2018 IL App (1st) 161974-U

No. 1-16-1974

Order filed June 29, 2018

Second 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. 14 CR 22138
	)	
LASHARN ROBINSON,	)	Honorable
	)	Neil J. Linehan,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE MASON delivered the judgment of the court.
Justices Pucinski and Walker concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's convictions for robbery and aggravated battery over his contention that the State failed to prove him guilty beyond a reasonable doubt because the eyewitness testimony was not credible. Defendant's fines, fees, and costs order is modified.

¶ 2 Following a bench trial, defendant Lasharn Robinson was convicted of robbery and aggravated battery, and sentenced to respective, concurrent terms of six and four years' imprisonment. On appeal, Robinson argues that the State failed to prove him guilty of both

offenses beyond a reasonable doubt. He also contends that his fines, fees, and costs order should be corrected. We affirm and modify the fines, fees, and costs order.

¶ 3 Robinson was charged by indictment with robbery (count 1) (720 ILCS 5/18-1(a) (West 2014)) and four counts of aggravated battery (counts 2 – 5) (720 ILCS 5/12-3.05(c) (West 2014)), stemming from an incident involving Sharon Young and her boyfriend, Drequan Burglar. The indictment alleged that Robinson knowingly took Young's purse by the use of force or threatening the imminent use of force and that he struck both Young and Burglar during the course of the robbery.

¶ 4 Just after midnight on October 14, 2014, Young, who was then 17, and Burglar were waiting at a bus stop near 99 East 126th Street. As they waited, a red car slowly drove past them. Two minutes later, the car returned, but this time it swerved to a stop in front of them. Young saw three people in the car: Daveion Harris, who was driving the car, Robinson, who was in the front passenger seat, and another person. Young knew Harris. She went to school with his brothers and had reported his brothers to the police on previous occasions. Before the incident, Young did not know Robinson.

¶ 5 As the car stopped, Harris yelled curse words at Young and all three occupants then exited the vehicle. Robinson ran up to Young and punched her in the face causing her to fall down. As she fell, she dropped her purse. While she was on the ground, Robinson "stomped" and kicked her. Young saw Burglar, on the ground, fighting with Harris and the unknown third individual. Burglar then positioned himself on top of Young to shield her from further blows. Harris shouted for Robinson to grab Young's purse, which contained, among other things, her Fenger High School identification. Robinson picked up the purse and the three offenders drove

away. Young called 911 and told the responding officers that she recognized Harris as one of the offenders. Young and Burglar were then transported to the hospital. Young stated that she had bruises on her forehead and felt pain in her head following the attack.

¶ 6 On November 1, 2014, Young met with Detective Sharon Walker. Young viewed three different photo arrays and identified Robinson as the person who punched her. Young told Walker that she was "130 percent sure that it was him" and Walker wrote that information next to Robinson's photograph, which Young signed. After Young viewed another photo array, she identified a third individual as someone who she was "60 percent sure" took her purse. Similarly, Walker wrote that information next to the photograph and Young signed it.

¶ 7 Robinson was arrested on November 30, 2014. At the police station, after being read his *Miranda* rights, Robinson agreed to speak with Chicago police detective William Donnelly. Robinson told Donnelly that he, Harris, and a third individual known as "Black" pulled up to Young and Burglar at a bus stop. According to Robinson, Burglar had been "disrespecting" a deceased friend of Robinson's. Harris attacked Young while Robinson and Black attacked Burglar. Harris instructed Robinson and Black to get Young's purse. Robinson saw the purse on the ground, picked it up, and then gave it to Black. Robinson noticed a Fenger High School ID in the purse. As they drove away, Black discarded the purse at a nearby school.

¶ 8 At trial, Robinson testified in his own defense and although he admitted to an altercation with Burglar on October 14, 2014, he claimed it involved only the two of them and that Harris, Black, and Young stood and watched. At some point, Robinson got the better of Burglar, who fell to the ground. The fight continued until Young threw herself on top of Burglar to protect him

from further blows. Robinson stopped striking Burglar and returned to the car with Harris and Black. Robinson denied taking Young's purse or punching her in the face.

¶ 9 The court found Robinson guilty of robbery and both counts of aggravated battery against Young. The court found Robinson not guilty of the two counts of aggravated battery against Burglar. Although the court found the State proved the aggravated battery of Burglar, it refused to find Robinson guilty because Burglar did not testify at trial. The court sentenced Robinson, as a Class X offender, to a term of six years' imprisonment for the robbery conviction. The court merged count 3 into count 2 and sentenced Robinson to a concurrent term of four years' imprisonment for aggravated battery.

¶ 10 On appeal, Robinson argues that the State failed to prove him guilty beyond a reasonable doubt because Young's testimony was incredible, impeached, and uncorroborated.

