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2014 IL App (3d) 130199-U

Order filed November 14, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-13-0199
ORLANDO MATHEWS,)	Circuit No. 12-CF-292
Defendant-Appellant.)	Honorable Stephen A. Kouri, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to support the jury's finding that defendant was guilty of aggravated unlawful use of a weapon under section 24-1.6(a)(1), (a)(3)(C) of the Criminal Code of 1961. The cause is remanded for a proper hearing on costs.

¶ 2 A jury found defendant, Orlando Mathews, guilty of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(a)(1), (a)(3)(C) (West 2010)). The court sentenced defendant to the statutory minimum term of one year of incarceration. Defendant appeals, arguing that the evidence was insufficient to prove him guilty beyond a reasonable doubt and

that the costs imposed against him must be modified. We affirm the jury's finding of guilty, vacate the costs award, and remand for a new hearing.

¶ 3

FACTS

¶ 4 Defendant was charged with two counts of AUUW (720 ILCS 5/24-1.6(a)(1), (a)(3)(C), (a)(3)(I) (West 2010)). The cause proceeded to a jury trial.

¶ 5 Officer David Logan testified he was dispatched to a report of shots fired at 2129 West Marquette Street in Peoria about 9 p.m. on March 12, 2012. When he arrived, he witnessed activity at the house next door at 2127 West Marquette Street. There were three cars parked in the driveway of 2127 West Marquette Street, which ran from the street past the east side of the house and back to the fenced-in backyard. Closest to the street was a gold car with a woman seated inside. Logan observed a man standing on the porch, who, after noticing Logan, began banging on the front door until someone let him in the house. Logan heard commotion on the west side of the house and saw someone fleeing over the backyard fence. Other officers arrived, and Logan searched the house and the gold car.

¶ 6 Twenty to thirty minutes after Logan arrived at the scene, Officer Brock Lavin informed him that Lavin had found a person hiding under the rear-most car in the driveway. Logan observed as officers removed defendant from underneath the car. Logan looked underneath the vehicle and saw a black handgun. Logan testified that defendant's date of birth was October 28, 1993, and his address was 1712 Millman Street.

¶ 7 Lavin testified that after responding to the call, he entered the house at 2127 West Marquette Street, where he found two people. Defendant's mother arrived at the scene and stood in the front yard. Lavin went into the backyard and then through the fence gate into the driveway. He saw a pair of eyes looking at him from underneath the rear-most car in the

driveway. Defendant was "wedged" underneath the car and required officers' help to remove him. As officers removed defendant, he told officers that the gun was not his and that Lavin had planted it. After defendant was removed, Lavin observed a black handgun on the ground underneath the car.

¶ 8 The parties stipulated that defendant did not have a valid Firearm Owner's Identification (FOID) card on March 12, 2012.

¶ 9 Investigator Tim Wong testified that the gun was muddy and that Wong could not find a usable fingerprint on it.

¶ 10 The jury found defendant guilty beyond a reasonable doubt on both counts of AUUW. The court—on the State's encouragement—entered judgment on only section 24-1.6(a)(3)(C) of AUUW, as a judgment on both counts was barred by double jeopardy principles. Defendant filed a motion for a new trial, arguing that the evidence was insufficient to prove him guilty beyond a reasonable doubt because it was entirely circumstantial. The court denied the motion.

¶ 11 The court sentenced defendant to the minimum sentence of one year of incarceration. The court's sentencing order also imposed "costs." Included in the record on appeal is a printout from the circuit clerk, notating various acronyms associated with different numerical values. We assume this is an accounting of the costs imposed by the clerk against defendant. Defendant appeals.

¶ 12 ANALYSIS

¶ 13 On appeal, defendant raises two issues: (1) the evidence was insufficient to convict him on either count of AUUW, where the State failed to present sufficient evidence to prove defendant was neither on his land nor on the land of another as an invitee; (2) defendant's fines and fees must be modified.

¶ 14

A. Sufficiency of the Evidence

¶ 15

To sustain a guilty verdict for AUUW¹ under section 24-1.6(a)(1) of the Criminal Code of 1961 (720 ILCS 5/24-1.6(a)(1) (West 2010)), the State must prove beyond a reasonable doubt that: (1) defendant carried or concealed on or about his person or carried in a vehicle any pistol, revolver, stun gun or taser, or other firearm; (2) defendant was not on his land, abode, legal dwelling, or fixed place of business; (3) defendant was not on the land or legal dwelling of another as an invitee with that person's permission; and (4) one of the factors enumerated under section 24-1.6(a)(3) was present. In the instant case, the State alleged that factor 24-1.6(a)(3)(C) was present, in that defendant had not been issued a valid FOID card at the time he possessed the firearm. 720 ILCS 5/24-1.6(a)(3)(C) (West 2010); see *People v. Laubscher*, 183 Ill. 2d 330, 335 (1998) (holding that the State bears the burden of disproving beyond a reasonable doubt the exception for a person on his or her own land).

¶ 16

On appeal in the present case, defendant argues that the State failed to present sufficient evidence that defendant was neither on his own land nor on the land of another as an invitee.

¶ 17

When a defendant challenges the sufficiency of the evidence on appeal, we will affirm the conviction if, 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*

¹ We note that in *People v. Aguilar*, 2013 IL 112116, our supreme court held that the complete ban on carrying ready-to-use firearms in public—enumerated under section 24-1.6(a)(1), (a)(3)(A)—was facially unconstitutional under the second amendment (U.S. Const., amend. II). However, *Aguilar* did not affect section 24-1.6(a)(1), (a)(3)(C), which most likely passes scrutiny under the second amendment. The parties have not addressed the second amendment at any stage of these proceedings.

v. Wheeler, 226 Ill. 2d 92, 114 (2007). The State may rely on circumstantial evidence. *Laubscher*, 183 Ill. 2d at 335. A factfinder "need [not] search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). However, "the State may not leave to conjecture or assumption essential elements of the crime." *Laubscher*, 183 Ill. 2d at 336.

¶ 18 The evidence in the present case was sufficient to support the jury's guilty verdict. Logan testified that defendant's address was 1712 Millman Street. That testimony, combined with defendant's presence underneath a vehicle rather than inside the residence at 2127 West Marquette Street, was sufficient for the jury to find beyond a reasonable doubt that defendant did not have an ownership interest in the land or residence at 2127 West Marquette Street.

¶ 19 Likewise, the testimony establishing that defendant was "wedged" underneath a car and had been lying in the mud for at least 20 to 30 minutes was sufficient to support the jury's finding that he was not an invitee at 2127 West Marquette Street. Invitors do not typically invite people onto their property to lie underneath cars in the mud. Although it is possible that defendant was an invitee on the property and then hid under the car when police arrived, the jury was not required to "search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *Jackson*, 232 Ill. 2d at 281. The most reasonable inference to be drawn from the evidence was that defendant was not an invitee. The evidence was sufficient to support the jury's verdict.

¶ 20 B. Fines and Fees

¶ 21 The parties agree that the trial court failed to order the circuit clerk to impose the specific assessments applicable to this case. See *People v. Williams*, 2014 IL App (3d) 120240, ¶¶ 17-19. Hence, we remand for a hearing on fines and fees, at which time the State shall move for the

finest and fees it believes are applicable, the defense shall respond by conceding or challenging the alleged assessments, and the court shall order the circuit clerk, *specifically*, which assessments shall be entered.

¶ 22

CONCLUSION

¶ 23

For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed in part, vacated in part, and remanded with instructions.

¶ 24

Affirmed in part and vacated in part; cause remanded with instructions.