

2015 IL App (2d) 130646-U
No. 2-13-0646
Order filed March 3, 2015

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
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CF-1889
)	
JEFFREY WALTER,)	Honorable
)	Susan Clancy Boles,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Schostok and Justice Zenoff concurred in the judgment.

ORDER

- ¶ 1 *Held:* The State proved defendant guilty beyond a reasonable doubt of burglary and theft: although the evidence conflicted on certain points, the jury could have rationally found that defendant entered a truck and removed property from it.
- ¶ 2 Following a jury trial, defendant, Jeffrey Walter, was found guilty of burglary (720 ILCS 5/19-1(a) (West 2010)) and theft (720 ILCS 5/16-1(a)(1) (West 2010)). The trial court sentenced defendant to six years' imprisonment on the burglary conviction (finding that the theft conviction merged into the burglary conviction). Defendant timely appealed. On appeal, defendant argues that, although the evidence was sufficient to prove him guilty beyond a

reasonable doubt of attempted burglary, the evidence was insufficient to prove him guilty beyond a reasonable doubt of burglary and theft. He asks that we reverse the conviction of theft and reduce the conviction of burglary to attempted burglary. We affirm.

¶ 3

I. BACKGROUND

¶ 4 On February 3, 2011, defendant was indicted on various offenses in connection with an incident that occurred on July 27, 2010. Count I charged defendant with burglary (720 ILCS 5/19-1(a) (West 2010)), in that he “knowingly and without authority, entered a motor vehicle, with the intent to commit therein a theft.” Count IV charged defendant with theft (720 ILCS 5/16-1(a)(1) (West 2010)), in that he “knowingly exerted unauthorized control over property of Asplundh [Tree Expert Company], chainsaws, having a total value exceeding \$300.00, but not exceeding \$10,000.00, intending to deprive Asplundh permanently of the use of the property.” Prior to trial, the State voluntarily dismissed all of the charges except for counts I and IV.

¶ 5 The following relevant evidence was established at defendant’s trial.

¶ 6 Aurora police officer Jennifer Hillgoth testified that, on July 27, 2010, she was dispatched to 1210 Aurora Avenue to investigate a suspicious vehicle. Two other Aurora police officers, David Sheldon and Patrick Camardo, arrived to assist in the investigation. When Hillgoth arrived, she saw defendant’s vehicle parked in the parking lot of an abandoned church on East Indian Trail. A service road, running north, was located west of the parking lot. Directly west across the service road was a Chihuahua Tires building. Hillgoth and Sheldon walked north on the service road toward a gravel parking area, where nine Asplundh trucks were parked. The gravel parking area was located west of the service road, and a grassy hill separated the parking area from the service road. Camardo walked toward the Chihuahua Tires building.

¶ 7 Hillgoth testified that, as she and Sheldon approached the trucks in the gravel parking area, she heard feet rustling in the gravel and metal being cut or scraped. She could not see very well, because it was dark out and the lot was unlit. When Sheldon shone his flashlight between two orange Asplundh trucks, Hillgoth saw two people wearing dark clothing and bandanas over their faces. When the officers identified themselves, the two people ran west toward a barbed-wire fence located behind Chihuahua Tires. Sheldon chased after the two individuals, while Hillgoth ran south on the service road toward the Chihuahua Tires building. As she came around the building, she encountered Kevin Kosatka and took him into custody. Defendant was apprehended in a cemetery located about a quarter-mile north of the gravel lot and later told Hillgoth that he knew that he was being charged with burglary.

¶ 8 Hillgoth further testified that she returned to investigate the area where the Asplundh trucks were located. She saw “pry bar marks” on a locked side-compartment door of one of the trucks. She stated: “It was still locked, so the side compartment door had some pry marks on there.” She saw a large set of bolt cutters next to the truck where she had seen the two individuals standing, and the truck door had been cut open. After the officers checked the nine trucks for damage, they found four chainsaws in a grassy area just east of the trucks. The chainsaws were about 10 feet away from the service road leading to defendant’s vehicle. Defendant’s vehicle was about one-eighth of a mile away.

