

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN THE INTEREST OF: R.M.D. a Minor,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
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	:	No. 310 MDA 2012

Appeal from the Order entered on January 13, 2012  
in the Court of Common Pleas of York County,  
Criminal Division, No. CP-67-JV-0000718-2011

BEFORE: MUSMANNO, OLSON and STRASSBURGER\*, JJ.

MEMORANDUM BY MUSMANNO, J.: Filed: February 12, 2013

R.M.D. appeals from the dispositional Order entered after he was adjudicated delinquent of burglary, conspiracy, criminal attempt of theft by unlawful taking, and receiving stolen property. **See** 18 Pa.C.S.A. §§ 3502(a), 903(a), 901(a), 3925(a). We affirm.

The juvenile court has set forth the relevant underlying facts:

[On December 18, 2011,] Christopher Edmondson [“Edmondson”], [was] visiting his girlfriend in the area of DriveRight Auto[, located at 1459 South George Street in York County.] [] Edmondson saw three individuals, one wearing a red sweatshirt and later identified upon arrest as [R.M.D.], in the area of DriveRight Auto at or around 5:30 p.m. to 6:30 p.m. that night. [] Edmondson observed those three individuals on four different occasions during that time period. [] Edmondson also testified that, immediately after hearing a car door shut, he witnessed a few of the individuals walking between, and trying to gain entry to, the cars at the DriveRight Auto lot. Upon seeing this and phoning the police, [] Edmondson testified that he heard the individual in the red sweatshirt yell at the other two to hurry. [] Edmondson stated that [he] had a visual of the individuals, except for a brief period when the individuals disappeared into a nearby parking lot. [] Edmondson stated that

\*Retired Senior Judge assigned to the Superior Court.

he saw them come out of that parking lot and [that they] were headed back in the direction of DriveRight when [Officer] Greybill arrived.

... [Officer] Greybill [] testified that she was dispatched to DriveRight Auto at 6:25 p.m. that evening in response to [] [Edmondson's] call. [Officer] Greybill testified that, upon arriving at the scene, she observed an individual in a red sweatshirt, later identified as [R.M.D.,] on the east side of South George Street in the area of DriveRight Auto. [Officer] Greybill testified that [Officer] Sampere arrived shortly thereafter as backup. [Officer] Sampere immediately began collecting information from the individuals and observed that there were four sets of keys underneath where one of the individuals had been sitting. The officers also performed a parameter search of the area that uncovered other sets of keys later identified as being keys to cars owned by DriveRight Auto. The officers also discovered, during their search, that a window to DriveRight Auto had been broken. Large pieces of glass from that window were collected and tread marks left on that glass were analyzed. [The tread marks on the glass matched the tread found on boots belonging to the individuals.]

... Robert Lyon ["Lyon"], service manager at DriveRight Auto ... testified that, upon arrival at the scene, he noticed a broken window to the rear of the building and keys to the vehicles were missing. [] Lyon stated that, as of the close of business on Saturday, December 17, he was unaware of any damage to the DriveRight Auto building. He further testified that it would be impossible for anyone to remove the missing keys without entering the building. [] Lyon then testified that a dealer tag had been removed from a loaner vehicle and screwed upon a silver Mazda, previously identified by [] Edmondson as a vehicle the individuals had gotten into. [] Lyon also testified that he discovered a screwdriver ... laying in the immediate vicinity of DriveRight Auto.

Juvenile Court Opinion, 3/16/12, at 5-7 (unnumbered) (footnotes omitted).

A juvenile Petition was filed against R.M.D. alleging the above-mentioned crimes. Following an adjudicatory hearing, the juvenile court determined that R.M.D. had committed all of the charged offenses and

adjudicated him delinquent. R.M.D. filed a Motion for reconsideration, stating that the Commonwealth did not meet its burden of proving burglary and conspiracy. At the dispositional hearing, the juvenile court denied the Motion. Subsequently, the juvenile court committed R.M.D. to Loysville Youth Detention Center and ordered him to complete the Loysville Program.

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

On appeal, R.M.D. raises the following question for our review: "Was the evidence of record was [*sic*] insufficient to sustain a finding that the Commonwealth met its burden of proof as to the criminal offenses of burglary and criminal conspiracy to commit burglary?" Brief for Appellant at 6.

