2012 IL App (1st) 103657-U

SECOND DIVISION
July 17, 2012

No. 1-10-3657

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 10 CR 7158
	)	
CARLOS DeJESUS,	)	Honorable
	)	Catherine M. Haberkorn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

O R D E R

¶ 1 *Held*: (1) Evidence was sufficient to support defendant's conviction for residential burglary, and, (2) $200 DNA analysis fee must be vacated where defendant had previously submitted a DNA sample following a prior conviction.

¶ 2 Following a bench trial, defendant Carlos DeJesus was convicted of residential burglary and sentenced to nine years in prison. On appeal, defendant challenges the sufficiency of the evidence, asserting that the State failed to prove that defendant's blood had been left at the scene of the crime at the time of the burglary and not during an earlier visit by defendant to the residence. Defendant also correctly contends that the trial court improperly imposed a $200 DNA

analysis fee. We vacate the fee and affirm in all other respects.

¶ 3 Anita Rivera testified that she left the residence she shared with her mother located at 1644 North Mango around 4:45 a.m. on July 21, 2008 to go to work. When she returned home around 4 p.m., she noticed that a back door that led to the residence's basement was "busted open," with glass on the floor. A locked iron gate which stood between the outside door and the inside basement door had been bent upwards between 18 and 24 inches, and the inside basement door was "wide open."

¶ 4 Rivera went immediately to her mother's room and found that $200 had been taken from a night stand where her mother typically kept money. Nothing else was in disarray in the room. Rivera then went upstairs to her own room where, in addition to seeing blood, she discovered that a laptop worth $700 had been taken from the place she kept it in her closet, along with gold jewelry worth between $2,000 and $3,000 that she kept in a shoe box in her night stand. The money, laptop and gold jewelry had all been present in the residence when Rivera departed for work that morning. Rivera continued to inspect the remainder of the residence and discovered nothing else to be missing or out of place. Rivera called the police, who conducted an investigation and collected evidence, including samples of blood.

¶ 5 Rivera testified that she allowed Reyes and her children to live at the residence because Rivera's mother felt sorry for her. In March of 2008, however, Rivera had asked that Reyes no longer live at the residence because Rivera discovered that Reyes was dating defendant. Rivera knew from a past discussion with defendant that he had "deep records" of burglary, and she did not want any problems with Reyes or defendant.

¶ 6 Rivera had known defendant from the neighborhood for approximately 15 to 18 years, defendant had been in the same gang as her brother, and she knew him socially during a time that he was trying to date her cousin. She had never given defendant permission to be in her residence, nor had he ever been to the residence to her knowledge. She denied having a romantic

relationship with defendant, but admitted to embracing defendant in pictures taken either during Christmas of 2007 or New Year's Day of 2008. She also admitted to sending two emails to Maria Reyes, later identified as defendant's girlfriend, dated January 28, 2009, and January 29, 2009, respectively. In the latter email, Rivera suggested that though defendant "didn't do shit to me, I'm not disputing that," she thought it was better if she ceased communicating with Reyes and defendant. Rivera did not know at the time she sent the emails that the blood left on the door and collected by the police had been matched to defendant's DNA.

¶ 7 Police evidence technician Eileen Donohoe testified that she processed the crime scene at the Rivera residence on July 21, 2008. There, she found blood on a door leading to the basement. She discovered no blood on the second floor of the residence and also found no fingerprints in the residence. She admitted that there was no way to "date" the blood as to when it had been deposited.

¶ 8 Detective Derek Johnson testified that he learned in May of 2009 that the blood sample collected at the scene of the burglary had been matched through DNA analysis to defendant in the Combined DNA Index System (CODIS) database. On April 1, 2010, Johnson located defendant, arrested him and read him his *Miranda* rights. Defendant then told Johnson that he had never been to the Rivera residence and he could not understand how his blood was found at the scene.

¶ 9 The defense called two witnesses. Maria Reyes stated that she lived with Anita Rivera and Rivera's mother in the residence on Mango until January or February of 2008, but denied ever having had a romantic relationship with Anita Rivera. She admitted that she knew where Rivera's mother kept her "special belongings" and where Rivera kept her own belongings within the residence. She stated that she began dating defendant while she lived with Rivera, and that defendant had been to the residence with her about four or five times during that period. When she moved out of the residence in January or February of 2008, defendant helped her carry a few boxes out through the basement entrance, and she returned the keys to Rivera around that time.

Reyes then moved in with defendant and was living with him at the time of the burglary.

¶ 10 Defendant testified that he had been to the Rivera residence "numerous times" before he met Maria Reyes, with whom he lived at the time of the burglary. He denied stating at the time of his arrest both that he had never been to the Rivera residence, and that he did not know how his blood was found at the residence.

