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FILED
December 16, 2016
Carla Bender
4th District Appellate
Court, IL

2016 IL App (4th) 140997-U

NO. 4-14-0997

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from |
| Plaintiff-Appellee, | ) | Circuit Court of |
| v. | ) | McLean County |
| DONOVAN NICHOLAS, | ) | No. 13CF1729 |
| Defendant-Appellant. | ) | |
| | ) | Honorable |
| | ) | John Casey Costigan, |
| | ) | Judge Presiding. |

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held*: (1) The State presented sufficient evidence to support defendant's conviction for interfering with the reporting of domestic violence.

(2) The circuit clerk's total assessment of fines, fees, and costs for defendant's convictions did not require defendant to pay his probation fee as a lump sum. Instead, the probation order stated he was required to pay $25 per month for 30 months.

(3) Defendant was improperly assessed a domestic violence fine as to count III because it was clerk-imposed and otherwise not authorized by statute.

¶ 2 In August 2014, a judge found defendant, Donovan Nicholas, guilty of domestic battery (count I) (720 ILCS 5/12-3.2(a)(2) (West 2012)) and interfering with the reporting of domestic violence (count III) (720 ILCS 5/12-3.5(a) (West 2012)). The trial court sentenced

defendant to 180 days in jail (with 120 days stayed) and ordered fines, fees, and costs pursuant to statute. Defendant appeals, arguing (1) the State presented insufficient evidence to support his conviction for count III, (2) the circuit clerk improperly assessed the monthly probation fee in the form of a lump sum, and (3) the circuit clerk improperly imposed a $390 domestic violence fine. For the reasons that follow, we affirm in part and vacate in part.

¶ 3 I. BACKGROUND

¶ 4 On December 31, 2013, the State charged defendant by indictment with two counts of domestic battery (counts I and II) (720 ILCS 5/12-3.2(a)(2) (West 2012)) and one count of interfering with the reporting of domestic violence (count III) (720 ILCS 5/12-3.5(a) (West 2012)). Count I alleged defendant made physical contact of an insulting or provoking nature with Natasha Morgan, a family or household member, by grabbing her neck and he was previously convicted of domestic battery in McLean County case No. 01-CF-76 (720 ILCS 5/12-3.2(a)(2) (West 2012)). Count II alleged defendant made physical contact of an insulting or provoking nature with Morgan, a family or household member, by throwing her to the ground and he was previously convicted of domestic battery in McLean County case No. 01-CF-76 (720 ILCS 5/12-3.2(a)(2) (West 2012)). Count III alleged, after defendant committed an act of domestic violence, he knowingly prevented or attempted to prevent Morgan from calling 9-1-1 (720 ILCS 5/12-3.5(a) (West 2012)).

¶ 5 The trial court held a bench trial on July 29, 2014. Morgan testified to the following events. Defendant and Morgan dated on and off for a couple of years. On September 26, 2013, she, while in a dating relationship with defendant, was living with him because she did not have anywhere else to live and he offered to let her stay with him. Around 11 p.m., she told

defendant she was going out of town to help a male friend file for bankruptcy. Defendant "blew up" and yelled at her, stating it would be inappropriate for her to visit her friend and, if she did, she could no longer stay with him. Morgan responded she was going to leave. Defendant began making several trips from the room where her clothes were stored to the balcony and threw her clothes off the balcony.

¶ 6 Morgan informed defendant she was going to call the police and defendant was "standing there *** [and] heard [her] call them." Morgan testified she decided to call the police because "[she] didn't feel it was right. *** [I]f he didn't want [her] to be there anymore he could have gone about it in a better way than that." As Morgan was calling 9-1-1, defendant forcefully grabbed her by the neck, tried to get the phone away from her, and pushed her to the ground. She said this was "all one continuous act." Defendant grabbed her phone and threw it against the wall. During this physical encounter, Morgan did not know what defendant was going to do and said he was unpredictable and intoxicated. She eventually redialed 9-1-1 and reported the incident. On cross-examination, Morgan stated, at the time of this incident, she was a heroin addict and had consumed one alcoholic beverage.

¶ 7 Gil Winger, a police officer with the Bloomington police department, testified he responded to Morgan's 9-1-1 call. As he arrived at defendant's residence, Morgan was standing outside and defendant was on the phone with Bloomington police department dispatch (no attempts were made to preserve the call between defendant and the police dispatcher). Winger observed Morgan was upset and did not appear to be intoxicated. He did not observe any marks on her body and, as a result, did not take any photographs. Winger also spoke with defendant, whom he described as upset and angry. Defendant told Winger about the incident but claimed

no physical contact occurred between him and Morgan. Winger transported defendant to the police station for questioning. After reading defendant his *Miranda* rights (*Miranda v. Arizona*, 384 U.S. 436 (1966)), defendant recalled the incident and being upset that Morgan wanted to visit a friend, but denied ever pushing her.

