No. 2—09—1291
Order filed June 29, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of DeKalb County.
Plaintiff-Appellee,	)	
v.	)	No. 08—CF—365
DONEVIN A. QUICK,	)	Honorable Robbin J. Stuckert,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

Held: Where the evidence was sufficient to prove defendant guilty beyond a reasonable doubt of burglary, and where defendant was properly sentenced to a three-year term of mandatory supervised release, defendant's conviction and sentence were affirmed.

Defendant, Donevin A. Quick, appeals his conviction and sentence for burglary (720 ILCS 5/19—1(a) (West 2006)). He challenges the sufficiency of the evidence and the length of his mandatory supervised release (MSR). For the following reasons, we affirm.

BACKGROUND

Defendant was indicted for the August 24, 2007, burglary of D & J Liquors in Hinckley, Illinois. Defendant's first trial ended with a deadlocked jury.

At defendant's second trial, Diane Falk Ruby testified that she lives in an apartment above D & J Liquors. On August 24, 2007, she was awakened by a "noise, bang" at approximately 5:40 a.m. After hearing the sound again, she went to the living room and looked out the window, which was "[p]robably about straight over" the liquor store's front door, but she did not see anything unusual. Ruby testified that she heard the bang three times. At around 7:15 a.m. or 7:30 a.m., when Ruby stepped out of the apartment, she noticed that the glass door to the liquor store had been shattered; she had not noticed any damage to the door when she returned home from work the previous night at approximately 7 p.m. She telephoned Jack Beane, the owner of the property, to report the damage.

Jack testified that Ruby telephoned him on August 24, 2007, between 6 a.m. and 7 a.m., and told him that the window in the liquor store's door was broken. Jack went to the store and observed that "the glass in the front door was broken out," and a "rock landed on the step." Because the door was made of safety glass, most of the glass remained intact but was shattered. Jack testified that when he had driven past the liquor store a few hours earlier, between 3 a.m. and 3:15 a.m., the store's door was not broken. Jack testified that he telephoned the police and his mother, Diane Beane, who co-owned the store. After they arrived, Jack entered the store. He described the scene: glass slivers were present; blood was on the "inside of the glass about a foot and a half up from the bottom of the glass"; bottles of wine in a display were tipped over; lottery tickets were on the counter and floor; a lottery ticket bin was empty, and another lottery ticket bin was "pulled out." Jack testified that neither bin was in that condition the previous night. A review of the store's inventory

revealed missing lottery tickets. Jack further testified that the top desk drawer in the store's office was "pulled open."

According to Jack, defendant worked at the liquor store from April 2007 to Memorial Day weekend, 2007, when defendant failed to appear for work. At that point, Jack immediately changed the store's locks.

Diane testified; her testimony largely reiterated Jack's version of events and description of the store on the morning of August 24, 2007. She also testified that coins were missing from the liquor store's office desk drawer.

Richard Robinson, a DeKalb County deputy sheriff, testified that on the morning of August 24, 2007, he investigated the burglary at D & J Liquors. The majority of the glass in the store's front door had been shattered and had "slid down in the tray of that door so at the top there was a gap probably about this big open and then at the bottom of the door it bowed out." Deputy Robinson observed a bright red spot on the interior side of the door. Deputy Robinson collected the substance with a sterile swab.

On June 25, 2008, Deputy Robinson interrogated defendant about the burglary at the liquor store and collected a DNA sample from him. Defendant told Deputy Robinson that he "wasn't around" at the time of the burglary and "that he couldn't have done it because [he was on] electronic home monitoring." Deputy Robinson testified that he told defendant that he had a record that defendant was "out of range for the electronic home monitoring" at the time of the burglary. Defendant responded that he might have been at work. Deputy Robinson testified that he also told defendant that his blood was found on the broken glass in the liquor store, and defendant responded that his blood could not possibly have been on the broken glass.

