NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF A.B., A MINOR APPEAL OF: A.B., A MINOR Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2144 EDA 2012

Appeal from the Order of July 27, 2012,
in the Court of Common Pleas of Philadelphia County,
Criminal Division at No. CP-51-JV-0002076-2012

BEFORE: ALLEN, OTT and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.: **FILED DECEMBER 13, 2013**

This is an appeal from the dispositional order entered following Appellant's adjudication of delinquency on charges of theft, conspiracy to commit theft, and unauthorized use of an automobile. The charges stemmed from an incident where Appellant and another individual were driving in a car that was reported stolen. Appellant challenges the sufficiency of the evidence to support the adjudication of delinquency for theft, conspiracy to commit theft, and unauthorized use of an automobile. Appellant also claims his adjudication of delinquency for unauthorized use of an automobile violated his rights against double jeopardy. We affirm.

Our standard of review is as follows:

> 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

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*Retired Senior Judge assigned to the Superior Court.

> delinquency, we must review the entire record and view the evidence in the light most favorable to the Commonwealth.
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> 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.
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> 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 M.J.H., 988 A.2d 694, 696-97 (Pa. Super. 2010) (citation omitted).

The relevant portions of the criminal statutes at issue are as follows:

> § 3921. Theft by unlawful taking or disposition.
>
> (a) Movable property. --A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive him thereof. . . .

18 Pa.C.S.A. § 3921(a).

> § 903. Criminal conspiracy.
>
> (a) Definition of conspiracy. --A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he:
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> (1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or

> (2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

18 Pa.C.S.A. § 903(a)(1)-(2).

> § 3928. Unauthorized use of automobiles and other vehicles.
>
> (a) Offense defined. --A person is guilty of a misdemeanor of the second degree if he operates the automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle of another without consent of the owner.

18 Pa.C.S.A. § 3928(a).

In addition, with regard to conspiracy, this Court has stated:

> To convict a defendant of conspiracy, the trier of fact must find that: (1) the defendant intended to commit or aid in the commission of the criminal act; (2) the defendant entered into an agreement with another (a "co-conspirator") to engage in the crime; and (3) the defendant or one or more of the other co-conspirators committed an overt act in furtherance of the agreed upon crime. ***[Commonwealth v.] Spotz***, 552 Pa. 499, 716 A.2d 580, 592 (Pa. 1998); see also 18 Pa. C.S. § 903. The essence of a criminal conspiracy, which is what distinguishes this crime from accomplice liability, is the agreement made between the co-conspirators. ***See Spotz***, 716 A.2d at 592; ***[Commonwealth v.] Lambert***, 795 A.2d [1010, 1016 (Pa. Super 2002)].
>
> As with accomplice liability, "mere association with the perpetrators, mere presence at the scene, or mere knowledge of the crime is insufficient" to establish that a defendant was part of a conspiratorial agreement to commit the crime. ***Lambert***, 795 A.2d at 1016. There needs to be some additional proof that the defendant intended to commit the crime along with his co-conspirator. ***See id.***; ***see also Commonwealth v. Wayne***, 553 Pa. 614, 720 A.2d 456, 464 (Pa. 1998). Direct evidence of the defendant's criminal intent or the conspiratorial agreement, however, is rarely available. ***See Spotz***, 716 A.2d at 592. Consequently, the defendant's intent as well as the agreement is

> almost always proven through circumstantial evidence, such as by "the relations, conduct or circumstances of the parties or overt acts on the part of the co-conspirators." ***Id.*** Once the trier of fact finds that there was an agreement and the defendant intentionally entered into the agreement, that defendant may be liable for the overt acts committed in furtherance of the conspiracy regardless of which co-conspirator committed the act.

Commonwealth v. Murphy, 844 A.2d 1228, 1238 (Pa. Super. 2004).

We further note, "a conviction for unauthorized use of a vehicle must be predicated on proof that the defendant operated the vehicle without the owner's consent and that the defendant knew or had reason to know that he lacked the owner's permission to operate the vehicle." ***Commonwealth v. Carson***, 592 A.2d 1318, 1321 (Pa. Super. 1991).

Appellant first argues there was insufficient evidence to prove that he committed theft by unlawful taking.

The vehicle owner testified as follows. He parked his vehicle in front of 2600 Lawrence Street in Philadelphia on May 9, 2012. The next day he discovered that his vehicle was missing and called the police to report it stolen.

Officer Jonathan Ramos testified as follows. On May 10, 2012 at 7:00 p.m., Officer Ramos observed a vehicle matching the description of a vehicle reported stolen on May 9, 2012, in the 400 block of Diamond Street in Philadelphia being operated by Appellant and a passenger. Officer Ramos stopped the vehicle. Appellant, age fourteen, was driving the vehicle and his passenger was fifteen. The passenger stated that he purchased the vehicle

for $700. Neither Appellant nor the passenger offered Officer Ramos paperwork for the vehicle. Appellant was operating the vehicle with a key that had been "jammed into the ignition" and did not fit or belong to the vehicle. N.T., 06/14/12, at 21.

