

No. 1-16-1796

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)
) Appeal from the
) Circuit Court of
 Plaintiff-Appellee,) Cook County.
)
 v.) No. 14 C6 60697
)
 JONATHAN BARNES,) Honorable
) Allen F. Murphy,
 Defendant-Appellant.) Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Pierce and Griffin concurred in the judgment.

ORDER

- ¶ 1 *Held:* We affirm the trial court’s finding that defendant was “not not guilty” of burglary following a discharge hearing.
- ¶ 2 Defendant Jonathan Barnes was charged with burglary (720 ILCS 5/19-1(a) (West 2014)) after police investigating an early morning alarm and a broken window at a Harvey church found Mr. Barnes inside the building. Mr. Barnes was found unfit to stand trial, and a discharge hearing was held pursuant to section 104-25 of the Code of Criminal Procedure (Code) (725 ILCS 5/104-25) (West 2014)), at which the circuit court found the State had met its burden of proof and determined Mr. Barnes was “not not guilty.” On appeal, Mr. Barnes contends the State failed to

prove beyond a reasonable doubt that he knowingly entered the church with the intent to commit a felony or theft. For the following reasons, we affirm.

¶ 3

I. BACKGROUND

¶ 4 The State charged Mr. Barnes with burglary after he was found inside the First Lutheran Church in Harvey in the early morning hours of July 10, 2014. Defense counsel requested a behavioral clinical examination of Mr. Barnes.

¶ 5 On December 17, 2014, a hearing was held to determine Mr. Barnes's fitness to stand trial. The parties stipulated that Dr. Brian Curran, a licensed clinical psychologist from the forensic clinical services department, examined Mr. Barnes on November 6, 2014, and found him unfit to stand trial due to "cognitive deficits" which limit his ability to understand the nature of the proceedings and impede his ability to assist in his defense. The trial court found Mr. Barnes unfit to stand trial and remanded him to the Illinois Department of Human Services (DHS). On April 29, 2016, Dr. Curran again evaluated Mr. Barnes, finding that he remained unfit to stand trial and likely would not be restored to fitness within one year. Dr. Curran's written report indicated Mr. Barnes had been admitted to Choate Mental Health and Developmental Center and diagnosed with mild intellectual disability and schizoaffective disorder.

¶ 6 On May 17, 2016, the State requested a discharge hearing pursuant to section 104-25 of the Code. The circuit court held that hearing on June 1, 2016. Harvey police detective Rife testified that about 4 a.m. on July 10, 2014, he was on patrol and received a dispatch that an alarm was sounding at the First Lutheran Church, which is located at 45 East 150th Street. A brick had been thrown through a window at the back of the church. Detective Rife called for backup and, while he waited for other officers to arrive, saw a door on the side of the building

open and close quickly. Detective Rife could see the silhouette of the person opening and closing the door but could not see who the person was.

¶ 7 When additional officers arrived, Detective Rife entered the church through the broken window and saw that a panel on an interior wall near the broken window had been damaged and wires were coming out of the wall. Several cabinets in the church's kitchen had also been opened. Detective Rife went into the church sanctuary and found Mr. Barnes on his hands and knees under the lectern. Mr. Barnes was arrested and taken to the Harvey police department. Two pairs of pliers were recovered from Mr. Barnes's pants pockets.

¶ 8 Charles Brent testified that in July 2014, he was the church council president. On the morning of July 10, Mr. Brent was contacted by the alarm company and went to the Harvey police station. Mr. Brent went to the church with police and noted that the window near the church's fellowship hall was broken. Later that day, Mr. Brent went inside the church and noted that some closet doors in the fellowship hall had been opened and the alarm system "had been ripped off the wall by the office." An area where the pastor's robes were kept was also damaged. Mr. Brent testified he had not seen any of that damage when he was at the church on the previous Sunday.

¶ 9 Mr. Brent testified Mr. Barnes was not an employee of the church and did not have permission to enter the church on July 10, 2014, for any purpose. When Mr. Barnes was found inside the church, it was the middle of the night so the building was locked and closed to the public. Mr. Brent testified that he believed some items were missing from inside the church but could not identify anything specific.

¶ 10 The parties stipulated that Dr. Curran reported to the court in a May 17, 2016, letter that Mr. Barnes was unfit to proceed to trial and would not likely be restored to fitness within one

year.

