

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN RE: D.M.

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: D.M.

No. 779 EDA 2012

Appeal from the Dispositional Order of February 7, 2012  
In the Court of Common Pleas of Philadelphia County  
Juvenile Division at No: CP-51-JV-0002210-2011

BEFORE: OLSON, J., WECHT, J., and COLVILLE, J.\*

MEMORANDUM BY WECHT, J.:

**FILED JUNE 06, 2013**

D.M. ("Appellant") appeals from the February 7, 2012 dispositional order entered after Appellant was adjudicated delinquent of robbery<sup>1</sup> and criminal conspiracy.<sup>2</sup> We affirm.

The trial court has provided us the following thorough summary of this case:

On May 11, 2011, at approximately 8:20 p.m., the victim, Jenna Rae Lee, was in the area of the subway stop located at Girard Avenue in Philadelphia. In a subway car, the victim first witnessed [Appellant] with three other females, co-defendants [A.M.], [S.P.], and a third unnamed female. Ms. Lee had never

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\* Retired Senior Judge assigned to the Superior Court.

<sup>1</sup> 18 Pa.C.S. § 3701(a)(1)(iv) (graded as second-degree felony).

<sup>2</sup> 18 Pa.C.S. § 903.

seen [Appellant] or [the] three females before. The lighting on the subway car was very bright. [Appellant] and the three other females walked past Ms. Lee on the train. [Appellant] and the three other females sat a few seats in front of the victim, Ms. Lee. While on the subway car, Ms. Lee had no contact with any of these females. Upon arrival at the Girard Avenue stop, all four females, including [Appellant], stood and waited by the door. Ms. Lee then stood and walked to a point right behind [Appellant] and other females.

[Appellant] and the other females walked off the subway car and then stood to the side. Ms. Lee walked off the subway car, passing [Appellant] and the other females. As Ms. Lee began walking up a set of stairs toward street level, one of these females came from behind and pulled Ms. Lee's hair. Ms. Lee was not sure which of the assailants pulled her hair. Almost simultaneously, Ms. Lee turned and witnessed [Appellant] and the three assailants coming up the stairs on Ms. Lee's right side. Ms. Lee testified that the assailant who pulled her hair was wearing sunglasses. A.M. seemingly deflated the situation and told Ms. Lee not to worry about anything. For several moments, Ms. Lee was now facing all four assailants.

Subsequently, the assailants proceeded up the stairs in front of Ms. Lee. The four assailants went to a ticket booth, and S.P. was speaking with a male SEPTA employee who was sitting in the booth. Ms. Lee was approximately ten steps behind them when she proceeded past them. After Ms. Lee went through the turnstile, she proceeded through a tunnel leading to the street level. As Ms. Lee approached the final set of stairs before street level, the assailants approached from behind. They pulled Ms. Lee down to the ground.

At this point, Ms. Lee and the assailants were alone. They all began kicking Ms. Lee's back area and the back of her head. Ms. Lee was in a fetal position covering her face. Ms. Lee was also kicked in the face. Ms. Lee testified that "they started pulling on my bag which was around my right arm." Because Ms. Lee's bag was caught under her arm, the assailants had to "work a bit" in order to pry it from her arm. One of the assailants was pulling the bag while another was taking Ms. Lee's cell phone. Ms. Lee believes she was hit approximately ten to fifteen times, but it may have been more. The assailants took a cell phone, bag, and headphones from Ms. Lee. The headphones were left on the ground but the phone and bag were carried off by [Appellant]

and her co-conspirators. The beating stopped only when they took the possessions. The lighting throughout this entire area was very bright.

Ms. Lee went back to the SEPTA employee in the booth. She sought help but was ignored as the employee talked on the phone. A woman came to Ms. Lee's aid, taking her to street level and allowing her to use her cell phone. Approximately one minute to one and a half minutes transpired after the robbery. Ms. Lee explained to the dispatcher what happened. Ms. Lee put her hands up to stop a police van that was making a right onto Girard Avenue from Broad Street. When the police van stopped, Ms. Lee gave the officers a description of the assailants. One of the females wore a white coat with blue air-brushing on the back. Another female wore a black cotton vest and black and green sneakers. Ms. Lee further described one of them as tall.

A man by the subway entrance witnessed the assailants running down East Girard Avenue. The police officers instructed Ms. Lee to wait on the corner for a dispatched patrol car to pick her up. Instead, Ms. Lee flagged down a patrol car and entered. A few minutes later, the police officer received radio notification that three suspects had been stopped. At 13<sup>th</sup> Street and Girard Avenue, Ms. Lee identified all three defendants. Ms. Lee witnessed police officers retrieving her items from the sidewalk, where the defendants were stopped. The cell phone was by a tree, sunglasses were a little further down by a fence. Ms. Lee's identification card was also retrieved at the scene. The items were ten to fifteen steps from the assailants. A purse, wallet, sunglasses, cell phone, medication, and books were initially taken during the robbery. The purse was worth \$ 1,400, the "iPhone 4" cell phone \$ 600, and the sunglasses \$ 340. After Ms. Lee's testimony, Police Officer Ben Johnson testified.

