2015 IL App (1st) 133579-U

FOURTH DIVISION
June 11, 2015

No. 1-13-3579

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 CR 6933
	)	
TIM GRIFFIN,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's convictions for residential burglary and possession of burglary tools affirmed over challenges to sufficiency of evidence and trial court's credibility determination of police officers' testimony.

¶ 2 Following a joint bench trial, defendant Tim Griffin and codefendant Mitchell Finger[1] were convicted of residential burglary and possession of burglary tools. The trial court sentenced defendant as a Class X offender to concurrent, respective terms of 12 and 3 years' imprisonment.

[1] Codefendant's appeal is pending before this court in case number 1-13-3665; he is not a party to this appeal.

On appeal, defendant argues that the State failed to prove him guilty beyond a reasonable doubt because the police officers' testimony was not credible.

¶ 3 At trial, Chicago police officer Brandon Dougherty testified that, at about 1:30 a.m. on March 25, 2013, he responded to a call of a burglary in progress in the 5800 block of West Midway Park. When he arrived at the designated location, he saw that the screen on the rear security door of the apartment building had been kicked in. Police entered the building, noticed that the door to the first-floor apartment was ajar with pry marks on the wooden door frame, and entered that apartment. Officer Dougherty announced his office and, after hearing noise in the bedroom, entered that room, where he saw codefendant Finger holding a flat-screen television. Officer Dougherty again announced his office, at which point codefendant immediately dropped the television onto the bed and jumped through the upper portion of a window, smashing through the glass and falling into the neighboring yard. Officer Dougherty looked out the window, which was approximately 7 to 10 feet off the ground, saw codefendant lying uninjured in the neighboring yard, and shined his flashlight on him until his partner, Officer Mendez, detained him.

¶ 4 Officer Dougherty further testified that he continued checking the bedroom and found defendant hiding in a closet, seated and trying to cover himself with clothing. Officer Dougherty arrested defendant, conducted a quick pat-down of his waist area to check for weapons, and found none. Officer Dougherty felt other hard metal objects in defendant's pockets but determined that they were not weapons, so he did not remove them from defendant's pockets at that time. He then brought defendant outside, at which time both defendant and codefendant were transported to the police station.

¶ 5 Officer Dougherty identified several photographs from the crime scene, including one which depicted the television lying on the bed where codefendant dropped it, and another that showed the damaged window after codefendant jumped through it. A third photograph taken from outside the building showed the window, a wooden fence, and a gangway between the window and fence which Officer Dougherty estimated to be about three feet wide. Officer Dougherty testified that when codefendant jumped out the window, he went over the wooden fence and fell into the next yard. The officer also pointed out that the photograph showed that the curtains were hanging outside the window codefendant jumped through.

¶ 6 Chicago police officer Mendez testified to substantially the same sequence of events at the outset as Officer Dougherty, also testifying that he saw codefendant drop the television onto the bed and jump out the window, breaking through the glass. Officer Mendez then ran out of the apartment building and detained codefendant in the neighboring backyard. Officer Mendez was not present when Officer Daughter subdued defendant inside the bedroom.

¶ 7 Chicago police officer Vatori testified that he was standing in front of that apartment building when he heard a loud crash that sounded like breaking glass, at which point he ran to the alley and saw Officer Mendez arresting codefendant in the backyard. During a custodial search of codefendant at the scene, Officer Vatori recovered a screwdriver, pliers and flashlight from his jacket pocket, as well as some jewelry. During a subsequent search at the police station, he also recovered a television remote from codefendant. In the protective pat-down of defendant conducted at the scene, Officer Vatori felt hard objects inside his pockets but did not remove them at that time. During a full custodial search at the police station, the officer recovered a ring, a flashlight and a screwdriver from defendant's pants pockets.

¶ 8 Shakita Moore testified that the jewelry recovered from defendants was taken from a jewelry box on her dresser, and that she had not given anyone permission to remove those items from her home. Moore's bedroom had been ransacked with clothing everywhere, and her bedroom window was broken, with the curtains hanging outside the window. Moore did not know either of the defendants, nor had she given them or anyone else permission to enter her home.

¶ 9 In closing, defense counsel argued that the police officers' testimony that codefendant jumped through the window, over the gangway and a fence, and landed in the neighboring yard with no injuries was not credible. Counsel further argued that the officers' testimony that they felt the screwdriver inside defendant's pocket during their protective pat-downs but did not remove those items at that time was also not credible.

¶ 10 The trial court stated that when police found defendants inside the home, "[a]drenaline was flying. People are in a heightened state, not only because they are committing a serious crime but because the police are about to take them into custody." The court found that codefendant tried to flee by jumping out of a window and was caught shortly thereafter with "proceeds all over him." The court expressly stated "[t]he case is not even close. There is not a question in my mind," and found that the State proved defendants guilty beyond a reasonable doubt of residential burglary and possession of burglary tools. In denying defendant's subsequent motion for a new trial, the court specifically found that the testimony of the police officers "was all credible beyond a reasonable doubt."

