2016 IL App (1st) 140305-U

FIRST DIVISION
May 16, 2016

No. 1-14-0305

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. 12 CR 11519
	)	
MICHAEL BALDWIN,	)	Honorable
	)	Shelley Sutker-Dermer,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Connors concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's conviction for unlawful restraint is vacated under the one-act, one-crime rule of *People v. King*, 66 Ill. 2d 551, 566 (1977). Two fees are vacated, and the fines, fees, and costs order is corrected.

¶ 2 Following a bench trial, defendant Michael Baldwin was convicted of aggravated battery and unlawful restraint and sentenced to concurrent prison terms of four years six months and three years, respectively. The trial court also imposed a total of $704 in fines, fees, and costs. On appeal, defendant challenges his conviction for unlawful restraint under three alternative

theories: (1) the charging instrument did not provide him with sufficient specificity to prepare his defense and act as a double jeopardy bar to future prosecution; (2) the unlawful restraint conviction was incidental to the aggravated battery conviction; and (3) the unlawful restraint conviction was subsumed in the more serious conviction for aggravated battery and must be vacated under the one-act, one-crime doctrine of *People v. King*, 66 Ill. 2d 551, 566 (1977). Defendant also contends that the fines, fees, and costs order does not reflect the number of days he received in presentence custody credit, and challenges the amount of fines and fees imposed by the trial court.

¶ 3 For the reasons that follow, we vacate defendant's conviction for unlawful restraint and order correction of the fines, fees, and costs order.

¶ 4 Defendant's conviction arose from the events of May 16, 2012. On that date, Chicago police were called to the apartment of the victim, Lauren Daniel, where they arrested defendant. Defendant was subsequently charged by information with one count of attempted first degree murder, six counts of aggravated domestic battery, six counts of aggravated battery, and one count of unlawful restraint.

¶ 5 At trial, Daniel testified that on the date in question, she and defendant were in her bedroom, sitting on the bed and watching television. Daniel was drinking vodka and Squirt. Defendant asked her for $40, and when she refused, he asked for a drink. After making himself a drink in a jelly jar glass, defendant resumed watching television. After about 10 or 20 minutes, Daniel saw a glass "coming at [her] head." The glass hit her forehead and shattered. Daniel, who was bleeding, pushed defendant and tried to get up to run to the door. However, she was dizzy and fell. Defendant grabbed her by her hair, dragged her to the side of the bed, climbed on top of her on the floor with his knees on her chest, and started punching her in the face with his fists. As

defendant punched Daniel, he told her that she "could have just been nice." Defendant's punches caused a cut above Daniel's eyelid, a bloody nose, and black eyes. In addition, defendant's punches broke Daniel's partial dental plate, which cut up the inside of her mouth. She screamed the whole time defendant was beating her. Daniel testified that as she felt defendant's arms start to tire, he leaned over and bit off part of her right ear lobe. He then smiled, said "that had gone too far and that he was going to kill [her]," and started squeezing her neck. Daniel clawed at defendant's hands, but she could not get them off her throat.

¶ 6 At this point, Daniel saw police flashlights come over the end of the bed. Defendant sat up, put his hands in the air, and said, "She attacked me." After the police moved defendant, Daniel was taken to the hospital in an ambulance. She received stitches on her forehead and eyelids. Although the bitten piece of her ear had been recovered, Daniel explained that "since it was a human bite wound, they couldn't sew it back on, and they couldn't sew it up either because it had to weep bacteria because there's so much bacteria in your mouth." Daniel remained in the hospital for two days. She subsequently had plastic surgery to reduce the size of the scar on her forehead and reconstruct her ear.

¶ 7 Chicago police officer Jonathan Washkevich testified that he and his partner went to Daniel's apartment in response to a neighbor's report of fighting and screaming. The officers entered the unlocked apartment and slowly approached the back bedroom. Officer Washkevich could see defendant behind the bed, straddling someone on the floor. When the officers announced their office, defendant, who was completely covered in blood, put his hands up and said that "she attacked him." After defendant was handcuffed, the officers had a brief conversation with Daniel, who was also completely covered in blood. Daniel was taken from the scene in an ambulance.

