

NOTICE
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2014 IL App (4th) 120720-U
NO. 4-12-0720

FILED
January 10, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
NICHOLAS JAMES,)	No. 11CF1885
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Appleton and Justice Turner concurred in the judgment.

ORDER

- ¶ 1 *Held:* As the State proved beyond a reasonable doubt defendant committed residential burglary, we affirm
- ¶ 2 Following an April 2012 trial, a jury found defendant, Nicholas James, guilty of residential burglary. In May 2012, the trial court sentenced defendant to 30 years in prison. Defendant appeals, arguing the State failed to prove beyond a reasonable doubt he committed residential burglary. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On December 16, 2010, Candice Phillips left her Champaign, Illinois, home at about 8:15 p.m. When she returned at about 1 a.m., she found someone had entered her home and stolen three laptop computers and some Christmas presents that had been under her Christmas tree. Phillips' bedroom window was open. She called the police.

¶ 5 Officer Brian Karbach responded just after 1 a.m. The temperature was very cold and it had snowed during the day. On the two days prior to the snowfall, it had been very windy. Karbach noticed a bedroom window was open and had no screen. The window was an inexpensive type that locked on top. The lock could be easily broken by pushing the window in slightly. Karbach observed a palm impression on the window, appearing to have been made by a hand wearing a glove, but he found no latent prints. Karbach concluded the window was the point of entry.

¶ 6 Just outside the window Karbach observed footprints, appearing to come toward the window and also back behind other residences. The footprints appeared to Karbach to have been made by the same person but he could not be sure. Because the snow was light and fluffy, the footprints did not have distinct impressions. Karbach followed the footprints to the next street over but lost them in the driveway of 2607 Campbell. Karbach also followed the footprints leading away from the house for about 1 1/2 blocks, until they were also lost about 1317 or 1319 Hanover. Karbach testified following the footprints did not provide any helpful evidence.

¶ 7 Karbach also found a cigarette butt just outside the window, sitting on top of the fallen snow. The cigarette butt was taken for deoxyribonucleic acid (DNA) testing, which revealed a single source of male DNA. The profile matched defendant. Detective Dale Rawdin received defendant's name and place of employment.

¶ 8 Rawdin and his partner contacted defendant at his place of employment. After reading defendant his *Miranda* rights (*Miranda v. Arizona*, 384 U.S. 436 (1966)), Rawdin told defendant there had been a burglary in his neighborhood, and his DNA had been found at the scene. Defendant lived two blocks from the victim at 2804 Campbell. Rawdin did not tell

defendant on what object his DNA was found. Defendant first stated he had not committed the burglary. Rawdin then asked defendant to explain why his DNA was found at the scene of the crime. He showed defendant photos of the front of the burglarized house and the window illegally entered by the burglar.

¶ 9 Defendant asked to borrow Rawdin's cell phone to call his daughter and his daughter's mother. After placing the call and a short discussion with Rawdin, defendant told Rawdin on the night of the burglary he had gone for a walk and encountered someone he knew as "D." Defendant stated he knew "D" from the neighborhood but did not know his full name, his address, or any other information about him. Defendant claimed "D" asked him to watch for the police, but "D" did not say why. Defendant agreed and watched for police at an intersection less than a block away from the scene of the crime. When "D" did not return, defendant went to look for him and found the open window. Assuming "D" had gone into the house, defendant walked to the window, placed his hand on the windowsill, yelled for "D," and walked away. Rawdin told defendant he would inform the State's Attorney of defendant's cooperation if he could identify "D" and help return the stolen property. Defendant never contacted Rawdin.

¶ 10 Rawdin contacted defendant again in February 2012 to take a buccal swab of his DNA. Dana Pitchford tested the DNA found in this buccal swab against the DNA profile found on the cigarette butt. They matched, and the statistical probability would be expected to occur in approximately 1 in 430 trillion African-Americans, 1 in 355 quadrillion Caucasians, and 1 in 9.8 quadrillion Hispanic and unrelated individuals. The presentence report states defendant is African-American.

¶ 11 When Rawdin interviewed defendant, defendant was wearing an ankle bracelet

because he was on parole. Rawdin knew defendant was on parole, but he did not investigate the details of the ankle bracelet with defendant's parole officer. Rawdin explained the ankle bracelet was not a global positioning system (GPS) unit but indicated if defendant was in his house at certain times. Rawdin did not remember if defendant's parole officer gave him any information about whether the time of the burglary was during a time when it was acceptable for defendant to be away from his home. Rawdin never searched defendant's residence for stolen goods, and none were ever located.