On cross-examination, Deputy Robinson described the blood he observed as a small dime-size, or less-than-dime-size, circular spot with no smear pattern. He described the blood as more wet than dry. He opined that the burglar entered the store by sliding through the portion of the door that slid down. He testified that it appeared to him that the blood had been deposited as the person entered or exited the store through the part of the door where the glass was bowed out. He explained that the blood was found on the broken glass at the bottom of the door. Deputy Robinson acknowledged that no blood stains were found inside the store.

A forensic scientist testified that the DNA from the blood found at the scene matched defendant's DNA. Electronic home monitoring records reflected that defendant was out of the 150-foot range of the base unit in his Ottawa, Illinois, home beginning at 4:59 p.m. on August 23, 2007. He returned in range at 4:30 a.m. on August 24, 2007 (the morning of the burglary), but was out of range again at 4:32 a.m. He was back in range day that day, at 11:38 a.m. The records indicated defendant's location relative to the 150-foot range of the base unit, not defendant's actual location.

Defendant's mother, Cher Jennings, testified that the drive from their Ottawa home to Hinckley was about 50 or 55 minutes. Cher testified that she saw defendant at their house on August 23, 2007. He left the house that day around dinner time. She saw defendant the next day, August 24, 2007, at 2:30 p.m. or 3 p.m. when she returned home from work. Defendant had his daughter with him at that time. Defendant's daughter lived with her mother in Fort Atkinson, Wisconsin.

Dustin Jennings, defendant's brother, testified that in August 2007, he lived in Ottawa with his mother and defendant. According to Dustin, on August 22, 2007, he and defendant went to D & J Liquors to purchase beer and snacks for a card game. When they left the store, Dustin noticed that defendant's hand was bleeding. Dustin testified that the next day, at around 12 p.m., he saw

defendant driving Dustin's car. The next time Dustin saw defendant was "the next morning" (August 24, 2007); at that time, defendant was with his daughter. On cross-examination, Dustin testified that when he left the liquor store with defendant on August 22, 2007, he gave defendant a napkin from his car's glove compartment because he did not want blood in his car. Dustin also acknowledged that he never told anyone (except his parents) about defendant's bleeding hand until the day of his testimony.

The jury found defendant guilty of burglary. The trial court denied defendant's motion for a new trial. Following a sentencing hearing, the trial court sentenced defendant to nine years' imprisonment with a three-year term of MSR. Defendant was sentenced as a Class X offender because of his criminal history. Defendant timely appealed.

ANALYSIS

Defendant first argues that the State did not prove him guilty of burglary beyond a reasonable doubt because the evidence against him was circumstantial, and defendant presented a "reasonable hypothesis of innocence." We disagree. Initially, the "reasonable hypothesis of innocence" standard of review, which previously applied in cases involving wholly circumstantial evidence, is obsolete: "[T]he reasonable hypothesis of innocence standard of review is no longer viable in Illinois." *People v. Pintos*, 133 Ill. 2d 286, 291 (1989).

The reasonable doubt test as set forth in *People v. Collins*, 106 Ill. 2d 237, 261 (1985), applies in reviewing the sufficiency of the evidence in all criminal cases, regardless of whether the evidence is direct or circumstantial. *Pintos*, 133 Ill. 2d at 291. Under this standard, 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. *Collins*,

106 Ill. 2d at 261. A reviewing court is not allowed to substitute its judgment for that of the fact finder on questions involving the credibility of the witnesses or the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). A conviction will not be set aside on grounds of insufficient evidence unless the evidence is unreasonable, improbable, or so unsatisfactory as to leave a reasonable doubt as to the defendant's guilt. *Jackson*, 232 Ill. 2d at 281.

A defendant is guilty of burglary when "without authority he knowingly enters or without authority remains within a building *** with intent to commit therein a felony or theft." 720 ILCS 5/19—1(a) (West 2006). Defendant contends that the State failed to prove beyond a reasonable doubt that he was the person who burglarized the liquor store. He characterizes the evidence against him as entirely circumstantial because no eyewitness identified him as the burglar. However, defendant's "bright red" blood was found at the crime scene.