¶ 8 Chicago police detective Tracy Fanning testified that she spoke with Daniel at the hospital a few hours after the incident. Daniel told the detective that defendant said, "I've gone too far; I have to kill you."

¶ 9 Defendant testified that at the time of the incident, he and Daniel were friends and had no dating or sexual relationship. He was in Chicago for business and was staying at her apartment, sleeping on the couch. On the night in question, he had just returned from an Alcoholics Anonymous meeting when Daniel called him into her bedroom. Defendant found Daniel, who was "kind of crazy-eyed," with a half-empty gallon bottle of vodka. Daniel called defendant Shawn, which was her boyfriend's name, swore at him, and demanded money. Defendant testified that he sat down at the end of the bed and offered to take her to an Alcoholics Anonymous meeting in the morning. After talking for about 10 minutes, Daniel smashed a glass on his head, causing him to fall onto the floor. Defendant had raised his hand in an attempt to deflect the blow and ended up with cuts on both his head and hand. Daniel "pounced" on top of defendant on the floor and started screaming, choking him, and calling him Shawn. Defendant testified that he fought to get free. He did not recall biting Daniel's ear, but was afraid for his safety and possibly his life and stated, "And I assume that that's when this bite of the ear happened. It was my only possibility to get free." Defendant denied threatening to kill Daniel, hitting her with a glass, or grabbing her hair and dragging her around the bed. However, he acknowledged that he hit her face with his fist during the struggle and that when the police arrived, he was on top of Daniel on the floor. Defendant reported that he suffered a 2 ½ inch laceration on the top of his head, and that he received nine stitches to close the wounds on the palm of his hand and his fingers.

¶ 10 The trial court found defendant guilty of all six counts of aggravated battery and the single count of unlawful restraint. At sentencing, the trial court noted that all the aggravated battery counts merged. After hearing arguments in aggravation and mitigation and considering the presentence investigation report, the court imposed concurrent prison terms of four years and six months for aggravated battery and three years for unlawful restraint. The trial court also stated that defendant would receive 116 days of presentence custody credit and imposed a total of $704 in fines, fees, and costs.

¶ 11 On appeal, defendant first challenges his conviction for unlawful restraint. He advances three alternative theories: (1) the charging instrument alleged "no specific facts whatsoever," and therefore did not provide him with sufficient specificity to prepare his defense and act as a double jeopardy bar to future prosecution; (2) the unlawful restraint conviction was incidental to the aggravated battery conviction; and (3) the unlawful restraint conviction was subsumed in the more serious conviction for aggravated battery and must be vacated under the one-act, one-crime doctrine of *People v. King*, 66 Ill. 2d 551, 566 (1977).

¶ 12 As an initial matter, we address defendant's challenge to the charging instrument. Defendant argues that the count of the information charging him with unlawful restraint fails the "*Pujoue* test." In *People v. Pujoue*, 61 Ill. 2d 335, 339 (1975), our supreme court held that when, as here, a charging instrument is challenged for the first time on appeal, it will be found sufficient if it apprised the defendant of the precise offense charged with enough specificity to allow preparation of his defense and to allow pleading a resulting conviction as a bar to future prosecution arising out of the same conduct. This standard is more liberal than the one applied when a defendant challenges a charging instrument before trial; if an information or indictment is attacked before trial, it must strictly comply with the pleading requirements of the Code of

Criminal Procedure of 1963 (Code) (725 ILCS 5/100–1 *et seq*. (West 2012)). *People v. DiLorenzo*, 169 Ill. 2d 318, 321-22 (1996); *City of Chicago v. Powell*, 315 Ill. App. 3d 1136, 1141 (2000). The unlawful restraint statute defines the offense as follows: "A person commits the offense of unlawful restraint when he or she knowingly without legal authority detains another." 720 ILCS 5/10-3(a) (West 2012).

