

2013 IL App (1st) 112025-U

SIXTH DIVISION
May 17, 2013

No. 1-11-2025

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,)	
)	
Plaintiff-Appellee,)	Appeal from the
)	Circuit Court of
)	Cook County.
v.)	
)	No. 10 CR 20693
KEITH WALKER,)	
)	The Honorable
Defendant-Appellant.)	James B. Linn,
)	Judge Presiding.
)	
)	

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Lampkin and Justice Reyes concurred in the judgment.

ORDER

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¶ 1 *Held:* Viewed in the light most favorable for the State, the evidence was not so improbable as to create a reasonable doubt as to defendant's criminal intent for burglary.

¶ 2 Following a bench trial, defendant Keith Walker was found guilty of burglary, and was sentenced to a 90-month prison term, with a recommendation for drug treatment. On appeal, defendant contends that his conviction should be reduced from burglary to criminal trespass because there was no evidence that he had the requisite criminal intent for burglary.

¶ 3 At trial, Guadalupe Orozco and Officer Miguel Cabrales testified for the State, and defendant testified on his own behalf.

¶ 4 The State's evidence established that Guadalupe Orozco was a custodian for the Chicago Public Schools. At approximately 9:30 a.m. on October 30, 2010, Orozco was instructed to go to the Crispus Attucks School building (hereinafter the building), located at 3813 South Dearborn Street in Chicago, because there had been a break-in. The school was closed, but the building, which was owned by the Chicago Public Schools, was used as a storage facility for, *e.g.*, furniture.

¶ 5 Orozco approached police officers at the building, one of whom told Orozco that someone had broken into the building. Orozco entered the building and found that someone had cut copper wires from the engineer's room. Orozco saw the bags of tools that had been used to cut the copper wires. Orozco had been in that room prior to the date of the incident but he did not remember when. On the previous occasion that Orozco was there, the wires were not cut. Orozco did not know defendant, and defendant did not have permission to enter the building and

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take anything. The wires were "on the building." Orozco testified, "He started cutting the wires * * * but he couldn't take them off." "[T]he wires were cut" and there was "a bag with tools on the bottom," but no wires had been taken. Orozco identified the bag and its contents in court and acknowledged that they were in substantially the same condition as when he had last seen them. The contents were a hand saw, a screwdriver, a blade, and pliers, all of which Orozco had seen on October 30.

¶ 6 The only people who had access to the building were employees of the Chicago Public Schools, namely, 14 custodians. To Orozco's knowledge, defendant was not an employee of the Chicago Public Schools.

¶ 7 Officer Miguel Cabrales drove around the building, looking for signs of breakage, such as windows or open doors. As Cabrales approached a closed door on the State Street side, it started to open, and a man whom Cabrales identified in court as defendant came out waving his arms and stating that he worked there and that everything was "okay." Cabrales was still in his vehicle, but got out as soon as defendant started to go out the door. As defendant waved and spoke, defendant held a small black plastic garbage bag, which he dropped and ran when Cabrales approached. Cabrales chased defendant, who jumped over a fence and ran eastbound, past a vacant lot, and into another building at 3858 Wabash. Cabrales did not follow defendant over the fence, but he could see through the fence that the "backup" he had called took defendant, in handcuffs, out of the doorway of the building on Wabash. Cabrales did not enter the building on Dearborn. The black garbage bag was empty.

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¶ 8 During cross-examination, Cabrales testified that he searched defendant, but did not find any bolt cutters, screwdrivers, or wire on defendant's person and did not see defendant with any burglary tools or burglary proceeds. Nor did Cabrales see defendant cut any wires, or manipulate any burglary tools. The only felonious act defendant committed that Cabrales saw was when defendant ran away from Cabrales. Cabrales did not see any signs of forcible entry into the building.

¶ 9 Defendant denied that he was in the building, that he forced any doors, that he attempted to take any wires, and that he used any burglary tools there and claimed instead that he was sitting behind a big garbage dumpster and was getting "high" when the police pulled up.

