2017 IL App (1st) 150740-U
Order filed: June 16, 2017

SIXTH DIVISION

No. 1-15-0740

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 21421
	)	
DENNIS CLARK,	)	Honorable
	)	Rickey Jones,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held*: We affirmed defendant's conviction for delivery of a controlled substance where the State proved all the elements of the offense beyond a reasonable doubt; we modified defendant's fines and fees order.

¶ 2 Following a jury trial, defendant Dennis Clark was convicted of delivery of a controlled substance (cocaine) in violation of 720 ILCS 570/401(d)(i) (West 2012), and sentenced to 15 years' imprisonment. Defendant was also assessed $1,549 in fines, fees, and costs. On appeal, defendant contends that his conviction should be reversed because the State did not prove beyond a reasonable doubt that he delivered cocaine. He also contests the various fines and fees assessed by the trial court. We affirm defendant's conviction and modify the fines, fees, and costs order.

¶ 3 Defendant was arrested on October 17, 2013, as a result of a Chicago police narcotics investigation and surveillance near the intersection of St. Louis Avenue and Grenshaw Street. He was subsequently charged with delivery of less than one gram of cocaine within 1,000 feet of a school (count I), and delivery of less than one gram of cocaine (count II). Prior to trial, the State nol-prossed count I.

¶ 4 At trial, Chicago police officer, Steven Leveille, testified that, on October 17, 2013, at approximately 1:40 p.m., he was dressed in plain clothes and driving an unmarked police vehicle as part of a narcotics surveillance team—surveillance officers, enforcement officers, and a supervisor—who were dispatched to investigate "an ongoing narcotics complaint" at the intersection of St. Louis Avenue and Grenshaw Street. Officer Leveille's role on the team was to make an undercover narcotics purchase with Chicago Police Department prerecorded funds. Officer Leveille had participated in narcotics transactions "over a hundred" times and estimated that, approximately "70% of the time," he has recovered prerecorded funds when making narcotics transactions.

¶ 5 Officer Leveille was on foot when he first encountered defendant in a vacant lot near the intersection of St. Louis Avenue and Grenshaw Street. Chicago police surveillance officer Laura Pagan observed from an unmarked police vehicle nearby. Defendant stood with five or six individuals, and he wore a New York Mets baseball cap, a black jacket, and blue jeans. Defendant approached Officer Leveille and asked: "Where you be?" Officer Leveille replied: "I have been south." Defendant then asked: "How many do you want today?" Officer Leveille replied: "Let me get two." In exchange for $20 in prerecorded funds, defendant gave Officer Leveille two clear Ziploc bags containing a white rock-like substance of suspect crack cocaine which he held on his person. The entire transaction took place with "less than an arm's length"

of distance between Officer Leveille and defendant. Defendant did not conceal his face during the entire drug transaction. About five minutes following the transaction, Officer Leveille returned to his vehicle and radioed the surveillance team that he had made a positive narcotics transaction from defendant and that he had used $20 in prerecorded funds to make the purchase. He gave a physical description of defendant and informed the team that the last location where contact was made was near 3507 West Grenshaw Street. Approximately 10 minutes later, Officer Leveille was notified that defendant had been detained. Officer Leveille reported to the location and identified defendant as the person who sold him the suspect crack cocaine. Defendant was wearing a New York Mets baseball cap, black jacket, and blue jeans. After defendant was arrested, Officer Leveille inventoried the suspect crack cocaine.

¶ 6 Immediately after Officer Leveille was notified that defendant had been detained, he drove to the last known location where he had contact with defendant near 3507 West Grenshaw Street. There, Officer Leveille positively identified defendant as the person who had sold him narcotics. Officer Leveille was able to identify defendant from "half a cars length" away while driving "two or three miles an hour." Nothing obstructed the officer's view of defendant or defendant's face when he made the positive identification.

