FIRST DIVISION
July 5, 2016

No. 1-15-0671

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 20126
	)	
ANTON BALDWIN,	)	Honorable
	)	Clayton J. Crane,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Harris concurred in the judgment.

O R D E R

¶ 1 *Held*: We affirm the judgment of the circuit court where the evidence was sufficient to convict defendant of burglary and the State successfully proved all elements of the offense beyond a reasonable doubt.

¶ 2 Following a bench trial, defendant Anton Baldwin was convicted of burglary and sentenced to three years in prison. On appeal, defendant contends that the State failed to prove that Krista Dutt was the owner of the vehicle or, alternatively, that the State failed to prove that he had the requisite intent to commit theft when he entered a vehicle based on a belief that the vehicle was abandoned. We affirm.

¶ 3 Defendant was charged with one count of burglary and one count of possession of burglary tools. The information alleged in Count I that, on September 16, 2013, defendant "knowingly and without authority entered a motor vehicle, to wit: a 2002 Honda Odyssey, the property of Krista Dutt, with the intent to commit therein a theft."

¶ 4 At trial, Krista Dutt testified that she dropped off her work vehicle, a gold-colored 2002 Honda Odyssey, at Mr. Al and Sons auto repair shop for a tune-up on September 12, 2013. The vehicle was owned by her employer. Inside the vehicle at the time she dropped it off were several coats, a case of water bottles, and sports equipment. On September 14, 2013, Dutt received a phone call from the auto shop's owner informing her that the vehicle was missing. A few days later, police informed her that that they had found the vehicle. Dutt accompanied the police to the vehicle and reported damage to the front, the front right headlight, and the steering column. Using a spare key, Dutt was able to drive the minivan home. None of her possessions were missing from the vehicle.

¶ 5 The parties stipulated to Al Gayden's testimony. Gayden owns Mr. Al and Sons, located at 105 North Pulaski Road in Chicago, Illinois. When he opened his shop on September 13, 2013, at 7:00 am, he discovered that the vehicle owned by "Doring Chicago" was missing and presumed stolen. He could not recall whether he left the vehicle's keys in its ignition the previous night. Gayden contacted Dutt to inform her that the vehicle was missing.

¶ 6 Officer Christopher McGuire testified that, on September 16, 2013, at approximately 11:00 pm, he and his partner received a radio transmission regarding an auto theft of a gold-colored minivan in progress on the 400 block of Parkside Avenue in Chicago, Illinois. They arrived at 410 North Parkside Avenue "moments" later. McGuire testified that he saw defendant

sitting in a gold-colored 2002 Honda Odyssey minivan. Defendant was attempting to start the vehicle by engaging the ignition switch.

¶ 7 Officer McGuire asked defendant if the van was his, to which defendant replied "no," that his friend had given it to him. Finding the answer suspicious, McGuire asked defendant to exit the vehicle. Defendant complied. McGuire then noticed a black-handled key "partially embedded" in the ignition. He removed the key and noted that it belonged to a "Stratic" brand vehicle, not a Honda. McGuire tested the key and determined that it did not fit the minivan's ignition or locks and concluded that the key was not cut for that vehicle.

¶ 8 McGuire ran the vehicle's license plates through the law enforcement agency's data system, which indicated that the vehicle was reported stolen. McGuire placed defendant in custody and searched him, recovering a Phillip's head screwdriver, a folding knife, a pair of black gloves, and two key rings containing generic automobile keys. McGuire testified that he read defendant his Miranda rights and asked him what his intentions were with the vehicle. Defendant responded that his friend told him where the vehicle was and he entered it intending to see what he could "find and keep."

¶ 9 Defendant testified that on September 16, 2013, he was homeless and unable to secure a bed at the homeless shelter across the street from where the minivan was parked. Defendant testified that the minivan had been parked in the same spot for several days. It was severely damaged and appeared to be inoperable. Believing it to be abandoned, defendant entered it intending to sleep in it. He testified that he was asleep in the back seat when police officers approached the vehicle with guns drawn. He told them he did not know who owned the minivan. He denied being read his Miranda rights or telling Officer McGuire that he was looking through

the vehicle to find what he could take. He denied attempting to start the vehicle and any knowledge of the screwdriver, the folding knife, the pair of gloves, or the key rings. In rebuttal, the State submitted defendant's 2006 felony conviction for delivery of a controlled substance.

