

2014 IL App (2d) 120823-U
No. 2-12-0823
Order filed April 1, 2014

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of McHenry County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CF-1054
)	
CARRIE GIL,)	Honorable
)	Sharon L. Prather,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court did not abuse its discretion in admitting evidence of defendant's suicide attempt, as the court reasonably found that the evidence's probative value (as to her consciousness of guilt) was not substantially outweighed by its prejudicial effect (from the fact that the suicide attempt, like the offense at issue, involved fire), and in any event any error was harmless given the overwhelming evidence of guilt; (2) defendant was entitled to full credit against various fines, to reflect the 570 days she spent in presentencing custody; (3) we vacated defendant's duplicative document-storage, court-automation, court-security, and circuit-clerk fees, and we remanded the cause for the trial court to determine whether her State's Attorney and sheriff fees were authorized.

¶ 2 Following a jury trial, defendant, Carrie Gil, was found guilty of first-degree attempted murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2010)), aggravated arson (720 ILCS 5/20-1.1 (West

2010)), and residential arson (720 ILCS 5/20-1.2 (West 2010)). On appeal, she argues that the trial court abused its discretion in allowing the State to introduce evidence of her attempted suicide as consciousness of guilt. She also argues that she is entitled to monetary credit against certain mandatory fines and that certain fees were imposed in error. For the reasons that follow, we affirm as modified in part, vacate in part, and remand.

¶ 3

I. BACKGROUND

¶ 4 Defendant was arrested on October 12, 2010, and charged with aggravated arson and residential arson. The complaint alleged that, on September 27, 2010, defendant started a fire at a residence while Jonathon Davis was present. On December 2, 2010, defendant was indicted on those same offenses and, in addition, on five counts of attempted murder.

¶ 5 On May 4, 2012, the State filed a motion *in limine*, seeking to introduce evidence that, on December 5, 2010, defendant committed arson in that she attempted to commit suicide by lighting a charcoal grill in the backseat of her vehicle with herself and her dog inside. The evidence would include statements made by defendant to the investigating officer. The State sought to introduce this evidence to show defendant's consciousness of guilt and to show common scheme, plan, and *modus operandi*. At the hearing on the motion, defendant argued that, although "suicide would be admissible as an admission or consciousness of guilt," here the evidence should not be admitted, because it involved the same crime with which defendant had been charged and, thus, was overly prejudicial. The trial court granted the State's motion, finding that the probative value of the evidence was not outweighed by the prejudicial effect. The court noted that, if requested by defendant, it would give a limiting instruction when the evidence was admitted and at the conclusion of the case.

¶ 6 Defendant's jury trial began on May 14, 2012. The evidence established that, in 2004, defendant lived in a rented two-story townhome, which was one of four attached homes in a single building. There were three bedrooms on the second floor. At the time of the fire, defendant and her boyfriend, Davis, had lived together in the townhome for over six years. Defendant's daughter, Elizabeth Quinn, had also lived in the townhome until August 2010, when she moved to Wisconsin to attend college.

¶ 7 Davis testified that, in 2009, defendant lost her job and was unable to find new employment. Davis, who had worked as a salesman for Frito-Lay for 32 years, had to pay all the bills, including those related to Quinn; it was a strain on their relationship. In August 2010, Davis learned that defendant had obtained a credit card in his name and that there was a balance of \$15,500 on the card. Davis and defendant had several conversations about the card. Davis told defendant that she was responsible for the entire balance. Several days prior to the offense, Davis told defendant that she could go to jail for what she did.

¶ 8 Davis further testified that he spent the evening of Sunday, September 26, 2010, at home with defendant, using their laptop computers to play a game. Davis fell asleep on the couch. Defendant woke him up around midnight. Davis locked the doors and then went upstairs to the master bedroom to sleep. When Davis went to bed, defendant was in another bedroom, which they used as the computer room, using her computer. Davis asked defendant to come to bed, but defendant told Davis that she was working on her job search.

¶ 9 Davis testified that he fell asleep and woke a short time later to the sounds of popping and clicking. He saw five-foot-high flames at the foot of the bed. Davis ran through the flames and went downstairs, where he used his cell phone to call 911. He thought that he saw a gas can

at the end of the bed, but he also thought that he might have been dreaming. He thought that he saw defendant downstairs as he was fleeing. He testified that “[i]t was a little foggy.”

