

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2017 IL App (4th) 150043-U

NO. 4-15-0043

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

March 22, 2017

Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
ANTHONY STENNIS,)	No. 14CF80
Defendant-Appellant.)	
)	Honorable
)	John W. Belz,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Steigmann and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court reversed in part, concluding the trial court erred by admitting hearsay evidence from an anonymous source, and that double jeopardy prevents a retrial, as the State presented insufficient evidence for the jury to find defendant unlawfully possessed a firearm. Further, this court affirms defendant's convictions for resisting a peace officer as modified to award credit for two additional days served in custody and vacate the clerk-imposed fines.

¶ 2 In January 2014, an anonymous 9-1-1 caller told police about observing an individual, who matched the description of defendant, Anthony Stennis, in the Brandon Court area of Springfield, Illinois, in possession of a weapon. Police arrived on the scene and defendant, who was standing outside on Brandon Court, immediately fled. After a brief pursuit, police apprehended defendant but recovered no firearm. However, police later discovered a firearm in the vicinity.

¶ 3 In October 2014, defendant's case proceeded to jury trial on one count of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)) and two counts of resisting a peace officer (720 ILCS 5/31-1(a) (West 2012)). Following the trial, a jury found defendant guilty on all counts, and the trial court sentenced defendant to a term of imprisonment.

¶ 4 Defendant appeals, asserting (1) the evidence was insufficient to sustain a conviction for unlawful possession of a weapon by a felon, (2) the trial court improperly admitted hearsay statements from the anonymous 9-1-1 caller, (3) the State committed prosecutorial misconduct by inducing the court to admit those hearsay statements, (4) defense counsel committed ineffective assistance of counsel by failing to sever the weapon charge from the resisting-a-peace-officer charges, (5) he should receive two additional days of custody credit, and (6) the clerk-imposed fines should be vacated. We reverse defendant's conviction for unlawful possession of a weapon by a felon, affirm the convictions for resisting a peace officer as modified to correct the judgment to reflect two additional days of custody credit and vacate any clerk-imposed fines.

¶ 5 I. BACKGROUND

¶ 6 In January 2014, the State charged defendant with one count of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2012)) and two counts of resisting a peace officer (720 ILCS 5/31-1(a) (West 2012)).

¶ 7 A. Objection to Hearsay Evidence

¶ 8 Immediately prior to commencing his October 2014 jury trial, defendant made a preliminary objection regarding an anonymous 9-1-1 call that led to his arrest. Defense counsel explained an anonymous caller gave police a detailed description of an individual whom the caller believed to be in possession of a firearm. However, the State had not produced the

anonymous caller at trial. Accordingly, defense counsel asserted the information provided by the anonymous caller should be excluded as hearsay. When the trial court asked if the information from the anonymous caller would be relevant to explain how the officers came into contact with defendant, defense counsel argued defendant's sudden flight from the scene was sufficient to explain the contact. The State argued it did not intend to introduce the anonymous caller's statements for the truth of the matter asserted, but merely to show the effect of the statement on the officer. The court sustained defendant's preliminary objection in part and allowed the State to introduce a general description—that the anonymous caller reported observing a black male in dark clothing brandishing a weapon—and officers could thereafter testify defendant matched that general description. The parties thereafter proceeded with the jury trial.

¶ 9

B. Jury Trial

¶ 10 The evidence presented at trial is undisputed. Sergeant Brian Graves with the Springfield police department testified, on January 28, 2014, at approximately 4 p.m., he received a call from the dispatcher about "a subject armed with a weapon" near Brandon Court. The Brandon Court area, which consisted of a collection of small apartment buildings, was considered a high-crime area, and therefore it received an extra police presence. After receiving the call, Graves, who was driving a marked squad car and wearing his police uniform, drove down 23rd Street to Brandon Court, which took about 15 seconds from the time he received the dispatch. As Graves turned the corner onto Brandon Court, he observed an individual, later identified as defendant, who matched the general description from the anonymous caller. Upon seeing the squad car, defendant fled southbound on Brandon Court. Graves accelerated to pursue defendant, but when defendant left the roadway and ran between two apartment buildings, Graves parked his vehicle and pursued defendant on foot.

