

2014 IL App (1st) 120660-U
No. 1-12-0660
June 11, 2014

THIRD DIVISION

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 10 CR 21651
)	
GERARD SMILEY,)	Honorable
)	Arthur F. Hill, Jr.,
Defendant-Appellant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Justices Pucinski and Mason concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Defendant's conviction for possession of burglary tools affirmed over challenge to the sufficiency of the evidence.
- ¶ 2 Following a bench trial, Gerard Smiley, the defendant, was convicted of possession of a stolen motor vehicle (PSMV) and possession of burglary tools, then sentenced to concurrent, respective terms of eight and one years' imprisonment. On appeal, he solely challenges the sufficiency of the evidence to sustain his conviction for possession of burglary tools.

¶ 3 The evidence adduced at defendant's trial showed that at 7 p.m. on November 28, 2010, the complainant, Jaenyun Ko, parked his 1997 Ford Econoline van in a parking lot at 524 East 79th Street in Chicago. He had not given defendant, or anyone else, permission to drive the van, and the next morning, Ko learned that police had recovered his vehicle. Ko identified photographs of his van and noted damage to the ignition and steering column that was not there at the time he parked it the night before.

¶ 4 Chicago police officer Nathaniel Myles testified that about 1:55 a.m. on November 29, 2010, he and his partner received a radio message regarding a van being stolen at 524 East 79th Street. The officers proceeded to that location where they observed a van matching the description provided in the call. They activated their emergency lights, and watched as the van was backed out of a parking spot, and driven out of the lot and into an alley. The officers pursued the driver, who was later identified as defendant, as he travelled eastbound on 79th Street, before turning southbound on Eberhart Street and striking a parked car. Defendant then turned into an alley, stopped the van, and fled on foot.

¶ 5 Officer Myles exited the police vehicle and followed defendant, who jumped a fence into the backyard of a residence and ran down the gangway between two houses. Officer Myles was five or six feet behind him during the pursuit, and never lost sight of him. The officer caught up with him at the end of the gangway, and took him into custody.

¶ 6 Officer Myles returned to the van and observed that the steering column was damaged and that the ignition had been "punched" with something stuck inside of it. The officer saw a mallet and a large screwdriver inside the vehicle, which, based on his experience investigating stolen vehicles, he believed were used to "steal the vehicle." The State admitted photographic

exhibits depicting the van and the damage to the steering column and ignition, and a video of the chase recorded by the equipment in the police vehicle.

¶ 7 After argument, the trial court found defendant guilty of PSMV and possession of burglary tools. In this appeal, defendant solely challenges the sufficiency of the evidence to prove him guilty beyond a reasonable doubt of possession of burglary tools.

¶ 8 When considering a challenge to the sufficiency of the evidence, the relevant question on appeal 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. Hall*, 194 Ill. 2d 305, 330 (2000). It is the responsibility of the trier of fact to determine the weight to be given to the witnesses' testimony, their credibility and the reasonable inferences to be drawn from the evidence. *People v. Brown*, 362 Ill. App. 3d 374, 377 (2005). Although the determination of the trier of fact is not conclusive, its findings on witness credibility are entitled to great weight, and this court will reverse a conviction only where the evidence is so unreasonable, improbable or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Smith*, 185 Ill. 2d 532, 542 (1999).

¶ 9 A person commits the offense of possession of burglary tools when he possesses any tool which is suitable for breaking into a motor vehicle with intent to enter into that vehicle and with intent to commit a felony or theft therein. 720 ILCS 5/19-2(a) (West 2010). Defendant first contends that the State failed to prove that he possessed the mallet and screwdriver, or that the tools were suitable for breaking and entering. He argues that, because the evidence did not reveal where the screwdriver and mallet were found in the van, it is unclear if they were in plain sight or if he was even aware of their presence. He also observes that Ko was not asked if the

mallet and screwdriver belonged to him, and that Ko identified several spare tires in the back of the van that were there before it was stolen. He thus contends that the tools could have been Ko's for use in changing a tire.

¶ 10 The evidence introduced at trial showed that defendant was the driver and only occupant of the van in which the mallet and screwdriver were found. The evidence also showed that the van had damage to the steering column, and that the ignition had been "punched:" the damage was not there when the owner parked the van the night before it was stolen. In addition, defendant attempted to flee when police officers arrived on the scene. We find that this evidence, and the reasonable inferences to be drawn, was sufficient to allow a reasonable trier of fact—who had the duty to determine the credibility of witnesses and the weight to be given to their testimony—to conclude that defendant was in possession of the tools and that the tools were suitable for breaking and entering. *People v. Janis*, 56 Ill. App. 3d 160, 163 (1977).

¶ 11 Defendant also claims that because there was no evidence of damage to the exterior of the van, the evidence was insufficient to show that he intended to use the tools to break into the vehicle. He further contends that Officer Myles' testimony, that he believed the tools were used to "steal the vehicle" and that he observed damage to the steering column and ignition, is insufficient to sustain his conviction because it only shows that defendant intended to use the tools to "operate" the vehicle, but not to "break and enter" it. We disagree.

¶ 12 In so arguing, defendant appears to misconstrue the elements of the offense by adding a requirement that the tools be used to effectuate his intent to commit a burglary. The required intent, however, is a general intent to use the tools for a criminal purpose and the intent may be inferred from the circumstances which accompany the tools possession. *People v. Obrochta*, 149

Ill. App. 3d 944, 952 (1986). This court has held that direct evidence linking the tools found in defendant's possession to the method of entry is not required. *People v. Johnson*, 88 Ill. App. 2d 265, 280 (1967). We find that the possession of tools suitable for "break[ing] and enter[ing] into an integral portion of a motor vehicle's mechanism[.]" with the intent to effect an unlawful entry and commit a felony, to be conduct within the purview of the possession of burglary tools statute. 720 ILCS 5/19-2(a) (West 2010); *People v. Matthews*, 122 Ill. App. 2d 264, 270-71 (1970).

¶ 13 In this case, defendant was observed fleeing in, and from, a stolen van which contained the burglary tools and had an ignition and steering column that had been damaged, *i.e.*, "punched[.]" From defendant's conduct, a reasonable trier of fact could infer that defendant intended to use the tools to facilitate his intent to steal the van, thus satisfying the intent element of the statute. 720 ILCS 5/19-2(a) (West 2010); *Janis*, 56 Ill. App. 3d at 164-65.

¶ 14 For the reasons stated, we find that the evidence was sufficient to sustain defendant's conviction for possession of burglary tools, and, therefore, affirm the judgment of the circuit court of Cook County.

¶ 15 Affirmed.