2017 IL App (1st) 151255-U

No. 1-15-1255

Order filed December 22, 2017

Sixth Division

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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 16198
	)	
TERRY MYRICK,	)	Honorable
	)	William H. Hooks,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Hoffman and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held*: Where police officers responding to a call of a theft or burglary in progress observed defendant sitting in the driver's seat of a parked pickup truck that was loaded with property stolen from the house in question, the evidence was sufficient to establish defendant's accountability for burglary.

¶ 2 Following a bench trial, defendant Terry Myrick was convicted of burglary and sentenced to two years of probation. On appeal, defendant contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt. For the reasons that follow, we affirm.

¶ 3 Defendant's conviction arose from the events of July 29, 2013. Following arrest, defendant and three codefendants were charged with two counts of burglary and two counts of criminal damage to property. The three codefendants entered guilty pleas.

¶ 4 At trial, Chicago police officer Jerome Warner testified that on the date in question, he responded to a call of a theft in progress. When he arrived at the reported address, 210 North Lorel Avenue, at 12:12 p.m., he saw defendant in the driver's seat of a pickup truck. A second man was in the back seat, and a third man was leaning into the truck's window. The bed of the truck was loaded with "a lot" of ductwork, copper piping, a water heater, sheet metal elbows and vent covers, and a ShopVac. Warner stated that he and his fellow officers detained "everybody." He then viewed the house and observed that the basement door had been removed and the plywood sheet that was covering the door had been damaged and opened. Warner identified photos of the house, as well as photos of the pickup truck with sheet metal, ductwork, elbow joints, and a vent cover in its bed.

¶ 5 Similar to Officer Warner, Chicago police officer Costanzo testified that at 12:12 p.m. on the day in question, he and fellow officers went to 210 North Lorel Avenue in response to a call of a theft / burglary in progress. When Costanzo arrived at the address's alley, he saw defendant in the driver's seat of a pickup truck. A second man was inside the truck, a third man was leaning into the truck, and a fourth man was "coming from the rear property with pipes in his hand towards the truck." Costanzo clarified that the fourth man was approximately 20 feet from the house, approaching the alley where the truck was parked. Costanzo testified that there were "miscellaneous items" in the back of the truck. When Costanzo inspected the house, he noticed that the rear door was knocked off its hinges. In court, Costanzo identified photographs of the

truck and the items in it, which he described as "miscellaneous aluminum vents for the heating, the heating ducts, water softener, other miscellaneous pipes."

¶ 6 Chicago police detective Derrick Johnson testified that around 7 p.m. on the day in question, he interviewed defendant at the police station. After Johnson advised defendant of his *Miranda* rights, defendant related that earlier in the day, he was driving his truck through the alley of Lorel Avenue when he was flagged down by a man who offered him money to take him to a local scrap yard so he could scrap some things that he had. Defendant told Johnson that when he moved his truck to help "them" load things into it, he noticed that the things included a hot water heater, some chrome, trim, and things like that. Defendant said that the items were behind a building on Lorel Avenue, and that "he believed that the things that they were about to load in his truck had to be -- were stolen because everything looked too new to be going to a scrap yard." Nevertheless, defendant let "them" load the items into his truck, as he was going to accept the money and take "them" to the scrap yard. On cross-examination, Johnson acknowledged that defendant never said he saw anyone taking the items from anywhere. Rather, defendant said he saw "them" in the alley.

¶ 7 The parties stipulated that if called as a witness, Brenda Stevenson would have testified she was the owner of the property at 210 North Laurel Avenue; that on the date in question, no one was living in the house because it was being rehabilitated; that she did not know defendant or the codefendants; and that she did not give defendant or any of the codefendants permission or authority to enter the property or remove any contents from it. The parties further stipulated that if called as a witness, Corey Stevenson, Brenda Stevenson's son, would have testified that he was engaged in ongoing work on the house at 210 North Laurel Avenue. On the day in question,

the police called him to identify some items, and he was shown the items depicted in the photographs the State introduced at trial. Corey Stevenson would have testified that the depicted items had been inside the house, and that he did not give anyone permission or authority to enter the house or remove any items from it. Finally, Corey Stevenson would have identified the photographs of the door to the house's basement, showing damage that did not previously exist.

¶ 8 Defendant made a motion for directed finding. The trial court granted the motion as to the counts charging criminal damage to property, as the State had not proved up a value of damage. The court denied the motion as to the counts charging burglary.

