2019 IL App (1st) 172816-U

THIRD DIVISION
November 20, 2019

No. 1-17-2816

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. 16 CR 15186
	)	
NICHOLAS CLAXTON,	)	
	)	Honorable
Defendant-Appellant.	)	Neera Walsh,
	)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Ellis and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State proved defendant guilty of residential burglary beyond a reasonable doubt; and (2) the admission of defendant's unlawful use of a weapon by a felon conviction for impeachment was harmless beyond a reasonable doubt.

¶ 2 Following a bench trial, defendant Nicholas Claxton was found guilty of residential burglary. The trial court subsequently sentenced defendant to a term of five years in prison.

¶ 3 Defendant appeals, arguing that (1) the State failed to prove defendant guilty of residential burglary beyond a reasonable doubt, and (2) the trial court erred in granting the

State's motion *in limine* allowing defendant to be impeached with his 2012 conviction for unlawful use of a weapon by a felon (UUWF).

¶ 4 In October 2016, defendant was charged by indictment with one count of residential burglary of Latoya Henry's apartment, located 1169 South Plymouth Court in Chicago. Prior to trial, the State filed a motion *in limine* asking the trial court to allow it to introduce evidence of defendant's prior convictions as impeachment if defendant chose to testify. Initially, the State sought to admit a 2011 conviction for aggravated unlawful use of a weapon (AUUW) and a 2012 conviction for UUWF. However, the State later withdrew its request to admit the AUUW conviction and only asked to admit the UUWF conviction. Defendant also filed a motion *in limine* asking to prohibit the State from using evidence of his prior conviction and noted that the UUWF conviction was currently on appeal at that time.

¶ 5 At a pretrial hearing, the trial court heard the arguments from both parties and after considering the parties' arguments, held that the conviction could be admitted as impeachment evidence if defendant testified. The court observed that the conviction had not been vacated at that time and stated, "If it's vacated by the time that we go to a jury trial or the resolution of this case by way of any other kind of trial or obviously it would factor into any kind of sentencing that there may be, the Court would revisit it at that time." The court also found that the probative value outweighed the prejudicial effect in admitting the prior conviction. Defendant later waived his right to a jury trial and opted to proceed to a bench trial.

¶ 6 The following evidence was presented at defendant's April 2017 bench trial. Latoya Henry testified that on September 12, 2016, she lived in apartment 301 at 1169 South Plymouth Court in Chicago with her fiancé. The building has approximately 60 units. The building has a

vestibule with a locked inner door and entry to the building must be by key or a phone call to a resident.

¶ 7 On September 12, 2016, her fiancé was out of town. She left her residence at approximately 7:15 a.m. and returned home around 8:30 p.m. after work and school. When she returned home, she entered with her key at the vestibule and proceeded via the elevator to the third floor. Her unit was the last apartment before a stairwell. When she approached her unit, she noticed the door to her neighbor's apartment on the left was slightly open, but she did not think anything of it. When she went to her door, she observed it was locked, but it was easier to open than normal. She testified, "Normally, you have to use a bit of excess force to get in there, like, just lean in, shoulder to get into the door." She unlocked the door with her key and entered the apartment.

¶ 8 When Henry entered the apartment, she noticed a light on in her fiancé's office. She initially thought he might have returned from out of town. She put her keys in a tray on a table and walked to the office. The office door was open and normally her fiancé would be sitting at a computer desk. She looked and her fiancé was not at the desk. Then as she walked in a few more feet she saw a man standing facing a closet in the room. Henry described that she was standing face to face with the man. She identified defendant in open court as the man she observed in her apartment. He was wearing an orange "hoodie," navy basketball shorts, gym shoes, glasses, and cream latex gloves.

¶ 9 Henry asked defendant if he was "attempting to rob" them. Defendant told her the door was open, and Henry responded that it was not. She testified that he was "very calm," while she was "aggressive." He tried to show her how the door was open, but Henry was calling 911 to explain what happened. As she was on the phone, defendant ran upstairs. Henry ran after him

while still on the phone with 911. She ran to the top floor, but did not see him. On her way back downstairs, she found a latex glove like the one defendant was wearing on the ground. She picked up the glove with a piece of paper. She went back to her apartment.