Defendant argues that the evidence showed a reasonable explanation for the presence of his blood at the store, namely, his brother Dustin's testimony that he and defendant were at the liquor store two days before the burglary and that defendant's hand was bleeding as they left the store. Dustin acknowledged that he never told the police about the incident. Defendant himself did not discuss the incident when Deputy Robinson told him that his blood was found on the broken glass inside the liquor store. Rather, defendant responded that the presence of his blood on the broken glass was not possible. Dustin's credibility and the weight to be given his testimony were determinations for the jury to resolve. See *Jackson*, 232 Ill. 2d at 280-81. Moreover, the theory that the blood was deposited two days before the burglary does not account for the fact that the blood was described as bright red and more wet than dry. See *People v. Rhodes*, 85 Ill. 2d 241, 250 (1981)

(noting that a fresh fingerprint at the crime scene indicated that it was more probably left at the time of the offense rather than at some other time).

Additional evidence supported defendant's burglary conviction. The electronic home monitoring records showed that defendant was out of the 150-foot range at the time of the early morning burglary. Defendant was a former employee of the liquor store. The jury reasonably could have inferred that defendant was familiar with the location of the lottery tickets and coin rolls. Viewing the evidence in the light most favorable to the State, the jury could have found beyond a reasonable doubt that defendant burglarized the liquor store.

Defendant next argues that his MSR term should be the two-year term for a Class 2 felony, not the three-year term for a Class X felony. Defendant acknowledges that he forfeited this issue by failing to file a motion to reconsider sentence. See *People v. Reed*, 177 Ill. 2d 389, 394-95 (1997) (holding that a defendant is required to file a postsentencing motion in the trial court to preserve sentencing issues for appellate review). He nevertheless contends that his sentence is void because it does not conform to the statutory requirements, and, therefore, may be corrected at any time. See *People v. Arna*, 168 Ill. 2d 107, 113 (1995) (holding that a sentence that does not conform to a statutory requirement is void and may be corrected at any time). In determining whether defendant's sentence is void, we must consider the substance of defendant's argument. Thus, we address the merits of defendant's claim. The issue of whether the trial court has imposed an unauthorized sentence is a question of law subject to *de novo* review. *People v. Smith*, 345 Ill. App. 3d 179, 189 (2004).

Defendant's sentence is not void. Defendant was convicted of burglary (720 ILCS 5/19—1(a) (West 2006)), a Class 2 felony. However, because of defendant's criminal history, the

trial court was required to sentence him as a Class X offender pursuant to section 5—5—3(c)(8) of the Unified Code of Corrections (Code) (730 ILCS 5/5—5—3(c)(8) (West 2008)). He was sentenced to nine years' imprisonment and three years of MSR. Three years is the length of MSR applicable to a Class X felony. 730 ILCS 5/5—8—1(d)(1) (West 2008). The term of MSR for a Class 2 felony is two years. 730 ILCS 5/5—8—1(d)(2) (West 2008). The issue is whether defendant should receive the term of MSR imposed for Class X felonies or Class 2 felonies.

The identical issue was raised and rejected in two recent cases before this court. *People v. Holman*, 402 Ill. App. 3d 645, 652-53 (2010); *People v. McKinney*, 399 Ill. App. 3d 77, 79-83 (2010). In both cases, the defendants were convicted of Class 1 or 2 felonies, sentenced as Class X offenders because of their criminal histories, and sentenced to the three years of MSR applicable to Class X felonies. This court held that the terms of MSR applicable to Class X felonies should apply because a defendant sentenced as a Class X offender "shall receive the sentence—the *entire* sentence—that one convicted of a Class X felony would receive." *McKinney*, 399 Ill. App. 3d at 80-81; *accord Holman*, 402 Ill. App. 3d at 652-53.

