2013 IL App (4th) 111087-U

NO. 4-11-1087

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 22, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
BRIAN L. JACKSON,	)	No. 11CF369
Defendant-Appellant.	)	
	)	Honorable
	)	James R. Coryell,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Steigmann and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State presented sufficient evidence to convict defendant of residential burglary, (2) defendant is entitled to monetary credit for 258 days, (3) fines imposed by the circuit clerk must be vacated, and (4) cause remanded for clarification of various assessments.

¶ 2 In March 2011, the State charged defendant, Brian L. Jackson, with residential burglary (720 ILCS 5/19-3 (West 2010)). In October 2011, a jury found defendant guilty of residential burglary. In November 2011, the trial court sentenced defendant to 20 years' imprisonment.

¶ 3 On appeal, defendant argues (1) the State did not present sufficient evidence to prove he entered the home with the intent to commit a theft and (2) the circuit clerk (a) erroneously did not give him presentence incarceration credit for March 17, 2011, to November 29, 2011, 258 days, and (b) improperly imposed various fines and fees. The State responds (1) it

presented sufficient evidence of defendant's intent, (2) defendant is entitled to presentence incarceration credit for fines, and (3) this court should (a) vacate the "Anti-Crime Fund," "State Police Ops," "Youth Diversion," and "Child Advocacy Fee" assessments and (b) remand for clarification of the authority for the assessments and allow the trial court to reimpose any mandatory fines. We affirm defendant's conviction for residential burglary, vacate improperly imposed fines, and remand for determination of the authority for various assessments.

¶ 4 I. BACKGROUND

¶ 5 In March 2011, the State charged defendant with residential burglary (720 ILCS 5/19-3 (West 2010)).

¶ 6 In October 2011, the trial court held a jury trial. Michael Bale testified he lived at the house on East Whitmer Street with his wife, Penny, and two children. On the morning of the burglary, March 17, 2011, he left the house to drive his son to high school. As he backed out of the driveway, he noticed a man watching him from the street corner. He did not know the man at the time but identified him in court as defendant. When Bale returned to his house, he saw the front door jam was "busted" with the trim "all pushed in on it" and a side window was raised up. The window was closed when he left the house. A dresser and television stand stood in front of the open window. Bale testified nothing was taken from the house.

¶ 7 Penny Bale testified she left the house, separate from her husband, to take her daughter to school. When she left the house, the front door was not damaged and all the windows were closed because it was "too cold." Upon returning to the house, she discovered the front door locked but pushed open, the door jam broken, and her dog "trembling" on the couch. Bale testified nothing of value in the house would fit inside someone's pocket. However, her son

kept a laptop hidden under a pillow in the bedroom.

¶ 8 Ella Holloway testified she lived across the street from the Bales and was looking out her front window on the morning of the burglary. She noticed an individual, later identified as defendant, walking in between the houses on East Whitmer Street. She observed defendant walk to the front door of the Bales' home and knock on the front door. Defendant then went around to one side, went back to the door, and then went around to the other side. Holloway observed defendant try to enter a side window. Defendant returned to the front door and then "shoved" in the front door and went inside the house for about five minutes.

¶ 9 A neighbor testified on the day of the burglary, defendant approached her in her car about "cashing" a check fo $40. Another neighbor testified defendant knocked on his door to ask if he knew "Kevin Hill." The neighbor did not know such a person.

¶ 10 Officer Thomas Butts of the Decatur police department testified he located defendant on a different block of East Whitmer Street from the Bales' house. Defendant did not run from police or evade questions. Officer Ed Hurst of the Decatur police department testified he investigated the burglary of the Bales' house. He observed the window sash raised the entire height of the window and a dresser inside the house blocking the window. Officer Hurst interviewed defendant and defendant told him the house was "too nasty" and "all [the police] had on him was attempted burglary."

¶ 11 Defendant submitted a jury instruction for criminal trespass to a residence (720 ILCS 5/19-4 (West 2010)), which the trial court gave without objection. The jury found defendant guilty of residential burglary.

¶ 12 On November 30, 2011, the trial court held a sentencing hearing. The court found

this was defendant's fourth residential burglary conviction. The court sentenced defendant to 20 years' imprisonment and found he was entitled to receive credit for time served in custody from March 17, 2011, to November 29, 2011. Neither the court's oral pronouncement of sentence or written sentencing judgement reflected any fines.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 Defendant argues (1) the State did not present sufficient evidence to prove he entered the home with the intent to commit a theft and (2) the circuit clerk (a) erroneously did not give him presentence incarceration credit for March 17, 2011, to November 29, 2011, 258 days, and (b) improperly imposed various fines and fees.

