

2017 IL App (1st) 152892-U
No. 1-15-2892
Order filed December 18, 2017

First Division

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 14 CR 8859
)	
TORY MCCRAY,)	Honorable
)	James Michael Obbish,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Harris and Mikva concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for residential burglary affirmed over his claims that the State failed to prove that he entered the residence, and that the witnesses were not credible.

¶ 2 Following a joint bench trial, defendant Tory McCray and codefendant Charles Virgil¹ were convicted of residential burglary and sentenced to six years' imprisonment. On appeal,

¹ Codefendant Virgil's appeal is pending before this court in case number 1-15-2893. He is not a party to this appeal.

defendant contends that the State failed to prove him guilty beyond a reasonable doubt because it failed to prove that he entered the residence. Defendant also contends that the testimony from the State's witnesses was contradictory and not credible. We affirm.

¶ 3 At trial, Margo Street-Robinson testified that she lives with her son and daughter-in-law, Brian and Robyn Street, at 10505 South Wallace Street in Chicago. Their three-bedroom home is the second house from the corner on the east side of the street. There are two air conditioners mounted in the windows on the first floor. The home has an alarm system with outside wiring in the back of the house, and an indoor control box about five feet from the back door.

¶ 4 About 1 p.m. on May 7, 2014, Margo left her home. No one else was home. Everything in the house was in order, and the air conditioners were in place. On her way home, she received a call that her house had been burglarized. When she arrived home about 3 p.m., the police were there. The outside alarm wires had been disconnected. Inside, the alarm control box had been pulled from the wall. The air conditioner was on the floor in the living room. Upstairs, the dresser drawers were open in all three bedrooms, and the rooms were in disarray. In Margo's room, a metal box containing cancelled checks was removed from the back of her closet and placed on her bed, and a small jewelry box that she kept in a drawer was on her bed. She later discovered that her two diamond rings were missing. Margo did not know defendants and did not give them, or anyone else, permission to enter her home or take anything while she was away.

¶ 5 Robyn Street left home for work about 6 a.m. on May 7. That afternoon, she was notified that her house had been burglarized and returned home about 4 p.m. In her room, her clothes were removed from her drawers. All of the drawers from her jewelry box that sat on top of her dresser were removed and dumped on her bed. Multiple pieces of jewelry were missing

including her watches, bracelets, earrings, and rings. Four \$50 bills she kept in her jewelry box were also missing. Her money and jewelry was later returned to her by police. No televisions, computers, or electronic items were taken. Robyn did not know defendants and did not give them, or anyone else, permission to enter her home and take her property. Across the street from their house is Fernwood Park. On cross-examination, Robyn testified that there is no fence in front of their house, but the backyard is surrounded by a fence, adjacent to the alley.

¶ 6 Cordell Martin lived at 10459 South Wallace Street, on the corner of Wallace and 105th Streets. About 2 or 2:30 p.m. on May 7, Martin was outside watering his side lawn that abutted 105th Street. He noticed the defendants walking through Fernwood Park, directly across Wallace Street from his house. Defendant was wearing a dark blue or black jacket with a hood and a fisherman's hat. Codefendant Virgil wore a red and black hoodie with dreads or braids in his hair. The defendants stood in front of the corner house at 10501 South Wallace, across 105th Street from Martin's house, for about five minutes. They then walked south on Wallace to 106th Street, turned the corner, and walked towards Parnell Avenue. Martin lost sight of them. About five minutes later, the defendants returned, walking west on 105th Street coming from Parnell towards Wallace. They again stood in front of the corner house across the street. Defendant pulled a pair of dark-colored gloves from his pocket. The men then walked into the gangway on the north side of the house at 10505 South Wallace.

¶ 7 Five minutes later, Martin heard a loud crash and called police. He continued watering his lawn and watching the house at 10505 Wallace. When the police arrived, defendant ran from the back of the house. He was inside the backyard and jumped over a wooden fence. He entered the alley behind the house and crossed the parking slab for the corner house at 10501. Defendant

tossed his gloves into the bushes by the back door at 10501. He then ran north down the alley and was chased by police. Codefendant Virgil came from the front area of the house at 10505, crossed the street, and started walking through Fernwood Park. Martin made a second call to the police to convey that information. The police followed Virgil into the park and arrested him on the basketball court. Martin identified both defendants at the scene and in court. In court, Martin also identified several photographs of the homes at 10501 and 10505, and defendant's gloves lying in the bush and next to the bush. Martin also identified defendant's hat and gloves, and both men's jackets.

