

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

JAMES ROBINSON

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 3276 EDA 2011

Appeal from the Judgment of Sentence November 23, 2011
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0002003-2011

BEFORE: MUNDY, J., OTT, J., and PLATT, J.*

MEMORANDUM BY MUNDY, J.:

Filed: January 4, 2013

Appellant, James Robinson, appeals from the November 23, 2011 judgment of sentence of time-served to 23 months' imprisonment, followed by four years' probation, after he was found guilty of burglary, criminal trespass, theft by unlawful taking, and receiving stolen property.¹ After careful review, we affirm.²

We summarize the relevant facts and procedural history of this case as follows. The victim in this case, Charles Flemming, resided at 4271 Griscom Street in Philadelphia. N.T., 7/13/11, at 8. Flemming lived alone and often

* Retired Senior Judge assigned to the Superior Court.

¹ 18 Pa.C.S.A. §§ 3502(a), 3503(a), 3921(a), and 3925(a), respectively.

² We note the Commonwealth has not filed a brief in this matter.

worked late hours, including night shifts. *Id.* On June 17, 2011, Flemming left for work at around 6:30 p.m. and did not return until 3:30 a.m. the next morning. *Id.* at 9. When he returned home, Flemming discovered that the window of his back door had been smashed. *Id.* After taking an inventory of his home, Flemming called the police. *Id.* at 10. Flemming noted that a camera, two camcorders, a Wii game system, an Xbox game system, a Movado watch, and one of his car keys were missing. *Id.* at 11. Officer Ryan Pownall arrived at the scene, took Flemming's statement, surveyed the crime scene and dusted the home for fingerprints. *Id.* at 32. Officer Pownall noted that although there was glass inside the home from the breaking of the back-door window, one piece was moved to a table away from the back door. *Id.* at 33. From this piece of glass, Officer Pownall was able to lift four prints. *Id.* Officer Pownall submitted these prints to the latent print section of the Philadelphia Police Department for analysis. *Id.* Based on the analysis the police identified three of the prints as belonging to Appellant. *Id.* at 47. Appellant was subsequently arrested and charged with the aforementioned offenses. On July 13, 2011, Appellant proceeded to a bench trial, wherein he stipulated that Officer Halim Mackey, a fingerprint technician, would testify to a reasonable degree of scientific certainty that three of the four prints belonged to Appellant. *Id.*

At the conclusion of the trial, Appellant was found guilty of the aforementioned offenses. On October 21, 2011, Appellant made an oral

motion for extraordinary relief pursuant to Pennsylvania Rule of Criminal Procedure 704(B)(1). That same day, the trial court heard argument and denied Appellant's motion. On November 23, 2011, the trial court imposed a sentence of time served to 23 months' imprisonment, followed by four years' probation. The trial court also granted Appellant immediate parole. On December 12, 2011, Appellant filed a timely notice of appeal.³

On appeal, Appellant presents one issue for our review.

Was not the evidence insufficient, as a matter of law, to sustain [A]ppellant's conviction burglary and related offenses where the only evidence linking [A]ppellant to the crime was his fingerprints on pieces of glass from a broken window that faced a public street?

Appellant's Brief at 3.

When reviewing a sufficiency of the evidence claim, our standard of review is well settled. We must "review the evidence admitted during the trial along with any reasonable inferences that may be drawn from that evidence in the light most favorable to the Commonwealth." *Commonwealth v. Crawford*, 24 A.3d 396, 404 (Pa. Super. 2011) (citation omitted). "Any doubts concerning an appellant's guilt [are] to be

³ The trial court did not order Appellant to file a concise statement of matters complained of on appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). We also note that the trial judge, the Honorable Roger F. Gordon, left the bench before he could author a Rule 1925(a) opinion; however, we are able to discern the trial court's reasoning for its decision from the record.

resolved by the trier of fact unless the evidence was so weak and inconclusive that no probability of fact could be drawn therefrom.” ***Commonwealth v. West***, 937 A.2d 516, 523 (Pa. Super. 2007), *appeal denied*, 947 A.2d 737 (Pa. 2008). Moreover, “[t]he Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence.” ***Commonwealth v. Perez***, 931 A.2d 703, 707 (Pa. Super. 2007) (citations omitted). “[T]he trier of fact, in passing upon the credibility of the witnesses, is free to believe all, part, or none of the evidence.” ***Commonwealth v. Rivera***, 983 A.2d 1211, 1220 (Pa. 2009) (citation and internal quotation marks omitted), *cert. denied*, ***Rivera v. Pennsylvania***, 131 S. Ct. 3282 (2010).