¶ 11 According to Graves, defendant ran between 51 and 52 Brandon Court. Graves, however, ran between 49 and 50 Brandon Court, which was to the west of defendant's path. A fence spanned the length of the properties. As Graves approached a gate at the back of 49 and 50 Brandon Court, he observed defendant crossing Old Rochester Road. Graves did not observe defendant pass through the gate, but he assumed defendant used the gate as it was the only nearby opening in the fence. After crossing Old Rochester Road, defendant ran eastbound on Kansas Street. By that time, another officer had joined in the pursuit, and defendant was apprehended on Kansas Street.

¶ 12 During the pursuit, defendant ignored officers' commands to stop and, when he was arrested, he refused to place his hands behind his back. A search of defendant revealed no firearm.

¶ 13 Once defendant was secured, Graves retraced his steps. Just outside the gate between 49 and 50 Brandon Court, Graves located a black revolver in the gravel parking lot. The firearm was free from gravel dust, rust, or moisture. Graves also acknowledged, given the time of day, it would not be unusual for people to be outside in the general area, but he could not recall whether he saw anyone else outside that day. The laboratory recovered no deoxyribonucleic acid (DNA) or fingerprint evidence from the firearm. Officers' attempts to make contact with the anonymous caller and to retrieve any local surveillance were unsuccessful.

¶ 14 The State introduced a photograph of the area surrounding the gate between 49 and 50 Brandon Court. The photograph depicted an unobstructed view from Brandon Court to the gate, with the firearm located several feet south of the gate. The fence itself was a wrought-iron fence that appeared to be approximately 5 feet tall, with vertical bars spaced several inches apart, and a horizontal bar about 2 1/2 feet from the ground.

¶ 15 The parties further stipulated defendant had a prior felony conviction. After the State rested its case, defendant moved for a directed verdict, which the trial court denied.

¶ 16 Following the presentation of evidence, the jury found defendant guilty of all three counts.

¶ 17 C. Posttrial and Sentencing

¶ 18 In October 2014, defendant filed a motion for acquittal or, in the alternative, for a new trial, arguing, in part, the evidence was insufficient to convict him of unlawful possession of a weapon by a felon. In January 2015, the trial court denied defendant's motion and subsequently sentenced defendant to 7 years' imprisonment for unlawful possession of a weapon by a felon, and concurrent terms of 364 days' imprisonment on each of the resisting-a-peace-officer charges. The court credited defendant with 349 days of credit for time previously spent in custody. Following the sentencing hearing, the circuit clerk imposed numerous charges, including several fines.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, defendant asserts (1) the evidence was insufficient to sustain a conviction for unlawful possession of a weapon by a felon, (2) the trial court improperly admitted hearsay statements from the anonymous 9-1-1 caller, (3) the State committed prosecutorial misconduct by inducing the court to admit those hearsay statements, (4) defense counsel committed ineffective assistance of counsel by failing to sever the weapon charge from the resisting-a-peace-officer charges, (5) he should receive two additional days of custody credit, and (6) the clerk-imposed fines should be vacated. We note defendant does not challenge his

convictions for resisting a peace officer, so we affirm his convictions for resisting a peace officer.

¶ 22 We begin by examining the hearsay statements from the anonymous 9-1-1 caller.

¶ 23 A. Hearsay Evidence

¶ 24 Defendant contends the trial court erred by allowing a police officer to testify regarding the statements made by the anonymous 9-1-1 caller. "Evidentiary rulings are within the sound discretion of the trial court and will not be reversed unless the trial court has abused that discretion." *People v. Caffey*, 205 Ill. 2d 52, 89, 792 N.E.2d 1163, 1188 (2001). "An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *Id.* To the extent the court considered purely a question of law, our review is *de novo*. See *People v. Williams*, 188 Ill. 2d 365, 369, 721 N.E.2d 539, 542 (1999).

