

FIRST DIVISION  
May 18, 2015

No. 1-13-1500

**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.	)	No. 12 CR 18832
	)	
SYLVESTER WALLS,	)	Honorable
	)	William T. O'Brien,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Justices Cunningham and Connors concurred in the judgment.

**O R D E R**

¶ 1 **Held:** The State presented sufficient evidence to prove beyond a reasonable doubt defendant's intent to commit a theft inside an apartment supporting his conviction for possession of burglary tools despite his contention that intent was not established because no one witnessed him remove anything from the apartment nor was anything actually missing from the apartment.

¶ 2 After a bench trial, defendant Sylvester Walls was convicted of possession of burglary tools and sentenced to four years in prison. On appeal, defendant contends: (1) the State failed to

prove beyond a reasonable doubt that he was guilty of possession of burglary tools when the State did not sufficiently prove he had the intent to commit a theft inside the apartment; and (2) his fines and fees order should be corrected, specifically arguing he did not receive a pre-sentence credit toward his \$30 Children's Advocacy Center fine and was improperly assessed a \$5 Electronic Citation fee.

¶ 3 Defendant was also charged with residential burglary under a different case number, but originating from the same facts. However, the trial court dismissed the residential burglary charge prior to trial.

¶ 4 At trial, Officer George Pappone testified that at approximately 10:35 a.m. on September 27, 2012, he was conducting covert surveillance looking for burglary offenders in the area around the intersections of West Grace Street, North Pine Grove Avenue and West Waveland Avenue in Chicago. Pappone was in plain clothes and in an unmarked vehicle.

¶ 5 Pappone saw defendant near the intersection of West Grace Street and North Pine Grove Avenue, biking southbound on North Pine Grove Avenue until he was near 3720 North Pine Grove Avenue. There, defendant locked his bicycle to a fence and proceeded to walk down North Pine Grove Avenue until he turned west onto West Waveland Avenue. Pappone exited his vehicle and began to follow defendant on foot at a distance of approximately 50 feet. From an observation point on the south side of West Waveland Avenue, Pappone saw defendant, who was carrying a backpack, attempt to open a door near 710 West Waveland Avenue. Defendant next went to a courtyard adjacent to that address. Pappone maintained an unobstructed view of defendant. He attempted to walk in a doorway, but subsequently left the courtyard when a female exited through the doorway.

¶ 6 Defendant walked further west on West Waveland Avenue to an apartment building located at 728 West Waveland Avenue where he walked down a driveway into a parking lot. Pappone continued to follow defendant on foot, at a distance of approximately 25 feet. While defendant was standing in the parking lot, Pappone radioed his enforcement team to set up surveillance near the area where defendant had locked his bicycle.

¶ 7 Pappone further testified that while following defendant to the parking lot, he noticed Bradley Adams leave his third story apartment from the rear of the building located at 728 West Waveland Avenue. Adams walked down three flights of stairs, opened a gated entry and then left the parking lot in his car.

¶ 8 Soon thereafter, Pappone saw defendant walk to that same gated entry, maneuver his arm through the fence and open the gate from the inside. Defendant walked up the three flights of stairs and to the door where Adams had exited. Pappone was approximately 60 to 70 feet away and could only see defendant's back due to his surveillance angle. He also could no longer see defendant's backpack. However, Pappone saw defendant open a storm door and a minute or two later, enter the apartment building.

¶ 9 Pappone radioed his enforcement team alerting them that defendant had entered the apartment building. Seven to eight minutes later, Pappone received radio contact from a team member alerting him that defendant had left the apartment building through the front entrance. Pappone walked toward the front of the building, then back east on West Waveland Avenue. As Pappone began to walk north on North Pine Grove Avenue, he saw defendant had been detained by his enforcement team near where defendant's bicycle had been chained. While Pappone was present, a member of the enforcement team searched defendant's backpack and found a knife, a pair of gloves and a flashlight.

¶ 10 After giving defendant his *Miranda* rights, the officers asked defendant what he was doing in the apartment building. Defendant replied that he was there to see "white Mike" and do some work for him. Defendant could not identify the address of the building. The officers were not able to locate any individual named "Mike" living in the building.

