

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: O.E., A MINOR,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1296 MDA 2012

Appeal from the Dispositional Order May 29, 2012
In the Court of Common Pleas of Dauphin County
Criminal Division at No(s): CP-22-JV-0001221-2011

BEFORE: MUNDY, OLSON, and STRASSBURGER*, JJ.

MEMORANDUM BY STRASSBURGER, J.:

Filed: March 13, 2013

O.E. (Appellant) appeals from the dispositional order entered after she was adjudicated delinquent of burglary.¹ We affirm.

The juvenile court has set forth the pertinent facts and procedural history, as follows:

A Juvenile Petition was filed on February 24, 2012 alleging that Appellant committed the delinquent act of burglarizing 3200 Derry Street. On April 30, 2012, an Adjudication Hearing to determine whether Appellant committed the alleged delinquent acts was held before [the juvenile court]. The Commonwealth called two witnesses: Kierra West ("Ms. West"), a friend of Appellant's and Melissa Schrader ("Ms. Schrader"), the owner of the burglarized home. Appellant took the stand but called no other witnesses on her behalf.

According to Ms. West's testimony, Ms. West, Appellant and Destiny Morales ("Ms. Morales") went together to 3200

¹ 18 Pa.C.S. § 3502

* Retired Senior Judge assigned to the Superior Court.

Derry Street in Paxtang, Dauphin County, Pennsylvania for the purpose of retrieving clothing Ms. West had left at the residence. Ms. West testified that 3200 Derry Street was the residence of Ms. Schrader. Ms. West testified that, although the Schraders were not home, Ms. Schrader's daughter, Alexis, gave Ms. West permission to enter the residence. Ms. West testified that Appellant and Ms. Morales were not allowed in the Schraders' home [because they had previously stolen clothing from Alexis, and as such,] Ms. West did not ask Alexis for permission to have Ms. Morales or Appellant enter the residence.

Ms. West testified that she entered the Schrader home without inviting Ms. Morales or Appellant to follow her into the residence. According to Ms. West's testimony, ten to fifteen seconds after she entered the Schrader home, Ms. Morales and Appellant entered the residence. Ms. West testified that Ms. Morales and Appellant followed her upstairs to Alexis' bedroom where Ms. Morales proceeded to remove clothing from Alexis's drawers and to throw the clothing around the room. Ms. West testified that both Appellant and Ms. Morales took items from Alexis's room and, in particular, Appellant and Ms. Morales took a bra from Alexis's room. Ms. West testified that Appellant left after taking the bra. Ms. West testified that Alexis recovered her belongings when Ms. Schrader went to Ms. Morales's home and that the bra Appellant took was located in Ms. Morales's home.

Ms. Schrader's testimony is summarized as follows: At the time of the hearing, Ms. Schrader lived at 3200 Derry Street, Paxtang, Dauphin County, Pennsylvania. Appellant was not permitted in the Schrader home because she had previously stolen items from the home. Appellant had previously taken Alexis's clothing and Ms. Morales had been involved in each prior incident of theft. Ms. Schrader had previously informed Appellant that she was not permitted in the Schrader home.

The Schraders were away from home on October 3, 2011. On that date, Ms. West contacted Alexis for permission to retrieve clothing she had left at the Schrader home and Ms. Schrader [through her daughter, Alexis,] granted such permission. When the Schraders returned, they found Alexis's room in disarray. Clothing, shoes, and recently purchased bras and underwear were missing from Alexis's room.

Ms. Schrader learned from Ms. West that Ms. Morales and Appellant had been in the Schrader home and Ms. West reported

the girls' actions in the home to Ms. Schrader. Ms. Schrader went to Ms. Morales's apartment and asked the girls to return the items they took. Appellant and Ms. Morales returned a bra that they claimed they intended to only wear for a day before they returned it. No other items were returned.

Appellant's testimony is summarized as follows: On October 3, 2011, Appellant and Ms. Morales accompanied Ms. West to 3200 Derry Street. Ms. West entered the house and Ms. Morales followed; Appellant did not want to stand outside alone so she also went into the house. Appellant did not know whether or not she was allowed to enter the home but she did not seek Alexis's permission to enter the home. Appellant recalled Ms. Schrader told Ms. Morales, in Appellant's presence, that Ms. Morales was not allowed in the home, but Appellant did not believe the prohibition extended to her. Appellant had never previously taken an item from the home without permission.

