2017 IL App (1st) 143883-U

No. 1-14-3883

September 27, 2017

Third 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. 13 CR 17374 (01)
	)	
TONY LANDERS,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient to prove defendant guilty beyond a reasonable doubt. The fines, fees and costs order is modified.

¶ 2 Following a bench trial, defendant Tony Landers was convicted of vehicular hijacking (720 ILCS 5/18-3(a) (West 2012)), unlawful vehicular invasion (720 ILCS 5/18-6(a) (West 2012)), robbery (720 ILCS 5/18-1(a) (West 2012)), possession of a stolen motor vehicle (625

ILCS 5/4-103(a)(1) (West 2012)), and aggravated battery (720 ILCS 5/12-3.05(c) (West 2012)). The trial court merged the unlawful vehicular invasion and the possession of a stolen motor vehicle counts into the vehicular hijacking count and sentenced defendant to, respectively, nine, seven, and five years in prison on the remaining counts, to be served concurrently. On appeal, defendant contends that the State did not prove him guilty beyond a reasonable doubt where the testimony of the State's witness was untrustworthy and was directly contradicted by defendant's two credible eyewitnesses. Defendant also challenges certain assessed fines and fees. For the reasons below, we affirm defendant's convictions but order modification of the fines, fees, and costs order.

¶ 3 Defendant's convictions arose from the beating, robbery and vehicular hijacking of Daniel Johnson on August 16, 2013. The trial court set the case for a bench trial on June 19, 2014.[1] The State was unable to proceed as Johnson failed to appear. Johnson similarly failed to appear on the next three court dates, despite issuance of a rule to show cause and a warrant. Finally, pursuant to an arrest warrant, he appeared for trial on August 28, 2014, and testified for the State.

¶ 4 Johnson testified that, at about 2:20 a.m., on August 16, 2013, he pulled his Cadillac over in the area of 636 North Springfield Street, in Chicago, to change a compact disc. An individual, identified in court as defendant, approached Johnson from the driver's side window and asked him for a light. When Johnson leaned over to get a light from his pants pocket, defendant pulled him out of his car. As Johnson was being pulled out of the car, he grabbed his keys from the ignition and put them in his pocket. Then, defendant and codefendant Michal Landers, hit,

[1] The trial court conducted a joint bench trial with codefendant Michael Landers, but he is not a party to this appeal.

kicked, and "knocked [him] unconscious." When Johnson regained consciousness, his car, cellular phone, and money from his pocket were gone. Neither defendant nor Michael Landers had permission to take his car.

¶ 5 About 15 to 20 minutes later, the police arrived. Johnson told the police that "two guys jumped" him. Although he was "hurt," Johnson did not get into the ambulance or tell the paramedics that he lost consciousness. After he spoke with the police, they took him around the corner to Ferdinand Street, where he saw defendant standing next to his car. Johnson identified defendant as the individual that "initially came up and asked me for a light." Prior to the incident, he did not know defendant or Michael Landers. Johnson identified People's Exhibits Nos. 5, 6, 7, and 8 as photographs of his injuries from the incident, including to his lip, forehead, and elbows.

¶ 6 On cross-examination, Johnson testified that, on the night in question, he had drunk alcohol but had not used any illegal drugs. He also testified that the Cook County State's Attorney's office had a pending case against him in Skokie.

¶ 7 Chicago police officer Galligan testified that, at approximately 2:30 a.m. on August 16, 2013, he responded to a "battery in progress" call at 636 North Springfield Street, in Chicago. When he arrived there, he saw Johnson had bruises, abrasions on his forehead, and a cut on his mouth. After speaking with Johnson, Galligan went looking for two individuals and Johnson's vehicle. Five to ten minutes later, he located Johnson's vehicle at 3838 West Ferdinand Street, which was one and a half blocks from 636 North Springfield. Defendant was sitting in the driver's seat of Johnson's vehicle. The police brought Johnson to that location, and Johnson

identified defendant as the individual "that approached him, asked for the lighter, and then struck him and dragged him out of the car."

