2018 IL App (2d) 160001-U
No. 2-16-0001
Order filed February 5, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kendall County.
Plaintiff-Appellee,	)	
v.	)	No. 13-CM-246
RICHARD M. REILLY,	)	Honorable Timothy J. McCann,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE HUDSON delivered the judgment of the court.
Justices Schostok and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved defendant guilty beyond a reasonable doubt of theft: the jury could find that he intended to permanently deprive the owner of the use of the property, as he took possession and control of it without her permission and refused to return it; and the jury could find that he "used" the property knowing that such use would permanently deprive the owner of the use of the property, as he did not merely keep it in storage but rather kept some in his home and donated some for charitable purposes.

¶ 2 Defendant, Richard M. Reilly, appeals his conviction of theft (720 ILCS 5/16-1(a)(1) (West 2012)). He contends that the State failed to prove beyond a reasonable doubt that he intended to deprive the owner permanently of the use of property or that he used the property at issue. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged by a complaint alleging that, on December 17, 2012, he went to a garage and knowingly exerted control over items belonging to Michelle Yeakel with the intent to permanently deprive Yeakel of their use. The complaint alleged that he removed the items and dropped some of them off at a church. In November 2015, a jury trial was held.

¶ 5 Yeakel testified that she had known defendant for 8 to 10 years and that they had had a strange friendship. In August 2012, she had items that needed to be put in storage. Yeakel paid defendant to use his truck to transport some of the items to the garage of her friend, Bonnie Wilhelmi, in Oswego. She did not give defendant permission to move her property on any other dates.

¶ 6 In December 2012, Yeakel was at Wilhelmi's home and noticed that items were missing from the garage, including a dining room set and children's beds. Wilhelmi testified that she met defendant only once, on the day that he dropped off Yeakel's items. A few months later, defendant called her while she was at a doctor's appointment and he said that he was at her home to get Yeakel's items. Wilhelmi recognized defendant's voice from speaking with him when he initially dropped off the items. Wilhelmi told defendant that she was at the doctor's office, and he said that he needed to get the items right away since he had borrowed a truck to do so. He told Wilhelmi to give him the garage code so that he could get the items out, and she gave him the code. She described defendant as very persistent. When she arrived home, a sofa remained, but other items were gone, including a black and gray marble table, four chairs, an electric heating fan, and a child's train bed. Wilhelmi said that she and Yeakel were friends and that she had known Yeakel for 10 years. When asked why she did not contact Yeakel within a couple of

weeks after defendant took the items, Wilhelmi said that she had lost her son and had "kind of shut down" and "just become very quiet and just handle things."

¶ 7 When Yeakel noticed the items missing, Wilhelmi told her what had happened. Yeakel testified that, between December 2012 and January 2013, she called and texted defendant, stating that she wanted her property back. Defendant first denied that he had her property but, in another conversation, said that he had the items but would not return them. Yeakel threatened to call the police if defendant did not return her property.

¶ 8 In January 2013, Yeakel went to defendant's home with a Warrenville police officer. Yeakel described defendant as very hostile. He denied having any of Yeakel's property, but Yeakel saw a picture of hers that was damaged and she accused defendant of having additional items. Defendant then went in the house and returned with some damaged items and threw them in the driveway. Yeakel left the items there because they were broken. Yeakel still had not recovered an electric fan, an electric heater, a dining room set, a train bed, an outdoor bench, and a few other items that she could not recall. Yeakel was told that she would have to work with the Oswego police department on the matter.

¶ 9 Yeakel contacted the Oswego police and then received a call from defendant in which he told her that he took her property to a Wal-Mart for charity pickup. Yeakel checked with Wal-Mart, which could not confirm that there had been any charity pickups. In another conversation, defendant told her that he took the items to Goodwill. She checked with Goodwill and was unable to recover her property from there. She then told the Oswego police that she wanted to pursue charges.

