2018 IL App (1st) 162405-U

No. 1-16-2405

Order filed December 24, 2018

First Division

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. 14 CR 18995
	)	
DARIUS DICKERSON,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Mikva and Justice Walker concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for aggravated domestic battery is affirmed over his challenge to the credibility of the complaining witness. The fines, fees, and costs order is corrected.

¶ 2 Following a bench trial, defendant Darius Dickerson was convicted of aggravated domestic battery (720 ILCS 5/12-3.3(a-5) (West 2014)) and sentenced to four years in prison. On appeal, defendant challenges the sufficiency of the evidence, contending that the class of his conviction should be reduced because the victim was not credible in her testimony that he

strangled her and that he battered her on a public way. Defendant also challenges the fines and fees imposed by the trial court. For the reasons that follow, we affirm and order correction of the fines, fees, and costs order.

¶ 3 Defendant's conviction arose from events that occurred in Chicago on October 13, 2014. Following his arrest, defendant was charged by information with three counts of aggravated domestic battery, five counts of aggravated battery, four counts of domestic battery, and one count of unlawful restraint.

¶ 4 At trial, Kendra Strickland testified that on the date in question, she lived in a house with defendant, whom she was dating, and a roommate, Sierra Atwater. That night, when Strickland came home from work around 9 p.m., defendant and Atwater's boyfriend, Mike, were in the front yard, drinking. Strickland went to the front door and asked defendant why he was outside, drinking, yelling, and talking in front of the house. Defendant said nothing in response, walked up to her, and struck her face with a closed fist. Strickland fell onto the living room floor, where defendant repeatedly hit and kicked her. Strickland had her eyes closed but heard Mike pull defendant away from her. She ran to her bedroom, grabbed her phone and purse, left the house through a side door, and ran down the alley. Defendant caught up with her almost at the end of the alley, grabbed her hair, pulled her to the ground, and started hitting and cursing at her. Mike pulled defendant off Strickland, but defendant dragged her back to the house.

¶ 5 Strickland testified that once they were inside, she "got loose" and ran into her bedroom and locked the door. She called 9-1-1, and as she was relating what was going on, defendant punched and kicked the door until he broke holes in it. Strickland threw her phone in the closet so that defendant would not know she had called the police. Defendant entered the room and

attacked, hitting Strickland in the face. He then followed Strickland into the bathroom, locked the door behind them, and accused her of cheating on him. Strickland tried to talk to defendant to calm him down, but he hit her face and she fell to the ground. Defendant kicked Strickland, who grabbed his leg and stood up. At that point, defendant grabbed her neck and started choking her over the bathroom sink with both hands. In court, Strickland demonstrated defendant's actions by taking both of her hands, and, in the prosecutor's words, "plac[ing] them in almost a V pattern over her neck." Strickland was not able to breathe, but did not lose consciousness. She unlocked the bathroom door and tried to open it, but defendant kept pushing it closed with his body. Strickland testified that defendant "stopped when the police came." She did not see the police, as her eyes were closed, but said she knew they had grabbed defendant because she was free. When the prosecutor asked, "So you said your eyes were closed and then all of a sudden he was not choking you anymore?" Strickland answered affirmatively.

¶ 6 Strickland testified that she sought medical attention for her injuries, which she listed as a black eye, a blood clot, and stitches. She stated that she received "about 20" stitches. Strickland identified a number of photographs of her house, depicting two holes in the living room walls, the broken bedroom door, and her blood on the wall near the bedroom closet. She also identified pictures of injuries to her face, lip, and eye. The photograph of her eye shows five stitches in her left eyebrow.

¶ 7 On cross-examination, Strickland agreed that the only stitches she received were above her eyebrow. She also acknowledged that she signed a written statement the day after the incident, in which she related that when she confronted defendant about being loud and drinking outside, he walked up to her and told her to "shut the fuck up." However, at the time of trial,

Strickland did not remember whether defendant said those words. Noting that the incident occurred over a year and a half before trial, she explained, "I know if I told you in that statement of what happened that day in that statement that he said that, he said that, but right now I cannot remember, and I cannot tell you if he said that to me right now. I cannot remember that." On further cross-examination, Strickland stated that she told paramedics and hospital staff that she had been choked. She also agreed that when the police officers "opened the door," defendant was still choking her.