Appellant's argument is not based on evidence of record. However, viewing the evidence in the light most favorable to the Commonwealth, we find sufficient evidence that Appellant unlawfully took or exercised unlawful control over a vehicle belonging to the victim with intent to deprive him thereof when Appellant was operating a vehicle which had been stolen the night before, neither Appellant nor his passenger produced proof of ownership of the vehicle, and the key with which the vehicle was being driven did not belong to the vehicle. Moreover, neither Appellant nor his passenger were old enough to drive a vehicle in Pennsylvania.

Appellant further argues there was insufficient evidence to support his adjudication of conspiracy to commit theft by unlawful taking. Appellant argues the evidence did not prove that Appellant agreed with another to commit a theft of the vehicle or that he participated in the theft. Appellant asserts the evidence failed to establish that he had reason to know that a theft had occurred.

The evidence, viewed in the proper light, established that, hours after the vehicle was reported stolen, Appellant was operating it with keys that did not belong to the vehicle alongside a passenger who lied about his ownership of the vehicle. A reasonable inference can be drawn therefrom that: Appellant intended to commit theft by unlawful taking, Appellant

entered into an agreement with another individual to engage in the theft, and Appellant and the other individual committed overt acts in furtherance of the agreed upon theft. Thus, the evidence was sufficient to support Appellant's adjudication for conspiracy to commit theft by unlawful taking.

Appellant further argues there was insufficient evidence to support his adjudication of unauthorized use of an automobile. Appellant argues there was no evidence to establish that he was aware that his passenger was not the owner of the vehicle or that the owner's cousin, who had keys to the vehicle, had not given Appellant permission to drive the vehicle.

As discussed above with respect to Appellant's adjudication of delinquency for theft by unlawful taking, the evidence established that Appellant was operating a vehicle which had been recently stolen, neither Appellant nor his passenger produced proof of ownership of the vehicle, the key with which the vehicle was being driven did not belong to the vehicle, and neither Appellant nor his passenger were old enough to drive a vehicle in Pennsylvania. ***See Commonwealth v. Terry***, 847 A.2d 93, 95 (Pa. Super. 2004) (finding there was sufficient evidence that the defendant lacked consent to drive a vehicle to convict defendant of unauthorized use of an automobile where the defendant was driving a hot-wired vehicle without proof of ownership or insurance, and without a driver's license). Viewing the evidence in the light most favorable to the Commonwealth, a reasonable inference can be drawn that Appellant operated the vehicle without the owner's consent and that Appellant knew or had reason to know that he lacked the owner's permission to operate the vehicle. Thus, the evidence

was sufficient to support Appellant's adjudication for unauthorized use of an automobile.

Appellant's final claim is that his adjudication of delinquency for unauthorized use of an automobile violated his federal and state constitutional rights against double jeopardy. Appellant argues the court adjudicated him delinquent of unauthorized use of an automobile on July 27, 2012, after having issued a written order of July 14, 2012, finding Appellant "not guilty" of this charge.[1] Appellant's Brief, at 11.

Generally, double jeopardy protections protect individuals from successive punishments for the same criminal offense. ***Commonwealth v. Szebin***, 785 A.2d 103, 104 (Pa. Super. 2001).[2]

At the conclusion of the June 14, 2012, adjudicatory hearing, the lower court announced that it found Appellant committed the act of unauthorized use of an automobile in addition to other charges. However, the written order of June 14, 2012, did not indicate that Appellant committed the act of unauthorized use of an automobile; the order found Appellant committed the acts of theft, receiving stolen property, and conspiracy and found Appellant "not guilty" as to remaining charges. Order, 06/14/12. By order of July 27, 2012, the court amended its order to find Appellant committed the acts of

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[1] "[T]he question of whether a defendant's constitutional right against double jeopardy was infringed is a question of law. Hence, our scope of review is plenary and our standard of review is de novo." ***Commonwealth v. Kuykendall***, 2 A.3d 559, 563 (Pa. Super. 2010) (citations omitted).

[2] Federal and state double-jeopardy protections are coextensive. ***Commonwealth v. Bowers***, 25 A.3d 349, 355 n.5 (Pa. Super. 2011).

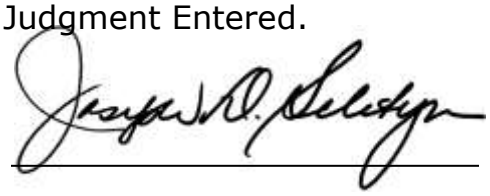
theft, conspiracy, and unauthorized use of an automobile. The court found Appellant did not commit the act of receiving stolen property.

"It is well-settled . . . that a court possesses the inherent power to correct clerical errors appearing either in the record or in its orders. Moreover, the power to correct errors extends to improperly recorded verdicts; thus, a court may correct a recorded verdict if the verdict does not reflect the obvious intention of the trier of fact." ***Commonwealth v. Williams***, 519 A.2d 971, 973 (Pa. Super. 1986) (citations omitted).

The court explained that the June 14, 2012, order was inconsistent with its finding on the record that Appellant committed the act of unauthorized use of an automobile. The court stated that the notes of testimony reflected its intention to adjudicate Appellant delinquent of unauthorized use of an automobile and that the June 14, 2012, order was a clerical error which the court corrected by means of the July 27, 2012, order. Based on the record, we are satisfied that the court's intention was to find that Appellant committed the act of unauthorized use of an automobile. Thus, the June 14, 2012, order resulted from a clerical error and the court had the power to correct that error. Appellant's rights against double jeopardy were not violated.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/13/2013