¶ 9 Hillgoth also identified numerous photographs taken at the scene. People’s exhibit No. 8 was a picture of a large set of bolt cutters next to an orange Asplundh truck, where Hillgoth first saw the two individuals. People’s exhibit No. 7 was a picture of two orange Asplundh trucks with a set of bolt cutters between them; it was another view of where the bolt cutters were located. People’s exhibit No. 9C was a picture of “more Asplundh trucks.” The picture showed

two orange trucks and one white truck. Hillgoth testified that, of the nine trucks on the scene, eight were orange and one was white. Hillgoth further testified that the white truck's side-compartment door was unlocked. People's exhibit No. 9B was a picture of all of the trucks in the lot on the evening of the incident.

¶ 10 Hillgoth further testified that People's exhibit No. 12 was a blurry picture of a chainsaw sitting in a grassy area next to the trucks. Hillgoth testified that she observed the chainsaws on the night of the incident. When asked where they were in relation to where she first saw the two individuals, she stated: "I mean, the trucks are parked right next to the grass area where these chainsaws were, so right next to them." She explained that the trucks were parked next to a grassy hill area, which was located between the service road and the parking lot. The trucks were backed in toward the service road, so the chainsaws were located behind the trucks and between the trucks and the service road. Hillgoth identified People's exhibit No. 10 as a picture of the pry bar that Sheldon had seen while on the scene; Hillgoth saw it after it had been recovered.

¶ 11 Using People's exhibit No. 1 (a large aerial photograph of the scene) as a demonstrative exhibit, Hillgoth drew a triangle to show where defendant's vehicle had been parked, a black line to show the service road on which she walked with Sheldon to where the trucks were located, a rectangle to indicate where the trucks had been located, an X to show where she had first seen defendant and Kosatka, a dashed line to show the direction in which defendant and Kostaka ran when they spotted the officers, and an X with a circle around it to show where she had apprehended Kosatka.

¶ 12 Sheldon testified that, as he approached the gravel parking area with Hillgoth, he heard banging and scraping noises coming from the northwest. As he got closer, he could see people

moving around next to one of the Asplundh trucks located in the parking lot. When Sheldon shone a flashlight on the individuals, he saw two men wearing dark clothing and bandanas on their faces. One man was holding bolt cutters and the other was holding a flashlight. They were standing next to a truck; they had “cut the little bin and opened up the door.” As Sheldon approached them down the hilly embankment, the men took off running west. Sheldon ran to the west, and Hillgoth ran to the south on the service road. Sheldon chased after the man who had been holding the bolt cutters. The man had dropped the bolt cutters when he began to run. The man jumped over a barbed-wire fence and, as he was doing so, he dropped another item, later discovered to be a pry bar. Sheldon did not jump over the barbed-wire fence; instead, he kept his flashlight on the man as the man ran west and then south toward the front of Chihuahua Tires. Hillgoth caught up to Sheldon and they apprehended the individual, later identified as Kosatka.

¶ 13 Sheldon testified further that, when he returned to the gravel parking area, he looked at the truck that the men had been standing next to when he first saw them. Sheldon testified that there were pry marks on the truck and that “the door was forced, broken open.” He did not personally examine any other trucks. He did see four chainsaws “over by where the berm came down.” He testified that they were north and east of where the trucks were.

¶ 14 Using People’s exhibit No. 1, which had been previously marked on by Hillgoth, Sheldon testified that the black line showed the service road that he walked along with Hillgoth and that the rectangle showed where the Asplundh trucks were parked. Sheldon testified that he could not recall how many Asplundh trucks were parked in the lot; however, he stated that there was one white truck and that the others were orange. Sheldon testified that the X showed about where the men had been standing by the truck and that the dashed line going away from the X showed the approximate path that Sheldon had followed when he chased after one of the men.

