

2019 IL App (1st) 170488-U

No. 1-17-0488

Order filed May 31, 2019

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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 17309
	)	
SANDRO CABAN,	)	Honorable
	)	Marguerite A. Quinn,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Presiding Justice Rochford and Justice Hoffman concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's convictions for burglary and theft reversed where the evidence failed to establish his guilt beyond a reasonable doubt and the conclusion that he committed the offenses was based upon speculation.

¶ 2 Following a bench trial, defendant Sandro Caban was convicted of burglary (720 ILCS 5/19-1(a) (West 2012)) and theft (720 ILCS 5/16-1(a)(1) (West 2012)), and sentenced to concurrent terms of 12 years' imprisonment as a Class X offender. On appeal, defendant contends that the State failed to prove him guilty of both offenses beyond a reasonable doubt,

and instead relied on speculation unsupported by the evidence. Defendant also challenges his sentences.<sup>1</sup> We reverse defendant's convictions for burglary and theft because they are based on speculation where the evidence failed to establish his guilt beyond a reasonable doubt.<sup>2</sup>

¶ 3 Defendant was charged with one count each of burglary and theft. At trial, Michael Courtney testified that, on the morning of November 6, 2012, he was working as a grave digger at Maryhill Cemetery. Courtney was setting up a grave site when he observed a woman who came to the cemetery daily visiting a nearby grave. Courtney observed a red Toyota pull up next to the woman's parked vehicle. A man exited the Toyota and immediately looked inside the woman's vehicle. Courtney asked the woman if she knew the man. She did not. Courtney walked towards the man, intending to approach him. The man walked to a headstone, knelt down, and "pretended" to pray. In court, Courtney identified defendant as that man.

¶ 4 Courtney returned to the grave site where he was working, but continued watching defendant because he "seemed suspicious." The woman entered her vehicle and drove away. Defendant immediately entered his vehicle and drove away, "kind of" following her. Courtney and his coworker jumped into their truck and followed the vehicles. Courtney wrote down defendant's license plate number. Defendant made a three-point turn and drove his vehicle "right next to" Courtney's truck. Courtney looked directly at defendant through their driver's side windows. Courtney had a good opportunity to view defendant's face because they were "right

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<sup>1</sup> In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

<sup>2</sup> Although not at issue, procedurally, we note that the trial court properly granted defendant leave to file a late notice of appeal in this case after his initial appeal had been dismissed by this court for want of prosecution. *People v. Caban*, No. 1-15-0885 (2016) (dispositional order). In June 2016, defendant filed a *pro se* postconviction petition requesting leave to file a late notice of appeal, and demonstrating that his retained private counsel had abandoned him on appeal, thereby establishing that he had lost his right to appeal due to ineffective assistance of counsel, warranting leave to file a late notice of appeal. See *People v. Ross*, 229 Ill. 2d 255, 271 (2008).

next to each other.” Courtney reported the incident and gave defendant’s license plate number to his supervisor. Later that day, Courtney spoke with the police when they came to the cemetery.

¶ 5 Courtney was subsequently contacted by Detective Jason Moran from the Cook County sheriff’s police. Courtney told Moran that he would be able to identify the man he saw in the cemetery that morning. On April 3, 2013, Moran showed Courtney a photo array containing six photographs. Courtney did not identify anyone in that photo array. Courtney told Moran that the men in those photos were too old. On April 8, 2013, Moran showed Courtney a second photo array. Courtney identified defendant. On August 8, 2013, Courtney viewed a lineup and identified defendant as the man he saw in the cemetery.

¶ 6 On cross-examination, Courtney testified that he saw defendant in the cemetery about 8:30 or 9 a.m. Courtney was about 30 feet away from defendant when he saw defendant look inside the woman’s vehicle. When Courtney attempted to approach defendant, they were about 20 feet apart. Courtney acknowledged that he did not see defendant enter any vehicles. The woman Courtney observed at the cemetery in the morning was not Josephina Medina. After seeing defendant in the morning, Courtney did not see him again later that day.

¶ 7 Medina, who was 72 years old, testified that on November 6, 2012, she drove to Maryhill Cemetery to place a wreath on her husband’s grave. She parked her Honda CRV, left the doors unlocked, and walked to her husband’s grave. While standing at the gravesite, she observed a “red car” turn around where her vehicle was parked. She then bent over to place the wreath and did not see anything else. Medina returned to her vehicle. As she was entering her vehicle, she noticed a black object on the road, but did not pay it any attention, and pulled away. Medina’s sister-in-law was in a vehicle behind her. Her sister-in-law blinked her lights and beckoned to

Medina to return to where she had been parked. Medina did so. Her sister-in-law asked Medina if the black object lying on the road was Medina's purse. It was. Medina observed that her wallet was missing from inside her purse.

