NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: J.C.C., A MINOR	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: J.C.C.	:	No. 1075 MDA 2012

Appeal from the Dispositional Order Entered May 25, 2012,
In the Court of Common Pleas of York County,
Juvenile Division, at No. CP-67-JV-0000698-2011.

BEFORE: SHOGAN, OTT and COLVILLE*, JJ.

MEMORANDUM BY SHOGAN, J.: Filed: February 8, 2013

Minor Appellant, J.C.C., appeals from the dispositional order entered on May 25, 2012, after the juvenile court found Appellant committed the offenses of theft by unlawful taking or disposition, receiving stolen property, theft from a motor vehicle, and criminal conspiracy, and adjudicated him delinquent. We affirm.

The juvenile court summarized the evidence presented at the March 20, 2012 adjudication hearing as follows:

> The incident giving rise to these charges occurred on September 27, 2011, in the area of 1695 Kenneth Road.
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> The Commonwealth first called Chelsey Ritchey. She stated that on September 27, 2011, she had been staying the night at the Sunset Ridge apartment complex, which is on Kenneth Road. She had her vehicle with her, which was a 2003 Chevy TrailBlazer, which was parked in the parking lot of the apartment complex.
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> She stated that her car was unlocked but did contain a number of items in it, as she was getting ready to move. She stated the last time she saw her vehicle was on September 26 at

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*Retired Senior Judge assigned to the Superior Court.

11:00 p.m., and it wasn't until the next day in the afternoon when she noticed items that were missing from her vehicle, including an after-market speaker system, which was installed in her car, which had been ripped out; and her grandmother's ring, which was in a box. The box was left there, but the ring had been taken. There were other items, including sunglasses and CDs.

The total cost of the items missing [is] estimated to be $5,865.00. In addition, there was a tear in the back of the passenger seat. She did immediately report this to the police.

The next witness was Joseph Roberts. He resided at 1765 Yorktowne Drive in West Manchester Township, which is an apartment condominium/townhouse.

He stated that his 2004 [Chevrolet] Silverado crew cab vehicle was parked right out in front of his townhouse. He stated that he last saw his vehicle [at] 7:30 p.m. on September 26. The vehicle was locked; however, there were three keys to the vehicle inside the console. Also there were his gym bag, which contained his iPod, running shoes, and clothes; a set of golf clubs; personal items, including sunglasses.

He stated that on September 27 at 5:45 a.m., he went out to go to his vehicle to go to work when he noticed that it was missing. He immediately called the police, and approximately two months later, the vehicle was recovered in very poor condition. Both sides of the vehicle appeared to be swiped.

There was gunshot spray on the door, window knocked out, and the ignition column was ripped out. He had to pay $250.00 for Intown Motors to tow the vehicle, $1200.00 to have the window and the column replaced, and there was approximately $4500.00 in body damage to the vehicle, which ultimately he did not get done as he could not afford it and sold the vehicle.

He said that he had spoken with Officer Hanuska regarding the three keys. The next day [the police] had apparently recovered three of the ignition keys, one of which was a key fob. The serial numbers matched up, and, in fact, when he later obtained the vehicle back, the keys did, in fact, open the door;

however, the ignition had been ripped out, so he couldn't verify that the keys worked in the ignition.

A photo of the keys was marked as Commonwealth Exhibit Number 2 and entered into evidence.

He stated that homeowners' coverage had covered the contents of the vehicle, approximately $1800.00, with a $500.00 deductible, but the insurance did not cover the damage to the vehicle.

The next witness was Angela Lance. She resides at the Sunset Ridge Apartments on Kenneth Road. She stated in the early, early hours of the 27th, around 3:00 a.m., she was going to let her dog out when she noticed a young male walking towards her apartment, which was very odd for that time of day.

She immediately called 911, went into her bathroom to describe what was happening, when the dispatcher asked her to go to the window and tell her what she was observing. She noticed that the individual was in her neighbor's car and rooting through both the front and rear seats and that the dome light was on and also there was a lamppost light at the end of her walkway as well as an overhead light across the street.

She also saw another individual as well. She also identified a van that was parked that had its doors open and watching them put items into the van. She then saw the van move to another location within the parking lot. She couldn't exactly see what was happening there, but [she] kept giving the dispatcher information.

