2016 IL App (1st) 143413-U

SIXTH DIVISION
September 16, 2016

No. 1-14-3413

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. 14 CR 8008
	)	
STEVEN GIBSON,	)	Honorable
	)	Joseph M. Claps,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the judgment of the circuit court where the evidence was sufficient to convict defendant of burglary and modify the fines and fees order.

¶ 2 Following a bench trial, defendant Steven Gibson was found guilty of one count of burglary (720 ILCS 5/19-1(a) (West 2014)), and sentenced to 42 months' imprisonment. On appeal, defendant argues that the evidence presented at trial was insufficient to prove him guilty beyond a reasonable doubt and that certain fines and fees were incorrectly assessed. We affirm defendant's conviction, but modify the fines and fees order.

¶ 3 Defendant was charged by information with one count of burglary based upon his April 24, 2014, entry into the vehicle of Larry Johnson with the intent to commit a theft. The following evidence was presented at trial.

¶ 4 Larry Johnson testified that he is the sole owner of a 2001 Chevy Tahoe SUV (Tahoe), which he uses for both work and personal purposes. Mr. Johnson lives in the vicinity of 7300 South Paxton Avenue in Chicago. On April 24, 2014, at approximately 8:00 p.m., he had parked his Tahoe nearby on 73rd Street. On the backseat of the Tahoe were boxed light fixtures which Mr. Johnson had purchased from a store.

¶ 5 After leaving his parked Tahoe, Mr. Johnson entered his residence where his girlfriend and children were present, remained there for about ten minutes, and then went out on his deck. From his deck, Mr. Johnson had an unobstructed view of his Tahoe which was parked approximately 20 feet to the west under a streetlight. Mr. Johnson observed a man, identified in court as defendant, exiting the rear of the Tahoe with a box. When asked "how much of [defendant's] body was actually inside the [Tahoe]," Mr. Johnson stated that the top half of defendant's body was inside the Tahoe, and defendant was "coming out with a box." Mr. Johnson ran outside and knocked defendant to the ground. Mr. Johnson discovered that the rest of the boxes which had been on the backseat had been placed behind his neighbor's garage. Mr. Johnson did not know defendant nor had he given him permission to enter the Tahoe.

¶ 6 On cross-examination, Mr. Johnson was questioned regarding his testimony at the preliminary hearing where he stated that, when he initially saw defendant, "[defendant] was walking away from the back of my vehicle going towards the alley." Mr. Johnson testified that he was "not 100 percent [certain] if that is the exact answer but probably."

¶ 7 On redirect examination, Mr. Johnson testified as follows:

"Q. When you initially saw the defendant, he was inside your vehicle. That's what you testified to, correct?

A. Yes.

Q. Were you able to observe anything else that he was doing?

A. He was coming out of my vehicle and walking towards the alley.

Q. Okay. And that's what you were telling –

A. Initially, yes.

Q. – when you testified at the preliminary hearing?

A. Yes."

¶ 8 Chicago police officer, David Brown, testified that on April 24, 2014, he responded to a call to go to 7300 South Paxton Avenue. When Officer Brown arrived, he observed Mr. Johnson standing and defendant on the ground. Following a conversation with Mr. Johnson, Officer Brown placed defendant into custody. After he was given his *Miranda* rights, defendant stated to Officer Brown, "you got me and – you know, you got me." Officer Brown noted that a box was located near the rear of the Tahoe, and that there were more boxes in a nearby alley behind a garage.

¶ 9 Defendant testified that on April 24, 2014, around 8 p.m., he arrived in the area of 73rd Street and Paxton Avenue following a visit to his sister's apartment. Defendant noticed boxes outside of a vehicle which was parked right off an alley. He walked over to one of the boxes when a man approached him and asked him what he was doing. The man then struck him with something, knocking him to the ground. The man stayed with defendant near the vehicle until

the police arrived. Defendant denied touching the boxes or removing them from the vehicle and denied being inside the vehicle or even touching it.

¶ 10 The trial court found defendant guilty, noting that "[t]he State has met its burden beyond a reasonable doubt. Mr. Johnson testified clearly and convincingly. I don't find Mr. Gibson's testimony credible whatsoever." Defendant's motion for a new trial was denied. He was then sentenced to 42 months' imprisonment and was assessed fines and fees in the amount of $754. Defendant's motion to reconsider his sentence was denied. Defendant now appeals.

