2012 IL App (1st) 103653-U

SECOND DIVISION
August 7, 2012

No. 1-10-3653

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. 10 CR 25
	)	
EODIS GIBSON,	)	Honorable
	)	Thomas V. Gainer,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

O R D E R

¶ 1 *Held:* Where defendant and a co-defendant were seen carrying a television away from house, State presented sufficient evidence that defendant committed residential burglary even though he did not enter house himself; defendant also did not established that the judge's remarks preceding the testimony of two police officers revealed a predisposition as to guilt; the judgment of the trial court was affirmed.

¶ 2 Following a bench trial, defendant Eodis Gibson was convicted of residential burglary and was sentenced as a Class X offender to six years and six months in prison. On appeal, defendant contends his conviction should be reversed because although police encountered him in the back yard of the residence carrying a television, the State did not present sufficient evidence that he actually entered the house. Defendant also argues the trial court made remarks

that indicated its belief of defendant's guilt and that those comments influenced the testimony of a police officer. For the reasons set out below, we affirm.

¶ 3 Defendant and five co-defendants were charged with committing residential burglary. Defendant was tried in a joint bench trial with co-defendants Deante Lee and Shelly Rogers. The judge who presided over that bench trial also presided over the dispositions of the cases against the remaining three co-defendants, Pierre Williamson, Eric Rogers and Melvin Wiley.

¶ 4 At trial, Michelle Townsend testified she left her home at 6827 South Marshfield in Chicago between 8 and 8:30 a.m. on October 24, 2009, and returned home several hours later after receiving a phone call. Numerous police officers were present, and various items Townsend recognized as hers, including an all-terrain vehicle (ATV) and a television set, were visible in the back and side yards of the home and in an alley. Clothing, shoes and groceries were scattered about the lawn, and a portion of the fence surrounding the property was damaged.

¶ 5 Townsend testified that inside the residence, drawers and closets were open and possessions were strewn everywhere. She also stated that the wires to her security system had been cut. In addition to the ATV and television in the yard, the property removed from the home included two additional televisions, paintings, a Play Station and an X-Box game system, a slot machine, about 200 DVDs and CDs, a turntable, a DVD burner, a video camcorder, clothing and shoes. Townsend said she did not know defendant or the other offenders or give them permission to enter her house.

¶ 6 Chicago police officer Edward Winstead testified in the case against co-defendant Lee. The officer stated that at about 11:30 a.m. on October 24, 2009, he responded to a call of a burglary in progress and drove into an alley behind 6827 South Marshfield. Officer Winstead stated he observed Lee and another man carrying an ATV into the alley. Both men fled, and Lee was apprehended and arrested. The wheels of the ATV, along with other property belonging to Townsend, were found in the backseat of a car parked in the alley.

¶ 7 Officer Winstead also observed several other men carrying items in the back yard and that there "was a lot going on." When asked if defendant and Shelly Rogers were carrying a television, the officer replied, "I believe so" and said those two men were arrested by other police officers on the scene. Although Officer Winstead was listed as an arresting officer on defendant's arrest report, he could not identify defendant in court, noting that six people were arrested.

¶ 8 Chicago police officer Toriano Clinton testified that he and two other officers responded to the burglary in progress call. Upon reaching the alley, Officer Clinton observed "two men carrying a rather large TV." The men dropped the television and fled on foot upon seeing the police. The officer identified those men in court as defendant and Shelly Rogers. Several officers pursued the offenders, and Officer Clinton detained defendant and arrested both men. The officer identified a photograph in court of the "large flat screen TV" being carried. He never saw defendant inside the residence.

¶ 9 For the defense, Lee testified in his case, and defendant and Shelly Rogers did not testify. At the close of evidence, the trial court found each defendant guilty of residential burglary. In explaining its ruling, the court found Officer Clinton's testimony as to his observations of the scene, including the position of a nearby vehicle and defendant and Shelly Rogers carrying the television in the yard, to be credible and otherwise corroborated by photographs entered into evidence.

¶ 10 As to the residential burglary count, the court found that the evidence established the elements of that offense as to all three defendants, stating as follows:

> "And I think it's very important to note that the State need not prove that these men actually entered the residence to connect them to this burglary. What connects them to this burglary is the vehicle that they were approaching as they were coming over the fence that was destroyed to get all of this property out of the

> backyard. As they were approaching the vehicle that already contained the proceeds – a number of proceeds of the vehicle including the wheels from the ATV. No, these three men were involved with the gang that destroyed this residence.
>
> There's a finding of guilty of residential burglary. I believe a reasonable trier of fact, any reasonable trier of fact could conclude on the circumstantial evidence presented here that these three men were involved in this residential burglary. All three are found guilty."

