

No. 1-12-1932

**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).

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IN THE APPELLATE COURT  
OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	11 CR 7226
	)	
BERNARD BROOKS,	)	Honorable
	)	Michael Brown,
Defendant-Appellant.	)	Judge Presiding.
	)	

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JUSTICE MASON delivered the judgment of the court.  
Justices Neville and Pucinski concurred in the judgment.

**ORDER**

¶ 1 *HELD:* The State did not prove beyond a reasonable doubt that defendant met the requisite intent to commit burglary where defendant told the police that he thought the vehicle from which he took two items was abandoned and the evidence established that the vehicle had been in an accident in which all of its windows had been broken out and had been sitting on the street in that condition for two days. Because we are reversing defendant's conviction outright, we need not address the remaining issues raised on appeal.

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¶ 2 Following a bench trial, defendant Bernard Brooks was convicted of burglary and sentenced to 10 years in prison. On appeal, Brooks contends that the State did not prove beyond a reasonable doubt that he had the requisite intent to commit burglary. Alternatively, Brooks argues that his trial counsel was ineffective for failing to raise and argue an affirmative mistake-of-fact defense. Brooks also claims that the trial court committed reversible error in telling him that the decision whether to demand trial belonged only to his attorney, and that the trial court abused its discretion in sentencing him to 10 years for the offense of taking a bottle of lotion and an umbrella. For the reasons that follow, we reverse the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 At 11:15 p.m. on April 24, 2011, police officers received a report that two individuals were "going through a vehicle" that was parked on the street at 1808 South Millard in Chicago. Three officers responded to the scene and arrested Brooks, who was carrying a bottle of lotion and an umbrella, and Brooks's codefendant, Booker Brandon.<sup>1</sup> Brooks was charged with one count of burglary and the matter proceeded to a severed but simultaneous bench trial.

¶ 5 At the start of trial, the trial court informed the owner of the vehicle, Oteria Webster, and her sister, Justina Woodring, that they would be testifying sometime that day. Woodring informed the court that she needed to pick her child up at noon, and the trial court told her to make other arrangements. Woodring asked what would happen if they did not want to testify and

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<sup>1</sup>Brandon's appeal is currently pending before this court under case number 1-12-1450.

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the trial court informed her that if she and her sister left, the court could hold them in contempt of court, issue a warrant for their arrest, and have them jailed. Woodring responded, "All [be]cause somebody went through \*\*\* a car that we don't even care about?" The trial court repeated that both Woodring and her sister were required to testify.

¶ 6 Webster testified that on April 21 or 22, she was driving her car and was involved in an accident. Webster explained that she had "wrapped the car around [a] pole," resulting in extensive damage to the exterior of the vehicle, and confirmed that all of the windows had been shattered in the accident. She had the vehicle towed and left on the street outside her sister's house in the 1800 block of South Millard. Webster walked past her car every time she left her sister's house, but did not try to get inside it because it was filled with broken glass. She confirmed that she had CDs and a black and silver umbrella in the car, but did not remember whether she had any lotion in the car. Finally, Webster confirmed that she had not given anyone permission to take anything from the car. Following Webster's testimony, she and Woodring were both excused.

¶ 7 Officer Lawrence Olivares testified that when he and the other officers arrived at the scene, he observed Brandon exiting the rear of an extensively damaged vehicle that was parked on the street. Brandon had a couple of CDs in his hand. Brandon told Officer Olivares that he was with a friend and pointed toward Brooks, who was approximately four house lengths away. Officer Olivares reversed the police car and stopped near Brooks, who was holding a bottle of lotion and a black and silver umbrella. As Officer Olivares approached, Brooks dropped both items. Officer Olivares was able to get in touch with the owner of the vehicle, who confirmed

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that the CDs, lotion and umbrella belonged to her. Brooks and Brandon were both arrested and transported to the police station.

¶ 8 At this point in the trial, the State called Officer Kevin Deeren. However, because Officer Deeren's testimony only related to Brandon, the matter was continued as to Brooks.

¶ 9 Officer Eli Perez testified that he spoke with Brooks at the police station after his arrest. Officer Perez read Brooks his *Miranda* rights and Brooks agreed to speak with him. Brooks told Officer Perez that he had taken an umbrella and a bottle of lotion from a vehicle he thought to be abandoned.

¶ 10 The trial court denied Brooks's motion for a finding at the close of the State's case and found Brooks guilty of burglary. Brooks's motion for a new trial was also denied. Based on Brooks's prior convictions, the State argued that he was subject to mandatory class X sentencing. Defense counsel noted that the items in question had little or no value and were taken from a vehicle that was abandoned. Defense counsel further noted that Brooks has a drug problem and asked for the minimum sentence. The trial court sentenced Brooks to 10 years in prison and his motion to reconsider the sentence was denied. Brooks timely filed this appeal.