In order to sustain a burglary conviction as relevant in this case, the Commonwealth must prove the following.

§ 3502. Burglary

(a) Offense defined.--A person commits the offense of burglary if, with the intent to commit a crime therein, the person:

...

(2) 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 no person is present;

...

18 Pa.C.S.A. § 3502(a)(2).

Appellant argues that evidence his fingerprints were found on a piece of glass from a broken window used to gain entry into a burglarized home is insufficient to sustain his conviction for burglary.⁴ Appellant's Brief at 12. Appellant further argues that "[t]he mere presence of [A]ppellant's fingerprints on the glass without any evidence to show which side of the glass the fingerprints were on or when they were placed there is insufficient to convict [A]ppellant of burglary." *Id.* When the Commonwealth's case rests primarily on fingerprint evidence, we are mindful of the following principle.

Although we recognize the accuracy of fingerprint evidence for purposes of identification, the probative value of that evidence depends entirely on the circumstances of each case. Unless those circumstances are such that the fingerprint could only have been impressed at the time and place the crime was committed, such evidence is insufficient to sustain a conviction.

In re M.J.H., 988 A.2d 694, 697 (Pa. Super. 2010) (citation omitted).⁵

⁴ We note that Appellant avers in his appellate brief that "the evidence was insufficient to sustain Appellant's conviction for burglary and related offenses[.]" However, Appellant has not developed his argument as to any offense except burglary. Appellant's Brief at 8.

⁵ In *M.J.H.*, police responded to a burglary at a local clothing store. *Id.* at 695. After dusting for fingerprints, police were able to lift one print from the back of a clothing rack, which was later identified to be the appellant's. *Id.* This Court observed, "appellant's fingerprint was recovered at a location where his presence was explained and from an object with which he could have had innocent contact." *Id.* at 698. Since "appellant's fingerprint was found on a rack in a clothing store open to the public where anyone could (Footnote Continued Next Page)

In this case, Appellant's fingerprints were found on a piece of glass from the window of the back door to Flemming's home. N.T., 7/13/11, at 33. Furthermore, Flemming testified that he and Appellant were strangers before this case began.

Q: Mr. Flemming, do you know this defendant, James Robinson?

A: I know him now, I've seen him in the neighborhood. I did not know who he was per the name of when I got my subpoena. I did not know his name per se, no.

Q: So on June 17, 2010 you did not know this man as James Robinson?

A: I did not.

Q: Prior to June 17, 2010 had you seen him before?

A: I've seen him in the neighborhood before, yes.

Q: Had you ever spoken to him before?

A: No.

Q: Had you ever given him permission to come to your home?

(Footnote Continued) _____

have had access until the store closed[,]” we reversed his convictions. **See also Commonwealth v. Tribble**, 467 A.2d 1130, 1131-1132 (Pa. 1983) (finding insufficient evidence to sustain theft of movable property conviction where the appellant's fingerprints found on the truck's driver's-side door and driver's side wing window where the “appellant was in frequent physical contact with the trucks when he worked for the [the victim] only two months prior to the break-in” of the [victim]'s trucks).

A: No.

Q: Had you ever given him permission go [sic] into your home?

A: No.

Q: Had you ever given him permission to take anything from your home?

A: No.

Q: Had you ever given him permission to be at your back door?

A: No.

Id. at 14-15.

Appellant claims that because the Commonwealth could not prove which side of the glass window Appellant's fingerprints were on, "the possibility of innocent contact is too great to uphold [Appellant's] conviction" Appellant's Brief at 10. It is possible that Appellant's fingerprints were from the exterior-facing side of the glass. However, contrary to the facts of this case, the appellants in *M.J.H.* and *Tribble* had legitimate reasons to be in the locations where their fingerprints were found. In our view, given that the fingerprints in question were from Flemming's backdoor window and that Appellant and Flemming were strangers, the existence of Appellant's fingerprints does not give rise to "two **equally** reasonable and mutually inconsistent inferences." *Tribble, supra* at 1131 (citation omitted; emphasis added). The trial court, sitting as the factfinder, was free to infer

that Appellant's fingerprints were left while burglarizing Flemming's home.

See Crawford, supra at 404.

Based on the foregoing, we conclude the Commonwealth presented sufficient evidence to sustain Appellant's conviction for robbery.

Accordingly, we affirm the November 23, 2011 judgment of sentence.

Judgment of sentence affirmed.