2024 IL App (3d) 230168-U

Order filed August 12, 2024

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2024

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 18th Judicial Circuit,
	)	Du Page County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-23-0168
v.	)	Circuit No. 22-CF-2043
	)	
DARELL O. CRAWFORD,	)	Honorable
	)	Mia S. McPherson,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE DAVENPORT delivered the judgment of the court.
Justice Brennan concurred in the judgment.
Presiding Justice McDade specially concurred.

ORDER

¶ 1 *Held*: Defendant's right to prepare a viable defense was not compromised.

¶ 2 Defendant, Darell O. Crawford, appeals his conviction of attempted burglary. He argues he was deprived of his right to prepare a viable defense because the charging instrument only contained factual allegations for the uncharged offense of burglary, the evidence supported the offense of burglary, and a key jury instruction was not presented. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A grand jury indicted defendant with attempted burglary (720 ILCS 5/8-4(a), 19-1(a) (West 2022)). The indictment alleged defendant

> "with the intent to commit the offense of Burglary *** took a substantial step toward the commission of that offense, in that said defendant entered a building, TJ Maxx *** with the intent to commit therein a theft by selecting an item of merchandise offered for sale, being a backpack, and removing a security sensor."

¶ 5 At the jury trial, the State's evidence included surveillance video from TJ Maxx, police officer body camera video, and witness testimony from both police and loss prevention officers. The evidence showed that on September 7, 2022, defendant entered TJ Maxx and then exited the store approximately one minute later. A short time later, defendant reentered the store and removed antitheft security devices from two of the several identical fragrance items in his shopping cart, placing one device back on the shelf and hanging the other on a nearby display rack. Defendant then put a backpack with attached price tags and several more fragrance items into his cart, before placing one item inside the backpack. Defendant eventually removed the backpack from the cart and began wearing it. At this point, the backpack appeared to be full, with the price tags no longer attached. Defendant abandoned the empty cart and continued to wander around the store before making his way to the register, where he handed the backpack to the cashier. The cashier opened the backpack and removed nine fragrance items from inside the backpack, some with and some without security devices. There were no price tags on the backpack, so a supervisor scanned and attached a replacement tag. After the first card defendant attempted to use as payment was declined, he used another card to purchase the backpack and four fragrance items. Once the

transaction was complete, defendant exited the store and was immediately approached by two police officers. The officers confronted him about removing tags and security devices from items in the store and defendant denied the accusations.

¶ 6 After the close of the State's case, the court reviewed potential jury instructions with the parties. The State asked to withdraw Illinois Pattern Jury Instructions, Criminal, No. 14.07A (approved July 29, 2022) (hereinafter IPI Criminal No. 14.07A). Defense counsel argued the instruction, explaining the limited authority doctrine, defined the unauthorized entry element of burglary and was required when the issue of defendant's criminal intent when entering a building arises. The State countered that because defendant was charged with attempted burglary, IPI Criminal No. 14.07A was not required and would only serve to confuse the jury, as it was not an element of the charged offense. The State further argued the Committee Note for the attempt instruction under Illinois Pattern Jury Instructions, Criminal, No. 6.05 (approved Oct. 17, 2014) (hereinafter IPI Criminal No. 6.05), precluded giving an issue instruction for an uncharged burglary offense when the attempt instruction for the offense is given. The court granted the State's request to withdraw the instruction over defendant's objection.

¶ 7 During closing arguments, the State explained that to find defendant guilty, it needed to prove beyond a reasonable doubt defendant intended to commit the offense of burglary and performed a substantial step toward the commission of that offense. The State then defined burglary, stating "[a] person commits burglary when he, without authority, knowingly enters a building with the intent to commit therein the offense of theft."

¶ 8 After closing arguments, the court instructed the jury, giving both IPI Criminal No. 6.05 and Illinois Pattern Jury Instruction, Criminal, No. 14.07 (approved July 29, 2022) (hereinafter IPI

Criminal No. 14.07), defining burglary. The court did not give IPI Criminal No. 14.07A. Defendant was found guilty of attempted burglary and sentenced to two years' imprisonment.

¶ 9 II. ANALYSIS

¶ 10 On appeal, defendant challenges the sufficiency of the charging instrument. He argues the factual allegations in the indictment alleged the uncharged offense of burglary rather than the charged offense of attempted burglary. Defendant contends he was prejudiced by this defect because it impeded his ability to prepare a defense.

¶ 11 At the outset, defendant acknowledges this issue was not previously raised before the trial court.

