2014 IL App (1st) 122576-U

FIRST DIVISION
July 14, 2014

No. 1-12-2576

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. 11 CR 20123
	)	
RONNIE COMPTON,	)	Honorable
	)	Mary Colleen Roberts,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Hoffman and Delort concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Defendant's conviction for theft affirmed over his contention that evidence established no more than attempted theft; defendant's request for $80 reduction in fines for presentence credit granted.

¶ 2 Following a joint, but severed, bench trial, defendant Ronnie Compton and codefendant Eugene Taylor were found guilty of theft.[1] Defendant was sentenced to six years' imprisonment and ordered to pay $600 in fines, fees and costs. On appeal, defendant contends that the trial

[1] Codefendant Eugene Taylor's direct appeal is pending in this court under case number 1-12-2574; he is not a party to this appeal.

court erred in convicting him of theft, where the evidence showed that the police prevented him from acquiring and permanently depriving the school of the property at issue. He thus requests this court to reduce his conviction to attempted theft and remand the case for resentencing. Defendant further requests that his fines and fees order be amended to reflect credit for the days he spent in pretrial custody.

¶ 3 The incident leading to defendant's arrest and conviction occurred on November 15, 2011. At that time, the Howe Public School building, which was located in the 700 block of North Lorel Avenue, was undergoing major renovations, including cornice work and installation of new gutters.

¶ 4 At trial, Chicago police officers Jerome Warner and Peter Chambers testified that they and two other officers were conducting a violence reduction mission near the school shortly before 10 p.m. that night. As they drove past the Howe school building in their patrol car, they heard a loud bang. When they stopped the car and looked in the direction of the noise, they observed defendant and Taylor on the school grounds, placing metal gutters into a yellow bin with wheels. The four officers exited the car and attempted to approach the pair to conduct a field interview, but they immediately fled northbound on foot, leaving the bin and its contents behind. Taylor was arrested within 60 feet of the bin by Officer Chambers and his partner. Defendant hopped the fence and continued running north, while Officer Warner and his partner pursued defendant in their squad car.

¶ 5 On cross examination, Officer Warner testified that he lost sight of defendant but found him a few minutes later, attempting to hide on the roof of a nearby building garage, approximately eight feet off the ground. They took defendant into custody, and, after being advised of his *Miranda* rights at the police station, defendant told the officers that he was not

committing a burglary, but that he was "just a scrapper." Defendant admitted he knew about the materials on the roof because he had observed a forklift placing the gutters there earlier that day.

¶ 6 Walter Bidus testified that he was a project foreman for the Domain Corporation, and the contractor in charge of the renovation of the school. Between 3 and 3:30 p.m. on November 14, 2011, his crew placed the construction materials on the roof of the building and left the worksite. When he returned to the school at 7 a.m. on November 16, 2011, the worksite was in disarray. Metal was scattered about, some metal from the roof was on the ground, and several pieces were missing. Materials still on site were damaged, and the estimated cost of the missing materials was $4800. The foreman had not authorized defendant or Taylor to take materials from the school grounds, and the yellow bin with wheels used by defendant did not belong to the Domain Corporation.

¶ 7 The building engineer for Howe School, Alan Hoover, confirmed that a construction project was underway at the time of the incident. He also testified that the materials for the project were stored on the roof of the school building, that he had not seen defendant and Taylor before the trial, nor authorized them to take materials from the school grounds. He further testified that the yellow bin did not belong to the school.

¶ 8 At the close of evidence and argument, the trial court found defendant guilty of theft. On appeal, defendant challenges the propriety of that ruling, claiming that his conviction must be reduced to attempted theft because the State failed to prove a completed offense of theft. Defendant also claims that this issue is one of law entitling him to *de novo* review, citing *People v. Smith*, 191 Ill. 2d. 408 (2000), in support.

¶ 9 In *Smith*, the court was asked to determine whether the undisputed evidence showed that defendant was "otherwise armed" for purposes of the armed violence statute. *Smith*, 191 Ill. 2d

at 411-413. Here, by contrast, defendant has presented a factual dispute as to whether the evidence was sufficient to prove him guilty of theft, which involved the credibility of the witnesses and the inferences to be drawn from the evidence. As such, defendant challenges the sufficiency of the evidence to sustain his conviction, and the reasonable doubt standard of review applies. *People v. Givens*, 364 Ill. App. 3d 37, 43 (2005).