¶ 7 Officer Pagan testified that, on October 17, 2013, at 1:47 p.m., she was part of a surveillance team assigned to make a narcotics purchase in the vicinity of St. Louis Avenue and Grenshaw Street. On that day, she had observed Officer Leveille and defendant "engage in brief conversation, and then engage in a brief hand-to-hand transaction." It was a bright and sunny day and cars were sporadically parked on the street. She observed the entire narcotics transaction from her covert vehicle, which was parked a distance of "five or six car lengths" from the area of the transaction. Officer Pagan observed others in the area, but observed only defendant engaging

in conversation with Officer Leveille. None of the other individuals in the lot wore a black New York Mets baseball cap.

¶ 8 "A couple of seconds" after the narcotics transaction, Officer Leveille gave Office Pagan a nonverbal signal which indicated that a positive narcotics transaction had taken place. Afterward, Officer Pagan watched Officer Leveille walk eastbound and then southbound, away from the area, but defendant remained in the area. Upon receiving a nonverbal signal, Officer Pagan radioed the other surveillance team members that a positive narcotics transaction had taken place. Officer Pagan maintained her surveillance of the area for approximately six minutes after Officer Leveille left the area, and then observed enforcement officers arriving at the location to detain defendant. Officer Pagan described defendant as "a male black with New York Mets baseball cap, black jacket, and blue jeans." Officer Pagan identified defendant in court as the man who engaged in the narcotics transaction with Officer Leveille. Officer Pagan acknowledged that no prerecorded funds were recovered from defendant.

¶ 9 The parties stipulated that Officer Leveille kept the two bags of cocaine recovered on October 17 in his control from the time of recovery until he inventoried those items. The parties further stipulated that, if called as a witness, Illinois State Police Crime Lab forensic chemist, Laneen Blount, would testify that the items inventoried by Officer Leveille tested positive for less than 0.1 grams of cocaine.

¶ 10 Based on this evidence, the jury found defendant guilty of delivery of a controlled substance.

¶ 11 The court denied defendant's motion for a new trial and sentenced him as a Class X offender to 15 years' imprisonment. Defendant was awarded 482 days of presentence custody

credit and assessed a total of $1,549 in fines, fees, and costs. The court denied defendant's motion to reconsider sentence. Defendant timely appealed.

¶ 12 On appeal, defendant first contends that the State failed to prove, beyond a reasonable doubt, that he delivered a controlled substance arguing that, because police did not recover the prerecorded funds from his person, the evidence was insufficient to establish that he participated in a narcotics transaction with Officer Leveille.

¶ 13 When a defendant challenges the sufficiency of the evidence, the standard of review is whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. On review, all reasonable inferences from the evidence are drawn in favor of the State. *People v. Martin*, 2011 IL 109102, ¶ 15. The reviewing court may not substitute its judgment for that of the trier of fact. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009). A defendant's conviction will be reversed only if the evidence is so improbable or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *Id*. "[W]here the finding of guilt depends on eyewitness testimony, a reviewing court must decide whether, in view of the record, a fact finder could reasonably accept the testimony as true beyond a reasonable doubt." *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004).

¶ 14 In order to sustain a conviction for delivery of a controlled substance, the State must prove that the defendant knowingly delivered a controlled substance. 720 ILCS 570/401 (West 2012); *People v. Brown*, 388 Ill. App. 3d 104, 108 (2009).

¶ 15 In the present case, the evidence established that defendant knowingly delivered 0.1 grams of cocaine. During a narcotics surveillance, defendant approached Officer Leveille and asked: "How many do you want today?" Officer Leveille replied that he wanted two and

defendant, in exchange for $20 of prerecorded funds, tendered to the officer two Ziploc bags containing a white, rock-like substance that tested positive for cocaine. Shortly after the transaction, Officer Leveille described and identified defendant as the person from whom he purchased the narcotics. See *People v. Smith*, 185 Ill. 2d 532, 541 (1999) ("The testimony of a single witness, if it is positive and the witness credible, is sufficient to convict"). Officer Pagan, a surveillance officer, also identified defendant as the person from whom Officer Leveille purchased the cocaine. This evidence was sufficient to prove, beyond a reasonable doubt, that defendant knowingly delivered the cocaine.

¶ 16 Defendant, nevertheless, argues that his conviction should be reversed because the officers did not recover the prerecorded funds used by Officer Leveille when he purchased the cocaine. Defendant maintains that, if he delivered the cocaine to Officer Leveille, the funds should have been recovered where Officer Pagan testified that defendant remained under surveillance "the entire time" until he was detained.

