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).

2013 IL App (4th) 120442-U

NO. 4-12-0442

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
October 18, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	DeWitt County
BLAINE AUSTIN SHORT,	)	No. 11CF13
Defendant-Appellant.	)	
	)	Honorable
	)	Chris E. Freese,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Pope and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, holding (1) the trial court did not shift the burden of proof from the State to defendant, (2) the State proved defendant guilty beyond a reasonable doubt, and (3) the State established the value of the stolen property exceeded $500.

¶ 2 In February 2012, the trial court found defendant, Blaine Austin Short, guilty of theft exceeding $500, a Class 3 felony (720 ILCS 5/16-1(a)(1)(A), (b)(4) (West 2010)), and burglary, a Class 2 felony (720 ILCS 5/19-1(a), (b) (West 2010)). Following a March 2012 hearing, the court sentenced defendant to 24 months' probation, imposing as conditions of defendant's probation that he (1) serve 180 days in jail and (2) pay $3,490 in restitution.

¶ 3 Defendant appeals, asserting his case should be reversed because (1) the trial court improperly shifted the burden of proof from the State to defendant, (2) the State failed to prove defendant guilty beyond a reasonable doubt, and (3) the State failed to establish the value of the

stolen property exceeded $500.

¶ 4 We affirm.

¶ 5 I. BACKGROUND

¶ 6 In February 2011, the State charged defendant by information with (1) two counts of tattooing a minor (720 ILCS 5/12-10(a) (West 2010)); (2) one count of theft exceeding $500 (720 ILCS 5/16-1(a)(1)(A) (West 2010)); and (3) one count of burglary (720 ILCS 5/19-1(a) (West 2010)). In February 2012, the parties appeared for defendant's trial, at which time defendant waived his right to a jury trial and the State dismissed the charges relating to tattooing a minor.

¶ 7 Thereafter, defendant's bench trial commenced. Jerry Russell testified he entered his garage, which also served as a tattoo parlor, on January 9, 2011, to discover a window was open and several items were missing. The missing items included (1) 4 tattoo guns, with a replacement value of $680 per gun; (2) 3 bottles of black tattoo ink, valued at $30 each; (3) several ink tubes, valued at $20 or $25 each; (4) 3 to 6 boxes of tattoo needles, valued at $60 to $70 per box; and (5) 16 boxes of ditto paper, valued at $120 per box. Russell described his tattoo guns as two years old and approximated the cost of a used tattoo gun to be $300 to $400. The trial court asked Russell whether "the present day value" of the stolen items would be in excess of $500, to which Russell responded "[w]ithout a doubt."

¶ 8 Russell did not witness the theft of his property, nor did he know exactly when the theft occurred, as he could not recall the last time he entered the garage prior to January 2011. He did not give anyone permission to use or take his tattoo equipment. In December 2010 and January 2011, two teenage boys who had previously been in trouble for burglary and theft were

living in Russell's home. Russell also had a 1991 burglary conviction.

¶ 9 Skylar D. testified he visited defendant's girlfriend's apartment on New Year's Eve 2010. That night, defendant gave him a tattoo. According to Skylar, during this tattoo session, defendant confided he took the tattoo gun from Russell's garage and told Skylar not to tell anyone. At the time of trial, Skylar had a pending juvenile battery case.

¶ 10 James M. and David H. testified they encountered defendant before Christmas 2010, at which time defendant sold James a tattoo gun for $25 or $30. According to James and David, defendant also had needles, ink, and other tattoo guns for sale. Upon learning the tattoo gun had been stolen from Russell's garage, David and James turned the gun over to police. At the time of trial, David was on juvenile probation for aggravated battery.

¶ 11 Officer Todd Ummel, a juvenile investigator with the Clinton, Illinois, police department, interviewed defendant after Skylar reported defendant had been bragging about the burglary. According to Ummel, at first, defendant denied responsibility for and knowledge of the burglary; however, he eventually admitted he possessed the tattoo guns but did not sell them. Defendant told Ummel another individual, Levi T., entered Russell's garage on two occasions, the first time taking tattoo guns and the second time taking tattoo equipment such as ink and needles. Ummel then interviewed Levi, who told Ummel defendant committed the burglary.

¶ 12 Defendant testified Levi loaned him a tattoo gun in December 2010 so defendant could give Levi a tattoo. Levi was unsatisfied with defendant's work, so he eventually took back the tattoo gun and remaining supplies. Defendant stated he first learned the tattoo gun had been stolen when he returned it to Levi, who told defendant the gun had been stolen from Russell's garage. Defendant admitted giving Skylar a tattoo on New Year's Eve of 2010 with Levi's tattoo

equipment. However, defendant explained he was not friends with Skylar, and he only knew of David but did not know him "personally." At the time of trial, defendant had successfully completed juvenile probation for battery.