¶ 8 On cross-examination, Martin acknowledged that the corner house at 10501 is between his house and the subject house at 10505. Looking at a photograph, Martin identified where he was standing on his lawn. He indicated an area in the middle of the photograph along the side of his house, between his house and the sidewalk. Counsel asked Martin "that's where you stood the whole time?" He replied "[y]es, I did." Martin estimated that he had been watering his lawn for an hour. He explained that it is a large lawn, and he took a break about 1 p.m. Martin also explained that his house has a large open space which allows him to see Wallace Street and the side area. He testified "I'm able to see a lot."

¶ 9 Martin initially observed defendants exit the park and cross Wallace to Martin's side of the street. When they saw Martin, they walked up Wallace. Martin noticed defendants the first time they stopped in front of the house across the street because Virgil was on his cell phone and defendant was looking around. They appeared to be looking for an address. When defendants walked south on Wallace towards 106th Street, Martin walked to the front of his house and

watched them. He lost sight of them when they turned east on 106th and walked towards Parnell. Martin testified that defendants looked “suspicious” because “they kept coming past.”

¶ 10 When Martin saw defendant run through the alley, defendant was still wearing his jacket and hat. Defendant fled the scene first, and Virgil left three to five minutes later. Martin explained that he was able to see everything as it happened because he was standing on the side of his house and was able to see both the alley and the front of his house from that location. After the police apprehended Virgil, they talked to Martin, who was then at the back of his house watering his back lawn. Martin estimated that 10 to 15 minutes passed between the time he heard the crash and when he saw defendant flee through the alley.

¶ 11 Jesse Murry was exiting his garage behind his home at 10449 South Parnell about 2:30 or 3 p.m. on May 7 when he heard a gate open. A young man ran through the next-door neighbor’s gangway from the alley at 10443 Parnell. The man stopped momentarily, threw something under the neighbor’s back porch, and continued running towards Parnell. A minute later, a police officer came through the same gangway and asked Murry if someone had just passed through. Murry replied in the affirmative and said the man had thrown something under the porch. The officer went to the porch and indicated that he found something.

¶ 12 Chicago police officers Adam Schur and Brian Kennedy responded to a call regarding a residential burglary in progress about 2:30 p.m. on May 7. Schur testified that Kennedy drove to 106th and Wallace, and drove northbound through the alley between Wallace and Parnell. Kennedy then alerted Schur’s attention. When they reached the end of the alley at 105th Street, Schur exited their vehicle. Kennedy moved the vehicle and also exited. Schur walked south in the 105th block of Parnell checking the bushes for an offender. He looked north on Parnell and

saw defendant run from the gangway at 10443 South Parnell. Defendant looked at Schur and ran diagonally across Parnell. Schur issued a radio message and chased him. Defendant began walking north on the sidewalk in the 104th block of Parnell. Kennedy ran east on 105th Street, then north on Parnell. Kennedy caught up to defendant and detained him. Defendant was wearing dark pants and a two-toned T-shirt with a logo and black sleeves. Schur stayed with defendant and pointed out the gangway that defendant exited to Kennedy.

¶ 13 Officer Kennedy testified substantially the same as Schur regarding their arrival at the scene, except he stated that Schur was driving. As they drove through the alley, Kennedy saw defendant running east across the end of the alley near 105th Street. Defendant was wearing black pants, a black jacket, and a dark blue fisherman's hat. Kennedy saw defendant's profile. Kennedy issued a radio message as Schur sped up and drove to the end of the alley at 105th Street. They lost sight of defendant and exited their vehicle to look for him. Kennedy was on 105th Street near Parnell when Schur called for his attention. Kennedy then saw defendant running north on Parnell towards 104th Street. Kennedy caught up to defendant and detained him. He recognized defendant as the same person he earlier saw running eastbound. Defendant was now wearing a long-sleeved black T-shirt with a red Bulls logo.

