2017 IL App (1st) 151966-U

No. 1-15-1966

Order filed November 3, 2017

Sixth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 16192
	)	
MICHAEL DAMPIER,	)	Honorable
	)	Michele McDowell Pitman,
Defendant-Appellant.	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: Defendant was found guilty, beyond a reasonable doubt, of the unlawful use or possession of a weapon by a felon when the evidence at trial established that defendant, who had previously been convicted of a felony, placed a handgun near a bush.

¶ 2 Following a bench trial, defendant Michael Dampier was found guilty of the unlawful use or possession of a weapon by a felon (UUWF), and sentenced to seven years in prison. On appeal, defendant contends that he was not proven guilty beyond a reasonable doubt because a

police officer's "dropsy" testimony was unbelievable. He also contests the imposition of certain fines and fees. We affirm, and correct the fines and fees order.

¶ 3 Defendant was charged by indictment with armed robbery with a firearm, attempted armed robbery with a firearm, aggravated battery, unlawful restraint, and unlawful possession of a firearm by a felon following an incident on July 23, 2014. Following a bench trial, defendant was acquitted of the charges related to the alleged robbery and found guilty of UUWF. Accordingly, this court will set forth only the facts relevant to the UUWF conviction.

¶ 4 A trial, Officer Marinez testified that in the early morning of July 23, 2014, he took part in a canvass of an area looking for potential suspects following an alleged robbery. At approximately 2:25 a.m., he saw a man walking in an alley. He stopped the vehicle he was driving in order to approach the man and conduct a field interview. As Marinez exited his vehicle, he observed the man "[s]lightly bend and place a handgun on the grass area next to a bush." He described the area as "an open field," that is, "maybe a house lot" that was empty. The man kept walking toward Marinez. He identified defendant in court as this person. Marinez approached defendant, told defendant to place his hands on the hood of Marinez's vehicle and "waited for backup to arrive." Marinez later recovered a loaded black handgun near the bush. During cross-examination, Marinez testified that the alley where he observed defendant was next to an open field. Defendant did not run away from Marinez; rather, defendant continued walking toward him. The gun was in defendant's right hand, and defendant then bent and placed the gun in the grass near a bush. Marinez did not draw his weapon as he exited his vehicle. No weapons were recovered from a search of defendant.

¶ 5 The State then introduced a certified copy of defendant's conviction for kidnapping in case number 08 CR 60157.

¶ 6 In finding defendant guilty of UUWF, the trial court found Officer Marinez's testimony that he saw defendant place a handgun on the ground to be credible. Defendant was sentenced to seven years in prison.

¶ 7 On appeal, defendant first contends that he was not proven guilty of UUWF beyond a reasonable doubt because Officer Marinez's "dropsy" testimony that defendant discarded a gun in plain view was unbelievable. Specifically, defendant contends that "it runs counter to human experience that any person would willingly present incriminating evidence to the police."

¶ 8 When reviewing a challenge to the sufficiency of the evidence, the relevant question is whether, after 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 v. Brown*, 2013 IL 114196, ¶ 48. It is the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts. *People v. Bradford*, 2016 IL 118674, ¶ 12. A reviewing court will not substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses. *Id*. This court reverses a defendant's conviction only where the evidence is so unreasonable, improbable or unsatisfactory that a reasonable doubt of his guilt remains. *Id*.

¶ 9 Here, Officer Marinez testified that he observed defendant bend down and place a handgun on the ground near a bush. The trial court found Officer Marinez to be credible; this court will not substitute our judgment for that of the trier of fact on the question of a witness's credibility. *Id.* Viewing the evidence in the light most favorable to the State, we cannot say that

no rational trier of fact could have found that defendant possessed a handgun. *Brown*, 2013 IL 114196, ¶ 48.

¶ 10 Defendant, however, contends that Officer Marinez's testimony was improbable because the allegation that he placed a gun on the ground as he was walking toward a police officer runs contrary to common sense and human experience. He argues that this testimony is a classic example of "dropsy" testimony. See *People v. Ash*, 346 Ill. App. 3d 809, 816 (2004) ("A 'dropsy case' is one in which a police officer, to avoid the exclusion of evidence on fourth-amendment grounds, falsely testifies that the defendant dropped the narcotics in plain view (as opposed to the officer's discovering the narcotics in an illegal search)."). He also relies on law review articles and federal cases as support for the proposition that police officers often resort to perjury to avoid the exclusion of evidence.

¶ 11 In the case at bar, defendant is essentially asking this court to reweigh the evidence presented at trial and substitute our judgment for that of the trial court. We decline to do so, as the determination of the weight to be given to a witness's testimony and credibility, and the reasonable inferences to be drawn from the evidence are the responsibility of the fact finder, who observed the witness and heard his testimony. *Bradford*, 2016 IL 118674, ¶ 12.

