2012 IL App (1st) 103072-U

SECOND DIVISION
September 18, 2012

No. 1-10-3072

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. 09 CR 6288
	)	
TERRELL JACKSON,	)	The Honorable
	)	Thomas M. Tucker,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court:
Justices Quinn and Connors concurred in the judgment.

O R D E R

¶ *1* *Held:* Any error by the trial court in allowing pawnshop receipts into evidence was harmless in light of overwhelming evidence of defendant's guilt of residential burglary; claim of prejudice regarding comments made by the State in closing rebuttal argument waived; judgment affirmed.

¶ 2 Following a jury trial, defendant Terrell Jackson was convicted of residential burglary and theft, then sentenced to concurrent, respective terms of 15 and 4 years' imprisonment. On appeal, defendant contends that the trial court erred in allowing the State to introduce highly prejudicial irrelevant evidence.

¶ 3 Prior to trial, defendant filed a motion *in limine* to bar the State from introducing into evidence two pawnshop receipts that were recovered from him when he was detained by police after the incident. Defendant alleged that his possession of these receipts was not evidence of any crime, and that the receipts were irrelevant and immaterial to his case. Defendant further alleged that the pawnshop receipts lacked probative value, and could lead the jury to make an unfair inference of guilt regarding the offenses charged, thereby prejudicing him and denying him a fair trial.

¶ 4 At the proceeding on the motion *in limine*, the defense argued that having pawnshop receipts is not a criminal act as it is not illegal to pawn items, and thus, the receipts were irrelevant and immaterial to his case. The State responded that the receipts recovered from defendant were from two jewelry pawnshops, Chatham Jewelry and Loan and Ingram Jewelers and Pawners; that jewelry was stolen from the residence in question, and several items of jewelry were recovered from defendant; and thus, that the receipts were circumstantial evidence of defendant's intent regarding the jewelry after he steals it. The court allowed the evidence, finding that the receipts go to intent, and that they were material in that the receipts were from a jewelry store and jewelry was taken from the residence.

¶ 5 At trial, Steve Dienberg testified that he has a store at 114 Madison Street in Oak Park, and can see the condominium residence at 439 South Taylor Avenue from the back door of his store. At 7:40 p.m. on February 28, 2009, he was in the back area of his store when he heard glass breaking. Dienberg opened the back door and looked into the alley in the direction of the noise, and noticed a shadow in the stairway leading to the garden unit at 439 South Taylor Avenue. He then saw a man bring a bicycle out of the garden unit. Dienberg could not see the man's face, but observed that he was a black male wearing dark clothing and a winter jacket.

This man then returned to the unit and came out with a dark duffel bag.

¶ 6 Dienberg felt something was amiss, and drove his car around the alley. He did not see the man there, but then drove to a nearby intersection, where he saw the man, who he thought was the person he had seen earlier, walking down Madison Street. At this point, the man was only 40 feet away from the Taylor Avenue residence, and was still carrying the duffel bag and pushing the bicycle.

¶ 7 Dienberg testified that he followed the man down Madison Street, and when he got to Austin Boulevard, he told a police officer what he had observed, and pointed out the man to him. Dienberg further testified that when the officer was talking to the man, he observed the duffel bag in the bushes nearby.

¶ 8 Sotirios Petropoulos testified that he lived in the garden apartment in question at 439 South Taylor Avenue in Oak Park. At 7:45 p.m. on February 28, 2009, he received a call from the Oak Park Police Department, and rushed home. When he arrived at his apartment, he observed that his apartment was in disarray, that his television and DVD player had been moved, and that DVDs, the VCR, some jewelry, a hand blown glass shoe, his bicycle, and his duffel bag were missing. He also observed that the back kitchen window had been broken out. When he received his duffel bag back from police, his baggage claim tag was still on it, and most of the missing items from his apartment, including a hand blown glass shoe, were inside. Petropoulos testified that the items stolen from his home were worth $1,500.

¶ 9 Oak Park police officer James Valentine testified that he responded to the incident in question, and observed Officer Stanford stopping defendant, who was standing 30 feet away from a black duffel bag. Officer Valentine recovered this bag which had a tag that listed the owner as Petropolous and his address at 439 South Taylor Avenue. When Officer Valentine

went to that address, he observed that the back window was broken and there was a brick just outside of it.

¶ 10 Oak Park police officer Alvin Stanford testified that, on the night in question, Dienberg approached him on Madison Street near Austin Boulevard. After that, Officer Stanford observed a young man, later identified as defendant, walking east on Madison Street carrying a black duffel bag and pushing a bicycle. When defendant walked toward the officer, he somehow, dropped the duffel bag without him seeing it, and the officer subsequently found it near a bush that defendant had walked past. Officer Stanford stopped defendant, who told him he was pushing his bicycle to Chicago to have a flat tire fixed.

