

NOTICE

Decision filed 01/23/19. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2019 IL App (5th) 160079-U

NO. 5-16-0079

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 13-CF-2809
	)	
MARK CLARK,	)	Honorable
	)	Neil T. Schroeder,
Defendant-Appellant.	)	Judge, presiding.

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PRESIDING JUSTICE OVERSTREET delivered the judgment of the court.  
Justices Chapman and Cates concurred in the judgment.

**ORDER**

¶ 1 *Held:* The defendant’s conviction for burglary is affirmed where sufficient evidence supported the jury’s verdict.

¶ 2 In May 2014, a Madison County jury found the defendant, Mark Clark, guilty of burglary (720 ILCS 5/19-1(a) (West 2012)). On appeal, the defendant contests the sufficiency of the evidence to prove him guilty beyond a reasonable doubt. For the following reasons, we affirm.

¶ 3 **BACKGROUND**

¶ 4 On December 23, 2013, the defendant was charged by information with burglary (*id.*). Prior to trial, the defendant waived his right to counsel and was allowed to proceed *pro se* throughout the court proceedings. The evidence adduced at the defendant’s jury trial established the following.

¶ 5 On December 20, 2013, at approximately 9:30 p.m., Dwight Gherardini was returning to his Collinsville home in his Oldsmobile vehicle when he noticed two individuals within a half-mile from his home, standing and walking by a dumpster on Bethel Road. Gherardini testified that it was unusual to have anyone standing around dumpsters in the area, which had no sidewalks and rarely experienced foot traffic. Gherardini identified one individual as wearing a gray sweatshirt. Gherardini testified that he smoked a cigarette during his drive home and returned the cigarettes to the center console of the vehicle and closed it. Gherardini drove his Oldsmobile vehicle home and parked it.

¶ 6 After Gherardini had returned home, Collinsville Police Department Sergeant Charles Mackin assisted Collinsville police officer Mike Brown on a pedestrian check on Bethel Road, less than a mile from Gherardini's residence, where they found the defendant, who was wearing a "grayish, bluish hoodie." While searching the defendant, Mackin found numerous items in the defendant's hoodie pocket, including two packs of cigarettes, Gherardini's vehicle registration and insurance paperwork, UMB bank deposit envelopes, and an Alton & Southern Railway Company parking pass. The defendant was highly intoxicated and indicated that he had acquired the burglary proceeds from a friend, but when Mackin asked who the friend was, the defendant had no answer.

¶ 7 An hour after Gherardini had arrived home, at approximately 10:30 p.m., Mackin arrived at Gherardini's home with the items recovered from the defendant. Inspecting his vehicle, Gherardini observed that his middle console and glove compartment had been disturbed and that two packs of cigarettes, which consisted of Camel wide boxes with Lucky Strike packs inside, were missing. Gherardini explained that he kept his Lucky Strike packs, which were not in a hard box, inside the Camel hard boxes so that they did not bend or break. In Gherardini's glove box,

there had been UMB bank deposit envelopes, his vehicle registration and insurance information, and an Alton & Southern Railway Company parking pass. Gherardini identified the items found in the defendant's possession as belonging to him.

¶ 8 On May 20, 2014, the jury found the defendant guilty of burglary, and on July 16, 2014, the circuit court sentenced the defendant to 15 years with the Illinois Department of Corrections. The defendant filed a timely appeal.

¶ 9 ANALYSIS

¶ 10 On appeal, the defendant argues that without evidence other than his possession of stolen items once located in a vehicle, the State failed to prove beyond a reasonable doubt that he committed burglary. The defendant argues that no evidence proved that he entered the motor vehicle and that mere possession of stolen goods, standing alone, is insufficient to establish guilt of burglary. The defendant argues that without witnesses, fingerprints, or DNA evidence placing him in the vehicle, the evidence was insufficient to convict him of burglary.

¶ 11 It is well established that “[a] reviewing court will not set aside a criminal conviction on grounds of insufficient evidence unless the proof is so improbable or unsatisfactory that there exists a reasonable doubt of the defendant’s guilt.” *People v. Maggette*, 195 Ill. 2d 336, 353 (2001). When considering the sufficiency of the evidence, it is not our function to retry the defendant. *Id.* The relevant question is whether, after reviewing all of the evidence in the light most favorable to the State, any rational fact finder could have found the essential elements of the crime beyond a reasonable doubt. *Id.* “The trier of fact need not, however, be satisfied beyond a reasonable doubt as to each link in the chain of circumstances.” *People v. Hall*, 194 Ill. 2d 305, 330 (2000). “It is sufficient if all of the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant’s guilt.” *Id.* “Further, in weighing evidence, the trier

of fact is not required to disregard inferences which flow normally from evidence before it [citation], nor need it search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt [citation].” *People v. Campbell*, 146 Ill. 2d 363, 380 (1992).

¶ 12 To sustain a burglary conviction, the State must prove beyond a reasonable doubt that the defendant knowingly entered the motor vehicle of another without authority and with an intent to commit a theft or felony. 720 ILCS 5/19-1(a) (West 2012). Circumstantial evidence is often required to prove the elements of burglary. *People v. Richardson*, 104 Ill. 2d 8, 13 (1984). A criminal conviction may be sustained on circumstantial evidence, provided the elements of the crime have been proven beyond a reasonable doubt. *People v. Sutherland*, 223 Ill. 2d 187, 242-43 (2006).

