2019 IL App (1st) 162917-U

No. 1-16-2917

Order filed October 10, 2019

Fourth Division

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 MC1 223093
	)	
PAUL IVERSON,	)	Honorable
	)	Clarence L. Burch,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Reyes and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for criminal trespass to a residence affirmed where the evidence proved beyond a reasonable doubt that defendant without authority, knowingly entered or remained in a residence.

¶ 2 Following a bench trial, defendant Paul Iverson was convicted of criminal trespass to a residence (720 ILCS 5/19-4(a)(1) (West 2014)) and was sentenced to six months supervision. On

appeal, defendant argues that his conviction should be reversed where the State failed to prove beyond a reasonable doubt that defendant entered a "residence" under the statute. We affirm.[1]

¶ 3 Defendant was charged with and tried on one count of criminal damage to property and one count of criminal trespass to a residence, arising from his unauthorized presence at a house in the 5300 block of North Linder Avenue on August 4, 2014.

¶ 4 At trial, Daniel Waters testified that he was the brother of the deceased John Waters.[2] John owned approximately 60 properties when he died, including the Linder property, which was part of his estate. The Linder property was a "Cape Cod frame home that [John] lived in for a while" and a garage on a 30-foot lot in Chicago. Daniel believed that people other than his brother had lived at that property. On March 20, 2013, the court declared Daniel and his brother Jerry co-administrators of John's estate after a dispute over the ownership of John's properties. Daniel installed a security system in the house, with an alarm system on every level, to which only Daniel, his wife, and the security company had access.

¶ 5 On August 4, 2014, Daniel drove to the house on Linder, which was "empty" at the time, because Daniel had not rented the property to anyone. At the house, he found the front door open, and defendant inside with two men. Daniel believed the two men were prospective tenants to whom defendant was trying to rent the property. Daniel had known defendant for approximately five years as an associate of John's, but did not know to what degree they had been acquainted. The security system was "pulled out of the areas that [they] had it in, and it was missing." The garage door's lock was also "pulled out." When the police arrived, they asked

[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

[2] Because John Waters, Daniel Waters, and Jerry Waters all share the same last name, we will refer to them by their first names.

Daniel if he wanted defendant arrested. He said yes, as defendant did not have consent to be there. Defendant was subsequently taken to the police station.

¶ 6 On cross-examination, Daniel acknowledged that he obtained an order barring defendant from the property on August 6, 2014. Daniel thought he already had such an order on August 4, 2014. The property was sold in 2015 by the estate of John Waters. On redirect examination, the State presented a court order dated August 13, 2014, which made voidable certain deeds for estate properties including the Linder property, "for failure of the deed to include a City of Chicago transfer tax stamp or exempt stamp."

¶ 7 Andrew Maggio testified he became the attorney of record for John's estate "[a]t the end of the will contest in March of 2013," when the will was declared a forgery and Daniel became co-administrator of the estate. Maggio identified the October 10, 2012, court order barring defendant from 35 estate properties. Defendant and his attorney were in court at the time the order was entered. In 2014, defendant filed a deed to the Linder property, which the court found voidable and fraudulent.

¶ 8 The court granted defendant's motion for a directed finding with regard to the criminal damage to property charge and denied it with regard to the criminal trespass to a residence charge. Defendant then submitted exhibits, including a certified copy of the August 6, 2014, order barring him from the property, and the August 13, 2014, order declaring that the deed previously recorded was voidable.

¶ 9 The trial court found defendant guilty of criminal trespass to a residence, finding defendant had neither consent nor authority to be on the Linder property. It sentenced defendant

to six months supervision, and ordered him to have no contact with the Linder property. The court subsequently denied defendant's motion to reconsider.

¶ 10 Defendant argues on appeal that this court should reverse his conviction, because the evidence supported a finding that the Linder property was not a "residence" under the criminal trespass to a residence statute, which defendant argues is defined identically to "dwelling" under the residential burglary statute.

