2017 IL App (1st) 142412-U

SIXTH DIVISION
APRIL 14, 2017

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 4559
	)	
WILLIE POLK,	)	Honorable
	)	Sharon M. Sullivan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: Judgment affirmed over defendant's challenge to the sufficiency of the evidence to sustain his conviction for possession of a stolen motor vehicle; mittimus and fines, fees, and costs order corrected.

¶ 2 Following a bench trial, defendant Willie Polk was found guilty of possession of a stolen motor vehicle (PSMV) and, based on his criminal history, sentenced to a Class-X term of six years' imprisonment. On appeal, defendant contends the State failed to prove him guilty of PSMV beyond a reasonable doubt because there was insufficient evidence that: (1) the vehicle he had exclusive control over at the time of his arrest was the same vehicle Ana Burgos (Burgos)

reported stolen earlier that day; and (2) he knew the vehicle had been stolen. Defendant also raises an as-applied constitutional challenge to the statutorily permitted inference of knowledge that a vehicle was stolen. Lastly, defendant contends, and the State concedes, that he is entitled to an increase in his presentence custody credit and a reduction in the monetary assessments imposed by the trial court. For the following reasons, we affirm the judgment of the circuit court of Cook County and order the mittimus and the order assessing fines, fees, and costs to be corrected.

¶ 3 BACKGROUND

¶ 4 Defendant's arrest and the events giving rise to the charges occurred on February 20, 2013. Count 1 charged defendant with PSMV in that he possessed a 2005 Honda CR-V owned by Burgos in violation of section 4-103(a)(1) of the Illinois Vehicle Code (Code) (625 ILCS 5/4-103(a)(1) (West 2012)). Count 2, which the State *nol-prossed* prior to trial, named the same victim and vehicle and charged defendant with burglary. 720 ILCS 5/19-1(a) (West 2013).

¶ 5 At trial, Burgos testified that as an employee of the Department of Family Support Services (DFSS), she provided clients with services such as rental assistance and housing referrals. While at work, Burgos would hang her key chain on a hook behind her desk in her office. Her house, office, and car keys were all on that chain. On February 20, 2013, Burgos had to leave work for an appointment at 1 p.m., so defendant and a family with three children were her only clients. As part of the "first contact" process at DFSS's front desk, defendant provided his social security number and signed a printout of his ID, which was given to Burgos before she called defendant to her office. After meeting with defendant for about 20 minutes, she retrieved referral forms, leaving defendant alone in her office. Defendant left after she gave him the forms. As Burgos was getting ready to leave for her appointment about half an hour later, she could not

find her keys. Once Burgos discovered that her car was missing from the parking lot, she notified the police that her 2005 Honda CR-V had been taken.

¶ 6 Later that day, Burgos went to the address listed on the printout of defendant's ID, 1343 North Cleveland in Chicago, Illinois, to try to find her car. After Burgos arrived, she saw her 2005 Honda CR-V and defendant in a police vehicle and identified them both to Chicago police officers Jessica Gray and Lori Stranski (Offficer Gray and Officer Stranski). Burgos gave the officers the copy of defendant's ID, which was entered into evidence as People's Exhibit 1. The police returned Burgos's car to her at the station a few hours later. When asked if she noticed anything about her car keys when they were returned, Burgos stated, "It was my key because I know the key very well because they got a little dent." She also noticed that her other keys were missing. She testified that she did not give defendant permission to take her vehicle.

¶ 7 On redirect-examination, Burgos testified that when she noticed her keys were missing, the family was still "in the building waiting for transportation" but that defendant was gone. When asked whether the family was still in her office, Burgos responded, "No, it was not missing by that time. The keys was not missing when the family was there. And I also ask[ed] the family if they saw my keys."

¶ 8 Officer Gray testified that she was on patrol with Officer Stranski in the area of 1343 North Cleveland at around 7 p.m. when she observed a 2005 Honda CR-V stopped in the middle of the street. The officers ran the plate and learned the vehicle had been reported stolen. Defendant, who was sitting in the driver's seat, was the only occupant and the key was in the ignition. The officers placed defendant in custody and Burgos, who had arrived at the scene, explained that her vehicle had been stolen earlier that day. She identified defendant "as the person that she had seen in her office earlier that day" and stated that the vehicle at the scene was

the vehicle she had reported stolen. While at the police station about 30 minutes later, Burgos gave the officers the copy of defendant's ID, which Officer Gray identified as People's Exhibit 1, and she inventoried it.

¶ 9 Defendant moved for a directed finding, which the court denied.

