

No. 1-12-1021

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 15900 |
| |) | |
| STEPHAN BAILEY, |) | The Honorable |
| |) | William G. Lacy, |
| Defendant-Appellant. |) | Judge Presiding. |
| |) | |
| |) | |

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Epstein and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* Viewed in the light most favorable for the State, the evidence was not so improbable as to create a reasonable doubt regarding defendant's criminal intent for burglary. Defendant's 11-year prison sentence was not excessive or an abuse of discretion.

¶ 2 Following a bench trial, defendant Stephan (also spelled Stephen in the record) Bailey was found guilty of burglary, and, based on his criminal background, was sentenced to an 11-year, Class X prison term. On appeal, defendant contends that his conviction should be reversed

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because there was no evidence that he had the requisite criminal intent for burglary. He alternatively contends that his sentence was excessive because the court disregarded that he was non-violent and a drug addict.

¶ 3 At trial, three witnesses testified for the State: the victim, Melanie Clements; the arresting officer, Dominick Boardman; and the detective who interviewed defendant at the station, Roxanna Hopps. The defense did not present any evidence.

¶ 4 The trial evidence showed the following. On August 17, 2010, Melanie Clements was the sole owner of a two-flat graystone residence undergoing renovation and located at 3939 West Monroe Street in Chicago. Clements was not living there at the time and had not given permission to anyone to open the garage door or enter the garage, but there had been forced entries in the back of the garage and into the residence, the garage door was broken and open, the back door to the house was open, the alarm system had been "cut" and "smashed," and all of the basement lights were on. Clements' "things" had been placed by the open back door, and some of her kitchen cabinets had been placed in a gangway between her building and the adjacent building. She identified photographs of a pickup truck that contained more of her kitchen cabinets.

¶ 5 When Chicago police officer Dominick Boardman and his partner, Officer Rosito, arrived at around 10:45 p.m., Officer Boardman first observed a black Ford pickup truck parked in the alley in the rear of 3939 West Monroe Street, and he also observed two individuals loading large kitchen-type cabinets into the back of the truck. Boardman never saw defendant put anything on

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the pickup truck, but he did see defendant and another individual carrying items. As Officers Boardman and Rosito approached, Boardman noticed that defendant and the other man were holding a cabinet, that the garage door had been opened, and that numerous other cabinets were inside the garage. Boardman never saw defendant come out of the garage door or take anything from there, but the cabinets in the garage matched the style and shape of the cabinets that were being loaded onto the truck. Boardman and Rosito immediately got out of their vehicle and detained defendant and his partner. Boardman had a conversation with defendant in the alleyway, and defendant said that the items were his and that he had been storing them there, at 3939 West Monroe Street. However, when defendant was in the back of the squad car, he said that they were not his and that his friend Jimmy was the owner of the house where he was storing his items. Defendant "said that they belonged to or the residence was a friend of his named Jimmy." Thus, defendant initially said that the items were his, but a few minutes later he "backtracked" and said that the items were not his without saying whose they were. Boardman observed "a rear door to the building immediately in front of the garage that was open and it was also open and there were numerous other cabinets and interior building equipment inside."

¶ 6 At around 1:45 a.m. on August 18, 2010, after receiving his *Miranda* warnings, defendant told Chicago police detective Roxanna Hopps that the police had stopped him in the alley at approximately 3300 on West Madison. Initially, defendant had said that the items he was loading onto the truck were his. However, one of the men defendant was with had fled and defendant was upset and nervous because the person that said it belonged to "them" was no

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longer on the scene. Defendant stated he had said that the items were his because the other person had run. Defendant further stated that when he first got there the person who had fled had opened the garage door. Later defendant said that when they arrived, the garage door was partly open. Defendant indicated that the one who had fled had opened the garage door to gain access. Defendant said that he was loading items onto the truck from the garage.

¶ 7 Photographs depicting the premises, the parked pickup truck, and the cabinets were allowed into evidence.

