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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 12-CM-1642
)	
TOMAS M. CARDENAS,)	Honorable
)	Bruce R. Kelsey,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Schostok and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The State proved defendant guilty beyond a reasonable doubt of theft: the victim's tenant testified that he gave a rent payment to defendant, the only receipt for that payment was signed by defendant, and the victim testified that defendant never turned over that payment to him.

¶ 2 Defendant, Tomas M. Cardenas, appeals his conviction of theft (720 ILCS 5/16-1(a)(1)(A) (West 2010)). He contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On April 24, 2012, defendant was charged by complaint with knowingly obtaining unauthorized control over a monthly rent payment from Mario Hernandez, also known as Mario Hernandez-Lopez (Hernandez), having a total value not exceeding \$500, for purposes of depriving Ray Grozdic of use of the property. Grozdic was defendant's landlord and defendant had been hired by Grozdic to collect rent from Spanish-speaking tenants, including Hernandez. On October 22, 2012, a bench trial was held.

¶ 5 The evidence presented at trial was at times confusing and contained multiple inconsistencies. Grozdic testified that he was the owner of an apartment complex and that defendant was one of his tenants. Defendant worked for Grozdic doing handyman projects and collecting rent from Spanish-speaking tenants in exchange for credit for two apartments. Defendant was fired in November 2011.

¶ 6 When defendant collected rent, he would give the tenant a receipt from a carbon copy receipt book. He would then give the money to Grozdic, who would verify the payment by writing the date that Grozdic received the money and his initials in the book. Grozdic would then make a photocopy of the entry, and defendant would keep the book in his possession. Grozdic stated that defendant had two different receipt books and that he never got those books from defendant.

¶ 7 According to Grozdic, Hernandez moved into the complex on September 1, 2011, and defendant collected rent from him for September 2011. When asked if he received the October rent, Grozdic stated, "[i]t was issue, was issue with [defendant]. That's why I stop him collecting because we have several missing rent." Grozdic testified that the last time defendant brought him a receipt book was on October 5, 2011, and during the second half of that month he told defendant to stop collecting rent. The record contains a receipt issued by defendant and

initialed by Grozdic on October 5, 2011, for a payment that Hernandez made to defendant. That receipt was numbered 369866 and stated that it was for a deposit.

¶ 8 Grozdic testified that he did not receive rent collected for November 2011. He spoke to Hernandez, and Hernandez said that he had already paid defendant. Hernandez gave Grozdic a receipt issued by defendant for the November rent, which was introduced into evidence. The receipt was dated November 8, 2011, numbered 369871, and stated that it was for the November rent. It was signed by defendant. Grozdic had not previously seen the receipt, nor had he been given the money by defendant.

¶ 9 On cross-examination, Grozdic was shown a receipt that he issued on November 8, 2011, to “Mario Lopez.” That receipt was numbered 553707, signed by Grozdic, and stated that it was for the October 2011 rent. Grozdic was also shown receipts from yet another receipt book that showed three different payments to defendant. The first, receipt number 794439, dated August 24, 2011, stated that it was for rent, without naming a month. The second, receipt number 794443, dated September 13, 2011, stated that it was for a deposit. The third, receipt number 794447, dated October 2, 2011, stated that it was for October rent. Those receipts were obtained from Hernandez. There were no copies of them initialed by Grozdic.

¶ 10 Because there were two different receipts for October, one issued by defendant and one by Grozdic, the defense suggested that Grozdic made a mistake and either collected rent twice for October or wrote the wrong date on his November 8 receipt to Hernandez. Essentially, defendant’s theory was that Grozdic’s receipt number 553707 reflected the same November rent payment as shown in receipt number 369871, which defendant wrote to Hernandez to correct the error. However, Grozdic said that Hernandez was late with his October rent and that receipt number 553707 was for his payment directly to Grozdic for that. Grozdic insisted that there was

no mistake on the receipt that he wrote. When asked on redirect about it, he testified again that he personally collected the October rent from Hernandez in November with receipt number 553707 and that he never received the rent for November reflected in receipt number 369871.

¶ 11 Grozdic was also asked about a lawsuit between himself and defendant in which defendant claimed that Grozdic owed him either \$200,000 or \$400,000. After the State questioned the relevancy of the matter, the defense contended that it was to show that Grozdic had other reasons to fire defendant and implicate him in a criminal act. The trial court stated that it would take the evidence for what it was worth and assume that both Grozdic and defendant had reasons to dislike each other or had issues with credibility.

¶ 12 Hernandez testified that September was the first month that he lived in the apartment complex. He said that he paid September, October, and November 2011 rent to defendant and was given receipts. He identified the November rent receipt, number 369871 given to him by defendant, and said that he gave the receipt to Grozdic.

