

No. 1-12-1450

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IN THE APPELLATE COURT  
OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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|--------------------------------------|---|------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the  |
|                                      | ) | Circuit Court of |
| Plaintiff-Appellee,                  | ) | Cook County      |
|                                      | ) |                  |
| v.                                   | ) | 11 CR 7226       |
|                                      | ) |                  |
| BOOKER BRANDON,                      | ) | Honorable        |
|                                      | ) | Michael Brown,   |
| Defendant-Appellant.                 | ) | Judge Presiding. |
|                                      | ) |                  |

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JUSTICE MASON delivered the judgment of the court.  
Justices Neville and Pucinski concurred in the judgment.

**ORDER**

¶ 1 *HELD:* The State did not prove beyond a reasonable doubt that defendant met the requisite intent to commit burglary where defendant told the police that he thought the vehicle from which he took some items was abandoned and the evidence established that the vehicle had been in an accident in which all of its windows had been broken out and had been sitting on the street in that condition for two days.

¶ 2 Following a bench trial, defendant Booker Brandon was convicted of burglary and sentenced to 12 years in prison. On appeal, Brandon contends that the State did not prove beyond a reasonable doubt that he had the requisite intent to commit burglary. Alternatively,

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Brandon argues that his trial counsel was ineffective for failing to raise and argue an affirmative mistake-of-fact defense. For the reasons that follow, we reverse the judgment of the circuit court of Cook County.

¶ 3

### BACKGROUND

¶ 4 At 11:15 p.m. on April 24, 2011, police officers received a report that two individuals were "going through a vehicle" that was parked on the street at 1808 South Millard in Chicago. Three officers responded to the scene and arrested Brandon, who was exiting the vehicle with some CDs in his hand, and Brandon's codefendant, Bernard Brooks.<sup>1</sup> Brandon was charged with one count of burglary and the matter proceeded to a severed but simultaneous bench trial.

¶ 5 At the start of trial, the trial court informed the owner of the vehicle, Oteria Webster, and her sister, Justina Woodring, that they would be testifying sometime that day. Woodring informed the court that she needed to pick her child up at noon, and the trial court told her to make other arrangements. Woodring asked what would happen if they did not want to testify and the trial court informed her that if she and her sister left, the court could hold them in contempt of court, issue a warrant for their arrest, and have them jailed. Woodring responded, "All [be]cause somebody went through \*\*\* a car that we don't even care about?" The trial court repeated that both Woodring and her sister were required to testify.

¶ 6 Webster testified that on April 21 or 22, she was driving her car and was involved in an accident. Webster explained that she had "wrapped the car around [a] pole," resulting in extensive damage to the exterior of the vehicle, and confirmed that all of the windows had been

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<sup>1</sup>Brooks's appeal is currently pending before this court under case number 1-12-1932.

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shattered in the accident. She had the vehicle towed and left on the street outside her sister's house in the 1800 block of South Millard. Webster walked past her car every time she left her sister's house, but did not try to get inside it because it was filled with broken glass. She confirmed that she had CDs and a black and silver umbrella in the car, but did not remember whether she had any lotion in the car. Finally, Webster confirmed that she had not given anyone permission to take anything from the car. Following Webster's testimony, she and Woodring were both excused.

¶ 7 Officer Lawrence Olivares testified that when he and the other officers arrived at the scene, he observed Brandon exiting the rear of an extensively damaged vehicle that was parked on the street. Brandon had some CDs in his hand. Brandon told Officer Olivares that he was with a friend and pointed toward Brooks, who was approximately four house lengths away. Officer Olivares reversed the police car and stopped near Brooks, who was holding a bottle of lotion and a black and silver umbrella. As Officer Olivares approached, Brooks dropped both items. Officer Olivares was able to get in touch with the owner of the vehicle, who confirmed that the CDs, lotion and umbrella belonged to her. Brandon and Brooks were both arrested and transported to the police station.

¶ 8 Officer Kevin Deeren testified that he spoke with Brandon at the police station after his arrest. Officer Deeren read Brandon his *Miranda* rights and Brandon agreed to speak with him. Brandon told Officer Deeren that he hoped the vehicle was not a "bait" car and that he thought it was abandoned. Brandon said he had taken some CDs from the vehicle.

¶ 9 The trial court denied Brandon's motion for a finding at the close of the State's case and

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found Brandon guilty of burglary. Brandon's motion for a new trial was also denied. Based on Brandon's prior convictions, the State argued that he was subject to mandatory class X sentencing. The trial court sentenced Brandon to 12 years in prison and his motion to reconsider the sentence was denied. Brandon timely filed this appeal.