¶ 10 Davis identified photographs of: defendant’s computer, which was located in the upstairs computer room; a waste can, which was kept in the computer room, that contained a paintbrush; the location in the garage where Davis stored his gas can; a can of black paint; and the nozzle of Davis’s gas can lying on carpeting. Davis also identified two notes written by defendant.

¶ 11 Arson investigator Mitchell S. Kushner testified as an expert on the causes of fires. Kushner arrived on the scene at about 4 a.m. on September 27, 2010. He found a black and yellow plastic spout on the stair landing between the first and second floors and a melted red plastic container on the floor in the master bedroom. There was liquid in the plastic container, and he poured it into a jar. He also collected carpet samples from the area. Forensic scientist Ralph Meyer testified that the liquid in the container was gasoline. Meyer further testified that the same liquid was found in the carpet samples. Kushner opined that the point of origin of the fire was between the bed and the bedroom doorway and that the fire was started by someone who poured an accelerant on the carpet and ignited it.

¶ 12 Other testimony established that the words “Frito Asshole Fucker” were found painted on the garage door. There was also paint on the front screen door. The paint was consistent with the paint in a can found inside the garage and on a paintbrush found in a wastebasket in the computer room. Handwritten notes were found in the townhome. One note contained a list of locations and included the words “2 gas stations” and “funeral home/cemetery [sic].” Another contained the words: “By the power of the darkness give me my final revenge,” and “Made of blood made of bone spirit of evil heart of stone destroy them with their flame never to be seen again.” A handwriting expert opined that the notes were written by defendant. Files were

located on defendant's computer containing "Casting Instructions for 'Dark Death,'" "Casting Instructions for 'Death by plastic toy,'" and "Casting Instructions for 'Death Spell.'" The "Casting Instructions for 'Death Spell'" were reproduced in defendant's handwriting on one of the notes found in the townhome.

¶ 13 Police officer Russell Will testified that he arrived on the scene at about 3 a.m. He interviewed defendant in his van. She told Will that she had an average relationship with Davis. She said that, sometime after 12:30 a.m., she went into Quinn's bedroom to play with her cats. She fell asleep and was awoken by the sound of the smoke detector alarm, but she fell back asleep because the alarm often went off while Davis was showering. She then heard Davis screaming. She ran downstairs and saw Davis at the bottom of the stairs. She took her dog outside and then went back inside to get the cats.

¶ 14 Will further testified that defendant appeared "very solemn and morose, very even keeled, not excited or emotional." Will observed "black splotches on the wrist cuff of [defendant's] sweatshirt and vivid black splotches left from a liquid." He also observed that the hairs at the top of defendant's forehead were "frizzled like hair gets damaged from the heat of a flame." Will took a bathroom break and when he returned to the van he asked defendant if she had any personal or financial problems with Davis. Defendant told him that she had taken out a credit card in Davis's name and had accrued a high balance. Eventually, defendant told Will that her relationship with Davis was "rather unpleasant," that Davis "drank far too much," and that Davis "treated her poorly." Defendant told Will that Davis "would call her a bitch and would chastise her for not having a job." She denied any physical abuse. Defendant said that Davis was "an asshole" and that they argued a lot.

¶ 15 Will further testified that defendant denied starting the fire. When Will inquired about the black marks on her sweatshirt, defendant denied writing anything on the door. Defendant agreed to go the police station with Will, and when they arrived she asked to use the bathroom. Defendant was allowed to use the bathroom alone. When she returned, Will observed that defendant's sleeves had been rolled up and that a cuff looked wet. In addition, defendant no longer had frizzled hair on her forehead. Will identified a gray sweatshirt as the one that defendant had been wearing. He pointed to the left sleeve when asked to identify where he had seen the black marks. The black marks were no longer present on the sweatshirt.

¶ 16 Quinn testified that she had lived at the townhome with Davis and defendant for five years prior to going to college. Quinn testified that Davis and defendant's relationship "didn't seem very good." A week or two before the fire, Quinn had a telephone conversation with defendant about a fight that Quinn had had with Davis. Defendant told Quinn that "we wouldn't have to worry about him anymore." They talked about how they would find their own place to live and that defendant was going to break up with Davis.

¶ 17 Quinn further testified that she did not care for Davis. Davis and defendant fought often. Davis often belittled and talked down to defendant. In 2010, Quinn got into a fight with Davis. Davis accused Quinn of stealing money from him. He told her that he was going to call the police on her. Quinn told defendant what had happened between her and Davis.

