2018 IL App (1st) 160185-U
Order filed: April 27, 2018

FIFTH DIVISION

No. 1-16-0185

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. 13 C6 61323
	)	
RODNEY PATRICK,	)	Honorable
	)	Frank G. Zelezinski,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
JUSTICES HALL and LAMPKIN concurred in the judgment.

ORDER

¶ 1 *Held*: We affirmed defendant's conviction where the evidence was sufficient to prove him guilty of burglary over his contention that the State did not prove beyond a reasonable doubt that he intended to commit a felony or theft upon entering the business in question.

¶ 2 Following a bench trial, defendant-appellant, Rodney Patrick, was found guilty of burglary in violation of 720 ILCS 5/19-1(a) (West 2012), in that he knowingly entered a building doing business as the Alpha Gyros restaurant (the restaurant) with the intent to commit a felony or theft and was sentenced to eight years' imprisonment. On appeal, defendant contends that the

State failed to prove him guilty of burglary because it did not prove that he entered the restaurant with the intent to commit therein a felony or theft. For the reasons that follow, we affirm.

¶ 3 At trial, Harvey police officer, Jeffery Tibbs, testified that, on the evening of December 25, 2012, he was on patrol in his marked police vehicle driving on north Dixie Highway. At about 11 or 11:15 p.m., as he drove past a closed restaurant located at 14815 Dixie Highway, he noticed an individual jumping over the counter inside the restaurant. The officer was approximately 40 feet away and, although it was dimly lit, he was able to see inside. Seconds later, Officer Tibbs pulled into the parking lot of the restaurant.

¶ 4 The individual exited the restaurant's east door and fled running eastbound. The glass of that door had been shattered. The officer exited his vehicle, announced his office, and ordered the individual to stop. When the individual failed to stop, Officer Tibbs pursued him on foot through a vacant lot between 148th Avenue and 148th Place. The individual removed his hooded sweatshirt, threw it to the ground, continued running eastbound, and turned south on Vail Street. Officer Tibbs was about 15 feet away from the individual as he fled, until he reached a green Dodge pickup truck. The area was dimly lit by a streetlight. The individual opened the driver side door of the truck, looked at Officer Tibbs, and then drove away. Officer Tibbs was near the rear bumper of the truck and was able to see the individual's face. He did not see anyone else in the pickup truck.

¶ 5 Officer Tibbs gave a description of the vehicle and its license plate number over the police radio and returned to the vacant lot to recover defendant's discarded sweatshirt. He then went to the restaurant and confirmed that no one else was inside. There, the officer noticed that the door to an office was open and that a "bunch of paper work" was on the floor. Thomas Voutiritsas, the owner of the restaurant, arrived at the scene.

¶ 6 On January 23, 2013, Officer Tibbs viewed an array of photographs and identified defendant as the individual who fled from the restaurant. He also identified defendant in court.

¶ 7 On cross-examination, Officer Tibbs testified that: he did not find any identification in the recovered sweatshirt; he made an incident report of the crime in the early morning of December 26, 2012; and he did not include in his report that defendant ran eastbound through a vacant lot, removing a hooded sweatshirt and looking in his direction. The officer also did not include in his report that, when defendant entered the pickup truck, he turned toward Officer Tibbs and looked at him. The officer stated that, although he eventually lost sight of the pickup truck, other police officers were in pursuit at that time.

¶ 8 Harvey police corporal Matthews testified that, on December 25, 2012, at about 11 p.m., he was on patrol in a marked police vehicle when he received a radio call from Officer Tibbs. Officer Tibbs stated that he was on foot in pursuit of an individual who had burglarized a restaurant, and that the offender had fled from 149th Avenue and Dixie Highway eastbound toward Vail Avenue. Officer Tibbs then gave a description of a green pickup truck which the individual had driven southbound on Vail Avenue. Corporal Matthews proceeded toward the area and, as he approached northbound Dixie Highway, he observed a green pickup truck turning in front of him. Corporal Matthews activated his emergency lights and siren. The driver of the vehicle would not pull over, instead, he turned off the lights of his vehicle. Corporal Matthews and other Harvey police officers pursued the green pickup truck. After 10 minutes, Corporal Matthews lost sight of the vehicle. Shortly thereafter, however, another officer located the pickup truck parked in front of an apartment complex located at 2205 W. 119th Street in Blue Island. Corporal Matthews proceeded to that location and identified the vehicle as the one he had been pursuing.

