

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
 :
IN THE INTEREST OF: : NO. JV-103-2005
 :
 D.F., :
 :
 A JUVENILE : 1925(a) OPINION

Date: December 23, 2005

**OPINION IN SUPPORT OF THE ORDER OF OCTOBER 6, 2005 IN COMPLIANCE
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Defendant, Daniel Fisher, a minor, has appealed the court's delinquency adjudication of a receiving stolen property charge. For the reasons discussed infra, the appeal should be denied and the delinquency adjudication affirmed.

I. BACKGROUND

A. Facts

December 2004 to April 2005 is the time frame within which the relevant events occurred. Ben Card, a minor, resides at 1219 Cemetery Street, Jersey Shore, Pennsylvania with his mother Kelly Huling. For Christmas 2004, Card's parents gave him a red and blue Roadmaster Mt. Fury bike. Notes of Testimony, 4, 7 (7/7/05). Card's parents had purchased bikes as Christmas gifts for their three sons. Id. at 24. Upon purchasing the bikes, Huling wrote the serial numbers located on the bottom of each bike in the bike's corresponding owner's manual. Id. at 24, 25-26. Card's parents also wrote the name of each son in the owner's manual that went with his bike. Id. at 25.

Card wrecked the bike the first day he had it. N.T., 8 (7/7/05). The wreck produced a scratch on the frame of the bike. Id. at 8, 18. The scratch was about an inch long and located near where the handle bars join the frame. Id. at 18.

At some point, Card's Roadmaster Mt. Fury was stolen. Card first noticed that the bike was missing around February 14, 2005. N.T., 15 (7/7/05). Card had stored the bike on the front porch of his residence. Id. at 7-8. Card had not secure the bike with a lock. Id. at 8.

Daniel Fisher resided at 1217 ½ Cemetery Street, Jersey Shore, Pennsylvania. N.T., 32 (10/6/05). He was a neighbor of Card. N.T., 9 (7/7/05). In fact, Fisher's residence was only about ten to fifteen yards away from Card's. Id. at 28.

Around the middle of April 2005, Card observed Fisher riding a bike in Fisher's yard. N.T., 8-9, 15-16 (7/7/05). Card recognized the bike as the one that was stolen from him. Id. at 8-9, 15. When Fisher realized that he had been seen by Card, Fisher rode the bike around his residence to the front porch. Id. at 9-10, 17. At that point, Card went into his residence to tell his mother that he had seen Fisher riding his stolen bike. Id. at 10, 17.

The following day Huling went over to Fisher's residence. N.T., 28. (7/7/05). Huling went to speak with Fisher's mother, Eileen Sechrist. Huling had knocked on the door of Fisher's residence and noticed that the bike was on the porch. Id. at 29. She flipped the bike over and was able to write down the first four numbers of the serial number located on the bike. Ibid. After doing this, Huling went to the Porter Township Police station. Id. at 29-30.

Later that day, Card's stolen bike was returned to him. Officer Kyle Day, of the Porter Township Police Department, had retrieved the bike that was at Fisher's residence and brought

it to Card. N.T., 12, 31 (7/7/05). Once Officer Day had returned the bike to Card, he photographed it. Id. at 32.

B. Procedural History

In a juvenile petition filed May 3, 2005, Daniel Fisher was charged with theft by unlawful taking¹ and receiving stolen property.² On October 6, 2005, the court adjudicated the minor delinquent of the receiving stolen property charge, but found that the Commonwealth failed to prove beyond a reasonable doubt the theft by unlawful taking charge. On October 14, 2005, Fisher filed a post adjudication motion asserting that there was insufficient evidence to establish the requisite mens rea for the receiving stolen property charge and that the delinquency adjudication was against the weight of the evidence. On October 17, 2005, the court denied the post adjudication motion in all respects.

On November 4, 2005, Fisher. filed his notice of appeal. On November 8, 2005, the court issued an order in compliance with Pa.R.A.P. 1925(b) directing Fisher to file a statement of matters complained of on appeal within fourteen days of the order. On November 22, 2005, Fisher filed his statement of matters.’

II. ISSUES

Based upon the statements of matters, there are two issues on appeal:

- (1) Whether the Commonwealth presented sufficient evidence to establish the requisite intent for the charge of receiving stolen property beyond a reasonable doubt?

¹ 18 Pa.C.S.A. §3921(a).

² 18 Pa.C.S.A. §3925(a).

- (2) Whether the lower court's finding of delinquency on the charge of receiving stolen property was against the weight of the evidence presented at trial?

For the reasons discussed *infra*, the Commonwealth did present sufficient evidence to establish the requisite intent for the charge of receiving stolen property beyond a reasonable doubt and the court's finding of delinquency on the charge of receiving stolen property was not against the weight of the evidence presented at the hearing.

