THIRD DIVISION
December 28, 2016

No. 1-14-0833

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 20467
	)	
TERRY HUDDLESTON,	)	Honorable
	)	Arthur F. Hill, Jr.,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Lavin concurred in the judgment.

O R D E R

¶ 1 *Held*: The trial court did not abuse its discretion when it permitted a witness to testify regarding his personal knowledge and experience. Defendant was proven guilty beyond a reasonable doubt of burglary pursuant to an accountability theory. Defendant's fines and fees order must be corrected to reflect the offset of certain fines by his presentence custody credit.

¶ 2 Following a bench trial, defendant Terry Huddleston was found guilty of burglary pursuant to an accountability theory. He was sentenced, because of his criminal background, to a Class X sentence of eight years in prison. On appeal, defendant first contends that the trial court erred when it admitted a witness's "foundationless" testimony. He further contends that he was

not proven guilty of burglary beyond a reasonable doubt because the evidence at trial established, *inter alia,* that he believed that the property at issue was abandoned. Defendant finally contests the imposition of certain fines and fees. We affirm and correct the fines and fees order.

¶ 3 At trial, Jeff Balanda testified that he worked as a substation operator for Commonwealth Edison and was responsible for a geographic area that included "an old Com Ed substation" at 2141 South Troy. Balanda explained that a substation is where "all the power" is distributed. A substation contains copper "bust work," steel, circuit breakers, and "all kinds of wiring." The substation at 2141 South Troy no longer had power coming in and out, but the building still contained "all the equipment." Although the location had been "nonfunctioning" for 12 to 15 years, the building contained "de-energized electrical" equipment that could be used as spare parts in other substations.

¶ 4 On November 14, 2011, when Balanda arrived at 2141 South Troy, he observed "the bottom tanks of [certain] 4KB circuit breakers" in the alley outside the building. When the State asked Balanda if 2141 South Troy was still the property of Commonwealth Edison, the defense objected arguing that there was a lack of foundation as to how he would know whether or not Commonwealth Edison owned the building. The State responded that Balanda was a substation operator, and that the substation was "previously in function by Commonwealth Edison." The trial court overruled the objection.

¶ 5 Balanda then testified that Commonwealth Edison owned the building at 2141 South Troy and that to the best of his knowledge no one, other than Commonwealth Edison employees, was permitted inside. No one had permission to remove items from the building. He then

indentified certain photographs of the area outside the 2141 South Troy building, including one showing "the hole in the station as we found it that day." The photograph also showed the "bottom tank of the circuit breaker."

¶ 6 During cross-examination, Balanda testified that he was last inside the 2141 South Troy building seven or eight years prior. Although he testified that he had seen the circuit breaker tank inside the building, there was nothing on the item that marked it as belonging to the 2141 South Troy building. He admitted that if he had seen the item, it would have been seven or eight years prior. He did not know how long the hole in the wall had been there. The police did not give him any names to verify employment by Commonwealth Edison. Balanda acknowledged that there was nothing on the circuit breaker tank indicating that it belonged to Commonwealth Edison as opposed to another company, but testified that it was "the exact tank" that was in "almost" all of the "4KB stations."

¶ 7 During redirect, Balanda testified that Commonwealth Edison would never store tanks in an alley and that he had never seen tanks in an alley at any of the substations that he had visited. The defense objected to this testimony, and the trial court denied the objection.

¶ 8 Officer Chris Stenzel testified that he was driving by an "abandoned substation" owned by Commonwealth Edison when he saw three people standing outside. At trial, he identified defendant as one of these people. As Stenzel approached the location, he observed defendant kneeling next to a cinder block "that appeared to have been broken out." Defendant was dragging a "large heavy item" out of a hole and into the alley. Stenzel explained that defendant's feet were "planted" in the alley, "the object was in the threshold of the hole," and defendant was dragging the item toward the alley. Although Stenzel took defendant and a female into custody, the third

person ran way. After Stenzel informed defendant of the *Miranda* warnings, defendant stated that a fourth person was inside the building. During cross-examination, Stenzel testified that defendant's feet were in the alley when he saw defendant and that he had made an arrest for burglary at the same location "within" six months prior.

