NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: J.C., A MINOR	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: J.C.	:	No. 714 EDA 2013

Appeal from the Dispositional Order Entered February 1, 2013,
In the Court of Common Pleas of Philadelphia County,
Juvenile Division, at No. CP-51-JV-0002823-2012.

BEFORE: BENDER, P.J., SHOGAN and FITZGERALD*, JJ.

MEMORANDUM BY SHOGAN, J.: **FILED April 10, 2014**

Appellant, J.C., a juvenile, appeals from the February 1, 2013 dispositional order entered after he was adjudicated delinquent of committing acts that constituted criminal trespass and criminal mischief. We affirm.

The juvenile court set forth the underlying facts of this case as follows:

> On May 22, 2012, homeowner, Karen Bradley, received a call from her daughter whom [sic] had just arrived at the family home, 4316 Teesdale Street in the City and County of Philadelphia. (Trial Hearing, Notes of testimony at 2). As a result of this call, Ms. Bradley instructed her daughter to call police (Trial Hearing, Notes of testimony at 3). Ms. Bradley further testified that her home was secure when she left for work (Trial Hearing, Notes of testimony at 3).
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> Upon Ms. Bradley's arrival at the location, she witnessed that the lower pane of glass on the back door had been removed (Trial Hearing, Notes of testimony at 3-4). This pane of glass is closest to the door knob (Trial Hearing, Notes of testimony at 4). This door knob can only be operated by key (Trial Hearing, Notes of testimony at 6).

*Former Justice specially assigned to the Superior Court.

> Ms. Bradley testified that pieces of the wood frame that holds the pane of glass in place were removed and placed next to the rear door (Trial Hearing, Notes of testimony at 7).
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> Ms. Bradley further testified that she did not know, J.C., and gave no one permission to enter the location (Trial Hearing, Notes of testimony at 8).
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> Philadelphia Police Officer Daniel Murphy (badge 1865) was dispatched at approximately 12:30 PM to the location of 4316 Teesdale Avenue in the City and County of Philadelphia (Trial Hearing, Notes of testimony at 18). After an inspection of the property, P.O. Murphy witnessed that the lower right pane of glass from the rear door had been removed and placed next to the door (Trial Hearing, Notes of testimony at 18). At that time the Police Officer carefully collected the pane of glass, placed it into an evidence bag and delivered it to Detective Grimm (badge 9303) at NE detectives (Trial Hearing, Notes of testimony at 18).
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> At this time Defense counsel and the Commonwealth entered into a stipulation that Detective Grimm was able to lift a right palm print from the pane of glass and submitted it for analysis. Further, counsel stipulated to the findings of the Latent Print Analysis Report that the right palm print belongs to J.C. and it was compared through [the Automated Fingerprint Identification System] AFIS. (Trial Hearing, Notes of testimony at 22).
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> Defense then presented a witness, Christopher Thompson, who stated that he and [] J.C. had, approximately 1 month prior, been behind the house with the complainant's daughter (Trial Hearing, Notes of testimony at 31-32). Mr. Thompson conceded that they were in the alley and not near the door in question (Trial Hearing, Notes of testimony at 32).

Juvenile Court Opinion, 5/17/13, at 1-3. Following the hearing, Appellant was adjudicated delinquent on the charges of criminal trespass and criminal mischief. ***Id***. at 1.

On March 1, 2013, Appellant filed a timely appeal. The juvenile court directed Appellant to file and serve a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Appellant timely complied.