¶ 11 On appeal, defendant first challenges the sufficiency of the evidence to establish he committed the crime of residential burglary. In reviewing the sufficiency of the evidence in a criminal case, our 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 offense beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31, citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State. *Baskerville*, 2012 IL 111056, ¶ 31.

¶ 12 A person commits residential burglary when he, knowingly and without authority, enters or remains within the dwelling place of another, or any part thereof, with the intent to commit a felony or theft, including the offense of burglary. 720 ILCS 5/19-3(a) (West 2008). A person commits burglary when he enters or remains in a building, trailer, vehicle or other specified place with intent to commit therein a felony or theft. 720 ILCS 5/19-1(a) (West 2008).

¶ 13 The determination of the weight to be given the testimony of the witnesses, their credibility, and the reasonable inferences to be drawn from the evidence are the responsibility of the trier of fact. *People v. Ross*, 229 Ill. 2d 255, 272 (2008) (noting that under this standard, the reviewing court does not retry the defendant). This standard applies whether the verdict is the

result of a jury trial or a bench trial, and whether the evidence is direct or circumstantial. *People v. Cooper*, 194 Ill. 2d 419, 421 (2000). Circumstantial evidence alone is sufficient to sustain a conviction where it satisfies proof beyond a reasonable doubt of the elements of the crime charged. *People v. Pollock*, 202 Ill. 2d 189, 217 (2002).

¶ 14 Defendant argues the State did not prove he went inside Townsend's residence so as to establish the elements of residential burglary. He contends the testimony that he was seen carrying a television set in the yard did not support an inference that he entered the house and, therefore, the State only established that he was in possession of stolen property.

¶ 15 A defendant's exclusive and unexplained possession of recently stolen property is insufficient to support a burglary conviction without corroborating evidence of his guilt. *People v. Housby*, 84 Ill. 2d 415, 422 (1981). A presumption of guilt based on the possession of such property can occur if three requirements are met: (1) there was a rational connection between the defendant's recent possession of stolen property and his participation in the burglary; (2) the defendant's guilt of the burglary "more likely than not" flows from his recent, unexplained and exclusive possession of the proceeds; and (3) there was corroborating evidence of the defendant's guilt. *Id*. at 424.

¶ 16 As to the first requirement, defendant contends there was no evidence that he had any relation to his co-defendants or that he entered the house. However, such proof is not required as part of the first prong of *Housby*. In this analysis, a rational connection exists between recent possession of stolen property and participation in the burglary if the inference that the defendant obtained the items by burglary is not unreasonable. *People v. Gonzalez*, 292 Ill. App. 3d 280, 288 (1997). "Of paramount concern in determining whether the inference was reasonable is whether defendant's possession of the stolen property is proximate to both the time and place of the burglary." *Id*. at 288-89, citing *People v. Caban*, 251 Ill. App. 3d 1030, 1033 (1993) (defendant's presence four miles from burglary scene in possession of stolen goods sufficient to

meet this test), and *People v. Span*, 156 Ill. App. 3d 1046, 1051-52 (1987) (police found defendant with stolen items 40 minutes after burglary). As another illustration, this court concluded in *Gonzalez* that the State met the requirements of proximate time and distance when the defendant was found in possession of the stolen property 20 minutes after the burglary at a location within a two- or three-minute drive from the victims' house. *Gonzalez*, 292 Ill. App. 3d at 289. In the case at bar, the requirements of proximity as to time and place are clearly met. Defendant was found carrying the victim's property in the yard of the residence by police who were responding to a call of a burglary in progress.

¶ 17 Under the second requirement of *Housby*, a presumption of guilt can rest on a determination that the guilt "more likely than not" flowed from his recent, unexplained and exclusive possession of the proceeds. *Housby*, 84 Ill. 2d at 424. Joint possession with another can be exclusive possession for the purpose of satisfying this test. *Gonzalez*, 292 Ill. App. 3d at 289; *Span*, 156 Ill. App. 3d at 1052. Here, Officer Clinton's testimony that he saw defendant carrying a television with co-defendant Shelly Rogers established defendant's exclusive possession under the *Housby* factors. The trial judge, as the trier of fact in this case, could reasonably conclude that defendant was carrying the television away from the house to commit burglary. See, *e.g.*, *People v. Belton*, 184 Ill. App. 3d 1001, 1010-12 (1989) (evidence sufficient to establish residential burglary when stereo equipment was seen outside open back door of apartment, police officer testified he observed man place television set behind fence in alley of same building, and defendants were found a block from apartment in possession of many of the items taken).