Defendant nevertheless contends that our supreme court's decision in *People v. Pullen*, 192 Ill. 2d 36 (2000), dictates the opposite conclusion. In both *Holman* and *McKinney*, we rejected this precise argument, as have several other decisions. See *People v. Rutledge*, No. 1—09—1668 (April 18, 2011) (unpublished order under Supreme Court Rule 23); *People v. Lampley*, 405 Ill. App. 3d 1, 14 (2010); *People v. Lee*, 397 Ill. App. 3d 1067, 1072-73 (2010).

The issue in *Pullen* was the permissible aggregate sentence for a defendant who pleaded guilty to five counts of burglary (a Class 2 felony), but was required to be sentenced as a Class X offender because of his criminal history. *Pullen*, 192 Ill. 2d at 40-41. Section 5—8—4(c)(2) of the

Unified Code of Corrections (730 ILCS 5/5—8—4(c)(2) (West 1994)), provided that the "aggregate of consecutive sentences shall not exceed the sum of the maximum terms authorized under Section 5—8—2 for the 2 most serious felonies involved." The sum of the maximum permissible extended-term sentences for two Class 2 felonies was 28 years (730 ILCS 5/5—8—2(a)(4) (West 1994)); the sum of the maximum permissible extended-term sentences for two Class X felonies was 120 years (730 ILCS 5/5—8—2(a)(2) (West 1994)). The court held that the defendant's aggregate sentence could not exceed 28 years. *Pullen*, 192 Ill. 2d at 42-43. The two most serious felonies involved were burglaries, which are Class 2 felonies. *Pullen*, 192 Ill. 2d at 42-43. Accordingly, the maximum aggregate sentence was 28 years. *Pullen*, 192 Ill. 2d at 43. The court reasoned that a defendant who commits a Class 2 felony, even though he is subject to sentencing as a Class X offender, still has committed a Class 2 felony. *Pullen*, 192 Ill. 2d at 43-44. The "character and classification" of the defendant's felony convictions remains unchanged, notwithstanding that he is subject to the sentence enhancement. *Pullen*, 192 Ill. 2d at 43, 46.

Likewise, according to defendant, the MSR term for someone convicted of a Class 2 felony but sentenced as a Class X offender should be determined with reference to the classification of the felony committed. As the court in *McKinney* pointed out in rejecting the same argument,

> "This argument overlooks a critical difference between the MSR statute at issue here and the consecutive sentencing provision considered in *Pullen*. The former specifies part of the sentence for a defendant's offense, while the latter delineates how separate sentences for separate crimes are served. 'It is a settled rule in this state that sentences which run consecutively to each other are not transmuted thereby into a single sentence.' " *McKinney*, 399 Ill. App. 3d at 83, quoting *People v. Wagener*, 196 Ill. 2d 269, 286 (2001).

The statutory mandate that a defendant be sentenced as a Class X offender means that the defendant shall receive a sentence that one convicted of a Class X felony would receive. *McKinney*, 399 Ill. App. 3d at 83. "*Pullen* is entirely consistent with this interpretation." *McKinney*, 399 Ill. App. 3d at 83. The statute at issue in *Pullen* did not specify what sentence a Class X offender receives; rather, the statute merely limited the extent to which separate sentences for separate offenses may be served consecutively. *McKinney*, 399 Ill. App. 3d at 83; *accord Lampley*, 405 Ill. App. 3d at 14; *Holman*, 402 Ill. App. 3d at 653; *Lee*, 397 Ill. App. 3d at 1073. In contrast, section 5—5—3(c)(8) mandated that defendant be sentenced as a Class X offender, including a three-year MSR term. Accordingly, the trial court did not err in sentencing defendant to three years of MSR.

For the foregoing reasons, we affirm the judgment of the circuit court of DeKalb County.

Affirmed.