2015 IL App (1st) 132300-U

FIRST DIVISION
DECEMBER 7, 2015

No. 1-13-2300

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. 12 C4 40776
	)	
PARIS MAYFIELD,	)	Honorable
	)	Carol A. Kipperman,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Liu and Harris concurred in the judgment.

ORDER

¶ 1 ***Held:*** The judgment of the trial court is reversed where the evidence was insufficient to sustain defendant's conviction for burglary; defendant's felony theft conviction is affirmed; cause is remanded for resentencing.

¶ 2 Defendant Paris Mayfield was charged by information with possession of a stolen motor vehicle ((625 ILCS 5/4-103(a)(1) (West 2012)), burglary (720 ILCS 5/19-1(a) (West 2012)), and felony theft (720 ILCS 5/16-1(a)(1)(A) (West 2012)). Following a bench trial, the trial court found defendant guilty of burglary and felony theft, not guilty of possession of a stolen motor vehicle, sentenced defendant to two years' probation and ordered him to pay $1,000 in

restitution. On appeal, defendant contends the evidence was insufficient to prove that he committed burglary or felony theft, and asks this court to reverse his burglary conviction, reduce his felony theft conviction to a misdemeanor, and remand his case for resentencing. Defendant also claims that the trial court erred by ordering him to pay restitution where the State did not prove the amount of actual losses suffered by the victim.

¶ 3 The State began its case-in-chief by presenting the stipulated testimony of the victim that if called to testify he would state that he was the registered owner of a "2006 Triumph Daytona motorcycle" that he discovered missing from his garage in Skokie, Illinois on April 22, 2012, and immediately reported this to police. The victim did not give defendant permission to take the motorcycle and does not know the defendant. When he last saw the motorcycle on April 15, 2012, "the damage that he saw [after the police officers recovered it], was not damage that existed" before the vehicle went missing. The State also introduced the certified vehicle records for the motorcycle confirming the victim is the owner of the vehicle and there has never been a transfer of title.

¶ 4 The State then presented the testimony of Bellwood police officer John Trevarthen who testified that he observed a red Triumph motorcycle parked in the parking lot of a convenience store that he believed had no license plate. Officer Trevarthen observed defendant (whom he positively identified in court) get onto the motorcycle and exit the parking lot and then activated his lights to initiate a stop. During the stop, Officer Trevarthen realized the vehicle had a license plate that was bent in half and the ignition had been altered as if "some type of tool had made it larger than it was original[ly]," which he referred to as "being punched." A registration check revealed the motorcycle had been stolen. Defendant told Officer Trevarthen that the motorcycle

belonged to his friend and acknowledged that it had been reported stolen. Defendant was also unable to produce the vehicle registration and was subsequently taken into custody.

¶ 5 Officer Trevarthen testified that during the custodial interview, defendant claimed he purchased the motorcycle from a person named "Billy," that the motorcycle came with a key and the license plate was already bent when he purchased it. Defendant also confirmed there was no title for the vehicle. Defendant explained that his friend "Toby" "punched" the ignition; in order to steal the motorcycle to return it to defendant after defendant claimed the motorcycle was stolen from him somewhere on the south side of Chicago. Defendant never reported the motorcycle stolen to police. Defendant also could not provide any contact information for either Billy or Toby. Officer Trevarthen allowed defendant to make a phone call and defendant called his uncle who provided a phone number for Billy that was disconnected.

¶ 6 On cross-examination, Officer Trevarthen stated that defendant also told him he did not have the title to the motorcycle and that the purchase price was $2500. He also testified that in his opinion, the value of the motorcycle was "considerably more" than $2500, and confirmed that defendant never admitted he knew the motorcycle was stolen when he purchased it.