¶ 18 As to this second *Housby* requirement, defendant further argues the residence's security system had been disarmed. He contends that the fact that he did not possess any scissors, knives or tools at the scene contradicts any inference that his possession of the television could have "flowed from his breaking into the home." The absence of burglary tools on defendant's person

is not dispositive, as it was not necessary for the State to establish that defendant himself dismantled the security system. The uncontroverted evidence established that multiple offenders entered the victim's home and removed possessions. Indeed, defendant's assertion defies logic, as it would have required the trial court to believe that defendant merely happened to be assisting another person in carrying a television through the victim's yard at the same time other offenders were removing items from the house.

¶ 19 The third prong of *Housby* requires evidence corroborating defendant's guilt. Defendant contends that requirement was not satisfied because the State did not present any testimony or evidence, such as fingerprints or photographs, to establish that he entered the house. A positive identification of the accused by one eyewitness can be sufficient to sustain a defendant's conviction (*People v. Slim*, 127 Ill. 2d 302, 307 (1989)), and such proof has been found to corroborate a defendant's guilt under the third requirement in *Housby*. See *Gonzalez*, 292 Ill. App. 3d at 289-90. Here, Officer Clinton identified defendant as one of the men carrying the television. Moreover, Officer Winstead testified that he saw two men walking through the yard holding a television between them.

¶ 20 Defendant argues the facts of this case are comparable to those in *People v. Natal*, 368 Ill. App. 3d 262 (2006), in which the defendant's residential burglary conviction was reversed. In stark contrast to the case at bar, the defendant in *Natal* was not seen carrying the victim's property away from the residence. Here, the State sufficiently proved defendant's guilt of the charged offenses under the factors in *Housby*.

¶ 21 Defendant's second claim of error on appeal is that the trial judge made remarks indicating his belief that the testimony of the police officers would mirror that of witnesses in the trials of the other co-offenders not involved in the instant case. Defendant argues the judge's comments thereby revealed a predisposition as to his guilt.

¶ 22 The record establishes that after Townsend's testimony, the assistant State's Attorney indicated he would next call Officer Winstead. At that point, the following exchange occurred:

> "THE COURT: [T]his record should reflect that I've already heard half of this trial before, okay, and we all know what the issues are here, okay, so let's get to the issues. This case is going to be won and lost on the testimony of [the] next witnesses as it was in the instance – I think we tried three now or one pled and we tried two; isn't that right?
>
> MS. SILVA [assistant public defender representing defendant]: Yes.
>
> THE COURT: And one was found guilty and one was found not guilty, right?
>
> MS. SILVA: I believe one pled guilty and the other one was found not guilty.
>
> THE COURT: Right. And then there was one guilty.
>
> MR. GRACE: [attorney for co-defendant Lee]: Two pled and one was found not guilty.
>
> THE COURT: There you go."

¶ 23 Officers Winstead and Clinton then testified about their investigation of the crime scene.

¶ 24 Defendant acknowledges his counsel did not object to the comments when they were made or include this issue in a post-trial motion, which would ordinarily result in the forfeiture of this claim on appellate review. As defendant urges, this court may relax the forfeiture rule where the basis for the objection is the conduct of the trial judge. *People v. Kliner*, 185 Ill. 2d 81, 161(1998); see also, *e.g.*, *People v. Brisco*, 2012 IL App (1st) 101612, ¶ 26.

¶ 25 This principle of relaxing forfeiture based on a judge's conduct began in *People v. Sprinkle*, 27 Ill. 2d 398 (1963), which addressed the discomfort that a trial lawyer could face in questioning a judge's conduct while in the presence of a jury. The *Sprinkle* doctrine, as it has come to be known, since has been expanded to include situations where no jury is present, as was the situation in the case at bar. The standard for relaxing this form of forfeiture is high: the failure to contemporaneously object and preserve the issue for review is excused only under "extraordinary circumstances," such as when a trial judge makes inappropriate remarks to a jury or "relies on social commentary, rather than evidence, in sentencing a defendant to death." *People v. McLaurin*, 235 Ill. 2d 478, 488 (2009).

