FIFTH DIVISION
September 30, 2016

No. 1-14-1220

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. 13 CR 13319
	)	
MARCUS WEBSTER,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Gordon and Justice Lampkin concurred in the judgment.

O R D E R

¶ 1 *Held*: Eyewitness evidence sufficient to convict defendant of armed robbery with a firearm. Erroneous fee vacated and postsentencing detention credit granted for fines.

¶ 2 Following a bench trial, defendant Marcus Webster was convicted of armed robbery and sentenced to 22 years' imprisonment with fines and fees. On appeal, defendant primarily contends that his conviction for armed robbery should be reduced to robbery because there was insufficient evidence to establish he was armed with a firearm. Defendant also contends that a certain fee was erroneously assessed and he is entitled to presentencing detention credit against

other fines. The State agrees that we must correct the order assessing fines and fees. For the reasons stated below, we affirm the trial court's decision except for correcting the order assessing fines and fees, to vacate an erroneous fee and include the requisite credit.

¶ 3 Defendant was charged with armed robbery for allegedly taking currency from Weston Murphy by the use of force or threatening the imminent use of force while armed with a firearm on or about June 19, 2013.

¶ 4 At trial, Weston Murphy testified that he was walking home in the middle of the day when he heard two voices behind him ordering him to stop and put his hands up. He complied with the request and stopped. While raising his hands, he turned slightly behind him, and noticed two men (but not their faces) and "the gun." One of the men moved in front of Murphy, holding a black revolver. Murphy focused his attention on the handgun, which he knew was loaded as he saw "the tips of the bullets." The man pointed the weapon at Murphy's stomach, standing "not even that close" or "like an inch away" in that he was far enough away to "still stick the gun out" but could "just reach his other hand in my pocket" with an extended arm. The man demanded Murphy's money before reaching into Murphy's pocket and removing $140 cash. The two men left, and Murphy intentionally did not pay attention which way they went for fear that they would shoot him if he did. After they left, Murphy noticed Dominique Hobson nearby; she went down the street as she made a phone call, then returned. The police arrived several minutes later, and Murphy described the weapon to the police but did not mention that it was loaded. He admitted to a 2009 felony conviction for theft.

¶ 5 Hobson testified that she was walking to meet Murphy on the day in question when she noticed him standing with his hands raised and two men around him. She recognized one man –

defendant – from the neighborhood. Defendant was facing Hobson as he faced Murphy, and she noticed that defendant had a "black handgun" in his hand. She was too far away to observe greater details. Defendant reached into one of Murphy's pockets and removed money, and the two men fled. Noticing which way they went, Hobson phoned the police but did not follow the men. Officers arrived almost immediately, and she described defendant as wearing a white, orange, and blue striped shirt, orange hat, and earrings. A short time later, officers took her to another location where two men were detained; she recognized one of the men as defendant and told the police that he was one of the robbers. She admitted to a 2013 disposition of supervision for misdemeanor retail theft.

¶ 6 Police officer Bret Westcott testified to responding to the report of a robbery, which described one of the robbers as wearing a striped shirt and orange hat. Officer Westcott and his partner searched the area until seeing defendant wearing an orange hat and striped shirt. Defendant removed his orange hat upon noticing the officers, so Officer Westcott and his partner detained him. No handgun was discovered during the pat-down nor in the area where he was detained. Defendant was held until other officers brought Murphy and Hobson to defendant. When one of the officers relayed that defendant was positively identified, Officer Westcott placed him under arrest; a post-arrest search found $78 cash. No other person was identified that day as the other offender.

¶ 7 Following closing arguments, the court denied defendant's motion for a directed finding. The court noted that Murphy could not identify the robbers because he was focused on the weapon but Hobson observed defendant pointing a handgun at Murphy and reaching into Murphy's pocket before fleeing with the other robber. Defendant was detained based on

Hobson's description of his distinctive clothing, Hobson identified him as one of the robbers, and a post-arrest search found currency but no handgun. Following closing arguments, the court found defendant guilty of armed robbery with a firearm. The court found that defendant was arrested wearing clothes matching the description of one of the robbers, he was positively identified, and "defendant was in possession of a weapon when he committed that robbery."