¶ 11 Defendant’s lone argument on appeal is that the State failed to prove him guilty beyond a reasonable doubt because the police officers' testimony was not credible. He specifically claims that the officers' testimony that codefendant jumped through a window, across a gangway and

over a fence and landed without injury, and their testimony that they felt metal objects in defendant's pocket during the pat-down but did not immediately recover them, was so unworthy of belief and contrary to human experience that it cannot sustain his convictions. Defendant correctly notes that the State presented no fingerprint or other forensic evidence placing defendant at the scene. Thus, defendant argues, because the evidence against him rises or falls on the credibility of the police officers' supposedly unbelievable testimony, his convictions cannot stand.

¶ 12 In considering whether defendant was proven guilty beyond a reasonable doubt, we review the evidence in the light most favorable to the State and draw all reasonable inferences from the evidence in the State's favor. *People v. Baskerville*, 2012 IL 111056, ¶ 31. We must determine whether any rational trier of fact could have found the elements of the offense proven beyond a reasonable doubt. *Id*. We will not reverse a conviction based on insufficient evidence unless the evidence is so improbable or unsatisfactory that the only rational result would be an acquittal. *People v. Givens*, 237 Ill. 2d 311, 334 (2010). Nor will we reverse a conviction simply because defendant claims that a witness was not credible or that the evidence was contradictory. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009).

¶ 13 In a bench trial, the trial court is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences therefrom. *Id*. We will not substitute our judgment on these factual determinations for that of the trial court. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009).

¶ 14 To convict defendant of residential burglary in this case, the State was required to prove that he knowingly and without authority entered the dwelling place of another with the intent to commit a theft therein. 720 ILCS 5/19-3 (West 2012). To prove him guilty of possession of

burglary tools, the State was required to establish that defendant possessed tools suitable for use in breaking into a building with the intent to enter that building and commit a theft therein. 720 ILCS 5/19-2 (West 2012).

¶ 15 Viewed in the light most favorable to the State, we find that the evidence was sufficient to find defendant guilty of residential burglary and possession of burglary tools. Officers Dougherty and Mendez each testified that the doors to the apartment building and the first-floor apartment had been forcibly opened, and photographs corroborated that testimony. Upon entering the bedroom in that apartment, they saw codefendant holding a flat-screen television, which he immediately dropped onto the bed before jumping out of a window. Officer Dougherty then found defendant hiding in the bedroom closet trying to cover himself with clothing. Officer Vatori testified that during a custodial search, he recovered a ring, a screwdriver and a flashlight from defendant's pants pocket. This testimony, if believed, was sufficient to prove defendant guilty of both offenses. The lack of fingerprint evidence had no bearing on this case, given that the police detained defendant while he was committing the offense; their eyewitness identifications were sufficient to sustain the convictions, rendering fingerprint evidence unnecessary. *People v. Herron*, 2012 IL App (1st) 090663, ¶ 23 (in light of single witness's credible identification of defendant, lack of corroborating physical evidence did not create reasonable doubt as to defendant's guilt).

¶ 16 Defendant's argument that the police officers' testimony was not credible also provides no basis for reversal. Defendant points to two different lines of testimony that, he believes, strain all credibility: First, that codefendant was able to jump through a window and land, uninjured, in the neighboring yard, requiring him first to clear a gangway and a wooden fence; and second, that

two police officers did not recover burglary tools on defendant's person during their initial pat-downs but somehow discovered them later at the police station. We find no merit to either claim.

¶ 17 Regarding the testimony that codefendant fled the scene by jumping out the window, we would first note that this has nothing to do with the evidence against defendant. Defendant was found hiding in a closet by Officer Daugherty, who cleared the room after codefendant fled. Defendant is arguing that the testimony regarding codefendant's jump out the window was so implausible that nothing that came out of Officer Daugherty's mouth at trial is worthy of belief—in other words, it proves that Officer Daugherty (the only one who found defendant hiding in the closet) must have completely fabricated defendant's presence at the house. How, exactly, Officer Daugherty came upon defendant to arrest him, if he did not find him hiding in that closet, is not something defendant has explained or even theorized; his only argument, both at trial and on appeal, is that the story Officer Daugherty told is not believable.

