2016 IL App (2d) 140546-U
No. 2-14-0546
Order filed July 25, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. TYLER WARREN LAWSON, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 13-CF-2300 Honorable Fernando L. Engelsma, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Schostok and Justice Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court properly admitted defendant's statement as an admission, as the most likely inference from his statement that he "put himself" in jail was that he had committed the charged offenses; (2) as defendant's convictions of home invasion and residential burglary violated the one-act, one-crime rule, we vacated the latter.

¶ 2 Following a bench trial, defendant, Tyler Warren Lawson, was convicted of home invasion (720 ILCS 5/19-6(a)(2) (West 2012)) and residential burglary (720 ILCS 5/19-3(a) (West 2012)), and sentenced to 10 years' imprisonment. He appeals, contending that (1) the trial court erred in admitting a recording of a telephone conversation with his girlfriend in which he

purportedly admitted his guilt; and (2) his residential-burglary conviction should be vacated, as it is based on the same physical act as home invasion. We affirm in part and vacate in part.

¶ 3 Defendant was charged with home invasion, residential burglary, and aggravated battery (720 ILCS 5/12-3.05(d)(1) (West 2012)). At trial, Richard Fisher testified that he was 85 years old. Defendant is his grandson. Defendant called Fisher on August 12, 2013, and asked if he could come visit. Fisher said that he was visiting friends for dinner. Defendant called again an hour later. He said that he had a ride and needed money for cigarettes. Fisher offered defendant a pack of cigarettes, but he said that he did not like that brand.

¶ 4 Fisher went to bed around 9:30 or 10 p.m. Later, he heard a noise, but did not get up. He opened his eyes to see an intruder standing over him. Although the intruder had a hoodie pulled tight around his head, Fisher could see his face. He recognized defendant based on his eyes and the way he walked. Defendant did not say anything, but started hitting him. Defendant then demanded his money.

¶ 5 Fisher tried to get up, but was punched and fell to his knees. Defendant held Fisher down and choked him with his arm. Defendant asked where the money was. Fisher recognized defendant's voice. Fisher said that he did not have any. Defendant then grabbed three or four cigarettes from the nightstand and left. Fisher waited a few minutes before calling 911.

¶ 6 On cross-examination, Fisher said that his home had been broken into six or eight months earlier. He testified that he was about 80 percent sure defendant was the intruder. At one time he was more sure that defendant was the intruder. On redirect, Fisher testified that he asked two or three times during the incident, " 'Tyler, what are you doing here?' "

¶ 7 Deputy sheriff Tiffany Eisman responded to Fisher's residence. She saw that the door had been kicked in. She spoke with Fisher, who identified defendant as the intruder.

¶ 8 Margaret Boswell, who is Fisher's daughter and defendant's aunt, talked with defendant about six days after the incident. Defendant asked her about the incident and whether Fisher was okay. He also asked if Fisher knew the identity of the intruder. Boswell said that Fisher thought defendant was the intruder. Defendant appeared shocked and asked Boswell why Fisher thought defendant was the intruder.

¶ 9 Deputy Nicholas Cunningham spoke with Boswell, who said that defendant called her two days after the incident. She found the call suspicious because defendant never asked if Fisher was okay and seemed concerned only with whether Fisher was going to press charges.

¶ 10 Lieutenant David Huff testified that he handled administrative duties at the county jail, including monitoring inmate telephone services. All inmate calls were recorded and stored. Huff retrieved all 202 calls attributed to defendant between August 2013 and February 2014. The State introduced one such call, recorded February 11, 2014, in which defendant spoke with an unidentified woman about their relationship. Defendant said, " 'I'm looking at some time, I might be gone, I don't want to put you through that.' " He later said, " 'I put myself in this situation,' " and " 'I can't be mad at you *** I put myself in here, know what I'm saying?' "

¶ 11 At the close of the State's case, defendant moved for a directed finding. In denying the motion, the trial court stated that it found that the phone call was "not a direct confession." The court gave it "a little weight, but not substantial weight."

