2022 IL App (4th) 210390-U

NO. 4-21-0390

FILED
March 31, 2022
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Vermilion County
RYAN W. SYKES,	)	No. 20CF728
Defendant-Appellant.	)	
	)	Honorable
	)	Charles C. Hall,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Knecht and Justice Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The State's evidence was sufficient to prove defendant guilty of burglary, and the trial court did not err by denying defendant's motion for a new trial.

¶ 2 In November 2020, a grand jury indicted defendant, Ryan W. Sykes, with one count of burglary (720 ILCS 5/19-1(a) (West 2020)), one count of possession of burglary tools (720 ILCS 5/19-2(a) (West 2020)), and one count of criminal damage to property over $500 (720 ILCS 5/21-1(a)(1) (West 2020)). The criminal damage to property charge was dismissed before trial. After a May 2021 bench trial, the Vermilion County circuit court found defendant guilty of the remaining two charges. Defendant filed a motion and another document claiming ineffective assistance of counsel, and defense counsel filed a motion for a new trial raising numerous claims, including newly discovered evidence. The court held a joint hearing at which it conducted an inquiry under *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), and heard oral

arguments on defendant's posttrial motion. The court found no basis for ineffective assistance of counsel and denied defendant's motion for a new trial. After a July 2021 hearing, the court sentenced defendant to six years' imprisonment for burglary but did not sentence him for possession of burglary tools. Defendant filed a motion to reconsider his sentence, and the State moved to dismiss the possession of burglary tools count. The court dismissed the possession of burglary tools count and denied defendant's posttrial motion.

¶ 3 Defendant appeals, contending (1) the State's evidence was insufficient to prove him guilty beyond a reasonable doubt of burglary and (2) the trial court erred by denying his motion for a new trial. We affirm.

¶ 4 I. BACKGROUND

¶ 5 At a March 2021 pretrial hearing, defendant waived his right to a jury trial, and the State noted it would not be proceeding on an accountability theory. On May 13, 2021, the trial court held a bench trial on the burglary and possession of burglary tools charges. The State presented the testimony of (1) Christopher Bryant, the victim; (2) Kyle Butcher, a Danville police sergeant; and (3) Austin Shelton, a Danville police officer. The State also presented several exhibits, including photographs and a video from a body camera. Defendant's evidence consisted of two photographs and stipulated testimony by Ryan Sparling, a Danville police officer.

¶ 6 Bryant testified he lived at 1304 Knox Drive in Danville, Illinois. In the early morning hours of November 1, 2020, Bryant drove his normal route home, and a black Chevrolet Impala was in front of him. He observed the Impala pull into his driveway, which was the first driveway on the street. The street had a cul-de-sac, and Bryant continued to drive past his home and turn around in the cul-de-sac. When he drove back past his house, Bryant noticed the

Impala's lights were off. Bryant continued driving and turned right onto Griffin Street. He went about a block, turned around, and again drove towards his home. This time when he got to his house, Bryant observed one of his televisions on his driveway and his home's front door was wide open. Bryant pulled into his driveway behind the Impala and called 9-1-1. Bryant told the 9-1-1 dispatcher the Impala had temporary tags and gave the dispatcher the specific tag number. Bryant remained in his car and observed one person close to the front door of his house. Bryant testified he got a "clear look" at that individual. Shortly after, a second person came from around the backside of the house. Bryant did not get a good look at the second person because it was dark and the person was wearing all black. The first person exited the front door, and both individuals went to the Impala. The first person who Bryant saw entered the passenger's side of the Impala, and the second person got in the driver's side. The Impala pulled through Bryant's yard, and Bryant followed the vehicle for a couple of miles. At the direction of the dispatcher, Bryant returned to his home.

¶ 7 When he got back to his home, Bryant observed the television was still sitting on his driveway and the front door to the house was open. Bryant brought the television back into his home before the police arrived. After he entered his home, Bryant observed one of the windowpanes from his kitchen window had been removed, the curtains for that window were on the floor, and the window's blinds were clearly damaged. The kitchen window faced the home's backyard, and the window screen for the right side of the windowpane was on the ground near the window. Bryant popped the windowpane back in place before the police arrived. In addition to the kitchen window, Bryant also noticed a second television was moved and left near the front door. Bryant testified he did not give anyone permission to enter his home that evening and his house was not in that condition when he left for work. Bryant noted the television he had

observed on the driveway had been in the living room and the other television had been in the bedroom. Additionally, Bryant testified the same two televisions had been taken from his home on October 23 or 24, 2020, and discovered nearby on October 25, 2020. The two televisions had been returned to Bryant.

