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2017 IL App (4th) 170102-U

NO. 4-17-0102

FILED
June 23, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: MARCUS J., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Vermilion County
v.	)	No. 16JD245
MARCUS J.,	)	
Respondent-Appellant.	)	Honorable
	)	Craig H. DeArmond,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The appellate court reversed, concluding the State presented insufficient evidence to support an adjudication for residential burglary where the State failed to prove respondent entered the residence without authority.

¶ 2 In December 2016, respondent, Marcus J., a minor, was adjudicated delinquent after the trial court found he committed the offense of residential burglary. 720 ILCS 5/19-3 (West 2016). Respondent was thereafter committed to the Department of Juvenile Justice (Department) for an indeterminate sentence not to exceed four years.

¶ 3 Respondent appeals, asserting (1) the State presented insufficient evidence to adjudicate him for residential burglary, (2) defense counsel provided ineffective assistance of counsel by failing to object to certain evidence, (3) the trial court erred by failing to appoint a guardian *ad litem* (GAL) to represent respondent's best interest, and (4) the court made errors with respect to sentencing. For the following reasons, we reverse.

¶ 4 I. BACKGROUND

¶ 5 A. The Petition

¶ 6 On October 26, 2016, the State filed a petition for adjudication of wardship, alleging respondent was a delinquent minor for committing the offense of residential burglary (720 ILCS 5/19-3 (West 2016)). Specifically, the charge alleged respondent knowingly and without authority entered the home of Daniel Butts, located at 1907 East Fairchild Street in Danville, Illinois, with the intent to commit therein a theft.

¶ 7 B. The Trial

¶ 8 In December 2016, the case proceeded to trial, where the trial court considered the following evidence.

¶ 9 1. *Officer Nathan Howie*

¶ 10 Officer Nathan Howie of the Danville police department testified, on October 25, 2016, at approximately 8:20 a.m., he received a dispatch about a possible residential burglary at 1909 East Fairchild Street. He proceeded to that location with Officer Brandon Hahne. Upon arrival, Officer Howie learned the address where the residential burglary was allegedly occurring was 1907 East Fairchild Street. He described the house as a small, ranch-style home.

¶ 11 Officer Howie approached the front of the residence, which faced Fairchild Street. He noticed a window five or six feet from the front door had been broken, with one of the window panes knocked out. When Officer Howie walked toward the front door, he heard the door handle "jiggle" as if someone was attempting to open or close the door from the inside. Officer Howie then knocked on the door but received no response. Officer Hahne and another officer positioned themselves on the sides of the residence to look inside the windows. When

Officer Hahne indicated he saw movement within the house, Officer Howie moved to Officer Hahne's position, where he observed a "younger black male" inside.

¶ 12 When the "younger black male" attempted to exit the window headfirst next to Officer Howie, Officer Howie testified he drew his weapon and told the individual to stop. Instead, the individual withdrew back into the house. Officer Howie returned to his squad car to release his police canine. As Officer Howie returned to his squad car, about 25 feet away, he heard the front door open. As he turned, Officer Howie observed a black male, later identified as respondent, exit the front door of the residence and flee in an easterly direction.

¶ 13 After other officers pursued and detained respondent, Officer Howie testified he spoke with "Daniel Butts, who lives at 1907 East Fairchild," and Butts provided "his information." Officer Howie stated he secured the residence both before and after Butts arrived. He stated the residence appeared as though "someone had been through" it. He located items that appeared out of place—jewelry boxes, an empty gun case, and a gun cleaning kit. The empty gun case was in a chair, but "it was originally under a couch." The jewelry boxes were on the floor, "with jewelry taken out of them and other items that were in them instead of being on the dresser where they originally were." Despite his testimony that objects in the home had been displaced, Officer Howie admitted he had never been inside 1907 East Fairchild Street prior to this incident to know the state of the home. Although the State attempted to ask Officer Howie whether (1) the handgun case had previously held a gun and (2) Butts gave permission for anyone to enter his home, the trial court sustained respondent's counsel's objections.

¶ 14 2. *Officer Brandon Hahne*

¶ 15 Officer Hahne, who was training under Officer Howie, testified he investigated a possible residential burglary at 1907 East Fairchild Street on October 25, 2016. The three

officers present formed a perimeter around the house, with him standing on the east side of the residence. Officer Hahne saw movement inside the house and, shortly thereafter, an individual attempted to climb out of the window next to Officer Hahne. When Officers Hahne and Howie drew their guns on the individual, he withdrew back into the residence. Officer Hahne continued to peer through the window when, out of the corner of his eye, he noticed a "shorter black male" run by him.

¶ 16 After other officers apprehended respondent, Officer Hahne identified him as the person who ran by him at the residence based on the similarity of the clothing. He did not see the individual's face, only his back.

