2011 IL App (5th) 100623-U

NO. 5-10-0623

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 09-CM-4949
	)	
GEORGE A. BOSTON,	)	Honorable
	)	Kyle Napp,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE SPOMER delivered the judgment of the court.
Justices Donovan and Wexstten concurred in the judgment.

O R D E R

¶ 1 *Held*: Trial court did not err in finding the defendant guilty of criminal housing management, nor in sentencing the defendant to supervision and ordering restitution in the amount of $321.

¶ 2 The defendant, George A. Boston, appeals his conviction, following a bench trial in the circuit court of Madison County, of the offense of criminal housing management. For the reasons that follow, we affirm.

¶ 3 FACTS

¶ 4 The facts necessary to our disposition of this appeal are adduced from the common law record and the report of proceedings of the defendant's bench trial, and are as follows. On December 10, 2009, Ashley Waskom, her husband, and their two young children, all of whom were tenants leasing an apartment in a building owned by the defendant, awakened to find that their furnace was not functioning properly and that the temperature in the apartment was 51 degrees. Waskom testified that her husband reported the problem to the

defendant that morning and that on the evening of December 10, 2009, the landlord told her family "that it was going to be a week or two" before the furnace was fixed. She testified that the defendant brought the family a space heater and offered the use of additional space heaters. Waskom accepted one space heater but declined the others, telling the defendant she did not believe it was safe to heat the entire two-story apartment with space heaters. Eventually, the family used the space heater provided by the defendant, their own space heaters, and the apartment's stove to heat the home. During the five days when there was no functioning heating system, the outside temperature, Waskom testified, was "up and down but definitely below freezing." Two or three days after the furnace stopped working, the Waskoms' three-year-old daughter developed pneumonia, and a day or two later, the Waskoms' eight-month-old baby developed an infection.

¶ 5 On December 11, 2009, the defendant sent the Waskoms a certified letter. Waskom testified that she had previously reported to the defendant that the family's mailbox was broken but that he had not repaired it. The letter, which was not received by the Waskoms until December 17, 2009, informed them that the defendant believed parts for the furnace would be difficult to find and that he was "in the process of locating" baseboard heaters to replace the furnace. Waskom testified that because there were children living in the apartment, she called Scott Lawson, a community service officer employed by the city of Troy, and asked for help. Lawson testified that he received the family's complaint on December 14, 2009, and inspected the apartment the following day. His inspection confirmed that the furnace was inoperable and that the apartment was being heated by space heaters and a stove, in violation of city regulations. When Lawson attempted to turn the furnace on, smoke gathered in the room housing the furnace, a situation Lawson termed a "power hazard." Lawson also confirmed that the apartment had no working smoke detectors or carbon monoxide detector, which raised serious safety concerns because the family was

"heating with portable space heaters, which aren't generating enough heat that they're using their stove, creating carbon monoxide, which makes it even worse, because they have kids sleeping in there, so they're doing everything they can to heat with three or four different portable heaters and the oven with no working smoke detectors."

¶ 6 Following the inspection, the city of Troy sent a letter to the defendant, demanding that by 2 p.m. the following day, the defendant either have the furnace fixed or have a reputable contractor contact the city with an acceptable time frame in which to have it fixed and that he have working smoke detectors and a working carbon monoxide detector in place by that deadline. Lawson testified that the letter was hand-delivered to the defendant by Troy police officers, because when, in the past, city officials have tried to discuss rental property problems with the defendant, the defendant becomes "irate" and "won't reason with us." The defendant did not respond to the letter, and after the deadline passed, the defendant was cited for criminal housing management. In the meantime, the Waskoms had hired someone to fix the furnace, at a cost of $321.

¶ 7 At the conclusion of the bench trial, at which the defendant represented himself, the defendant was found guilty of the offense, was placed on court supervision for one year, and was ordered to pay restitution in the amount of the $321 it had cost to fix the furnace. The defendant filed a posttrial motion, which was denied in a written order, and this timely appeal followed. Additional facts will be provided as necessary throughout the remainder of this order.

¶ 8 ANALYSIS

¶ 9 On appeal, the defendant first argues he was not found guilty beyond a reasonable doubt. Specifically, he claims that the State did not prove beyond a reasonable doubt that the defendant "recklessly" permitted the apartment to degenerate to the extent that it became a danger to the health or safety of the Waskoms, as required by the statute delineating the

elements of the offense of criminal housing management. See 720 ILCS 5/12-5.1 (West 2010). The defendant claims that he acted as any reasonable landlord would have, by offering the use of portable space heaters until he could replace the furnace with baseboard heaters.

