

2011 IL App (2d) 101010-U
No. 2-10-1010
Order filed November 28, 2011

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CF-678
)	
GRACIANO A. MONTOYA,)	Honorable
)	Theodore S. Potkonjak,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Zenoff concurred in the judgment.

ORDER

Held: The State proved defendant guilty beyond a reasonable doubt of disorderly conduct: in light of all the evidence, the trial court properly inferred that defendant did not casually look through a teenager's bedroom window while he was urinating outside but, instead, deliberately looked for a lewd purpose.

¶ 1 Following a bench trial, defendant, Graciano A. Montoya, was convicted of disorderly conduct (720 ILCS 5/26-1(a)(5) (West 2010)), and he was sentenced to three years' imprisonment. On appeal, he claims that he was not proved guilty beyond a reasonable doubt. We disagree. Thus, we affirm.

¶ 2 The facts relevant to resolving this appeal are as follows. On February 28, 2010, at around 6 p.m., defendant was riding his bicycle after he had gone shopping. Defendant stopped his bicycle in a dark alley at 3112 Elizabeth Avenue. The Roe family lived at 3112 Elizabeth Avenue. Defendant left his bicycle in the alley and walked 60 to 70 feet to the northeast corner of the Roes' house, which corner was at the front of the house. The Roes' two teenaged daughters, Catherine and Shannon, shared the bedroom located at the northeast corner of the house. When defendant approached the Roes' home, Catherine was in her bedroom watching television.

¶ 3 Joyce Frederick, the woman who lived across the street from the Roe family, saw defendant standing in front of the window to the Roes' daughters' bedroom. Although the blinds on that window were closed, and some evidence indicated that the blinds were bent, lights were on in the room. Frederick observed defendant for a few seconds and then called the police. After making that call, she returned to watch defendant standing in front of the Roes' daughters' bedroom window. Soon thereafter, she saw the police arrive. Frederick then saw defendant run toward the alley. While defendant was standing in front of the Roes' daughters' window, Frederick could not tell if defendant was urinating.

¶ 4 Officer Jenna Madera was the first officer to arrive at the Roes' house that night. When she got there, she saw defendant standing in front of the Roes' daughters' bedroom window. Light was coming through the window. Madera saw defendant standing there for approximately one minute facing the window with his back to the street in front of the Roes' house. Madera could not see what defendant was doing with his hands while he was standing in front of the window, and she did not know if defendant was urinating.

¶ 5 Officer Eric Hill arrived soon after Madera, and Hill spoke with Madera about what she had observed. During that conversation, Madera pointed to defendant, who was standing by the Roes'

daughters' window. Hill noticed that the lights were on in the bedroom. Hill could not see what defendant was doing.

¶ 6 The officers then saw defendant walk along the west side of the Roes' house, which area was dark. Madera ordered defendant to stop, but defendant did not comply. After Madera unsuccessfully attempted to use her taser to stop defendant, Hill handcuffed defendant. Madera and Hill noticed that the zipper on the fly of defendant's pants was down.

¶ 7 After defendant was arrested, Hill searched the area and discovered that the bushes in front of the Roes' daughters' bedroom window looked like they had been trampled or stepped on. On top of those bushes were two phone books, which were stacked. The two phone books were each approximately two inches thick. According to Montell Roe, Jr., Catherine and Shannon's father, the phone books had been on the porch earlier in the day and the bushes did not look trampled when he saw them a few days earlier.

¶ 8 When Hill questioned defendant, defendant told him that he stopped at the Roes' house because he had to urinate. Defendant indicated that he moved from the alley, which defendant claimed was illuminated, so that he could urinate without being seen. Defendant told Hill that he looked in the Roes' daughters' window but that he did not see anybody in the room. Defendant also told Hill that he was in front of the Roes' house for five minutes and that he fled from the police because he was scared.

¶ 9 Photographs taken of the area, which truly and accurately reflected how the scene was illuminated that night when Hill arrived, revealed that the front porch lights of the Roes' home, which were close to the Roes' daughters' bedroom window, were on. Moreover, although a light at the back of the Roes' home was on, that light did not illuminate the entire back yard. And,

according to Montell, the light at the back of the house was not turned on until the police arrived. Pictures of the scene also showed that there was an overhead street light in the alley.

¶ 10 The trial court found defendant guilty, relying on the facts that defendant stowed his bike at the back of the house, it was dark at the back of the house, the area in front of the house was lit up, defendant was seen standing outside a girl's window, defendant was facing that window, underneath the window were two phone books, defendant fled from the police, and the zipper on the fly of defendant's pants was down. Although the court observed that defendant told the police that he was at the Roes' house to urinate, the court found that, in light of the evidence presented, the statement ceased being exculpatory. That is, based on the evidence presented, the court found that common sense dictated that, if defendant had to stop to urinate, he would not have done so by the front of the house, which was lit up.

¶ 11 Defendant filed a posttrial motion, contending that the State failed to prove him guilty beyond a reasonable doubt. Specifically, defendant argued that the State did not establish that he deliberately looked in the window or that he looked in the window for a lewd purpose. The trial court denied the motion and sentenced defendant. This timely appeal followed.

