2013 IL App (1st) 111350-U

FIRST DIVISION
APRIL 15, 2013

No. 1-11-1350

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 C5 50183
	)	
CHESTER PARZYCH,	)	Honorable
	)	Colleen Ann Hyland,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant was proven guilty of burglary beyond a reasonable doubt. Mittimus corrected to reflect the correct amount of fines, fees, and costs assessed against defendant, as well as his conviction of only one county of burglary.

¶ 2 In a bench trial in the circuit court of Cook County, defendant Chester Parzych was convicted of burglary and sentenced to five years in prison, with two years of mandatory supervised release. On appeal, defendant contends that: (1) the State failed to prove his guilt beyond a reasonable doubt; (2) certain fines, fees, and costs were improperly assessed against him; and (3) the mittimus should be changed to reflect a conviction of one count of burglary.

¶ 3 The State's evidence established the following. Walter Gubala testified that he had known defendant for six or seven years. On January 9, 2010, he and defendant went to a Safeguard Storage Facility (Safeguard) in Lyons. Defendant told him that defendant needed to rent a locker there

because his sister was evicting defendant from her house. Gubala rented locker 2124 for defendant in Gubala's own name, because defendant did not have his driver's license with him. Gubala left all the rental papers, which included the security code for Safeguard, with defendant, and never returned to the facility. On March 9, 2010, police detectives encountered Gubala in front of defendant's house and took him into custody overnight. The next day, the detectives showed Gubala three photographs of a person whom Gubala identified as defendant. These photographs, which have been included in the record on appeal, were printed from a Safeguard security videotape taken on the evening of January 10, 2010. They show defendant in his van and show him standing by Safeguard's elevators on the evening of January 10, 2010. Gubala was released from custody after he identified defendant in those photographs.

¶ 4 Paul Hantel testified that he had rented storage locker 2222 at Safeway for several years. The property he stored there included computers, baseball cards, comforters, and other items which he valued at about $20,000. On January 19, 2010, a Safeguard employee telephoned Hantel because an alarm for his storage locker had sounded. Hantel went to Safeguard and noticed that the lock on his storage locker was not the original lock that he used, but instead, it had been replaced by a combination lock which he had left inside the storage locker. Hantel then opened the storage locker and found that all his property had been stolen. He then reviewed Safeway's security videotapes from January 10, 2010, which showed his property being stolen. At trial, Hantel identified two photographs taken from the security videotapes, which showed his property gathered next to the elevator. These photographs have been included in the record on appeal and depict defendant standing next to Hantel's possessions and pulling those possessions on a cart. Hantel also testified that he was the only person with security code access to his storage locker, and that he had not given anyone permission to enter that storage locker.

¶ 5 Safeguard's district manager, Don Griffin, testified that at the time in question, he oversaw the Safeguard facility where Hantel stored his property. One could only enter the facility after hours

by entering a security code and then driving into the garage. Each patron could then only access his floor with another code. Safeguard had 16 security cameras, including ones at the entry gate, the garage, the emergency exits, and each elevator door. In addition, Safeguard had a computer security system which recorded the date, time, and location of every use of the security codes and every time a storage locker had been accessed, regardless of whether a code was used for that entry. Griffin testified that a computer security report for January 10, 2010, indicated that unit 2222, Hantel's storage locker, had been accessed without a code at 11:49 p.m. That same night, at 11:24 p.m., storage locker 2124 was opened. The person then used the elevator key pad twice, at 11:28 p.m. and 11:37 p.m. Griffin testified that the computer report showed that the only person in the building at that time was the person who had entered storage locker 2124, which was the storage locker rented by Gubala for defendant.

¶ 6 On cross-examination, Griffin testified that the times indicated on the photographs varied by several minutes from the times shown on the computer report for the same event. Photographs showed that the time when someone used the garage keypad was 11:13 p.m., while the computer report showed that it was at 11:20 p.m. The time indicated for when the van entered the garage varied by four minutes between the photograph and the computer report. The time indicated for when a person entered an elevator code varied by just over one minute. Griffin explained that these variances could result from power outages. He also testified that the still photographs depicted the same scenes he had seen on the security videotape of the evening at issue.

¶ 7 Lyons police detective David DeLeshe (Detective DeLeshe) testified that on January 20, 2010, he was assigned to investigate a burglary at Safeguard. He reviewed a Safeguard security videotape which was recorded on January 10, 2010 and printed several photographs from that videotape. Detective DeLeshe did not follow up on this investigation until March 9, 2010, when he went to interview Gubala. Gubala pointed out defendant, who was nearby, and Detective DeLeshe saw that defendant was the same person depicted in the photographs taken from the videotape. At

the close of all the evidence, the trial court convicted defendant of burglary and sentenced him to five years in prison with a two-year period of mandatory supervised release. Defendant filed this appeal.