¶ 14 Schur arrived at Kennedy's location and pointed to the address at 10443 Parnell. Kennedy went to the address and spoke briefly with Murry. Under the rear porch Kennedy found the black hooded jacket and fisherman's hat that he previously saw defendant wearing. Kennedy estimated that two to three minutes had passed from the time he initially saw defendant to the second time he saw him with different clothing. On cross-examination, Kennedy acknowledged

that defendant was not in possession of any jewelry or money when he was detained, nor did he see defendant discard any items.

¶ 15 Chicago police officer Michael Wrobel and his partner, Officer Simmons, responded to a call regarding a man with dreads wearing a black and red hoodie inside Fernwood Park. Codefendant Virgil, who matched the description, was at the edge of the grass by the basketball courts. Virgil swung both of his arms extended out sideways from his body on both sides in an outward and upwards motion. Wrobel saw items fall from Virgil's hands but could not tell what they were. Virgil walked to the basketball court, removed his hoodie and threw it to the ground. He then pretended that he was playing basketball by himself without a ball. Several other men were playing basketball at the time. The officers detained Virgil. They searched the area where they initially saw him and recovered jewelry that was scattered throughout the grass. They brought Virgil to 105th and Wallace where Martin identified him as the man he saw coming from the gangway of the burglarized house. Virgil was then arrested. During a custodial search, Wrobel recovered four \$50 bills from Virgil. Wrobel also recovered a pair of black shoes from defendant and a pair of multi-colored shoes from Virgil. Margo and Robyn identified the recovered jewelry as that which was taken from their home.

¶ 16 Chicago police evidence technician Stephen Balcerzak arrived at the burglarized home at 4:50 p.m. on May 7. He found footwear impressions on the window air conditioner that had been pushed into the living room, which was the point of entry. He took scaled photographs of the impressions and also lifted the impressions with an adhesive plastic. Balcerzak then went to the corner house at 10501 South Wallace where he photographed and recovered a pair of gloves, one of which was on a bush and the other was on the grass. Balcerzak also went to 10443 South

Parnell where he photographed and recovered a black jacket and blue floppy hat from underneath the rear porch of that residence.

¶ 17 Forensic scientist Aimee Stevens specializes in footwear identification, which determines whether a footwear impression was made by a particular shoe. In this case, she received two pairs of athletic shoes and four hinge lifters containing footwear impressions. One pair of shoes was size 8½ black Adidas and the other was size 9½ multi-colored Nikes. Stevens made test impressions from the shoes and compared them to the lifted impressions and scaled photographs of footprints taken by police at the crime scene. One of the impressions from the crime scene was consistent with the outsole pattern size and design of the left Adidas shoe, and another impression was consistent with the outsole pattern size and design of the right Nike shoe. In other words, the features on the bottoms of the shoes were of the same design and size as the impressions from the scene. She was unable to identify any individual characteristics of the shoes due to a lack of features that could be utilized for that purpose. Stevens acknowledged that her analysis connects impressions and prints to a shoe, not to a particular person.

¶ 18 The trial court found that all of the State’s witnesses “testified in a very credible manner.” The court summarized Martin’s testimony and found that he was “the epitome of a good neighbor.” It found that the loud noise Martin heard were the defendants breaking into the home where the air conditioner used to be. The court also found that defendant and Virgil were “clearly together.” The court noted that although the shoe print evidence was not conclusive, it was additional evidence that corroborated everything else. The court concluded that the evidence against both defendants was overwhelming, and even without the shoe print evidence, they were both proven guilty beyond a reasonable doubt of residential burglary.

¶ 19 In denying defendant's motion for a new trial, the trial court expressly rejected his argument that Martin was not credible because he would not have been able to see everything he claimed to have seen while watering his lawn. The court stated that Martin was "extraordinarily credible as a witness." The court then sentenced defendant to six years' imprisonment.

¶ 20 On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt because it failed to prove that he entered the residence. He also contends that the testimony from Martin and Officers Schur and Kennedy was contradictory and not credible.

¶ 21 When a defendant claims that the evidence is insufficient to sustain his conviction, this court must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the offense proved beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). This standard applies whether the evidence is direct or circumstantial, and does not allow this court to substitute its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42.