¶ 8 On August 8, 2014, the trial court entered an order with the following findings: (1) defendant was found guilty of count I as the court found Morgan's testimony credible that defendant grabbed her by the neck out of anger in a provoking and insulting manner; (2) defendant was found not guilty of count II as the court found very little evidence was presented on how defendant allegedly threw Morgan to the ground, and therefore, the State did not meet its burden; and (3) defendant was found guilty of count III as the court found Morgan's testimony credible that she was calling the police when defendant grabbed her phone and threw it against the wall.

¶ 9 On August 12, 2014, defendant filed a motion for a judgment of acquittal, or in the alternative, a new trial. Defendant argued (1) the trial court erred when it overruled his objection to leading questions, (2) the court erred when it denied his motion for a directed finding at the close of the State's case, and (3) he was not proved guilty beyond a reasonable doubt. The trial court denied the motion.

¶ 10 On September 30, 2014, the trial court sentenced defendant to 180 days in jail (with 120 days stayed until a 6-month review hearing), 30 months of probation, treatment directed by probation, and "fines and costs pursuant to statute." The trial judge signed a supplemental sentencing order only for count I, which, *inter alia*, imposed a $200 domestic violence fine (minus $10 pretrial detention credit (730 ILCS 5/5-9-1.6 (West 2012))) and a $750

probation fee ($25 per month for 30 months).

¶ 11 On October 9, 2014, an amended supplemental sentencing order was filed for count I and a supplemental sentencing order was filed for count III. These orders were signed by the trial court judge. Defendant's domestic violence fine on count I remained unaltered and the judge did not impose a domestic violence fine on count III. However, when the circuit clerk prepared its notice to party, defendant was assessed a $200 domestic violence fine on count III.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 Defendant raises three arguments on appeal: (1) the State presented insufficient evidence to support his conviction of interfering with the reporting of domestic violence, (2) the circuit clerk improperly assessed a $750 probation fee in the form of a lump sum, and (3) the circuit clerk improperly imposed a $390 domestic violence fine. The State disagrees with defendant's first contention and argues the State's evidence was sufficient to support his conviction, but it concedes the probation fee was improperly assessed as a lump sum and the circuit clerk improperly imposed a $390 domestic violence fine. We address each of these contentions in turn.

¶ 15 A. Interfering With the Reporting of Domestic Violence

¶ 16 Defendant argues the State presented insufficient evidence to support his conviction for interfering with the reporting of domestic violence because no act of domestic violence occurred when Morgan initiated the 9-1-1 call, so he cannot be found guilty of interfering with the reporting of domestic violence. The State responds the act of domestic violence occurred either when (1) Morgan called 9-1-1 and defendant thereafter grabbed her by

the neck and threw her phone against the wall or (2) defendant threw Morgan's clothes off the balcony.

¶ 17 "Where a criminal conviction is challenged based on insufficient evidence, a reviewing court, considering all of the evidence in the light most favorable to the prosecution, must determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *People v. Brown*, 2013 IL 114196, ¶ 48, 1 N.E.3d 888. Under this standard of review, the trier of fact has the responsibility to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from the facts. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224, 920 N.E.2d 233, 240 (2009). However, "[a] conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt." *People v. Belknap*, 2014 IL 117094, ¶ 67, 23 N.E.3d 325.

¶ 18 Section 12-3.5(a) of the Criminal Code of 2012 provides, in relevant part:

> "A person commits interfering with the reporting of domestic violence when, *after having committed an act of domestic violence*, he or she knowingly prevents or attempts to prevent the victim of or a witness to the act of domestic violence from calling a 9-1-1 emergency telephone system, obtaining medical assistance, or making a report to any law enforcement official." (Emphasis added.) 720 ILCS 5/12-3.5(a) (West 2012).

¶ 19 Defendant contends, based on the statutory language of section 12-3.5(a), the purpose and intent of the victim's 9-1-1 call must be to report an act of domestic violence.

Defendant suggests, because Morgan was initially calling the police to report the act of throwing her clothes over the balcony and the act of domestic violence did not occur until she had already dialed 9-1-1, he could not be found guilty of interfering with the reporting of domestic violence. The State responds that when defendant grabbed Morgan by the neck (the act of domestic violence) and subsequently threw her phone against the wall, he interfered with the reporting of domestic violence. We agree with the State.

¶ 20 Although Morgan called 9-1-1 because she "didn't feel it was right" when defendant threw her clothes off of his balcony, this is of no consequence. Defendant grabbed Morgan by the neck while she had already initiated the 9-1-1 call, and he eventually threw her phone against a wall. The "act of domestic violence," undisputed by the parties under this theory, is the grabbing of Morgan's neck. When defendant committed this act of domestic violence, he then interfered, by means of physical force, with Morgan's ability to report the act to the police by throwing her phone against a wall. It is insignificant she already initiated a call to 9-1-1 and this act of domestic violence occurred simultaneously.

¶ 21 Defendant's argument would create a nonsensical outcome in light of the purpose of this statute. Defendant essentially asks this court to devise an outcome where Morgan would have had to disconnect her call with 9-1-1 and then reinitiate a call to be interfered with by defendant—and only then would defendant would have met the prescribed elements of interfering with the reporting of domestic violence. Given the serious nature of preventing another from reporting an act of domestic violence coupled with the actual act of domestic violence, this approach would not serve the statute's obvious purpose, which is to protect victims of domestic violence and allow them to report these acts without interference.

