2017 IL App (1st) 151624-U

No. 1-15-1624

Order filed November 9, 2017

Fifth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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 3872
	)	
	)	Honorable
DEON HAMPTON,	)	Timothy J. Chambers and
	)	Lauren Gottainer Edidin,
Defendant-Appellant.	)	Judges, presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Reyes and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's conviction for residential burglary where: (1) the trial court did not err in denying her motion to quash her arrest and suppress evidence because, under the totality of the circumstances, a police officer had reasonable suspicion to stop defendant and investigate whether she had been involved in criminal activity; and (2) there was sufficient evidence to convict her of the offense. We, however, modify defendant's fines and fees order.

¶ 2 Following a bench trial, defendant Deon Hampton was convicted of residential burglary (720 ILCS 5/19-3(a) (West 2014)) and sentenced to 10 years' imprisonment.[1] On appeal, defendant contends that: (1) the trial court erred in denying her pretrial motion to quash her arrest and suppress evidence; (2) the State failed to prove her guilt beyond a reasonable doubt; and (3) her fines and fees order must be amended. We affirm as modified.[2]

¶ 3 On February 17, 2014, police officers responded to a reported burglary at a first-floor apartment. Prior to entering the apartment, the officers observed defendant on the sidewalk directly outside the residence. Based on information that the suspect might still be inside the apartment, the officers ignored defendant, entered the residence and found the victims hiding in a bedroom, but did not find any suspects inside. The officers learned that property was missing from the apartment, suspected that defendant might have been involved and directed an assisting officer to stop her. Defendant was stopped 200 yards away from the apartment and in possession of the missing property. As a result, the State charged her with residential burglary (720 ILCS 5/19-3(a) (West 2014)) and theft (720 ILCS 5/16-1(a) (West 2014)).

¶ 4 Prior to trial, defendant filed a motion to quash arrest and suppress the evidence, arguing that, when she was stopped by the police, they lacked a legal basis for the seizure. She therefore asserted that the evidence recovered from her must be suppressed.

¶ 5 At the hearing on the motion, Officer Jason Barney testified that, at around 4 a.m. on February 17, 2014, he and his partner, Officer Brandau, were having coffee in a restaurant when they received a radio transmission of "a burglary in progress" at the first-floor apartment of 2469

[1] The parties refer to defendant as female and accordingly, we will, as well.

[2] Judge Edidin presided over defendant's hearing on her motion to suppress while Judge Chambers presided over her trial.

North Clybourn Avenue in Chicago. The transmission did not contain a description of any suspects. The officers, who were in uniform, acknowledged the transmission and immediately responded. After turning onto North Clybourn Avenue from West Fullerton Avenue, Barney did not observe anyone or any vehicles on the street. The officers arrived at the apartment and parked their marked police vehicle directly in front. At the time the officers arrived, the information that had been relayed to them included the possibility that the offender was still inside the residence.

¶ 6 The officers exited their vehicle, and Barney observed a woman, identified in court as defendant, on the sidewalk directly "[i]n front" of the residence. Barney did not note her appearance or if she had any belongings with her. Defendant asked the officers for a ride to the train station. Because their focus was on entering the residence and aiding the people inside, they essentially ignored her, and she began walking southbound down North Clybourn Avenue.

¶ 7 The officers approached the apartment where Barney observed that the front door was closed and appeared to be undamaged. Barney opened the door, which was unlocked, and entered the residence, but did not immediately observe anyone. He announced that he was a police officer and then observed two individuals, including Shelbi Hardin, come out of a bedroom. Hardin was unsure if the suspect was still inside the apartment, which prompted the officers to search the three-bedroom apartment. The search took "20 seconds," and they did not find anyone. Hardin informed the officers that she was in her bedroom with the door shut and heard noises coming from outside her room, but never actually saw anyone and could not describe the suspect. She told the officers that she stopped hearing the noises "just before" they arrived. Based on this, Barney realized that he "had just passed the offender."