¶ 8 Chicago police officer Jerry Doskocz testified that about 10 p.m. on the day in question, he and his partner, Officer Robert Casale, responded to a dispatch call of a battery in progress. When they arrived at the given address, a woman directed them inside the house. As Doskocz entered the house, he heard a woman screaming and followed the sound to a bathroom. Doskocz and Casale announced their office and forced the door open. Doskocz saw defendant, whom he identified in court, pulling a woman's hair and slamming her against the wall. Doskocz grabbed defendant and pulled him off the woman. Doskocz then spoke with the woman, and based on the conversation, placed defendant in custody. On cross-examination, Doskocz clarified that when he opened the bathroom door, defendant was pulling the woman by the hair with one hand and slamming her against the wall with his other hand.

¶ 9 The parties stipulated that defendant had a prior conviction for domestic battery. Defendant made a motion for a directed finding, which was denied by the trial court.

¶ 10 Defendant called as witnesses two Chicago Fire Department paramedics, an emergency room nurse, and himself.

¶ 11 The first paramedic, Anthony Moreno, testified that according to a report he helped generate, he made a run to Strickland's address on the night in question. He did not have an independent memory of the run. His paperwork indicated the call was designated as a "fight/beating/brawl," which was an automatic selection on the form, and that Strickland's main complaint was a laceration or cut to the face. The form did not include a notation that Strickland was choked. Moreno stated that he "write[s] the comments of what I'm told" and acknowledged that being choked is "notable." On cross-examination, Moreno agreed that he only noted an injury to the left eyebrow in his report, and that the report was a brief summary consisting of only three and a half lines.

¶ 12 The second paramedic, Arthur Mallo, also had no independent memory of the run to Strickland's address. Based on Moreno's report, he testified that Strickland was able to walk, had a laceration, and was tearful and crying. Mallo acknowledged that there was no reference to choking or strangling on the report. When asked whether that would be something of significance to be included in a report, he responded, "I would assume, but she also has a pain scale of six out of ten on here." On cross-examination, Mallow agreed he was not a criminal investigator and that when called to a scene, he would treat open and obvious injuries.

¶ 13 Nurse Adrianna Salgado testified that on the night in question, she treated Strickland at the hospital. Like the paramedics, she had no independent recollection of Strickland and testified in accordance with charts and reports she made at the time. According to the paperwork, Strickland arrived at the hospital by ambulance for evaluation of a left eyebrow laceration after a battery, and reported that a known male punched her and kicked her to the back of the head. The paperwork did not include mention of Strickland being choked or strangled. Salgado stated that

Strickland received five sutures. On cross-examination, Salgado acknowledged she was not a criminal investigator and stated that she treated Strickland for a laceration, as that was the injury for which Strickland was brought to the hospital. On redirect, Salgado agreed that choking would be a "medically significant event to note in [a] chart."

¶ 14 Defendant testified that on the date in question, he was on home monitoring for possession of a stolen motor vehicle. That night, he and Mike were drinking on the porch to celebrate Mike's birthday. At some point, Strickland came to the door and called his name. Defendant went inside the house and asked her about some information Mike had relayed to him. Specifically, defendant asked her whether, while he was incarcerated for three days "for the car chase," Strickland had another man in her bedroom. Strickland said she was sorry. In response, defendant slapped her across the face. Strickland went to the floor and balled up. Mike tried to grab defendant, but fell on him instead. Defendant tripped over Strickland and when he tried to grab himself, "ended up stepping into the wall." Defendant tried to use Mike to get up, but Mike pushed him and defendant "ended up stepping into the wall again." When Strickland got up and went to her bedroom, defendant followed. Strickland tried to close the door on defendant, but he pushed back and his left hand went through the door. Strickland started screaming, shoved past defendant, and moved toward the side door of the house.

¶ 15 Defendant testified that when he saw Strickland was bleeding, his anger "slipped" and "it got to the point where I was trying to keep from going to jail." He followed Strickland outside, but because he was on house arrest, did not leave the fenced yard. When Strickland got to the gate, defendant yelled to her to calm down and come back inside. She touched her face, looked at her hand, and walked back to the house, crying. Defendant and Strickland went into the

bathroom. Strickland looked in the mirror and became hysterical. She cried and screamed, and although defendant tried to calm her down and help clean her up, she moved against the wall, told him not to touch her, and smacked his hands away. Defendant grabbed Strickland's arms and told her to calm down and stop screaming and crying "before somebody calls the police." Just as defendant made that statement, the police walked in the door, grabbed his arm, and arrested him.

¶ 16 Defendant denied slamming Strickland's head against a wall, kicking her, dragging her by her hair, slamming her to the ground, strangling or choking her, putting his arms around her neck, or hitting her other than the single initial slap.

