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2012 IL App (4th) 100838-U

Filed 6/15/12

NO. 4-10-0838

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: JORDAN G., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	McLean County
v.	)	No. 10JD94
JORDAN G.,	)	
Respondent-Appellant.	)	Honorable
	)	Elizabeth A. Robb,
	)	Judge Presiding.

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JUSTICE COOK delivered the judgment of the court.

Presiding Justice Turner and Justice Knecht concurred in the judgment.

### ORDER

¶ 1 *Held:* The State proved respondent guilty of burglary beyond a reasonable doubt.

¶ 2 Following a bench trial, the trial court found respondent, Jordan G., born September 11, 1994, guilty of burglary (720 ILCS 5/19-1(a) (West 2010)), a Class 2 felony. The court sentenced respondent to the Illinois Department of Juvenile Justice for an indeterminate period not to exceed respondent's twenty-first birthday. Respondent appeals, arguing the State did not prove him guilty beyond a reasonable doubt. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On August 24, 2010, the State filed a petition for adjudication of wardship alleging that respondent committed burglary (720 ILCS 5/19-1(a) (West 2010)), a Class 2 felony. On September 13, 2010, the trial court conducted a bench trial.

¶ 5 At trial, Halie Umstattd, age 17, testified that on August 18, 2010, she parked her unlocked Grand Am in her driveway at 501 Cedar Street in LeRoy, Illinois. On the morning of August 19, 2010, Halie went to her car and found her center console was open and several items were missing from her car. Halie informed her mother and her mother called the police. When the police arrived, Halie told police she was missing a gold coin, silver coin, money from her purse, and a sheet of festival tickets for the LeRoy Fall Festival. She later informed the police she was also missing a gold necklace with diamonds she normally keeps in the cupholder of her car. After these items went missing, Halie ran into Jake Wahls while walking with her boyfriend. Jake told Haile that he had her missing coins.

¶ 6 Jake Wahls, age 20, testified he heard about a burglary to Halie's car and was aware that two coins were taken from the car. Jake explained respondent had given him the coins, but respondent did not tell Jake why he was giving Jake the coins. Jake testified respondent told him that Jonathon S. gave respondent the coins. When respondent gave the coins to Jake, Jake "didn't think anything of it at the time, and so [he] just took them." On August 22, 2010, Jake took the coins to the police station "[t]o turn in the stolen items that [he] had that [he] found out were stolen." Jake explained he was on probation for retail theft at that time and was worried about having stolen property in his possession.

¶ 7 Jonathon S., age 15, testified he lives with his grandparents across the street from Halie Umstattd. On August 18, 2010, he was with respondent at the fall festival and "hung around" with other friends off and on that evening. Jonathon S. eventually went home to take his medications and returned to the fall festival to see if the rides were still operating. Jonathon S. then called his grandmother and told her he was staying the night at respondent's house. Jonathon S. had a girl he

had met the day before call his grandmother and pretend to be respondent's mother, to tell Jonathon S.' grandmother Jonathon S. could stay at respondent's house. Jonathon S. testified respondent knew that he was coming over.

¶ 8 Jonathon S. testified after he arrived at respondent's, respondent snuck out of his bedroom window and he and respondent went walking around town at 12 or 1 a.m. Jonathon S. said he saw respondent get "into some cars and all that, and [he] wanted nothing to do with it." Jonathon S. said he "saw that [respondent] was walking onto somebody's yard and all that and towards the car, and when [he] saw that, [he] knew what he was doing, and [he] just told him not to do it, and [he] wanted nothing to do with it, and he shouldn't do it." He saw respondent get into three cars and he knew one of them to be Halie's car. After returning from Halie's car, respondent showed Jonathon S. the gold and silver coins. Jonathon S. identified these as the coins turned into the police.

¶ 9 Jonathon S. testified he and respondent returned to respondent's house and went into respondent's room through the window. Jonathon S. slept underneath respondent's bed and respondent covered the crack under his bed with a sheet so no one could see under the bed. The following morning Jonathon S. left respondent's house around 8 a.m., leaving through respondent's window.

¶ 10 Respondent testified he "hung out" with Jonathon S. on August 18, 2010, but he left the fall festival at 7 p.m. with his parents. Respondent spent the rest of the evening at home, in and out of his room. Respondent testified his parents locked him in his room at 10 or 11 p.m. and he did not sneak out of his room through his window that evening. Respondent did not see Jonathon S. after leaving the festival that evening. Jonathon S. did not sleep over at respondent's house. Respondent indicated Jonathon S. could not have slept under his bed because it was a mess and full

of "old random toys." Respondent did not see Jonathon S. until the following morning when Jonathon S.' grandmother had come by respondent's house.