¶ 15 Richard Heller, a supervisor with Asplundh, testified that they had two types of trucks: a manual truck and a lift truck. The trucks had compartments for storing equipment. The compartments were kept locked. The company's saws and fuel mix were kept in compartments located on the driver's side of the trucks. Ropes and climbing gear were kept in compartments located on the passenger's side of the trucks. On the evening of the incident, there would have been "roughly 9 or 10 trucks" located in the parking lot. He stated that there were "some white trucks and then some orange trucks." He could not remember how many white trucks were present. He stated: "It could have been one; it could have been two; it would [*sic*] have been three. We have a variety of white trucks and orange trucks, but that night I didn't take a particular count."

¶ 16 Heller testified that he was called to the scene on the evening of the incident and observed chainsaws "in the back grassy, gravel area," which was not where the chainsaws were usually kept. He also observed a white truck with its door "pried open"; the door was "partially opened, partially closed." He "thought it was pretty much pried open." Chainsaws were normally stored in the white truck, but he did not see any chainsaws in the white truck. Heller was shown People's exhibit No. 9C and testified that it showed a white truck and an orange truck. Heller circled the compartment area of the white truck. When asked whether this was the area where the chainsaws would be stored, he responded yes.

¶ 17 On cross-examination, Heller testified that the white truck in People's exhibit No. 9C was not the truck from which the chainsaws had been taken. He explained that, when he circled the compartment on the picture, it was to indicate only where chainsaws were kept on the trucks. Heller could not recall how many white trucks were in the parking lot on the evening of the incident but there was probably more than one.

¶ 18 The jury found defendant guilty of burglary and theft. The trial court found that the theft charge merged into the burglary charge and sentenced defendant to six years in prison. Defendant timely appealed.

¶ 19

II. ANALYSIS

¶ 20 Defendant argues that, although the evidence was sufficient to prove him guilty of attempted burglary as to the orange Asplundh truck, the evidence was insufficient to prove him guilty of burglary and theft as to the white Asplundh truck. He asks that we reverse the conviction of theft and reduce the conviction of burglary to attempted burglary. The State maintains that the evidence was sufficient to sustain the convictions. We agree with the State.

¶ 21 A reviewing court will not set aside a criminal conviction 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). When reviewing a challenge to the sufficiency of the evidence, “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)). The trier of fact is responsible for assessing the credibility of the witnesses, determining the appropriate weight of the testimony, and resolving conflicts or inconsistencies in the evidence. *People v. Naylor*, 229 Ill. 2d 584, 614 (2008). The trier of fact is not required to disregard inferences that flow from the evidence or 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).

¶ 22 A person commits burglary when “without authority he knowingly enters or without authority remains within a *** motor vehicle *** or any part thereof, with intent to commit

therein a felony or theft.” 720 ILCS 5/19-1 (West 2010). A person commits theft when he knowingly “[o]btains or exerts unauthorized control over property of the owner[.]” 720 ILCS 5/16-1(a)(1) (West 2010).

¶ 23 Defendant first contends that, as to the orange Asplundh truck, although the evidence was sufficient to prove him guilty of attempted burglary, the evidence was insufficient to prove him guilty of burglary or theft. Defendant argues that an entry for purposes of the burglary statute requires “ ‘breaking the close’ ” of the protected space, *i.e.*, “crossing the planes that enclose the protected space.” *People v. Beauchamp*, 241 Ill. 2d 1, 9 (2011). Although an entry can be made by breaking the close with an instrument, rather than by intrusion of all or part of the offender’s body, this counts as an entry “only if done with the intention of using the instrument to commit the intended felony or theft.” *Id.* Here, although there was evidence that the door to the compartment on the driver’s side of the orange truck had been pried open, there was no evidence that either defendant or Kosatka physically entered the orange truck or that they used the bolt cutters or pry bar to steal anything from the orange truck. The State essentially concedes that the evidence as to the orange truck proved only attempted burglary, stating that “the prosecutor did not err in his closing argument in asserting the attempt burglary was made on the orange truck and both theft and burglary occurred in the white truck.” That is, the State argues that, notwithstanding defendant’s argument concerning the orange truck, the evidence was sufficient to prove that defendant committed both burglary and theft as to the white truck. We agree with the State.

