

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
NATE POWERS,	:	
	:	
Appellant	:	No. 2936 EDA 2011

Appeal from the Judgment of Sentence entered on April 13, 2011
in the Court of Common Pleas of Philadelphia County,
Criminal Division, No. CP-51-CR-0007474-2010

BEFORE: MUSMANNO, WECHT and PLATT*, JJ.

MEMORANDUM BY MUSMANNO, J.:

Filed: February 22, 2013

Nate Powers ("Powers") appeals from the judgment of sentence imposed following his convictions of theft by unlawful taking, receiving stolen property, and unauthorized use of an automobile. **See** 18 Pa.C.S.A. §§ 3921(a), 3925(a), 3928(a). We affirm.

The trial court set forth the relevant underlying facts in its Opinion, which we adopt for the purpose of this appeal. **See** Trial Court Opinion, 6/29/12, at 1-2.

Powers was arrested and charged with the above-mentioned crimes. On March 1, 2011, Powers proceeded to a non-jury trial before the Honorable Daniel J. Anders. Judge Anders found Powers guilty of all the charges. Subsequently, Powers was sentenced to 11½ to 23 months in

*Retired Senior Judge assigned to the Superior Court.

prison, with immediate parole to house arrest, followed by three years of probation. Powers filed a post-sentence Motion, which the trial court denied.

Powers filed a timely Notice of appeal. The trial court ordered Powers to file a Pennsylvania Rule of Appellate Procedure 1925(b) concise statement. Powers filed a timely Concise Statement and the trial court issued an Opinion.

On appeal, Powers raises the following questions for our review:

1. Was not the evidence insufficient as a matter of law to sustain [Powers's] convictions for theft of a car, receiving stolen property (car) and unauthorized use of [] an automobile, in that the Commonwealth failed to prove [Powers's] *mens rea* as it did not disprove that the rental agreement had been extended, that [Powers] knew that the rental agreement had not been extended or that negotiations for an extension were still ongoing at the time of his arrest?
2. Were not the verdicts on all three charges contrary to the weight of the evidence presented and should not a new trial be ordered in the interest of justice so that right may prevail?

Brief for Appellant at 3.

In his first claim, Powers contends that the evidence was insufficient to support his convictions. *Id.* at 8. Powers argues that the evidence did not demonstrate that he intended to deprive Alamo of the rental car or that he did not intend to return the car. *Id.* Powers asserts that the evidence demonstrates that he reasonably believed that he was in legitimate possession of the car, and that the rental period had been extended. *Id.* at 8, 10. Powers further asserts that because he provided his drivers' license, contact information, and a credit card to Alamo, he demonstrated his

intention to pay. *Id.* Powers also claims that he did not show consciousness of guilt because he immediately stopped when the police pulled him over, and he informed the police that the car was a rental. *Id.* Powers argues that the Commonwealth failed to disprove that the rental agreement had been extended, that Powers knew the agreement had not been extended or that negotiations about an extension were still ongoing. *Id.* at 11.

The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying the above test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Brown, 23 A.3d 544, 559-60 (Pa. Super. 2011) (citation omitted).

Here, the trial court set forth the relevant law and determined that the evidence was sufficient to support Powers's convictions. ***See*** Trial Court Opinion, 6/29/12, at 3-5. We adopt the sound reasoning of the trial court for the purpose of this appeal. ***See id.***

As an addendum, we note the following. Here, Powers's entire argument rests on the weight and credibility given to the evidence presented at trial. As noted above, this Court must view all of the evidence in a light most favorable to the Commonwealth and we may not re-weigh the evidence. **See Brown**, 23 A.3d at 559-60 (stating that this Court must view all of the evidence in a light most favorable to the Commonwealth, as the verdict winner, and that the fact-finder is free to believe all, part, or none of the evidence presented). Powers also argues that the signature on the FedEx receipt for the end of permissive use letter sent by Alamo did not match his signature on the rental agreement. Brief for Appellant at 11-12. However, Powers did not raise this claim in his Rule 1925(b) Concise Statement. **See Commonwealth v. Hansley**, 24 A.3d 410, 415 (Pa. Super. 2011) (stating that "issues not raised in a Rule 1925(b) statement will be deemed waived for review."). In any event, the trial court determined that the signature on the FedEx receipt and the signature on the rental agreement matched and we will not disturb the fact-finder's decision on appeal. **See** Trial Court Opinion, 6/29/12, at 2, 4; N.T., 3/1/11, at 31; **see also Brown**, 23 A.3d at 559-60. Based upon the foregoing, the evidence was sufficient to support Powers's convictions.

In his second claim, Powers contends that the verdicts were against the weight of the evidence. Brief for Appellant at 12, 14. Powers argues that the signature on the FedEx receipt and the signature on the rental

agreement did not match and that “99.99% of people would say have nothing to do with one another[.]” *Id.* at 13-14.¹

When a trial court denies a weight-of-the-evidence motion, and when an appellant then appeals that ruling to this Court, our review is limited. It is important to understand we do not reach the underlying question of whether the verdict was, in fact, against the weight of the evidence. We do not decide how we would have ruled on the motion and then simply replace our own judgment for that of the trial court. Instead, this Court determines whether the trial court abused its discretion in reaching whatever decision it made on the motion, whether or not that decision is the one we might have made in the first instance.

Commonwealth v. Stays, 40 A.3d 160, 169 (Pa. Super. 2012) (citation omitted).

Here, the fact-finder found the two signatures in question to be a match and we will not disturb this finding on appeal. **See** Trial Court Opinion, 6/29/12, at 2, 4; N.T., 3/1/11, at 31; **see also *Commonwealth v. Hunzer***, 868 A.2d 498, 506 (Pa. Super. 2005) (stating that the weight of the evidence is exclusively for the finder of fact, who determines credibility and is free to believe all, part, or none of the evidence). Powers has not cited to any authority to support his assertion that the verdict was against the weight of the evidence because “99.99% of people” would find the signatures did not match. **See** Pa.R.A.P. 2119(a). Thus, we conclude that

¹ We note that Powers improperly incorporates by reference his sufficiency argument to support his argument that the signatures did not match. **See *Commonwealth v. Briggs***, 12 A.3d 291, 342-43 (Pa. 2011) (stating that “incorporation by reference” is an improper form of presentation of appellate advocacy).

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the trial court did not abuse its discretion in denying the weight of the evidence claim. **See** Trial Court Opinion, 6/29/12, at 5.

Judgment of sentence affirmed.