2015 IL App (1st) 130941-U

FIFTH DIVISION
MARCH 31, 2015

No. 1-13-0941

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 20916
	)	
SAMUEL LEE,	)	Honorable
	)	William H. Hooks,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Palmer and Justice Reyes concurred in the judgment.

O R D E R

¶ 1 *Held*: Evidence was sufficient to convict defendant of possession of burglary tools. Defendant did not make a clear, unequivocal, or unambiguous demand to represent himself and thus the trial court did not deprive him of that right.

¶ 2 Following a bench trial, defendant Samuel Lee was convicted of possession of burglary tools and criminal trespass to real property and sentenced to two years and a concurrent six months in the Illinois Department of Corrections, respectively. On appeal, defendant contends that the evidence was insufficient to convict him of possession of burglary tools beyond a

reasonable doubt, and he also argues that the trial court violated his constitutional right to represent himself.

¶ 3 Defendant was charged with burglary and possession of burglary tools for, on or about November 9, 2011, allegedly entering a specified building (the premises) without authority with the intent to commit a theft therein and allegedly possessing tools – a flashlight, saw, wrenches, and screwdrivers – with the intent of entering a building to commit theft therein.

¶ 4 The public defender was appointed as defense counsel in December 2011 and a particular assistant public defender (APD) appeared for defendant through the pretrial proceedings up to and including the July 2012 hearing when trial was set for September 5. In these proceedings, the court repeatedly admonished defendant for interrupting and personally addressing the court.

¶ 5 On September 5, 2012, another APD appeared (as the previous APD was attending mandatory continuing legal education) and advised the court that the defense was answering not ready for trial and seeking a "short" continuance for the regular APD to agree to a trial date. Counsel then advised the court that defendant wanted to address the court against counsel's advice and answered ready for trial. The court opined that defendant was not ready for trial as he "doesn't have a lawyer," and asked defendant if he wanted "to try the case today without an attorney? You're going to try the case?" Defendant replied "Yes" and the court ascertained from defendant that his highest education was one year of high school and he never tried a case before. The court found that defendant was represented by the public defender, was not ready for trial, and "I am not going to let you try the case in front of me *** with one year of whatever you've got" but instead would set a new trial date once the regular APD was in court. The court told defendant that if he had "a private attorney that you were to hire overnight *** he'll have four

days to prepare for it but he'd better be ready." Defendant replied that he would wait for the regular APD. On counsel's assurance that the regular APD would be in court on September 10, the case was continued to that day. The regular APD appeared that day and thereafter for defendant.

¶ 6 At the November 2012 trial, police officer Chris Hackett testified that he was checking the premises shortly before 10 a.m. on November 9, 2011, because the premises – a large warehouse being converted into condominiums – had been burglarized the previous week. When Officer Hackett observed a door ajar, he watched that door until he observed a man (not defendant) enter the premises through that door, and then watched for the man's exit. When the man and defendant exited the premises together, defendant had a black bag and an orange furniture hand-truck. After the two men walked down the street for some distance, with defendant still carrying the bag and pulling the hand-truck, Officer Hackett stopped them. Defendant's black bag contained wrenches, screwdrivers, a hacksaw, and a flashlight. After contacting the agent of the premises' owner, defendant was arrested and the bag and hand-truck were recovered. Officer Hackett observed that the ajar door appeared to have been pried open, and a photograph of the door was admitted into evidence. At the police station, the hand-truck was identified by and turned over to the agent.

¶ 7 The parties stipulated that the agent of the premises' owner would testify that the doors of the premises were secure when he left the premises on the evening of November 8, 2011, and that defendant did not have permission or authority to be on the premises.

¶ 8 Following closing arguments, the court found defendant guilty of possession of burglary tools and not guilty of burglary while convicting him of the lesser-included offense of criminal

trespass to real property. The court found that defendant's tools could have been used for entering a building, though no evidence was presented that the tools were so used. The court found that defendant was inside the premises without authority and left the premises with the hand-truck but the ownership of the hand-truck was not expressly addressed. While "the tools alone don't say a lot," the fact that defendant also had the hand-cart caused the court to find that he did not have the tools to conduct repairs on the premises but instead they were burglary tools.

¶ 9 In his posttrial motion, defendant argued at length that the evidence presented that the tools were burglary tools was insufficient. The court denied the motion, finding that the evidence of the pried-open door to the premises led to the reasonable inference that defendant's tools were burglary tools. Following arguments in aggravation and mitigation, the court sentenced defendant to two years for possession of burglary tools, a concurrent six months for trespass in the Illinois Department of Corrections, and fines and fees. This appeal timely followed.

¶ 10 On appeal, defendant first contends that the evidence was insufficient to convict him beyond a reasonable doubt of possession of burglary tools. In particularly, he argues that the State failed to prove that he had the requisite intent, as shown by his acquittal for burglary.

¶ 11 On a claim of insufficiency of the evidence, we must determine whether, taking the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. It is the responsibility of the trier of fact to weigh, resolve conflicts in, and draw reasonable inferences from the testimony and other evidence. *Brown*, 2013 IL 114196, ¶ 48. The weight of the evidence and credibility of witnesses are matters for the trier of fact, who may accept or reject as much or little of a witness's testimony as it chooses. *People v. Johnson*, 2014 IL App

(1st) 122459-B, ¶ 131. We do not retry the defendant – we do not substitute our judgment for that of the trier of fact on the weight of the evidence or credibility of witnesses – and we accept all reasonable inferences from the record in favor of the State. *Brown*, 2013 IL 114196, ¶ 48. 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 defendant'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. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Brown*, 2013 IL 114196, ¶ 48.