¶ 10 The trial court found defendant guilty of burglary and imposed a three-year prison term. It found defendant not guilty of possession of burglary tools because there was no evidence that the equipment found on defendant was used or intended to be used in the course of committing a burglary.

¶ 11 On appeal, defendant contends the State failed to prove him guilty of burglary beyond a reasonable doubt as the evidence failed to establish that (1) the vehicle belonged to Krista Dutt and (2) he had the requisite intent to commit a felony or a theft because he reasonably believed that the vehicle was abandoned.

¶ 12 The standard of review on a challenge to the sufficiency of the evidence 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. McGee*, 373 Ill. App. 3d 824, 832 (2007). "This means that we 'must allow all reasonable inferences from the record in favor of the prosecution." *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011) (quoting *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004)). We will not substitute our judgment for that of the tier of fact on issues of weight of evidence or credibility of witnesses. *People v. Cooper*, 194 Ill. 2d 419, 431 (2000). In a bench trial, the trial court, as the trier of fact, assesses the credibility of the witnesses, determines the appropriate weight of the testimony, and resolves conflicts or inconsistencies in the evidence. *Id.* We will not set aside a criminal conviction on grounds of insufficient evidence unless the proof is so improbable or

unsatisfactory that there exists a reasonable doubt of defendant's guilt. *People v. Maggette,* 195 Ill.2d 336, 353 (2001).

¶ 13 To sustain the conviction for burglary, the State had to prove beyond a reasonable doubt that defendant, without authority, knowingly entered or remained within a motor vehicle with intent to commit therein a theft. 720 ILCS 5/19-1(a) (West 2004). A person commits theft when he knowingly obtains or exerts unauthorized control over property of the owner and intends to deprive the owner permanently of the use or benefit of the property. 720 ILCS 5/16-1(a)(1)(A) (West 2013). To prove burglary, the State need not prove specific ownership of the property. *People v. Rothermel*, 88 Ill. 2d 541, 544-47 (1982). Instead, it need only establish that someone other than the defendant held a possessory or ownership interest in the property. *Rothermel*, 88 Ill. 2d at 546.

¶ 14 Defendant argues that the State failed to prove that the minivan in which he was found was the same minivan returned to Dutt *i.e.*, that the State offered no evidence that anyone other than defendant had an interest in the vehicle he entered. This argument is unconvincing. First, defendant testified that he told police that he did not know who owned the vehicle, thus acknowledging that he had no interest in it. Second, Dutt described the work vehicle she left at Mr. Al and Sons as a gold-colored 2002 Honda Odyssey containing several coats, a case of water bottles, and sports equipment. Defendant was found in a gold-colored 2002 Honda Odyssey, inside which were the same possessions that Dutt had left in her work vehicle when she dropped it off at Mr. Al and Sons. Third, when police officers brought Dutt to the vehicle in which defendant was found, she identified it as her work vehicle. Most tellingly, Dutt used a spare key

to the vehicle she dropped off at Mr. Al and Sons to drive home the vehicle in which defendant was found, thus demonstrating that defendant was found in Dutt's work vehicle.

¶ 15 Defendant argues that the State failed to prove that Dutt owned the vehicle and therefore failed to prove defendant was found in Dutt's vehicle as charged. The gravamen of burglary is not that the defendant broke into something belonging to a particular victim but rather that the defendant broke into property that was not his own with the intent to commit a felony or theft. *Rothermel*, 88 Ill. 2d at 545. All the State must show regarding ownership is that someone other than the defendant had a superior interest in the property, which may be proven by circumstantial evidence and the reasonable inferences therefrom. *People v. Tucker*, 186 Ill. App. 3d 683, 691 (1989); see also *People v. Span*, 156 Ill. App. 3d 1046, 1050-52 (1987).

