

No. 1-14-0514

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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 16434
)	
BILLY BASS,)	Honorable
)	Noreen Love,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Ellis concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Defendant's convictions for aggravated battery of a peace officer and resisting a peace officer affirmed over his contention that the officer was not acting within his official duties; fines and fees order modified.
- ¶ 2 Following a bench trial, defendant Billy Bass was found guilty of aggravated battery of a peace officer and resisting a peace officer, then sentenced, as a Class X Offender (730 ILCS 5/5-4.5-25 (West 2012)), to concurrent terms of 10 and three years' imprisonment, respectively. On

appeal, he contests the sufficiency of the evidence to prove that the peace officer was performing his official duties. He also contests the assessment of certain fines and fees.

¶ 3 The record shows that defendant was charged by indictment with possession of burglary tools, aggravated battery of a peace officer, and resisting a peace officer. At trial, Cook County Sheriff's Police Officer Matthew Goral testified that on July 24, 2012, he was working a second job as a security officer for the Federal Deposit Insurance Corporation (FDIC). Officer Goral accompanied FDIC personnel to a bank located at the 4800 block of West Cermak Road in Cicero, Illinois, wearing a tan-colored shirt with "Sheriff Police" on the front and "Police" on the back. He also had his "star" on the left side of his body and his primary weapon in a holster on his right side. At 9:45 a.m. that day, an FDIC representative told him that someone was trying to rob the bank.

¶ 4 Officer Goral went outside to the alley next to the bank and looked at the ATM, but did not see anyone there. FDIC personnel pointed him to a yard located adjacent to the alley, and Officer Goral observed defendant walking out of the yard of an apartment building at 4822 22nd Place carrying "pipe cutters," and saw no one else in the area. Defendant stuffed the pipe cutters underneath his sweatshirt, then mounted a bike and started to bike away from the bank. Officer Goral testified that he chased after defendant because "somebody had accused him of robbing a bank[, and he] needed to find out what was going on."

¶ 5 Officer Goral approached defendant at the corner of 49th Avenue and Cermak Road. From about 10 feet away, Officer Goral shouted "Stop. Police" three times, but defendant turned and rode down the street. Officer Goral caught defendant, grabbed him, and forced him to the

ground. Defendant tried to hit Officer Goral with his fists while Officer Goral held onto defendant's sweatshirt, but defendant slipped out of his sweatshirt and was able to get away from Officer Goral. Defendant started swinging the pipe cutters at Officer Goral to keep him away, so Officer Goral drew his weapon, pointed it at defendant, and kept saying "stop, police." Defendant turned and started running, and Officer Goral holstered his weapon and chased after him.

¶ 6 When Officer Goral was a few feet away, defendant turned and "whipped" the pipe cutters at him. The pipe cutters hit Officer Goral in the leg and he fell to the ground, but was able to get back up and continue pursuing defendant. Defendant then turned and jumped a fence, but Officer Goral was unable to follow him over the fence because of the pain in his leg. Officer Goral returned to the area around the bank and continued to survey the area, but lost sight of defendant. Officer Goral described defendant's appearance to the Cicero police officers who arrived on the scene, and saw defendant in custody 5 to 10 minutes later. Officer Goral went to MacNeal Hospital for an examination on his leg, and received treatment for a contusion on his leg over the next several weeks, including ice packs and anti-inflammatory medication.

¶ 7 On cross-examination, Officer Goral stated that it was his job as an FDIC security officer to secure FDIC personnel from harm and anything that happens outside of the bank is also his responsibility. He further stated that he never saw defendant in the bank or on the bank's property, and first saw him outside in the adjacent yard. Officer Goral stated that no one else was around defendant, and there was no burglary in progress at the time he saw defendant.

¶ 8 Cicero police detective Mike Winiars testified that he was working as a patrol officer on the date of the incident and he searched the residence at 482 [sic] 22nd Place in Cicero. In the yard of that residence, he found six bikes, a sweatshirt, a pair of bolt cutters, a knife, and a bike cable lock that had been cut.

¶ 9 The State rested and the court granted defendant's motion for a directed finding as to possession of burglary tools, but denied the motion as to the other counts. Defendant did not present any evidence. Following closing argument, the court found defendant guilty of aggravated battery of a peace officer and resisting a peace officer. Defendant moved for a new trial contending that Officer Goral was acting outside of his capacity as a peace officer. The trial court denied the motion finding that Officer Goral believed that something was happening at the bank where he was providing security, and that there was someone suspicious off the property of the bank, which aroused his attention. At the subsequent sentencing hearing, after considering the arguments in aggravation and mitigation, and defendant's statement in allocution, the trial court sentenced defendant to concurrent sentences of 10 years' imprisonment for aggravated battery of a peace officer and three years' imprisonment for resisting a peace officer. The court also assessed him certain fines and fees.

¶ 10 In this appeal from that judgment, defendant contests the sufficiency of the evidence to prove him guilty beyond a reasonable doubt. He maintains that Officer Goral was not acting as a peace officer when he pursued defendant because there was no evidence that defendant was involved in criminal activity. He further asserts that Officer Goral was not acting within his

official duties because he did not have a reasonable suspicion to stop defendant or probable cause to arrest him.

