2017 IL App (1st) 142205-U

FIRST DIVISION
January 30, 2017

No. 1-14-2205

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 13929
	)	
JAMES MARSHALL,	)	Honorable
	)	Vincent M. Gaughan,
Defendant-Appellant.	)	Judge Presiding.

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

O R D E R

¶ 1 *Held*: Defendant's conviction for possession of a controlled substance is affirmed over his contention that the trial court erred by denying his motion to quash arrest and suppress evidence. The fines, fees, and costs order is corrected.

¶ 2 Following a simultaneous bench trial and hearing on a motion to quash arrest and suppress evidence, defendant James Marshall was convicted of possession of a controlled substance and, based on his criminal history, sentenced to an extended term of five years in

prison. On appeal, defendant contends that the trial court erred in accepting the testimony of the sole testifying police officer, which he asserts was "contrary to human experience and taxes the gullibility of the credulous." Defendant argues that this court should reverse the denial of his motion to quash arrest and suppress evidence and, because the State would not be able to obtain a conviction without the heroin seized by the police, reverse his conviction. Defendant also challenges his fines and fees.

¶ 3 For the reasons that follow, we affirm the denial of defendant's motion to quash and suppress, affirm defendant's conviction, and order correction of the fines, fees, and costs order.

¶ 4 Defendant's conviction arose from the events of June 27, 2013. Following his arrest, defendant filed a motion to quash arrest and suppress evidence, arguing that his warrantless arrest was not supported by probable cause and that the evidence obtained as a result of the arrest should be suppressed. The case proceeded to a simultaneous bench trial and hearing on the motion.

¶ 5 At the hearing/trial, Chicago police officer Mark La Civita testified for the State that around 12:30 or 1:00 a.m. on the day in question, he and his partner, Emily Hock, who were both in uniform, responded to a domestic battery call at 4936 West Harrison. While at that location, the officers spoke with the victim and a witness and received a description of an offender named Willie Turner, who was black, bald, and wearing a white T-shirt and jeans. Having received this information, the officers began touring the area in their marked squad car. At 2:12 a.m., they observed "someone who matched that description" walking on the sidewalk at 5150 West Harrison, about 20 feet from the squad car. In court, Officer La Civita identified defendant as the man on the sidewalk.

¶ 6 Officer La Civita testified that while he was still in the squad car, he asked defendant if his name was Willie, and defendant looked at him and responded, "Yeah." The officers got out of the car and walked toward defendant. As the officers approached and defendant slowly walked away, Officer La Civita saw defendant drop a gray golf ball-sized item from his right hand to the ground. Officer La Civita estimated that he was approximately 10 feet from defendant when defendant dropped the item. As Officer Hock recovered the item, Officer La Civita detained defendant. Officer Hock then showed Officer La Civita the item, which was a "wound up" piece of newspaper with six tin foil packets inside of it. Officer La Civita testified that he then placed defendant in custody. After returning to the station, Officer Hock inventoried the recovered items.

¶ 7 On cross-examination by defense counsel, Officer La Civita acknowledged that when he and his partner were responding to the domestic battery call, the victim and the witness provided Willie Turner's date of birth, as well as his height. After refreshing his memory with the case report on the domestic battery, which was drafted by his partner, Officer La Civita testified that Willie Turner was born on May 15, 1981, and had been described as 5'6" tall. Officer La Civita further acknowledged that when defendant was processed after his arrest, it was determined he was born on November 29, 1959, and that he was 6'0" tall.

¶ 8 The parties stipulated as to the chain of custody and the chemical composition of the packets recovered from the golf ball-sized object. Specifically, four of the six packets that were recovered tested positive for 1.2 grams of heroin.

¶ 9 Defendant did not testify or present any evidence.

¶ 10 During closing arguments, the trial court interrupted the prosecutor and asked, "State, how do you explain the height difference, 5 foot [6 inches] and 6 foot?" The prosecutor

responded that when Officer La Civita first observed defendant on the sidewalk, the officer was seated in a car and it was 2:12 a.m.

