2020 IL App (1st) 181018-U

No. 1-18-1018

Order filed December 24, 2020

Fifth Division

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. 17 MC6 3575
	)	
EMMANUEL BINION,	)	Honorable
	)	Vincenzo Chimera,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Delort and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for criminal trespass to real property is affirmed where the trial evidence supported findings that, prior to the date of the trespass, defendant's lease on the complainant's property terminated and the complainant told defendant not to return to the property.

¶ 2 Following a bench trial, defendant Emmanuel Binion was convicted of criminal trespass to real property and sentenced to 12 months' court supervision. On appeal, defendant argues the State failed to prove him guilty beyond a reasonable doubt, where there was insufficient evidence to

show that prior to the date of the offense, (1) his lease on the complainant's property ended, and (2) he received notice that he was not allowed on the complainant's property. We affirm.

¶ 3 Defendant was charged by misdemeanor complaint with criminal trespass to real property (720 ILCS 5/21-3(a)(2) (West 2016)) following an incident in South Holland, Illinois, on May 16, 2017.

¶ 4 At the trial, which took place on March 15, 2018, Howard Cook testified that in 2016 he owned property in unincorporated South Holland on the 15700 block of Paxton Avenue (South Holland property). Cook explained that the South Holland property included a house and a "big garage" that was split into a front and back portion. Cook rented the garage's front and back portions to separate tenants.

¶ 5 In 2016, Cook entered into a month-to-month lease with defendant, whereby defendant rented the garage's front portion and had permission only to access that portion of the garage and its entrance. Defendant never renewed the 30-day lease or paid rent, and Cook told defendant that "he has to pay the rent or he has to move." Defendant ultimately moved out of the garage and took his belongings with him. The State asked whether Cook was present when defendant vacated the garage "in 2016"; Cook replied that he was not, but he later accessed the garage and saw that defendant's belongings were gone. Cook did not give defendant permission to return to the garage, and stated that defendant was not allowed to return because he still owed Cook money.

¶ 6 The ASA questioned Cook regarding a telephone conversation that Cook had with defendant. The trial court sustained the defense's objection to the content of the conversation due

to lack of a foundation, but permitted Cook to testify that he had this conversation with defendant in 2016 after defendant moved out.[1]

¶ 7 Cook next testified that he called defendant on another occasion after defendant had moved out. Cook had known defendant's cell phone number since the day defendant moved in, and had spoken with defendant on the phone prior to this call. Cook told defendant that "he was never to come back to the property," and defendant responded, " 'I won't.' " Cook never had a face-to-face conversation with defendant after defendant moved. Defendant was not renting the garage at the time of trial, and Cook sold the South Holland property six to eight months prior to trial.

¶ 8 On cross-examination, Cook testified that he did not see defendant on the South Holland property on May 16, 2017, because Cook was in the hospital. After Cook left the hospital, he called the police, returned to the South Holland property, and saw that nothing had been taken from the property.

¶ 9 John Marmon testified that he used to work on Cook's properties. According to Marmon, Cook's South Holland property included a barn, a house, and a shop referred to as "the garage." The house and garage faced the same road and were 20 feet apart from one another. Additionally, a small road led onto the property and looped around the garage. On the date of the offense, there was no gate or fence surrounding the property.

¶ 10 On May 16, 2017, Marmon was in the house's basement and heard "a bunch of racket," but could not tell where it was coming from. He exited the basement, went behind the house, and saw defendant standing on the small road at the side of the garage that faced away from the house.

[1] The parties dispute whether the trial court admitted any testimony regarding this first telephone conversation. However, during a hearing on defendant's posttrial motion, the trial court clarified that it had admitted the fact that Cook and defendant had the conversation in 2016 after defendant had moved out.

Defendant was next to a truck, which contained one of the ramps that Cook kept outside behind the garage in a grassy area that measured about 20 square feet. Marmon saw defendant loading a second ramp onto the truck, and he approached defendant.

¶ 11 On cross-examination, Marmon confirmed that he did not see defendant inside the house or garage. Defendant did not leave the property with the two ramps. Marmon called the police that day.

¶ 12 Defendant testified that he rented the garage on Cook's South Holland property through a month-to-month lease. Defendant moved out of the garage permanently and took his belongings with him because Cook was "harassing" him. Defendant denied being at the South Holland property on May 16, 2017, and attempting to take any ramps. He also denied that he received notice he was not allowed on the property, or that Cook told him to never return to the property. On cross-examination, defendant confirmed that his lease with Cook terminated when he left the property, and that defendant had no intention of returning to the property when he left.

¶ 13 The trial court found defendant guilty of criminal trespass to real property. The court stated that Cook and Marmon were "very credible and very lucid." Additionally, the court found that defendant received notice that he was not allowed on the South Holland property when Cook called defendant and told him not to come back to the property. Despite this notice, defendant entered the "grassy area" of the property without authority.

¶ 14 Defendant filed a posttrial motion, arguing in part that the State failed to lay a proper foundation for the telephone conversation in which Cook told defendant not to return to the property. Defendant asserted that as a result, the State had failed to prove he received notice that he was not allowed on the South Holland property prior to his entry.

¶ 15 At a hearing on the motion, the trial court held that the State properly laid a foundation for the conversation when Cook testified that he knew defendant's phone number and had called defendant before. The court concluded that defendant had received proper notice, and reiterated its finding that the State proved defendant guilty beyond a reasonable doubt. The trial court denied defendant's motion and sentenced him to 12 months' court supervision.

¶ 16 On appeal, defendant argues the State failed to prove him guilty beyond a reasonable doubt where there was insufficient evidence that, prior to his entry onto Cook's South Holland property on May 16, 2017, (1) his lease ended, and (2) he received notice that he was not allowed on the property. The State responds that it established defendant's guilt, where Cook testified that defendant's month-to-month lease terminated in 2016, and it could be reasonably inferred that Cook expressly told defendant to never return to the property shortly after defendant moved out.

