

No. 1-14-2813

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 MC1 228266
)	
DONALD SMITH,)	Honorable
)	Clarence Burch,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justice Cunningham and Delort concurred in the judgment.

ORDER

- ¶ 1 *Held:* We affirmed defendant's conviction where the evidence proved him guilty beyond a reasonable doubt of criminal trespass to real property and amended the mittimus to accurately reflect his conviction for that offense.
- ¶ 2 Following a bench trial, defendant Donald Smith was convicted of criminal trespass to property in violation of section 21-3(a)(2) of the Criminal Code of 2012 (Code) (720 ILCS 5/21-3(a)(2) (West 2012)) and sentenced to 90 days to be served in the Cook County Department of Corrections (DOC). On appeal, defendant argues that the evidence was insufficient to support his conviction and that the mittimus should be amended to accurately reflect the offense. For the

following reasons, we affirm the judgment of the circuit court and direct the clerk of the circuit court of Cook County to correct the mittimus.

¶ 3 Defendant was charged with criminal trespass to residence on June 28, 2013. Prior to trial, the State amended the charge to criminal trespass to real property. After defendant was admonished as to his right to counsel under Illinois Supreme Court Rule 401(a) (Ill. S. Ct. R. 401(a) (eff. Jul. 1, 1984)), the trial court allowed defendant to represent himself at trial with an Assistant Public Defender acting as stand-by counsel. Defendant elected to proceed to a bench trial.

¶ 4 At the July 1, 2014, trial, Joseph McFadden, testified that he was president of JMMH Investments (JMMH) and had held that position for three years. JMMH owned a three-flat building located at 3030 West Washington Boulevard in Chicago (building) which is vacant and unfinished. The building has a front door, and each unit has a separate rear door. The doors remain locked at all times. Mr. McFadden posted on each door "no trespassing" signs, boarded up the doors and windows with plywood and, at times, inspected the building. On June 28, 2013, while he was inspecting the building, Mr. McFadden observed defendant inside the third floor unit. Defendant had removed the plywood from the windows of the unit to gain access to the building. Mr. McFadden recognized defendant as he had been removed from the building by the police on prior occasions at Mr. McFadden's requests. Defendant had been warned in the past that he should not return to the building. Mr. McFadden called the police on that date to have defendant removed. To give police access to the building, Mr. McFadden cut a lock on a rear door.

¶ 5 On cross-examination, Mr. McFadden could not recall the exact dates that he had previously encountered defendant in the building. On June 28, 2013, he told the police he was

the owner of the building, but did not provide the police with proof of his ownership. Mr. McFadden testified that he owned JMMH, which holds the deed for the property, but had no documentation in court to support his claim.

¶ 6 Defendant testified that he spoke with a person named "Nat," a supervisor in the office of the Illinois Secretary of State. Nat informed defendant that JMMH was "being investigated on criminal matters." Defendant also testified that, when he first gained access to the building, it was "loaded with garbage" and "full of filth." Defendant cleaned the building. Defendant denied there were "no trespassing" signs on the building. He testified that there was no "tree with any ribbons on it, indicating that trespass was forbidden." Defendant posted a written notice of his occupancy of the building to the owner. Defendant discovered during proceedings in an action in the Chancery Division of the circuit court of Cook County (circuit court case number 04 CH 0741), that JMMH had been dissolved.

¶ 7 Defendant testified that he had previously been arrested at the building for criminal trespass and had received notice from the police to not enter the building. Defendant denied receiving such notice from the owner of the building. However, defendant acknowledged that Mr. McFadden had told defendant not to enter the building, but insisted that Mr. McFadden had not done so "in the capacity of owner." Further, defendant asserted that based on previous civil cases filed by him, the circuit court had "evicted" JMMH and Mr. McFadden from the building.

¶ 8 Following closing arguments, the trial court found defendant guilty of criminal trespass to real property. Defendant filed a posttrial motion requesting a substitution of judge. In presenting this motion, defendant orally argued that the State had not proved the elements of the offense beyond a reasonable doubt and that he had presented an affirmative defense of "an

emergency situation." The court denied defendant's motion. After a sentencing hearing, the circuit court sentenced defendant to 90 days in jail.

¶ 9 On appeal, defendant argues that the State failed to prove him guilty beyond a reasonable doubt. Specifically, defendant argues that the State failed to: (1) prove that Mr. McFadden was the owner of the building, or that he was authorized to give notice; (2) prove that defendant received prior notice from the owner to vacate the building; and (3) disprove the "beautifying" exemption to the criminal trespass statute (720 ILCS 5/21-3 (a)(4)(d) (West 2013)).