In reviewing a challenge to the sufficiency of the evidence, we must determine whether, viewing all the evidence admitted at trial, together with all reasonable inferences therefrom, in the light most favorable to the Commonwealth, the trier of fact could have found that each element of the offense charged was supported by evidence and inferences sufficient in law to prove guilt beyond a reasonable doubt. This standard is equally applicable to cases where the evidence is circumstantial rather than direct so long as the combination of the evidence links the accused to the crime beyond a reasonable doubt. Moreover, it is the province of the trier of fact to pass upon the credibility of witnesses and the weight to be accorded the evidence produced. The factfinder is free to believe all, part or none of the evidence. The facts and circumstances established by the Commonwealth need not be absolutely incompatible with the defendant's innocence, but the question of any doubt is for 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.

***In the Interest of T.B.***, 11 A.3d 500, 504 (Pa. Super. 2010) (citation and brackets omitted).

R.M.D. contends that the evidence was insufficient to support his adjudications of delinquency of burglary and criminal conspiracy. Brief for Appellant at 15, 16, 19. R.M.D. argues that the evidence did not support the adjudication for burglary because there was no evidence demonstrating that he entered the DriveRight Auto building. ***Id.*** at 16-17. R.M.D. points out that Edmondson never testified to any of the individuals entering the building and the officers did not testify to any physical evidence showing he entered the building. ***Id.*** at 17-18. R.M.D. argues that the only evidence showing he committed the burglary was that the keys recovered from the two individuals who accompanied him had been removed from the building within the preceding two days of the incident in question. ***Id.*** at 18-19. R.M.D. asserts that the fact-finder could not determine that it was “more-likely-than-not” that he was involved in the burglary. ***Id.*** at 19. R.M.D. also contends that the Commonwealth did not establish that he and the other two individuals conspired to commit burglary. ***Id.*** at 21. R.M.D. claims that the evidence, at best, demonstrates a conspiracy to steal cars. ***Id.***

The juvenile court has addressed R.M.D.’s claims and determined that the evidence was sufficient to support his adjudications of delinquency of

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burglary and criminal conspiracy. **See** Juvenile Court Opinion, 3/16/12, at 3-8 (unnumbered). We agree with the juvenile court and adopt its sound reasoning for the purpose of this appeal. **See id.**

Dispositional Order affirmed.

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA  
Juvenile Division

IN THE INTEREST OF  
R.M.D.

CP-67-JV-0000718-2011

[REDACTED],

A Minor

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**Appearances:**

Charles R. Murphy, Esquire  
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York County Judicial Center  
45 North George Street  
York, Pennsylvania 17401  
Counsel for the Commonwealth

Glenn Smith, Esquire  
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Counsel for the Juvenile

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CLERK OF COURT  
YORK COUNTY  
JUDICIAL CENTER

**MEMORANDUM OPINION IN SUPPORT OF COURT ORDER ENTERED  
DECEMBER 28, 2011, PURSUANT TO Pa.R.A.P. 1925(a)**

Juvenile filed the present appeal on February 8, 2012, to the Court's adjudication of delinquency on January 13, 2012. A Fact-finding Hearing was held December 28, 2011. At that hearing, the Court found beyond a reasonable doubt that the Juvenile had committed the offenses charged in the above captioned matter, namely Burglary<sup>1</sup>, Criminal Conspiracy to Commit Burglary<sup>2</sup>, Criminal Attempt of Theft by Unlawful Taking<sup>3</sup>, and Receiving Stolen Property<sup>4</sup>. Juvenile filed a Statement of Matters Complained of on Appeal (hereinafter "Juvenile's Statement of Matters Complained") on

<sup>1</sup> 18 Pa.C.S.A. §3502(a).

<sup>2</sup> 18 Pa.C.S.A. §903(a)(1)(2).

<sup>3</sup> 18 Pa.C.S.A. §901(a).

<sup>4</sup> 18 Pa.C.S.A. §3925(a).

February 28, 2012 wherein he contends that the Commonwealth failed to meet its burden of proof as to the criminal offenses of Burglary and Criminal Conspiracy to Commit Burglary and that the Courts delinquent adjudication is contrary to the weight of the evidence. The Court hereby submits this Memorandum, pursuant to Pa.R.A.P. 1925(a), to serve as a supplement to the Courts Order of December 28, 2011, and incorporates herein the facts stated in that Order.