¶ 18 Over defendant's objection, Rockford firefighter Timothy Morris, Jr., testified concerning defendant's alleged suicide attempt. According to Morris, on December 5, 2010, at about 3:30 a.m., he was dispatched to a secluded parking lot at the Rockford Airport. He saw firefighters extinguishing a fire that had originated in a 2008 Jeep and had extended to several other vehicles. About 40 minutes after he had arrived, he was approached by defendant, who

was walking with a dog. She told Morris that the Jeep belonged to her and that she had set it on fire. Morris read her *Miranda* rights and placed her in his van.

¶ 19 According to Morris, defendant agreed to speak with him. Defendant told Morris that “she had been arrested for arson and that she was going to also be charged with attempted murder.” She told Morris that she did not want to spend the rest of her life in jail. She was very upset about the attempted murder charge. Defendant told Morris that she had bought a small metal grill and some charcoal lighter. At about 2 a.m., she typed a letter for her mother on her computer at the hotel where she had been staying and then left with her dog. She took eight Benadryl pills, drank some alcohol, and then parked at the airport. She put the grill in her car, lit the charcoal in the grill, and lay down in the front seat of the Jeep with her dog. She had hoped that she and her dog would pass out from the carbon monoxide. When the flames became too intense, she decided to leave the car.

¶ 20 On cross-examination, Morris testified that defendant told him that she was not guilty of the charges she was facing. On redirect examination, when the State inquired about defendant’s statement, Morris stated:

“She stated that she was very upset about being charged with those crimes. She just stated she didn’t—she was very upset about being charged with those crimes. She— but she seemed a little bit deceptive in her answers to me.”

Defense counsel’s objection was overruled. Morris testified that defendant did not offer any alternative theory as to the cause of the fire at the townhome or blame anyone else.

¶ 21 At the conclusion of Morris’s testimony, the trial court instructed the jury that Morris’s testimony could be considered only on the issue of defendant’s consciousness of guilt. The jury was similarly instructed prior to deliberating.

¶ 22 The jury found defendant guilty of attempted first-degree murder (720 ILCS 5/8-4, 5/9-1(a)(1) (West 2010)), aggravated arson (720 ILCS 5/20-1.1 (West 2010)), and residential arson (720 ILCS 5/20-1.2 (West 2010)). The court sentenced defendant to concurrent terms of 14 years in prison on the attempted first-degree murder conviction and 12 years in prison on the aggravated arson conviction. The court found that the residential arson conviction merged with the aggravated arson conviction. The court further found that defendant was entitled to receive credit for time served in custody from September 27, 2010, through October 13, 2010, and from December 7, 2010, through July 26, 2012.

¶ 23 Following the denial of her motion for reconsideration of her sentence, defendant timely appealed.

¶ 24

II. ANALYSIS

¶ 25 Defendant first argues that the trial court abused its discretion when it allowed the State to introduce, as evidence of defendant's consciousness of guilt, testimony that defendant tried to commit suicide by starting a fire in her car. According to defendant, the circumstances surrounding the suicide attempt precluded such an inference. In addition, she argues that proof of the uncharged arson significantly prejudiced her defense. The State responds that the evidence was properly admitted where it was relevant to show defendant's consciousness of guilt and where its probative value was not substantially outweighed by its prejudicial effect. We agree with the State.

¶ 26 "It is well established that evidence of other offenses is not admissible for the purpose of showing the defendant's disposition or propensity to commit crime." *People v. Illgen*, 145 Ill. 2d 353, 364 (1991). However, the court may admit such evidence if it is relevant for any other purpose. *Id.* at 365. One such purpose is to show a consciousness of guilt. *People v. Baptist*, 76

Ill. 2d 19, 27 (1979). “Even where other-crimes evidence is relevant for a permissible purpose, the circuit court must weigh the prejudicial effect of admitting the other-crimes evidence against its probative value. [Citation.] The court should exclude evidence of other crimes where its prejudicial effect substantially outweighs its probative value.” *People v. Placek*, 184 Ill. 2d 370, 385 (1998). The admissibility of evidence is a matter within the sound discretion of the trial court, and the court’s decision will not be overturned absent an abuse of that discretion. *Illgen*, 145 Ill. 2d at 364.