¶ 8 Cherish Siler testified on behalf of defendant. Siler was defendant's friend. On the evening of August 15, 2013, she was at a party with defendant on Springfield and was with defendant "the whole time." Siler knew Johnson "from the neighborhood" and, on prior occasions, had seen him driving by or sitting and talking to defendant. At approximately 1:00 a.m., defendant and Johnson spoke to each other for five or eight minutes by Johnson's car, 25 or 30 feet away from Siler. After defendant and Johnson "exchange[d] something," defendant got into Johnson's car and drove away. Johnson walked away.

¶ 9 About 20 to 25 minutes later, she saw the police "come up the one-way of Springfield." Siler never saw the police speak to Johnson, and ran away when the police arrived. She later learned that defendant had been arrested in Johnson's car and charged with stealing it. Siler did not see defendant hit Johnson or pull him out of his car. She never told any law enforcement authority that defendant did not beat up Johnson or take his car.

¶ 10 Demond Warren also testified on behalf of defendant. Warren had known defendant for about ten years. On August 15, 2013, he attended a party on Springfield with defendant and was with defendant the whole time. Warren knew Siler but testified that Siler was hanging out in a different group that evening.

¶ 11 Warren knew Johnson "through the neighborhood" and had previously seen defendant and Johnson hanging out together in the car about five or six times. He testified that Johnson rented his car to people in the neighborhood. During the party, Johnson parked his car on the street, walked across the street and pulled defendant out of a dice game. Defendant and Johnson

then talked and walked down the street. Warren saw Johnson give defendant car keys and defendant give Johnson money. Defendant got into the car and "pulled off smiling." Johnson walked away. Warren never saw defendant pull Johnson out of the car.

¶ 12 About an hour later, the police came and tried to shut down the party. Warren testified that, after the party dispersed, the police walked to Johnson's car and "pulled [defendant] out [of] the car." The next day, Warren learned that defendant was accused of taking Johnson's car and beating him up. Warren never went to the police or any law enforcement officer to inform them that he saw Johnson give defendant the car.

¶ 13 Defendant testified that, on the evening of August 15, 2013, he was at the party on Springfield. He testified that he knew Johnson "throughout the neighborhood because I sell drugs to [him]." He had sold drugs to Johnson "a lot of times" and gave Johnson "drugs to use his car." Defendant was playing a dice game at the party when Johnson approached him. Defendant left the game and walked off with Johnson. Johnson asked defendant for cocaine but did not have any money. Defendant told Johnson that he was "his man because I wanted to use the car that night." Johnson agreed to give defendant his car until 8:00 a.m. in exchange for four bags of cocaine and $20. After defendant gave him the four bags and $20, defendant and Johnson walked to the car and shook hands. Defendant got the keys and drove off. Johnson walked away.

¶ 14 Defendant stopped at a liquor store and then parked his car near Ferdinand Street to make a phone call. A police officer pulled up, "pulled his gun" on him and, after asking defendant questions, took him out of the car. Defendant testified that he never hit Johnson or pulled him out of the car and that he never took his car without permission.

¶ 15 In rebuttal, the State entered into evidence defendant's certified convictions for possession of a controlled substance in 2012, manufacture and delivery of a controlled substance in 2009, and possession of a controlled substance in 2008.

¶ 16 The trial court found defendant guilty of vehicular hijacking, unlawful vehicular invasion, robbery, possession of a stolen motor vehicle, and aggravated battery. It noted:

> "[H]is case confirms what I thought and suspected during the testimony of Mr. Danny Johnson, that is that Mr. Johnson had some familiarity or knowledge of [defendant] Landers. He knew who he was. They had some type of dealings with each other, whether they were legal or illegal. He knew who he was. And as I suspected, that Mr. Danny Johnson was likely out there trying to scope out some drugs.
>
> But he didn't beat himself up. He didn't cause those injuries to himself. Police didn't respond almost immediately - - as immediately goes for Chicago response - - to a fake call. Mr. Johnson's car was taken from him after he was beaten up. And whether it was for a situation where there was no meeting of the minds as to what the cost was going to be for a street car rental, which the Court is certainly familiar with on the streets of Chicago, Defendant Tony Landers decided this day that he was going to beat up Mr. Johnson and take the vehicle forcefully, without lawful justification or permission by the use of force with intent to steal that vehicle. And in the process, he took Mr. Johnson's cell phone and money."

