NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. FRANCISCO RUBIO, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1057 EDA 2012

Appeal from the Judgment of Sentence Entered March 14, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0009918-2011

BEFORE: BENDER, J., LAZARUS, J., and COLVILLE, J.*

MEMORANDUM BY BENDER, J.: Filed: February 15, 2013

Appellant, Francisco Rubio, appeals from the judgment of sentence of two and one-half to five years' incarceration, imposed after he was convicted, following a non-jury trial, of burglary and other related offenses. We affirm.

The trial court set forth the following factual summary of Appellant's case:

> On February 14, 2009, Michael McCarey, who resided at 224 Robina Street in Philadelphia, left his house for two hours. When he returned home, he found his home ransacked and personal items missing.
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> Mr. McCarey lived in the first floor of a duplex. The home consisted of two bedrooms, a kitchen, a dining room, and a

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* Retired Senior Judge assigned to the Superior Court.

> living room. The duplex had two entrances, one through the basement and one through the main door.
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> When Mr. McCarey returned home, he first noticed damage to the door jam. He then observed that a Nintendo Wii box on the living room floor had been torn open and his television was missing from the television stand. Additionally, Mr. McCarey observed that someone had rifled through his drawers, that his wallet was not where he left it, and that he was missing an Xbox 360, an iPod from a bedroom, a laptop [computer], and about $300 in cash. In total, the value of everything taken amounted to approximately $3,000.
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> One year earlier, in December, 2007, Mr. McCarey had stored the Nintendo Wii box in an interior shelf in a closet in one of the bedrooms. He did not touch or move the Wii box after he stored it.
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> Mr. McCarey did not know [Appellant] and did not give [Appellant] permission to enter his home or touch anything inside the house.
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> The police were called and Police Officer Michael Murphy arrived at 22 Robina Street and encountered Mr. McCarey. Officer Murphy observed marks on the front door of the home, which indicated that someone had kicked in or pried open part of the doorframe. Officer Murphy also noticed someone had ransacked the apartment and moved items around.
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> Officer Murphy, trained in recovering fingerprints, lifted a fingerprint from the Wii box. Although Officer Murphy attempted to obtain fingerprints from other portions of the apartment, he could only obtain one positive print and that print came from the surface of the outside of the Wii box.
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> Scott Copeland, a fingerprint technician, matched the latent fingerprint that Officer Murphy lifted from the Wii box to the known fingerprint of [Appellant].

Trial Court Opinion (T.C.O.), 6/30/12, at 1-3 (citations to the record omitted).

Based on this evidence, the trial court convicted Appellant on January 23, 2012, of burglary, theft by unlawful taking, criminal trespass, criminal mischief, and receiving stolen property. On March 14, 2012, he was sentenced to the above-stated term of incarceration for his burglary conviction. No further penalty was imposed for his remaining offenses. Appellant filed a timely notice of appeal, as well as a timely concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). Herein, he raises two issues for our review:

> 1. Did not the court err by denying Appellant's motion to dismiss the charges pursuant to Pa.R.Crim.P. 600 where his trial was held more than [one] year of non-excusable and/or non-excludable time after the criminal complaint was filed against him, and the Commonwealth failed to exercise due diligence in bringing him to trial?
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> 2. Was not the evidence insufficient to find [Appellant] guilty of burglary and related charges beyond a reasonable doubt where the evidence of a single fingerprint matching that of Appellant found on a single object at the scene of the crime did not prove that he was present at the location of the crime or that he committed the offenses charged?

Appellant's Brief at 3.

In his first issue, Appellant contends that the court erred in denying his pretrial motion for dismissal of the charges based on a violation of Rule 600. That rule states, in pertinent part:

> [(A)](2) Trial in a court case in which a written complaint is filed against the defendant, when the defendant is incarcerated on that case, shall commence no later than 180 days from the date on which the complaint is filed.

> (3) Trial in a court case in which a written complaint is filed against the defendant, when the defendant is at liberty on bail, shall commence no later than 365 days from the date on which the complaint is filed.

