

NOTICE  
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2012 IL App (4th) 110652-U  
NO. 4-11-0652  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

FILED  
December 14, 2012  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
CLIFFORD A. BAUGH,	)	No. 11CF53
Defendant-Appellant.	)	
	)	Honorable
	)	Peter C. Cavanagh,
	)	Judge Presiding.

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JUSTICE APPLETON delivered the judgment of the court.  
Justices Knecht and Turner concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) The evidence presented at defendant's jury trial was sufficient to convict him of burglary.

(2) Defendant's sentence of 20 years imprisonment on his conviction of residential burglary was not excessive in light of defendant's extensive criminal history and the fact he committed the offense while on mandatory supervised release.

¶ 2 After a jury trial, defendant, Clifford A. Baugh, was convicted of burglary. The trial court sentenced him to 20 years in prison. Defendant appeals, claiming the State failed to sufficiently prove it was defendant who had entered the victim's home. He also claims his sentence was excessive as disproportionate to the nature of the offense. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In January 2011, the State charged defendant with one count of residential burglary (720 ILCS 5/19-3(a) (West 2010)) for entering Delores Englemann's house and stealing her purse.

The 81-year-old victim testified at trial that at 9:45 a.m. on January 25, 2011, she heard her front door open and heard someone yell. Englemann told the intruder he was in the wrong house but "he dashed right for the kitchen like he knew where [her] purse was and grabbed it and out the front door." Englemann was in her bathroom with the door open, so she saw only that the intruder, a white male, was wearing dark clothing. Otherwise, she "did not get a good look at him." She saw the intruder ride away on a bicycle with her purse over his shoulder. She called the police.

¶ 5 Englemann further testified that the day prior to the burglary, on January 24, 2011, Mike Selby, a man that was to shovel snow for her, came inside her home while she was paying him for his services and allegedly took her wallet from her purse. Because he was the only person inside her home, Englemann reported him to the police. She replaced her wallet with another and put it in her purse on the kitchen table. Because of the incident the day before with Selby, Englemann assumed it was Selby that stole her purse the following day. However, when police brought the man caught with the purse to Englemann, she saw it was not Selby.

¶ 6 Michael Vogel, a Springfield police officer, testified he was dispatched to Englemann's house in response to the burglary on January 25, 2011. While en route, Vogel heard other officers say they saw a suspect matching the description of a white male with a dark-colored coat on a bicycle in the area. Vogel proceeded to Englemann's house and spoke with her. One officer soon arrived at the house with the purse and its contents. Englemann was given the opportunity to identify the suspect, defendant, but she was unable to do so because she "only had a glancing view of the suspect." Vogel found a fresh bicycle tire track and a fresh boot impression in the snow "[u]p very close to the house." The boots defendant was wearing "appear[ed] to be of the same type of boot" as the impression in the snow. According to Vogel, who admittedly was not an

expert in footprint analysis, the tread wear patterns matched.

¶ 7 Springfield police officer Steve Termine testified he heard the dispatch of a burglary in progress. The reported suspect was a white male wearing a black jacket on a bicycle with a stolen purse. Detectives had spotted a suspect approximately one mile from Englemann's house. Termine, a K-9 officer, proceeded to the area and saw the suspect, who appeared to be "actively fleeing" from the officers' vehicles. The officers were eventually able to block his path. Termine exited his car and ordered the suspect to get off his bicycle and on the ground. He refused, remaining on his bicycle. Termine grabbed the suspect's jacket and took him to the ground. The suspect had Englemann's purse in his possession (in a white grocery bag that had fallen from the handlebars). In court, Termine identified defendant as the suspect.

¶ 8 Scott Kincaid, a detective with the Springfield Police Department, testified he and Detective Ryan Sims were in the same unmarked vehicle in the area of the burglary at the time they heard the dispatch. Approximately six minutes later, they spotted the suspect and told him to stop, which he refused to do. Kincaid also identified defendant as the suspect they apprehended.

