2017 IL App (1st) 150664-U

No. 1-15-0664

Fifth Division
June 30, 2017

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. LAWRENCE BRANTLEY, Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County. No. 13 CR 8808 The Honorable Kenneth J. Wadas, Judge Presiding.

PRESIDING JUSTICE GORDON delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence at trial was sufficient to support defendant's possession of burglary tools conviction where he used a half-inch socket to gain entry to and burglarize a Chevy Cobalt, and he then attempted to leave the crime scene with the half-inch socket still in his possession.

¶ 2 After a bench trial, defendant was convicted of burglary and possession of burglary tools and was sentenced to two concurrent terms of six years with the Illinois Department of

Corrections (IDOC). The convictions stemmed from the events of April 19, 2013, when police observed defendant burglarizing a parked vehicle and then walking away.

¶ 3 On appeal, defendant claims: (1) that his conviction for possession of burglary tools must be vacated pursuant to the one-act, one-crime rule; and (2) that his six-year extended-term sentence imposed for possession of burglary tools must be reduced to the maximum non-extended class 4 sentence of three years because an extended term is authorized only for the most serious offense of which a defendant is convicted, and defendant was convicted of the Class 2 offense of burglary. The State concedes that his sentence for burglary tools must be reduced to three years.

¶ 4 For the following reasons, we affirm defendant's conviction for possession of burglary tools but reduce the sentence from six years to three years for this offense. Defendant raises no issues on this appeal concerning his conviction and sentence for burglary.

¶ 5 BACKGROUND

¶ 6 In the early morning hours of April 19, 2013, a truck driver observed defendant breaking into a parked vehicle and flagged down a passing police vehicle. The police observed defendant partially inside the vehicle and then walking away from the vehicle carrying a plastic bag. After defendant's arrest, the police discovered a half-inch socket on defendant's person and defendant told police that he had used the socket to break into the vehicle.

¶ 7 I. Pretrial Proceedings

¶ 8 Prior to trial, the trial court conducted a fitness hearing which revealed that defendant was taking several psychotropic medications, including: Effexor (antidepressant); Remeron (sedating antidepressant); and Zyprexa (antipsychotic and mood stabilizer). However, the

trial court concluded that defendant was fit to stand trial. Defendant signed a jury waiver and waived his rights to a jury trial, and the case proceeded to a bench trial.

¶ 9 II. Evidence at Trial

¶ 10 At trial, two Chicago police officers testified concerning the incident on April 19, 2013. Officer Victor Perez testified that he and his partner were travelling westbound on Roosevelt Road at 1:50 a.m. when a truck driver flagged them down. The officers were on duty, in uniform, and driving a marked police vehicle. The truck driver identified a black Chevy Cobalt parked a half block south of Roosevelt Road on South St. Louis Avenue and he informed the officers that an individual, later identified as defendant, had just broken into that vehicle. Officer Perez observed that the passenger side door of the Chevy Cobalt was open and that an individual's upper body was inside it, while his lower body remained outside of the passenger side door. Officer Perez observed that the trunk was closed at that time.

¶ 11 Without losing sight of either the Chevy Cobalt or defendant, Officer Perez drove toward the vehicle. As he approached defendant from behind, he observed that defendant was removing items from the trunk, which was now open, and was placing those items into a plastic bag. He also observed that the passenger side door remained open and that the glass in its window was broken. At some point, defendant became aware of the approaching officers and attempted to walk away on the sidewalk with the plastic shopping bag, but he was soon detained by Officer Perez. Upon inspection of the Chevy Cobalt, Officer Perez observed paper, as well as broken glass from the passenger side window, scattered throughout the vehicle's interior. Inside the plastic bag recovered from defendant were Kleenex, laundry detergent, glasses and a glasses case, and some chewing gum.

¶ 12 The officers then contacted the owner of the vehicle, Elizabeth Epting, who arrived 20 minutes later and identified the Chevy Cobalt as her vehicle. Epting also identified the contents within the plastic bag as her property and informed the officers that the windows were intact when she last parked her vehicle and that she neither knew defendant nor gave him permission to enter her vehicle. An evidence technician was then called to photograph the vehicle and the contents of the bag. Defendant received *Miranda* warnings at the scene after his arrest.