¶ 11 Respondent testified he had possession of the gold and silver coins at one point, but that Jonathon S. had given them to him. Respondent was under the impression that Jonathon S. had received the coins from his mother. Respondent testified Jonathon S. offered respondent the coins as payment for gasoline because Jonathon S. often rode respondent's dirt bike. Respondent gave the coins to Jake Wahls because he "had owed him money from a while back." Respondent estimated he had snuck out of his room without his parents knowing it six or seven times.

¶ 12 Respondent's father, Richard G., testified he locked respondent in his room. He stated it was impossible for respondent to sneak out of his bedroom window because it was screwed shut with a screw gun. Upon cross-examination, Richard admitted the window was only screwed shut from the inside and identified one of the screws as a Phillips screw, which could be taken out with a Phillips screwdriver. He also testified respondent had a shelf and terrarium in front of his window. Richard admitted respondent had snuck out of his bedroom on at least four separate occasions in the past and had ripped the screen out during one attempt to sneak out.

¶ 13 Officer Sean Spencer of the LeRoy police testified he was involved in the investigation of the burglary of Halie's car. He interviewed respondent, and respondent told Officer Spencer he was not involved in the burglary. He also told Officer Spencer he was locked in his room on the evening of the incident. Respondent told Officer Spencer that Jonathon S. gave him the gold and silver coins. Officer Spencer then reinterviewed Jonathon S. with respondent in the room, and Jonathon S. recited the same version of events as described in his testimony.

¶ 14 Officer Nathan Wilkins of the LeRoy police department also participated in the

investigation. He testified respondent's parents told him it was impossible for respondent to commit the crime because respondent came home at 7 p.m. that evening and his windows were screwed shut from the inside and outside. Officer Wilkins viewed the outside of respondent's window while at respondent's home and found the window was not screwed shut from the outside. He "couldn't see whether there were screws on the inside." He testified the screen on the window was worn and "easy accessible to where you can just basically remove the screen and take it off." Officer Wilkins also stated the window was low to the ground and "easily accessible inside or outside to get in it and climb in or out."

¶ 15 At the conclusion of the hearing, the trial court found "that the State's witnesses were credible" and respondent's "story just doesn't hold up." The court found respondent guilty of burglary, adjudicated respondent a ward of the court, and sentenced respondent to an indeterminate period in the Illinois Department of Juvenile Justice, not to exceed respondent's twenty-first birthday.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, defendant argues the State did not prove respondent guilty of burglary beyond a reasonable doubt. Specifically, defendant argues (1) the State's case rested on the self-serving testimony of another involved minor (Jonathon S.), (2) respondent presented a solid alibi defense, and (3) the trial court failed to evaluate posttrial evidence that Jonathon S. committed the burglary. We address each argument in turn.

¶ 19 A. Standard of Review

¶ 20 When reviewing a conviction based upon the sufficiency of the evidence, the relevant

question 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." *People v. Smith*, 185 Ill. 2d 532, 541, 708 N.E.2d 365, 369 (1999). Weighing the credibility of witnesses is within the province of the trier of fact, and "[t]he testimony of a single witness, if it is positive and the witness credible, is sufficient to convict." *Smith*, 185 Ill. 2d at 541, 708 N.E.2d at 369. We will not substitute our judgment for that of the trier of fact. *People v. Owens*, 386 Ill. App. 3d 765, 770, 899 N.E.2d 625, 630 (2008). A reversal is warranted only when the evidence is so improbable or unsatisfactory that it leaves doubt as to defendant's guilt. *People v. Ehlert*, 211 Ill. 2d 192, 202, 811 N.E.2d 620, 625 (2004).

¶ 21 B. Jonathon S.' Testimony

¶ 22 Respondent argues Jonathon S. was not a credible witness because he was an accomplice to the burglary. At trial, Jonathon S. testified he was "pretty much being a lookout for cops if any of them came" while respondent burglarized the cars. Defendant argues accomplice testimony is fraught with serious weakness and should be accepted only with utmost caution and suspicion. While it is true that accomplice testimony should be "cautiously scrutinized on appeal," the concern is that the testimony of an accomplice will not have an "absolute conviction of truth" because an accomplice is often seeking a lesser or reduced charge or sentence in exchange for such testimony. See *People v. Ash*, 102 Ill. 2d 485, 493, 468 N.E.2d 1153, 1156 (1984). Jonathon S. was not charged as an accomplice, and thus, was not in the position of needing to offer testimony in exchange for a reduced charge or sentence. Thus, the concerns of accomplice liability testimony were not present in this case.