¶ 22 We decline to adopt defendant's argument and hold defendant committed an act of domestic violence by grabbing Morgan by the neck and interfered with the reporting of such domestic violence when he threw her phone against the wall. It is insignificant the 9-1-1 call was already in progress when the act of domestic violence occurred. At that time, Morgan had an additional reason for calling 9-1-1 (being grabbed by the neck), and then defendant interfered with the reporting thereof. Thus, the State presented sufficient evidence to sustain defendant's conviction for interfering with the reporting of domestic violence. Based on this finding, we decline to address the State's other arguments on this issue.

¶ 23 B. Probation Fee as a Lump Sum

¶ 24 Next, defendant argues the circuit clerk improperly assessed his monthly probation fee in a lump sum of $750 ($25 per month for 30 months). In support of this argument, defendant cites the notice to party prepared by the circuit clerk. The State concedes this issue and contends the fee should instead be assessed monthly. We disagree with defendant and the State's concession is not well-taken.

¶ 25 The record contains a probation order signed by the trial court judge, which stated defendant was to be placed on a 30-month term of probation and ordered him to pay a probation fee of $25 per month. The notice to party prepared by the circuit clerk nevertheless stated the probation fee was "$750 ($25 x 30 months)" and included it in defendant's grand total with other assessments. Defendant contends this assessment was improper because only he can elect to pay the probation fee in the form of a lump sum. 730 ILCS 5/5-6-3(i) (West 2012) ("An offender *may* elect to pay probation fees due in a lump sum." (Emphasis added.)). The State agrees.

¶ 26 Although the clerk assessed the probation fee in a lump sum, it was merely

demonstrative of the total amount of fines, fees, and costs defendant owed based on his two convictions. It was not an actual order to pay the amount in full. The probation order signed by the judge instead dictated the frequency and amount of payments. The probation order stated defendant owed a monthly probation fee of $25 for 30 months. The probation order did not require defendant to pay in the form of a lump sum; however, as mentioned, defendant could elect to do so on his own accord. Defendant has failed to demonstrate he was *required* to pay a lump sum because the notice to party was a mere calculation of all assessments in his case. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958, 959 (1984) (to support a claim of error on appeal, the appellant has the burden to present a sufficiently complete record).

¶ 27 C. Domestic Violence Fine

¶ 28 Last, defendant argues the $390 domestic violence fine assessed against him is void because the circuit clerk improperly imposed it. The State concedes this issue and requests this court vacate the fine. We find it is only appropriate to vacate $200 of the $390 assessment.

¶ 29 The imposition of a fine is exclusively a judicial act and, as a result, can only be imposed by a judge. *People v. Smith*, 2014 IL App (4th) 121118, ¶ 18, 18 N.E.3d 912. Therefore, a circuit clerk has no authority to impose fines, and any fines imposed by the clerk must be vacated. See *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 89, 55 N.E.3d 117.

¶ 30 1. *Count I*

¶ 31 The docket reflects the trial court entered its judgment of conviction on September 30, 2014, and filed a supplemental sentencing order as to count I that same day. The supplemental sentencing order included a domestic violence fine of $200 with a $10 credit for pretrial detention, bringing the amount owed on the domestic violence fine to $190 (730 ILCS

5/5-9-1.5 (West 2012)). On October 9, 2014, the court filed an amended supplemental sentencing order as to count I, but it did not modify this fine. The circuit clerk sent defendant a notice to party totaling and detailing fines, fees, and costs based on these orders.

¶ 32 As the judge included the domestic violence fine in both the supplemental sentencing order and the amended version, it could not have been clerk-imposed. Each of these orders bears a judicial signature in the record before us. In his brief, defendant completely omits the existence of the supplemental sentencing orders and relies only on the court's statement: "fines and costs pursuant to statute." The supplemental sentencing orders clearly demonstrate this fine was not clerk-imposed, and defendant has failed to show otherwise.

¶ 33 2. *Count III*

¶ 34 Defendant was not assessed fines and costs on count III until several days after his conviction was entered. When the trial court filed its amended supplemental sentencing order as to count I, it included a supplemental sentencing order on count III. The supplemental sentencing order as to count III did not include an assessment for a domestic violence fine. Instead, the fine was assessed in the clerk's notice to party. On the notice to party form, the clerk calculated a $390 domestic violence fine (presumably $190 based on count I and $200 based on count III). The trial judge did not authorize this fine as to count III, which is evidenced by its omission from the supplemental sentencing order. Further, it would be error to assess this fine on count III because it is not authorized by statute. See 730 ILCS 5/5-9-1.5 (West 2012) (interfering with the reporting of domestic violence is not included in the limited list of crimes which prompt the domestic violence fine). We therefore vacate only the domestic violence fine of $200 as to count III.

¶ 35 III. CONCLUSION

¶ 36 We vacate the $200 domestic violence fine as to count III. We otherwise affirm. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 37 Affirmed in part and vacated in part.