¶ 12 Phillip Ledesma, a private investigator, testified for the defense that he interviewed Fisher in September 2013. Fisher said that he believed his grandson committed the offense. However, he later referred to the intruder as "whoever it was." Fisher said that the intruder was thin and wiry, but the hoodie was pulled down over his eyes and Fisher could not see their color. Fisher said he did not hear the intruder's voice.

¶ 13 The trial court found defendant guilty. In announcing its decision, the court stated that defendant's statement that he " 'put [himself]' " in jail "directly bears on circumstantial evidence of guilt and [is] actually a direct admission, if you will." The court merged the aggravated-battery conviction into that for home invasion. It sentenced defendant to concurrent prison terms of 10 years for home invasion and 8 years for residential burglary. The court denied a motion to reconsider the sentence, and defendant timely appeals.

¶ 14 Defendant first contends that the trial court erred by admitting his phone call to his girlfriend. Although the State contends that the call was relevant as an admission by defendant that he committed the offense, defendant contends that his references to putting himself "in this situation" are too vague to constitute an admission of guilt.

¶ 15 The admission of evidence is within the sound discretion of the trial court, whose judgment should not be reversed absent a clear showing of an abuse of discretion. *People v. Anderson*, 367 Ill. App. 3d 653, 663-64 (2006) (citing *People v. Tenney*, 205 Ill. 2d 411, 436 (2002)). Under the Illinois Rules of Evidence, a statement is not hearsay if "[t]he statement is offered against a party and is *** the party's own statement, in either an individual or a representative capacity." Ill. R. Evid. 801(d)(1)(B)(2) (eff. Jan. 1, 2011); see *People v. Schlott*, 2015 IL App (3d) 130725, ¶ 34. "[A]n admission is a statement 'from which guilt may be inferred, when taken in connection with other facts, but from which guilt does not necessarily follow.' " *People v. Milka*, 336 Ill. App. 3d 206, 232 (2003) (quoting *People v. Stewart*, 105 Ill. 2d 22, 57 (1984)).[1]

[1] Arguably, under the Rules of Evidence, this definition is unduly narrow, and an admission is simply any statement by the accused. See *People v. Aguilar*, 265 Ill. App. 3d 105, 111 (1994). However, as the State here makes no such argument, we do not address it.

¶ 16 Defendant contends that his statement was not an admission, because it was simply too vague. He notes that his statement did not reference any details of the crime and could have been merely a commentary on his life situation. We disagree.

¶ 17 Defendant told his girlfriend that he was in jail and facing prison time. As far as the record reveals, he was in custody only for the present offenses and thus facing prison time only for those offenses. Thus, the most likely inference from his statement that he "put [himself] in here" is that he was guilty of those offenses. While other inferences are perhaps possible, it was for the fact finder (in this case the trial court) to decide which of these competing inferences was correct. See *People v. Jaimes*, 2014 IL App (2d) 121368, ¶ 44.

¶ 18 Defendant cites *People v. Hoffstetter*, 203 Ill. App. 3d 755 (1990), to support his argument that, to be considered an admission, his statement had to include some details of the crime, but that case is distinguishable. There, the trial evidence included the defendant's conversation with a codefendant, Fischer, in which Fischer advised the defendant to " 'get rid of Tina [Rose, a potential witness].' " *Id.* at 765. The defendant responded that he was not "worried about Tina." *Id.* On appeal, the court held that it was error, albeit harmless, to admit the defendant's statement under the coconspirator exception to the hearsay rule, given that the conspiracy had ended by the time the defendant made the statement. *Id.* at 776.

¶ 19 The court also rejected the State's alternative argument that the statement was admissible as an admission. The court noted that the statement "did not indicate any details of the crimes, nor were they even mentioned." *Id.* at 777. The court distinguished *People v. Whitlock*, 174 Ill. App. 3d 749 (1988), because there the defendant's statements "supported an inference of guilt where they 'indicated knowledge of the facts of the crime.' " *Hoffstetter*, 203 Ill. App. 3d at 777 (quoting *Whitlock*, 174 Ill. App. 3d at 771-72).