¶ 10 After her call to 911, Henry called her fiancé to tell him what happened. Her fiancé called a friend of his who came over to wait with her until the police arrived. She still had the glove. When the police arrived, Henry was asked to wait outside while the police checked to make sure no one else was in the apartment. She spoke with police about what happened, what she needed to do, and what her options were. As she walked downstairs, she dropped the glove. She went to the police station to discuss what happened and filled out a police report. The next day, September 13, 2016, she spoke with Detective Heneghan. On September 14, 2016, Henry went to the police station to view a photo array. She identified two potential males that could have been the perpetrator. The following day on September 15, 2016, Henry viewed a physical lineup at the police station. She recognized defendant in the lineup as the person who tried to rob her apartment. Henry denied seeing defendant prior to September 12, 2016. Henry testified that she never gave defendant permission to enter her residence and when she left that day, she locked the door.

¶ 11 Henry testified that she and her fiancé took photographs of her front door and the carpet outside of the door. The photographs showed chipped paint on the carpet and on the door. She also observed "scratching marks on the front door." She stated that the door was not in this condition when she left that morning. There was no chipped paint on the door and there were not any "chippings" on the carpet in front of the door.

¶ 12 On cross-examination, Henry testified that she did not see anything in disarray in her foyer or living room when she entered the apartment. She did not see anything out of place. She

also did not see any unfamiliar bags or backpacks. When she saw defendant, he was not holding anything. He did not have any bags or any weapons, such as, a crowbar. She did not see defendant do anything to her belongings. She stated that as soon as they made eye contact, she went to call 911 as defendant told her the door had been open. He then left. She did not see anyone break into her apartment. On redirect, Henry testified that she observed defendant in the office in front of a closet that contained clothes, ties, and bags, including luggage. She did not know how long defendant had been in her apartment before she arrived home.

¶ 13 Detective Heneghan testified that he was assigned to investigate the residential burglary on September 13, 2016. He first called Henry on the phone. After the conversation, he met with his partner and they canvassed the building. He also spoke with the building manager and viewed a surveillance video. After viewing the video, Detective Heneghan compiled a photo array and showed it to Henry. She pointed to two individuals in the array and thought the man in her apartment was one of the two people, but she was not sure.

¶ 14 Detective Heneghan later arrested defendant at 1169 South Plymouth Court. Defendant lived in unit 302, across the hall from Henry. The detective identified defendant in court. Defendant then was taken to the police station and Henry was notified. She came to the station and viewed a lineup. She identified defendant in the lineup.

¶ 15 While at the station, Detective Heneghan gave defendant his *Miranda* rights, which defendant waived and agreed to speak with the detective, his partner, and a sergeant. Defendant told him that Henry had been complaining to the building management about defendant's smoking in and around the building. He admitted to going into her unit, but denied wearing rubber gloves. He also denied running from the location, he went to his unit. He did not hear the

police arrive. Defendant admitted to smoking marijuana, but denied having a substance abuse problem. He did admit to being in a 12-step program.

¶ 16 On cross-examination, Detective Heneghan agreed that there was no report of missing objects. When defendant was arrested, the detective asked defendant if he had an orange sweatshirt that matched the surveillance video. Defendant then tendered the sweatshirt to the police. The video did not show any of the upstairs apartments, it showed the entryway to the building. Detective Heneghan did not search defendant's apartment for weapons or tools.

¶ 17 Following the detective's testimony, the State asked to enter exhibits into evidence, which the trial court allowed. Defense counsel moved for a directed finding, which the trial court denied.

¶ 18 Defendant testified on his own behalf. On September 12, 2016, defendant lived in unit 302 at 1169 South Plymouth Court in Chicago. He had lived there for six months. At approximately 8:30 p.m., he was going outside for a cigarette break after working on his computer. He worked from home as a computer programmer. He noticed Henry's apartment door was "wide open" and he walked over to the door. The lights were all off and he "heard a couple noises inside." He turned on the light inside the door, knocked a couple times, and announced himself. He entered into the foyer of the apartment. Defendant had met Henry multiple times and had received complaints from her. Defendant only had his keys, cigarettes, and a lighter in his possession. He called out to Henry and she "stumbled out of the hallway." According to defendant, she was "inebriated."