¶ 9 Elva Thompson, 76, Englemann's neighbor, testified she lives two houses away from her. At approximately 9:30 a.m. on the date of the burglary, Thompson looked out her window and saw a man sitting on a bicycle across the street. He was wearing a dark hooded sweatshirt. He sat on his bicycle for five to ten minutes and then rode past her house, rode through the alley, then rode up Englemann's driveway. She lost sight of him after he got off the bicycle near Englemann's house. She saw him come out of the house, get back onto the bicycle, and ride away. When the police brought defendant to Englemann's house, Thompson asked them to put defendant's hood up. She then told police "[i]t looked like the same person [she] had seen earlier." This identification was

based only on his clothing, as she had not seen his face.

¶ 10 Springfield police officer Tara Unland testified she also responded to the dispatch. She proceeded to the area where Kincaid and Sims had detained the subject with her lights and siren activated. She too identified defendant as the suspect. She took defendant's bicycle to his address, located approximately 13 blocks from Englemann's house. She then took defendant to Englemann's house for an identification. After Unland put defendant's hood up, from a distance of approximately 40 feet, Thompson "indicated immediately that that was the person she had seen."

¶ 11 The State rested. Defendant moved for a directed verdict, which the trial court denied, finding the State had presented a *prima facie* case. Defendant presented no evidence. After considering the evidence and the jury instructions, the jury found defendant guilty of residential burglary.

¶ 12 Defendant filed a motion for a new trial, claiming the trial court erred in denying defendant's (1) motion *in limine* seeking to exclude impeachment evidence and (2) motion for a directed verdict. In July 2011, the court denied defendant's motion and proceeded to sentencing. The court noted it would sentence defendant as a Class X offender pursuant to section 5-4.5-95(b) of the Unified Code of Corrections (730 ILCS 5/5-4.5-95(b) (West 2010)) based on defendant's criminal history. The court sentenced defendant to 20 years in prison. Defendant filed a motion to reconsider, which the court denied. This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 A. Sufficiency Of The Evidence

¶ 15 Defendant claims the evidence presented at trial was insufficient to prove him guilty of burglary. Englemann had testified she saw a man leaving her house with her purse, but she could

not identify defendant as that person. Defendant was caught in possession of the purse but, he claims, he could have gained possession after the purse was discarded by the person who burglarized Englemann's house. He contends the State failed to prove beyond a reasonable doubt that he was the man Englemann saw inside her house.

¶ 16 A person commits residential burglary when he "knowingly and without authority enters or knowingly and without authority remains within 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 2010). Defendant claims the State's evidence places doubt on the first element—that he entered the dwelling place of another.

¶ 17 In determining whether the evidence presented at trial was sufficient to convict, this court must view the evidence in the light most favorable to the prosecution and decide whether any rational trier of fact could have found the essential elements proven beyond a reasonable doubt. *People v. Pollock*, 202 Ill. 2d 189, 217 (2002). This standard of review applies when reviewing the sufficiency of evidence in all criminal cases, including cases based on direct or circumstantial evidence. *Pollock*, 202 Ill. 2d at 217. "Circumstantial evidence alone is sufficient to sustain a conviction where it satisfies proof beyond a reasonable doubt of the elements of the crime charged." *Pollock*, 202 Ill. 2d at 217. The trier of fact has the responsibility to resolve conflicts in witnesses' testimony, determine whether witnesses are credible, and draw reasonable inferences from all the evidence presented. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A court of review will not overturn the verdict of the fact finder "unless the evidence is so unreasonable, improbable[,] or unsatisfactory that it raises a reasonable doubt of defendant's guilt." *People v. Evans*, 209 Ill. 2d 194, 209 (2004).

¶ 18 In this case, the evidence was sufficient to prove defendant was the one who entered Englemann's house and stole her purse. The undisputed testimony at trial established that Thompson saw a white male, wearing a dark hooded sweatshirt, on a bicycle in her neighborhood. She saw this man ride to Englemann's house and then, moments later, ride away. Englemann saw the man ride away with her purse. Within a few minutes, police officers spotted a man wearing a dark colored sweatshirt on a bicycle in the area. The suspect, identified as defendant, was in possession of the purse and was wearing boots that, according to the lay testimony of Officer Vogel, matched the prints left in the snow at Englemann's house.