Officer Ben Johnson was on duty as a Philadelphia Police Officer on May 11, 2011. He was on routine patrol with his partner, Police Officer DeBiasio. Officers Johnson and DeBiasio were flagged down by Ms. Lee, who told the officers that she had just been robbed and beaten. She described that one of the assailants was wearing a white jacket and another wore blue jeans and a black vest. Officers Johnson and DeBiasio began surveying the area when they soon spotted [Appellant] and two of the assailants approximately one block away, at the 1200 block of North 13<sup>th</sup> Street. The description given matched.

Officer Johnson testified that A.M. bent toward her feet to discard an item, while [Appellant] threw an identification card toward a fence. Officer Johnson directed Police Officer Brown to retrieve the discarded identification card. Officer Brown retrieved Ms. Lee's driver's license that was on a basketball court near a fence. An arrest memo indicated that S.P. had discarded the driver's license toward the fence line. Officer Johnson testified that [Appellant] wore a black vest that day but also agrees that in the arrest memo it is stated that S.P. wore a black vest. Further, in the arrest memo it is stated that A.M. wore a white jacket. After testimony, there were a series of stipulations.

All counsel stipulated to hospital records that indicated Ms. Lee was treated at Saint Mary's Hospital for contusions. There was a stipulation between counsel that if [Appellant's] mother testified, she would state that her daughter has a reputation in the community for being peaceful, law-abiding, and truthful. There was also a stipulation between counsel that if S.P.'s mother and father were to testify, they would state that their daughter has a reputation in the community for being peaceful and law-abiding. Finally, there was a stipulation to the [Appellant's] biographical arrest paperwork, which indicated that [Appellant] was wearing a white shirt and blue jeans.

Trial Court Opinion ("T.C.O."), 6/13/2012, at 3-6 (citations to notes of testimony ("N.T.") omitted).

On May 24, 2011, Appellant proceeded to a joint hearing with S.P. and A.M. The trial court found Appellant "guilty of the conspiracy and the robbery," and deferred adjudication. N.T., 5/24/2011, at 37-42.<sup>3</sup> On January 17, 2012, the trial court adjudicated Appellant delinquent of robbery and criminal conspiracy. On February 7, 2012 the trial court committed

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<sup>3</sup> S.P. was also found "guilty of the conspiracy and robbery." A.M. was found "not guilty." N.T., 5/24/2011, at 37.

Appellant to Sleepy Hollow Academy, a juvenile drug and alcohol treatment facility. N.T., 2/7/2012, at 2-4. On February 24, 2012, Appellant filed a notice of appeal.<sup>4</sup> On March 13, 2012, the trial court signed an order directing counsel to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Appellant timely complied. On June 13, 2012, the trial court issued an opinion pursuant to Pa.R.A.P. 1925(a).

Appellant raises the following issues:

1. Did not the lower court err in finding that the Commonwealth presented sufficient evidence to convict appellant of conspiracy to commit robbery as a felony of the second degree?
2. Did not the lower court err in finding that the Commonwealth presented sufficient evidence to convict appellant of robbery as a felony of the second degree?

Appellant's Brief at 3.

Both of Appellant's issues challenge the sufficiency of the evidence.

[O]ur applicable standard of review is whether the evidence admitted at trial, and all reasonable inferences drawn from that evidence, when viewed in the light most favorable to the Commonwealth as verdict winner, was sufficient to enable the factfinder to conclude that the Commonwealth established all of

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<sup>4</sup> The trial court recommends that Appellant's appeal be quashed because it was not filed within thirty days of Appellant's delinquency adjudication. T.C.O. at 1. However, it is the disposition of a juvenile matter, rather than the adjudication of delinquency, that constitutes the final order from which a defendant must appeal. ***Commonwealth v. Van Buskirk***, 449 A.2d 621, 622 (Pa. Super. 1982). In the instant matter, the notice of appeal was timely filed on February 24, 2012, within thirty days of Appellant's commitment to Sleepy Hollow Academy.

the elements of the offense beyond a reasonable doubt. Additionally, when examining sufficiency issues, we bear in mind that: the Commonwealth's burden may be sustained by means of wholly circumstantial evidence; the entire trial record is evaluated and all evidence received against the defendant considered; and the trier of fact is free to believe all, part, or none of the evidence when evaluating witness credibility.

***Commonwealth v. Crabill***, 926 A.2d 488, 490-91 (Pa. Super. 2007).

(internal citations and quotation marks omitted).

Appellant claims that the evidence was insufficient to support an adjudication for conspiracy and robbery. Because our analysis of these two issues is intertwined, we consider them together, beginning with conspiracy.

A conspiracy conviction requires proof of (1) an intent to commit or aid in an unlawful act, (2) an agreement with a co-conspirator and (3) an overt act in furtherance of the conspiracy. Because it is difficult to prove an explicit or formal agreement to commit an unlawful act, such an act may be proved inferentially by circumstantial evidence, i.e., the relations, conduct or circumstances of the parties or overt acts on the part of the co-conspirators.