Pa.R.Crim.P. 600(A)(2)-(3).

This Court has explained the method for calculating the timeliness of a trial under Rule 600 as follows:

> The mechanical run date is the date by which the trial must commence under [Rule 600]. It is calculated by adding 365 days (the time for commencing trial under [Rule 600]) to the date on which the criminal complaint is filed. As discussed herein, the mechanical run date can be modified or extended by adding to the date any periods of time in which delay is caused by the defendant. Once the mechanical run date is modified accordingly, it then becomes an adjusted run date.
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> ***Commonwealth v. Cook***, 544 Pa. 361, 676 A.2d 639, 646 n. 12 (1996) *cert. denied*, 519 U.S. 1119, 117 S.Ct. 967, 136 L.Ed.2d 851 (1997). If the defendant's trial commences prior to the adjusted run date, we need go no further.

Commonwealth v. Ramos, 936 A.2d 1097, 1102 (Pa. Super. 2007) (footnote omitted).

As evidenced by Rule 600, and elucidated by ***Cook*** and ***Ramos***, it is clear that calculating the mechanical and/or adjusted run dates for Rule 600 purposes begins on the date that a written criminal complaint is filed against the defendant. Here, Appellant alleges that a criminal complaint was filed on March 6, 2009, and thus, the mechanical run date of his trial was March 10, 2010. As he was not tried until January 23, 2012, he maintains that Rule 600 was violated.

To provide some factual background for Appellant's Rule 600 argument, it is evident from the record that a warrant for Appellant's arrest in the instant case was issued on March 6, 2009. However, the day before that warrant was issued, Appellant was arrested and detained on unrelated charges in New Jersey. T.C.O. at 5. It was not until January 24, 2011, that he was sentenced for those offenses. ***Id.*** He was released from prison in New Jersey on January 31, 2011, and apparently returned to Pennsylvania. ***Id.*** On February 22, 2011, he was arrested in Philadelphia for his offenses in the instant case. ***Id.***

Further complicating this matter is the fact that the March 6, 2009 warrant for Appellant's arrest incorrectly stated his birthdate, which erroneously indicated that Appellant was a juvenile. ***Id.*** The Commonwealth claimed at the Rule 600 hearing that this mistake was not discovered until a "juvenile hearing" was held following Appellant's February 22, 2011 arrest in Pennsylvania. N.T. Motions Hearing, 12/2/11, at 9. Upon realizing the mistake, the Commonwealth filed a criminal complaint charging Appellant as an adult on May 14, 2011. ***Id.*** at 9-10.

At the Rule 600 hearing and in his brief to this Court, Appellant claims that a criminal complaint was filed on March 6, 2009, and the time from that date until his arrest on February 22, 2011, must be charged against the Commonwealth for Rule 600 purposes, as the Commonwealth did not act diligently in attempting to extradite him from New Jersey. The Commonwealth, on the other hand, contends that Appellant was considered

– albeit mistakenly – to be a juvenile during that time, and Rule 600 does not apply in juvenile proceedings. Therefore, it concludes that the running of time for Rule 600 purposes did not begin until the May 14, 2011 criminal complaint charging Appellant as an adult was filed.

We need not decide the merits of either of these arguments. Our examination of the certified record indicates that the *only* criminal complaint charging Appellant with the above-stated crimes, and commencing the running of time for Rule 600 purposes, was filed on May 14, 2011. While Appellant alleges that a criminal complaint was filed on March 6, 2009, the only documents from 2009 that are contained in the record are the affidavit of probable cause and the warrant for Appellant's arrest. Directly following those documents is the May 14, 2011 criminal complaint. As this court may only consider that which is contained in the certified record, we conclude that Appellant was brought to trial 254 days after the May 14, 2011 filing of the criminal complaint, which satisfies the requirements of Rule 600. ***See Bennyhoff v. Pappert***, 790 A.2d 313, 318 (Pa. Super. 2001) (stating "[i]t is black letter law in this jurisdiction that an appellate court cannot consider anything which is not part of the record in [the] case").