¶ 23 Moreover, even if Jonathon S. were an accomplice, accomplice testimony "may be

sufficient, even in the absence of corroboration, to sustain a conviction." *People Jimerson*, 127 Ill. 2d 12, 44, 535 N.E.2d 889, 903 (1989). Here, the trial court found Jonathon S.' testimony was credible when it found "that the State's witnesses were credible." We defer to this credibility determination and conclude Jonathon's testimony was sufficient to convict respondent.

¶ 24 Respondent also argues Jonathon was not a credible witness because he admitted to creating an elaborate lie to convince his grandmother he had permission from respondent's mother to stay the night at respondent's house. Again, the trial court found Jonathon to be a credible witness despite his admission he lied to his grandmother. "The trier of fact is best equipped to judge the credibility of the witnesses, and due consideration must be given to the fact that it was the trial court \*\*\* that saw and heard the witnesses." *People v. Wheeler*, 226 Ill. 2d 92, 114-15, 871 N.E.2d 728, 740 (2007). This credibility determination is entitled to great weight. *Wheeler*, 226 Ill. 2d at 115, 871 N.E.2d at 740. We have reviewed the record and conclude the State's witnesses were not so lacking in credibility that it leaves us with doubt as to defendant's guilt.

¶ 25 C. Respondent's Alibi

¶ 26 Respondent next argues he presented a credible alibi defense, which the State did not disprove. Respondent's father testified respondent could not have committed the burglary because respondent was locked in his bedroom and his windows were screwed shut. Officer Wilkins testified, however, the window was not screwed shut from the outside and he "couldn't see whether there were screws on the inside." He testified the screen on the window was worn and "easy accessible to where you can just basically remove the screen and take it off." Officer Wilkins also stated the window was low to the ground and "easily accessible inside or outside to get in it and climb in or out."

¶ 27 Moreover, respondent's father testified respondent had snuck out on at least four separate occasions in the past. He also admitted that although a shelving unit and a terrarium stood in front of respondent's window, respondent was able to move such items. This is consistent with Jonathon S.' testimony that respondent moved these items on the night of the burglary when respondent crawled through his bedroom window. Further, respondent estimated at trial he had previously snuck out of his room six or seven times.

¶ 28 The trial court determines the credibility of the alibi witnesses and the weight to be given to the totality of the testimony (*People v. Brown*, 52 Ill. 2d 94, 105-06, 285 N.E.2d 1, 8 (1972)) and is not required to believe alibi testimony (*People v. Setzke*, 22 Ill. 2d 582, 586, 177 N.E.2d 168, 170 (1961)). We have read the testimony of the alibi witness and the State's witnesses and do not conclude the trial court's consideration thereof was so unreasonable as to raise doubt as to defendant's guilt.

¶ 29 D. Posttrial Evidence

¶ 30 Respondent also argues defense counsel submitted a letter, written by respondent's classmate, to the trial court at sentencing which implicated Jonathon S. as the person who committed the burglaries on August 18, 2010. Respondent contends the trial court failed to consider this posttrial evidence and asks us to remand the case for a hearing on the evidence of Jonathon S.' perjured testimony.

¶ 31 At the sentencing hearing, the State objected to admitting the letter into evidence because it did not pertain to mitigation. Defense counsel asked the court to consider the letter because juveniles do not have the right to file postconviction petitions. The record does not reflect whether the court took this information into consideration as the court's only response was "[o]kay."

¶ 32 During a sentencing hearing, the trial court's responsibility is to " 'determine the type and extent of punishment *after the issue of guilt has been determined.*' " (Emphasis added.) *People v. Adkins*, 41 Ill. 2d 297, 300, 242 N.E.2d 258, 260 (1968) (quoting *Williams v. New York*, 337 U.S. 241, 246-47 (1949)). When committing a minor to the Department of Juvenile Justice, the court is directed to consider various factors, which are essentially the equivalent of mitigating and aggravating factors considered at an adult sentencing hearing. Compare 705 ILCS 405/5-750 (West 2010), with 730 ILCS 5/5-5-3.1, 3.2 (West 2010). As we conclude the letter at issue strictly concerns the guilt or innocence of respondent and does not pertain to mitigation or aggravation, the court was not required to consider the letter when it sentenced respondent.

¶ 33 Respondent requests, in the alternative, this court conclude juveniles are entitled to file postconviction petitions where constitutional deprivations have occurred. Our appellate courts have already settled this issue, concluding the Post-Conviction Hearing Act does not apply to juveniles. See *In re A.W.H.*, 95 Ill. App. 3d 1106, 1107, 420 N.E.2d 1041, 1043 (1981); *In re R.R.*, 75 Ill. App. 3d 494, 497, 394 N.E.2d 75, 77 (1979). We conclude these courts reached the correct result and deny respondent's request.

¶ 34 III. CONCLUSION

¶ 35 For the foregoing reasons, we affirm the trial court's judgment.

¶ 36 Affirmed.