2013 IL App (2d) 120028-U
Nos. 2-12-0028 & 2-12-0029 cons.
Order filed May 9, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JAMES R. BEAVERS, JR., Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 09-CF-3280 Honorable Timothy Q. Sheldon Judge, Presiding.

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JAMES R. BEAVERS, JR., Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 10-CF-890 Honorable Timothy Q. Sheldon, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State proved defendant guilty beyond a reasonable doubt of arson, as the trial court was entitled to find that the burned property was of sufficient value in light of defendant's estimate and its own common sense; (2) the State failed to prove defendant guilty beyond a reasonable doubt of unlawful use of a weapon: although he possessed a knife, there was no evidence of any intent to use it against someone; defendant's threat, on which the trial court relied, was made after his arrest and was purely forward-looking.

¶ 2 Defendant, James R. Beavers, Jr., appeals his convictions of arson (720 ILCS 5/20-1(a) (West 2008)) and unlawful use of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2008)), contending that there was insufficient evidence to convict him beyond a reasonable doubt. We affirm the arson conviction, but reverse the conviction of unlawful use of a weapon by a felon.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged in case number 09-CF-3280 with multiple offenses, including arson. That charge alleged that he knowingly damaged the personal property of Heather Saletri, with a value in excess of $150. On June 20, 2011, a bench trial was held.

¶ 5 Evidence at trial showed that Saletri had seven children with defendant and that their relationship ended in the summer of 2009. Defendant then went to California, and Saletri lived with defendant's parents. Sometime before November 2009, defendant moved back to his parents' home.

¶ 6 On November 19, 2009, the police were called to the home in connection with a fire. A fire investigator found that the fire started on a mattress and that the cause was an open flame, but he was unable to determine the item that first ignited the fire. A firefighter observed that an outdoor fire pit was smoldering, but he was unable to tell what had been burning in it. A police officer saw fragments of clothing in the pit. During the investigation, defendant pushed a firefighter and had an altercation with a police officer.

¶ 7 Detective Brian Gorcowski testified that defendant's mother told him that, on November 18, 2009, she saw defendant burning Saletri's clothes in an outdoor fire pit and that defendant returned inside to get more clothes and a purse. At trial, defendant's mother testified that defendant had been drinking beer and told her that Saletri had been unfaithful to him. She denied that she saw defendant burn Saletri's clothes and that she told police that she saw him burning clothing.

¶ 8 Gorcowski testified that defendant's father also said that he saw defendant carrying a "not very big" pile of clothes on November 18, 2009. At trial, defendant's father testified that he did not see defendant burn the clothes and that defendant told him that he "ought" to burn them. Defendant's father told defendant to "grow up and go to bed," and defendant went to his bedroom.

¶ 9 Gorcowski interviewed defendant and testified that defendant said that, on November 18, 2009, he had been drinking and he burned Saletri's clothes in the fire pit. At first, he estimated that he made about 20 trips back and forth to the pit. Later, he said that he made 8 to 10 trips. He said that he was trying to burn everything he could find belonging to Saletri and that he estimated the value of the clothes at about $500. Defendant said that he burned more clothes on November 19, 2009. The interview was not recorded, and defendant did not sign a written statement. After the fire, Saletri moved to an apartment and, on March 4, 2010, she got an order of protection against defendant. The court found defendant guilty of arson, noting that defendant admitted the value of the clothing.

¶ 10 In case number 10-CF-890, defendant was charged with multiple counts, including unlawful use of a weapon by a felon. On January 10, 2011, a bench trial was held. Saletri testified about the fire and the protection order. She then testified that, on April 6, 2010, at around 10 p.m., she heard pounding on her door. At around 11 p.m., she heard shuffling outside the door. She looked out the

peephole and saw defendant. He was wearing a black hoodie and had his hands in the pocket of it. Defendant was looking around and it looked like he was trying to peer into the window. Defendant then walked back to a vehicle, which Saletri recognized as belonging to his uncle. She did not see defendant carrying anything.

¶ 11 Saletri was unable to get her cell phone to work and she contacted a friend using her computer, said that defendant had been released from jail and was outside her apartment, and asked the friend to notify the police. She then went upstairs to watch defendant from a bedroom window. She saw defendant walk from the car to the door approximately five times.

¶ 12 The police arrived at approximately 2:45 a.m. and found defendant asleep in the vehicle. The vehicle was "full of stuff" and was a mess inside. Lying on top of a pile of items on the passenger seat was a large butcher knife. The officers opined that defendant was under the influence of alcohol. An officer testified that, while being transported to the police station, defendant said that he did not know "she" lived there, that "she" set him up, and that he "was going to get her." He was also combative and uncooperative.