¶ 13 While we must carefully examine the evidence before us, credibility issues, resolution of conflicting or inconsistent evidence, weighing the evidence, and making reasonable inferences from the evidence are all reserved for the trier of fact. *People v. Brown*, 2013 IL 114196, ¶ 48. We will not overturn a conviction unless “the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant’s guilt.” *Id.*

¶ 14 In *People v. Housby*, 84 Ill. 2d 415, 423 (1981), our supreme court found that exclusive and unexplained possession of stolen property is not sufficient, standing alone and without corroborating evidence of guilt, to sustain a burglary conviction. Our supreme court observed that “[t]he person in exclusive possession may be the burglar, to be sure, but he might also be a receiver of stolen property, guilty of theft but not burglary, an innocent purchaser without knowledge that the item is stolen, or even an innocent victim of circumstances.” *Id.* The court concluded that the trier of fact could presume guilt based on exclusive and unexplained possession of recently stolen property only if three requirements were met: (1) “there was a

rational connection between [the defendant's] recent possession of property stolen in the burglary and his participation in the burglary"; (2) the defendant's "guilt of burglary is more likely than not to flow from his recent, unexplained and exclusive possession of burglary proceeds"; and (3) "there was evidence corroborating [the defendant's] guilt." *Id.* at 424. "Sufficient corroboration is \*\*\* presented where the defendant himself presents an explanation of possession that the jury reasonably finds to be false." *Id.* at 430-31.

¶ 15 Although the test in *Housby* arose from an issue involving a jury instruction and a permissible inference from the evidence (*id.* at 418-20), the test is applicable to a review of the sufficiency of the evidence. See *People v. Smith*, 2014 IL App (1st) 123094, ¶¶ 12-14. The same evidence may used to satisfy all three requirements of the test. *People v. Caban*, 251 Ill. App. 3d 1030, 1033 (1993).

¶ 16 Facts are sufficient to establish a "rational connection" between the defendant's recent possession of property and his participation in burglary if the inference that the defendant obtained the items by burglary is not unreasonable. *Housby*, 84 Ill. 2d 415; *Caban*, 251 Ill. App. 3d at 1033. In the present case, driving home, Gherardini saw an individual wearing a gray hoodie standing around a dumpster within a half of a mile from his home, in a neighborhood that rarely hosted pedestrians. Within an hour and within a mile of Gherardini's vehicle, the police stopped the defendant while wearing a hoodie containing the property stolen from Gherardini's vehicle. Thus, the defendant's possession was proximate to both the time and location of the burglary. See *Caban*, 251 Ill. App. 3d at 1033-34. Any rational trier of fact could have inferred that the defendant was near Gherardini's vehicle before the burglary, walked to the vehicle from the dumpster, burglarized the vehicle, and was leaving the scene when he was stopped by the police shortly afterward and not far from the vehicle. See *People v. McGee*, 373 Ill. App. 3d 824,

828, 834 (2007) (finding that, where a defendant was arrested three blocks away from, and within 5 to 10 minutes of, a reported burglary, the geographic and temporal proximity supported a rational connection to satisfy the first requirement of the *Housby* test).

¶ 17 Likewise, the likelihood that a defendant, discovered in recent, unexplained possession of the proceeds of a burglary, participated in the burglary itself increases with the proximity in time and place to the defendant's discovered possession of the stolen items. *Caban*, 251 Ill. App. 3d at 1034. The defendant's presence in the area shortly before the burglary and the police's discovery of the defendant shortly after the burglary, walking near the recently burglarized vehicle in possession of the proceeds of the burglary, in a rural area with little other foot traffic, increased the likelihood that the defendant was the actual burglar. The defendant's guilt for burglary is more likely than not to flow from his recent, unexplained, and exclusive possession of the property taken from the vehicle.

¶ 18 The third requirement of the *Housby* test has been satisfied based on the same evidence that satisfied the previous requirements of the test. The defendant's presence in the rural area within an hour and within a mile of the burglary corroborated his guilt for the offense beyond his mere unexplained and exclusive possession of the missing property. Moreover, the defendant's explanations regarding how he came into possession of the burglary proceeds also corroborate his guilt. *Housby*, 84 Ill. 2d at 430-31 (sufficient corroboration is presented where the defendant himself presents an explanation of possession which the fact finder reasonably finds to be incredible). The defendant posited two theories through cross-examination: either the defendant received the burglary proceeds from a friend or the defendant found these items on the ground. The evidence revealed that the defendant could not name the friend to officers and that the documents and cigarettes were dry and intact, even though the evening was rainy. Thus, although

the defendant did not testify, the evidence revealed that neither explanation to officers for his possession of the proceeds of the burglary proved to be credible. Compare *People v. Natal*, 368 Ill. App. 3d 262, 271 (2006) (evidence insufficient to establish guilt of burglary where defendant was found on busy sidewalk outside burglarized apartment, looking into pillowcases taken from apartment, the defendant provided a reasonable explanation for his possession of the property, and fingerprints taken from burglarized apartment did not match the defendant's) and *Caban*, 251 Ill. App. 3d at 1034-35 (evidence sufficient to establish guilt of burglary where defendant's possession was proximate to both the time and location of the burglary and the defendant's explanation of possession was deceitful). The facts presented to the fact finder were sufficient to permit an inference that the defendant had acquired the burglary proceeds in question as a result of his participation in the underlying burglary.

¶ 19 Based on our review of the evidence, we cannot conclude that the proof is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt for burglary. See *Brown*, 2013 IL 114196, ¶ 48. Accordingly, we affirm the defendant's conviction for burglary.

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, the judgment of the circuit court of Madison County is affirmed.

¶ 22 Affirmed.