NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: Q.B.	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: Q.B.	No. 1332 EDA 2012

Appeal from the Dispositional Order October 28, 2011
In the Court of Common Pleas of Montgomery County
Juvenile Division at No.: 2008-203

BEFORE: BOWES, J., ALLEN, J., and PLATT, J.*

MEMORANDUM BY PLATT, J. Filed: January 8, 2013

Appellant, Q.B., appeals from the adjudication of delinquency arising from evidence of three counts of conspiracy to commit simple assault, one count of recklessly endangering another person, one count of disorderly conduct, and one count of summary harassment.[1] Appellant challenges the sufficiency and the weight of the evidence. We affirm.

The adjudication of delinquency at issue arose out of a group fight on March 19, 2011 which resulted in serious injuries to the victim, G.E. At the

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* Retired Senior Judge assigned to the Superior Court.

[1] Appellant improperly appealed from the adjudication of delinquency. In juvenile proceedings, the final order from which a direct appeal may be taken is the order of disposition, entered after the juvenile is adjudicated delinquent. ***See In re N.W.***, 6 A.3d 1020, 1021 n.1 (Pa. Super. 2010). We have amended the caption accordingly.

time of the incident in question, Appellant, then seventeen years of age, was a child as defined by the Juvenile Act, 42 Pa.C.S.A. §§ 6301-6365. ***See*** 42 Pa.C.S.A. § 6302.[2]

The fight occurred in the aftermath of an incident on the previous day, when the victim's younger brother allegedly struck the girlfriend of one of the young men who belonged to the opposing group. (***See*** Juvenile Court Opinion, 5/04/12, at 1-5).

The two sides, six on one, three on the other, met up after a message on Facebook proposed a "meeting" about the previous incident. The gathering was in a residential neighborhood. The victim testified that after talking for about three minutes, one young man said, "somebody is going to fight . . . so what's up; what are we going to do?" (N.T. Denial Adjudication, 9/26/11, at 16-17). The speaker then punched G.E.'s brother, who had allegedly hit the young girl. Neighbors who heard the commotion looked out and saw the fight. One called the police.

Another witness testified that all the young men participated in the fight, which broke up as the police were arriving. G.E. was the most seriously injured, suffering a concussion and a bone fracture of the eye socket which caused entrapment of the eye muscle in the fracture, resulting in lingering double vision despite surgery. (***See id.*** at 3).

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[2] Appellant's date of birth is October 4, 1993.

The court also heard evidence which tended to show that, although Appellant may have tried to stop the fight in its later stage, earlier he was an active participant. Following the adjudication of delinquency, the juvenile court placed Appellant on probation with five custodial accountability weekends.

Appellant filed a notice of appeal after his post-dispositional "Motion for Judgment of Acquittal/Motion in Arrest of Judgment" and "Post-Sentence Motion Challenging the Sufficiency of the Evidence" were deemed denied by operation of law. Appellant raises two questions for our review, challenging the sufficiency and the weight of the evidence, respectively. (***See*** Appellant's Brief, at 6).

Appellant maintains that he was "merely present" at the fight, and in fact, acted as a "peacemaker" to break it up. (***Id.*** at 11). He argues that "the trial court engaged in an untoward amount of speculation[.]" (***Id.*** at 12). He asserts the adjudication of delinquency should be reversed. (***See id.*** at 30). We disagree.

> In a juvenile proceeding, the hearing judge sits as the finder of fact. The weight to be assigned the testimony of the witnesses is within the exclusive province of the fact finder. In reviewing the sufficiency of the evidence, we must determine whether the evidence, and all reasonable inferences deducible therefrom, viewed in the light most favorable to the Commonwealth as verdict winner, are sufficient to establish all of the elements of the offenses beyond a reasonable doubt. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence.

In re L.A., 853 A.2d 388, 391 (Pa. Super. 2004) (citations omitted).

Preliminarily, we note that although Appellant challenges the sufficiency and weight of the evidence, he failed to ensure that the certified record included the transcript of the delinquency hearing, necessary to enable meaningful review of his claims. We could quash this appeal for Appellant's failure. ***See*** Pa.R.A.P. 2101; ***see also Commonwealth v. Preston*** 904 A.2d 1, 7 (Pa. Super. 2006), *appeal denied*, 916 A.2d 632 (Pa. 2007) ("Simply put, if a document is not in the certified record, the Superior Court may not consider it.") (citation omitted).

However, through the diligent efforts of Superior Court personnel and the generous cooperation of the juvenile court, we have independently obtained the relevant transcript. Therefore, we will proceed to review Appellant's claims.