¶ 13 Next, Officer Daniel Vazquez testified that he and his partner arrived at the scene at 2 a.m. and took custody of defendant and transported him to a police station. Officer Vazquez was on duty, in uniform, and driving a marked police vehicle.

¶ 14 At the police station, Officer Vazquez performed a custodial search and recovered a half-inch socket attachment for a wrench from the right pocket of defendant's pants. No wrench was recovered. Defendant stated that he used it to break the window. Officer Vazquez then inventoried the socket.

¶ 15 Epting's trial testimony echoed the statements which she had provided to the responding police officers at the scene. She identified herself as the owner of both the Chevy Cobalt and the contents of the plastic bag recovered from defendant. She had last parked her vehicle on South St. Louis Avenue, and she did not know defendant nor had she given him permission to enter her vehicle. The State then rested its case-in-chief.

¶ 16 After the trial court denied defendant's motion for a directed finding, he then testified that he never entered the vehicle or took anything from it. On April 19, 2013, he walked by the Chevy Cobalt on St. Louis Avenue while on his way home from a friend's house. He observed that the passenger window was broken and its trunk was open, and that a plastic

bag was on the ground near the trunk. He scanned the contents of the bag, picked it up, and walked off with it moments before the police arrived and arrested him. He further testified that he was read his *Miranda* rights, but that he did not possess a half-inch socket in his pocket nor was such an item discovered on his person at the police station. Finally, he denied ever making a statement about using a half-inch socket to break the window of the Chevy Cobalt.

¶ 17 In rebuttal, the State moved into evidence a certified copy of defendant's 2013 misdemeanor theft conviction. The trial court stated that it found that both officers testified with a "high degree of credibility" and that it did not believe defendant's version of events. The trial court noted the corroboration of the officers' testimony by physical evidence, photographs of the scene, and "strong circumstantial evidence." The trial court found defendant guilty of burglary and possession of burglary tools.

¶ 18 III. Conviction and Sentencing

¶ 19 The trial court denied defendant's posttrial motion for a new trial. At sentencing, the trial court considered both factors in aggravation and mitigation, including defendant's criminal history and his history of schizophrenia and substance abuse. His criminal history included convictions for murder and armed robbery in 1987 and possession of a stolen vehicle in 2002, for which he was sentenced to 25 years and 4 years with IDOC, respectively. The trial court sentenced him to the minimum for burglary which was six years with IDOC, and to six years to run concurrently for possession of burglary tools. The six-year sentence imposed for the Class 4 possession of burglary tools was an extended-term sentence. The trial court denied defendant's motion to reconsider his sentence, and this appeal followed.

¶ 20 ANALYSIS

¶ 21 On appeal, defendant claims: (1) that his conviction for possession of burglary tools must be vacated pursuant to the one-act, one-crime rule; and (2) that his six-year extended-term sentence for possession of burglary tools must be reduced to the maximum nonextended class 4 sentence of three years because an extended term is authorized only for the most serious offense of which a defendant is convicted, and defendant was convicted of the Class 2 offense of burglary. The State concedes that his sentence for possession of burglary tools must be reduced to three years.

¶ 22 For the following reasons, we affirm his conviction for possession of burglary tools but reduce the sentence for possession of burglary tools to three years. Defendant raises no issues on this appeal concerning his conviction and sentence for burglary.

¶ 23 I. Standard of Review

¶ 24 Defendant claims that the trial court violated the one-act, one-crime rule. To determine whether a violation of the one-act, one-crime rule occurred, a reviewing court must determine whether the defendant's conduct involved multiple acts or a single act. *People v. Miller*, 238 Ill. 2d 161, 165 (2010). We review *de novo* whether a defendant's convictions violate the one-act, one-crime rule. *People v. Csaszar*, 375 Ill. App. 3d 929, 943 (2007). *De novo* review means that this court performs the same analysis that a trial judge would perform. *People v. Schlosser*, 2012 IL App (1st) 092523, ¶ 12.

