

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2015 IL App (4th) 131130-U

NO. 4-13-1130

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Schuyler County
JEFFREY R. MILLER,	)	No. 13CF14
Defendant-Appellant.	)	
	)	Honorable
	)	Alesia A. McMillen,
	)	Judge Presiding.

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PRESIDING JUSTICE POPE delivered the judgment of the court.  
Justices Harris and Holder White concurred in the judgment.

**ORDER**

¶ 1 *Held:* The State presented sufficient evidence to convict defendant of both theft counts.

¶ 2 In October 2013, a jury convicted defendant, Jeffrey R. Miller, of theft.

Defendant appeals, arguing the State failed to prove his guilt beyond a reasonable doubt because the State's evidence demonstrated defendant believed the items were abandoned. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On April 3, 2013, the State charged defendant by information with two counts of theft. Count I charged defendant with felony theft (720 ILCS 5/16-1 (West 2012)), alleging defendant knowingly exerted unauthorized control with the intent to permanently deprive its owner of the use of a three-point hitch backward dirt scoop, 35 steel posts, an endloader bale spear, and a long steel bale spear. This property, with a total value in excess of \$500.00, belonged to Alan Acheson. Count II charged defendant with misdemeanor theft (720 ILCS

5/16-1 (West 2012)), alleging defendant knowingly exerted unauthorized control with the intent to permanently deprive its owner of the use of a double galvanized washtub on a stand and a 1/2 metal barrel. This property, which had a value of less than \$500, belonged to Elaine Hood-Cromwell.

¶ 5 Defendant's jury trial was held on October 21, 2013. Chief Deputy Jeffrey J. Boyd of the Schuyler County sheriff's office testified he investigated the thefts at issue in this case. Boyd testified the following items were taken from Alan Acheson's property: fence posts, a bucket scoop, and a bale spear. Some of those items were later found at D & D Scrap Metal. During his investigation, defendant became a suspect.

¶ 6 Boyd interviewed defendant at the Schuyler County sheriff's office on February 4, 2013, and questioned him about the items taken from the Acheson property. Defendant admitted he was at the Acheson property at about 11:30 p.m. and items taken from the property were loaded into his truck by other people. Tristan Brines, Kaleb Miller, and Kyle Miller were with defendant that night. Defendant was driving the truck. Tristan Brines and Kaleb Miller loaded the items into the truck. Boyd testified defendant had no permission to be on Acheson's property.

¶ 7 On cross-examination, Boyd stated defendant claimed Tristan Brines told defendant Tristan was related to the people whose property they were loading. However, on re-direct, Boyd stated Tristan Brines said defendant told Brines the property in question belonged to defendant's family.

¶ 8 Schuyler County Deputy Kevin Murray testified he investigated items taken from Elaine Hood-Cromwell's property, including half of a metal barrel, a wheelbarrow, an antique

washtub, a propane tank, and some miscellaneous items. During the course of his investigation, defendant became a suspect.

¶ 9 Alan Acheson testified he discovered items were missing from his farm in January 2013. He located the missing bale spear at D & D Scrap Yard and recovered it. The remaining items taken from his property had been cut up into scrap iron at the scrap yard. Acheson testified he did not give anyone permission to remove any items from his property. He did not know defendant, Tristan Brines, Kaleb Miller, or Kyle Miller.

¶ 10 Elaine Hood-Cromwell testified she noticed some items missing from her property in January 2013. She noticed a floor jack was out of place and the garage door was open when she pulled into her driveway. After calling the sheriff's department, she discovered property was missing. She did not give anyone permission to remove any items from her property. Like Acheson, Hood-Cromwell did not know defendant, Tristan Brines, Kaleb Miller, or Kyle Miller.

