

No. 1-12-0334

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 7065
	)	
ALFRED WOOTEN,	)	Honorable
	)	Diane Gordon Cannon,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE EPSTEIN delivered the judgment of the court.  
Presiding Justice Howse and Justice Lavin concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's burglary conviction affirmed over his contentions that the evidence was insufficient, he was denied a fair trial where the trial court failed to consider evidence, and defense counsel provided him ineffective assistance.

¶ 2 Following a bench trial, defendant Alfred Wooten was found guilty of burglary and sentenced, as a Class X offender, to six years' imprisonment. On appeal, defendant contends that the evidence was insufficient to prove that he intended to commit a theft when he entered the victim's garage. He also contends that the trial court erred in failing to consider photographs

showing the garage appeared abandoned. Defendant finally maintains that to the extent that the trial court's failure to consider the photographs was due to defense counsel's objection to their admission into evidence, counsel was ineffective. We affirm.

¶ 3 At trial, Stephan Nowells (nicknamed "Gym Shoe"), a retired police officer, testified that at about 8:25 a.m. on April 21, 2011, he owned and lived at 1525 East Marquette Road in Chicago, which was a three-flat with a four-car garage behind the building. On that date, Nowells exited his garage, leaving the door open, and drove across the street to talk to his neighbor, who was outside. When he exited, Nowells had jumper cables, windshield wiper fluid, antifreeze, license plates, a gas can, and a baseball bat in his garage. As Nowells was talking to his neighbor, he observed defendant, who he did not know, go into his garage, pick up some items, and then walk out about three minutes later with jumper cables, a gas can, and a baseball bat. Nowells left his neighbor's house and stopped defendant by jumping out of his car and grabbing him. Defendant stated, "Gym Shoe, I didn't know that it was your garage." Nowells held defendant and called 911. The police responded to the scene and arrested defendant.

¶ 4 During Nowell's testimony, the State produced six photographs. The photographs showed Nowell's garage with his car inside, some of the items inside of his garage, including jumper cables and windshield wiper fluid, and the alley and vacant lot near Nowell's garage. On the photographs, Nowells indicated how defendant approached the garage and where he stopped defendant. Nowells testified that the photographs accurately depicted the scene and items in his garage as they appeared on April 21, 2011.

¶ 5 On cross-examination, Nowells testified that the photos were taken after the incident and did not accurately reflect how the garage looked at the time of the incident because not all of the

items that were in the garage were depicted. The photographs were ultimately admitted into evidence over defense counsel's objection that they did not truly and accurately depict the scene at the date and time in question.

¶ 6 Officer Baader testified that he and his partners responded to the scene where defendant was already handcuffed in the back of a squad car. Defendant told Baader that he took items from the garage because he thought it was abandoned.

¶ 7 Detective Susan Ryan testified that she spoke with defendant at the police station, and he told her that while he was walking down an alley he observed an open garage door. He entered the garage because he believed it was abandoned, and took jumper cables, an aluminum bat, and a gas can. As he was exiting the garage, defendant heard an engine revving, stopped walking, and turned around. Nowells got out of his car, and asked defendant what he was doing in his garage. Defendant told Nowells that he was sorry, he did not know it was Nowells' garage, and that he thought it was abandoned.

¶ 8 Defendant testified that on April 21, 2011, he entered a garage in order to light his crack pipe. Defendant believed the garage was abandoned because he did not see anything inside of it and the door was wide open. As he exited the garage, he noticed a baseball bat and took it with him because he did not believe it belonged to anyone.

¶ 9 Following closing arguments, the court found defendant guilty of burglary. In doing so, the court held that Nowells saw defendant leaving the garage with a bat, jumper cables, and a gas can in broad daylight, and that defendant's testimony was incredible.

¶ 10 At a hearing on defendant's motion for a new trial, the defense again raised objections to the photographs being admitted into evidence on account of their inaccurate depiction of the

scene. In denying the motion, the trial court stated that it based its decision on the credibility of the witnesses, not the photographs.

¶ 11 On appeal, defendant contests the sufficiency of the evidence, contending that the State failed to prove his intent to commit a theft, which is an essential element of burglary. Defendant specifically maintains that he believed the garage he entered was abandoned, and that its contents did not belong to anyone.