¶ 25 Hearsay statements are admissible to the extent they explain police conduct. *People v. Cameron*, 189 Ill. App. 3d 998, 1004, 546 N.E.2d 259, 263 (1989). "However, the trial court must carefully assess such testimony to ensure that it does not include more than is necessary to explain police conduct." *Id.*

¶ 26 Here, the trial court admitted a hearsay statement from the anonymous 9-1-1 caller that generally described the defendant and the fact that he had a weapon. The court allowed Graves to make this hearsay statement as a way of explaining why he was present on Brandon Court. Such a broad statement goes beyond an explanation of police conduct. An arresting officer need not give the appearance that he just happened to be on the scene where an incident occurred. *Id.* (citing McCormick, *Evidence* § 249, at 724 (3d ed. 1984)). But neither should an officer be permitted " 'to relate historical aspects of the case, replete with hearsay

statements in the form of complaints and reports, on the ground that he was entitled to give the information upon which he acted. The need for the evidence is slight, the likelihood of misuse great.' " *Id.* That is precisely the situation that occurred here.

¶ 27 By admitting the anonymous caller's statement, Graves was able to identify defendant as the person he sought. More importantly, Graves was able to place a firearm in defendant's hands without a single eyewitness present to testify to that fact. Defendant compares these circumstances to those presented in *People v. Jura*, 352 Ill. App. 3d 1080, 1087, 817 N.E.2d 968, 975 (2004), where a police officer was permitted to testify that an anonymous caller described the defendant in detail and stated the defendant had a gun. The reviewing court reversed for a new trial, concluding the officer's testimony regarding the call went beyond explaining the officer's subsequent actions and, instead, improperly "impact[ed] the very essence of the dispute: whether [the] defendant was the man who possessed a gun." *Id.* at 1088, 817 N.E.2d at 977.

¶ 28 Similarly, in this case, Graves' testimony that provided the hearsay description of defendant and the report of a firearm contained extraneous information unnecessary to justify the presence of police or subsequent police actions. Such testimony was prejudicial and should have been kept out. Instead, the trial court could have permitted far less prejudicial testimony regarding Graves' presence in Brandon Court, such as Graves testifying that he received a dispatch about a suspicious person in the area, to explain police presence in the area.

¶ 29 Accordingly, we conclude the trial court erred by denying, in part, defendant's oral motion to preclude the anonymous 9-1-1 caller's statement. We must next determine whether the court's error was harmless.

¶ 30 **B. Harmless Error**

¶ 31 "The admission of hearsay evidence is harmless error where there is no reasonable probability that the jury would have acquitted defendant absent the hearsay testimony." *People v. Shorty*, 408 Ill. App. 3d 504, 512, 946 N.E.2d 474, 482 (2011). In other words, we must answer the question, "[I]s there a reasonable probability that a jury would have acquitted absent the hearsay testimony?" *Id.* We answer that question in the affirmative, as the only evidence that defendant possessed a firearm came from the hearsay statement. Not only that, but the State used the hearsay statement in its closing argument as substantive evidence that defendant possessed a firearm. The State made several related arguments to the jury, such as the following:

"The only evidence that we have of why he [ran from police] is because of the gun. It is uncontroverted that he took off. Why? Because he had the firearm. *** You didn't hear from the tipster. That doesn't mean that there wasn't a tip that was called in. Obviously, it was.

It is uncontroverted that there was a 9-1-1 call placed. It is uncontroverted that the [d]efendant matched the description given in that call as the individual."

By using the anonymous caller's statement as substantive evidence that defendant possessed a firearm, the State exceeded the scope for which the hearsay statement was admitted—to explain police conduct—and improperly emphasized the statement's importance to the jury. Without that statement, the jury would have very little evidence upon which to convict. For this and other reasons set forth fully below, we conclude the error was not harmless.

¶ 32 Such a holding would ordinarily result in remanding this case for a new trial. Before doing so, we must determine whether double jeopardy prevents us from remanding this case for a new trial.

¶ 33 C. Double Jeopardy

¶ 34 "One of the purposes of the protection against double jeopardy is to protect an accused from the unfair harassment of successive trials." (Internal quotation marks omitted.) *People v. Gorka*, 374 Ill. App. 3d 85, 89, 870 N.E.2d 867, 872 (2007) (quoting *People v. McCutcheon*, 68 Ill. 2d 101, 106, 368 N.E.2d 886, 889 (1977)). A defendant is subjected to unfair harassment where jeopardy has already attached to the charged offenses. *Id.* We must therefore decide whether sufficient evidence existed upon which to convict defendant.

