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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 12-CF-1216
)	
DENZIL RADABAUGH,)	Honorable
)	Gary V. Pumilia,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Schostok and Justice Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held:* The detective's testimony concerning defendant's intent to steal the shop vac before he entered the victim's porch was sufficient for a rational fact finder to determine that defendant was guilty beyond a reasonable doubt of the offense of residential burglary. Affirmed.

¶ 2 Following a jury trial, defendant, Denzil Radabaugh, was convicted of residential burglary for entering the victim's enclosed porch, which was attached to the house, and stealing a shop vac. Defendant's sole argument on appeal is that the evidence was insufficient to convict him for residential burglary because the evidence failed to show that he entered the porch with the intent to steal. We affirm.

¶ 3

I. ANALYSIS

¶ 4 When a defendant challenges the sufficiency of the evidence used to convict him, the relevant inquiry is “ ‘whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ ” *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). It is for the trier of fact to assess the credibility of witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from that testimony and to resolve conflicts in their testimony. *People v. Steidl*, 142 Ill. 2d 204, 226 (1991). It is the jury’s responsibility to assess the credibility of the witnesses, weigh their testimony, resolve inconsistencies and conflicts in the evidence, and draw reasonable inferences therefrom. *People v. Lipscomb-Bey*, 2012 IL App (2d) 110187, ¶ 21. It is not the function of the reviewing court to retry the defendant or to substitute its judgment for that of the trial court. *People v. Evans*, 209 Ill. 2d 194, 209 (2004); *People v. Steele*, 2014 IL App (1st) 121452, ¶ 20.

¶ 5 The relevant statute at the time the offense was committed was section 19-3 of the Criminal Code of 1961, which states: “A person commits residential burglary who knowingly and without authority enters or knowingly and without authority remains within the dwelling place of another, or any part thereof, with the intent to commit therein a felony or theft.” 720 ILCS 5/19-3 (West 2010).

¶ 6 However, the instructions read to the jury, which were not objected to, provided that “[a] person commits the offense of residential burglary when he knowingly and without authority enters the dwelling place of another with the intent to commit therein the offense of theft.” The jury also was instructed that to sustain the charge of residential burglary, the State must prove first, that the defendant knowingly entered the dwelling place of another; second, that the

defendant did so without authority; and, third, that the defendant did so with the intent to commit therein the offense of theft.

¶ 7 Defendant admits that he entered the enclosed porch without authority and admits he took a shop vac from the porch area. However, because he testified at trial that he did not intend to steal anything when he entered the victim's porch, he contends that the State failed to establish that he had that requisite intent at the time of entry for a conviction of the offense of residential burglary. Defendant maintains that the only other evidence alluded to by the State as to defendant's "intent to commit a theft was the alleged statement he made to police," in which he stated that, upon looking onto the porch, he saw a shop vac; that the door to the porch was unlocked and he went onto the porch and stole the shop vac. Therefore, defendant maintains that his conviction for residential burglary must be reversed outright or, at the very least, be reduced to theft.

¶ 8 Defendant did testify that he did not intend to steal the shop vac until he saw it on the porch when he turned to leave and noticed it "back in the corner buried with boxes." Defendant also did deny that he saw the shop vac and then entered the porch. Nevertheless, defendant's testimony was directly contradicted by Rockford Detective Jeff Stovall. He testified that, after defendant agreed to waive his *Miranda* rights, defendant told him that he saw a shop vac on the victim's porch, entered the porch, took the shop vac, and rode off to sell it. Stovall also testified during rebuttal that defendant told him that he saw the shop vac on the porch prior to entering and that he entered the porch "because" he saw the shop vac. Stovall's report does not impeach his testimony where it stated that defendant told him that, upon looking onto the porch, he saw the shop vac, went onto the porch, and stole the shop vac.

¶ 9 Defendant argues that his lack of stealth, failure to possess burglary tools, and failure to conceal his identity weighed against the finding of guilt, as it showed his lack of criminal intent. Defendant further points out that the State failed to present evidence of the description of the porch or the screen door, which might have shown that defendant's view of the contents of the porch had been obstructed. Without this evidence, defendant argues that it was improper for the jury to speculate on whether defendant even could have seen into the porch.

¶ 10 Despite the fact that defendant stated that he did not intend to steal the shop vac until after he entered the porch and despite defendant's lack of stealth and failure to possess burglary tools to show his lack of intent, this was a crime of opportunity. Defendant may not have had the intent to steal anything when he approached the house, but there is evidence that his intentions changed when he saw the shop vac while knocking on the porch door and decided he would take it. The jury was free to disbelieve defendant's explanations and the evidence warranted a finding that defendant had entered the victim's home with the intent to commit a theft.

¶ 11 Defendant also maintains that the prosecutor's closing argument improperly expanded a witness's testimony and misstated the evidence, which served only to bolster an already weak case, and to "over-persuade" the jury where there was insufficient evidence of intent. Defendant objected to these statements made by the prosecutor during closing argument. Any error was sufficiently cured when the trial court sustained the objection and directed the jury to recall the evidence. See *People v. Coleman*, 2014 IL App (5th) 110274 ¶¶ 140-141.

¶ 12

II. CONCLUSION

¶ 13 When viewed in the light most favorable to the State, Stovall's testimony was sufficient for a rational fact finder to determine defendant's guilt beyond a reasonable doubt. Accordingly, we affirm defendant's conviction for residential burglary.

¶ 14 Affirmed.