¶ 11 ANALYSIS

¶ 12 We first address Brooks's contention that the State failed to prove beyond a reasonable doubt that he had the requisite intent to commit burglary. Due process requires the State to provide "proof beyond a reasonable doubt of every fact necessary to constitute the crime with which [the defendant] is charged." (Internal quotation marks omitted.) *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004) (quoting *In re Winship*, 397 U.S. 358, 364 (1970)).

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¶ 13 When a defendant challenges the sufficiency of the evidence, the relevant inquiry is whether, after viewing 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. Woods*, 214 Ill. 2d 455, 470 (2005) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "If a court determines that the evidence is insufficient to establish the defendant's guilt beyond a reasonable doubt, the defendant's conviction must be reversed." *Id.*

¶ 14 In order to support a conviction for burglary, the State was required to prove beyond a reasonable doubt that Brooks entered the vehicle with the intent to commit a theft. See 720 ILCS 5/19-1(a) (West 2010). The elements for the crime of burglary must often be proved by circumstantial evidence. *People v. Richardson*, 104 Ill. 2d 8, 13 (1984). "Intent is a state of mind which can be inferred from surrounding circumstances." *Id.* at 12.

¶ 15 Unauthorized entry into a vehicle containing personal property could give rise to an inference of intent to commit burglary sufficient to sustain a burglary conviction. See *People v. Johnson*, 28 Ill. 2d 441 (1964) (unlawful entry into a building containing personal property could give rise to an inference of intent to commit burglary sufficient to sustain a burglary conviction). "However, this inference is permissible only in the absence of circumstances that are inconsistent with an intent to commit theft." *People v. Boguszewski*, 220 Ill. App. 3d 85, 88 (1991).

¶ 16 In viewing the evidence in the light most favorable to the prosecution, we cannot say that the evidence was sufficient to establish beyond a reasonable doubt that Brooks intended to commit theft. The evidence established that Brooks was carrying an umbrella and a bottle of lotion when he was apprehended. The owner of the vehicle did not remember whether there was

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lotion in the vehicle, and only gave a general description of the umbrella. Even assuming that both items were taken from the vehicle, our supreme court has observed that exclusive and unexplained possession of recently stolen property is insufficient, standing alone and without corroborating evidence of guilt, to prove burglary beyond a reasonable doubt. *People v. Housby*, 84 Ill. 2d 415, 423 (1981). The police officers did not actually observe Brooks taking any items from the vehicle, nor did they see him in close proximity to the vehicle.

¶ 17 Here, not only do we have exclusive and unexplained possession of stolen property standing alone, but there was also evidence that Brooks believed the vehicle to be abandoned, together with evidence that the vehicle was extensively damaged, all the windows were shattered, and it had been parked on the street in that condition for two days. If property has in fact been abandoned, or if a defendant believes it to be abandoned and unwanted property, he cannot have the requisite intention to commit a theft of that property. See *Morissette v. United States*, 342 U.S. 246, 271 (1952). Thus, we conclude that the evidence was insufficient to sustain a conviction for burglary.

¶ 18 We note that even if the State had proven Brooks's intent to commit a theft beyond a reasonable doubt, "[a] person's ignorance or mistake as to a matter of either fact or law \*\*\* is a defense if it negatives the existence of the mental state which the statute prescribes with respect to an element of the offense." 720 ILCS 5/4-8(a) (West 2010). A defense based on mistake of fact is an affirmative defense. 720 ILCS 5/4-8(d) (West 2010). In order to raise an affirmative defense, the defendant is required to present some evidence on the issue unless the State's evidence raises the issue. 720 ILCS 5/3-2(a) (West 2010). Once an affirmative defense has been

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raised, the State must sustain the burden of proving the defendant guilty beyond a reasonable doubt as to that issue. 720 ILCS 5/3-2(b) (West 2010).

¶ 19 Here, it was not necessary for Brooks to present evidence on a mistake of fact defense because the State's evidence raised the issue. Officer Perez testified that Brooks told him he thought the vehicle was abandoned. The State therefore had the burden of proving beyond a reasonable doubt that Brooks did not believe the vehicle was abandoned. However, the only evidence presented at trial supported the conclusion that Brooks did, in fact, believe the property had been abandoned. The undisputed condition of the vehicle objectively supports Brooks's stated belief. Considering the totality of the circumstances, we additionally note that the items taken were of negligible financial value, lending more credence to the notion that they had simply been abandoned. Thus, the State failed to meet its burden of proving beyond a reasonable doubt that Brooks did not, in fact, believe the property to have been abandoned.

¶ 20 "Where the prosecution has failed to prove its case, the only proper remedy is a judgment of acquittal, and remand of the cause for a new trial is not an option." (Internal quotation marks omitted.) *Woods*, 214 Ill. 2d at 470-71 (quoting *People v. Olivera*, 164 Ill. 2d 382, 393 (1995)). Because we are reversing Brooks's conviction outright, it is not necessary to address the remaining issues on appeal.

¶ 21 For the reasons stated herein, we reverse Brooks's conviction and sentence.

¶ 22 Reversed.