> "When attacked for the first time on appeal, a charging instrument is sufficient if it notified the defendant of the precise offense charged with enough specificity to allow the defendant to (1) prepare his or her defense and (2) plead a resulting conviction as a bar to future prosecution arising out of the same conduct." *People v. Carey*, 2018 IL 121371, ¶ 22.

Stated another way, the issue is whether, in light of the record, the charging instrument was so imprecise it prejudiced defendant by inhibiting the preparation of his defense. *Id.* We review *de novo* the sufficiency of a charging instrument. *People v. Libricz*, 2022 IL 127757, ¶ 34.

¶ 12 Here, the indictment charged defendant with attempted burglary. A burglary is committed when, without authority, a person knowingly enters or remains within a building, with intent to commit a felony or theft therein. 720 ILCS 5/19-1(a) (West 2022). "A person commits the offense of attempt when, with intent to commit a specific offense, he or she does any act that constitutes a substantial step toward the commission of that offense." *Id.* § 8-4(a). Because attempt is an included offense of the crime alleged to have been attempted, attempted burglary is a lesser

included offense of burglary. See *id.* § 2-9(b); *People v. Newell*, 105 Ill. App. 3d 330, 333-34 (1982); *People v. Rangel*, 104 Ill. App. 3d 695, 700 (1982). As a lesser included offense, it is impossible to commit the greater offense of burglary without committing the lesser offense of attempt because an attempt is completed " 'at some point short of the last deed prior to committing the intended offense.' " *People v. Jiles*, 364 Ill. App. 3d 320, 334 (2006) (quoting *People v. Terrell*, 110 Ill. App. 3d 1086, 1090 (1982)); see *People v. Reveles-Cordova*, 2020 IL 124797, ¶ 21. A defendant "may be convicted of an attempt to commit an offense, even though the evidence establishes that the defendant committed the substantive offense." *People v. Keller*, 267 Ill. App. 3d 602, 609-10 (1994).

¶ 13 Defendant argues he was hindered in preparing his defense against an attempted burglary charge because the factual allegations in the indictment and the evidence adduced at trial demonstrated he committed a burglary by completing the offense rather than merely attempting it. The evidence established defendant entered TJ Maxx, removed tags and security devices from items, and concealed the items inside a backpack. Defendant's actions reflected his intent to commit a theft. Although the evidence presented satisfies the elements for the more serious, uncharged offense of burglary, the State was well within its discretion to alternatively pursue the lesser included offense of attempted burglary. See *People v. White*, 2011 IL 109616, ¶ 25. As a lesser included offense of burglary, the elements of an attempted burglary were further established because defendant's removal of tags and security devices in addition to concealing items constituted a substantial step toward the commission of the intended burglary. The greater offense of burglary would be impossible to commit without first taking a substantial step toward its commission; therefore, the indictment was not defective as it contained factual allegations supporting both the charged attempt as well as the completion of the uncharged offense.

¶ 14 In reaching this conclusion, we reject defendant's assertion he was further prejudiced by the court's decision to exclude IPI Criminal No. 14.07A, an issue instruction for burglary explaining the limited authority doctrine. This doctrine defines when entry into a building is "without authority." IPI Criminal No. 14.07A. Here, IPI Criminal No. 6.05 was a required instruction defining attempt because defendant was charged with attempted burglary. The Committee Note for IPI Criminal No. 6.05 states "[t]he court must also give an instruction that defines the offense which is the alleged subject of the attempt. However, the issues instruction for that offense should not be given in conjunction with the attempt instruction." IPI Criminal No. 6.05, Committee Note. Accordingly, IPI Criminal No. 14.07 was required here as this instruction defines burglary, the alleged subject offense of the attempt, but the court was not to give the corresponding issues instruction, like that in IPI Criminal No. 14.07A. See IPI Criminal No. 6.05, Committee Note. Notably, defendant fails to provide any authority to support his contrary proposition. See *Kieken v. City of Joliet*, 2023 IL App (3d) 220392, ¶ 20 (the appellant may not foist upon the appellate court the burden of argument and research).

¶ 15 III. CONCLUSION

¶ 16 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 17 Affirmed.

¶ 18 PRESIDING JUSTICE McDADE, specially concurring:

¶ 19 I am compelled to concur with the majority's decision in this case that affirms the circuit court's judgment. I write separately merely to state that while I believe the evidence was insufficient to prove Crawford guilty beyond a reasonable doubt of attempted burglary, there is nothing that can be done about the conviction based on the arguments Crawford raised in this appeal.