¶ 10 When assessing a sufficiency of the evidence claim, we inquire " '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.' " (Emphasis omitted.) *People v. Davison*, 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In so doing, we draw all reasonable inferences in favor of the prosecution. *Id.* The State must prove each element of an offense beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). We will not overturn a criminal conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 11 Criminal trespass to real property occurs when a person "enters upon the land of another, after receiving, prior to the entry, notice from the owner or occupant that the entry is forbidden." 720 ILCS 5/21-3(a)(2) (West 2012). Here, the evidence supports the trial court's decision. Mr. McFadden testified that JMMH owned the building and that defendant was on the premises without permission when he was arrested. Mr. McFadden also testified that he knew defendant, had previous contact with him at the building and that, on several prior occasions, he had called the police to remove defendant from the premises and gave defendant notice that entry to the

building was forbidden. See *People v. Hsiu Yan Chai*, 2014 IL App (2d) 121234, ¶ 35-38 (in certain circumstances, owners may request that police provide defendant with notice that his entry is forbidden).

¶ 12 Defendant contends that the State failed to prove that JMMH owned the building. Mr. McFadden testified at trial that he is president and owner of JMMH and that JMMH owned and held the deed for the building. Mr. McFadden also testified to his control over the building by: posting "no trespassing" signs; securing the windows and doors with plywood; and conducting inspections. The evidence thus, supported a finding that Mr. McFadden was in a position to give defendant notice that he was not welcome in the building.

¶ 13 Defendant testified that, "pursuant to all those other court causes," the circuit court had evicted JMMH from the building. At most, this testimony presented a factual question to be resolved by the trier of fact which turned on the credibility of the witnesses and the inferences to be drawn from their testimony. *Siguenza-Brito*, 235 Ill. 2d at 228. The trial court found Mr. McFadden to be more credible than defendant and resolved the conflicting evidence in favor of his version of the events, *i.e.*, that JMMH owned the building.

¶ 14 Further, defendant asserts that the State failed to show that he received prior notice that he was prohibited from entering the building. We disagree.

¶ 15 Mr. McFadden testified that both he and the police had previously warned defendant that he was forbidden from entering the building. Defendant, at trial, agreed that he had been arrested for trespassing at the building and was told by the police and Mr. McFadden that he could not enter the building. Thus, the evidence established, beyond a reasonable doubt, that defendant had been warned that he was not permitted to be on the premises.

¶ 16 Defendant contends, however, that Mr. McFadden's testimony—that the police told defendant to stay away from the building—was inadmissible hearsay. A failure to object to hearsay during trial waives an objection to its admission and allows the trier of fact to consider such evidence and to give the evidence its natural probative effect. *People v. Ramsey*, 205 Ill. 2d 287, 293 (2002). Defendant failed to raise a hearsay objection to this testimony during trial or in a posttrial motion. Therefore, the trial court was allowed to consider Mr. McFadden's testimony that police warned defendant to stay off the property. Notably, defendant corroborated Mr. McFadden's assertion, by admitting during cross-examination, that he received notice several times from the police that he was forbidden to enter the building.

¶ 17 Defendant next asserts that the State failed to disprove that he was exempt from prosecution for trespass under section 21-3(a)(4)(d) of the Code. 720 ILCS 5/21-3(a)(4)(d) (West 2013). Section 21-3(d) provides, in relevant part, that "[a] person shall be exempt from prosecution under this [s]ection if he or she beautifies unoccupied and abandoned residential and industrial properties located within any municipality." *Id.* Abandoned property is defined as "any real estate *** in which the taxes have not been paid for a period of at least 2 years[,] and *** which has been left unoccupied and abandoned for a period of at least one year." *Id.* Because the exemption withdraws certain acts or "certain persons from the operation of the statute," and is not "descriptive" of the offense, it is not an element which the State was required to disprove. See *People v. Tolbert*, 2016 IL 117846, ¶ 15. Thus, defendant bore the burden of demonstrating that he was exempt from the statute, but he failed to do by his testimony that he cleared the building of garbage.

¶ 18 Nevertheless, although defendant bore the burden of establishing that he was exempt from prosecution, we find that the State presented sufficient evidence to show that the exemption

was inapplicable to the case at bar. At trial, the evidence was that the building was unoccupied but not abandoned. Mr. McFadden testified that he had the windows covered with plywood, kept all doors locked, and had posted "no trespassing" signs. Mr. McFadden had a history of inspecting the building and, on several prior occasions, caught defendant trespassing there. Because Mr. McFadden made efforts to keep intruders out, the trial court could reasonably conclude that the building was not abandoned within the meaning of the statute.

¶ 19 Accordingly, in viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found the elements of criminal trespass to real property beyond a reasonable doubt.

¶ 20 Finally, defendant contends, and the State concedes, that the mittimus inaccurately lists his conviction as criminal trespass to a residence, rather than the offense of which he was convicted: criminal trespass to real property. The mittimus must accurately reflect the offense of which defendant was convicted. See *People v. DeWeese*, 298 Ill. App. 3d 4, 13 (1998). Therefore, we direct the clerk of the circuit court of Cook County to amend the mittimus to reflect defendant's conviction of criminal trespass to real property.

¶ 21 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed, and the clerk of the circuit court of Cook County is directed to amend the mittimus to reflect defendant's conviction of criminal trespass to real property.

¶ 22 Affirmed; mittimus amended.