NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. CHANTE NICHOLE DAYS, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 3574 EDA 2013

Appeal from the Judgment of Sentence entered September 26, 2013, in the Court of Common Pleas of Montgomery County, Criminal Division, at No(s): CP-46-CR-0005081-2011

BEFORE: GANTMAN, P.J., ALLEN, and FITZGERALD*, JJ.

MEMORANDUM BY ALLEN, J. : **FILED JULY 08, 2014**

Chante Nichole Days ("Appellant") appeals from the judgment of sentence entered after a jury found her guilty of three counts of burglary and three counts of access device fraud.[1]

Appellant's convictions arose from the following events: On March 23, 2011, the first victim, Edwige Dagana returned home from work and discovered that her home had been ransacked and that thousands of dollars' worth of jewelry and other items, including a Chase Bank credit card, had been stolen. Trial Court Opinion, 3/19/14, at 4; N.T., 4/30/13, at 128, 134, 143.

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[1] 18 Pa.C.S.A. §§ 3502(a) and 4106(a)(1)(ii).

*Former Justice specially assigned to the Superior Court.

On April 5, 2011, the second victims, Susan Grande and her husband Jose Grande, left their residence in the morning to go to work, leaving their son, Jacob Grande, in the residence. Sometime in the morning, Jacob Grande, who was in his bedroom, heard someone walking around the house and ascending the steps. Trial Court Opinion, 3/19/14, at 5; N.T., 4/30/13, at 41-42, 71-74. Believing the person to be his father, Jacob Grande called out to him several times and then, receiving no response, left his room to investigate and saw that drawers had been opened in his brother's bedroom. *Id*. Jacob Grande looked out the window and saw a silver Chevrolet HHR with a Macintosh Apple logo decal on the bottom of the left side of the rear window pulling out of the driveway. *Id.* The Grandes reported thousands of dollars worth of jewelry and other items stolen, including a Sears Master Card and a Visa gift card. Later that same day, a purchase was attempted at a local BP station using the stolen Visa card. Trial Court Opinion, 3/19/14, at 5-7. Video surveillance footage at the BP station taken that day revealed a Chevrolet HHR at the BP station around the time someone attempted to use the stolen Visa card, and which Jacob Grande identified as identical to the vehicle he had observed in his driveway. *Id*. One minute after the failed attempt to use the Visa card, a debit card in Appellant's name was utilized to complete a transaction. *Id*.

On April 20, 2011, the third victim, Janet O'Brien, left for work, and later in the afternoon received a telephone call from her credit card company to inquire whether she had made a large purchase at a Target store. Ms.

O’Brien informed the credit card company that she had not made the purchase. Trial Court Opinion, 3/19/14, at 5-6, N.T., 4/30/13, at 106-123. Ms. O’Brien then received a call from her housekeeper, who reported that she had arrived to find the residence in disarray. Id. Upon Ms. O’Brien's return to her home, she found that the back door to her basement had been forced open and that thousands of dollars worth of jewelry and other items had been stolen, including a Master Card. *Id*.

Following an investigation, the Montgomery County police viewed surveillance footage from various locations at which the stolen credit cards were used, and identified Appellant as a suspect. N.T., 5/1/13, at 16-42. Appellant was arrested, and gave a statement to the police admitting that she was the individual who had used the stolen credit cards. Trial Court Opinion, 3/19/14, at 8. Appellant was charged with burglary, criminal trespass, theft by unlawful taking, access device fraud, identity theft, theft by deception, and receiving stolen property with regard to the aforementioned victims, and in addition, charged with burglary stemming from April 12, 2011, when Ellen Biel reported to the police that a burglary had taken place at her residence and several items including an iPod were stolen. N.T., 04/30/13, at 92-105. A jury trial commenced on April 30, 2013, and on May 2, 2012, Appellant was found guilty of burglary of the Dagana, Grande and O’Brien families. Appellant was found not guilty of the burglary of Ellen Biel.

Following a hearing on September 26, 2013, the trial court sentenced Appellant to ten to twenty months of imprisonment for each burglary conviction and a concurrent two to four years of imprisonment for each access device fraud conviction, for an aggregate sentence of ten to twenty years of imprisonment. Appellant filed a post-sentence motion on October 7, 2013, which the trial court denied. This appeal followed. Both Appellant and the trial court have complied with Pa.R.A.P. 1925.

