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2011 Il App (3d) 090338-U

Order filed October 5, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of the 10th Judicial Circuit,
	)	Peoria County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-09-0338
v.	)	Circuit No. 08-CF-888
	)	
TY TA, a/k/a TA TY,	)	Honorable
	)	James E. Shadid,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE LYTTON delivered the judgment of the court.  
Justice Schmidt concurred in the judgment.  
Justice McDade specially concurred.

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**ORDER**

- ¶ 1     *Held:*     The State's evidence proved the defendant guilty of residential burglary beyond a reasonable doubt because it showed that the defendant broke the victim's window, accessed the victim's apartment, and removed food from the victim's refrigerator, all without permission from the victim to do so.
- ¶ 2     The court convicted the defendant, Ty Ta, a/k/a Ta Ty, of residential burglary (720 ILCS 5/19-3 (West 2008)), and sentenced him to a 7½-year term of imprisonment. The defendant appeals, contending that the State's evidence did not prove his guilt beyond a reasonable doubt,

as it did not show he entered the victim's apartment or that he did so with the intent to commit a theft. We affirm.

¶ 3

### FACTS

¶ 4 On July 23, 2008, the State charged the defendant with residential burglary, alleging that the defendant entered the dwelling of Alaa Rawaisi with the intent to commit a theft. The charges stemmed from an incident on July 22, 2008, where the defendant broke the bottom half of a kitchen window of Rawaisi's apartment at 1219 West Main Street (the subject residence) in Peoria, Illinois, and removed a steak from Rawaisi's refrigerator, without Rawaisi's permission to do so.

¶ 5 The record indicates that Rawaisi's residence was a second floor apartment, and that commercial property comprised the first floor of the building. The record further shows that a staircase went from the ground floor to the subject residence, and that a person could climb from the staircase onto portions of the roof that covered the first floor and a porch. Regarding the broken window, the record shows that if a person stood on the roof of the first floor, the person could stand directly in front of the window. The record further indicates that the window, which started where the roof of the first floor ended, was approximately four feet high.

¶ 6 The defendant's bench trial began on January 22, 2009. Peoria police officer Brock Lavin testified that on July 22, 2008, he was dispatched to the subject residence around 6 p.m. When Lavin arrived there, he found the defendant, who had blood on his hand, sitting on the stairs leading up to the apartment. Rawaisi was also present, and Rawaisi told Lavin that the defendant had burglarized his residence and that he was missing a steak from his refrigerator.

¶ 7 Lavin observed that the kitchen window of the apartment had been broken, and that there

were "blood droplets inside the kitchen where the glass had come in from the window on the floor." According to Lavin, there was blood on the stairs, roof, broken glass, and window sill. However, Lavin did not find any other blood inside Rawaisi's apartment, nor did he find a trail of blood going down the stairs and into the alley behind the apartment or to the street. He also did not find the defendant in possession of a steak. According to Lavin, the distance between the broken window and the refrigerator was about 12 inches.

¶ 8 Peoria police officer Scott Bowers testified that he arrived at the subject residence around 6:15 p.m. on the evening of the incident. According to Bowers, he observed that the glass of Rawaisi's kitchen window was broken, and that there was blood on the window, window frame, roof, between the window and stairs, and on the defendant's hands, but not on or in Rawaisi's refrigerator. The defendant stipulated that the blood found at the scene was his blood.

¶ 9 Rawaisi testified through an Arabic interpreter that on July 22, 2008, he left his apartment around 3 p.m. Prior to Rawaisi's departure, he stated that he "closed and sealed up" the subject residence, that his kitchen window was intact, and that his steak was in his refrigerator. Around 4 or 5 p.m., a neighbor telephoned Rawaisi and informed him that someone had broken into his apartment. Rawaisi returned home and saw the defendant on the roof of the first floor building. Rawaisi noticed that his kitchen window was broken, and asked the defendant if he had broken it. The defendant answered in the affirmative, but he would not tell Rawaisi why he had broken his kitchen window. Once inside his apartment, Rawaisi discovered glass on his kitchen floor and that a Pepsi and a three-pound frozen steak were missing from his refrigerator. Rawaisi, however, did not see the defendant in possession of these items once he arrived on the scene. According to Rawaisi, he did not give the defendant permission to enter

his apartment or remove food from his refrigerator.

