2019 IL App (1st) 170024-U

No. 1-17-0024

Order filed June 13, 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. 16 CR 3480
	)	
WILLIAM WILLIAMS,	)	Honorable
	)	Vincent M. Gaughan,
Defendant-Appellant.	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: Defendant was proven guilty of residential burglary beyond a reasonable doubt where his blood was left at the crime scene during the offense. Remanded as to the mittimus and fines and fees order.

¶ 2 Following a bench trial, defendant William Williams was convicted of residential burglary and sentenced to 7½ years in prison. He appeals, arguing that he was not proven guilty beyond a reasonable doubt because the State's case "rested solely" on evidence that his blood was found in the burglarized home, and because he offered a "credible innocent explanation" for

the presence of his blood. Defendant also contends that the mittimus should be amended to reflect one additional day of presentence credit, and that his fines and fees order should be corrected in several respects. We affirm defendant's conviction, but remand with respect to the mittimus and fines and fees.

¶ 3 Defendant was charged by information with one count of residential burglary (720 ILCS 5/19-3(a) (West 2014)) arising from an incident in which he allegedly entered the home of Mariana Marquez[1] with the intent to commit a theft.

¶ 4 At trial, Marquez testified, through an interpreter, that she and her ex-boyfriend, Jose Urbina, broke up in the "first days" of January 2014. The couple had previously lived together at Marquez's house on the 3400 block of West 74th Street in Chicago. On January 30, after Urbina had moved out, Marquez spent the night at her sister's house. When Marquez left for her sister's, there was no damage to any of her windows or doors. When she returned home on January 31, she noticed that her living room television and some of her jewelry were missing. Marquez examined the rest of the house, and found that the window on the back door was broken. She denied noticing "anything else unusual" about her home.

¶ 5 Marquez identified People's Exhibits 2 and 3, which are in the record on appeal, as photographs of her back door with a broken window. The photographs show a large hole in the bottom left corner of the window, the part nearest to the door knob. There is a red substance on the window frame immediately next to the broken glass. The substance is approximately the height of the deadbolt on the back door, located several inches above the door knob. Marquez

[1] Marquez's surname was formerly Ramirez, and the parties refer to her by both names throughout the proceedings. For consistency, we refer to her as Marquez.

testified that the red substance was not there and that the window was intact when she left her house on January 30.

¶ 6 Marquez identified People's Exhibit 4 as a photograph of her bedroom showing where her jewelry was taken from a box on the dresser. Nothing else appears disturbed, except several drawers that are slightly ajar. A television is mounted to the wall above the dresser.

¶ 7 People's Exhibit 5 is a photograph of Marquez's living room showing the area from which her television was taken. Nothing else appears disturbed in the living room, and several other electronic devices are shown next to where the television used to sit.

¶ 8 Marquez explained that she knew defendant through Urbina, but had not seen him in the months leading up to the burglary. Defendant had been in her home with Urbina in the past, but Marquez never saw him cut or bleeding. By January 2014, neither Urbina nor defendant was allowed in Marquez's home because she had obtained an order of protection against Urbina.

¶ 9 On cross-examination, Marquez stated that defendant and Urbina would occasionally work on her house together, but that she "wouldn't allow [defendant] in the house very much." She agreed that it was possible Urbina would allow defendant into the house when she was not home. Marquez acknowledged that Urbina came to the house with a police officer to collect his belongings in "the middle of January," and that he retained a key to her house after he moved out.

¶ 10 She also stated that, before the burglary, there were several items plugged into her living room television. Those items, which included speakers and a video game console, were unplugged, but not taken during the burglary.

¶ 11 When Marquez spoke with a detective after the break-in, she told him that she thought Urbina was the perpetrator because she had "gotten [him] locked up" by obtaining the order of protection earlier that month. In February 2016, a police officer called Marquez about the burglary, and she told the officer that she knew defendant.

