2018 IL App (1st)160497-U

No. 1-16-0497

Order filed November 15, 2018

Fourth 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 6804
	)	
ARMOND JONES,	)	Honorable
	)	Thomas M. Davy,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Gordon and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for aggravated unlawful use of weapon is affirmed over his contention that the evidence that he placed in, and removed from, his ankle sock a handgun the size of a cellular phone defied belief. Fines and fees order corrected.

¶ 2 Following a bench trial, defendant Armond Jones was found guilty of aggravated unlawful use of a weapon (AUUW), and sentenced to two years of probation. On appeal, he contends that he was not proven guilty of AUUW beyond a reasonable doubt because the

testimony at trial defied belief. Defendant further challenges the imposition of certain fines and fees. We affirm, and correct the fines and fees order.

¶ 3 At trial, Chicago police officer Brad Scaduto testified that he was on patrol around 11:15 p.m. on March 21, 2013, when he observed defendant on the sidewalk. Scaduto watched as defendant placed a shiny object in his left sock. At that point, Scaduto did not know what the object was, however, based upon the shape and shiny chrome finish, he believed it was firearm. Scaduto's partner, who was driving, then called defendant over for a field interview. As defendant approached the vehicle. Scaduto attempted to get out. It was at this point that defendant "took off running." During the subsequent foot chase, Scaduto observed defendant reach into his left sock, take out what appeared to be a firearm, and throw it to the ground. Defendant was subsequently detained and Scaduto recovered the object that defendant threw away. The object was a Raven .25 caliber handgun with a chrome finish containing seven rounds.

¶ 4 Later, at a police station, Scaduto inventoried the firearm and spoke to defendant. During the conversation, defendant stated that he was holding the gun for Melvin and that Melvin had gotten the gun from Ralph. Scaduto later determined that defendant had not been issued a valid Firearm Owner's Identification (FOID) Card.

¶ 5 During cross-examination, Scaduto testified that he was in a moving vehicle approximately 20 feet away from defendant when he first observed defendant. Defendant removed the shiny object from the "outer garment of his clothing" and placed it in his sock. Scaduto described the sock as a "standard tube sock." Defendant did not stop walking as he placed the gun in his sock; rather, it was a "fluid motion." The object was small, about the size of

a cellular phone. As Scaduto chased defendant, he observed defendant reach down and remove the object from the sock in a "fluid motion." Defendant did not stop running until Scaduto tackled him. At the conclusion of Scaduto's testimony the case was continued.

¶ 6 At a subsequent court date, the parties stipulated that if the State was to recall Officer Scaduto he would identify "People's Exhibit No. 1" as the handgun in question. The State presented the handgun to the trial court for inspection. The parties also stipulated to a certification from the "Illinois State Police Firearm Services Bureau" indicating that defendant, with a January 4, 1991 date of birth, had not been issued a FOID card as of February 20, 2015.

¶ 7 Defendant testified that he was walking home when he was "pulled over" by two police officers in a vehicle, and asked to "come here." When he was about five feet away he stopped. At this point, an officer exited the vehicle with a "pointed" gun and defendant ran to the back of the vehicle. He continued to run "for cover." After running through an alley, he lay on the ground. He denied having a gun when he got down on the ground. Defendant testified that he was wearing a hoody, "low top" shoes and ankle socks when he was arrested. Defendant was wearing the same socks at trial and testified that the socks only came up to his ankle.

¶ 8 During cross-examination, defendant testified that he only wore ankle socks, and that he was wearing the pair that he wore the night of his arrest. He owned two pairs of white socks that looked "just like" the socks he was wearing. Defendant knew it was the same pair because he kept them in the closet and had not worn them since his arrest around two years prior. He chose to wear the socks to court rather then bring them as a trial exhibit. He denied knowing anyone named Melvin or Ralph. The officers did not ask him anything about a gun, and he did not tell them that he was holding the gun for Melvin. Defendant then testified that officer who took him

into custody "jumped on" him and beat him up "a little bit" before placing him in handcuffs. Defendant explained that the officer hit him in the face "a couple of times real quick." He was face down on the ground and did not remember where on the face he was punched. Although "The County" took pictures of the bruises on his face, he had not seen the pictures.

¶ 9 During redirect examination, defendant denied that he had a gun earlier in the day or that he had one in his hand as he walked toward the police. He also denied seeing a gun the night he was arrested or that he threw anything away as he ran from the police.

¶ 10 The case was continued so that defense counsel could investigate whether the photographs existed. At a subsequent court date, defense counsel informed the court that although photographs were apparently taken, none had been located. At another court date, the defense presented a photograph of defendant as he was "put into" the Cook County jail system.

¶ 11 The trial court found defendant guilty of AUUW, and sentenced him to two years of probation.

¶ 12 On appeal, defendant contends that he was not proven guilty beyond a reasonable doubt because Officer Scaduto's description of defendant's actions "defies belief." Defendant argues that Scaduto's description of defendant putting a gun in a sock and then running away with it in the sock "strains credulity."

¶ 13 When reviewing a challenge to the sufficiency of the evidence, the relevant question 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 crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. It is the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts. *People v.*

Bradford, 2016 IL 118674, ¶ 12. A reviewing court will not substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses. *Id*. This court reverses a defendant's conviction only where the evidence is so unreasonable, improbable or unsatisfactory that a reasonable doubt of his guilt remains. *Id*.