¶ 19 Defendant denied entering any other rooms in the apartment or touching anything in the apartment. Henry then became "belligerent, screaming" at defendant about what he was doing and why he was in her apartment. Defendant tried to explain that the door was open and the

lights were off. Henry then pulled out her cell phone to call the police. Defendant told her that was not necessary, he was leaving. He closed the door behind him and went into his unit. He did not have any contact with the police that evening. He went back to work and skipped his cigarette break. Defendant also called his father and a couple friends. Defendant admitted that he matched Henry's description of what he was wearing, except he was not wearing gloves.

¶ 20 On cross-examination, defendant testified that it was odd to see his neighbor's door open and he was "quite concerned." He had never seen any other residents have their doors open late at night. He denied leaving his door open to run and do something. He entered the apartment, but did not think it was necessary to call 911. He admitted the building had a management company, but he did not have their number. Defendant had not seen Henry enter her apartment that day. He denied running out the apartment, but he left and closed the door.

¶ 21 On redirect, defense counsel asked defendant if he had a prior conviction. Defendant responded that he had one standing conviction at that time and it was on appeal. The conviction was a 2012 UUWF. The defense then rested.

¶ 22 Following closing arguments, the trial court found defendant guilty of residential burglary. In its ruling, the court observed that there was no dispute that defendant entered Henry's apartment, but the issue was whether there was intent to commit a theft therein. The court then made the following findings.

> "What we have here is the State has shown that there are pictures of this door that do show pry marks on the door. The victim testified clearly and convincingly that this is not how the door appeared when she left. There were not paint chips on the floor; that there were paint chips afterwards, that there were these marks on the

door. And this is not the condition of the door when she left that morning at about 7:15 or so.

The complaining witness in this case --Ms. Henry -- testified that when she returned home at about 8:30 -- and it is interesting and very convincing to this Court that she said she never gave the defendant permission to enter her apartment, nor had she seen the defendant before was her testimony. Here you have a defendant who, in stark contrast to what the complaining witness in this case said, said that he had many encounters with her and that it seemed that she has complained about him.

And there was no indication by the detective or -- other than the defendant's word that she was inebriated at that time.

The victim says that when she came in, the door was not open, but she still had to use her key and it was not as easy -- it was easier to open than it was usually. She didn't have to put her shoulder into it as she did ordinarily with the key. And so it was easier to open. And when she entered, she then saw a light on in the office. She didn't indicate that there was a light on in the entry; she said there was a light on in the office. And then when she walked in there, surprised to encounter anybody there because her fiancé, who she lived there with, was not there and was out of town. She did not see her fiancé but, in fact, it was the defendant, who she describes in detail about what he was wearing. And, as it turns out, he did have those clothing on. And she gave quite a detail. And somebody who would be inebriated would not be able to give that kind of detail as to what the defendant was wearing. The defendant was looking into the closet and that, in

fact, he was wearing a glove. She asked him if he was there to rob her, and he said the door was open. Why would he be inside her apartment? And she laid out the layout of the apartment inside the office, which was not directly in the entry of this apartment, which was some ways away from the entry of this apartment.

She said that, at that time, she took out her phone, and the defendant then ran out. The defendant didn't stick around. The defendant ran away, and he went somewhere else but outside of the apartment.

The complaining witness in this case indicates that he left and that she heard some loud noise, and so she ran up the stairs. She came back to the fourth floor. And, at some place, she found the glove. She picked that up, and it looked like the glove that the defendant had been wearing.

She then followed up with the police. She viewed a photo array, and she picked out two individuals, one of which looks to be the defendant. And then she viewed a physical lineup, and it turns out to be the defendant who she identifies.

The defendant is arrested, and he gives a far different story about what happened. He portrays himself as just the good neighbor, just the good neighbor looking out for his neighbor; and that he just gratuitously happens to walk out, and the door is open. Instead of calling any management company or alerting somebody, like the police, that this door is open, but he did find it unusual. He walked in, and he said he then encountered an inebriated complaining witness and that he saw that she was calling the police. He didn't stick around. He didn't say, hey, police, I didn't break into this place, I wasn't trying to do anything here, I

> was trying to help out a neighbor because I'm the good neighbor. He said none of that. He fled. Flight. That is an indication of guilt also.
>
> And based on everything that the Court has heard, the statements that the defendant made were minimizing and self-serving. There will be a finding of guilty as to the charge as charged."