III. DISCUSSION

The discussion of this opinion will be divided in to two main parts. The first part will address the sufficiency of the evidence challenge. It will be divided into three subparts. The first subpart will set forth the standard of review that will guide the determination of the sufficiency challenge. The second subpart will then set forth the elements of the crime of receiving stolen property, including the requisite *mens rea*. The final subpart will set forth why the Commonwealth has established beyond a reasonable doubt the requisite *mens rea*.

The second part of the discussion will address the weight of the evidence challenge. It will be divided into two subparts. The first subpart will set for the standard of review. The second will set forth the reasons as to why the delinquency adjudication regarding the receiving stolen property charge was not against the weight of the evidence.

A. Sufficiency of the Evidence Challenge

1. Standard of Review

When reviewing a challenge to the sufficiency of the evidence, a court must determine whether the evidence at trial, and all reasonable inferences drawn therefrom when viewed in the light most favorable to the Commonwealth as verdict winner, are sufficient to establish each

element of the offense beyond a reasonable doubt. *Commonwealth v. Taylor*, 876 A.2d 916, 922 (Pa. 2005); *Commonwealth v. Davido*, 868 A.2d 431, 435 (Pa. Super. 2005), *app. denied*, 872 A.2d 1125 (Pa. 2005), *cert. denied*, 2005 U.S. LEXIS 8457. The Commonwealth is not required to preclude every possibility of innocence. *Commonwealth v. Jones*, 874 A.2d 108, 120 (Pa. Super. 2005). “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.” *Ibid.* (quoting *Commonwealth v. Bullick*, 830 A.2d 998, 1000 (Pa. Super. 2003)). In reviewing a challenge to the sufficiency of the evidence, a court does not weigh the evidence or substitute its judgment for that of the fact finder. *Commonwealth v. Jones*, 874 A.2d 108, 120 (Pa. Super. 2005). The entire record must be evaluated and all evidence actually received is to be considered. *Id.* at 121.

Direct and circumstantial evidence receive equal weight when assessing the sufficiency of the evidence. *Commonwealth v. Grekis*, 601 A.2d 1275, 1280 (Pa. Super. 1992). Circumstantial evidence alone is sufficient to convict one of a crime. *Davido*, 868 A.2d at 435. Whether it is direct, circumstantial or a combination of both, what is required of the evidence is that it taken as a whole links the accused to the crime beyond a reasonable doubt. *Commonwealth v. Robinson*, 864 A.2d 460, 478 (Pa. 2004), *cert. denied*, 2005 U.S. LEXIS 7952.

2. Receiving Stolen Property Elements

In order to convict an individual 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 had guilty knowledge, that is, he knew or had reason to know the property was

stolen. *Commonwealth v. Matthews*, 632 A.2d 570, 572 (Pa. Super. 1993); *Grekis*, 601 A.2d at 1280.³ Mere possession of stolen property is insufficient to establish guilty knowledge. *Commonwealth v. Foreman*, 797 A.2d 1005, 1012 (Pa. Super. 2002); *Matthews*, 632 A.2d at 572. The Commonwealth must introduce either direct or circumstantial evidence that demonstrates that the defendant knew or had reason to know the property was stolen. *Foreman*, 797 A.2d at 1012; *Matthews*, 632 A.2d at 572.

Guilty knowledge may be inferred from the facts and surrounding circumstances. *Commonwealth v. Carson*, 592 A.2d 1318, 1321 (Pa. Super. 1991), *app. denied*, 600 A.2d 533 (Pa. 1991); *Commonwealth v. Grabowski*, 549 A.2d 145, 148 (Pa. Super. 1988), *app. denied*, 559 A.2d 526 (Pa. 1989). Relevant facts would include the unexplained possession of recently stolen goods, the nature of the goods, the quantity of goods involved, the lapse of time between theft and possession, the ease with which the goods can be assimilated into trade channels, and whether there have been alterations made to the property indicative of it being stolen. *Foreman*, 797 A.2d at 1012. A trier of fact could also consider the accused's conduct at arrest and during possession, the situs of the property and the situs of the possession, the value of the property and the price paid for the property; the quantity of the property, flight from the police or other evidence indicating an attempt to avoid capture, and the condition of the property indicating a theft. *Carson*, 592 A.2d at 1321; *Grabowski*, 549 A.2d at 148. With regard to an accused's explanation for his possession of stolen property, "...the trier of fact may consider

³ "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 the intent to restore it to the owner." 18 Pa.C.S.A. §3925(a).

the possession as unexplained if it deems the explanation unsatisfactory.” *Foreman*, 797 A.2d at 1012-13.

3. The Commonwealth Presented Sufficient Evidence to Establish the Requisite Mens Rea

The Commonwealth has presented sufficient evidence to establish that Fisher knew or had reason to know that the bike in his possession was stolen. Fisher’s conduct while in possession of the bike indicates that he knew the bike was stolen. When Fisher was observed by Card riding the bike in his yard he fled and tried to conceal his possession of the bike from its owner by riding around his residence to his front porch.