¶ 11 The standard of review in challenging the sufficiency of the evidence is "whether, viewing 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.' " *People v. Belknap*, 2014 IL 117094, ¶ 67 (quoting *People v. Collins*, 106 Ill. 2d 237, 261 (1985)). The trier of fact, here the trial judge, has the responsibility to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from basic facts to ultimate facts. *People v. Brown*, 2013 IL 114196, ¶ 48.

¶ 12 In order to prove defendant guilty of the misdemeanor of criminal trespass to a residence, the State needed to establish that defendant, without authority, knowingly entered or remained in any "residence, including a house trailer that is the dwelling place of another." 720 ILCS 5/19-4(a)(1) (West 2014). Defendant does not challenge the authority, knowledge, or entry/remaining elements of the offense. His sole argument is that the State failed to prove that he entered a "residence" under the statute.

¶ 13 Defendant raises a claim of statutory interpretation, which we review *de novo*. *People v. Tolbert*, 2016 IL 117846, ¶ 12. This court's primary objective in interpreting a statute is to ascertain and give effect to the intent of the legislature. *People v. Marshall*, 242 Ill. 2d 285, 292

(2011). "The most reliable indicator of legislative intent is the language of the statute, given its plain and ordinary meaning." *People v. Minnis*, 2016 IL 119563, ¶ 25. Accordingly, a court must view the statute as a whole, with each word, clause, and sentence given a reasonable meaning, if possible, and not rendered superfluous. *Id.* Where the language is clear and unambiguous, we apply the statute without further aids of statutory construction. *Marshall*, 242 Ill. 2d at 292. The court may consider "the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another." *Minnis*, 2016 IL 119563, ¶ 25. Furthermore, the court presumes that the legislature did not intend to create absurd, inconvenient, or unjust results. *Id.*

¶ 14 The Illinois Criminal Code does not define the term "residence." The court in *In re A.C.*, 215 Ill. App. 3d 611 (1991), construing the 1989 version of the offense of criminal trespass to a residence, interpreted "residence" to mean a "relatively permanent habitat" and synonymous with "dwelling," which it defined as an " 'enclosed space *** intended for *** human habitation.' "[3] *Id.* at 614 (quoting Ill. Rev. Stat. 1989, ch. 38, par. 2-6(a), now codified as 720 ILCS 5/2-6(a) (West 2014)) (finding an unattached uninhabited garage was neither a residence nor a dwelling).

[3] In relevant part, in the 1989 version of the statute, the offense is defined as "[a person] without authority *** knowingly enters or remains within any residence, including a house trailer." Ill. Rev. Stat. 1989, ch. 38, par. 19-4(a). Under the current version of the statute, "[a] person commits criminal trespass to a residence when, without authority, he or she knowingly enters or remains within any residence, including a house trailer that is the dwelling place of another." 720 ILCS 5/19-4(a)(1) (West 2014).

¶ 15 Section 2-6 of the Criminal Code contains two definitions for "dwelling":

> "(a) Except as otherwise provided in subsection (b) of this Section, 'dwelling' means a building or portion thereof, a tent, a vehicle, or other enclosed space which is used or intended for use as a human habitation, home or residence.
>
> (b) For the purposes of Section 19-3 of this Code [residential burglary statute], 'dwelling' means a house, apartment, mobile home, trailer, or other living quarters in which at the time of the alleged offense the owners or occupants actually reside or in their absence intend within a reasonable period of time to reside." 720 ILCS 5/2-6(a), (b) (West 2014).

¶ 16 Section 2-6 specifically provides that the more stringent subsection (b) definition of dwelling is to be applied only to residential burglary, which is not at issue here. For all other offenses, the definition in section 2-6(a) applies. Thus, as did the court in *A.C.*, we find the definition of dwelling applicable to "residence" in the criminal trespass to a residence statute to be an "enclosed space *** intended for *** human habitation," as set forth in section 2-6(a). [4] See *In re A.C.*, 215 Ill. App. 33 at 614 (citing the definition set forth in Ill. Rev. Stat. 1989, ch. 38, par. 2-6(a), the precursor to 720 ILCS 5/2-6(a) (West 2014)).

