2015 IL App (1st) 133665-U

FOURTH DIVISION
September 24, 2015

No. 1-13-3665

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
	)	
MITCHELL FINGER,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice McBride 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. Trial court's credibility determinations were well within its discretion, and evidence was sufficient to support convictions.

¶ 2 Following a joint bench trial, defendant Mitchell Finger and codefendant Tim Griffin 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 6½ and 3 years' imprisonment. On appeal, defendant argues that the State failed to prove him guilty beyond a reasonable doubt

because the police officers' testimony was not credible. We disagree and affirm defendant's convictions.[1]

¶ 3 The State's case began with the testimony of Chicago police officer Brandon Dougherty. The officer testified that, around 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, he saw that the screen on the rear security door of the apartment building had been kicked in. Dougherty noticed that the door to the first-floor apartment was ajar, with pry marks on the wooden door frame. He entered the apartment and announced his office. When he entered the bedroom, he saw defendant holding a flat-screen television. Officer Dougherty again announced his office, at which point defendant 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 defendant lying in the neighboring yard, and shined his flashlight on him until his partner, Officer Mendez, detained him.

¶ 4 Dougherty then continued to check the bedroom and found codefendant Griffin hiding in a closet, seated and trying to cover himself with clothing. Officer Dougherty arrested codefendant, searched him, and brought him 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 defendant dropped it, and another that

[1] This court affirmed codefendant's convictions and sentence in case number 1-13-3579; he is not a party to this appeal.

showed the damaged window after defendant 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 Dougherty estimated to be about three feet wide. Dougherty testified that when defendant 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 through which defendant had jumped.

¶ 6 The State next called Chicago police officer Mendez (whose first name is not found in the record). Mendez testified to substantially the same sequence of events at the outset as Officer Dougherty, also testifying that he saw defendant 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 defendant in the neighboring backyard. Mendez confirmed that, at the time he caught defendant in the neighboring yard, Officer Dougherty was watching from the bedroom window.

¶ 7 Chicago police officer Vatori (whose first name is also unknown) 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 defendant in the backyard. During a custodial search of defendant at the scene, 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 defendant.

¶ 8 The owner of the apartment that was burglarized, 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 arguments, defense counsel argued that the police officers' testimony that defendant jumped through the window, over the gangway and a fence, and landed in the neighboring yard with no injuries was not credible. Counsel argued that their testimony was implausible, as defendant would not have had enough momentum to make such a jump, and pointed out a discrepancy between the officers' testimony as to whether defendant was standing or lying on the ground in the yard when he was detained by police.

¶ 10 The trial court stated that when the 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 defendant 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 only argument for reversal 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 he jumped through a window, across a gangway and over a fence, and landed without injury, 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 him 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 defendant holding a flat-screen television, which he immediately dropped onto the bed before jumping out of a window. And the owner's testimony clearly demonstrated that defendant was not an invited guest to that apartment. 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 literally caught defendant in the act of the crime. The officers' 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 provides no basis for reversal. The testimony from Officer Dougherty that defendant 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 defendant 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. In addition, a third officer, Officer Vatori, testified to the sound of breaking glass, though he did not see the jump himself. Against all of this evidence, defendant raises two credibility points: that it would not be possible for him to make that jump to the yard, and that it is impossible to believe that he could have done so without suffering some injury in the process.

¶ 17 We disagree that the evidence renders it wholly implausible that defendant 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, defendant 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 wide, 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 defendant travelled a few feet in the air while descending and landing in the neighbor's yard. And as the able trial judge correctly pointed out, defendant would be expected to be in a heightened, adrenaline-fueled 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 defendant could have jumped out that window and landed in the neighbor's yard, just as Officer Dougherty claimed.

¶ 18 As for the determination that defendant 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 defendant was entirely unharmed by the fall. We know that, when Officer Daugherty came upon defendant after he had been subdued by Officer Mendez, he believed defendant to be "uninjured." But defense counsel did not elaborate on that point. We do not know, for example, if defendant 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 defendant did not require immediate medical attention—he was not bleeding profusely or suffering from any major broken bones—but the testimony did not reveal that any officer conducted a full-body examination of defendant 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 defendant 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, as could the jacket that defendant was wearing.

¶ 19 More important than any of the foregoing, we will not utterly disregard the testimony of two officers who witnessed the jump simply because defendant appeared to have come out of the experience better than he speculates a jumper should have fared. The trial court, which was in a far superior position to determine the credibility of these witnesses (see *People v. Richardson*,

234 Ill. 2d 233, 251 (2009)), found the testimony of these officers to be "all credible beyond a reasonable doubt." We find no reason to disturb that finding.

¶ 20 We would finally note the rather gigantic leap that defendant asks this court to take in his argument. He is not simply taking issue with the testimony concerning the jump out the window—he is using that testimony to claim that the trial court should have rejected, wholesale, everything that Officers Daugherty and Mendez said. But even were we inclined to wholly reject the testimony of Officers Daugherty and Mendez—and we certainly are not—there is the testimony of Officer Vatori, who neither saw defendant in the bedroom nor witnessed the jump. Vatori said that he heard glass shattering and then saw Officer Mendez detain defendant in the neighbor's back yard. Vatori then searched defendant and discovered jewelry that belonged to the owner of the apartment and burglary tools. Even if we utterly disregarded the testimony of Daugherty and Mendez, we would still have defendant in the neighbor's back yard, in possession of contraband and burglary tools, next to an apartment with a broken bedroom window and a busted-in front door.

¶ 21 Suffice it to say that, viewed in the light most favorable to the State, we find no basis to disagree with the trial court's assessment that the evidence against defendant was overwhelming, that "[t]he case is not even close. There is not a question in my mind." We affirm defendant's convictions.

¶ 22 Affirmed.