¶ 17 The trial court denied defendant's motion to reconsider, noting that it found Johnson's testimony credible. Defendant timely appealed, raising three arguments.

¶ 18 Defendant's first contention is that all his convictions should be reversed as the State did not prove him guilty beyond a reasonable doubt because the only evidence to support his convictions was Johnson's incredible and contradicted testimony.

¶ 19 On appeal, when we review the sufficiency of the evidence, the question 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, 319 (1979). We "must give the State the benefit of all reasonable inferences." *People v. Daheya*, 2013 IL App (1st) 122333, ¶ 62. It is the fact finder's responsibility to determine the "credibility of the witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from that evidence." *People v. Hale*, 2012 IL App (4th) 100949, ¶ 29. "[T]he factual determinations and credibility assessments made by the fact finder—here, the trial court—are entitled to 'great weight' because the fact finder, and not the reviewing court, had the opportunity to hear the witnesses and observe their demeanor in court." *People v. Simpson*, 2015 IL App (1st) 130303, ¶ 41 (quoting *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007)).

¶ 20 As a reviewing court, we will not retry a defendant (*People v. Hall*, 194 Ill. 2d 305, 329-30 (2000)), and we will not substitute our judgment with that of the trier of fact on questions about the weight of the evidence or the credibility of the witnesses (*People v. Hunter*, 2016 IL App (1st) 141904, ¶ 15). We will only reverse a conviction if the credibility of the witnesses is so improbable that it raises a reasonable doubt (*People v. Mays*, 81 Ill. App. 3d 1090, 1099 (1980)), or if the evidence is "so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of defendant's guilt" (*Wheeler*, 226 Ill. 2d at 115).

¶ 21 To prove vehicular hijacking as charged, the State had to prove defendant knowingly took the Cadillac from the person or the immediate presence of Johnson "by the use of force or by threatening the imminent use of force." 720 ILCS 5/18-3(a) (West 2012). To prove vehicular invasion, it had to prove defendant knowingly, by force and without lawful justification, entered or reached into the interior of the Cadillac while it was occupied by Johnson, "with the intent to commit therein a theft or felony." 720 ILCS 5/18-6 (West 2012). To prove possession of a stolen motor vehicle, the State had to prove that defendant possessed the Cadillac without authority and knew the vehicle was stolen. 625 ILCS 5/4-103(a)(1) (West 2012).

¶ 22 To prove robbery, the State had to prove defendant knowingly took the mobile phone and currency from Johnson's person or presence "by the use of force or by threatening the imminent use of force." 720 ILCS 5/18-1(a) (West 2012). To prove aggravated battery, it had to prove that, while Johnson was on a public way, defendant battered Johnson, *i.e.*, he knowingly and without legal justification caused bodily harm to him or made "physical contact of an insulting or provoking nature" with him. 720 ILCS 5/12-3.05(c) (West 2012); 720 ILCS 5/12-3 (West 2012).

¶ 23 Here, Johnson testified that he was stopped in his car when defendant approached him, asked for a light, and pulled him out of his car. Defendant and Michael Landers then hit and kicked him until he became unconscious. After Johnson regained consciousness, his car was gone, as were the cellular phone, money, and car keys from his pocket. Officer Galligan testified that, when he arrived at the scene, defendant had bruises, abrasions on his forehead, and a cut on his mouth. Galligan found defendant in Johnson's car about one and half blocks away. Johnson identified photographs of his injuries, including injuries to his lip, forehead, and elbows. The testimony of a single witness, if positive and credible, is sufficient to convict. *People v.*

Siguenza-Brito, 235 Ill. 2d 213, 228 (2009). We find that the evidence, viewed in the light most favorable to the State, was sufficient to support defendant's convictions for all charges.