¶ 35 In a jury trial, the State bears the burden of proving the defendant guilty of every element of the offense beyond a reasonable doubt. *People v. Maggette*, 195 Ill. 2d 336, 353, 747 N.E.2d 339, 349 (2001). "A reviewing court will not set aside a criminal conviction on grounds of insufficient evidence unless the proof is so improbable or unsatisfactory that there exists a reasonable doubt of the defendant's guilt." *Id.* In other words, where a jury finds a defendant guilty, our inquiry is whether, in viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found all of the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278, 818 N.E.2d 304, 307 (2004).

¶ 36 To convict defendant of unlawful possession of a weapon by a felon, the State was required to prove defendant (1) knowingly possessed a firearm, and (2) had a prior felony conviction. See Illinois Pattern Jury Instruction, Criminal, No. 18.08 (4th ed. 2000); 720 ILCS 5/24-1.1(a) (West 2012). Defendant concedes the evidence was sufficient to prove he has a prior

felony conviction. Rather, the dispute in this case centers on whether the State proved, beyond a reasonable doubt, defendant knowingly possessed a firearm.

¶ 37 We begin by noting the only evidence that defendant had any connection with a firearm was the improperly admitted hearsay statement from the anonymous 9-1-1 caller. Without it, the State fails to establish any circumstantial grounds upon which to convict defendant. Even with that statement improperly admitted, the State's evidence failed to demonstrate defendant's guilt beyond a reasonable doubt.

¶ 38 The evidence at trial is undisputed. No witnesses observed defendant with a firearm. No DNA or fingerprint evidence could be found on the recovered firearm. The anonymous caller, the only person to allegedly observe defendant with a firearm, did not testify. Thus, the evidence of defendant's possession of a firearm is purely circumstantial. Circumstantial evidence can be sufficient to convict a criminal defendant if it provides "proof of facts or circumstances that give rise to reasonable inferences of other facts that tend to establish guilt or innocence of the defendant." *People v. Saxon*, 374 Ill. App. 3d 409, 417, 871 N.E.2d 244, 251 (2007). Because the only witness to defendant's flight was Graves, we look to his testimony to determine whether the State provided sufficient circumstantial evidence upon which to convict defendant.

¶ 39 Graves parked his squad car between 49 and 50 Brandon Court. The photograph provided to the jury depicts an unobstructed view between Brandon Court and the gate at the end of 49 and 50 Brandon Court. The open gate was attached to a wrought-iron fence that appeared to be approximately five feet tall and had a metal bar running horizontally at the mid-point of the fence. As Graves parked his squad car, defendant fled, running between 51 and 52 Brandon Court. Notably, the photograph demonstrates the sidewalk between 49 and 50 Brandon Court is

to the west of 51 and 52 Brandon Court. During the pursuit, Graves lost sight of defendant, and Graves did not see defendant again until Graves reached the gate at the end of 49 and 50 Brandon Court, at which time he observed defendant cross Old Rochester Road and head east on Kansas Street. Graves never saw defendant near the vicinity of the gate, where the firearm was later recovered.

¶ 40 Graves testified he *assumed* defendant ran through the gate, as it was the only nearby gate. The State asserts the fact that the firearm was later recovered near the gate gave rise to a reasonable inference that defendant dropped the firearm during his flight from police. However, no evidence suggests defendant ran through the gate.

¶ 41 First, the photograph demonstrates Graves would have an unimpeded view of the gate from where he parked his squad car on Brandon Court, yet he never observed defendant run through the gate. Second, defendant's path of flight as described throughout the trial is inconsistent with defendant utilizing the gate. Had defendant run through the gate, his path of flight would have consisted of (1) running southbound between 51 and 52 Brandon Court, (2) turning westbound and running to the gate behind 49 and 50 Brandon Court, and (3) turning immediately eastbound to cross Old Rochester Road and fleeing down Kansas Street. None of the officers observed defendant taking such a route, nor did defendant cross into Graves' line of vision. Moreover, although the firearm appeared to have been placed in the gravel parking lot recently, Graves admitted the incident occurred around 4 p.m., a time when many people were often outside, and that the Brandon Court area was a high-crime area.

¶ 42 The State also argues defendant's flight provided circumstantial evidence of his guilt. However, given no firearm was found in the path of defendant's flight, we will not speculate as to the reason defendant chose to flee from police.

