No. 1-09-3107

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SECOND DIVISION
March 31, 2011

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. 08 CR 22304
	)	
JULIO MALDONADO,	)	Honorable
	)	William H. Hooks,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE KARNEZIS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Connors concurred in the judgment.

O R D E R

HELD: Judgment affirmed on attempted residential burglary where evidence was sufficient to establish that defendant took a substantial step toward the commission of that offense.

Following a bench trial, defendant Julio Maldonado was found guilty of attempted residential burglary and sentenced as a Class X offender to 10 years' imprisonment. On appeal, defendant

contends that the State failed to prove him guilty of this offense beyond a reasonable doubt where he committed no act which constituted a substantial step toward the commission of a theft.

At trial, the State presented testimony that defendant attempted to break into the third-floor apartment of Armando Garcia on November 4, 2008, and was arrested after a physical confrontation with Armando's brother, Victor Garcia, in the apartment directly across the hall. Eledia Saucedo testified through an interpreter that she was at home with her husband, Victor, at 8:45 p.m. when she heard a loud noise at her front door. Through the window above her front door, she saw defendant standing outside the door of Armando's apartment wearing a red, hooded sweatshirt. She informed her husband of this, then followed him into the hallway and saw defendant run toward the stairs. When her husband flashed the hallway lights, defendant ran toward them. They retreated into their apartment, but defendant kicked the door open, walked into the kitchen and pointed a gun at her husband.

On cross-examination, Eledia explained that there were three floors in the apartment building, with two units on each floor. She saw defendant leaning against Armando's front door "trying to open it," and then attempt to flee when she and her husband opened their door. She added on redirect examination that defendant claimed he was looking for his friend when he forced

his way into her apartment.

Victor Garcia testified through an interpreter that he also observed defendant wearing a red, hooded sweatshirt, trying to open his brother's front door. He did not know precisely what defendant was doing as his back was toward him, "but where you close the door, it was a thing and he was trying to open it." When he stepped into the hallway to investigate, he saw defendant seated at the bottom of the stairs, and retreated to his apartment because defendant started coming toward him. Moments later, defendant forced his front door open, then entered the kitchen and threatened him with what turned out to be a toy gun. His wife was in the living room at the time and she called police. Meanwhile, he wrestled defendant to the ground and held him there until the police arrived.

When cross-examined about whether defendant started moving down the stairs before he opened his front door, Victor stated, "He was already seated on the stairs. When asked whether he saw defendant move from Armando's door toward the stairs, Victor stated, "No, I looked through the window, and I got down, and he went down the stairs." He added that Armando helped him hold defendant until the police arrived.

Armando Garcia testified through an interpreter that he was asleep in his apartment and was awakened by the fight between his brother and defendant. After the police arrived, he looked at

his front door and noticed that it was newly damaged, "sort of a little bit open." Armando identified photographs, later admitted into evidence, depicting the damage to his front door. He testified, "You could see that it was forced there. And then to the other side where it closes, the -- the board on there is broken."

Chicago police officer Gabriel Vasquez testified that she and her fellow officers responded to a call regarding a person with a gun at Eledia and Victor's apartment and arrested defendant. She found a toy gun on the third-floor hallway, and a custodial search of defendant led to the recovery of a box cutter and a punch, which in her experience is "commonly used to pick the locks." In addition, she observed pieces of the wooden door frame inside Victor and Eledia's apartment and "some damage" to Armando's front door.

Defendant did not testify or call any witnesses, and, following closing argument, the trial court found him guilty of the attempted residential burglary of Armando's apartment. The trial court subsequently denied defendant's motion for a new trial in which he alleged that the State failed to prove that he intended to commit a theft inside Armando's apartment.

In this court, defendant contends that the State failed to prove beyond a reasonable doubt that he took a substantial step toward the commission of a theft in Armando's apartment because

there is no evidence of what he was doing in the apartment building that night. He maintains that the State's evidence merely shows that he stood in front of Armando's door and then walked over and sat down on the stairs.

When a defendant challenges the sufficiency of the evidence to sustain his conviction, the relevant question on review is whether, after considering 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. *Jackson v. Virginia,* 443 U.S. 307, 319 (1979); *People v. Collins,* 106 Ill. 2d 237, 261 (1985). This standard of review gives "'full play to the responsibility of the trier of fact fairly to resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.'" *People v. Jackson,* 232 Ill. 2d 246, 281 (2009), quoting *Jackson,* 443 U.S. at 319. The determinations of the trier of fact are entitled to great deference and will not be set aside on review unless the evidence is so unlikely or inadequate that a reasonable doubt of defendant's guilt remains. *People v. Rojas,* 359 Ill. App. 3d 392, 396-97 (2005). For the reasons to follow, we do not find this to be such a case.

