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2016 IL App (3d) 140371-U

Order filed April 1, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-14-0371
AUGUSTA SPEARMAN, JR.,)	Circuit No. 13-CF-759
Defendant-Appellant.)	Honorable Robert P. Livas, Judge, Presiding.

PRESIDING JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence at trial was sufficient for a rational trier of fact to find defendant guilty beyond a reasonable doubt.

¶ 2 Defendant, Augusta Spearman, Jr., appeals from his conviction for home invasion, arguing that the evidence was insufficient to find him guilty beyond a reasonable doubt. We affirm.

¶ 3 **FACTS**

¶ 4 On July 15, 2013, defendant was charged by superseding indictment with two counts of home invasion (720 ILCS 5/19-6(a)(2), (3) (West 2012)), alleging that defendant and his accomplice knowingly and without authority entered the dwelling of Benjamin Klahn, knowing or having reason to know that Klahn was present in the dwelling, and used force upon Klahn while armed with a firearm (count I) or intentionally caused injury to Klahn (count II).

¶ 5 A jury trial began on October 3, 2013, where defendant proceeded *pro se*. Benjamin Klahn testified that he lived on the bottom floor of a two-story building. On the night of April 7, 2013, he was alone in his bedroom watching "Game of Thrones" on his desktop computer. The light was on in his bedroom, but no other lights were on in the apartment. Around 10:45 p.m. he heard a noise at his back door, which he assumed was his roommate. Klahn said the back door was locked and there was an outer door that was usually locked. "[B]efore five seconds had passed," a tall, thin man, wearing a gray hooded sweatshirt with a navy bandana over his face, pointed a semiautomatic handgun at him and yelled, "[G]ive me the guns, give me the weed, give me the money." Klahn did not have any guns or marijuana. The gunman swung at Klahn. Klahn blocked the swing with his hand, which dislocated Klahn's finger and caused it to bleed. Then Klahn turned away, and told the gunman to take anything he wanted but not to hurt him. Klahn gave the gunman his cell phone and tablet.

¶ 6 The gunman asked where Klahn's bag was, and Klahn dragged it over to him. The gunman grabbed the bag. At that point, the gunman began talking to someone other than Klahn, and Klahn realized that another person (the accomplice) had come in with the gunman and was waiting in the kitchen. The accomplice in the kitchen said, "[W]hat, huh[?]" The gunman told the accomplice to come and retrieve the bag. The accomplice then reached his hand out of the kitchen and dragged the bag into the kitchen. The bag contained another tablet, a portable hard

drive, an Apple keyboard, and other miscellaneous items. The gunman then asked Klahn where his money was. Klahn said, "I don't know where it is, I can't think straight, I'm in a lot of pain." The gunman then said "[Y]ou have five seconds to find your wallet or I'm going to shoot you." Klahn saw his wallet on the kitchen table, pointed to it, and told the gunman "there's my wallet." The gunman instructed the accomplice to retrieve the wallet. Klahn then saw the accomplice for the first time. He was wearing a gray hooded sweatshirt and weighed "probably 400 pounds." Klahn was unable to see the accomplice's face as it was dark and his hood obscured most of it. The accomplice grabbed Klahn's keys and wallet containing \$400 and retreated to the kitchen. The gunman asked Klahn if he had anything else. Klahn said, "[N]o, just my computer in front of me" and told the gunman he should go. The gunman picked up a broken CD rom drive, threw it on the ground, and the gunman and his accomplice both left.

¶ 7 On cross-examination, Klahn testified that he was usually awake at the time the crime occurred. When asked by defendant if he could identify the accomplice, Klahn stated, "I believe you are the gentleman who helped the person who [robbed] me."

¶ 8 Officers Patrick Kelly, Ryan Shaw, Donald McKinney, and Matt Campos and Sergeant Scott Cammack testified that on April 7, 2013, they worked at the Joliet police department. The officers were dispatched to Klahn's apartment between 10:55 and 11 p.m. Klahn explained the robbery, stating that he was at his computer when he heard the kitchen door open and close. He thought it was his roommate. He was then approached by a man with a gun wearing a hooded sweatshirt and a blue bandana covering his face. There was a black male with the gunman, who was heavy set and wore a gray hooded sweatshirt. Klahn told the officers what was taken. Officer Kelly asked Klahn if he had a global positioning system (GPS) on any of his devices. Klahn said there was GPS on his phone, and activated it. The GPS showed that the electronics

were stationary and were a couple of blocks away on Benton Street. The GPS eventually led to a house where both defendant and a man named Anthony Lukas were located along with the electronics that Klahn identified at trial as his own.

