NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

NO. 4-10-0039 Filed 6/22/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
JAMEEL A. HAMILTON,	)	No. 09CF375
Defendant-Appellant.	)	
	)	Honorable
	)	Leo J. Zappa, Jr.,
	)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.
Presiding Justice Knecht and Justice Pope concurred in the judgment.

ORDER

Held: The evidence was sufficient to prove defendant guilty of residential burglary beyond a reasonable doubt.

In April 2009, defendant, Jameel A. Hamilton, was charged via information with the crime, *inter alia*, of residential burglary (720 ILCS 5/19-3(a) (West 2008)), a Class 1 felony. The information alleged that defendant entered into the residence of the victim without authority intending to commit a theft therein. In September 2009, a jury found defendant guilty of residential burglary. In November 2009, the trial court denied defendant's motions for acquittal notwithstanding the verdict and for a new trial and sentenced him to eight years in prison. In January 2010, the court denied defendant's motion to reconsider his sentence. This appeal followed.

On appeal, defendant argues the evidence was insufficient for the jury to find him guilty of residential burglary beyond a reasonable doubt. Residential burglary, as it was charged

by the State, has three elements: (1) knowing entry into the dwelling place of another, (2) lack of authority to enter said dwelling, and (3) intent to commit a theft therein. See 720 ILCS 5/19-3(a) (West 2008). Here, defendant specifically argues the evidence was insufficient to show that he intended to commit a theft upon entering the dwelling of the victim. We disagree.

The intent to commit a theft must be established beyond a reasonable doubt at the time of entry into the dwelling, not after entry has been gained. *People v. Maggette*, 195 Ill. 2d 336, 353, 747 N.E.2d 339, 349 (2001). However, the State can prove the defendant's intent by drawing inferences based on the conditions surrounding his entry into the building and conduct once inside the building. *People v. Bridgewater*, 388 Ill. App. 3d 787, 795, 904 N.E.2d 171, 178 (2009); see also *People v. Roberts*, 189 Ill. App. 3d 66, 71, 544 N.E.2d 1340, 1344 (1989) ("[W]here *** unauthorized entry into a building containing valuable property is shown, the trier of fact may infer the entry was made with intent to commit a theft.").

When reviewing a jury verdict, "this court considers whether, 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." (Emphasis in original; internal quotation marks omitted.) *People v. Wheeler*, 226 Ill. 2d 92, 114, 871 N.E.2d 728, 740 (2007). "This court will not retry a defendant when considering a sufficiency of the evidence challenge." *Id*. Generally, the trier of fact is in a better position to determine the credibility of witnesses and weight of evidence, and its decision will not be reversed unless "the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of defendant's guilt." *Wheeler,* 226 Ill. 2d at 115, 871 N.E.2d at 740. In other words, during a jury trial, the jury has the prerogative to accept or reject the testimony of witnesses called by either the State or the defense.

Roberts, 189 Ill. App. 3d at 69-70, 544 N.E.2d at 1343.

In the instant case, the jury heard conflicting testimony from the State's witnesses on one hand and the defendant on the other. Testimony at trial showed that defendant and the victim had an on-again, off-again dating relationship prior to defendant's incarceration in November 2008 on unrelated charges. Defendant was released from jail in April 2009. On the day defendant was released, he went to the victim's house and, upon finding all the doors locked, he entered her residence through a window. Testimony was conflicting as to whether he was authorized to enter the residence, with the victim claiming he was not and defendant claiming he thought he was. At that time, the victim had checked into a hotel and was not staying at the residence. After a few days had passed, the victim went to her residence accompanied by police officers to have defendant removed from the house.

Upon arrival, the officers observed signs that someone had been staying in the house, including water in the shower, plates with crumbs on them in an upstairs closet, and a makeshift bed in that same closet. Upon further checking, the officers located defendant hiding inside the house and placed him under arrest. When searching defendant subject to arrest, the officers found a set of keys, a piece of paper belonging to the victim, and a knife on defendant's person. Defendant claimed the keys were his, he did not intend to keep the victim's paper, and he only had the knife to use it as a tool for unscrewing a light cover in the upstairs bathroom. The victim claimed the keys belonged to her.