¶ 11 Where defendant challenges the sufficiency of the evidence to sustain his convictions, the reviewing court must consider whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004). This standard recognizes the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any conflicts and inconsistencies in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court must allow all reasonable inferences from the record in favor of the prosecution, and will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Smith*, 185 Ill. 2d 532, 542 (1999).

¶ 12 To sustain defendant's conviction for aggravated battery to a police officer, the State was required to prove that defendant, in committing a battery, knew that Officer Goral was a peace officer performing his official duties. 720 ILCS 5/12-3.05(d)(4) (West 2012). To sustain defendant's conviction for resisting a peace officer, the State was required to prove that defendant knowingly resisted the performance by Officer Goral, knowing that he was a peace officer authorized to act within his official capacity. 720 ILCS 5/31-1(a) (West 2012). Defendant concedes that Officer Goral was a peace officer, that defendant committed a battery against him,

and that defendant resisted him. Defendant contends, however, that Officer Goral was not engaged in the performance of his official duties.

¶ 13 We initially observe, and defendant concedes, citing *People v. Barrett*, 54 Ill. App. 3d 994 (1977), that Illinois courts have recognized that off-duty police officers can be engaged in the performance of their official duties. As such, it is immaterial that Officer Goral was off duty and working a second job as a security guard when he encountered defendant because "an officer's duties are not constrained by specific time or place limitations. It is the nature of the act performed by the officer which determines whether the officer was in the execution of his official duties." *Id.* at 997. Generally, where the act performed is an arrest, we will not inquire into the legality of the action because a defendant is not privileged to resist an arrest, even if it is unlawful. *People v. Jones*, 2015 IL App (2d) 130387, ¶ 11. The officer's actions will not be considered an "authorized act," however, where they violate a defendant's fourth amendment rights. See *Jones*, 2015 IL App (2d) 130387, ¶ 11; *City of Champaign v. Torres*, 214 Ill. 2d 234, 247 (2005).

¶ 14 Defendant contends, citing *Terry v. Ohio*, 392 U.S. 1 (1968), that Officer Goral's actions violated his fourth amendment rights because he did not have a reasonable, articulable suspicion to stop him. Accordingly, defendant maintains that Officer Goral was not performing his official duties, and was therefore not acting as a peace officer when he encountered defendant. The State responds that defendant was aware that Officer Goral was a police officer and that given the circumstances, he had the minimum articulable suspicion necessary to conduct a *Terry* stop of defendant.

¶ 15 In *Terry*, the Supreme Court recognized a limited exception to the fourth amendment's prohibition against unreasonable searches and seizures that permits a police officer, under appropriate circumstances, to conduct a brief, investigatory stop of a person if he can point to specific, articulable facts that reasonably warrant an intrusion. *Terry*, 392 U.S. at 21-22. Under the *Terry* exception, an officer may briefly stop a person for temporary questioning if the officer reasonably believes that the person is committing, or has committed, a crime. *People v. Close*, 238 Ill. 2d 497, 505 (2010), codified in 725 ILCS 5/107-14 (West 2014).

¶ 16 To justify an investigatory stop, the police officer must be able to point to specific, articulable facts, which, taken with rational inferences therefrom, reasonably warrant the intrusion. *People v. Thomas*, 198 Ill. 2d 103, 109 (2001), citing *Terry*, 392 U.S. at 20-21. In determining whether a stop is reasonable, an objective standard is used in which the court considers the totality of the facts and circumstances from the perspective of a reasonable officer at the time of the stop. *People v. Sanders*, 2013 IL App (1st) 102696, ¶ 14, and cases cited therein. Viewed as a whole, the circumstances must lead to the conclusion that the situation is so far removed from the ordinary, that any reasonable police officer would be expected to act, rather than observe the situation further. *People v. McGowan*, 69 Ill. 2d 73, 78 (1977).

¶ 17 The evidence in this case, viewed in a light most favorable to the State, shows that Officer Goral, who was wearing his star and a shirt that had "Sheriff Police" on the front and "Police" on the back, was working a second job as a security officer for the FDIC when bank personnel told him that someone was robbing the bank. Officer Goral went outside, but did not see anyone near the ATM. FDIC personnel directed his attention across the street where Officer

Goral observed defendant place a pair of pipe cutters underneath his sweatshirt, get on his bike, and ride away from the bank. Officer Goral attempted to approach defendant, but defendant fled and, during the subsequent pursuit, injured Officer Goral by throwing the pipe cutters at him before defendant was taken into custody.