On appeal, Appellant raises the following issues for this Court's consideration:

> 1. Was not the evidence insufficient as a matter of law to sustain appellant's adjudication for criminal trespass as a felony of the second degree where the Commonwealth failed to prove beyond a reasonable doubt that appellant "broke into" the structure or building at issue?
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> 2. Was not the evidence insufficient as a matter of law to sustain appellant's adjudication of felony criminal trespass and criminal mischief where the Commonwealth failed to prove beyond a reasonable doubt that the latent print found on the removed pane of glass was made on the date at issue in the complaint?
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> 3. Was not the evidence insufficient as a matter of law to sustain the juvenile appellant's adjudication where the Commonwealth failed to prove beyond a reasonable doubt that the latent print was made by the juvenile appellant and not by an adult with the same name?
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> 4. Was not the evidence insufficient as a matter of law to sustain the juvenile appellant's adjudication of criminal mischief, pursuant to 18 Pa.C.S. § 3304(a)(4), where the Commonwealth failed to prove any graffiti on the property at issue?

Appellant's Brief at 4.

All four of Appellant's issues present challenges to the sufficiency of the evidence produced by the Commonwealth. Our standard of review is well settled:

> In evaluating a challenge to the sufficiency of the evidence supporting an adjudication of delinquency, our standard of review is as follows:
>
> > When a juvenile is charged with an act that would constitute a crime if committed by an adult, the Commonwealth must establish the elements of the crime by proof beyond a reasonable doubt. When considering a challenge to the sufficiency of the evidence following an adjudication of delinquency, we must review the entire record and view the evidence in the light most favorable to the Commonwealth.
> >
> > In determining whether the Commonwealth presented sufficient evidence to meet its burden of proof, the test to be applied is whether, viewing the evidence in the light most favorable to the Commonwealth, and drawing all reasonable inferences therefrom, there is sufficient evidence to find every element of the crime charged. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by wholly circumstantial evidence.
> >
> > The facts and circumstances established by the Commonwealth need not be absolutely incompatible with a defendant's innocence. Questions of doubt are for the hearing judge, unless the evidence is so weak that, as a matter of law, no probability of fact can be drawn from the combined circumstances established by the Commonwealth.

In re V.C., 66 A.3d 341, 348-349 (Pa. Super. 2013) (quoting ***In re A.V.***, 48 A.3d 1251, 1252–1253 (Pa. Super. 2012)). The finder of fact is free to believe some, all, or none of the evidence presented. ***Commonwealth v. Hartle***, 894 A.2d 800, 804 (Pa. Super. 2006).

In his first issue on appeal, Appellant claims the evidence was insufficient to establish the crime of criminal trespass. Upon review, we conclude that this issue is meritless. Criminal trespass is defined as follows:

> **Criminal trespass**
>
> **(a) Buildings and occupied structures.--**
>
> > (1) A person commits an offense if, knowing that he is not licensed or privileged to do so, he:
> >
> > * * *
> >
> > > (ii) breaks into any building or occupied structure or separately secured or occupied portion thereof.

18 Pa.C.S.A. § 3503(a)(1)(ii).

The focus of Appellant's argument is that the Commonwealth failed to prove that Appellant actually broke into Ms. Bradley's house or that any part of his body or instrumentality entered the house. Appellant's Brief at 12. We disagree.

As noted above, we review the evidence and reasonable inferences arising therefrom in the light most favorable to the Commonwealth. ***In re V.C.***, 66 A.3d at 348-349. We reiterate that the elements of a crime may be established beyond a reasonable doubt through wholly circumstantial evidence. ***Id***. In the seminal case of ***Commonwealth v. Myers***, 297 A.2d 151 (Pa. Super. 1972), this Court discussed permissible inferences in

determining what constitutes the breaking and entering of a structure. The Court stated:

> It is true that in this case there is no direct evidence of an entry. But the condition of the door suggests that an entry did in fact occur. The frame was damaged as if someone had attempted to batter in the door. Since the window closest to the doorknob had been broken as well, it would not be unreasonable to assume that the defendant had reached his arm inside to try to unlock the door before resorting to breaking it down. And the passing of an arm through a window is enough to satisfy the entry requirement, for the entry of any part of the body is sufficient to constitute a burglary.

