

2014 IL App (1st) 121977-U

THIRD DIVISION  
JUNE 4, 2014

No. 1-12-1977

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff-Appellee,	)	Appeal from the
	)	Circuit Court of
v.	)	Cook County.
	)	
FASONTI HAMPTON,	)	No. 10 MC1 501331
	)	
Defendant-Appellant.	)	The Honorable
	)	Sandra Ramos and
	)	Susan Kennedy Sullivan,
	)	Judges Presiding.
	)	

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JUSTICE PUCINSKI delivered the judgment of the court.  
Presiding Justice Hyman and Justice Neville concurred in the judgment.

ORDER

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¶ 1 *Held:* Court upheld defendant's conviction for aggravated assault of a peace officer where defendant's verbal threats that he had guns, would shoot the next officer who "f---[ed]" with him, and would come back to Wal-Mart "to get" the officer when the officer got off work in a little more than an hour, were accompanied by his physical conduct of driving toward, and taking pictures of, the officer. Defendant was entitled to a credit of \$10 against his fines for two days spent in presentence custody.

¶ 2 Following a bench trial, defendant Fasonti Hampton was convicted of aggravated assault of a peace officer and driving while his license was suspended, and was placed on one year of supervision concurrently for both offenses and ordered to pay a total of \$360 in fines, fees, and costs. On appeal, defendant contends that he was not proved guilty beyond a reasonable doubt of aggravated assault of a peace officer. Defendant further contends, and the State concurs, that the total fines, fees, and costs should be reduced by \$10 to \$350 because he is entitled to a \$10 credit for two days spent in presentence custody.

¶ 3 At trial, three witnesses testified for the State: Chicago police officers John Thornton, Joseph Martis, and Kevin White. The defense did not present any evidence. The State's trial evidence as to aggravated assault of a peace officer established that on September 1, 2010, Officer Thornton was working from 8 p.m. to midnight for a security company as an off-duty police officer at a Wal-Mart store. Officer Thornton was dressed in a black U.S. Security shirt that said, "security," on the front and on the back. He had a U.S. Security badge and an insignia badge on the arm, and he was dressed in Chicago police blue cargo pants and boots.

¶ 4 At around 10:45 p.m., defendant tried to go out of the front doors of the store with items that were required to be checked by a door greeter to make sure that defendant had paid for them. Officer Thornton was at the front door in between the entry and the exit doors when he first

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encountered defendant. When the door greeter asked defendant for his receipt, defendant became very belligerent and engaged in a verbal altercation with the door greeter. Officer Thornton then approached defendant and told him to produce the receipt. Defendant became verbally belligerent with Officer Thornton, who then produced his Chicago police badge, announced his office as a Chicago police officer, and told defendant to go out of the store. Defendant responded, "I don't give a f--- about the police, police got guns, I got guns too but the police don't know how to use their guns."

¶ 5 Officer Thornton continued to tell defendant to leave the store and followed defendant outside the store. Officer Thornton was at the front entrance of the door and watched defendant enter his car. Defendant then drove up to the front of the store to where Officer Thornton was standing and told him, "I know what time you get off, I'll be back to get you," and defendant also took pictures of Officer Thornton. Officer Thornton perceived the remark to be a threat because defendant had stated that he had guns, too, that the police did not know how to use their guns, and that "the next time a police officer f--- with him he gonna shoot the mother f----." Officer Thornton did not think that defendant was going to be peaceful when he returned at closing time, but rather very violent, and he wrote down information about defendant and tendered it to his fellow officers.

¶ 6 Officer Thornton had never previously met defendant and did not know anything about him. Officer Thornton believed that defendant was holding bags in his hand. After Officer Thornton reported defendant's conduct and a police report was made, an officer safety alert was issued. Chicago police officers arrested defendant on September 6, 2010.

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¶ 7 On appeal, defendant contends that the evidence of aggravated assault of a peace officer was insufficient because he merely made belligerent statements about "future, conditional action" and therefore did not cause the officer to have a reasonable apprehension of an imminent battery. Defendant argues that when Officer Thornton told him to leave the store, he complied; that he did not have a weapon or gesture toward Officer Thornton; that his hands were full of purchases; that his words were in the future tense and conditional; and that he and Officer Thornton had not previously met and had no history that might have created an apprehension of an imminent battery. Defendant argues that if Officer Thornton feared that he might return, that was not a fear of an imminent battery. Defendant further argues that Officer Thornton pursued him.

¶ 8 The State responds in part that this court lacks jurisdiction to entertain this appeal because the notice of appeal reflects the wrong offense (DUI) and defendant never appealed from the correct convictions. Defendant has corrected that error by filing an amended notice of appeal, which relates back to the time of the filing of the notice of appeal. Ill. S. Ct. R. 303(b)(5) (eff. June 4, 2008).

¶ 9 The State alternatively responds that defendant was proved guilty of aggravated assault of a peace officer beyond a reasonable doubt.

¶ 10 A criminal conviction will not be reversed on appeal unless the evidence, viewed in the light most favorable for the State, was so improbable as to create a reasonable doubt of guilt. See *People v. Maggette*, 195 Ill. 2d 336, 353 (2001); *People v. Slim*, 127 Ill. 2d 302, 307 (1989). In a bench trial, the credibility of the witnesses, the weight of the evidence, and the resolution of

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any conflicts in the evidence, are matters for the trial court to decide. *Slim*, 127 Ill. 2d at 307.

The reasonable doubt standard applies, whether the evidence is direct or circumstantial.

