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2016 IL App (3d) 160215-U

Order filed November 17, 2016

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2016

CITY OF EAST PEORIA,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Plaintiff-Appellee,	)	Tazewell County, Illinois,
	)	
v.	)	Appeal No. 3-16-0215
	)	Circuit No. 15-TR-22960
	)	
JOHNATHAN O. KIMBER,	)	Honorable
	)	Richard D. McCoy,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE LYTTON delivered the judgment of the court.  
Justices Carter and Holdridge concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Defendant's allegations of error are without merit, and his conviction and sentence are affirmed.

¶ 2 Defendant, Johnathan O. Kimber, appeals from his conviction for a violation of section 11-711 of the Illinois Vehicle Code (Code). Defendant raises several allegations of error regarding the various stages of the proceedings. We affirm.

¶ 3 **FACTS**

¶ 4 Defendant was originally charged with violating section 11-1007 of the Code (625 ILCS 5/11-1007 (West 2014)). The court granted the City of East Peoria’s (City) motion to amend the charge to a violation of section 11-711 of the Code (625 ILCS 5/11-711(b) (West 2014)), “Unlawful Use of a Controlled Access Highway.”

¶ 5 Defendant filed *pro se* motions to dismiss the charge and for discovery. The court granted the motion for discovery and ordered the City to provide defendant with the recordings and reports related to the incident. The court denied defendant’s motion to dismiss.

¶ 6 Before trial, defendant argued that counsel for the City was laboring under a conflict of interest. Defendant alleged that counsel had introduced herself as a State’s Attorney when she was counsel for the City. The court found defendant’s allegation lacked merit. The City made an oral motion *in limine* to prohibit defendant from discussing any events that transpired at the Tazewell County jail following defendant’s arrest. The court granted the motion *in limine* finding that any evidence of the events that occurred at the jail were irrelevant.

¶ 7 At trial, the State called Trooper Lisa Osborne as its first witness. On October 24, 2015, at 3:40 a.m., Osborne was dispatched to a call of a pedestrian on eastbound Interstate 74 at mile marker 99. Osborne saw defendant walking on the shoulder of Interstate 74 and said that signs were posted on all of the entrance ramps that notified motorists of the restrictions of the “controlled access highway.” The City admitted a photograph of the sign into evidence. The sign stated that individuals were not allowed to walk on Interstate 74. The City also introduced the video recording of Osborne’s interaction with defendant. Osborne said that defendant was taken into custody by an East Peoria police officer.

¶ 8 On cross-examination, Osborne said that she considered Interstate 74 a controlled access highway. Osborne said that it was illegal for a pedestrian to walk on the shoulder of Interstate 74.

¶ 9 East Peoria Police Officer David Meinders testified that, on October 24, 2015, he was dispatched to assist an Illinois State Trooper on Interstate 74. The incident was located within East Peoria city limits. Meinders issued defendant a citation for unlawful pedestrian walking on a highway and transported defendant to the Tazewell County jail.

¶ 10 Defendant elected not to testify in his defense and presented no evidence. The jury found defendant guilty of violating section 11-711 of the Code. The court imposed a \$500 fine.

¶ 11 ANALYSIS

¶ 12 Defendant's brief presents several disjointed and underdeveloped arguments. To the best of our ability, we have distilled these arguments as follows: (1) defendant's postarrest incarceration was cruel and unusual punishment; (2) the City did not have authority to prosecute the case; (3) the charging instrument was impermissibly amended; (4) section 11-711 of the Code is unconstitutional; (5) the court erroneously did not allow defendant to introduce evidence; (6) the evidence was insufficient; (7) defendant's sentence was imposed in violation of *Apprendi v. New Jersey*, 530 U.S. 466 (2000); (8) the City engaged in prosecutorial misconduct; and (9) defendant's sentence was excessive. While we find that none of the arguments have merit, we address each in turn.

¶ 13 At the outset, we hold defendant has forfeited each of these arguments as he did not file a posttrial motion raising each of the alleged errors. See *People v. Enoch*, 122 Ill. 2d 176, 190 (1988) (to preserve an issue for review, a party must raise it at trial and in a written posttrial motion). Defendant does not attempt to overcome his forfeiture by arguing that any one of the

errors is reversible plain error. See *People v. Hillier*, 237 Ill. 2d 539, 545 (2010) (a defendant who fails to argue for plain error review cannot meet his burden to establish that his forfeiture is overcome by application of one of the two prongs of the plain error doctrine).

¶ 14 Even if we were to excuse defendant's forfeiture, we find each of defendant's arguments is without merit. First, defendant did not establish that his postarrest incarceration was cruel and unusual punishment. See *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979) (eighth amendment cruel and unusual punishment protection does not apply to pretrial detention). Second, the City had prosecutorial authority, derived from section 16-102(c) of the Code (625 ILCS 5/16-102(c) (West 2014)) to prosecute this case. See also *City of East Peoria v. Palmer*, 2012 IL App (3d) 110904, ¶ 26 (holding that a 1989 letter from the Tazewell County State's Attorney vested the City with prosecutorial authority). Third, the amendment to the charging instrument corrected a formal defect in that it changed an erroneous citation, and it did not materially alter the nature of the offense charged. See *People v. Jones*, 219 Ill. 2d 1, 35 (2006). Fourth, defendant's bare bones argument that section 11-1007 of the Code is unconstitutional is unsupported by authority or argument. See *Ramos v. Kewanee Hospital*, 2013 IL App (3d) 120001, ¶ 37 ("appellate court is not a repository into which an appellant may foist the burden of argument and research"). Fifth, there is no evidence to support defendant's argument that the court prohibited him from introducing evidence at trial, as defendant elected to present no evidence in his defense. Sixth, viewed in the light most favorable to the prosecution, the evidence established beyond a reasonable doubt that defendant was a pedestrian on the shoulder of a designated controlled access highway. 625 ILCS 5/11-711 (West 2014); *People v. Brown*, 2013 IL 114196, ¶ 48 (in a challenge to the sufficiency of the evidence, a reviewing court considers the evidence in the light most favorable to the prosecution to determine whether any rational trier of fact could have

found the essential elements of the offense beyond a reasonable doubt). Seventh, the record does not support defendant's allegation of an *Apprendi* violation as defendant was not subject to an enhanced sentence. See *People v. Burns*, 2015 IL 117387, ¶ 51 (prosecution must prove any fact, other than a prior conviction, that subjects defendant to a harsher penalty). Eighth, defendant's argument that the City engaged in prosecutorial misconduct is unsupported by any factual allegations of misconduct. See *Ramos*, 2013 IL App (3d) 120001, ¶ 37. Finally, defendant's sentence of a \$500 fine was not excessive as it fell below the statutory maximum fine of \$1000. 730 ILCS 5/5-4.5-75(a) (West 2014).

¶ 15

#### CONCLUSION

¶ 16

The judgment of the circuit court of Tazewell County is affirmed.

¶ 17

Affirmed.