Appellant presents the following issues for our review:

> 1. ARE THE APPELLANT'S CONVICTIONS FOR THREE (3) COUNTS OF BURGLARY SUPPORTED BY SUFFICIENT EVIDENCE TO ESTABLISH ALL OF THE ELEMENTS OF EACH OFFENSE BEYOND A REASONABLE DOUBT?
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> 2. DID THE TRIAL COURT ABUSE ITS DISCRETION WHEN IT DENIED APPELLANT'S MOTION FOR A NEW TRIAL ON THE BASIS THAT THE GUILTY VERDICTS WERE AGAINST THE WEIGHT OF THE EVIDENCE?

Anders Brief at 5.

Preliminarily, we recognize that Appellant's counsel has filed a brief pursuant to ***Anders*** and its Pennsylvania counterpart, ***McClendon***. ***See Anders***, 386 U.S. 738; ***McClendon***, 434 A.2d at 1187. Where an ***Anders/McClendon*** brief has been presented, our standard of review requires counsel seeking permission to withdraw pursuant to ***Anders*** to: (1) petition the court for leave to withdraw stating that after making a conscientious examination of the record it has been determined that the appeal would be frivolous; (2) file a brief referring to anything that might

arguably support the appeal, but which does not resemble a "no merit" letter or amicus curiae brief; and (3) furnish a copy of the brief to the defendant and advise him of his right to retain new counsel or raise any additional points that he deems worthy of the court's attention. ***Commonwealth v. McBride***, 957 A.2d 752, 756 (Pa. Super. 2008). Counsel is required to submit to this Court "a copy of any letter used by counsel to advise the appellant of the rights associated with the ***Anders*** process." ***Commonwealth v. Woods***, 939 A.2d 896, 900 (Pa. Super. 2007). Pursuant to ***Commonwealth v. Santiago***, 978 A.2d 349, 361 (Pa. 2009), Appellant's counsel must state the reasons for concluding that the appeal is frivolous in the ***Anders*** brief. If these requirements are met, this Court may then review the record to determine whether the appeal is indeed frivolous.

By letter dated April 17, 2014, counsel for Appellant notified Appellant of his intent to file an ***Anders*** brief and petition to withdraw with this Court, and informed Appellant of her rights to retain new counsel and raise additional issues. On April 21, 2014, Appellant's counsel filed an appropriate petition seeking leave to withdraw. Finally, Appellant's counsel has submitted an ***Anders*** brief to this Court, with a copy provided to Appellant. We are satisfied that counsel has adhered to the technical requirements set forth in ***Anders*** and ***McClendon***, and proceed to address the substantive issues raised in the ***Anders*** brief.

In her first issue, Appellant argues that the evidence was insufficient to support her burglary convictions. When reviewing a challenge to the sufficiency of the evidence, we are bound by the following:

> We must determine whether the evidence admitted at trial, and all reasonable inferences drawn therefrom, when viewed in a light most favorable to the Commonwealth as verdict winner, support the conviction beyond a reasonable doubt. Where there is sufficient evidence to enable the trier of fact to find every element of the crime has been established beyond a reasonable doubt, the sufficiency of the evidence claim must fail.
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> The evidence established at trial need not preclude every possibility of innocence and the fact-finder is free to believe all, part, or none of the evidence presented. It is not within the province of this Court to re-weigh the evidence and substitute our judgment for that of the fact-finder. The Commonwealth's burden may be met by wholly circumstantial evidence and 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.

Commonwealth v. Tarrach, 42 A.3d 342, 345 (Pa. Super. 2012).

Appellant was found to have committed burglary which is defined in 18 Pa.C.S.A. § 3502(a) as follows:

> (a) Offense defined.--A person commits the offense of burglary if, with the intent to commit a crime therein, the person:
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> (1) enters a building or occupied structure, or separately secured or occupied portion thereof that is adapted for overnight accommodations in which at the time of the offense any person is present.

Here, the trial court determined that the evidence was sufficient to support Appellant's convictions, and explained:

> Each of the homeowners testified that they left their residences in the morning and returned in the afternoon or evening to find their homes ransacked, with jewelry and credit cards stolen. Each of the homeowners testified that they had given no one – and specifically not [Appellant] – permission to enter their homes. In each case, credit cards were stolen from the residences, and were utilized on the same day the burglaries were committed. By her own admission, it was [Appellant] herself who utilized these cards. Further, [Appellant] admitted that, on the same day as the Grande burglary, she had used her silver Chevy HHR on her trip to the BP station to attempt to use the [Visa] gift card stolen during the Grande burglary. ... Jacob Grande identified the video still of [Appellant's] car at the BP station as identical to the car he had seen pulling out of his driveway at the time of the burglary. Again, Jacob Grande testified that this vehicle had a distinctive Apple decal on the bottom left rear window. Further, [Appellant's co-worker] Ms. Yorgey, testi[fied] that [Appellant's] work schedule would not have prevented her from committing the burglaries, and [Roger] Boyell, [an electrical engineer and expert in electronic communications and cell phone technology] established that a cell phone utilized by [Appellant] was physically present near the scene of each of the burglaries at the approximate times the burglaries were committed. Additionally, [Appellant] by her own admission, used credit cards stolen during each of the burglaries on the very days those burglaries were committed.

Trial Court Opinion, 3/19/14, at 9-10.

Upon review, we disagree with Appellant's contention that the Commonwealth failed to demonstrate every element of the crimes and that the evidence was insufficient to support her convictions. Based on the testimony of the police officers, who through surveillance footage, identified Appellant at the locations where the stolen credit cards were used, together with Appellant's admission that she used the stolen credit cards, and Jacob

Grande's observation of a vehicle in his driveway at the time of the burglary that matched the description of Appellant's vehicle, we agree with the trial court that the evidence was sufficient to support Appellant's convictions.

Appellant next argues that the verdict was against the weight of the evidence. Our scrutiny of whether a verdict is against the weight of the evidence is governed by the principles set forth in ***Commonwealth v. Champney***, 832 A.2d 403, 408 (Pa. 2003) (citations omitted):

> 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.
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> 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.

In her weight of the evidence claim, Appellant challenges the credibility of Jacob Grande's testimony because Appellant is black, but shortly after the burglary of the Grande residence, Jacob Grande informed the police that he believed the occupant of the Chevrolet HHR was Caucasian, and then later testified at trial that he was unable to tell the race of the occupant. However, it is well-settled that "[q]uestions concerning inconsistent testimony ... go to the credibility of the witnesses. [An appellate court] cannot substitute its judgment for that of the [fact finder]

on issues of credibility." ***Commonwealth v. DeJesus***, 860 A.2d 102, 107 (Pa. 2004). As the trial court stated:

> [I]t was for the jury to evaluate the evidence to determine whether it was [Appellant's] silver Chevy HHR that Jacob Grande saw in his driveway. [It] was for the jury to resolve any apparent contradictions stemming from Jacob's testimony. [It] was for the jury to evaluate the testimony of Ms. Yorgey and Mr. Boyell and assign to it what weight they deemed appropriate. [It] was for the jury to evaluate whether to accept [Appellant's] self-serving statement that, while she had used the stolen credit cards, she had not burglarized the victim's residence to obtain them.
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> In no way was the jury's resolution of this case shocking to [the trial court]. The Commonwealth presented compelling evidence that [Appellant] committed the burglaries, and the jurors accepted it. We note that this was no "runaway" jury that simply accepted what the Commonwealth said without question. This is shown by the fact that the jurors actually acquitted [Appellant] of a fourth burglary with which she had been charged.
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> In ***Commonwealth v. Cruz***, 919 A.2d 279 (Pa. Super. 2007), our Superior Court held ... that a verdict is against the weight of the evidence when the verdict is such that "the figure of Justice totters on her pedestal," or when "the jury's verdict, at the time of its rendition, causes the trial judge to lose his breath, temporarily, and causes him to almost fall from the bench." In the instant case, Justice did not totter on her pedestal, and the [trial court] remained firmly in place at the announcement of the verdict. The jurors were fully entitled to credit the evidence presented by the Commonwealth, and to resolve any apparent contradictions within that evidence as they saw fit.

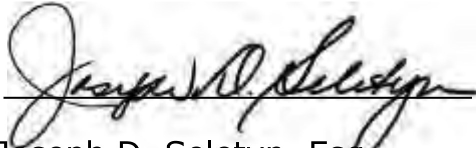
Trial Court Opinion, 3/19/14, at 15-16.

"Where, as here, the judge who presided at trial 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." ***Commonwealth v. Tharp***, 830 A.2d 519 (Pa. 2003) (citations and quotation marks omitted). Upon review, we find no such abuse of discretion. Our independent review of the record reveals no non-frivolous claims that Appellant could have raised, and we agree with counsel that this appeal is wholly frivolous. We therefore affirm the judgment of sentence and grant counsel's petition to withdraw.

Judgment of sentence affirmed. Petition to withdraw granted.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/8/2014