¶ 11 Tristan Brines testified he knew defendant through defendant's sons, Kaleb and Kyle Miller. Sometime between January 5 and January 28, 2013, he ended up at defendant's house after defendant picked up Brines and Kaleb. Defendant said he wanted to show Brines and his two sons something. Defendant drove Brines and Kaleb and Kyle Miller toward Frederick. They ended up on a field road, which led to a barn and an "old abandoned trailer." Brines testified he had never been at that location before. It was dark outside. Defendant started looking around and saw a "green fork" (bale spear) for hay bales. Brines and Miller put the bale spear in the back of defendant's truck. Either the next night or two nights later, defendant, Kaleb and Kyle Miller, and Brines returned to the same location. Again, it was dark outside. Defendant got out of the truck "for a second or two" and then went and sat in the truck. Brines

stated he and Kaleb Miller picked up some steel posts, a bucket for a scoop, and some tin, which they put in the back of defendant's truck. According to Brines, the property had an old barn, a newer barn, and another old barn behind the newer barn.

¶ 12 Brines also testified defendant, Kaleb and Kyle Miller, and he went to D & D Scrap Yard on January 28, 2013, to sell the items they collected. After leaving the scrap yard, defendant drove the four toward Frederick. They turned off and went down a road to a house. They all got out of the truck, and defendant started looking around the house. Defendant told Brines and Kaleb Miller to start grabbing stuff. They grabbed a wheelbarrow, old propane gas tanks, old metal chairs, a yellow and black machete, and old metal flower pots. Defendant was in and out of his truck. At one point, defendant got "paranoid." He and Kyle got in the truck and drove off. When he came back, defendant told Brines and Kaleb to hurry up. Brines and Kaleb loaded the items in the back of defendant's truck. They then got in the truck and left. These items were also taken to D & D Scrap Yard.

¶ 13 David Large testified he is a part-owner of D & D Enterprises in Beardstown and is the yard supervisor/operator. He had a ticket for scrap material written to Kyle Miller, who was in a gray Dodge, dated January 28, 2013. He saw the truck being unloaded. Defendant was driving the truck and three younger males were in the truck. Large testified he did not know how the material was acquired or defendant's involvement in getting the material.

¶ 14 Mark Hill, salesman and manager at Mount Sterling Implement Company, testified he was contacted by Alan Acheson about some items, including a reversible dirt scoop, a front hay spear, a pin, and 35 steel posts. Hill testified the replacement costs for these items would be as follows: \$375 for a used reversible dirt scoop, \$250 for a used bale spear, \$10 for a pin, and \$105 for 35 used steel posts.

¶ 15 Kaleb Miller, age 16, testified on behalf of defendant, his father. Kaleb testified he did prison time for taking items from Acheson's and Hood-Cromwell's respective properties. He testified Jason Mantzke and Brines were with him when the items were taken. They decided to take the property because they needed some money. He stole his father's truck to steal the property. They took the items and put them in a pile of items Kaleb's grandfather gave to Kaleb's younger brother, Kyle. Defendant and Kyle planned on taking the scrap Kyle received from his grandfather to D & D Scrap Yard. Kaleb asked if defendant could take the other items with them to D & D Scrap Yard. Defendant did not know the items were stolen.

¶ 16 Kaleb testified his father has some disabilities and can be easily confused. Neither defendant nor Kyle were with Kaleb, Mantzke, and Brines when the property was stolen. According to Kaleb, two days before he and his friends stole the property, he and defendant found some scrap in a ditch on Rabbit Run Road. Kaleb pulled the item out of the ditch with a chain and defendant's truck.

¶ 17 On cross-examination, Kaleb admitted he lied to the police when they questioned him about the thefts. He testified he loved his father and did not want to see him get in trouble. However, Kaleb stated he would not lie for him as a witness in this case.

¶ 18 Kyle Miller, age 14, testified defendant was his father. Kyle stated he was with his brother Kaleb and defendant when they took some items out of a ditch on Rabbit Run Road. He denied being in his father's truck with Kaleb, Mantzke, and Brines when things were stolen. He also denied being with defendant when anything was stolen.

¶ 19 Defendant did not testify.

¶ 20 The State called Deputy Boyd as a rebuttal witness. Boyd testified defendant mentioned Rabbit Run Road during his interview on February 4. According to defendant's

statement to Boyd, defendant pulled the bale spear out of a ditch on Rabbit Run Road. Defendant took Boyd to the location on Rabbit Run Road where the property allegedly was retrieved. Boyd saw no signs of anything being pulled out of that ditch. During the interview, defendant eventually admitted being with Brines and defendant's sons when the property was taken.

¶ 21 The jury found defendant guilty of both counts of theft.