¶ 17 The trial court found defendant guilty of one count of aggravated domestic battery (Count 1), three counts of aggravated battery (Counts 4, 7, and 8), four counts of domestic battery (Counts 9, 10, 11, and 12), and one count of unlawful restraint (Count 13). As relevant to the instant appeal, Counts 1 and 4 alleged that defendant strangled Strickland by grabbing her about the neck, and Counts 7 and 8 alleged that defendant committed a battery against Strickland on a public way. The court acquitted defendant on Counts 2, 3, 5, and 6 due to the State not proving permanent disfigurement or great bodily harm. Defendant filed a posttrial motion, which was denied by the trial court.

¶ 18 At sentencing, the trial court merged all counts into Count 1 and imposed a sentence of four years in prison, to be followed by two years of mandatory supervised release. The court further stated that defendant would be credited with 669 days of presentence custody and that it was imposing $914 in fines, fees, and costs. Although the written fines, fees, and costs order

echoes this total, when the individual assessments are added up, they total $924. Defendant's motion to reduce sentence was denied.

¶ 19 On appeal, defendant challenges the sufficiency of the evidence to sustain his conviction. When reviewing the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 131 (1999). The testimony of a single witness, if positive and credible, is sufficient to convict. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). A reviewing court will not reverse a conviction simply because the defendant claims that a witness was not credible. *Id*. Rather, reversal is justified only where the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). Where a guilty finding depends on eyewitness testimony, a reviewing court, keeping in mind that it was the fact finder who saw and heard the witnesses, must decide whether any fact finder could reasonably accept the witnesses' testimony as true beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004). It is for the finder of fact to judge how flaws in a witness's testimony affect the credibility of the whole. *Id.* at 283.

¶ 20 Defendant contends that the State failed to prove beyond a reasonable doubt that he strangled Strickland and battered her on a public way, and that therefore, his class 2 conviction

for aggravated domestic battery based on strangulation and his class 3 convictions for aggravated battery based on strangulation and commission of the offense on a public way must be reduced to non-aggravated class 4 offenses. Acknowledging that the State introduced evidence of these two elements via Strickland's testimony, defendant asserts that her credibility was fatally impeached by other, more credible evidence at trial. Defendant argues that all of Strickland's testimony should be viewed with suspicion because of her demonstrated propensity to exaggerate. Specifically, he observes that she testified to having received about 20 stitches, when the photographs of her eyebrow and the treating nurse's testimony established she only received five. Defendant asserts that contrary to Strickland's testimony, it was physically impossible that he could have been strangling her until the police entered the bathroom, since Officer Doskocz testified he heard a woman screaming when he entered the house and then saw no strangling or choking when he opened the bathroom door. According to defendant, it defies common human experience that Strickland could have been both unable to breathe and able to scream at the same time. Defendant asserts that Strickland's testimony is further undermined by the treating paramedics' and nurse's failure to record or recall any claim of being choked. With regard to the public way element, defendant argues only that Strickland's testimony was uncorroborated and contradicted by his own testimony at trial.

¶ 21 Defendant's arguments involve matters of credibility that are for the trial court to resolve in its role as trier of fact. *People v. Tenney*, 205 Ill. 2d 411, 428 (2002). As noted above, it is the trier of fact who assesses the credibility of witnesses, the weight to be given their testimony, and the inferences to be drawn from the evidence, and who resolves conflicts or inconsistencies in

the evidence. *Id*.; *Brooks*, 187 Ill. 2d at 131. The trier of fact may believe part of a witness's testimony without believing all of it. *People v. Sanchez*, 105 Ill. App. 3d 488, 493 (1982).

¶ 22 In this case, the trial court was well aware of defendant's position that Strickland was not worthy of belief. In closing arguments, defense counsel pointed out that Strickland exaggerated the number of stitches she received and argued that the photographs of her face and body did not show the kind of injuries one would expect to see from "an awful beating." Counsel asserted that contrary to Strickland's testimony, defendant could not have been strangling her when the police entered, since the responding officer heard her screaming and then only witnessed defendant grabbing her hair and slamming her head against the wall. Counsel further noted that neither the paramedics nor the nurse had memories or records of a report of strangulation. As for being on a public way, counsel argued that defendant would not have left the fenced-in yard due to being on home monitoring.