¶ 8 Medina went to the cemetery office and reported that her purse and wallet had been stolen. The police were at the office when she arrived. A woman exiting the cemetery had found Medina's wallet and turned it in at the office. Medina observed that her money was missing from her wallet. The wallet had contained either \$380 or \$480. Medina never gave anyone permission to enter her vehicle or take any item that belonged to her.

¶ 9 On cross-examination, Medina testified that she had arrived at the cemetery about 1:30 p.m. She was unable to describe the red car in any further detail. She did not know the make of the vehicle, and described it as "just a normal car." She did not see the person driving the red car. She did not see defendant at the cemetery. She first realized her purse was missing from her vehicle when she observed it on the road while exiting the cemetery. She did not observe anyone enter her vehicle. On redirect examination, Medina testified that she did not know the style of the car she observed, and stated "[i]t was a red car. That is all I can say."

¶ 10 Moran testified that, while investigating the burglary and theft in this case, he spoke with Medina over the telephone. Over defense counsel's hearsay objection, the court stated that it would allow Moran's testimony of what Medina told him to explain Moran's course of conduct, not for the truth of the matter asserted. Medina told Moran that while she was praying at her husband's grave, she noticed a red Toyota vehicle pull up next to her parked vehicle. She assumed it was another cemetery visitor. She returned to her vehicle after the red Toyota left and

noticed that her purse was gone. She observed her purse on a grassy area inside the cemetery, retrieved it, and found that her money was missing.

¶ 11 Moran spoke with Courtney, who told him that he had observed a red Toyota. Courtney gave Moran a license plate number and a description of an individual. Moran checked the vehicle's registration and found that it was registered to Luperino Caban and Awilda Hoeksema. Moran drove to the address where the vehicle was registered and spoke with Caban. Based on that conversation, Moran looked for information on Caban's son, defendant.

¶ 12 On April 3, 2013, Moran showed a photo array to Courtney that included a photograph of Caban. Courtney did not identify anyone in that photo array, and told Moran that the men pictured were too old to be the man he saw. On April 8, Moran showed Courtney a different photo array that included defendant's photograph. Courtney identified defendant. In court, Moran identified defendant.

¶ 13 Moran asked Caban to have defendant call him. When defendant called, Moran asked him to come to the police station to discuss the incident. Moran had several conversations with defendant's attorney, but defendant never met with Moran. On August 7, 2013, Moran went to the Caban residence and observed a red Toyota parked in the driveway. The vehicle pulled out of the driveway. Moran drove next to the vehicle and observed that defendant was the driver. Moran activated his lights and siren and pulled over defendant. Moran approached defendant's vehicle, told defendant that he was under arrest for burglary to a motor vehicle, and asked him to exit his vehicle. Defendant refused, made a U-turn, and drove away. Moran returned to his vehicle and followed defendant. Moran pulled over defendant a second time, approached his vehicle, and ordered defendant to exit his vehicle. Defendant again refused, and Moran called for

assistance from the local police. Defendant eventually exited his vehicle and was arrested. After waiving his *Miranda* rights, defendant told Moran that he had never been to Maryhill Cemetery in his life, and that he did not steal a purse from a woman.

¶ 14 On cross-examination, Moran testified that Medina told him that, about 1:30 p.m., a red Toyota pulled up next to her in the cemetery. Medina specified that the vehicle was a “red Toyota.” She did not know the model, but said it was a “passenger vehicle,” not an SUV or truck. She did not provide a license plate number. Medina did not describe the driver of the red vehicle. Nor could she describe the person who entered her vehicle or took her purse. Courtney told Moran that, earlier that morning, he observed defendant driving a red Toyota passenger car. Defendant parked next to a woman’s vehicle. Defendant exited his Toyota and peered into the woman’s vehicle as if he was looking for something. As Courtney approached, defendant noticed Courtney looking at him. Defendant began looking at grave markers, and took a “prayer-type posture.” As Courtney got closer, defendant entered his red Toyota and drove away. Courtney did not observe defendant enter Medina’s vehicle. The red Toyota was not registered to defendant, but Caban told Moran that defendant drove that vehicle. Moran acknowledged that he did not know if anyone else had access to the vehicle. He also acknowledged that, when he initially stopped defendant in the vehicle, defendant told Moran that he was going home.

¶ 15 The trial court found that the testimony from both Medina and Courtney was “very credible.” The court reviewed all of the testimony presented in detail. It considered the fact that defendant chose not to exercise the opportunity to go to the police station and speak with the police. It also considered the fact that defendant fled from Moran as consciousness of guilt. The court found that defendant knew he was caught and panicked. The court found that the most

important piece of evidence in this case was defendant's statement that he had never been to Maryhill Cemetery in his life, and that he did not steal a purse from a woman. The court stated that, to believe defendant, it would have to completely disregard Courtney's testimony. However, Courtney was "too honest and too credible of a witness" to ignore his testimony. The trial court found that the State proved beyond a reasonable doubt that it was defendant who was driving the red Toyota in the cemetery at 1:30 p.m., and who entered Medina's car, took her purse, took money out of her wallet, and disposed of her purse and wallet. The court expressly found that "everything weaves together absolutely perfectly where all roads lead to the decision or the conclusion that it was the defendant and the defendant only who was in that cemetery and who took that purse from Mrs. Medina." Accordingly, the trial court found defendant guilty of burglary and theft. The court sentenced defendant as a Class X offender to concurrent terms of 12 years' imprisonment.

