

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: J.A.D.-B., A MINOR	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
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Appellant	:	
	:	
	:	
	:	
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	:	No. 76 MDA 2022

Appeal from the Dispositional Order Entered July 15, 2021
In the Court of Common Pleas of Centre County
Juvenile Division at No(s): CP-14-JV-0000005-2021

BEFORE: PANELLA, P.J., KUNSELMAN, J., and COLINS, J.*

MEMORANDUM BY PANELLA, P.J.: **FILED JULY 29, 2022**

J.A.D.-B., a minor, appeals from the dispositional order entered following his adjudication of delinquency for one count each of burglary, robbery, criminal trespass, theft by unlawful taking, receiving stolen property, possessing an instrument of crime, possessing a weapon, terroristic threats, simple assault, recklessly endangering another person and tampering with evidence, and five counts of criminal conspiracy.¹ J.A.D.-B. challenges the evidence supporting his adjudication of delinquency, as well as his dispositional placement in a secure facility. After careful review, we affirm.

* Retired Senior Judge assigned to the Superior Court.

¹ **See** 18 Pa.C.S.A. §§ 3502(a)(1)(i), 3701(a)(1)(iv), 3503(a)(1)(i), 3921(a), 3925(a), 907(a) and (b), 2706(a)(1), 2701(a)(3), 2705, 4910(1), 903.

During the late night to early evening hours of May 24-25, 2020, J.A.D.-B. and another juvenile, D.B., broke into an apartment, threatened the residents with a BB gun, and stole a limited-edition PlayStation controller and several video games. The Commonwealth filed a delinquency petition against J.A.D.-B. charging him with the above-mentioned delinquent acts.

At the conclusion of the adjudicatory hearing, the juvenile court concluded J.A.D.-B. committed the delinquent acts and was in need of treatment, supervision, or rehabilitation. The juvenile court later conducted a dispositional hearing, and on July 15, 2021, the court entered an order placing him at Adelphoi's secure residential facilities. The juvenile court also imposed costs and restitution and ordered J.A.D.-B. to complete 32 hours of community service.

J.A.D.-B. filed a timely post-dispositional motion seeking an arrest of judgment and modification of his placement. The juvenile court denied J.A.D.-

B.'s post-dispositional motion on November 5, 2021. The instant appeal followed.^{2, 3}

In his first claim, J.A.D.-B. challenges the sufficiency of the evidence. In particular, J.A.D.-B. contends the Commonwealth failed to establish his identity as a participant in the home invasion. **See** Appellant's Brief at 11. He acknowledges that D.B. admitted to his own participation in the burglary and identified J.A.D.-B. as the second perpetrator. **See id.** at 12. However, J.A.D.-B. asserts that D.B. provided several inconsistent statements. **See id.** at 12-13. J.A.D.-B. also points to the victims' inability to identify him and the lack of physical evidence in the home. **See id.** at 13-14.

Further, J.A.D.-B. challenges the use of certain cell phone data during his adjudicatory hearing. J.A.D.-B. argues that his communications with D.B.

² The juvenile court took no action on J.A.D.-B.'s post-dispositional motion for several months. **See** Pa.R.J.C.P. 620(D)(1) (requiring a juvenile court to decide a post-dispositional motion "as soon as possible but within thirty days"). Once the thirty-day time period expires, the motion is deemed denied by operation of law, and Rule 620 requires the clerk of courts to enter an order on the court's behalf. **See** Pa.R.J.C.P. 620(D)(1), (3). However, the clerk of courts did not enter such order or otherwise note on the docket that the motion was denied by operation of law. J.A.D.-B. filed his notice of appeal within 30 days after the juvenile court denied his post-dispositional motion; therefore, we will consider the instant appeal as timely filed. **See Commonwealth v. B.H.**, 138 A.3d 15, 19 n.7 (Pa. Super. 2016).

³ During the pendency of this appeal, the juvenile court conducted a dispositional review hearing. On January 7, 2022, the court entered an order directing J.A.D.-B. to remain at Adelphoi's secure residential facilities, but to transfer to Adelphoi's intensive supervision group home after successfully completing three weekend visits with intensive supervision.

and other juveniles had little value as circumstantial evidence and “was dubious at best due to the significant credibility issues of D.B.” ***Id.*** at 14. J.A.D.-B. additionally challenges the use of data taken from his cell phone’s health app, which provided his step count from the night of burglary without additional location data. ***See id.*** at 14-15.⁴

“An adjudication of delinquency requires the juvenile court to find that the juvenile: (1) has committed a delinquent act and (2) is in need of treatment, supervision, or rehabilitation.” ***Interest of C.B.***, 241 A.3d 677, 681 (Pa. Super. 2020) (emphasis omitted); ***see also*** 42 Pa.C.S.A. § 6341(b) (explaining that the juvenile’s commission of a delinquent act must be established beyond a reasonable doubt, and the court may find the juvenile is in need of treatment, supervision, or rehabilitation by a preponderance of the evidence).⁵

When a juvenile is charged with an act that would constitute a crime if committed by an adult, the Commonwealth must establish the elements of the crime by proof beyond a reasonable doubt. When considering a challenge to the sufficiency of the evidence following an adjudication of delinquency, we must review the entire record and view the evidence in the light most favorable to the Commonwealth.