¶ 10 Detective Patrick Wicyk of the Oswego police department testified over objection that he spoke with one of Yeakel's friends who saw the missing items in defendant's home. Wicyk

attempted multiple times to meet with defendant, who was evasive about talking or setting up a meeting. During one call, defendant said that he dropped the items off to be donated at various locations, including a church. Wicyk then went to defendant's home and had a conversation with him. Defendant told Wicyk that Wilhelmi had contacted him to inquire about the items in her garage, indicating that she did not want them there, and he took it upon himself to go get them. He admitted that he went on his own accord, took the items, and left. Defendant said that he had donated some of the items. Defendant gave Wicyk a heat fan and a toy box that were in his garage. Wicyk took photos of two chairs inside of the home that Yeakel later identified as hers. Defendant told Wicyk that the train bed had been in the home but he did not know where it was currently.

¶ 11 After a warrant was issued for defendant's arrest, Wicyk had multiple phone conversations with defendant, asking him to return the remaining items and to turn himself in. Defendant asked if the charges would be dropped if he returned the items, and Wicyk told him that he could not promise that. The items never were returned.

¶ 12 After the State's evidence, defendant's motion for a directed verdict was denied. Defendant's mother then testified that defendant stored a number of Yeakel's items in the basement and shed with the understanding that they would eventually be taken to Yeakel's home. She said that she had not seen defendant use the items. She testified that police officers took a few items that were in the basement. In regard to the rest, she said that they were still there at the time of trial and that she did not want them. She testified that she and defendant had sent Yeakel a letter telling her that the items needed to be removed, but Yeakel did not respond.

¶ 13 The jury was instructed that the State was required to prove that (1) Yeakel was the owner of property that defendant knowingly exerted unauthorized control over and (2) defendant

used the property knowing that such use would probably deprive Yeakel permanently of the use or benefit of it. During closing, defense counsel argued that defendant was not "using" the property and was merely storing it for Yeakel.

¶ 14 The jury found defendant guilty. Defendant moved for a new trial, arguing that the State failed to prove that he intended to deprive Yeakel of the use of her property or that he used the property knowing that it would probably permanently deprive Yeakel of the use or benefit of it. The court denied the motion, noting that, although the case was strange and it appeared that the property was just being stored, the State met its burden. Defendant was sentenced to 18 months' supervision, various fines, and costs, and he appeals.

¶ 15 II. ANALYSIS

¶ 16 Defendant contends that the State failed to prove beyond a reasonable doubt that he intended to deprive Yeakel of the use of her property or that he "used" the property knowing that it would probably permanently deprive Yeakel of the use or benefit of it.

¶ 17 A reviewing court will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). On a challenge to the sufficiency of the evidence, " 'the relevant question 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.' " (Emphasis in original.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This standard applies regardless of whether the evidence is direct or circumstantial, and circumstantial evidence meeting this standard is sufficient to sustain a criminal conviction. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). The trier of fact is responsible for resolving conflicts in the testimony, weighing the evidence, and determining

what inferences to draw, and a reviewing court ordinarily will not substitute its judgment on these matters for that of the trier of fact. *People v. Cooper*, 194 Ill. 2d 419, 431 (2000). The mere existence of conflicts in the evidence does not by itself require reversal, and the resolution of the conflicts in the evidence and the credibility of the witnesses is the province of the trier of fact. *People v. Ellzey*, 96 Ill. App. 2d 356, 358-59 (1968).

¶ 18 As relevant to this case, a defendant commits theft when he or she knowingly obtains or exerts unauthorized control over the property of the owner and either, under section 16-1(a)(1)(A), "[i]ntends to deprive the owner permanently of the use or benefit of the property" or, under subsection (a)(1)(C), "[u]ses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the owner permanently of such use or benefit." 720 ILCS 5/16-1(a)(1)(A), (C) (West 2012). Defendant was charged under subsection (a)(1)(A), but the matter was presented to the jury under subsection (a)(1)(C). Defendant has not argued that there was any error based on that discrepancy. Instead, he argues that the evidence was insufficient under either subsection.

