2017 IL App (1st) 151092-U

No. 1-15-1092

Order filed December 4, 2017

FIRST DIVISION

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. 14 CR 15552
	)	
CHARLES KNIGHT,	)	Honorable
	)	Frank Zelezinski,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Simon and Mikva concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's conviction for residential burglary over his contention that the evidence was insufficient to prove the elements of unauthorized entry and intent to commit theft.

¶ 2 Following a bench trial, defendant Charles Knight was convicted of residential burglary (720 ILCS 5/19-3(a) (West 2014)), and sentenced to four years' imprisonment. On appeal, defendant contends the evidence was insufficient to prove beyond a reasonable doubt that he

entered the victim's residence without authority and possessed the requisite intent to commit theft therein. For the following reasons, we affirm.

¶ 3 Defendant and co-defendant, Aaron Whirl, were charged with residential burglary for "knowingly and without authority, enter[ing] the dwelling place of Simeon Sabal Jr., located at 14930 S. Cottage Grove Avenue in Dolton, *** Illinois, with the intent to commit therein a theft."[1] The following evidence was adduced at defendant's and Whirl's joint bench trial. Sabal testified that, in August 2014, he was living at 14930 South Cottage Grove Avenue ("the residence") with Christopher Smith and Parish McCray. He and McCray moved into the residence approximately five weeks earlier. He lived in a bedroom in the basement, while Smith and McCray each had their own room on the ground level. On the evening of August 10, 2014, Sabal was home with McCray, Smith, and two women. Around 9 p.m., Smith announced he was going out of town and left the house. Sabal went to bed around 10:30 p.m. and woke up the following morning around 10 a.m. No one else was home.

¶ 4 Around noon on August 11, 2014, Sabal was on the porch speaking to McCray on the phone. Three individuals, including defendant and Whirl, drove up to the residence in a black Chrysler 300. Sabal was familiar with the vehicle and knew it belonged to Whirl. Sabal had seen Whirl at the residence on several prior occasions because he was friends with Smith. The three men walked up to the house and Whirl said, "Get the f*** in the house and sit down." Sabal complied because there were "three tall men" against him, but did not give them permission to enter. He walked in first and sat on the couch as instructed, but did not know why they were there. While seated on the couch, Sabal observed that Whirl had a gun.

[1] Whirl is not a party to the instant appeal and has a separate appeal pending. *People v. Whirl*, No. 1-15-1093.

¶ 5 The three men went into Smith's room and then walked across the hall to McCray's room. Sabal was still on the phone with McCray, but accidentally hung up on him. One of the men kicked the door to McCray's room, and Sabal heard it knock off of the hinges. When he heard them enter McCray's room, Sabal ran to his car parked in front of the residence and drove away. Sabal subsequently called McCray back and informed him of what had just occurred at their house. McCray called the police because Sabal's phone died.

¶ 6 Later that evening, Sabal went to the Dolton Police Department and identified Whirl in a photographic array. When he returned to the residence that evening, the police were there and he was not permitted to enter. The following morning, he went to the residence and his room was in disarray. His television and gaming system were missing and his dresser was open, although everything had been intact when he left the house the day before. Sabal noted that there were no bullet holes in the window when he left, but there were bullet holes and the front door was shattered when he returned.

¶ 7 On August 13, 2014, Sabal returned to the Dolton police station and identified both defendant and Whirl in a physical lineup. He identified Whirl as the person who kicked McCray's door and was in possession of a gun, and he identified defendant as one of the individuals with Whirl. Sabal did not give defendant or Whirl permission to enter the residence or remove items, and he was never contacted about the men coming to the residence.

¶ 8 On cross-examination, Sabal acknowledged that he did not sign a lease to stay at the residence but testified he paid rent to Smith. He did not know defendant prior to the day of the incident and did not recall seeing him at the residence. He acknowledged that on the night of August 10, 2014, a man named "Shawn" was also present at the residence. Sabal did not see

defendant or Whirl with his television or other property, but the men had been in the residence only two minutes before he ran to his vehicle. He denied hearing gunshots or being shot at that day. A few days after the incident, he spoke with Smith's mother, Barbara Smith, but denied telling her that he let three men in the front door. Sabal and McCray moved out a week after the incident.