¶ 11 When a defendant challenges his conviction based upon the sufficiency of the evidence presented against him, we ask 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 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). All reasonable inferences from the record must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42. It is the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh evidence, and to draw reasonable inferences from the facts. *Brown*, 2013 IL 114196, ¶ 48; see also. *People v. Gray*, 2017 IL 120958, ¶ 47 (discrepancies in testimony affect only its weight and the trier of fact is charged with deciding how such flaws impact the credibility of the witness). We will not substitute our judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses. *Brown*,

2013 IL 114196, ¶ 48. A defendant's conviction will not be overturned unless the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *Id.*

¶ 12 In order to sustain Robinson's conviction for robbery, the State was required to prove beyond a reasonable doubt that Robinson knowingly took Young's purse by the use of force or threatening the use of force. 720 ILCS 5/18-1(a) (West 2014). On the aggravated battery counts, the State was required to prove both the commission of a battery and the presence of an additional factor aggravating that battery. *People v. Cherry*, 2016 IL 118728, ¶ 16. Battery requires proof beyond a reasonable doubt that Robinson struck Young causing her bodily harm (count 2) and that he struck her in an insulting or provoking manner (count 3). 720 ILCS 5/12-3(a) (West 2014). As relevant here, to establish that Robinson committed aggravated battery under the charged counts, the State had to prove that Robinson battered Young on a public way. 720 ILCS 5/12-3.5(c) (West 2014).

¶ 13 After viewing the evidence in the light most favorable to the State, we conclude that a rational trier of fact could find, beyond a reasonable doubt, that Robinson committed robbery and aggravated battery against Young. Robinson's primary argument is that Young's account of the attack was unbelievable and that she was impeached on several points, including whether she and Burglar said anything to their attackers (she first said no, but then testified that she said several times during the attack that she was pregnant), what her curfew was that evening (she could not remember), and whether she received a bill for her treatment at the hospital (again, she could not remember). Robinson also discredits Young's testimony because (i) it required the trier of fact to assume that Robinson attacked her without provocation, (ii) before trial, she was "60%

sure" that someone else took her purse and (iii) she did not offer any corroboration, such as photographs, for the injuries she claimed to have sustained. But all of these discrepancies were argued at length at Robinson's trial and the trial judge specifically found Young's testimony credible.

¶ 14 A reasonable trier of fact could have found that a 25 year-old man in Robinson's position would attempt to minimize his conduct in striking an unarmed 17 year-old female when questioned by police. Thus, the fact that Robinson persisted in this denial at trial is unsurprising. Further, Young's testimony that she had called police on family members of Robinson's friend Harris provided sufficient explanation for Robinson's conduct in striking her, undermining Robinson's argument that according to the State's evidence, his attack on Young was unexplained.

¶ 15 Young's testimony, alone, is sufficient to sustain Robinson's convictions. See *People v. Siguenza–Brito*, 235 Ill. 2d 213, 228 (2009) (It is well settled that "[t]he testimony of a single witness, if positive and credible, is sufficient to sustain a conviction."). Young's assertion that she experienced pain and bruising after the attack was likewise sufficient to establish the element of bodily harm. See *People v. Mays*, (explaining that, to find bodily harm "some sort of physical pain or damage to the body, * * * whether temporary or permanent, is required."); see also *People v. McCrimmon*, 225 Ill. App. 3d 456, 466 (1992) (finding bodily harm where the victim suffered physical pain in shoulder from being slammed against a building and was absent from work the following day); *People v. Wenkus*, 171 Ill. App. 3d 1064, 1067 (1988) (finding that physical pain from striking chin against a stair after having been pushed down the stairs

constituted bodily harm). And proof of physical evidence connecting defendant to a crime is not required to establish guilt. *People v. Williams*, 182 Ill. 2d 171, 192 (1998).

¶ 16 Moreover, Robinson admitted to Donnelly that he took Robinson's purse, specifically mentioning the Fenger High School ID he saw. Robinson ignores this corroboration in arguing that his conviction rests solely on Young's testimony.

¶ 17 The inconsistencies in the evidence that the trial judge was called on to resolve were not limited to the State's witnesses. Robinson's own version of the events was inconsistent. After he was arrested, Robinson told Donnelly that Harris attacked Young, while he and Black attacked Burglar. But at trial, after Burglar did not testify, Robinson claimed that only he and Burglar fought while Young, Harris, and Black watched. There was nothing in this evidence that mandated acceptance of Robinson's trial testimony or that allows us to second guess the trial judge's credibility determinations. See *People v. Collins*, 214 Ill. 2d 206, 217 (2005) ("In reviewing the evidence, it is not the function of th[is] court to retry the defendant, nor will we substitute our judgment for that of the trier of fact."); *People v. Evans*, 209 Ill. 2d 194, 211-12 (2004) (reviewing court will not reverse a conviction simply because defendant claims that witness was not credible). After reviewing the record, we harbor no reasonable doubt regarding Robinson's guilt and so we reject his claim that the evidence is insufficient to support his convictions.