¶ 43 We therefore hold the State failed to present proof of facts or circumstances that gave rise to a reasonable inference of other facts that tended to establish defendant's guilt.

¶ 44 Accordingly, we conclude no reasonable jury could have found defendant guilty. Thus, we reverse defendant's conviction for unlawful possession of a weapon by a felon. Because we are reversing defendant's conviction for unlawful possession of a weapon by a felon, we need not consider defendant's claims regarding (1) prosecutorial misconduct and (2) ineffective assistance of counsel.

¶ 45 D. Custody Credit

¶ 46 Defendant next asserts he is entitled to an additional two days of custody credit, which would be credited toward his jail sentences for the counts of resisting a peace officer. The State concedes this issue, and we accept the State's concession.

¶ 47 The calculation of the number of days a defendant spent in pretrial custody is subject to *de novo* review. *People v. Jones*, 2015 IL App (4th) 130711, ¶ 12, 44 N.E.3d 1112. A defendant is entitled to credit "for the number of days spent in custody as a result of the offense for which the sentence was imposed." 730 ILCS 5/5-4.5-100(b) (West 2012). Here, the judgment order erroneously indicates defendant was in custody until January 12, 2015, and therefore only credited defendant with 349 days. However, the record demonstrates defendant was in custody from January 28, 2014, through January 14, 2015, the day he received his sentence. Accordingly, defendant is entitled to two additional days of custody credit for a total of 351 days toward his convictions of resisting a peace officer.

¶ 48 E. Clerk-Imposed Fines

¶ 49 Defendant also argues this court should vacate any fines imposed by the circuit clerk. The State concedes any fines imposed by the circuit clerk must be vacated, but it asserts

one of the charges from the circuit clerk is an authorized fee, not a fine. To the extent some of these fines may remain in effect with respect to defendant's convictions for resisting a peace officer, we address them here.

¶ 50 Because the circuit clerk lacks the authority to impose fines, any fines imposed by the circuit clerk are void from their inception. *People v. Daily*, 2016 IL App (4th) 150588, ¶ 27. We review *de novo* whether the circuit clerk improperly imposed fines. *Id.* ¶ 26. Nothing in the record demonstrates the trial court ordered defendant to pay any fines associated with his convictions; accordingly, the fines imposed by the circuit clerk must be vacated.

¶ 51 The State concedes the following charges constitute fines: (1) the \$50 court-systems assessment, (2) a \$10 child-advocacy fine, (3) a \$15 "ISP Op Assistance" fine, (4) a \$5 drug-court fee, and (5) a \$100 victims-assistance-fund fine. *Id.* ¶ 29; see also *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 138, 55 N.E.3d 117. However, the State contests defendant's argument that the \$2 State's Attorney's Automation assessment constitutes a fine.

¶ 52 In *Warren*, this court concluded the assessment constituted a fee, concluding the statutory language clearly demonstrated the legislature's intent that this charge would reimburse the State's Attorney's Office for establishing and maintaining an automated records system. *Warren*, 2016 IL App (4th) 120721-B, ¶ 115, 55 N.E.3d 117; see also 55 ILCS 5/4-2002(a) (West 2012). Defendant asks us to reconsider our ruling and adopt the First District's approach in *People v. Camacho*, 2016 IL App (1st) 140604, ¶ 50, 64 N.E.3d 647, which concluded the assessment constituted a fine because the cost was not associated with prosecuting a particular defendant. We decline to reconsider our position in *Warren* and continue to conclude this assessment reimburses the State's Attorney's office for establishing and maintaining an

automated records system. Accordingly, we conclude the State's Attorney's Automation assessment constitutes a fee.

¶ 53 We therefore vacate the circuit clerk's imposition of (1) the \$50 court-systems assessment, (2) a \$10 child-advocacy fine, (3) a \$15 "ISP Op Assistance" fine, (4) a \$5 drug-court fee, and (5) a \$100 victims-assistance-fund fine.

¶ 54 III. CONCLUSION

¶ 55 For the foregoing reasons, we reverse the trial court's judgment for unlawful possession of a weapon by a felon. We affirm defendant's convictions for resisting a peace officer as modified to correct the judgment to reflect two additional days of custody credit and vacate the improperly imposed fines.

¶ 56 Affirmed in part as modified, reversed in part, and vacated in part.