

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KELLY MURRAY,	§	
	§	No. 76, 2005
Defendant Below,	§	
Appellant,	§	Court Below: Family Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	UCN No. 0403023631
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: July 27, 2005
Decided: August 2, 2005

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

ORDER

This 2nd day of August 2005, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. The defendant-below appellant, Kelly Murray, appeals from an order of the Family Court adjudging him delinquent on the charges of burglary in the second degree, conspiracy in the second degree, and criminal mischief. On appeal, Murray argues that the State did not present sufficient evidence to support the Family Court's judgment, because the victims' testimony was inconsistent and therefore unreliable. Because the evidence, despite inconsistencies in the eyewitnesses' testimony, was sufficient for the Family Court to find Murray guilty beyond a reasonable doubt, we affirm.

2. On March 29, 2004, Marcia Gomez's home was burglarized. Two or three young men broke down the front door, entered the house, and threw a rock through the glass door of her china cabinet. Ms. Gomez and her son, Eric, were at home at the time of the incident, and they saw the burglars in the living room of their house. They both identified Murray as one of the young men who was in the house. Ms. Gomez's older son, Alex, arrived home as the men were leaving the house, and he also identified Murray. Murray was arrested and charged with second degree burglary, criminal mischief, and conspiracy.

3. At the time of the incident, Murray was 17 years old. He was tried in the Family Court and found delinquent on all three charges. The Family Court sentenced Murray to an indefinite commitment, suspended for Level III/A probation for 12 months. The Family Court also ordered Murray to pay restitution. Murray appeals from that conviction and sentence.

4. On appeal, Murray argues that the evidence was not sufficient to support the finding of delinquency on the charges, because the trial testimony of the witnesses differed from the statements they gave to the police on the night of the burglary. In reviewing a claim for insufficiency of the evidence, the relevant inquiry is whether, viewing the evidence in the light most favorable to the State,

any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.¹

5. Officer Jason Wilson, the police officer who investigated the burglary, testified at trial about the statements he took from Marcia, Eric and Alex Gomez on the night of the burglary. Marcia, Eric and Alex Gomez also testified for the State. The victims each made statements at trial that were not entirely consistent with the statements they made to Officer Wilson.

6. For example, Ms. Gomez testified that on the night of the burglary she was asleep in her bedroom when she heard a loud noise. She went into the living room where she saw Murray and his brother standing inside the house near the front door. The two men left the house, and Ms. Gomez followed them outside, where she saw a third person running away. That testimony varied from the statement that Ms. Gomez gave to Officer Wilson, wherein she said that she saw three persons inside her residence and heard one of the subjects yell “what now mother fucker?”

7. Similarly, Eric Gomez’s testimony differed in some respects from the statement he gave Officer Wilson. At trial, Eric testified that on the night of the burglary he was inside his bedroom, but came out to the living room when he heard a loud noise. He saw Murray and his brother standing in the living room,

¹ *Barnett v. State*, 691 A.2d 614, 618 (Del. 1997); *Dixon v. State*, 567 A.2d 854, 857 (Del. 1989).

and he heard someone yell “what now mother fucker,” and the sound of breaking glass. At trial Eric could not say who yelled the “what now” statement. In contrast, on the night of the burglary Eric told Officer Wilson that he saw three persons, including Murray, inside the house, and that he heard Murray yell the “what now” statement.

8. Finally, Alex Gomez testified that he arrived home at 10:00 p.m. on the night of the burglary, and saw Murray and his brother walking out of the house, followed by Alex’s mother. Alex also testified that he saw a third person running away in the opposite direction. That testimony differed slightly from Alex’s statement to Officer Wilson, in which Alex said that when he pulled up to the house he saw Murray, his brother, and a third person walking out of the residence, followed by Ms. Gomez.

9. The Family Court acknowledged that the victims’ testimony conflicted in some respects with the statements they gave to Officer Wilson. In particular, at trial Ms. Gomez and Eric testified that they only saw *two* persons inside the home, while in their statements they reported having seen *three* persons inside the home. There also were some inconsistencies about who yelled the “what now” statement. Murray argues that those inconsistencies demonstrated that the witnesses were not credible, and that the Family Court should therefore not have relied on that evidence. Without the victims’ testimony, Murray argues, the

evidence was legally insufficient. Murray's argument fails, however, because the Family Court found that the witnesses were credible, and this Court defers to that finding.

10. The Family Court Judge, as the trier of fact, was solely responsible for adjudging witness credibility and resolving inconsistencies in the witnesses' testimony.² After acknowledging the conflicts in the victims' testimony, the Family Court found that Marcia, Alex, and Eric Gomez were, nonetheless, credible and had no motive to lie. This Court will defer to the Family Court's credibility determinations.³ The Family Court also found that two or three persons broke into the house, shattered a glass cabinet and yelled an obscenity, and that all three witnesses consistently identified Murray as one of those persons.

11. Based on those factual findings, there was sufficient evidence to find Murray guilty of burglary. A person is guilty of second degree burglary when the person "knowingly enters ... in a dwelling with intent to commit a crime therein."⁴ The Family Court found that the Gomez's front door was broken down, and a rock was thrown through the glass door of a cabinet. Murray was identified by three

² *Richards v. State*, 865 A.2d 1274 (Del. 2004); *Pryor v. State*, 453 A.2d 98, 100 (Del. 1982); *Tyre v. State*, 412 A.2d 326, 330 (Del. 1980).

³ *Wellman v. Wellman*, No. 17, 1994, 1994 WL 466091 (Del. Aug. 25, 1994).

⁴ 8 *Del. C.* § 825.

different witnesses as one of the people inside the house. That evidence was sufficient to support Murray's conviction for burglary.

12. The Family Court's findings were also sufficient to support its judgment on the conspiracy charge. A person is guilty of conspiracy in the second degree when the person "intending to promote or facilitate the commission of a felony, agrees with another person that they ... will engage in conduct constituting the felony."⁵ For a person to be guilty of conspiracy, it is not necessary that there be a formal agreement in advance of the crime. "If a person understands the unlawful nature of the acts taking place, and nevertheless assists in any manner in the carrying out of the common scheme, that person becomes a conspirator to commit the offense."⁶ A conspiracy may be logically inferred from the record.⁷ The fact that Murray and his brother together broke into the Gomez residence was circumstantial evidence sufficient to infer a conspiracy.⁸

13. Finally, there was sufficient evidence to support Murray's conviction for criminal mischief. A person commits criminal mischief when he or she

⁵ 8 *Del. C.* § 512.

⁶ *Stroud v. State*, No. 334, 1989, 1990 WL 43315 at *3 (Del. 1990) (citing *Bender v. State*, 253 A.2d 686, 687 (Del. 1969)).

⁷ *Foraker v. State*, 394 A.2d 208, 215 (Del. 1978).

⁸ *Richards v. State*, 865 A.2d 1274.

“intentionally or recklessly ... damages tangible property of another person.”⁹ The evidence that the door to the property was seriously damaged and that one of the conspirators threw a rock through the cabinet was sufficient to find Murray guilty of criminal mischief.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁹ 8 *Del. C.* § 811.