An inference of guilty knowledge may also be made from the fact that Fisher was in possession of recently stolen property without a satisfactory explanation. Fisher was seen riding the bike approximately two months after it had been stolen. Fisher has advanced the factual scenario that he had borrowed a red and blue Roadmaster Mt. Fury bike from his friend Nick Barler. N.T., 51 (10/6/05). However, the evidence contradicts Fisher’s assertion that the bike found in his possession was Barler’s and not Card’s.

Card testified that his bike had an inch long scratch on the frame near where the frame and the handle bars meet. N.T., 8, 18 (7/7/05). The bike retrieved from Fisher’s possession had a scratch on it near where the frame and handle bars meet. During his testimony, the Commonwealth gave Card the photograph of the bike that was retrieved from Fisher’s possession (Commonwealth Exhibit 2). *Id.* at 20. Card circled on the photograph the scratch on the frame of the bike. *Id.* at 21. The scratch he circled was on the frame near where the frame and handlebars meet. *Ibid.* Barler testified that there were no scrape marks on his bike. N.T., 7 (10/6/05). Sechrist testified that her family did not possess, aside from the allegedly

borrowed Barler bike, any bikes during this period. *Id.* at 41. Thus, while assuming *agruendo* that Fisher did borrow a Roadmaster Mt. Fury from Barler, the evidence demonstrates that he had in his possession Card's stolen bike. Furthermore, the court did not find Fisher's explanation to be credible.

Accordingly, the Commonwealth has presented sufficient evidence to establish beyond a reasonable doubt the requisite intent to have Fisher adjudicated delinquent of receiving stolen property.

B. Weight of the Evidence Challenge

1. Standard of Review

A claim that the verdict was against the weight of the evidence is addressed to the sound discretion of the trial court. *Commonwealth v. Snyder*, 870 A.2d 336, 345 (Pa. Super. 2005). "In reviewing such a claim, a trial court must determine whether certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice." *Ibid*, *see also*, *Commonwealth v. Sullivan*, 820 A.2d 795, 806 (Pa. Super. 2003), *app. denied*, 833 A.2d 143 (Pa. 2003). In order for a new trial to be granted on the basis that the verdict was against the weight of the evidence, the fact finder's verdict must be so contrary to the evidence as to shock one's sense of justice. *Commonwealth v. Fletcher*, 861 A.2d 898, 908 (Pa. 2004).

In reviewing a weight of the evidence claim, the trial court is not required to view the evidence in the light most favorable to the verdict winner. *Sullivan*, 820 A.2d at 806. A weight of the evidence challenge concedes that there is sufficient evidence to sustain the verdict. *Ibid*.

2. The Delinquency Adjudication was not Against the Weight of the Evidence

This court's finding of delinquency regarding the receiving stolen property charge was not against the weight of the evidence. Fisher argues that finding him delinquent of the charge of receiving stolen property was against the weight of the evidence because the evidence established that the bike he was in possession of was Barler's and that the evidence which contradicted this conclusion could not be believed. Fisher asserts that the testimony of himself, Barler and Nick Barler's mother, Dawn Barler, establish that Barler let him borrow his Roadmaster Mt. Fury so that he could get home from Avis. N.T., 4, 18, 51 (10/6/05). Fisher argues that any contradictory evidence cannot be believed. Fisher asserts that the evidence demonstrates that Card and Huling did not get along with Fisher and his family and that Card and Huling were biased against Fisher because of this animosity. Fisher argues that it is through this bias that their testimony must be viewed. Also, Fisher asserts that Card and Huling gave inconsistent testimony as would relate to who wrote the numbers in the manuals and what was done with those manuals after the bikes were purchased.

Fisher's argument is a credibility argument. As the finder of fact, the court was free to believe all, some, or none of the various witnesses' testimony. *See, Jones*, 874 A.2d at 120. The court did not find credible the testimony of Fisher, Barler or Barler's mother regarding the loaning of the bike. The court did find credible Card's testimony regarding Fisher's conduct while in possession and the distinctive identification marks on the bike. The fact that Fisher believes that the testimony he presented regarding borrowing the bike from Barler was most truthful does not mean that he will prevail on his weight of the evidence claim.

Commonwealth v. Smith, 861 A.2d 892, 896 (Pa. 2004). The fact that the court did not credit the testimony of the witnesses Fisher presented does not militate that the delinquency adjudication was against the weight of the evidence; rather, it merely establishes that the court did not find that testimony to be credible, a conclusion that the court were empowered to make. *See, Ibid.*

Accordingly, the court's delinquency adjudication regarding the receiving stolen property charge was not against the weight of the evidence.

IV. CONCLUSION

The appeal should be denied and the adjudication of delinquency affirmed.

BY THE COURT,

William S. Kieser, Judge

cc: Charles G Brace, Esquire
Henry Mitchell, Esquire
Judges
Christian Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)