2018 IL App (1st) 161526-U

FIRST DIVISION
September 17, 2018

No. 1-16-1526

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. 15 CR 8193
	)	
JAMES TATE,	)	Honorable
	)	Neil J. Linehan,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justice Pierces and Walker concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for burglary is affirmed. The evidence was sufficient to prove him guilty beyond a reasonable doubt. The trial court is ordered to modify the fines, fees, and costs order.

¶ 2 Following a bench trial, defendant James Tate was convicted of burglary and sentenced to eight years' imprisonment. On appeal, he argues that the State failed to prove him guilty beyond a reasonable doubt and that his fines, fees, and costs order should be modified. We affirm Mr. Tate's conviction and order the trial court to modify the fines, fees, and costs order.

¶ 3 I. BACKGROUND

¶ 4 Mr. Tate was charged by information with one count of burglary. Mr. Tate waived his right to a jury and the case proceeded to a bench trial.

¶ 5 At that trial, Curtis Brown testified that, on May 11, 2015, he lived on West 107th Place and also owned a nearby property located on South State Street. The State Street building was unoccupied, but Mr. Brown kept furniture, clothing, and other "family things" inside. The evening of May 11, he received a phone call from a neighbor about his State Street property. Following the call, he and his sister drove to the property. On the way, his sister called the police. When Mr. Brown got there, he saw Mr. Tate on the side of his property, pushing Mr. Brown's mother's china cabinet on a dolly. Mr. Brown confronted Mr. Tate and told him to put the cabinet down. Mr. Tate responded that it was not Mr. Brown's house or belongings. The two continued to exchange words and, eventually, Mr. Tate left without the cabinet. As Mr. Tate walked away, the police arrived. Mr. Brown's sister directed the officers to Mr. Tate, who was then apprehended.

¶ 6 Mr. Brown examined the rear of the property and discovered a board that had covered the rear entrance to the home had been removed. Mr. Brown testified that when he visited the property a week earlier, the board had been in place and it had also been in place when he mowed the lawn on May 9. He also testified that he had last seen his mother's china cabinet a week earlier inside the State Street property. Mr. Brown did not give Mr. Tate authorization to enter his building. The dolly Mr. Tate used did not belong to Mr. Brown and he did not know where it came from.

¶ 7 Chicago police officer Anthony Martinez responded to the scene and approached Mr. Tate and placed him into custody. Officer Martinez searched Mr. Tate and found several tools in

his pockets, including screwdrivers, wrenches, sockets, and pliers. Mr. Tate was transported to the police station where a custodial search revealed more tools in the liner of Mr. Tate's jacket, including utility knives and a wire cutter. On cross-examination, Officer Martinez acknowledged that Mr. Tate was cooperative and did not appear under the influence of alcohol or drugs.

¶ 8 Chicago police detective Joseph Bowes interviewed Mr. Tate at the police station as part of the burglary investigation. Detective Bowes informed Mr. Tate of his *Miranda* rights, which Mr. Tate indicated that he understood. During the interview, Mr. Tate told Detective Bowes that he was inside the property getting high when he saw a china cabinet that he liked in the backyard. He put the cabinet on a dolly and tried to leave with it. This interview was not memorialized or recorded and no one else was present.

¶ 9 Mr. Tate testified in his own defense. He testified that, on the morning of May 11, 2015, he traveled to the Roseland neighborhood to work on cars. His first stop was to retrieve his tools, which he kept at a friend's house in the area to avoid carrying them on his long train ride. Later in the day, after he finished working on two cars, he saw a china cabinet in the backyard of 10201 South State Street. Mr. Tate explained that the property was a corner lot with no fence surrounding the backyard. He entered the yard and inspected the cabinet, noticing that it had some broken glass. He believed that he could fix the cabinet and give it to his mother as a gift. In order to transport the cabinet, he retrieved a dolly and cables from his friend's house where he stored his tools. He returned and transferred the cabinet from the backyard onto the dolly. When he started to leave, he was confronted by two individuals claiming to be the cabinet's owners. The owners yelled at Mr. Tate and told him to leave. He tried to take his dolly, but they told him again to leave. He started to walk away and, shortly thereafter, the police arrived. Mr. Tate denied removing boards from the rear of the property, entering the house, or doing any drugs.

¶ 10 On cross-examination, Mr. Tate testified that he first worked on a 1967 Pontiac GTO at his friend's house, replacing the spark plug wires. He acknowledged that, before he could complete the work, he had to purchase the necessary materials. When he finished working on the Pontiac, another acquaintance, Steve Bailey, drove past and asked Mr. Tate to work on his car. Mr. Tate agreed and walked to Mr. Bailey's house, carrying his tools in a bag. There, he worked on the wiring for the headlights of Mr. Bailey's Buick. He again had to leave and purchase materials to complete the work. After returning and completing work on the second car, Mr. Tate walked toward another friend's house. On the way, he saw the cabinet from the street. He admitted that he knew Mr. Brown because they had spoken once before at the State Street property. Mr. Tate acknowledged that, while he knew that Mr. Brown had owned the property, he did not know that Mr. Brown was still the current owner.

