2015 IL App (1st) 133522-U

FIRST DIVISION
December 14, 2015

No. 1-13-3522

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. 13 C4 40484
	)	
CRAIG YOUNG,	)	Honorable
	)	Paula M. Daleo,
Defendant-Appellant.	)	Judge Presiding.

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

O R D E R

¶ 1 *Held*: We affirm defendant's conviction for theft where he was found in possession of a downspout half a block from where it was stolen in the early hours of the day after the owner last saw it attached to his house.

¶ 2 Following a bench trial, defendant Craig Young was convicted of theft of a downspout and sentenced to two years' imprisonment. On appeal, defendant contends that the State failed to prove his guilt beyond a reasonable doubt where the evidence only showed that he was present near where the downspout was found and may have had temporary possession of it. We affirm.

¶ 3 At trial, Officer Tworek testified that he was driving a marked patrol car on Grove Avenue in Oak Park at 4:25 a.m. on June 8, 2013, with his window down. As he braked for the stop sign at Pleasant Street, he heard "a loud sound of metal being thrown to the ground" somewhere to the left. The street was dimly lit, but he turned on the car's light and saw defendant 15 to 20 feet to the left on Pleasant Street, walking briskly toward the intersection. No one else was in the area. Tworek recognized defendant and asked "was that you?" Defendant responded "yes." Tworek asked "what was that?" and defendant said "I don't know." Tworek then asked defendant what he was doing. Defendant said he was "just out for a walk" and continued past the patrol car at the same brisk pace. Tworek shined his spotlight in the direction defendant had come from and observed a large copper downspout on the grass parkway, five feet from where he first saw defendant and approximately half a block from the address 138 Kenilworth Avenue. Tworek estimated the size of the downspout as 12 feet long and six inches round. He did not see defendant hold or drop the downspout or stand up from a kneeling position.

¶ 4 Tworek conducted an investigatory stop of defendant, who cooperated and was not wearing a mask or gloves. Tworek allowed defendant to leave and inventoried the downspout. On June 10, 2013, Tworek learned that an individual identified the downspout as coming from his house. Tworek subsequently arrested defendant at his residence, 1.5 miles from where the downspout was found.

¶ 5 Jonathon Groll testified that he lived at 138 South Kenilworth Avenue in Oak Park and had installed copper downspouts on his home. On June 9, 2013, he noticed the elbow of a gutter on the side of the house was bent "completely off position" and the downspout was missing. The nearby hedges were "all tore up like somebody had been back there." He called the police, went to the station, and identified the downspout. Groll last saw the downspout attached to his house

about 5:30 p.m. on June 7, 2013, and the hedges were undamaged at that time. He did not recall telling police the downspout could have gone missing between 11 a.m. on June 7, 2013 and 7:30 a.m. on June 9, 2013. Groll did not know defendant and did not give him permission to take the downspout, which Groll estimated was worth $900 at installation and was "not very heavy."

¶ 6 The State presented a certified statement showing that defendant was convicted of retail theft in 2008. After the court denied defendant's motion for a directed finding, the defense rested.

¶ 7 At the close of trial, the court stated Tworek and Groll were both credible witnesses. The court found Groll owned the downspout and did not consent to its removal. After reviewing Tworek's testimony, the court stated "there is a reasonable inference to be drawn from that testimony that the defendant, the only person in the area, was the one who dropped that pipe." The court found defendant guilty of theft of property not exceeding $500 in value but acquitted defendant of theft of property exceeding $500 in value, finding the State did not prove the value of the downspout. Subsequently, the court denied defendant's motion for a new trial and sentenced him to two years' imprisonment.

¶ 8 On appeal, defendant contends he was not proven guilty of theft beyond a reasonable doubt where the evidence only showed that he was present near where the downspout was found and may have briefly handled the downspout. Defendant argues that Tworek’s testimony describing the sound of metal being thrown to the ground lacks credibility because the downspout was found on the grass and the noise could have been caused by defendant tripping over the object. Moreover, because Tworek never saw defendant carrying the downspout, defendant argues that no direct evidence establishes that he knowingly controlled it, removed it from the house, or intended to permanently deprive the victim of its use. Defendant urges that

Tworek's testimony at most provides evidence that defendant temporarily possessed the downspout, which, without corroborating evidence, is insufficient to support a finding of guilt.

¶ 9 The standard of review on a challenge to the sufficiency of the evidence is whether, after reviewing all 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. Circumstantial evidence is sufficient to sustain a conviction. *People v. Hall*, 194 Ill. 2d 305, 330 (2000). The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances, however, and it is sufficient if all the evidence taken together proves the defendant's guilt. *People v. Milka*, 211 Ill. 2d 150, 178 (2004). Additionally, the trier of fact is not required to disregard inferences that flow normally from the evidence or to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). The reviewing court will not retry the defendant or substitute its judgment for that of the trier of fact on questions involving the credibility of witnesses or the weight of the evidence. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). A conviction will be reversed only if the evidence is so improbable or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *Siguenza-Brito*, 235 Ill. 2d at 225.