¶ 9 Harvey police officer Wallace testified that, on December 27, 2012, he processed the green pickup truck. The officer photographed the vehicle and recovered two fingerprints—one from the exterior driver side; the other from the exterior passenger side. The following items were recovered from the pickup truck: insurance documents; a receipt; a duffel bag containing black and red bolt cutters; a blue saw; a black hooded sweatshirt; a pair of black winter overalls; a pair of Nike shoes; and a man's brown wallet which contained both a traffic citation and a social security card bearing the name of Rodney Patrick.

¶ 10 The State presented a stipulation between the parties that, if called to testify, Thomas Voutiritsas would state that on December 25, 2012, he owned the restaurant. On December 24, 2012, he locked up the restaurant at 9 p.m. and left for the holiday. At that time, he did not notice any "damage to the exterior of that building, specifically a broken glass door." He did not go to the restaurant on December 25, 2012, but returned during the early morning of December 26, 2012, after receiving a call from the Harvey Police Department. When he arrived at the restaurant, he saw "the glass door had been shattered," but it had not been shattered when he last left the restaurant. Mr. Voutiritsas was not familiar with defendant and he did not give defendant permission to enter his restaurant on December 25, 2012.

¶ 11 Following this testimony the State rested and defendant's motion for a directed finding was denied.

¶ 12 Bryan Patrick, defendant's brother, testified that, on December 25, 2012, he lived at 6855 S. Campbell Avenue with his mother and defendant. At about 8:30 that evening, Bryan, his wife, and his mother drove to his aunt's house in his mother's green Dodge Ram pickup truck. They returned home at about 10 or 10:30 p.m., and Bryan's wife parked the vehicle in front of their

residence. At about 12 or 12:30 a.m., Bryan noticed that the vehicle was missing. His mother called the police and gave a theft report over the phone.

¶ 13 On cross examination, Bryan testified that defendant did not accompany them to his aunt's house. Bryan acknowledged that it was possible there was more than one set of keys to the vehicle and that defendant had been known to use it. On redirect, Bryan testified that defendant was not present when he noticed the vehicle had gone missing.

¶ 14 Following closing arguments, the trial court found defendant guilty of burglary and denied his motion for a new trial. Based on his criminal background, defendant was sentenced as a Class X offender to eight years' imprisonment. This appeal followed.

¶ 15 On appeal, defendant contends that the State failed to prove him guilty of burglary.

¶ 16 When reviewing the sufficiency of the evidence, we must determine 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, 319 (1979). As the fact finder, it is the trial court's responsibility to "resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts." *People v. Murphy*, 2017 IL App (1st) 142092, ¶ 9. "[A] reviewing court will not substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses." *Id*.

¶ 17 To prove defendant guilty of burglary as charged, the State had to prove, beyond a reasonable doubt, that defendant: (1) knowingly entered or remained within the restaurant without the authority of Mr. Voutiritsas; and (2) entered the restaurant with intent to commit therein a felony or theft. *Id.* ¶ 10; 720 ILCS 5/19-1(a) (West 2013).

¶ 18 Here, defendant's identity is not at issue, and he does not argue that the State failed to prove that he entered the restaurant without authority. Instead, defendant's sole contention is that the State failed to prove that, at the time he entered the restaurant, he had the requisite intent to commit a felony or theft.