¶ 13 Here, count 14 of the information alleged that on May 16, 2012, defendant "committed the offense of unlawful restraint in that he, knowingly without legal authority detained Lauren Daniel, in violation of Chapter 720 Act 5 Section 10-3(a) of the Illinois Complied Statutes 1992, as amended and, contrary to the Statute and against the peace and dignity of the same People of the State of Illinois." We find that this language sufficiently apprised defendant of the offense with which he was charged so as to pass what he has termed the "*Pujoue* test." In coming to this decision, we rely on our supreme court's decision in *People v. Wisslead*, 108 Ill. 2d 389 (1985). In *Wisslead*, our supreme court found strikingly similar language sufficient to pass the strict adherence test that is applied when a charging instrument is challenged prior to appeal. *Id*. at 394, 400. There, the information alleged that the defendant "knowingly without legal authority, detained Nancy Rutlege Wisslead, and did then and there, thereby, commit the offense of UNLAWFUL RESTRAINT, in violation of chapter 38, Section 10–3(a) of the Illinois Revised Statutes." *Id*. at 393. The *Wisslead* court observed that the offense of unlawful restraint does not involve specific statements or objects, and that the statutory language involved – "knowingly without legal authority detains another" – does not leave room for wide speculation as to the nature of the conduct alleged. *Id*. at 396. Thus, the court held that so long as the statutory language used when charging unlawful restraint describes specific conduct, there is no need for the charge to specify the exact means by which the conduct was carried out. *Id*. at 397.

Accordingly, the *Wisslead* court found that the information in that case sufficiently apprised the defendant of the offense charged. *Id*. at 400.

¶ 14 In light of the decision in *Wisslead*, we find unpersuasive defendant's argument that the information in the instant case fails the more liberal "*Pujoue* test."

¶ 15 With regard to defendant's remaining alternative theories for challenging his conviction for unlawful restraint, the State concedes the one-act, one-crime violation. Although defendant failed to preserve the issue by objecting at trial and addressing it in a posttrial motion, one-act, one-crime violations are recognized under the second prong of the plain error rule. *People v. Harvey*, 211 Ill. 2d 368, 389 (2004) ("an alleged one-act, one-crime violation and the potential for a surplus conviction and sentence affects the integrity of the judicial process, thus satisfying the second prong of the plain error rule"). We accept the State's concession that defendant's convictions for aggravated battery and unlawful restraint were carved from the same physical act of defendant's attack of Daniel. Because only a conviction for the most serious offense may be sustained (see *People v. Donaldson*, 91 Ill. 2d 164, 170 (1982)), we vacate defendant's conviction and sentence for unlawful restraint. Given our disposition, we need not address defendant's alternate contention that his conviction for unlawful restraint was incidental to the aggravated battery conviction.

¶ 16 Next, defendant contends that the fines, fees, and costs order must be corrected to reflect 116 days of presentence custody credit. Under section 5-4.5-100(b) of the Unified Code of Corrections, defendants "shall be given credit *** for the number of days spent in custody as a result of the offense for which the sentence was imposed." 730 ILCS 5/5-4.5-100(b) (West 2012). This statutory language is mandatory; therefore, a claim of error in the calculation of presentence custody credit cannot be waived. *People v. Purcell*, 2013 IL App (2d) 110810, ¶ 18;

People v. Dieu, 298 Ill. App. 3d 245, 248-49 (1998) (citing *People v. Woodard*, 175 Ill. 2d 435, 456-57 (1997)). Again, the State concedes the issue and we agree with the parties. Although the trial court announced orally that defendant would be credited with 116 days of presentence custody, and although the mittimus lists 116 days of credit, this number of days is not specified in the fines, fees, and costs order. Pursuant to Illinois Supreme Court Rule 615(b)(1) (eff .Jan. 1, 1967), we order the clerk of the circuit court to amend the fines, fees, and costs order to reflect 116 days of presentence custody credit.

¶ 17 Next, defendant contends that two assessments imposed by the trial court must be vacated: the $5 Electronic Citation Fee (705 ILCS 105/27.3e (West 2012)) and the $5 Court System fee (55 ILCS 5/5-1101(a) (West 2012)). Defendant did not challenge these assessments in the trial court. Nevertheless, defendant argues that the charges are void and therefore may be challenged at any time. In light of our supreme court's recent decision in *People v. Castleberry*, 2015 IL 116916, ¶ 19, the "void sentence" rule no longer applies. In general, a defendant forfeits any sentencing issue that he or she fails to preserve through both a contemporaneous objection and a written postsentencing motion. *People v. Reed*, 2016 IL App (1st) 140498, ¶ 13. However, forfeiture and rules of waiver also apply to the State, and where the State fails to timely argue that a defendant has forfeited an issue, it waives the issue of forfeiture. *Id*. Here, the State has not argued that defendant forfeited his challenge to these assessments. Accordingly, we address the merits of defendant's claim. We review the propriety of court-ordered fines and fees *de novo*. *Id*.

