NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. ROBERT GILMOR NORTON II Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 749 MDA 2012

Appeal from the Judgment of Sentence March 23, 2012
In the Court of Common Pleas of Columbia County
Criminal Division at No(s): CP-19-CR-0000550-2011

BEFORE: BOWES, J., GANTMAN, J., and OLSON, J.

MEMORANDUM BY GANTMAN, J.: Filed: March 5, 2013

Appellant, Robert Gilmor Norton II, appeals from the judgment of sentence entered in the Columbia County Court of Common Pleas, following his bench trial conviction for receiving stolen property.[1] We affirm.

In its opinion, the trial court set forth the relevant facts of this case as follows:

> [Victim] was visiting his parents in Bloomsburg on the weekend of August 13-14, 2011. He parked his car on the street in front of his parents' house. During the night someone entered the car and stole several items, among which was an I-Pod. He called the police and provided them with the serial number of the device. He valued the I-Pod at $180.

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[1] 18 Pa.C.S.A. § 3925.

> Henry Przekop operates a store, which buys and sells electronic devices on Main Street in Bloomsburg. On Monday morning, August 15, 2011, Sgt. Van Loan of the Bloomsburg Police Department, provided the serial number of the [stolen] I-Pod, and asked Przekop to call the police if anyone brought it into the store to sell. Later that day, [Appellant] entered Przekop's store and attempted to sell the stolen item. Przekop called the police.
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> Sgt. Van Loan arrived at the store and after verifying that the serial numbers matched, confronted [Appellant]. [Appellant] stated that the I-Pod "can't be stolen" and that he had purchased it one or two days ago from a friend named Jordan Rosenberg. In fact, [Appellant] said he purchased two I-Pods from Rosenberg for a total of $35.
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> Jordan Rosenberg testified at trial that he did not sell an I-Pod to [Appellant], and that he was not in Bloomsburg for the better part of the weekend in question. His testimony was verified by Scott Crouthamel, with whom Rosenberg resided at the time, who said he and Rosenberg had spent the weekend visiting a friend in Mehoopany, Wyoming County.

(Trial Court Opinion, filed May 9, 2012, at 1-2). On August 17, 2012, the Commonwealth charged Appellant with one count of receiving stolen property. The court conducted a bench trial on March 23, 2012, and convicted Appellant of receiving stolen property graded as a misdemeanor of the second degree. Thereafter, the court sentenced Appellant to twenty-three and one-half (23½) months' probation. Appellant filed a timely notice of appeal on April 18, 2012. On April 23, 2012, the court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Appellant timely filed his Rule 1925(b) statement on May 4, 2012. In his statement, Appellant raised three claims: (1) the evidence

submitted at trial was insufficient to support a conviction; (2) the evidence was insufficient to support the grading of Appellant's offense as a misdemeanor of the second degree; and (3) the verdict was against the weight of the evidence.

Appellant raises the following issues for our review:

> DID THE TRIAL COURT ERR IN ALLOWING HEARSAY INTO EVIDENCE?
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> DID THE EVIDENCE IN THIS CASE, VIEWED IN A LIGHT MOST FAVORABLE TO THE COMMONWEALTH, PROVIDE EVIDENCE SUFFICIENT TO CONVICT [APPELLANT] OF THE OFFENSES?
>
> DID THE EVIDENCE IN THIS CASE, VIEWED IN A LIGHT MOST FAVORABLE TO THE COMMONWEALTH, PROVIDE EVIDENCE SUFFICIENT TO SUPPORT THE GRADING OF THE OFFENSE AS A MISDEMEANOR OF THE 2ND DEGREE?

(Appellant's Brief at 6).

In his first issue, Appellant asserts that Henry Przekop's son checked the serial number on the I-Pod Appellant brought to Mr. Przekop's electronics store on August 15, 2012. Appellant claims Mr. Przekop's son recorded the number on a piece of paper, and informed Mr. Przekop the serial number on the I-Pod matched the number on the device Sgt. Van Loan reported as stolen. Appellant contends that the Commonwealth offered Mr. Przekop's testimony describing his son's conduct, to prove that Appellant possessed the stolen I-Pod on August 15, 2012. Appellant submits Mr. Przekop's testimony included inadmissible hearsay that the trial court should

have excluded. Appellant concludes he is entitled to have his conviction reversed, his sentence vacated, and his charge dismissed. We cannot agree.

As a prefatory matter, we must determine whether Appellant properly preserved his first issue for review. ***See Commonwealth v. Wholaver***, 588 Pa. 218, 903 A.2d 1178 (2006), *cert. denied*, 549 U.S. 1171, 127 S.Ct. 1131, 166 L.Ed.2d 900 (2007) (stating intermediate appellate court can *sua sponte* raise waiver under Rule 1925). Where a trial court directs a defendant to file a concise statement of errors complained of on appeal, any issues not raised in that statement shall be waived. ***Commonwealth v. Bullock***, 948 A.2d 818, 823 (Pa.Super. 2008), *appeal denied*, 600 Pa. 773, 968 A.2d 1280 (2009).

Instantly, with respect to his hearsay issue, Appellant failed to raise this specific issue in his Rule 1925(b) statement. Therefore, the hearsay issue is waived. ***See Bullock, supra***.

Moreover, Sgt. Van Loan verified the serial number of the I-Pod at Mr. Przekop's store on August 15, 2012, matched the serial number of the stolen I-Pod. Thus, the court had sufficient evidence to conclude Appellant possessed the stolen I-Pod on that day. Further, to the extent inadmissible evidence might have been presented at trial, the court, sitting as trier of fact, is presumed to have disregarded it. ***See Commonwealth v. Moss***, 852 A.2d 374, 381 (Pa.Super. 2004) (stating: when court conducts bench

trial, presumption exists that court disregarded inadmissible evidence). Accordingly, Appellant's first issue merits no relief.

