

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 13973
)	
TYRONE RUDOLPH,)	Honorable
)	Neera Lall Walsh,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE LAMPKIN delivered the judgment of the court.
Justices Garcia and Robert E. Gordon concurred in the judgment.

ORDER

¶ 1 *Held:* Where defendant was found in vacant renovated building from which copper pipes had been removed from walls, circumstantial evidence existed of his intent to commit burglary, and evidence as a whole was sufficient to establish defendant's guilt; the judgment of the trial court was affirmed.

¶ 2 Following a bench trial, defendant Tyrone Rudolph was convicted of burglary and was sentenced to seven years in prison. On appeal, defendant contends his conviction should be reduced to trespass because the State failed to prove that he intended to commit a felony or theft when he entered the vacant house. We affirm.

¶ 3 Brian Bodie, a construction manager for Om Management, testified that on July 21, 2010, he visited a two-unit residence at 5233 South Wood Street in Chicago that his company

renovated. After receiving phone calls from police and a neighbor to the property, Bodie returned to the building on July 26 to find the structure's interior walls had been opened and all of the copper pipes were missing.

¶ 4 Chicago police officer Chris Hackett testified that at 5:30 a.m. on July 24, he responded to a call of a trespass in progress at the above location. When Hackett arrived, he and a sergeant went to the rear of the building and observed pieces of copper piping wrapped in a white T-shirt just outside the back door. The officers entered the kitchen of the residence and noted the "walls were busted up" and there was copper piping on the floor and counters.

¶ 5 Hackett testified that upon searching the residence, they encountered defendant standing in a first floor bedroom "right off the kitchen." A hammer was on the floor of the bedroom two or three feet away from defendant. A search of the residence revealed damage to both of the building's units, with sinks, countertops and drywall removed. A basement window also was damaged.

¶ 6 Hackett testified he could not ascertain when the damage to the building occurred and said he did not see defendant holding the hammer. Defendant wore boxer shorts and no shirt or shoes and was "sweaty" when confronted by the officers.

¶ 7 Another Chicago police officer gave testimony regarding the condition of the building's interior consistent with that of Hackett. More than 40 photographs of the damage were entered into evidence.

¶ 8 Defendant testified that during July 2010, he was homeless and had been staying at different places. Defendant said he went inside the building in question because he "needed somewhere to lay my head at night" and that he had stayed in the building as often as twice in one week. He used a knife to pry the basement window open. Defendant said he had been drinking and smoking marijuana that night and had been playing cards around the corner from

the building. He invited his friend Mario to stay with him in the building, where defendant arrived at about midnight. Defendant said he was upset because Mario had broken the window.

¶ 9 Defendant stated that they both fell asleep in the living room of the lower-level apartment and that while he slept, Mario removed the plumbing and left the building. Defendant was awakened by a knocking noise and noticed his shirt was missing. He removed his shoes because the floor was wet and walked upstairs, where he saw the damaged walls and removed piping. Defendant said his girlfriend lived nearby and police had to take him to her house to get shoes. He said that he sometimes would stay at his sister's house.

¶ 10 At the close of evidence, the trial court found defendant guilty of burglary. The court stated that the extensive damage supported the conclusion that the perpetrator acted with the intent to commit a theft, and the officers testified that defendant was the only person inside the building. The court found that defendant's account was not credible.

¶ 11 On appeal, defendant contends this court should reduce his conviction from burglary to trespass because the State failed to prove his intent to commit a felony or theft beyond a reasonable doubt. He argues the evidence did not demonstrate that he intended to damage the property or that he was the person who did so.

¶ 12 When reviewing a challenge to the sufficiency of the evidence in a criminal case, the relevant inquiry is whether, when 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. *People v. Burney*, 2011 IL App (4th) 100343, ¶24 (noting that standard applies in cases based on direct or circumstantial evidence). At issue is not whether any possible innocent explanation exists, but rather, whether the evidence was sufficient to allow a rational trier of fact to reasonably infer that the defendant intended to commit a theft when he entered the building. *Id.*

¶ 13 A person commits burglary when he knowingly enters a building without authority while intending to commit a felony or theft therein. 720 ILCS 5/19-1(a) (West 2010). Criminal trespass to real property occurs when a person knowingly and without authority enters or remains within a building. 720 ILCS 5/21-3(a)(1) (West 2010). Therefore, those two offenses are differentiated by proof of a defendant's intent to commit a theft.

¶ 14 Intent may be proven through circumstantial evidence; indeed, this court has noted that circumstantial evidence is usually the only way to establish a defendant's intent to commit a theft or other crime. *People v. Rudd*, 2012 IL App (5th) 100528, ¶ 14 (citing *People v. Richardson*, 104 Ill. 2d 8, 13 (1984)). Indeed, this court has held that an inference of an intent to commit theft, so as to sustain a burglary conviction, arises when there is evidence of unlawful breaking and entry into a building where a theft could occur. *People v. Mackins*, 222 Ill. App. 3d 1063, 1067 (1991).

¶ 15 Here, defendant admits his entry and presence in the building could support an inference of his intent to commit theft; however, he contends the relevant circumstances establish he only wanted to spend the night in the building. Defendant offers various explanations for the situation in which he was discovered. He claims he was sweating and clothed only in boxer shorts due to the warm weather and not from physical exertion. He contends the hammer on the floor could have been left by a carpenter, and he asserts he slept in the building because it was near his girlfriend's residence.

¶ 16 Defendant also contends the extensive damage inside the building, as depicted for the trial court in numerous photographs, would have taken many hours and could not have been completed in one night. He points out that no witnesses could specify when the damage occurred and that it could have been completed anytime after Bodie's last visit to the building on July 21.

¶ 17 It was the role as the trial judge, as the trier of fact in this proceeding, to determine the credibility of witnesses and the weight to be given their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from that evidence. See *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). Here, the record establishes that the trial judge expressly found defendant's testimony to lack credibility. Indeed, there are various inconsistencies between defendant's version of events and the facts of this case. In contrast to the scenario that defendant presents on appeal, his trial testimony supports an inference that he could have caused the damage over a period of time. He admitted to entering the building before the night in question. Defendant was not wearing a shirt, and some of the pipes were seen outside the building wrapped in a white T-shirt. While defendant now claims he fell asleep in the bedroom, he testified at trial that he and Mario fell asleep in the living room.

¶ 18 Although defendant posits he could not have caused the damage if it occurred before the night in question, he admitted at trial that he had entered the building through the window prior to that night. Defendant's position also conflicts with his trial testimony that Mario performed the entire demolition after he had fallen asleep, which according to defendant was after midnight, and that Mario completed the entire job without disturbing his slumber. Considering the evidence presented at trial in the light most favorable to the State, this court lacks any basis to disturb the trial court's ruling.

¶ 19 Accordingly, the judgment of the trial court is affirmed.

¶ 20 Affirmed.