¶ 8 Defendant first contends that he was not proven guilty beyond a reasonable doubt. Our standard of review for such a claim is whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). It is the function of the trier of fact to weigh the evidence, determine witness credibility, resolve conflicts in the evidence, and draw reasonable inferences from these factors. *People v. Williams*, 193 Ill. 2d 306, 338 (2000). The trier of fact is not required to disregard inferences that flow normally from the evidence, nor to seek out all possible explanations consistent with innocence and elevate them to reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 9 Defendant was charged with two counts of the burglary of Hantel's storage locker. Count 1 required the State to prove that defendant entered that storage locker without authority and with the intent to commit a theft. See 720 ILCS 5/19-1(a) (West 2010). The crime is complete upon entry with intent to steal (*Beauchamp*, 241 Ill. 2d at 8) and intent may be proven by circumstantial evidence (*People v. Ybarra*, 272 Ill. App. 3d 1008, 1010-11 (1995)). Citing to *People v. Baker*, 59 Ill. App. 3d 100, 103-104 (1978), defendant contends that the State failed to prove that he entered the building without authority. In *Baker*, where a motorcycle was taken from a condominium complex garage, there was evidence that the defendant had a lease to a condominium unit, so that he had authority to enter the garage. *Baker*, 59 Ill. App. 3d at 103. Here, the entry was to Hantel's storage locker, which defendant did not have permission or authority to enter. The circumstantial evidence established that defendant broke into Hantel's storage locker with the intent to steal his belongings. Defendant was the only person who accessed the building with a security code late on the night in question. The evidence establishes that Hantel's storage locker was broken into that evening, as the building's computer records showed that the alarm from his storage locker door was

triggered. Defendant then appeared on the building's security cameras, taking Hantel's belongings away on a cart. Hantel testified that when he examined his storage locker on January 19, 2010, the storage locker door had a different lock on it and all of his belongings had been removed. Hantel also testified that he was the only person with authority to enter his storage locker.

¶ 10 Defendant notes that there were discrepancies in the time records of the security computer and those of the security videotape. However, we find those differences to be minor, and the State explained them with the testimony of Griffin, who stated that power outages could cause such discrepancies. Defendant also argues that there was insufficient evidence to establish that he entered the building with the intent to commit a theft. He cites to *People v. Vallero*, 61 Ill. App. 3d 413, 415-16 (1978), where the defendant entered a dairy office and then was told to sit by a desk where payroll checks were being prepared. There was evidence that defendant stole some of those checks, but the *Vallero* court found that there was no evidence that the defendant had the intent to steal the checks when he entered the building. *Vallero*, 61 Ill. App. 3d at 415. Here, defendant was required to force open Hantel's storage locker from which he stole Hantel's belongings. The security alarm on that storage locker sounded because defendant did not have a security code to Hantel's storage locker. Indeed, Hantel testified that he had not given anybody permission to enter his storage locker. Nor was there any evidence that defendant had the authority to enter that storage locker. Based upon this evidence, we will not disturb the trial court's determination that defendant committed a burglary by entering Hantel's storage locker without authority and with the intent to commit a theft. We do not reach the sufficiency of the evidence to establish the State's second count of burglary, based upon the allegation that defendant knowingly and without authority remained in Hantel's storage locker. See 720 ILCS 5/19-1(a) (West 2010). As defendant argues, and the State concedes, that conviction merges into defendant's conviction of the first count of burglary because both convictions were based on the same acts. *People v. Miller*, 238 Ill. 2d 161, 165 (2010).

¶ 11 Defendant was assessed $670 in fees, fines and costs. Defendant contends, and the State

concedes, that a $5 court systems fee assessed against him must be vacated because it only applies to violations of the Illinois Vehicle Code. See 55 ILCS 5/5-1101(a) (West 2010). That vacature reduces the fees, fines and costs assessed against defendant to $665. Defendant and the State also agree that, for the 229 days he spent in presentence custody, defendant is entitled to a credit of $5 per day against the $80 in fines which were imposed upon him. 725 ILCS 5/110-14(a) (West 2010). We concur. The following amounts assessed against defendant have been determined to be fines, against which the credit is to be applied: $10 mental health court assessment and $5 youth court assessment (*People v. Graves*, 235 Ill. 2d 244, 255 (2009)); $5 drug court assessment (*People v. Sulton*, 395 Ill. App. 3d 186, 193 (2009)); and the $30 children's advocacy center assessment (*People v. Jones*, 397 Ill. App. 3d 651, 660 (2009)). In addition, the $30 juvenile expungement assessment is a fine. It is imposed on all convictions, even though the expungement of juvenile records ordinarily is not implicated by adult convictions. See 730 ILCS 5/5-9-1.17(a) (West 2010). It therefore is a fine and not a fee, which is assessed to reimburse the State for part of the cost of prosecuting a defendant (*People v. Jones*, 223 Ill. 2d 569, 581-82 (2006)). Accordingly, defendant is entitled to a full credit against the $80 in fines assessed against him, leaving him with fees and costs in the amount of $585. We order that the mittimus be corrected to reflect this amount.

¶ 12 Defendant also contends, and the State concedes, that the mittimus must be corrected to state that he was only convicted of one count of burglary (entering with intent to commit a theft). The second burglary conviction (remaining with intent to commit a theft) merges with the first burglary conviction because, as we have found, it is based upon the same acts. Accordingly, pursuant to our authority under Supreme Court Rule 615(b) (eff. August 27, 1999), we direct the clerk of the court to correct the mittimus to reflect a single burglary conviction and a single sentence of five years in prison, with a two-year period of mandatory supervised release.

¶ 13 For the reasons set out in this order, we affirm defendant's conviction and sentence, but order that the mittimus be corrected to reflect only one burglary conviction. We also order that the

mittimus be corrected to show that the fees, fines, and costs assessed against defendant are reduced to $585.

¶ 14 Affirmed; mittimus corrected.