¶ 9 Parish McCray testified that, in August 2014, he lived at the residence with Sabal and Smith. McCray's room was on the same floor as Smith's room, and he kept his door locked. On August 10, 2014, he was home with Smith, Sabal, Sabal's friend, and the friend's girlfriend. "[A]ll of a sudden," Smith said he was going out of town. McCray went to bed while "everyone" was still at the residence. The following morning, he woke up at 5:15 a.m. to go to work. Smith was not home and Sabal was asleep. Smith's bedroom door was open with the light on, and McCray went into the room and observed that Smith's television was missing.

¶ 10 McCray went to work at 5:45 a.m. When he left, he had a television in his room, his room was clean, and his bedroom door was closed and locked. Around 12 p.m., McCray was on the phone with Sabal discussing finding different living accommodations. During the conversation, they lost contact, but Sabal called him again approximately 30 minutes to an hour later. Based on that phone call, McCray called the police.

¶ 11 That evening, McCray went to the Dolton police station with Sabal. He returned home the following morning and noticed his bedroom door was off its hinges, his television and DVD player were missing, his drawers and papers "were everywhere" and some shoes and other "stuff" were missing.

¶ 12 McCray knew Whirl through Smith, but did not know defendant. He did not give either man permission to enter the residence or take items from the residence. McCray was not informed by his roommates that defendant and Whirl were going to enter his home on August 11, 2014.

¶ 13 On cross-examination, McCray testified that he had known Whirl for approximately one year prior to the incident. He acknowledged that defendant had been at the residence "about three times," and Sabal had been present once or twice when defendant was there. McCray called Barbara Smith when he noticed something wrong with Smith's room. He asked her if Smith took anything other than clothes when he went out of town, and she responded that she did not know. He did not tell her that there was a problem with Smith's room. McCray did not have a chance to speak to Smith that morning. He denied texting anything that day, and did not know what a "hitter" meant. When confronted with a cell phone displaying a text message, he acknowledged that the text message was from his phone number at the time of the incident. McCray first denied sending the text message, and then acknowledged he wrote it and sent it to Smith. The text read, "Yo, O-G, a liar. WTF. We want some -- and you the one that got us robbed. And if I wanted to kill you, I had the 30 in the car that night. We saw you. I could have -- *** I hear you set me up to get my tablet stole. But --" McCray testified that "30" referred to money that he owed Smith and "OG" referred to Barbara Smith.

¶ 14 Ava Casey-Hicks testified that, around 12 p.m. on August 11, 2014, she was at State Farm located at 792 East Sibley Boulevard in Dolton, Illinois. She heard approximately four gunshots behind the insurance office, and then a pause followed by approximately four to five more gunshots. After the shots ceased, Casey-Hicks went outside and observed Whirl holding a

gun standing on the sidewalk in between the residence and the State Farm office. She then returned to the insurance office and, while calling 911, saw that Whirl was driving away in a dark-colored four-door vehicle with the passenger-side mirror hanging off. After she called 911, Casey-Hicks observed two other individuals outside, one of whom was defendant. She did not see the third individual's face. On August 13, 2014, Casey-Hicks went to the Dolton Police Department, and identified both defendant and Whirl in a physical lineup.

¶ 15 On cross-examination, Casey-Hicks testified that she did not recall telling police that she saw an armed black man enter the residence, but acknowledged that someone was giving her information while she was on the phone with 911, so she may have repeated what they told her.

¶ 16 Riverdale police officer Lakeisha Gray testified that, while on duty on August 11, 2014, she learned information about Whirl from a radio dispatch, and based on that information, she went to 14229 South State Street in Riverdale, Illinois. Gray had met Whirl before and knew he lived at that address. In the driveway at that address, she observed a dark-colored Chrysler with a passenger-side mirror hanging off the vehicle. Dolton police officers were trying locate that vehicle in connection with a burglary in progress. Riverdale police officers Jordan and Kozeluh also responded to the dispatch. Gray observed Whirl and defendant walking toward the house at approximately 12:35 p.m. Defendant and Whirl were subsequently detained and Kozeluh conducted a protective patdown on each of them. He recovered a loaded .9 millimeter Ruger semiautomatic handgun from Whirl's waistband, but did not recover any weapons from defendant.