¶ 10 The defendant testified through a Vietnamese interpreter that he occasionally slept beneath Rawaisi's outside staircase, but stated that he was around the subject residence on the day of incident because he was playing with some of the guys from the neighborhood. The defendant admitted that he broke Rawaisi's window. According to the defendant, he had eaten a piece of beef, and he had a bone left over, so he threw the bone and it broke Rawaisi's window. The defendant, however, denied taking anything from Rawaisi's apartment. The defendant also acknowledged that he had two prior convictions for retail theft, and one prior conviction for theft by deception.

¶ 11 The court found the defendant guilty of residential burglary. The court specifically stated that after weighing the credibility of the witnesses and assessing the evidence, the State met their burden of proof. The court noted that considering "the way [Rawaisi's] window was broken," that a steak was taken from Rawaisi's apartment, the drops of blood, the defendant's testimony that the window was broken in a different manner, and his prior theft convictions, the evidence weighed in favor of the State and sufficiently proved the defendant's guilt of the instant offense beyond a reasonable doubt. The court sentenced the defendant to a 7½-year term of imprisonment. The defendant appealed.

¶ 12 ANALYSIS

¶ 13 On appeal, the defendant contends that the State did not prove him guilty beyond a reasonable doubt of residential burglary because the State's evidence did not sufficiently show that he entered Rawaisi's apartment or that he did so with the intent to commit a theft.

¶ 14 When reviewing a challenge to the sufficiency of the evidence, a reviewing court must

determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237 (1985). "Under this standard, the reviewing court does not retry the defendant, and the trier of fact remains responsible for making determinations regarding the credibility of witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence." *People v. Ross*, 229 Ill. 2d 255, 272 (2008). A conviction will be reversed when there is a reasonable doubt as to the defendant's guilt because the evidence is so unreasonable, improbable, or unsatisfactory. *Ross*, 229 Ill. 2d 255.

¶ 15 To sustain a charge of residential burglary, the State must prove that a defendant "knowingly and without authority enter[ed] or knowingly and without authority remain[ed] within the dwelling place of another, or any part thereof, with the intent to commit therein a felony or theft." 720 ILCS 5/19-3(a) (West 2008).

¶ 16 Intent may be inferred from the surrounding circumstances and proved by circumstantial evidence. *People v. Maggette*, 195 Ill. 2d 336 (2001). For example, a trier of fact may infer a defendant's intent to commit a residential burglary from evidence that the offender unlawfully entered a building containing property subject of a theft. *People v. Moreira*, 378 Ill. App. 3d 120 (2007). The inference is based on " 'human experience which justifies the assumption that the unlawful entry was not purposeless, and, in the absence of other proof, indicates theft as the most likely purpose.' " *Moreira*, 378 Ill. App. 3d at 129, quoting *People v. Rossi*, 112 Ill. App. 2d 208, 212 (1969).

¶ 17 In this case, the evidence was sufficient to prove beyond a reasonable doubt that the defendant entered Rawaisi's residence with the intent to commit a theft. When viewed in the

light most favorable to the State, the evidence indicates that the defendant broke Rawaisi's kitchen window from the outside, as Rawaisi found glass on his kitchen floor when he returned to investigate the instant offense. Lavin and Bowers found the defendant's blood on and around the window, at the scene, and on the defendant's hands. The blood evidence supported the inference that the defendant placed one or both hands on or through Rawaisi's broken window either to break the glass, access the inside of the subject residence, or both. Given Rawaisi's testimony that a steak was missing when he returned to investigate the burglary, the most logical conclusion was that the defendant reached the 12 inches from the window to the refrigerator and removed the steak. The defendant also testified that he had eaten beef that day, the very object missing from the subject residence. Thus, based on this evidence, the trial court, as the trier of fact, could have reasonably concluded that the defendant had the intent to commit a theft and subsequently committed a theft by accessing Rawaisi's apartment and taking a steak.