¶ 26 We first consider whether the forfeiture rule should be relaxed under the *Sprinkle* doctrine. A trial judge "must not interject opinions or comments reflecting prejudice against or favor toward any party." *People v. Lopez*, 2012 IL App (1st) 101395, ¶ 57, quoting *People v. Williams*, 209 Ill. App. 3d 709, 718 (1991). "Improper comments include those which reflect disbelief in the testimony of defense witnesses, confidence in the credibility of the prosecution witnesses or an assumption of defendant's guilt." *Id.* In the context of *Sprinkle*, for comments by a judge to constitute reversible error, a defendant must show the remarks were prejudicial and that he was harmed by the remarks. *Lopez*, 2012 IL App (1st) 101395, ¶ 57.

¶ 27 Defendant contends he was denied a fair trial by an unbiased finder of fact and that a retrial is warranted, arguing the judge's remarks demonstrated his premature assessment of the importance of the upcoming testimony. He argues the judge's comments, which came prior to the testimony of two police officers, that the judge had "already heard half of this trial before" indicated his belief that the facts of defendant's case were indistinguishable from those of any of the other related offenders. He asserts the remarks were not made to clarify any point and that the comments "could have invalidated [his] presumed innocence." The State responds that, in

the above-quoted remarks, the judge was simply restating and summarizing the procedural posture of the trial after the victim's testimony and prior to the officers' accounts.

¶ 28 We note that many cases involving *Sprinkle* involve the effect of a judge's remarks on a jury, which is not a consideration here, where defendant was involved in a bench trial. As the above-quoted colloquy illustrates, defendant's counsel was involved in the exchange and was capable of raising any objection to the court's remarks, thus erasing any possibility that an objection would have "fallen on deaf ears," as required for application of the *Sprinkle* rule. See *People v. Brisco*, 2012 IL App (1st) 101612, ¶ 28.

¶ 29 Because a *Sprinkle* analysis does not apply to defendant's case, we next consider his contention that this court should review the matter under the plain error rule. Under plain error, this court may consider a forfeited claim when: (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to top the scales of justice against the defendant, regardless of the seriousness of the error; or (2) a clear or obvious error occurred and that error is so serious that is affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the strength of the evidence. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). The first step of plain error analysis is to determine whether a clear or obvious error occurred. *Id.* It is the defendant's burden to demonstrate error. *People v. Herron*, 215 Ill. 2d 167, 187 (2005).

¶ 30 The defendant has the burden of establishing a judge's bias or prejudice. *People v. Shelton*, 401 Ill. App. 3d 564, 583 (2010). A judge's bias or prejudice is shown where there is active personal animosity, hostility, ill will or distrust towards the defendant. *Id.*, citing *People v. Hooper*, 133 Ill. 2d 469, 513 (1989). The alleged bias or prejudice of a trial judge must be shown to have stemmed from an extra-judicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case. *People v. Massarella*, 80 Ill. App. 3d 552, 565 (1979) (finding no affirmative showing that the judge considered

information from the plea hearings of co-defendants during the defendant's trial). Such allegations of judicial bias or prejudice must be viewed in context and should be evaluated in terms of the trial judge's specific reaction to the events taking place. *People v. Faria*, 402 Ill. App. 3d 475, 482 (2010), citing *People v. Jackson*, 205 Ill. 2d 247, 277 (2001).

¶ 31 In this case, the complained-of remarks were neutral, in that the judge observed the case could be "won and lost" on the upcoming testimony of the police. To that point, the court had only heard the victim's account of the offense, which did not include any evidence connecting defendant to the crime. The judge's characterization of the officers' testimony as allowing the parties to "get to the issues" did not denote a bias or prejudice toward either side. Likewise, the court's recap, together with attorneys for two of the defendants, of the dispositions of the other defendants did not display an inclination to decide defendant's case in any particular fashion. In fact, the discussion specifically noted that one prior co-offender had been found not guilty. We find no error in the court's comments.

¶ 32 In summary, the State presented sufficient evidence that defendant committed residential burglary along with his co-offenders, as the testimony established he was seen carrying Townsend's property away from her house. In addition, defendant has not established that the judge's remarks preceding the testimony of two police officers revealed a bias against him or a predisposition as to defendant's guilt under a *Sprinkle* analysis or a plain error analysis.

¶ 33 Accordingly, the judgment of the trial court is affirmed.

¶ 34 Affirmed.