She saw the vehicle exit the apartment complex and could tell that it turned right on Kenneth Road.

The next Commonwealth witness was Officer Hanuska, who is with West Manchester Police Department. He stated that on the 27th of September, he was working when he was dispatched around 3:00 a.m. to a call of theft from vehicles at the Sunset Ridge apartment complex. It took him approximately two minutes to respond.

As he was coming into the area, another officer had already arrived on foot. He stated that he came to the entrance

of the apartment complex when a Chrysler minivan matching the description was coming out. He had come within 15 feet of the vehicle and could clearly see the driver of the vehicle, who he identified as [Appellant]. He gave a description of what [Appellant] was wearing.

He immediately made a U-turn and activated his lights. The minivan pulled over. As soon as [Officer Hanuska] got outside of his vehicle, the minivan took off. He immediately pursued it. He noticed that the vehicle had gone left onto Loucks Road and then went eastbound on Route 30 going the wrong way, actually traveling on the westbound lane and continuing ultimately to George Street, going approximately a hundred miles an hour and going over a median.

He noticed that when the vehicle turned onto George Street, the side door had come open and items were either being thrown out or falling out. He continued to pursue the vehicle into the city through Parkway and Pershing Streets, seeing the vehicle going down the wrong way on Union Street.

He stopped his pursuit; however, several other officers were in the area. The vehicle came to a stop, and approximately six to eight officers became involved in the search. They set up a perimeter around the area of Smith and Union Streets. They ultimately within a few minutes were able to apprehend [Appellant] first and then three others. He stated that [Appellant], in fact, was running, and he had to ultimately use his Taser® to get him to stop.

During the course of the search of the individuals, [the police] found one key on Mr. Breeland, one key on Jihad Bashir, and one key inside the minivan, all of which were for Mr. Roberts' vehicle. [ ] Mr. Roberts' house, as noted, is the next apartment complex from Sunset [Ridge] Apartments, and, in fact, they abut one another. [The police] ultimately did not find any of the items that had been stolen, other than the keys to Mr. Roberts' vehicle.

There was a stipulation regarding [Appellant's] mother, that she let [Appellant] use the Chrysler Town & Country minivan that evening and that she had rented that vehicle.

> Also, there was a stipulation regarding Officer Schlemmer's report that his report indicates that he interviewed Mr. Roberts, who said there was an extra key in his vehicle.
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> Finally, [Appellant] testified. [Appellant] is 17 years of age. He stated that on September 26th, his mother had asked him to go to the Turkey Hill to get her something to drink. He had called Dominick Breeland, or Dominick Breeland had actually called him and asked him for a ride and gave him $20.00 for the ride.
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> He then called his friend, Marcos Martinez, and Jihad to meet up with some girls. He picked up Marcos and Jihad and then picked up Dominick around midnight. He stated that Dominick had someone else with him who he didn't know. Apparently Dominick told him where to go.
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> He acknowledges going into the apartment complex and remaining in the vehicle for approximately 20 minutes with Marcos and Jihad while Dominick and the other individual went out. He said he didn't see what they were doing as he had his head down the whole time texting.
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> He does acknowledge moving the van to another location within the apartment complex, but doesn't recall anything being put inside the vehicle.
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> He stated that as he was leaving the apartment complex, the police came, and his friends told him to go, and so he did. He acknowledges speeding and committing the vehicle code violations and not being licensed to drive. He acknowledges running from the police, but states that he was already down on the ground when he was Tased. He has specifically said that he had been given $20.00 to give Dominick a ride; however, Officer Hanuska was re-called to testify and stated that his search of [Appellant] did not come up with any money at all.

N.T., 3/20/12, at 92-99. Following the adjudication, the juvenile court deferred disposition, pending completion of a case assessment. ***Id.*** at 100.