¶ 11 On appeal, defendant challenges the sufficiency of the evidence. Defendant argues that because the trial testimony of Mr. Johnson was "incredible" as it contradicted his testimony at the preliminary hearing and there was no physical evidence, the State did not prove he unlawfully entered the Tahoe beyond a reasonable doubt. Additionally, defendant contests the assessment of certain fines and fees.

¶ 12 When challenging the sufficiency of the evidence, the standard of review is whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. "A reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of evidence or the credibility of witnesses." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). In a bench trial, the trial judge, as the trier of fact, must determine the credibility of witnesses, weigh the evidence and any inferences derived therefrom, and resolve any conflicts in the evidence. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). A conviction will not be reversed unless "the evidence is so improbable, unsatisfactory, or

inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 13 In order to sustain a conviction for burglary, the State must prove, beyond a reasonable doubt, that defendant, without authority, knowingly entered or remained within a motor vehicle with the intent to commit therein a felony or theft. 720 ILCS 5/19-1(a) (West 2014). A burglary is complete upon entering a vehicle with the requisite intent, regardless of whether the theft is accomplished. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). An entry may be accomplished simply by crossing the boundaries which enclose the protected space. *Id*. at 9.

¶ 14 Here, the State proved each element of burglary beyond a reasonable doubt. The testimony of Mr. Johnson established that: he was the sole owner of the Tahoe; he did not give defendant permission to enter the Tahoe; and, on the day of the incident, boxes containing light fixtures were located inside the Tahoe. Mr. Johnson observed defendant exiting the Tahoe while carrying one of the boxes and walking toward the alley. Mr. Johnson discovered boxes of light fixtures in the alley. This testimony established defendant entered the Tahoe without authority and with the intent to commit a theft.

¶ 15 Mr. Johnson's testimony was corroborated by the testimony of Officer Brown, who observed defendant on the ground near Mr. Johnson's Tahoe with one box near him and other boxes in the nearby alley.

¶ 16 Additionally, Officer Brown testified that, after receiving *Miranda* warnings, defendant stated to Officer Brown: "you got me -- you know, you got me." Defendant, however, argues that this statement did not demonstrate a guilty conscience, only that he was not going to resist or flee. However, it was in the authority of the trial court to infer from defendant's statement that

he was admitting to the crime. See *Siguenza-Brito*, 235 Ill. 2d at 228 ("it is for the trial judge, as the trier of fact, to determine the credibility of witnesses, to weigh evidence and draw reasonable inferences therefrom").

¶ 17 Principally, defendant argues that the State did not establish the element of unlawful entry because Mr. Johnson was impeached at trial by his preliminary hearing testimony that he first observed defendant walking away from the Tahoe. The State responds that, any discrepancy between Mr. Johnson's preliminary hearing testimony and his trial testimony, that he had first observed defendant partially inside of his vehicle, was insignificant. Further, the State argues that, any inconsistency between Mr. Johnson's preliminary hearing and trial testimony, was clarified on redirect examination.

¶ 18 Minor conflicts and inconsistencies in testimony of witnesses do not, of themselves, create reasonable doubt. *People v. Adams*, 109 Ill. 2d 102, 115 (1985). The trial court, as the trier of fact, must weigh how flaws in a witness's testimony, including any inconsistencies with prior statements, affect the credibility of the whole. See *People v. Cunningham*, 212 Ill. 2d 274, 283 (2004).

¶ 19 Here, the trial court was able to observe the demeanor of Mr. Johnson, weigh any conflicts in his testimony, and determine that his testimony was credible and sufficient to find defendant guilty beyond a reasonable doubt. Further, the trial court heard defendant's testimony and did not find him to be credible "whatsoever." We cannot say that the trial court's findings as to credibility were so improbable or unsatisfactory that the findings created reasonable doubt of defendant's guilt. See *People v. Ciborowski*, 2016 IL App (1st) 143352, ¶ 103.