¶ 18 Given the fact that defendant was in the area of the reported criminal activity, fled from the pursuing Officer Goral, and was the only person Officer Goral saw in the area where FDIC personnel directed his attention, we find that Officer Goral had the minimum articulable suspicion necessary to warrant an inquiry. See *People v. Rivera*, 272 Ill. App. 3d 502, 506 (1995). Thus, a reasonable trier of fact could find that Officer Goral was attempting to make a *Terry* stop of defendant, and, as such, was engaged in the performance of his official duties (See *People v. Smith*, 342 Ill. App. 3d 289, 295-96 (2003); *People v. Weaver*, 100 Ill. App. 3d 512, 514 (1981); *Barrett*, 54 Ill. App. 3d at 996-97) and that defendant was thus proved guilty of both offenses beyond a reasonable doubt.

¶ 19 Defendant next contends that the fines and fees order contains several errors and needs to be corrected. Defendant asserts that when a fine imposed does not conform to a statutory requirement, the fine is void, which is an issue that may not be forfeited. See *People v. Milsap*, 2012 IL App (4th) 110668, ¶ 26. In light of *People v. Castleberry*, 2015 IL 116916, ¶ 19, this rule no longer applies. On appeal, however, the reviewing court may modify the fines and fees order without remanding the case back to the circuit court. Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999) ("[o]n appeal the reviewing court may *** modify the judgment or order from which the appeal is taken"); *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995) ("[r]emandment is

unnecessary since this court has the authority to directly order the clerk of the circuit court to make the necessary corrections"). The propriety of court-ordered fines and fees is reviewed *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 20 Defendant first contends, and the State concedes, that the \$5 electronic citation fee should be vacated. Defendant must pay the electronic citation fee only in a "traffic, misdemeanor, or municipal ordinance, or conservation case" (705 ILCS 105/27.3e (West 2012)), and, as neither aggravated battery of a peace officer nor resisting a peace officer is enumerated in the statute, we vacate the \$5 electronic citation fee.

¶ 21 Defendant next argues that his presentence incarceration credit offsets various assessments. Defendant spent 358 days in presentence custody, for which he was entitled to a \$5-per-day presentence custody credit to offset his fines. 725 ILCS 5/110-14(a) (West 2012). Defendant first contends, the State concedes, and we agree, that defendant is entitled to offset the \$10 mental health court assessment (*People v. Graves*, 235 Ill. 2d 244, 251-52 (2009)), the \$5 youth diversion/peer court assessment (*id.*), the \$5 drug court fee (*People v. Unander*, 404 Ill. App. 3d 884, 886 (2010)), the \$30 Children's Advocacy Center Assessment (*People v. Jones*, 397 Ill. App. 3d 651, 660-61 (2009)), and the \$15 State Police operations assistance fee (*Milsap*, 2012 IL App (4th) 110668, ¶ 31) ("[d]espite it's statutory label, the State Police operations assistance fee is also a fine").

¶ 22 Defendant finally contends that he should be permitted to use his presentence custody credit to offset the \$2 Public Defender records automation fee and the \$2 State's Attorney records automation fee because, despite being labeled as fees, they are actually fines. The Public

Defender records automation fee requires defendant to pay a \$2 assessment "to discharge the expenses of the Cook County Public Defender's office for establishing and maintaining automated record keeping systems." 55 ILCS 5/3-4012 (West 2012). Similarly, under the State's Attorney records automation fee, defendant is required to pay a \$2 assessment "to discharge the expenses of the State's Attorney's office for establishing and maintaining automated record keeping systems." 55 ILCS 5/4-2002.1(c) (West 2012).

¶ 23 As the State points out, the Fourth District appellate court recently determined that the State's Attorney records automation assessment was compensatory in nature, and, therefore, a fee. *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30. Citing *People v. Warren*, 2014 IL App (4th) 120721, ¶ 108, the court in *Rogers* stated that the "assessment is a fee because it is intended to reimburse the State's Attorney for their expenses related to automated record-keeping systems." *Rogers*, 2014 IL App (4th) 121088, ¶ 30. Defendant acknowledges the decision in *Rogers*, but urges us to apply the supreme court's holding in *People v. Graves*, where the supreme court stated that a fee is intended to compensate the State for the costs of prosecuting defendant, while fines are punitive in nature. *Graves*, 235 Ill. 2d at 250. He maintains that these assessments do not reimburse the State for costs incurred in defendant's specific prosecution, but are collected to finance future purchases of automated record-keeping systems.

¶ 24 We believe that the Fourth District properly interpreted the supreme court's holding in *Graves* in deciding *Warren* and *Rogers*. The statutory language of section 5/4-2002.1(c) of the Counties Code shows that the assessment is intended to compensate the State for the costs of prosecuting defendant by offsetting the State's costs in establishing and maintaining automated

record keeping systems (55 ILCS 5/4-2002.1(c) (West 2012)), and, as such, is a fee, which may not be offset by presentence custody credit (*Jones*, 397 Ill. App. 3d at 664). It therefore follows that the \$2 Public Defender records automation fee is a fee in that it is intended to compensate the office of the public defender for costs incurred in defending defendant, and may not be offset by defendant's presentence custody credit.

¶ 25 Accordingly, we order the clerk of the circuit court to modify defendant's fines and fees order in accordance with this order, reflecting a total assessment of \$369, and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 26 Affirmed; fines and fees order modified.