¶ 7 Defendant's testimony regarding the purchase of the motorcycle was substantially the same as his statement to Officer Trevarthen. In addition, defendant stated that when he purchased the motorcycle, he was told that it had a title and he would receive it once he paid the $5,000 purchase price of the motorcycle in full. Defendant claimed that he purchased the vehicle from Billy on the west side of Chicago, despite the fact that Billy's repair facility was located in Melrose Park. This was because Billy was in the area "dropping off another guy's bike."

Defendant stated that prior to purchasing the motorcycle, he saw it at Billy's shop and confirmed a purchase price.

¶ 8 Defendant also testified that the motorcycle was stolen from the parking lot of a restaurant two nights after he purchased the vehicle. The next day defendant received a call from his friend Toby who stated he saw defendant's motorcycle and asked if defendant wanted it. Defendant replied, "Yeah, I want[ ] my bike," and it was returned to him by Toby approximately two days later with the ignition "punched." Defendant claimed that when Officer Trevarthen asked him if he knew the motorcycle was stolen, he responded "Yeah, I told him I knew the bike to be stolen. But from me though." Defendant also stated he was unaware that Billy was not the actual owner of the motorcycle.

¶ 9 On cross-examination, defendant confirmed he purchased the motorcycle using cash but did not ask for a receipt because he trusted Billy. Defendant also confirmed he did not know Billy's last name. He also stated that he did not report the motorcycle stolen because he did not know the license plate number. Defendant testified that he attempted to find Billy at his repair shop after the police attempted to contact him and someone there told him "he hadn't seen Billy in two weeks, that Billy owed him some money, that he's looking for Billy too." He also explained that his friend Toby was not present in court because "he has money problems" and was currently living in Wisconsin. Defendant acknowledged on re-cross examination that the license plate was not visible the way it was bent when he was stopped by Officer Trevarthen, but explained that it had to bend that way because it would scratch the back tire otherwise.

¶ 10 During closing arguments, the State argued that the issue at trial is whether "defendant knew that he was on a stolen motorcycle – whether he knew that he was on a motorcycle that

didn't belong to him, that belonged to someone else." The State also argued defendant's version of events was not credible.

¶ 11 The trial court found defendant guilty of burglary and felony theft and not guilty of possession of a stolen motor vehicle. In so finding, the trial court stated that defendant's testimony was not credible.

¶ 12 Defendant's motion for new trial was denied and the case proceeded to sentencing. During the sentencing hearing, the State explained, in part, that the victim was required to pay a $1,000 deductible to repair the motorcycle that was returned to him damaged. In mitigation, defense counsel argued that defendant made a mistake regarding the validity of the purchase of the motorcycle. The trial court ultimately sentenced defendant as previously described.

¶ 13 Defendant first contends the evidence was insufficient to establish he committed a burglary.

¶ 14 We review the sufficiency of the evidence in the light most favorable to the prosecution to determine if any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *Jackson*, 443 U.S. at 319; *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). Under this standard, a conviction will only be overturned where the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt. *Beauchamp*, 241 Ill. 2d at 8.

¶ 15 A person commits the offense of burglary when he or she, without authority, knowingly enters a motor vehicle with the intent to commit a theft or felony therein. 720 ILCS 5/19-1(a) (West 2012). A burglary is complete upon entering with the requisite intent, irrespective of whether the intended felony or theft is accomplished. *Beauchamp*, 241 Ill. 2d at 8; *People v. Poe*,

385 Ill. App. 3d 763, 766 (2008). An entry may be accomplished simply by "breaking the close," i.e. crossing the planes that enclose the protected space. *People v. Parham*, 377 Ill. App. 3d 721, 730 (2007).