A person commits residential burglary when he knowingly and without authority enters the dwelling place of another with the intent to commit a felony or theft therein. 720 ILCS 5/19-3(a)

(West 2008). To prove the offense of attempt, the State must establish that defendant intended to commit the underlying offense (in this case residential burglary), and that he committed an act that constituted a substantial step toward the commission of that offense. 720 ILCS 5/8-4 (West 2008); *People v. Norris,* 399 Ill. App. 3d 525, 531 (2010).

Intent to commit a specific offense and the taking of a substantial step towards commission of the offense are distinct and different elements of the crime of attempt, and a finding that intent could not be inferred from certain conduct does not necessarily mean that the conduct could not constitute the taking of a substantial step towards commission of that offense if intent were otherwise established. *People v. Cosby,* 305 Ill. App. 3d 211, 223 (1999). On the other hand, each attempt case must be resolved on its own unique facts, and the question to be answered is whether defendant performed an act which brought him in "dangerous proximity" to carrying out his intent. *Norris,* 399 Ill. App. 3d at 532, citing *People v. Brown,* 75 Ill. App. 3d 503, 505 (1979).

Here, the evidence adduced by the State at trial shows that Eledia heard a loud noise at her front door and then saw defendant, who was wearing a hooded sweatshirt, standing outside Armando's front door. Although she could not see precisely what defendant was doing, she saw him leaning against Armando's door

and it appeared that he was trying to open it. Eledia stated that she saw defendant run toward the stairs when she and her husband went into the hallway to investigate. Victor stated, "I looked through the window, and I got down, and [defendant] went down the stairs." Defendant then rushed them, forced open their apartment door, pointed what they believed was a real gun at Victor and said he was looking for his friend.

The record further shows that Armando examined his front door after the incident and noticed that it was newly damaged, "sort of a little bit open." He also identified the photographs of his front door which reflected evidence of force on one side, and a broken board on the side where it closes. Officer Vasquez corroborated the damage to the door and added that a custodial search of defendant led to the recovery of a box cutter and a punch, which in her experience "is commonly used to pick the locks."

Viewing these unique facts and circumstances in the light most favorable to the State, we find sufficient evidence to allow the trier of fact to find that defendant had taken a substantial step toward the commission of residential burglary when he pried at Armando's apartment door with the intent to commit a theft therein. Intent must ordinarily be proved by inferences drawn from conduct appraised in its factual setting; and, in the absence of inconsistent circumstances, proof of unlawful entry

into a building which could be the subject of larceny gives rise to an inference that will sustain a conviction of burglary. *People v. Johnson,* 28 Ill. 2d 441, 443 (1963) (there is an assumption that entry of the building of another is not purposeless, and absent other proof, theft is a likely purpose).

Defendant contends that the surrounding circumstances, considered in the light most favorable to the State, show no more than "a confused man acting illogically instead of evidencing an intent to knowingly enter Armando's apartment to commit a theft." Although defendant refers to his presentence investigation report, which shows that he suffered from bipolar disorder and polysubstance dependence, as "a possible explanation for his erratic behavior," this was not "evidence at trial" because it was only argued as mitigation during sentencing. *People v. Ybarra,* 156 Ill. App. 3d 996, 1005 (1987).

Here, defendant's acts support the assumption that his attempt at unlawful entry was not without purpose (*Johnson,* 28 Ill. 2d at 443), and brought him within dangerous proximity of entering Armando's apartment to commit theft. In reaching that conclusion, we are unpersuaded that the alleged "weaknesses" in the State's evidence cited by defendant require a different result. Notably, the record contradicts defendant's claim that he "did not attempt to flee down the stairs or give an excuse for his presence." Although defendant is not required to explain his

presence at the crime scene, if he does so, his story must be reasonable or he will be judged by the improbability of the explanation. *People v. Williams,* 189 Ill. App. 3d 17, 20-21 (1989). Under the circumstances in evidence, we find it highly unlikely that defendant was looking for his "friend" on the third floor where the only two units were occupied by the complaining witnesses, and he kicked in the door of the second apartment to look for him.

Moreover, defendant's presence, coupled with his flight upon being seen by another is a factor tending to establish guilt (*Williams,* 189 Ill. App. 3d at 21); however, the proof required for attempted residential burglary is the evidence that he was leaning on Armando's front door, using something to force it open which resulted in damage to the door and rendered it ajar (*People v. Terrell,* 110 Ill. App. 3d 1086, 1089 (1982)).

As for his possession of a box cutter and a punch, the means of attempt are not essential to conclusively establish the attempted residential burglary of Armando's apartment. *People v. Rogers,* 77 Ill. App. 3d 989, 993 (1979). Notwithstanding, it is clear that defendant was using an instrument to pry Armando's door and the tools found on him were consistent with that activity.

For the reasons stated, we affirm the judgment of the circuit court of Cook County.

Affirmed.