¶ 10 Defendant testified that on February 20, 2013, he went to DFSS at around 9 a.m. where he gave a receptionist his ID and then met with "a lady" regarding housing matters about 40 minutes later. He was alone in her office for 5 or 10 minutes while she made copies of his ID and social security card, and he answered questions for 10 or 15 more minutes when she returned. When defendant was on his way out of the building, he ran into a "drinking buddy" named Chris, who wanted to get together. As defendant walked toward the train, Chris, who was alone, picked defendant up in a car he had never seen before. After a while, Chris wanted to drink so defendant agreed to drive and they went to the area of 1343 North Cleveland, where defendant's mother lived, twice without finding her at home. At around 7:45 p.m., Chris "wanted to get some more to drink," so defendant dropped him off at a grocery store, said he would be right back, and then returned to his mother's house a third time. A police car was "sitting right outside" her house so he stopped in the parking lot next to the building and took the keys out of the ignition. He was arrested at about 8 p.m. Defendant testified that he did not take the keys or the car from anyone and that he would not have because he was on parole.

¶ 11 On cross-examination, defendant testified that he was not read his *Miranda* rights at the police station. He denied telling the police that the car belonged to his girlfriend and that she let him drive it all the time. He did not know "the lady" he met with at DFSS and had never seen her before in his life.

¶ 12 In rebuttal, the State called Officer Stranski who testified that after she advised defendant of his *Miranda* rights from memory, he waived those rights. Defendant then stated that it was his girlfriend's car and she gave him permission to use it. The parties stipulated that defendant had three prior felony convictions for retail theft.

¶ 13 In finding defendant guilty of PSMV, the trial court stated, "Ana Burgos was an extremely credible witness, as were the officers who testified." The court explained that it found defendant's story incredible.

¶ 14 Defense counsel filed a motion for a new trial arguing, in relevant part, that there was reasonable doubt because defendant did not know the vehicle was stolen. After argument, the court denied the motion. Defendant brought a separate *pro se* motion entitled, "Motion for a New Trial, a Motion to Reconsider the Sentence, and a Notice of Appeal." The trial court conducted a preliminary hearing pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), and determined that defendant's *pro se* posttrial allegations against his trial counsel lacked merit.

¶ 15 Following a sentencing hearing on June 30, 2014, the trial court sentenced defendant as a Class X felon based on his criminal history, to six years' imprisonment with three years of mandatory supervised release. The court awarded defendant 491 days of presentence custody credit and assessed fines, fees, and costs. Defendant filed a notice of appeal on July 17, 2014.

¶ 16 ANALYSIS

¶ 17 On appeal, defendant first challenges the sufficiency of the evidence to sustain his conviction for PSMV beyond a reasonable doubt. Where, as here, a defendant challenges the sufficiency of the evidence to sustain his conviction, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have

found the essential elements of the offense beyond a reasonable doubt. *People v. Cardamone*, 232 Ill. 2d 504, 511 (2009). A reviewing court may not overturn a conviction based on insufficient evidence unless the proof is so unreasonable, improbable or unsatisfactory that a reasonable doubt exists. *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007); *People v. Smith*, 2015 IL App (1st) 132176, ¶ 24. To obtain a conviction for PSMV, the State must prove that: (1) the defendant possessed the vehicle; (2) the vehicle the defendant possessed was stolen; and (3) the defendant knew the vehicle was stolen. *People v. Cox*, 195 Ill. 2d 378, 391 (2001); 625 ILCS 5/4-103(a)(1) (West 2012).

¶ 18 Here, hours after Burgos reported her 2005 Honda CR-V stolen, the police arrested defendant when they found him in the driver's seat of a 2005 Honda CR-V with no other occupants. At the scene, Burgos identified the vehicle defendant was found in as her vehicle. Burgos also identified defendant as the man who, earlier that morning, had been alone in her office where she kept her car keys hanging on a hook. Following defendant's arrest, the police returned the 2005 Honda CR-V to Burgos along with her key, which Burgos recognized because of "a little dent." Drawing all reasonable inferences in a light most favorable to the State, we find that the evidence was sufficient for a reasonable trier of fact to conclude that the State proved defendant guilty of PSMV beyond a reasonable doubt.

¶ 19 Defendant nevertheless maintains the State did not prove that the 2005 Honda CR-V he possessed was stolen because the State failed to show it was the same 2005 Honda CR-V stolen from Burgos earlier that day. The State may establish a vehicle was stolen through evidence of ownership, so long as there is evidence that the vehicle owned by the complainant was the same vehicle the defendant possessed. *People v. Frazier*, 2016 IL App (1st) 140911, ¶ 18. Here, Burgos testified that the 2005 Honda CR-V defendant possessed when he was arrested was the

same 2005 Honda CR-V stolen from her earlier that day. Although defendant cites authority where the link between the stolen vehicle and the recovered vehicle was established through license plate numbers and VIN numbers, the authority does not hold that license plate or VIN numbers are necessary to prove defendant possessed the stolen vehicle. Defendant's argument fails.

