

No. 1-12-1765

**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).

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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. 09 CR 8457
	)	
BRIAN DEBLASIO,	)	Honorable
	)	Carol A. Kipperman,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HOFFMAN delivered the judgment of the court.  
Presiding Justice Connors and Justice Cunningham concurred in the judgment.

**O R D E R**

- ¶ 1 **Held:** Judgment affirmed over defendant's challenge to the sufficiency of the evidence to sustain his conviction for residential burglary.
- ¶ 2 Following a jury trial, defendant Brian DeBlasio was convicted of residential burglary and sentenced as a Class X offender to 26 years' imprisonment. On appeal, defendant contests the sufficiency of the evidence to prove him guilty beyond a reasonable doubt.
- ¶ 3 Prior to trial, defendant waived his right to counsel and was allowed to proceed *pro se*

throughout the court proceedings. At trial, Mary Duffy Pelzer testified that she lives at 946 Monroe Avenue in River Forest, Illinois, with her husband, Harold, and son, Owen. At 11 a.m. on May 26, 2008, Pelzer and her husband went to the Memorial Day parade, and their son joined them shortly thereafter. They returned home about 45 minutes later, and noticed a number of police cars, a tow truck, and a crowd of people three houses away. Pelzer then entered her home and noticed muddy footprints on the floor of the front hallway leading to the second floor. There were also footprints on her screened-in porch in the back of the house, which were not there when she left for the parade.

¶ 4 Pelzer and her husband then noticed that the window on the back porch was open, the screen, which was in place when they left the house in the morning, was gone, and there was a lot of mud. Pelzer called police, who came and secured the home. When Pelzer went inside, she noticed that her son's computer, and the jewelry that was on the dresser in her bedroom, were missing. Pelzer further testified that \$1,500 dollars, and some foreign currency, Euros and Bahamian money, were also missing.

¶ 5 Later that evening, Pelzer went to the River Forest Police Department where she identified her missing jewelry and foreign currency. Pelzer testified that she never gave defendant permission to enter her home.

¶ 6 Clayton O'Brien testified that, on May 26, 2008, he went to his parents' home on the 900 block of Jackson Avenue in River Forest, which was one block away from 946 Monroe Avenue. He then went to the Memorial Day parade, and afterwards, returned to his parents' home where he noticed a car driving down the street erratically and at a high rate of speed. The driver then parked, exited, and quickly walked away looking over both shoulders. Five minutes later, a

police officer arrived to inspect the car in question, and O'Brien went up to him and asked if everything was okay. The officer wanted to know which direction the driver went, and O'Brien gave him a description of the driver and the direction he had gone. O'Brien described the driver as a white male, between the ages of 30 and 40, 5'7" or 5'8" tall, with a crew cut or shaved head, and wearing wire-rimmed glasses, Army cargo shorts and a t-shirt. O'Brien identified defendant in court as the driver.

¶ 7 River Forest Police Officer Michael Fries testified that, on May 26, 2008, he investigated a hit-and-run car accident involving a Lincoln Town car with license plate number X425844. While he was patrolling, he observed this unoccupied car parked in front of 918 Jackson Avenue, and learned that it was owned by defendant.

¶ 8 Officer Fries was then dispatched to investigate a residential burglary at 946 Monroe Avenue. Officer Fries dusted the open porch window for fingerprints, which the victim indicated was the burglar's point of entry. He also photographed the footprints leading from that window, and noticed footprint impressions outside the window.

¶ 9 Officer Fries further testified that he later learned from cab driver Tanner Darwish that he had driven defendant to the Karavan Hotel in Cicero. Officer Fries went to that hotel with several other officers, and the clerk told them what room defendant was staying in. Officer Fries noticed defendant check the window of that room a couple of times, and open the door and peek out. The officers went up to that room, and placed defendant under arrest. At that time, defendant had a black book bag on his back and a Walgreens bag containing syringes. He also had a newspaper clipping containing five tinfoil packets of a white powdery substance, and \$1,200 in cash in his pocket. Defendant was wearing Army fatigue shorts, and glasses, and was

almost bald. When the officer asked defendant where the laptop computer was that was taken from the residence, defendant responded that he did not have it, but later told him that it was in the hotel room under the dresser. Jewelry, Euros and Bahamian money were also found in defendant's bag.

¶ 10 River Forest Police Commander Jim O'Shea testified that, at 11:40 a.m. on May 26, 2008, he responded to a residential burglar alarm call at 938 Jackson Avenue. While there, he learned of an abandoned vehicle a few doors away, and his investigation showed that defendant was the registered owner of that vehicle. The officer also found a magazine and a Lincoln Town car manual, both with defendant's name on them, in a nearby bush.