Similarly, although the docket reflects that a Rule 1925(b) concise statement of errors was filed on April 2, 2012, the statement is not contained in the certified record. ***See*** Pennsylvania Rule of Appellant Procedure 1925. However, the juvenile court acknowledges that Appellant filed a concise statement, and Appellant has included a copy of the concise statement of errors in his brief, as did the Commonwealth. They are substantially similar. Accordingly, we will review the concise statement as contained in Appellant's brief.

On review, we agree with the Commonwealth that Appellant's concise statement of errors is too vague to enable meaningful appellate review of his sufficiency claim. (***See*** Commonwealth's Brief, at 6).

Appellant's first assertion of error, in its entirety, states:

> The evidence was insufficient as a matter of law to support an adjudication of delinquency as to the charges of three counts of Conspiracy to Commit Simple Assault, one count of Recklessly Endangering Another Person, one count of Disorderly Conduct, and one count of Summary Harassment.

(Appellant's Brief, at Exhibit A; ***see also*** Commonwealth's Brief, at 6).

"A concise statement which is too vague to allow the court to identify the issues raised on appeal is the functional equivalent of no concise statement at all." ***Commonwealth v. Hernandez***, 39 A.3d 406, 411 (Pa. Super. 2012) (quoting ***Commonwealth v. Hansley***, 24 A.3d 410, 415 (Pa. Super. 2011), *appeal denied,* 32 A.3d 1275 (Pa. 2011) (internal punctuation omitted)). Here, Appellant's statement is mere boilerplate, reciting the counts, but failing to specify how the evidence was insufficient for any of them. The claim is waived.

Moreover, it would not merit relief. Appellant's argument on appeal fails to prove that the evidence against him was insufficient. (***See*** Appellant's Brief, at 13-26). Rather than identify any specific basis for insufficiency, he presents a lengthy self-serving rehash of the evidence, which repeatedly faults the juvenile court for reliance on "mere speculation." (***Id.*** at 17; ***see also id.*** at 21, 25).

Notably, much of Appellant's own recitation is unreliable, and mischaracterizes the evidence. For example, Appellant summarizes a portion of the testimony of eyewitness Christopher Fantozzi, as follows: "When he [Fantozzi] reached the melee, he made eye contact with the offenders, fussed at them and the fighting stopped." (Appellant's Brief, at 14, citing "N.T. 9-26-11 P. 10, L. 1-6").

What the transcript actually says is:

> "So it was all of a sudden the three of us [Fantozzi, a neighbor, and another bystander], and they looked at us and fled.
>
> And they fled down, in my memory was [sic], Wyoming Avenue, on foot.
>
> At that point I did hear police sirens heading in our direction.

(N.T. Denial Adjudication, 9/26/11, at 9 - 10).

While the point of Appellant's summary of Mr. Fantozzi's testimony remains obscure, it is readily apparent from a direct comparison that Appellant's version omits a crucial detail (sound of sirens signaling arrival of police), gets facts backward ("he made eye contact" instead of "they looked at us"), and invents an unsupported narrative ("[he] fussed at them and the fighting stopped"). (***Id.***; ***see also*** Appellant's Brief, at 14). Appellant's

free-wheeling and self-serving recast of the evidence is unsupported by the record, and fails to prove insufficiency.

Even more importantly, Appellant misapprehends our standard of review. To review an insufficiency claim, we view the evidence, and all reasonable inferences, in the light most favorable to the Commonwealth as "verdict" winner, which may sustain its burden of proof wholly by circumstantial evidence. ***See In re L.A.***, ***supra***. The weight to be assigned to the testimony of witnesses is the province of the juvenile court, sitting as fact finder. ***See id.*** Appellant's citation of purported contradictions in the testimony does not prove insufficiency.

Rather, we conclude that viewing the evidence in the light most favorable to the Commonwealth, together with all reasonable inferences, the juvenile court's adjudication is amply supported by the record. We will not re-weigh the evidence. Even if it were not waived, Appellant's insufficiency claim would not merit relief.

Appellant's second question challenges the weight of the evidence. (***See*** Appellant's Brief, at 27-29). Appellant claims that the trial court's adjudication "was a manifest abuse of discretion." (***Id.*** at 27). We disagree. The juvenile court and the Commonwealth maintain that Appellant's claim is waived. (***See*** Juvenile Court Opinion, 5/04/12, at 9; Commonwealth's Brief, at 7). We agree with the juvenile court and the Commonwealth.