¶ 23 After the trial, the trial court allowed defendant's public defender to withdraw and allowed private counsel to file his appearance. Defendant's trial counsel had filed a motion for a new trial in May 8, 2017, but defendant's new attorney filed a new motion on May 22, 2017. The second motion for a new trial asserted that the State failed to prove defendant guilty beyond a reasonable doubt, the trial court erred in denying defendant's motion for a directed finding, and the trial court erred in allowing inadmissible hearsay statements at trial as well as statements in violation of the sixth amendment. In August 2017, counsel filed a memorandum in support of the motion for new trial and motion to reconsider finding of guilt. In this motion, defendant argued that (1) his trial counsel was ineffective for failing to sufficiently cross examine Henry and Detective Heneghan, failure to call witnesses to impeach Henry's credibility about forced entry into the apartment, and failing to file a pretrial motion to have latex glove subjected to forensic and DNA testing; and (2) the State failed to prove defendant guilty beyond a reasonable doubt.

¶ 24 In October 2017, the trial court heard the parties' arguments on defendant's motion for a new trial. Following arguments, the court denied defendant's motion. The court then turned to sentencing. After hearing arguments in mitigation and aggravation, the trial court sentenced defendant to a term of five years. Defendant was given credit for 400 days served and assessed fees and fines of $404.

¶ 25 This appeal followed.

¶ 26 Defendant first argues that the State failed to prove him guilty of residential burglary beyond a reasonable doubt. Specifically, defendant contends that the State failed to present sufficient evidence that he possessed an intent to commit a theft in Henry's apartment. According to defendant, Henry's testimony was "simply illogical" and corroborated defendant's innocent explanation for the encounter. The State maintains that it sufficiently established that defendant committed residential burglary beyond a reasonable doubt.

¶ 27 When this court considers a challenge to a criminal conviction based upon the sufficiency of the evidence, our inquiry is limited to "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.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); accord *People v. Wright*, 2017 IL 119561, ¶ 70. "Under this standard a reviewing court does not retry the defendant, and the trier of fact remains responsible for making determinations regarding the credibility of witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence." *Id.*

¶ 28 The reviewing court must carefully examine the record evidence while bearing in mind that it was the fact finder who observed and heard the witnesses. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). Testimony may be found insufficient under the *Jackson* standard, but only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt. *Id.* "A conviction will not be set aside on appeal unless the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of the defendant's guilt." *Wright*, 2017 IL 119561, ¶ 70.

¶ 29 To support a conviction for residential burglary, the State was required to prove beyond a reasonable doubt that defendant knowingly and without authority entered the dwelling place of

another with the intent to commit a felony or theft. 720 ILCS 5/19-3(a) (West 2016). A residential burglary has been committed "the moment an unauthorized entry with the requisite intent occurs regardless of whether a subsequent felony or theft was actually committed." *People v. Murphy*, 2017 IL App (1st) 142092, ¶ 10. "Absent direct evidence, intent must be proven circumstantially, and a conviction may be sustained on circumstantial evidence alone." *Id*. "Intent is usually proven through circumstantial evidence, that is, inferences based upon defendant's conduct." *Id*. "Such circumstances include the time, place, and manner of entry into the premises; the defendant's activity within the premises; and any alternative explanations offered for his presence." *People v. Maggette*, 195 Ill. 2d 336, 354 (2001). "Whether the requisite intent existed is a question for the trier of fact, whose determination will not be disturbed on review unless a reasonable doubt exists as to the defendant's guilt." *Id*.