¶ 11 Pappone went back to the rear of the building, opened the locked gate just as defendant had and climbed the stairs to the third floor where Pappone had seen defendant enter the apartment. There, he noticed scratch marks on the door frame and that both doors – the storm door and main door – were open. Pappone stated that based on his experience on burglary investigation teams, he believed defendant was carrying burglary tools.

¶ 12 Adams testified that he lived in the third story apartment at 728 West Waveland Avenue and had moved in about one to two weeks prior to September 27, 2012. When he exited his apartment that day, he locked the main door and it had no scratch marks. Adams did not know defendant and did not give him permission to enter his apartment. Adams believed none of his or his wife's personal possessions were missing from their apartment.

¶ 13 In finding defendant guilty of possession of burglary tools, the trial court stated that the fact that defendant entered the apartment building "goes toward[] his intent as to the use of the tools that were recovered from his backpack." The court further found significant defendant's "actions leading up to [728 West Waveland Avenue]." Finally, the court stated that there was "no indication that [the items found in defendant's backpack] were taken from the apartment, since Mr. Adams testified that nothing was missing from his apartment." Defendant was subsequently sentenced to four years in prison.

¶ 14 On appeal, defendant first contends that the evidence was insufficient to prove beyond a reasonable doubt that he had the intent to commit a theft inside Adams' apartment. Accordingly,

defendant argues he cannot be found guilty of possession of burglary tools. The State responds that the circumstantial evidence surrounding defendant's actions that day is sufficient proof that he intended to commit a theft inside Adams' apartment. Thus, the State concludes that the evidence elicited at trial was sufficient to find defendant guilty of possession of burglary tools.

¶ 15 Due process mandates that a defendant may not be convicted of a crime unless each element constituting that crime is proven beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004) quoting *In re Winship*, 397 U.S. 358, 364 (1970). When assessing the sufficiency of the evidence in a criminal case, the reviewing court must view the evidence in the light most favorable to the prosecution and then decide if any rational trier of fact could find all the elements of the crime proven beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. All reasonable inferences must be allowed in favor of the prosecution. *People v. Givens*, 237 Ill. 2d 311, 334 (2010). We will not overturn a conviction unless the evidence is "so improbable or unsatisfactory that it creates" reasonable doubt of guilt. *Id.* Finally, while we must carefully examine the evidence before us, we must give the proper deference to the trial court who saw the witnesses testify (*People v. Smith*, 185 Ill. 2d 532, 541 (1999)) because it was in the "superior position to assess the credibility of witnesses, resolve inconsistencies, determine the weight to assign the testimony, and draw reasonable inferences therefrom." *People v. Vaughn*, 2011 IL App (1st) 092834, ¶ 24.

¶ 16 A person commits the crime of possession of burglary tools when he "possesses any \*\*\* tool \*\*\* suitable for use in breaking into a building \*\*\* with intent to enter that place and with intent to commit therein a felony or theft." 720 ILCS 5/19-2(a) (West 2012).

¶ 17 When the tools found on a defendant could be used for both an innocent and illegal purpose, the defendant's intent becomes the controlling factor. *People v. Whitfield*, 214 Ill. App.

3d 446, 456 (1991). The required intent is a general intent to use the tools for a criminal purpose, which may be inferred from the circumstances surrounding their possession. *People v. Obrochta*, 149 Ill. App. 3d 944, 952 (1986). Intent is usually proven through circumstantial evidence, making inferences from the conduct of the defendant. *People v. Ybarra*, 156 Ill. App. 3d 996, 1002-03 (1987). Determining whether or not the defendant had the requisite intent is a question for the trier of fact and its finding will not be overturned "unless the evidence is palpably contrary to the verdict or so unreasonable, improper, or unsatisfactory as to create a reasonable doubt of guilt." *Id.* at 1002.

¶ 18 When, as here, the items found on defendant (a knife, flashlight and gloves), could have both an innocuous and illicit purpose, the sole focus should turn on defendant's intent. See *Whitfield*, 214 Ill. App. 3d at 456. However, we find that the circumstantial evidence sufficiently proves the tools were suitable for breaking into a building regardless of their possible innocent uses.