On May 25, 2012, the juvenile court conducted a disposition hearing and entered the following findings:

> This is [Appellant's] first involvement with Juvenile Probation. He is residing with his mother. His father is incarcerated, and he has not had any contact with him since he was ten years of age. His mother reports things are going very well in the home. He is now enrolled at Central York School District. Most of his grades are very good. Unfortunately, he is having some issues with math, and as a result he will need to attend summer school. In addition, he will need to make up some credits for failed grades in the past.
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> [Appellant] is currently not employed. There do not appear to be any drug or alcohol issues at this time. [Appellant] scored a five on the YLS Assessment, which indicates a low risk.
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> Critical areas of intervention are education and employment, peer relations, and attitudes and orientation. The interventions are that he continue his education at Central York School District, that he participate with Justice Works to assist him in making positive choices with his peers, and that also will be able to assist him with employment, and finally the Victim/Community Awareness classes will help address the attitudes and orientation issues.

N.T., 5/25/12, at 12-13. Thereafter, the juvenile court entered a dispositional order, placing Appellant on formal probation and imposing certain conditions: random drug screening, attendance at Victim Awareness Class, and payment of fees.

Given the conflicting estimates of property loss and damage, the juvenile court scheduled a restitution hearing. That hearing occurred on August 22, 2012, before a different judge. Both victims presented evidence regarding their losses. The restitution judge set Ms. Ritchey's restitution at

$2,134.98, and Mr. Roberts' at $4,350.00. Order of Court, 8/22/12, at 2, 3.[1]

On appeal, Appellant raises the following issues for our consideration:

> A. Whether the evidence was insufficient for the Court to find that the juvenile committed the offense[s] of Theft By Unlawful Taking (F3) and Criminal Conspiracy (F3) involving the theft of a truck.
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> B. Whether the evidence was insufficient for the Court to find that the juvenile committed the offense[s] of Receiving Stolen Property (F3) and Criminal Conspiracy (F3) involving the truck.
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> C. Whether the evidence was insufficient for the Court to find that the juvenile committed the offense of Theft (M1) involving items taken from vehicles.
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> D. Whether the adjudication was against the weight of the evidence as to: Theft By Unlawful Taking (F3); Receiving Stolen Property (F3); Conspiracy (F3); and Theft (M1).

Appellant's Brief at 4.

Appellant's first three issues challenge the sufficiency of the evidence supporting the adjudications of delinquency. Our standard of review for challenges to the sufficiency of the evidence is well established:

> [W]e must determine whether, viewing all the evidence admitted at trial, together with all reasonable inferences therefrom, in the light most favorable to the Commonwealth, the trier of fact could have found that each element of the offenses charged was supported by evidence and inferences sufficient in law to prove guilt beyond a reasonable doubt. This standard is equally applicable to cases where the evidence is circumstantial rather

[1] We note that Appellant filed the instant appeal on June 8, 2012, after the dispositional order and before the order of restitution. Appellant does not challenge the order of restitution in this appeal.

> than direct so long as the combination of the evidence links the accused to the crime beyond a reasonable doubt. Moreover, it is the province of the trier of fact to pass upon the credibility of witnesses and the weight to be accorded the evidence produced. The factfinder is free to believe all, part or none of the evidence. The facts and circumstances established by the Commonwealth need not be absolutely incompatible with the defendant's innocence, but the question of any doubt is for the [factfinder] unless the evidence be so weak and inconclusive that as a matter of law no probability of fact can be drawn from the combined circumstances.

In re R.D., 44 A.3d 657, 678 (Pa. Super. 2012), *appeal denied*, 56 A.3d 398 (2012) (quoting ***In re T.B.***, 11 A.3d 500, 504 (Pa. Super. 2010)).

Here, the juvenile court found Appellant committed the offenses of theft by unlawful taking or disposition, receiving stolen property, criminal conspiracy, and theft from a motor vehicle. The Pennsylvania Legislature has defined these offenses as follows:

> **§ 3921. Theft by unlawful taking or disposition**
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> **(a) Movable property.**--A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive him thereof.

18 Pa.C.S.A. § 3921(a).

> **§ 3925. Receiving stolen property**
>
> **(a) Offense defined.**--A person is guilty of theft if he intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner.
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> **(b) Definition.**--As used in this section the word "receiving" means acquiring possession, control or title, or lending on the security of the property.