¶ 11 On redirect-examination, Mr. Tate testified that the board covering the rear entrance had been removed prior to him arriving. He testified that he had passed the property many times and estimated that it had been boarded up for at least two years. Mr. Tate recalled that, at various times during those two years, he had seen the property with some boards removed.

¶ 12 The court found Mr. Tate guilty of burglary. In announcing its decision, the court highlighted that when Mr. Tate was arrested, he possessed tools that could be used for either working on automobiles or burglarizing a home. The court also expressed skepticism that the tools recovered from Mr. Tate could be used to remove the spark plug harness from the Pontiac GTO, but allowed for the possibility that Mr. Tate left the necessary tools for that task at his friend's residence. The court then found that Mr. Tate had made an oral admission to Detective Bowes, who the court found "highly credible." Mr. Tate was sentenced, as a Class X offender, to eight years' imprisonment.

¶ 13 II. JURISDICTION

¶ 14 Mr. Tate was sentenced on April 29, 2016, and timely filed his notice of appeal that same day. This court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case (Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013)).

¶ 15 III. ANALYSIS

¶ 16 A. Sufficiency of the State's Evidence

¶ 17 Mr. Tate's primary argument on appeal is that the State failed to prove him guilty of burglary beyond a reasonable doubt. When a defendant makes this challenge, we must ask 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. All reasonable inferences from the record must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42. It is the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh evidence, and to draw reasonable inferences from the facts. *Brown*, 2013 IL 114196, ¶ 48. We will not substitute our judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses. *Id.* A defendant's conviction will not be overturned unless the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *Id.*

¶ 18 In order to sustain Mr. Tate's conviction for burglary, the State was required to prove beyond a reasonable doubt that he entered the building without authority and "with intent to commit therein a felony or theft." 720 ILCS 5/19-1(a) (West 2014). Mr. Tate argues that the evidence failed to establish that he entered the building or, if he did enter it, that he did so with the intent to commit a felony or theft therein.

¶ 19 Mr. Tate is correct that his possession of recently stolen property is not, alone, enough to sustain a burglary conviction. *People v. Housby*, 84 Ill. 2d 415, 423 (1981). But, in addition to showing that Mr. Tate was in possession of Mr. Brown's cabinet, the State presented Mr. Tate's statement to Detective Bowes as evidence that Mr. Tate entered the building. Also, at the time of his arrest Mr. Tate was found in possession of tools—including screwdrivers, wrenches, utility knives, and wire cutters—that could have been used to remove the board that Mr. Brown testified had been covering the rear entrance of the building two days prior. Mr. Tate was also in possession of a dolly for transporting heavy items. This evidence supports the court's finding that Mr. Tate entered the building and the inference that he did so with the intent to commit theft.

¶ 20 Mr. Tate argues that our supreme court in *Housby* set out a three-part "test" of additional indicia of guilt that must accompany the possession of stolen merchandise to uphold a conviction. The court in *Housby* listed three additional facts that it relied on in finding that the instruction given to the jury in that burglary case, that guilt could be inferred from a defendant's exclusive and unexplained possession of recently stolen property, did not violate due process. *Housby*, 84 Ill. 2d at 424. Those facts included that (1) there was a rational connection between the defendant's recent possession of stolen property and his participation in the burglary, (2) the defendant's guilt of the burglary more likely than not flowed from his recent, unexplained, and exclusive possession of the proceeds, and (3) there was corroborating evidence of the defendant's guilt. *Id.* In *People v. Smith*, 2014 IL App (1st) 123094, ¶ 14, we used the absence of these same factors to decide that the evidence in that case was not sufficient to sustain the defendant's conviction for burglary. In this case, as in *Housby* and in contrast to *Smith*, there is significant corroborating evidence that supports the inference that Mr. Tate participated in the burglary itself, including his statement that he was inside the property and his possession of tools

that could have helped him gain entrance. This evidence is sufficient to meet the criteria outlined in *Housby*.

¶ 21 We note that although Mr. Tate provided an alternative explanation for his presence inside the building and possession of the tools, the court was not required to accept that explanation. See *People v. Barney*, 176 Ill. 2d 69, 74 (1997) (a defendant's testimony does not carry a presumption of veracity and is not entitled to greater deference than the testimony of any other witness). In announcing its ruling, the court treated Mr. Tate's statement to Detective Bowes as an admission that he entered the building. The court also rejected Mr. Tate's testimony that the tools he had in his possession were for working on cars. As such, the trial court resolved these inconsistencies in favor of the State. In doing so, the court was not required to disregard the inferences that flowed from the evidence or search out all possible explanations consistent with the defendant's innocence and raise them to a level of reasonable doubt. *People v. Alvarez*, 2012 IL App (1st) 092119, ¶ 51. We cannot substitute our judgment for that of the trier of fact.

