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2013 IL App (3d) 110303-U

Order filed April 11, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 21st Judicial Circuit,
Plaintiff-Appellee,	)	Kankakee County, Illinois,
	)	
v.	)	Appeal No. 3-11-0303
	)	Circuit No. 08-CF-761
	)	
STEPHEN H. ASPAN,	)	Honorable
	)	Clark E. Erickson,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE McDADE delivered the judgment of the court.  
Justices Schmidt and Holdridge concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The evidence at trial was sufficient for a rational trier of fact to convict defendant of attempted burglary.
- ¶ 2 Following a bench trial, defendant, Stephen H. Aspan, was convicted of attempted burglary (720 ILCS 5/8-4(a), 19-1(a) (West 2008)), and sentenced to 24 months' probation. Defendant appeals, arguing that he was not proven guilty beyond a reasonable doubt of attempted burglary. We affirm.

## FACTS

¶ 3

¶ 4 On December 22, 2008, defendant was charged by indictment with attempted burglary. 720 ILCS 5/8-4(a), 19-1(a) (West 2008). The charge alleged that on December 3, 2008, defendant, with the intent to commit a burglary, performed a substantial step toward the commission of the offense when he drove to Doc's Drugs, while in possession of items intended for use in committing a burglary, with the intent to enter the business and commit a theft therein.

¶ 5 On December 20, 2010, the cause proceeded to a bench trial. The State called Eric Haas, an employee of Doc's Drugs, who testified that he did not give defendant permission to enter the store while it was closed on December 3, 2008. Haas also testified that the earliest the store opened was 8:30 a.m.

¶ 6 The State next called police officer Aaron Tobeck, who testified that he responded to a call that a vehicle had pulled in and parked at Doc's Drugs on December 3, 2008. Tobeck responded to the scene at approximately 7 a.m. Tobeck witnessed defendant leave a black Jeep Cherokee and walk within 15 feet from the only entrance to Doc's Drugs but did not see defendant make contact with the building. Tobeck parked his patrol vehicle between the Jeep and defendant, exited his vehicle and called to defendant, who was startled and dropped his flashlight. Defendant was wearing a camouflage hunting jacket and was carrying the large end of a pool cue. Tobeck asked defendant what his intentions were. Defendant stated that he was checking to see what time the store opened.

¶ 7 Tobeck testified that Sergeant Brian Lockwood arrived at the scene, took the pool cue from defendant and asked defendant what his intentions were. Defendant responded that he was going to break into Doc's Drugs. Defendant admitted to Tobeck that he drove his Jeep to the

scene. Tobeck then placed defendant under arrest for driving while his license was suspended and possibly for attempted burglary. In the patrol vehicle, defendant told Tobeck that he was going to break into Doc's Drugs to get some vodka because of his withdrawal from alcohol.

¶ 8 The State also called Lockwood, who testified that when he arrived at Doc's Drugs, Tobeck was already speaking with defendant. Defendant was 20 to 25 feet from Doc's Drugs. Lockwood observed that defendant had a jacket or vest covering a pool cue. He retrieved the pool cue and patted down defendant, but he did not find any weapons. Lockwood asked defendant if he was thinking about breaking in and stealing alcohol. Defendant responded that he "might be thinking about doing that." Lockwood conducted an inventory search of defendant's vehicle and located gloves, a pair of binoculars, and a knife that was taped up. When Lockwood asked defendant about the knife, defendant responded that the knife was for personal protection and it was taped up so he did not hurt himself.

¶ 9 Defendant moved for a directed verdict, which the trial court denied. Defendant then testified on his own behalf. He acknowledged that he was at Doc's Drugs on the day of the incident at approximately 7 a.m. He testified that he did not know if the store was open or closed, but he thought that it opened at 7 a.m. Defendant denied any intention of breaking into Doc's Drugs. When the officers appeared at the scene, defendant was already returning to his vehicle because he had determined Doc's Drugs was not open. Defendant admitted that he had thought about breaking into the store when he was five feet from the window, had determined that no one was inside, had seen no vehicles in the parking lot, and had realized that he did not have his wallet with him. However, defendant decided against breaking in because he did not want to get into trouble. When asked by an officer if he was going to break into the store,

defendant told him yes, because he had thought about it.

¶ 10 Defendant testified that he had a flashlight with him at Doc's Drugs because, although it was beginning to get light outside, the store was dark and he wanted to check the times.

Defendant also admitted that he had half a pool cue. He kept it in his vehicle and was using it for protection because it was dark outside and he felt vulnerable. Defendant had the camouflage jacket wrapped over the cue and his arm to conceal the cue in the event that someone attacked him. Defendant testified that he had a knife in his vehicle and used it for fishing. Defendant stated that the gloves found in his vehicle were there at all times. He denied using or intending to use any of the items found on his person or in his vehicle to tamper with the door or get into the store.

¶ 11 The trial court found defendant guilty of attempted burglary and sentenced him to 24 months' probation. Defendant filed a motion to reconsider, which the trial court denied. Defendant appeals.

¶ 12 ANALYSIS

¶ 13 Defendant argues the evidence was insufficient to prove him guilty beyond a reasonable doubt of attempted burglary. Specifically, defendant argues that the State's evidence, apart from his statement to the police, failed to establish the *corpus delicti* for the offense.