¶ 12 Officer Anthony Beam, an evidence technician for the Chicago Police Department, testified that he was assigned to process the crime scene on January 31, 2014. Beam took photographs of the home and swabbed suspected blood that was next to the broken glass on the back door. He did not see blood anywhere else in the house. On cross-examination, Beam testified that he "would have no way of knowing" how long the blood had been on the back door. He did not recover any latent fingerprints in the house.

¶ 13 The State then entered a stipulation between the parties that Leslie Cittadino, a forensic biologist for the Illinois State Police, would testify that she examined the swabs of a "dark substance," and that they tested positive for blood. Lisa Kell, a forensic DNA analyst for the Illinois State Police, created a DNA profile suitable for comparison from the blood swabs. The parties further stipulated that a buccal swab was collected from defendant in April 2016 and sent to the Illinois State Police Crime Lab for testing. Bill Cheng, a forensic DNA analyst for the Illinois State Police, compared the DNA from the blood and buccal swabs, and concluded "with a reasonable degree of scientific certainty" that the blood taken from the back door window was defendant's.

¶ 14 The State rested, and the defense moved for a directed finding, which was denied.

¶ 15 The defense called Urbina, who testified that he had lived with Marquez on West 74th Street for eight years until they broke up in January 2014. Sometime in mid-January, after the

break-up, defendant, who was Urbina's neighbor and coworker, helped him remove a "very heavy" concrete sink from Marquez's basement. While moving the sink, Urbina noticed that defendant cut his hand and bled "on the carpet going down to the basement and some on the doorjamb on the outside." Urbina identified the red stain next to the broken window shown in People's Exhibit 3 as the blood defendant left while carrying the sink through the doorway. Marquez later called Urbina and accused him of burglarizing her house. He replied, "how come you say it was me? I'm not there. I'm not even close to you." Urbina denied being contacted by the police about the burglary.

¶ 16 On cross-examination, Urbina acknowledged that he and defendant were friends and "still keep in touch." He and defendant moved the sink before he was served with the order of protection. They did not clean up any of the blood from the door or carpet. Urbina explained that he purchased the missing television with money he borrowed from his brother-in-law.

¶ 17 On redirect examination, Urbina testified that it was a "very tight" fit to get the sink through the backdoor, and that their hands rubbed against the door frame as they removed it from the house.

¶ 18 Chicago police detective Bruce Phipps testified that he was assigned to investigate the burglary "two, three days after the fact." Phipps spoke with Marquez, who told him that she suspected that Urbina was the offender. Phipps stated that he then talked to Urbina by telephone, but acknowledged that he never made a record of the conversation. Phipps called Marquez again after he learned that the blood from the door matched defendant's DNA. Marquez told him that she did not know defendant. On cross-examination, Phipps testified that he only talked to Marquez on the telephone and did not use an interpreter.

¶ 19 After closing arguments, the court found defendant guilty of residential burglary. In so finding, the court announced:

> "I've listened to the evidence, observed the demeanor of the witnesses while testifying, and looked at the physical and forensic evidence here.
>
> Certainly the blood that was recovered from the door and by the window matched [defendant]. The next thing is, is the evidence proof beyond a reasonable doubt *** how he cut himself. And that's the issue here.
>
> If [defendant] cut himself moving the sink and, as testified to by Mr. Urbina, then he did not commit the residential burglary. If he cut himself breaking into the house, then he did."

¶ 20 The court then reviewed the evidence and concluded that, "looking at the position of the blood," defendant's theory that he cut himself carrying the sink "doesn't really present itself logically."

¶ 21 The defense filed a motion to reconsider, arguing that defendant was not proven guilty beyond a reasonable doubt because the State's only evidence connecting him to the burglary was the blood on the back door. The trial court denied the motion, stating that the height of the blood was "consistent with a forced entry" and "eliminates [the theory] that he was carrying out a sink at that time, otherwise the sink would have been way up in the air." The court further found that Marquez's testimony was "credible" and "in line with the forensic evidence," whereas Urbina was biased toward the defense. The case proceeded to a sentencing hearing, where the court received defendant's presentence investigation (PSI) report. After the hearing, the court sentenced defendant to 7½ years in prison and imposed $489 in fines, fees, and costs.