¶ 14 Here, taking the evidence in the light most favorable to the State as we must (*Brown*, 2013 IL 114196, ¶ 48), there was evidence from which a rational trier of fact could have found that defendant knowingly carried a firearm on his person when the evidence at trial established that defendant placed a shiny object in his sock and threw the object away as he ran from police, and that the object was later recovered and determined to be a Raven .25 caliber firearm with a chrome finish containing seven rounds.

¶ 15 Defendant, however, contends that Officer Scaduto's testimony is implausible because of the physical awkwardness of placing and removing a firearm in a sock while walking and running. Defendant argues that he testified that he was wearing ankle socks at the time of his arrest and that "it is impossible to imagine" running while having a firearm in an ankle sock.

¶ 16 In the case at bar, defendant essentially asks this court to reweigh the evidence presented at trial and come to a different conclusion. However, that is not the role of a reviewing court. Rather, it is the responsibility of the trier of fact to resolve conflicts in the testimony and weigh the evidence presented at trial. *Bradford*, 2016 IL 118674, ¶ 12. To the extent that defendant and Scaduto differed as to the length of the socks defendant wore at the time of his arrest, we note that Scaduto described the firearm as the size of a cellular phone and we cannot agree with defendant's conclusion that it is "impossible" for someone to run with a weapon that size in a sock. Moreover, the trial court was presented with both the firearm and the socks at trial, and,

consequently, was able to determine what weight to give to that evidence and what inferences to draw from those facts. See *Bradford*, 2016 IL 118674, ¶ 12. Ultimately, here, despite the differing testimony regarding the length of defendant's socks, the trial court found Scaduto to be credible, as evidenced by the finding of guilt; we will not substitute our judgment for that of the trial court on this issue. See *People v. Jones*, 2015 IL App (1st) 142597, ¶ 20 (a reviewing court will not substitute its "judgment for that of the trier of fact on questions concerning the weight of the evidence or the credibility of the witnesses"). We therefore affirm defendant's conviction for AUUW.

¶ 17 Defendant further contends that the trial court improperly assessed the $5 electronic citation fee and the $5 court system fee. Defendant acknowledges that he did not challenge the fines and fees order in the trial court. These issues, are, therefore, forfeited. See *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). Defendant, however, requests that we review his claims under the plain error doctrine or pursuant to Illinois Supreme Court Rule 615(b) (eff. Aug. 27, 1999).

¶ 18 In *People v. Cox*, 2017 IL App (1st) 151536, ¶¶ 97-102, this court determined that unpreserved errors pertaining to the imposition of fines and fees affect a defendant's substantial rights and are reviewable under the second prong of the plain error doctrine. As we noted in that case (see *id.*, ¶ 98), our supreme court has held that " '[t]he imposition of an unauthorized sentence affects substantial rights' and, thus, may be considered by a reviewing court even if not properly preserved in the trial court." *People v. Fort*, 2017 IL 118966, ¶ 19 (quoting *People v. Hicks*, 181 Ill. 2d 541, 545 (1998)); see also *People v. Lewis*, 234 Ill. 2d 32, 48-49 (2009) (plain error review is appropriate to consider the imposition of fine in contravention of statute because it implicates a defendant's right to fair sentencing hearing). Moreover, a fine is simply the

financial component of a criminal sentence. *People v. Johnson*, 2011 IL 111817, ¶ 16; *People v. Johnson*, 2015 IL App (3d) 140364, ¶¶ 10-11 ("fines may only be imposed by an order of the trial court," because they are "the financial component of a felony sentence").

¶ 19 Accordingly, challenges to the imposition of fines or fees are reviewable under the plain error doctrine because, as a component of a defendant's criminal sentence, they affect substantial rights. See *Cox*, 2017 IL App (1st) 151536, ¶ 102; accord *People v. Mullen*, 2018 IL App (1st) 152306, ¶ 38 ("We can and should review these legal errors in the assessment of fines and fees as plain error."); but see *People v. Griffin*, 2017 IL App (1st) 143800, ¶¶ 9, *appeal allowed*, No. 122549 (Nov. 22, 2017) (denying plain error review to alleged errors in imposition of fines and fees). Moreover, the State concedes the errors. *People v. Williams*, 193 Ill. 2d 306, 347-48 (2000) (rules of waiver and forfeiture apply to the State). We review the imposition of fines and fees *de novo*. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 60.

¶ 20 Defendant first contends, and the State concedes, that the $5 electronic citation fee (705 ILCS 105/27.3e (West 2014)), must be vacated. We agree as this assessment does not apply to felonies. See *People v. Smith*, 2018 IL App (1st) 151402, ¶ 12. Here, defendant was convicted of a felony and, accordingly, we vacate the $5 electronic citation fee.

¶ 21 Similarly, the parties agree, and we concur, that the $5 court system fee (55 ILCS 5/5-1101(a) (West 2014)), must be vacated as that assessment only applies to violations of the Illinois Vehicle Code. Here, defendant was not convicted of a violation of the Vehicle Code. We therefore vacate the $5 court system fee.

¶ 22 Accordingly, we affirm defendant's conviction for AUUW. We also order the clerk of the circuit court to correct defendant's fines and fees order to reflect the vacation of the $5 electronic citation fee and the $5 court system fee.

¶ 23 Affirmed in part and vacated in part; fines and fees order corrected.