¶ 9 Officer Cox testified that he entered the 2141 South Troy location with his partner through a hole in the wall between the alley and the yard. He believed that they entered the building itself through an open door. A search of the building located codefendant Jose Rivera on the roof.[1] Later, at a police station, defendant stated that he and "the other individual." *i.e.*, codefendant, pulled items through a hole and planned to "scrap those items."

¶ 10 In finding defendant guilty of burglary, the trial court relied upon Balanda's testimony that "he was very certain" that at least one of the items in the alley was kept inside the substation. The court further stated that "everybody knows that you don't have to be inside of a building to be guilty of burglary; that, in fact, if you had assistance or help and you had a certain role ***, then through accountability, you are as guilty as if you were inside." Defendant was sentenced, because of his criminal background, to a Class X sentence of eight years in prison.

¶ 11 On appeal, defendant first contends that the trial court erred when it permitted Balanda to testify that Commonwealth Edison owned the 2141 South Troy building and that Commonwealth Edison would never store a circuit breaker tank in an alley. He argues that the State failed to lay a proper foundation establishing that Balanda would have known whether Commonwealth

[1] The record reveals that codefendant entered a plea of guilty to burglary and was sentenced to 18 months of probation.

Edison still owned the building and whether circuit breaker tanks would have been stored in an alley.

¶ 12 Defendant acknowledges that although counsel preserved the issue of whether Balanda knew that Commonwealth Edison still owned the building by including it in a posttrial motion, counsel failed to raise the issue of Balanda's testimony regarding equipment storage in that motion and, therefore, defendant has forfeited review of that issue on appeal. However, he asks this court to review that issue pursuant to the plain error doctrine. The plain error doctrine permits "a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip 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 it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

¶ 13 Effective January 1, 2011, Illinois adopted rules of evidence. See *People v. Mister*, 2016 IL App (4th) 130180-B, ¶ 50. Generally, a witness must testify only to facts based on personal knowledge. Ill. R. Evid. 602 (eff. Jan. 1, 2011). A witness may give opinion testimony if it is (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the testimony or determination of a fact in issue. Ill. R. Evid. 701 (eff. Jan. 1, 2011); see also *Mister*, 2016 IL App (4th) 130180-B, ¶ 58 ("Illinois Rules of Evidence 701 and 704 (eff. Jan. 1, 2011) are identical to Federal Rules of Evidence 701 and 704(a) (eff. Dec. 1, 2011)"). Testimony otherwise admissible in the form of an opinion or inference is not objectionable simply because it "embraces" an ultimate issue the trier of fact must decide. Ill. R. Evid. 704 (eff. Jan. 1, 2011).

"The admission of evidence is within the sound discretion of a trial court, and a reviewing court will not reverse the trial court absent a showing of an abuse of discretion." *People v. Becker*, 239 Ill. 2d 215, 234 (2010).

¶ 14 Here, Balanda testified that he was a Commonwealth Edison employee, that he was the substation operator for the area which included the 2141 South Troy building, and that he had previously been inside the building. He also explained the function of a substation, described some of the equipment inside a substation and characterized the 2141 South Troy substation as nonfunctioning while noting that equipment stored inside the facility could be used for spare parts. Balanda's testimony, based upon his personal knowledge, therefore established that he had entered the Commonwealth Edison-owned building at 2141 South Troy in his capacity as a Commonwealth Edison employee and that the contents of the building were potential spare parts for other Commonwealth Edison substations. We decline defendant's speculative argument that because the 2141 South Troy substation was nonfunctioning, it was no longer owned by Commonwealth Edison. Accordingly, this court cannot say that the trial court's decision to permit Balanda to testify regarding the ownership of the 2141 South Troy building was an abuse of discretion.