Myers, 297 A.2d at 152. While the ***Myers*** case concerned a burglary, the rationale announced regarding reasonable inferences and the entry of a structure applies to the case at bar. ***See Commonwealth v. Giddings***, 686 A.2d 6, 8 (Pa. Super. 1996) (stating that the entry requirement of criminal trespass is same as that of burglary).[1]

Here, the record reveals that the wooden frame and glass pane of the back door closest to the knob had been removed, and this door knob can only be operated and opened from the inside or outside by using a key. N.T., 2/1/13, at 6-7. We conclude that it was entirely reasonable for the finder of fact to conclude that Appellant removed the glass nearest the doorknob, reached his hand inside, discovered that he could not open the door from either the inside or outside without a key, and fled at that point.

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[1] ***Giddings*** also expanded the entry requirement of criminal trespass and held that "entry" could be satisfied by a tool held or manipulated by the defendant that enters the structure even where the defendant never physically entered.

This reasonable inference, concluding that Appellant reached inside the house, satisfies the entry element of criminal trespass.[2] ***Myers***, 297 A.2d at 152; 18 Pa.C.S.A. § 3503(a)(1)(ii). Accordingly, we conclude that Appellant is entitled to no relief on this claim.

Next, Appellant claims the evidence was insufficient because the Commonwealth failed to prove that the latent palm print found on the pane of glass was made at the time the crime was committed. Appellant's Brief at 13. We conclude that there is no merit to this claim.

While the Commonwealth could not prove with mathematical certainty when the palm print was made, we again note that this Court reviews the evidence and reasonable inferences arising therefrom in the light most favorable to the Commonwealth, and the elements of a crime may be established beyond a reasonable doubt through circumstantial evidence. ***In re V.C.***, 66 A.3d at 348-349. Here, the record reflects that Ms. Bradley did not know Appellant and never gave him permission to enter her house.

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[2] In his Reply Brief, Appellant argues that the entry element was refuted by a Commonwealth witness. Appellant's Reply Brief at 3. We disagree. While Officer Daniel Murphy did in fact say that there was "no entry," this statement was made in response to a question from the juvenile court judge regarding whether the door had "been knocked open" or whether the door remained closed. N.T., 2/1/13, at 21. Therefore, it appears that the judge's question was asking if a person's entire body could have entered the house. However, as explained above, the entry element does not require the perpetrator's entire body enter the structure. Moreover, as it was the trial court that posed the question at issue, it is clear from the disposition that the court believed that there was an entry of some kind even if Appellant was unable to walk through Ms. Bradley's door.

N.T., 2/1/13, at 7-8. Ms. Bradley testified that visitors to the house used the front door. ***Id***. at 8. There was damage done to the window frame and window on her back door. ***Id***. There was a palm print on glass that had been removed from the door on the day in question, and the print was matched to a print on file from Appellant. ***Id***. at 22. Appellant stipulated to the match. ***Id***. at 22-23. The trial court, sitting as the finder of fact, was required to review the evidence and was free to accept some, all, or none of the evidence presented. ***Hartle***, 894 A.2d at 804. Moreover, based on our standard of review, we discern no error in the fact-finder's reasonable inference that the palm print was made at the time of the crime. The fact that the Commonwealth did not establish the precise moment that the palm print was made does not render the evidence insufficient.

Next, Appellant claims that the evidence was insufficient because the Commonwealth failed to prove beyond a reasonable doubt that the palm print was made by Appellant and not by an adult with the same name. We conclude that no relief is due on this issue.

The point Appellant is arguing is that, while the palm print report revealed Appellant's correct name, correct state identification number, and matched the palm print from the window to Appellant, the report allegedly listed Appellant's birthdate as January 1, 1955. The birthdate discrepancy is the issue upon which Appellant focuses.