¶ 13 Ryan West, defendant's stepbrother, also testified. He stated he attended a party in December 2010 or January 2011 at which he observed Levi attempting to sell a tattoo gun. He admitted he did not share this information with defense counsel or police until the morning of trial and that he wanted to help defendant. On the date of trial, West was on probation in Macon County for burglary.

¶ 14 The trial court found defendant guilty of burglary and theft in excess of $500. In reaching its decision, the court first stated,

> "If I was going back in the jury room as a juror, the first question I would ask is, where is Levi [T.]? Neither side called Levi [T.] . . . someone who supposedly has information about the burglary. Not a witness for either side. I understand he might not be a witness for the People—take the fifth amendment. If he's going to be denied [*sic*] being involved, why would he be a witness for the defense? Interesting."

The court went on to question the credibility of the witnesses for both sides. Specifically, the court noted that although defendant testified he did not know Skylar well, Skylar stated he was at defendant's home on New Year's Eve and during the visit, defendant admitted to Skylar that he committed the burglary. Additionally, the court considered (1) defendant's ability to detail the burglary and (2) defendant changing his story while speaking with police, first denying but later

admitting that he had the tattoo guns and that he tattooed Skylar. Moreover, the court found David's testimony to be consistent with James's testimony and with the items taken in the burglary. The court also found West's testimony to be consistent with other testimony from the State's witnesses in that West observed Levi with one tattoo gun while other witnesses observed defendant with more than one tattoo gun, which was consistent with the taking of multiple tattoo guns.

¶ 15 Defendant did not file a posttrial motion.

¶ 16 Following a March 2012 sentencing hearing, the trial court sentenced defendant to 24 months of probation, imposing as conditions of defendant's probation that he (1) serve 180 days in jail and (2) pay $3,490 in restitution. Defendant did not file a motion to reconsider sentence.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 On appeal, defendant asserts his case should be reversed because (1) the trial court improperly shifted the burden of proof from the State to defendant, (2) the State failed to prove defendant guilty beyond a reasonable doubt, and (3) the State failed to establish the value of the stolen property exceeded $500.

¶ 20 We address defendant's arguments in turn.

¶ 21 A. Whether the Trial Court Improperly Shifted the Burden of Proof

¶ 22 Defendant first contends the trial court improperly shifted the burden of proof from the State to defendant when it remarked on both parties' failure to provide Levi T. as a witness.

¶ 23 Initially, we note defendant did not object at trial or file a posttrial motion. Accordingly, defendant has forfeited his contentions relating to the court's alleged error, and we review them only for plain error. See *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124, 1130 (1988) (to preserve an issue for appeal, a defendant must object at trial and file a posttrial motion challenging that issue). Our first step under the plain-error doctrine is to determine whether error occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410 (2007).

¶ 24 In a criminal proceeding, the State has the burden of proving each element of the offense beyond a reasonable doubt. *People v. Howery*, 178 Ill. 2d 1, 32, 687 N.E.2d 836, 851 (1997). This burden never shifts to the defendant. *Id.* The defendant is presumed innocent of the charges against him and his failure to present evidence or testify cannot be held against him. *People v. Cameron*, 2012 IL App (3d) 110020, ¶ 27, 977 N.E.2d 909. Whether the trial court applied the proper legal standard is a question of law subject to a *de novo* standard of appellate review. See *People v. Campos*, 349 Ill. App. 3d 172, 176, 812 N.E.2d 16, 20 (2004).

¶ 25 "[T]he trial court is presumed to know the law and apply it properly." *Howery*, 178 Ill. 2d at 32, 687 N.E.2d at 851. However, that presumption may be rebutted when the record contains strong affirmative evidence to the contrary. *Id.* Thus, on review, we consider whether the record "contains strong affirmative evidence that the trial court incorrectly allocated the burden of proof to the defendant[.]" *Id.* at 33, 687 N.E.2d at 851.

¶ 26 A review of the entire proceeding reveals that, although the trial court did speculate regarding the questions the evidence might leave in the mind of a juror, the court did not shift the burden of proof. The court undertook the proper analysis in deciding the matter and held the State to its burden of proof. The court considered the credibility of each witness.

Specifically, the court concluded James and David were more credible than defendant, and defendant's testimony that Skylar was not his friend was not credible. The court also noted defendant admitted to Skylar he committed the burglary and admitted he had a tattoo gun in his possession, which he used to tattoo Skylar. Further, the court pointed out that defendant possessed information about Levi's involvement in the burglary.