¶ 23 The inconsistencies and improbabilities in Strickland's testimony were fully explored at trial during cross-examination and highlighted by counsel in closing arguments. Nevertheless, the trial court specifically found that defendant beat Strickland "not only inside the apartment but [also] out on the public way" and that he "strangled and choked her about the neck." Although the court did not specifically say so, it apparently found Strickland to be a credible witness. See *People v. Moody*, 2016 IL App (1st) 130071, ¶ 52 (guilty verdict indicated that jury found complaining witness to be credible). This was the court's prerogative in its role as the tier of fact. *Id.* We will not substitute our judgment for that of the trier of fact on this issue of credibility. *Brooks*, 187 Ill. 2d at 131.

¶ 24 Despite the flaws that defendant has identified in Strickland's testimony, we find that the portions of her testimony that directly support defendant's conviction could reasonably be accepted by the trial court, who saw and heard Strickland testify. See *Cunningham*, 212 Ill. 2d at 285. The trial court was convinced of defendant's guilt beyond a reasonable doubt. After reviewing the evidence in the light most favorable to the prosecution, which we must, we conclude that the evidence was not "so unsatisfactory, improbable or implausible" as to raise a reasonable doubt as to defendant's guilt. *Slim*, 127 Ill. 2d at 307. Accordingly, defendant's challenge to the sufficiency of the evidence fails.

¶ 25 Next, defendant challenges the fines and fees assessed against him. He asserts that there are four problems with the fines, fees, and costs order: (1) due to a mathematical error, the order currently lists the total amount owed as $914, rather than $924; (2) certain assessments should be vacated as inapplicable; (3) certain assessments designated as fees are in fact fines that should be offset by *per diem* credit; and (4) the imposed fines were not actually offset. Defendant acknowledges that he did not raise the issue of fines and fees in the trial court. Nevertheless, defendant argues that we may reach his arguments under the doctrine of plain error. The State has responded that "errors in the fines, fees, and costs order may be corrected despite the forfeiture." By this statement, the State has waived any forfeiture argument. *People v. Brown*, 2018 IL App (1st) 160924, ¶ 25; *People v. Smith*, 2018 IL App (1st) 151402, ¶ 7. As such, we will address defendant's claims. Our review of the propriety of the trial court's imposition of fines and fees is *de novo*. *Brown*, 2018 IL App (1st) 160924, ¶ 25; *Smith*, 2018 IL App (1st) 151402, ¶ 7.

¶ 26 First, defendant is correct that when the individual fines, fees, and costs currently listed on the order are added together, they total $924.

¶ 27 Second, defendant contends that four assessments must be vacated: the $20 Protection Order Violation Fine (730 ILCS 5/5-9-1.11(a) (West 2016)); the $2 Public Defender Records Automation Fee (55 ILCS 5/3-4012 (West 2016)); the $5 Electronic Citation Fee (705 ILCS 105/27.3e (West 2016)); and the $5 Court System fee (55 ILCS 5/5-1101(a) (West 2016)). We agree. The $20 Protection Order Violation Fine only applies to convictions for violations of orders of protection (*People v. Costa*, 2013 IL App (1st) 090833, ¶ 38); the $2 Public Defender Records Automation Fee only applies when a defendant is represented by the public defender (*People v. Taylor*, 2016 IL App (1st) 141251, ¶ 30); 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 not convicted of violating an order of protection, was represented by private counsel, and was convicted of a felony that is not a vehicle offense. Therefore, we vacate all four assessments and direct the clerk of the circuit court to correct the fines, fees, and costs order accordingly.

¶ 28 Third, defendant contends that he is entitled to *per diem* presentence custody credit against various 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 2016). 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). A "fine" is punitive in nature,

while a "fee" is assessed in order to compensate the State or recoup expenses incurred by the State in prosecuting a defendant. *People v. Mullen*, 2018 IL App (1st) 152306, ¶ 21. Here, defendant spent 669 days in presentence custody. Therefore, he is entitled to up to $3,345 in presentence custody credit against his fines.

¶ 29 Defendant argues that he is entitled to credit against five assessments that are designated on the fines, fees, and costs order as "FEES AND COSTS *NOT* OFFSET BY THE $5 PER-DAY PRE-SENTENCE INCARCERATION CREDIT." (Emphasis in original.) These charges are: the $190 Felony Complaint Filed, (Clerk) fee (705 ILCS 105/27.2a(w)(1)(A) (West 2016)); the $25 Automation (Clerk) fee, 705 ILCS 105/27.3a-1 (West 2016)); the $15 State Police Operations Fee (705 ILCS 27.3a-1.5 (West 2016)); the $2 State's Attorney Records Automation Fee (55 ILCS 5/4-2002.1(c) (West 2016)); and the $25 Document Storage (Clerk) fee (705 ILCS 105/27.3c (West 2016)).