¶ 24 Defendant contends, however, that Johnson's testimony was not credible and therefore cannot support the convictions. He argues Johnson's testimony was impeached, unbelievable, untrustworthy, and contradicted by his two credible eyewitnesses. Defendant asserts that "in reaching its verdict, the trial court itself stated that it did not believe major portions of Johnson's testimony," and thus the court's determination that Johnson was credible regarding the battery of Johnson and taking of the car and property was not supported by the evidence.

¶ 25 We disagree with defendant's characterization of the trial court's credibility finding. Defendant takes issue with the trial court's statements that it suspected Johnson knew defendant from previous dealings and was likely looking for drugs on the night in question. While the trial court may have disbelieved parts of Johnson's testimony, it never stated that it found his testimony as a whole incredible or that it did not believe "major portions" of his testimony. See *People v. Peoples*, 2015 IL App (1st) 121717, ¶ 67 (" 'The trier of fact is free to accept or reject as much or as little of a witness's testimony as it pleases.' ") (quoting *People v. McCarter*, 2011 IL App (1st) 092864, ¶ 22).

¶ 26 Further, during the hearing on the motion to reconsider, the trial court explained why it had found Johnson's version of the incident credible despite the aforementioned issues with his testimony. It stated: "the fact that the witness doesn't want to readily admit that they were out for an illegal purpose, as the Court suspects, does not mean that I throw out all of their testimony." The trial court then expressly stated that it had found Johnson's testimony credible: "I found the testimony to be credible and solid on those points and aspects that were germane to the decision

to be made by this Court. *** So the Court believes the testimony is credible on every salient point[.]"

¶ 27 As this case was based on the credibility of the witnesses and the trier of fact, here the trial court, was in a better position to evaluate the evidence and to appraise the witnesses' credibility, we will not substitute our judgment for that of the trial court on its credibility finding. See *People v. Clark*, 2014 IL App (1st) 130222, ¶ 26; *People v. Mays,* 81 Ill. App. 3d 1090, 1101 (1980). Further, " 'Testimony may be found insufficient * * * only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt.' " *People v. Simpson*, 2015 IL App (1st) 130303, ¶ 41 (quoting *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004)). From our review of Johnson's testimony and the record as a whole, we cannot find that his testimony was so insufficient that no reasonable person could accept it.

¶ 28 As defendant points out, Johnson's testimony was contradicted by Siler and Warren's testimony, as well as defendant's testimony. But we will not reverse a conviction "simply because the evidence is contradictory" or because defendant "claims that a witness was not credible." *Siguenza-Brito*, 235 Ill. 2d at 228. It was for the trial court as the trier of fact to determine which version of events to accept. See *People v. Ortiz*, 196 Ill. 2d 236, 267 (2001) ("a fact finder need not accept the defendant's version of events as among competing versions"). The court chose to credit Johnson's version over that of the defense witnesses and, on this record, we do not find its determination unreasonable.

¶ 29 Defendant also argues that Johnson was untrustworthy because of "his multiple failures to show up at trial." However, the trial court was well aware that Johnson repeatedly failed to appear at the scheduled trial dates when it accepted Johnson's version of the incident. Again, as

the trier of fact, the court had the opportunity to hear the witnesses and to observe their demeanor (*Simpson*, 2015 IL App (1st) 130303, ¶ 41) and, on this record, we will not disturb the trial court's credibility determinations (*Mays*, 81 Ill. App. 3d at 1101). Accordingly, given the court's findings that Johnson's version of events was credible in all relevant aspects, the evidence amply supported all five convictions beyond a reasonable doubt.

¶ 30 In his second argument, defendant contends that, if we do not reverse all of his convictions, we should reverse his robbery conviction because the State did not prove beyond a reasonable doubt that he took a cellular phone or money from Johnson. Defendant asserts that the only evidence presented to support that defendant took the phone or money from Johnson was Johnson's untrustworthy testimony and that the State did not present evidence to demonstrate that he was found in possession of these items when he was arrested.