¶ 18 Robinson next contends that the assessed fines, fees, and costs should be reduced from $577 to $447. He argues that the trial court erroneously assessed him with charges for which his offense does not qualify. Robinson also insists that several of his assessments are labeled as "fees," but are actually fines, which should be offset by his presentence custody credit.

¶ 19 Robinson did not raise these challenges at trial and they are, therefore, arguably forfeited. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). However, the rules of forfeiture and waiver also apply to the State, and where, as here, the State fails to argue that Robinson has forfeited the issue, it waives the forfeiture. *People v. Bridgeforth*, 2017 IL App (1st) 143637, ¶ 46. We review *de novo* the propriety of a court-ordered fine or fee. *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22.

¶ 20 First, the parties correctly agree that the $5 electronic citation fee (705 ILCS 105/27.3e (West 2014)), must be vacated as the fee does not apply to Robinson's felony convictions for robbery and aggravated battery. See 705 ILCS 105/27.3e (West 2014) (fee imposed in any traffic, misdemeanor, municipal ordinance, or conservation cases). Additionally, the parties agree that a $25 fine imposed by the trial court under the heading "Other as Ordered by the Court" should be vacated because it did not list the statutory authority under which the fine was assessed. Accordingly, we vacate the erroneous charges for the $5 electronic citation fee and the unattributed $25 fine.

¶ 21 Robinson also argues that he was improperly assessed the $25 court services (sheriff) assessment (55 ILCS 5/5–1103 (West 2012)), because the offenses of which he was convicted, robbery and aggravated battery, are not qualifying offenses under the language of the statute. Robinson's argument in his opening brief is limited to two sentences and cites no authority. We have consistently held that section 5–1103 permits the court services (sheriff) assessment to be assessed against defendants convicted of offenses that are not listed within the statute. See *People v. Adair*, 406 Ill. App. 3d 133, 144 (2010) ("Based on the encompassing language of the statute and its clear purpose of defraying court security expenses, we are unpersuaded that the

[statute's] failure to list the offenses the defendant committed means he cannot be required to defray the expenses incurred by the sheriff for his court proceedings."); *People v. Lattimore*, 2011 IL App (1st) 093238, ¶¶ 102–05 (finding the list of statutes following the phrase "sentence of probation" modified only that phrase); *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 61. We therefore conclude that the $25 court services (sheriff) assessment was correctly imposed against Robinson in this case.

¶ 22 Lastly, Robinson asserts that three of the assessments imposed against him are fines subject to offset by his presentence incarceration credit. See *People v. Jones*, 223 Ill. 2d 569, 599 (2006) ("[T]he credit for presentence incarceration can only reduce fines, not fees."). "Broadly speaking, a 'fine' is a part of the punishment for a conviction, whereas a 'fee' or 'cost' seeks to recoup expenses incurred by the State." *Id.* at 582. The most important factor, therefore, is whether the charge seeks to compensate the State for any costs incurred as a result of prosecuting the defendant. See *People v. Graves*, 235 Ill. 2d 244, 250 (2009); see also *Jones*, 223 Ill. 2d at 600 ("A charge is a fee if and only if it is intended to reimburse the State for some cost incurred in defendant's prosecution.").

¶ 23 The parties agree that two of the fees assessed to Robinson, the $50 court system fee (55 ILCS 5/5-1101(c) (West 2014)) and the $15 state police operations fee (705 ILCS 105/27.3a(1.5) (West 2014)), are actually fines and should be offset by Robinson's presentence credit. We have reached the same result before. See, *e.g.*, *People v. Blanchard*, 2015 IL App (1st) 132281, ¶ 22 ("[W]e hold that the $50 Court System fee imposed in this case pursuant to section 5–1101(c) is a fine for which defendant can receive credit for the *** days he spent in presentence custody.");

see *People v. Maxey*, 2016 IL App (1st) 130698, ¶¶ 140–41 ("Since the state operations charge under section 27.3a(1.5) is a fine, defendant is entitled to presentence credit toward it.").

¶ 24 The parties' dispute is thus limited to the $10 arrestee's medical costs fund (730 ILCS 125/17 (West 2014)). But, again, we have already considered challenges to this assessment and determined that this assessment is a fee not subject to presentence incarceration credit. See *People v. Mullen*, 2018 IL App (1st) 152306, ¶ 51; *People v. Jones*, 397 Ill. App. 3d 651, 664 (2009). We decline Robinson's invitation to revisit these previous rulings.

¶ 25 For these reasons, we affirm Robinson's convictions for robbery and aggravated battery. We vacate the erroneously assessed $5 electronic citation fee and the $25 unattributed assessment; we also find that the $50 court system fee and the $15 state police operations charge are fines subject to presentence incarceration credit. However, the $10 arrestee's medical costs fund charge is a fee and not subject to presentence incarceration credit. The fines, fees, and costs order should reflect a new total due of $482. Pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967), we direct the circuit court on remand to modify the fines, fees, and costs order accordingly.

¶ 26 Affirmed; remanded with directions to correct fines, fees, and costs order.