

2012 IL App (1st) 110577-U

**SIXTH DIVISION**  
September 28, 2012

No. 1-11-0577

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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<i>In re</i> Hamidulah T., a minor	)	Appeal from the
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
	)	Cook County.
Petitioner-Appellee,	)	
	)	
v.	)	No. 10 JD 1709
	)	
HAMIDULAH T.,	)	The Honorable
	)	Terrence V. Sharkey,
Respondent-Appellant).	)	Judge Presiding.

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JUSTICE GARCIA delivered the judgment of the court.  
Presiding Justice Lampkin and Justice Hall concurred in the judgment.

**ORDER**

¶ 1 *Held:* Evidence was sufficient to establish the minor respondent was guilty of residential burglary beyond a reasonable doubt where the trial court was entitled to infer respondent's guilt from his unexplained possession of proceeds from a recent burglary.

¶ 2 Following a bench trial, the trial court found respondent, Hamidulah T., guilty of residential burglary and adjudicated him a delinquent. The court extended respondent's electric monitoring for two months and then sentenced him to a probation term of 4 years and 10 months. On appeal, respondent asserts the trial court erred in finding him guilty where no direct evidence of his entry into the burglarized premises was presented and the State failed to show that the televisions in respondent's possession were burglary proceeds. We affirm.

¶ 3 Respondent was charged in an amended petition for adjudication of wardship with residential burglary, burglary, and theft. Anthony Davis was also charged in a separate petition with the same offenses. The following evidence was received at the joint trial of respondent and Davis. At about 4:25 p.m. on April 1, 2010, Gregory Peck was in the alley between 45<sup>th</sup> Street and 45<sup>th</sup> Place in Chicago. Peck observed respondent and two other young men walking in the alley, carrying two flat-screen televisions and a black plastic bag. They were near 435 East 45<sup>th</sup> Place. Peck recognized the televisions as belonging to Allen Rogers, a tenant at 436 East 45<sup>th</sup> Place where Peck worked as the maintenance man. Rogers was out of town at that time and had left Peck in charge of watching his residence. Peck saw respondent place the televisions into a garbage can. Respondent and one of the other youths, Anthony Davis, pushed the can down the alley toward Peck to the rear of a four-flat building at 417 East 45<sup>th</sup> Street. When they saw Peck watching them, they ran. Respondent went up to the second floor of the 417 building; Davis and the third youth went to the front of the building. Peck phoned Allen Rogers and the police.

¶ 4 Police Officer Prieto and his partner responded to a call of burglary in progress at 436 East 45<sup>th</sup> Place and spoke with Peck, who told him the direction in which the youths had fled. Prieto told Peck to wait by the garbage can and went to an upper porch of the building at

417 East 45<sup>th</sup> Street. He apprehended respondent and subsequently learned that respondent lived in that building. Prieto brought respondent back to the alley where Peck identified respondent as one of the offenders. Prieto looked inside garbage cans next to the 417 building "and recovered two flat screen TVs." Prieto asked Peck whether those were the televisions and Peck said they were. Peck told Prieto the televisions were the property of Allen Rogers, the tenant of the third-floor apartment at 436 East 45<sup>th</sup> Place, who was then out of town.

¶ 5 Allen Rogers lived with his two sons and a nephew at 436 East 45<sup>th</sup> Place on April 1, 2010, but the four left their residence at about 1:00 or 1:30 p.m. that day and drove to Detroit, Michigan. Before leaving, Rogers made sure all the windows and doors were locked. He had known his neighbor, Gregory Peck, for 15 or 16 years. After Rogers arrived in Detroit, he received messages from Peck and Prieto that his apartment had been burglarized. He returned to his apartment to find that the front door had been pried open and the door jamb had been broken. He noticed that his two televisions and a video game console were missing. He testified, "The police had the televisions in their inventory room at the police station." However, he never saw the video game console again. He went to the police station the following day, April 2, but did not see and identify the televisions at that time because the police told him they needed the televisions for evidence. About a week or 10 days later, Rogers returned to the police station and the police released the televisions to him. "I took the paperwork with me with the serial numbers on them to match it to it because I still had all the paperwork, the boxes and everything."