¶ 30 The evidence at trial came down to a question of credibility between Henry and defendant. Henry testified that she left her apartment on September 12, 2016, at 7:15 a.m. and returned home at 8:30 p.m. after she attended work and school. She found her door was locked, but easier to open than usual. She usually needed to use her shoulder to exert force to open the door, but the door opened without such effort. She immediately observed a light on in her fiancé's office. He was out of town, but Henry first thought he had returned home early. She walked to the office and saw defendant standing in the office facing the closet, which contained clothing and luggage. She described him as wearing an orange "hoodie" sweatshirt, basketball shorts, glasses, and cream latex gloves. Henry confronted defendant and asked if he was attempting to rob her apartment. Defendant started to tell Henry that her apartment door was open, but Henry began to call 911. Defendant then ran from the apartment. Henry attempted to follow him, but was unable to find him. The following day, Henry viewed a photo array and

tentatively identified two potential suspects. A couple days later, Henry viewed a physical lineup and identified defendant as the man in her apartment. Henry denied ever seeing defendant before that evening.

¶ 31 Henry also testified that she and her fiancé took photographs of the apartment door. The photographs showed significant paint removed or chipped from the door near the lock, including some paint that was partially pealed and still attached to the door. Another photograph showed the paint chips and debris on the carpet in front of the door frame. Henry testified that her door was not in that condition when she left for the day on September 12, 2016. These photographs were admitted as exhibits at trial and are included in the record on appeal.

¶ 32 In contrast, defendant testified that he had been working from home and at about 8:30 p.m., he was going outside for a smoke break. As he exited his apartment, he observed that the door to the apartment across the hall was open and the lights were off. Defendant stated that he knocked and called into the apartment. He turned on the entry foyer light and stepped into the unit. He did not go further than the foyer. Henry then "stumbled" out of the hallway and was inebriated. She was belligerent and screaming at him. He tried to explain, but when she called 911, he left and closed the door behind him. He then returned to his unit. Defendant testified that he did not hear the police arrive and had no contact with the police that evening. Defendant admitted that he was wearing an orange sweatshirt, shorts, and glasses that night, but denied wearing latex gloves. Defendant stated that he had multiple prior encounters with Henry with multiple complaints from her.

¶ 33 Defendant admits that he knowingly entered Henry's apartment without authority, but asserts that the State failed to establish the requisite intent to commit a theft therein. Defendant relies on his own trial testimony that he observed the door to Henry's unit open with the lights

off and he entered the unit out of concern. Defendant also focuses on the lack of tools, weapons, or a backpack to support his lack of intent to commit a theft. However, all this testimony and argument was presented to the trial court, and as the trier of fact, the court found Henry to be more credible and that defendant's testimony was "minimizing and self-serving."

¶ 34 Defendant contends that Henry's testimony and the State's case corroborated his innocent explanation for his entry into Henry's apartment. He notes that Henry testified that defendant was calm when she confronted him in her apartment while she was aggressive. According to defendant, this testimony corroborates his own testimony that he was calm and she was "belligerent." He also points to Detective Heneghan's testimony that defendant gave a statement to police which was consistent with defendant's trial testimony. We disagree with defendant's assertion of corroboration. This testimony only established that defendant has presented a consistent story to explain away his unlawful entry into Henry's apartment, but does not corroborate his explanation. Defendant also asserts that the State did not present evidence that anything was removed from Henry's apartment, nor did the State introduce any burglary tools at trial. Defendant further argues that the State "conspicuously chose not to admit into evidence" the latex glove found by Henry after the burglary.

¶ 35 As previously stated, residential burglary is committed after an unauthorized entry has occurred with an intent to commit a theft regardless of whether the theft has been completed. *Murphy*, 2017 IL App (1st) 142092, ¶ 10. The State presented evidence to support the required elements of residential burglary: unauthorized entry into a dwelling and an intent to commit a theft therein. See 720 ILCS 5/19-3(a) (West 2016). All of defendant's arguments were raised in the trial court through his attorney's questioning of witnesses and in argument. The trial court had the opportunity to observe the witnesses and consider the circumstantial evidence of

defendant's intent to commit a theft in Henry's apartment. "[T]he trier of fact is not required to disregard inferences which flow normally from the evidence and to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *People v. Hall*, 194 Ill. 2d 305, 332 (2000). The trial court heard all the testimony and found Henry to be a credible witness. After viewing the evidence in the light most favorable to the State, we cannot say that the evidence was so improbable that no rational trier of fact could have found defendant guilty of residential burglary beyond a reasonable doubt.