¶ 31 To prove robbery as charged, the State had to prove defendant knowingly took a cellular phone and United States currency from Johnson's person or presence "by the use of force or by threatening the imminent use of force." 720 ILCS 5/18-1(a) (West 2012). Robbery may be proved by circumstantial evidence. *People v. Harris*, 2012 IL App (1st) 100678, ¶ 84; *People v. Wilson*, 37 Ill. App. 3d 560, 564 (1976). "When money or property is no longer in the place where it is habitually placed, for example, it may be inferred that defendant took the property." *Harris*, 2012 IL App (1st) 100678, ¶ 84.

¶ 32 As discussed, the record supports the trial court's finding that Johnson's testimony about the relevant facts was credible. In that testimony, Johnson stated that defendant pulled him from his car and beat him until he was unconscious. When Johnson regained consciousness, his car and the cellular phone and money from his pocket were gone. Shortly thereafter, Officer

Galligan found defendant in Johnson's car. Viewing this evidence in the light most favorable to the State, we find it was sufficient for the trial court to reasonably infer that defendant took not only Johnson's car, but also his cellular phone and money from his pocket. Thus, the evidence was sufficient to convict him of robbery beyond a reasonable doubt. See *People v. Wilson*, 37 Ill. App. 3d 560, 564 (1976) ("The commission of a robbery is sufficiently established by proof that the victim had valuables on his person at the time of being assaulted, beaten and rendered unconscious, and that they were missing when he regained consciousness.).

¶ 33 Defendant's last contention on appeal is that the assessed fines, fees, and costs should be reduced from $449 to $129. He argues that he is entitled to presentence incarceration credit toward certain (1) fines and (2) fees that are legally considered fines.

¶ 34 As an initial matter, defendant did not raise his challenge to the fines, fees, and costs imposed on him in the trial court, but he urges us to review the issue under the plain error doctrine. The State argues that defendant has forfeited the issue because he failed to raise the issue in the trial court. See *People v. Hillier*, 237 Ill. 2d 539, 544 (2010).

¶ 35 As a reviewing court, we may modify the fines and fees order without remanding the case to the circuit court. Ill. S. Ct. R. 615(b)(1) (eff. Jan. 1, 1967); see *People v. McGee*, 2015 IL App (1st) 130367, ¶ 82. Therefore, we will review defendant's challenge to the assessed fines, fees, and costs even though he did not raise the issue in the trial court. The propriety of court-ordered fines and fees is reviewed *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 36 Defendant contends that he is entitled to a $5 credit for each day he spent in presentence custody toward certain fines imposed on him. Under section 110-14(a) of the Code of Criminal Procedure, defendant is entitled to a credit of $5 to be applied toward his fines for each day he

spent in presentence custody. 725 ILCS 5/110-14(a) (West 2014). The credit applies to fines imposed after a conviction but does not apply to other court costs or fees. *People v. Tolliver*, 363 Ill. App. 3d 94, 96 (2006). A "fine" is considered to be "part of the punishment for a conviction," and a "fee" is imposed to "recoup expenses incurred by the state—to 'compensat[e]' the state for some expenditure incurred in prosecuting the defendant." *People v. Jones*, 223 Ill. 2d 569, 582 (2006). The mittimus provides that defendant was in presentence custody for 454 days. He is, therefore, entitled to $2270 in presentence custody credit.

¶ 37 Defendant first contends, and the State concedes, that he is entitled to presentence custody credit against the following assessments: $10 mental health court (55 ILCS 5/5-1101(d-5) (West 2014)), the $5 youth diversion/peer court (55 ILCS 5/5-1101(e) (West 2014)), the $5 drug court (55 ILCS 5/5-1101(f) (West 2014)), and the $30 Children's Advocacy Center (55 ILCS 5/5-1101(f-5) (West 2014)).