¶ 18 Defendant argues, and the State agrees, that the two challenged assessments were not statutorily authorized in his case. We agree with the parties. First, the Electronic Citation Fee does not apply to felonies. *People v. Moore*, 2014 IL App (1st) 112592-B, ¶ 46. Second, the Court System fee applies only to vehicle offenses. *People v. Williams*, 394 Ill. App. 3d 480, 483

(2011). Here, defendant was convicted of a felony that is not a vehicle offense. Therefore, we vacate both $5 assessments and direct the clerk of the circuit court to correct the fines, fees, and costs order accordingly.

¶ 19 Finally, defendant contends that the fines, fees, and costs order should be modified to reflect that he is entitled to $5-per-day presentence custody credit against the following fines: the $15 State Police Operations Fee (705 ILCS 105/27.3a-1.5 (West 2012)); the $2 Public Defender Records Automation Fee (55 ILCS 5/3-4012) (West 2012)); the $2 State's Attorney Records Automation Fee (55 ILCS 5/4-2002.1(c) (West 2012)); the $50 Court System fee (55 ILCS 5/5-1101(c) (West 2012)); and the $10 Probation and Court Services Operations Fee, 705 ILCS 105/27.3a-1.1 (West 2012)).[1] Under section 110-14(a) of the Code of Criminal Procedure of 1963, an offender who has been assessed one or more fines is entitled to a $5-per-day credit for time spent in custody as a result of the offense for which the sentence was imposed. 725 ILCS 5/110-14(a) (West 2012). It is well-established that the presentence custody credit applies only to reduce fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 599 (2006). Our supreme court has held that claims for $5-per-day credit may be raised at any time and stage of court proceedings, and that if the basis for granting such credit is clear and available from the record, an appellate court may grant the relief requested. *People v. Caballero*, 228 Ill. 2d 79, 88 (2008).

¶ 20 Here, the State agrees that defendant is entitled to presentence incarceration credit against the $15 State Police Operations Fee (see *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31) and the $50 Court System fee (see *People v. Ackerman*, 2014 IL App (3d) 120585, ¶ 30). We accept the State's concession and hold that these two assessments are fines against which defendant can

[1] We note that the fines, fees, and costs order accurately reflects that defendant is entitled to $30 worth of presentence custody credit against the $30 Children's Advocacy Center fine (55 ILCS 5/5-1101(f-5) (West 2012)).

receive $5-per-day credit for the time he spent in presentence custody. Accordingly, we order the clerk of the circuit court to correct the fines, fees, and costs order to reflect this credit.

¶ 21 With regard to the $2 Public Defender Records Automation Fee and the $2 State's Attorney Records Automation Fee, this court has previously found that both of these charges are compensatory fees, as opposed to fines. *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65, citing *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30. Similarly, this court has found that where, as in the instant case, the probation department is utilized by the trial court to prepare a presentence investigation report, the $10 Probation and Court Services Operations Fee is a compensatory fee because it reimburses the State for costs incurred as a result of prosecuting defendants. *Rogers*, 2014 IL App (4th) 121088, ¶ 37. In keeping with precedent, we also conclude that the Public Defender Records Automation Fee, the State's Attorney Records Automation Fee, and the Probation and Court Services Operation Fee are compensatory fees and, therefore, may not be offset by defendant's presentence custody credit.

¶ 22 For the reasons explained above, we vacate defendant's conviction for unlawful restraint; vacate the $5 Electronic Citation Fee and the $5 Court System fee; and order the clerk of the circuit court to correct the fines, fees, and costs order to reflect that defendant spent 116 days in presentence custody and to reflect that defendant is entitled to $95 worth of $5-per-day presentence custody credit against his remaining fines.

¶ 23 Affirmed in part, vacated in part; fines, fees, and costs order corrected.