

No. 1-14-2145

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. 13 CR 7965
)	
ALLAN CAMPBELL,)	Honorable
)	Charles P. Burns,
Defendant-Appellant.)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 **Held:** Defendant was proven guilty of burglary beyond a reasonable doubt when the evidence at trial established that defendant entered a vacant building without permission and removed certain radiators.

¶ 2 Following a joint bench trial with codefendant Anthony Wright, defendant Allan Campbell was found guilty of burglary.¹ He was sentenced, because of his criminal background, to a Class X sentence of eight years in prison. On appeal, defendant contends that he was not proven guilty of burglary beyond a reasonable doubt because the State failed to establish his

¹ Codefendant Wright's conviction and sentence were affirmed on appeal. See *People v. Wright*, 2016 IL App (1st) 142024-U.

intent to commit a theft when the “circumstances” of this case prove “nothing more” than that he entered a building that he believed was abandoned. We affirm.

¶ 3 At trial, Michael Sutherland testified that he owned adjacent properties at 3345 and 3343 South Giles Avenue in Chicago. Sutherland lived in the single-family home at 3345 South Giles. The 3343 South Giles building (the 3343 building) was a vacant property that Sutherland was “getting ready to be sold.” On March 22, 2013, at approximately 3 p.m., Sutherland was in his kitchen when he looked out the window and saw four men exiting the 3343 building through the back door with radiators. At trial, he indentified defendant and codefendant Wright as two of those men. Sutherland had not given anyone permission to enter the property or remove anything from it.

¶ 4 Sutherland went downstairs and watched the men through a window in the back door. He then returned upstairs and contacted the police. When the police arrived, officers entered the 3343 building. Sutherland told the officers that he saw four men leave through the front of the 3343 building. One man walked northbound while the other three walked southbound. Sutherland informed police that the three men walking southbound were the men he saw removing radiators from his property. The police detained defendant, codefendant and another man. Sutherland viewed a photograph of radiators stacked against his neighbor’s fence and identified them as the radiators removed from the 3343 building. He also observed a broken window on the rear first level of the 3343 building that had not previously been there. Sutherland later boarded up the broken window.

¶ 5 During cross-examination, Sutherland testified that he had last been in the 3343 building several months prior to this incident. He “probably” observed the window on the first floor earlier the same day and it was not broken at that time. Chicago police officer Terrance

McKitterick testified that he recovered a wrench and an electric chainsaw from the scene, which Sutherland stated did not belong to him.

¶ 6 In finding defendant guilty of burglary, the trial court found Sutherland's testimony credible and noted that defendant was "arrested on or near the scene." The trial court further found that the fact that Sutherland was in the 3343 building a "couple months before" was "irrelevant" and that it did not appear that defendant was "using [an] abandoned building to sleep or squat." Rather, defendant was "going in and out of that building trying to take items out." Defendant now appeals.

¶ 7 When reviewing a challenge to the sufficiency of the evidence, the relevant question 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. Brown*, 2013 IL 114196, ¶ 48. It is the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts. *People v. Bradford*, 2016 IL 118674, ¶ 12. Accordingly, a reviewing court will not substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses. *Id.* This court reverses a defendant's conviction only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of his guilt remains. *Id.*

¶ 8 To sustain a conviction for burglary, the State must prove beyond a reasonable doubt that defendant, without authority, knowingly entered or remained within a building with intent to commit therein a theft. 720 ILCS 5/19-1(a) (West 2012). Burglary is accomplished the moment an unauthorized entry with the requisite intent occurs, regardless of whether a subsequent felony or theft was actually committed. *People v. Poe*, 385 Ill. App. 3d 763, 766 (2008). Intent must be proven circumstantially, and a conviction may be sustained on circumstantial evidence alone.

People v. Johnson, 28 Ill. 2d 441, 443 (1963). Intent is usually proven through circumstantial evidence, that is, inferences based upon defendant's conduct. *People v. Ybarra*, 156 Ill. App. 3d 996, 1002-03 (1987). "Like other inferences, this one is grounded in human experience, which justifies the assumption that the unlawful entry was not purposeless, and, in the absence of other proof, indicates theft as the most likely purpose." *Johnson*, 28 Ill. 2d at 443.

