

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).

FIRST DIVISION
May 22, 2017

2017 IL App (1st) 141682-U
No. 1-14-1682

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 13 CR 13398
)	
TERREN CHILDRESS,)	Honorable
)	William G. Lacy,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Harris and Mikva concurred in the judgment.

ORDER

¶ 1 *Held:* Conviction for residential burglary affirmed over defendant's contentions that the victim's testimony was not credible and that trial counsel rendered ineffective assistance when he did not impeach the victim with statements in a police document.

¶ 2 Following a bench trial, defendant Terren Childress was convicted of residential burglary and sentenced to nine years' imprisonment as a Class X offender based upon his criminal history. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt because the only evidence presented was the victim's testimony, which was incredible and lacked logic and common sense. Defendant also contends that his trial counsel rendered

No. 1-14-1682

ineffective assistance because counsel failed to impeach the victim with her alleged prior inconsistent statements contained in a police document. We affirm.

¶ 3 At trial, Kimberly Selmon testified that on July 2, 2013, she lived in the first-floor apartment at 4852 West Rice Street. The building was a two-flat and the second-floor apartment was vacant. About 2 a.m., she arrived home with her two 13-year-old cousins who were spending the night. Upon entering her apartment, she observed that the lights were on although she had turned them off when she left. She immediately noticed that her air conditioner was missing from the window. Selmon heard noise coming from her bedroom. She whispered to her cousins that someone was robbing her apartment and they needed to leave.

¶ 4 Selmon and her cousins left the building and got into her car. As she drove around the block to the alley, she called the police. In the alley, Selmon observed a man she knew as “Chicken man” standing with a ladder next to the gate that led to her residence. To the left of Chicken man were two shopping carts containing Selmon’s personal property including food, bottles of soda, candy and hygiene items. When Selmon left her apartment earlier that day, those items were in her kitchen. Chicken man was holding a bag from Selmon’s bedroom.

¶ 5 Selmon asked Chicken man why he was standing there. She then told him that someone was robbing her apartment and that he appeared to be the “watch out guy.” Chicken man denied the accusation and said he was picking up refrigerators. Selmon argued with Chicken man about being the look-out. She then told him that the police were on their way, and Chicken man quickly walked away from the area.

¶ 6 Selmon then observed defendant, whom she knew from the neighborhood as “Rat,” exiting her apartment by coming out the window onto her back porch. She also observed that

No. 1-14-1682

several items of her personal property were on the porch. Defendant jumped over the gate from her backyard and fell directly behind her in the alley. Selmon explained that she lived in a gated community and the gate was always locked unless she unlocked it with her key.

¶ 7 Some men from the neighborhood arrived in the alley and Selmon told them that defendant had robbed her house and that she had called the police. The men held defendant to prevent him from fleeing, but defendant wrestled away from them and broke free. Defendant ran down Lamon Avenue to a police vehicle. Selmon also ran to the vehicle and told the police that she had called them and that “this guy robbed my house.” The officers then arrested defendant.

¶ 8 Selmon identified a photograph of the front of her apartment building and confirmed that was where she lived in July of 2013. She also identified two photographs of several items of her personal property on the back porch. The items had been inside her apartment when she left earlier in the day. Selmon noted that one of the items was her air conditioner that had been in her living room window when she left her apartment. Selmon testified that she did not give defendant permission to enter her home or remove any items from it.

¶ 9 Selmon acknowledged that she had a pending aggravated DUI case, but stated that nothing was offered or promised to her in that case in exchange for her testimony in this case. She also had a contempt of court petition pending against her in this case for failure to appear on a previous court date.

¶ 10 On cross-examination, Selmon acknowledged that she did not have a refrigerator or stove in her apartment, but she did have furniture. Counsel asked Selmon “[y]ou didn’t actually really live there all the time, correct?” and she replied “[n]o.” She denied that she only went to the apartment occasionally because it was used for drug transactions. Selmon testified that the items

No. 1-14-1682

taken from her apartment included a speaker, a DVD player, DVDs, a chair, pillows, an air conditioner, covers and baby clothes. None of those items were in the shopping carts. The shopping carts contained her soda, candy, snack food, and other items of that nature.

¶ 11 The men who held defendant in the alley arrived while Selmon was arguing with him about why he was in her apartment. Defendant was arrested half a block from her residence. When the police arrived, the shopping carts were still in the alley. The police photographed the items on her porch. Selmon acknowledged that there were no photographs of the ladder, the shopping carts, or the items inside the carts, and asserted that there should have been more photographs. Selmon's property was returned to her. Selmon acknowledged that she subsequently saw Chicken man on the street, and said he was living in her family's house.

¶ 12 On redirect, Selmon testified that she lived in the apartment and that she was the only person who had keys to the residence. Pursuant to the court's questioning, Selmon testified that she moved into the building in December, that it was in foreclosure, and that the landlord rented the apartment to her to make money before the building was sold. Selmon estimated that defendant ran down the street for "maybe two minutes," and acknowledged that she previously testified that he ran about half a block.