¶ 38 We agree that these four assessments are considered "fines." *People v. Unander*, 404 Ill. App. 3d 884, 886, 891 (2010) (concluding that the drug court "fee" is actually a "fine" and awarding credit toward this charge); *People v. Price*, 375 Ill. App. 3d 684, 701 (2007) (finding that the mental health court and your diversion/peer court charges are fines); *People v. Jones*, 397 Ill. App. 3d 651, 660 (2009) (concluding that the $30 Children's Advocacy Center charge is a "fine," and noting that the charge "does not reimburse the state for expenses incurred while prosecuting the defendant"). Accordingly, defendant is entitled to receive presentence custody credit against these four assessments.

¶ 39 Defendant next contends that the following four fees are actually considered fines and thus subject to offset by presentence custody credit: $190 "Felony Complaint Filed (Clerk)" fee

(705 ILCS 105/27.2a(w)(1)(A) (West 2014)), $15 automation fee (705 ILCS 105/27.3a(1) (West 2014)), the $15 State Police operations fee (705 ILCS 105/27.3a(1.5) (West 2014)), and the $50 court system fee (55 ILCS 5/5-1101(c)(1) (West 2014)). The State concedes that the $15 State Police operations fee and $50 court system fee are considered fines subject to offset, but argues that the $190 clerk fee and $15 automation fee are considered fees that are not subject to presentence incarceration credit.

¶ 40 We agree with the parties that the $15 State Police operations fee and the $50 court system fee are considered "fines." These charges do not reimburse the State for the costs it incurred in defendant's prosecution. *People v. Maxey*, 2016 IL App (1st) 130698, ¶ 141 (concluding that the State Police operations assessment is a fine); *People v. Smith*, 2013 IL App (2d) 120691, ¶ 21-22 (awarding the defendant credit for the court system fee, noting that the charge "is not explicitly tied to, and bears no inherent relationship to, the actual expenses involved in prosecuting the defendant"). Defendant is, therefore, entitled to presentence custody credit toward the $15 State Police operations and the $50 court system assessments.

¶ 41 Defendant next argues that the $190 clerk fee and $15 automation fee are actually considered "fines." He asserts that the clerk's fee is an arbitrary number that is imposed to finance "the clerk's mission as a whole" and does not reimburse the clerk for a cost "specifically incurred by [defendant's] prosecution." Defendant argues that the automation fee does not compensate the State for costs incurred to prosecute defendant, that it did not "result" from his prosecution, and that it finances a component of the court system. We disagree.

¶ 42 As explained by our supreme court, the central characteristic which separates a fee from a fine is "whether the charge seeks to compensate the state for any costs incurred as the result of

prosecuting the defendant." *People v. Graves*, 235 Ill. 2d 244, 250 (2009); *Jones*, 223 Ill. 2d at 600. In *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006), consistent with this reasoning, we held that the felony complaint filing and automation charges are considered "fees" because these charges are "compensatory and a collateral consequence of defendant's conviction." Thus, we conclude that the felony complaint filing and automation charges imposed on defendant are fees and he is not entitled to presentence incarceration credit toward these assessments.

¶ 43 As defendant points out, the fines, fees, and costs order incorrectly provides that the total amount of fines and fees imposed on him was $724. At sentencing, the trial court orally pronounced that defendant would be assessed fees and costs in the amount of $449. See *People v. Jones*, 376 Ill. App. 3d 372, 395 (2007) (the trial court's oral pronouncement controls). Our review of the fines, fees, and costs order shows the court's calculation was correct, as the total amount of fines, fees, and costs imposed on defendant was $449. Therefore, the total on the fines and fees order should be corrected, taking into account the presentence custody credit awarded herein.

¶ 44 For the reasons explained above, we affirm defendant's convictions and find defendant is entitled to $5 per day of presentence custody credit toward the $10 mental health court, the $5 youth diversion/peer court, the $5 drug court, the $30 Children's Advocacy Center, the $15 State Police operations, and the $50 court system assessments and to correction of the fines and fees, and costs order. Under Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967), we order the clerk of the circuit court to modify the fines, fees, and costs order accordingly. See *People v. Bryant*, 2016 IL App (1st) 140421, ¶¶ 22-23. The judgment of the circuit court is affirmed in all other respects.

¶ 45 Affirmed; fines, fees, and costs order modified.