¶ 25 II. Plain Error Doctrine

¶ 26 Defendant concedes that he failed to raise his one-act, one-crime claim before the trial court. However, he asks that we consider this issue pursuant to the plain error doctrine. The plain error doctrine permits "a reviewing court to consider unpreserved error when (1) a clear

or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007) (citing *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005)). It is well-established that this court will review a one-act, one-crime claim pursuant to the second prong of the plain error doctrine. *People v. Burgess*, 2015 IL App (1st) 130657 ¶ 236. This is because the potential for an unwarranted conviction and sentence threatens the integrity of the judicial process. See *People v. Harvey*, 211 Ill. 2d 368, 389 (2004).

¶ 27 III. One Act, One Crime Rule

¶ 28 Defendant argues that the one-act, one-crime rule was violated because he possessed the socket at issue solely for the burglary, for which he was also convicted. "Burglary and possession of burglary tools are separate acts not arising from the same conduct *unless* the possession is shown to be exclusively for the purpose of committing that burglary for which one is convicted." (Emphasis added.) *People v. Watson*, 35 Ill. App. 3d 723, 724 (1976); see also *People v. Jiles*, 364 Ill. App. 3d 320, 337 (2006) ("[t]he defendant's intent is the controlling factor when the tools in question could be used for innocent purposes as well as illegal purposes").

¶ 29 The statute for "possession of burglary tools" provides in relevant part:

"A person commits possession of burglary tools when he or she

possesses any key, tool, instrument, device, or any explosive, suitable for use in

> breaking into a *** motor vehicle *** or any part thereof, with intent to enter that place and with intent to commit therein a felony or theft." 720 ILCS 5/19-2(a) (West 2012).

Thus, the first element is that defendant must have possessed "any key, tool, instrument, device, or any explosive, suitable for use in breaking into a *** motor vehicle." 720 ILCS 5/19-2(a) (West 2012). The statute does not require that the tool's only purpose be for breaking and entering; "[t]ools originally designed and intended for an innocent purpose may nonetheless be considered burglary tools where they are suitable for use in a burglary and are intended for such a use." *People v. Waln*, 169 Ill. App. 3d 264, 270 (1988); see also *People v. Faginkrantz*, 21 Ill.2d 75, 79 (1960).

¶ 30 Officer Vazquez's testimony established that defendant orally confessed to using the half-inch socket to break into the Chevy Cobalt. While defendant denied ever making that confession to the police, the trial court specifically found the police officers to be credible and did not believe defendant's version of events. "[I]n a bench trial, it is for the trial judge, sitting as the trier of fact, to determine the credibility of witnesses, to weigh evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). Reviewing courts may not substitute their judgment for the trial court's judgment. *People v. Miller*, 2017 IL App (3d) 140977, ¶ 59; *People v. Chatman*, 357 Ill. App. 3d 695, 704 (2005). In the case at bar, the socket was shown to be a tool adapted for breaking and entering by evidence that it was used to break and enter into a vehicle.

¶ 31 The second requirement is that defendant must have possessed the tool "with intent to enter that place and with intent to commit therein a felony or theft." 720 ILCS 5/19-2(a) (West 2012). Defendant claims that we must vacate the possession count because "the State

offered no evidence to suggest that Brantley possessed the half-inch socket for any unlawful purpose other than burglarizing the Cobalt." In other words, his argument is that the burglary and possession of burglary tools convictions were based on the same intent; that is, to commit the theft of items from the Chevy Cobalt.

¶ 32 General intent to commit a burglary, alone, is not sufficient to convict defendant for possession of a burglary tools here because it is an inchoate offense and defendant committed the principal offense of burglary. Under Illinois law, "[n]o person shall be convicted of both the inchoate and the principal offense." 720 ILCS 5/8-5 (West 2012). To affirm the conviction, we must determine whether the facts support a finding of a separate intent to commit another burglary. *People v. Myles*, 132 Ill. App. 2d 962, 967 (1971).