¶ 17 3. *Mark Toler*

¶ 18 Officer Mark Toler testified, on October 25, 2016, he responded to a residential burglary dispatch. He arrived on Shasta Street, the street immediately north of Fairchild Street, and parked his squad car approximately 150 to 200 feet north of 1907 East Fairchild Street. As he exited the vehicle to approach the residence, he observed a black male, whom he knew from prior contact to be respondent, run eastbound from the front of the residence and turn north. Officer Toler stated officers later recovered a ring belonging to Butts, but the ring was not recovered in respondent's path of flight.

¶ 19 4. *Respondent's Motion for a Directed Verdict*

¶ 20 After the State rested, respondent moved for a directed verdict. Respondent asserted the evidence was insufficient to demonstrate he entered the residence with the intent to commit a theft. Rather, respondent asserted a finding of criminal trespass to residence "would be justified." The trial court denied the motion. Respondent rested without presenting evidence.

¶ 21 5. *Closing Arguments and the Trial Court's Finding*

¶ 22 During closing arguments, respondent's counsel reiterated the State presented insufficient evidence to prove respondent's intent to commit a felony within the residence. Respondent's counsel also stated, "There was no actual evidence, again, beyond a reasonable doubt except for the fact that [respondent] was in a residence that is not his, but, however, without the homeowner here we don't even know if maybe he had been given permission to be in that residence."

¶ 23 In finding respondent guilty, the trial court stated:

> "What's one of the thing that we tell juries in almost every case? No. 1, that circumstantial evidence is as good evidence as any other evidence and you should consider it just as you would any other evidence. No. 2, you are not required to leave your common sense outside the door.
>
> What do we have? Well, we have a call of a burglary in progress. What is it a burglary of? It's a residence, 1907 East Fairchild. We have the respondent minor observed inside by the police officers running back and forth from window to window, apparently trying to find some method of escape. Why would someone be escaping if they have a right to be there? Flight. Flight is evidence of guilt. He fled from the premises. The premises is observed to appear to have been gone through *** [and] I am allowed to consider it as circumstantial evidence. We have evidence of jewelry boxes opened and spilled out, we have evidence of an empty gun case out and we have the evidence of the

respondent minor fleeing from the police, having been seen inside the residence in a burglary-in-progress call."

¶ 24 C. Motion for a New Trial and the Sentencing Hearing

¶ 25 In January 2017, respondent's case proceeded to a hearing on respondent's motion for a new trial and a dispositional hearing.

¶ 26 Respondent's motion for a new trial alleged the State failed to provide sufficient evidence to prove him guilty beyond a reasonable doubt where the State failed to (1) call the owner of the residence to testify, (2) establish the house was a "dwelling," (3) show the building had been burglarized, (4) establish any items had been taken without permission, (5) prove respondent lacked authority to be in the building, and (6) demonstrate respondent intended to steal or commit any other felony. The trial court denied the motion, stating the evidence supported a guilty finding.

¶ 27 After denying respondent's motion for a new trial, the trial court proceeded to a sentencing hearing. After considering the social history report and respondent's statement in allocution, the court sentenced respondent to an indeterminate period in the Department for a period not to exceed four years and further ordered respondent to receive mental-health and substance-abuse services.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 On appeal, respondent argues (1) the State presented insufficient evidence to adjudicate him for residential burglary, (2) defense counsel provided ineffective assistance of counsel by failing to object to certain evidence, (3) the trial court erred by failing to appoint a GAL to represent respondent's best interest, and (4) the court made errors with respect to

sentencing. We begin by discussing the sufficiency of the evidence, as we find this issue to be dispositive.

¶ 31 Respondent asserts the State presented insufficient evidence upon which to base the adjudication for residential burglary. In evaluating the sufficiency of the evidence, our standard of review 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 and internal quotation marks omitted.) *People v. Cunningham*, 212 Ill. 2d 274, 278, 818 N.E.2d 304, 307 (2004); see also *In re Jonathon C.B.*, 2011 IL 107750, ¶ 47, 958 N.E.2d 227 (applying the reasonable-doubt standard to delinquency cases). We will not overturn a finding of guilt "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Givens*, 237 Ill. 2d 311, 334, 934 N.E.2d 470, 484 (2010). "A trier of fact is not required to disregard inferences which flow normally from the evidence before it, nor must the trier of fact search out all possible explanations consistent with innocence, and raise those explanations to a level of reasonable doubt." *Jonathon C.B.*, 2011 IL 107750, ¶ 60, 958 N.E.2d 227. In deciding if the State has met its burden, the court may base its finding solely on circumstantial evidence. *People v. Patterson*, 217 Ill. 2d 407, 435, 841 N.E.2d 889, 905 (2005).

¶ 32 In this case, the petition alleged respondent committed residential burglary. "A person commits residential burglary when he or she knowingly and without authority enters *** the dwelling place of another, or any part thereof, with the intent to commit therein a felony or theft." 720 ILCS 5/19-3(a) (West 2016). Respondent asserts the State failed to present sufficient evidence to support a finding he (1) entered the "dwelling" of "another," (2) entered without authority, and (3) intended to commit therein a felony or theft. Finding it dispositive, we begin

by discussing whether the evidence proved respondent entered the dwelling of another without authority.

