

FIFTH DIVISION  
April 22, 2016

No. 1-14-2848

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 20019
	)	
JAMES SMITH,	)	Honorable
	)	Neil J. Linehan,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE Burke delivered the judgment of the court.  
Justice Gordon and Justice Lampkin concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Evidence sufficient to convict defendant of burglary and possession of burglary tools. Trial counsel not ineffective regarding defense theory that defendant could not have committed said offenses with his physical disabilities.

¶ 2 Following a bench trial, the circuit court found defendant James Smith guilty of both burglary and possession of burglary tools. Due to his criminal history, he was sentenced as a Class X offender to nine years for burglary and two years for possession of burglary tools, to run concurrently. On appeal, defendant contends that there was insufficient evidence to convict him

of burglary and possession of burglary tools and that he received ineffective assistance of counsel. For the reasons stated below, we affirm.

¶ 3 On October 8, 2012, Chicago Police responded to a call of a burglar alarm being triggered at St. James Baptist Church at 8539 S. Racine Avenue. When Officers Soto and Zaccone arrived, they found that one of the front doors was damaged and the other door was hanging off the hinges; the iron gate over the front doors was locked but had a two-foot gap at the bottom. The officers moved to the back of the church, and Officer Soto observed lights and movement through a side door with glass block. When he opened that door, he observed defendant standing inside the church five feet away from him. Officer Soto told defendant to step out of the building and "get on the floor." Instead, defendant started to walk toward the alley, so Officer Soto forcibly pulled him to the ground. After defendant was arrested, a custodial search revealed that defendant had on his person a screwdriver, a television remote control, and two walkie-talkies. After defendant was placed in the squad car, the officers observed an unplugged television within three feet of the side door. They found a container with U.S. currency, a bottle of cologne, and a camcorder. Upon further examination of the church, they observed an alarm system panel that appeared to have been yanked from the wall. They found the church office had been ransacked, with a safe overturned on the floor, and they observed that the front door had been pulled off its hinges, with damage to the surrounding siding.

¶ 4 Warner Pitts testified that on October 8, 2012, he was the pastor of St. James Baptist Church. The day before, the 7<sup>th</sup>, the front doors of the church were intact and locked securely. He came to the church on the early morning of the 9<sup>th</sup> because he had been notified that the security alarm had been activated. The police were there when he arrived, and he noticed that the front

door was taken off the hinges and the surrounding paneling had been removed. Pastor Pitts identified the camcorder, cologne, and bag as his property that he kept in a drawer in his office. The television was normally plugged into the wall. He also identified the walkie-talkies and the remote control recovered from the defendant as church property. He told the officers that the office had been ransacked, the drawers had been emptied out, and the safe overturned. Pastor Pitts did not know the defendant and no one had given defendant permission to be in the church or possess the items belonging to Pastor Pitts or the church.

¶ 5 Defendant testified that he cannot use his right hand, his right leg and arm are numb, he cannot lift his right arm above his waist requiring assistance in dressing, and he cannot fully open his left hand due to numbness; all these limitations applied in October 2012. At that time, he lived less than a block from the church. On the night in question, he left home to purchase a 40-ounce bottle of beer; a friend drove defendant to the store but he walked home carrying the bottle of beer. As he walked past the church, Officer Soto stopped him, then arrested him after he admitted having a prior burglary conviction. Defendant balked at Officer Soto's order to get on the ground, explaining that he could not due to his disabilities, so Officer Soto forced him to the ground. Defendant denied entering the church or taking anything from it, and denied that anything was removed from his pockets during the post-arrest search. On cross-examination, he admitted that he can open and close his left hand, and while he cannot do his own grocery shopping, he is able to shop for smaller items.

¶ 6 Officer Soto testified in rebuttal that he did not observe defendant outside the church or carrying a bottle of beer. He did not notice defendant walking or moving his arms or hands with difficulty during the incident. On cross-examination, he testified that defendant did not run or

grab anything during the incident, nor did he observe defendant touch anything inside the church. At the police station during processing, defendant used only one hand as the other was handcuffed.

¶ 7 During closing arguments, defense counsel argued that the court could "take judicial notice of [defendant's] condition, of the use of his arms, of his ability to raise his right arm to just about hip height, perhaps his rib cage," and noted defendant's testimony to his physical condition. Counsel argued that defendant could not have used the screwdriver to remove the door hinges using either arm, nor could he have torn the alarm panel from the wall, upended the safe, or moved the television. Counsel concluded that defendant "did not have the physical strength or the capability or the intention to burglarize this church." The State argued that it did not take much strength or ability to shimmy under the security gate, remove the door hinges, or push the unhinged door aside, nor to pry the burglar alarm panel from the wall, and that Officer Soto's account was credible while defendant's account was not.

¶ 8 The court found defendant guilty of burglary and possession of burglary tools. The court found that defendant's own account had him walking about a half-mile carrying a 40-ounce bottle of beer and found that "I have seen the Defendant maneuver the courtroom and he can maneuver the courtroom without any problem." The court found that "any average-size person could easily slide underneath those burglar bars" or security gate, found no difficulty in removing the pins from the door hinges, and found the screwdriver in defendant's possession consistent with this task. The court found Officer Soto's testimony clear and credible despite trial counsel's "vigorous cross-examination," noting that "defendant on the other hand obviously has his reasons to testify the way he testified" and thus did not impeach Officer Soto.