¶ 22 In a bench trial, the trial court is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences from therein. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We will not reverse a criminal conviction based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt (*People v.*

Beauchamp, 241 Ill. 2d 1, 8 (2011)), nor simply because defendant claims that a witness was not credible or that the evidence was contradictory (*Siguenza-Brito*, 235 Ill. 2d at 228).

¶ 23 Defendant claims that the State failed to prove that he entered the dwelling because none of the witnesses testified that he was inside the house, and he was not found in possession of any of the proceeds. He acknowledges the shoeprint evidence, but claims it was inconclusive and notes that the court did not rely on it in finding him guilty. Defendant argues that his presence and flight from the vicinity alone are not enough to sustain his conviction.

¶ 24 To prove defendant guilty of residential burglary in this case, the State was required to show that he, knowingly and without authority, entered the dwelling of Margo Street-Robinson at 10505 South Wallace Street with the intent to commit a theft therein. 720 ILCS 5/19-3(a) (West 2014). A burglary is complete when defendant enters the premises with the requisite intent, regardless of whether he accomplishes the intended theft. *Beauchamp*, 241 Ill. 2d at 8. An entry may be accomplished by even a slight intrusion by part of the body into a protected enclosure, or by simply crossing the boundaries that enclose the protected space. *Id.* at 8-9. “[A] burglary conviction may be sustained on circumstantial evidence.” *Id.* at 9.

¶ 25 Viewed in the light most favorable to the State, we find that the evidence in this case was sufficient for the trial court to find that defendant entered the home and was guilty of residential burglary. Martin testified that he observed defendant and Virgil as they exited Fernwood Park, crossed Wallace and 105th Streets, and stood in front of the corner house for five minutes. The defendants walked around the block and again stood in front of the corner house. Defendant pulled a pair of dark gloves from his pocket, and he and Virgil then walked into the gangway of the house at 10505 Wallace. Minutes later, Martin heard a loud crash and called police. The

evidence showed that a window air conditioner on the first floor had been forcibly pushed into the house, creating a point of entry. About 10 to 15 minutes later, Martin saw defendant jump over a wooden fence from the backyard and run through the alley. While fleeing, defendant tossed his gloves into a bush behind the corner house. Minutes later, Martin saw Virgil leave the front area of the house and walk through the park. Martin identified both defendants at the scene.

¶ 26 Officers Schur and Kennedy pursued defendant as he fled the scene and detained him about a block away. When detained, defendant was no longer wearing a jacket and hat. Murry saw a man run through his neighbor's gangway and throw something under the porch. Kennedy went to that porch and found the jacket and hat that he previously saw defendant wearing.

¶ 27 In addition, Margo testified that the wires for her home alarm system had been disconnected, and the alarm control box inside her house was pulled from the wall. All of the bedrooms in her home were in disarray. Margo and Robyn both testified that their jewelry boxes had been emptied onto their beds, and they were both missing jewelry. Robyn was also missing four \$50 bills. Officer Wrobel detained Virgil in the park and recovered Margo and Robyn's jewelry from the grass. He also recovered four \$50 bills from Virgil's person.

¶ 28 Police recovered two different footwear impressions from the air conditioner. Although not conclusive, Stevens found that one of those impressions was consistent with the design and size of defendant's shoe. The other impression was consistent with the design and size of Virgil's shoe. The testimony from several witnesses was corroborated with numerous photographs taken in multiple locations at the crime scene.

¶ 29 The trial court found that the testimony from all of the State's witnesses was "very credible." The record thus shows that the overwhelming evidence, when considered together,

allowed the trial court to make a reasonable inference that defendant had entered the residence with the intent of committing a theft therein. In making this finding, we need not rely on a theory of accountability. The footwear impression consistent with defendant's shoe, although inconclusive alone, when considered with the other evidence, shows that defendant made some form of entry, however slight, into the home. *Beauchamp*, 241 Ill. 2d at 8-9. Accordingly, the State proved defendant guilty beyond a reasonable doubt of residential burglary.

¶ 30 Defendant next contends that Martin's testimony was unreliable because he testified that he witnessed the entire incident from one location on his lawn, then contradicted himself by testifying that he walked to the front and back of his house. Defendant argues that Martin testified about details that would have been impossible for him to see, such as defendant jumping over the fence. He claims that Martin's view of the burglarized home would have been obstructed by the corner house. Defendant also argues that Martin's testimony regarding the defendants' movements before the burglary, and that they returned and burglarized the home while he was watching, was contrary to human experience.