Appellant entered the house solely with the intention of retrieving Ms. West's clothing and did not intend to take any items from the house. While in Alexis's room, Ms. West found a dress belonging to her sister. Finding Alexis rude for having the dress, Appellant stole Alexis's bra. Appellant took one bra and Ms. Morales took another. Ms. Morales opened Alexis's dresser and threw Alexis's clothes on the floor. Ms. Morales grabbed a bra and asked Appellant if she was going to take anything. After Appellant responded negatively, Ms. Morales asked Appellant if she was scared; Appellant then decided to take the bra because she was pressured to steal. Appellant planned on returning the bra to Alexis.

Ms. Schrader confronted Appellant and Ms. Morales after the incident and the girls returned the bras. Ms. Schrader [informed] Appellant that she was no longer allowed in the home. Appellant gave Ms. Schrader the bra she took but she was unsure whether Ms. Morales did the same.

Juvenile Court Opinion, 8/13/2012, at 2-5 (footnotes and citations to notes of testimony omitted). At the conclusion of the hearing the court adjudicated Appellant delinquent. On May 29, 2012, a dispositional order was entered sentencing Appellant to formal probation, directing the payment

of restitution in the amount of \$620.00, and ordering the payment of fines and costs. Appellant also was required to participate in a reading program, and a community service program, as well as submit to random drug and alcohol testing. On June 8, 2012, Appellant filed a "Post-Dispositional Motion," alleging there was insufficient evidence to sustain her burglary conviction, and, in the alternative, challenging the verdict as being against the weight of the evidence. While the juvenile court denied Appellant's motion as to sufficiency and weight, it amended the dispositional order to reflect the total amount of restitution as \$330.00 instead of the original amount of \$620.00. This timely appeal followed. Both Appellant and the juvenile court have complied with Pa.R.A.P. 1925.

On appeal, Appellant presents the following issues for our consideration.

[1.] Whether the evidence presented at Appellant's adjudication was insufficient to sustain a charge of burglary as the Commonwealth failed to prove that Appellant entered a building with the intent to commit a crime therein?

[2.] Alternatively, whether ... Appellant's burglary adjudication was so contrary to the weight of the evidence as to shock one's sense of justice where the evidence indicates Appellant lacked intent to commit a crime therein and the court found only that Appellant entered the residence without authority?

Appellant's Brief at 5 (capitalization and underline omitted).

We address Appellant's first question mindful of the following standard of review.

In reviewing a challenge to the sufficiency of the evidence, we 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 offense 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 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 the Interest of T.B., 11 A.3d 500, 504 (Pa. Super. 2010) (citation omitted). *See also In the Interest of B.S.*, 831 A.2d 151, 155 (Pa. Super. 2003) ("In order to sustain an adjudication of delinquency, the *due process clause of the United States Constitution* requires that the Commonwealth present evidence that, when viewed in the light most favorable to the Commonwealth, is sufficient to establish that the juvenile committed the accused act beyond a reasonable doubt.") (emphasis in original). The Crimes Code defines burglary as follows:

§ 3502. Burglary

(a) Offense defined.--A person is guilty of burglary if he enters a building or occupied structure, or separately secured or occupied portion thereof, with intent to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter.

18 Pa.C.S.A. § 3502(a). "Intent may be proved by direct evidence or inferred from circumstantial evidence." *Commonwealth v. Burton*, 770 A.2d 771, 784 (Pa. Super. 2001).

Appellant contends that there was insufficient evidence offered by the Commonwealth to show that Appellant had the intent to commit a crime within the residence prior to her unforced entry into the home as required by the burglary statute. Appellant alleges that she did not form the intent to take a bra of Alexis's until she was in Alexis's bedroom with Ms. Morales, and Ms. Morales pressured her to take it. Thus, she asserts that the Commonwealth failed to prove the requisite intent necessary for the crime of burglary, and as such the court erred in adjudicating her delinquent for committing that offense.

The juvenile court found that the evidence presented at the hearing supported the conclusion that each of the elements of the crime of burglary had been met. Specifically, the court stated:

Appellant admitted that she entered 3200 Derry Street, a private residence, on October 3, 2011. Ms. Schrader testified that she previously forbade Appellant from being in her home. Ms. Schrader testified that the reason Appellant was prohibited from 3200 Derry Street was that Appellant had previously stolen clothing from that residence. Ms. Schrader testified that each incident of prior theft by Appellant involved Ms. Morales. Appellant admits that she was with Ms. Morales on the date of the incident. According to the testimony of Ms. West and Appellant, once Appellant entered the home, she and Ms. Morales immediately rifled through Alexis's clothing. Appellant admitted that she stole an item of clothing from Alexis's room. Viewed in the light most favorable to the Commonwealth, the evidence was sufficient to support a finding that Appellant

entered 3200 Derry Street with intent to commit a crime therein, and committed the delinquent act of burglary.