¶ 16 Although the parties advance various legal theories regarding what constitutes a burglary within the meaning of the statute, the evidence simply does not support a finding on the elements of burglary. The evidence presented at trial established only that Officer Trevarthen saw defendant get onto the motorcycle after leaving a convenience store and realized the ignition had been punched. Notably, the officer did not witness defendant punch the ignition or retrieve any tools from defendant's person suitable for performing this act, nor did defendant admit to punching the ignition of the motorcycle. Furthermore, the victim's unrebutted testimony was that the motorcycle was taken from his garage nearly two months earlier. See *People v. McGee*, 373 Ill. App. 3d 824, 833 (2007). Even taken in the light most favorable to the prosecution, the evidence presented at trial failed to establish that defendant entered a motor vehicle with the intent to commit a theft or felony. Consequently, defendant's burglary conviction is reversed.

¶ 17 Defendant next argues that his felony theft conviction should be reduced to misdemeanor theft because the evidence was insufficient to establish that the value of the vehicle was over $500 where the State failed to present any evidence of the value of the motorcycle; or in the alternative, if the evidence was sufficient to establish value, that defense counsel rendered ineffective assistance by eliciting such information.

¶ 18 A person commits the offense of theft when he or she knowingly obtains or exerts unauthorized control over the property of the owner intending to permanently deprive the owner of the use and benefit of such property. See 720 ILCS 5/16-1(a)(1)(a) (West 2012). When the fair

market value of the stolen property exceeds $500 but is less than $10,000, at the time and place of the theft, the offense is a Class 3 felony. See 720 ILCS 5/16-1(b)(4) (West 2012); see also *People v. Cobetto*, 66 Ill. 2d 488, 491 (1977) (standard for determining the value of the property at the time and place of the theft is property's fair market value).

¶ 19 Proof that the value of the property taken meets the statutory minimum is an element required in proof of felony theft. *People v. Kurtz*, 37 Ill. 2d 103, 110 (1967). Therefore, in order to sustain this conviction, the State must prove beyond a reasonable doubt that the fair market value of the property exceeds the minimum statutory requirement. See *People v. Langston*, 96 Ill. App. 3d 48, 54 (1981).

¶ 20 Although generally value must be proved by someone familiar with the property and its value (see *People v. Newton*, 117 Ill. App. 2d 232, 235-36 (1969)), it is "well recognized that judicial notice may be taken of the fact that property has some value" in the absence of direct proof of value. See *People v. Tassone*, 41 Ill. 2d 7, 12 (1968).

¶ 21 The parties do not dispute that the State failed to provide direct proof of the value of the motorcycle. However, the owner's stipulated testimony established that the motorcycle was a newer model brand name motorcycle in good condition prior to being stolen. Furthermore, the State admitted photographs of the motorcycle as it was when Officer Trevarthen arrested defendant, which the trial court reviewed and could have used to infer the value was over $500.

¶ 22 Although defendant has failed to append the photographs of the motorcycle to the record on appeal for this court's review, we can presume the photographs depict the motorcycle as the record describes. See *People v. Odumuyiwa*, 188 Ill. App. 3d 40, 45-46 (1989) ("In the absence of a complete record on appeal, it is presumed that the trial court's judgment conforms to the law

and has a sufficient factual basis."). Therefore, we cannot find that no rational trier of fact could have found the motorcycle was worth more than $500 to sustain defendant's conviction for felony theft. Because we find the evidence presented by the State was sufficient to sustain defendant's felony theft conviction, this court need not address his claim that defense counsel was ineffective by eliciting a material element missing from the State's case.

¶ 23 The cause is also remanded for resentencing because defendant's most serious conviction has been vacated (720 ILCS 5/19-1(b) (West 2012) (Class 2 burglary); 720 ILCS 5/16-1(b)(4) (West 2012) (Class 3 felony theft)). *People v. Durdin*, 312 Ill. App. 3d 4, 10 (2000) (defendant entitled to new sentencing hearing where court vacated more serious offense). Therefore, we need not address defendant's final argument that the trial court improperly sentenced defendant to pay $1,000 in restitution.

¶ 24 For the foregoing reasons, we reverse defendant's burglary conviction, affirm his conviction for felony theft, and remand the cause for resentencing.

¶ 25 Reversed in part; affirmed in part; remanded for resentencing.