⁴ We note that J.A.D.-B. did not contest the admissibility of this evidence; rather, he purports to challenge its use as circumstantial evidence solely within the context of his sufficiency claim.

⁵ Though J.A.D.-B. does not challenge the second required finding, we note that the juvenile court explicitly found him to be in need of rehabilitation, supervision, and treatment. ***See*** N.T., Non-Jury Trial, 6/25/21, at 413.

In determining whether the Commonwealth presented sufficient evidence to meet its burden of proof, the test to be applied is whether, viewing the evidence in the light most favorable to the Commonwealth, and drawing all reasonable inferences therefrom, there is sufficient evidence to find every element of the crime charged. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by wholly circumstantial evidence.

The facts and circumstances established by the Commonwealth need not be absolutely incompatible with a defendant's innocence. Questions of doubt are for the hearing judge, unless the evidence is so weak that, as a matter of law, no probability of fact can be drawn from the combined circumstances established by the Commonwealth.

In re V.C., 66 A.3d 341, 348-49 (Pa. Super. 2013) (citation omitted).

J.A.D.-B. challenges only the evidence establishing his identity as one of the perpetrators.⁶ In its Opinion and Order, the juvenile court thoroughly addressed J.A.D.-B.'s sufficiency claim and concluded that it lacks merit. **See** Opinion and Order, 11/5/21, at 2-6; **see also generally** Appellant's Brief 11-16 (acknowledging the same evidence but arguing it does not support the court's inferences). The juvenile court expressly considered inconsistencies in D.B.'s testimony in conjunction with all other evidence introduced during the proceedings but declined to disregard D.B.'s identification of J.A.D.-B. as his co-conspirator. **See** Opinion and Order, 11/5/21, at 3-4. Additionally, the court considered a general description provided by the victim, data retrieved

⁶ In his appellate brief, J.A.D.-B. provides very little citation to and discussion of relevant authorities. **See** Pa.R.A.P. 2119(a) (providing an appellate argument shall include "such discussion and citation of authorities as are deemed pertinent.").

from J.A.D.-B.'s cell phone, and the discovery of a limited-edition PlayStation controller in J.A.D.-B.'s home. **See id.** at 4-5.

J.A.D.-B. dedicates a significant portion of his argument to asserting the evidence highlighted by the juvenile court was unreliable. He claims D.B.'s testimony was contradictory; the eyewitness description was vague; and the health app data was equally capable of supporting innocent explanations. However, these arguments address the weight given to such evidence, not the sufficiency.

The juvenile court, as the finder of fact in this delinquency proceeding, was free to make credibility determinations and to believe all, part, or none of the evidence. **See Interest of D.J.B.**, 230 A.3d 379, 387 (Pa. Super. 2020). The evidence, viewed in the light most favorable to the Commonwealth as the verdict-winner, was sufficient to establish J.A.D.-B.'s identity as one of the perpetrators. Therefore, his first claim lacks merit.

In his second claim, J.A.D.-B. challenges his disposition, arguing his placement in Adelphoi's secure facilities is not the least restrictive placement option. **See** Appellant's Brief at 16. J.A.D.-B. states that his juvenile assessment report categorized him as a low or moderate risk in most categories. **See id.** at 17. J.A.D.-B. argues his needs could be addressed by other methods, such as schooling and counseling. **See id.** at 17-18. According to J.A.D.-B., the juvenile court focused too heavily on his prior placement at

home and the fact that the burglary giving rise to this adjudication occurred while J.A.D.-B. was on probation supervision. **See id.** at 18-19.⁷

Juvenile courts are afforded broad discretion to craft an appropriate disposition, and we will not disturb the disposition absent a manifest abuse of discretion. **See Interest of C.B.**, 241 A.3d at 681. “[A]n abuse of discretion occurs when the court has overridden or misapplied the law, when its judgment is manifestly unreasonable, or when there is insufficient evidence of record to support the court’s findings.” **Interest of D.W.**, 220 A.3d 573, 576 (Pa. Super. 2019) (citation and internal quotation marks omitted).