¶ 17 Dolton police detective Major Coleman testified that he was working in the investigations department on August 11, 2014, and around 12 p.m. was dispatched to the residence regarding

an armed person attempting to break in. When he arrived at the scene, he observed various items thrown about the porch, including a game box and cords. He also observed the door to the residence was open, and there were multiple bullet holes in the living room window. No one was inside the home.

¶ 18 In the basement, there were drawers pulled out of the dresser and clothes thrown about the room and the linens pulled off the bed. While at the residence, Coleman was informed that defendant and Whirl were taken into custody. He thereafter contacted the Illinois State Police to process the crime scene.

¶ 19 Whirl agreed to speak to Coleman and Detective Hope that day. Coleman typed up Whirl's statement. He published the statement in court. In his statement, Whirl told Coleman the following. Smith called Whirl around 10:30 a.m. on August 11, 2014, asking him to remove his personal belongings from the house because his two roommates were allowing people to steal his belongings. Smith instructed him to take "everything [Whirl] can grab out of the house." Whirl and defendant went to the residence to do what Smith asked. When they arrived, they were carrying a television through the front door and Whirl observed someone across the street who started firing a gun at them. When the shooting started, they dropped the television and went back inside the house. Whirl returned fire with his .9 millimeter Ruger handgun and shot approximately three to four times. Defendant told Whirl that he "was hit." Whirl took the television, and the men left the residence in his dark blue Chrysler 300 and drove to his home at 14229 South State Street in Riverdale. Whirl called Smith, who said that he would be there shortly and they would go to the police station. Whirl then changed his clothes, put the television

in his basement, and went to the store with defendant to buy cigarettes. On the way back to his house, the police stopped them.

¶ 20 For the defense, Christopher Smith testified that he was serving a sentence in the Illinois Department of Corrections. In August 2014, he was living at the residence in Dolton, Illinois. He was the only person on the lease for the residence, but Sabal and McCray also lived with him. On August 10, 2014, Smith went to Champaign, Illinois with his mother and sister. When he left, his bedroom was intact. He had a bed, dresser, television, laptop, game system, and clothes in his room. He believed he locked his bedroom door when he left. McCray, Sabal, and a man named Shawn were at the residence that night.

¶ 21 On August 11, 2014, Smith woke up around 10:30 a.m. in Champaign and had several missed calls and texts from McCray. He returned the calls, and McCray informed him that his bedroom door was open and his room was ransacked. McCray told him that his television, games, and clothes were gone. Smith called Whirl, whom he had known since kindergarten, and told him that someone took his belongings out of his house and asked Whirl to "go over there and check it out." Smith gave Whirl permission to go into the residence. Whirl and defendant had been to his residence socially, and Sabal had been present during those visits. Smith spoke with McCray several times, but McCray repeatedly stated that he did not know anything about the incident because he was at work. McCray told Smith that he was going to move out because the "stuff was stolen" and he did not know what was going on.

¶ 22 Whirl informed Smith that there was nothing in his room, so Smith instructed Whirl to go back to his residence, collect the rest of Smith's "valuables" and "if anything was valuable in

there to get it for [him] so [he] can sort it out when [he] get[s] home." By "sort it out," Smith meant that he would sit down with his roommates and distribute the property to its owner.

¶ 23 Smith received a text from McCray that read, "As you can see, I got hitters." Smith stated that meant that McCray had people shoot at Whirl. He received another text from McCray a week later referencing Smith's mother. Smith denied that McCray owed him money.

