

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * NO. 2003-KA-0196
VERSUS * COURT OF APPEAL
KEVIN EAGLIN * FOURTH CIRCUIT
* STATE OF LOUISIANA
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 426-221, SECTION "B"
Honorable Patrick G. Quinlan, Judge
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Judge Dennis R. Bagneris, Sr.
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(Court composed of Judge Charles R. Jones, Judge James F. McKay, III, and Judge Dennis R. Bagneris, Sr.)

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CONVICTION AND SENTENCED AFFIRMED

STATEMENT OF CASE

Defendant Kevin Eaglin was charged by bill of information on November 19, 2001, with one count of simple burglary in violation of La. R.S. 14:62. Defendant pleaded not guilty at his November 27, 2001, arraignment. On July 16, 2002, a six-person jury found the defendant guilty as charged.

On July 31, 2002, the state filed a multiple bill alleging the defendant to be a fourth felony offender. On that same date, the defendant filed a motion for new trial, which the trial court denied. On August 20, 2002, after a hearing, the trial court adjudged the defendant to be a fourth offender. The defendant waived all delays and was sentenced to thirty years in the Department of Corrections. On that same date, the defendant filed a motion to reconsider sentence, which the trial court denied. The court granted the defendant's motion for appeal.

STATEMENT OF FACT

Sergeant Charles Watkins, of the New Orleans Police Department, testified that on October 15, 2001, at approximately 11:45 a.m. he observed

the defendant walking down Nashville Avenue carrying a black bag. The defendant caught Sgt. Watkins' attention because he was walking slowly looking down the side of the homes as he walked. Sgt. Watkins decided to conduct a moving surveillance of the defendant and followed him for a few blocks. Sgt. Watkins followed the defendant down Nashville Avenue to Claiborne Ave. and Claiborne Ave. over to State Street Drive. The defendant continued to walk slowly looking down the sides of the homes he passed.

Sgt. Watkins radioed Detectives Preston Bosch and Mason Seoul to give them a description of the defendant, and to seek their assistance in the surveillance of the defendant. Sgt. Watkins testified he lost sight of the defendant at the intersection of State Street Drive and Fontainebleau. Shortly after Sgt. Watkins lost sight of the defendant the detectives observed a man fitting the defendant's description walk down the side of a residence at 4200 State Street Drive. The detectives stopped their vehicle and continued to conduct surveillance. After a few minutes the detectives drove past the home at 4200 State Street Drive and observed the rear shed door open. The detectives informed Sgt. Watkins of their observation. Sgt. Watkins also drove past the home and observed the defendant exiting the shed at the rear of the home. Sgt. Watkins informed the detectives of his

observation, and the detectives stopped the defendant for questioning.

Detective Preston Bosch, of the New Orleans Police Department, testified that when the defendant was stopped and questioned the defendant stated that he had only gone into the shed to urinate. Detective Bosch entered the shed to investigate the defendant's story, and found boxes on the ground and things overturned. Detective Bosch returned and informed the defendant that he believed the defendant had just committed a burglary. The defendant was advised of his rights and arrested. Detective Bosch then searched the defendant's bag and found several shirts and five watches. The detectives then questioned the neighbors to determine who lived in the home at 4200 State Street Drive. One of the neighbors told the officers the home belonged to Susan Tabor and her two children.

The detectives informed Ms. Tabor of the burglary and arranged to show her the items found in the defendant's bag. Ms. Tabor identified two of the shirts found in the bag as shirts belonging to her son. Ms. Tabor did not recognize the watches.

ERRORS PATENT

A review of the record revealed there are no errors patent.

DISCUSSION

ASSIGNMENT OF ERROR NUMBER 1/EAGLIN'S PRO SE

ASSIGNMENT OF ERROR NUMBER 3

Counsel and the defendant complain the trial court erred in adjudging the defendant to be a fourth felony offender because neither the guilty plea form nor the minute entry for one of the predicate offenses states that the defendant was advised of his right to remain silent at the time the guilty plea was given. The defendant also argues that the trial court erred in allowing Officer Jay Jacquet, of the New Orleans Police Department, to testify as a fingerprint expert, and that the state failed to prove that the person convicted in the three predicate offenses was in fact the defendant.

In Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969), the United States Supreme Court emphasized three federal constitutional rights which are waived by a guilty plea: the privilege against self-incrimination; the right to trial by jury; and the right to confront one's accusers. The purpose of the Boykin rule is to ensure that the defendant had adequate information to plead guilty intelligently and voluntarily.