¶ 27 Defendant argues that the evidence of her suicide attempt was inadmissible because “[t]he circumstances surrounding the suicide attempt supported the single reasonable inference that the attempt was motivated by [defendant’s] fear of wrongful conviction and devastating penalties rather than her consciousness of guilt.” We disagree. First, we note that evidence of a defendant’s suicide attempt is probative of a defendant’s consciousness of guilt. *People v. Campbell*, 126 Ill. App. 3d 1028, 1053 (1984) (evidence of the defendant’s suicide attempt was probative of the defendant’s consciousness of guilt and thus properly admitted); *People v. Henry*, 103 Ill. App. 3d 1143, 1148 (1982) (evidence of the defendant’s suicide attempt suggested that the defendant was conscious of his guilt); see also *People v. O’Neil*, 18 Ill. 2d 461, 465 (1960) (threat of suicide tends to show a consciousness of guilt). We reject defendant’s argument that *Campbell*, *Henry*, and *O’Neil* are distinguishable because in those cases the suicide attempts were made shortly after the charged offenses. Although, here, defendant’s suicide attempt took place over two months after the offense, this period was not so significant as to negate the relevance of the evidence. Besides, as the State notes, defendant’s suicide attempt took place three days after the attempted murder charges were added. Thus, it is highly likely that, as

defendant suggested to Morris, defendant's suicide attempt was prompted by the addition of the attempted murder charges.

¶ 28 Moreover, we agree with the State that defendant's argument that the suicide attempt was motivated by a fear of wrongful conviction is pure speculation. In any event, the jury heard Morris's testimony that defendant told him that she was upset about the attempted murder charges and that she did not want to spend the rest of her life in jail. The jury was free to find that defendant's suicide attempt was motivated by a fear of wrongful conviction, but we do not agree with defendant that it was "the single reasonable inference" or that "no reasonable person would think otherwise." Thus, the evidence of defendant's suicide attempt was relevant to establish defendant's consciousness of guilt.

¶ 29 Defendant also argues that, even if probative, the evidence was inadmissible because its probative value is outweighed by its prejudicial effect. According to defendant, proof that she committed arson a few months after the arson for which she was on trial "was likely to have caused some jurors to view her as someone with pyromaniac tendencies thus increasing the likelihood that she set the fire in Davis' room." Certainly, reasonable minds could differ on the admissibility of this evidence. However, we cannot say as a matter of law that the probative value of the evidence was substantially outweighed by its prejudicial effect. We must defer to trial judge, who was better able to determine the effect of the evidence on the jury. See *Illgen*, 145 Ill. 2d at 364. The court considered the evidence and determined that the probative value was not outweighed by the prejudicial effect. Moreover, the court specifically instructed the jury that the evidence could be considered as evidence of only defendant's consciousness of guilt. "Such an instruction limited and substantially reduced any prejudicial effect." *Id.* at 376.

¶ 30 Even if we were to conclude that the trial court abused its discretion in admitting the evidence, to necessitate reversal the other-crimes evidence “must have been a material factor in the defendant’s conviction such that, without the evidence, the verdict likely would have been different.” *People v. Hall*, 194 Ill. 2d 305, 339 (2000). Given the evidence in this case, we cannot say that, absent Morris’s testimony, the verdict likely would have been different. Davis testified that, on the evening of the fire, he was home alone with defendant. When Davis went to bed, defendant remained awake using the computer. Davis testified that he had locked the doors to the townhome. The evidence established that the fire was intentionally set. A gas can, presumably taken from the garage, was found between Davis’s bed and the bedroom door. Gas was found on the bedroom carpet. Evidence also established that the relationship between defendant and Davis was strained. Offensive words directed at Davis were painted on the garage door. The paint on the paintbrush found in the trash can next to defendant’s computer was similar to the paint used. Splotches of paint were observed on defendant’s sweatshirt. “Death spells” were found on defendant’s computer and written on notes in defendant’s handwriting. Another note written in defendant’s handwriting contained a list of locations and included the words “2 gas stations” and “funeral home/cemetery [*sic*].” Accordingly, even if admitting the evidence of defendant’s suicide attempt was error, reversal is not warranted.

¶ 31 Defendant also argues that she was prejudiced by other aspects of Morris’s testimony. First, she argues that the trial court erred when it overruled her objection to Morris’s testimony that defendant “seemed a little bit deceptive” when she was speaking with him. Generally, a witness may testify only to facts within his own personal knowledge and recollection and may not draw inferences and conclusions. *People v. Hopley*, 159 Ill. 2d 272, 310 (1994). Given the overwhelming evidence noted above, we agree with the State that any error was harmless.