¶ 6 After motions of respondent and Davis for findings in their favor were denied, both sides rested. The court found respondent guilty of theft, which the court classified as a misdemeanor because no evidence had been introduced as to the dollar value of the televisions.

The court also found respondent guilty of residential burglary after concluding that a nexus existed between respondent and the burglarized premises, based on respondent's possession of Rogers' property in close proximity in time and location to the burglary and Peck's identification of respondent. The court also found that, based on Rogers' testimony that the televisions held at the police station were released to him after he produced appropriate documentation, the State established beyond a reasonable doubt that the televisions were Rogers' property. The court merged the misdemeanor theft count into the residential burglary count. Respondent was committed to the Department of Juvenile Justice and was ordered to be kept on electronic monitoring at home for two months. At the end of the two-month period, respondent was returned to court on a bring-back order and the court imposed a probation term of 4 years 10 months.

¶ 7 Following the guilty finding, respondent's counsel filed a motion to reconsider, arguing, *inter alia*, that the evidence was insufficient to prove the televisions Peck saw in respondent's possession in the alley on April 1, 2010, were the same televisions Rogers picked up 10 days later from the police station. The motion was denied.

¶ 8 On appeal, respondent contends that the State's circumstantial evidence was insufficient to establish his guilt where no evidence linked him directly to the burglarized premises and the State failed to prove the televisions Peck saw in his possession in the alley were the same televisions stolen from Rogers' apartment.

¶ 9 When considering a challenge to the sufficiency of the evidence, generally we apply the traditional standard of reasonable doubt. *In re Jonathan C.B.*, 2011 IL 107750, ¶ 47. This standard applies in delinquency proceedings, requiring the State to prove the elements of the

charged substantive offense beyond a reasonable doubt. *Id.*; *People v. Austin M.*, 2012 IL 111194, ¶ 86. Under the reasonable doubt standard, we view the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v. Leonard*, 377 Ill. App. 3d 399, 403 (2007).

¶ 10 Respondent was found guilty of residential burglary. To obtain a conviction for that offense, the State was required to prove that respondent knowingly and without authority entered or remained in the dwelling place of another with intent to commit therein a felony or theft. 720 ILCS 5/19-3 (West 2010); *People v. Tatum*, 389 Ill. App. 3d 656, 661 (2009). Under certain circumstances, a factfinder can infer from a defendant's possession of recently stolen property taken in a burglary that the defendant is guilty of that burglary. *People v. Sanders*, 198 Ill. App. 3d 178, 183 (1990).

¶ 11 At issue here is whether the trial court erred in using the permissive inference that respondent's recent and unexplained possession of the burglary proceeds established his guilt of residential burglary beyond a reasonable doubt. A permissive inference or presumption is one where the factfinder is free to accept or reject the suggested presumption. *People v. Ferguson*, 204 Ill. App. 3d 146, 152 (1990). Where the permissive presumption based on recent and unexplained possession is the lone basis for a finding of guilt, the presumed fact must flow beyond a reasonable doubt from the proven, predicate fact. *People v. Greco*, 204 Ill. 2d 400, 408 (2003), citing *People v. Housby*, 84 Ill. 2d 415, 421 (1981). *Housby* ruled that a defendant's possession of recently stolen property is sufficient to support a burglary conviction if (1) there is a rational connection between the defendant's recent possession of stolen property and his

participation in the burglary, (2) the defendant's guilt of the burglary more likely than not flows from his recent, unexplained, and exclusive possession of the proceeds; and (3) there is corroborating evidence of the defendant's guilt. *Id.* at 424. Here, the evidence established all three prongs of the *Housby* analysis, and the court's inference as to respondent's guilt was proper.

