J. S63009/13

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
KEVYN TYLER RIDEOUT,	:	No. 194 MDA 2013
Appellant	:	

Appeal from the Judgment of Sentence, January 3, 2013,
in the Court of Common Pleas of Franklin County
Criminal Division at No. CP-28-CR-0001932-2011

BEFORE: FORD ELLIOTT, P.J.E., SHOGAN AND PLATT,* JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED DECEMBER 24, 2013**

Kevyn Tyler Rideout ("Rideout") appeals from the judgment of sentence entered on January 3, 2013, following a jury trial wherein he was convicted, ***in absentia***, of one count of burglary, two counts of conspiracy to commit burglary, one count of theft by unlawful taking, two counts of theft of a motor vehicle, and one count of criminal attempt to commit theft.[1] We affirm.

The facts and procedural history of this case have been aptly summarized by the trial court as follows:

> Rideout's convictions concern a series of thefts that took place in 2011. On June 5-6, 2011, Rideout and his girlfriend's minor son, P.J., took various

* Retired Senior Judge assigned to the Superior Court.

[1] Rideout was found not guilty of one count of receiving stolen property.

items from residents of a Shippensburg, Franklin County neighborhood. In the middle of the night, one resident saw two strangers in the process of appropriating his neighbor's grill toward a blue Dodge Durango, so he called police. Responding State Police troopers were unable to capture either person, but they impounded the vehicle, and discovered that it was registered to Keisha Tasker, Rideout's girlfriend. Tasker testified that Rideout had called her, told her that he was watching police impound her SUV, and that he and P.J. were "robbing" or burglarizing homes in Shippensburg.

State Police obtained Tasker's consent to search the impounded Durango. Inside the vehicle, police found two bicycles, two laptop computers, and a wireless modem--all taken from residents of the Shippensburg neighborhood. The grill was also inside. Responding troopers had placed it there, not knowing its rightful owner. Additionally, the vehicle also contained a Garmin nuvi GPS unit, a car stereo, and a Sirius satellite radio. Police later determined that those items belonged to residents of Chambersburg and Fayetteville. Finally, inside Tasker's residence, police found a chainsaw that did not belong to her or Rideout.

Police developed Rideout as a suspect and arrested him. Rideout waived his ***Miranda*** rights and agreed to a stationhouse interview. He admitted to taking items--but only the things from the Shippensburg neighborhood (the bicycles, laptops, wireless modem, and grill). Nevertheless, police charged him with burglary, theft, theft from a motor vehicle, conspiracy, and receiving stolen property for taking and keeping all of the items found in the Durango and the chainsaw.

Rideout failed to appear for jury selection on December 10, 2012, and he failed to appear two days later for trial. Before the jury was sworn, the Court denied a defense request to continue, because Rideout knew of the trial date. After the Commonwealth rested its case, Rideout's counsel

> moved to dismiss on the grounds that no one identified Rideout as the defendant. The Court denied the motion. At the close of trial, the jury convicted Rideout of most of the charged offenses.
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> Rideout remained at large, so the Court sentenced him ***in absentia*** on January 3, 2013. The Court handed down a sentence of three to seven years of incarceration on Count 1 (burglary) with all other sentences to run concurrently, a standard-range sentence. In support, the Court took into account Rideout's failure to appear for jury selection or trial, and the fact that he involved a juvenile in the commission of the Shippensburg burglary and thefts. The Court also noted that Rideout would forfeit his appellate rights if he failed to appear within 30 days.
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> Authorities took Rideout into custody on January 17, 2013. The time to file post-sentence motions had expired, ***Commonwealth v. Deemer***, 705 A.2d 827 (Pa. 1997), but the time to appeal had not. Rideout did so on January 31, 2013. The Court ordered Rideout to file a concise statement of errors complained of on appeal, Pa.R.A.P. 1925(b), and he has complied.