¶ 22 Defendant now appeals, arguing that the State failed to prove him guilty beyond a reasonable doubt. Specifically, he contends that the mere presence of his blood was insufficient to prove he committed the burglary, especially because he presented a "credible innocent explanation" for why his blood was on Marquez's back door.

¶ 23 When considering a challenge to the sufficiency of the evidence, a reviewing court must determine whether, after examining the evidence in the light most favorable to the State, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *People v. Harris*, 2018 IL 121932, ¶ 26. It is the sole responsibility of the trier of fact to weigh, resolve conflicts in, and draw reasonable inferences from the trial evidence. *People v. Gray*, 2017 IL 120958, ¶ 35. A reviewing court may not substitute its own judgment on the credibility of the witnesses or the weight of the evidence. *Id.* The prosecution is not required to dispel every reasonable hypothesis of the defendant's innocence, and the trier of fact need not "search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *People v. Hall*, 194 Ill. 2d 305, 332 (2000). Instead, a conviction will be reversed only if the evidence was "so unreasonable, improbable or unsatisfactory" that a reasonable doubt of the defendant's guilt remains. *Id.* at 333.

¶ 24 A person commits residential burglary when he knowingly and without authority enters or remains in the dwelling of another with the intent to commit a felony or theft therein. 720 ILCS 5/19-3(a) (West 2014).

¶ 25 In *People v. Rhodes*, 85 Ill. 2d 241, 249 (1981), our supreme court held that, to sustain a conviction based "solely on fingerprint evidence," the fingerprints must have been found in the immediate vicinity of the crime and under such circumstances as to establish beyond a

reasonable doubt that they were impressed at the time of the offense. This standard has also been applied where a conviction relied on shoeprint evidence. *People v. Campbell*, 146 Ill. 2d 363, 387 (1992). In either case, the particular location of the evidence or the surrounding "attendant circumstances" may establish that the evidence was left at the time of the offense. *Id.* The trier of fact is not required to raise any possible explanation consistent with innocence to the level of reasonable doubt. *Rhodes*, 85 Ill. 2d at 249. Since DNA, like a fingerprint, is a unique identifier of an individual, we agree with the parties that this standard should be applied here as well. See *In re Jessica M.*, 399 Ill. Ap. 3d 730, 744 (2010) (noting that DNA creates a unique genetic "profile" of an individual).

¶ 26 Turning to the facts of the present case, we conclude that a rational trier of fact could have found defendant guilty beyond a reasonable doubt. Contrary to defendant's assertion, the State did establish that his blood was temporally and proximally connected to the offense. Marquez, who the trial court found credible, testified that there was no blood or damage on her back door when she left her house on the night of January 30. When she returned home the next day, defendant's blood was on the outside of the door, right next to the now-broken glass in the pane closest to the door knob. There were no signs of forced entry elsewhere in the house. Thus, it was reasonable for the trial court to conclude that the blood was left during the commission of the offense.

¶ 27 Moreover, other circumstantial evidence supports the inference that defendant was the burglar. The offense occurred the same month Marquez broke up with Urbina, forced him to move out of her home, and got him "locked up" by obtaining an order of protection against him. Thus, defendant, Urbina's friend and neighbor, had a motive to burglarize Marquez's home. In

addition, the only property stolen was a television, which was purchased by Urbina, and some of Marquez's jewelry. The house was not ransacked, and several valuable items, including a television and other electronics, were left undisturbed. This suggests that the burglar was familiar with the premises and targeted specific property. When combined with the presence and position of defendant's blood on the broken window, a rational trier of fact could find defendant guilty beyond a reasonable doubt.

¶ 28 Defendant's argument that he offered a "credible innocent explanation" for the presence of his blood is misplaced. Our supreme court ruled long ago that the State need not dispel all reasonable hypotheses of innocence to sustain a conviction, even where the evidence is entirely circumstantial. *People v. Pintos*, 133 Ill. 2d 286, 291 (1989). Thus, the cases cited by defendant are unavailing to the extent that they apply that defunct standard.