¶ 8 The trial court observed that the testimony of Clements and the officers was "highly credible and not impeached ***." The court also noted that the evidence overwhelmingly belied defendant's claim that he owned the cabinets and was storing them in the basement because his friend owned the building.

¶ 9 On appeal, defendant contends first that there was insufficient evidence that he possessed the requisite felonious intent for burglary. He maintains that he believed he was helping a friend move the cabinets, and he alleges that the facts "must" "exclude every reasonable hypothesis of his innocence."

¶ 10 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.

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The reasonable doubt standard applies, whether the evidence is direct or circumstantial.

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). A court of review must not retry the defendant. *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004).

¶ 11 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

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inherently impossible or unreasonable (*Cunningham*, 265 Ill. App. 3d at 4-5).

¶ 12 Here, the determinations were within the province of the trial judge, who observed the witnesses, listened to their testimony, and explicitly found that the State's evidence was highly credible. Furthermore, the circumstances of the time, place, and manner of entry and the reasonable inferences therefrom established defendant's felonious intent for burglary. The alarm system was smashed, there were forced entries into the residence and the garage, it was night, defendant provided conflicting stories to the police, he was caught carrying a kitchen cabinet to a pickup truck that was loaded with kitchen cabinets, and the various kitchen cabinets matched. The circumstances belie defendant's claim that he thought the entry was authorized, or that he was mistaken. Moreover, the trial court could have found that defendant's conflicting accounts to the police also detracted from his credibility. See *People v. Price*, 158 Ill App. 3d 921, 927 (1987).

¶ 13 Defendant cites the reasonable hypothesis of innocence standard, which is not a proper standard of review. See *People v. Pintos*, 133 Ill. 2d 286, 291 (1989). 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 mistakenly thought he was moving cabinets for a friend. *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 reasonably could have inferred that defendant had the requisite criminal intent before he entered the premises. Viewed in a light most favorable for the State, as it must be, the credible testimony of the State's witnesses proved

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beyond a reasonable doubt that defendant had the requisite felonious intent for burglary.

¶ 14 The cases cited by defendant are distinguishable. For example, in *People v. Boguszewski*, 220 Ill. App. 3d 85, 88 (1991), the defendant's behavior in repeatedly calling out "hello" in her former boy friend's place of employment was consistent with that of someone who lacked intent to commit a theft; unlike defendant in the present case, the defendant in *Boguszewski* was not seen in the middle of the night carrying a kitchen cabinet toward a pickup truck from someone else's garage at a residence that was undergoing rehabilitation. In *People v. Atherton*, 261 Ill. App. 3d 1012, 1018 (1994), the court observed that "there was nothing inherently unbelievable about defendant's testimony that he thought he was helping Hirsch to move his possessions from one building to another." In the present case, there were signs of forced entry and the trial court was entitled to find that defendant's inconsistent stories were not credible.

¶ 15 Defendant contends next that his sentence should be reduced to a term closer to the 6-year minimum for a Class X sentence. He argues that the 11-year sentence was excessive because this was a property crime, he was a drug addict, and his background was non-violent. He maintains that the trial court abused its discretion by unduly focusing on his criminal background and failing to consider mitigating factors such as his drug addiction and his non-violent background.

¶ 16 During the sentencing hearing, the assistant State's Attorney argued in aggravation that a Class X sentence was mandatory based on defendant's criminal background.

¶ 17 In mitigation, defense counsel argued that defendant's wife usually came to court but could not be present that day, that defendant had no violence in his background, and that the last

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time he was in custody was in 2005. Defense counsel requested the minimum Class X term, six years.

¶ 18 In response, the assistant State's Attorney argued that defendant went there to steal from a woman who had spent a lot of money to rehabilitate a residence and that defendant had shown no remorse.