¶ 19 Defendant claims that, because neither Englemann nor Thompson were able to positively identify defendant as the man that entered Englemann's home, it is reasonable to assume that defendant came into possession of the purse only after the real suspect dropped it after riding away from Englemann's house. This scenario would require the jury to believe that, within a few minutes of the burglary, the real suspect, the man Englemann and Thompson saw on a bicycle with the purse, dropped or otherwise discarded it, and defendant, wearing a similar dark colored hooded sweatshirt and similar boots, also on a bicycle, picked up the purse, and was caught with it in his possession. This scenario is unlikely and would require the jury to stretch the evidence to fit into defendant's proposed version of the facts presented. See *People v. Wharton*, 334 Ill. App. 3d 1066, 1078 (2002) (the court must "assume that the jury did not reach its verdict through 'mental gymnastics'") (quoting *People v. Borchers*, 67 Ill. 2d 578, 589 (1977)), (quoting *Johnson v. Estelle*, 506 F.2d 347, 352 (5th Cir. 1975)).

¶ 20 Rather, viewing the evidence in the light most favorable to the State, which we are required to do, we find the evidence in this case was not so unreasonable, improbable, or

unsatisfactory that it created a reasonable doubt of defendant's guilt. See *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007). In other words, we hold the evidence presented was sufficient to find defendant guilty of residential burglary. It was not unreasonable for the jury to find that the circumstantial evidence presented sufficiently proved defendant, who was apprehended on a bicycle in possession of the purse, was the same person who entered Englemann's house and stole it.

¶ 21 B. Excessive Sentence

¶ 22 Defendant also argues his sentence of 20 years was excessive, an abuse of discretion, and manifestly disproportionate to the nature of the offense. We disagree.

¶ 23 The Illinois Constitution mandates "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. "In determining an appropriate sentence, a defendant's history, character, and rehabilitative potential, along with the seriousness of the offense, the need to protect society, and the need for deterrence and punishment, must be equally weighed." *People v. Hestand*, 362 Ill. App. 3d 272, 281 (2005) (quoting *People v. Hernandez*, 319 Ill. App. 3d 520, 529 (2001)).

"A sentence imposed by a trial judge should not be overturned absent an abuse of discretion. [Citation.] A trial judge's ruling is entitled to great deference, because a trial judge is better able to make a firsthand, reasoned judgment based on the defendant's moral character, credibility, demeanor, social habits, and age. [Citation.] In considering the propriety of a sentence, the reviewing court must not substitute its judgment for that of the trial court merely because

it would have weighed the relevant factors differently. [Citation.] A sentence within the statutory limits will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. [Citation.]" *People v. Crenshaw*, 2011 IL App (4th) 090908, ¶ 22.

¶ 24 Before sentencing defendant, the trial court considered (1) the testimony and arguments at trial, (2) the presentence investigation report, (3) the victim impact statement, (4) recommendations of counsel, (5) the statutory factors in aggravation and mitigation, and (6) defendant's criminal history. The court noted defendant's criminal history included "somewhere in the neighborhood of 16 felony convictions over his lifetime." Based on his criminal history, defendant was Class-X eligible (730 ILCS 5/5-4.5-95(b) (West 2010)), subject to a permissible range of punishment between 6 and 30 years in prison. See 730 ILCS 5/5-4.5-25(a) (West 2010). The court further noted defendant "committed this offense while on parole for another felony, two felonies, and [he] victimized a sacred segment of our community[.]" After considering all relevant information, the court sentenced defendant to 20 years in prison.

¶ 25 We cannot say the trial court abused its discretion in sentencing defendant. His extensive criminal history and the fact he committed this crime after having recently been released from prison justifies the sentence imposed. Indeed, a sentencing court may properly consider defendant's criminal history as a factor in aggravation. 730 ILCS 5/5-5-3.2(a)(3) (West 2010). Defendant's sentence falls within the permissible range of punishment and is supported by the record. Even though defendant caused no harm to the victim and she recovered her property, the presence of these factors does not detract from the seriousness of the offense as defendant apparently cannot

conduct himself within the constraints of the law other than while incarcerated. Given defendant's lengthy criminal record, which included multiple prior residential burglaries, we find no abuse of discretion in the court's sentence of 20 years in prison.

¶ 26

### III. CONCLUSION

¶ 27 For the foregoing reasons, 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.

¶ 28 Affirmed.