Second, defendant argues that prejudicial error occurred when Morris was asked whether defendant blamed anyone else for the fire or offered any alternative theory as to the cause of the fire. However, defendant failed to object to this line of questioning, and therefore her argument is forfeited. See *People v. McLaurin*, 235 Ill. 2d 478, 496 (2009).

¶ 32 We next address defendant's arguments concerning the imposition of various fees and fines. Although defendant did not challenge the propriety of the monetary assessments below, she may do so for the first time on appeal. *People v. Caballero*, 228 Ill. 2d 79, 88 (2008). Our standard of review is *de novo*. *People v. Jones*, 223 Ill. 2d 569, 580 (2006).

¶ 33 Defendant argues that she is entitled to monetary credit against certain fines imposed. Under section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2010)), a defendant who is incarcerated on aailable offense and does not supply bail, and against whom a fine is levied in connection with the offense, shall be allowed a credit of \$5 for each day, upon her application. Here, defendant was incarcerated for 570 days before sentencing, thus entitling her to a \$2,850 credit.

¶ 34 The parties agree that the following assessments are fines that are satisfied by the credit: (1) two \$13 Children's Advocacy Center fees (55 ILCS 5/5-1101(f-5) (West 2010)) (see *People v. Jones*, 397 Ill. App. 3d 651, 660-61 (2009)); (2) two \$5 drug-court fees (55 ILCS 5/5-1101(f) (West 2010)) (see *People v. Sulton*, 395 Ill. App. 3d 186, 191-93 (2009)); (3) two \$10 mental-health-court assessments (55 ILCS 5/5-1101(d-5) (West 2010)) (see *People v. Graves*, 235 Ill. 2d 244, 255 (2009)); (4) two \$15 state police operations assistance fees (705 ILCS 105/27.3a(1.5) (West 2010)) (see *People v. Milsap*, 2012 IL App (4th) 110668, ¶ 31); and (5) two \$30 juvenile expungement fines (730 ILCS 5/5-9-1.17 (West 2010)) (see *People v. Wynn*, 2013 IL App (2d)

120575, ¶ 16). We agree with the parties, and we modify the judgment to show that these charges, totaling \$146, have been fully satisfied.

¶ 35 Next, defendant argues that the trial court erred in imposing two \$15 document-storage fees (see 705 ILCS 105/27.3(c)(1) (West 2010)); two \$15 court-automation fees (see 705 ILCS 105/27.3a(1) West 2010)); two \$25 court-security fees (see 55 ILCS 5/5-1103 (West 2010)); and two \$100 clerk fees (see 705 ILCS 105/27.2(w)(1)(A) (West 2010)). Defendant observes that, in *People v. Martino*, 2012 IL App (2d) 101244, we held that the statutes that authorize these fees allow a trial court to impose only one of each in a case, even when the defendant has been convicted of more than one offense. *Id.* ¶¶ 30 (court-automation and document-storage fees), 35 (clerk’s fee), 38 (court-security fee). The State agrees that, under *Martino*, only one of each fee is authorized. Therefore, we vacate the duplicative fees.

¶ 36 Finally, defendant argues that certain “State’s Attorney Service Fees” and “Sheriff’s Fees” were imposed without authority. The State responds that any fee imposed on a defendant to defray costs related to an investigation of the charged offense is proper. According to the State, because these fees were imposed to defray costs related to subpoena expenses, the fees were properly imposed. In support, the State relies on *People v. White*, 333 Ill. App. 3d 777 (2002). However, the issue in *White* was whether the fees at issue (probation fees and a crime lab analysis fee) were fines or fees for purposes of section 114-10 of the Code (725 ILCS 5/110-4 (West 2010)); both fees were clearly authorized by statute. We fail to see how *White* supports the imposition of a fee that is not authorized by statute or ordinance. The State cites no other authority to support imposition of the fees. Defendant asks that the matter be remanded for the trial court to determine whether the fees are authorized and, if not, then to vacate them. We grant defendant the relief she seeks and remand for this determination.

¶ 37

III. CONCLUSION

¶ 38 For the reasons stated, we affirm as modified in part and vacate in part the judgment of the circuit court of McHenry County, and we remand.

¶ 39 Affirmed as modified in part and vacated in part; cause remanded.