¶ 13 Chicago police officer Golak testified that about 2:10 a.m., he and his partner responded to a call regarding a burglary in progress. As they drove to the scene, he observed defendant, a woman and possibly another man running towards their vehicle, and the officers stopped. As the people approached the police vehicle, the woman said "that's the guy that tried to rob my house."

¶ 14 The trial court found that, although Selmon was "somewhat quirky" and over-responsive to the questions, that did not affect her credibility. The court noted that Selmon knew defendant

from the neighborhood and that she never lost sight of him from the time he exited her apartment window until he was arrested by police. The court specifically found that the evidence that there was furniture inside the apartment and that Selmon was the only person who had keys to the apartment established beyond a reasonable doubt that the apartment was a residence. The court therefore concluded that based on the totality of the evidence, defendant was proven guilty of residential burglary beyond a reasonable doubt. The court subsequently sentenced defendant to nine years' imprisonment as a Class X offender based upon his criminal history.

¶ 15 On appeal, defendant first contends that the State failed to prove him guilty beyond a reasonable doubt because the only evidence presented was Selmon's testimony, which was incredible and lacked logic and common sense. Defendant argues that Selmon provided many different accounts of the burglary which were inconsistent in regards to the items stolen and the details of what occurred. He also argues that the evidence did not establish that the apartment constituted a "dwelling" for purposes of the residential burglary statute because Selmon admitted that she did not live there all the time, and her testimony that she lived there for seven months with no refrigerator or stove was "contrary to human experience," and thus, unbelievable.

¶ 16 The State responds that the evidence sufficiently proved defendant guilty where Selmon testified that she saw defendant exit her apartment through a window and never lost sight of him until he was arrested by police minutes later. The State also points out that the trial court expressly found Selmon's testimony credible. In addition, the State argues that the evidence established that Selmon lived in the apartment where she testified that she was the only person who had keys to the residence, and her furniture and personal property were located therein.

¶ 17 As a threshold matter, when defendant argues that Selmon’s testimony was inconsistent, in several instances, he compares her trial testimony to information contained in a police document entitled “PROBABLE CAUSE STATEMENT FOR JUDICIAL DETERMINATION” contained in the common law record. It appears that this document is the probable cause affidavit that was prepared by an assistant State’s Attorney and a detective on the day of the burglary. The form provides that “THE FACTS BRIEFLY STATED ARE AS FOLLOWS:” and includes a brief narrative of the facts of this case. In his argument, defendant repeatedly notes specific details Selmon testified to at trial, and then claims that she did not report that information to the police because it is not contained in the narrative in this document. This document was not referred to or admitted into evidence at trial. Accordingly, the State urges this court to disregard the information contained in this document.

¶ 18 In general, documents that were not admitted into evidence at trial, including police reports, may not be considered by the reviewing court on appeal. *People v. Blankenship*, 406 Ill. App. 3d 578, 590 (2010). Moreover, although police reports may be used for impeachment purposes, they are not admissible as substantive evidence as the contents generally constitute hearsay. *People v. Gagliani*, 210 Ill. App. 3d 617, 629 (1991); *People v. Banasik*, 93 Ill. App. 3d 612, 616 (1981). Consequently, we cannot give any consideration to this police document in our review of the sufficiency of the evidence.

¶ 19 When defendant claims that the evidence is insufficient to sustain his conviction, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48, citing *Jackson v. Virginia*, 443 U.S.

307, 318-19 (1979). This standard applies whether the evidence is direct or circumstantial, and does not allow this court to substitute its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42.

¶ 20 In a bench trial, the trial court is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences from therein. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We will not reverse a criminal conviction based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt (*People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011)), nor simply because defendant claims that a witness was not credible or that the evidence was contradictory (*Siguenza-Brito*, 235 Ill. 2d at 228). The testimony of a single witness, if positive and credible, is sufficient to sustain a conviction. *Id.*

¶ 21 To prove defendant guilty of residential burglary in this case, the State was required to show that he knowingly entered Selmon's dwelling without authority and with the intent to commit a theft therein. 720 ILCS 5/19-3(a) (West 2012). For the purposes of the residential burglary offense, and as relevant in this case, a "dwelling" means an apartment in which the occupant actually resided at the time of the offense. 720 ILCS 5/2-6(b) (West 2012).

¶ 22 Viewed in the light most favorable to the State, we find that the evidence in this case was sufficient to allow the trial court to find defendant guilty of residential burglary. Selmon testified that when she entered her apartment at 2 a.m., she observed that her air conditioner was missing from the window and she heard noise coming from her bedroom. Selmon suspected that she was

being robbed and left her apartment. Minutes later, as she stood in the alley behind her residence, Selmon observed defendant, whom she knew, exiting her apartment by coming out the window onto her back porch. She also observed that several items of her personal property which had been inside the apartment when she left were now on the back porch and in two shopping carts in the alley. Defendant jumped over the gate from her backyard and attempted to flee, but ran into a police vehicle as it approached the scene. Selmon testified that she did not give defendant permission to enter her apartment or remove any items from therein. Selmon's testimony was corroborated by two photographs which depicted her personal property piled on her back porch. The trial court expressly found Selmon's testimony credible. Consequently, the record shows that Selmon's testimony alone was sufficient for the trial court to convict defendant of residential burglary. *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 23 In making this finding, we reject defendant's claim that the evidence failed to establish that the apartment was a dwelling. Selmon initially testified that she lived in the apartment and confirmed that testimony twice – when she was shown a photograph of the apartment building and during redirect examination. She also testified that she was the only person who had keys to the apartment, which contained her furniture and personal property. Sitting as the trier of fact, the trial court found that this evidence established beyond a reasonable doubt that the apartment constituted a dwelling within the meaning of the residential burglary statute, and we find no reason to disturb that determination.