¶ 19 Defendant first argues that his conviction should be reversed because the State did not prove beyond a reasonable doubt that he intended to commit a theft inside the apartment because no one saw him remove anything nor was anything actually taken from the apartment. However, this argument is unpersuasive. The intent to commit a theft inside an apartment when entering is entirely independent from the outcome of such entry. See *People v. Poe*, 385 Ill. App. 3d 763, 766 (2008) (stating that in a burglary case, one can have the requisite intent to commit a theft inside a building regardless of whether a subsequent theft is ever committed). Defendant's intent must be examined from the point where the officers first saw him to the moment when he made entry into the apartment. Thus, we must look at all of defendant's actions leading up to his entry

into the apartment to determine if a rational trier of fact could have found defendant had the requisite intent.

¶ 20 The unimpeached testimony of Pappone indicated that defendant tried to open a door to a building near 710 West Waveland Avenue, was about to enter another doorway in an adjacent courtyard until an individual walked through that door and then proceeded to reach around the inside of a gated entry to open the gate at 728 West Waveland Avenue. Furthermore, defendant gained entry to an apartment building in which he did not live, did not have permission to enter and for which he had no keys. Finally, the evidence adduced at trial indicated that prior to defendant being at the third story apartment's door, there were no scratch marks on the door, yet after his presence there, scratch marks were observed. All of these actions occurred while defendant carried a backpack which upon his arrest was found to contain a pair of gloves, a knife and a flashlight. The trial court's inference that defendant's entry into the apartment building proved his intent to commit a theft therein is completely rational. See *People v. Johnson*, 28 Ill. 2d 441, 443 (1963) ("Like other inferences, this one is grounded in human experience, which justifies the assumption that the unlawful entry was not purposeless, and, in the absence of other proof, indicates theft as the most likely purpose."). Accordingly, the fact that no one saw defendant take any of Adams' belongings and none of Adams' belongings were missing from the apartment does not defeat the circumstantial evidence of defendant's intent to commit a theft inside the apartment.

¶ 21 Defendant also argues that his failure to flee demonstrates a lack of a consciousness of guilt defeating the inference that he intended to commit a theft inside the apartment. While it is proper to infer that a suspect who flees or attempts to flee has a consciousness of guilt, (see *People v. Hart*, 214 Ill. 2d 490, 518-19 (2005); *People v. Williams*, 266 Ill. App. 3d 752, 760

(1994)), the inverse is not automatically true, and a trier of fact must still look at the totality of the circumstances. Any attempt to run likely would have been futile as Pappone's enforcement team, consisting of three officers, had detained defendant and the alleged crime occurred during broad daylight. Thus, the evidence of defendant's lack of flight cannot overcome the overwhelming circumstantial evidence that defendant intended to commit a theft inside the apartment.

¶ 22 Accordingly, because the evidence must be taken in the light most favorable to the prosecution with all reasonable inferences allowed in favor of the prosecution, we cannot say that no rational trier of fact could have found the evidence elicited at trial proved beyond a reasonable doubt that defendant intended to commit a theft inside the apartment or accordingly his possession of burglary tools. The evidence of defendant's intent was not "so improbable or unsatisfactory that it creates" reasonable doubt of guilt. *Givens*, 237 Ill. 2d at 334.

¶ 23 Defendant next contends, and the State concedes, that his \$459 of fines, fees and costs should be reduced to \$424 because defendant was not given pre-sentence custody credit toward his \$30 Children's Advocacy Center fine and was improperly assessed a \$5 Electronic Citation fee.

¶ 24 We agree that defendant is entitled to a \$5 per day pre-sentence custody credit for the 209 days he spent in pre-trial custody to offset the \$30 Children's Advocacy Center fine. See 725 ILCS 5/110-14(a) (West 2012). We also agree that the \$5 Electronic Citation fee was improperly assessed because defendant was not convicted of a traffic, misdemeanor, municipal ordinance or conservation violation. See 705 ILCS 105/27.3e (West 2012). Pursuant to our authority under Illinois Supreme Court Rule 615(b) (eff. Aug. 27, 1999), we order the clerk of the circuit court to modify defendant's fines and fees order to reflect an outstanding balance of \$424, vacating the \$5



Electronic Citation fee and crediting him \$30 toward his Children's Advocacy Center fine. For the reasons stated above, we affirm the judgment of the circuit court of Cook County in all other respects.

¶ 25 Affirmed; fines and fees order corrected.