¶ 8 Barney asked Hardin what items were missing, and after she searched the living area of her apartment, she discovered that her tan Calvin Klein bag and iPad were missing. Brandau subsequently radioed an assisting officer to stop defendant, and both he and Barney exited the apartment. Barney observed an assisting officer's vehicle back up and eventually detain defendant south of their location on North Clybourn Avenue. Via radio, Brandau asked the assisting officer if defendant had a tan Calvin Klein bag, which the officer confirmed. Defendant was subsequently brought back to the residence, where Hardin identified the tan bag and iPad as hers, as well as a pair of sunglasses. Barney estimated that, from the time he received the original transmission of a burglary in progress until Hardin had her property returned, six minutes had elapsed.

¶ 9 During Barney's cross-examination, the following colloquy occurred:

"Q. That [burglary-in-progress] call came in at 4:00 a.m., correct?

A. Correct.

Q. You responded to that location at 406 p.m. [*sic*], correct?

A. Correct.

Q. In the two minutes it took you to get to that location, you drove northwest on Clybourn, correct?

A. Correct."

¶ 10 Officer Tanya Neita, the assisting officer, testified that, as she drove northbound on North Clybourn Avenue approaching the residence, she observed a woman, identified in court as defendant, walking on the sidewalk. Neita's vehicle did not have its lights or siren activated, and defendant was the only person Neita observed near that location. After passing defendant, Neita

received a radio transmission to "stop the individual *** walking southbound" on North Clybourn Avenue. Neita backed her vehicle up and exited. Neita, who was in uniform and did not draw her weapon, asked defendant "to please step over to the car." As they both walked toward one another, Neita observed that defendant had "a bag in her hand." At the same time, Neita was asked via radio if defendant had a bag in her hand. Neita subsequently had defendant enter her police vehicle, but did not handcuff her, and drove 200 yards to the apartment. Leaving defendant in the vehicle, Neita brought the tan bag to Hardin, who identified it as hers. Inside the bag were an iPad and sunglasses. Neita estimated that, from the time she "collected" defendant until Hardin identified the property, one minute had elapsed.

¶ 11 The trial court denied defendant's motion to suppress. The court observed that Officers Barney and Neita "were very credible." It did not find their actions "unreasonable based upon the circumstances," especially in light of "the timing of everything" and "defendant [being] right outside the [burglarized apartment's] door." The court observed that the "intrusion of stopping" defendant was "minimal," as Neita did not use handcuffs, did not "grab[]" defendant and did not "throw[]" her inside the police vehicle. Lastly, the court noted that, after Barney learned what had been taken from the residence, Neita discovered those items in defendant's possession.

¶ 12 The case proceeded to trial, where Shelbi Hardin testified that, on February 17, 2014, she and her boyfriend lived on the first floor of 2469 North Clybourn Avenue in Chicago, a two-unit apartment building, with their front door facing North Clybourn Avenue. They slept with their bedroom door shut. At around "4:05 a.m.," Hardin woke up and noticed through the "crack" between the door and the floor that her living room light was on, something Hardin never would do. After sitting in bed "for a few minutes because [she] really wasn't quite awake yet," she

heard footsteps and a drawer open in the living area outside her bedroom. Hardin alerted her boyfriend that someone might be in their apartment and subsequently observed "a shadow," which confirmed her belief. She "immediately" called 911 using her cell phone. While speaking with the operator, she continued to hear noises outside her bedroom.

¶ 13 The police eventually arrived "less than five minutes" after she called 911. She had remained in her bedroom the entire time. When the police arrived, she stopped hearing the noises, but "really thought the person was still in [her] apartment" because she "didn't feel that there was enough time for [the offender] to even leave." She estimated that "less than a minute" had elapsed between the police arriving and the noises stopping, but acknowledged not "know[ing] exactly how much time" had elapsed because she never actually heard the offender shut the apartment's door.