¶ 31 As a threshold matter, we reject defendant's request that this court use Google Maps to view the area at 105th and Wallace Streets, and take judicial notice of what Martin would have been able to see from the middle of his side lawn where he claimed that he was standing. Judicial notice cannot be extended to introduce new factual evidence that was not presented to the trial court. *People v. Boykin*, 2013 IL App (1st) 112696, ¶ 9. A view of the area using Google Maps was not presented to the fact finder, nor was the trial court requested to take judicial notice of the alleged extent of Martin's view. We therefore decline the request to take judicial notice of it. *Id.*

¶ 32 Here, defendant's claim that contradictions in Martin's testimony rendered him not credible are unpersuasive. The record shows that Martin did agree that he was standing in one area of his lawn the entire time, but also testified that he walked to the front of his house as he watched defendants walk south on Wallace. Although this is a discrepancy, it is one that the trial court resolved in the State's favor, expressly finding Martin's testimony credible.

¶ 33 Nor are we persuaded that Martin's testimony as to what he was able to observe was not credible. Martin explained that his house, a corner lot, has a large open space that allows him to see Wallace Street and the side area. He also explained that he was able to see everything as it happened because he was standing on the side of his house and was able to see both the alley and the area in front of his house from that location. This testimony explains how Martin was able to observe all of the defendants' movements from the time he initially saw them exiting the park to the time they fled from the house in opposite directions and were pursued by police. The record shows that the court expressly rejected defendant's argument that Martin would not have been able to see everything he claimed to have seen while watering his lawn. It was the trial court's duty to determine the veracity of Martin's observations, and it found his testimony credible.

¶ 34 In addition, we find no merit in defendant's claim that Martin's testimony regarding the defendants' movements before the burglary, and that they returned and burglarized the home while he was watching, was so contrary to human experience that it rendered his testimony incredible. It was the trial court's duty to assess the believability and truthfulness of this testimony, and it found Martin credible.

¶ 35 The determination of Martin's credibility was a matter entirely within the province of the trial court which heard and observed him testify. *Siguenza-Brito*, 235 Ill. 2d at 228. The court

expressly found that Martin was “extraordinarily credible as a witness.” Based on this record, we find no reason to disturb that determination.

¶ 36 Finally, defendant contends that Officer Kennedy’s testimony, especially his identification of defendant, was unreliable because Kennedy did not have a sufficient opportunity to view the offender when he initially saw the man running across the end of the alley. Defendant points out that Kennedy and Schur contradicted each other regarding who was driving their vehicle. Defendant notes that Kennedy was in a moving car and argues that it is completely implausible that he would have been able to see the offender’s profile well enough in a couple of seconds, and through a floppy fisherman’s hat, to recognize him upon arrest.

¶ 37 We acknowledge that Kennedy and Schur each testified that the other was driving. However, the record shows that is the only contradiction and that the rest of their testimony is consistent and corroborates each other. Kennedy testified that as they drove through the alley, he saw defendant running east across the end of the alley. Defendant was wearing black pants, a black jacket, and a dark blue fisherman’s hat. Kennedy testified that he saw defendant’s profile. There is no evidence that the hat obstructed defendant’s face. Minutes later, Schur observed defendant running from the gangway at 10443 Parnell. Kennedy gave chase and detained defendant. He recognized defendant as the same person he earlier saw running in the alley, even though defendant was no longer wearing the jacket and hat. Shortly thereafter, Kennedy went through the same gangway defendant had just passed through and found defendant’s jacket and hat under a porch.

¶ 38 The record shows that Kennedy had a sufficient opportunity to view defendant from the police vehicle, and that he recognized defendant based on his profile when he detained him

minutes later in the alley. The contradiction as to who was driving the car was not so significant that it rendered their testimony unreliable. It was the trial court's duty to resolve the contradiction in the testimony and to determine the officers' credibility. *Siguenza-Brito*, 235 Ill. 2d at 228. The court found both of the officers credible, and we find no reason to disturb that determination.

¶ 39 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 40 Affirmed.