¶ 12 Where, as here, defendant challenges the sufficiency of the evidence to sustain his conviction, the question for the reviewing court is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). This standard recognizes the responsibility of the trier of fact to resolve conflicts in testimony, weigh the evidence, and draw reasonable inferences therefrom. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). A reviewing court will not set aside a criminal conviction unless the evidence is so unreasonable or improbable as to raise a reasonable doubt of defendant's guilt. *People v. Hall*, 194 Ill. 2d 305, 330 (2000).

¶ 13 In relevant part, a person commits burglary when, without authority, he knowingly enters or remains within a building with the intent to commit a theft. 720 ILCS 5/19-1(a) (West 2010). A person commits theft when he obtains unauthorized control over the property of another and intends to permanently deprive the owner of the use or benefit of the property. 720 ILCS 5/16-1(a)(1)(A) (West 2010).

¶ 14 Intent may be established through circumstantial evidence. *People v. Obrochta*, 149 Ill. App. 3d 944, 949 (1986). Further, the State may prove intent by inferences drawn from the

defendant's conduct and from surrounding circumstances. *People v. McKinney*, 260 Ill. App. 3d 539, 544 (1994). Relevant considerations include the time, place, and manner of entry, the defendant's activity within the premises, and any alternative explanations offered for his presence. *People v. Richardson*, 104 Ill. 2d 8, 13 (1984). In the absence of inconsistent circumstances, proof of unlawful entry into a building which contains personal property that could be the subject of larceny gives rise to an inference that will sustain a conviction for burglary. *McKinney*, 260 Ill. App. 3d at 544. Whether the requisite intent existed is a question for the trier of fact, and its decision will not be overturned on appeal unless the evidence is contrary to the verdict or so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of guilt. *People v. Boone*, 217 Ill. App. 3d 532, 533 (1991).

¶ 15 Here, viewing the evidence in the light most favorable to the State, we see no reason to upset the trial court's determination that defendant committed the offense of burglary when he intended to commit theft inside Nowells' garage. The evidence shows that upon exiting his garage, Nowells left the door open and drove across the street to talk to his neighbor. Nowells observed defendant enter his garage and leave a few minutes later with his jumper cables, gas can, and baseball bat. A short time later, Nowells stopped defendant, who stated that he did not know the garage belonged to Nowells. Defendant's apology to Nowells immediately following the incident is evidence of a guilty conscience. See *People v. Ross*, 395 Ill. App. 3d 660, 678 (2009), citing *People v. Grathler*, 368 Ill. App. 3d 802, 808 (2006) (stating that apologizing to a victim demonstrates consciousness of guilt). The reasonable inferences from Nowells' credible and unimpeached testimony about defendant's conduct and the surrounding circumstances establish that defendant intended to commit a theft inside of his garage. See *McKinney*, 260 Ill. App. 3d at 544 (burglary conviction affirmed where circumstantial evidence established that the

defendant entered a garage with the requisite intent). Moreover, the fact that defendant did not attempt to escape when Nowells stopped him does not change this result, particularly where Nowells testified that he grabbed and held defendant at the scene. See *People v. Ybarra*, 156 Ill. App. 3d 996, 1003 (1987) (the defendant's nonviolent submission to others upon being discovered was not necessarily inconsistent with an intent to commit theft).

¶ 16 We note that there was also evidence to support the defense theory that defendant did not intend to commit theft. Defendant testified that he only entered the garage to light his crack pipe, believed the garage was abandoned where he did not initially see any items inside of it, and that he thought the items he did see upon exiting did not belong to anyone. Officer Baader and Detective Ryan testified that they spoke to defendant, and that he indicated that he believed the garage was abandoned. Photographs taken of the garage after the incident also show that it was mostly empty apart from a car, a couple bottles of fluid, and jumper cables. However, where there is conflicting evidence, and the trier of fact makes its credibility determination, it would be improper for us to disturb that determination. *People v. Szudy*, 262 Ill. App. 3d 695, 714-15 (1994). Here, the record clearly shows that the trial court believed defendant intended to commit a theft inside the garage, and found defendant's version of the events "incredible." Therefore, the evidence that defendant intended to commit theft was not so unreasonable, improbable, or unsatisfactory that it raises a reasonable doubt of his guilt.

¶ 17 In reaching this conclusion, we find *People v. Atherton*, 261 Ill. App. 3d 1012 (1994), relied on by defendant to support his contention that the State did not sustain its burden of proving that he was not operating under a mistake of fact when he entered the garage, distinguishable from the case at bar. In *Atherton*, 261 Ill. App. 3d at 1015, the defendant was charged with burglary and his theory of the case was mistake of fact where he testified that he

mistakenly thought he was helping another person move. The defendant asked for a jury instruction on the affirmative defense of mistake of fact, and the trial court denied his request. *Id.* at 1015-16. On appeal, the reviewing court held that the trial court abused its discretion in denying the instruction because there was evidence to support his theory. *Id.* at 1016. As the reviewing court in *Atherton* was not asked to address whether the evidence at trial established the defendant's intent to commit a burglary, as here, *Atherton* is inapposite.