Juvenile Court Opinion, 8/13/2012, at 6-7. We agree with the juvenile court that sufficient evidence existed to sustain the adjudication.

“It is true that in order to be convicted of burglary appellant must have formed the intent to commit a crime when [s]he entered, not after [s]he entered.” *Commonwealth v. Crocker*, 421 A.2d 818, 819 (Pa. Super. 1980). However, “[b]ecause it is rare for a defendant to explicitly state his intent, it must generally be gleaned from a detailed and comprehensive review of the circumstances.” *Commonwealth v. Addison*, 413 A.2d 402, 403-404 (Pa. Super. 1979). Thus, “[t]he specific intent required to make out a burglary charge may be found in the defendant’s words, conduct, or from the attendant circumstances together with all reasonable inferences therefrom.” *Id.* at 403. Intent also may be inferred from the words and conduct of a defendant’s “confederates at the time of the incident, as part of the attendant circumstances.” *Commonwealth v. Thompson*, 417 A.2d 1243, 1247 (Pa. Super. 1979).

In the present case, when viewing the evidence in the light most favorable to the Commonwealth, the fact finder could have reasonably concluded that Appellant and Ms. Morales had the requisite intent to commit theft when they entered the Schrader home. Ms. Schrader testified that she had instructed Appellant, along with Ms. Morales, that they were not permitted into her home due to their previous theft of clothing from Alexis.

Testimony from Ms. West established that both Appellant and Ms. Morales nonetheless entered the home, directly proceeded into Alexis's bedroom, and began to rummage her dresser drawers, ransacking the room. Upon removing various undergarments of Alexis's, they left the premise. Upon confrontation by Ms. Schrader, Appellant admitted taking, and returned, one of Alexis's bras. This evidence was sufficient for the fact-finder to conclude that Appellant entered the Schrader home when she was not permitted to do so, with the intent to commit theft, and that her argument, that she only formed the intent to take the bra after being in the home and in response to peer pressure, was fabricated.

Next, Appellant contends that the juvenile court erred in not finding her burglary adjudication against the weight of the evidence where the evidence presented at the adjudication hearing indicated that Appellant lacked the requisite intent to commit a crime therein. Our standard of review in such cases is well-settled.

For this Court to reverse the jury's verdict on weight of the evidence grounds, we must determine that the verdict is so contrary to the evidence as to 'shock one's sense of justice.' Appellate review of a weight claim is a review of the exercise of discretion, not of the underlying question of whether the verdict is against the weight of the evidence. Because the trial judge has had the opportunity to hear and see the evidence presented, an appellate court will give the gravest consideration to the findings and reasons advanced by the trial judge when reviewing a trial court's determination that the verdict is against the weight of the evidence. One of the least assailable reasons for granting or denying a new trial is the lower court's conviction that the verdict was or was not against the weight of the evidence and that a new trial should be granted in the interest of justice.

In the Interest of D.Y., 34 A.3d 177, 181 (Pa. Super. 2011) (*en banc*) (citation omitted).

In addressing Appellant's claim, the juvenile court stated that it, as the trier of fact, found Ms. Schrader and Ms. West credible but found Appellant's version of events to lack credibility. The Commonwealth presented sufficient evidence to establish that Appellant entered 3200 Derry Street with the intent to commit the crime of theft therein. Accordingly, the finding that Appellant committed the delinquent act of burglary does not shock the conscience of the court.

Juvenile Court Opinion, 8/13/2012, at 7 (footnote omitted).

Essentially, Appellant is requesting this Court to make credibility determinations in her favor. It is clear that the juvenile court found the Commonwealth's version of the events more credible than that asserted by Appellant. "[I]t was solely for the [juvenile] court, as finder of fact, to determine the credibility of witnesses and to resolve any conflicts or inconsistencies in the evidence." ***Commonwealth v. Cruz-Centeno***, 668 A.2d 536, 541 (Pa. Super. 1995). ***See also In the Interest of D.Y.***, 34 A.3d at 181 ("It is well settled that the trier of fact, while passing on the credibility of the witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence."). Given the foregoing, we conclude that the juvenile court did not abuse its discretion in finding the adjudication of delinquency for burglary did not shock its sense of justice and, as such, was not against the weight of the evidence. Accordingly, we affirm the juvenile court's adjudication and entry of dispositional order.

Order affirmed.

Judge Mundy Concurrs in the Result.