¶ 10 We begin by noting our standard of review and the law applicable to the offense of which the defendant was convicted. Where, as here, a defendant contends he or she was not proven guilty beyond a reasonable doubt, this court asks "whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt when viewing the evidence in the light most favorable to the prosecution." *People v. Swartwout*, 311 Ill. App. 3d 250, 259 (2000). A defendant commits the offense of criminal housing management when the State proves that the defendant "consciously disregarded a substantial and unjustified risk that the physical condition of [the defendant's] property endangered the healthy or safety of any person." *Swartwout*, 311 Ill. App. 3d at 261. In the case at bar, we agree with the State that the evidence, viewed in the light most favorable to the prosecution, amply supports a finding of guilty of the offense charged.

¶ 11 The apartment owned by the defendant and leased to the Waskoms was inadequately heated for five consecutive days and nights, during December, at a time when the unrebutted testimony of record was that the outside temperature was "up and down but definitely below freezing." Moreover, the apartment contained no working smoke or carbon monoxide detectors during that time, and the little heat that was provided came from space heaters and a stove, in contravention of city regulations. The failure of the landlord to immediately call a competent and qualified contractor to assess and address the problem with the furnace was patently objectively unreasonable, particularly in light of the fact that once the Waskoms resorted to self-help and called a contractor themselves, the furnace was quickly and inexpensively restored to working order, and in light of the fact that both of the Waskom

children became ill while awaiting action from the malingering defendant. The defendant did not behave as any reasonable landlord would have behaved, and there was sufficient evidence before the court to find the defendant guilty of criminal housing management.

¶ 12 The defendant next contends his "right to due process" was violated because the trial judge made a finding of fact that the space heaters used by the Waskoms were "not to code" and were "dangerous," when there was no direct testimony that the heaters violated the code or were dangerous. The defendant also contends no evidence was presented from which the trial judge could have concluded that the lack of adequate heating caused the illnesses of the Waskom children. As the State aptly notes, because the defendant never raised these issues before the trial court, he has forfeited consideration of the issues on appeal. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (to preserve error, one must object at trial and must raise issue in posttrial motion). Moreover, although the waiver rule may be relaxed when a party has argued for plain-error review, in this case, appellate counsel for the defendant failed, in his opening brief, to argue for such a review, and thus the issues have again been waived. See Ill. S. Ct. R. 341(h)(7) (eff. Mar. 16, 2007) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing); *People v. Nieves*, 192 Ill. 2d 487, 503 (2000) (failure to adequately argue plain error results in waiver, even in death penalty case).

¶ 13 The defendant next contends the citation issued in this case referred to a nonexistent section of the statute in question and that as a result, "the defendant was limited in his ability to prepare a defense because he could not review the statutory language, containing the elements of the offense." The defendant's claim is rebutted by the record and is utterly without merit. Although it is true that the written complaint filed against the defendant cited "720 ILCS 5/12-5.7" instead of the proper section, "720 ILCS 5/12-5.1," it is also true that

the State moved to correct the scrivener's error prior to trial, at which time the trial judge read the complaint out loud to the defendant, who indicated that he understood the charges against him. She next read out loud to the defendant the entire text of section 12-5.1, including the name of the charge against the defendant. She explained that the crime is a Class A misdemeanor, that a subsequent offense may be charged as a felony, and the defendant, when asked, confirmed that he understood what he had just been told. When subsequently asked if he had any questions, he stated that he did not. There was no error.

¶ 14 The defendant's final contention on appeal is that he should not have been allowed to represent himself. As the State points out, the defendant does not claim that his waiver of counsel was involuntary, nor does he claim it was made in ignorance of his constitutional right to counsel. Instead, the defendant claims simply that because he was 88 years old at the time of trial, and was hard of hearing, the trial court should have overruled his request to represent himself. We note that because the defendant had already told the trial court that he did not qualify for the public defender, the logical conclusion of the defendant's argument is that the defendant should have been forced, against the wishes he expressed in open court, to hire counsel to defend him from the misdemeanor charges he faced. We do not agree. As the trial judge pointed out in her order denying this point in the defendant's posttrial motion, at trial the defendant "did not appear to suffer from any physical or mental disabilities that prevented him from representing himself or receiving a fair trial." Moreover, she expressly found that during the trial the defendant "asked appropriate [questions] on cross-examination, called witnesses to testify on his behalf, used exhibits during trial, recalled witnesses and presented a closing argument." Microphones were available, and used, throughout the trial, and the defendant "did not indicate he was having trouble hearing the court proceedings," with the exception of one time when he stated that he had not heard testimony. There is no factual support in the record for the defendant's claim that because he was "hard of hearing"

he should have been forced to hire an attorney to represent him.

¶ 15 CONCLUSION

¶ 16 For the foregoing reasons, we affirm the defendant's conviction and sentence.

¶ 17 Affirmed.