

No. 1-13-3883

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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 9989
)	
JERMEL PETTWAY,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Presiding Justice Reyes and Justice Lampkin concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Evidence sufficient to convict defendant of possession of burglary tools; removing catalytic converter from underneath a vehicle constitutes entry for purposes of requisite intent to enter and commit theft or other felony.
- ¶ 2 Following a 2013 bench trial, defendant Jermel Pettway was convicted of possession of burglary tools and sentenced to two years' imprisonment. On appeal, defendant contends that the evidence was insufficient to convict, in particular because the State failed to prove his intent to enter a vehicle where the trial court found that removing the catalytic converter from underneath a vehicle does not entail entering it. For the reasons stated below, we affirm the judgment.

¶ 3 Defendant and codefendant Stanley Hunter were charged with burglary and possession of burglary tools, allegedly committed on or about April 16, 2013. The State alleged that defendants entered a 2004 Chevrolet Cavalier owned by Dana Thomas with the intent to commit a theft therein and that they possessed a tool – a rotary saw – suitable for use in breaking into a motor vehicle with the intent to enter a motor vehicle and commit a theft therein. Defendants were tried simultaneously by the court.

¶ 4 Leah Herman testified that she was sleeping on the night in question when she was awakened by a "metal sawing noise from the street." She looked out the window and saw a man underneath a parked Chevrolet Cavalier, so that only the man's legs were visible, and noticed that the sawing noise was also coming from underneath the car. After several seconds, the sawing noise stopped and the man, wearing a headlamp, came out from under the car and walked over to a nearby building where he stood for a few minutes. After a maroon pickup truck arrived, the man who had been under the Cavalier returned to the car and the sawing from underneath the car began again. Herman phoned the police but "kept watching." After several seconds of sawing, the man again came from under the car and returned to standing near the nearby building. A third time, the man returned to the car and sawed, and this time he had "a piece of the car and his saw" in hand when he came out again. He went to the maroon pickup truck and placed the saw in the truck bed and the car part under the hood. The man from under the car then entered the truck and drove it from the scene, with the man who drove the truck there as passenger. Herman went back to bed but was awakened by hearing a police car passing. When she looked out, she also noticed the pickup truck from earlier that night passing by. She therefore yelled down to the police to the effect that she had reported the incident and the truck now passing was the one in question. The

police then pursued the truck. Later that night, officers came to Herman's home and showed her two men; she identified one of them.

¶ 5 Dana Thompson, owner of the Cavalier, testified that, to the best of her knowledge, it still had its catalytic converter when she parked it at home on the night in question as the car was "running fine." She was asleep until about 3 a.m. when she was awoken by police at her door. They told her that two men had taken the catalytic converter from her car, and when she went outside to her car, that device was missing. She had not given anyone – in particular defendants, who she did not know – permission to remove it from her car.

¶ 6 Police officer Michael Howe testified that he and Officer Jesus Enriquez responded on the night in question to the report of a theft in progress. At the reported scene, a woman (who Officer Howe later learned was Herman) called down from an upstairs window, after which Officer Howe was seeking a maroon pickup truck. He saw such a truck leaving the scene and pursued it until it stopped. Defendants were inside the truck when it was stopped, with codefendant driving. As defendants were detained by Officer Howe, Officer Enriquez opened the truck's hood and found a catalytic converter under the hood but not attached to the truck as a part thereof. Officer Howe explained that a vehicle's catalytic converter is usually underneath it and not under the hood. Officer Enriquez also removed a saw and headlamp from the truck cab. (On cross-examination, Officer Howe said the saw and headlamp were found in the truck bed.) The officers brought defendants to the scene, where Herman identified the truck and "the defendant."

¶ 7 Defendants both sought directed findings and, after extensive argument by the parties, the court granted the motions as to burglary. The court found the State witnesses "credible and compelling" but also stated "I am not sure that taking something from outside the car, from underneath the car, meets all the elements of burglary because burglary requires actual ent[ry]

into a building *** or some such structure." Defendants chose not to testify and rested their cases. Following closing arguments, the court found both defendants guilty of possession of burglary tools, noting that they "were both in the vehicle with [a] stolen catalytic converter, a saw, and a hat with a headlamp on it. Those are tools that are used for theft and burglary and they're both in possession of them."

¶ 8 Defendant filed a post-trial motion challenging the sufficiency of the evidence. At the hearing on the motion, after further argument by defendant, the court denied the motion. The court found that it was "wholly convinced that [defendant] who was acting in concert with [codefendant] was certainly in possession of the burglary tools that they both had together in [the] same car, especially in light of evidence of what was going on with that tool prior to the police finding him." Following arguments in aggravation and mitigation, defendant was sentenced to two years' imprisonment.