¶ 12 Moreover, we do not agree that it is "improbable or contrary to human experience" that a person would try to get rid of contraband after becoming aware of the presence of police officers. Indeed, such a scenario is not unheard of. See *People v. Comage*, 241 Ill. 2d 139, 142 (2011) (defendant threw a crack pipe over a fence while being chased by police); *People v. Pigrenet*, 26 Ill. 2d 224, 225 (1962) (defendant dropped foil-wrapped packages of heroin on the ground after being approached by police); *People v. Evans*, 2015 IL App (1st) 130991, ¶¶ 8-9 (defendant

threw a bag containing cannabis into a room and closed the door after police ordered him to show his hands and approach the officers); *In re M.F.*, 315 Ill. App. 3d 641, 643-44 (2000) (defendant threw bags of cocaine off of a roof landing, within the plain view of police who told him to remain still). As these cases demonstrate, it is not uncommon for a person to attempt to get rid of contraband while in view of police officers. In reaching this conclusion, we are unpersuaded by defendant's reliance on sources which suggest that police perjury is widespread.

¶ 13 Even if we were to accept defendant's argument that police officers have been known to lie in order to avoid the exclusion of evidence, however, it does not automatically follow that Officer Marinez lied or that his testimony was unreliable. See *People v. Moore*, 2013 IL App (1st) 110793, ¶¶ 11-12, vacated on other grounds, 378 Ill. Dec. 743 (2014) (declining to reject an officer's testimony in the face of similar claims of "dropsy" testimony).

¶ 14 We are similarly unpersuaded by defendant's argument that Officer Marinez's testimony was suspect because he testified that he did not draw his weapon. Marinez's testimony was that he observed defendant drop a gun as he exited his vehicle and that defendant then continued to walk toward him. Although defendant argues that Marinez's failure to draw his weapon is fatal to his credibility, arguing that it makes no sense that Marinez would not draw his weapon after having seen a gun in defendant's possession and that Marinez's failure to do means that defendant did not really have a gun, it was the responsibility of the trial court, as the trier of fact, to determine the officer's credibility and to resolve any inconsistencies and conflicts in the evidence. *Bradford*, 2016 IL 118674, ¶ 12. Here, the trial court stated that it found Officer Marinez to be credible. In so doing, the court was not required to disregard the inferences that flow from the evidence or search out all possible explanations consistent with defendant's

innocence and raise them to a level of reasonable doubt. See *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. This court reverses a defendant's conviction only when the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt (*Bradford*, 2016 IL 118674, ¶ 12); this is not one of those cases. Accordingly, we affirm defendant's conviction for UUWF.

¶ 15 Defendant next contests the imposition of certain fines and fees. He acknowledges that he failed to preserve these issues for appeal because he did not challenge the fines and fees order in the trial court. It is well settled that a defendant forfeits a sentencing issue that he fails to raise in the trial court through both a contemporaneous objection and a written postsentencing motion. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). However, the State does not argue that defendant has forfeited appellate review of his challenge to the fines and fees order, and has therefore forfeited any forfeiture argument. See *People v. Williams*, 193 Ill. 2d 306, 347-48 (2000) (rules of waiver and forfeiture apply to the State). Therefore, although defendant did not raise these issues in the trial court, we will consider his claims. The propriety of court-ordered fines and fees is reviewed *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 16 Here, defendant's 687 days of presentence custody entitle him to up to $3,435 credit against his fines. 725 ILCS 5/110-14(a) (West 2014) ($5 credit against fines for each day of presentence custody). The parties correctly agree that the $15 State Police Operations Fee (705 ILCS 105/27.3a(1.5) (West 2014)), should be offset by defendant's presentence custody credit. See *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 (State Police Operations assessment is a fine). We so order.

¶ 17 Defendant next contends that he must also receive $5 per day of presentence custody credit against the following assessments: the $2 State's Attorney records automation assessment (55 ILCS 5/4-2002.1(c) (West 2014)), the $2 Public Defender records automation assessment (55 ILCS 5/3-4012 (West 2014)), and the $10 probation and court services operations assessment (705 ILCS 105/27.3a(1.1) (West 2014)). Defendant asserts these assessments are actually fines despite their statutory labels as fees because they do not seek to reimburse the state for the costs of prosecuting a particular defendant. The State responds that they are properly labeled as fees.

¶ 18 These three assessments are all fees, and this court has previously considered and rejected the identical arguments made by defendant in the instant case. See *People v. Brown*, 2017 IL App (1st) 142877, ¶¶ 75-78 (concluding that both the $2 State's Attorney records automation charge and the $2 Public Defender records automation charge are fees rather than fines); *People v. Murphy*, 2017 IL App (1st) 142092, ¶¶ 19-20 (same); *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65 (same); *People v. Rogers*, 2014 IL App (4th) 121088, ¶¶ 30, 36-39 (probation and court services operations assessment, and State's Attorney records automation assessments are fees); but see *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56 (categorizing the $2 State's Attorney records automation charge and the $2 Public Defender records automation charge as fines). We elect to follow the weight of authority and conclude these assessments are fees. Therefore, defendant is not entitled to presentence custody credit toward these fees.

¶ 19 Accordingly, pursuant to our ability to correct a fines and fees order without remand (see *Bowen*, 2015 IL App (1st) 132046, ¶ 68), we order the circuit court to correct defendant's fines and fees order to show that the $15 State Police operations fine is offset by his presentence

custody credit for a new total due of $699. We affirm the circuit court of Cook County in all other aspects.

¶ 20 Affirmed; fines and fees order corrected.