¶ 9 Defendant testified that on the day in question, he was out "scrapping iron," which he explained meant he was picking up metal people had thrown out. When he was in the 200 block of North Lorel Avenue, a man defendant had never seen before waved him down. Defendant pulled over in the alley to talk to the man, who offered to pay defendant to take him to the scrap yard. Defendant replied that he would do it for $15 to $20, provided the man would do his own loading. The man said he had someone to help him load, so defendant continued down the alley about 10 or 15 feet "to where they were." Defendant clarified that there were three men in total: the one who approached him, and two more down the alley. In the area between the pavement of the alley and a building, defendant saw a water heater and several pieces of metal. As two of the men were loading the items into the truck and the third man was approaching from the end of the alley with a pipe in his hand, the police pulled up. When asked how long the men were loading items into the truck before the police arrived, defendant estimated that it could not have been more than 10 or 15 minutes. Defendant stated that he did not see anyone taking items from

anywhere and putting them in the alley, that he never got out of the truck, and that he never got paid.

¶ 10 On cross-examination, defendant agreed that some of the items in the alley were shiny and looked like they could have been new, but stated the water heater did not look new. When shown photographs of his truck and asked whether it depicted the items that the men were loading into it, defendant answered, "Well, I'm not sure about that. I don't know. I know about the hot water heater. I don't -- was all this on there? I don't know. I don't know." Defendant maintained that he did not see all of the items the men placed into the bed of his truck because he had pulled up a little past the items and then stayed in the truck while they loaded it.

¶ 11 The court found defendant guilty on both counts of burglary, which were identical save for the name of the owner of the property. In the course of announcing its decision, the court stated that based on its review of the photographs in evidence, the items loaded into the back of defendant's truck appeared to have been new. The court stated that it found the testimony of the two police officers and detective to be credible. With regard to defendant's testimony, the court noted that he had "a lapse of memory" when questioned about the photographs introduced at trial, and then stated as follows:

> "Then the defendant is testifying that he doesn't know whether the items on the back of the truck were the items they were loading on his truck. It's the defendant's truck. Some of the items are even blocking the rear panel of the -- the rear window of the pickup truck, and they're actually -- it appears as though they were trying to put all the items in one run on the truck, to the degree that the

defendant's rear window was completely obstructed by the items that were being stored on there.

The Court -- it looks very clear from that, even [photograph] 2A, that the items that are visible are new. [Photograph] 2C, the very same, appears to be a number of elbows and a cardboard box of some sort.

Defendant was allowing his truck to be used in the burglary operation and it's this Court's assessment the defendant was part of that burglary operation.

You can't be [an] ostrich concerning the items that were being put into, for lack of another word, the getaway car for the burglary. It wasn't the getaway car that was the sports car outside the bank being robbed, but it might as well be. It was the truck that's being used to take away [items] from the house. Defendant says he didn't see the house or the door or whatever, but the defendant was allowing the vehicle to be used as part of a burglary. And now he decides to be [an] ostrich at the day of trial and testify that he doesn't know anything, although he admits to being a scrapper.

It is this Court's assessment the defendant was knowingly -- was knowingly involved in the burglary at issue. Accordingly, the defendant's found guilty of Count 1 and Count 2 of the charging instrument. Judgment is entered. Finding of guilty, Counts 1 and 2.

The Court -- in the Court's assessment, the State has met its burden with respect to the charge of burglary. Defendant was part of that burglary operation with the other three defendants.

> His truck was the one, in this Court's assessment, that would make good the transportation of those items to another location.
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> ***
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> This defendant is not naïve. He's a 50-something-year-old man who makes part of his living -- makes his living, according to the testimony, scrapping. He knows when he's involved in a burglary operation and when he's not."

¶ 12 Defendant filed a motion for a new trial. At the hearing on the motion, defense counsel argued that there was no evidence showing defendant "had anything to do with going into the building and taking those items out." Counsel argued that the offense of burglary was already complete by the time the items were placed in defendant's truck, and that therefore, he could not be found guilty of aiding and abetting. The court responded to this argument by stating:

> "Well, unless his job was to be that part of the burglary that would transport the items once they were brought out of the house. If he was part of the plan to transport -- if you had a truck you have two roles. One is you have the role to watch out for what's going on. The other role is for you to transport the items that somebody else is going in to steal. There might be, not be evidence to support that is what you're saying."

Defense counsel confirmed that this was his argument, and then continued on, asserting that no evidence at trial contradicted defendant's testimony that he was not part of the burglary, but rather, was flagged down and brought to the alley after the codefendants had already taken items from the building.