Next, Appellant challenges the sufficiency of the evidence to sustain his convictions. To begin, we note our standard of review:

> In reviewing a sufficiency of the evidence claim, we must determine whether the evidence admitted at trial, as well as all reasonable inferences drawn therefrom, when viewed in the light most favorable to the verdict winner, are sufficient to support all elements of the offense. ***Commonwealth v. Moreno****,* 14 A.3d

> 133 (Pa. Super. 2011). Additionally, we may not reweigh the evidence or substitute our own judgment for that of the fact finder. ***Commonwealth v. Hartzell***, 988 A.2d 141 (Pa. Super. 2009). The evidence may be entirely circumstantial as long as it links the accused to the crime beyond a reasonable doubt. ***Moreno, supra*** at 136.

Commonwealth v. Koch, 39 A.3d 996, 1001 (Pa. Super. 2011).

Appellant argues that the evidence was insufficient to sustain his convictions because the only evidence linking him to the scene of the burglary was the lone fingerprint discovered on the Wii box. Appellant alleges that the Commonwealth offered no evidence to prove when that print was left on the box, and argues that "[t]here is no indication as to where the box had been prior to Christmas of 2007 when the complainant received it, that is, whether it had been in any area accessible to the public." Appellant's Brief at 16. In other words, Appellant suggests that his fingerprint was left on the Wii box prior to Mr. McCarey's obtaining it, not during the commission of the burglary.

The Commonwealth, on the other hand, maintains that it did produce evidence that the fingerprint discovered on the Wii box was freshly made. Specifically, the Commonwealth established that "the box had been exclusively inside the victim's private residence since December of 2007," and that no fingerprints of the victim were found on the box, despite "[t]he victim's extensive handling of the box more than a year earlier." Commonwealth's Brief at 10. Additionally, the Commonwealth states that its "fingerprint expert specifically testified that it was 'quite possible' that any

fingerprints on the box at the time the victim stored it in the bedroom closet could have been wiped away by coming into contact with the pillows, blankets, bed[]sheets and other items in the closet." ***Id.*** The Commonwealth also notes that the expert "repeatedly emphasized that fingerprints are fragile." ***Id.*** In sum, the Commonwealth argues that "[t]he farfetched scenario posited by [Appellant] – that out of the many millions of Wii game consoles in circulation, he just so happened to touch and then leave a fingerprint on the box for the very same console given to the victim as a Christmas present, and that his fingerprint somehow managed to remain on the box as it was opened and handled by the victim and then stuffed into a cluttered linen closet for more than a year – is not plausible, let alone reasonable." ***Id.***

We agree with the Commonwealth. It is well-established that the Commonwealth need not disprove every possibility of innocence but, rather, must present sufficient evidence to demonstrate a defendant's guilt beyond a reasonable doubt. ***See Commonwealth v. Smith***, 904 A.2d 30, 38 (Pa. Super. 2006) (citation omitted) ("The Commonwealth need not preclude every possibility of innocence or establish the defendant's guilt to a mathematical certainty."). Here, the Commonwealth presented evidence that Appellant did not have permission to be in Mr. McCarey's home, or any other innocent explanation for being there. Moreover, the Commonwealth's circumstantial evidence indicated the likelihood that Appellant's fingerprint was freshly made, including the fact that the Wii box had been stored in a

closet for over a year prior to the burglary, and the fingerprint expert testified that fingerprints are fragile and could have easily been removed during the storage of the box in the closet. Therefore, we conclude that Appellant's fingerprint on the Wii box was sufficient evidence to prove that he committed the offenses of which he was convicted. ***See Commonwealth v. Wilson***, 392 A.2d 769, 771 (Pa. Super. 1978) (fingerprint evidence found on lamp and closet of burglarized residence sufficient to uphold convictions because items were not "readily movable object[s] in common usage" and there was no innocent explanation for defendant's presence in the home).

Judgment of sentence affirmed.