¶ 14 Hardin then discovered that her Calvin Klein handbag was missing, in addition to her iPad and a pair of sunglasses that were inside the bag. "[A]bout five minutes" after the officers arrived, they had retrieved her bag, which still contained her iPad and sunglasses. Hardin did not know defendant, did not recognize her and never gave her permission to enter the apartment or have the bag, iPad or sunglasses.

¶ 15 The parties stipulated that Officers Barney and Neita's testimony from the hearing on the motion to suppress would be considered at defendant's trial. The parties further stipulated that Barney would testify that, after Hardin identified her property, defendant was placed into custody.

¶ 16 The trial court found defendant guilty of residential burglary and theft, observing that the case was "circumstantial" but "a very clear circumstantial case." The court subsequently merged

her theft conviction into her residential burglary conviction. After defendant unsuccessfully moved for a new trial, the court sentenced her to 10 years' imprisonment for residential burglary. The court also imposed $704 worth of fines and fees. Defendant filed a motion for leave to file a late notice of appeal, which this court granted, and this appeal followed.

¶ 17 Defendant first contends that the trial court erred in denying her motion to suppress. Specifically, defendant argues that, when she was stopped by Officer Neita at Officer Barney's behest, Barney did not have a reasonable suspicion that she had committed a crime. Defendant therefore asserts that she was unlawfully seized in violation of her constitutional rights.

¶ 18 The trial court's ruling on a motion to suppress presents a mixed question of law and fact, and therefore requires a bifurcated standard of review. *People v. Lee*, 214 Ill. 2d 476, 483 (2005). The court's findings of fact, including reasonable inferences from the evidence, are given deference, and we will not disturb the findings of fact unless they are against the manifest weight of the evidence. *Id.*; *People v. Green*, 2014 IL App (3d) 120522, ¶ 48. The ultimate issue, however, of whether the law was applied correctly to the established facts is reviewed *de novo*. *Lee*, 214 Ill. 2d at 484; *People v. Fox*, 2014 IL App (2d) 130320, ¶ 11.

¶ 19 Both the United States and Illinois constitutions protect an individual's right to be free from unreasonable searches and seizures. U.S. Const., amends. IV, XIV; Ill. Const. 1970, art. I, § 6; *People v. Timmsen*, 2016 IL 118181, ¶ 9. "The touchstone of the fourth amendment is 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.' " *Timmsen*, 2016 IL 118181, ¶ 9 (quoting *Terry v. Ohio*, 392 U.S. 1, 19 (1968)). Not every encounter between the police and a citizen results in a seizure. *People v. Luedemann*, 222 Ill. 2d 530, 544 (2006). For example, a consensual encounter between the

police and a citizen involves no coercion or detention, and is therefore not a seizure under the fourth amendment. *People v. Gherna*, 203 Ill. 2d 165, 177 (2003). Additionally, not all seizures by the police of a citizen are unreasonable. *Id.* at 176. The police may reasonably seize a citizen pursuant to: (1) a *Terry* stop, which is a brief investigatory detention that must be supported by a reasonable, articulable suspicion of criminal activity; and (2) an arrest, which must be supported by probable cause. *Id.* at 176-77.

¶ 20 Defendant first argues that, at the time Neita directed her to come toward the police vehicle, she was seized. The State does not argue that the encounter between Neita and defendant was a consensual encounter, thereby implicitly agreeing with defendant that she was seized. During argument on the motion to suppress in the trial court, the State likewise did not contest that defendant was seized. As the State has implicitly conceded that defendant was seized, we will accept its concession. See *People v. Williams*, 2016 IL App (1st) 132615, ¶ 39 (finding the defendant was seized when an officer pulled up in a vehicle behind the defendant, who was walking down the street, exited the vehicle, and said to the defendant " '[p]olice, can I talk to you?' " and " 'to come here to where [he was] at' "); but see *People v. Qurash*, 2017 IL App (1st) 143412, ¶¶ 17, 22-27 (finding the defendant was not seized when, from inside a police vehicle, officers asked him to " 'come here,' " as this was a request, not a command, in light of the officers never physically touching him and never drawing their weapons).