¶ 13 The prosecutor argued in response that the photographs admitted at trial depicted large, bulky items in the back of defendant's pickup truck, and that defendant had made a statement admitting that the items appeared to be new and he knew they were not scrap material. The prosecutor asserted that these circumstances supported a conclusion that defendant knew the items were being stolen and therefore, made him accountable in his role as transporter. When the court observed that defense counsel was arguing no evidence linked defendant to the burglary "but instead if anything it would be receiving stolen goods," defense counsel repeated his claims that the burglary was complete at the moment the items were taken from the building, that there was no evidence to show defendant was present at that moment, that "absolutely nothing" connected defendant with the burglary, and that at worst, defendant was only guilty of theft or possession of stolen property. The trial court then asked whether receiving stolen goods is a lesser included offense of burglary, and the prosecutor answered that she thought theft would be a lesser included offense. The trial court continued the hearing so that it could review the trial transcript.

¶ 14 When the hearing reconvened, defense counsel reiterated his arguments that defendant could not have aided and abetted a burglary that was already completed by the time he was flagged down. The prosecutor responded, in relevant part, as follows:

> "What I wanted to get the transcript for was to determine, you know, what the defendant was seeing with these other individuals specifically who were loading up his truck. I think it is uncontested that the defendant stopped and got money from these -- was offered money in order to transport these items that were -- some of them very new items -- to a scrap yard where, even by his testimony,

> he knew they would get pennies on the dollar for the value of what these items actually were. As the Court note[d] from the exhibits, these were a large amount of metal items, some of them appearing to be quite new in condition.
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> ***
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> So I wanted to check, Judge, to see what evidence did we have that the defendant would know that this was still an ongoing operation, not that he just happened upon these people and, you know, that the crime was already committed and he just took on some items he should have known were stolen and therefore was guilty of this lesser charge. In looking at the transcript, Judge, there is evidence that the people were still coming from the property with these pipes."

¶ 15 When the trial court asked whether there was any evidence that defendant actually saw codefendants transporting items out of the house, the prosecutor answered, "I do not see anything that would say that." Rather, the prosecutor indicated that the evidence showed when Officer Costanzo arrived at the scene, he saw one man coming from the rear of the property toward the truck with pipes in his hands. The prosecutor further emphasized defendant's statement to the police, in which he admitted that he believed the items were stolen.

¶ 16 The trial court thereafter asked defense counsel the following:

> "Why would he be sitting in a truck in an alley that happened to be behind a residence in which these expensive items -- although we are not saying expensive. There was no proof of what the value is. But the court is just going to take note that these items are not trivial items. These items are very substantial

components to a duct system for a home. Why would his truck happen upon there?

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I mean, this is a perfect situation for the burglars. They didn't have to order up anybody -- they have all of these items from the house. So they have an operation where they are taking items from the house.

In looking in the back of the pickup truck, these are not items that they could have put in a duffle bag or carry on their back. It has to -- it requires the use of a flat-bed truck, a pickup truck. So instead of trying to figure out where they are going to get these items, which for lack of a better work are hot, are clearly ductwork, they don't have to go through that or call anybody because the defendant just happens to be there with an empty truck.

The items in the pictures provided by the State show that those items completely fill the back of that truck. And it is like a hallelujah moment for the burglars. They have happened upon a place, done what they have done, had the stuff to bring out, and here is the defendant. So is this a perfect storm for the burglars? Not a storm. It is a perfect sunny day because they don't have to get a truck. They don't have to worry about being caught by law enforcement, they thought. But here is a truck to fill up and get out of the area.

So what is the defendant's -- is there any evidence as to why the defendant was just sitting in an alley with a pickup truck[?]"

¶ 17 When defense counsel answered that his client was near the alley because he was out scrapping iron, the trial court referenced the photographs and commented that it did not see scrapped items in the truck bed, such as old bicycle frames, ironing boards, or snow blowers. While acknowledging that it could not see into the bottom of the truck bed in the photographs, the court noted that all it could see was probably "$1,500, $2,000 worth of -- or more of piping and it is all of the same nature."

¶ 18 The court found that this was not an "incidental situation," but rather, that defendant knew he was part of a burglary, and concluded as follows:

> "I see this -- I see this case as a matter of credibility. I don't believe defendant's testimony. I gave credit to the State's witnesses concerning testimony. This nice truck that the defendant has *** has a long bed to it. These items -- although it is filled up past the bed -- are a perfect fit. There is even a box with the elbows -- duct elbows nicely in that box.
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> ***
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> The defendant knows what this is. Defendant didn't have to load these items. The defendant's job was to make sure -- or to carry the items -- is to make sure these items are secure in the back of the vehicle so he can get out of there -- get out of there with the items.
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> I do see this as a -- I continue to find the defendant is guilty of those two counts that he was found guilty of. And those are the two burglary counts.
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> However, I will note that the arguments that defense counsel made are reasonable inferences which an Appellate Court might differ with this court on.