¶ 18 Although the defendant testified that he accidentally broke the window and that did not take anything from Rawaisi's apartment, the trial court rejected this testimony. This court will not reweigh the evidence or reassess the credibility of the witnesses.

¶ 19 Our review of the record does not indicate that the State's evidence was so unreasonable, improbable, or unsatisfactory that it created a reasonable doubt of the defendant's guilt. Therefore, we conclude that the State sufficiently proved the defendant guilty beyond a reasonable doubt of residential burglary. 720 ILCS 5/19-3 (West 2008).

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court of Peoria County.

¶ 22 Affirmed.

¶ 23 JUSTICE McDADE, specially concurring:

¶ 24 Defendant, Ty Ta, has challenged his conviction for residential burglary alleging insufficient evidence to show either that he actually entered the apartment of Alaa Rawaisi or that he had any intent to steal from him.

¶ 25 Alaa Rawaisi left his Peoria apartment at 3:00 p.m. at which time he asserted – and the trial court found him credible – that there was a three-pound frozen steak in his freezer.

According to Rawaisi, he was gone between one and two hours, returning home between 4:00 and 5:00 p.m. after receiving a call telling him his window was broken. He found the defendant Ty Ta on the roof of the building outside Rawaisi's window, his left hand was cut and both hands were bloody, and Rawaisi's window was broken. Rawaisi asked the defendant if he had broken his window and was told that he had when he accidentally hit the window while playing on the roof. Defendant then began to clean up the glass. Rawaisi had a neighbor call the police and when he, at the direction of police, checked for missing items, he reported that the steak and a soft drink were gone.

¶ 26 Rawaisi told the police at the scene and later testified that he did not see who broke his window, who took the steak and drink from the refrigerator, and he did not see either of the items in defendant's possession. Thus, it appears he did not actually observe anything that was inconsistent with the defendant's account of *how* the window was broken and his credibility is irrelevant in that regard.

¶ 27 At trial, in addition to Rawaisi's testimony, the evidence presented to the jury indicated that one of defendant's hands was cut and both were bloody. The cuts were such that blood had

dripped on the windowsill, the roof around the window, between the window and the stairs, and on the top step of the stairway. There was no blood trail going down the stairs. The only blood inside the kitchen was, according to the officer's testimony, "where the glass had come in from the window on the floor." I take that to mean that the blood was on the broken glass that was on the kitchen floor. This reading is supported by clear additional testimony that there was no blood between the window and the refrigerator; no blood anywhere on the refrigerator or the freezer; and, indeed, no blood anywhere in the apartment other than on the broken glass. Although the State opines that defendant reached through the window, opened the refrigerator/freezer to steal the steak and the refrigerator to steal the drink, there is no evidence of blood on the handles of the appliance or of cuts on his arms.

¶ 28 The only thing that lends any weight to the charge of residential burglary is the fact that the frozen steak and drink reported by Rawaisi to have been in his refrigerator were no longer there. Although defendant was still bloody and at the scene, the missing items were not found in his possession or elsewhere. The State opines that defendant actually ate the steak. The State's scenario would require that the defendant either somehow ate the steak frozen or left the scene, thawed and cooked the steak, all the while refraining from washing his hands or treating his injuries, and returned – still bloody – to the scene of his crime to wait there for his victim to return home and catch him.

¶ 29 Based on the evidence set out above, one can certainly speculate that defendant broke into Rawaisi's apartment and stole the steak and Pepsi, but, in my opinion, the State's evidence does not – either directly or by reasonable inference from proven facts – prove beyond a reasonable doubt that defendant entered the apartment, entered with an intent to steal, or entered

and did, in fact, steal. For these reasons, I would have found defendant not guilty had I been the trial judge.

¶ 30 We are, however, the appellate court and restrained by the very restrictive standard of review set out by the supreme court in *People v. Collins*, 106 Ill. 2d 237 (1985), and faithfully reiterated ever since. Viewing the evidence, not as it was presented at trial, but in the light most favorable to the State as *Collins* requires, I cannot say that *no* reasonable person could reach the same conclusion as that reached by the trial court. I, therefore, concur in the judgment.