***Commonwealth v. Poland***, 26 A.3d 518, 521 (Pa. Super. 2011). Though individual circumstances may be insufficient to prove intent or agreement for conspiracy purposes, when taken together in context they may create a “web of evidence” linking the accused to the conspiracy. ***Commonwealth v. Perez***, 931 A.2d 703, 708 (Pa. Super. 2007).

Appellant asserts that the evidence presented was insufficient to prove that she conspired with the other individuals to rob Ms. Lee. To the contrary, according to Appellant, the evidence established only her presence at the scene of a crime. Brief for Appellant at 13; **see**

**Commonwealth v. Lambert**, 795 A.2d 1010, 1016 (Pa. Super. 2002) (“[M]ere association with the perpetrators, mere presence at the scene, or mere knowledge of the crime is insufficient.”). The Commonwealth responds that the totality of circumstances demonstrated that Appellant and the three other females acted together as a group to carry out an agreement to rob Ms. Lee. Brief for Commonwealth at 6-7. We agree with the Commonwealth.

Appellant and the other females traveled as a group, and remained together throughout the incident. After the attack, police found three of them together about one block away.<sup>5</sup> Their continuous attachment to one another provides sufficient evidence that they were more than mere acquaintances who happened to be present at the scene of a robbery. After exiting the subway car, the group passed Ms. Lee on the stairs while one of them pulled her hair. They then waited for Ms. Lee at the top of the staircase, where the attack occurred. One group member pulled Ms. Lee to the ground, one grabbed her handbag, and another grabbed her iPhone while one or more of the assailants repeatedly kicked Ms. Lee in the head and back. The coordination of these acts provided ample evidence of planning and a concerted joint effort to carry out a criminal objective. **See Commonwealth v. Ruiz**, 819 A.2d 92, 97-98 (Pa. Super. 2003)

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<sup>5</sup> The fourth attacker was apparently never located.

(appellant's acting in concert with cohort before, during, and after crime sustained conspiracy conviction). After the attack, Ms. Lee identified Appellant as one of her four assailants and later testified that all four females participated in the attack.

The synchronization of the acts, taken together, creates a web of evidence that amply demonstrates the intent and agreement required for a conspiracy conviction. While the record is unclear as to which individual committed each act, it is not necessary to identify which overt acts Appellant actually performed. Each individual member of a conspiracy is criminally responsible for the acts of co-conspirators committed in furtherance of the conspiracy. 18 Pa.C.S. § 903(e); ***Commonwealth v. Galindes***, 786 A.2d 1004, 1011 (Pa. Super. 2001) (“[A]ll co-conspirators are responsible for actions undertaken in furtherance of the conspiracy regardless of their individual knowledge of such actions and regardless of which member of the conspiracy undertook the action.”). Appellant's conspiracy adjudication is supported by sufficient evidence.

Appellant also claims that the evidence was insufficient to support an adjudication for robbery. Robbery occurs when “in the course of committing a theft, [the assailant]: inflicts bodily injury upon another or threatens another with or intentionally puts him in fear of immediate bodily injury.” 18 Pa.C.S. § 3701(a)(iv). “Bodily injury” is defined by statute as an “impairment of physical condition or substantial pain.” 18 Pa.C.S. § 2301.



Appellant focuses her argument upon the claim that no evidence established what, if any, role she played during the attack. Brief for Appellant at 12. Appellant asserts that the evidence was insufficient to prove that she was a willing or active participant in the robbery. ***Id.***

Ms. Lee testified that Appellant was present at the scene during the incident as one of the four assailants. Ms. Lee could not say whether Appellant was the one that pulled her down, struck her, or grabbed any of her belongings, because Ms. Lee had covered her face for protection. ***Id.*** Nonetheless, as Appellant was a member of the conspiracy as demonstrated above, it is immaterial whether she personally performed any of the overt acts, or committed the necessary theft for robbery. She is liable for the foreseeable actions of her co-conspirators. ***See Galindes, supra; Commonwealth v. Morton***, 512 A.2d 1273 (Pa. Super. 1983) (finding sufficient evidence when two men approached victim together and left together, even though it was unknown which one carried out the overt act).

At least one of the females repeatedly kicked Ms. Lee in the head and back, and records indicate that Saint Mary's Hospital treated Ms. Lee for contusions. The beating that Ms. Lee endured suffices to constitute an "impaired physical condition or substantial pain." 18 Pa.C.S. § 2301. While Ms. Lee was being struck, at least one of the females took her handbag, phone, and headphones. Appellant and her conspirators left the scene of the crime with Ms. Lee's belongings, and police caught them nearby as they

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discarded the items. The facts establish that Ms. Lee was robbed by Appellant and her co-conspirators. As Appellant was a co-conspirator, her adjudication of robbery was supported by sufficient evidence.

Dispositional Order affirmed. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Karen Gambett", written over a horizontal line.

Prothonotary

Date: 6/6/2013