¶ 12 Although no evidence was introduced showing the precise time of the crime, the burglary occurred no earlier than three hours, and perhaps just minutes, before Peck saw respondent with the televisions in close proximity to Rogers' residence. The first prong of the *Housby* test is met where respondent's possession of the television sets was proximate to both the time and place of the burglary. *People v. Gonzalez*, 292 Ill. App. 3d 280, 288-89 (1997).

¶ 13 Under the second prong of *Housby*, we find that respondent was in exclusive possession of the television sets. Joint possession with another--here, respondent's joint possession of the televisions with Davis--can be exclusive possession for the purpose of satisfying the second prong of *Housby*. *Gonzalez*, 292 Ill. App. 3d at 289. Given Peck's testimony that he observed respondent place the televisions in the garbage can and saw respondent and Davis push the garbage can up the alley, together with the proximity in time and place between the burglary and respondent's arrest, the court reasonably concluded that respondent's joint but exclusive possession of the burglary proceeds established that more likely than not he committed the burglary, as opposed to his being a mere subsequent possessor of the proceeds. *Id.*; *People v. Caban*, 251 Ill. App. 3d 1030, 1034 (1993).

¶ 14 Finally, the permissive inference was not the sole basis for finding respondent guilty where the State satisfied the third prong of *Housby* by presenting corroborating evidence that it was more likely than not respondent obtained possession of the televisions by burglary.

Respondent's flight when he saw Peck observing him "tends to show his consciousness of guilt [citation], supplying the necessary corroborative evidence under the third prong of *Housby*." *People v. Mallette*, 131 Ill. App. 3d 67, 72 (1985). The positive identification of an eyewitness who viewed the accused with possession of burglary proceeds within very close proximity of the burglarized premises was also corroborating evidence. *Gonzalez*, Ill. App. 3d at 289.

¶ 15 Respondent argues that *People v. Natal*, 368 Ill. App. 3d 262 (2006), supports his contention that the permissive inference is inapplicable under the facts here. We find *Natal* distinguishable. There, a police evidence technician testified for the defense that he recovered eight fingerprint lifts on items that the burglar handled in the residence, and the prints did not match the defendant's. In reversing the burglary conviction, we noted that the trial court had failed to discuss the three-pronged *Housby* analysis, there was no corroborating evidence of defendant's guilt, and the fingerprints on the items the burglar handled, which were not the defendant's, raised reasonable doubt that the defendant was the burglar. In the instant case, the trial court considered *Natal* and appropriately concluded it was distinguishable. The trial court here found that the *Housby* "three prongs have been met." Corroborative evidence also existed that respondent had participated in the burglary. The facts presented to the trial court were sufficient to permit, though not mandate, an inference that respondent gained possession of the televisions during the course of the residential burglary.

¶ 16 Respondent asserts, however, that the trial court erred in employing the inference flowing from his recent and unexplained possession of the two televisions because the State failed to prove that the televisions were actually those taken during the burglary. Peck testified that on April 1, 2010, he was asked to look after Rogers' apartment while Rogers was away.