¶ 36 Next, defendant contends that the trial court denied him a fair trial when it granted the State's motion *in limine* to impeach him with his 2012 UUWF conviction if he chose to testify. The case law in Illinois regarding prior firearm convictions has been evolving over the last several years. The Illinois Supreme Court in *People v. Aguilar*, 2013 IL 112116, and *People v. Burns*, 2015 IL 117387, held that the AUUW offense in section 24-1.6(a)(1) of the Criminal Code of 2012 (720 ILCS 5/24-1.6(a)(1) (West 2012)) was unconstitutional and invalid.

¶ 37 Later, the supreme court in *People v. McFadden*, 2016 IL 117424, ¶¶ 27-31, held that the defendant's conviction for unlawful use of a weapon by a felon, which was predicated on a prior conviction for AUUW, was not void where the AUUW conviction had not been vacated at the time the defendant committed the offense of unlawful use of a weapon by a felon. However, the Illinois Supreme Court subsequently overruled its decision in *McFadden* in *In re N.G.*, 2018 IL 121939. In *N.G.*, the supreme court considered whether a parent's unconstitutional AUUW conviction could be used as a predicate for terminating parental rights. *Id.* ¶ 23. The court stated that "[w]hen a statute is found to be facially unconstitutional in Illinois, it is said to be void *ab initio*; that is, it is as if the law had never been passed." *Id.* ¶ 50. Further, "the conviction must be treated by the courts as if it did not exist, and it cannot be used for any purpose under any

circumstances." *Id*. ¶ 36. An individual may challenge a conviction under an unconstitutional statute at any time, in any court with jurisdiction, and is not subject to forfeiture. *Id*. ¶¶ 43, 56. "[I]f the constitutional infirmity is put in issue during a proceeding that is pending before a court, the court has an independent duty to vacate the void judgment and may do so *sua sponte*." *Id*. ¶ 57. The court summarized its holding as follows:

> "[A] facially unconstitutional statute and any conviction based on the statute must be treated as if they *never existed*. Because they are nonexistent, as a matter of federal constitutional law, and must therefore be ignored by the courts, using them against a defendant in any subsequent proceeding, civil or criminal, is not only conceptually impossible (if something has no legal existence how can it be given any legal recognition?) but would subvert the very constitutional protections that resulted in the statute being found facially invalid to begin with and is incompatible with the United States Supreme Court's command that when, as under *Aguilar* and here, the conduct penalized by a statute is constitutionally immune from punishment, that determination must be given complete retroactive effect." (Emphasis in original.) *Id*. ¶ 74.

¶ 38 Here, defendant's UUWF conviction was predicated on a prior AUUW conviction. There is no question that defendant's AUUW was based on the facially unconstitutional statute. At the time of the trial, defendant's appeal of his UUWF conviction was pending in this court after the decision in *McFadden* had been issued. However, following *N.G.*, which was issued after the instant appeal had been filed, defendant's UUWF conviction was no longer valid because it was based on a void AUUW conviction. The State agrees with defendant that, in light of the holding in *N.G.*, the trial court erred in granting the State's motion *in limine* allowing the State to

impeach defendant with the UUWF conviction if he chose to testify. Although the State asserts that the introduction of defendant's prior conviction was invited error, we find the State's alternative argument that any error was harmless to be determinative.

¶ 39 Defendant acknowledges that he did not raise this claim in his posttrial motion. To preserve an issue for appeal, defendant must make an objection at trial and raise the issue in a written posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Defendant asserts that his court may address the issue by applying an exception to the forfeiture rule. The Illinois Supreme Court has held that an exception exists for constitutional issues that were properly raised at trial that may be raised later in a postconviction petition. *People v. Cregan*, 2014 IL 113600, ¶ 16 (citing *Enoch*, 122 Ill. 2d at 190). The primary basis for this exception is judicial economy. *Id.* ¶ 18. The *Cregan* court reasoned that if a defendant was precluded from raising a constitutional issue previously raised at trial on direct appeal, merely because he failed to raise it in a posttrial motion, he could simply raise the issue in a subsequent postconviction petition. *Id.* "Accordingly, the interests in judicial economy favor addressing the issue on direct appeal rather than requiring defendant to raise it in a separate postconviction petition." *Id.* Therefore, under this exception we will address defendant's claim of error.

