

No. 1-14-2476

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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. 14 MC6 1020
)	
ALLEN MONTGOMERY,)	Honorable
)	John D. Turner,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HYMAN delivered the judgment of the court.
Justices Neville and Pierce concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant was not proven guilty of the theft of lost or mislaid property beyond a reasonable doubt when no evidence was presented at trial establishing that defendant knew or was aware of the identity of certain ticket owners or learned of a reasonable method to identify the owners.

¶ 2 Defendant Allen Montgomery was found guilty after a bench trial of the theft of lost or mislaid property (720 ILCS 5/16-2 (West 2012)), and sentenced to one year of supervision. Montgomery contends that he was not proven guilty beyond a reasonable doubt of the theft of lost or mislaid property because the facts established at trial "do not rise to the level of violating

the *** statute." We agree. No evidence at trial either identified the owners of the tickets or a reasonable method of identifying them.

¶ 3 Background

¶ 4 Montgomery was charged with the theft of lost or mislaid property in that he obtained control over mislaid property (Metra weekend tickets) knowing the identity of the owner, Metra, and failed to take reasonable measure to restore the property to Metra and intended to permanently deprive Metra of the use of the property.

¶ 5 At trial, assistant Metra conductor Rudolph Stiph testified that on Sunday, December 22, 2013, he was on a train traveling from Joliet to Chicago. At one point, he noticed person "exchange money for tickets" with some passengers, whom he identified as Montgomery. When Stiph asked Montgomery what he was doing, Montgomery replied "none of your business." Stiph confiscated the tickets that Montgomery sold to the passengers. Montgomery was selling "weekend tickets," that is, tickets that are good Saturday and Sunday.

¶ 6 Stiph did not know how Montgomery came o possess the tickets. He did not know who purchased the tickets, but the numbers on the ticket indicated "who sold them." Stiph had not sold tickets to Montgomery. On Sundays, a passenger can purchase a ticket from a conductor on the train or at the downtown Metra station. As a conductor, Stiph did not have a "lost and found place for tickets" and lost or mislaid tickets rarely are returned to him. Stiph called the police and Montgomery was taken into custody a few stops later.

¶ 7 During questioning by the court, Stiph testified neither he nor his coworker sold the weekend tickets that Montgomery had. The court then asked Stiph whether the effect of a person taking someone else's valid ticket and attempting to sell that ticket to a third person rendered the

ticket invalid. Stiph responded "[t]hat's exactly right." The court permitted the parties to ask further questions based on its questioning of the witness.

¶ 8 The defense then asked Stiph whether he knew the names of the people who purchased the tickets. He responded that he did not know their names or where the tickets were purchased; he only knew that he did not sell the tickets.

¶ 9 Officer Keith Hale testified that when he arrived at the train, he encountered Stiph and Montgomery. Hale recovered tickets from Montgomery's wallet. Montgomery stated he had purchased these tickets on an earlier date. Hale was also given tickets by Stiph which Stiph had taken from Montgomery. Regarding those tickets, Montgomery said he found them on the seats next to the left and right of him and decided to sell them because he needed extra money.

¶ 10 Montgomery testified that he had about 10 tickets. He purchased one ticket and the others he picked up from the back of seats on the train. None of the tickets had names on them.

¶ 11 In finding Montgomery guilty, the trial court determined that ownership need not be identified by a person's name, and the tickets left on the seats did not belong to Montgomery. The court further held that it did not matter who originally bought the tickets; rather, once Montgomery tried to sell them, he was depriving Metra of income. Montgomery was sentenced to one year of supervision.

¶ 12 Analysis

¶ 13 Montgomery contends that he was not proven guilty beyond a reasonable doubt of the theft of lost or mislaid property because without any evidence or knowledge of who purchased the tickets, it was impossible to restore the tickets to the owners. Alternatively, he argues the

evidence established the "used tickets" were "abandoned by unknown persons," and selling "abandoned garbage" is not a crime.

¶ 14 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. We will reverse a conviction where the evidence is so unreasonable, improbable or unsatisfactory that a reasonable doubt of guilt remains. *Id.*

¶ 15 A person commits the theft of lost or mislaid property when he or she obtains control over the property and (a) knows or learns the identity of the owner or knows, or is aware of, or learns of a reasonable method of identifying the owner; (b) fails to take reasonable measures to restore the property to the owner; and (c) intends to deprive the owner permanently of the use or benefit of the property. 720 ILCS 5/16-2 (West 2012).

¶ 16 *Paset v. Old Orchard Bank & Trust Co.*, 62 Ill. App. 3d 534 (1978), sets forth the distinctions between abandoned, lost, and mislaid property. Mislaid property involves property intentionally put in a certain place and later forgotten; lost property involves an unintentional separation of the property from the dominion of its owner; and abandoned property involves the owner, intending to relinquish all rights to the property, leaving the property free to be appropriated by any other person. *Id.* at 537. A finder of property acquires no rights in mislaid property, is entitled to possession of lost property against everyone except the true owner, and is entitled to keep abandoned property. *Id.*

¶ 17 That the tickets were the property of the passengers who purchased them makes no sense—the "owners" are unknown. The tickets did not have names on them or otherwise identify the purchasers. And, Stiph testified he did know who purchased them.

¶ 18 Although the evidence established that Montgomery obtained control over the tickets by removing them from the back of seats, nothing in the record establishes how Montgomery could know or learn the identity of the people who purchased the tickets or that Montgomery was aware of a reasonable method to identify these individuals. In the absence of any information regarding the identity of the ticket owners, the State failed to establish one of the elements of the theft of lost or mislaid property. See 720 ILCS 5/16-2 (West 2012).

¶ 19 Although the State argues that the Metra owned the tickets, that Montgomery failed to take reasonable measure to restore the tickets to Metra, and that Montgomery intended to permanently deprive Metra of the use or benefit of the tickets, the evidence established that unidentified individuals purchased the tickets from Metra. To the extent that the State argues that Montgomery attempted to deprive Metra of the use or benefit of the tickets by reselling them, we note that Montgomery was not convicted of the theft of services. See 720 ILCS 5/16-3(a) (West 2012) ("A person commits theft when he obtains the temporary use of property, labor or services of another which are available only for hire, by means of threat or deception or knowing that such use is without the consent of the person providing the property, labor or services.").

¶ 20 Ultimately, Montgomery was not proven guilty of the theft of lost or mislaid property when no evidence either identified the tickets' owners or a reasonable method of identifying the owners. See *Brown*, 2013 IL 114196, ¶ 48 (relevant question is whether, after viewing evidence

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in light most favorable to State, any rational trier of fact could have found essential elements of crime beyond a reasonable doubt).

¶ 21 Reversed.