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2014 IL App (3d) 120523-U

Order filed October 15, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF	)	Appeal from the Circuit Court
ILLINOIS,	)	of the 12th Judicial Circuit,
	)	Will County, Illinois.
Plaintiff-Appellee,	)	
	)	Appeal No. 3-12-0523
v.	)	Circuit No. 10-CF-1808
	)	
WAIL SALEM,	)	The Honorable
	)	Richard C. Schoenstedt,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE O'BRIEN delivered the judgment of the court.  
Presiding Justice Lytton concurred in the judgment.  
Justice Wright dissented.

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**ORDER**

¶ 1 *Held:* The defendant's appeal from his conviction for possession of a stolen motor vehicle was dismissed for lack of jurisdiction because the defendant failed to file his appeal within 30 days of final judgment. Although the defendant filed his notice of appeal within 30 days of the denial of his motion for a new trial, that motion was filed more than 30 days after the verdict, so was not a timely motion against the judgment.

¶ 2 The defendant, Wail Salem, appeals for his conviction of possession of a stolen motor vehicle, 625 ILCS 5/4-103.2(a)(3) (West 2010).

### FACTS

¶ 3

¶ 4

In the course of executing an unrelated search warrant, law enforcement officials discovered several stolen vehicles at the defendant's home. The defendant was charged by information with one Class 2 felony of unlawful possession of a stolen motor vehicle (a black 2006 BMW).

¶ 5

The State filed a pretrial motion to admit other-crimes evidence, arguing the evidence was admissible to show motive, intent, absence of mistake, a common scheme or plan, and knowledge. The trial court found that all of the evidence that the State proposed to submit was admissible but, concerned about the prejudicial effect, limited the State to: (1) one of the four felony convictions for unlawful possession of an open vehicle title (found during the same search as this case); (2) one Class 2 theft conviction from 2004; and (3) one Class 1 felony theft conviction from 2010.

¶ 6

The evidence offered at trial included the testimony of the owners of the BMW, who testified that it was taken from the dealership where they had left it for repairs. When the search warrant was executed at the defendant's residence, police officers found a number of cars parked in defendant's driveway, including the black BMW at issue here, and a white Navigator, a black Mercedes, and a maroon BMW. Officers immediately seized the Navigator and the Mercedes because they were reported as stolen. The officers also seized 10 to 12 license plates from defendant's garage, and various vehicle titles

¶ 7

The jury returned its verdict of guilty on April 12, 2012. The defendant was sentenced as a Class X offender to a term of 11½ years' imprisonment on May 14, 2012, and the written judgment of conviction was entered on the same day. The defendant filed a motion for a new trial on June 5, 2012. That motion was denied on June 21, 2012, and

the defendant filed his notice of appeal on June 22, 2012. On appeal, the defendant argues that the trial court erred by admitting the defendant's prior convictions as other-crimes evidence.

¶ 8

#### ANALYSIS

¶ 9

As an initial matter, the State argues that we lack jurisdiction. Whether this court has jurisdiction presents an issue of law subject to *de novo* review. *People v. Marker*, 233 Ill. 2d 158, 162 (2009).

¶ 10

Under Illinois Supreme Court Rule 606(b), a notice of appeal must be filed within 30 days after the entry of the final judgment or within 30 days of the order disposing of a timely motion against the judgment. The filing of the notice of appeal is jurisdictional. Ill. S. Ct. R. 606(a) (eff. Mar. 20, 2009). In a criminal case, a judgment is final when the defendant is sentenced. *People v. Stanford*, 2011 IL App (2d) 090420, ¶20 (citing *People v. Danenberger*, 364 Ill.App.3d 936, 939 (2006)). Thus, since the defendant was sentenced on May 14, 2012, the defendant had until June 14, 2012, to file his notice of appeal. The defendant did not file his notice of appeal until June 22, 2012, beyond the 30-day window. The question is, then, whether he filed his notice of appeal within 30 days of an order disposing of a timely motion against the judgment. The defendant did file his notice of appeal within 30 days of the denial of his motion for a new trial; the question is whether that motion was timely.