¶ 15 We reach a similar conclusion with respect to Balanda's testimony regarding whether Commonwealth Edison would store circuit breaker tanks in an alley. Balanda testified that Commonwealth Edison would never store tanks in an alley and that he had never seen tanks in any of substation alleys that he had visited. This testimony was within Balanda's personal knowledge and experience as a Commonwealth Edison employee, and, consequently, the trial court did not abuse its discretion when it permitted this testimony. Absent error, there can be no

plain error (see *People v. Williams,* 193 Ill. 2d 306, 349 (2000)), we must therefore honor defendant's procedural default.

¶ 16 Defendant next contends that he was not proven guilty beyond a reasonable doubt of burglary when, *inter alia,* the State failed to prove that he actually entered the 2141 South Troy building.

¶ 17 When reviewing a challenge to the sufficiency of the evidence, the relevant question is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. It is the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts. *People v. Bradford*, 2016 IL 118674, ¶ 12. Accordingly, a reviewing court will not substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses. *Id*. This court reverses a defendant's conviction only where the evidence is so unreasonable, improbable or unsatisfactory that a reasonable doubt of his guilt remains. *Id*.

¶ 18 To sustain a conviction for burglary, the State must prove beyond a reasonable doubt that defendant, without authority, knowingly entered or remained within a building with intent to commit therein a theft. 720 ILCS 5/19-1(a) (West 2010). Burglary is accomplished the moment an unauthorized entry with the requisite intent occurs regardless of whether a subsequent felony or theft was actually committed. *People v. Poe*, 385 Ill. App. 3d 763, 766 (2008). Absent direct evidence, intent must be proven circumstantially, and a conviction may be sustained on circumstantial evidence alone. *People v. Johnson*, 28 Ill. 2d 441, 443 (1963). Intent is usually proven through circumstantial evidence, that is, inferences based upon a defendant's conduct.

People v. Ybarra, 156 Ill. App. 3d 996, 1002-03 (1987). "Like other inferences, this one is grounded in human experience, which justifies the assumption that the unlawful entry was not purposeless, and, in the absence of other proof, indicates theft as the most likely purpose." *Johnson*, 28 Ill. 2d at 443.

¶ 19 A person is legally accountable for the conduct of another person when, either before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, or agrees or attempts to aid such other person in the planning or commission of the offense. 720 ILCS 5/5-2(c) (West 2010). A defendant may be deemed accountable for acts performed by another pursuant to a common criminal plan or purpose. *People v. Taylor*, 164 Ill. 2d 131, 140-41 (1995).

¶ 20 Viewing the evidence in light most favorable to the state, as we must (*Brown*, 2013 IL 114196, ¶ 48), there was sufficient evidence to find defendant guilty of burglary pursuant to an accountability theory beyond a reasonable doubt when entry into the 2141 South Troy building was limited to Commonwealth Edison employees, no one had permission to remove items from the building, and defendant was observed pulling a piece of equipment through a wall into the alley. Although defendant is correct that none of the witnesses saw him inside the 2141 South Troy building, codefendant was discovered on the roof of the building and defendant stated that he and codefendant planned to "scrap" the items from the building, that is, sell them as scrap metal. See *Taylor*, 164 Ill. 2d at 140-41 (a defendant may be deemed accountable for actions performed by another person pursuant to a common criminal plan). Accordingly, we find that the evidence presented at trial was sufficient to find defendant guilty of burglary. *Brown*, 2013 IL 114196, ¶ 48.

¶ 21 Defendant, however, contends that "the testimony of the State's witnesses supported a reasonable belief in abandonment," thus negating the essential element of intent to commit a theft. Defendant also argues that the State failed to establish that he lacked authority to enter the building. He finally argues that his actions were "further" evidence of a lack of criminal intent.