¶ 9 Viewing the evidence in light most favorable to the state, as we must (*Brown*, 2013 IL 114196, ¶ 48), there was sufficient evidence to find defendant guilty of burglary beyond a reasonable doubt when Sutherland, the owner of the 3343 building, testified that he observed defendant exit the building with a radiator and that he had not give defendant permission to enter the building or remove anything from it. The trial court's inference that defendant's entry into 3343 building proved his intent to commit a theft therein is completely rational. See *Johnson*, 28 Ill. 2d at 443 (human experience justifies the assumption that an unlawful entry is not purposeless, and, in the absence of other proof that theft is the most likely purpose). A trier of fact is not required to disregard the interferences that normally flow from the evidence or to seek out all possible explanations consistent with a defendant's innocence and elevate them to reasonable doubt. See *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. Accordingly, we find that the evidence presented at trial was sufficient to find defendant guilty of burglary. *Brown*, 2013 IL 114196, ¶ 48.

¶ 10 Defendant, however, contends that his belief that the building was "apparently abandoned" negates the essential element of intent to commit a theft. Defendant also argues that his actions of removing the radiators in broad daylight with "no method of transporting" them establishes his lack of intent.

¶ 11 Property is abandoned when the owner, intending to relinquish all rights to the property, leaves it free to be appropriated by any other person. *Paset v. Old Orchard Bank & Trust Co.*, 62 Ill. App. 3d 534, 537 (1978). A finder is entitled to keep abandoned property. *Id.* Thus, if defendant had a *bona fide* belief that 3343 building was abandoned, then he did not have the requisite intent to commit theft. See *People v. Baum*, 219 Ill. App. 3d 199, 201-02 (1991). A defense based on mistake of fact is an affirmative defense. 720 ILCS 5/4-8(d) (West 2012). To raise an affirmative defense, a defendant is required to present some evidence on the issue unless the State's evidence raises the issue. 720 ILCS 5/3-2(a) (West 2012). Once an affirmative defense has been raised, the State has the burden to prove the defendant guilty beyond a reasonable doubt as to that issue, together with all other elements of the offense. 720 ILCS 5/3-2(b) (West 2012).

¶ 12 Initially, we note that defendant did not argue that the 3343 building was abandoned before the trial court; rather, he raises this argument for the first time on appeal. We are unpersuaded by defendant's argument that the State's trial evidence implicitly raised the issue of abandonment. Defendant argues that certain photographs of the 3343 building implicitly raised the issue of abandonment before the trial court because they depicted a boarded-up window, but Sutherland testified that he boarded up the broken window *after* the incident. In any event, an unoccupied building is not necessarily abandoned. Even if we accept that defendant believed the property was abandoned, there was competent evidence to the contrary. The building's owner testified that he was preparing to sell the vacant building, and that he had not given defendant permission to enter the building or remove anything from the premises. See 720 ILCS 5/3-2(b) (West 2012) (once an affirmative defense has been raised, the State must sustain the burden of

proving defendant guilty beyond a reasonable doubt as to that issue as well as all other elements of the offense).

¶ 13 We are also unpersuaded by defendant's argument that the fact that this offense took place during the day and that he had no way to move the radiators is further proof of his lack of intent. A burglary is accomplished the moment an unauthorized entry with the requisite intent occurs even if no subsequent felony or theft is committed. There is no requirement that a defendant successfully complete the theft. See *Poe*, 385 Ill. App. 3d at 766. The facts that defendant entered the 3343 building during the day and did not have a way to transport the radiators does not defeat the circumstantial evidence of his intent to commit a theft when he and his companions were observed exiting the building with the radiators without the owner's permission to be inside the building.

¶ 14 Ultimately, this court cannot say that no rational trier of fact could have found defendant guilty when the evidence at trial established that he entered the 3343 building without the owner's permission and he exited the building with a radiator. *Brown*, 2013 IL 114196, ¶ 48. This court reverses a defendant's conviction only where the evidence is so unreasonable or unsatisfactory that a reasonable doubt of his guilt remains (*id.*); this is not one of those cases.

¶ 15 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 16 Affirmed.