

2019 IL App (2d) 161045-U  
No. 2-16-1045  
Order filed September 11, 2019.

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of McHenry County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 14-CF-517
	)	
HOWARD E. DIBBERN,	)	Honorable
	)	Sharon L. Prather,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE SPENCE delivered the judgment of the court.  
Justices McLaren and Jorgensen concurred in the judgment.

**ORDER**

¶ 1 *Held:* The State proved defendant guilty beyond a reasonable doubt of concealment of a homicidal death, as the trial court was entitled to infer that the victim's body was hidden affirmatively by defendant rather than accidentally.

¶ 2 Following a bench trial, defendant, Howard E. Dibbern, was found guilty but mentally ill of first-degree murder (720 ILCS 5/9-1(a)(2) (West 2014)), unlawful possession of a stolen motor vehicle (625 ILCS 5/4-103(a)(1) (West 2014)), and concealment of a homicidal death (720 ILCS 5/9-3.4(a) (West 2014)). He appeals, contending that he was not proved guilty beyond a reasonable doubt of concealment of a homicidal death. We affirm.

¶ 3

## I. BACKGROUND

¶ 4 Defendant was charged with the murder of Karen Scavelli at her Island Lake home. The court heard expert testimony on whether defendant should be found not guilty by reason of insanity or guilty but mentally ill. The remainder of the evidence was presented by stipulation.

¶ 5 The relevant stipulated evidence shows that on June 2, 2014, Scavelli's daughter, Nicole Allard, and Allard's young son lived with Scavelli. Allard came home from work around 3 p.m. and found her mother with a man called "Buddy." Scavelli said that Buddy was a friend of the bar owner for whom she worked.

¶ 6 Buddy, who was later identified as defendant, was acting strangely, making Allard uncomfortable. For example, Buddy insisted on holding Allard's son and, after doing so, said that the baby liked him because he was "the chosen one."

¶ 7 Allard left with her son to attend her boyfriend's softball game. When she returned home around 9 p.m., her mother's car was not in the driveway so she assumed that she had gone out. When she entered the house, she smelled bleach. She could not determine the source of the smell, but she began to notice that things were out of place. She went upstairs and found the bathtub full of water. Downstairs, she found a bag containing blood in a garbage can.

¶ 8 Allard noticed that the family dog was missing. She tried numerous times to call or text her mother but got no response. She eventually called the police.

¶ 9 Sergeant Schmoeller and Officer Behr responded to a report of suspicious circumstances. Schmoeller followed Allard upstairs to the master bedroom, where he found two sets of mattresses and box springs with no bed frames. He observed clothes piled between the mattresses and a higher pile on the far side of the second mattress, but "did not think much of it at the time."

¶ 10 Schmoeller and Behr unsuccessfully looked for Scavelli in the basement, back yard, and garage. In the meantime, Allard found her mother's phone, which "raise[d] flags." Schmoeller began to search the second floor more thoroughly. He returned to the master bedroom, where he examined a pile of linens between a mattress and the window. He picked up a sleeping bag that proved to be heavier than he thought. As he redistributed his weight, his boot struck something hard under a pile of heating blankets. He removed the sleeping bag and saw a plastic bag wrapped around what appeared to be a human head. He removed the blankets and found Scavelli's body.

¶ 11 Defendant was apprehended after he crashed Scavelli's car into a house. Defendant was charged with her murder, unlawful possession of her stolen car, and concealment of a homicidal death.

¶ 12 The court found defendant guilty but mentally ill of all the charges. It sentenced him to 40 years for murder, 8 years for possession of a stolen vehicle, and 5 years for concealment of a homicidal death. The latter two sentences were to run concurrently with each other but consecutively to the murder sentence, for a total term of 48 years. Defendant timely appeals.

¶ 13

## II. ANALYSIS

¶ 14 Defendant contends that the stipulated evidence does not establish beyond a reasonable doubt that he concealed a homicidal death. He contends that virtually all of the reported cases involved conduct much more serious and purposeful, such as hiding the body in another location and/or setting it on fire. He argues that he took no affirmative steps to conceal the body as, given the clutter in the room, it is possible that the blankets and sleeping bag simply fell on top of the body.

¶ 15 The State first contends that defendant’s argument “circumvents the sole purpose of having a stipulated bench trial.” A stipulated bench trial offers the advantages of a guilty plea while allowing a defendant to preserve issues for appeal. *People v. Gonzalez*, 313 Ill. App. 3d 607, 617 (2000). The issues typically involve the suppression of evidence or other questions unrelated to the *sufficiency* of the evidence, as “neither a reasonable defendant nor a prosecutor would choose to pursue a stipulated bench trial (or guilty plea) if the evidence is doubtful.” *Id.* However, the State is still required to prove the elements of the charged crimes, and nothing prohibits a defendant on appeal from challenging the sufficiency of the evidence. In *Gonzalez*, while we criticized generally the practice of stipulated bench trials (*id.* at 617-19), we nonetheless entertained the defendant’s argument that the evidence was insufficient (*id.* at 615-17).