¶ 17 Contrary to defendant's argument, the absence of this additional incriminating evidence does not raise a reasonable doubt of his guilt. Although Officer Pagan testified that defendant remained under surveillance from the time of the transaction until he was detained, she did not testify that he remained in her view "the entire time," as defendant suggests. This aside, both Officers Leveille and Pagan testified that there were several other individuals at the vacant lot near defendant. In addition, Officer Leveille estimated that, in his extensive experience using prerecorded funds to make controlled narcotics purchases, he recovered the prerecorded funds approximately "70% of the time." As mentioned, it is the responsibility of the fact finder to resolve inconsistencies and draw reasonable inferences from the evidence. See *People v. Phillips*, 2015 IL App (1st) 131147, ¶ 16. Based on the jury's verdict, it is clear that this alleged

inconsistency was resolved in favor of the State. In doing so, the jury was not required to disregard the inferences that flow from the evidence, or search out all possible explanations consistent with a defendant's innocence and raise them to a level of reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 71 (citing *People v. Wheeler*, 226 Ill. 2d 92,117 (2007)). We will not substitute our judgment for that of the trier of fact on these matters. *Siguenza-Brito*, 235 Ill. 2d at 225. We will reverse a defendant's conviction only when the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *Id*. This is not one of those cases.

¶ 18 Defendant next contends that various assessments imposed against him are fines that should be offset by his presentence custody credit. Although defendant did not challenge these assessments in the trial court, the State does not argue forfeiture and, therefore, has forfeited any claim that the issue has been forfeited. *People v. Whitfield*, 228 Ill. 2d 502, 509 (2007). Further, "a defendant may raise the issue of credit on appeal even if not raised in the trial court." *People v. Vasquez*, 368 Ill. App. 3d 241, 261 (2006) (citing *People v. Woodard*, 175 Ill. 2d 435, 457-58 (1997)).

¶ 19 A defendant incarcerated on a bailable offense who does not supply bail and against whom a fine is levied is allowed a credit of $5 for each day of presentence custody. 725 ILCS 5/110-14(a) (West 2014). A "fine" is punitive in nature and is imposed as part of a sentence for a criminal offense. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). A fee, in contrast, seeks to recoup expenses incurred by the state, or to compensate the state for expenditures incurred in prosecuting the defendant. *Id*. The presentence custody credit applies only to reduce fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 599 (2006). Here, defendant spent 482 days in custody and, therefore, has accumulated a $2,410 credit toward his eligible fees.

¶ 20 Defendant contends, the State concedes, and we agree that the $10 Mental Health Court fee; the $5 Youth Diversion/Peer Court assessment; the $5 Drug Court fee; the $30 Children's Advocacy Center assessment; the $1,000 Controlled Substances assessment; the $15 State Police Operations fee; and the $50 court system fee imposed by the trial court are fines subject to offset by presentence custody credit. See *People v. Price*, 375 Ill. App. 3d 684, 700-02 (2007) (finding both the $10 Mental Health Court fee and the $5 Youth Diversion/Peer Court assessment, are fines); *People v. Unander*, 404 Ill. App. 3d 884, 886 (2010) ("the $5 [Drug Court] 'fee' is actually a fine"); *People v. Jones*, 397 Ill. App. 3d 651, 660-61 (2009) ("the Children's Advocacy Center charge is a fine rather than a fee;" "the drug assessment has consistently been construed as a fine subject to reduction for presentencing incarceration"); *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 ("the State Police [O]perations assistance fee is also a fine"); *People v. Blanchard*, 2015 IL App (1st) 132281, ¶ 22 ("the $50 Court System fee *** is a fine"). Accordingly, the $10 Mental Health Court fee; the $5 Youth Diversion/Peer Court assessment; the $5 Drug Court fee; the $30 Children's Advocacy Center assessment; the $1,000 Controlled Substances assessment; the $15 State Police Operations fee; and the $50 court system fee imposed by the trial court should be offset by defendant's presentence custody credit.

