2012 IL App (2d) 110525-U
No. 2-11-0525
Order filed December 21,2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Stephenson County.
Plaintiff-Appellee,	)	
v.	)	No. 11-CF-14
TWIQWON R. FANE,	)	Honorable Michael P. Bald,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved defendant guilty beyond a reasonable doubt of attempted residential burglary based on the totality of the circumstantial evidence presented.

¶ 2 Following a jury trial, defendant, Twiqwon R. Fane, was found guilty of attempted residential burglary (720 ILCS 5/8-4(a), 19-3(a) (West 2010)) and resisting a peace officer (720 ILCS 5/31-1 (West 2010)). The trial court sentenced defendant to 5 years in prison for attempted residential burglary and to a concurrent sentence of 90 days in jail for resisting a peace officer. Following the denial of his motion for a new trial and his motion to reconsider his sentence, defendant timely

appealed. Defendant argues that the State failed to prove him guilty beyond a reasonable doubt of attempted residential burglary. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged with attempted residential burglary (720 ILCS 5/8-4(a), 19-3(a) (West 2010)), criminal damage to property (720 ILCS 5/21-1(1)(a) (West 2010)), and resisting a peace officer (720 ILCS 5/31-1 (West 2010)). The attempted residential burglary charge alleged that defendant, "with the intent to commit the offense of Residential Burglary, *** performed a substantial step towards the commission of that offense, in that he, knowingly, and without authority, attempted to enter the dwelling place of Cynthia Arola *** with the intent to commit therein a theft."

¶ 5 The following evidence was presented at defendant's jury trial. Cynthia Arola testified that, at about 6:30 p.m. on January 17, 2011, she was at home in her upstairs bedroom. She worked the night shift and usually left her house for work around 9:30 p.m. She decided to lie down to rest for a few hours before she had to leave. It was dark outside, and she had only one light on in her house. While she was lying in her bed, she heard three loud noises coming from the back door. She proceeded to walk down the stairs, and she heard someone on the deck by the back door. The back door led to a deck, which was approximately eight-by-eight-feet and about eight feet off the ground with stairs leading up. As she approached the door, she noticed that a few things had fallen off the wall, presumably from someone "kicking the door." She also noticed that the door was "kicked in a ways." She turned on the lights, and the noises stopped. She called 911 and was told that someone had already called. Arola testified that her back door had been damaged, specifically the lock. According to Arola, the door was in good condition before she heard the pounding. She had to replace the door, and it cost her $690. Arola further testified that she had a fenced backyard. She

kept a hose, a hose reel, and a garbage can outside the fence, by her driveway. She testified that the garbage can had been knocked over.

¶ 6 Arola was shown two photographs. State's Exhibit 213 depicted the front of Arola's two-story house. Arola's driveway could be seen to the right of the house. At the end of the driveway, there was a one-car garage. Arola did not share her driveway with her neighbor. State's Exhibit 212 was taken on Arola's driveway, near the garage, looking toward Arola's fenced backyard. The picture depicted a corner of Arola's house and a corner of Arola's garage, with a chain-link gate between the two corners. A portable garden hose reel was located next to the fence, on the outside of the gate, near the driveway. A garbage can was knocked on its side near the garage door. A portion on Arola's backyard deck could be seen on the other side of the fence.

¶ 7 Dennis Archer, Arola's neighbor, testified that he saw four people outside at about 6:45 p.m. A few minutes later, they "disappeared between the side of the houses." About two minutes later, they returned. He next saw them walk up the street, stop, talk for a bit, and then turn around and walk back. Three of the men then walked back between Arola's house and the house next to Arola's house, while one remained in front. Archer called 911. Before the police arrived, the men ran off. "Apparently something spooked them off." Archer described the four individuals as tall black males who were wearing dark clothing and hats.