¶ 11 After hearing that evidence, the circuit court stated it was “completely satisfied beyond any doubt that the defendant was the only person in that church at that time having broken a window [to enter].” The court found Mr. Barnes was the person who opened and closed the door on the side of the building and his act of hiding in the church demonstrated his “consciousness of guilt at that time.” The court found the building was a place of worship.

¶ 12 The circuit court further found the State proved Mr. Barnes’s intent to commit a theft in the building, noting he was in possession of pliers, which could be deemed burglary tools. The court concluded there was “a finding of not not guilty in this case” and remanded Mr. Barnes to DHS for further treatment.

¶ 13 **II. JURISDICTION**

¶ 14 The circuit court ruled on June 1, 2016, and Mr. Barnes timely filed his notice of appeal on June 15, 2016. This court has jurisdiction pursuant to article VI, section 6 of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6), and Illinois Supreme Court Rules 603 and 606, governing appeals in criminal cases (Ill. S. Ct. R. 603 (eff. Feb. 6, 2013); R. 606 (eff. Dec. 11, 2014)).

¶ 15 **III. ANALYSIS**

¶ 16 On appeal, Mr. Barnes contends the State failed to prove beyond a reasonable doubt that he committed burglary. Mr. Barnes argues that even though he was carrying pliers when police located him inside the church, he did not have any church property in his possession. In addition, Mr. Barnes asserts that, given his diagnosed mental deficiencies and schizoaffective disorder, the State could not show he entered the church with the intent to commit a theft.

¶ 17 Mr. Barnes appeals from the circuit court’s ruling after a discharge hearing under section

104-25 of the Code (725 ILCS 5/104-25 (West 2014)). A discharge hearing is not a criminal prosecution. *People v. Waid*, 221 Ill. 2d 464, 470 (2006); *People v. Orengo*, 2012 IL App (1st) 111071, ¶ 24. Rather, a discharge hearing is a civil proceeding that takes place after a defendant has been found unfit to stand trial and in which the circuit court determines whether it should acquit the defendant of the charges. *People v. Cardona*, 2013 IL 114076, ¶ 23 (A discharge hearing is an “innocence only” proceeding that “enables an unfit defendant to have the charges dismissed if the State does not have the evidence to prove he committed the charged offenses beyond a reasonable doubt.”).

¶ 18 If the evidence presented at the discharge hearing is sufficient to establish the defendant’s guilt, the defendant is found “not not guilty.” *Waid*, 221 Ill. 2d at 478. The defendant is then subject to further treatment for between one and five years, based on the seriousness of the charged offense. 725 ILCS 5/104-25(d) (West 2014). The issue of the defendant’s guilt is deferred until the defendant is fit to stand trial. *People v. Rink*, 97 Ill. 2d 533, 543 (1983). If at the expiration of that period of treatment the defendant is still unfit to stand trial, the court considers whether the defendant is subject to involuntary commitment. *Waid*, 221 Ill. 2d at 478. If so, the commitment and treatment period cannot exceed the maximum sentence to which the defendant would be subject had he been convicted in a criminal proceeding. *Id.*

¶ 19 Although a defendant is not subject to criminal conviction following a discharge hearing, the standard of proof is the same as that required for a conviction; the State still bears the burden of presenting sufficient evidence to establish the defendant’s guilt beyond a reasonable doubt. *People v. Mayo*, 2017 IL App (2d) 150390, ¶ 3; *Orengo*, 2012 IL App (1st) 111071, ¶ 25. The standard for our review of the circuit court’s judgment is also the same as in a criminal trial, *i.e.*, whether the evidence, when viewed in the light most favorable to the State, would permit any

rational trier of fact to find that the State proved the elements of the offense beyond a reasonable doubt. *People v. Peterson*, 404 Ill. App. 3d 145, 150 (2010). That standard applies whether the evidence is direct or circumstantial and does not allow this court to substitute its judgment for that of the trier of fact on issues that involve the credibility of the witnesses and the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009).

¶ 20 Mr. Barnes was charged with a burglary. A person commits burglary when he knowingly enters a building with the intent to commit therein a felony or theft. 720 ILCS 5/19-1(a) (West 2014). A burglary committed in a place of worship is a Class 1 felony. 720 ILCS 5/19-1(b) (West 2014).

