2018 IL App (1st) 160798-U
No. 1-16-0798
Order filed July 23, 2018

First Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of
	)	Cook County, Criminal Division.
Plaintiff-Appellee,	)	
	)	No. 13 CR 19815
v.	)	
	)	Honorable Lawrence E. Flood,
THADDIUS ROACH,	)	Judge presiding.
	)	
Defendant-Appellant.	)	

JUSTICE GRIFFIN delivered the judgment of the court.
Justices Harris and Mikva concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence presented at trial was sufficient to sustain defendant's conviction for possession of a stolen motor vehicle. The fines, fees, and costs order is corrected.

¶ 2 Following a bench trial, defendant Thaddius Roach was convicted of possession of a stolen motor vehicle (PSMV) and sentenced to eight years in prison. On appeal, defendant challenges the sufficiency of the evidence, contending that the State failed to establish that the car he was seen driving was the same one the victim had reported stolen. In the alternative, defendant challenges various fines and fees imposed by the trial court. For the reasons that

follow, we affirm defendant's conviction and sentence, vacate one assessment, and order correction of the fines, fees, and costs order.

¶ 3 Defendant was charged by indictment with one count of being an armed habitual criminal, two counts of unlawful use or possession of a weapon by a felon (UUWF), and one count of PSMV. The count charging PSMV alleged that on September 17, 2013, defendant, "not being entitled to the possession of a motor vehicle, to wit: 1997 Nissan, property of Jose Galvan, possessed said vehicle knowing it to have been stolen or converted."

¶ 4 At trial, Jose Galvan testified through an interpreter that around 5 a.m. on September 15, 2013, his car, a black 1997 Nissan Maxima, was stolen with the keys in the ignition. When asked, "Now, on September 17th, 2013, did the police return your keys and car to you?" Galvan answered affirmatively. Galvan also testified that he did not give defendant permission or authorization to drive his car at any time.

¶ 5 Chicago police officer Timothy Loring testified that about 2:19 a.m. on September 17, 2013, he was on patrol with his partner when he noticed a car without taillights. He ran the license plate on the car, which was a black 1997 Nissan Maxima, and "it came back as a steal." Loring curbed the car in a dirt parking lot. The lone occupant, identified in court as defendant, got out of the driver's seat with a blue backpack and fled into a nearby hotel. Loring pursued defendant into the lobby, but lost sight of him. After speaking with the front desk attendant, Loring and his partner proceeded to Room 205, where Loring knocked on the door and announced his office. According to Loring, defendant opened the door and, unprompted, "stated he ran because he was scared, he was in a stolen car, and he threw the key under the bed." Loring placed defendant into custody and recovered a car key from under the bed. Defendant was taken

to the police station. A woman who was in the hotel room with defendant, Dayna Kincaid, was not detained and remained in the room after the officers left.

¶ 6 Loring testified that a couple of hours later, after talking with a detective, he returned to Room 205 and looked out the bathroom window. From this vantage point, he could see the blue backpack defendant had fled with lying on an awning about four or five feet from the window. Loring recovered the backpack, opened it, and found a .32-caliber Colt revolver, one expended shell, and some men's clothing.

¶ 7 Chicago police detective Jorge Gonzalez testified that on the day in question, he met with defendant at the police station, gave him *Miranda* warnings, and interviewed him. Following this conversation, Gonzalez and another detective went to Room 205 and talked with Kincaid. Based on his conversation with Kincaid, Gonzalez looked out the bathroom window and observed a backpack lying on an awning. Gonzalez called Officer Loring, who came to the hotel and recovered the backpack. The officers took the backpack back to the police station. After the gun was removed from the backpack and inventoried, Gonzalez and another detective showed defendant the backpack. Defendant said, "Charge me, do what you got to do, you got me."

¶ 8 The State entered into evidence certified copies of conviction showing that defendant was convicted of Class 1 possession of a controlled substance with intent to deliver in 2004 and Class 2 possession of a controlled substance with intent to deliver in 2006.

¶ 9 Following closing arguments, the trial court acquitted defendant of the charge of being an armed habitual criminal and the two charges of UUWF. The trial court found defendant guilty of PSMV. The court subsequently sentenced defendant to eight years in prison, indicated he would be credited with 891 days of presentence custody credit, and imposed $469 in fines, fees, and costs.

¶ 10 On appeal, defendant challenges the sufficiency of the evidence, arguing that the State failed to establish that the vehicle he was seen driving was Galvan's. Defendant acknowledges that he possessed a black 1997 Nissan Maxima with a license plate that indicated the car had been stolen, and that Galvan owned a black 1997 Nissan Maxima that had been stolen, but maintains that the State's evidence did not establish that these two cars were one and the same. He asserts that where the State did not prove the material element of identity of the stolen property, either via ownership or chain of custody, his conviction must be reversed.

¶ 11 In an appeal challenging 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). A reviewing court must allow reasonable inferences from the record in favor of the prosecution. *People v. Saxon*, 374 Ill. App. 3d 409, 416 (2007). 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)), or where proof of an element is wholly lacking (*People v. Robinson*, 2013 IL App (2d) 120087, ¶ 11).