Section 6352 of the Juvenile Act sets forth six dispositional options for juveniles who have been adjudicated delinquent, including placement on supervision and commitment to a facility for delinquent children. **See** 42 Pa.C.S.A. § 6352(a). In choosing among these alternatives, a juvenile court must consider which dispositional alternative is

consistent with the protection of the public interest and best suited to the child’s treatment, supervision, rehabilitation and welfare, which disposition shall, as appropriate to the individual circumstances of the child’s case, provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable the child to become a responsible and productive member of the community[.]

⁷J.A.D.-B.’s discussion of this issue includes no citations to relevant case law. **See** Pa.R.A.P. 2119(a). Though we could deem J.A.D.-B.’s claim waived on this basis, we will nevertheless address his disposition.

Id. Further, when a disposition involves an out-of-home placement, the juvenile court must explain on the record why such commitment is “the least restrictive placement that is consistent with the protection of the public and best suited to the child’s treatment, supervision, rehabilitation and welfare.” 42 Pa.C.S.A. § 6352(c).

During the disposition hearing, juvenile probation officer Nathan Shervinskie testified concerning his completion of the juvenile assessment report for J.A.D.-B. Shervinskie testified that J.A.D.-B. was on probation at the time he committed the burglary. **See** N.T., Disposition Hearing, 7/14/21, at 16. Shervinskie recognized a low score⁸ in family circumstances and a moderate score in education and employment, based on grades and absences from school. **See id.** at 17-18; **see also id.** at 18-19 (explaining the education score indicated to Shervinskie that J.A.D.-B. would need more structure and accountability). J.A.D.-B. received a high score in peer relations, which indicates he “does not have many positive friends as in prosocial or non-delinquent friends....” **Id.** at 19-20. Shervinskie also testified that J.A.D.-B. reported marijuana use. **See id.** at 20. Ultimately, Shervinskie recommended

⁸ Shervinskie explained that the juvenile assessment report provides background information for the juvenile and is used to aid in the determination of what level of supervision the juvenile will need. **See** N.T., Disposition Hearing, 7/14/21, at 13. For each background factor addressed, the juvenile may receive a score of low, moderate, high, and very high; these scores indicate the juvenile’s risk level for each factor. **See id.** at 14; **see also** Commonwealth’s Exhibit 1 (Juvenile Assessment Report).

placement at Adelphoi's secure facility, due to J.A.D.-B.'s prior delinquency, peer relations, and education needs. **See id.** at 21.

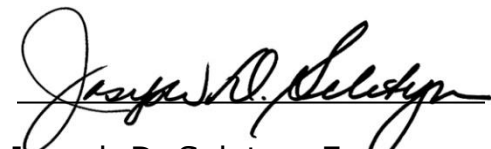
Further, Adelphoi's admissions liaison Ron Tanney testified that Adelphoi's secure facility works with juveniles to create an individual service plan. **See id.** at 45. Adelphoi works with Cambria County School District to provide educational programming and offers balanced and restorative justice classes, as well as aggression retraining, cognitive behavioral groups and counseling. **See id.** at 46, 48. Adelphoi can also help juveniles work on community service recommendations and restitution. **See id.** at 47-48. Tanney testified that Adelphoi has step-down programs available for juveniles who progress through their treatment goals. **See id.** at 50.

At the close of the hearing, the juvenile court emphasized that at the time J.A.D.-B. committed the instant delinquent acts, he was on supervision for another incident involving physical harm to another individual. **See id.** at 65; **see also id.** (noting a concern for community safety). Because J.A.D.-B. committed these acts while on juvenile probation, the court opined that he was not receiving the necessary supervision and guidance at home. **See id.** at 66. The juvenile court stated that Adelphoi's secure facility would be the least restrictive placement option and would provide J.A.D.-B. an opportunity to learn tools to succeed in the future. **See id.** at 66-67. Further, the court explained that J.A.D.-B. would be able to step down to less restrictive placements within the Adelphoi's program if he was successful. **See id.** at 67.

The juvenile court delineated the reasons for its disposition on the record in accordance with section 6352. The court also heard and considered the testimony of Shervinskie and Tanney concerning J.A.D.-B.'s placement needs and the programs available at Adelphoi. Moreover, the juvenile court fashioned a disposition to address J.A.D.-B.'s rehabilitative needs and his potential for treatment, while balancing the protection of the community and the need to impose accountability for the delinquent acts. **See** 42 Pa.C.S.A. § 6352(a); **see also Interest of D.W.**, 220 A.3d at 580-81 (juvenile court did not abuse its discretion by imposing an out-of-home placement where the record was clear that juvenile's treatment and supervision needs could not be satisfied at home). The record supports the juvenile court's findings, and we discern no abuse of the court's discretion in directing out-of-home placement in a secure facility with the possibility for J.A.D.-B. to progress through less restrictive options. Therefore, this claim merits no relief.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/29/2022