¶ 12 At trial, the State argued DNA on the cigarette butt placed defendant at the scene, defendant's statements to Detective Rawdin showed his consciousness of guilt, and defendant had the opportunity to commit the crime because he lived nearby. On the other hand, defense counsel showed it had been windy on the days preceding the burglary and argued the cigarette butt could have blown to the location it was found under the window. Defense counsel argued defendant's statement to Rawdin was the product of Rawdin's interrogation techniques and did not show defendant was guilty, but simply showed he was trying to explain why his DNA would be found at the scene of the crime. Defendant also suggested the State would have found exonerating evidence had it investigated defendant's ankle monitoring system. Defendant did not call any witnesses.

¶ 13 The jury convicted defendant, and the trial court sentenced him to the maximum prison term, 30 years. This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 Defendant was found guilty of residential burglary under section 19-3(a) of the Criminal Code of 1961 (720 ILCS 5/19-3(a) (West 2010)). "A person commits residential

burglary who knowingly and without authority enters *** within the dwelling place of another *** with the intent to commit therein a felony or theft." 720 ILCS 5/19-3(a) (West 2010).

¶ 16 On appeal, defendant argues the State failed to prove he committed residential burglary beyond a reasonable doubt, claiming (1) the DNA evidence linking defendant to a cigarette butt near the window entered during the burglary was insufficient to place defendant at the scene of the crime and (2) the State's only other evidence, defendant's police statement, was unreliable due to Detective Rawdin's interrogation tactics. We disagree. After weighing both pieces of evidence, the jury could rationally have found all elements of the crime beyond a reasonable doubt.

¶ 17 On appeal, a reviewing court "will not reverse a defendant's conviction unless the evidence is so improbable or unsatisfactory that it raises a reasonable doubt of defendant's guilt." *People v. Moss*, 205 Ill. 2d 139, 165, 792 N.E.2d 1217, 1232 (2001). When reviewing the sufficiency of the evidence, the relevant question 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. Sutherland*, 155 Ill. 2d 1, 17, 610 N.E.2d 1, 8 (1992). The jury's function is to "assess the credibility of witnesses, weigh the evidence presented, resolve conflicts in the evidence, and draw reasonable inferences from the evidence," and its determinations on such matters are afforded great deference. *Moss*, 205 Ill. 2d at 164, 792 N.E.2d at 1232. The appellate court cannot "'substitute its judgment for that of the fact finder.'" *Sutherland*, 155 Ill. 2d at 17, 610 N.E.2d at 8 (quoting *People v. Campbell* 146 Ill. 2d 363, 375, 586 N.E.2d 1261, 1266 (1992)). This standard applies "in all criminal cases, whether the evidence is direct or circumstantial." *People v. Pintos*, 133 Ill. 2d 286, 291, 549

N.E.2d 344, 346 (1989).

¶ 18 The State's main evidence was the cigarette butt found under the window entered during the burglary. In *People v. Rhodes*, 85 Ill. 2d 241, 249, 422 N.E.2d 605, 608 (1981), the court held a single fingerprint could be sufficient to prove guilt when it is "found in the immediate vicinity of the crime under such circumstances as to establish beyond a reasonable doubt that the fingerprints were impressed at the time the crime was committed." However, "the trier of fact need not search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *Id.* Here, the cigarette butt was found just under the illegally entered window, placing it in the immediate vicinity of the crime. The cigarette butt could be linked to the night of the crime because it was found on top of freshly fallen snow.

¶ 19 Defendant argues *Rhodes* is distinguishable because, in *Rhodes* the fingerprints were found on glass broken during the burglary (*Id.* at 249-50, 422 N.E.2d at 609), while here the cigarette butt was found outside the window entered during the burglary. The immediate vicinity of the crime is not necessarily inside the home and could be right outside the point of illegal entry. While being found outside the home may weaken the connection to the burglary, in *Rhodes* the fingerprint was the only evidence, whereas here the State presented other evidence. The State also claimed defendant's false statements to Detective Rawdin evidenced his consciousness of guilt and defendant had the opportunity to commit the crime because he lived only two blocks from the burglary.

¶ 20 Defendant also points to *People v. Rivera*, 2011 IL App (2d) 091060 ¶ 31, 962 N.E.2d 53, for the proposition "DNA, in and of itself, does not confirm the commission of a crime; rather, it confirms an individual's identity." While DNA evidence does not guarantee conviction,

it can be important evidence linking defendant to the scene of the crime on the night of the burglary. See *Id.* (holding while DNA "does not trump all other evidence," it can nonetheless be important if it raises a reasonable doubt as to the identity of the perpetrator). Here, the jury could reasonably conclude the cigarette butt on top of newly fallen snow linked defendant to the illegally entered window on the night of the burglary.