### **Summary of Facts and Procedural History**

Officer Alisha Graybill of Spring Garden Township Police Department filed an Allegation Form with York County Juvenile Probation on December 19, 2011. Officer Greybill alleges therein that, on December 18, 2011, the Juvenile committed the aforementioned offenses at DriveRight Auto.<sup>5</sup> Juvenile was arrested and subsequently detained at Lancaster Youth Intervention Center pending hearing on this matter. A Juvenile Petition was filed by York County Juvenile Probation Officer, Andrew Guise, and a Fact-finding hearing was held on December 28, 2011.

At that hearing, the Commonwealth introduced testimony from four witnesses. Christopher Edmondson testified as an eyewitness to the events that transpired on December 18, 2011. Officer Graybill, Sergeant Robert Lehman of the Spring Garden Police Department, and Officer Michael Sampere of York Area Regional Police Department testified as the arresting officers that evening. Robert Lyon, III, service manager of DriveRight Auto, testified as having responded to a call from the police that evening and subsequently reporting to the scene of the crime. The Commonwealth also introduced five exhibits consisting of photos taken of the broken window at DriveRight Auto<sup>6</sup>, photos of the shoes worn by the three juveniles charged in this matter<sup>7</sup>, and a

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<sup>5</sup> DriveRight Auto is located at 1459 South George Street in York County, Pennsylvania.

<sup>6</sup> Commonwealth's Exhibit 1 is a photo, authenticated by Officer Graybill at trial, of pieces of broken glass upon which were footprints showing a pattern consistent with the pattern found on the juvenile's shoes. Transcript at 29-30. Commonwealth's Exhibit 4 was a photo, authenticated by Robert Lyon, of the burglar's point of entry, after the broken window had been repaired. Transcript at 58-59.

photo of a screwdriver found in the immediate proximity of the entrance to DriveRight Auto.<sup>8</sup> Those exhibits were accepted into evidence without objection.<sup>9</sup> Juvenile neither called any witnesses to testify nor submitted any exhibits on the record.<sup>10</sup>

### Law and Analysis

In Juvenile's Statement of Matters Complained, Appellant requests the Appellate Court vacate this Court's findings made on December 28, 2012. Juvenile contends that the evidence was insufficient to sustain the Courts findings at that hearing and, therefore, the Commonwealth failed to meet its burden of proof as to the criminal offenses of Burglary and Criminal Conspiracy to Commit Burglary.<sup>11</sup> In the alternative, Juvenile argues that the Courts finding that the Appellant committed the delinquent acts is contrary to the weight of the evidence.<sup>12</sup>

The Court recognizes that "when presented with a claim that the evidence was insufficient to sustain an adjudication, an appellate court, viewing all the evidence and reasonable inferences therefrom in the light most favorable to the Commonwealth as the verdict winner, must determine whether the evidence was sufficient to enable the fact finder to find that . . . the elements of the offenses were established beyond a reasonable doubt." *In re R.G.B.*, 932 A.2d 166, 168 (Pa. Super. Ct. 2007). "The trier of fact, who determines credibility of witnesses and the weight to give the evidence produced, is free to believe all, part, or none of the evidence." *Id.* Similarly, where the Juvenile argues that the finding is contrary to the weight of the evidence, Juvenile concedes that there is sufficient evidence to sustain the verdict but asserts that "notwithstanding all the facts,

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<sup>7</sup> Commonwealth's Exhibit 2, authenticated by Sergeant Lehman, is a photo compilation of boots taken from Ramello Barber and Carlos Ginett, and sneakers taken from Richard Davis. Transcript at 52-54. Exhibit 3 is a photo, also authenticated by Sergeant Lehman, of the boots worn by Ramello Barber and Carlos Ginett. *Id.*

<sup>8</sup> Transcript at 71-72.

<sup>9</sup> *Id.* at 74.

<sup>10</sup> *Id.* at 75.

<sup>11</sup> Juvenile's Statement of Matters Complained, at 2-3.

