2018 IL App (1st) 161414-U

No. 1-16-1414

SIXTH DIVISION
NOVEMBER 9, 2018

IN THE

APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 1392
	)	
BERNARD SAMUELS,	)	Honorable
	)	Stanley J. Sacks,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Delort and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for burglary is affirmed. The trial court resolved conflicting evidence in favor of the State, regarding whether defendant entered a "railroad car" in committing the burglary.

¶ 2 Following a bench trial, defendant Bernard Samuels was convicted of burglary and possession of a controlled substance and sentenced to concurrent terms of six years and one year in prison, respectively. On appeal, defendant contends that his conviction for burglary should be reversed because the State failed to prove that he entered a "railroad car" or any other structure

covered by the statute defining burglary. For the reasons that follow, we affirm the defendant's conviction.

¶ 3 Defendant's conviction arose from the events of December 10, 2013. Following his arrest, defendant was charged by information with burglary, possession of burglary tools, and possession of a controlled substance. The count charging burglary alleged that defendant entered a "railroad car" with the intent to commit therein, a theft. Prior to trial, defendant filed a motion to suppress contraband that was recovered from his pocket after arrest. Following a hearing, the motion to suppress was denied.

¶ 4 At trial, Chicago police officer Binyamin Jones testified that at about 5 a.m. on the day in question, he and his partner, Officer Moya, responded to a call of a burglary in progress. The police officers went to the location given by the dispatcher. The location was an alley and grassy area outside a fence that enclosed a rail yard. Officer Jones saw an opening cut into the fence. He also saw four men outside the fence, each carrying a brown box to a parked minivan. Among the men was defendant, whom Jones identified in court. Jones activated the emergency lights on his vehicle and defendant ran. While Moya pursued defendant on foot, Jones pursued him in the police car. After a chase of about 200 to 300 feet, defendant was apprehended and detained. Jones went back to the location where he had originally spotted defendant and saw several boxes lying on the ground outside the fence.

¶ 5 When asked to describe the area inside the fence, Jones stated that it was the "property of Norfolk Railroad with various containers." The prosecutor then asked, "When you say containers, are those train cars?" to which Jones answered, "Correct." Jones testified that when he and his partner investigated the area inside the fence, they found that four or five of those

"containers" were open. The trial court interrupted Jones's testimony, asking, "You mean boxcars?" Jones answered, "Boxcars, yes. One of which contained similar boxes that we also saw outside of the rail yard." Jones further stated that those boxes were similar to the ones he saw defendant and the other men carrying outside the fence.

¶ 6 Jones identified three photographs that were subsequently entered into evidence. Jones testified that those photographs depicted (1) the grassy area outside the fence, boxes outside the fence, and the opening in the fence; (2) the opening in the fence; and (3) boxes outside of the rail yard. The photographs are not included in the record on appeal.

¶ 7 On cross-examination, Jones clarified that his "initial observations" at the scene began at 5:17 a.m. He testified that when he activated the emergency lights on his squad car, one of the men got into the minivan with a box and took off driving, while the other three men fled on foot. He acknowledged that he did not see any of the four men inside the fence enclosing the railroad property. Jones also acknowledged that he did not find any cutting devices on defendant's person, and that although he did find two sets of bolt cutters at the scene, he did not recall whether the bolt cutters were inside or outside of the fence.

¶ 8 Norfolk Southern Railroad special agent Reyes Moran testified that on the morning in question, he was on routine patrol when he received a radio transmission that the Chicago police had a subject in custody. Moran went to the given location, a rail yard, where he noticed several brown cases containing shoes "outside of the rail yard and outside over the fence and a large hole in the fence that separates the rail yard from the neighborhood." Moran was then asked and answered the following questions:

"Q. Did you make your way onto the railway property?

A. Yes.

Q. Did you make any observation about the railcars in the vicinity?

A. Yes. I noticed that five railroad containers that were on the ground had open doors and broken security seals.

Q. Okay?

THE COURT: When you say containers, what do you mean, boxcars?

THE WITNESS: Yes.

Q. [ASSISTANT STATE'S ATTORNEY]: They were open with a broken seal?

A. Yes, they were.

Q. Can you describe to the court how these -- what do you mean by seals?

A. The railcars have two double doors on one particular end of the container themselves. They are closed with handles and hasps. And there is a security seal, sometimes a tin seal, sometimes a plastic seal and sometimes both seals. They are latched over the handles so the doors cannot open without the seals.

Q. You say the seals were broken. Were you able to see inside of the open railcars?

A. Yes, I was.

> Q. Did you notice anything inside of the railcar?
>
> A. I noticed that one of the railcars had the exact same merchandise that was outside of the fence of the rail yard scattered outside of the ground, just several feet and yards from the fence."

Moran further testified that the merchandise he observed that was similar to that inside the rail cars, was shoes. He agreed that defendant did not have permission to go into those "railcars." When asked when was the last time he had patrolled the area, Moran stated that a "midnight officer" assigned to the area would have patrolled throughout the night and ended his shift at approximately 5 a.m.

¶ 9 The parties stipulated that if called, Chicago police officer Francisco Moya would have testified that on the date in question, he performed a custodial search of defendant at the police station and recovered a bag containing 14 tin foil packets of suspect heroin from defendant's person. Moya would have further testified that Moore inventoried the bag in his presence. The parties also stipulated that if called, a forensic chemist with the Illinois State Police laboratory would have testified that those 14 packets tested positive for 2.2 grams of heroin.

¶ 10 Defense counsel made a motion for acquittal, arguing that there were a number of plausible explanations as to what defendant was doing "other than burglarizing the cars, those train cars." Counsel also stated, "I think it's impossible for the State to put the boxes that my client presumably had on any one of those train cars" and "The State cannot prove that anything that my client had on his person as the officer observed from one hundred feet away were specifically anything removed from those train cars." The trial court granted the motion for

acquittal with regard to the charge of possession of burglary tools, but denied the motion with regard to the charges of burglary and possession of a controlled substance.