¶ 11 River Forest Police Officer Eric Bowman testified that, at 1:30 p.m. on May 26, 2008, Sergeant O'Shea gave him a photograph of the individual they were looking for in connection with the burglary at the Monroe address, and identified defendant in court as the person in the photograph. While he was looking for defendant, he was flagged down by Darwish, who told him that he believed he picked up a person involved in a burglary. He described this person as a white male, in his 30's, with a shaved head. Officer Bowman showed Darwish the picture of defendant, and he identified him as the person he had picked up. Darwish told the officer that, when defendant stopped him at Division Street and Harlem Avenue, he was carrying a laptop computer and possessed several different foreign currencies. He first drove defendant to the parking lot of a laundromat and was told to return in 10 minutes. He did so, then drove defendant to the Karavan Hotel in Cicero. Darwish further told the officer that he was very suspicious of some of the comments made by defendant while he was on the phone.

¶ 12 River Forest Police Officer Edwin Rann testified that just before 11 a.m., on May 26,

2008, he received a call of a hit-and-run accident in the vicinity of Chicago Avenue and William Street, and when he arrived there, he noticed a car against a tree. Two witnesses gave him the license plate number of the other car involved in the accident which the officer learned belonged to a Lincoln Town car owned by defendant. The witnesses also informed him that they observed the accident and saw the other driver, described as a bald, white male, between the ages of 30 and 40, drive away.

¶ 13 River Forest Police Officer Timothy Carroll testified that he met with defendant in the morning hours of May 28, 2008. Defendant first told him that the laptop computer was not located in his motel room, but then told him that it was hidden under a dresser in the room. Cicero Police Officer Michael Perry testified that he recovered the laptop from that location.

¶ 14 Illinois State Police forensic scientist Aimee Stevens testified that she compared defendant's shoes and the CD containing a digital image of a "partial" footwear impression from the scene. She found that the impression was not made by the left shoe that she received, but that the right shoe was similar in outsole pattern, size and design to the impression. She, however, "could not make an identification or an elimination [of defendant's] shoes."

¶ 15 The parties stipulated that there was one latent print suitable for comparison, and that it matched that of Harold Pelzer. The parties further stipulated that Carolyn Young would testify that, on May 26, 2008, after watching the Memorial Day Parade, she observed a white male, in his 40's, 5'7" to 5'10" tall, medium build, with a crew-cut haircut, carrying a messenger bag and "lurking" in the driveway of 946 Monroe Avenue. The parties also stipulated that Marta Jorgensen would testify that, at 11:45 a.m. on May 26, 2008, she saw a white male, 35 years of age, 5'8" tall, with a shaved head, wearing Army fatigue shorts, and wire-rimmed glasses, and

carrying a delivery bag over his shoulder in the driveway of 923 Jackson Avenue.

¶ 16 Defendant testified that, on the morning of May 26, 2008, he picked up his brother, Frank, who was in his 40's, 5'10" tall, and much larger than defendant, and who did not wear glasses, or have a shaved head. Defendant stated that Frank used to own a landscaping company with "big" clients in River Forest, and they drove to that location so that Frank could talk to one of his former clients about some money. Defendant dropped Frank off near a 7-Eleven store on Harlem Avenue, and they agreed to meet back there. Defendant then left to go visit his father in Franklin Park, and on his way there, he "nodd[ed]" off from the heroin he took, and hit a car. Defendant drove away and then got a flat tire, so he parked the car, and left panicking because he was on heroin and had drugs on him. He then went to a Denny's restaurant for 20 minutes, tried to make a phone call on a pay phone, and then returned to the 7-Eleven store. Thereafter, Frank arrived with a bag. Defendant also testified that he waited at the 7-Eleven store for three hours.

¶ 17 When Frank arrived, he told defendant that he wanted to meet his drug dealer on the west side of Chicago and that he wanted to give him some money. Frank then gave defendant his bag and told him to meet him at the Karavan Hotel. Defendant did not know that the \$1,200, the jewelry, and the other items in the bag were stolen. Defendant flagged down a cab driver, who drove him to Pulaski Road and Ogden Avenue where he picked up some drugs, and then to the Karavan Hotel. Defendant was later arrested for the burglary, and Frank told him that he would come forward, but he was murdered three months later. Defendant did not tell police that his brother was at fault because he did not want his brother to get in trouble, and he did not know the full extent of what happened.