¶ 12 When prosecuting the offense of PSMV, the State is not required to establish specific ownership of the stolen vehicle. *People v. Smith*, 226 Ill. App. 3d 433, 438 (1992). However, the State must prove that someone other than the defendant had a superior interest in the car identified and described in the indictment. *Smith*, 226 Ill. App. 3d at 438; *People v. Fernandez*, 204 Ill. App. 3d 105, 108, 109 (1990). This element may be satisfied by circumstantial evidence and reasonable inferences drawn therefrom. *Fernandez*, 204 Ill. App. 3d at 109. When evidence of ownership is used to establish this "superior interest," the State must prove that the defendant

possessed the same vehicle that was owned by the complainant. *Smith*, 226 Ill. App. 3d at 438. As an alternative to proof of ownership, chain of custody evidence, linking the recovered car to the car identified in the indictment, may provide the basis for an inference of identification. *Id.*

¶ 13 Defendant correctly observes that evidence establishing the make and model of a stolen vehicle, without more, is insufficient to prove ownership. *People v. Walker*, 193 Ill. App. 3d 277, 279 (1990). However, in the instant case, make and model were not the only evidence of identity. In addition to these features, the record establishes that the car defendant was seen driving and the car Galvan testified was stolen from him also shared the same color and year. Moreover, Galvan's testimony that his stolen car and car key were returned to him by the police on September 17, 2013, the same day as defendant's arrest, provided chain of custody evidence from which an inference of identification may be drawn. *People v. Whitfield*, 214 Ill. App. 3d 446, 455 (1991) (stipulation that car was returned to owner the day after the defendant's arrest was sufficient chain of custody evidence). While we cannot say that the identification evidence in the instant case is overwhelming, we find that, when viewed in the light most favorable to the prosecution, it is sufficient to establish that the car defendant possessed and the car Galvan owned were the same vehicle. Accordingly, we reject defendant's challenge to the sufficiency of the evidence.

¶ 14 Defendant next challenges the fines and fees assessed against him. He acknowledges that he did not raise the issue of fines and fees in a postsentencing motion. Nevertheless, defendant argues that we may reach his arguments regarding fines and fees under the doctrine of plain error or via Illinois Supreme Court Rule 615(b). 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. 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*. *Id*.

¶ 15 First, defendant contends, and the State concedes, that the $5 Electronic Citation Fee (705 ILCS 105/27.3e (West 2014)) must be vacated. We agree. This assessment does not apply to felonies. *Smith*, 2018 IL App (1st) 151402, ¶ 12. Here, defendant was convicted of a felony. As such, we vacate the assessment and direct the clerk of the circuit court to correct the fines, fees, and costs order accordingly.

¶ 16 Next, defendant contends that he is entitled to presentence custody credit against his 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). 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 891 days in presentence custody. Therefore, he is entitled to up to $4,455 in presentence custody credit against his fines.

¶ 17 Defendant argues that he is entitled to presentence custody credit against eight 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 assessments are: the $190 Felony Complaint Filed, (Clerk) fee (705 ILCS 105/27.2a(w)(1)(A) (West 2014)); the $15 Automation (Clerk) fee (705 ILCS 105/27.3a-1 (West 2014)); the $15 State Police Operations Fee (705 ILCS 27.3a-1.5 (West 2014)); the $2 Public Defender Records Automation

Fee (55 ILCS 5/3-4012 (West 2014)); the $2 State's Attorney Records Automation Fee (55 ILCS 5/4-2002.1(c) (West 2014)); the $15 Document Storage (Clerk) fee (705 ILCS 105/27.3c (West 2014)); the $25 Court Services (Sheriff) fee (55 ILCS 5/5-1103 (West 2014)); and a $50 Court System fee (55 ILCS 5/5-110(c) (West 2014)).

¶ 18 The State agrees with defendant that he is entitled to presentence incarceration credit against two of these assessments: the $15 State Police Operations Fee (see *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31) and the $50 Court System fee (see *People v. Ackerman*, 2014 IL App (3d) 120585, ¶ 30). We accept the State's concession and hold that these assessments are fines 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.

¶ 19 The State does not concede defendant's claim for credit against the remaining six assessments he has identified: the $190 Felony Complaint fee, the $15 Automation (Clerk) fee, the $2 Public Defender Records Automation Fee, the $2 State's Attorney Records Automation Fee, the $15 Document Storage (Clerk) fee, and the $25 Court Services (Sheriff) fee. This court has previously considered challenges to these six assessments and found them to be fees, not fines, and therefore not subject to offset by the $5-per-day presentence custody credit. *Smith*, 2018 IL App (1st) 151402, ¶¶ 15, 16. As for the $2 State's Attorney Records Automation fee and the $2 Public Defender Records Automation fee, the overwhelming majority of legal authority holds that they are fees not subject to offset. *E.g.*, *id.* ¶ 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 these two assessments are fines, not fees). In keeping with precedent, we conclude

that these six assessments are fees and, therefore, may not be offset by defendant's presentence custody credit.[1]

¶ 20 Finally, we note that defendant is entitled to credit against four 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 2014)); the $5 Youth Diversion / Peer Court fine (55 ILCS 5/5-1101(e) (West 2014)); the $5 Drug Court fine (55 ILCS 5/5-1101(f) (West 2014)); and the $30 Children's Advocacy Center fine (55 ILCS 5/5-1101(f-5) (West 2014)). We cannot discern from the fines, fees, and costs order whether defendant actually received credit against these fines. To ensure that he does, we order the clerk of the circuit court to correct 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).

¶ 21 For the reasons explained above, we affirm defendant's conviction and sentence. We vacate the $5 Electronic Citation Fee, and, in addition, find that the $15 State Police Operations Fee, the $50 Court System fee, the $10 Mental Health Court fine, the $5 Youth Diversion / Peer Court fine, the $5 Drug Court fine, and the $30 Children's Advocacy Center fine are offset by presentence credit. The total amount of fines, fees, and costs is reduced from $469 to $349. We order the clerk of the circuit court to correct the fines, fees, and costs order accordingly.

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

[1] We note that our supreme court has allowed appeal in a case where this court determined that all six of 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).