> But I am comfortable that this defendant knew exactly what he was getting into. He was part of it. His role was to have the truck onsite to load these items up. And if that's not the case, he is about the most unluckiest pickup truck scrapper on earth.
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> With that, the court having reconsidered the court's findings, the court continues to find the defendant guilty of the two counts of burglary previously entered."

¶ 19 The trial court subsequently sentenced defendant to two years of probation.

¶ 20 On appeal, defendant contends that his burglary convictions should be reversed where the State's evidence failed to show his involvement in the burglary, and the trial court's ultimate finding of guilt was based on improper speculation that was contrary to the "uncontested" evidence at trial that he was stopped by a stranger in an alley and agreed to help him move items to a scrap yard. Defendant argues that the trial court initially and improperly determined he was guilty of burglary simply because he knew or should have known that the items placed on his truck were stolen, but then, at the hearing on the posttrial motion, "apparently recognized the fallacy of its prior ruling" and relied on "rank speculation to suddenly determine for the first time at the posttrial hearing that [defendant] must have had a prior plan to meet these men with his truck in the alley, thereby making him accountable for the burglary that apparently occurred pursuant to that plan." Defendant maintains that the evidence presented at trial was insufficient to prove him accountable for burglary beyond a reasonable doubt where the essence of the offense of burglary is an unlawful entry into a building, where the State failed to show he had the requisite knowledge and intent to aid in the burglary at the time the unlawful entry into the home

occurred, where the burglary was already complete by the time he became involved, and where the evidence did not even establish when the burglary actually occurred.

¶ 21 When a question as to a defendant's accountability for an offense is raised on appeal, a reviewing court must determine 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. *People v. Fernandez*, 2014 IL 115527, ¶ 13. This court will not substitute its judgment for that of the trier of fact on questions involving the credibility of witnesses, conflicts in the testimony, or the weight of the evidence. *People v. Doolan*, 2016 IL App (1st) 141780, ¶ 40 (citing *People v. Brown*, 2013 IL 114196, ¶ 48). "Circumstantial evidence is sufficient to sustain a conviction, and the trier of fact 'is not required to disregard inferences which flow normally from the evidence before it, nor need it search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt.' " *Id.* (quoting *People v. Jackson*, 232 Ill. 2d 246, 281 (2009)). Reversal is justified only where the evidence is so improbable or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *Id.* (citing *People v. Hall*, 194 Ill. 2d 305, 330 (2000)).

¶ 22 Here, in order to prove defendant accountable for his codefendants' actions, the State was required to show that either before or during the commission of the crime, and with the intent to promote or facilitate such commission, defendant solicited, aided, abetted, agreed, or attempted to aid his codefendants in the planning or commission of the crime. 720 ILCS 5/5 2(c) (West 2012). A defendant's intent to promote or facilitate a crime may be inferred from the character of his acts and from the circumstances surrounding the commission of the crime. *People v. Perez*, 189 Ill. 2d 254, 266 (2000). A defendant will be found to have the intent to promote or facilitate

a crime if he either (1) shared the criminal intent of the principal or (2) there was a common criminal design. *Id.* at 266.

¶ 23 Under the common design rule, where two or more persons engage in a common criminal design or agreement, any acts committed by one party in furtherance of that common design are considered to be the acts of all parties to the design or agreement, and all parties are responsible for the consequences of the further acts. *Perez*, 189 Ill. 2d at 267. Accountability may be proven through a defendant's knowledge of and participation in the criminal scheme; neither words of agreement nor direct participation in the criminal act itself are required. *Perez*, 189 Ill. 2d at 267. Rather, a trier of fact may infer accountability from the circumstances that surround the perpetration of the unlawful conduct. *Doolan*, 2016 IL App (1st) 141780, ¶ 43. Factors a court may consider when determining whether a defendant is accountable include the defendant's presence during the planning of the offense, his presence during its commission, his failure to report the crime, and his continued affiliation with the other offender or offenders after the commission of the crime. *Perez*, 189 Ill. 2d at 267; *People v. Velez*, 388 Ill. App. 3d 493, 512 (2009). However, none of these factors is required for a finding of accountability. *Doolan*, 2016 IL App (1st) 141780, ¶ 43.