¶ 8 The police arrived at Bryant's home and drove him to a nearby location. At that time, it had been about 15 minutes since Bryant had returned to his house. At the location, Bryant observed the same Impala that had been in his driveway and two men standing with the police. Bryant testified he did not recognize the first person the police presented but did recognize the first person's clothing. Bryant further testified the first person was trying to distort his face, making different faces, and sticking his tongue out during the police showup. Bryant did recognize and positively identify the second person presented by the police. Bryant noted his very bright pajama pants. Bryant stated the second person was the man Bryant observed exiting his house and getting into the passenger side of the Impala. He further explained he never got a clear look at the face of the Impala's driver but did get a clear look at the passenger's face when the man was at Bryant's home.

¶ 9 Sergeant Butcher testified he was on patrol around 1:30 a.m. on November 1, 2020, and received a dispatch about a black Impala with temporary tags. He drove in the direction the Impala was last seen and observed the vehicle coming towards him. Sergeant Butcher got behind the Impala, verified the temporary tag was the one stated by the dispatcher, and stopped the Impala. After stopping the Impala, Sergeant Butcher checked the registration and learned the Impala was registered to defendant. While wearing a body camera, Sergeant Butcher approached the Impala on the passenger's side. The video from the body camera was admitted into evidence and portions of it played at the trial. Sergeant Butcher testified defendant

was identified as the person in the driver's seat of the Impala, and the passenger was identified as James Porter. He further identified defendant in the courtroom as being the person driving the Impala.

¶ 10 Sergeant Butcher further testified another officer brought the victim to the stop. While the victim was observing the stopped individuals, defendant made strange faces towards the vehicle in which the victim was seated. Sergeant Butcher explained defendant stuck his tongue out and rolled his eyes. The victim's viewing of defendant and his codefendant was also captured on Sergeant Butcher's body camera and played at trial. After the victim viewed both men, the police took both men into custody.

¶ 11 Officer Shelton testified Sergeant Butcher conducted the traffic stop of the Impala and he assisted Sergeant Butcher by making contact with the driver. Officer Shelton made an in-court identification of defendant as the driver of the stopped Impala. When Officer Shelton asked defendant where he was coming from, defendant responded he was just driving around in the area. After that, defendant did not want to speak with him. Officer Shelton further testified another officer searched the Impala and found a crowbar on the back driver's side floorboard. After the showup with the victim, Officer Shelton took defendant to the public safety building.

¶ 12 Officer Sparling's stipulated testimony was regarding the October 2020 break-in at Bryant's home. Around 11:46 a.m. on October 24, 2020, he was dispatched to Bryant's home and several items, including two televisions, were reported missing. Officer Sparling observed the back kitchen window had been pushed in, the back door had been opened with the dead bolt in the locked position, and items and/or containers in almost every room had been rummaged through. The next day at around 1:10 p.m., Officer Sparling was again dispatched to Bryant's home, and he was directed down the alley near the home. In the alley near 605 North Griffin,

Officer Sparling observed several items that matched the description of items missing from Bryant's home. After other officers arrived, Officer Sparling discovered the door to 605 North Griffin was unsecured and, inside that door, were two televisions matching the descriptions of the ones reported missing from Bryant's home. Officer Sparling took photographs of all items that matched the description of items missing from Bryant's home and then returned the items to Bryant. As of November 1, 2020, no one had been identified as the person or persons responsible for the apparent burglary on October 23 or 24, 2020.

¶ 13 After hearing the parties' arguments, the trial court found defendant guilty of both charges. On May 17, 2021, defendant filed *pro se* a motion for ineffective assistance of counsel and later filed another document asserting ineffective assistance of counsel. On June 11, 2021, defense counsel filed a motion for a new trial, asserting, *inter alia*, the State's evidence was insufficient to prove him guilty of the charges beyond a reasonable doubt and defendant had newly discovered evidence, statements by Porter, establishing defendant's innocence. Attached to the motion for a new trial was Porter's (1) March 19, 2021, affidavit; (2) May 14, 2021, affidavit; and (3) June 9, 2021, statements to Investigator Steven Blaine, defendant's attorney, and Porter's attorney. Porter stated defendant had no knowledge of the burglary and did not participate in it. According to Porter, defendant was under the influence the night of the robbery and drove Porter to meet Ronald Pettis to obtain methamphetamine. Defendant stayed in the car while he got drugs from Pettis. Pettis mentioned they could get some televisions, and it was Pettis and Porter who entered the home to get the televisions. They saw some headlights, and Porter ran through the house and dove out an open window in the kitchen. He ran around the house and saw Pettis getting in the car through the rear driver's side door. Porter got in through the passenger's side door and told defendant to drive. They drove away, and Pettis jumped out

of the car before the police stopped it.

