

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

IN THE INTEREST OF: C.F. : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
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APPEAL OF: C.F. : No. 3311 EDA 2011

Appeal from the Order entered November 18, 2011,
Court of Common Pleas, Philadelphia County,
Criminal Division at No. CP-51-JV-0004002-2007

BEFORE: DONOHUE, OLSON and FITZGERALD*, JJ.

MEMORANDUM BY DONOHUE, J.:

Filed: January 9, 2013

C.F. appeals from the dispositional order entered following his adjudication of delinquency for criminal mischief pursuant to 18 Pa.C.S.A. § 3304(a)(5). Following our review, we affirm.

The occurrence underlying this appeal took place on January 19, 2007 at approximately 3:15 p.m. At that time, Michael Edelson (“Edelson”), a teacher at Creighton Elementary School, left the school. He was in his car and stopped at a red light. This light was at an intersection where a group of children were waiting to cross the street. As he was stopped at the light, Edelson was not looking directly at these children, as he had noticed a co-worker on the street and was looking in that co-worker’s direction. As the children were crossing the street, Edelson felt his car shake two times. He looked up and saw C.F. on the hood of his car. Edelson, as well as other children then present, yelled at C.F. to get off of Edelson’s car. C.F. then got off of Edelson’s car, and Edelson drove away. When Edelson exited his car,

*Former Justice specially assigned to the Superior Court.

he noticed dents on the side and the hood of his car. Edelson had to pay a \$500 deductible toward the repair of these dents in his car.

A petition charging C.F. with delinquent acts related to this incident was subsequently filed. Following failed attempts at mediation, the matter proceeded to an adjudicatory hearing on November 18, 2011. Edelson and C.F. were the only witnesses who testified at the hearing. At the conclusion of the hearing, the juvenile court found C.F. guilty of criminal mischief, adjudicated C.F. delinquent, placed him on probation and ordered him to pay \$500 in restitution.

This appeal followed. C.F. presents only the following question for our review:

Was not the evidence insufficient as a matter of law to sustain [C.F.'s] conviction for criminal mischief, 18 Pa.C.S.A. 3304(a)(5), graded as a misdemeanor of the third degree, where the Commonwealth failed to prove beyond a reasonable doubt that [C.F.][:] [(a)] acted intentionally to cause the damage to the complainant's car, and [(b)] caused damage in excess of \$500, as required by statute?

Appellant's Brief at 3.

When reviewing a challenge to the sufficiency of the evidence in the context of a delinquency proceeding, we apply the same standard used for a similar challenge to a criminal conviction. *In re K.R.B.*, 851 A.2d 914, 917 (Pa. Super. 2004). This standard requires that "an appellate court must review the evidence presented and all reasonable inferences drawn

therefrom in a light most favorable to the verdict winner and determine whether on the record there is a sufficient basis to support the challenged conviction." *Id.* We "must determine if the trier of fact could reasonably have concluded that all of the elements of the crime were established beyond a reasonable doubt." *Id.*

The particular subsection of the criminal mischief statute that C.F. was found to have committed is defined as follows: "A person is guilty of criminal mischief if he[] intentionally damages real or personal property of another[.]" 18 Pa.C.S.A. § 3304(a)(5). C.F. argues that the evidence was insufficient to prove that he possessed "a specific intent to cause ... damage to [Edelson's] car. [C.F.'s] behavior, although negligent and perhaps even reckless, did not rise to the level of *mens rea* required by 18 Pa.C.S.[A.] (a)(5)." Appellant's Brief at 10.

This Court considered a somewhat similar situation in ***Commonwealth v. Adams***, 882 A.2d 496 (Pa. Super. 2005). The facts in that case were as follows:

Robert Aleva testified that while driving from a meeting with his son's teacher, he observed that Appellant's vehicle was following very close behind him. As Aleva was proceeding to an industrial park, he noticed that the vehicle was still behind him. After traveling into a left lane to make a turn, the vehicle pulled up along side of Aleva, he rolled down his window and inquired of the driver, 'What's the problem?' The driver responded, 'You drive like a bitch.' After Aleva exited his vehicle, Appellant walked toward Aleva's truck and then went back to

his vehicle, and as Aleva was pulling away, Appellant punched the side of Aleva's truck with his fist.

After stopping and observing the dent in the truck occasioned by Appellant's fist, Aleva called for the police and on the arrival of Sergeant Engemann, showed him the damage to his truck. The cost of repair of Aleva's vehicle was \$592.00.

* * *

Appellant testified that while traveling behind Aleva, Aleva was slamming on his brakes, trying to [get Appellant to] run into him. Appellant denied that he punched Aleva's vehicle, that it was impossible to have hit a moving vehicle without breaking his hand, or bruising it, and since he was married that following weekend, he never could have been able to shake hands if he had punched the vehicle.

Id. at 497.

The appellant, Adams, was convicted of 18 Pa.C.S.A. § 3304(a)(5), the same offense at issue in the present appeal. Adams challenged the sufficiency of the evidence on appeal. We held that “[t]he evidence presented at trial was ultimately sufficient to prove Appellant intentionally damaged the personal property of another, where the credible trial testimony of Aleva and the police officer established Appellant punched Aleva's truck, resulting in the specified damage.” *Id.* at 499. Thus, **Adams** instructs that for purposes of 18 Pa.C.S.A. § 3304(a)(5), an actor will be deemed to have intentionally caused the damage where he or she has intentionally committed the act that led to the damage.

The evidence in the present case, when considered in the light most favorable to the Commonwealth, establishes that Edelson was stopped at a light when C.F. jumped on to the hood of his car. N.T., 11/18/11, at 5-6. Edelson testified that when he first looked up to see C.F. on his car, C.F. smiled at Edelson through the windshield. *Id.* at 5. When Edelson exited his car after this incident, he observed two dents in his car where C.F. had impacted his car. *Id.* at 5-6. Pursuant to *Adams*, this evidence is sufficient to establish that C.F. intentionally damaged Edelson's car.¹

C.F. was charged with criminal mischief as a third-degree misdemeanor. Criminal mischief is graded as a "misdemeanor of the third degree if [the actor] intentionally or recklessly causes pecuniary loss in excess of \$500[.]" 18 Pa.C.S.A. § 3304(b). C.F. argues that while Edelson testified that he had to pay a \$500 deductible, the Commonwealth failed to introduce any evidence that the cost to repair the damage exceeded \$500. Appellant's Brief at 12. We do not agree. Edelson testified that he paid his \$500 deductible, and "the insurance covered the rest." N.T., 11/18/11, at 6.

¹ Similarly to the appellant in *Adams*, C.F. also testified to a radically different set of facts. C.F. testified that he was attempting to cross the street when Edelson almost struck him with his car. N.T., 11/18/11, at 13. He testified that he put his hand on the hood of Edelson's car in order to "brace himself" because he thought that Edelson was going to hit him. *Id.* The trial court discredited this testimony and accepted the testimony of Edelson. Trial Court Opinion, 6/19/12, at 1. We may not disturb this determination, as "[t]he fact finder is free to believe all, part or none of the evidence and "the credibility of and the weight to be accorded the evidence produced are matters within the province of the trier of fact." *In re K.R.B.*, 851 A.2d at 917.

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Thus, although we do not have evidence of a precise total for the repairs to Edelson's car, there is evidence that the cost exceeded \$500.

Order affirmed.