¶ 10

#### ANALYSIS

¶ 11 Brandon contends that the State failed to prove beyond a reasonable doubt that he had the requisite intent to commit burglary. Due process requires the State to provide "proof beyond a reasonable doubt of every fact necessary to constitute the crime with which [the defendant] is charged." (Internal quotation marks omitted.) *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004) (quoting *In re Winship*, 397 U.S. 358, 364 (1970)).

¶ 12 When a defendant challenges the sufficiency of the evidence, the relevant inquiry 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. Woods*, 214 Ill. 2d 455, 470 (2005) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "If a court determines that the evidence is insufficient to establish the defendant's guilt beyond a reasonable doubt, the defendant's conviction must be reversed." *Id.*

¶ 13 In order to support a conviction for burglary, the State was required to prove beyond a reasonable doubt that Brandon entered the vehicle with the intent to commit a theft. See 720 ILCS 5/19-1(a) (West 2010). The elements for the crime of burglary must often be proved by circumstantial evidence. *People v. Richardson*, 104 Ill. 2d 8, 13 (1984). "Intent is a state of mind which can be inferred from surrounding circumstances." *Id.* at 12.

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¶ 14 Unauthorized entry into a vehicle containing personal property could give rise to an inference of intent to commit burglary sufficient to sustain a burglary conviction. See *People v. Johnson*, 28 Ill. 2d 441 (1964) (unlawful entry into a building containing personal property could give rise to an inference of intent to commit burglary sufficient to sustain a burglary conviction). "However, this inference is permissible only in the absence of circumstances that are inconsistent with an intent to commit theft." *People v. Boguszewski*, 220 Ill. App. 3d 85, 88 (1991).

¶ 15 In viewing the evidence in the light most favorable to the prosecution, we cannot say that the evidence was sufficient to establish beyond a reasonable doubt that Brandon intended to commit theft. The evidence established that Brandon was exiting the vehicle with some CDs in his hand that belonged to the owner of the vehicle. However, the evidence further established that Brandon believed the vehicle to be abandoned. Moreover, the vehicle was extensively damaged, all of its windows were shattered, it was filled with broken glass, and it had been parked on the street in that condition for two days. If property has in fact been abandoned, or if a defendant believes it to be abandoned and unwanted property, he cannot have the requisite intention to commit a theft of that property. See *Morissette v. United States*, 342 U.S. 246, 271 (1952). Thus, we conclude that the evidence was insufficient to sustain a conviction for burglary.

¶ 16 We note that even if the State had proven Brandon's intent to commit a theft beyond a reasonable doubt, "[a] person's ignorance or mistake as to a matter of either fact or law \*\*\* is a defense if it negatives the existence of the mental state which the statute prescribes with respect to an element of the offense." 720 ILCS 5/4-8(a) (West 2010). A defense based on mistake of fact is an affirmative defense. 720 ILCS 5/4-8(d) (West 2010). In order to raise an affirmative

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defense, the defendant is required to present some evidence on the issue unless the State's evidence raises the issue. 720 ILCS 5/3-2(a) (West 2010). Once an affirmative defense has been raised, the State must sustain the burden of proving the defendant guilty beyond a reasonable doubt as to that issue. 720 ILCS 5/3-2(b) (West 2010).

¶ 17 Here, it was not necessary for Brandon to present evidence on a mistake of fact defense because the State's evidence raised the issue. Officer Deeren testified that Brandon told him he thought the vehicle was abandoned. The State therefore had the burden of proving beyond a reasonable doubt that Brandon did not believe the vehicle was abandoned. However, the only evidence presented at trial supported the conclusion that Brandon did, in fact, believe the property had been abandoned. Evidence regarding the undisputed condition of the vehicle objectively supports Brandon's stated belief. Considering the totality of the circumstances, we additionally note that the items taken were of negligible financial value, lending more credence to the notion that they had simply been abandoned. Thus, the State failed to meet its burden of proving beyond a reasonable doubt that Brandon did not, in fact, believe the property to have been abandoned.

¶ 18 "Where the prosecution has failed to prove its case, the only proper remedy is a judgment of acquittal, and remand of the cause for a new trial is not an option." (Internal quotation marks omitted.) *Woods*, 214 Ill. 2d at 470-71 (quoting *People v. Olivera*, 164 Ill. 2d 382, 393 (1995)).

¶ 19 For the reasons stated herein, we reverse Brandon's conviction and sentence.

¶ 20 Reversed.