¶ 11 Officer Stanford testified that the name on the tag of the duffel bag that defendant had been carrying was the same as that of the person whose apartment had been burglarized. He also stated that he found a pair of gloves and jewelry in defendant's jacket.

¶ 12 When the State began to ask Officer Stanford about some pawnshop receipts, defense counsel objected that the receipts were immaterial and irrelevant to the case. The court allowed them into evidence, noting that "[t]hings found on the defendant when he was arrested" were "proper and appropriate." Officer Stanford then testified that he recovered two pawnshop receipts from defendant's pocket, and that the pawnshop receipts were not related to any of the property stolen in this case. The receipts were from Chatham Jewelry and Loan, and Ingram Jewelers and Pawners. One receipt had a maturity date of February 8, 2009, and the maturity date of the other receipt was not visible. These receipts were then admitted into evidence over defense counsel's objection.

¶ 13 During rebuttal closing argument, the State asserted, in relevant part, and without objection from defendant, that:

> "[t]he defendant just happens to have pawn slips? Use your common sense, [jury]. *** You know what the defendant was going to do with the stuff he just took. He went to work that day. That is his job. His job was going into people's homes, taking things, and going to sell them so he could make some money. That's what he was doing."

¶ 14 Following closing arguments, the jury found defendant guilty of theft and residential burglary. Defendant filed a motion for a new trial alleging, in relevant part, that the court erred in allowing the State to elicit testimony, enter into evidence, and argue that defendant had pawnshop receipts in his possession at the time of the arrest. Defendant maintained that these receipts were prejudicial and lacked probative value. Defendant also generally alleged that the State made prejudicial, inflammatory, and erroneous statements during closing argument designed to arouse the prejudices and passions of the jury without specifying those found objectionable. The court denied the motion. Defendant subsequently alleged ineffective assistance of counsel, and was appointed new counsel, who filed a motion for a *Krankel* hearing. Following that hearing, the court found that defendant received effective assistance of counsel.

¶ 15 On appeal, defendant contends that the trial court erred in allowing the two pawnshop receipts into evidence because they had no relevance to the charges at issue. He maintains that the admission of this evidence was especially prejudicial where the State commented during its closing argument that the receipts were evidence that defendant was a professional thief whose job it was to steal and pawn items.

¶ 16 The State responds that the receipts were material and admissible as evidence of defendant's intent to pawn the items, and permanently deprive the owner of his property. The

State also claims that defendant forfeited any objection to the State's closing argument regarding the receipts because he did not object to it below, or specifically raise it in his motion for a new trial.

¶ 17 We initially observe, evidence is relevant, and thus admissible, where it tends to prove a material fact at issue and where the probative value of the evidence outweighs the prejudicial effect. *People v. Decaluw*e, 405 Ill. App. 3d 256, 266-67 (2010). Contrary to defendant's contention, we review the trial court's decision to admit evidence under the abuse of discretion standard, and will not disturb the trial court's exercise of discretion unless there has been an abuse that has prejudiced defendant. *Decaluw*e, 405 Ill. App. 3d at 266. That said, we additionally observe that an evidentiary error may be deemed harmless where there is no probability that the jury would have acquitted defendant absent the error. *People v. Pelo*, 404 Ill. App. 3d 839, 865-55 (2010).

¶ 18 Here, the trial court determined that the pawnshop receipts were admissible to show defendant's intent. Defendant maintains that they were irrelevant and immaterial to whether he committed the charged offenses, and had no probative value.

¶ 19 To sustain defendant's conviction for residential burglary in this case, the State was required to show that defendant knowingly and without authority, entered or remained within a dwelling place of another with the intent to commit a theft therein. 720 ILCS 5/19-3(a) (West 2010). To sustain his conviction for theft, the State was required to prove that defendant knowingly obtained or exerted unauthorized control over the property of the owner intending to permanently deprive the owner of the use and benefit of his property 720 ILCS 5/16-1(a)(1) (West 2010).

¶ 20 Defendant claims that "once the items were taken, the intent to deprive was established,"

and that the intent to deprive is "fully embodied in the taking itself." He also points out that the receipts had expired and one was issued for an item other than jewelry and asserts that the evidence without such receipts was insufficient to establish his guilt of the charged offenses. We disagree.