¶ 24 On cross-examination, Smith testified that he told Whirl to go to his house and, if his roommates were there, they would let him inside. However, Whirl did not have a key to get inside the home so he could only get inside if either Sabal or McCray was home. Smith clarified that he instructed Whirl to get "everything out of the house," including items that did not belong to Smith. He did not tell his roommates that defendant and Whirl were going to the residence. Smith acknowledged that he was a convicted felon and had five prior convictions for aggravated robbery.

¶ 25 Barbara Smith, Smith's mother, testified for the defense that the residence was owned by her friend and she helped Smith rent the home. There were no other lessees, aside from Smith, but McCray and Sabal were also living at the residence in their own rooms. On the morning of August 11, 2014, Barbara was in Urbana with her family, including Smith. They learned of an issue at the residence in the early afternoon. Barbara received a call from McCray and, following the call, she and Smith returned to Dolton that night.

¶ 26 The police were at the residence when they arrived around 8:30 or 9 p.m. Barbara observed cones set out by the police, glass on the ground, and bullet holes in the windows and took photographs on her cell phone. On August 13, 2014, Barbara spoke with Sabal on the phone regarding Smith's missing items. Sabal told her that he was on the front couch watching

television and Whirl and two other men came to the house and he let them in. According to Sabal, the men went into Smith's room and then McCray's room. Barbara later learned that Sabal and McCray planned to move out of the residence the following week. She returned to the residence the day they were moving out and Sabal told her again that he let the men into the house. Barbara observed several of her own items from the house inside Sabal and McCray's moving truck, and she told them to return her property. They complied.

¶ 27 On cross-examination, Barbara acknowledged that Smith sublet the residence despite a provision in the lease stating that he could not sublet without the owner's consent.

¶ 28 Aaron Whirl testified that he had known Smith for years, and received a phone call from him on August 11, 2014. Smith asked Whirl to look around his room to see if anything was wrong. Whirl went to Smith's with two friends, Kwami and Darren, in case he needed help removing items from Smith's home. Whirl carried his firearm that day, and had a license to carry the weapon. When he arrived at the residence, Sabal answered the door, and asked what he had planned for the day. Whirl responded that he was there to "check out" Smith's room. He found that Smith's room was "completely empty," other than the bed. Defendant was not with him at that time. Prior to leaving, Whirl walked through the residence and observed multiple items that belonged to Smith.

¶ 29 Whirl then left the residence and dropped off Kwami and Darren before returning home. When he got home, he spoke with Smith and informed him that his room was empty. Smith told Whirl to return to the residence and "grab everything, like all the valuable items so [Smith] wouldn't basically come back to a[n] empty house." Whirl subsequently contacted defendant and told him that Smith asked him to pick things up from the residence. He asked defendant to

accompany him to the residence to help remove items. Whirl did not tell defendant that the items might belong to Smith's roommates.

¶ 30 Whirl did not see Sabal at the residence when he returned. Instead, he saw Sabal standing in front of a nearby barbershop. Defendant did not follow Whirl into the residence immediately. When Whirl entered the residence, he went into McCray's room, took a television from the room, and on his way out, defendant entered the residence. While the two men were walking out of the house, someone fired four to five shots into the residence, and Whirl dropped the television. Defendant told Whirl that he had been shot, and Whirl fired shots across the street. When the shots ceased, Whirl took the television and left in his vehicle with defendant.

¶ 31 Whirl took the television out of McCray's room because "that's what [he] was instructed to do." He knew Smith had a similar television so he did not know if the one he removed belonged to Smith or McCray. He intended to give the television to Smith and was "just trying to help a friend out." Whirl had been to the residence on several prior occasions. Both Sabal and defendant were present on multiple occasions.

¶ 32 On cross-examination, Whirl acknowledged that he did not have a key to get inside the residence. No one was home the second time he entered the residence, but the door was unlocked. He did not ask the roommates for permission to enter the house or to take their property. Whirl further acknowledged that McCray's bedroom door was shut and locked and he forced it with his shoulder to open it. Whirl searched McCray's drawers in an attempt to locate Smith's laptops and gaming system. Although Sabal was not home the second time he entered the house, he acknowledged breaking down McCray's door while Sabal was home. He knew the television in the living room belonged to Smith, but did not remove it from the residence because

it was too big to lift. Whirl denied dropping anything on the front porch, but acknowledged that he fired four or five shots from inside the residence. He lost his cell phone in the commotion after the shooting, and therefore could not call the police.