¶ 10 Under that standard we determine whether, after 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. Beauchamp*, 241 Ill. 2d 1, 8 (2011). In doing so, we must allow all reasonable inferences from the record in favor of the prosecution, (*People v. Cunningham*, 212 Ill. 2d 274, 280 (2004)), and will not reverse the conviction unless "the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of defendant's guilt (*People v. Wheeler*, 226 Ill. 2d 92, 115 (2007))."

¶ 11 To find defendant guilty of theft in this case, the State was required to prove that he knowingly obtained or exerted unauthorized control over property of Howe Elementary School, and intended to deprive that owner permanently of the use or benefit of that property. 720 ILCS 5/16-1 (a)(1)(A) (West 2013). Defendant maintains that the State failed to show that he exerted unauthorized control over the gutters, or that he intended to permanently deprive the owner of the use of that property.

¶ 12 We find, for the reasons to follow, that both elements of the crime of theft were established in this case.

¶ 13 At trial, the project foreman testified that the construction materials were on the roof of the school when he left the worksite on November 14, 2011. When he returned on November 16, 2011, he found the worksite in disarray, with materials on the ground and in a damaged

condition. Meanwhile, Officers Warner and Chambers had observed defendant and Taylor around 10 p.m. on November 15, 2011, physically picking up metal gutters off the school grounds and placing them in a yellow bin with wheels, which further testimony showed did not belong to the school or the construction crew.

¶ 14 Under the Code, a person commits theft when he or she knowingly obtains or exerts unauthorized control over property of the owner, and intends to deprive the owner permanently of the use or benefit of the property. 720 ILCS 5/16-1 (a)(1)(A) (West 2013). Here, we find that the testimony regarding defendant's activity in the yard with the gutters shows beyond a reasonable doubt that he exerted unauthorized control over the school property at issue. *People v. Graves*, 207 Ill. 2d 478, 483-484 (2013).

¶ 15 The evidence further shows that he was placing these materials in a wheeled bin and fled when the police arrived on the scene, permitting the reasonable inference that he intended to permanently deprive the school of the use or benefit of the property he was putting inside. *People v. Haissig*, 2012 IL App (2d) 110726, ¶ 31. The fact that defendant's possession was brief and that he did not take the materials off the owner's premises is immaterial (*People v. Rivera*, 141 Ill. 2d 528, 531-532 (1990)), where his intent was demonstrated and the enterprise interrupted by the police officers who arrived on the scene. Accordingly, we conclude that the evidence was sufficient to allow the trial court to find that defendant acted with the requisite intent to deprive the school of its property, over which he exercised unauthorized control, and was thus proved guilty of theft beyond reasonable doubt.

¶ 16 In reaching this conclusion, we have considered *People v. Mullinex*, 125 Ill. App. 3d 87 (2d Dist. 1984), cited by defendant in support of his argument that he was guilty of no more than attempted theft, and find it factually distinguishable. In *Mullinex*, defendant was attempting to

steal a car, but before he could remove the ignition, he was thwarted by a police officer. The court found no clear evidence that Mullinex had removed the ignition mechanism, without which he could not have activated the car. The court thus found that at most, defendant's actions were preliminary steps to exert actual control over the vehicle, and that the evidence was only sufficient to convict Mullinex of attempted theft. *Id.* at 91.

¶ 17 Here, by contrast, defendant was exerting actual unauthorized control over school property by lifting the metal gutters and placing these materials into a wheeled bin, which was not owned by the school or the contractors. As found above, this constitutes an actual taking with the requisite intent and established defendant's commission of the offense theft.

¶ 18 Finally, defendant asserts, the State concedes, and we agree that he is entitled to a $5 per diem pre-sentence incarceration credit, pursuant to 725 ILCS 5/110–14(a) (West 2005). The record indicates that defendant spent 266 days in presentence custody and that the court failed to award him the corresponding credit he was due. Defendant claims that he is entitled to an $80 credit against the $600 levied, and pursuant to our authority under Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we direct the clerk of the court to modify defendant's fine and fees order to reflect a credit of $80.

¶ 19 For the reasons stated, we modify defendant's fines and fees order to reflect a credit of $80, and affirm the judgment in all other respects.

¶ 20 Affirmed, as modified.