18 Pa.C.S.A. § 3925.

> **§ 903. Criminal conspiracy**
>
> **(a) Definition of conspiracy.**--A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he:
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> (1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or
>
> (2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

18 Pa.C.S.A. § 903(a).

> **§ 3934. Theft from a motor vehicle**
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> **(a) Offense defined.**--A person commits the offense of theft from a motor vehicle if he unlawfully takes or attempts to take possession of, carries away or exercises unlawful control over any movable property of another from a motor vehicle with the intent to deprive him thereof.

18 Pa.C.S.A. § 3934(a).

Here, the juvenile court heard evidence from two victims, an eyewitness, a police officer, and Appellant. Based on the testimony, the juvenile court opined that the Commonwealth sustained its burden of proof with regard to all of the charges:

> Based upon the testimony presented, we do find that the Commonwealth has established beyond a reasonable doubt the offenses alleged. In particular, we do not find [Appellant's] testimony to be credible. Clearly there was testimony from a neutral witness who indicated that she observed items being put into the minivan.

> [Appellant] indicated he never saw any of this. The fact that he fled from the police and also that there were keys located on not only Dominick but also Jihad and the fact that the vehicle that was stolen was in close proximity to the area in which [Appellant] was found, based upon that, we do find that the Commonwealth has established beyond a reasonable doubt those offenses.

Order of Court, 3/20/12, at 11.

Upon review of the certified record, we discern no error. The evidence against Appellant was mostly circumstantial. However, when viewed in the light most favorable to the Commonwealth, the evidence and the juvenile court's credibility determinations support a reasonable inference that Appellant committed the offenses. In sum, Appellant used a minivan that his mother had rented to drive two friends, Marcus and Jihad, along with Dominick Breeland and another man, to the Sunset Ridge Apartment complex in the early morning hours of September 27, 2011. While the minivan was parked with its side door open, two of the five men broke into other vehicles in the parking lot, took items from those vehicles, and put the items in the minivan. When the men were done, Appellant drove the minivan out of the complex, led Officer Hanuska on a high-speed chase, stopped the vehicle in the City of York, and fled on foot. Upon apprehending the men, the police found one of the missing keys to Mr. Roberts' truck on Breeland, one on Appellant's friend Jihad, and one on the back seat of the minivan. N.T., 3/20/12, at 7-91. The location of the keys supports a reasonable inference that, before arriving at the Sunset Ridge Apartments,

Appellant and the other men went to the adjacent apartment complex where Mr. Roberts lived and stole his truck and its contents.

Thus, we conclude there was sufficient evidence that Appellant acted in agreement with his accomplices (a) to unlawfully take and exercise unlawful control over Mr. Roberts' truck; (b) to receive and then dispose of the personal property of Mr. Roberts and Ms. Ritchey knowing it was stolen; and (c) to unlawfully take personal property belonging to Mr. Roberts and Ms. Ritchey from their motor vehicles with the intent to deprive them of it. Appellant's three sufficiency challenges fail.

Appellant's fourth issue challenges the weight of the evidence. Upon review, we conclude that Appellant has waived this issue. In doing so, we rely on our decision in ***In re R.N.***, 951 A.2d 363 (Pa. Super. 1988):

> The determination of whether a verdict is against the weight of the evidence is governed by the standard set forth in ***Commonwealth v. Champney***, 574 Pa. 435, 832 A.2d 403 (2003):
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> > The weight of the evidence is exclusively for the finder of fact who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses. An appellate court cannot substitute its judgment for that of the finder of fact. Thus, we may only reverse the lower court's verdict if it is so contrary to the evidence as to shock one's sense of justice. Moreover, where the trial court has ruled on the weight claim below, an appellate court's role is not to consider the underlying question of whether the verdict is against the weight of the evidence. Rather, appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim.

Champney, 832 A.2d at 408 (citations omitted). This Court applies the same standard for reviewing weight claims in juvenile cases. In considering weight of the evidence claims, it is not the function of an appellate court to substitute its judgment based on a cold record for that of the judge who conducted the juvenile adjudication hearing. Credibility is for the trier of fact, who is free to believe all, part or none of the evidence presented. A challenge to the weight of the evidence concedes that sufficient evidence exists to sustain the verdict, but questions which evidence is to be believed. An appellate court reviews the trial court's exercise of discretion, not the underlying question of whether the verdict is against the weight of the evidence.