¶ 16 A. Defendant's Sufficiency-of-the-Evidence Claim

¶ 17 Defendant asserts the State failed to present sufficient evidence to show he entered the residence with the requisite intent. Specifically, defendant contends his intent was not proved because (1) the residence was not in disarray as would be consistent with a "hastily [conducted] search [of] the house for items of value," (2) he was only inside the residence for five minutes, (3) he made no attempt to conceal his identity, and (4) he did not flee from the police. Defendant requests this court to reduce his conviction to criminal trespass to a residence.

¶ 18 When this court reviews a conviction for sufficiency of the evidence, it must determine 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. *People v. Beauchamp*, 241 Ill. 2d 1, 8, 944 N.E.2d 319, 322 (2011). "This means that we 'must allow all reasonable inferences from the record in favor of the prosecution.' "

Beauchamp, 241 Ill. 2d at 8, 944 N.E.2d at 323 (quoting *People v. Cunningham*, 212 Ill. 2d 274, 280, 818 N.E.2d 304, 308 (2004)). The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, and to draw reasonable inferences from that evidence. *People v. Burney*, 2011 IL App (4th) 100343, ¶ 25, 963 N.E.2d 430, 437 (citing *People v. Jackson*, 232 Ill. 2d 246, 281, 903 N.E.2d 388, 406 (2009)). This court "will not reverse a criminal conviction unless the evidence is so unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *People v. Campbell*, 146 Ill. 2d 363, 375, 586 N.E.2d 1261, 1266 (1992).

¶ 19 Under the statute, a person commits residential burglary when without authority he knowingly enters a dwelling place of another with the intent to commit therein a felony or theft. 720 ILCS 5/19-3(a) (West 2010). "A burglary is complete upon entering with the requisite intent, irrespective of whether the intended felony or theft is accomplished." *Beauchamp*, 241 Ill. 2d at 8, 944 N.E.2d at 323. A criminal defendant's intent may be inferred by surrounding circumstances and in a burglary case, this includes (1) the time, place, and manner of entry into the residence, (2) defendant's activity within the premises, and (3) any alternative explanations offered for his presence. *People v. Grathler*, 368 Ill. App. 3d 802, 808, 858 N.E.2d 937, 942 (2006) (quoting *People v. Richardson*, 104 Ill. 2d 8, 13, 470 N.E.2d 1024, 1027 (1984)).

¶ 20 In viewing the evidence in the light most favorable to the State, we conclude the jury could reasonably infer defendant's intent to commit theft. The fact defendant may not have taken anything from the residence is of little consequence, as the burglary is complete upon the illegal entry. See *People v. Ybarra*, 156 Ill. App. 3d 996, 1004, 510 N.E.2d 122, 127 (1987) (fact nothing was taken or even moved did not present an inconsistent circumstance sufficient to raise

a reasonable doubt of guilt). Rather, the way in which defendant entered the residence is important. Evidence presented showed defendant was in the neighborhood earlier in the morning, knocked on a neighbor's door (consistent with an effort to determine if anyone was home), watched Bale leave the house with his son, waited until all the residents left, knocked on the front door, went to the side, broke a window that was blocked by a dresser, and then broke the front door to enter the house. A reasonable jury could infer defendant was ensuring no one was home before he entered the residence with the intent to find something of value inside. Defendant's statement the house was "too nasty" supports a conclusion defendant wanted to find something of value inside but was unable to do so. Further, defendant's statements "all [the police] had on him was attempted burglary" can be reasonably viewed as consistent with the intent to enter the house to search for valuables, but he had been unable to locate any or chose to leave before finding any valuables. See *Burney*, 2011 IL App (4th) 100343, ¶ 29, 963 N.E.2d at 437-38 (defendant's statement the police could not " 'get residential burglary or home invasion' " charges on him could be seen as an admission he had committed a crime). Further, defendant's assertion his conviction should be reduced to criminal trespass to a residence is without merit as he presented this instruction to the jury, and the jury rejected it. See *Richardson*, 104 Ill. 2d at 12, 470 N.E.2d at 1026.

