

2013 IL App (1st) 121254-U

SECOND DIVISION
August 6, 2013

No. 1-12-1254

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

IN THE INTEREST OF:)	Appeal from the
)	Circuit Court of
)	Cook County.
DESHUN B., a minor.)	
)	
)	No. 11 JD 4361
)	
)	Honorable
)	Stuart P. Katz,
)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Harris and Justice Quinn concurred in the judgment.

ORDER

- ¶ 1 *Held:* Evidence was sufficient to find respondent delinquent based on residential burglary and theft. Finding of guilt for burglary must be vacated as redundant to finding of guilt for residential burglary.
- ¶ 2 Following trial, minor respondent Deshun B. was found delinquent based on residential burglary, burglary, and theft and was sentenced to five years' probation. Respondent contends on appeal that the State failed to prove him guilty beyond a reasonable doubt. He also contends that

the court erred in finding him delinquent on both residential burglary and burglary as both offenses were based on the same physical act. The State concedes the latter error.

¶ 3 The petition for adjudication of wardship alleged that respondent committed residential burglary, burglary, and theft on or about September 3, 2011. Both the residential burglary and burglary counts alleged that he entered a particular building owned by, and the dwelling place of, Jessica Shorter with the intent to commit theft. The theft count alleged that, with the intent to permanently deprive their owner – Shorter – thereof, he "obtained or exerted unauthorized control over *** a computer, Wii game system, two dvd players, and a camera" worth over \$500.

¶ 4 Respondent was tried jointly with co-respondents Samuel P., Nathaniel P., and Tywan (or Tywaun) D.

¶ 5 Croshana Campbell testified that, in September 2011, she lived next door to the Shorter premises with her family, including three sisters and her brother McHale Campbell. She had a third-floor rear bedroom, and her window overlooked the backyard of her home, the rear of the Shorter premises, and the adjoining alley, though she could not see the back door of the Shorter house. She was in her bedroom in the mid-day of the day in question when she heard multiple loud "banging" sounds. She looked outside and saw Nathaniel and Tywan in the alley behind the Shorter premises. They were empty-handed. She identified both in court. Croshana heard one of the two yell "Did they get the door open?" and a few seconds later, "We are in this bitch," and then Nathaniel and Tywan ran across the backyard of the Shorter premises towards the house. Concerned that her own home was being "broken into," she went downstairs, but then went back to her room when she concluded that nobody was entering her home.

¶ 6 Upon returning to her room, accompanied by her sister Tiara Brown, Croshana looked outside and saw the alley and the backyard of the Shorter premises empty, then after about 10 seconds saw her brother, respondent, and co-respondents running across the Shorter backyard

away from the house. She identified respondent and Samuel in court. Croshana yelled from her window, calling her brother by name and telling "them to stop and put her stuff back." They "had stuff in their hands," and they stopped and looked up at her when she yelled. One of them threw a bag over the fence into the Campbell yard before they all ran down the alley out of her view. (However, on cross-examination, Croshana testified that respondent was on a black bicycle.) She saw Tywan carrying, and then dropping, a bicycle. When Croshana went outside, she found in her backyard and garage a pink bicycle, a "bookbag with some games in it" and "a computer and a router." She did not recognize any of the items as belonging to anyone in the Campbell household. Shorter later retrieved these items, identifying the recovered bicycle as belonging to her daughter. Croshana went to respondent's home; she did not find him there but saw him and Tywan on the street. Respondent told her that "he didn't do anything." While Tywan had been wearing a blue shirt and red hat at the premises, he was now wearing a black shirt. Croshana next went to the home of Nathaniel and Samuel; Nathaniel answered the door, wearing the same clothing as earlier.

¶ 7 Tiara Brown testified that, on the day in question, Croshana came to her and then brought her up to Croshana's room. Through the window, Tiara saw respondent, co-respondents, and McHale running from the neighboring premises; that is, across the yard, as she could not see the rear door of the house. She saw co-respondents, but not respondent, carrying objects. She identified respondent – who she knew as the brother of a friend – and co-respondents in court.

¶ 8 Police officer Michael Keeney testified that he responded to the report of a burglary at the premises. He met Shorter there and examined the premises. The rear door of the house had been forced open; that is, the lock had been forced through the door frame. In the inventory of stolen property he prepared after interviewing Shorter, no bicycle was listed. He also interviewed Croshana, who told him that she saw five people in the yard. However, she named only four

persons – co-respondents and McHale – and Officer Keeney's report did not reflect that Croshana mentioned seeing five people.

¶ 9 Police detective David Sipchen testified that he interviewed Croshana a day or two after the incident, then went to the Campbell home on September 6 to show photographs to Tiara. As a result of this investigation, he arrested respondent and co-respondents. He then interviewed respondent, who said that he "just happened to be behind the house" riding his bicycle down the alley when he saw McHale, Nathaniel, and Samuel running from the premises. On cross-examination, Detective Sipchen testified that Croshana did not mention going to the home of Nathaniel and Samuel after the incident, nor did she mention seeing Tywan afterwards in different clothing.

¶ 10 The parties stipulated that Shorter would testify that she owned the premises and, when told on the day in question by telephone that her home had been burglarized, returned home to find the rear door forcibly opened and "several items" missing, "including a computer, a Wii video game console, a radio, a television, a VCR, two DVD players, and a digital camera" worth in total over \$500. Shorter would also testify that she did not know nor gave permission to enter her home to respondent, co-respondents, or McHale.