<sup>12</sup> *Id.* at 3-4.



certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice.” *Commonwealth v. Widmer*, 744 A.2d 745, 752 (Pa. 2000). The Court notes that the *Widmer* Court expressed, “[o]ne of the least assailable reasons for granting or denying a new trial is the lower court’s conviction that the verdict was or was not against the weight of the evidence and that a new trial should be granted in the interest of justice.” *Id.* at 753.

In the present case, Juvenile appeals his delinquent adjudication for Burglary and Criminal Conspiracy to Commit Burglary. This Commonwealth has established, by statute, that a person has committed the criminal act of Burglary if: “[That] person...enters a building or occupied structure, or separately secured or occupied portion thereof, with intent to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter.”<sup>13</sup> The Court notes that, “[a] person is legally accountable for the conduct of another person when...he is an accomplice of such other person in the commission of the offense.”<sup>14</sup> A person is regarded as an accomplice of another in the commission of a criminal offense if he “aids or agrees or attempts to aid such other person in planning or committing it.”<sup>15</sup>

The Commonwealth has also established by statute that, “[a] person is guilty of conspiracy with [other person(s)] to commit a crime if, with the intent of promoting or facilitating its commission, he...agrees to aid such other [person(s)] in the planning or commission of such crime or of an attempt or solicitation to commit such crime.” The Superior Court has held that, “to prove a conspiracy, the Commonwealth must establish beyond a reasonable doubt that a defendant (1) had the intent to promote the crime charged; (2) made an agreement with one or more people to engage in conduct to promote the crime; (3) made an agreement to plan, commit, or solicit the crime; and (4) that one co-conspirator committed an overt act in pursuance of the conspiracy.”

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<sup>13</sup> 18 Pa.C.S.A. §3502(a).

<sup>14</sup> 18 Pa.C.S.A. §306(b).

<sup>15</sup> 18 Pa.C.S.A. §306(c)(1)(ii).

*Commonwealth v. McKeever*, 689 A.2d 272 (Pa.Super. 1997) (citing to *Commonwealth v. Ocasio*, 619 A.2d 352, 354 (1993).) “The conduct of the parties and the circumstances surrounding their conduct may create ‘a web of evidence’ linking the accused to the alleged conspiracy beyond a reasonable doubt.” *Id.* (quoting *Commonwealth v. Morton*, 512 A.2d 1273, 1275 (1986), appeal denied 522 A.2d 49 (1987).) The *McKeever* Court also stated that a conspiracy can be proven by relevant circumstances, including: “(1) an association between alleged conspirators; (2) knowledge of the commission of the crime; (3) presence at the scene of the crime; and (4) in some situations, participation in the object of the conspiracy.” *Id.* (quoting *Commonwealth v. Lamb*, 455 A.2d 678, 685 (1983).)

The Court notes, in response to Juvenile’s Statement of Matters Complained, that it’s findings were based on an abundance of evidence showing that the Juvenile had worked in concert with two other individuals in the commission of the crimes charged. The Commonwealth presented testimony of an eyewitness, Christopher Edmondson, who had been visiting his girlfriend in the area of DriveRight Auto, on December 18, 2012. Mr. Edmondson saw three individuals, one wearing a red sweatshirt and later identified upon arrest as the Juvenile in this matter, in the area of DriveRight Auto at or around 5:30 PM to 6:30 PM that night.<sup>16</sup> Mr. Edmondson observed those three individuals on four different occasions during that time period. Mr. Edmondson also testified that, immediately after hearing a car door shut, he witnessed a few of the individuals walking between, and trying to gain entry to, the cars at the DriveRight Auto lot.<sup>17</sup> Upon seeing this and phoning the police, Mr. Edmondson testified that he heard the individual in the red sweatshirt yell at the other two to hurry.<sup>18</sup> Mr. Edmondson stated that had a visual of the individuals, except for a brief period when the individuals disappeared into a nearby

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<sup>16</sup> Transcript at 17-18.

<sup>17</sup> *Id.* at 13-15.