¶ 19 Specifically, defendant argues that the State did not present evidence demonstrating that: anything was stolen by him; any items were missing; there was any damage, other than to the door; or that there was any movable property inside the restaurant which could have been stolen by him. Defendant acknowledges that the State presented sufficient evidence for the court to infer that he damaged the restaurant's door, but asserts that it presented no evidence demonstrating this damage exceeded $500. Unless the damage exceeded $500, the damage amounted to only a misdemeanor criminal damage to property, not a felony criminal damage to property. Defendant argues that the evidence, at most, showed that he committed criminal trespass to property or criminal damage to property, both of which are misdemeanors. Accordingly, he argues his conviction should be reduced to criminal trespass to property. We disagree.

¶ 20 To establish burglary, "[i]t is not necessary that anything be stolen." *People v. Richardson*, 118 Ill. App. 3d 175, 177 (1984). Rather, burglary can be established "the moment an unauthorized entry with the requisite intent occurs regardless of whether a subsequent felony or theft was actually committed." *Murphy*, 2017 IL App (1st) 142092, ¶ 10.

¶ 21 Intent is a state of mind that is generally proven from the surrounding circumstances (*People v. Maggette*, 195 Ill. 2d 336, 354 (2001)) and circumstantial evidence, i.e. "inferences based upon defendant's conduct" (*Murphy*, 2017 IL App (1st) 142092, ¶ 10). The "surrounding circumstances" to consider "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. Richardson*, 104 Ill. 2d 8, 13 (1984). Inferences based upon a defendant's conduct are " 'grounded in human experience, which justifies the assumption that the unlawful entry was not purposeless, and, in the absence of other proof, indicates theft as the most likely purpose.' " *Murphy*, 2017 IL App (1st) 142092, ¶ 10 (quoting *People v. Johnson*, 28 Ill. 2d 441, 443 (1963)). The question of whether a defendant had the requisite intent for burglary is for the fact finder (*People v. Ybarra*, 272 Ill. App. 3d 1008, 1011 (1995)) and, on review, we will not disturb that determination "unless the evidence is so improbable that there exists reasonable doubt as to the defendant's guilt." *Id.*

¶ 22 Here, the evidence at trial established that defendant had entered the closed restaurant late at night on December 25, 2012, without authority, through a shattered glass door. The door had not been damaged when the owner closed the restaurant for the holiday. At about 11 p.m. or 11:15 p.m. that night, Officer Tibbs observed defendant inside the dimly lit restaurant "jumping over the counter." When Officer Tibbs pulled his marked police vehicle into the parking lot, defendant fled through the shattered glass door. Even though Officer Tibbs announced his office and had advised defendant to stop, he continued to flee. Officer Tibbs pursued defendant on foot until defendant escaped in the green pickup truck. Defendant was then pursued by other police officers. When Officer Tibbs returned to the restaurant after pursuing defendant, there was no one else inside, the door to the office located behind the counter had been opened, and a "bunch of paper work" from the office was on the floor.

¶ 23 Considering the surrounding circumstances, including the time and manner in which defendant had entered the building without authority, and viewing the circumstantial evidence in the light most favorable to the State, the evidence was sufficient for the trial court to reasonably

infer that defendant entered the building with the intent to commit a theft therein. See *Ybarra*, 272 Ill. App. 3d at 1011 (affirming the defendant's conviction for burglary where police officers observed the defendant crawl inside a laundromat at 12:30 a.m. after pulling back a boarded-up portion of the door; the defendant testified that he entered the laundromat to use the washroom; and the officers did not recover money or burglary tools from the defendant); see also *Richardson*, 104 Ill. 2d at 13-14 (affirming the defendant's conviction for burglary where the police officers found the defendant at 3 a.m. in a closet in a building; boards blocking a window had been removed; and a search of the premises revealed that nothing was missing or out of place). The evidence here was not "so improbable" that reasonable doubt exists as to defendant's guilt.

¶ 24 For the reasons stated above, we affirm defendant's conviction.

¶ 25 Affirmed.