In State v. Alexander, 98-1377, pp. 5-6 (La. App. 4 Cir. 2/16/00), 753 So.2d 933, 937, this court set forth the standard of proof in multiple bill hearings: La. R.S. 15:529.1 D (1)(b) states that the district attorney has the burden of proving beyond a reasonable doubt any issue of fact and that the presumption of regularity of judgment shall be sufficient to meet the original

burden of proof. In State v. Shelton, 621 So.2d 769, 779-780 (La. 1993), the Supreme Court stated:

If the defendant denies the allegations of the bill of information, the burden is on the State to prove the existence of the prior guilty pleas and that defendant was represented by counsel when they were taken. If the State meets this burden, the defendant has the burden to produce some affirmative evidence showing an infringement of his rights or a procedural irregularity in the taking of the plea. If the defendant is able to do this, then the burden of proving the constitutionality of the plea shifts to the State. The State will meet its burden of proof if it introduces a “perfect” transcript of the taking of the guilty plea, one that reflects a colloquy between judge and defendant wherein the defendant was informed of and specifically waived his right to trial by jury, his privilege against self-incrimination, and his right to confront his accusers. If the State introduces anything less than the “perfect” transcript, for example, a guilty plea form, a minute entry, and “imperfect” transcript, or any combination thereof, the judge then must weigh the evidence submitted by the defendant and by the State to determine whether the State has met its burden of proving that the defendant’s prior guilty plea was informed and voluntary, and made with an articulated waiver of the three Boykin rights.
(footnotes omitted).

In State ex rel. Le Blanc v. Henderson, 261 La. 315, 259 So. 2d 557 (1972), the court held that a determination of voluntariness of a guilty plea is not limited by Boykin to the verbatim entry made at the time of the plea but

rather is determined from the entire record, which can include evidence taken at a reconstruction of the plea proceedings at a hearing when the plea is later attacked. In State v. Bland, 419 So.2d 1227, 1232 (La. 1982), the Louisiana Supreme Court stated the state may affirmatively prove that defendant was fully Boykinized by either the transcript of the plea of guilty or by the minute entry. “Most importantly, for our purposes, we have also held the state has met its burden of proving a prior guilty plea in a habitual offender hearing where it submitted a very general minute entry, and a well executed plea of guilty form.” State v. Tucker, 405 So.2d 506, 509 (La. 1981).

In the instant case as in Tucker, the minute entry of the guilty plea in case # 358-919 F does not specifically mention the Boykin rights, but it is accompanied by a well executed plea of guilty form. The minute entry, the docket master, and the guilty plea form all reveal that the defendant was represented by counsel when the plea was made. The form spells out the rights being waived, and is signed by the defendant, his counsel and the judge. The defendant argues these forms do not show he was adequately advised of his right against self-incrimination because he was not advised he could remain silent both at trial and at the time of his plea. He cites no authority to support this claim.

The defendant further argues the trial court erred in allowing Officer Jay Jacquet to testify as a fingerprint expert.

La. C.Cr.P. art. 841 provides in part:

An irregularity or error cannot be availed of after the verdict unless it was objected to at the time of occurrence.

At the defendant's August 20, 2002, multiple bill hearing both the state and defense counsel stipulated to Officer Jacquet's qualifications as a fingerprint expert. The defense did not object to the finding; therefore, this court need not address the issue because the defendant failed to preserve it for appellate review.

The defendant avers the state did not meet its burden of proving the person convicted in the predicate offenses was in fact the defendant. During the defendant's multiple bill hearing the following exchange took place:

Mr. Pebbles (state): Could you identify where the social security numbers are located on both arrest registers.

Officer Jacquet: Yes, sir. The social on both documents-

Mr. Whittaker (defense): Your Honor, I would object to hearsay, the documents speak for themselves. And its contents are hearsay.

Mr. Pebbles: Your Honor, they are self-authenticated documents, they are certified and they are just for the purpose of matching up identity.

Court: The objection is overruled.

As it was previously noted La. C.Cr.P.art. 841 requires that an objection be made at the time an error occurs to preserve it for appellate review. In the above exchange defense counsel did not object to the content of the documents as they related to the defendant's identity, but rather to Officer Jacquet reading the form verbatim. Nor did the defendant argue he was not the same person convicted of the earlier offenses. Therefore, it appears the defendant failed to preserve the issue of whether the state met its burden of proving whether the person named in the predicate offenses was in fact the defendant.

ASSIGNMENT OF ERROR NUMBER 2

Appellate contends the thirty-year sentence is excessive.

Although a sentence is within the statutory limits, the sentence may still violate a defendant's constitutional right against excessive punishment. State v. Sepulvado, 367 So.2d 762 (La. 1979). A sentence is unconstitutionally excessive if it makes no measurable contribution to acceptable goals of punishment, is nothing more than the needless and purposeless imposition of pain and suffering, and is grossly out of proportion to the severity of the crime. State v. Labato, 603 So.2d 739 (La. 1992).

Generally, a reviewing court must determine whether the trial judge adequately complied with the sentencing guidelines set forth in La. C.Cr.P. art. 894.1 and whether the sentence is warranted in light of the particular circumstances of the case. State v. Soco, 441 So.2d 719 (La. 1983).