¶ 21 B. Defendant's Statutory Credit and Assessments Claims

¶ 22 Defendant asserts (1) he is entitled to monetary presentencing credit for time spent in custody from March 17, 2011, to November 29, 2011, 258 days, and (2) the circuit clerk improperly imposed several assessments including (a) a $9.50 "Nonstandard" fine, (b) a $14.25 children's-advocacy-center fee, (c) a $5 "Youth Diversion" fine, (d) a $15 "State Police Ops" fee,

(e) a $1.25 "Clerk Op Add-On" fee, and (f) a $10 "Anti-Crime Fund" fine.

¶ 23 A trial court exceeds its authority if it orders a lesser sentence than what the statute mandates, including failing to impose statutory fines. *People v. Mitchell*, 395 Ill. App. 3d 161, 166, 916 N.E.2d 624, 629 (2009). The circuit clerk does not have authority to impose fines and this court may vacate the fines and reimpose them. *People v. Isaacson*, 409 Ill. App. 3d 1079, 1085, 950 N.E.2d 1183, 1190 (2011); *People v. Folks*, 406 Ill. App. 3d 300, 306, 943 N.E.2d 1128, 1133 (2010) (this court may reimpose mandatory fines).

¶ 24 1. *Statutory Credit*

¶ 25 The State concedes defendant is entitled to monetary credit for time spent in custody from March 17, 2011, to November 29, 2011, for any fines the trial court should have imposed. Because the record reflects the court did not impose any assessments that constitute fines (the clerk did), on remand the court should apply the monetary credit.

¶ 26 Pursuant to section 110-14 of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2010)), defendant is entitled to a statutory $5-per-day credit for time spent in presentence custody toward certain creditable fines. "Such credit may only be applied to offset eligible fines, not fees." *People v. Vlahon*, 2012 IL App (4th) 110229, ¶ 33, 977 N.E.2d 327, 333. However, many so-called "fees" are actually fines.

¶ 27 Here, the record shows the trial court awarded defendant credit for custody from March 17, 2011, to November 29, 2011, 258 days. Defendant is entitled to $1,290 of available credit. As we noted in *Folks*, "[t]he judicial and clerical time expended on accurate calculation of the precise assessment of these monies, much of which may never be collected, is phenomenal." *Folks*, 406 Ill. App. 3d at 309, 943 N.E.2d at 1135. On remand, we direct the trial

court to instruct the circuit clerk to credit defendant's creditable fines.

¶ 28 2. *"Clerk Op Add-Ons" Assessment*

¶ 29 Defendant asserts the $1.25 "Clerk Op Add-Ons" assessment is not authorized. He cites to section 27.3d of the Clerks of Courts Act (Act) (705 ILCS 105/27.3d (West 2010)), which provides for a "Circuit Court Clerk Operation and Administrative Fund," and contends it does not authorize the clerk to assess a fee for this fund. The State hypothesizes the assessment may be authorized by sections 27.5(a) and 27.6(a) of the Act, which authorizes the clerk to add to any unpaid fees and costs a delinquency amount equal to 5% of the unpaid fees that remain unpaid after 30 days, 10% after 60 days, and 15% after 90 days (705 ILCS 105/27.3d, 27.5(a), 27.6(a) (West 2010)). The State contends if this assessment is for "delinquency amounts" this court is without jurisdiction to consider this issue (see *People v. Jake*, 2011 IL App (4th) 090779, ¶ 24, 960 N.E.2d 45, 51). The State requests we remand for clarification of the nature of this assessment.

¶ 30 Neither party is able to provide authority or an explanation for this assessment. The State's explanation, while plausible, is undermined by math. A 5% delinquency charge on defendant's outstanding balance (correcting for the $1.25) would result in an approximately $36 additional assessment. Rather, this $1.25 assessment equals approximately 0.17% of defendant's balance. The parties have been unable to supply us with the authority for this assessment. We vacate the assessment and remand for determination of the basis for this assessment.

¶ 31 3. *"State Ops," "Youth Diversion," and "Child Advocacy Fee" Assessments*

¶ 32 Defendant argues the "State Police Operations Fee, " "Youth Diversion" fee, and the child-advocacy-center assessment are fines subject to offset by his presentence incarceration

credit. The State concedes these fees are fines but requests we remand to the trial court for determination whether a Macon County ordinance authorizes these fees.