¶ 16 Given that Dutt does not identify Doring Chicago as her employer, it is unclear from Dutt's testimony and Gayden's stipulated testimony who holds title to the vehicle. However, both Dutt and Gayden's testimony clearly established that someone other than defendant owned the minivan in which he was found. Indeed, defendant admitted as much, testifying that he told Officer McGuire that he did not know who owned the minivan. The fact that the indictment identified the vehicle as Dutt's property rather then as the property of Dutt's employer is not material as ownership of the burglarized property, here the minivan, is not an essential element of the charging instrument. *Rothermel*, 88 Ill. 2d at 545. Specific ownership need not be alleged; only that occupancy or possession of the premises lay with someone other than defendant. *Rothermel*, 88 Ill. 2d at 545-46. The indictment correctly identified the minivan as belonging to someone other than defendant. Even assuming an inaccurate allegation of ownership in the indictment, it did not misinform defendant of the nature of the charges against him and was

sufficient to support the conviction. See *Rothermel*, 88 Ill. 2d at 547-48; *People v. Williams*, 299 Ill. App. 3d. 143, 150-51 (1998).

¶ 17 A burglary is complete upon entering a vehicle with the requisite intent, irrespective of whether the intended felony or theft is accomplished. *Beauchamp*, 241 Ill. 2d at 8. The determination of that intent is for the trier of fact and will not be disturbed on review unless the evidence is so improbable that there exists reasonable doubt as to the defendant's guilt. *People v. Cabrera*, 116 Ill. 2d 474, 493 (1987).

¶ 18 It is undisputed that defendant entered the motor vehicle. Intent is established by Officer McGuire's testimony that defendant told him that the vehicle was not his and he had entered it looking for items that he could "find and keep." It is also established by McGuire's testimony that defendant was attempting to start the minivan with a key not cut for the vehicle. Although defendant denies making this statement or attempting to start the vehicle and further testified that he believed the vehicle to be abandoned, the trial court found Officer McGuire more credible than defendant. The trial court, as the trier of fact, determined the credibility of the witnesses and the weight to be given their testimony and we will not substitute our judgment for that of the trial court on these matters. *Cooper*, 194 Ill. 2d at 431. The evidence, therefore, supports the finding that defendant had the intent to commit theft not only in the minivan but of the minivan.

¶ 19 Defendant contends, however, that his belief at the time he entered the vehicle that it was abandoned negates the essential element of intent to commit a theft and that the State must prove beyond a reasonable doubt that he did not actually have that belief. A property is abandoned when the owner, intending to relinquish all rights to the property, leaves it free to be appropriated by any other person. *Paset v. Old Orchard Bank & Trust Co.*, 62 Ill. App. 3d 534, 537 (1978). A

finder is entitled to keep abandoned property. *Id*. Thus, if defendant had a bona fide belief that the minivan was abandoned, *i.e.* that it's rightful owner had relinquished all rights to it and he therefore had a right to the property, then he did not have the requisite intent to commit theft. *People v. Baum*, 219 Ill. App. 3d 199, 201-02 (1991). A defense based on mistake of fact is an affirmative defense. 720 ILCS 5/4–8(d) (West 2010).

¶ 20 In order to raise an affirmative defense, the defendant is required to present some evidence on the issue unless the State's evidence raises the issue. 720 ILCS 5/3–2(a) (West 2010). Once an affirmative defense has been raised, the State must sustain the burden of proving the defendant guilty beyond a reasonable doubt as to that issue. 720 ILCS 5/3–2(b) (West 2010). Here, the defendant testified that the minivan "looked like it was pretty much an abandoned motor vehicle." At the time of arrest, defendant made no such indication and in fact told Officer McGuire that his friend had given it to him. More importantly, the trial court heard defendant's testimony and rejected his abandonment claim, crediting Officer McGuire's testimony over that of defendant. As the trial court explained, it "had the ability to observe the witnesses, their interests and biases as they testified in this case." The trial court found:

> "The only issue in this case is what was [defendant's] intent while he was in the vehicle. Certainly from the explanations given by the officer, that it's easy to figure out what that intent is. Defendant says I never made those statements, but after observations of the defendant and the officer I'm still convinced beyond a reasonable doubt the defendant was in that vehicle, committed a theft."

¶ 21 Viewing the evidence in the light most favorable to the prosecution, we find it was sufficient to prove defendant guilty beyond a reasonable doubt of burglary. From the evidence

presented, the trial court could have reasonably inferred that defendant acted with the intent to commit theft and did not actually believe the vehicle was abandoned.

¶ 22 For the reasons presented above, we affirm the decision of the trial court.

¶ 23 Affirmed.