¶ 27 We also note that, during their closing arguments, both the State and defense counsel referenced the State's burden of proving defendant guilty beyond a reasonable doubt. Finally, the trial court specifically referenced the fact that the State had met its burden. Specifically, the court stated, "I think, when you add all of this up, the state has met its burden." Based on the foregoing, the record does not contain "strong affirmative evidence" that the court incorrectly placed the burden of proof on defendant; rather, the record shows the court weighed the credibility of the witnesses, considered defendant's admissions, and held the State to its burden of proof. We find no error. Therefore, no further plain-error analysis is required.

¶ 28 B. Whether the State Proved Defendant Guilty Beyond a Reasonable Doubt

¶ 29 Defendant next argues the State's evidence was insufficient to prove defendant guilty beyond a reasonable doubt. We disagree.

¶ 30 In considering a defendant's challenge to the sufficiency of the evidence, this court asks 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.) *People v. Collins*, 106 Ill. 2d 237, 261,478 N.E.2d 267, 277 (1985) (quoting *Jackson v. Virginia,* 443 U.S. 307, 319 (1979)). The trier of fact has the responsibility to determine the credibility of witnesses and the weight to be given to their

testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81, 903 N.E.2d 388, 406 (2009)). We will not reverse a defendant's conviction "unless the evidence is 'unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant's guilt.' " *Jackson*, 232 Ill. 2d at 281, 903 N.E.2d at 407 (quoting *People v. Campbell*, 146 Ill. 2d 363, 375, 586 N.E.2d 1261, 1266 (1992)).

¶ 31 In this case, David and James both testified defendant sold them a tattoo gun. Skylar testified defendant admitted stealing a tattoo gun and tattooing supplies from Russell's garage. As noted by the trial court, defendant was less than forthcoming with police, changing his story during Ummel's interview with him.

¶ 32 The trial court observed the witnesses testify and specifically found the State's witnesses to be more credible than defendant. The court found defendant's ability to describe the burglary in detail particularly incriminating. We will not substitute our judgment for that of the trial court on issues involving the weight of evidence or credibility of witnesses. *People v. Siguenza-Brito,* 235 Ill. 2d 213, 224-25, 920 N.E.2d 233, 240 (2009). Based on the court's credibility determinations and the evidence presented, the court could have found defendant guilty beyond a reasonable doubt.

¶ 33 C. Whether the State Established the Value of the Property Exceeded $500

¶ 34 Finally, defendant contends the State failed to establish the fair cash market value of the stolen items exceeded $500, as required to elevate defendant's theft conviction from a misdemeanor to a felony. See 720 ILCS 5/16-1(b)(1), (4) (West 2010). We disagree.

¶ 35 "It is well-settled law that the value of stolen property is the fair cash market value

at the time and place of the theft." *People v. Perry*, 224 Ill. 2d 312, 336, 864 N.E.2d 196, 211 (2007). A consumer who is familiar with the stolen property is competent to testify to the property's value. *People v. Foster*, 199 Ill. App. 3d 372, 392, 556 N.E.2d 1289, 1302 (1990). "The value of stolen property is not judged by the amount recovered." *People v. Hansen*, 28 Ill. 2d 322, 340, 192 N.E.2d 359, 369 (1963).

¶ 36 First, defendant argues the State failed to present evidence from any witness demonstrating defendant ever possessed all of the items Russell listed as stolen. Defendant asserts that, at most, James and David saw defendant with a couple of tattoo guns and unspecified amounts of ink and needles, and defendant testified to being in possession of only two tattoo guns, three needles, and a small amount of tattoo ink. However, the State was not required to present a witness placing all of the stolen items in defendant's possession. Rather, a reasonable inference can be drawn from the evidence that defendant participated in the burglary with Levi, making him accountable for the value of all the stolen items. See *Hansen*, 28 Ill. 2d at 340, 192 N.E.2d at 369 (the amount of stolen property is not based on the amount of property actually recovered).

¶ 37 Second, defendant asserts the State presented no direct evidence of fair cash market value, only Russell's estimate of replacement value; therefore, the State could not prove the value of the stolen property exceeded $500. However, defendant fails to mention that the trial court specifically asked Russell whether the "present day value," not the replacement cost, of the items exceeded $500, to which Russell responded "without a doubt." Russell also testified the value of each used tattoo gun was between $300 and $400. Thus, the evidence was sufficient to establish the value of the property exceeded $500 on the day it was stolen.

¶ 38 III. CONCLUSION

¶ 39 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.

¶ 40 Affirmed.