¶ 24 In the instant case, the evidence, viewed in the light most favorable to the prosecution, was sufficient to establish a common criminal design. There is no dispute that the house's basement door was damaged and opened and that numerous large items that had been inside the house were found loaded in the bed of defendant's pickup truck, including a water heater, sheet metal, ductwork, a large cardboard box full of elbow joints, aluminum vents or a vent cover, and other miscellaneous pipes. Photographs included in the record on appeal depict defendant's

pickup truck, which has an extended cab and long bed, filled with these items to a height that would obscure the view from the back window of the cab. One duct pipe is so long that it extends all the way from the cab's back window to beyond the tailgate. It was not unreasonable for the trial court to infer from the size and volume of the stolen items that the codefendants were not planning to "put [them] in a duffle bag or carry [them away] on their back[s]," but rather, that it had been the plan all along to have defendant present with his extended-cab, long-bed pickup truck to drive the items and all three codefendants away. Contrary to defendant's argument, we find that the trial court's inference from the evidence was eminently reasonable, not "rank and unreasonable speculation."

¶ 25 The evidence presented by the State supports a finding that defendant intended to facilitate his codefendants' burglary of the victims' building. We cannot say that the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). The evidence, viewed in the light most favorable to the prosecution, was sufficient to prove defendant guilty of burglary.

¶ 26 We are not persuaded by defendant's argument that because his testimony that he was flagged down by a stranger and agreed to help this man move items from an alley to a scrap yard was "uncontested," the trial court was obligated to accept it. In support of this argument, defendant has cited *People ex rel. Brown v. Baker*, 88 Ill. 2d 81, 85 (1981), for the proposition that "[w]here the testimony of a witness is neither contradicted, either by positive testimony or by circumstances, nor inherently improbable, and the witness has not been impeached, that testimony cannot be disregarded even by a jury." Here, while there was no direct conflicting testimony, defendant's version of events was impeached by the circumstantial evidence

discussed above and, in our view, was inherently improbable given the size and volume of the stolen items. Accordingly, the trial court was free to find defendant incredible and reject his testimony.

¶ 27 We are also not troubled that the trial court did not fully explain its reasoning until the hearing on the posttrial motion. Defendant argues that "the trial court initially found [him] guilty of burglary simply because [he] knew or should have known that the items placed on his truck were stolen," but then, at the hearing on the posttrial motion, "apparently recognized the fallacy of its prior ruling" and suddenly inferred "that it had been [his] 'job' all along to have his truck in this alley at this designated time, making him accountable for the burglary that occurred after this agreement was apparently made." First, we disagree with defendant's interpretation of the trial court's ruling at the end of trial, which we have quoted extensively above. The court's statements reveal that it found defendant guilty not because he knew or should have known that the items placed on his truck were stolen, but because he was "part of that burglary operation with the other three defendants" and knowingly involved himself in a burglary by allowing his truck to be used as the getaway car for the burglary. Second, the trial court made several comments at the end of trial that foreshadowed its later, more detailed remarks at the hearing on the posttrial motion. For example, the court noted that it appeared the codefendants were trying to put all the stolen items in one run on the truck, that the items filled the truck bed to the point that they obstructed the rear window, and that defendant's "truck was the one *** that would make good the transportation of those items to another location." It was completely consistent for the trial court to later express, at the hearing on the posttrial motion, that due to the size and

number of the stolen items, carrying them away would require the use of a pickup truck, and that defendant's role in the burglary was to provide that truck and drive it away after it was loaded.

¶ 28 Finally, we note defendant's argument that where the State did not establish when exactly the building was burglarized, it is possible that none of the codefendants ever entered the building, and that the items found in the truck "were taken out of the home and discarded by the actual burglars, perhaps due to a fear that they had been spotted breaking into the house." Contrary to defendant's assertion, the State did introduce evidence at trial that tended to establish the timing of the burglary. Officer Costanzo testified that upon his arrival in the alley, he observed one of the codefendants about 20 feet from the rear of the house, approaching the truck with pipes in his hands. It is reasonable to infer from the officer's testimony that at the time he arrived at the scene, the burglary had just occurred. Moreover, with regard to defendant's theory that "the actual burglars" discarded all the items in the alley, "speculation that another person might have committed the offense does not necessarily raise a reasonable doubt of the guilt of the accused" (*People v. Manning*, 182 Ill. 2d 193, 211 (1998)) and the trier of fact is not required to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt (*Doolan*, 2016 IL App (1st) 141780, ¶ 40).

¶ 29 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 30 Affirmed.