¶ 21 The intent for theft may, and often must, be deduced by the trier of fact from the facts and circumstances surrounding the alleged criminal act. *People v. Sims*, 29 Ill. App. 3d 815, 817-18 (1975); *People v. Graham*, 27 Ill. App. 3d 408, 411 (1975). The act of taking another's property may lead to an inference of intent (*People v. Gischer*, 51 Ill. App. 3d 847, 850 (1977)), which is particularly true where the items belong to a stranger of the accused (*People v. Veasey*, 251 Ill. App. 3d 589, 592 (1993)).

¶ 22 In this case, the evidence presented by the State showed that defendant was in recent, exclusive and unexplained possession of the items stolen from the apartment in question. *People v. Perry*, 81 Ill. App. 3d 422, 425 (1980). There was also direct, corroborating proof of a forcible entry into that apartment where Dienberg heard glass breaking and immediately saw a man leaving the apartment with a bicycle and duffel bag, and police subsequently found a window of the apartment broken, a brick just outside of it, and the apartment ransacked. *People v. Flowers*, 111 Ill. App. 3d 348, 355 (1982). Further evidence showed that Dienberg immediately attempted to locate the perpetrator and observed defendant on the street within minutes where he observed him pushing a bicycle and carrying a duffle bag. That bag was recovered in a nearby bush, and shown to contain items belonging to the resident of the apartment in question, Petropoulos, who was a stranger to defendant. *Veasey*, 251 Ill. App. 3d at 592.

¶ 23 From this evidence, the jury could rationally conclude beyond a reasonable doubt that the person Dienberg saw only 40 feet from the apartment in question with the bicycle and duffel bag

was the same person he saw a short while earlier leaving the apartment with those items (*People v. Rucker,* 294 Ill. App. 3d 218, 226 (1998); *People v. Clodfelder*, 176 Ill. App. 3d 339, 343 (1988)), and that he entered the apartment with the intent to commit a theft therein, and to permanently deprive Petropoulos of the use and benefit of his property. Defendant maintains that the State's use of the pawnshop receipts in closing argument was prejudicial in that the State attempted to depict him as a bad person. Given the overwhelming evidence of defendant's guilt of theft and residential burglary, and absent any other facts or circumstances creating a reasonable doubt, *i.e.,* such as an explanation as to why defendant possessed the stolen goods (*Clodfelder*, 176 Ill. App. 3d at 343), we find that any evidentiary error by the trial court in admitting the tangential pawnshop receipts was harmless where no reasonable probability exists that the jury would have acquitted defendant absent the error (*Pelo*, 404 Ill. App. 3d at 865-66), and defendant was not thereby prejudiced by this.

¶ 24 Defendant maintains that this situation is analogous to pointing out a person's poverty as a motive to commit crime which federal courts have held to be improper. We note that the federal cases cited by defendant have no precedential authority in this court (*People v. High Tower*, 172 Ill. App. 3d 678, 691 (1988)), and defendant's attempt to inject issues of poverty and motive into the case where there was no hint of either at trial, is irrelevant and unpersuasive. Moreover, an accused's motive is no defense to a charge of burglary or theft, and has no bearing on defendant's guilt or innocence. *Gischer*, 51 Ill. App. 3d at 851.

¶ 25 Further, to the extent defendant is now objecting to the State's rebuttal closing argument, we observe that he did not object to the State's rebuttal argument at trial that it was defendant's job to steal items and sell them, and did not specifically raise any objection to those comments in his post-trial motion. Rather, defendant made a general allegation of error in his post-trial

motion that the State's closing argument aroused the prejudices and passions of the jury, which is insufficient to preserve the issue for review. *People v. Moss*, 205 Ill. 2d 139, 168 (2001). As such, defendant forfeited this claim on appeal (*People v. Enoch*, 122 Ill. 2d 176, 186 (1988); *People v. Crisp*, 242 Ill. App. 3d 652, 661 (1992)), and since defendant has not presented an argument for plain error review, we honor his procedural default (*People v. Hillier*, 237 Ill. 2d 539, 545-47 (2010)).

¶ 26 In sum, we find that the admission of the receipts was not a material factor in the determination of defendant's guilt where, even without such receipts, there is more than sufficient evidence to convict him. *People v. Enis*, 163 Ill. 2d 367, 405 (1994); *People v. Tucker*, 317 Ill. App. 3d 233, 242-43 (2000). We deny defendant's request for a new trial given the competent evidence in the record establishing defendant's guilt beyond a reasonable doubt and where retrial without the challenged evidence would not produce a different result. *People v. Graves*, 2012 IL. App. (4th) 110536, ¶¶31-32.

¶ 27 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 28 Affirmed.