¶ 33 We must inquire whether defendant abandoned the tool at any point during the burglary's commission, because abandonment would indicate that defendant possessed the socket specifically for the burglary of the Chevy Cobalt. Where a defendant is caught in the act of attempted burglary, there is no separate act between possession of the tools and the attempt, and so defendant cannot be convicted of both offenses. *People v. Brown*, 194 Ill. App. 3d 958, 967 (1989) (discussing *People v. Blahuta*, 131 Ill. App. 2d 200, 202 (1970)). For example, in *Blahuta*, where the defendant abandoned his burglary tool (a crowbar) at the crime scene after the owner of the grocery store interrupted his attempt to burglarize the store, the appellate court vacated his conviction for possession of burglary tools. *Blahuta*, 131 Ill. App. 2d at 202, 205-06. By contrast, in *Brown*, where the defendant left the scene while still carrying the screwdriver used to burglarize the property, his action "constitute[d] identifiable, separate conduct sufficient for a separate conviction on the possession count." *Brown*, 194 Ill. App. 3d at 967; see also *People v. Cox*, 71 Ill. App. 3d 850, 862 (1979) (the

act of carrying tools from the burglary was sufficient separate conduct to support a separate charge of possession of burglary tools).

¶ 34 Similar to *Brown*, defendant's possession of the half-inch socket while walking away was conduct separate and distinct from the conduct which constituted the burglary offense because he never voluntarily relinquished possession of the half-inch socket and tried to walk away with it. By walking away with it, he possessed the tool necessary to commit another similar offense. The purpose of making burglary tool possession a separate crime from burglary itself is the desire to protect future victims from future crimes. *Myles*, 132 Ill. App. 2d at 966-67 ("the offense of possession of burglary tools *** subjects all of society to the possibility that anyone in the future may be the victim of the crime"). Two separate and distinct convictions are proper here because the purpose of the tool endured beyond defendant's intent to burglarize the victim's vehicle, as demonstrated by the fact that he chose to retain possession of it after it was used to gain entry into that vehicle.

¶ 35 Even if the trial court believed defendant's testimony denying that he ever stated to police that he used the socket to break the window of the black Chevy Cobalt, the possession count would still stand. Such testimony, if considered credible, would contradict the defense's argument that defendant possessed and used the tool solely to burglarize the victim's vehicle. The possession of the burglary tool would then be unrelated to the substantive crime of burglary, allowing for the inchoate possession crime to be charged separately from the burglary crime.

¶ 36 IV. Extended-Term Sentence

¶ 37 In the alternative, defendant argues that, if this court does not vacate his conviction for possession of burglary tools, this court should still reduce the six-year extended-term

sentence which he received for it. Defendant argues that, according to the Illinois Supreme Court, " 'when a defendant has been convicted of multiple offenses of differing classes, an extended-term sentence may be imposed only on the conviction within the most serious class.' " *People v. Robinson*, 2015 IL App (1st) 130837, ¶ 101 (quoting *People v. Thompson*, 209 Ill.2d 19, 23 (2004)). Here, defendant's convictions are of differing classes; burglary is a Class 2 felony, while possession of burglary tools is a Class 4 felony. 720 ILCS 5/19-1(b) (West 2012); 720 ILCS 5/19-2(b) (West 2012). The State concedes that the extended sentence should apply only to the burglary offense, since it is the most serious offense of which defendant was convicted. We reduce the six year sentence to three years to reflect the correct sentence of three years for possession of burglary tools, which is the maximum nonextended class 4 sentence to run concurrent with the six-year term for the burglary conviction. 730 ILCS 5/5-4.5-45(a) (West 2012). See also Ill. S. Ct. R. 615(b) ("the reviewing court may *** reduce the punishment imposed by the trial court").

¶ 38 CONCLUSION

¶ 39 For the forgoing reasons, we find no violation of the one-act, one-crime rule resulting from defendant's convictions for possession of burglary tools and burglary, and thus affirm defendant's conviction for possession of burglary tools. There were two separate physical acts: the burglary of the Chevy Cobalt, and the attempt to walk away with the half-inch socket that defendant admitted he used in the burglary. See also Ill. S. Ct. R. 615(b) ("the reviewing court may *** reduce the punishment imposed by the trial court").

¶ 40 We agree with defendant and the State that the extended-term sentence for possession of burglary tools was improper and reduce the sentence to three years for the Class 4 felony to run concurrent with the six-year term for the burglary conviction.

¶ 41 Affirmed in part, reversed in part.