In his second and third issues combined, Appellant asserts there was no testimony at trial identifying the stolen I-Pod as the one in Appellant's possession on August 15, 2012, and the Commonwealth failed to present any evidence of the I-Pod's size, shape, color, or model. Appellant claims the stolen I-Pod was not presented at trial for identification and that the Commonwealth did not provide the stolen I-Pod's serial number. Appellant contends there is no evidence linking the stolen I-Pod to the one found in Appellant's possession.

Appellant also maintains the Commonwealth failed to establish the value of the stolen I-Pod. Appellant argues the original purchase price of the I-Pod cannot establish its market value, and the court improperly used the purchase price for purposes of grading Appellant's offense as a second-degree misdemeanor. Appellant concludes the evidence at trial was insufficient to support his conviction for receiving stolen property and was insufficient to sustain a grading of Appellant's offense as a second-degree misdemeanor. We disagree.

When examining a challenge to the sufficiency of evidence, our standard of review is as follows:

> 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. Hansley, 24 A.3d 410, 416 (Pa.Super. 2011), *appeal denied*, ___ Pa. ___, 32 A.3d 1275 (2011) (quoting ***Commonwealth v. Jones***, 874 A.2d 108, 120-21 (Pa.Super. 2005)).

Section 3925 of the Crimes Code defines the offense of receiving stolen property as follows:

> **§ 3925. Receiving stolen property**
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> **(a) Offense defined.**—A person is guilty of theft if he intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner.
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> **(b) Definition.**—As used in this section the word "receiving" means acquiring possession, control or title, or lending on the security of the property.

18 Pa.C.S.A. § 3925. To convict a person of receiving stolen property, the

Commonwealth must prove: "(1) the property was stolen; (2) the defendant was in possession of the property; and (3) the defendant knew or had reason to believe the property was stolen." ***Commonwealth v. Foreman***, 797 A.2d 1005, 1011 (Pa.Super. 2002). "[T]he mere possession of stolen property is insufficient to prove guilty knowledge, and the Commonwealth must introduce other evidence, which can be either circumstantial or direct, that demonstrates that the defendant knew or had reason to believe that the property was stolen." ***Id.*** at 1012. Circumstantial evidence alone can establish guilty knowledge. ***Commonwealth v. Marrero***, 914 A.2d 870, 873 (Pa.Super. 2006). Circumstances that contribute to such a determination include: (1) the time between the theft and defendant's possession; (2) the accused's conduct at the time of arrest and while in possession of the stolen property; (3) the type of stolen property; (4) the proximity of the location of the theft and the location where the accused gained possession; and (5) the value of the property. ***Id.***

Additionally,

> A claim that the court improperly graded an offense for sentencing purposes implicates the legality of a sentence. The issue of whether a sentence is illegal is a question of law; therefore, our task is to determine whether the trial court erred as a matter of law and, in doing so, our scope of review is plenary. … If no statutory authorization exists for a particular sentence, that sentence is illegal and subject to correction.

Commonwealth v. Pantalion, 957 A.2d 1267, 1271 (Pa.Super. 2008) (internal citations and quotation marks omitted); ***Commonwealth v.***

Sanchez, 848 A.2d 977 (Pa.Super. 2004) (explaining appellant's claim trial court improperly graded theft offense was challenge to legality of sentence; appellant contested amount stolen, which affects gradation of crime).

The Crimes Code grades theft offenses, including receiving stolen property, in relevant part as follows:

> **§ 3903. Grading of theft offenses**
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> * * *
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> **(b) Other grades.**—Theft not within subsection (a), (a.1) or (a.2), constitutes a misdemeanor of the first degree, except that if the property was not taken from the person or by threat, or in breach of fiduciary obligation, and:
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> (1) **the amount involved was $50 or more but less than $200 the offense constitutes a misdemeanor of the second degree**; or
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> (2) the amount involved was less than $50 the offense constitutes a misdemeanor of the third degree.
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> **(c) Valuation.**—The amount involved in a theft shall be ascertained as follows:
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> (1) Except as otherwise specified in this section, value means the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime.
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> * * *

18 Pa.C.S.A. § 3903 (emphasis added).

Instantly, with regard to Appellant's contentions on the sufficiency of the evidence and grading of his offense, the trial court stated:

> [Appellant] possessed the I-Pod within 24 to 36 hours of its having been stolen. The possession occurred in the same small town in which the item had been stolen. [Appellant's] explanation for his possession of the item was proved to be patently false. Accordingly [the] court determined that the requisite [guilty] knowledge had been established beyond a reasonable doubt.
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> As for the grading of the offense, the only evidence of the value of the I-Pod was presented by [Victim]. The trier of fact cannot substitute conjecture or suspicion for unrefuted evidence.

(Trial Court Opinion at 3). The certified record confirms the court's findings. Victim's I-Pod was stolen from his car in Bloomsburg during the night of August 13-14, 2012. On August 15, 2012, Appellant was in possession of the stolen I-Pod when confronted by Sgt. Van Loan at Mr. Przekop's electronics store in Bloomsburg. Further, Appellant provided the police with a false story of how he acquired the I-Pod. Thus, the evidence was sufficient to support Appellant's conviction for receiving stolen property. ***See*** 18 Pa.C.S.A. § 3925; ***Foreman, supra***; ***Marrero, supra***.

Further, Victim testified to the purchase price of the I-Pod. Absent other evidence, the item's original price reasonably constituted the cost of replacement. Therefore, the evidence supported the court's gradation of Appellant's offense as a second-degree misdemeanor. ***See*** 18 Pa.C.S.A. § 3903. Accordingly, we affirm Appellant's judgment of sentence.

Judgment of sentence affirmed.