2017 IL App (1st) 150409-U

No. 1-15-0409

Order filed April 13, 2017

Fourth Division



IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 14 CR 15227 |
| | ) | |
| COREY GRAHAM, | ) | Honorable |
| | ) | James B. Linn, |
| Defendant-Appellant. | ) | Judge Presiding. |

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Ellis and Justice McBride concurred in the judgment.

**ORDER**

¶ 1 *Held*: Defendant was proven guilty, beyond a reasonable doubt, of residential burglary when the evidence at trial established that he and his companions entered an enclosed porch.

¶ 2 Following a bench trial, defendant Corey Graham was found guilty of residential burglary and sentenced to four years in prison.[1] On appeal, he contends that the State did not

[1] Defendant was also convicted of the possession of burglary tools and sentenced to a concurrent two-year prison term. He makes no argument regarding that conviction or sentence on appeal.

prove him guilty of residential burglary beyond a reasonable doubt when the evidence at trial only established that he entered an enclosed porch used for storage, rather than a "dwelling." We affirm.

¶ 3 At trial, Matthew Jahnke testified that he owned a single-family home at 6549 South Fairfield in Chicago. When he left his home at 5:30 a.m. on August 14, 2014, the house was "secure." He was later contacted by police officers and returned home. During a walkthrough of the house, he observed "pry marks" on the back porch window, by the back porch door, and by the basement door. Five panes of glass were removed from a window and put on the grass. The rear door to the enclosed porch was open. Nothing was taken from the house or the enclosed porch. Jahnke did not give defendant permission to enter the rear of the house.

¶ 4 During cross-examination, Jahnke testified that the doors to the house and the basement were not open. The porch area is used for storage. There are shelves on the porch, but no chairs or tables.

¶ 5 James O'Donnell testified that he was employed as a deputy sheriff by Cook County and as an officer by Marquette Park Security. On the morning of August 14, 2014, he was driving a patrol car in his capacity as a Marquette Park Security Officer while listening to Chicago Police radio transmissions. After he heard a call of a burglary in progress at 6549 South Fairfield, he "responded to that location." When he arrived, he saw a Chicago police vehicle pull up in front of the house, so he went to the alley behind the house. He exited his vehicle and went to the rear of the house. He then saw three "male black possible offenders" exit the rear of the location and step down the stairs. At trial, he identified defendant as one of those people. The three men fled and O'Donnell chased them. Ultimately, he lost sight of defendant, and returned to 6549 South

Fairfield. He was later met at that location by two officers who had taken the men into custody. He indentified defendant as one of the men he saw leaving the house.

¶ 6 Officer Jerry Sikorski testified that he and his partner responded to a flash message of a "burglary in progress" at 6549 South Fairfield and approached through the alley. He saw defendant and took defendant into custody. Another man was also taken into custody. The officers relocated to 6549 South Fairfield and met O'Donnell. O'Donnell identified defendant as one of the people he saw fleeing from the residence. Later, after being informed of the *Miranda* warnings, defendant stated that he was standing outside as a lookout while his companions attempted to get into the house.

¶ 7 Detective Ronald Skrip testified that he spoke with defendant at a police station. Defendant stated that he went to the location with his brother and Ty "Sticky" Huddleston; that the other two men knocked on the front door; and that after no one answered, the men went to the rear of the location. There, Huddleston unsuccessfully tried to pry open a door. Huddleston then pried open a window and after the window was opened, Huddleston opened a door. The other two men then "went inside the residence." Defendant stated that as the men were attempting to pry open a window that was "inside the location" they heard "police activity" and fled. Defendant indicated that he was the "lookout." This statement was not reduced to writing.

¶ 8 The trial court found defendant guilty of residential burglary and sentenced him to four years in prison.

¶ 9 On appeal, defendant contends that he was not proven guilty of residential burglary beyond a reasonable doubt because the State failed to establish that the enclosed back porch of 6549 South Fairfield, which Jahnke used only for storage, was part of the "dwelling." Defendant

argues that his conviction should be reduced to attempted residential burglary because the evidence at trial established that no one actually entered the "dwelling;" rather, only the enclosed porch was entered.

¶ 10 A person commits residential burglary when he "knowingly and without authority enters or knowingly and without authority remains within the dwelling place of another, or any part thereof, with the intent to commit therein a felony or theft." See 720 ILCS 5/19-3(a) (West 2014). Section 2-6 of the Criminal Code of 2012 (the Code) states that:

> "(a) Except as otherwise provided in subsection (b) of this Section, 'dwelling' means a building or portion thereof, a tent, a vehicle, or other enclosed space which is used or intended for use as a human habitation, home or residence.
>
> (b) For the purposes of Section 19-3 of this Code, 'dwelling' means a house, apartment, mobile home, trailer, or other living quarters in which at the time of the alleged offense the owners or occupants actually reside or in their absence intend within a reasonable period of time to reside." See 720 ILCS 5/2-6 (West 2014).

¶ 11 In the case at bar, the parties disagree as to the standard of review. Defendant argues that the question of whether an enclosed porch qualifies as a "dwelling" is one of statutory interpretation to which this court must apply a *de novo* standard of review. The State, on the other hand, argues that the question before this court is whether, after viewing all the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. See, *e.g.*, *People v. Brown*, 2013 IL 114196, ¶ 48.

¶ 12 We agree with defendant that the question presented is one of statutory construction, which requires us to ascertain and give effect to the legislature's intent. *People v. Diggins*, 235 Ill. 2d 48, 54 (2009). "The best indicator of the legislature's intent is the language of the statute, which must be accorded its plain and ordinary meaning," and "[w]here the language of the statute is clear and unambiguous, this court will apply the statute as written without resort to aids of statutory construction." *Id*. at 54-55. Our review is *de novo*. *Id*. at 54.