¶ 14 On June 24, 2021, the trial court held a joint hearing at which it conducted a *Krankel* inquiry and addressed defendant's posttrial motion. The court found no basis for ineffective assistance of counsel and denied defendant's motion for a new trial. The court found Porter's statements were not sufficient to in any way change the outcome of the trial.

¶ 15 After a July 1, 2021, hearing, the court sentenced defendant to six years' imprisonment for burglary but did not sentence him for possession of burglary tools. That same day, defendant filed a motion to reconsider his sentence. On July 2, 2021, the court held another hearing, at which the State moved to dismiss the possession of burglary tools count. The court granted the motion to dismiss and denied defendant's motion to reconsider his sentence.

¶ 16 On July 12, 2021, defendant filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 606 (eff. Mar. 12, 2021). Accordingly, this court has jurisdiction of defendant's appeal under Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013).

¶ 17 II. ANALYSIS

¶ 18 A. Sufficiency of the Evidence

¶ 19 Defendant contends the State's evidence was insufficient to prove beyond a reasonable doubt he committed the offense of burglary. The State asserts its evidence was sufficient to sustain defendant's burglary conviction. Our supreme court has set forth the following standard of review for insufficiency of the evidence claims:

> "When considering a challenge to the sufficiency of the evidence, a reviewing court must determine whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the required elements beyond a reasonable doubt. [Citation.] [I]t is not the function of this

court to retry the defendant. [Citation.] All reasonable inferences from the evidence must be drawn in favor of the prosecution. [I]n weighing evidence, the trier of fact is not required to disregard inferences which flow normally from the evidence before it, nor need it search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt. [Citation.] We will not reverse the trial court's judgment unless the evidence is so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of the defendant's guilt. [Citation.]" (Internal quotation marks omitted.) *People v. Newton*, 2018 IL 122958, ¶ 24, 120 N.E.3d 948.

¶ 20 A person commits burglary when, without authority, he knowingly enters a building with intent to commit therein a felony or theft. 720 ILCS 5/19-1(a) (West 2020). Defendant contends the evidence did not show he entered Bryant's home. Illinois courts have recognized the State may prove a defendant committed burglary by circumstantial evidence providing " 'the elements of the crime have been proven beyond a reasonable doubt.' " *People v. Smith*, 2014 IL App (1st) 123094, ¶ 13, 13 N.E.3d 102 (quoting *People v. McGee*, 373 Ill. App. 3d 824, 832, 869 N.E.2d 883, 891 (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." (Internal quotation marks omitted.) *Smith*, 2014 IL App (1st) 123094, ¶ 13. The trier of fact, who has the responsibility to draw reasonable inferences, may infer from the facts both the fact and manner of entry, as well as the requisite intent. *Smith*, 2014 IL App (1st) 123094, ¶ 13. "In determining whether an inference is reasonable, the trier of fact need not look for all possible explanations consistent with innocence or be satisfied beyond a reasonable doubt as to each link in the chain of circumstances."

(Internal quotation marks omitted.) *Smith*, 2014 IL App (1st) 123094, ¶ 13. Rather, it is sufficient if all the evidence, taken as a whole, satisfies the trier of fact the defendant is guilty beyond a reasonable doubt. *Smith*, 2014 IL App (1st) 123094, ¶ 13. We recognize suspicious conduct or probabilities are not a substitute for proof, and a defendant's mere presence at the scene of the crime is not itself sufficient to sustain a conviction. *People v. Jakes*, 207 Ill. App. 3d 762, 770, 566 N.E.2d 422, 428 (1990).

¶ 21 The State's evidence showed defendant was dressed in all black and seen walking from the backside of Bryant's home where part of the kitchen window and its screen had been removed. Given the damage to the window coverings and the removal of the window screen, it is a reasonable inference the kitchen window is where entry was gained into Bryant's home. The television in Bryant's living room was moved to the driveway and the television in the bedroom was moved to near the front door. Photographs of the two televisions indicate they were flat screen televisions of a medium size. The time frame for moving the two televisions was fairly short, as Bryant continued to drive around in the area after observing the Impala pull into his driveway. It is a reasonable inference from the aforementioned facts two people were involved in moving the televisions within Bryant's home. We find the aforementioned evidence was sufficient for the trial court to find defendant entered Bryant's home beyond a reasonable doubt.

¶ 22 B. Motion for a New Trial

¶ 23 Defendant also contends the trial court erred by denying his motion for a new trial based on newly discovered evidence. The State disagrees.