¶ 18 In any event, we disagree with defendant's take on the evidence. The testimony from Officer Dougherty that codefendant jumped through the bedroom window, smashing through the glass in the process and landing on the other side of a wooden fence in the neighboring yard, uninjured, was not impeached in any meaningful way by defense counsel. First, Officer Mendez corroborated that testimony. Second, there was no suggestion that either officer had anything but a clear view of codefendant before he jumped or while he jumped out the window. Nor is there any basis to deny the broken window itself; photographs taken at the scene show the window with the glass smashed out and a portion of the curtains hanging outside the window—as if someone had just jumped through it. And a third officer testified to the sound of breaking glass, though he did not see the jump itself. Against all of this evidence, defendant raises two

credibility points—that it would not be possible for codefendant to make that jump, and that it is impossible to believe that he did so without suffering some injury in the process.

¶ 19 We disagree that the evidence renders it wholly implausible that codefendant could have completed that jump out the window in the manner that he did. The window was higher than the wooden fence in the neighboring yard by a few feet at least, as best as testimony could estimate, and as indicated in the photographs admitted at trial. Thus, codefendant would not have been required to clear an obstacle above him; he was already above the wooden fence. The gangway separating the window from the wooden fence and the neighbor's yard was only a few feet in width, again according to witness estimates and the photographs themselves. We do not deny that the jump was impressive, but all we have to accept is that codefendant travelled a few feet in the air before descending and landing in the neighbor's yard. And as the able trial judge correctly pointed out, codefendant would be expected to be in a heightened, adrenaline-induced state at the time he was trying to flee the police. Taking the evidence in the light most favorable to the State, we do not find it implausible that codefendant could have jumped out that window and landed in the neighbor's yard, just as Officer Dougherty claimed.

¶ 20 As for the determination that codefendant was not injured during the jump, we would make several observations. First, it is not at all clear to us that the testimony established that codefendant was entirely unharmed by the fall. We know that, when Officer Daugherty came upon codefendant after he had been subdued by Officer Mendez, he believed codefendant to be "uninjured." But defense counsel did not elaborate on that point. We do not know, for example, if codefendant was momentarily stunned or had the wind knocked out of him as a result of the jump. We do not know if he was in pain. We take it, from Officer Mendez's testimony that codefendant did not require immediate medical attention, that codefendant was not bleeding

profusely and had not suffered any major broken bones, but the testimony did not reveal that any officer conducted a full-body examination of codefendant to search for bruises or scrapes, and we would fully expect that the officers had more important things on their minds at that moment. Suffice it to say, we do not read the trial transcripts as demonstrating that codefendant was completely unscathed by the jump and landing. We would further note that the curtain, which testimony showed was typically inside the apartment, could have acted as protection against broken glass during the jump. More important than any of the foregoing, we will not utterly disregard the testimony of two officers who witnessed the jump simply because codefendant appeared to have come out of the experience better than defendant speculates he should have.

¶ 21 We also find no merit in defendant's claim regarding the pat-downs of defendant at the scene and the officers' failure to uncover burglary tools in defendant's possession until later, at the police station. Defendant argues that it is unreasonable to believe that Officers Daugherty and Vatori patted defendant down and felt a metal object in defendant's pocket but did not remove that object until later at the police station. The thrust of defendant's argument, of course, is that defendant did not actually possess that metal object—the screwdriver—because if he did, the officers would have removed it from defendant's pocket immediately on the scene. First of all, there was no testimony indicating that either officer identified the metal object they felt as a screwdriver; Officer Daugherty simply stated that he felt a metal object of indeterminate length and did not consider it a weapon. We find nothing implausible about that testimony. A screwdriver is not a *per se* dangerous weapon, especially once defendant was handcuffed. See *People v. Fields*, 258 Ill. App. 3d 912, 919 (1994) ("A screwdriver only becomes dangerous when used in a dangerous manner"). And even if it could be considered dangerous inside defendant's pocket, while defendant's hands were restrained behind his back, the question before

this court is not whether the officers acted reasonably or cautiously, but whether their testimony is so far-fetched that we are compelled to conclude that they fabricated it. We find nothing in the record to remotely suggest that conclusion. More to the point, the trial court did not find the officers' testimony unworthy of belief; it found their testimony entirely credible. The trial court is in a superior position to determine the credibility of witnesses, and we find nothing in the record to disturb those findings. See *People v. Richardson*, 234 Ill. 2d 233, 251 (2009). Viewed in the light most favorable to the State, the evidence comes nowhere close to suggesting that the police officers' testimony was so unbelievable that their testimony should be rejected.

¶ 22 Based on the testimony of the police officers, corroborated in large part by photographs entered into evidence, the trial court found the evidence against defendant on both counts to be overwhelming. In initially rendering his verdict, Judge Linn stated that "[t]he case is not even close. There is not a question in my mind." At the post-trial hearing, he found that the officers' testimony "was all credible beyond a reasonable doubt." We find no basis to disagree with the trial court's judgment.

¶ 23 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 24 Affirmed.