Initially, we note that Appellant has failed to include the original palm print report in the certified record. It is well settled that an appellate court cannot consider anything that is not part of the certified record. ***Commonwealth v. Martz***, 926 A.2d 514, 524 (Pa. Super. 2007) (citation omitted). It is the appellant's responsibility to supply this Court with a complete record for purposes of appellate review. ***Id***. (citation omitted). A failure by the appellant to insure that the certified record on appeal contains sufficient information to conduct a proper review constitutes waiver of the issue sought to be examined. ***Id***. (citation and quotation marks omitted). Additionally, we note that Appellant has attached to his brief what purports to be a copy of the palm print report. Appellant's Brief at Exhibit C. However, it is well settled that, for purposes of appellate review, what is not of record does not exist. ***Commonwealth v. Holley***, 945 A.2d 241, 246 (Pa. Super. 2008) (citation and quotation marks omitted). Moreover, copying a document and attaching it to a brief does not make it a part of the certified record. ***Id***. Accordingly, because we are unable to view the document in question, Appellant's challenge to the palm print report is waived.

Assuming, *arguendo*, that this challenge was properly before us, we would conclude that Appellant is entitled to no relief. Initially, the record reveals that the palm print report identified the print on the pane of glass as

Appellant's, and Appellant stipulated to the report. N.T., 2/1/13, at 22 and 38. Moreover, Appellant's challenge to the reliability of the palm print report based on the erroneous date of birth is not a challenge to the sufficiency of the evidence. Rather, it is a challenge to the weight of the evidence. ***See Commonwealth v. Patterson***, 940 A.2d 493 (Pa. Super. 2007) (reliability of identification evidence relates to its weight and not to its sufficiency). A challenge to the weight of the evidence questions which evidence is to be believed. ***Commonwealth v. Charlton***, 902 A.2d 554, 561 (Pa. Super. 2006). In ***Commonwealth v. Grahame***, 482 A.2d 255, 259 (Pa. Super. 1984), we made the following observation regarding challenges to the identity of the perpetrator of a crime being an attack on the weight of the evidence: "Proof beyond a reasonable doubt of the identity of the accused as the person who committed the crime is *essential* to a conviction. The evidence of identification, however, needn't be positive and certain in order to convict, although any indefiniteness and uncertainty in the identification testimony goes to its weight." ***Grahame***, 482 A.2d at 259 (internal citations omitted). Nevertheless, were we to reach this issue, we would conclude that Appellant is entitled to no relief. This Court applies the same standard for reviewing weight of the evidence claims in juvenile cases as in those involving adults. ***In re J.B.***, 69 A.3d 268, 278 (Pa. Super. 2013) (citation omitted). A new trial should not be granted because of a conflict in

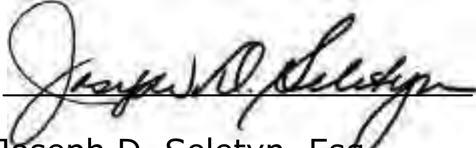
testimony or because the judge on the same facts would have arrived at a different conclusion. ***Id***. at 277. A new trial should be awarded when the fact-finder's verdict is so contrary to the evidence as to shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail. ***Id***. Nothing in the juvenile court's decision is shocking to our sense of justice, and despite the errant date of birth on the palm print report, the balance of the evidence supports Appellant's adjudication. Accordingly, were we to reach this issue, we would conclude that no relief is due.

In his fourth issue, Appellant claims that the evidence was insufficient to sustain an adjudication of criminal mischief. Upon review, however, we note that this issue was not raised in Appellant's Pa.R.A.P 1925(b) statement of errors complained of on appeal. Therefore, we are constrained to conclude that the issue is waived. ***In re R.B.G.***, 932 A.2d 166, 170 n.9 (Pa. Super. 2007) (citing ***Commonwealth v. Castillo***, 888 A.2d 775, 780 (Pa. 2005) ("Any issues not raised in a Pa.R.A.P.1925(b) statement will be waived." (quoting ***Commonwealth v. Lord***, 719 A.2d 306, 309 (Pa. 1998)). This waiver is conceded by Appellant in his Reply Brief. Appellant's Reply Brief at 8.

For the reasons set forth above, we conclude that Appellant is entitled to no relief. Accordingly, the dispositional order is affirmed.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/10/2014