¶ 21 Defendant next argues that the $2 State's Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2014)); the $2 Public Defender records automation fee (55 ILCS 5/3-4012 (West 2014)); the $15 document storage fee (705 ILCS 105/27.3c(a) (West 2014)); the $190 felony complaint fee (705 ILCS 105/27.2a(w)(1)(1) (West 2014)); the $25 court services fee (55 ILCS 5/5-1103 (West 2014)); and the $15 clerk automation fee (705 ILCS 105/27.3a(1), (1.5) (West 2014)), are fines which should be offset by defendant's presentence incarceration credit.

¶ 22 Contrary to defendant's argument, this court has previously considered challenges to these assessments and found them to be fees, not fines. See *People v. Warren*, 2016 IL App (4th) 120721-B, ¶¶114-116 (State's Attorney records automation assessment is not punitive and is, therefore, a fee); *Bowen*, 2015 IL App (1st) 132046, ¶¶ 63-65 ("both, the [S]tate's [A]ttorney and the [P]ublic [D]efender records automation assessment constitute fees"); see *contra People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56 (the automation assessments do not compensate the State for the costs associated in prosecuting a particular defendant and, therefore, cannot be considered fees); *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006); *People v. Bingham*, 2017 IL App (1st) 143150, ¶¶ 4142 (relying on *Tolliver* and finding the $190 felony complaint filing fee to be a fee not subject to presentence incarceration credit); *People v. Brown*, 2017 IL App (1st) 142877, ¶ 78 (finding clerk automation fee and document storage fee are fees not subject to offset by presentence incarceration credit). Accordingly, the $2 State's Attorney records automation fee; the $2 Public Defender records automation fee; the $15 document storage fee; the $190 felony complaint fee; the $25 court services fee; and the $15 clerk automation fee are not offset by defendant's presentence custody credit.

¶ 23 Defendant, relying on *Graves*, argues that the $15 document storage fee; the $190 felony complaint fee; the $25 court services fee; and the $15 clerk automation fee, are actually fines because they do not reimburse the State for costs incurred in prosecuting him. See *Graves*, 235 Ill. 2d at 250. However, in *Tolliver*, we rejected this argument and found that the charges are fees as they do represent a part of the cost incurred in prosecuting a defendant. See *Tolliver*, 363 Ill. App. 3d at 97 ("We find that all of these charges are compensatory and a collateral consequence of defendant's conviction and, as such, are considered 'fees' rather than 'fines.' "); *Brown*, 2017 IL App (1st) 142877, ¶ 78. We see no reason here to depart from our holding in *Tolliver*.

¶ 24 Finally, defendant argues, the State concedes, and we agree that the $5 electronic citation fee assessed pursuant to section 27.3e of the Clerk of the Courts Act (705 ILCS 105/27.3e (West 2012)), was erroneously assessed and must be vacated as that fee only applies to traffic, misdemeanor, municipal ordinance, and conservation violations, and does not apply to defendant's felony conviction for delivery of a controlled substance. *Id*.; *People v. Robinson*, 2015 IL App (1st) 130837, ¶ 115 (vacating the fee where the defendant's offense did not fall into an enumerated category). Accordingly, we direct the clerk of the circuit court to vacate the $5 electronic citation fee from defendant's fines, fees, and costs order.

¶ 25 In sum, we find that the $10 Mental Health Court fee; the $5 Youth Diversion/Peer Court assessment; the $5 Drug Court fee; $30 Children's Advocacy Center assessment; the $1,000 Controlled Substances assessment; the $15 State Police Operations fee; and the $50 court system fee are offset by defendant's presentence custody credit. However, the $2 State's Attorney records automation fee; the $2 Public Defender records automation fee; the $15 document storage fee; the $190 felony complaint fee; the $25 court services fee; and the $15 clerk automation fee are not offset by defendant's presentence custody credit. Finally, the $5 electronic citation fee was erroneously assessed and is, therefore, vacated. Pursuant to Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999), we direct the clerk of the circuit court to correct the fines and fees order accordingly. The judgment of the trial court is affirmed in all other respects.

¶ 26 Affirmed as modified.