¶ 18 Defendant next contends that he was denied a fair trial where the trial court failed to consider the photographs admitted into evidence that show how empty and abandoned the garage appeared. To the extent that the trial court's failure to consider the photographs was due to defense counsel's objection to the photos being admitted into evidence, defendant argues his counsel was ineffective.

¶ 19 We initially note that defendant concedes that he forfeited his contention that he was denied a fair trial by failing to object at the time of trial and to raise the issue in his posttrial motion (see *People v. Enoch*, 122 Ill. 2d 176, 186 (1988)). Nevertheless, he maintains that we should review the matter under the plain error doctrine. See *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005) (a reviewing court may address forfeited errors "when either (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence"). However, the first step in the plain error analysis is to determine whether error occurred at all. *People v. Harris*, 225 Ill. 2d 1, 31 (2007). Here, we agree with the State that defendant has failed to show that any error occurred.

¶ 20 Defendant's contention that the trial court erred in failing to consider the photographs is based on the court's comments when it denied his motion for a new trial. At the hearing on this

motion, defense counsel argued, in part, that the trial court erred in allowing the photographs into evidence because they did not truly and accurately depict the garage at the time of the burglary, *i.e.*, the photos were taken after the burglary and not all of the items were depicted. The court replied that it had again reviewed the evidence and found that it was sufficient to find defendant guilty based on the credibility of the witnesses, including Nowells' testimony establishing that he saw defendant leave his garage with a bat, jumper cables, and a gas can. With respect to the contested photographs, the court stated:

"The garage was photographed after the items were taken out of the garage. So whether or not they were admitted, the photographs were admitted, is irrelevant. I did not consider in my findings any pictures and do not now. The pictures did not depict, according to the witness, the way the garage appeared prior to the defendant removing the property that did not belong to him."

¶ 21 In considering the court's comments in their entirety, we agree with the State that the record shows that the court was only responding to defendant's specific posttrial claim that the photos did not accurately depict the garage at the time of the incident. The court merely explained that it did not give these photos any weight or consideration for the same reasons articulated by defense counsel. See *People v. Brooks*, 187 Ill. 2d 91, 132 (1999) (it is well settled that the trier of fact is vested with the responsibility of determining the amount of weight to give evidence). However, the court did not, as argued by defendant on appeal, make a blanket statement that it refused to consider the photographs. We thus find that the court did not err when it announced that it based its decision on the credibility of the witnesses, and not the photographs.

¶ 22 Defendant finally contends that he was denied effective assistance of counsel to the extent that the trial court's failure to consider the photographs was due to defense counsel's

objection to their admission into evidence.

¶ 23 In order to establish ineffective assistance of counsel, defendant must allege facts which demonstrate that counsel's representation fell below an objective standard of reasonableness and that he was prejudiced by the deficient performance. *People v. Enis*, 194 Ill. 2d 361, 376 (2000), citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The failure to satisfy either prong of the *Strickland* test precludes a finding of ineffective assistance of counsel. *Enis*, 194 Ill. 2d at 377, citing *Strickland*, 466 U.S. at 697. "If it is easier, a court may proceed directly to the second prong of *Strickland* and dismiss an ineffective assistance claim on the ground that it lacks sufficient prejudice, without first determining whether counsel's performance was deficient." *People v. Valladares*, 2013 IL App (1st) 112010, ¶ 70. Prejudice is demonstrated where the defendant shows a reasonable probability that, absent counsel's alleged error, the trial's outcome would have been different. *People v. Evans*, 209 Ill. 2d 194, 220 (2004).

¶ 24 Here, defendant cannot establish that there is a reasonable probability that the outcome of his trial would have been different if defense counsel had not objected to the admission of the photographs. Critically, had defendant not objected, the photographs still would have been admitted into evidence, and the trial court would have accorded them the same weight. In denying defendant's motion for a new trial, the trial court specifically stated that it based its decision on the credibility of the witnesses, and not on the photographs. It is thus irrelevant to the outcome of the trial whether or not defense counsel objected to the admission of the photographs.

¶ 25 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 26 Affirmed.