¶ 19 Defendant first argues that the State failed to prove beyond a reasonable doubt that he intended to permanently deprive Yeakel of her property.

¶ 20 "The knowledge and intent necessary for a theft charge need not be proven by direct evidence and may, instead, be proven indirectly by inference or by deduction made by the trier of fact based upon the facts and circumstances of the case." *People v. Cameron*, 2012 IL App (3d) 110020, ¶ 32. "A defendant's intent to permanently deprive the owner of property may be deduced by the trier of fact from the facts and circumstances surrounding the alleged criminal act." *People v. Veasey*, 251 Ill. App. 3d 589, 591 (1993). "[I]t has been generally recognized that an intent to permanently deprive the owner of his property may ordinarily be inferred when a

person takes the property of another." *Id*. at 592. This is particularly true when the parties are strangers. *Id*. Concealment of property and fraudulent or deceptive acts can also give rise to an inference of such intent. *Id*.

¶ 21 Here, although defendant and Yeakel knew one another, and although he argues that he took the property because Wilhelmi wanted it removed, there was evidence that defendant took Yeakel's property without her permission and under false pretenses. He then concealed the property by initially denying that he had it, and there was evidence that he lied multiple times about what he did with it. When asked to return the property on multiple occasions, he failed to do so, even after the police became involved. Indeed, defendant never returned all of the property and he claimed that he gave some of it away.

¶ 22 Defendant argues that it was unreasonable for Wilhelmi to fail to consult with Yeakel before allowing him to take the property. But Wilhelmi explained her actions, and her credibility was for the jury to decide. In any event, the fact remains that defendant took Yeakel's property from Wilhelmi and did not return it to Yeakel. Thus, there was sufficient evidence to allow a trier of fact to conclude beyond a reasonable doubt that he intended to permanently deprive Yeakel of her property.

¶ 23 Defendant next argues that the State failed to prove that he "used" the property knowing that such use would probably permanently deprive Yeakel of the use or benefit of it. He relies on *People v. Haissig*, 2012 IL App (2d) 110726, to argue that the dictionary definition of "use" requires the application or employment of something, and he was merely storing the property in his garage. *Id*. ¶ 24. However, defendant does not state the full definition of "use" as given in *Haissig*. "Black's Law Dictionary defines 'use' as '[t]he application or employment of something; esp., a long-continued possession and employment of a thing for the purpose for

which it is adapted, as distinguished from a possession and employment that is merely temporary or occasional.' " *Id.* (quoting Black's Law Dictionary 1540 (7th ed. 1999)).

¶ 24 Here, there was evidence that defendant had some of Yeakel's items in his home and not merely in storage. Chairs belonging to Yeakel were seen inside of the home, and a friend told Wicyk that she saw Yeakel's property in the home.[1] Defendant admitted that the train bed had been in the home. That some items were damaged was also evidence of use. Further, as previously discussed, there was substantial evidence that defendant had long-continued possession of the property, and Yeakel never recovered most of it. Finally, defendant claimed to have donated some of the items, which is in itself a "use" of the property for charitable purposes and contrary to defendant's argument that he was merely storing the property. Accordingly, there was sufficient evidence for the jury to conclude that defendant "used" the property knowing that such use would probably permanently deprive Yeakel of the use or benefit of it.

¶ 25 III. CONCLUSION

¶ 26 The evidence was sufficient to prove defendant guilty of theft beyond a reasonable doubt. Accordingly, the judgment of the circuit court of Kendall Country is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 27 Affirmed.

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[1] Defendant argues for the first time in his reply brief that Wicyk's statement about Yeakel's friend seeing the items was hearsay. However, the failure to raise an issue in a written motion for a new trial results in forfeiture of that issue on appeal. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Further, points not argued in the appellant's brief are forfeited and shall not be raised in the reply brief. *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 23.