¶ 8 In his posttrial motion, defendant argued insufficiency of the evidence. He noted that the only evidence that defendant was armed with a firearm was from the testimony of Murphy and Hobson, who were not firearm experts. Following arguments, the court denied the motion, finding Murphy and Hobson credible, that their testimony did not require an expert, and they "saw the defendant with the gun in the commission of the offense." The court sentenced defendant to 22 years' imprisonment with fines and fees. Defendant's motion to reconsider his sentence was denied, and this appeal followed.

¶ 9 On appeal, defendant contends that his conviction for armed robbery with a firearm should be reduced to robbery, or alternatively to aggravated robbery or armed robbery without a firearm, because there was insufficient evidence that he was armed with a firearm.

¶ 10 A person commits armed robbery when he or she commits robbery – knowingly takes property from the person or presence of another by use of force or by threatening imminent use of force – while armed with a firearm or a dangerous weapon other than a firearm. 720 ILCS 5/18-1(a), 18-2(a)(1), (2) (West 2014). For purposes of this statute, a "firearm" is defined in section 1.1 of the Firearm Owners Identification Card Act as "any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas" except for BB guns firing "a single globular projectile" of no

more than 0.18 inches at less than 700 feet per second, paint-ball guns, flare guns, nail and rivet guns, and antique firearms designated as such by the State Police. 720 ILCS 5/2-7.5 (West 2014), citing 430 ILCS 65/1.1 (West 2014).

¶ 11 Illinois courts have repeatedly addressed the issue of the sufficiency of the evidence from which a trier of fact may infer that an object used in a crime was a firearm. In *People v. Ross*, 229 Ill. 2d 255, 273-76 (2008), our supreme court rejected a presumption that an object appearing to be a handgun is a loaded and operable firearm, instead finding that a trier of fact may infer from trial evidence that an object was a firearm. Since *Ross*, we have held that unequivocal eyewitness testimony that a defendant held a gun is sufficient circumstantial evidence that he or she was armed with a firearm, and the State need not prove with direct or physical evidence that a particular object is a firearm as defined by statute. *People v. Clark*, 2015 IL App (3d) 140036, ¶¶ 20-29; *People v. Wright*, 2015 IL App (1st) 123496, ¶¶ 74-79, appeal allowed, No. 119561; *People v. Fields*, 2014 IL App (1st) 110311, ¶¶ 34-37; *People v. Toy*, 407 Ill. App. 3d 272, 286-93 (2011).

¶ 12 In so holding, we noted that "unlike in *Ross*, no BB gun or other toy gun was recovered and linked to the crime which could potentially have precluded the jury from inferring that the gun used to commit the crime was not a toy gun." *Clark*, ¶ 28. In other words, the *Ross* court found the evidence insufficient to prove a firearm where the trier of fact credited "the subjective feelings of the victim" over the contradictory "objective nature of the gun" (*Ross*, 229 Ill. 2d at 277), whereas in *Clark*, *Wright*, *Fields*, and *Toy*, there was no such superior objective evidence. We have also distinguished *People v. Crowder*, 323 Ill. App. 3d 710 (2001), where the issue was not sufficiency of the evidence but a discovery sanction: "whether the trial court properly

dismissed the indictment, which charged the defendant with unlawful possession of weapons by a felon and willful use of weapons, where the State destroyed the gun that formed the basis of the charges after the defendant requested to view it" (*Clark*, ¶ 29) thus "precluding the defendant from mounting a defense." *Fields*, ¶ 37.