¶ 8 Freeport police officer Douglas Hill testified that he was dispatched to the area at about 6:45 p.m. in response to a call concerning suspicious individuals walking around houses. It was dark and snowing. He parked a few blocks away and approached on foot. As he approached the area, he received a call concerning someone banging on a door. When he arrived at the home, officers approached from the back as he approached from the front. After officers spoke with Arola, Hill

checked the area for evidence and discovered a shoe print in the freshly fallen snow. The shoe print was on a hose reel located outside the backyard fence, about 10 to 20 feet from the back deck. The shoe print contained a circular pattern with a "Nike swoosh." Hill also saw shoe prints on the driveway. Hill followed the shoe prints from the driveway to the intersection of Broadway Street and Cherry Avenue, where Freeport police officer Timothy Weichel had defendant and Rasean Allen detained. Hill asked defendant to show him the bottom of his shoe. When defendant lifted his shoe, Hill saw that the pattern on defendant's shoe matched the pattern on the hose reel. Hill advised Weichel that the prints matched. Weichel asked defendant if he would like to go down to the police station. Defendant declined, and Weichel told defendant that he was under arrest. At that point, according to Hill, "[defendant] wouldn't place his arms behind his back. He tried to get away by running, and then he was taken to the ground because he tried to resist. Hill took pictures of the shoe prints on the hose reel and on the driveway, and the pictures were admitted into evidence. Hill did not take any pictures of shoe prints in the backyard or on the deck, because they were not "usable as evidence."

¶ 9 Weichel testified that he was dispatched to the area at 6:51 p.m. and canvassed the area for suspects. About three to five minutes later, he located defendant and Allen at the corner of Cherry Avenue and Pheasant Road. Weichel testified that they fit the description of the suspects. They were wearing dark clothing and had hoods pulled up over their heads. Hill had provided Weichel via radio a description of the shoe pattern he had seen at the scene. Defendant's shoes matched the description; Allen's did not. Hill, who had been following the shoe prints from the scene, arrived at Weichel's location, where the shoe prints had stopped. Weichel described the shoe prints as having "a circular pattern on both the heel and the toe and it had a line connecting the two circles."

Weichel took pictures of the shoe prints, and they were admitted into evidence. Weichel asked defendant if he would be willing to go to the police station for questioning, and defendant said no. Weichel next told defendant that he was under arrest. At that point, defendant "began to flee. He attempted to run from [Weichel]." Defendant "got maybe three steps." Weichel grabbed defendant by the arm and "took him to the ground for a controlled handcuffing." At the police station, Weichel took a picture of the bottom of defendant's shoe, and it was admitted into evidence.

¶ 10 For the defense, Allen testified that he and defendant were walking leisurely down the street when they were stopped by Weichel. Allen told Weichel that defendant had been with him at the All-In-One store. Allen admitted that he told the police the next day that defendant was not with him at the All-In-One store. Allen testified that he "got tired" of the police asking him whether or not defendant was with him, so he changed his story. However, at trial, he testified that defendant was, in fact, with him at the All-In-One store.

¶ 11 The jury found defendant guilty of attempted residential burglary (720 ILCS 5/8-4(a), 19-3(a) (West 2010)) and resisting a peace officer (720 ILCS 5/31-1 (West 2010)). The jury found defendant not guilty of criminal damage to property (720 ILCS 5/21-1(1)(a) (West 2010)). The trial court sentenced defendant to 5 years in prison for attempted residential burglary and to a concurrent sentence of 90 days in jail for resisting a peace officer. Following the denial of his motion for a new trial and his motion to reconsider his sentence, defendant timely appealed.

¶ 12 II. ANALYSIS

¶ 13 Defendant argues that the State failed to prove him guilty beyond a reasonable doubt of attempted residential burglary. According to defendant, the evidence does not establish that he took

a substantial step toward committing residential burglary or that defendant had the specific intent to commit residential burglary.

¶ 14 A reviewing court will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). 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 prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *Collins*, 106 Ill. 2d at 261 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). It is firmly established that a criminal conviction may be sustained solely on the basis of circumstantial evidence. *People v. Saxon*, 374 Ill. App. 3d 409, 417 (2007). "Circumstantial evidence is 'proof of facts and circumstances from which the trier of fact may infer other connected facts which reasonably and usually follow according to common experience.' " *People v. McPeak*, 399 Ill. App. 3d 799, 801 (2010) (quoting *People v. Stokes*, 95 Ill. App. 3d 62, 68 (1981)). The choice of inferences to be drawn from the evidence belongs to the trier of fact. *People v. Hay*, 362 Ill. App. 3d 459, 465 (2005). The trier of fact is not required to draw those inferences most favorable to the defendant. Accord *People v. Martin*, 401 Ill. App. 3d 315, 323 (2010) (whether or not it was reasonable to infer that caps on natural gas lines had simply fallen off, it was also reasonable to infer that the caps had been removed intentionally, and trier of fact in reckless conduct prosecution was entitled to draw the latter inference). "It is sufficient if all the evidence taken as a whole satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt." *People v. Edwards*, 218 Ill. App. 3d 184, 196 (1991).