If adequate compliance with Article 894.1 is found, the reviewing court must determine whether the sentence imposed is too severe in light of the particular defendant and the circumstances of his case, keeping in mind that maximum sentences should be reserved for the most egregious violators of the offense so charged. State v. Quebedeaux, 424 So.2d 1009 (La. 1982).

The trial judge is given wide discretion in imposing a sentence, and a sentence imposed within the statutory limits will not be deemed excessive in the absence of manifest abuse of discretion. State v. Walker, 96-112 (La. App.3 Cir. 6/5/96), 677 So.2d 532, 535, citing State v. Howard, 414 So.2d 1210 (La. 1982).

In State v. Royal, 527 So.2d 1083, (La. App. 1 Cir. 1988), the First Circuit found a thirty-year sentence for the defendant convicted of burglary as a second offender was not excessive.

In the instant case, the defendant was sentenced to thirty years for his conviction of simple burglary as a fourth offender. The sentence falls within the low end of the statutorily mandated sentencing range of twenty years to

life imprisonment. Additionally, the defendant has failed to rebut the presumption that the sentence is constitutional. This assignment of error is without merit.

EAGLIN'S PRO SE ASSIGNMENT OF ERROR NUMBER 1

The defendant complains the evidence was insufficient to support a conviction for simple burglary.

The standard for reviewing a claim of insufficient evidence whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found all of the essential elements of the offense proven beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). The reviewing court is to consider the record as a whole and not just evidence most favorable to the prosecution; and if rational triers of fact could disagree as to the interpretation of the evidence, the rational decision to convict should be upheld. State v. Mussall, 523 So.2d 1305 (La. 1988). Additionally, the reviewing court is not called upon to decide whether it believes the witnesses or whether the conviction is contrary to the weight of the evidence. Id. The trier of fact's determination of credibility is not to be disturbed on appeal absent an abuse of discretion. State v. Cashen, 544 So.2d 1268 (La. App. 4 Cir. 1989).

When circumstantial evidence forms the basis for the conviction, such evidence must exclude every reasonable hypothesis of innocence. La. R.S. 15:438. The court does not determine whether another possible hypothesis suggested by the defendant could afford an exculpatory explanation of the events. Rather, this court when evaluating the evidence in the light most favorable to the prosecution, must determine whether the possible alternative hypothesis is sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt under Jackson. State v. Davis, 92-1623 (La. 5/23/94), 637 So.2d 1012. This is not a separate test from Jackson, but is instead an evidentiary guideline for the jury when considering circumstantial evidence, and this test facilitates appellate review of whether a rational juror could have found the defendant guilty beyond a reasonable doubt. State v. Wright, 445 So.2d 1198 (La. 1984).

La. R.S. 14:62 defines simple burglary as the unauthorized entry of any dwelling, vehicle, watercraft, or other structure, movable or immovable, or any cemetery, with the intent to commit a felony or any theft therein, other than set forth in La. R.S. 14:60.

To convict a defendant of simple burglary, the state must prove beyond a reasonable doubt that the defendant entered a vehicle without authorization, and had the specific intent to commit a felony or theft therein.

State v. Ewin, 98-1096 (La. App. 5 Cir. 3/30/99), 735 So.2d 89. Specific intent is a state of mind that need not be proven as fact but may be inferred from circumstances and the actions of the defendant. State v. Bailey, 00-1398 (La. App. 5 Cir. 2/14/01), 782 So.2d 22.

In the instant case, Sgt. Watkins observed the defendant exiting the shed at the rear of 4200 State Street Drive. Detective Bosch found the defendant in possession of property belonging to the residents of 4200 State Street Drive. Ms. Tabor testified she did not give the defendant permission to enter the shed at the rear of her home. It appears the evidence was sufficient to support the defendant's conviction. This assignment of error is without merit.

EAGLIN'S PRO SE ASSIGNMENT OF ERROR NUMBER2

The defendant complains the trial court erred when it overruled the defense's objection to the admission of irrelevant evidence.

La. C.E. art. 401 provides:

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

La. C.E. art. 402 provides:

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of Louisiana, this

Code of Evidence, or other legislation. Evidence, which is not relevant, is not admissible.

La. C.E. art. 403 provides:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or waste of time.

The Fifth Circuit in State v. Forrest, 95-31 (La. App. 5 Cir. 2/14/96), 670 So.2d 1263, found that fruits and physical evidence of a crime are relevant evidence to show the commission of the crime and are, therefore, generally admissible.

The items found in the black bag are physical evidence. The shirts found in the bag belonged to Susan Tabor's son. The defendant has failed to show how the admission of the evidence found in the bag created unfair prejudice, confusion of the issues, misled the jury, caused undue delay or wasted time. This assignment of error is without merit.

CONCLUSION

The defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCED AFFIRMED