¶ 33 Where authorized by county ordinance, the youth diversion fee is mandatory and a fine. *People v. Graves*, 235 Ill. 2d 244, 251-54, 919 N.E.2d 906, 910-11 (2009); 55 ILCS 5/5-1101(e) (West 2010). Where authorized by county ordinance, the child-advocacy-center assessment is mandatory and a fine. *Folks*, 406 Ill. App. 3d at 305, 943 N.E.2d at 1132; 55 ILCS 5/5-1101(f-5) (West 2010). The youth diversion and the child-advocacy-center fines are creditable fines. *People v. Williams*, 2011 IL App (1st) 091667-B, ¶ 19, 962 N.E.2d 1148, 1155-56 (youth diversion fine); *Folks*, 406 Ill. App. 3d at 307, 943 N.E.2d at 1133 (child-advocacy-center fine). Section 27.3a(5) of the Act authorizes a fee of no less than $1 and no more than $15 to be remitted to the State Police Operations Assistance Fund (705 ILCS 105/27.3a (5) (West 2010)); however, this assessment is only required if authorized by county ordinance (705 ILCS 105/27.3a(1) (West 2010)). Fines can only be imposed by the trial court. *Folks*, 406 Ill. App. 3d at 306, 943 N.E.2d at 1133.

¶ 34 We accept the State's concession the "State Police Ops" assessment is a fine. See *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31, 979 N.E.2d 1030. We vacate these fines and remand for determination whether they are authorized by Macon County ordinance. If authorized, the trial court is instructed to reimpose these fines and to apply defendant's available monetary credit thereto.

¶ 35 4. *"Nonstandard" Assessment*

¶ 36 Defendant asserts the $9.50 "Nonstandard" assessment is a fine and is authorized by section 5-1101(d-5) of the Counties Code (Code) (55 ILCS 5/5-1101(d-5) (West 2010)). The

State responds section 5-1101(d-5) of the Code authorizes a $10 assessment and the $0.50 discrepancy makes defendant's contention "speculative." The State requests we remand for clarification of the nature and authority for this assessment.

¶ 37 As the State points out, $9.50 is not the same as the authorized $10 assessment. Neither party provides conclusive authority for this assessment. We vacate the $9.50 "Nonstandard" assessment and remand for determination of its basis.

¶ 38 5. *"Anti-Crime Fund" Assessment*

¶ 39 Defendant asserts the "Anti-Crime Fund" assessment should be vacated because the Unified Code of Corrections (Unified Code) only permits contributions to a local anti-crime program where the defendant is sentenced to probation, supervision, or conditional discharge (see 730 ILCS 5/5-6-3(b)(13) (West 2010) (probation and conditional discharge); 730 ILCS 5/5-6-3.1(c)(13) (West 2010) (supervision)). The State concedes the "Anti-Crime Fund" Assessment should be vacated because it is unauthorized. We accept the State's concession.

¶ 40 Section 5-6-3(b)(12) of the Unified Code provides an offender may be required to reimburse any " 'local anti-crime program' " for any reasonable expense incurred by the program on the offender's case; however, the assessment is only assessable when the offender is sentenced to probation or conditional discharge. 730 ILCS 5/5-6-3(b)(12) (West 2010); *People v. Beler*, 327 Ill. App. 3d 829, 837, 763 N.E.2d 925, 931 (2002). Here, the trial court sentenced defendant to imprisonment; therefore, the "Anti-Crime Fund" assessment was improper. We vacate the $10 "Anti-Crime Fund" assessment.

¶ 41 We recognize the tedious nature of assessing these fees and fines, and reviewing the propriety of such. However, the law is clear it is the court and *not* the clerk who must assess

fines, and fees that are actually fines.

¶ 42 III. CONCLUSION

¶ 43 For the foregoing reasons, we affirm the judgment of the trial court in part as modified and vacate in part. We (1) direct the trial court to instruct the circuit clerk to credit defendant with $1,290 of available sentencing credit toward creditable fines, (2) vacate the $1.25 "Clerk Op Add-Ons" and $9.50 "Nonstandard" assessments and remand for determination of their basis and authority; (3) vacate the $15 "State Ops," $5 "Youth Diversion," and $14.25 "Child Advocacy Fee" fines and remand for determination whether Macon County ordinance authorizes these fines; and (4) vacate the $10 "Anti-Crime Fund" assessment. We award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2010).

¶ 44 Affirmed in part as modified, vacated in part, and cause remanded with directions.