¶ 17 Although the Code specifies that the section 2-6(b) definition of "dwelling" applies only for purposes of residential burglary, defendant contends that, because trespass to a residence is a lesser-included offense of residential burglary, we must interpret "residence" identically to this definition of "dwelling." There is no question courts have found criminal trespass to a residence

[4] *In re A.C.* employs the definition of "dwelling" set forth section 2-6(a) of the 1989 Criminal Code (Ill. Rev. Stat. 1989, ch. 38, par. 2-6(a)). Section 2-6 of the 1989 Code is identical to the definition of "dwelling" set forth in the current Code (720 ILCS 5/2-6 (West 2014)), and similarly applies the more stringent definition only to the residential burglary statute. Ill. Rev. Stat. 1989, ch. 38, par. 2-6(b).

to be a lesser included offense of residential burglary. See, *e.g.*, *In re Matthew M.*, 335 Ill. App. 3d 276, 285 (2002); *People v. Austin*, 216 Ill. App. 3d 913, 916 (1991). But it does not follow that the legislature's section 2-6 directive that the more stringent definition of dwelling be applied only to residential burglary should be rendered superfluous by applying that definition to another offense. *Minnis*, 2016 IL 119563, ¶ 25 (viewing the statute as a whole, each word, clause, and sentence should be given a reasonable meaning, if possible, and not rendered superfluous). We cannot depart from the plain language of section 2-6 and read into it an exception, limitation, or condition that is not consistent with the express legislative intent. *Hosey v. City of Joliet*, 2019 IL App (3d) 180118, ¶ 13.

¶ 18 Indeed, defendant cites no cases interpreting section 2-6 as he suggests, *i.e.* applying the section 2-6(b) definition to an offense other than residential burglary, let alone to criminal trespass to a residence. *In re A.C.* appears to be the only case addressing the definition of residence in the context of the criminal trespass to a residence statute, and it found "residence" is synonymous with the broader definition of "dwelling" then and now set forth in section 2-6(a). See *In re A.C.*, 215 Ill. App. 3d at 614 (holding a detached building used only as a garage was not a "residence" in part because it is not an " 'enclosed space *** intended for *** human habitation' ") (quoting Ill. Rev. Stat. 1989, ch. 38, par. 2-6); 720 ILCS 5/2-6(a) (West 2014).

¶ 19 We find the Linder house was a "residence" for purposes of the criminal trespass to a residence statute. John Waters and other people had lived in the Linder house previously, the house was secured by locks on the front door and garage, and Daniel, as co-administrator of the estate, had installed a security system on every floor. As defendant points out, the house was vacant at the time of defendant's entry and eventually sold by the estate, which owned the

property. While the owner of the unoccupied house, the estate, did not reside there or intend to reside there within a reasonable period of time, the owner was not required to do so, as this requirement applies only to residential burglary. Accordingly, we find the evidence supports the finding that the Linder house was a "permanent habitat" or a building "intended for use as a human habitation, home or residence" as defined in section 2-6(a), and thus was a "residence" for purposes of the criminal trespass to a residence statute.

¶ 20 This determination is bolstered by section (a-5) of the criminal trespass to a residence statute, which provides: "[f]or purposes of this Section, in the case of a multi-unit residential building or complex, 'residence' shall only include the portion of the building or complex which is the actual dwelling place of any person and shall not include such places as common recreational areas or lobbies." 720 ILCS 5/19-4(a-5) (West 2014). This definition is silent regarding the requirement that, as for the definition of dwelling applicable to the residential burglary statute, the owner or occupant reside or intend within a reasonable period of time to reside in those dwelling places. 720 ILCS 5/2-6(b) (West 2014). We will not read into the statute a condition not expressed therein.

¶ 21 Taking the evidence in the light most favorable to the State, we find that a rational trier of fact could have found that defendant, without authority, knowingly entered or remained in the Linder "residence," and therefore was guilty of criminal trespass to a residence. Under the circumstances, defendant's conviction is not so unreasonable or improbable as to create a reasonable doubt of his guilt. Accordingly, we affirm the trial court's judgment.

¶ 22 Affirmed.