¶ 30 The State agrees with defendant that he is entitled to presentence incarceration credit against one of these assessments: the $15 State Police Operations Fee. See *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31. We accept the State's concession and hold that this assessment is a fine against which defendant can receive $5-per-day credit for the time he spent in presentence custody. We order the clerk of the circuit court to correct the fines, fees, and costs order to reflect this credit.

¶ 31 The State does not concede defendant's claim for credit against the remaining four assessments he has identified: the $190 Felony Complaint fee, the $25 Automation (Clerk) fee, the $2 State's Attorney Records Automation Fee, and the $25 Document Storage (Clerk) fee. This court has previously considered challenges to these assessments and found them to be fees,

not fines, and therefore not subject to offset by the $5-per-day presentence custody credit. *E.g.*, *Brown*, 2018 IL app (1st) 160924, ¶¶ 31, 32; *Smith*, 2018 IL App (1st) 151402, ¶¶ 15, 16. As for the $2 State's Attorney Records Automation fee, the overwhelming majority of legal authority holds that it is a fee not subject to offset. *E.g.*, *Brown*, 2018 Il App (1st) 160924, ¶ 31; *Smith*, 2018 IL App (1st) 151402, ¶ 16; *People v. Brown*, 2017 IL App (1st) 150146, ¶ 38 (collecting cases); but see *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56 (finding that this assessment is a fine, not a fee). In keeping with precedent, we conclude that these assessments are fees and, therefore, may not be offset by defendant's presentence custody credit.[1]

¶ 32 Finally, defendant argues that his fines were not offset by his presentence incarceration credit. We agree that the order does not reflect whether defendant received *per diem* credit against five assessments that are correctly designated on the fines, fees, and costs order as "FINES OFFSET by the $5 per-day pre-sentence incarceration [credit]." These fines are: the $10 Mental Health Court fine (55 ILCS 5/5-1101(d-5) (West 2016)); the $5 Youth Diversion / Peer Court fine (55 ILCS 5/5-1101(e) (West 2016)); the $5 Drug Court fine (55 ILCS 5/5-1101(f) (West 2016)); the $30 Children's Advocacy Center fine (55 ILCS 5/5-1101(f-5) (West 2016)); and the $200 Domestic Violence Fine (730 ILCS 5/5-9-1.16 (West 2016)).[2] Although the fines, fees, and costs order includes a pre-printed statement indicating that "Allowable credit toward fine will be calculated," we cannot discern from the order whether defendant actually received credit against his fines. To ensure that he does, we order the clerk of the circuit court to correct

[1] We note that our supreme court has allowed appeal in a case where this court determined that these assessments are fees not subject to offset. *People v. Clark*, 2017 IL App (1st) 150740-U, ¶¶ 21-23, *appeal allowed*, No. 122495 (Sept. 27, 2017).

[2] Defendant was also assessed a $10 Domestic Battery Fine, which, though designated by the pre-printed fines, fees, and costs order as a fine offset by the credit, is not subject to offset. 730 ILCS 5/5-9-1.6 (West 2016) (the $10 assessment for domestic battery "shall not be considered a part of the fine for purposes of any reduction in the fine for time served either before or after sentencing").

the fines, fees, and costs order to reflect this credit. See *Mullen*, 2018 IL App (1st) 152306, ¶ 58 (where this court was "unsure whether the presence or absence of a calculation [in the fines, fees, and costs order] affects whether a defendant receives the necessary credit," we ordered modification of the order to ensure the defendant received his due credit).

¶ 33 For the reasons explained above, we affirm defendant's conviction for aggravated domestic battery. We vacate the $20 Protection Order Violation Fine, the $2 Public Defender Records Automation Fee, the $5 Electronic Citation Fee, and the $5 Court System fee. In addition, we find that the $10 Mental Health Court fine, the $5 Youth Diversion / Peer Court fine, the $5 Drug Court fine, the $30 Children's Advocacy Center fine, the $200 Domestic Violence Fine, and the $15 State Police Operations Fee are offset by *per diem* credit for presentence custody, of which the fines, fees, and costs order should reflect that defendant served 669 days. The total amount of fines, fees, and costs is reduced from $924 to $627. We order the clerk of the circuit court to correct the fines, fees, and costs order accordingly.

¶ 34 Affirmed; fines, fees, and costs order corrected.