In juvenile proceedings, appellants must preserve issues on appeal by raising them in the [juvenile] court; otherwise, they are waived. ***In the Interest of DelSignore***, 249 Pa.Super. 149, 375 A.2d 803, 805–06 (1977). In ***DelSignore***, the appellant (DelSignore), who had been adjudicated delinquent, argued that the petition did not properly charge that she had committed a crime. ***Id.*** DelSignore also argued that she was denied various constitutional rights. ***Id.*** at 808. The Court held that DelSignore waived those arguments because counsel did not raise objections to the alleged errors in the trial court. ***Id.*** at 805, 808. The Court held that while juvenile proceedings are not quite civil and not quite criminal, the "purposes of the waiver doctrine argue for its application in such proceedings." ***Id.*** at 805.[FN5]

A juvenile's right to file post-dispositional motions has been recognized by Juvenile Court Procedure Rule 520, which became effective on August 20, 2007.[FN6] Rule 520 permits the filing of post-dispositional motions on an optional basis. Rule 520 also provides clear authority that appellants in juvenile cases must preserve issues on appeal by raising them in the juvenile court. Rule 520 states:

> A. Optional Post–Dispositional Motion.
>
> (1) The parties shall have the right to make a post-dispositional motion. All requests for relief from the court shall be stated with specificity and particularity, and shall be consolidated in the post-dispositional motion.

> (2) Issues raised before or during the adjudicatory hearing shall be deemed preserved for appeal whether or not the party elects to file a post-dispositional motion on those issues.

Pa.R.J.C.P. 520(A)(1), (2). The official Comment to Rule 520 discusses the appeal of "properly preserved issues":

> Under paragraph (A)(2), any issue raised before or during adjudication is deemed preserved for appeal whether a party chooses to raise the issue in a post-dispositional motion. It follows that the failure to brief or argue an issue in the post-dispositional motion would not waive that issue on appeal *as long as the issue was properly preserved, in the first instance, before or during adjudication*.

Comment, Pa.R.J.C.P. 520 (emphasis added). The Comment further states that:

> Issues properly preserved at the dispositional hearing need not, but may, be raised again in a motion to modify disposition in order to preserve them for appeal. In deciding whether to move to modify disposition, counsel carefully is to consider whether the record created at the dispositional hearing is adequate for appellate review of the issues, or the issues may be waived.

Id. (citing ***Commonwealth v. Jarvis***, 444 Pa.Super. 295, 663 A.2d 790, 791–92 (1995) (holding that issues not raised in the lower court are waived and cannot be raised for the first time on appeal)).

> [FN5.] An *en banc* panel of this Court recognized the continued validity of the waiver doctrine as applied in ***DelSignore***. ***In the Matter of Smith***, 393 Pa.Super. 39, 573 A.2d 1077, 1081–82 (1990) (*en banc*). While the ***Smith*** Court did not achieve a majority on all points implicated by the appeal, the Court did agree on the application of the waiver doctrine in the juvenile court context.

> FN6. The dispositional order in this case was filed August 14, 2007, prior to the implementation of Rule 520 of the Rules of Juvenile Court Procedure on August 20, 2007. Although we apply the waiver doctrine to the instant case based on ***DelSignore*** and subsequent case authority, we note Rule 520's application in cases where the dispositional order was filed on or after August 20, 2007.

In re R.N., 951 A.2d at 370-372 (some internal citations omitted).

As in the case of ***In re R.N.***, Appellant failed to raise the weight claim during the adjudication conducted on March 20, 2012. Furthermore, Appellant did not present this claim at the disposition hearing conducted on May 25, 2012, or in a post-disposition motion. Because Appellant did not raise his weight claim in the juvenile court, any such challenge is waived on appeal, and we cannot consider it further. ***In re R.N.***, 951 A.2d at 372; ***DelSignore***, 375 A.2d at 805–806.

For the reasons set forth above, Appellant is not entitled to relief. Therefore, we affirm the dispositional order.

Dispositional order affirmed. Jurisdiction relinquished.