¶ 12 Consistency in the verdicts (the disposition of particular counts by the trier of fact) in a criminal case is not constitutionally required, and inconsistent verdicts can often be explained as a product of lenity on the part of the trier of fact. We do not presume that the acquittal was the correct verdict, as it is just as likely that the acquittal was a windfall given to the defendant. The constitution does not prohibit courts from being exceptionally lenient. "Though we do not encourage trial judges to stray from their duty to follow the law, we do acknowledge, without condoning, the clear reality that trial judges may exercise lenity in what they perceive as the interests of justice. Thus, we do not reject an inconsistent verdict rendered in a bench trial as unreliable and suggestive of confusion." *People v. McCoy*, 207 Ill. 2d 352, 356-58 (2003) (citing *United States v. Powell*, 469 U.S. 57 (1984), and *Harris v. Rivera*, 454 U.S. 339 (1981)).

¶ 13 A person commits the offense of possession of burglary tools when he "possesses any key, tool, instrument, device, or any explosive, suitable for use in breaking into a building *** or any part thereof, with intent to enter that place and with intent to commit therein a felony or theft." 720 ILCS 5/19-2(a) (West 2012). For a conviction for possession of burglary tools where the tools at issue could be used for innocent as well as illegal purposes, the defendant's intent is the controlling factor. *People v. Whitfield*, 214 Ill. App. 3d 446, 456 (1991).

¶ 14 On this record, taking the evidence in the light most favorable to the State as we must, we cannot conclude that no reasonable finder of fact would convict defendant of possession of burglary tools. The trial evidence established that a door of the premises had been pried open since the previous night and that defendant exited the premises (having been inside the premises without authority) through that door carrying tools suitable to pry a door open and pulling a hand-cart that was later returned to the agent of the premises' owner. As the trial court found, while the tools *by themselves* proved little as they are common tools, it is reasonable to infer that they were burglary tools – that is, that defendant intended the tools for breaking into a building to commit theft therein – when combined with the recently pried-open door, his presence on the premises without authority, and his pulling a hand-cart that inferredly was not his property.

¶ 15 Defendant also contends that the trial court violated his right to represent himself.

¶ 16 While a defendant has a right to represent himself, he must first knowingly and intelligently waive his right to counsel. *People v. Baez*, 241 Ill. 2d 44, 115-17 (2011). He must make an articulate and unmistakable demand to proceed *pro se*; a waiver of counsel must be clear, unequivocal, and unambiguous. *Baez*, 241 Ill. 2d at 115-17. The court shall determine whether the defendant truly desires to represent himself and definitively invoked his right to act

pro se, and courts shall indulge every reasonable presumption against waiver of counsel. *Baez*, 241 Ill. 2d at 115-17. Determination of whether a defendant has intelligently waived his right to counsel depends on the facts and circumstances of the case, including the defendant's background, experience, and conduct. *Baez*, 241 Ill. 2d at 115-17. Though a court may consider a defendant's decision to act *pro se* unwise, it must accept that decision if freely, knowingly, and intelligently made. *Baez*, 241 Ill. 2d at 115-17. A court should apprise a defendant of the dangers and disadvantages of self-representation so the record establishes his awareness of the nature of the right being waived and the consequences of his decision. *Baez*, 241 Ill. 2d at 115-17. Even if a defendant gives some indication that he wants to act *pro se*, he may later acquiesce in representation by counsel. *Baez*, 241 Ill. 2d at 115-17. We review the trial court's determination regarding waiver of counsel for abuse of discretion. *Baez*, 241 Ill. 2d at 115-17.

¶ 17 Here, upon learning on the scheduled trial date that defense counsel was seeking a continuance, defendant informed the court through counsel that he was ready for trial. We consider it highly significant that neither defendant nor counsel ever stated that defendant would represent himself at trial, but instead the court itself raised the prospect of self-representation. We also consider it significant that defendant did not answer after the court asked if he wanted "to try the case today without an attorney" but replied affirmatively to "You're going to try the case?" Defendant contends that he thereby affirmed that he would represent himself. However, in light of defendant's stated desire for an immediate trial, the question and answer are also reasonably construed as his affirmance that the defense – a collective "you" as he had counsel despite the court's assertions that he did not – would proceed immediately to trial. The ambiguity was not resolved in the subsequent colloquy, where defendant directly and tersely answered the

court's questions (likely taking to heart the court's admonishments not to speak out-of-turn) until he clearly stated that he would wait for his regular APD. Under all the circumstances, we conclude that defendant did not make a clear, unequivocal, or unambiguous demand to represent himself and we therefore find no deprivation of his right to represent himself. It appeared as if defendant was not happy that his assigned APD was not available for trial that date, but when he realized that the trial court was going to continue the case so that his assigned APD would be present, defendant agreed to wait for his lawyer and abandoned his request for self-representation.

¶ 18 Accordingly, the judgment of the circuit court is affirmed.

¶ 19 Affirmed.