¶ 15 The crime of burglary is defined as follows:

> "A person commits 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 2010).

The crime of residential burglary is identical to burglary except that the object of the crime is "the dwelling place of another, or any part thereof." 720 ILCS 5/19-3(a) (West 2010). A person is guilty of the inchoate offense of attempt when "with intent to commit a specific offense, he or she does any act that constitutes a substantial step toward the commission of that offense." 720 ILCS 5/8-4(a) (West 2010).

¶ 16 This court looks to section 5.01 of the Model Penal Code (Model Penal Code § 5.01(2) (1985)) for assistance in determining the types of behavior that constitute a substantial step. *People v. Jiles*, 364 Ill. App. 3d 320, 333 (2006). The Model Penal Code lists types of conduct that shall not, as a matter of law, be held insufficient to support an attempt conviction, so long as the act is strongly corroborative of the actor's criminal purpose, including:

> "(a) lying in wait, searching for[,] or following the contemplated victim of the crime;
>
> (b) enticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission;
>
> (c) reconnoitering the place contemplated for the commission of the crime;
>
> (d) unlawful entry of a structure, vehicle[,] or enclosure in which it is contemplated that the crime will be committed." Model Penal Code § 5.01(2) (1985).

"Precisely what is a substantial step must be determined by evaluating the facts and circumstances of each particular case." *Jiles*, 364 Ill. App. 3d at 334. Defendant argues that, of the Model Penal

Code factors, the only factor arguably present is "reconnoitering the place contemplated for the commission of the crime." Model Penal Code § 5.01(2)(c) (1985).

¶ 17 Defendant argues that, at most, the State established only that defendant was one of four people around Arola's house when someone pounded on Arola's door. According to defendant, because he was not charged under an accountability theory, he could not be found guilty of attempted residential burglary if the State could not prove that he was the individual who actually attempted to enter the home. We disagree. We find that, viewing the evidence in the light most favorable to the State, a rational trier of fact could have found that defendant committed a substantial step toward the commission of residential burglary.

¶ 18 As an initial matter, we note that the evidence was sufficient to establish that someone attempted to enter Arola's home and that defendant was, at the very least, on Arola's private driveway. Archer's testimony established the presence of four individuals in front of his house. He saw them disappear between two houses. After a couple of minutes, they returned to the street, walked down the street a bit, then turned around and returned to the houses. He saw three individuals walk between Arola's house and Arola's next-door neighbor's house, while one individual remained outside. Although it was early evening, it was dark out, and Arola had only one light on in her house. Arola testified that she heard a pounding on her back door, strong enough to knock items off her interior wall. She described her door as being "kicked in a ways." The back door was damaged and needed to be replaced. Certainly this testimony established that someone attempted to enter her home.

¶ 19 There was also sufficient evidence to establish defendant's presence on Arola's property. Defendant's shoe print was found on the hose reel next to Arola's backyard fence, which was located

on Arola's private driveway. The hose reel was located in such a way that it provided access over the gate into Arola's backyard. Shoe prints (while not identified specifically as defendant's) were seen in Arola's backyard. Hill followed the shoe prints from the hose reel, down the driveway and sidewalk to a location where another officer had apprehended defendant. The bottom of defendant's shoe matched the shoe print on the hose reel. The evidence is sufficient to establish defendant's presence on Arola's property.