¶ 18 Defendant further testified that, on March 16, 2009, he spoke to Detectives DeYoung and

Greenwood, but did not recall their conversation, and did not elaborate on any events that took place on the day in question. He told the detectives that, while he was at the hotel, Mike Kersinger came by and gave him some heroin. When he attempted to tell the detectives about what happened on the day in question, they would not listen to him and "got smart" with him. Defendant testified that he never told them that his brother committed the burglary and admitted that he spoke to the detectives after his brother died, when he was no longer concerned about him being arrested, but was concerned about his father and "his moral feelings about what happened." In rebuttal, the State presented defendant's certified copy of conviction for the offense of escape by a felon from a penal institution on October 21, 2003.

¶ 19 At the close of evidence, the jury found defendant guilty of residential burglary. Defendant filed a motion for a new trial or for judgment notwithstanding the verdict, which the trial court denied. The court found, in relevant part, that based on the totality of the circumstances, including defendant's presence near the scene of the burglary, the opportunity he had to be near the stolen property, the car being found so close to the scene, and defendant's belongings being found near the scene, the jury could properly find him guilty of residential burglary. The court also noted that the testimony regarding the shoe impression was inconclusive.

¶ 20 On appeal, defendant contends that the evidence was insufficient to prove him guilty of residential burglary beyond a reasonable doubt where the only evidence against him was his possession of proceeds from the burglary and his presence on the block where the burglary occurred. He maintains that this evidence was insufficient to prove breaking and entering with the intent to commit a theft therein.

¶ 21 When a defendant challenges the sufficiency of the evidence to sustain his conviction, our duty is to determine whether all of the evidence, direct and circumstantial, when viewed in the light most favorable to the prosecution, would cause a rational trier of fact to conclude that the essential elements of the offense have been proved beyond a reasonable doubt. *People v. Wiley*, 165 Ill. 2d 259, 297 (1995). A criminal conviction will be reversed only if the evidence is so unsatisfactory or improbable that it leaves a reasonable doubt of defendant's guilt. *Wiley*, 165 Ill. 2d at 297. For the reasons that follow, we do not find reversal is warranted in this case.

¶ 22 To sustain defendant's conviction for residential burglary, the State was required to prove beyond a reasonable doubt that he knowingly and without authority entered the dwelling place of another with the intent to commit a theft therein. 720 ILCS 5/19-3(a) (West 2012). Circumstantial evidence alone is sufficient to sustain a conviction where it satisfies proof beyond a reasonable doubt of the elements of the crime charged. *People v. Pollok*, 202 Ill. 2d 189, 217 (2002).

¶ 23 The evidence in this case, when viewed in the light most favorable to the prosecution (*People v. Pintos*, 133 Ill. 2d 286, 292 (1989)), shows that on May 26, 2008, the Pelzers left their home around 11 a.m., and when they returned home less than an hour later, they noticed that the screen to the back porch was missing, as well as jewelry, a laptop computer, \$1,500 and foreign currency. A person matching defendant's description was seen carrying a messenger bag, and "lurking" in the driveway of the Pelzer home just after the Memorial Day parade, and at 11:45 a.m., a man fitting defendant's description was seen in the driveway of a nearby home, also carrying a delivery bag. The evidence further shows that a man matching defendant's description was seen driving fast and erratically down Jackson Avenue, who then abandoned his car, and

walked away quickly, looking over both shoulders. Police learned that the abandoned car was registered to defendant. Further, the evidence shows that police learned that defendant was driven to a hotel in Cicero by cab, and when police arrived there, they saw defendant acting suspiciously, looking out the window and peeking out the door. When they apprehended him, they found in his possession the stolen jewelry and money, as well as a messenger bag. Although defendant initially denied possessing the stolen computer, he later told police that it was in his hotel room, and police recovered it from that location.

¶ 24 The fact that defendant was discovered with recent, unexplained possession of the burglary proceeds can support the inference that defendant participated in the burglary itself, as well as the inference that the property was delivered to him sometime after the burglary. *People v. Caban*, 251 Ill. App. 3d 1030, 1034 (1993). Although both inferences may be plausible, the likelihood of the former increases with the latter seeming remote in comparison where, as here, defendant was observed in close proximity to the burglarized home at the time of the offense and items belonging to him were found in a nearby bush, near his car which he abandoned after crashing into another. *Caban*, 251 Ill. App. 3d at 1034. These time and location factors were corroborative of his guilt, as well as his further attempt to deter police from discovering the laptop computer in his room. *Caban*, 251 Ill. App. 3d at 1034. Based on the totality of this evidence, the trier of fact could reasonably conclude that defendant was the person who burglarized the Pelzer home. *Caban*, 251 Ill. App. 3d at 1034. In reaching this conclusion, we observe that, in weighing the evidence, the jury was not required to disregard the inferences flowing normally from the evidence, or to search out all possible explanations consistent with

innocence and raise them to the level of a reasonable doubt. *People v. Moore*, 394 Ill. App. 3d 361, 364-65 (2009).