¶ 22 Property is abandoned when the owner, intending to relinquish all rights to the property, leaves it free to be appropriated by any other person. *Paset v. Old Orchard Bank & Trust Co.*, 62 Ill. App. 3d 534, 537 (1978). A finder is entitled to keep abandoned property. *Id*. Thus, if defendant had a *bona fide* belief that the 2141 South Troy building was abandoned then he did not have the requisite intent to commit theft. See *People v. Baum*, 219 Ill. App. 3d 199, 201-02 (1991). A defense based on a mistake of fact is an affirmative defense. 720 ILCS 5/4-8(d) (West 2010). In order to raise an affirmative defense, a 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 together with all other elements of the offense. 720 ILCS 5/3-2(b) (West 2010).

¶ 23 We are unpersuaded by defendant's argument that the testimony of the State's witnesses "supported a reasonable belief in abandonment." While Officer Stenzel characterized the building as "abandoned," and the photographs admitted at trial showed that there was foliage on the fence around the building, the officer also testified that the building was owned by "ComEd." Additionally, Balanda testified that the building was nonfunctioning but still contained equipment that could be used as spare parts for other substations. A "dilapidated" building is not necessarily abandoned. Even accepting defendant's contention that he believed that the property

was abandoned, a Commonwealth Edison employee testified that the site was a nonfunctioning Commonwealth Edison substation, to the best of his knowledge nonemployees were not permitted in the building and no one had permission to remove items from the building. See 720 ILCS 5/3-2(b) (West 2010) (once an affirmative defense has been raised, the State must sustain the burden of proving defendant guilty beyond a reasonable doubt as to that issue as well as all other elements of the offense).

¶ 24 To the extent that defendant argues that the State failed to establish that he lacked authority to enter the building, Balanda testified that to his knowledge, only employees were allowed inside the substation. Although Balanda acknowledged that he was never given names in order to verify employment by Commonwealth Edison, the evidence at trial established that defendant was observed in an alley pulling an item through a hole in a wall and defendant stated that he and codefendant planned to "scrap" the items from the building. A trier of fact is not required to disregard the interferences that normally flow from the evidence or to seek out all possible explanations consistent with a defendant's innocence and elevate them to reasonable doubt. See *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60.

¶ 25 We are also unpersuaded by defendant's argument that the facts that this offense took place during the day, that he did not try to conceal his identity and that he did not run away from the police further establishes a lack of intent. Initially, we note that a burglary is accomplished the moment an unauthorized entry with the requisite intent occurs even if no subsequent felony or theft is committed; there is no requirement that the theft be completed successfully. See *Poe*, 385 Ill. App. 3d at 766. Therefore, the fact that the offense occurred during the day and that defendant did not try to hide his identity in no way defeats the circumstantial evidence of

defendant's intent when he was observed pulling a metal object through the wall into the alley and codefendant was discovered on the roof of the building. We also reject defendant's argument that his failure to run from the police reflects a lack of a consciousness of guilt defeating the inference that he intended to commit a theft. While it is proper to infer that a suspect who flees or attempts to flee has a consciousness of guilt (see, *e.g.*, *People v. Hart*, 214 Ill. 2d 490, 518-19 (2005)), it does not follow that the opposite is automatically true. Most importantly, however, it is not this court's job to reweigh the evidence presented at trial, and we decline defendant's invitation to do so in this case. See *Bradford*, 2016 IL 118674, ¶ 12.

¶ 26 Ultimately, this court cannot say that no rational trier of fact could have found defendant guilty when the evidence at trial established that he was observed pulling Commonwealth Edison equipment that he and codefendant planned to "scrap" through a hole in a wall. *Brown*, 2013 IL 114196, ¶ 48. This court reverses a defendant's conviction only where the evidence is so unreasonable or unsatisfactory that a reasonable doubt of his guilt remains (*id.*); this is not one of those cases. Therefore, we affirm defendant's conviction for burglary.