¶ 16 On appeal, defendant contends that the State failed to prove him guilty of both burglary and theft beyond a reasonable doubt, and instead relied upon speculation unsupported by the evidence. Defendant argues that the State proved, at most, that he was in the area five hours before the offenses. He argues that the State failed to present "a chain of factual evidentiary antecedents" to transform the speculation that he stole Medina's purse into a reasonable inference that would support the guilty verdicts. Defendant claims that the State did not link him or his vehicle to the offenses, or to the red car Medina observed. He asserts that the State's inferences were not supported by any corroborating evidence.

¶ 17 In response, the State argues that this was a case of circumstantial evidence that was sufficient to sustain the convictions. The State points out that Medina told Moran that a red

Toyota passenger car pulled up next to her vehicle immediately before the burglary. The State argues that the trial court made a reasonable inference by connecting that incident to defendant's conduct earlier that day when he was observed in the same cemetery in a red Toyota looking into a woman's vehicle. It argues that, based on the facts, the trial court properly inferred that defendant was the offender. The State further argues that defendant's false exculpatory statement that he had never been to that cemetery in his life was additional evidence of his guilt, and he displayed consciousness of guilt when he fled from Moran. The State asserts that the totality of the evidence presented proved defendant guilty beyond a reasonable doubt.

¶ 18 When defendant claims that the evidence is insufficient to sustain his conviction, this court must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the offense proved beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). This standard applies whether the evidence is direct or circumstantial, and does not allow this court to substitute its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42. Unreasonable inferences, however, are not allowed. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004).

¶ 19 In a bench trial, the trial court is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences from therein. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). Nevertheless, merely because the trier of fact accepted certain testimony or made inferences based upon the

evidence does not guarantee the reasonableness of those decisions. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). A conviction will be reversed where the evidence is so unsatisfactory, improbable, or unreasonable that there exists a reasonable doubt of the defendant's guilt. *Id.* "[T]he fact that defendant is 'probably' guilty does not equate with guilt beyond a reasonable doubt." *People v. Ehlert*, 211 Ill. 2d 192, 213 (2004).

¶ 20 To prove defendant guilty of burglary as charged in this case, the State was required to show that he knowingly and without authority entered Medina's Honda CRV when it was located in the cemetery, with the intent to commit a theft therein. 720 ILCS 5/19-1(a) (West 2012). To prove defendant guilty of theft in this case, the State was required to show that he knowingly obtained or exerted unauthorized control over Medina's property, specifically, money totaling less than \$500, with the intent to permanently deprive her of the use or benefit of that property. 720 ILCS 5/16-1(a)(1) (West 2012).

¶ 21 We find that the evidence in this case failed to establish that defendant was guilty beyond a reasonable doubt of the burglary and theft offenses. The evidence presented at trial merely established that between 8:30 and 9 a.m. on November 6, Courtney saw defendant drive a red Toyota inside Maryhill Cemetery, look inside a woman's vehicle, and then leave the cemetery. The evidence further established that when police approached defendant months later and told him that he was under arrest for burglary to a vehicle, defendant attempted to flee from police and, when questioned by police, denied having ever been in Maryhill Cemetery and taking a woman's purse.

¶ 22 There was not a scintilla of evidence that defendant was in Maryhill Cemetery around 1:30 p.m. on November 6, 2012, when Medina's purse was taken from her vehicle. There was no

evidence anyone saw him there or that he was driving the unidentified red car seen by Medina. Nor was there any evidence that defendant entered Medina's car and took her purse and wallet. There was no evidence that defendant was found in possession of any property belonging to Medina. The conclusion that defendant committed the offenses of burglary and theft was based upon pure speculation, not proof beyond a reasonable doubt. Accordingly, we find that the State failed to prove defendant guilty of burglary and theft, and reverse his convictions.

¶ 23 When a conviction is reversed based upon insufficient evidence, the double jeopardy clause prohibits the State from retrying the defendant, and the only remedy that is appropriate is a judgment of acquittal. *People v. Williams*, 239 Ill. 2d 119, 133 (2010). Based on our reversal of defendant's convictions, we need not consider his challenges to his sentence.

¶ 24 For these reasons, we reverse the judgment of the circuit court of Cook County and enter a judgment of acquittal.

¶ 25 Reversed.