it is worth noting that funds collected through the probation operations assistance charge are to be deposited into a probation and court services fund. 705 ILCS 105/27.3a(1.2) (West 2012); see *Carter*, 2015 IL App (5th) 130544, ¶ 19 (citing *People v. Gildart*, 377 Ill. App. 3d 39, 41 (2007)) (explaining that there must be some relationship between the offense for which a fee is charged and the use to which the funds are put). It is also worth noting that $10 is a small amount. This amount is not so grossly disproportionate to the likely cost of preparing a presentence investigation report that the charge must be

deemed to serve a punitive, rather than compensatory, purpose. See *People v. Ratliff*, 282 Ill. App. 3d 707, 713 (1996) (quoting *United States v. Ursery*, 518 U.S. 267, 284 (1996)). Because we find that the probation operations assistance charge is properly characterized as a fee, the constitutional prohibition against *ex post facto* laws is not implicated. As such, we reject the defendant's contention that this charge must be vacated.

¶ 31 For the foregoing reasons, we affirm the judgment of conviction and the imposition of the probation operations assistance charge. However, we vacate the anti-crime fund fee and amend the mittimus to reflect the $5-per-day credit for the 250 days the defendant spent in custody prior to sentencing.

¶ 32 Affirmed; anti-crime fund fee vacated; mittimus amended.