¶ 11 Following the completion of arguments, the trial court denied the motion to quash arrest and suppress evidence and found defendant guilty of possession of a controlled substance. In the course of doing so, the trial court found that because defendant was walking away from the officers and dropped the object before any seizure occurred, there was no fourth amendment violation. Defendant subsequently filed a motion for judgment notwithstanding the finding or, in the alternative, for a new trial, which the trial court denied. The trial court thereafter sentenced defendant, based on his criminal history, to an extended term of five years in prison. The court also imposed $1,229 in fines and fees. Defendant filed a motion to reconsider sentence, which the trial court denied.

¶ 12 On appeal, defendant first contends that the trial court's decision to credit the police testimony in this case was against the manifest weight of the evidence. He argues that the trial court erred in accepting Officer La Civita's testimony that he and his partner, both trained officers who "identif[y] people for a living," believed defendant matched the description of Willie Turner even though the men were 21 years apart in age and differed 6" in height; that defendant, a man named James, holding heroin in the middle of the night, responded affirmatively when asked by police if his name was Willie; and that defendant patiently waited until the two uniformed officers left their car and began approaching him before he dropped heroin on the ground in front of them. Defendant asserts that Officer La Civita presented a "patently incredible scenario" that was "contrary to human experience and taxes the gullibility of the credulous." He maintains that Officer La Civita and his partner illegally searched him, found heroin, and invented a *post hoc* explanation for how they recovered the drugs legally. Defendant

argues that this court should reverse the denial of his motion to quash arrest and suppress evidence and, because the State would not be able to obtain a conviction without the recovered heroin, reverse his conviction outright.

¶ 13 An appeal from a trial court's ruling on a motion to suppress presents mixed questions of fact and law. *People v. McDonough*, 239 Ill. 2d 260, 265-66 (2010). We accord great deference to the trial court's factual determinations, and will disturb them only if they are against the manifest weight of the evidence. *Id*. at 266. This deferential standard recognizes that the trial court is in a superior position to determine and weigh the credibility of the witnesses, observe their demeanor, and resolve conflicts in their testimony. *Id*. However, we review *de novo* the trial court's ultimate determination regarding whether evidence should be suppressed. *Id*.

¶ 14 In this case, defendant is challenging the trial court's credibility findings. When reviewing a trial court's decision on a motion to suppress, we defer to the factual determinations of the trial court in judging witness credibility. *People v. Hunley*, 313 Ill. App. 3d 16, 28 (2000). Here, Officer La Civita testified that he and his partner were looking for a man named Willie Turner when they spotted defendant, who matched the description given by the victim and a witness, which the officer stated was of a bald black man in a white T-shirt and jeans. When Officer La Civita asked defendant if his name was Willie, defendant said, "Yeah." The officers got out of their car to approach defendant, and as defendant walked away, he dropped an object that eventually was determined to contain heroin. Officer La Civita acknowledged on cross-examination that the victim and a witness had provided Willie Turner's date of birth and height; that Willie Turner was born in 1981 and had been described as 5'6" tall; and that defendant was born in 1959 and was 6'0" tall. After hearing this evidence, and after specifically questioning the

State regarding the height difference between Willie Turner and defendant, the trial court denied defendant's motion to quash and suppress.

¶ 15 While the trial court did not explicitly announce that it was making a credibility finding, it apparently was satisfied with Officer La Civita's account of events and found him credible. Given the degree of deference that must be accorded to the trial court's factual determinations, we cannot agree with defendant that Officer La Civita's account was implausible and that the trial court's credibility determination was against the manifest weight of the evidence. Defendant's argument fails. We affirm the denial of defendant's motion to quash and suppress and, in turn, reject his argument that his conviction should be reversed outright due to the State's inability to obtain a conviction for possession of a controlled substance without the suppressed evidence.

¶ 16 We are not persuaded by defendant's heavy reliance on our supreme court's decision in *People v. Coulson*, 13 Ill. 2d 290 (1958). In *Coulson*, the victim testified that as he came out of a tavern, a man approached him and forced him at gun point to a parked car in which four other men were seated; that he was compelled to get into the car; that the men took his wallet and threatened to shoot him; that he told the men he had more money at home and that if they would take him there he would get it for them and not inform the police; that the five men drove him to his aunt's home and parked; that he got out of the car alone, went into the house, talked to his aunt and uncle, called the police, returned to the car, told the men he would come back, and re-entered the house; and that three of the five men were still in the car when officers arrived and then arrested them. *Id*. at 293. The two defendants and the third man who was arrested each testified that the victim, who appeared to have been drinking, approached them and asked for a ride home; that one of the defendants explained he was almost out of gas and the victim said if

they took him home he would get money to buy some; that they drove the victim to a house, where he got out and told them to wait while he went inside; and that the police arrived a few minutes later and arrested them. *Id*. at 294-95. A jury found the defendants guilty of armed robbery and robbery. *Id*. at 291.