¶ 11

A defendant must file a motion for a new trial “within 30 days following the entry of a finding or the return of a verdict.” 725 ILCS 5/116–1(b) (West 2010); *People v. Gilmore*, 356 Ill. App. 3d 1023, 1035 (2005). In this case, the verdict was returned on April 12, 2012, so the defendant's motion for a new trial filed on June 5, 2012, was not timely.



¶ 19 JUSTICE WRIGHT, dissenting.

¶ 20 In this case, I agree with the majority that the defense motion did not comply with the procedural deadline of section 116-1(b) of the Code of Criminal Procedure of 1963 (the Code) since it was filed more than 30 days after the April 12, 2012, verdict. In my opinion, the *procedural* deadline set out in section 116-1(b) was waived by both the court and counsel. In addition, I submit the procedural timeline defined in section 116-1(b) does not control whether the same motion was *timely* filed with respect to the jurisdictional considerations set out in rule 606(b). In other words, a motion will be considered procedurally untimely for purposes of section 116-1(b), when filed more than 30 days after the date of verdict. However, the same motion filed more than 30 days after the date of verdict, may still be considered timely for purposes of jurisdiction according to rule 606(b). This is true because rule 606(b) does not cross-reference section 116-1(b) for purposes of timeliness.

¶ 21 The case law supports my view that the trial court did not lack jurisdiction to exercise its discretion to consider the posttrial motion based on a *procedural* timeline that the parties waived in the case at bar. A trial court always has the discretion to consider the merits of an untimely posttrial motion with respect to section 116-1(b), as long as the motion was filed within 30 days of final judgment and before the court automatically loses jurisdiction by the operation of rule 606(b). See *People v. Gilmore*, 356 Ill. App. 3d 1023, 1036 (2005); *Talach*, 114 Ill. App. 3d at 818. This is exactly what happened in the case at bar.

¶ 22 In this case, the trial court imposed defendant's sentence, or final judgment, on May 14, 2012. The court immediately instructed defendant to file a written posttrial motion within the next 30 days. The State did not object to this procedure. Nonetheless,

the trial court clearly did not lose jurisdiction to accept the motion on June 5, 2012, and then schedule a hearing on the merits for June 21, 2012. Consequently, I conclude defendant's notice of appeal, filed within 30 days of the court's ruling on the merits, gives rise to our jurisdiction to review the court's decision.

¶ 23           The decision in *People v. Bailey*, 2014 IL 115459, can be distinguished from the case at bar. In *Bailey*, the defense filed a posttrial motion more than three years after the trial court *lost* subject matter jurisdiction. Unlike the situation in *Bailey*, in this case, the court had jurisdiction on May 14, 2012, and retained jurisdiction to accept the anticipated motion for new trial, which the defense filed on June 5, 2012. I disagree the trial court lost jurisdiction to consider this particular pending posttrial motion on June 21, 2012. Since jurisdiction did not lapse, I conclude revestment does not apply.

¶ 24           The chronology of events in this case is somewhat atypical. Yet, all of the parties seemed to be very comfortable with the court's decision to provide an extended deadline by directing this defendant to file his posttrial motion within 30 days after the conclusion of the May 14, 2012, sentencing hearing. The State failed to remind the court on May 14, 2012, that defense counsel had already missed the deadline for filing a posttrial motion according to section 116-1(b) of the Code. Perhaps the court and counsel were simply unaware that posttrial motions addressing errors preceding the date of verdict must be filed within 30 days of verdict according section 116-1(b). However, it appears more likely to me that the judge's procedural approach was rooted in established local custom or, perhaps, this particular judge's preference to conduct only one posttrial motion hearing, for the purpose of addressing both trial and sentencing issues, if any, on the same date. Nonetheless, neither party took issue, in the trial court, with the procedural approach adopted by this judge. In fact, the State did not object to the extended deadline

and argued the merits of the posttrial motion without asserting the trial court had lost jurisdiction prior to the hearing on June 21, 2012.

¶ 25            Since defendant's notice of appeal was filed on June 22, 2012, within the 30-day window set out in rule 606(b), I submit the notice of appeal was timely. Consequently, I conclude this court has jurisdiction to consider the merits of this appeal.