¶ 20 In *Whitlock*, the evidence included the defendant's statement that a codefendant had shot the victim. The appellate court affirmed, noting that the statement was not a confession that he committed the crime, but "indicated knowledge of the facts of the crime," which established that the defendant was present when the crime was committed. *Whitlock*, 174 Ill. App. 3d at 772.

¶ 21 In *Hoffstetter*, the defendant's statement that he was not "worried about Tina" was not a confession, even in the context of Fischer's statement that the defendant should " 'get rid of' " Tina, as it was subject to numerous reasonable interpretations. For example, the defendant might have believed that he was not guilty and thus was not worried that Tina would incriminate him. Or perhaps the defendant knew that Tina had moved out of the jurisdiction and thus would not testify against him. Because the statement was subject to differing interpretations, the only way it could have incriminated the defendant was if the defendant mentioned details of the crime that only someone who participated in the crime would have known.

¶ 22 In *Whitlock*, the defendant's statement about the codefendant was not an admission of the defendant's guilt at all. Again, its only value as an incriminating statement was that the defendant mentioned details of the crime. Thus, *Hoffstetter* and *Whitlock* do not create a hard-and-fast rule that an admission must include a reference to details of the crime. Rather, it is sufficient if the statement, "when taken in connection with other facts" (*Stewart*, 105 Ill. 2d at 57), leads to an inference of guilt. Here, defendant's statement, in connection with the fact that he was facing imprisonment only for the present offenses, leads to an inference that defendant committed those offenses.

¶ 23 Defendant next contends that his residential-burglary conviction should be vacated because it is based on the same physical act as home invasion. In *People v. King*, 66 Ill. 2d 551, 566 (1977), the supreme court stated:

> "Prejudice results to the defendant only in those instances where more than one offense is carved from the same physical act. Prejudice, with regard to multiple acts, exists only when the defendant is convicted of more than one offense, some of which are, by definition, lesser included offenses. Multiple convictions and concurrent sentences should be permitted in all other cases where a defendant has committed several acts, despite the interrelationship of those acts. 'Act,' when used in this sense, is intended to mean any overt or outward manifestation which will support a different offense."

¶ 24 Under *King*, a court first decides if a defendant's conduct consisted of separate acts or a single act, because multiple convictions are improper if they are based on precisely the same physical act. However, if the court decides that the defendant committed multiple acts, it then goes on to decide whether any of the offenses are lesser included offenses. *People v. Rodriguez*, 169 Ill. 2d 183, 186 (1996).

¶ 25 In *People v. McLaurin*, 184 Ill. 2d 58, 106 (1998), the court held that residential burglary and home invasion are carved from the same physical act: the entry of the victim's home. In *People v. Jones*, 2015 IL App (2d) 120717, ¶ 42, this court followed *McLaurin*.

¶ 26 The State cites *People v. Price*, 2011 IL App (4th) 100311, where the court declined to follow *McLaurin*. The court stated that while residential burglary and home invasion share a common act—the unauthorized entry—home invasion, as charged there, contained an additional element, causing injury to an occupant of the residence. Thus, the court reasoned, the defendant's home invasion and residential burglary convictions were not based on the same physical act.

¶ 27 While the *Price* court's approach perhaps has some superficial appeal, it is simply inconsistent with *McLaurin*. *McLaurin* held that residential burglary and home invasion are

based on the same physical act. We are, of course, bound by the decisions of our supreme court. *People v. Muhammad*, 398 Ill. App. 3d 1013, 1017 (2010). Thus, we continue to adhere to *Jones*, which is consistent with supreme court precedent, and vacate defendant's residential-burglary conviction.

¶ 28 The judgment of the circuit court of Winnebago County is affirmed in part and vacated in part. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nichols*, 71 Ill. 2d 166, 179 (1978).

¶ 29 Affirmed in part and vacated in part.