¶ 22 B. Fines and Fees

¶ 23 Mr. Tate next contends that the assessed fines, fees, and costs should be reduced from $489 to $190. He argues that (1) the $5 electronic citation fee should be vacated because it was improperly imposed and (2) pursuant to section 110-14 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-14(a) (West 2016)), he is entitled to presentence incarceration credit to offset a number of his assessments that are labeled as "fees," but are actually "fines."

¶ 24 Even though Mr. Hall did not make these arguments before the trial court, we can consider them both under the plain error doctrine and pursuant to section 110-14(a) of the Code (725 ILCS 5/110-14(a) (West 2010)). *People v. Mullen*, 2018 IL App (1st) 152306, ¶¶ 38, 39; *People v. Caballero*, 228 Ill. 2d 79, 88 (2008) (holding that "a claim for monetary credit under

section 110–14 is a statutory claim" that "may be raised at any time and at any stage of court proceedings")).

¶ 25 The parties agree, as do we, that the $5 electronic citation fee must be vacated as this fee does not apply to Mr. Tate's felony conviction for burglary. 705 ILCS 105/27.3e (West 2016) (fee imposed in any traffic, misdemeanor, municipal ordinance, or conservation cases).

¶ 26 Mr. Tate also asserts that six of the assessments imposed against him are fines subject to offset by his presentence incarceration credit. See *People v. Jones*, 223 Ill. 2d 569, 599 (2006) ("[T]he credit for presentence incarceration can only reduce fines, not fees."). "Broadly speaking, a 'fine' is a part of the punishment for a conviction, whereas a 'fee' or 'cost' seeks to recoup expenses incurred by the State." *Id.* at 582. The most important factor in distinguishing a fee from a fine is that a fee seeks to compensate the State for any costs incurred as a result of prosecuting the defendant. See *People v. Graves*, 235 Ill. 2d 244, 250 (2009); see also *Jones*, 223 Ill. 2d at 600 ("A charge is a fee if and only if it is intended to reimburse the State for some cost incurred in defendant's prosecution.").

¶ 27 The State concedes, and we agree, that the $50 court systems "fee" (55 ILCS 5/5-110(c) (West 2016)) should be treated as a fine, to which Mr. Tate is entitled to have his presentence incarceration credit applied. The parties dispute is thus limited to the following five charges: the $190 felony complaint fee (705 ILCS 105/27.2a(w)(1)(A) (West 2016)); the $25 automation fee (705 ILCS 105/27.3a(1) (West 2016)); the $25 document storage fee (705 ILCS 105/27.3c (West 2016)); the $2 State's Attorney records automation fee (55 ILCS 5/42002.1(c) (West 2016)); and the $2 public defender records automation fee (55 ILCS 5/3–4012 (West 2016)).

¶ 28 This court has already considered challenges to these assessments and determined that they are fees and, therefore, not subject to presentence incarceration credit. See *People v.*

Tolliver, 363 Ill. App. 3d 94, 97 (2006) ("We find that all of these charges are compensatory and a collateral consequence of defendant's conviction and, as such, are considered 'fees' rather than 'fines' "); *People v. Bingham*, 2017 IL App (1st) 143150, ¶¶ 41–42 (relying on *Tolliver* and finding the $190 felony complaint assessment to be a fee); *People v. Brown*, 2017 IL App (1st) 142877, ¶ 81 (finding clerk automation fee and document storage fee are fees not subject to offset by presentence incarceration credit); *People v. Brown*, 2017 IL App (1st) 150146, ¶ 38 (finding the State's Attorney records automation fee and public defender records automation fee to be fees); see *contra People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47–56 (finding these two assessments are fines, not fees). We decline Mr. Tate's invitation to revisit these rulings. Accordingly, we hold that these charges are fees not subject to offset by presentence incarceration credit.

¶ 29 IV. CONCLUSION

¶ 30 For these reasons, we affirm Mr. Tate's burglary conviction. We vacate the erroneously assessed $5 electronic citation fee and order that the $50 court system fee be treated as a fine, subject to presentence incarceration credit. However, the other fees that Mr. Tate seeks to recharacterize are not fines subject to that credit. The fines, fees, and costs order should reflect a new total due of $434. Pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967), we direct the trial court to modify the fines, fees, and costs order accordingly.

¶ 31 We affirm; fines, fees, and costs order to be modified by the trial court.