¶ 20 Finally, defendant argues that, because no physical evidence was presented at trial, his conviction rests only on the "dubious" testimony of Mr. Johnson, which is not sufficient to prove him guilty beyond a reasonable doubt. However, physical evidence is not necessary to prove defendant guilty beyond a reasonable doubt. See *People v. Williams*, 182 Ill. 2d 171, 192 (1998) ("Proof of physical evidence connecting a defendant to a crime has never been required to establish guilt."). Further, as we discussed, Officer Brown's testimony corroborated Mr. Johnson's testimony to a significant degree. Accordingly, we reject this argument.

¶ 21 Viewing the evidence in the light most favorable to the State, we find that it was sufficient to prove defendant guilty beyond a reasonable doubt of burglary. Mr. Johnson's testimony, viewed as a whole, allowed the trial court to determine that defendant unlawfully entered Mr. Johnson's Tahoe with the intent to commit a theft. Accordingly, we affirm defendant's conviction of burglary.

¶ 22 Next, defendant challenges certain assessments on his fines and fees order. We review *de novo* the propriety of the trial court's imposition of fines and fees. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 60.

¶ 23 First, defendant argues that the $5 court system fee (55 ILCS 5/5-1101(a) (West 2013)), was improperly assessed because he was not convicted under the Illinois Vehicle Code. The State correctly concedes this fee was improperly assessed. Defendant was convicted of burglary under section 19-1(a) of the Criminal Code of 2012 (720 ILCS 5/19-1(a) (West 2014)), which is not part of the Illinois Vehicle Code (625 ILCS 5/1-100 (West 2008)). Accordingly, we vacate this $5 court system fee.

¶ 24 Likewise, defendant argues the $5 electronic citation fee (705 ILCS 105/27.3e (West 2011)), was improperly assessed because it is only imposed on a defendant "in any traffic, misdemeanor, municipal ordinance, or conservation case upon a judgment of guilty or grant of supervision." Again, the State correctly concedes this fee is improper. Here, defendant was convicted of felony burglary, an offense not enumerated in that statute. Accordingly, we vacate the $5 electronic citation fee.

¶ 25 Next, defendant maintains the $2 Public Defender Records Automation fee (55 ILCS 5/3-4012 (West 2014)), and the $2 State's Attorney Records Automation fee (55 ILCS 5/4-2002.1(c) (West 2014)), are not fees, but fines, and do not compensate the State for prosecuting a particular defendant and should be vacated.

¶ 26 This court has previously found both the $2 Public Defender Records Automation fee and the $2 State's Attorney Records Automation fee are not fines. See generally *Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65 (finding the State's Attorney Records Automation assessment and the Public Defender Records Automation assessment both are fees because they are meant to reimburse the State for expenses related to automated record-keeping systems); *People v. Green*, 2016 IL App (1st) 134011, ¶ 46 (agreeing with the analysis in *Bowen* that the $2 Public Defender Records Automation assessment is a fee); *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30 (finding the State's Attorney Records Automation assessment is a fee as it serves to reimburse the office of the State's Attorney for costs associated with automated record-keeping); *People v. Reed*, 2016 IL App (1st) 140498, ¶¶ 16-17 (agreeing with *Bowen* and *Rogers* in finding both the State's Attorney Records Automation assessment and Public Defender Records Automation assessment are fees). While we recognize that *People v. Camacho*, 2016 IL App (1st) 140604,

¶¶ 47-56 (2016), recently found these assessments to be fines, we follow *Bowen* and *Rogers* and determine the Public Defender Records Automation assessment and the State's Attorney Records Automation assessment are fees which were properly assessed.

¶ 27 Accordingly, pursuant to our authority under Illinois Supreme Court Rule 615(b)(1) (Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999)), we direct the clerk of the circuit court of Cook County to vacate the $5 court system fee and $5 electronic citation fee. See *Bowen*, 2015 IL App (1st) 132046, ¶ 68. However, we affirm the imposition of the $2 Public Defender Records Automation fee and the $2 State's Attorney Records Automation fee. The updated fines and fees order should reflect a total balance of $744.

¶ 28 For the reasons set forth above, we affirm defendant's conviction for burglary and direct the clerk of the circuit court of Cook County to correct the fines and fees order in accordance with this order.

¶ 29 Affirmed; fines and fees order corrected.