¶ 14 When a defendant challenges the sufficiency of the evidence, we view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1 (2011) and *People v. Collins*, 106 Ill. 2d 237 (1985). It is not this court's function to retry a defendant who challenges the sufficiency of the evidence. *People v.*

*Ross*, 229 Ill. 2d 255 (2008). The trier of fact remains responsible for making determinations regarding the credibility of witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence. *Id.* We will not set aside a defendant's conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt. *Beauchamp*, 241 Ill. 2d 1.

¶ 15 A person commits burglary when without authority he knowingly enters a building with the intent to commit a felony therein. 720 ILCS 5/19-1(a) (West 2008). To sustain a charge for attempted burglary, the State must prove that defendant, with the intent to commit a burglary, performed a substantial step toward the commission of the burglary. 720 ILCS 5/8-4(a) (West 2008). To sustain any conviction, the State must prove beyond a reasonable doubt that: (1) a crime was committed, the *corpus delicti*; and (2) the crime was committed by defendant. *People v. Sargent*, 239 Ill. 2d 166 (2010). In cases where a defendant's statement is part of the proof of the *corpus delicti*, the State may not rest exclusively on defendant's extrajudicial statement. *People v. Furby*, 138 Ill. 2d 434 (1990). Rather, the State must present independent evidence that tends to show the commission of the offense and is corroborative of the facts in defendant's statement. *Id.* Such independent evidence need not prove commission of the offense beyond a reasonable doubt; rather, it need only tend to inspire belief in defendant's statement that the offense occurred. *Id.*

¶ 16 In the instant case, the State's independent evidence adequately corroborated defendant's statement to the police that he intended to break into the store. See *Furby*, 138 Ill. 2d 434 (holding it is not necessary that the independent evidence disproves every possible alternative or that every detail corresponds to the statement made by defendant). At trial, defendant admitted

telling the police that he intended to break into the store, but went on to explain that he decided against it because he did not want to get into trouble. See *People v. Manske*, 399 Ill. 176 (1948) (holding that defendant's direct testimony on the witness stand is proof of facts used to establish the *corpus delicti*). Furthermore, the evidence established that defendant drove to Doc's Drugs at 7 a.m., when the store did not open until 8:30 a.m. The store was dark, and no vehicles were in the parking lot. Defendant admitted that he came within five feet of the door with a flashlight in his hand and a concealed pool cue, and he did not have his wallet. Additionally, gloves, a pair of binoculars, and a knife were located inside defendant's vehicle. When questioned by the police, defendant admitted that he intended to break into Doc's Drugs to get alcohol. We conclude that the supporting evidence tended to show the commission of the offense and corroborated defendant's statement that he intended to burglarize the store. See *Furby*, 138 Ill. 2d 434; *People v. Terrell*, 110 Ill. App. 3d 1086 (1982) (stating that a defendant's intent may be inferred from the facts and circumstances surrounding the offense).

¶ 17 Defendant also claims that the State failed to prove that he performed a substantial step toward the commission of the burglary, and cites to *People v. Toolate*, 45 Ill. App. 3d 567 (1976) and *People v. Ray*, 3 Ill. App. 3d 517 (1972), *reversed on other grounds*, 54 Ill. 2d 377 (1973), for support. We find both of those cases distinguishable. In *Toolate*, no substantial step was found because the evidence was insufficient to establish defendant's possession of the crowbar and screwdriver found in the general vicinity of a business that had pry marks on the door. *Toolate*, 45 Ill. App. 3d 567. In *Ray*, the evidence was insufficient to establish that defendant attempted to enter a business where he was found in an alley behind the business possessing gloves, a pry bar, and flashlight. *Ray*, 3 Ill. App. 3d 517. By contrast, in the instant case,

defendant was not only found within 15 feet of Doc's Drugs' entrance while possessing tools capable of effecting a burglary, but he also admitted that he was going to burglarize the store.

¶ 18 Defendant further claims that his actions did not constitute a substantial step under *Terrell*, 110 Ill. App. 3d 1086, where the court relied on the Model Penal Code for conduct indicative of a substantial step. Among the conduct evaluated was: (1) lying in wait, searching for or following the contemplated victim of the crime; (2) reconnoitering the place contemplated for the commission of the crime; (3) possession of materials to be employed in the commission of the crime that are specifically designed for such unlawful use or that can serve no lawful purpose of the actor under the circumstances; and (4) possession, collection or fabrication of materials to be employed in the commission of the crime, at or near the place contemplated for its commission, if such possession, collections or fabrication serves no lawful purpose of the actor under the circumstances. *Terrell*, 110 Ill. App. 3d 1086.

¶ 19 Defendant claims that his conduct does not satisfy any of the above factors. We disagree. We find that the evidence supports defendant's reconnoitering of Doc's Drugs, when he testified to coming within five feet of the door with a flashlight and half a pool cue an hour and a half before the store opened. See *People v. Jiles*, 364 Ill. App. 3d 320 (2006) (reconnoitering found for the offense of attempted burglary where, despite no attempt to enter any structure, defendant was prowling around the victims' property and shined his flashlight into their van and home). Therefore, we conclude that defendant's statement to the police officers, considered together with the corroborating evidence and viewed in the light most favorable to the State, was sufficient for a rational trier of fact to find defendant guilty of attempted burglary. See *Beauchamp*, 241 Ill. 2d 1.

¶ 20

CONCLUSION

¶ 21 For the foregoing reasons, the judgment of the circuit court of Kankakee County is affirmed.

¶ 22 Affirmed.