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No. 3--09--0110

Order filed April 6, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois
Plaintiff-Appellee,	)	
v.	)	No. 08--CM--3152
ROBERT VALDEZ,	)	
Defendant-Appellant.	)	Honorable James E. Egan, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court:
Justices Holdridge and Wright concurred in the judgment.

ORDER

Held: The State failed to prove defendant guilty of criminal trespass to real property where it introduced no evidence at trial from which one could reasonably infer that defendant's return to the apartment in which he lived with his girlfriend and children was forbidden.

The State charged and convicted defendant, Robert Valdez, of

criminal trespass to real property, a Class B misdemeanor. The circuit court of Will County sentenced defendant to 12 months' conditional discharge and a $200 fine. Defendant appeals, claiming the evidence adduced at trial was insufficient to prove him guilty beyond a reasonable doubt and that he was denied a fair trial by the trial court’s refusal to allow him to testify regarding an invitation to return the property. We reverse.

BACKGROUND

The facts of this matter, as detailed below, are taken from the transcript of the bench trial as well as an agreed statement of facts contained within the record on appeal.

Joliet police officer Yezo testified that the Joliet police department has an agreement with Burnham Management, the company that owns the apartment complex at 358 North Broadway, Joliet, Illinois. When working security for Burnham, pursuant to the agreement, he is also on call with the police department for emergencies only. While "moonlighting" for Burnham, he responded to a call at the 358 North Broadway apartment complex on July 4, 2008, involving a couple's domestic dispute.

The agreed statement of facts indicates that when the officers initially responded to the scene, they "told the defendant to leave because the defendant's girlfriend, Liana

Ramos, requested that he leave. *** After asking him to leave, officers were later called back and observed the defendant standing in the 3rd floor hallway in front of the door of Apt. #304 trying to get Ramos to open the door. Ramos told officers that she wanted the defendant removed. The defendant was placed into custody for criminal trespass."

Joliet police officer Mau also testified at trial. He was called to the subject property for what ended up being an unwanted subject. He believed Ramos called the police. Officer Yezo arrived with Officer Mau. Mau indicated that Officer Yezo claimed he had encountered defendant earlier in the day at the premises. Defendant objected to this line of questioning, claiming that anything Officer Yezo told Officer Mau constituted inadmissible hearsay. The State responded, "I'm not offering it for the truth of the matter, Judge." The trial court then allowed Officer Mau to testify that defendant "had been warned to - - that if he came back, he would be arrested."

Officer Mau concluded his testimony by noting that when he arrived on scene and encountered the defendant, defendant was in a hallway of the building. Defendant was not on the lease and produced no visitor’s pass. Officer Mau concluded defendant did not live there. To Officer Mau’s knowledge, no one from Burnham

Management asked defendant to leave the premises.

Danny Davis, property manager of the apartment complex, testified that U.S. Security and the Joliet police department provide security for the property. Security officers could approach anyone on the property at any time and ask for a visitors pass or resident identification. In the past, Davis has issued defendant many visitors passes, but defendant was not leasing an apartment at the property. "No trespassing" signs appeared at various locations on the property as well as signs indicating that all visitors must possess a valid pass.

Davis continued his testimony noting that defendant had a visitor's pass to visit Ramos which was valid between June 9, 2008, and July 10, 2008. He further noted that no manager from Burnham provided notice to defendant that defendant was forbidden from entering the property on July 4, 2008. However, police working through the security agreement with Burnham were authorized to revoke and take a person's pass and visiting privileges away if the person did not comply with the rules. Davis provided an example of not complying with the rules as someone involved in a domestic disturbance. Davis indicated that Joliet police have the power to remove a person from the premises even if they have a valid pass.

The State rested after Davis's testimony. Defendant moved for a directed finding, arguing that he had a valid visitor's pass. The State disagreed and argued the police had authority to revoke his pass which Officer Yezo did when he told defendant to leave. The trial court denied defendant's motion reasoning that the police, as agents of Burnham, had authority to remove someone if they committed a violation of the visitor pass agreement. Defendant then testified on his own behalf.

Defendant noted that he has two children with Liana Ramos and lived with them at the 358 North Broadway apartment. He had been living with them at that address on the date in issue and still lived there with them at the time of his testimony. On the night in question, defendant and Ramos had been drinking and engaged in an argument before their planned trip to take the children to see fireworks. After the argument escalated, Ramos wanted defendant to leave and called the police. When the police arrived, they "wanted" defendant to leave. Defendant left the apartment and went to his van located in a parking lot to sober up before he drove somewhere.

Defendant testified that he remained in his van for about an hour when Ramos called him and asked him to come back to the apartment. The State objected to defendant's testimony claiming

it constituted impermissible hearsay. Defense counsel answered the State's objection noting she was offering the testimony, not to prove the truth of the matter asserted, but instead for the effect it had on the listener and whether or not defendant felt he could return to the property. The trial court sustained the State's objection noting that if defendant wanted to present evidence that Ramos invited him back on the property, Ramos would have to testify.

Defendant then continued his testimony indicating he had reason to believe he had permission to go back to the property. Approximately 45 minutes after he spoke with Ramos, he went back to the apartment. When he got to the apartment, Ramos was upset that he waited 45 minutes after her call to return so she would not allow him in the apartment and called the police. Defendant admitted he is not on the lease for the property but noted he did have a valid visitor's pass at the time. Defendant believed he had the right to be at the property.