¶ 24 Defendant's assertion that Selmon admitted that she did not live in the apartment all the time is unpersuasive. Counsel asked Selmon "[y]ou didn't actually really live there all the time, correct?" and she replied "[n]o." Her reply could have meant that counsel's assertion was not

correct. Immediately thereafter, Selmon denied that she only went to the apartment occasionally. The trial court expressly asked Selmon what she meant when counsel inferred that she did not live there all the time. Selmon explained that she recently moved into the apartment in December, that the building was in foreclosure, and that the landlord rented the apartment to her to make money before the building was sold. This testimony shows that Selmon's residency in the apartment appears to have been tentative, pending foreclosure proceedings. It does not, however, negate the trial court's finding that she was living there at the time of the offense.

¶ 25 Furthermore, the fact that she lived in the apartment without a stove or refrigerator is not so "contrary to human experience" that it rendered her testimony unbelievable. There could be any number of reasons as to why she did not have these appliances, including uncertainty as to the length of her tenancy.

¶ 26 The determination of Selmon's credibility was a matter entirely within the province of the trial court which heard and observed her testify. *Siguenza-Brito*, 235 Ill. 2d at 228. The trial court expressly found her testimony credible. Based on this record, we conclude that Selmon's testimony was sufficient to allow the trial court to find defendant guilty of residential burglary beyond a reasonable doubt.

¶ 27 Defendant next contends that his trial counsel rendered ineffective assistance because counsel failed to impeach Selmon with her alleged prior inconsistent statements contained in the police document entitled "PROBABLE CAUSE STATEMENT FOR JUDICIAL DETERMINATION," *i.e.*, the probable cause affidavit discussed above. Defendant asserts that the police memorialized Selmon's statements therein. He maintains that the document reflects numerous inconsistencies between Selmon's testimony at trial and her statements to police on

No. 1-14-1682

the night of the burglary regarding the items stolen and the details of what occurred. He argues that omissions in the factual narrative show that Selmon did not inform the police of many details she testified to at trial. Defendant claims that he suffered prejudice because the trial court likely would have found Selmon's testimony unreliable if counsel had impeached her with her statements in this affidavit.

¶ 28 The State responds that counsel could not impeach Selmon with the statements contained in the affidavit because it was prepared and signed by an assistant State's Attorney and a detective, not Selmon. The State argues that it is impossible to discern what information in this document was from Selmon and what was obtained from other witnesses on the scene.

¶ 29 Claims of ineffective assistance of counsel are evaluated under the two-prong test set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Graham*, 206 Ill. 2d 465, 476 (2003). To support a claim of ineffective assistance of counsel, defendant must demonstrate that counsel's representation was deficient, and as a result, he suffered prejudice. *Strickland*, 466 U.S. at 687. Specifically, defendant must show that counsel's performance was objectively unreasonable, and that there is a reasonable probability that the outcome of the proceeding would have been different if not for counsel's error. *People v. Henderson*, 2013 IL 114040, ¶ 11. If defendant cannot prove that he suffered prejudice, this court need not determine whether counsel's performance was deficient. *Graham*, 206 Ill. 2d at 476.

¶ 30 Defense counsel's decision of whether or not to cross-examine or impeach a witness is considered a matter of trial strategy which does not support a claim of ineffective assistance. *People v. Clay*, 379 Ill. App. 3d 470, 481 (2008). Although a police report is not admissible as

No. 1-14-1682

substantive evidence, it may be used for impeachment purposes. *Gagliani*, 210 Ill. App. 3d at 629. However, a police report may only be used to impeach the officer who actually wrote the report. *Id.* Counsel may not impeach the testimony of a complainant based on an alleged omission in a police report. *Id.*; *People v. Beard*, 271 Ill. App. 3d 320, 331 (1995). See also *People v. Moore*, 51 Ill. 2d 79, 83 (1972) (no merit in the defendant’s argument that he was deprived of the opportunity to impeach the complainant with her prior statements where “[t]he one specific reference in the argument is to a police report which obviously could not be used to impeach the complainant.”)

¶ 31 Here, trial counsel would have been precluded from attempting to impeach Selmon’s testimony with the factual narrative in the probable cause affidavit. The document could only have been used to impeach the testimony of the detective and the assistant State’s Attorney who wrote it, neither of whom testified at trial. The statements in the affidavit are attributable only to those who wrote it; they are not Selmon’s statements. Accordingly, trial counsel did not render ineffective assistance when he failed to attempt to impeach Selmon with the statements in the probable cause affidavit.

¶ 32 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 33 Affirmed.