¶ 9 On appeal, defendant contends that the evidence was insufficient to convict him of possession of burglary tools because the State failed to prove his intent to enter a vehicle where the trial court had found as a matter of law that removing the catalytic converter from underneath a vehicle does not entail an entry to the vehicle.

¶ 10 A person commits the offense of possession of burglary tools when he "possesses any key, tool, instrument, device, or any explosive, suitable for use in breaking into a *** motor vehicle *** or any part thereof, with intent to enter that place and with intent to commit therein a felony or theft." (Emphasis added.) 720 ILCS 5/19-2(a) (West 2014). Interpreting similar language in the burglary statute, our supreme court concluded that the word "therein" does not require that a defendant intend to steal something from inside a vehicle but merely that he intended to steal (or commit a felony) coincident with the unauthorized entry. *People v. Steppan*,

105 Ill. 2d 310, 317 (1985). Again interpreting the burglary statute, this court has found that the legislative intent to deter unauthorized entry into any part of a vehicle encompasses the open bed of a truck, so that the fact that "the bed was not sheltered, protected, covered, closed or sealed, or in some other manner completely enclosed, is no defense to an unlawful entry." *People v. Frey*, 126 Ill. App. 3d 484, 486-87(1984), cited in *People v. Beauchamp*, 241 Ill. 2d 1, 9 (2011). On a charge of possession of burglary tools when the tools in question can be used for innocent as well as illicit purposes, the defendant's intent is the controlling factor. *People v. Jiles*, 364 Ill. App. 3d 320, 337 (2006).

¶ 11 On a claim of insufficiency of the evidence, we must determine whether, taking 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. *In re Q.P.*, 2015 IL 118569, ¶ 24. It is the responsibility of the trier of fact to weigh, resolve conflicts in, and draw reasonable inferences from the testimony and other evidence, and it is better equipped than this court to do so as it heard the evidence. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59. We do not retry the defendant – we do not substitute our judgment for that of the trier of fact on the weight of the evidence or credibility of witnesses – and we accept all reasonable inferences from the record in favor of the State. *Q.P.*, 2015 IL 118569, ¶ 24. As witness credibility is a matter for the trier of fact, it may accept or reject as much or little of a witness's testimony as it chooses. *People v. Johnson*, 2014 IL App (1st) 122459-B, ¶ 131. The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; instead, it is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *Jonathon C.B.*, 2011 IL 107750, ¶ 60. The trier of fact is not required to disregard inferences that flow normally from the evidence, nor to seek all possible explanations consistent

with innocence and elevate them to reasonable doubt, nor to find a witness was not credible merely because the defendant says so. *Id.* A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Q.P.*, 2015 IL 118569, ¶ 24.

¶ 12 The verdicts or judgments in a criminal case are not required to be consistent, as such inconsistencies are often exercises of lenity and do not suggest that the finder of fact was confused or misunderstood the evidence or law. *People v. McCoy*, 207 Ill. 2d 352 (2003).

¶ 13 Here, as a threshold matter we find that the trial court did not find as a matter of law that removing a catalytic converter from underneath a vehicle is not entry. The court was "not sure" of the proposition that it constituted entry and therefore granted directed findings on burglary. Notably, defendant cites no case supporting the court's uncertainty – or exercise of lenity – on that point but relies upon the court's finding. We therefore find the court's disposition of the burglary charges irrelevant; the conviction we are reviewing is for possession of burglary tools and the proposition before us is whether the State proved the elements of that offense. Taking the evidence in the light most favorable to the State as we must, the State proved that defendant and codefendant not only intended to enter but actually entered a part of a motor vehicle – the bolts fastening the catalytic converter to the rest of the car – with the intent to commit theft. Stated another way, the State showed that defendants not only intended to break but actually broke the close created by extending an imaginary plane along the sides of the car (including the tires, which actually touch the ground) from the car's underside to the ground, with the intent to commit theft within that close. See *Frey*, 126 Ill. App. 3d at 487 (finding an open truck bed to be a similar close "defined by the four sides, the bottom, and the imaginary plane extending atop the

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sides and parallel to the bottom" thereof). The State thus proved that the tools used for these intended and completed entries, including the saw as charged, were burglary tools.

¶ 14 Accordingly, the judgment of the circuit court is affirmed.

¶ 15 Affirmed.