¶ 13 On a claim of insufficiency of the evidence, we must determine whether, taking the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *In re Q.P.*, 2015 IL 118569, ¶ 24. It is the responsibility of the trier of fact to weigh, resolve conflicts in, and draw reasonable inferences from the testimony and other evidence, and it is better equipped than this court to do so as it heard the evidence. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59. We do not retry the defendant – we do not substitute our judgment for that of the trier of fact on the weight of the evidence or credibility of witnesses – and we accept all reasonable inferences from the record in favor of the State. *Q.P.*, ¶ 24. The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; instead, it is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *Jonathon C.B.*, ¶ 60. The trier of fact is not required to disregard inferences that flow normally from the evidence, nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt, nor to find a witness was not credible merely because the defendant says so. *Id*. A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Q.P.*, ¶ 24.

¶ 14 Here, taking the evidence in the light most favorable to the State as we must, we cannot conclude that a rational trier of fact would not have found that defendant was armed with a

firearm during the robbery of Murphy. We note that defendant tries to conjure the specter that his handgun was a toy, BB gun, or similar non-firearm object from various matters outside the trial evidence and thus beyond our proper consideration. "In support of his contention, defendant cites federal and New York cases in which police officers mistook fake guns for real guns and includes *** photograph[s] of [objects] that would not be considered a 'firearm' under the statutory definition. However, these things were not offered as evidence at trial." *Clark*, ¶ 24. Turning to the trial evidence, Murphy and Hobson testified that a black handgun was used in the robbery, and Murphy added that it was a loaded revolver as he could see the tips of the bullets. While defendant argues that Murphy could not have seen the bullets if the weapon was pointed at his stomach, Murphy's attention was focused on the firearm and it is not in the least improbable or unsatisfactory to us that he could have seen the bullets at some point in the process of defendant moving in front of him, standing in front of him, reaching into his pocket for his money, and leaving. Lastly, as in *Clark*, *Wright*, *Fields*, and *Toy*, and unlike *Ross*, there was no evidence that a handgun-like object used in Murphy's robbery was recovered and found to be a non-firearm.

¶ 15 Defendant also contends that his $5 electronic citation fee should be vacated and he should receive presentencing detention credit against $67 in fines.

¶ 16 A defendant is entitled to $5 credit against his or her fines for each day of presentencing detention. 725 ILCS 5/110-14(a) (West 2014). Our supreme court has held that a charge labeled a fee may be a fine because a fee is a charge meant to compensate the State for any cost incurred as the result of prosecuting a defendant. *People v. Graves*, 235 Ill. 2d 244, 250-51 (2009).

¶ 17 The parties correctly agree that the $5 electronic citation fee is inapplicable here, as this is not a "traffic, misdemeanor, municipal ordinance, or conservation case." 705 ILCS 105/27.3e (West 2014). They also correctly agree that $65 of defendant's charges are fines subject to credit: $50 for the court system and $15 for State Police operations. 55 ILCS 5/5-1101(c); 705 ILCS 105/27.3a(1.5) (West 2014); *People v. Reed*, 2016 IL App (1st) 140498, ¶ 15; *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 31.

¶ 18 However, the parties dispute whether the $2 charge for Public Defender records automation (55 ILCS 5/3-4012 (West 2014)) is a fine or fee. We have held that this charge is a fee for a defendant who was represented by the Public Defender. *People v. Green*, 2016 IL App (1st) 134011, ¶ 46; *Reed*, ¶ 17; *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65. We see no reason not to follow our precedent, and as defendant was represented by the Public Defender in the trial court, we find this charge to be a fee here.

¶ 19 Accordingly, we vacate defendant's $5 electronic citation fee. Pursuant to Supreme Court Rule 615(b)(2) (eff. Aug. 27, 1999), we direct the clerk of the circuit court to correct the order assessing fines and fees to reflect said vacatur and $65 in presentencing detention credit. The judgment of the circuit court is otherwise affirmed.

¶ 20 Affirmed in part, vacated in part, and order corrected.