¶ 21 Having concluded that defendant was seized, we next must determine whether that seizure was unreasonable. Defendant argues that it was because Officer Barney did not have a reasonable suspicion to believe that she had committed a crime. She asserts that the only basis

for being stopped was her proximity to the burglarized apartment. The State responds that, based on the totality of the circumstances, defendant was lawfully stopped pursuant to *Terry*.

¶ 22 In a *Terry* stop, a police officer may "conduct a brief, investigatory stop of a citizen when the officer has a reasonable, articulable suspicion of criminal activity." *Gherna*, 203 Ill. 2d at 177. The purpose of this investigatory detention is so an officer, who reasonably suspects an individual "to be recently or currently engaged in criminal activity," can "verify or dispel those suspicions." *People v. Brown*, 2013 IL App (1st) 083158, ¶ 22. To perform a lawful *Terry* stop, "officers must be able to point to specific and articulable facts which, considered with the rational inferences from those facts, make the intrusion reasonable." *In re Elijah W.*, 2017 IL App (1st) 162648, ¶ 36. The collective knowledge of all of the officers involved in the detention of the defendant may be considered in determining whether reasonable suspicion existed, even if such knowledge was not told to the officer who initiated the detention. *People v. Maxey*, 2011 IL App (1st) 100011, ¶ 54. Reasonable suspicion requires more than a "hunch or unparticularized suspicion." *In re Elijah W.*, 2017 IL App (1st) 162648, ¶ 36. The decision to perform a *Terry* stop is a practical one based on the totality of the circumstances at the moment the stop is initiated. *Id.* The reasonableness of the detention is judged according to an objective standard (*id.*) and must be determined on a case-by-case basis as reasonableness under *Terry* is a fact-intensive inquiry. *People v. Hubbard*, 341 Ill. App. 3d 911, 917 (2003).

¶ 23 In the present case, Officer Neita's detention of defendant was proper under *Terry*. The evidence established that Officers Barney and Brandau immediately responded to an apartment at 2469 North Clybourn Avenue based on a radio transmission of a burglary in progress. According to Barney's testimony, the officers arrived between two and six minutes after

receiving the transmission. After the officers exited their vehicle, they encountered defendant on the sidewalk directly in front of the apartment. Defendant asked the officers, who were dressed in their police uniforms, for a ride to the train station, but they ignored her and proceeded to enter the residence. After searching the residence and finding no suspects, the officers learned that Shelbi Hardin, the victim, had heard noises coming from outside her bedroom, which had possibly stopped just before the officers arrived. Barney realized that defendant might have been the burglar, so Neita was directed to stop defendant. It is undisputed that, at the point Neita encountered defendant, Barney did not have a description of the suspect, had not observed defendant inside the apartment, did not know whether defendant was carrying anything and had not observed defendant violate any laws.

¶ 24 However, given that defendant was first observed by Barney directly in front of the burglarized residence at 4:05 a.m. and Hardin believed she stopped hearing the noises outside her bedroom moments before Barney arrived, under the totality of the circumstances, Barney had a reasonable and articulable suspicion that defendant was involved in the burglary based on her extreme proximity both temporally and geographically to the apartment and the early hours of the morning. See *People v. Waln*, 120 Ill. App. 3d 73, 76-77 (1983) (finding that, after a police officer received a radio call of a burglary in progress in a subdivision, the officer was justified in performing a *Terry* stop of two vehicles leaving the subdivision's sole exit, which was approximately one-quarter to one-half a mile away from the location of the burglary, "especially given the extremely close spatial and temporal proximity to the report of the burglary in progress" even though the radio call did not include a description of any suspects or vehicles to be stopped).