¶ 10 To sustain a conviction for theft, the State must prove the defendant knowingly obtained or exerted unauthorized control over the owner's property and intended to permanently deprive the owner of the use or benefit of the property. 720 ILCS 5/16-1(a)(1)(A) (West 2010). The elements of knowledge and intent may be proven by inferences based upon the facts and circumstances of the case, including a defendant's recent, exclusive, and unexplained possession

of stolen property. *People v. Cameron*, 2012 IL App (3d) 110020, ¶ 32; *People v. McCracken*, 244 Ill. App. 3d 318, 322 (1993).

¶ 11 Evidence that defendant possessed stolen property, alone, will not sustain a conviction for theft, and some additional evidence is needed. *People v. Natal*, 368 Ill. App. 3d 262, 270 (2006); *People v. Munoz*, 101 Ill. App. 3d 447, 450 (1981). Defendant urges we apply the factors enumerated in *People v. Housby*, 84 Ill. 2d 415 (1981), where our supreme court held that to preserve due process, jury instructions must explain that guilt may be inferred from possession of stolen property only where a rational connection exists between possession and participation in the crime, guilt more likely than not flows from possession, and corroborating evidence is present. *Id*. at 423-24. However, defendant's reliance on *Housby* is misplaced, as that decision did not address the sufficiency of the evidence. *People v. Richardson*, 104 Ill. 2d 8, 12 (1984) (finding the "*Housby* test applies only to instructions which advise a jury of inferences it may draw"). The *Housby* factors may be useful "to determine the ultimate facts" of a case but are not dispositive of whether the evidence was sufficient to sustain a conviction. *Natal*, 368 Ill. App. 3d at 270.

¶ 12 The evidence in this case was sufficient to establish that defendant committed theft. The downspout was stolen between the evening of June 7, 2013 and the morning of June 9, 2013. Officer Tworek testified that on June 8, 2013 at 4:25 a.m., half a block from Groll's home and 1.5 miles from defendant’s residence, he heard "a loud sound of metal being thrown to the ground.” He observed defendant briskly walking away from where the sound had come from, with no one else in the area. Tworek asked “was that you?” and defendant responded “yes.” Tworek then saw the downspout on the grass, five feet from where he first saw defendant. The trial court expressly stated that Tworek testified credibly, and found that his testimony showed

defendant dropped the downspout just before the officer confronted him. *People v. Jones*, 2014 IL App (3d) 121016, ¶ 19 (deferring to trier of fact where evidence is capable of producing conflicting inferences); *People v. Carodine*, 374 Ill. App. 3d 16, 25 (2007) (possession may be indicated by "hiding or trying to dispose of the item"). Defendant's possession of the stolen downspout, in turn, supports the inference that he knowingly and intentionally stole it. *Cameron*, 2012 IL App (3d) 110020, ¶ 33 (inferring knowledge and intent from possession of stolen property).

¶ 13 We reject defendant's argument that possession was the only evidence supporting his conviction for theft. Rather, defendant's proximity to the downspout, coupled with his answer of "yes" to the Tworek's question of "Was that you?" after Tworek heard the loud noise of a 12 foot piece of metal hitting the pavement where the downspout was found, was very strong circumstantial evidence that defendant had possession of the downspout immediately before Tworek noticed him. The time and location establishes a rational connection between defendant’s possession of the downspout and the theft, and also renders it more likely than not that defendant’s possession establishes his guilt. *People v. Caban*, 251 Ill. App. 3d 1030, 1033-34 (1993) (where possession was proximate to time and location of burglary, “[i]t was not unreasonable for the trial court to have inferred from this evidence that [defendants] committed the burglary and were leaving the scene when they were serendipitously stopped by the police"); *People v. Carter*, 197 Ill. App. 3d 1043, 1047 (1990) (finding guilt more likely than not where defendant was found with stolen goods near crime scene). Notably, the time and location of a defendant's possession of stolen goods may also be taken as corroborating evidence to support an inference of guilt. *Carter*, 197 Ill. App. 3d at 1047 (corroborative evidence may include time span between burglary and discovery of defendant in possession of proceeds). Viewing all the

evidence in the light most favorable to the State, we cannot say the evidence was insufficient for a rational trier of fact to find defendant guilty of theft.

¶ 14 For all the foregoing reasons, we affirm the judgment of the trial court.

¶ 15 Affirmed.