¶ 10 During cross-examination, defendant acknowledged that he was familiar with the building, spent a lot of time in that area, and knew that the building used to be a school. Defendant was "always in the park" or "always behind the dumpster," sitting and drinking wine. When the assistant State's Attorney asked defendant, "So you see what goes in and out of that building?", defendant testified, "No, not all the time. I don't see nobody." Defendant sat by the dumpster because "can't nobody see you." It was sort of a hiding spot. Defendant ran from the officer because defendant had a pipe in his hand that he had used to get high. Defendant dropped the pipe, probably in the grass somewhere, but defendant did not know where. The officer did not chase defendant. Defendant jumped over the fence, fell, and hit his head. A different officer apprehended defendant in the doorway. Defendant thought that the police were after him because he was high.

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¶ 11 During rebuttal, the State presented stipulated evidence of defendant's prior felony conviction for retail theft.

¶ 12 The trial court observed:

"I've heard the evidence. I find the officer that just testified to be credible and compelling, much more so than [defendant]. He says he was not even in the building. He was just running away because he was getting high with a pipe.

He was inside the building and tried to pull out some wire. There was a burglary alarm, the police responded. He saw them respond. He first tried to trick them into thinking he's working there, he was fine, he saw that wasn't working and he tried to run away, he hurt himself, had to be taken to the hospital and then processed."

¶ 13 On appeal, defendant contends that the conviction should be reduced from burglary to criminal trespass because there was insufficient evidence that he possessed the requisite felonious intent for burglary. Defendant argues that even if it was proved that he entered the building without permission, there was no evidence that he had been anywhere near the engineer's room, where the wires had been cut. Defendant argues further that the wires could have been cut prior to the date in question. Defendant maintains that he had no tools, wires, or proceeds in his possession when the police stopped him. He observes that 13 other individuals had access to the room and could have cut the wires "for any number of reasons." He further observes that the tools were located where they would be expected to be, namely, in the

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engineer's room, that there was no fingerprint evidence or other physical evidence linking him to the tools or to the room, and that he had no tools, wires, or stolen property at all in his possession when he was arrested. He suggests that he could have been in the building to use the bathroom or to have shelter from the weather, and that he fled to avoid being arrested for trespass.

¶ 14 A criminal conviction will not be reversed on appeal unless the evidence, viewed in the light most favorable for the State, was so improbable as to create a reasonable doubt of guilt. See *People v. Maggette*, 195 Ill. 2d 336, 353 (2001); *People v. Slim*, 127 Ill. 2d 302, 307 (1989). In a bench trial, the credibility of the witnesses, the weight of the evidence, and the resolution of any conflicts in the evidence, are matters for the trial court to decide. *Slim*, 127 Ill. 2d at 307. The reasonable doubt standard applies, whether the evidence is direct or circumstantial. *Maggette*, 195 Ill. 2d at 353. The question on appeal is whether, after viewing the evidence in the light most favorable for the State, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *Maggette*, 195 Ill. 2d at 353. When assessing evidence that can produce conflicting inferences, the fact finder is not required to look for all possible explanations consistent with innocence and elevate them to the level of reasonable doubt. *People v. Wheeler*, 226 Ill. 2d 92, 117 (2007); *People v. Digirolamo*, 179 Ill. 2d 24, 45 (1997); see also *People v. Slinkard*, 362 Ill. App. 3d 855, 858 (2006) (State's evidence need not exclude every possible doubt). It was the trial court's function as the trier of fact to evaluate the credibility of the witnesses and to resolve conflicts in the evidence. See *Slim*, 127 Ill. 2d at 307. A court of review must not retry the defendant. *People v. Cunningham*, 212 Ill. 2d 274, 279

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(2004).