¶ 25 Furthermore, the burglary occurred around 4 a.m., and according to both Barney and Neita, defendant was the only individual they had observed in the immediate vicinity of the residence. See *Brown*, 2013 IL App (1st) 083158, ¶ 25 (finding that officers could conduct a *Terry* stop of the defendant based, in part, on him "leaving the scene of a crime in the middle of the night"); *Hubbard*, 341 Ill. App. 3d at 912, 919-20 (finding that, after officers received a radio dispatch of a shooting, it was "reasonable" for them "to detain, in order to investigate, the only person they had seen coming from the direction of the scene of the crime," given the seriousness of the reported crime).

¶ 26 Defendant acknowledges that she was found in close proximity to the scene of the burglary in the early hours of the morning, but argues there are several factors to consider in conjunction with an individual's proximity to a recent crime that are not present in this case. The factors to consider are: " '(1) the particularity of the description of the offender or the vehicle in which [s]he fled; (2) the size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime occurred; (3) the number of persons about in that area; (4) the known or probable direction of the offender's flight; (5) observed activity by the particular person stopped; and (6) knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation.' " *People v. Mendez*, 371 Ill. App. 3d 773, 776 (2007) (quoting *People v. Brown*, 88 Ill. App. 3d 514, 519-20 (1980)).

¶ 27 Although some of these factors are not present here, we cannot ignore that defendant was observed directly in front of the burglarized residence at 4:05 a.m., moments after Hardin believed the noises outside her bedroom had stopped. In fact, Officer Barney's arrival at the residence was so contemporaneous in time to the crime being committed that Hardin even

believed the burglar might have still been inside her apartment. Given defendant's extreme temporal and geographic proximity to the burglary, Barney's suspicion that she was involved in criminal activity was therefore based on more than a mere hunch. Because an officer's reasonableness must be judged, in part, "on the basis of [his] responsibility to prevent crime and to catch criminals" (*People v. Stout*, 106 Ill. 2d 77, 86-87 (1985)), it was reasonable for Barney to direct Neita to stop defendant in order to verify or dispel his suspicions that defendant was the offender. Moreover, as the trial court observed, the intrusion by Neita was "minimal," as she never handcuffed defendant, grabbed defendant or searched defendant. Rather, Neita asked defendant to come toward her so that she could determine whether defendant was, in fact, the offender. See *People v. Lippert*, 89 Ill. 2d 171, 183 (1982) (finding the rationale of *Terry* and its progeny is "that a short period of detention" is "only minimally intrusive when compared to the benefit of immediate investigation"). In light of these circumstances, the trial court did not err when it denied defendant's motion to suppress.

¶ 28 Defendant next contends that the State failed to prove beyond a reasonable doubt her guilt for residential burglary where the evidence only showed that she possessed recently stolen property. Defendant asserts that, when the officers initially encountered her, they did not recall her having any belongings and notes that Shelbi Hardin never observed anyone in the apartment and could not describe the offender.

¶ 29 When a defendant challenges her conviction based upon the sufficiency of the evidence presented against her, we must ask whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could find all the elements of the crime proven beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*,

443 U.S. 307, 318-19 (1979)). All reasonable inferences must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42. While we must carefully examine the evidence before us, credibility issues, resolution of conflicting or inconsistent evidence, weighing the evidence and making reasonable inferences from the evidence are all reserved for the trier of fact. *Brown*, 2013 IL 114196, ¶ 48. We will not overturn a conviction unless "the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Id.*

¶ 30 To prove that defendant committed residential burglary, the State had to establish that she knowingly and without authority entered the dwelling place of Shelbi Hardin at 2469 North Clybourn Avenue with the intent to commit a theft therein. 720 ILCS 5/19-3(a) (West 2014).