¶ 29 Furthermore, it was reasonable for the trial court to discredit the theory that defendant's blood was left when removing the sink, which relied almost exclusively on Urbina's testimony. See *Gray*, 2017 IL 120958, ¶ 35 (trier of fact decides witness credibility and resolves conflicts in the evidence). First, Urbina had a clear bias toward the defense, as he was friends with defendant and had recently broken up with Marquez after a long-term relationship. Second, Urbina's testimony that the police never contacted him about the burglary was contradicted by Phipps, who testified that he spoke with Urbina by telephone after Marquez identified him as a suspect. Third, and most importantly, Urbina's version of events conflicted with the testimony of Marquez, whom the trial court found credible. Although Urbina testified that he and defendant moved the sink in mid-January, Marquez stated that there was no blood on the door when she left her house on January 30. Thus, credible testimony completely refuted the proposition that

defendant's blood was left during the sink removal. In addition, Urbina's testimony that defendant also bled elsewhere in the house was contradicted by Beam, who only found blood next to the broken glass on the back door. Lastly, the trial court found that the blood was too high on the door to have been left while defendant was carrying a concrete sink, which Urbina described as "very heavy." As noted, defendant's blood was on the window frame next to the broken glass, well above the height of the door knob. After reviewing the photographic evidence for ourselves, we cannot say that the trial court's finding was unreasonable. The trial court therefore did not err in rejecting defendant's alternative explanation for the presence of his blood at the crime scene, and the evidence was sufficient to prove him guilty beyond a reasonable doubt.

¶ 30 Defendant next argues that his mittimus and fines and fees order should be corrected in several respects. First, defendant argues that the $15 "State Police Operations Fee" (705 ILCS 105/27.3a(1.5) (West 2012)), the $50 "Court System" charge (55 ILCS 5/5-1101(c) (West 2014)), and the $10 "Probation and Court Services Operations Fee" (705 ILCS 105/27.3a(1.1) (West 2012)), although designated as fees, are actually fines that should be offset by his *per diem* credit.[2] Second, he contends that the $5 "Court System" fee (55 ILCS 5/5-1101(a) (West 2014)) was improperly imposed. Finally, defendant maintains that the mittimus should be corrected to reflect that he spent 82 days in presentence custody.

¶ 31 On February 26, 2019, while this appeal was pending, our supreme court adopted new Illinois Supreme Court Rule 472, which sets forth the procedure in criminal cases for correcting

[2] In his initial brief on appeal, defendant also contended that several others assessments were improperly designated as fees. However, he subsequently withdrew this challenge in light of our supreme court's decision in *People v. Clark*, 2018 IL 122495.

sentencing errors in, as relevant here, "the imposition or calculations of fines [and] fees," "the application of *per diem* credit against fines," and "the calculation of presentence custody credit." Ill. S. Ct. R. 472(a)(1-3) (eff. Mar. 1, 2019). On May 17, 2019, Rule 472 was amended to provide that "[i]n all criminal cases pending on appeal as of March 1, 2019, or appeals filed thereafter in which a party has attempted to raise sentencing errors covered by this rule for the first time on appeal, the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule." Ill. S. Ct. R. 472(e) (eff. May 17, 2019). "No appeal may be taken" on the ground of any of the sentencing errors enumerated in the rule unless that alleged error "has first been raised in the circuit court." Ill. S. Ct. R. 472(c) (eff. May 17, 2019). Therefore, pursuant to Rule 472, we "remand to the circuit court to allow [defendant] to file a motion pursuant to this rule," raising the alleged errors regarding the mittimus and fines and fees order. Ill. S. Ct. R. 472(e) (eff. May 17, 2019).

¶ 32 For the foregoing reasons, we affirm defendant's conviction, but remand with respect to the mittimus and fines and fees order.

¶ 33 Conviction affirmed; remanded as to mittimus and fines and fees order.