¶ 20 Defendant next maintains that the State failed to prove he knew the vehicle was stolen. Factual questions such as knowledge are resolved by the trier of fact. *People v. Fernandez*, 204 Ill. App. 3d 105, 108 (1990). A defendant's knowledge that the property was stolen does not require direct evidence. *Frazier*, 2016 IL App (1st) 140911, ¶ 23. Rather, if surrounding facts and circumstances would lead a reasonable person to believe that the property was stolen, the trier of fact may infer that a defendant knew the vehicle was stolen. *Id.*

¶ 21 Here, defendant was alone in Burgos's office and Burgos testified that she discovered her keys were missing half an hour after defendant left her office. Because defendant's access to the car keys and subsequent exclusive possession of the stolen vehicle support the reasonable inference that defendant took the car keys, we find that a reasonable trier of fact could conclude defendant knew the car was stolen. Although defendant testified that his "drinking buddy," Chris, picked him up in the car, it was defendant, and not Chris, who was alone with the car key in Burgos's office and who was subsequently found in exclusive possession of her vehicle. The trial court found that defendant's story was incredible in light of the State's "extremely credible" witnesses. "[I]n weighing evidence, the trier of fact is not required to disregard inferences which flow normally from the evidence before it, nor need it search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). Accordingly, we are not persuaded by defendant's argument.

¶ 22 We are mindful of defendant's contentions that the statutorily permitted inference of knowledge that a vehicle was stolen was inappropriate in this case and unconstitutional as applied to him. Section 4-103(a)(1) of the Code permits the trier of fact to infer "that a person exercising exclusive unexplained possession over a stolen or converted vehicle or an essential part of a stolen or converted vehicle has knowledge that such vehicle or essential part is stolen or converted." 625 ILCS 5/4-103(a)(1) (West 2012). However, as we do not rely on the permissive inference in the Code to determine that the evidence was sufficient to show defendant knew the vehicle was stolen, we need not address defendant's arguments regarding the applicability and constitutionality of such an inference in this case.

¶ 23 Finally, defendant argues, and the State concedes, that the trial court erroneously awarded him 491 days of presentence custody credit instead of 495, and that it failed to apply his credit to offset certain "fines" assessed against him. We agree.

¶ 24 Defendant failed to challenge his presentence custody credit or the order assessing fines, fees, and costs in the trial court. However, the statutory language providing that defendants shall be given credit for the number of days spent in custody is mandatory (730 ILCS 5/5-4.5-100(6) (West 2012)), and therefore, a claim of error in the calculation of presentence custody credit cannot be waived. *People v. Brown*, 2017 IL App (3d) 140907, ¶ 9. Moreover, 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). In addition, under Illinois Supreme Court Rule 615(b) (eff. Aug. 17, 1999), we may modify the fines and fees order without remanding the case back to the circuit court. *People v. Camacho*, 2016 IL App (1st) 140604, ¶ 45; see also *People v. Hunter*, 2016 IL App (1st) 141904, ¶ 79

(appellate court may correct the mittimus at any time without remand). The propriety of a trial court's imposition of fines and fees raises a question of statutory interpretation, which we review *de novo. People v. Millsap*, 2012 IL App (4th) 110668, ¶ 23.

¶ 25 Here, defendant was arrested on January 20, 2013, and sentenced on June 30, 2014. Thus, he spent 495 days in custody prior to sentencing and should have received $2,475 of credit. However, the mittimus and the fines, fees, and costs order both reflect that the trial court awarded defendant 491 days of $5-per-day credit. Accordingly, we direct the clerk of the circuit court to correct defendant's mittimus and the order assessing fines, fees, and costs to reflect 495 days of presentence custody credit.

¶ 26 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); *People v. Woodard*, 175 Ill. 2d 435, 439-40 (1997). Defendant maintains, and the State concedes, that defendant is entitled to apply his $5-per-day credit to offset the following "fines" assessed against him: the $5 Drug Court charge (55 ILCS 5/5-1101(f) (West 2012)); the $30 Children's Advocacy Center charge (55 ILCS 5/5-1101(f-5) (West 2012)); the $15 State Police Operations charge (705 ILCS 105/27.3a-1.5 (West 2012)); and the $50 Court System charge (55 ILCS 5/5-1101(c) (West 2012)). We agree. It is well settled that the presentence custody credit applies only to reduce fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 599 (2006).

¶ 27 Here, although the fines and fees order correctly characterizes the $5 Drug Court and the $30 Children's Advocacy Center charges as "fines," which defendant may offset by his presentence custody credit (see *id.* 599-601), the order does not reflect a deduction for the credit. Next, this court has held that the $15 State Police Operations charge (*Millsap*, 2012 IL App (4th)

110668, ¶ 31) and the $50 Court System charge (see *e.g. People v. Ackerman*, 2014 IL App (3d) 120585, ¶¶ 25-30) are "fines." However, defendant's fines and fees order incorrectly characterizes them as "fees." Thus, the total amount of "fines" which defendant is entitled to offset with his presentence custody credit is $100. Accordingly, we direct the clerk of the circuit court to correct the order imposing fines, fees, and costs to reflect that defendant is entitled to offset the four "fines" by his 495 days' worth of presentence custody credit.

¶ 28 CONCLUSION

¶ 29 We affirm the judgment of the circuit court of Cook County and direct the clerk of the circuit court to correct the mittimus and the order assessing fines, fees, and costs.

¶ 30 Affirmed; mittimus and fines and fees order corrected.