Following closing arguments, the trial court found defendant guilty of criminal trespass to real property. The court noted it found the officers to be credible in their testimony regarding revocation of defendant's visiting privileges. The court also stated that if defendant wanted to "trump" that revocation, he

needed to bring in Ramos to testify. The court sentenced defendant to 12 months' conditional discharge and a $200 fine. Defendant filed a posttrial motion that the trial court denied. This appeal followed.

ANALYSIS

Defendant raises two claims of error on appeal. Initially, defendant challenges the sufficiency of the State's evidence claiming the State failed to prove him guilty beyond a reasonable doubt of criminal trespass to real property. Defendant also alleges that the trial court erred in excluding his testimony, finding it to be impermissible hearsay, that Ramos invited him to return to the property.

Defendant claims that since he "concedes on appeal that the reviewing court should resolve the disputed facts at trial in favor of the State," our review is *de novo*. We disagree. Defendant is challenging whether the evidence adduced at trial is sufficient to convict him of the offense of criminal trespass to real property. On review, our inquiry is whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237 (1985). Under this

standard, we must allow all reasonable inferences from the record in favor of the prosecution. *People v. Bush*, 214 Ill. 2d 318 (2005).

A. Sufficiency of the evidence

One can commit the crime of criminal trespass to real property in many ways. The State charged that defendant violated section 21-3(a)(2) of the Criminal Code of 1961 (the Code) which reads:

> "(a) Except as provided in subsection (a-5), whoever;
>
> ***
>
> (2) enters upon the land of another, after receiving, prior to such entry, notice from the owner or occupant that such entry is forbidden;
>
> ***
>
> commits a Class B misdemeanor." 720 ILCS 5/21-3(a)(2) (West 2008).

We hold the State failed to introduce evidence, when viewed in the light most favorable to the prosecution, sufficient to prove defendant guilty of the offense of criminal trespass to real property beyond a reasonable doubt. The record is simply

devoid of any evidence indicating, or from which a reasonable inference can be drawn, that defendant received notice of any kind that his entry on the premises was forbidden.

The agreed statement of facts indicates that Officer Yezo "told defendant to leave" but later states the officer merely asked defendant to leave. We find no testimony in the record on appeal indicating officer Yezo told defendant that his return to the property was forbidden. There is no substantive evidence contained in the record disputing the apartment manager's testimony that defendant possessed a valid visitor's pass for the day in question. The statute mandates that the State prove defendant's entry on the premises was "forbidden", not that he was simply asked to leave.

Officer Mau's testified that Officer Yezo informed defendant that defendant would be arrested if he returned to the property. While this testimony could give rise to the reasonable inference that defendant's presence on the property was forbidden, the testimony was only admitted to show the course of police conduct and specifically not admitted to prove the truth of the matter asserted. As such, it cannot be considered as substantive evidence sufficient to prove an element of the State's case.

Defendant noted he lived at the subject premises with his

girlfriend and children prior to and at the time of his arrest. Following an argument, the police were called and they asked him to leave. He left the apartment and went to sleep off the affects of alcohol in his van. It is not even clear from the record that defendant was made to leave "the premises" as testimony indicated the van was parked in a parking lot. Whether the lot was on the Burnham site or not is unclear.

While inventorying his wallet, the police found his visitor's pass at the time of the arrest. Apartment manager Danny Davis verified the legitimacy of the pass and indicated it was issued June 9, 2008 and expired July 10, 2009. Neither Danny Davis nor anyone else from Burnham Management ever told defendant he should not return to the property. The last question asked of Mr. Davis queried:

> "Q. And to the best of your knowledge, is the pass I showed you valid?
>
> A. Yes."

We hold the evidence adduced at trial is insufficient, even when viewed in the light most favorable to the prosecution, to show beyond a reasonable doubt that defendant received notice that his entry on the property was forbidden. The evidence indicates the police told defendant to leave Ramos's apartment

following a domestic dispute. There is no evidence in the record, however, that proves beyond a reasonable doubt that defendant received notice that his entry on the property was forbidden. Of course, the State is entitled to any reasonable inferences from the evidence. *Bush*, 214 Ill. 2d at 326.

In the case before us, defendant, while not on the lease, lived in the apartment with his girlfriend and their children. When police were called to the apartment over a domestic dispute, defendant was either asked or told to leave. The police, acting as agents of the owner at the time, had the authority to ask for defendant's visitor's pass and to revoke it. They did not. We find it is not reasonable to infer that telling or asking defendant to leave while he and his girlfriend were arguing was equivalent to a revocation of his pass meaning he was forever forbidden from returning. Based on the evidence, we find that the owner's agents (the police) simply conveyed the notice to leave until things "cooled down." The fact that defendant later misjudged his girlfriend's temperature did not convert the earlier instruction to leave into a revocation of his pass to enter the apartment in which he was living. Defendant had a pass, it had not been revoked and, under the facts of this case, we find that defendant's conviction cannot stand. As such, we

reverse defendant's conviction for criminal trespass to real property. Having reversed defendant's conviction, we need not address additional issues he raises in this appeal.

CONCLUSION

For the foregoing reasons, the order of the circuit court of Will County is reversed.

Reversed.