¶ 9 Defendant agreed to be interviewed at the police station. He told Cammack that he knew Lukas, but they were not good friends. He called Lukas earlier in the day, and the two of them walked to the victim's residence. At that time, defendant believed Lukas was staying at the victim's residence. Lukas walked right in the rear door of the residence, and defendant followed, shutting the doors behind him. He saw that there was a man in a room off to one side working on a computer. Lukas entered that room while defendant stood outside in the adjacent room. Defendant heard bits of conversation between Lukas and the other man, and it was clear to him that Lukas was robbing the other man. Lukas told defendant three times to pick up a bag that was in the room. Defendant picked up the bag, and they left the residence and went back to 615 Benton Street. They then emptied the bag and looked at the contents for awhile. They were going to sell the items and split the proceeds. He did not know what happened to the items once the police arrived. Defendant had previously told police that he had been wearing a mask over the lower part of his face and had on a red shirt and red gloves on that night. He stated he was wearing the mask because it was cold that day.

¶ 10 Officer Chris Delaney, a crime scene technician for the Joliet police department, processed Klahn's tablets and cell phone and found latent fingerprints on both tablets. Michael Murphy, a latent-print examiner for the Joliet police department, testified that he concluded to a reasonable degree of scientific certainty that two of the fingerprints, one from each tablet, were from defendant.

¶ 11 Defendant was found guilty of all counts. On April 30, 2014, the trial court found defendant to be a habitual criminal, and he was sentenced to life imprisonment.

¶ 12 ANALYSIS

¶ 13 On appeal, defendant argues that the evidence at trial was insufficient to find defendant guilty beyond a reasonable doubt of home invasion. In order to be convicted of home invasion in this case, the State had to prove that: (1) defendant was not a peace officer acting in the line of duty; (2) defendant knowingly entered the dwelling place of another without authority; (3) upon entering, defendant knew or had reason to know that one or more persons were present in the residence; and (4) defendant either intentionally caused injury to any person in the residence, or, while armed with a firearm, used force or threatened the imminent use of force on a person in the residence. 720 ILCS 5/19-6(a)(2), (3) (West 2012). Defendant solely argues that the evidence was insufficient to prove him guilty of the third element, that he knew or had reason to know that someone was present in the residence when he entered. He does not challenge the other four elements. Our analysis, therefore, is limited to the third element.

¶ 14 At the outset we note that defendant was accountable for the conduct of Lukas during the commission of the home invasion. Defendant does not dispute this. Under the principle of accountability, a person is accountable for the conduct of another when "either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2012). As defendant aided Lukas in the commission of the offense, the State only had to prove, for the element of the crime at issue here, that either defendant or Lukas knew or had reason to know that someone was present in the residence. Stated another way, so long as the evidence was sufficient to prove that Lukas knew or should

have known that someone was in the dwelling, defendant would also be proven guilty of that element, regardless of whether defendant himself knew that Klahn was home.

¶ 15 Knowledge of whether a defendant knew or should have known that someone was in the residence is ordinarily proven by circumstantial evidence, but the State must present sufficient evidence from which an inference can be made. *People v. Hickey*, 178 Ill. 2d 256, 292 (1997). When determining whether defendant knew or should have known someone was present in the residence, courts have considered: any light or noise inside the dwelling (*People v. Frisby*, 160 Ill. App. 3d 19, 31 (1987); *People v. Redisi*, 172 Ill. App. 3d 1003, 1011 (1988)); any movement inside the dwelling (*Redisi*, 172 Ill. App. 3d at 1011; *People v. Austin*, 123 Ill. App. 3d 788, 794 (1984)); whether cars were parked on the property (*Hickey*, 178 Ill. 2d at 292-93; *Redisi*, 172 Ill. App. 3d at 1011); whether defendant was armed when entering the dwelling (*Hickey*, 178 Ill. 2d at 292); defendant's actions upon entering the dwelling (*Frisby*, 160 Ill. App. 3d at 31; *Austin*, 123 Ill. App. 3d at 794; *People v. Price*, 2011 IL App (4th) 100311, ¶ 20); whether defendant tried to conceal his identity (*Price*, 2011 IL App (4th) 100311, ¶ 19); and the time of day defendant entered the dwelling, particularly if defendant entered when most people are home asleep (*Hickey*, 178 Ill. 2d at 292; *Frisby*, 160 Ill. App. 3d at 30).

¶ 16 Here, defendant and Lukas entered the residence at 10:45 p.m. on a Sunday. Contrary to defendant's belief, we find that this is a time when most people are at home. See *Price*, 2011 IL App (4th) 100311, ¶ 18 (defendant entered the home around midnight which is "generally a time when most people are at home asleep or getting ready to sleep"). Defendant and Lukas both tried to conceal their identities and Lukas had a gun drawn, indicating that they expected they would encounter someone in the dwelling. Further, upon entering, Lukas started yelling for drugs, money, and weapons as soon as he came out of the kitchen and then went straight for the

bedroom that Klahn was occupying. See *People v. Davis*, 106 Ill. App. 3d 260, 267 (1982) (the fact that the defendant woke the resident immediately upon entering and forced her to disclose where she had put money demonstrated that he knew she would be present upon entering).

Taking this evidence in the light most favorable to the prosecution, a jury could have reasonably concluded that either defendant or Lukas knew or should have known that someone was in the residence.

¶ 17

CONCLUSION

¶ 18

The judgment of the circuit court of Will County is affirmed.

¶ 19

Affirmed.