¶ 13 On cross-examination, Hernandez was shown his lease, which stated that his tenancy began on October 1, 2011. However, Hernandez said that it was incorrect and that he started living in the apartment in September. He identified the three receipts he received from defendant and stated that he paid rent on August 24, 2011, so that defendant could hold the apartment for him. When asked about the receipt for a deposit made on October 1, 2011, receipt number 369866, Hernandez said that he did not pay a second deposit. He did not recognize receipt number 553707 written by Grozdic on November 8 for October rent and stated that he did not make that payment to Grozdic.

¶ 14 At the end of the State's case, defendant moved for a directed finding. That motion was denied and defendant testified. Defendant stated that he collected rent from Hernandez in

November and that he gave it to Grozdic. He also stated that there was a problem that month because Grozdic wrote the wrong month on a receipt. He said that he was not told to stop collecting rent until November 17, 2011. Defendant denied ever keeping any rent money for himself. On cross-examination, when asked about November receipt number 369871, defendant indicated that the receipt reflected his correction of the earlier mistake.

¶ 15 In closing, the State argued that defendant collected November rent from Hernandez and did not give the money to Grozdic. The State noted the lack of any initialed receipts from Grozdic for that payment and argued that the other receipts did not affect the fact that Grozdic never received the November rent. The defense, pointing to the two receipts for October, argued that Grozdic took the November rent and wrongly applied it October.

¶ 16 The trial court noted the discrepancies in the receipts, stating that the IRS or an accountant would have a field day trying to figure out what was going on. The court noted that the lease began October 1 and that Hernandez apparently paid rent in August and September. The court also stated that, from what it could see, Hernandez paid more than he was required to pay and the question was which person was being shorted. Observing that consistency was not a trait of either defendant or Grozdic, the court then stated, “[b]ased on the only thing I can conclude is that [defendant], based on the testimony of Mr. Hernandez, which says he didn’t go into the location until October, and he paid [defendant] money to hold the tenant, there is a finding of guilty.” Defendant’s motion to reconsider was denied and he was sentenced to one year of conditional discharge and five days in the Sheriff’s Work Alternative Program. He appeals.

¶ 17

II. ANALYSIS

¶ 18 Defendant contends that the State’s evidence was insufficient to prove him guilty beyond a reasonable doubt. He argues that the record shows that Grozdic wrongly applied the November rent to October. He also argues that the matter is subject to *de novo* review.

¶ 19 Contrary to defendant’s assertion, our review is not *de novo*. “A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant’s guilt.” *People v. Collins*, 106 Ill. 2d 237, 261 (1985). On a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant. *Id.* Rather, “ ‘the relevant question 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.’ ” (Emphasis in original.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Under this standard, a court of review must view in the State’s favor all reasonable inferences drawn from the record. *People v. Bush*, 214 Ill. 2d 318, 326 (2005). The trier of fact is responsible for determining the witnesses’ credibility, weighing their testimony, and deciding on the reasonable inferences to be drawn from the evidence. *People v. Lamon*, 346 Ill. App. 3d 1082, 1089 (2004).

¶ 20 Likewise, “[w]here the evidence is merely conflicting, the reviewing court will not substitute its judgment for that of the trier of fact.” *People v. McCarthy*, 102 Ill. App. 3d 519, 522 (1981). However, “[t]his rule is not inflexible.” *Id.* “When the record does not support the factual determinations, a court of review must reverse.” *Id.* It is also possible for there to be so many conflicts in the evidence that the evidence becomes too unsatisfactory to prove a defendant guilty beyond a reasonable doubt. See *id.* at 524.

¶ 21 Here, the conflicting evidence made it difficult to determine precisely what happened. The court appeared to ultimately base its finding of guilt solely on the fact that the lease term

began October 1, 2011, or on a mistaken finding that Hernandez testified that he moved in on October 1. Hernandez testified that he moved into the apartment in September, and Grozdic testified that defendant collected Hernandez's September rent. Regardless, the record still supports a finding of guilt. Grozdic testified that the only money he received from defendant in connection with Hernandez's tenancy was the September rent and a deposit, which was reflected by receipt number 369866. Grozdic testified that he then collected the October rent from Hernandez in November and never received the November rent that was given to defendant by Hernandez as evinced by Hernandez's testimony and the receipt that defendant gave to Hernandez.

¶ 22 Defendant contends that receipt number 369866 shows that he gave the October rent to Grozdic and that Grozdic's receipt written on November 8, which also stated that it was for October rent, was a mistake. Thus, according to defendant, Grozdic accidentally applied the November rent to October. But this ignores that receipt number 369866 does not state that it was for rent. It states that it was for a deposit. Because Hernandez testified that he paid the November rent to defendant, because the only receipt for that payment was signed by defendant, and because Grozdic testified that he never received that payment, the court was entitled to find that defendant did not turn over that payment to Grozdic.

¶ 23 **III. CONCLUSION**

¶ 24 A rational trier of fact could find defendant guilty beyond a reasonable doubt of the offense of theft. Accordingly, the State's evidence was sufficient, and we affirm the judgment of the circuit court of Du Page County.

¶ 25 Affirmed.