¶ 21 To establish this offense, the State must prove that the defendant (1) entered a building without authority and (2) did so with the intent to commit a theft or a felony. *People v. Ybarra*, 272 Ill. App. 3d 1008, 1010 (1995). These elements may be proved by circumstantial evidence. *People v. Smith*, 2014 IL App (1st) 123094, ¶ 13. Circumstantial evidence is “proof of facts and circumstances from which the trier of fact may infer other connected facts which reasonably and usually follow according to common experience.” *Id.* (quoting *People v. Stokes*, 95 Ill. App. 3d 62, 68 (1981)). The fact and manner of entry, as well as the requisite intent, may be inferred from the facts in evidence. *Smith*, 2014 IL App (1st) 123094, ¶ 13 (citing *People v. Rhodes*, 81 Ill. App. 3d 339, 344 (1980)).

¶ 22 The State here established that Mr. Barnes entered the church without authority. The record shows that Detective Rife responded to a dispatch of an alarm at the church at 4 a.m.. There, he saw that a brick had been thrown through the back window. Inside the church, Detective Rife found Mr. Barnes on his hands and knees under the lectern. Mr. Brent testified Mr. Barnes did not work at the church or have permission to enter the church at the time he was

found. Although Mr. Brent acknowledged that other church personnel could allow an individual to enter the church, there was no evidence that any such permission had been given to Mr. Barnes. Moreover, the fact that a window had been broken, the alarm was activated, and Mr. Barnes was concealing himself beneath the lectern when the police discovered him are all additional circumstances that support the finding that he was present in the church without permission. That circumstantial evidence was more than sufficient for the circuit court to conclude that Mr. Barnes entered the church without authority.

¶ 23 Mr. Barnes argues that even if he entered without permission, the evidence did not show he had the intent to commit a felony. He appears in his opening brief to argue that due to his mental health diagnosis, it was not possible for him to have formed the intent to commit a theft. Mr. Barnes points to his unfitness to stand trial and notes he was being treated with psychotropic medication and was diagnosed with cognitive impairments and schizoaffective disorder.

¶ 24 The State responds that Illinois does not recognize a “diminished capacity” defense, which is an affirmative defense that permits a legally sane defendant to present evidence of a mental illness that would negate the specific intent required to commit a particular crime. See *People v. Johnson*, 2018 IL App (1st) 140725, ¶ 63 (citing *Metrish v. Lancaster*, 569 U.S. 351, 355 (2013)); *People v. Hulitt*, 361 Ill. App. 3d 634, 640-41 (2005). In his reply brief, Mr. Barnes acknowledges that this defense is not available to him and clarifies that he was simply pointing out that he might have been motivated to enter the church only by a desire to find shelter rather than to commit a felony.

¶ 25 Whether the defendant acted with the required intent is a question for the trier of fact, and this court should not substitute its judgment for that of the trier of fact unless the latter’s judgment was inherently implausible or unreasonable. *Mayo*, 2017 IL App (2d) 150390, ¶ 30.

The *mens rea* of a crime can rarely be proved with direct evidence and is generally inferred from circumstantial evidence. *Id.* The State may prove the intent necessary in a burglary case by inferences drawn from the defendant's conduct and from surrounding circumstances. *People v. McKinney*, 260 Ill. App. 3d 539, 544 (1994) (citing *People v. Richardson*, 104 Ill. 2d 8, 12-13 (1984)). Relevant considerations 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. Grathler*, 368 Ill. App. 3d 802, 808 (2006) (quoting *Richardson*, 104 Ill. 2d at 13)).

¶ 26 Mr. Barnes was discovered in the church at 4 a.m. on a Thursday after an alarm went off. A window had been broken by a brick which left a hole large enough for a person to climb through, as Detective Rife did in investigating the scene. Several cabinets had been opened in the church kitchen, and there was visible damage to the alarm system. Mr. Barnes was found hiding beneath a lectern with two sets of pliers in his possession. Considering the evidence in the light most favorable to the State, the circuit court reasonably could have found that Mr. Barnes entered the church with the intent to commit a theft.

¶ 27 Although Mr. Barnes emphasizes he was not found in possession of church property, that fact is not dispositive because “a burglary is accomplished 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; see also *People v. Flores*, 269 Ill. App. 3d 196, 209 (1995) (comparing burglary to the separate offense of looting, which requires proof that the offender obtained or exerted control over the owner's property). The State was not required to show that Mr. Barnes exerted control over any items belonging to the church or that he removed anything from the building. The evidence was sufficient and the judgment of

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the circuit court is affirmed.

¶ 28

IV. CONCLUSION

¶ 29 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 30 Affirmed.