¶ 11 After defendant rested, the trial court found him guilty of burglary and possession of a controlled substance. In the course of doing so, the trial court stated, in relevant part, as follows:

> "There are four guys, the defendant and three others, coming from the direction of the railroad yard. There is a hole where access could have been getting in and getting out as well. And the four or five containers which were boxcars according to the evidence, within three or four feet or five feet at the most from that fence, all four people were carrying boxes when the police approached in that alley and see them, one of which is the defendant.
>
> ***
>
> Some of the boxes, at least one, had shoes in it. Inside of the boxcars container, as they referred to, and the box containing shoes as well.
>
> ***
>
> The burglary takes place maybe 5:17, somewhere around that time so there was plenty of time for someone to come to the scene within that short timeframe. So 5:00 o'clock to 5:17, when the man gets off of work at 5:00 o'clock, enter the railroad yard

> through the hole in the fence, gets something out of the boxcars, whatever they found in the boxcars and come out.
>
> The boxes appear to be, most of them at least, are intact boxes. Nothing is found lying around somewhere, property belonging to the railroad yard. The sole question finding of guilty, acknowledgment of that stipulation [regarding the heroin] more or less and also guilty of the burglary and boxcar as well. Finding of guilty on Counts 1 and 3."

¶ 12 The trial court subsequently sentenced defendant to concurrent terms of six years in prison for burglary and one year in prison for possession of a controlled substance.

¶ 13 On appeal, defendant contends that his conviction for burglary should be reversed because the State failed to prove beyond a reasonable doubt that what he entered was a "railroad car" or any other structure covered by the burglary statute. He asserts that the testimony of the State's witnesses established that what he entered was not a railroad car or a part thereof, but rather, an "intermodal *** standardized metal shipping container that can be transported by ship, train, or truck – that was sitting on the ground." Noting that the term "railroad car" is not defined by statute in Illinois, defendant argues that we must give the term its ordinary and popularly understood meaning, which he maintains includes some sort of wheels. He further asserts that while breaking into a shipping container that it is located on a train car would constitute burglary, breaking into the container while it is sitting on the ground does not.

¶ 14 When reviewing the sufficiency of the evidence, the relevant inquiry is 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. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). Under this standard, a reviewing court must allow all reasonable inferences from the record in favor of the prosecution. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). The credibility of the witnesses, the weight to be given their testimony and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a court of review will not substitute its judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 131 (1999). Reversal is justified only where the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶ 15 A person commits burglary when, without authority, he knowingly enters or remains within "a building, housetrailer, watercraft, aircraft, motor vehicle, railroad car, or any part thereof," with the intent to commit therein a felony or a theft. 720 ILCS 5/19-1(a) (West 2012). Here, defendant was charged with entering a "railroad car" with the intent to commit therein a theft. In this appeal, defendant only challenges the evidence regarding the "railroad car" element of the charged crime.

¶ 16 Our review of the record reveals that conflicting evidence on the "railroad car" element – all of it testimonial – was presented at trial. As defendant stresses, Officer Jones described the area inside the fence as having "various containers" and stated that four or five of those "containers" were open. Additionally, Agent Moran testified that when he arrived at the scene, he noticed "five railroad containers that were on the ground had[,] open doors and broken security seals."

¶ 17 However, when the prosecutor asked Jones whether the "containers" were "train cars," Jones answered affirmatively, and when the trial court asked Jones whether, by "containers" he meant "boxcars," Jones answered, "Boxcars, yes." Similarly, when the trial court asked Moran whether, by "containers," he meant "boxcars," Moran said yes. Moran then used the term "railcars" twice more in his testimony, and did not use the term "container" again.

¶ 18 As noted above, it is within the province of the trier of fact to resolve any conflicts in the evidence. *Brooks*, 187 Ill. 2d at 131. Here, the trial court heard conflicting descriptions of the scene of the crime. The trial court evaluated the evidentiary conflict and resolved it in favor of the State, explicitly finding that the scene of the crime included "four or five containers which were boxcars according to the evidence." Viewing the evidence in the light most favorable to the prosecution, which we must, we find no reason to disturb that finding.

¶ 19 We note that the issue of whether defendant entered a "railroad car" was not disputed at trial and that no photographs were introduced depicting that portion of the crime scene. Given Jones's and Moran's positive answers to the prosecutor's and trial court's questions regarding whether the crime involved "train cars" or "boxcars," as well as Moran's subsequent exclusive use of the term "railcars," we find that it was reasonable for the trial court to find that defendant's actions constituted burglary to a "railroad car." See *People v. Washington*, 2012 IL 107993 (2012), ¶¶ 35-40 (where the victim testified that the defendant had a gun and there was no real dispute at trial that the defendant possessed some type of gun, the jury could have reasonably inferred that the defendant possessed a real gun).

¶ 20 As a final matter, we note that to support his argument that the crime scene involved "an intermodal shipping container – a standardized metal shipping container that can be transported

by either ship, train, or truck – that was sitting on the ground," defendant has not cited to the record, but rather, to a Wikipedia entry. We decline to consider this website in deciding this appeal. See *People v. Hunter*, 2016 IL App (1st) 141904, ¶ 20 (finding it improper for the appellant to submit photographs of air pistols and pellet guns taken from retail websites and to ask this court to take judicial notice that these objects are not statutorily defined firearms, yet nonetheless resembled the gun that the victim described at trial).

¶ 21 For the reasons explained above, we affirm the judgment of the circuit court of Cook County.

¶ 22 Affirmed.