¶ 13 The court found defendant guilty, stating that, while there was no evidence that he had the knife when he went to Saletri's apartment door, the intent to use it was established when he said that he "was going to get her." Defendant was also found guilty of additional charges.

¶ 14 Defendant was sentenced to four years' incarceration for unlawful use of weapon by a felon and a consecutive five years' incarceration on the arson count. He appeals.

¶ 15 II. ANALYSIS

¶ 16 Defendant first contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt of arson because there was no evidence about the cost, condition, quality, or age of the items burned.

¶ 17 "A criminal conviction will not be set aside 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). On a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant. *Id*. Rather, " '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.) *Id*. (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Under this standard, a court of review must view in the State's favor all reasonable inferences drawn from the record. *People v. Bush*, 214 Ill. 2d 318, 326 (2005). The trier of fact is responsible for determining the witnesses' credibility, weighing their testimony, and deciding on the reasonable inferences to be drawn from the evidence. *People v. Lamon*, 346 Ill. App. 3d 1082, 1089 (2004). "Discrepancies, omissions and bias go to the weight of the testimony to be evaluated by the trier of fact." *People v. Rodriguez*, 408 Ill. App. 3d 782, 794 (2011).

¶ 18 A criminal conviction may be based on circumstantial evidence, as long as it satisfies proof beyond a reasonable doubt of the charged offense. *People v. Hall*, 194 Ill. 2d 305, 330 (2000). In a case based on circumstantial evidence, the trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances if all the evidence considered collectively satisfies the trier of fact beyond a reasonable doubt that the defendant is guilty. *Id*.

¶ 19 To sustain defendant's conviction of arson, the State was required to prove that defendant, by means of fire or explosive, knowingly damaged any real or personal property having a value of $150 or more. 720 ILCS 5/20-1(a) (West 2008).

¶ 20 "Courts may take judicial notice of matters which are commonly known, or of facts which, while not generally known, are readily verifiable from sources of indisputable accuracy." *People v. Roby*, 202 Ill. App. 3d 143, 146 (1990). In *People v. Tassone*, 41 Ill. 2d 7, 12 (1968), the court stated that "it has been well recognized that judicial notice may be taken of the fact that property has some value, although the courts have been reluctant to take notice of any specific value." Thus, judicial notice may be taken that property has a value of over $150. *Id.* "Courts do not operate in a vacuum; they are presumed to be no more ignorant than the public generally, and will take judicial notice of that which everyone knows to be true." *Id.*

¶ 21 For example, in *Tassone*, the court took notice that a truck had a value of over $150. *Id.* Likewise, in *Roby*, the court took notice that damage to a vehicle was worth more than $300. *Roby*, 202 Ill. App. 3d at 146-47. In contrast, in *People v. Burks*, 304 Ill. App. 3d 861, 863 (1999)), the court declined to take notice that 120 individually packed Old Navy T-shirts were worth over $300. The court observed that there was no evidence as to value, such as evidence of the quality, design, or price. *Id.* In *People v. Scott*, 59, Ill. App. 3d 846, 865-66 (1978), the court declined to take notice that a color television was worth over $150 when the only evidence of value was that the retail price of a new color television was $300, the television at issue would not properly project in color, and the defendant offered to sell it for $100.

¶ 22 Here, as in *Burks*, there was a lack of evidence about the quality, design, or price of the items that were burned. However, unlike in *Burks*, where there was a total lack of evidence as to value,

defendant himself provided an estimate as to value, telling the police that he thought the clothes were worth $500.

¶ 23 When determining value, "[o]riginal or replacement cost is not the standard for assessing value, although evidence of cost together with evidence concerning age, condition, and utility of the stolen item may afford a basis for determining value." *People v. Langston*, 96 Ill. App. 3d 48, 54 (1981); see also *People v. Brown*, 36 Ill. App. 3d 416, 421 (1976) (cost combined with proof of condition, quality, modernness, or obsolescence may be sufficient to show value). A person who is familiar with the property or property of a similar nature is competent to testify as to the property's value. See *id*. While the person might have less experience in valuing property than one engaged in the business of buying or selling such property, that inexperience goes toward the weight of the evidence, not its competency. See *id*.