¶ 33 The parties stipulated that if Detective Major Coleman was called, he would testify that he documented the following in the course of his investigation. Dolton police initially found the residence to be empty, and canvassed the area with negative results. Officers widened the canvass and moved several blocks square in all directions "at which point the offenders re-entered the house." With "callers still on the line" and "others still coming in," "officers tightened the search pattern back in, relocating back to the block of residence." They received a call from Ms. A Casey-Hicks from State Farm, who informed them that the offender was driving a dark-colored Chrysler 300 with right side mirrors broken off the vehicle.

¶ 34 Defendant testified that he was close friends with Whirl and knew Smith through Whirl. He had been to Smith's residence several times a week, and knew that Smith had two roommates. Sabal was present between 5 and 10 times when defendant was at the residence. On August 11, 2014, Whirl called defendant around 12 p.m. to ask him to go to Smith's residence. They had a conversation about the residence and defendant learned that Smith's room had been ransacked. Defendant agreed to go to the residence with Whirl because they were friends, and he did not believe anything illegal was occurring. They went to the residence to "gather anything valuable in the house" so that Smith could "sort it out with his roommates later." Defendant denied being present during Whirl's first trip to the residence that day.

¶ 35 When they arrived at the residence, Whirl initially went inside while defendant stayed outside on his phone. After defendant entered, he saw Whirl carrying a television. Before the

men could leave the residence, they heard gunshots, one of which skimmed defendant's upper thigh. Defendant heard four or five shots, and crawled to the kitchen to assess his wound. He heard Whirl firing his gun. After the shooting stopped, defendant and Whirl left the residence and drove to Riverdale. Defendant cleaned his wound and was subsequently arrested that afternoon.

¶ 36 On cross-examination, defendant testified that no one was home when they entered the residence. He denied going into McCray's room and did not see Whirl go into McCray's room. He also denied knowing where the television came from. Defendant did not have a chance to call the police that day.

¶ 37 On redirect, defendant testified his intention was to "gather things" from the residence, but denied that it was his intention to steal anything. He intended only to get valuables from the house and allow Smith to sort it out with his roommates upon his return.

¶ 38 On recross, defendant acknowledged that he was going to take anything valuable from the house, including valuables from McCray's bedroom, the living room, and basement. He further acknowledged that a television was taken from the residence.

¶ 39 Following argument, the court found defendant and Whirl guilty of residential burglary. In finding defendant guilty, the court stated,

> "For whatever reasons defendants as testimony goes were summoned by Mr. Smith to save his property or do things of that or just recover everything. Certainly Mr. Sabal had his own personal property which would be his bedroom that was his very private area aside from all other areas there. It's his testimony that this own bedroom was in fact ransacked, a break-in occurred there in his personal space.

> Based upon the evidence that I do have before the Court, Mr. Sabal did testify he never gave anyone permission of any type to be within his own personal bedroom there, place where he lived, his residence. And by the testimony which I have in front of me as to each defendant for residential burglary, there is a finding of guilty on that charge."

¶ 40 Defendant filed a motion for a new trial, which the court denied. The court subsequently sentenced defendant to four years' imprisonment. This appeal followed.

¶ 41 On appeal, defendant argues that the State's evidence was insufficient to prove beyond a reasonable doubt that he committed residential burglary.

¶ 42 On a challenge to the sufficiency of the evidence, 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 State (*Davison*, 233 Ill. 2d at 43) and we do not retry the defendant (*People v. Collins*, 106 Ill. 2d 237, 261 (1985)). 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).

¶ 43 As charged here, a person commits residential burglary when he "knowingly and without authority enters *** within the dwelling place of another, or any part thereof, with the intent to commit therein a *** theft." 720 ILCS 5/19-3(a) (West 2014).