¶ 22 On December 4, 2013, the trial court held a sentencing hearing. The court accepted the State's recommendation and sentenced defendant to 24 months' probation. The court ordered defendant to pay restitution, stating: "You are to pay restitution in the amount of \$740 to one victim, \$415 to the other, and that's joint and several with the restitution order against your juvenile son." The court also sentenced defendant to serve 60 days in the Schuyler County jail, with credit for two days served.

¶ 23 This appeal followed.

## ¶ 24 II. ANALYSIS

### ¶ 25 A. Sufficiency of the Evidence

¶ 26 Defendant argues the State failed to produce sufficient evidence to convict him of theft. According to defendant, the State's own evidence demonstrated defendant believed the property in question was abandoned. Defendant argues:

"Given the placement of the items out in the open, [his] statement to police explaining that Tristan Brines said the first items came from his uncle's property, and Tristan's observation that the Hood-Cromwell property looked 'abandoned,' the evidence does not

establish beyond a reasonable doubt that [defendant] possessed the requisite knowing mental state to commit theft."

Defendant argues "the State's own evidence raised an affirmative mistake-of-fact defense, and the State failed to prove beyond a reasonable doubt that Miller did not believe the items were abandoned." Defendant cites *Morrisette v. United States*, 342 U.S. 246, 276 (1952), for the proposition a defendant cannot knowingly steal property he believed was abandoned. Defendant contends the State failed to present evidence establishing beyond a reasonable doubt defendant knowingly took property he was not authorized to take. Further, according to defendant, his belief the items were abandoned constituted an affirmative defense to theft. However, defendant did not make a mistake-of-fact affirmative defense in the trial court.

¶ 27 This court will only reverse a conviction based on the sufficiency of the evidence if no rational trier of fact, when viewing the evidence in a light most favorable to the prosecution, could have found the State proved the essential elements of the crime beyond a reasonable doubt. *People v. Smith*, 185 Ill. 2d 532, 541, 708 N.E.2d 365, 369 (1999). Based on the facts in this case, a rational trier of fact could have easily found the State proved the essential elements of the crime in this case when the evidence is viewed in a light most favorable to the prosecution.

¶ 28 The State presented evidence defendant took Brines and his two sons to two different rural locations at night to steal property belonging to others. At one of these locations, defendant was acting paranoid and drove off before returning and telling Brines and Kaleb to hurry up loading his truck. Defendant, Brines, and his two sons then sold the property to a salvage yard.

¶ 29 The jury obviously did not find the testimony of Kaleb and Kyle Miller to be credible. A reviewing court will not substitute its credibility determinations for the jury's. *People v. Mister*, 2015 IL App (4th) 130180, ¶ 95, 27 N.E.3d 97. Further, the jury did not give defendant's innocent explanation to Deputy Boyd any credence. See *People v. Moreno*, 334 Ill. App. 3d 329, 343, 778 N.E.2d 180, 191 (2002) (a trier of fact does not have to accept a defendant's innocent explanation). It is the function of the jury to judge the credibility of witnesses. *People v. Evans*, 209 Ill. 2d 194, 211, 808 N.E.2d 939, 949 (2004). "A jury need not accept or reject all of a witness' testimony but may attribute different weight to different portions of it." *People v. Billups*, 318 Ill. App. 3d 948, 954, 742 N.E.2d 1261, 1267 (2001). The evidence in this case, when viewed in a light most favorable to the State, established defendant was guilty of both counts of theft.

¶ 30 B. Restitution

¶ 31 In his initial brief to this court, defendant argued the trial court's restitution order was deficient. Defendant asked this court to vacate the order and remand for a proper restitution hearing. According to defendant, the court ordered him to pay the full restitution amount—despite the fact Kaleb Miller had been ordered to pay the same restitution—and set no time or method of payment. Defendant did not object to the monetary amount of the restitution. However, the court made defendant's restitution joint and several with his son's restitution for his convictions for the same offenses. Regardless, this issue is now moot because the supplemental record shows the restitution for both defendant's and Kaleb's cases has been paid in full.



¶ 32

### III. CONCLUSION

¶ 33 For the reasons stated above, we affirm the judgment in this case. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 34 Affirmed.