¶ 17 On appeal, the defendants challenged the sufficiency of the evidence to convict. *Id*. at 292. Our supreme court reversed, finding that the State's evidence was "improbable, unconvincing and completely unsatisfactory." *Id*. at 298. First, the *Coulson* court found that the victim's testimony that five men took his wallet at gun point, voluntarily accompanied him to his home on the vague promise of more money, permitted him to go inside alone, and then obligingly waited outside, trusting that their victim would keep his promise and not call the police, "taxes the gullibility of the credulous." *Id*. at 296. In addition, our supreme court found that other aspects of the victim's testimony rendered it unsatisfactory and unconvincing. *Id*. at 296-97. Specifically, the *Coulson* court noted that the victim's testimony included an inconsistent time-frame; that the victim and his aunt contradicted each other regarding who contacted the police and whether she left the house; that the victim and a police officer contradicted each other regarding when the victim reported that two of his assailants left the scene before the police arrived; that the victim displayed "obvious reluctance" to testify as to his activities during the evening and the amount of liquor he consumed; and that the victim provided a vague description of his assailants. *Id*. at 297-98.

¶ 18 *Coulson* is readily distinguishable from the instant case. *Coulson* involved an incredible fact pattern, as well as considerable major inconsistencies and contradictions in the testimony offered by the State. In contrast, in the instant case, the fact pattern is not patently incredible and Officer La Civita's testimony was uncontradicted. The only conflict presented was the age and

height difference between defendant and Willie Turner. Whether to accept Officer La Civita's testimony that when he spotted defendant on the sidewalk 20 feet away at 2:12 a.m., he believed defendant matched the description of a man who was 21 years younger and six inches shorter, was a matter of credibility that in our view, was properly resolvable by the trial court in its role as the trier of fact. *Coulson* does not affect our decision.

¶ 19 Finally, we are mindful of defendant's argument that Officer La Civita's account of defendant's conduct was "classic dropsy testimony" and therefore, inherently subject to suspicion. This court recently rejected such an argument in *People v. Moore*, 2014 IL App (1st) 110793-B, ¶¶ 12-13, *vacated on other grounds*, 2016 IL 117919. A "dropsy" case is one in which a police officer, to avoid the exclusion of evidence on fourth-amendment grounds, falsely testifies that the defendant dropped evidence in plain view. *People v. Ash*, 346 Ill. App. 3d 809, 816 (2004). In *Moore*, we explained that even if anecdotal evidence actually establishes a rise in the use of "dropsy" testimony, such anecdotal evidence does little to discredit the testimony of police officers in a particular case. *Moore*, 2014 IL App (1st) 110793-B, ¶ 13. We reasoned that while anecdotal evidence might suggest that a trial court or jury would be wise to consider the frequency of police perjury as a factor when judging credibility, it did not require the trier of fact to disbelieve any officer's testimony that describes seeing a defendant dropping contraband. *Id*.

¶ 20 Here, Officer La Civita testified that defendant dropped a bag of suspect heroin in plain view. As noted in *Moore*, such conduct is both believable and common. *Id*. ¶ 10 (citing cases showing that a criminal opting to dispose of contraband after becoming aware of a police presence is not only believable, but also common); see also *People v. Henderson*, 33 Ill. 2d 225, 229 (1965) (citing cases showing that it is a common behavior pattern for individuals having narcotics on their person to attempt to dispose of them when suddenly confronted by authorities).

We decline to speculate as to why defendant decided to drop drugs in plain view of two police officers. The trial court accepted Officer La Civita's testimony and we will not disturb that credibility determination.

¶ 21 Defendant next challenges his fines and fees.