¶ 19 In allocution, defendant claimed that he was innocent. He denied that he had entered the house and claimed instead that "[s]omeone" had asked him to help load the truck. Defendant stated that the case "should have been a trespass, if anything." (During pretrial proceedings, defendant also had stated that the case should have been a "misdemeanor trespass.") Defendant accused the police of perjury. He stated that he had lupus and was being tested for cancer. He claimed that he had been "in the wrong place at the wrong time" and that there was no proof of his involvement--no fingerprints and no witnesses. He said that he had a longtime addiction and only once had received help for it.

¶ 20 The presentence investigation report (PSI) revealed that defendant had problems with alcohol, powdered heroin, and crack cocaine, and had developed a \$100 per day habit. In 1993, he completed a 90-day substance abuse program in jail. The PSI further disclosed that defendant one prior nonviolent misdemeanor conviction and seven prior nonviolent felony convictions.

¶ 21 The court observed that the facts "clearly" proved that defendant was guilty of burglary "beyond any doubt" and that this was his sixth felony conviction, he had received probation twice, and he continued to commit crimes. The court said that it had reviewed the PSI and had

considered the arguments of counsel in aggravation and mitigation. The court observed that the minimum Class X sentence of six years would not be appropriate.

¶ 22 The trial court is vested with considerable discretion in imposing a sentence, and a sentence consequently will not be modified on appeal in the absence of an abuse of that discretion. See *People v. Garcia*, 296 Ill. App. 3d 769, 781 (1998); see also *People v. Perruquet*, 68 Ill. 2d 149, 153 (1977). A sentence within the statutory range is entitled to great deference on appeal. *Garcia*, 296 Ill. App. 3d at 781. The trial judge is presumed to have considered mitigating factors (*People v. Hampton*, 149 Ill. 2d 71, 110 (1992)) and rehabilitative potential (*Garcia*, 296 Ill. App. 3d at 781), and is not required to accord greater weight to the defendant's potential for rehabilitation than to the seriousness of the crime (*People v. Johnson*, 206 Ill. App. 3d 542, 551 (1990); *People v. Tatum*, 181 Ill. App. 3d 821, 826 (1989); *People v. Shumate*, 94 Ill. App. 3d 478, 485 (1981)). The seriousness of the crime is the most important consideration. *People v. Marsan*, 238 Ill. App. 3d 470, 473 (1992). The trial court is in a better position than a court of review to determine an appropriate sentence (*People v. Brooks*, 297 Ill. App. 3d 581, 585 (1998)) and to consider such factors as credibility, demeanor, moral character, mentality, social environment, habits, age, and inclination or aversion to commit crime (see *People v. McCain*, 248 Ill. App. 3d 844, 850 (1993); *Marsan*, 238 Ill. App. 3d at 473; *People v. Riddle*, 175 Ill. App. 3d 85, 92 (1988)). A court of review will not disturb a sentence that falls within the statutory range unless the trial court abused its discretion, even if the reviewing court would have weighed the evidence differently. *Brooks*, 297 Ill. App. 3d at 585.

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¶ 23 Here, defendant does not dispute that his 11-year prison term fell within the lower end of the statutory sentencing range of not less than 6 years and not more than 30 years for a Class X felony. See 730 ILCS 5/5-4.5-25(a) (West 2010). The sentence is presumed to be proper because it falls within the statutory range. *In re Phillip C.*, 364 Ill. App. 3d 822, 833 (2006). The record establishes that the trial court explicitly relied on various factors in determining defendant's sentence for burglary: the PSI, the facts of the case, matters in aggravation and mitigation, the arguments of counsel, defendant's failure to accept responsibility and his lack of remorse during allocution, and his criminal history. The trial court expressly indicated that it had considered the mitigating factors and was not required to recite each mitigating factor. The trial court believed that an 11-year prison term was appropriate because defendant had been given leniency in the past but had continued to commit crimes. There was no abuse of sentencing discretion in this case. We have considered, and rejected, all of defendant's arguments on appeal.

¶ 24 The judgment of the circuit court is affirmed.

¶ 25 Affirmed.