Peck saw respondent in the alley in possession of two televisions he recognized as belonging to Rogers. Respondent contends that Peck's testimony, without more specificity, was insufficient to prove the televisions in respondent's possession belonged to Rogers. Respondent does not deny that the televisions returned to Rogers by the police were Rogers' property. He asserts, however, that the State failed to connect the televisions in his possession and to the televisions taken during the burglary. Respondent refers us to *People v. Munoz*, 101 Ill. App. 3d 447 (1981), where we reversed the defendant's theft conviction. There, after the complainant's apartment was burglarized, the complainant gave to police, and the police gave to the apartment building manager, a verbal description of a television and a photo of a stereo system taken two days earlier in the burglary. The manager told the police he saw those items in the defendant's apartment. A police officer made a warrantless, nonconsensual entry into the defendant's apartment where the officer saw the stolen television and stereo system. The complainant was summoned to the defendant's apartment where he identified the items as his. We reversed outright because the officer's entry could not be justified on the basis of exigent circumstances. *Id.* at 448. In its petition for rehearing, the State argued that there existed evidence untainted by the police illegal entry, which warranted a vacation of the conviction but with a remand for a new trial. We rejected the State's contention, holding "that defendant's conviction for theft can [not] be based solely on the building manager's identification." *Id.* at 450. We ruled that the manager's observation of the items in the defendant's apartment was insufficient to prove beyond a reasonable doubt that the items were the same as taken in the burglary because the items did not possess "any unique characteristics." *Id.* In this context we noted "that the building manager was [not] aware of the serial numbers of these items." *Id.* *Munoz* did not hold that "serial numbers"

were required to make a sufficient identification of stolen property. *Munoz* is inapposite to the issue raised before us in the instant case.

¶ 17 Here, admissible testimony established the connection between the burglary and the televisions in respondent's possession. Rogers testified that when he entered his apartment after the burglary, he "noticed two TVs were missing and a video game console was missing. \*\*\* The police had the televisions in their inventory room at the police station." The other testimony presented at trial and the normal and logical conclusions flowing from that testimony reinforced that connection. Peck testified that on April 1, 2010, he observed respondent and another youth in possession of two televisions that Peck recognized as belonging to Rogers. Peck summoned the police and told Officer Prieto the televisions in the garbage can were the same ones he had seen in respondent's possession. Prieto observed the televisions in the garbage can and testified that he "recovered" the televisions. About 7 to 10 days later, Rogers went to the police station with documents of ownership containing the television serial numbers, and the police released the televisions to him. In finding respondent guilty, the court noted that "it certainly would have been better had the State introduced an inventory slip indicating that the property was inventoried" with specific serial numbers that matched Rogers' receipts showing him to be the owner of flat screen televisions with those serial numbers. Nevertheless, the court concluded "beyond a reasonable doubt that these were [Rogers'] two TVs."

¶ 18 Respondent's contention that the televisions in his possession were not burglary proceeds, demands that we ignore Rogers' testimony and accept the possibility that two similar pairs of flat-screen televisions were taken into police custody: one pair that was in respondent's possession and recovered by Officer Prieto, and a second pair recovered from some unknown

source and later identified by Rogers as his property. We decline to join in respondent's speculative assertions. We conclude that any rational trier of fact could infer from the evidence that the televisions the police officer recovered in the alley were the same televisions that were taken during the burglary, that made their way to the police station inventory room and that were eventually released to Rogers. Proof beyond a reasonable doubt is not proof beyond any doubt. *People v. Ward*, 371 Ill. App. 3d 382, 414-15 (2007). While the chain of evidence of the televisions, from the burglarized apartment to respondent's hands in the alley to the police inventory room and back to Rogers, was partly circumstantial, each link in the chain of circumstances need not be proved beyond a reasonable doubt. See *In re Gregory G.*, 396 Ill. App. 3d 923, 929 (2009). "Rather, it is sufficient if all the circumstantial evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt." *Id.* The trial court, as the trier of fact, rejected the very claim respondent presents here, and its determination, though not conclusive, is entitled to great deference. *Ward*, 371 Ill. App. 3d at 415. A conviction will not be set aside on appeal unless the evidence is so improbable or unsatisfactory that reasonable doubt of the defendant's guilt remains. *People v. Lee*, 376 Ill. App. 3d 951, 955 (2007). As in *Lee*, we do not find this to be such a case.

¶ 19 We conclude that the facts presented to the trial court were sufficient to permit an inference that defendant acquired the televisions in his possession from his participation in the recent residential burglary. Accordingly, we affirm the judgment of the trial court.

¶ 20 Affirmed.