¶ 31 In the present case, the evidence revealed that, when defendant was stopped 200 yards away from the residence minutes after the reported burglary, she had in her exclusive possession, and without explanation, Hardin's property. However, as Hardin never left her bedroom to determine who was present inside her apartment and there was no forensic evidence linking defendant to being inside the apartment, there was no direct evidence presented at trial that defendant was the offender, except for the stolen property in her possession.

¶ 32 In *People v. Housby*, 84 Ill. 2d 415, 423 (1981), our supreme court found that exclusive and unexplained possession of recently stolen property is not sufficient, standing alone and without corroborating evidence of guilt, to sustain a burglary conviction. Our supreme court observed that "[t]he person in exclusive possession may be the burglar, to be sure, but [s]he might also be a receiver of stolen property, guilty of theft but not burglary, an innocent purchaser without knowledge that the item is stolen, or even an innocent victim of circumstances." *Id.* The court concluded that the trier of fact could presume guilt based on exclusive and unexplained

possession of recently stolen property only if three requirements were met: (1) "there was a rational connection between [the defendant's] recent possession of property stolen in the burglary and [her] participation in the burglary;" (2) her "guilt of burglary is more likely than not to flow from [her] recent, unexplained and exclusive possession of burglary proceeds;" and (3) "there was evidence corroborating [the defendant's] guilt." *Id.* at 424. Although the test in *Housby* arose from an issue involving a jury instruction and a permissible inference from the evidence (*id.* at 418-20), this court has found the test applicable to a review of the sufficiency of the evidence in bench trials. See *People v. Smith*, 2014 IL App (1st) 123094, ¶¶ 12-14. The same evidence may used to satisfy all three requirements of the test. *People v. Caban*, 251 Ill. App. 3d 1030, 1033 (1993).

¶ 33 In this case, the first requirement of the *Housby* test has been satisfied, as a rational connection exists between defendant's possession of Hardin's property and her participation in the burglary given that, only minutes after the burglary and a mere 200 yards from the residence, defendant was found in possession of the stolen property at 4:05 a.m. See *People v. McGee*, 373 Ill. App. 3d 824, 828, 834 (2007) (finding that, where a defendant was arrested three blocks away from, and within 5 to 10 minutes of, a reported burglary, the geographic and temporal proximity supported a rational connection to satisfy the first requirement of the *Housby* test).

¶ 34 The second requirement of the *Housby* test has been satisfied because Officer Barney initially observed defendant directly in front of the residence moments after Hardin believed she stopped hearing the noises outside her bedroom. Additionally, the burglary took place at 4 a.m. and neither Barney nor Officer Neita observed any vehicles or other people on the street that morning. Furthermore, the time between Barney's first encounter with defendant in front of the

residence and Neita's detention of her was minimal, as she only was able to travel 200 yards. Lastly, defendant was in possession of all of the property Hardin reported missing. Therefore, defendant's guilt for residential burglary is more likely than not to flow from her recent, unexplained and exclusive possession of the property taken from the apartment.

¶ 35 Lastly, the third requirement of the *Housby* test has been satisfied based on the same evidence that satisfied the second requirement of the test. Although there was no forensic evidence linking defendant to being the offender inside the residence and there was no description of the offender as no one actually observed the person inside the apartment, defendant's presence in front of the burglarized residence possibly seconds after the offender left the residence corroborated her guilt for the offense beyond her mere unexplained and exclusive possession of Hardin's missing property. Consequently, a rational trier of fact could have found defendant guilty of residential burglary.

¶ 36 Nevertheless, in arguing there was insufficient evidence to convict her of residential burglary, defendant attacks the timeline of events, as testified to by Hardin and Officers Barney and Neita. For instance, defendant asserts that Hardin initially said that she believed the noises outside her bedroom stopped moments before the police arrived, but highlights that Hardin also said she did not hear anyone slam or shut her door, could not be certain when the suspect left her apartment and if the suspect had even left the apartment. Furthermore, defendant points out that there was evidence presented that Barney received the radio transmission of the burglary in progress at 4 a.m. and arrived at the apartment at 4:06 a.m., leaving, according to defendant, "a gap of time as large as six minutes during which the intruder could have left the apartment, abandoned the property, and left the area."