¶ 15 The burglary statute requires that the entry be accompanied by the "intent to commit therein a felony or theft." 720 ILCS 5/19-1(a) (West 2010). The felonious intent, which the State must prove beyond a reasonable doubt, is the gist of the offense of burglary. *Maggette*, 195 Ill. 2d at 353. The defendant's intent may be inferred from his conduct and the surrounding circumstances (*Maggette*, 195 Ill. 2d at 354; *People v. Cunningham*, 265 Ill. App. 3d 3, 4 (1994)), including the time, place and manner of entry, his activities while on the premises, and any alternative explanations offered for his presence (*Maggette*, 195 Ill. 2d at 354; *People v. Ybarra*, 272 Ill. App. 3d 1008, 1011 (1995)). Intent usually is circumstantially proved. *Maggette*, 195 Ill. 2d at 354. Whether or not the defendant had the requisite intent for burglary is a question for the trier of fact (*Maggette*, 195 Ill. 2d at 354; *People v. Sehr*, 150 Ill. App. 3d 118, 122 (1986)), and where the facts give rise to more than one inference, a court of review may not substitute its judgment for that of the trier of fact unless there is a reasonable doubt regarding the defendant's guilt (*Maggette*, 195 Ill. 2d at 354) or the inference drawn by the trier of fact was inherently impossible or unreasonable (*Cunningham*, 265 Ill. App. 3d at 4-5). It is the function of the trier of fact to evaluate the credibility of the witnesses, and the trier of fact need not accept the defendant's version of the events. *People v. Bryant*, 79 Ill. App. 3d 501, 505 (1979). The decision of the trier of fact will not be reversed unless the evidence was palpably contrary to the decision or so unreasonable, improper or unsatisfactory as to leave a reasonable doubt regarding the defendant's guilt. *Sehr*, 150 Ill. App. 3d at 122. A court of review will examine the evidence

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in the light most favorable to the prosecution to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Cunningham*, 265 Ill. App. 3d at 5.

¶ 16 Here, the determinations were within the province of the trial judge, who observed the witnesses, listened to their testimony, and found that the State's evidence was more credible than the defense. Furthermore, the circumstances established defendant's felonious intent for burglary. Before Officer Cabrales got out of the car, defendant came out of the building by opening a closed door, and then attempted to deceive Cabrales by waving his arms and saying that he worked at the school and that everything was all right. Cabrales was not convinced and approached defendant on foot. Defendant dropped the bag and ran. Defendant testified that he was familiar with the building and that he knew it had been a school. Orozco testified that only he and 13 other employees of the Chicago Public Schools could lawfully access the building and that defendant had no permission to be there. Orozco also established that the building contained valuable property, including furniture and copper wiring. See *People v. Roberts*, 189 Ill. App. 3d 66, 71 (1989) (intent to commit theft may be inferred from an unauthorized entry into a building that contains valuable property). According to Orozco, the copper wiring was attached to the building, and the person who had cut the wiring had started to do so but could not remove it. A bag of tools was there that had not been there the last time Orozco was there, and a pair of pliers was outside of the bag. Defendant immediately fled when Cabrales approached him. It reasonably can be inferred that defendant cut the copper wires with the pliers with the intent to

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steal the copper wiring, that the police interrupted him and he left everything behind, and that he fled to avoid being arrested for burglary. The trial court was not required to look for all possible explanations consistent with innocence and elevate them to the level of reasonable doubt, such as defendant's hypothesis that he was using a bathroom in a locked building. *Wheeler*, 226 Ill. 2d at 117; *Digirolamo*, 179 Ill. 2d at 45; see also *Slinkard*, 362 Ill. App. 3d at 858. Therefore, the trial court could reasonably have inferred that defendant had the requisite criminal intent before he entered the building. Viewed in a light most favorable for the State, as it must be, the credible testimony of Cabrales and Orozco proved beyond a reasonable doubt that defendant had the requisite felonious intent for burglary when he entered the building.

¶ 17 The judgment of the circuit court is affirmed.

¶ 18 Affirmed.