<sup>18</sup> *Id.* at 10-11.

parking lot.<sup>19</sup> Mr. Edmondson stated that he saw them come out of that parking lot and were headed back in the direction of DriveRight when Ofc. Greybill arrived.<sup>20</sup>

The Commonwealth called Ofc. Greybill, who testified that she was dispatched to DriveRight Auto at 6:25 PM that evening in response to Mr. Edmondson's call. Ofc. Greybill testified that, upon arriving at the scene, she observed an individual in a red sweatshirt, later identified as the Juvenile in this matter, on west side of South George Street and the two other individuals involved in this matter on the east side of South George Street in the area of DriveRight Auto.<sup>21</sup> Ofc. Greybill testified that Ofc. Sampere arrived shortly thereafter as backup. Ofc. Sampere immediately began collecting information from the individuals and observed that there were four sets of keys underneath where one of the individuals had been sitting.<sup>22</sup> The officers also performed a parameter search of the area that uncovered other sets of keys later identified as being keys to the cars owned by DriveRight Auto.<sup>23</sup> The Officers also discovered, during their search, that a window to DriveRight Auto had been broken.<sup>24</sup> Large pieces of glass from that window were collected and tread marks left on that glass were analyzed.<sup>25</sup> The Court notes that the tread marks on the glass in Commonwealth's Exhibit 1 matched the tread found on boots belonging to the individuals shown in Exhibit 3.

The Commonwealth also elicited the testimony Robert Lyon, service manager at DriveRight Auto. Mr. Lyon testified that, upon arrival at the scene, he noticed a broken window to the rear of the building and keys to vehicles were missing.<sup>26</sup> Mr. Lyon stated that, as of the close of business on Saturday, December 17, he was unaware of any damage to the DriveRight Auto building.<sup>27</sup> He further testified that it would be

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<sup>19</sup> Id. at 11-13.

<sup>20</sup> Id. at 20.

<sup>21</sup> Id. at 24-26.

<sup>22</sup> Id. at 42.

<sup>23</sup> Id. at 60-61.

<sup>24</sup> Id. at 29.

<sup>25</sup> Id. at 30.

<sup>26</sup> Id. at 58-59.

<sup>27</sup> Id at 57.

impossible for anyone to remove the missing keys without entering the building. Mr. Lyon then testified that a dealer tag had been removed from a loaner vehicle and screwed upon a silver Mazda, previously identified by Mr. Edmondson as a vehicle the individuals had gotten into.<sup>28</sup> Mr. Lyon also testified that he discovered a screwdriver, as shown in Exhibit 5, laying in the immediate vicinity of DriveRight Auto.<sup>29</sup>

### Conclusion

In rendering its decision, the Court considered the testimony of Mr. Edmondson that he saw the individuals walking around the vehicles at DriveRight Auto and then getting into a silver Mazda. Mr. Edmondson also testified that he witnessed the Juvenile in this matter communicating with the other individuals whom he had seen in and around the vehicles at the DriveRight Auto lot. The officers involved testified as to the location of the individuals upon detainment, including the Juvenile in this matter, with regards to the keys and other evidence recovered from the scene. Where Mr. Edmondson testified to places he had seen the individuals walking, a subsequent search of those areas by the police officers discovered sets of car keys in those areas. Similarly, Ofc. Sampere recovered four sets of keys directly underneath the place one of the individuals had been sitting upon being detained. The Commonwealth also introduced photographic evidence entered onto the record showing that the individuals had been wearing boots with tread patterns matching tread patterns found on the broken glass from the window. Lastly, The evidence showed that the Juvenile and the other individuals took a dealer tag off one vehicle and screwed it onto the same silver Mazda the individuals were seen entering.

The evidence showed that either the Juvenile, or one of the other individuals, had broken into DriveRight Auto and removed car keys therefrom because that would have been the only way to remove the keys from the building. The Commonwealth established that the individuals had constructive possession of the keys based on the

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<sup>28</sup> Id. at 62.

<sup>29</sup> Id. at 71.

places those keys were recovered. The Court reasoned, in light of the individuals fastening the dealer tag to the silver Mazda, that it was the intent of the Juvenile and his cohorts to unlawfully take that Mazda from DriveRight Auto. The Court found that the Commonwealth had circumstantially shown beyond a reasonable doubt that the Juvenile, working in concert with the other individuals, had committed the offenses of Burglary and Criminal Conspiracy to Commit Burglary.

BY THE COURT,



JOSEPH C. ADAMS, JUDGE

Dated: March 13, 2012