¶ 25 In addition, when confronted by police, defendant did not indicate that someone else, namely, his brother, was the burglar, but waited until trial, when his brother was dead. Two witnesses, however, saw a man matching defendant's description at the scene, which included a bald head or crew-cut, and one of them further noted that he was wearing glasses. The evidence further showed that defendant's brother was not bald and did not wear glasses.

¶ 26 Where defendant chooses to give an explanation for his conduct, he must provide a reasonable story or be judged by its improbabilities. *People v. Hart*, 214 Ill. 2d 490, 520 (2005). Here, defendant's trial testimony regarding his brother was unbelievable, particularly where his brother did not match the description of the person at the scene and was now deceased. Examining the plausibility of defendant's explanation of events against the theory urged by the State, in light of the totality of the evidence, we find it reasonable for the jury to have concluded that defendant was the burglar, and not a mere subsequent possessor of the proceeds. *Caban*, 251 Ill. Ap. 3d at 1034.

¶ 27 Defendant argues the contrary, citing one suitable latent fingerprint lift recovered at the scene which did not match his, and the forensic scientist's conclusion that the left shoe impression found at the crime scene was not made by his left shoe. Although the one fingerprint lift found suitable for comparison matched one of the family members, this fact does not exclude defendant as the perpetrator. In addition, the forensic scientist testified that there was only a partial footwear impression photographed, that the impression was not made by the left shoe that she received, but that the right shoe was similar to this impression. As a result, the scientist

could not make an identification *or an elimination* from the partial footwear impression, and this factor does not raise a reasonable doubt of his guilt.

¶ 28 Notwithstanding, defendant maintains that *People v. Natal*, 368 Ill. App. 3d 262 (2006), is highly instructive, and analogous to the case at bar. In *Natal*, 368 Ill. App. 3d at 264, the victim, upon entering his apartment, noticed that the door had been damaged, and that the apartment had been ransacked. When he went outside, he saw defendant standing 20 feet away from his building and looking inside two pillow cases that had been removed from the victim's bedroom. *Natal*, 368 Ill. App. 3d at 264. When the victim asked defendant why he was looking through his property, defendant replied that it was not him and that the guy who did it just ran away. *Natal*, 368 Ill. App. 3d at 264. While defendant argued with the victim, police arrived and arrested him. *Natal*, 368 Ill. App. 3d at 265. This court found that the evidence was insufficient to prove defendant guilty of residential burglary beyond a reasonable doubt where, other than his possession of the stolen property in close proximity to the location burglarized, there was no corroborating evidence of his guilt. *Natal*, 368 Ill. App. 3d at 269.

¶ 29 In *Natal*, 368 Ill. App. 3d at 269-70, the court analyzed the case under the test announced in *People v. Housby*, 84 Ill. 2d 415, 424 (1981), with the caveat that it was not deciding whether the test applied to its case. In *Housby*, 84 Ill. 2d at 424, the supreme court held that a jury could presume guilt based on exclusive possession of property only if three requirements are met: 1) there was a rational connection between defendant's recent possession of stolen property and his participation in the burglary, 2) defendant's guilt of the burglary more likely than not flowed from his recent, unexplained and exclusive possession of the burglary proceeds, and 3) there was corroborating evidence of his guilt.

¶ 30 Here, unlike *Natal*, all three factors of the *Housby* test are met. As the State points out, there was a rational connection between defendant's possession of the stolen items and his participation in the burglary. The evidence showed that he was in possession of the stolen items shortly after witnesses saw a person matching his description with a messenger bag at the time of the burglary in close proximity to the burglarized home. In addition, he placed himself at the scene, and items belonging to him were found near the burglarized home. Further, evidence was presented that he fled from a car accident a short distance away while fleeing the scene of the burglary, and although he argues that he was avoiding an arrest for driving under the influence, we find that his flight both corroborated the proof of his guilt of the burglary and tended to make it more likely than not that his guilt flowed from his possession of the stolen items. *People v. Riley*, 99 Ill. App. 3d 244, 250 (1981). Finally, his trial explanation was implausible and did not diminish the evidence which was sufficient to allow the trier of fact to find that defendant was proved guilty of residential burglary beyond a reasonable doubt.

¶ 31 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 32 Affirmed.