¶ 33 The State asserts respondent has forfeited this argument because he conceded during closing argument that he "was in a residence that is not his." However, respondent followed this statement by arguing, "without the homeowner here we don't even know if maybe [respondent] had been given permission to be in that residence." Respondent repeated this argument in his motion for a new trial. We therefore conclude the argument has not been forfeited.

¶ 34 Nevertheless, the State argues sufficient evidence was presented to permit the trial court to find respondent lacked authority to enter Butts's residence. Specifically, the State points to (1) the broken window; (2) respondent ignoring officers' commands to stop; (3) respondent's flight from the scene; and (4) officers finding the residence in a state of disarray, as though it had been ransacked.

¶ 35 As respondent points out, the State presented no direct evidence from Butts or any other witness stating respondent lacked authority to be in the residence. "Typically, the owner of the burglarized premises testifies that the accused burglar had no authority to enter ***." *People v. Hopkins*, 229 Ill. App. 3d 665, 671, 593 N.E.2d 1028, 1031 (1992). Even without such testimony, the State suggests the trial court's reliance on the circumstantial evidence was sufficient to support the conviction. We disagree.

¶ 36 As to the evidence of the broken window, the State presented no evidence as to when the window was broken, the size of the window pane, or whether it appeared respondent had used the broken window to access the residence. Moreover, the presence of a broken window does not necessarily support a lack of authority because people are occasionally

confronted with a circumstance that requires them to break a window to lawfully enter a residence. *People v. Larry*, 2015 IL App (1st) 133664, ¶ 20, 45 N.E.3d 342.

¶ 37 Additionally, respondent's flight from the scene and ignoring officers' commands to stop does not necessarily support the finding he was in the residence without authority. The State argues that fleeing the scene demonstrates a consciousness of guilt. See *People v. Lewis*, 165 Ill. 2d 305, 349, 651 N.E.2d 72, 93 (1995). But for what crime? Without testimony from Butts stating respondent lacked the authority to be inside the residence, we can only speculate as to why respondent fled. For example, as the trial court was well aware, respondent was ordered to be on home confinement as a condition of his probation, and he was violating his probation order by being at another residence. Perhaps that violation or some other reason sparked his flight. Thus, we find respondent's flight from the scene and ignoring officers' commands, absent testimony that he lacked authority to enter the residence, insufficient to support this element of the offense.

¶ 38 Finally, the State's reliance on the "ransacked" condition of the residence and the location of the gun and jewelry cases was based entirely on hearsay, as Officer Howie admitted he was unfamiliar with the normal condition of the residence. Also, without further evidence, we fail to see how the condition of the home in this case demonstrates respondent lacked authority to be in the home.

¶ 39 Although it is true that a trier of fact may consider circumstantial evidence and need not abandon common sense, the cumulative effect of the circumstantial evidence and the consideration of common sense must still be sufficient to find every element of a crime beyond a reasonable doubt. Here, the State tried to demonstrate respondent lacked the authority to enter the residence based on circumstantial evidence alone. "However, there must be *some* evidence

giving rise to a reasonable inference of defendant's guilt; the State may not leave to conjecture or assumption essential elements of the crime." (Emphasis in original.) *People v. Laubscher*, 183 Ill. 2d 330, 335-36, 701 N.E.2d 489, 491 (1998). Even considering this element in the light most favorable to the prosecution, the inferences to be drawn from the evidence are unsatisfactory to prove respondent entered the residence without authority.

¶ 40 In reaching its decision to adjudicate respondent delinquent, the trial court also improperly relied on officers' testimony that they were dispatched to a burglary in progress. An arresting officer need not give the appearance that he just happened to be on the scene where an incident occurred. *People v. Cameron*, 189 Ill. App. 3d 998, 1004, 546 N.E.2d 259, 263 (1989) (citing McCormick, *Evidence* § 249, at 724 (3d ed. 1984)). But neither should an officer be permitted " 'to relate historical aspects of the case, replete with hearsay statements in the form of complaints and reports, on the ground that he was entitled to give the information upon which he acted. The need for the evidence is slight, the likelihood of misuse great.' " *Id.*

¶ 41 Rather than simply testifying they were dispatched to East Fairchild Street, the officers included hearsay information—that they were investigating a burglary in progress. The trial court then considered this information as circumstantial evidence to support the finding a residential burglary was indeed occurring. Thus, the court improperly relied on the nature of the dispatch to support the truth of the matter asserted.

¶ 42 Accordingly, we conclude insufficient evidence existed to support the adjudication of delinquency.

¶ 43 III. CONCLUSION

¶ 44 Based on the foregoing, we reverse the trial court's judgment.

¶ 45 Reversed.