¶ 24 Viewing the evidence in the light most favorable to the State, the evidence established that defendant and Kosatka were observed standing between two orange trucks, dressed in dark clothing and wearing bandanas over their faces, as one of the men was attempting to pry open the

locked container on the side of an orange Asplundh truck. The evidence established that chainsaws were found in a grassy area located behind the trucks, about 10 feet away from a service road that led directly to where defendant's vehicle was parked. Hillgoth testified that the chainsaws were right next to where she first saw defendant and Kosatka. Further, Heller testified that chainsaws were kept in locked side-compartments of the trucks and that he was certain that the chainsaws found in the grassy area had come from a white truck. Heller looked into the compartment of a white truck and did not see any chainsaws. Although the evidence conflicted as to whether the container door on the white truck was "unlocked" (as Hillgoth testified) or whether it was "pried open" (as Heller believed), the evidence nevertheless established that the interior of the compartment of the white truck was accessible and that the chainsaws were not inside. Given this evidence, the jury could have reasonably inferred that defendant and Kosatka entered and removed the chainsaws from the white truck and placed them in the grassy area and then attempted to break into another truck.

¶ 25 Nevertheless, defendant contends that certain discrepancies between Heller's testimony and that of Hillgoth and Sheldon render the evidence unreliable. For instance, the officers testified that there were nine trucks present, and only one of them was white, whereas Heller testified that there was probably more than one white truck present. In addition, as noted, although Hillgoth testified that the compartment door on the white truck was unlocked, Heller testified that the compartment door on the white truck had been pried open. Further, when Heller was shown People's exhibit No. 9C, he circled the compartment area of the white truck, indicating that it was where the chainsaws would be stored, but later testified that the white truck in People's exhibit No. 9C was not the truck that the chainsaws were taken from.

¶ 26 These conflicts were simply for the jury to resolve. The jury could have credited the officers' testimony and concluded that Heller was wrong about the number of white trucks in the area and about seeing the pry marks. We note that the photographic evidence (exhibit No. 9C) is not clear enough to establish either the presence or the absence of pry marks on the white truck. We further note that Heller also stated that there were anywhere from one to three white trucks present. Although evidence that the compartment had been pried open would have strengthened the State's case, Hillgoth's testimony that the compartment door on the white truck was unlocked, plus Heller's testimony that the chainsaws were missing from a white truck, was nevertheless sufficient. It was the jury's responsibility to weigh the evidence, resolve the conflicts therein, and assess the credibility of the witnesses. As the trier of fact, the jury determined that the evidence established that defendant committed burglary and theft, and we find no reason to disturb that finding.

¶ 27 Defendant's reliance on *People v. Parham*, 377 Ill. App. 3d 721 (2007), does not warrant a different conclusion. In *Parham*, the defendant was found guilty of having burglarized two vehicles, a Pontiac Grand Am and a Chevrolet Silverado. *Id.* at 729. Both vehicles had been parked behind an apartment complex. *Id.* at 723-24. A resident, looking out his bedroom window, saw the defendant trying to open the doors of the Silverado and another vehicle. *Id.* at 723. The resident went outside, along with a friend, and saw the defendant near the Pontiac. *Id.* at 724. The friend saw the defendant open up a toolbox on the flatbed of the Silverado. *Id.* When the defendant was apprehended by the resident, a car stereo fell from underneath his sweater. *Id.* at 725. The resident identified the stereo as having come from the Pontiac, which belonged to his uncle. *Id.* On appeal, the defendant argued that the evidence was insufficient to sustain either conviction. *Id.* at 728-29. As to the Silverado, we found that the evidence was

sufficient to sustain the conviction, based on the testimony that the defendant been seen opening a toolbox in the flatbed of that vehicle. *Id.* at 730. We reversed the conviction as to the Pontiac, because, although the resident testified that the stereo belonged to his uncle, there was no evidence presented “that the stereo was stolen from the Grand Am. More importantly, no one testified that, following defendant’s apprehension, a stereo had been stolen or was missing from the Grand Am.” *Id.* at 729. The present case is readily distinguishable. Here, unlike in *Parham*, there is evidence that the chainsaws were actually stolen from the white truck.

¶ 28

III. CONCLUSION

¶ 29 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 30 Affirmed.