¶ 24 Courts do not look favorably upon motions for a new trial on grounds of newly discovered evidence, and thus, such motions are subject to the closest scrutiny. *People v. Williams*, 2020 IL App (1st) 172118, ¶ 33, 155 N.E.3d 553. This court will not disturb the denial

of a motion for a new trial based on newly discovered evidence absent an abuse of discretion. *Williams*, 2020 IL App (1st) 172118, ¶ 33. Moreover, a trial court may dispose of a motion for a new trial based upon newly discovered evidence without holding a full evidentiary hearing where the trial court's decision is not an abuse of discretion. *Williams*, 2020 IL App (1st) 172118, ¶ 33. "An abuse of discretion occurs when a trial court's decision is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the court." *Williams*, 2020 IL App (1st) 172118, ¶ 33.

¶ 25 To warrant a new trial based on newly discovered evidence, the evidence must be the following: (1) of such conclusive character that it would likely change the result on retrial; (2) material to the issue and not merely cumulative; and (3) discovered since the trial and be of such character that it could not have been discovered sooner through the exercise of due diligence. *People v. Smith*, 177 Ill. 2d 53, 82, 685 N.E.2d 880, 892 (1997). In support of his argument, defendant cites *People v. Molstad*, 101 Ill. 2d 128, 137, 461 N.E.2d 398, 403 (1984), where the Illinois Supreme Court found the defendant was entitled to a new hearing based on affidavits from his codefendants, which were obtained after trial. There, at a joint trial, the defendant and his codefendants were found guilty of several offenses. *Molstad*, 101 Ill. 2d at 130, 461 N.E.2d at 400. The trial judge denied the defendant's posttrial motion for a new trial to introduce the exculpatory testimony of five codefendants. *Molstad*, 101 Ill. 2d at 131, 461 N.E.2d at 400. Defendant appealed, challenging the sufficiency of the State's evidence and the trial court's denial of his posttrial motion, but his codefendants did not appeal their convictions. *Molstad*, 101 Ill. 2d at 130-31, 133-34, 461 N.E.2d at 400-01.

¶ 26 As to the defendant's posttrial motion in *Molstad*, the supreme court first addressed whether the codefendants' affidavits were newly discovered evidence. *Molstad*, 101

Ill. 2d at 134, 461 N.E.2d at 402. The court rejected the State's argument the evidence was not newly discovered because the defendant knew about the evidence before trial because the affidavits were not prepared until after the guilty verdict and before the sentencing hearing. *Molstad*, 101 Ill. 2d at 134, 461 N.E.2d at 402. It further noted the codefendants did not present their testimony concerning the defendant's whereabouts at trial because such testimony would have incriminated them. *Molstad*, 101 Ill. 2d at 134-35, 461 N.E.2d at 402. Regarding due diligence, the supreme court concluded the affidavits could not have been discovered with the exercise of due diligence because "no amount of diligence could have forced the codefendants to violate their fifth amendment right to avoid self-incrimination (U.S. Const., amend. V (fifth amendment right to avoid self-incrimination made applicable to the States by the fourteenth amendment)) if the codefendants did not choose to do so." *Molstad*, 101 Ill. 2d at 135, 461 N.E.2d at 402. Lastly, the supreme court found the defendant established the newly discovered evidence would have been likely to produce a different result in the trial. *Molstad*, 101 Ill. 2d at 135-36, 461 N.E.2d at 402. It found it difficult to see how the admission of the five affidavits would not produce new questions for the trier of fact where the codefendants' testimony went to the ultimate issue in the case. *Molstad*, 101 Ill. 2d at 135, 461 N.E.2d at 402.

¶ 27 Unlike in *Molstad*, Porter made a signed written statement in March 2021, around two months *before* defendant's trial. Moreover, Porter was not tried with defendant, and no evidence has been presented Porter's fifth amendment right against self-incrimination is no longer an issue. In his affidavits and statement, Porter does not affirmatively state he would be willing to waive his fifth amendment right. Additionally, Porter's affidavits and statement do not contain any language Porter would actually testify to the facts alleged in the affidavits and statement. For an affidavit to merit consideration as newly discovered evidence, it must identify

" 'with reasonable certainty the source, character, and *availability* of the alleged evidence.' " (Emphasis added.) *People v. Jones*, 399 Ill. App. 3d 341, 366, 927 N.E.2d 710, 730-31 (2010) (quoting *People v. Johnson*, 183 Ill. 2d 176, 190, 700 N.E.2d 996, 1003 (1998)). As such, defendant failed to provide newly discovered evidence, and the trial court properly denied his motion for a new trial.

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we affirm the Vermilion County circuit court's judgment.

¶ 30 Affirmed.