¶ 9 Defense counsel filed an amended a posttrial motion challenging the sufficiency of the evidence. In relevant part, counsel noted defendant's testimony to being handicapped on his left side and having limited mobility, and alleged that the court disregarded defendant's physical problems such as a limp due to his left leg and the limited use of his left arm and hand.

Following arguments, the court denied the motion. The court found that counsel's cross-examination was vigorous and found Officer Soto and Pastor Pitts credible. The court found defendant physically capable of crawling under the security gate and prying hinges from a door, finding that defendant was found inside the church and noting his own testimony to walking home from the store. The court proceeded to sentencing after hearing arguments in aggravation and mitigation, where it found defendant to be a mandatory class X offender and imposed concurrent prison terms of nine and two years.

¶ 10 On appeal, defendant first contends that the evidence was insufficient to convict him beyond a reasonable doubt, in that his physical disabilities cast doubt on whether he could have entered the church by crawling under a security gate and prying door hinges, and then ripped an alarm panel from the wall and overturned a safe.

¶ 11 On a claim of sufficiency 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.*, ¶ 24. 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.*, ¶ 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.*, ¶ 24.

¶ 12 Here, taking the evidence in the light most favorable to the State as we must, we cannot conclude that no rational trier of fact would find defendant guilty of burglary and possession of burglary tools. We consider it key that Officer Soto testified clearly to finding defendant inside the broken-open and ransacked church building and arresting him essentially immediately thereafter with no opportunity to lose sight of him. For defendant to be found not guilty on such evidence, a rational trier of fact would have to conclude that Officer Soto was lying; indeed, defendant testified to that effect at trial. The court had defendant's testimony and his courtroom behavior and movements to judge his defense that he not only did not but could not have committed the acts testified to or inferable from the testimony of Officer Soto and Pastor Pitts, and the court expressly considered defendant's condition and the difficulty of performing said acts. In sum, this case comes down to the credibility of defendant against the credibility of Officer Soto, and we cannot find the court's weighing of credibility to be so unreasonable, improbable, or unsatisfactory that a reasonable doubt of defendant's guilt remains.

¶ 13 Defendant also contends that trial counsel was ineffective for (1) arguing that defendant's disabilities would exonerate him but then failing to prove his disabilities, (2) failing to obtain a ruling on the motion for judicial notice of defendant's disabilities, and (3) not limiting the examination of defendant as to his disabilities.

¶ 14 To prevail on a claim of ineffective assistance, a defendant must show that counsel's performance was both deficient and prejudicial to defendant. *People v. Hatchett*, 2015 IL App (1st) 130127, ¶ 28. Performance is deficient when it is objectively unreasonable, and there is a strong presumption that counsel's decision to act or refrain from acting was the product of sound trial strategy. *Id.* Counsel must provide representation that is competent, not perfect, and counsel's reasonable decision on strategy does not fall below prevailing norms of performance merely because the strategy did not succeed. *Id.*; *People v. Minniefield*, 2014 IL App (1st) 130535, ¶ 89. Prejudice is a reasonable probability that the result of the proceeding would have been different absent the deficiency; that is, the deficiency undermines confidence in the proceeding's outcome. *Hatchett*, ¶ 28.

¶ 15 "A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Ill. R. Evid. 201(b) (eff. Jan. 1, 2011). A court may take judicial notice of facts readily verifiable from sources of indisputable accuracy, or capable of being instantly and unquestionably demonstrated. *People v. Chambers*, 2016 IL 117911, ¶ 94 n.3; *People v. Roldan*, 2015 IL App (1st) 131962, ¶ 21.

¶ 16 Here, defendant contends that trial counsel failed to support her argued defense, that defendant could not have committed the offenses due to his disabilities, with evidence of his disabilities. However, counsel was clearly aware of the evidence of defendant's medical condition – before trial, the court ordered examinations of defendant at counsel's behest, and she included his medical records in discovery – and we presume that her decision to not present such evidence at trial was the result of sound trial strategy. As to counsel not obtaining a ruling on her request that the court take judicial notice of defendant's disabilities, she could not have rendered ineffective assistance because the existence and extent of defendant's disability at the time of the burglary was inappropriate for judicial notice; it was not a matter of indisputable accuracy or that could be unquestionably demonstrated. As to the scope of counsel's examination of defendant, while a defendant is not obliged to present evidence, we consider it reasonable in light of Officer Soto's clearly inculpatory account for counsel to elicit from defendant his alternative account, including his explanation of his presence at the scene, even if it opened him to broader cross-examination. Moreover, had defendant's direct testimony been limited to his disabilities, as he now suggests with perfect hindsight, the State could still have cross-examined him on any matter that would cast doubt upon the existence or extent of his disabilities on the night of the burglary. In sum, we find no ineffective assistance by trial counsel.

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

¶ 18 Affirmed.