2014 IL App (1st) 120337-U

FOURTH DIVISION
March 31, 2014

No. 1-12-0337

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. 11 CR 12476
	)	
EUGENE WILLIAMS,	)	Honorable
	)	James B. Linn
Defendant-Appellant.	)	Judge Presiding.

JUSTICE EPSTEIN delivered the judgment of the court.
Presiding Justice Howse and Justice Lavin concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Conviction of burglary affirmed over defendant's challenge to the sufficiency of the evidence; mittimus corrected.

¶ 2 Following a bench trial, defendant Eugene Williams was convicted of burglary and sentenced to 90 months' imprisonment. On appeal, he contends that the evidence was insufficient to prove him guilty of burglary beyond a reasonable doubt, and requests that his

mittimus be corrected to reflect the offense of which he was convicted.

¶ 3 On July 23, 2011, defendant was arrested inside a vacant building at 3900 West Lexington Street in Chicago as police responded to a "burglary in progress" call. The building was owned by St. Agatha Catholic Church and was formerly operated as a school. Defendant was charged, in relevant part, with one count of burglary of a school and one count of burglary of a place of worship.

¶ 4 At the ensuing bench trial, David Johnson testified that he is the head maintenance man for Saint Agatha Catholic Church, and randomly checks on the Lexington premises once or twice a week by examining the outside and walking through the building to ensure that everything is secure and intact. Earlier in the week of July 23, 2011, he found the building secure and intact, but on Saturday, July 23, 2011, when he returned to the building after receiving a call from the pastor, he found otherwise. He noticed a broken window on the building, which had not been broken earlier in the week, and a rock on the floor of the classroom inside. He also found that the classroom was in disarray, that a radiator and a ceiling fan, which were not out of place earlier in the week, were on the floor, as was a "dismantled object." Johnson testified that only his employees have access to the Lexington building, and he did not give anyone permission to enter the building on July 23, 2011.

¶ 5 Chicago police officer Gerardo Vega testified that at 11 a.m. on July 23, 2011, he and Officer Gallegos responded to a call of a burglary in progress at 3900 West Lexington Street, and upon arrival, Officer Vega noticed that the building had a broken window. While Officer Gallegos entered the building, Officer Vega waited outside, and observed a person, later identified as Rocell Stevenson, exit through the broken window. Officer Vega pursued

Stevenson and took him into custody, and after several other officers arrived on the scene, defendant was removed from the building. At that time, defendant did not have any tools in his hands, and Officer Vega did not recall if he had any cuts or was bleeding.

¶ 6 Chicago police detective Michael Malinowski testified that he investigated the burglary of the Lexington building, and was told by the caretaker that it was vacant and not in use. When he inspected the building, he noticed that there were multiple broken windows, and a chalice on a pedestal was bent and obviously damaged.

¶ 7 Detective Malinowski further testified that when he met defendant at the police station, he observed no injuries to defendant, who told him that he entered the Lexington building through a broken window, but did not break the window. Defendant also told him that he worked with Stevenson to try and remove the chalice on the pedestal, but they were making too much noise and decided to stop. They then wandered through the remainder of the building looking for scrap metal to sell, and were doing that when police arrived. Defendant also told him that they tried to remove radiators from the building, but that they were too heavy.

¶ 8 At the close of the State's case, defendant moved for a directed finding. The court found the State's witnesses credible and compelling at this point, but noted that the building was no longer used as a school, and was just a building. The court thus concluded that the State had only met their burden of proof on the lesser included offense of burglary, a Class 2 felony.

¶ 9 Defendant testified that at 11 a.m. on July 23, 2011, he was living at the Lexington building because he was homeless, and had been there for a week and a half, "resting" when discovered by police. Defendant testified that he did not break any windows of the building or try to move or steal the ceiling fan or the radiators. He also denied trying to remove the chalice

or moving anything in the classroom.

¶ 10 Defendant further testified that on July 23, 2011, he was asleep when he heard police coming in and dogs barking. He decided to stay where he was because he had no reason to run, and was arrested. Defendant told the detective that he had no knowledge of what took place, that he entered the building through the broken window, and was in the building to sleep. Defendant denied telling him that he tried to wrench the chalice from the pedestal or that he was working with Stevenson. He also denied telling the detective that he walked around the building looking for scrap metal, and tried to steal the radiator.

¶ 11 Defendant acknowledged that he did not have permission to be in the Lexington building, and stated that he had money from working as a day laborer, and does not make money from scrapping metal. He stated that he had no interest in any of the property left inside the building, and had "no knowledge" of Stevenson. The parties then stipulated that defendant had three prior convictions for possession of a controlled substance.

¶ 12 At the close of evidence, the trial court found that defendant was proved guilty of burglary beyond a reasonable doubt. In doing so, the court stated that it must judge the credibility of the witnesses, and that it found the police officers to be more credible than defendant "by far." The court explained that defendant was at the building to burglarize it and was caught. Defendant's motion for a new trial was denied, and defendant appealed.