¶ 11 The court denied motions for directed finding by respondent and co-respondents. Following closing arguments, the court found respondent (and co-respondents) guilty as charged. The court noted that the premises were clearly burglarized as the "back door was broken in" and "items were taken." Croshana "did get a good look at everybody" running through the backyard of the premises, and while she did not see them exiting the house, "common sense tells us that those five people didn't just *** suddenly appear in the backyard." The court noted that Tiara corroborated seeing the same five people in the neighboring backyard, and noted that Croshana

and Tiara "would not have implicated their own brother if they were going to lie about all of this." Thus, despite "minor" impeachment, the court found their testimony to be credible.

¶ 12 At sentencing, the court declared respondent a ward of the court and imposed five years' probation with 10 days' community service and \$200 restitution. This appeal timely followed.

¶ 13 Respondent contends that there was insufficient evidence to prove him guilty beyond a reasonable doubt.

¶ 14 A person commits burglary when "without authority he or she knowingly enters or without authority remains within a building *** or any part thereof, with intent to commit therein a felony or theft." 720 ILCS 5/19-1(a) (West 2010). A person commits residential burglary when the building thus entered is "the dwelling place of another." 720 ILCS 5/19-3(a) (West 2010). A burglary is complete upon entering with the requisite intent, regardless of whether the intended felony or theft is accomplished. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). Such intent is often established by circumstantial evidence as it is rarely susceptible to direct proof. *People v. Carbajal*, 2013 IL App (2d) 111018, ¶ 43. A person commits theft "when he or she knowingly *** [o]btains or exerts unauthorized control over property of the owner." 720 ILCS 5/16-1(a)(1) (West 2010).

¶ 15 A person may be convicted of a criminal offense based on his own conduct "or that of another and he is legally accountable for such conduct." 720 ILCS 5/5-1 (West 2010). Such accountability arises when, "either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2010). Similarly:

"When 2 or more persons engage in a common criminal design or agreement, any acts in the furtherance of that common design

committed by one party are considered to be the acts of all parties to the common design or agreement and all are equally responsible for the consequences of those further acts. Mere presence at the scene of a crime does not render a person accountable for an offense; a person's presence at the scene of a crime, however, may be considered with other circumstances by the trier of fact when determining accountability." 720 ILCS 5/5-2 (West 2010).

¶ 16 When presented with a challenge to the sufficiency of the evidence, this court must determine whether, after taking the evidence 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. Austin M.*, 2012 IL 111194, ¶ 107. This court does not retry a respondent; the trier of fact, charged with resolving conflicts or inconsistencies in the trial evidence, actually heard and saw the witnesses and is thus best equipped to judge the credibility of witnesses. *Id.* The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; instead, it is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the respondent's guilt. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. Similarly, the trier of fact is not required to disregard inferences that flow normally from the evidence nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *Id.* In our review, we make all reasonable inferences from the evidence in favor of the State, and we do not reverse unless the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the respondent's guilt remains. *Austin M.*, ¶ 107.

¶ 17 Here, after making all reasonable inferences in the State's favor as we must, we find sufficient evidence for a reasonable finder of fact to conclude that respondent committed residential burglary and theft. First and foremost, the evidence clearly establishes that the

premises in question were the residence of Shorter and were burglarized on the day in question: the rear door was broken open, items were found on the Campbell land that were not property of that household, and Shorter reclaimed those items as her property.

¶ 18 As to the identity of the burglars, two witnesses testified to seeing respondent, co-respondents, and the witnesses' own brother fleeing the Shorter premises. While the witnesses could not see the rear door of the house and thus did not actually see them exit the house, both testified to seeing the five persons running across the Shorter backyard, and Croshana testified unambiguously that the backyard and alley were empty just before she saw the five persons running in the backyard from the direction of the house. Thus, it is reasonable to infer that the five persons, including respondent, came from inside the Shorter house rather than from the alley or elsewhere. It is reasonable to conclude on this evidence that respondent was fleeing the Shorter premises alongside the other four persons, rather than being a mere passerby in the alley as he claimed after his arrest, and neither the trial court nor this court is obliged to raise his self-serving account to the level of reasonable doubt.

¶ 19 As to theft, the evidence is admittedly unclear as to whether respondent was carrying Shorter's property as he ran across the backyard. Tiara testified that respondent was not carrying anything as he fled, while Croshana testified that he had a black bicycle that no evidence established to be Shorter's property. However, we consider it key that both witnesses agreed that the other four persons were carrying objects away from the premises and at least some of those objects – the bookbag and its contents, and arguably the pink bicycle – were established to be Shorter's property. As stated above, the evidence reasonably supports a conclusion that respondent was not a mere passerby but was with the other four persons burglarizing the premises. He would thus be accountable for theft regardless of whether he personally carried any

of Shorter's property from the premises. In sum, there was sufficient evidence to find him guilty as charged.

¶ 20 Respondent also contends, and the State agrees, that the court erred in finding him guilty of both residential burglary and burglary because both charges were based on the same physical act of entering the premises. See *People v. Samantha V.*, 234 Ill. 2d 359 (2009). We note that, as in *Samantha V.*, "the 'Sentencing Order' making respondent a ward of the court, and the 'Probation Order,' detailing the terms of [his] sentence, do not list the offenses for which []he was found guilty and, therefore, do not require modification." *Samantha V.*, 234 Ill. 2d at 380.

¶ 21 Accordingly, we vacate the finding of delinquency for burglary. Pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), the clerk of the court is ordered to correct the record to reflect that respondent was sentenced upon two counts, residential burglary and theft. The judgment of the circuit court is affirmed in all other respects.

¶ 22 Affirmed in part, vacated in part, and record corrected.