¶ 17 "The due process clause of the fourteenth amendment to the United States Constitution requires that a person may not be convicted in state court 'except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.' " *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004) (quoting *In re Winship*, 397 U.S. 358, 364 (1970)). The inquiry on a challenge to the sufficiency of the evidence is " '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.) *People v. Cooper*, 194 Ill. 2d 419, 430-31 (2000) (quoting *Jackson v. Virginia*, 433 U.S. 307, 319 (1979)).

¶ 18 It is not the function of this court to retry the defendant when reviewing a challenge to the sufficiency of the evidence at trial. *People v. Nere*, 2018 IL 122566, ¶ 69. Rather, it is the role of the trier of fact "to determine the credibility of witnesses, to weigh their testimony, to resolve

conflicts in the evidence, and to draw reasonable inferences from the evidence." *People v. Williams*, 193 Ill. 2d 306, 338 (2000). The trier of fact need not "disregard inferences which flow normally from the evidence before it," or "search out all possible explanations consistent with innocence, and raise those explanations to a level of reasonable doubt." *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60.

¶ 19 "[C]ircumstantial evidence is sufficient to sustain a criminal conviction, so long as the elements of the crime have been proven beyond a reasonable doubt." *People v. Milka*, 211 Ill. 2d 150, 178 (2004). Further, "the testimony of a single witness, if positive and credible, is sufficient to convict, even though it is contradicted by the defendant." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We "must allow all reasonable inferences from the record in favor of the prosecution" (*People v. Givens*, 237 Ill. 2d 311, 334 (2010)), and will not reverse a conviction unless the evidence is "so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt" (*People v. Bradford*, 2016 IL 118674, ¶ 12).

¶ 20 Defendant was convicted of criminal trespass to real property. Section 21-3(a)(2) of the Criminal Code of 2012 (Code) (720 ILCS 5/21-3(a)(2) (West 2016)) provides in relevant part that "[a] person commits criminal trespass to real property when he or she *** enters upon the land of another, after receiving, prior to the entry, notice from the owner or occupant that the entry is forbidden." Section 21-3(b) provides that "[a] person has received notice from the owner or occupant within the meaning of Subsection (a) if he or she has been notified personally, either orally or in writing." 720 ILCS 5/21-3(b) (West 2016). While section 21-3(a) does not expressly set forth a mental-state requirement, "case law has established that the 'knowingly' mental state applies to all elements of the offense." *People v. Hsiu Yan Chai*, 2014 IL App (2d) 121234, ¶ 34.

¶ 21 Defendant does not challenge whether the evidence at trial sufficiently showed that he entered Cook's South Holland property on May 16, 2017. Instead, defendant essentially disputes whether the trial evidence sufficiently established two factual points: (1) that his lease terminated prior to May 16, 2017; and (2) that he received notice that he was not permitted on the South Holland property prior to his entry.

¶ 22 As to the first point, substantial evidence allowed for a finding that defendant's lease terminated prior to May 16, 2017. Specifically, Cook testified that in 2016, he entered into a month-to-month lease with defendant, in which defendant rented the front portion of a garage on Cook's South Holland property. Cook told defendant that defendant would have to move out if he did not pay rent. Nonetheless, Cook testified that defendant never renewed his lease or paid rent, and confirmed that defendant left the property and took his belongings in 2016. Defendant additionally confirmed that his lease terminated when he left the property and took his belongings, and that he had no intention of returning to the property. These facts, when viewed in the light most favorable to the State, clearly supported a finding that defendant's month-to-month lease began and ended in 2016, months before the date of the offense. *Cooper*, 194 Ill. 2d at 430-31.

¶ 23 We also find the evidence at trial supported a finding that prior to May 16, 2017, defendant had received notice that he was not permitted on the South Holland property. Specifically, as we have recounted, Cook testified that he expressly told defendant he was to move off the property if he did not pay rent, that defendant never paid Cook rent, and that defendant's lease terminated. Defendant confirmed that his lease ended when he removed all of his possessions from the property and permanently moved out.

¶ 24 Cook further testified that after defendant moved off the property, Cook had two telephone conversations with defendant. The trial court did not permit testimony as to the content of the first telephone conversation. Nonetheless, during the hearing on defendant's posttrial motion, the court expressly stated it admitted testimony that Cook spoke with defendant in 2016 after defendant moved out. Cook's testimony also showed that during a second telephone conversation, Cook told defendant never to return to the property, and defendant responded that he would not. Based on this conversation, the trial court reasonably found that defendant received an oral "notice from the owner" as contemplated in section 21-3(b) of the Code. 720 ILCS 5/21-3(b) (West 2016).

¶ 25 Defendant asserts that the testimony regarding this second phone call was insufficient to show he received notice prior to entering the property on May 16, 2017, as the conversation could have possibly occurred after May 16, 2017. However, the trial court was not required to "disregard inferences which flow normally from the evidence before it." *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. It was reasonable for the trial court to infer that Cook would have told defendant not to return to the property soon after defendant had failed to pay his rent and moved off the property. Such an inference comports with defendant's own testimony that he moved out of Cook's garage because Cook was "harassing" him, which suggested that the two had a contentious relationship at the time that defendant moved out. Viewing the evidence in the light most favorable to the State, the trial court was not required to find that Cook waited as long as five months before communicating to defendant that he could not enter the property once his lease terminated. *Cooper*, 194 Ill. 2d at 430-31. We find the evidence at trial was sufficient to support defendant's conviction of criminal trespass to real property.

¶ 26 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 27 Affirmed.