¶ 22 First, he contends that four assessments imposed by the trial court should be vacated: a $100 Methamphetamine Law Enforcement Fund fine (730 ILCS 5/5-9-1.1-5(b) (West 2012)); a $25 Methamphetamine Drug Traffic Prevention Fund fine (730 ILCS 5/5-9-1.1-5(c) (West 2012)); a $5 Electronic Citation Fee (705 ILCS 105/27.3e (West 2012)); and a $5 Court System fee (55 ILCS 5/5-1101(a) (West 2012)).

¶ 23 Defendant did not challenge these assessments in the trial court. However, under Illinois Supreme Court Rule 615(b) (eff. Jan. 1, 1967), we may modify the fines and fees order without remanding the case back to the circuit court. Ill. S. Ct. R 615(b)(1) ("[o]n appeal the reviewing court may *** modify the judgment or order from which the appeal is taken"); see *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"). Accordingly, we address the merits of defendant's claim. We review the propriety of court-ordered fines and fees *de novo*. *Id*. *People v. Reed*, 2016 IL App (1st) 140498, ¶ 13.

¶ 24 With regard to the two challenged methamphetamine assessments, defendant argues, and the State agrees, that they were not statutorily authorized in his case. We agree with the parties. The plain language of section 5-9-1.1-5 of the Unified Code of Corrections indicates that it applies only to methamphetamine-related offenses. 730 ILCS 5/5-9-1.1-5 (West 2012). In the instant case, defendant was convicted of possessing heroin, not methamphetamine. Therefore, we

vacate the $100 and $25 assessments and direct the clerk of the circuit court to correct the fines, fees, and costs order accordingly.

¶ 25 We also agree with the parties that the other two challenged assessments must be vacated. The $5 Electronic Citation Fee does not apply to felonies (*People v. Moore*, 2014 IL App (1st) 112592-B, ¶ 46) and the $5 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.

¶ 26 Next, defendant contends that the fines, fees, and costs order should be modified to reflect that he is entitled to 365 days' worth of $5-per-day presentence custody credit against his remaining fines. 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 presentence custody as a result of the offense for which the sentence was imposed. 725 ILCS 5/110-14(a) (West 2014). 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).

¶ 27 In this case, defendant has not identified which of the many assessments listed in the fines, fees, and costs order he believes should be offset by the credit. While he asserts that he is entitled to an offset against a total of $745 in assessments, he does not explain how he arrived at that number. His argument on the matter is as follows:

> "[Defendant] was assessed a total of $1,229 on the original order. Of that total, $745 were fines subject to pre-sentence credit. As explained above, $125 of that amount were improperly imposed methamphetamine fines, so the proper total amount of fines subject to credit should be $620. In any case, [defendant] was in custody for 365 days before sentencing, so his pre-sentence custody credit subsumes the total amount of fines subject to custody credit (365 x $5 = $1,825).
>
> That leaves $484 ($1,229 - $745). As also explained above, $10 of the remaining total is attributable to improperly imposed Court System and Electronic Citation fees. Thus, the total amount owed should be $474."

¶ 28 Our examination of the fines, fees, and costs order reveals that $700 worth of assessments are explicitly designated as fines offset by the $5-per-day presentence custody credit. Among those assessments are the $100 and $25 methamphetamine fines, which we have already determined must be vacated. Thus, on the face of the order, it is clear that $575 worth of remaining assessments are subject to offset. Beyond that, it is not readily apparent that any other assessments are subject to the $5-per-day offset. A reviewing court is entitled to have the issues clearly defined and is not a depository into which an appellant may dump the burden of research. *People v. Oglesby*, 2016 IL App (1st) 141477, ¶ 205. As such, we decline to speculate which of the remaining assessments defendant believes are subject to offset, or to examine them all one-by-one to make such a determination ourselves. We order the clerk of the circuit court to correct the fines, fees, and costs order to reflect $575 worth of presentence custody credit.

¶ 29 For the reasons explained above, we affirm the judgment of the circuit court; vacate the $100 Methamphetamine Law Enforcement Fund fine, the $25 Methamphetamine Drug Traffic Prevention Fund fine, 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 365 days in presentence custody and is entitled to $575 in $5-per-day presentence custody credit against his remaining fines. Defendant's total amount of fines, fees, and costs is reduced from $1,229 to $519.

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