¶ 24 Here, defendant handled the clothing that was burned and the court could reasonably infer that he was aware of its quality, age, and design. Defendant told the police that he estimated the value at $500. That estimate was uncontroverted. See *People v. Richardson*, 169 Ill. App. 3d 781 784 (1988). The trial court was entitled to give weight to defendant's estimate and apply its own common sense to conclude that eight armloads of clothing was worth at least $150. See *People v. Greene*, 50 Ill. App. 3d 872, 875 (1977) (observing that a court should not be asked to abandon common sense in favor to stringent technicalities or sheer formalism). Accordingly, there was sufficient evidence to convict defendant of arson.

¶ 25 Defendant next contends that the State failed to prove him guilty beyond a reasonable doubt of unlawful use of a weapon by a felon because there was no evidence that he had any intent to use the butcher knife when he was at Saletri's apartment.

¶ 26 A person commits the offense of unlawful use of a weapon when he or she knowingly possesses or carries a dangerous knife or any other dangerous weapon or instrument of like character with the intent to use it unlawfully against another. See 720 ILCS 5/24-1(a)(2) (West 2008).[1] However, "[m]ere possession of a knife, such as a hunting knife, is not a crime." *In re Marquita M.*, 2012 IL App (4th) 110011, ¶ 29. "Instead, for purposes of section 24-1(a)(2), 'knowingly carrying or possessing a dangerous weapon *with intent to use the same unlawfully against another* constitutes the offense of unlawful use of weapons. (Emphasis added.)' " *Id*. (quoting *People v. Kincy*, 106 Ill. App. 3d 250, 254 (1982)). "It is proof of that intent, 'or circumstances from which such intent is reasonably inferrable,' that is required." *Id*. (quoting *People v. Sullivan*, 46 Ill. 2d 399, 403 (1970)).

¶ 27 For example, when police searching a defendant pursuant to his arrest for disorderly conduct found a hunting knife, the mere possession of the knife in a residential area at night was not sufficient evidence of intent to support a conviction of unlawful use of a weapon. *Sullivan*, 46 Ill. 2d at 402. Also, where a defendant raised a clenched fist with a spiked wristband at people in a store, but never made any verbal threats and never attempted to enter the store, the evidence was insufficient. *People v. Whitfield*, 8 Ill. App. 3d 210, 211 (1972). In contrast, cases in which the intent of the defendant to use a weapon was inferred from the circumstances generally have involved

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[1]The essential elements of the unlawful use of a weapon by a felon are: (1) the knowing possession of a weapon prohibited by section 24-1 and (2) a prior felony conviction. See *People v. Gonzalez*, 151 Ill. 2d 79, 85 (1992). However, the reference in section 24-1.1(a) to the possession of a weapon prohibited by section 24-1 incorporates the mental state of "intent to use it unlawfully against another" as another element if the weapon in question is one listed in section 24-1(a)(2), which was the case here. See *People v. Crawford*, 145 Ill. App. 3d 318, 324 (1986).

specific threats or comments about use of a weapon. In *In re Marquita M*., the respondent brought a knife to school. She told police that she was supposed to be in a fight and did not know what she was planning to do with the knife, but that another person would probably get stabbed or cut during the fight. *In re Marquita M.*, 2012 IL App (4th) 110011, ¶ 30. In *Kincy*, shortly before the defendant had been found with a knife, he had held a gun to a man's head and threatened to kill him. *Kincy*, 106 Ill. App. 3d at 254.

¶ 28 Here, the court noted defendant's threat that he "was going to get her," in connection with the amount of time he spent outside Saletri's apartment, and found that, under the totality of the circumstances, defendant had the intent to use the knife. However, we find problematic the fact that defendant made the comment after he was arrested. At that point, the comment was forward-looking in that he said he had been framed and thus he was going to get her. When taken in context, the comment did not address his intent when he was outside the apartment. In *Kincy* and *In re Marquita M*., the intent was shown by the prior use of another weapon or by statements about the intended use of the weapon possessed. We find this case much more in line with *Whitfield* and *Sullivan*, where the evidence failed to show more than mere possession of a weapon. Indeed, once we discount defendant's statement to the police because it was forward-looking, this case is on-point with *Sullivan*, where there was evidence that the defendant broke the law while also in possession of a weapon, but there was insufficient evidence to prove beyond a reasonable doubt that he intended to use the weapon at that time. Accordingly, because there was no evidence that defendant possessed the knife with an intent to use it against another, we reverse the conviction of unlawful use of a weapon by a felon.

¶ 29 III. CONCLUSION

¶ 30 The evidence was sufficient to convict defendant of arson beyond a reasonable doubt. However, the evidence was not sufficient to convict him of unlawful use of a weapon by a felon. Accordingly, the judgment of the circuit court of Kane County is affirmed in part and reversed in part.

¶ 31 Affirmed in part and reversed in part.