*Maggette*, 195 Ill. 2d at 353. When assessing evidence that can produce conflicting inferences,

the fact finder is not required to look for all possible explanations consistent with innocence and

elevate them to the level of reasonable doubt. *People v. Wheeler*, 226 Ill. 2d 92, 117 (2007);

*People v. Digirolamo*, 179 Ill. 2d 24, 45 (1997); see also *People v. Slinkard*, 362 Ill. App. 3d

855, 858 (2006) (State's evidence need not exclude every possible doubt). It is the function of

the trier of fact, not the reviewing court, to evaluate the credibility of the witnesses, to resolve

inconsistencies in the evidence, and to draw reasonable inferences from the evidence. *In re Gino*

*W.*, 354 Ill. App. 3d 775, 777 (2005). A court of review must not retry the defendant. *People v.*

*Cunningham*, 212 Ill. 2d 274, 279 (2004).

"A person commits an assault when, without lawful authority, he or she

knowingly engages in conduct which places another in reasonable apprehension

of receiving a battery." 720 ILCS 5/12-1(a) (West 2012).

¶ 11 An aggravated assault is committed if the defendant commits an assault knowing that the

assaulted individual is a peace officer. 720 ILCS 5/12-2(b)(4)(i) (West 2012). Reasonable

apprehension is an objective standard (*In re Interest of C.L.*, 180 Ill. App. 3d 173, 178 (1989)),

but the court may nevertheless consider information known by the victim about the defendant

(*Gino W.*, 354 Ill. App. 3d at 779). The trier of fact must decide whether the victim reasonably

apprehended receiving a battery. *Gino W.*, 354 Ill. App. 3d at 777-78. An inference of the

victim's reasonable apprehension may be inferred from the trial evidence, including the conduct

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of the victim and of the defendant. *Gino W.*, 354 Ill. App. 3d at 778; *C.L.*, 180 Ill. App. 3d at 181. "[W]ords alone are not usually enough to constitute an assault." *People v. Floyd*, 278 Ill. App. 3d 568, 570 (1996). Instead, "[s]ome action or condition must accompany those words before there is a violation of the statute." *Id.* at 571. An assault cannot be predicated on a threat for some unspecified future date. *People v. Kettler*, 121 Ill. App. 3d 1, 11 (1984) (the defendant did not commit an assault when he told two police officers he would kill them while he was strapped to a hospital bed and about to have his stomach pumped because under those circumstances their apprehension of a battery was not reasonable).

¶ 12 Here, defendant did more than issue verbal threats. Defendant ranted about guns to Officer Thornton, a police officer who was working off-duty as a store security guard, and defendant threatened to shoot the next police officer who "f---[ed]" with him. Additionally, defendant took Officer Thornton's picture while driving toward him after issuing the verbal threats. Defendant also threatened to return and to "get" Officer Thornton when the latter would get off of work for the night, which would be in a little more than one hour. The incident occurred at approximately 10:45 p.m., and the threatened battery was for around midnight that same night, when Officer Thornton would leave work. Officer Thornton could reasonably have apprehended an imminent battery. The threats were imminent because they were not for some unspecified future date; rather, they were for slightly more than one hour later that same night by an individual who had ranted that he owned guns, that he would shoot the next police officer who "f---[ed]" with him, that he knew when the officer would get off of work and that he would return to "get" the officer at that time, and who had taken the officer's picture and knew what he

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looked like. Defendant's menacing physical conduct and verbal threats induced the Chicago police department to issue a safety alert for its officers, which demonstrated that Officer Thornton's apprehension of a battery was objectively reasonable and supported the conviction for aggravated assault of a peace officer. The State was not required to exclude every possible doubt, such as that defendant's threats were not for that particular night. See *Wheeler*, 226 Ill. 2d at 117; *Digirolamo*, 179 Ill. 2d at 45; *Slinkard*, 362 Ill. App. 3d at 858. The trial court inferred that Officer Thornton reasonably apprehended receiving a battery. Viewed in the light most favorable to the State, the evidence was not so improbable or unsatisfactory as to raise a reasonable doubt regarding defendant's guilt. *Slim*, 127 Ill. 2d at 307.

¶ 13 Finally, defendant contends, and the State agrees, that he must be credited \$10 for time spent in custody prior to sentencing and before he posted the bail bond, and that his total fines, fees, and costs should be \$350 instead of \$360. Defendant spent two days in presentence custody, September 6, 2010, which was the day he was arrested, and September 7, 2010, which was the day he posted the bail bond. Pursuant to section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2012)), defendant is entitled to credit in the amount of \$5 per day for each day of presentence incarceration toward the fines that were imposed (see 625 ILCS 5/16-104c (West 2012)(\$9.50 of the \$35 Traffic Court Supervision Fee is a fine subject to credit); 625 ILCS 5/16-104d (West 2012)(\$30 Of the \$35 Serious Traffic Violation Fee is a fine subject to credit)). Defendant is entitled to the \$5 per day credit for the days he spent in custody even though he subsequently posted bail. See *People v. Smith*, 258 Ill. App. 3d 261, 267-68 (1994) (the posting of bail does not preclude the application of section 110-

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14); *People v. Taylor*, 84 Ill. App. 3d 467, 471 (1980) (the defendant's fine was reduced by \$10-\$5 for each of two days she spent in presentence custody prior to posting bail).

¶ 14 We therefore direct the clerk of the circuit court to amend the fines, fees, and costs order to reflect that the total amount in fines, fees, and costs was \$350. See Illinois Supreme Court Rule 615(b)(4) (eff. Aug. 27, 1999).

¶ 15 For the foregoing reasons, the judgment of the circuit court is affirmed and the fines, fees, and costs order is ordered amended.

¶ 16 Affirmed as modified.