¶ 27 Defendant finally challenges the imposition of certain fines and fees. Although defendant has forfeited review of this claim because he did not challenge the fines and fees order in a postsentencing motion (see *People v. Enoch*, 122 Ill. 2d 176, 186 (1988)), he argues that the fees are void and may be challenged at any time. In light of *People v. Castleberry*, 2015 IL 116916, ¶ 19, this rule no longer applies. On appeal, however, a reviewing court may modify the fines and fees order without remanding the case back to the circuit court. See Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999); *People v. Rivera*, 378 Ill. App. 3d 896, 900 (2008). We review the imposition of fines and fees *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 28 Defendant first contends, and the State agrees, that pursuant to section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2010)), he is entitled to a $4,165 credit based on 833 days of presentence custody.

¶ 29 The parties also agree that defendant was assessed certain fines that may be offset by the presentence custody credit: the $50 Court Systems Fee (55 ILCS 5/5-1101(c) (West 2010)), and the $30 Children's Advocacy Center fine (55 ILCS 5/5-1101(f-5) (West 2010)). Therefore, pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we order that the $50 Court Systems Fee and the $30 Children's Advocacy Center fine be offset by defendant's presentence custody credit.

¶ 30 The parties, however, dispute whether the $2 Public Defender Records Automation Fee (55 ILCS 5/3-4012 (West 2012)), and the $2 State's Attorney Records Automation Fee (55 ILCS 5/4-2002.1(c) (West 2012)), are actually fines that should be offset by defendant's presentence custody credit.

¶ 31 In *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30, the Fourth District appellate court determined that the State's Attorney records automation assessment was compensatory in nature, and, therefore, a fee. The court found that the assessment was a fee because it was intended to reimburse the State's Attorneys for expenses related to automated record systems. *Id*. See also *People v. Bowen*, 2015 IL App (1st) 132046 ¶ 65 ("because the statutory language of both the Public Defender and State's Attorney Records Automation fees is identical except for the name of the organization, we find no reason to distinguish between the two statutes, and conclude both charges constitute fees"); *People v. Green*, 2016 IL App (1st) 134011, ¶ 46 (relying on *Bowen*); *People v. Reed*, 2016 IL App (1st) 140498, ¶¶ 16-17 (relying on *Bowen* and *Rogers*).

¶ 32 However, in *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56 (Aug. 9, 2016), a panel of this court recently held that these assessments are fines because they do not compensate the State for the costs associated with prosecuting a particular defendant. Rather, they "demonstrate a prospective purpose," that is, the establishment and maintenance of automated record keeping systems. *Id.* ¶ 50.

¶ 33 In *People v. Graves*, 235 Ill. 2d 244, 250 (2009), our supreme court stated that a fee is intended to compensate the State for the costs of prosecuting the defendant, while fines are punitive in nature. We believe that the Fourth District correctly interpreted our supreme court's holding in *Graves* when deciding *Rogers*. The statutory language of section 5/4-2002.1(c) of the Counties Code sets forth that the assessment is intended to compensate the State for the costs of prosecuting a defendant by offsetting the State's costs in establishing and maintaining automated record keeping systems (55 ILCS 5/4-2002.1(c) (West 2012)), and, as such, is a fee, which may not be offset by presentence custody credit (see *People v. Jones*, 397 Ill. App. 3d 651, 664 (2009)). Although the use of the word "establishing" in relation to an automated record keeping system suggests only future use of such a system, we believe that the language of the statute is broad enough to encompass the current use of such systems and we continue to follow *Rogers* and *Bowen*. It therefore follows that the $2 Public Defender records automation fee is intended as a fee to compensate the office of the public defender for costs incurred in defending defendant, and may not be offset by defendant's presentence custody credit.

¶ 34 Accordingly, pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we order the clerk of the circuit court to correct defendant's fines and fees order to reflect that the $50 Court Systems Fee and the $30 Children's Advocacy Center fine are offset by defendant's

presentence custody credit, for a new total due of $394. We affirm the judgment of the circuit court of Cook County in all other aspects.

¶ 35 Affirmed; fines and fees order corrected.