¶ 12 At issue in this appeal is whether defendant was proved guilty of disorderly conduct beyond a reasonable doubt. A reviewing court will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). 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 prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ ” (Emphasis in original.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

¶ 13 To convict defendant of disorderly conduct as charged in this case, the State needed to establish that defendant “[e]nter[ed] upon the property of another and for a lewd or unlawful purpose deliberately look[ed] into a dwelling on the property through any window or other opening in it[.]” 720 ILCS 5/26-1(a)(5) (West 2010). Defendant argues that no direct evidence established that he either acted for a lewd purpose or deliberately looked into a dwelling. We disagree.

¶ 14 Admittedly, the evidence of defendant’s guilt in this case was circumstantial, not direct. That fact alone does nothing to lessen the trial court’s finding of guilt, as it is firmly established that a criminal conviction may be sustained solely on the basis of circumstantial evidence. *People v. Saxon*, 374 Ill. App. 3d 409, 417 (2007). “Circumstantial evidence is ‘proof of facts and circumstances from which the trier of fact may infer other connected facts which reasonably and usually follow according to common experience.’ ” *People v. McPeak*, 399 Ill. App. 3d 799, 801 (2010) (quoting *People v. Stokes*, 95 Ill. App. 3d 62, 68 (1981)). The choice of inferences to be drawn from the evidence belongs to the trier of fact. *People v. Hay*, 362 Ill. App. 3d 459, 465 (2005). And the trier of fact is not required to draw those inferences most favorable to the defendant. See *People v. Martin*, 401 Ill. App. 3d 315, 323 (2010) (whether or not it was reasonable to infer that caps on natural gas lines had simply fallen off, it was also reasonable to infer that the caps had been removed intentionally, and trier of fact in reckless conduct prosecution was entitled to draw the latter inference).

¶ 15 From the evidence presented, a rational trier of fact could conclude that, in contrast to defendant’s statement to the police, defendant was not casually looking in the window while he urinated. Rather, a rational trier of fact could conclude that defendant was deliberately looking in the window for a lewd purpose.

¶ 16 Specifically, the evidence revealed that defendant was riding his bicycle when he stopped behind the Roes' home. Defendant claimed that he stopped because he needed to urinate and that he left the alley because he did not want anyone to see him. Although photographs of the alley area revealed that there was an overhead street light in the alley, Montell indicated that the alley was dark. In any event, the undisputed evidence indicated that, instead of urinating in the alley, defendant walked through the dark back yard and around the dark side yard, opting to stand outside Catherine's bedroom window. At the time, Catherine was in her room with the lights on, watching television. Next to Catherine's room, which was at the front of the house, was the front porch. The lights on the front porch were on. From this evidence, a rational trier of fact could infer that defendant did not go to the front of the house because he wanted to urinate in an area where he would not be seen.

¶ 17 While defendant stood in front of Catherine's window, he admittedly looked in. Other evidence indicated that defendant did more than just casually glance. Madera explicitly stated that defendant was facing the window while she watched him for one minute. Frederick saw defendant in front of the window for some time, and, in fact, defendant told the police that he was there for five minutes. From this evidence, and in the absence of any evidence suggesting otherwise, a rational trier of fact could conclude that, because defendant was standing in front of Catherine's window for several minutes, defendant was not urinating but purposefully looking in the window.

¶ 18 Although the evidence indicated that the blinds to Catherine's window were closed, the evidence also indicated that the lights were on in the bedroom and that the blinds were bent. From this evidence, a rational trier of fact could infer that defendant could perceive what was inside of Catherine's room. See *People v. Porter*, 96 Ill. App. 3d 976, 981 (1981) (trier of fact may use general knowledge to draw inferences based on the evidence). The evidence revealed that

Catherine, a teenager, was in her room watching television when defendant was outside of her window.

¶ 19 In the same area where defendant was standing, the police found two phone books, which were in total four inches thick, piled on top of some bushes that had been stepped on or trampled. Earlier in the day, those phone books were on the porch of the Roes' home, not in the bushes. Moreover, a few days before defendant's arrest, Montell noticed that the bushes did not appear to have been stepped on. From this evidence, a rational trier of fact could infer that defendant put the phone books there so that he could prop himself up to look in Catherine's window.

¶ 20 Once defendant was alerted to the fact that the police were at the Roes' home, he fled and resisted the officers' attempts to apprehend him. From this, a rational trier of fact could infer defendant's consciousness of guilt. See *People v. Hart*, 214 Ill. 2d 490, 519 (2005) ("defendant's flight and resistance upon apprehension constitute circumstances from which the trier of fact could infer consciousness of guilt."). When defendant was arrested, the police noticed that the zipper on the fly of defendant's pants was down. Although such evidence might suggest that defendant was, as he claimed, urinating, a rational trier of fact was not required to make that inference. Rather, in light of all the other evidence, a rational trier of fact could infer that the zipper on defendant's pants was down because he had been engaging in lewd behavior, such as masturbating, while he stood looking in Catherine's window.

¶ 21 In short, the common-sense inference to draw from the evidence presented is that defendant deliberately looked in Catherine's window for a lewd purpose. See *People v. Thomas*, 145 Ill. App. 3d 1, 10 (1986) ("A court of review is not required to throw away common sense when the record clearly demonstrates that the trial court's finding of guilt is supported by the evidence beyond any reasonable doubt."). Because a rational trier of fact could draw that conclusion based on the

evidence presented, we determine that defendant was proved guilty of disorderly conduct beyond a reasonable doubt.

¶ 22 For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 23 Affirmed.