¶ 11 The trial court found that Anita Rivera was not biased in her testimony, regardless of any past personal relationships she and defendant may have shared, because she did not immediately identify defendant as a suspect. Instead, the court noted, she did not identify him at all until the results of the DNA test of the blood confirmed that the blood belonged to defendant. The court found that defendant had contradicted himself as to whether he had been to the residence before the burglary, defendant's blood was found at the entry point into the residence, and defendant had knowledge of where the specific items taken during the burglary were located. The court found defendant guilty of residential burglary and sentenced him to nine years in prison.

¶ 12 In denying defendant's motion for a new trial, the court noted that it did not solely rely on the DNA evidence, but that the State's witnesses testified "clearly and convincingly."

¶ 13 On appeal, defendant first contends that the evidence did not prove him guilty of residential burglary beyond a reasonable doubt because the State's case depended entirely on the discovery of his blood at the scene of the crime, and defendant presented corroborated testimony that he had been to the scene several times before the burglary. Defendant thus contends that the State could not establish sufficient temporal proximity of his blood to the crime necessary to meet its burden of proof.

¶ 14 When a defendant challenges the sufficiency of evidence, the reviewing court must determine whether, 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. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). The reviewing court will not set aside a finding of guilt unless the

evidence is so unreasonable, improbable or unsatisfactory as to create a reasonable doubt. *Id*. A reviewing court must allow all reasonable inferences from the evidence in favor of the prosecution. *People v. Bush*, 214 Ill.2d 318, 326 (2005). The trier of fact bears the responsibility to assess witnesses' credibility, weigh their testimony, and resolve conflicts in the evidence. *People v. Sutherland*, 223 Ill. 2d 197, 242 (2006).

¶ 15 A person commits the offense of residential burglary when he knowingly and without authority enters the dwelling place of another with the intent to commit a felony or theft. 720 ILCS 5/19-3(a) (West 2008). The crime of burglary often requires its elements to be proven with circumstantial evidence. *People v. Richardson*, 104 Ill. 2d. 8, 13 (1984). Where a conviction is based solely upon circumstantial fingerprint evidence, the evidence must satisfy both physical and temporal proximity criteria: the fingerprints must have been found in the immediate vicinity of the crime and under such circumstances that they could have been made only at the time the crime occurred. *People v. Span*, 2011 IL App (1st) 083037; *People v. Zizzo*, 301 Ill. App. 3d 481, 490 (1998).

¶ 16 Here, testimony of Rivera established that, when she returned home after her work day, glass from the back door of her residence had been broken and it appeared that access had been forcibly gained into the residence. Further inspection of the residence revealed that property was missing which had been in the residence when she left earlier in the day with her mother. Defendant's girlfriend, a former roommate of Rivera's, was familiar specifically with where both women kept their respective belongings, lived with defendant at the time of the burglary and had relinquished her keys to the residence months earlier. The court found that defendant had knowledge of the specific location of the stolen property within the Rivera residence. The same day of the burglary, a blood sample later found to match defendant's DNA, and similar in nature to the fingerprints in *Zizzo* and *Span*, was collected by a police evidence technician from the point of entry into the residence. Though defendant and defendant's girlfriend both claimed he

had been to the residence several times previously, including once to move defendant's girlfriend out of the residence months before the burglary, Rivera stated that defendant had never been to the residence, nor did he have permission to be on the premises. Also, Detective Johnson testified that after defendant was arrested, defendant denied ever having been to the residence and he had wondered how his blood had been found at that location. The court determined that the State's witnesses in this respect gave "clear and convincing" testimony, and thus found that the first time defendant was on the property was the day of the burglary. Thus, as in both *Zizzo* and *Span*, we find sufficient circumstantial evidence to sustain defendant's conviction.

¶ 17 This case is distinguishable from *People v. Gomez*, 215 Ill. App. 3d 208 (1991). In *Gomez*, we found that a fingerprint bore insufficient indicia of physical and temporal proximity when the defendant's fingerprint was found inside the victim's kitchen, an area were the defendant and 22 other tenants would regularly wait to pay rent, and the circumstantial evidence offered by the State had minimum probative value. *Gomez*, 215 Ill. App. 3d at 216-18.

¶ 18 Here, unlike *Gomez*, there was conflicting testimony as to whether or not defendant had previously visited the crime scene *at all* before the date of the burglary, and the trial court resolved this conflict in favor of the State's witnesses. Moreover, defendant's blood was collected by the police the same day of the burglary at the same site where entry was gained to the residence and a window had been broken. Thus, although no direct evidence was offered as to when defendant's blood was deposited, the supplemental circumstantial evidence offered was far stronger than that in *Gomez*.

¶ 19 Defendant next argues, and the State correctly concedes, that we must vacate the $200 DNA analysis fee because defendant had previously submitted a DNA sample for analysis as a result of a prior conviction. *People v. Marshall*, 242 Ill. 2d 285 (2011).

¶ 20 For the foregoing reasons, we vacate the $200 DNA fee, and affirm the judgment in all other respects.

¶ 21 Affirmed in part; vacated in part.