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2013 IL App (3d) 110941-U

Order filed September 11, 2013

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 14th Judicial Circuit,
Plaintiff-Appellee,)	Rock Island County, Illinois,
)	
v.)	Appeal No. 3-11-0941
)	Circuit No. 09-CF-593
)	
DELFINO SIERRA,)	Honorable
)	Walter D. Braud,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Presiding Justice Wright and Justice Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to prove defendant guilty beyond a reasonable doubt of residential burglary.

¶ 2 Following a jury trial, defendant, Delfino Sierra, was found guilty of residential burglary (720 ILCS 5/19-3(a) (West 2008)), and was sentenced to six years' imprisonment. Defendant appeals, arguing that the State failed to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3 **FACTS**

¶ 4 On July 6, 2009, defendant was charged by information with two counts of aggravated kidnaping (720 ILCS 5/10-2(a)(2) (West 2008)), two counts of child abduction (720 ILCS 5/10-5(b)(3) (West 2008)), one count of home invasion (720 ILCS 5/12-11(a)(1) (West 2008)), and one count of residential burglary (720 ILCS 5/19-3(a) (West 2008)). The cause proceeded to a jury trial on August 16, 2010.

¶ 5 The evidence indicated that Ruth Guzman had previously dated defendant, and they had two children together, J.S. and D.S. In June 2009, Ruth separated from defendant and moved in with her sister. At that time, J.S. and D.S. were one year old and four months old, respectively.

¶ 6 On July 4, 2009, at around 9 or 10 p.m., Charlie Guzman and his brother, Chayann Guzman, began babysitting Ruth's five children so that Ruth and her sister could go to a party. Charlie and Chayann were Ruth's 13-year-old twin nephews. At approximately 3:30 a.m., defendant entered the residence, took J.S. and D.S., and brought them to his cousin's house. Later that evening, after defendant did not return to pick up his children, defendant's cousin contacted the police and returned the children to Ruth.

¶ 7 Charlie, who was soft-spoken and admitted to being nervous on the witness stand, testified that he was babysitting J.S. and D.S. on the day of the incident. At 11 p.m., he took D.S. to the bedroom and fell asleep with him. Chayann and the other children were on the couch in the living room. Chayann eventually put the other children in the bedroom with Charlie after he went to sleep.

¶ 8 At approximately 3:30 a.m., Charlie was awoken by defendant, who was sitting on his bed and holding a knife. Defendant was intoxicated. Charlie believed that defendant obtained the knife from the kitchen. Charlie admitted telling the police that defendant came into the house

with a knife, but clarified that defendant took the knife from the kitchen when his mother informed him one of her knives was missing.

¶ 9 Defendant had entered through the front door of the house. The State asked if Charlie saw defendant come through the front door, and Charlie responded "[y]eah, because the door was wide open." Charlie explained that the door was closed when he went to bed, but was opened after defendant came in. The door was broken and could not be locked. Charlie did not give defendant permission to come through the front door of the house and did not know of anyone else that gave defendant permission. Charlie recalled telling the police that he opened the door because someone was knocking, but that he told them incorrectly.

¶ 10 When Charlie woke up, defendant told Charlie to hurry and get the children ready. Defendant also told Charlie that if he did not get his children ready, he was going to kill him. Charlie was scared during the incident, but proceeded to wake up J.S. and D.S. to get them ready. Defendant followed Charlie around the house while he was doing this. Chayann and the other children did not wake up. Charlie did not wake up Chayann because defendant told him not to. Defendant also asked Charlie where Ruth was. Charlie told defendant Ruth "was out."

¶ 11 After Charlie got the children ready, defendant grabbed J.S. and D.S. while still holding the knife in his hand. Defendant left through the same door he came in and told Charlie not to call the police. When defendant left, Charlie woke up Chayann, and they attempted to locate a telephone to call someone. A couple minutes later, at approximately 3:45 a.m., Ruth came home.

¶ 12 Police officer Robert McNabb testified that shortly after the incident, he spoke with Charlie at the house. Charlie said defendant had entered the residence with a knife. Charlie initially told McNabb that he opened the front door for defendant because he was beating on the

door. Upon further questioning, Charlie clarified that he did not answer the door for defendant, but that defendant forced open the unlocked door. Defendant, who was intoxicated, told Charlie to get the children ready.

¶ 13 Police officer Chris Pickens testified that he spoke with Charlie at approximately 6 a.m. on the morning of the incident. Charlie stated that he was up making a bottle for D.S. when defendant forced open the door that could not be locked. They did not use the door because it was very hard to open. After defendant forced the door open, he told Charlie to get the children ready because he was taking them. Once inside, defendant brandished a knife and implied he had a gun; however, Charlie did not see the gun. Pickens located the knife in the front yard outside the front door.