¶ 13 In this court, defendant contends that the evidence was insufficient to sustain his conviction for burglary because the evidence did not "believably establish" that he intended to commit a felony or theft inside the building. He thus requests this court to reduce his conviction to criminal trespass and remand for resentencing.

¶ 14 When defendant challenges the sufficiency of the evidence to sustain his conviction, our duty is to determine whether all of the evidence, direct and circumstantial, when viewed in the light most favorable to the prosecution, would allow a rational trier of fact to conclude that the essential elements of the offense have been proved beyond a reasonable doubt. *People v. Wiley*, 165 Ill. 2d 259, 297 (1995). A criminal conviction will be reversed only if the evidence is so unsatisfactory or improbable that it leaves a reasonable doubt of defendant's guilt. *Wiley*, 165 Ill. 2d at 297. For the reasons that follow, we do not find this to be such a case.

¶ 15 To sustain defendant's conviction of burglary, the State was required to prove beyond a reasonable doubt that he unlawfully entered the building with the intent to commit a theft therein. 720 ILCS 5/19-1 (West 2012). Intent may be inferred from the surrounding circumstances and proved by circumstantial evidence. *People v. Moreira*, 378 Ill. App. 3d 120, 129 (2007).

¶ 16 In the absence of inconsistent circumstances, proof of unlawful entry into a building containing personal property that could be the subject of larceny gives rise to an inference that will sustain a conviction for burglary. *People v. McKinney*, 260 Ill. App. 3d 539, 544 (1994). This inference is grounded in human experience which justifies the assumption that the unlawful entry was not without purpose, and in the absence of other proof, indicates theft as the most likely purpose. *People v. Johnson*, 28 Ill. 2d 441, 443 (1963). Other relevant factors include the time, place and manner of entry, defendant's activities inside the premises, and his alternative explanations for being there. *People v. Richardson*, 104 Ill. 2d 8, 13 (1984). Burglary does not require the actual taking of property. *People v. Miller*, 238 Ill. 2d 161, 176 (2010).

¶ 17 In this case, defendant concedes that he unlawfully entered the building, but maintains that the evidence was insufficient to prove his entry was made with the intent to commit a theft

or felony therein where no evidence linked him to any of the items that could have been stolen. He points out that he had no proceeds or burglary tools on him, that he was not seen attempting to remove any items, that he did not have any cuts or injuries consistent with moving heavy items, nor flee or resist police, and there was no forensic or fingerprint evidence found. Defendant thus claims that the evidence did not "believably establish" that he entered the building with the intent to commit a felony or theft therein. We disagree.

¶ 18 The record shows that the caretaker of the vacant building, Johnson, had been there earlier in the week, and had walked through the building and examined the outside, and found the building secure and intact. On July 23, 2011, Johnson observed that a window had been broken, that there was a rock inside a classroom, which was in a disarray, and that radiators and a ceiling fan had been moved, and a chalice had been broken. When police responded to the call of a burglary in progress, they observed a broken window, apprehended Stevenson who fled from the building, and then found defendant inside. Defendant admitted to Detective Malinowski that he entered the building through the broken window and attempted to remove the radiators with Stevenson, but they were too heavy, as well as the chalice, but was unable to do so. He also told the detective that when police arrived, he was looking for scrap metal. Viewing this evidence in the light most favorable to the State, we find that the court could reasonably infer that defendant entered the premises with the intent to commit a theft therein. *Moreira*, 378 Ill. App. 3d at 130.

¶ 19 Although defendant sought to explain his presence in the building, claiming that he was homeless and had entered a week and a half before July 23, 2011, to rest, and was living there, the court was not required to believe defendant's self-serving testimony. *Moreira*, 378 Ill. App.

3d at 130. The court, in fact, rejected defendant's explanation, and found the officers' testimony "far" more credible. We find no reason to disturb the credibility determination made by the trial court. *People v. Hernandez*, 278 Ill. App. 3d 545, 552-53 (1996).

¶ 20 Defendant's testimony that he was living and sleeping at the premises because he was homeless, and had been there for a week and a half was undermined by that of Johnson who did not see any evidence of anyone sleeping in the building or any broken windows or damage to the premises during his weekly inspections despite defendant's contention otherwise. When defendant chooses to give an explanation for his conduct, he should provide a reasonable story or be judged by its improbabilities. *People v. Hart*, 214 Ill. 2d 490, 520 (2005). Here, defendant's testimony failed to diminish the credibility of the officers' testimony (*People v. Berland*, 74 Ill. 2d 286, 306 (1978)), and we therefore conclude that the evidence was sufficient to allow the trial court to find that defendant was proved guilty of burglary beyond a reasonable doubt.

¶ 21 Defendant next contends, the State concedes, and we agree that the mittimus incorrectly reflects that defendant was found guilty of burglary of a school or place of worship, a Class 1 felony. We, accordingly, order the mittimus to be corrected to accurately reflect the offense of which defendant was convicted, namely, burglary, a Class 2 felony. *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995).

¶ 22 In light of the foregoing, we affirm the judgment off the circuit court of Cook County, and correct the mittmus as indicated.

¶ 23 Affirmed; mittimus corrected.