

No. 1-11-3468

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 21075
)	
KENNETH NEAL,)	Honorable
)	Kevin M. Sheehan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Lavin and Justice Epstein concurred in the judgment.

ORDER

- ¶ 1 *Held:* Prosecution proved beyond a reasonable doubt that defendant was guilty of burglary. Defendant correctly received a three-year term of mandatory supervised release because he was sentenced as a Class X offender.
- ¶ 2 In a bench trial, defendant Kenneth Neal was convicted of burglary and sentenced to an eight-year prison term along with a three-year term of mandatory supervised release. On appeal, defendant contends that he was not proven guilty beyond a reasonable doubt because the State failed to show that he had entered the building where the alleged burglary had occurred.

Defendant also contends that he should have received only a two-year period of mandatory supervised release.

¶ 3 At trial, Andre Knox testified that he was an agent for RLB Realty Group which, on behalf of the owner, Fannie Mae, managed a three-story building at 1120 North Lawler in Chicago. Knox testified that when he visited the building on November 11, 2010, its two entrances were boarded up. On November 16, 2010, he responded to a call from the police and went back to the building, where he saw that the lock to the back door had been broken. There were radiators missing from each of the three floors of the building, and there were scratches on the floors. Knox identified photographs which he testified accurately showed where three of the radiators were on November 16, 2010. One was inside the back of a van, a second was outside of the building, next to a fence, and the third was just inside the door of the building. Knox testified that when he left the building on November 11, 2010, these three radiators were installed in three units of the building. Knox also testified that he had not given defendant or anyone else permission to enter the building or to remove radiators from it.

¶ 4 Chicago police officer Dailey testified that on November 16, 2010, he and his partner were called to the North Lawler building. As they drove up the alley behind the building, Officer Dailey saw defendant and another man loading a radiator into the back of a van. A third man was dragging a radiator in the gangway next to the alley. Officer Dailey did not recover any tools from defendant, nor did he see any item like a "two wheeler" which could have been used to remove the radiators from the second and third floors of the building. When Officer Dailey approached the rear of the building, he saw that the back door, which had been secured with wood, had been broken into and was partially open. Just inside that door was a third radiator. Officer Dailey also testified that he and two other officers subsequently removed the radiator from the van.

¶ 5 In convicting defendant of burglary, the court stated that it was not persuaded by the evidence that it took three officers to remove a radiator from the van, because defendant and two other men were moving radiators when the police arrived. The court also noted that the prosecution did not need to prove that defendant had broken into the building, only that he had entered with the intent of committing a theft. Because of two prior felony convictions, defendant was sentenced as a Class X offender to eight years in prison and a three-year term of mandatory supervised release. This appeal ensued.

¶ 6 We first consider defendant's claim that he was not proven guilty of burglary beyond a reasonable doubt. In reviewing this claim, we examine the evidence in the light most favorable to the State, in order to determine whether any rational trier of fact could find the elements of the crime beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). We will reverse a conviction only where the evidence is so unreasonable, improbable, or unsatisfactory that reasonable doubt of the defendant's guilt remains. *Id.* On questions involving the weight of the evidence or the credibility of witnesses, we cannot substitute our judgment for that of the fact finder. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). It is also the function of the trier of fact to resolve conflicts in the evidence and to draw reasonable inferences from that evidence. *People v. Williams*, 193 Ill. 2d 306, 338 (2000).

¶ 7 Defendant correctly notes that his unexplained possession of recently stolen property does not by itself permit the inference that he obtained that property by burglary. *People v. Housby*, 84 Ill. 2d 415, 419, 424 (1981). But that inference is permissible if: (1) there is also a rational connection between that recent possession and the defendant's participation in the burglary; (2) the defendant's guilt of burglary is more likely than not to flow from that recent unexplained possession; and (3) there is corroborating evidence of defendant's guilt. *Id.* at 424. The rational connection can be established by defendant's proximity in time or place to the burglary. *People*

v. Caban, 251 Ill. App. 3d 1030, 1034 (1993) (defendant in possession of burglary proceeds five miles from the burglary site). Here, defendant was at the site of the burglary with proceeds in his hands. We also find that his guilt of the burglary is more likely than not to flow from his recent unexplained possession of the burglary proceeds, the radiators, where he was loading one radiator into a van with a second man, a third man was moving a second radiator, and a third radiator was just inside the damaged door, apparently the next item to be taken. The final factor, corroborating evidence of a defendant's guilt, can be satisfied by evidence that the defendant's possession of the stolen property was not honest. *Housby*, 84 Ill. 2d at 430. Here, there is no dispute that the radiator being loaded by defendant had been illegally taken from the building. Indeed the defendant in his brief states that he was in possession of a stolen radiator. Thus there is evidence that defendant's possession of the stolen radiator was not honest.

¶ 8 Defendant cites to *People v. Natal*, 368 Ill. App. 3d 262, 267 (2006), where the court reversed the defendant's residential burglary conviction even though the defendant was seen 20 feet away from the burglary site, within three hours of the commission of the burglary, and in possession of burglary proceeds. But the *Natal* court noted that seven latent fingerprints from items believed to have been handled by the burglar were found not to match the defendant's fingerprints. *Id.* at 265. The court also noted that the trial court appeared to rely upon the prosecution's representation that the defendant's guilt could be based solely upon his recent unexplained possession of stolen property. *Id.* at 266-67. In this cause, there is no evidence like the exonerating fingerprints found in *Natal*. Nor is there any evidence that the trial court utilized an improper presumption in convicting defendant. Based upon all of these factors, we find that defendant was proven guilty of burglary beyond a reasonable doubt.

¶ 9 Defendant also contends that the trial court erred in imposing a three-year term of mandatory supervised release (MSR), the amount required for a Class X conviction, where he

was convicted of a Class 2 felony but sentenced as a Class X offender because of prior convictions. We find that defendant was properly sentenced, as we concur with the overwhelming number of cases which have determined that a Class X sentence includes the MSR period set out for one who has been convicted of a Class X offense. *People v. Brisco*, 2012 IL App (1st) 101612, ¶¶ 59-62; *People v. Lampley*, 2011 IL App (1st) 090661-B, ¶¶ 47-49; *People v. Allen*, 409 Ill. App. 3d 1058, 1078 (2011); *People v. Rutledge*, 409 Ill. App. 3d 22, 26 (2011); *People v. Anderson*, 272 Ill. App. 3d 537, 541-42 (1995).

¶ 10 For the reasons set out in this order, we affirm defendant's conviction and sentence.

¶ 11 Affirmed.