¶ 13 Here, defendant argues that because the enclosed porch was used only for storage, it cannot be considered a "dwelling." Defendant relies upon *People v. Thomas*, 137 Ill. 2d 500 (1990).

¶ 14 In *Thomas*, our supreme court considered whether the defendant was properly charged with burglary rather than residential burglary when he killed the victim in her garage while attempting to steal perfume products located there. The defendant argued that the facts as presented by the State established that he committed residential burglary rather than burglary, and therefore, he was improperly charged and convicted. In other words, because he entered the victim's attached garage he should have been charged with residential burglary and the State acted "arbitrarily" when it charged him with burglary. *Id.* at 519.

¶ 15 The court noted that the victim's body was found in her garage, which was part of a multiunit structure, *i.e.*, all the living units and garage units were attached and under the same roof. *Id.* The court therefore held "*here* that an attached garage *is not necessarily* a 'dwelling' within the meaning of the residential burglary statute" and that "[a] garage, *at least in this instance*, whether attached to the various living units or not, cannot be deemed a residence or living quarters." (Emphasis added.) *Id*.

¶ 16 The *Thomas* court then stated that its decision was not "necessarily inconsistent with the reasoning" of *People v. Dawson*, 116 Ill. App. 3d 672 (1983), which held that the entry into an attached garage constituted residential burglary because that case predated the legislature's adoption of a "new definition of 'dwelling.' " *Id.* at 520. See *Dawson*, 116 Ill. App. 3d at 675 (because the house and the garage were attached with one roof, one foundation, and a connecting door, once the defendant had broken "the close of the garage," he had entered a " 'dwelling place' [sufficient] to establish residential burglary"). Ultimately, however, our supreme court left "to another day, the question of whether the entry of an unoccupied portion of the second floor [citation] or the porch [citation] of a house constitutes the unlawful entry of a residence." *Thomas*, 137 Ill. 2d at 520.

¶ 17 Although defendant is correct that *Thomas* held that the garage in that case was not a "dwelling" for purposes of the residential burglary statute, the court also stated that it was not creating a *per se* rule that an attached garage cannot be a dwelling by limiting its holding to the facts of that case and specifically stating that it was leaving "to another day" the question of whether the entry to a porch of a house constituted an unlawful entry to a residence. *Id.*

¶ 18 We find *People v. McIntyre*, 218 Ill. App. 3d 479 (1991), instructive. In that case, the defendant was convicted of residential burglary after the screen door to a screened-in porch attached to a residence was torn, the porch door unlocked, and a gas grill removed from the porch. On appeal, the defendant contended that the State failed to "prove" a residential burglary because the only entry was to a screened porch attached to a house which did not qualify as a "dwelling." *Id.* at 481.

¶ 19 On appeal, the court noted that the *Thomas* court left unanswered the question of whether the unlawful entry into the porch of a house "may constitute the unlawful entry of a residence." *Id.* Although the court declined to decide "whether every porch is part of a dwelling," the court concluded that the porch in that case was part of the homeowners' "living quarters." *Id.* The court noted that the enclosed porch was a wood-frame structure with solid walls and screens, was attached to the house, and had doors with locks which provided access to the house and the backyard respectively. *Id.* at 481-82. Further, the porch was furnished with a table and chairs, had a gas grill, and the homeowners ate on the porch in the summer. *Id.* at 482. Therefore, the court concluded that because the porch was "attached, enclosed, and used for sitting, eating and cooking," the porch was "part of the living quarters of the house," and therefore qualified as part of the "dwelling." *Id*.

¶ 20 In the instant case, the evidence at trial established that defendant and his companions entered an enclosed porch attached to a single-family home and that there was a door that led from the porch into the house. Similar to *McIntyre*, the porch in this case was attached and enclosed and had locked doors the led to the house and the backyard respectively. Thus, the enclosed porch was part of the house and qualified as a "dwelling" pursuant to the Code. *Id.*

¶ 21 To the extent that defendant argues that the enclosed porch is not a "dwelling" because Jahnke testified that he used it for storage rather than for living space, we disagree.

¶ 22 In *People v. Cunningham*, 265 Ill. App. 3d 3, 8-9 (1994), the court concluded that an attached garage of a single-family home, which led directly into a room of the house, was a part of the dwelling for purposes of the residential burglary statute, and the State did not need prove that anyone was actually "living" in the garage. In that case, the evidence established that

defendant entered an attached garage of a single-family home which had a door that led directly into the family room, that the side door to the garage was locked and that the garage was used primarily to store tools and the children's bicycles and toys, that is, the children used the garage daily. *Id.* at 9. The court therefore concluded that that, under those facts, the jury could have found beyond a reasonable doubt that the garage was part of the dwelling for purposes of the residential burglary statute. *Id.*

¶ 23 Similarly, here, the door to the enclosed porch was locked, the porch led into a room of the house and the space was used for storage. Pursuant to *Cunningham,* the State did not need to prove that someone was actually "living" on the porch in order for the porch to be considered part of the dwelling for purposes of the residential burglary statute. See *Id.* at 8-9. See also *People v. Wiley,* 169 Ill. App. 3d 140, 143-44 (1988) (enclosed porch was part of the dwelling; "whether anyone actually occupied the porch area of the house was not determinative"). We therefore affirm defendant's conviction for residential burglary.

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

¶ 25 Affirmed.