Trial court opinion, 4/11/13 at 1-3 (citations to record and footnote omitted).

The sole issue presented is whether the Commonwealth presented sufficient evidence to prove Rideout's identity. We begin our analysis with our standard of review:

> As a general matter, our standard of review of sufficiency claims requires that we evaluate the record in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence. Evidence will be deemed sufficient to support the verdict when it establishes each material

> element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt. Nevertheless, the Commonwealth need not establish guilt to a mathematical certainty. Any doubt about the defendant's guilt is to be resolved by the fact finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances.
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> The Commonwealth may sustain its burden by means of wholly circumstantial evidence. Accordingly, [t]he fact that the evidence establishing a defendant's participation in a crime is circumstantial does not preclude a conviction where the evidence coupled with the reasonable inferences drawn therefrom overcomes the presumption of innocence. Significantly, we may not substitute our judgment for that of the fact finder; thus, so long as the evidence adduced, accepted in the light most favorable to the Commonwealth, demonstrates the respective elements of a defendant's crimes beyond a reasonable doubt, the appellant's convictions will be upheld.

Commonwealth v. Harvard, 64 A.3d 690, 699 (Pa.Super. 2013), quoting ***Commonwealth v. Norley***, 55 A.3d 526, 531 (Pa.Super. 2012) (citations omitted).

Rideout claims that the only identification offered by the Commonwealth was a name and the description of "light skinned black male." (Rideout's brief at 9.) Rideout avers that "the wrong man with the same name could have been arrested and charged and now be on trial." (***Id.*** at 12.) We find this argument to be disingenuous and note that it is

presented without the support of any case law.[2] Obviously, when a defendant appears at trial, an in-court identification occurs; when a defendant voluntarily fails to appear at trial, identification is established circumstantially.[3]

Viewing the evidence in the light most favorable to the Commonwealth, Rideout was clearly identified as the perpetrator of the crimes charged through circumstantial evidence. ***See Harvard***, ***supra***. Most telling was the testimony of Trooper Decker. Trooper Decker explained that he filed the charges against Rideout and had obtained a warrant for his arrest. Trooper Decker eventually located Rideout and served the warrant. The trooper explained that he brought Rideout to the station and interviewed him. (Notes of testimony, 12/12/12 at 96.) During the interview, Rideout confessed to committing certain crimes.

Additionally, Rideout's cohort, P.J., testified that he knew Rideout as he was dating his mother. (***Id.*** at 45.) P.J. testified that on the night in question, he and Rideout drove to the development where the thefts occurred. (***Id.*** at 46-47.) P.J. admitted to committing the crimes in

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[2] We could find this claim is waived as Rideout has failed to cite to any authority supporting his position; rather, his argument consists of self-serving facts and conclusions of law. ***See Commonwealth v. Rompilla***, 603 Pa. 332, 337, 983 A.2d 1207, 1210 (2009); ***Commonwealth v. Brougher***, 978 A.2d 373 (Pa.Super. 2009) (claim is waived if there is no citation to authority).

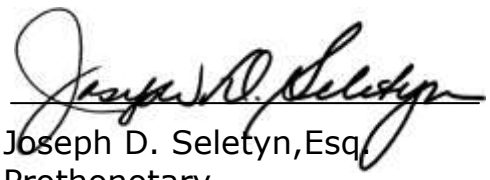
[3] We note that Rideout does not lodge an objection to the propriety of the trial ***in absentia***.

question with Rideout. (***Id.*** at 47-50.) Tasker also testified at trial and linked Rideout to the vehicle used in the burglary. (***Id.*** at 37-38.) Tasker explained that Rideout called her and told her he had been out stealing things with P.J. and that the police had impounded her vehicle. (***Id.*** at 39-41.)

We find the evidence is clearly established that Rideout, who has shown a blatant disregard for the criminal justice system, committed the aforementioned crimes.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn,Esq.
Prothonotary

Date: 12/24/2013