¶ 44 Defendant contends that the evidence was insufficient to show he committed residential burglary because he had Smith's permission to enter the residence, and therefore, his entry was not without authority. He additionally asserts Sabal did not see him enter the basement where he was living and, because Sabal was not on the lease, he could not deny permission to enter the residence.

¶ 45 We find the State proved beyond a reasonable doubt that defendant entered Sabal's dwelling place without authority. Sabal testified that he lived in the basement of the residence and paid rent. The residential burglary statute provides that "dwelling" means a "house *** or other living quarters in which at the time of the alleged offense the owners or occupants actually reside." 720 ILCS 5/2-6 (West 2014). Thus, Sabal was an occupant and could therefore deny defendant and Whirl permission to enter the residence. See *People v. Larry*, 2015 IL App (1st) 133664, ¶ 16 ("Significantly, [section 2-6] includes occupants as well as owners so property interests do not come into play."). Sabal further testified that he did not give defendant permission to enter either the residence or his room, but he had no choice but to allow defendant and the others to enter the residence because there were three of them against him. Once inside, defendant walked around and the men forced their way into McCray's room. When Sabal returned the following day, his room was ransacked and his television and gaming system were missing. Defendant and Whirl acknowledged they did not have permission from Sabal to enter the residence.

¶ 46 Defendant argues that because Sabal did not see defendant enter his room in the basement and remove property, the evidence was insufficient to show that he actually entered Sabal's room. We are unpersuaded by this contention. It is the responsibility of the trial court, sitting as

trier of fact, to draw reasonable inferences from the evidence. *Siguenza-Brito*, 235 Ill. 2d at 228. Based on the abovementioned evidence, and the testimony of both defendant and Whirl, who each acknowledged going to the residence in an effort to "gather" valuables from the entire house, we cannot say it was unreasonable for the trial court to infer that defendant entered Sabal's bedroom without authorization.

¶ 47 In reaching this conclusion, we reject defendant's contention that his entry was authorized because he had permission to enter the residence from Smith. The trial court was not required to accept the defense's version of events. *People v. Ortiz*, 196 Ill. 2d 236, 267 (2001). Based on its guilty finding, it is apparent that the court did not find defendant's, Whirl's, and Smith's testimony to be credible. Thus, we find that the evidence was sufficient to prove beyond a reasonable doubt that defendant entered Sabal's dwelling without authorization.

¶ 48 Defendant next argues that the evidence was insufficient to show that he intended to commit theft within Sabal's dwelling because he only intended to gather valuables to turn over to Smith.

¶ 49 We are likewise unpersuaded by this claim. Criminal intent is a state of mind that may be inferred from and proved by the surrounding circumstances. *People v. Maggette*, 195 Ill. 2d 336, 354 (2001). "Such circumstances include the time, place, and manner of entry into the premises; the defendant's activity within the premises; and any alternative explanations offered for his presence." *Id.* Whether the requisite intent existed is a question for the trier of fact. *Id.*

¶ 50 We reject defendant's contention that he lacked the requisite intent because he was acting pursuant to Smith's instructions to Whirl to remove his roommates' property. Defendant cites no authority to support his contention that a lessee can authorize a third party to take someone else's

property. Moreover, the trial court's finding of guilt is amply supported by the record. While defendant testified that he had no intention of stealing property, he admitted that his purpose in entering the residence was to "gather" valuables, regardless of who they belonged to or where they were located. The testimonial evidence also established that Sabal's room was ransacked and his television and gaming system were taken after he ran out of the residence where defendant and others forced their way into McCray's locked bedroom. Based on this evidence, it was not unreasonable for the trial court to infer that defendant intended to commit theft in Sabal's dwelling. See *Siguenza-Brito*, 235 Ill. 2d at 228 (It is the responsibility of the trier of fact to draw reasonable inferences from the evidence, as well as weigh the evidence and assess the credibility of the witnesses.). Again, trial court was not obligated to believe defendant's testimony that he did not intend to steal anything inside the residence. See *Ortiz*, 196 Ill. 2d at 267.

¶ 51 Based on the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 52 Affirmed.