¶ 14 Following deliberations, the jury found defendant guilty on all six counts. Thereafter, defense counsel filed several amended motions for a new trial. Additionally, the parties agreed that defendant and Ruth executed a voluntary acknowledgment of paternity at the time of J.S. and D.S.'s births. On September 30, 2011, the trial court held a hearing on the motion for new trial, and the parties came to a mutual agreement. Defendant withdrew his motion for a new trial and received a six-year sentence of imprisonment for residential burglary, and the State dismissed the remaining counts. Defendant appeals.

¶ 15 ANALYSIS

¶ 16 Defendant argues that the State failed to prove him guilty beyond a reasonable doubt because Charlie's testimony was not credible.

¶ 17 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. Collins*, 106 Ill. 2d 237 (1985); *People v. Beauchamp*, 241 Ill. 2d 1 (2011). The trier of fact is not required to disregard inferences that flow from the evidence, nor is it required to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246 (2009). As a court of review, we will not set aside a defendant's conviction unless the evidence was so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt. *Beauchamp*, 241 Ill. 2d 1.

¶ 18 To sustain a conviction for residential burglary in this case, the State was required to prove beyond a reasonable doubt that defendant knowingly and without authority entered the dwelling place of another with the intent to commit child abduction. See 720 ILCS 5/10-5(b)(3), 19-3(a) (West 2008). Defendant does not dispute that he knowingly entered the house, but argues that the State failed to prove that he did so without authority and with the intent to commit child abduction.

¶ 19 Here, Charlie testified that at 3:30 in the morning, while he was sleeping, defendant entered the house without permission. Shortly thereafter, defendant brandished a knife, demanded his children, and took them from the residence. We conclude that a rational jury, viewing this evidence in the light most favorable to the State, could have reasonably found that defendant entered the house without authority and with the intent to commit child abduction.

¶ 20 Defendant argues that this evidence was insufficient because Charlie's testimony was inconsistent and contradicted. This argument turns on the credibility of Charlie's testimony. The credibility of the witnesses and the weight to be given to the evidence is determined by the trier of fact, and we will not substitute our judgment for the trier of fact on these issues. *People v.*

Ross, 229 Ill. 2d 255 (2008). Moreover, a witness's testimony may be found insufficient only where the evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274 (2004).

¶ 21 Here, the jury found defendant guilty of residential burglary, thereby apparently finding Charlie's testimony credible. Based on the record before us, we find no basis for disturbing the jury's resolution of Charlie's conflicting testimony in the State's favor. Charlie was a 14-year-old boy attempting to recall the details of a crime that occurred over a year prior. Charlie was nervous and soft-spoken on the stand, and this was reflected in his testimony. Defendant points out that Charlie told McNabb that he let defendant into the house after he heard him knock. However, Charlie clarified that this was an incorrect statement both at the time of McNabb's questioning and at trial. Furthermore, at trial, Charlie stated numerous times that defendant forced his way in through the unlocked door of the house. Charlie also testified that neither he nor anyone else in the house gave defendant permission to enter.

¶ 22 Similarly, Charlie's statement to McNabb that defendant brought the knife into the house, as opposed to retrieving it from the kitchen, was also explained when he stated that his mother later told him one of her kitchen knives was missing. Since Charlie was asleep when defendant entered his bedroom with a knife, it was not unreasonable for him to initially tell McNabb that defendant brought the knife into the house. Thus, even though Charlie's testimony contained inconsistencies, it was not so unsatisfactory that no reasonable person could accept it beyond a reasonable doubt. See *Cunningham*, 212 Ill. 2d 274.

¶ 23 Moreover, whether defendant had a knife at the time of entering the home or immediately thereafter, there was sufficient evidence to conclude that defendant intended to commit child

abduction. See *People v. Grathler*, 368 Ill. App. 3d 802 (2006) (stating that criminal intent may be inferred from the surrounding circumstances, which include the time, place, and manner of entry, defendant's activity within the premises, and any alternative explanations offered for his presence). Defendant asserts that he entered the residence, and upon seeing the children essentially unsupervised, he decided to take them. While this was one possible scenario, the trier of fact was not required to search out all possible explanations consistent with innocence. See *Jackson*, 232 Ill. 2d 246. Accordingly, we find that the evidence presented at trial was not so improbable or unsatisfactory that it leaves any doubt of defendant's guilt. See *Beauchamp*, 241 Ill. 2d 1.

¶ 24

CONCLUSION

¶ 25 For the foregoing reasons, the judgment of the circuit court of Rock Island County is affirmed.

¶ 26 Affirmed.