As already noted, the weight to be assigned the testimony of the witnesses is within the exclusive province of the juvenile court hearing judge, sitting as the fact finder. ***See In re L.A.***, ***supra***.

We use the following standard of review in addressing a weight of the evidence claim:

> Our scope of review for such a claim is very narrow. The determination of whether to grant a new trial because the verdict is against the weight of the evidence rests within the discretion of the trial court, and we will not disturb that decision absent an abuse of discretion. Where issues of credibility and weight of the evidence are concerned, it is not the function of the appellate court to substitute its judgment based on a cold record for that of the trial court. The weight to be accorded conflicting evidence is exclusively for the fact finder, whose findings will not be disturbed on appeal if they are supported by the record. A claim that the evidence presented at trial was contradictory and unable to support the verdict requires the grant of a new trial only when the verdict is so contrary to the evidence as to shock one's sense of justice.

Commonwealth v. Knox, 50 A.3d 732, 737-38 (Pa. Super. 2012) (citation omitted).

Here, preliminarily, we must determine whether Appellant has waived his weight claim by failing to specify in his concise statement of errors the basis of the claim. ***See Hernandez***, ***supra***.

Appellant's second assertion of error, in its entirety, states:

> The weight of the evidence did not support a finding that the credible and competent evidence presented at trial [sic] could support a conviction [sic] for the charges of Simple Assault, Recklessly Endangering Another Person, Disorderly Conduct, and Summary Harassment.

(Appellant's Brief, at Exhibit A; ***see also*** Commonwealth's Brief, at 7).

Appellant disputes the juvenile court's finding of waiver, asserting that the reasons for his weight claim were contained in his "post-verdict and post-sentence motion[s]."[3] (Appellant's Brief, at 27). He also argues that his concise statement of errors was necessarily vague because he could not know the reasons for the court's adjudication, since it did not respond to his motions, which were deemed denied by operation of law. (***See id.*** at 28). Even leaving aside the undeveloped and unsupported claim that reasons given outside of the four corners of a Rule 1925(b) concise statement can cure a defective 1925(b) statement, both arguments fail.

First, neither of Appellant's two post-disposition motions addresses the weight of the evidence. (***See*** Appellant's Post Sentence Motion Challenging the **Sufficiency** of the Evidence, 11/04/11 (emphasis added); ***see also*** Motion for Judgment of Acquittal/Motion in Arrest of Judgment, 11/04/11 at unnumbered 2, 3 (arguing repeatedly and exclusively that there was "no evidence" to support the adjudication)).

Secondly, Appellant's professed inability to determine the juvenile court's reasoning for the adjudication ignores the court's lengthy commentary on the record, after closing arguments, and immediately preceding adjudication, about the evidence. (***See*** N.T. Denial Adjudication, 9/26/11, at 77-90). Appellant's weight claim is waived.

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[3] We note that this argument implicitly concedes that the statement itself was insufficient to identify the issues asserted.

Moreover, it would not merit relief. The crux of Appellant's argument at the hearing and on appeal is that he was merely present at the confrontation, and only became involved as a peacemaker who tried to break up the fight. (***See*** Appellant's Brief, at 11). There is no dispute that Appellant tried to break up the fight in its latter stages. The question is his participation before that. In light of the claim of purportedly inconsistent testimony, Appellant's challenge to the weight of the evidence is an issue of credibility. The assessment of credibility was the province of the juvenile court as fact finder. The court weighed testimony from an independent eyewitness that all nine youths were involved in the fray, and found it credible. (***See*** Juvenile Ct. Op., 5/04/12, at 4). It concluded that Appellant, rather than being merely present, "came for a fight." (N.T. Denial Adjudication, 9/26/11, at 89). The court expressly incorporated by reference its assessment at the hearing into its Rule 1925(a) opinion. (***See*** Juvenile Ct. Op., 5/04/12, at 9). The court also concluded that the Facebook message was circumstantial evidence of Appellant's intent to fight, along with his companions. (***See id.*** at 7).

"A claim that the evidence presented at trial was contradictory and unable to support the verdict requires the grant of a new trial only when the verdict is so contrary to the evidence as to shock one's sense of justice." ***Knox***, ***supra*** at 738. It was the province of the juvenile court as fact finder

to weigh the evidence, resolve conflicts in the testimony, and assess the credibility of the witnesses. (***See id.***). We will not re-weigh the evidence.

On review, we conclude that the court's adjudication is supported by the evidence, and does not shock our sense of justice. Even if it were not waived, Appellant's weight claim would not merit relief.

Dispositional order affirmed.