¶ 40 We now consider whether the admission of defendant's prior conviction for impeachment purposes was harmless beyond a reasonable doubt. According to the United States Supreme Court, constitutional error does not automatically require reversal of a conviction. *Arizona v. Fulminante*, 499 U.S. 279, 306 (1991) (citing *Chapman v. California*, 386 U.S. 18 (1967)). The Supreme Court "has applied harmless-error analysis to a wide range of errors and has recognized that most constitutional errors can be harmless." *Id.* "In determining whether a constitutional error is harmless, the test to be applied is whether it appears beyond a reasonable doubt that the

error at issue did not contribute to the verdict obtained." *People v. Patterson*, 217 Ill. 2d 407, 428 (2005). The State bears the burden of proof. *Id*. Three different approaches can be employed to measure the error under the harmless beyond a reasonable doubt test:

> "(1) focusing on the error to determine whether it might have contributed to the conviction, (2) examining the other evidence in the case to see if overwhelming evidence supports the conviction, and (3) determining whether the improperly admitted evidence is merely cumulative or duplicates properly admitted evidence." *Id*.

¶ 41 Here, the evidence at trial consisted of the testimony of Henry, Detective Heneghan, and defendant, as well as photograph exhibits showing signs of forced entry to Henry's apartment door with scratched paint and paint chips on the carpet immediately in front of the door. Defendant contends that the evidence at trial was a pure credibility contest between his version and Henry's testimony. We disagree because the photographs provided physical evidence to support Henry's testimony that defendant broke into her apartment. Defendant fails to acknowledge the photographs in his brief. Henry also testified that defendant was wearing latex gloves while in her apartment and she later found a latex glove that matched the ones worn by defendant in the building's stairwell. As we have fully discussed above, the evidence presented by the State supported defendant's conviction. We further point out, and defendant admits, that the trial court did not reference defendant's prior conviction as a factor in its finding of guilt. Instead, the court found Henry's testimony convincing and credible, while defendant's testimony was "self-serving." The court observed that the details given by Henry, including her correct description of what defendant was wearing did not support defendant's testimony that Henry was

"inebriated." The court also discussed defendant's flight from the apartment and that he did not remain to speak to police about his innocent intent.

¶ 42 We find defendant's reliance on *People v. Naylor*, 229 Ill. 2d 584, 603-609 (2008), to be unpersuasive. In that case, the supreme court found the evidence at trial was closely balanced because the trial court was faced with two credible versions of events, including two officers who testified that the defendant sold them heroin and the defendant who testified that he was mistakenly swept up in a drug raid. *Id*., at 607. In finding the evidence closely balanced, the court noted that there was no evidence to corroborate or contradict either version of events and the defendant's testimony was credible in that it was consistent with much of the officers' testimony. *Id*. Unlike in *Naylor*, the evidence in the present case did include corroborating physical evidence and the two versions of events were not equally credible.

¶ 43 We find the error in admitting defendant's 2012 UUWF conviction for impeachment to be harmless beyond a reasonable doubt. The prior conviction was briefly mentioned by defendant in redirect. It was not admitted as substantive evidence, nor was the conviction a required element of the offense of residential burglary. The trial court's findings fully discussed the evidence presented to support the guilty finding, but did not reference the prior conviction as a factor in determining credibility. The court specifically referred to defendant's version of events in reaching its finding. We further observe that at sentencing, the trial court acknowledged defendant's prior conviction, which was included on defendant's presentence investigation. However, the court declined the State's request to sentence defendant to an extended term based on defendant's history, but instead sentenced defendant to five years. The five-year sentence was near the minimum sentence for a Class 1 felony, which has sentencing range of 4 to 15 years. See 720 ILCS 5/19-3 (West 2016); 730 ILCS 5/5-4.5-30(a) (West 2016). Accordingly, we deny

defendant's claim that the admission of the prior conviction for impeachment violated his right to a fair trial.

¶ 44 Based on the foregoing reasons, we affirm defendant's convictions and sentence.

¶ 45 Affirmed.