Throughout the proceedings defense counsel repeatedly stressed that defendant had entered into the residence under the mistaken belief that he and the victim were in a relationship and with the sole purpose of showering, eating, and sleeping in "his bed." Defense

counsel further stressed that defendant reasonably thought the keys belonged to him and he had no intent to permanently deprive the victim of the paper or the knife; therefore, no proof gave rise to the inference of defendant's intent to commit theft when he entered the residence. The jury was faced with a defendant who claimed he thought he was allowed in the house but who entered a house that was titled in another person's name, entered through a back window, slept in a closet, removed lightbulbs from the second floor, hid from the owner and police when they came to the house, was found with property belonging to the victim on his person, and undeniably took and consumed food from inside the house.

Taken in the light most favorable to the State, the evidence introduced at trial was sufficient to allow a reasonable trier of fact to find defendant guilty of residential burglary beyond a reasonable doubt. The jury could have reasonably believed that the items in his possession were not his and that he had planned to permanently deprive the victim of those items. In addition, if the jury accepted that he entered the victim's house, without permission, to obtain food and did in fact obtain food, it could reasonably have seen that conduct by itself as residential burglary. In the end, whether or not he actually committed theft is irrelevant as the jury could infer the intent element from the surrounding circumstances. See *Maggette*, 195 Ill. 2d at 354, 747 N.E.2d at 349 ("Criminal intent is a state of mind that not only can be inferred from the surrounding circumstances [citation] but usually is so proved. [Citation.]"). Relevant 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." *Id.*

Defendant contends that the inference of intent in this case has been rebutted by defendant's explanation for his presence in the house and the history between himself and the

victim. Alternatively, defendant argues that even if he did intend to deprive the victim of the items found on his person, he did not formulate that intent until after he entered, so the evidence does not permit the inference that he had the requisite intent when entering. In support of this assertion, defendant cites *People v. Jackson*, 181 Ill. App. 3d 1048, 537 N.E.2d 1054 (1989). In *Jackson*, 181 Ill. App. 3d at 1051-52, 537 N.E.2d at 1057, the Third District reduced the defendant's conviction for residential burglary to a conviction for criminal trespass due to what it perceived as a weakness in the evidence. However, we conclude *Jackson* is clearly distinguishable from the case before us.

First and foremost, the court in *Jackson* was reviewing the verdict under an Illinois Supreme Court Rule 615(b)(3) theory, which allows for a reduction in offense but applies a different analysis than that applied by a court reviewing the sufficiency of evidence. *Jackson*, 181 Ill. App. 3d at 1050-52, 537 N.E.2d at 1056-57. In *Jackson*, 181 Ill. App. 3d at 1051, 537 N.E.2d at 1057, the defendant worked as a handyman at an apartment complex and committed the underlying theft while inside the apartment of the victim to perform some maintenance, thus presenting the issue of whether the defendant was authorized to be in the apartment or not. Further, unrebutted testimony by the defendant showed that he had been in the apartment performing maintenance for a while before he decided to take some money to buy food, thus calling into doubt the intent element. *Jackson*, 181 Ill. App. 3d at 1049-51, 537 N.E.2d at 1055-56. Finally, in *Jackson,* 181 Ill. App. 3d at 1052, 537 N.E.2d at 1057, the court found that the evidentiary weakness was not from conflicting testimony and thus was not based on credibility issues but instead arose from a lack of conflicting evidence offered by the State. The present case presents none of the evidentiary weaknesses present in *Jackson* and, in fact, is not even

subject to the same standard of review. Conflicting testimony in this case presented issues of credibility for the trier of fact to decide. Thus, the reasoning in *Jackson* is inapposite.

For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

Affirmed.