¶ 20 Given these facts and circumstances, even assuming that defendant never entered Arola's fenced backyard, the jury could have reasonably inferred that defendant was standing on the hose reel waiting for the door of Arola's home to be broken open in order to enter the home and commit the offense of residential burglary. Four men were seen "casing" Arola's home, there was an attempt at entry, and defendant was present on the residential property in such a manner that he was poised to act immediately upon entry being gained to Arola's home. Thus, defendant's act of standing on the hose reel, waiting for entry to be had, amounts to a substantial step in the commission of the offense of residential burglary.

¶ 21 We also find that, given the evidence, the jury could also have reasonably inferred that it was defendant who attempted entry into the house. The jury could have inferred that defendant stepped onto the hose reel to jump over the fence and, in the process of doing so, knocked over the garbage can. This evidence rationally places defendant in Arola's fenced backyard. Even if the jury believed that two other individuals were present with defendant (while another individual waited in front), it was defendant's shoe print that was found on the hose reel.

¶ 22 The cases upon which defendant relies to support his argument that the evidence was insufficient do not warrant a different conclusion, because in each case there was much less

circumstantial evidence than is present here. In *People v. Toolate*, 45 Ill. App. 3d 567 (1976), the defendant was convicted of attempted burglary of a sandwich shop. Pry marks were observed on the shop door, and a crowbar and screwdriver were found in the area. A set of footprints in the snow around parts of the building led to the defendant's car. The court found that the footprints, without more, were insufficient to support a finding of guilt. The court emphasized that there was no evidence that the crowbar and screwdriver were ever in the defendant's possession, that they were the instruments used to pry at the door, or that the pry marks on the door were not there the day before. Here, unlike in *Toolate*, there was evidence that defendant was on Arola's property, specifically, on her private driveway. Indeed, defendant's presence on residential property was much more suspicious than a defendant's presence in the vicinity of a business. In addition, there was evidence that the damage occurred on the evening in question. Arola testified that the door was in good condition prior to the incident.

¶ 23 In *People v. Williams*, 189 Ill. App. 3d 17 (1989), the defendant was convicted of attempted burglary after he was seen with his hand on the top of a car trunk when the car alarm went off. The court reversed the defendant's conviction, because there was no evidence of any damage to the car lock and there was no instrument found that could have been used for tampering with the lock. Here, as noted, there was evidence that the damage to Arola's door occurred on the evening in question.

¶ 24 In *People v. Peters*, 55 Ill. App. 3d 226 (1997), the defendant was convicted of attempted burglary after being found crouching behind a garbage can at 2:30 a.m. within the fenced-in premises of a tavern. The tavern owner reported hearing footsteps on the roof of the tavern, and two ladders were found resting against the building. The court reversed the defendant's conviction, finding that, even if the jury could reasonably find that the defendant had been on the roof, there was no evidence

that any attempt to enter the building had been made. Here, unlike in *Peters*, there was evidence of an attempted entry.

¶ 25 Defendant also argues that the State failed to prove that he intended to commit the offense of residential burglary, because he did not confess, he did not possess any burglary tools, and the incident occurred before 7 p.m. in a residential area. We disagree.

> "Criminal intent is a state of mind that not only can be inferred from the surrounding circumstances [citation], but usually is so proved [citation]. Such circumstances include the time, place, and manner of entry into the premises; the defendant's activity within the premises; and any alternative explanations offered for his presence. [Citation.] Whether the requisite intent existed is a question for the trier of fact, whose determination will not be disturbed on review unless a reasonable doubt exists as to the defendant's guilt. [Citation.]" *People v. Maggette*, 195 Ill. 2d 336, 354 (2001).

We find that the circumstances are such that a jury could have reasonably inferred that defendant intended to commit the offense of residential burglary. While it was relatively early in the evening, it was dark outside and Arola's home had only one light on inside. Defendant was present in a residential backyard on a private driveway. In addition, when defendant was told that he was under arrest, he tried to get away from the officers, who had to physically prevent defendant from fleeing. This may also be considered as evidence of defendant's guilt. See *People v. Lewis*, 165 Ill. 2d 305, 349 (1995) ("The fact of flight, when considered in connection with all other evidence in a case, is a circumstance which may be considered by the jury as tending to prove guilt.").

¶ 26 In sum, the evidence here is not so improbable or unsatisfactory that it creates a reasonable doubt of defendant's guilt.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we affirm defendant's convictions.

¶ 29 Affirmed.