¶ 37 We acknowledge that the timeline of events was not clear and consistent at all times, although undoubtedly, the events in question took place within a relatively short period of time. Regardless, when a defendant challenges her conviction based upon the sufficiency of the evidence, the evidence is viewed in the light most favorable to the State with all reasonable inferences in its favor. *Brown*, 2013 IL 114196, ¶ 48; *Lloyd*, 2013 IL 113510, ¶ 42. When viewing the evidence in this case in the light most favorable to the State, the facts establish that Hardin stopped hearing the noises outside her bedroom moments before the police arrived and therefore defendant's presence directly outside the apartment was similarly moments after the offender left.

¶ 38 Defendant also suggests it is possible that, between the time Barney initially observed her and when Neita stopped her, she could have "discovered the proceeds of the burglary somewhere along Clybourn Avenue." This argument may have some credence if the crime was not committed around 4 a.m. and the property discovered in defendant's possession was some, but not all, of the property taken from Hardin. However, the evidence showed that the only property missing from Hardin's apartment was the very property found in defendant's possession.

¶ 39 Based on our review of the evidence, we cannot find it is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of her guilt for residential burglary. See *Brown*, 2013 IL 114196, ¶ 48. Accordingly, we affirm defendant's conviction.

¶ 40 Defendant lastly contends that the trial court improperly imposed a $5 court systems assessment against her and failed to give her $5 per day of presentence custody credit toward her state police operations assessment which, she argues, qualified as a fine. Although defendant did not challenge these assessments in the trial court, a reviewing court may modify a fines and fees

order without remanding the matter to the trial court under Illinois Supreme Court Rule 615(b)(1) (*People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22), and "a defendant may request presentence [custody] credit for the first time on appeal." *People v. Lake*, 2015 IL App (3d) 140031, ¶ 31. We review the propriety of the trial court's imposition of fines and fees *de novo*. *Bryant*, 2016 IL App (1st) 140421, ¶ 22.

¶ 41 Defendant first argues that the trial court improperly imposed against her a $5 court system assessment (55 ILCS 5/5-1101(a) (West 2014)). The State apparently misconstrues defendant's argument, as in responding, it argues that she is not entitled to presentence custody credit toward this assessment.

¶ 42 The $5 court system assessment applies only to defendants "on a judgment of guilty or a grant of supervision for violation of the Illinois Vehicle Code other than Section 11-501 or violations of similar provisions contained in county or municipal ordinances committed in the county." 55 ILCS 5/5-1101(a) (West 2014). Here, defendant was convicted of residential burglary and theft of property exceeding $500, but not exceeding $10,000, both felonies. See 720 ILCS 5/16-1(a)(1), (b)(4); 19-3(a), (b) (West 2014). Therefore, the trial court improperly imposed this assessment, and we vacate it.

¶ 43 Defendant next argues, and the State correctly concedes, that she is entitled to $5 per day of presentence custody credit toward a $15 state police operations assessment (705 ILCS 105/27.3a(1.5) (West 2014)). This assessment is a fine subject to presentence custody credit. See *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31. Defendant served 435 days in presentence custody and thus has $2,175 in presentence custody credit available. See 725 ILCS 5/110-14(a) (West 2014) (a defendant incarcerated on a bailable offense who does not supply bail and against

whom a fine is levied is allowed a credit of $5 for each day of presentence custody). Accordingly, the $15 state police operations assessment should be fully offset by presentence custody credit.

¶ 44 For the foregoing reasons, the $5 court system assessment is vacated and defendant's $15 state police operations assessment is fully offset by his presentence custody credit. The clerk of the circuit court is directed to modify the fines and fees order accordingly. The judgment of the circuit court of Cook County is affirmed in all other respects.

¶ 45 Affirmed as modified.