¶ 21 At trial, defendant argued the wind could have blown the cigarette butt to the location where it was found and now claims this possibility created a reasonable doubt. Defendant stated, "if the jury could reasonably infer that the cigarette butt was blown by the wind, as the State admits, then the jury would *have* to have a reasonable doubt of [defendant's] guilt." While the jury could have drawn this inference, it did not. The jury inferred defendant dropped the cigarette butt on top of the newly fallen snow before entering or on exiting the window. Such an inference by the jury was reasonable based on the facts presented at trial, and we decline to overturn it simply because the jury could have drawn a different inference. "[A] reviewing court must allow all reasonable inferences from the record in favor of the prosecution." *People v. Davison*, 233 Ill. 2d 30, 43, 906 N.E.2d 545, 553 (2009).

¶ 22 The cigarette butt was not the State's only evidence. The State also argued defendant's false statements to Detective Rawdin showed consciousness of guilt and defendant had the opportunity to commit the crime. According to the Second District, "[f]alse exculpatory statements are admissible evidence of the accused's consciousness of guilt[,] as they are "further evidence of [defendant's] criminal intent." *In re P.A.G.*, 193 Ill. App. 3d 601, 604, 550 N.E.2d 32, 34 (1990). Defendant first denied any involvement in the burglary, then admitted he went to the open window and placed his hands on the windowsill, but claimed an individual named "D"

burglarized the home. At trial, defense counsel argued the entire story was unreliable and should be disregarded. However, even if the story was factually unreliable, the jury could reasonably have weighed it as evidence defendant committed the burglary because he attempted to create a story calculated to explain his presence at the scene. The fact that defendant made this statement after Rawdin asked him to explain why his DNA was found at the scene could weaken the significance of defendant's answer and is a consideration for the jury in evaluating the probative value of Rawdin's statement. Moreover, the State also argued defendant had the opportunity to commit the burglary because he lived only a few blocks from the burglarized home.

¶ 23 Last, defendant argues this court should also consider "Rawdin's exculpatory testimony about ankle monitoring." Rawdin testified he did not investigate details of the ankle bracelet to find out if the time of the burglary was also a time when defendant was required to be in his home. At trial, defense counsel argued the ankle monitoring system was exculpatory evidence because carwashes are generally not open from 8 p.m. to midnight, so it follows defendant must not have been working at the time of the burglary, and it further follows defendant must have been required to be at home. Thus, defense counsel suggested defendant would have violated his parole had he committed the burglary and defendant's parole officer would have known this and would have exonerated defendant had Rawdin asked him about the ankle monitoring device.

¶ 24 On appeal, reviewing courts consider "whether the evidence adduced at trial could support any rational determination of guilt beyond a reasonable doubt." *United States v. Powell*, 469 U.S. 57, 67 (1984). We cannot consider evidence not presented at trial. *Id.* Defendant essentially asks us to consider evidence not presented because the State should have followed up "on whether the ankle monitoring [device] would exonerate [defendant]," and otherwise the State

could strengthen its case "by simply ignoring potential exculpatory evidence." We disagree. The State did not simply ignore the evidence, as it was considered by the jury along with the all the other evidence presented. Nothing in the record suggests the State hid potential exonerating evidence or attempted to distort it when Rawdin testified. Rather, Rawdin testified he did not look into the issue. We note Rawdin's failure to pursue this matter was not unreasonable, as defendant admitted being at the scene of the crime. If follow-up on the issue would have exonerated defendant, as defense counsel suggests, it was incumbent on the defense to present evidence to that effect at trial. Defendant did not call any witnesses or present any evidence explaining how the monitoring system could exonerate defendant. Defense counsel simply chose to suggest exculpatory evidence might exist. Defense's suggestion without any corroborating evidence was weak, and the jury could reasonably have given it little weight.

¶ 25 The State's evidence was sufficient to find defendant guilty of residential burglary. First, based on the evidence presented, the jury could reasonably have inferred defendant dropped the cigarette butt at the scene just before or after the burglary took place. Second, the jury could also have reasonably evaluated defendant's statement to Detective Rawdin as additional evidence of his guilt. Third, as defendant presented no evidence demonstrating the ankle monitoring system amounted to exonerating evidence, the jury could reasonably have given the argument little weight.

¶ 26 III. CONCLUSION

¶ 27 We affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2012).