¶ 16 The State further posits that defendant has forfeited his challenge to the sufficiency of the evidence. The State argues that the only issue defendant preserved per the stipulated bench trial was whether he could appreciate the criminality of his conduct, *i.e.*, whether he was legally insane. Because defendant never questioned in the trial court the sufficiency of the stipulated evidence to prove his guilt, the State contends, he has forfeited this argument.

¶ 17 However, challenges to the sufficiency of the evidence are not subject to forfeiture. *People v. Cregan*, 2014 IL 113600, ¶ 16. Thus, we consider the merits of defendant’s reasonable-doubt argument despite his failure to raise it in the trial court.

¶ 18 Turning to the merits, we agree with the State that the evidence was sufficient. When a defendant questions the sufficiency of the evidence, we ask whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *People v. Campbell*, 146 Ill. 2d 363, 374

(1992). The parties acknowledge that the evidence that defendant was guilty of concealment was entirely circumstantial. But circumstantial evidence is sufficient to sustain a conviction so long as it satisfies the factfinder beyond a reasonable doubt of the elements of the crime charged. *Id.* at 379. In weighing evidence, the trier of fact is not required to disregard inferences flowing naturally from the evidence before it, nor need it search out all possible explanations consistent with innocence and raise them to the level of a reasonable doubt. *Id.* at 380.

¶ 19 Here, the stipulated evidence showed that, when Allard and her son left for the softball game, defendant and Scavelli were the only people in the house. When Allard returned around 9 p.m., her mother's body was under a pile of blankets and defendant was gone. Allard noticed that the house smelled like bleach, found the bathtub half full of water, and found bloody rags in a garbage bag.

¶ 20 Defendant does not contest his conviction of murdering Scavelli. He argues, however, that proof was lacking that he actively concealed the body. "A person commits the offense of concealment of homicidal death when he conceals the death of any other person with knowledge that such other person has died of homicidal means." 720 ILCS 5/9-3.4(a) (West 2014). Concealment of a homicidal death requires knowledge that a homicide has occurred and some affirmative act of concealment by the defendant. *People v. Wilson*, 229 Ill. App. 3d 80, 85 (1992). "Concealment of a homicidal death includes situations where the homicidal nature of the death or the body itself is concealed." *People v. Kirkman*, 170 Ill. App. 3d 106, 110 (1988).

¶ 21 The trial court reasonably concluded that defendant, after committing the murder, covered up the body, giving him additional time to escape. The effort appears to have succeeded to some extent. After Allard came home, she assumed that her mother had gone out and did not immediately notice that she was dead. After arriving to investigate, Schmoeller looked in the

bedroom once and did not notice the body. He continued searching before eventually returning to the bedroom and discovering the body accidentally. Thus, the evidence permits the rational inference that defendant killed Scavelli and buried the body to prevent its immediate discovery. The concealment statute requires nothing more.

¶ 22 Defendant suggests, however, that the State failed to prove that he took any affirmative steps to conceal the body, as the items might have fallen on the body accidentally. As noted, the trial court was not required to consider every possible theory consistent with defendant's innocence, and it properly declined to do so here. With defendant having a strong motive to conceal the homicide, the court was not required to accept that a pile of blankets and a heavy sleeping bag fell on top of the body and, coincidentally, completely concealed it. Moreover, defendant's theory fails to consider that Allard smelled bleach and found the bathtub partially full and a garbage bag with bloody items in it. Thus, it appears that defendant made some effort to clean up blood from the scene, another attempt to conceal the death or its homicidal nature. Defendant cannot plausibly contend that the house was cleaned accidentally.

¶ 23 Defendant argues that the vast majority of those convicted of this crime undertook more extreme measures, such as moving the body or setting it on fire. See, *e.g.*, *People v. Patterson*, 217 Ill. 2d 407 (2005) (defendant removed body from house, set house on fire, then drove body to another county and set car with body inside on fire). As defendant acknowledges, the statute requires only that a defendant conceal the death of another with knowledge that the person died by homicidal means. (Defendant does not appear to contest the second element.) No particular actions are required. Defendant may not escape responsibility merely because others have gone to more extreme lengths to accomplish the same result. As noted, defendant's chosen method

was at least partially successful. More extreme measures such as trying to move the body or setting a fire might only have alerted neighbors and brought police intervention.

¶ 24 Finally, we briefly dispose of two additional issues that defendant raises. First he contends that the mittimus incorrectly reflects that he was found guilty, rather than guilty but mentally ill. The State agrees. Thus, we amend the mittimus to reflect that defendant was found guilty but mentally ill. See *People v. Pryor*, 372 Ill. App. 3d 422, 438 (2007). Defendant further contends that he is entitled to a \$5-per-day credit against his fines. See 725 ILCS 5/110-14 (West 2014). The State agrees that defendant’s argument is “not unfounded,” but points out that the proper procedure is to remand to the trial court to allow defendant to file a motion for the credit. See Ill. S. Ct. R. 472(a) (eff. May 17, 2019). Thus, we affirm the judgment as modified and remand the cause for this limited purpose.

¶ 25

### III. CONCLUSION

¶ 26 The judgment of the circuit court of McHenry County is affirmed and the cause is remanded.

¶ 27 Affirmed and remanded.