

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
 :
 vs. : NO. JV-318-2009
 :
 FC, :
 :
 Defendant : 1925(a) OPINION

Date: April 12, 2010

**OPINION IN SUPPORT OF THE ORDER OF JANUARY 21, 2010 IN
COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE
PROCEDURE**

Juvenile FC has appealed this court's adjudication of sentence issued on January 21, 2010 following her disposition on charges of Theft from a Motor Vehicle; Receiving Stolen Property; Theft by Unlawful Taking; Receiving Stolen Property; Drivers Required to be Licensed; Careless Driving; and Accidents Involving Damage to Unattended Property. FC argues that the evidence at the hearing was insufficient to prove beyond a reasonable doubt that she committed the aforementioned offenses. FC's appeal should be denied and the verdict affirmed.

I. Background

On October 23, 2009, FC was arrested by the Williamsport Police on charges of Theft from a Motor Vehicle; Receiving Stolen Property; Theft by Unlawful Taking; Receiving Stolen Property; Drivers Required to be Licensed; Careless Driving; and Accidents Involving Damage to Unattended Property.

On January 21, 2010, a hearing was held before this Court at which time FC was represented by counsel, Ryan Gardner, Esquire. At the commencement of the hearing, Assistant District Attorney, Jeffrey Yates, Esquire, moved to amend the counts, to add an eighth count of conspiracy to commit theft under 18 Pa.C.S. § 903. N.T., January 21, 2010, p. 4. At the end of proceedings, the Court dismissed the amended eighth count and found FC committed the offenses of Theft from a Motor Vehicle under 18 Pa.C.S. § 3924A; Receiving Stolen Property under 18 Pa.C.S. § 3925A; Theft by Unlawful Taking under 18 Pa.C.S. § 3921A; Receiving Stolen Property under 18 Pa.C.S. § 3925A; Drivers Required to be Licensed under 75 Pa.C.S. § 1501A; Careless Driving under 75 Pa.C.S. § 3714A; and Accidents Involving Damage to Unattended Property under 75 Pa.C.S. § 3745. *Id.*, at 53. The Court imposed disposition that same date.

On February 8, 2010, Notice of Appeal to the Superior Court was filed. On February 9, 2010 this Court issued an order in compliance with Pennsylvania Rules of Appellate Procedure Rule 1925(b) directing the Juvenile, FC, to file a Concise Statement of Matters Complained of on Appeal within twenty-one days of the order. On March 1, 2010, FC filed by and through her attorney, Ryan Gardner, Esquire, a Concise Statement of Matters Complained of on Appeal.

In her statement of matters, FC sets forth one issue common to all seven counts she was found to have committed: “Was the evidence presented at trial insufficient to prove that the Defendant committed the offenses as outlined in Counts 1 through 7 of the Juvenile Petition?” Juvenile’s Concise Statement of Matters Complained of on Appeal Pursuant to Pa.R.A.P. 1925(b).

II. Facts

On October 23, 2009 FC stole a green Geo Tracker owned by Rebecca Levano. The vehicle was parked outside Ms. Levano's home at 626 Cemetery Street. The juvenile drove the vehicle around the block and into a telephone pole on the corner of Cemetery Street and St. James Place. Carrie Miller, a neighbor and cousin of the victim, came outside after she heard, the victim, Ms. Levano's vehicle start up and drive away. N.T., January 21, 2010, p. 14. She heard the vehicle circle around the block and hit the telephone pole. *Id.*, 15-17.

Ms. Miller ran to the vehicle after it crashed into the telephone pole. *Id.*, 17. Ms. Miller observed a male exit the passenger side of the vehicle and then observed a female climb over the console and exit the passenger side of the vehicle. *Id.*, 10. Ms. Miller identified FC as the individual she observed crawl over the console and exit the passenger side of the vehicle. *Id.*, 13. Ms. Miller watched where FC went until FC was detained by another neighbor. *Id.*, 13. FC remained in Ms. Miller's sight until she was detained by the neighbor. *Id.*, 18.

Upon hearing the vehicle hit the telephone pole, a neighbor, Jarret Houser, came outside his home. He immediately approached two individuals, an African American male and an African American female, he did not recognize which were along-side his home. *Id.*, 22-23. Mr. Houser testified that when he did this, the male took off running, and he detained the female which he identified in Court as being FC. *Id.*, 23-24. Mr. Houser asked the juvenile where she had just come from at which point she told him she had just come out of his, Mr. Houser's, home. *Id.*, 25.

The victim's husband, Brent Levano, was awoken by the victim telling him her car had been stolen. *Id.*, 29. Mr. Levano then went outside where he saw Mr. Houser restraining an African-American female whom he also identified as FC. *Id.*, 30. Mr. Levano went to his wife's Geo Tracker and looked inside the vehicle where he found a silver hoop earring on the passenger seat. *Id.*, 32. When Mr. Levano approached FC he noticed that she had a silver hoop earring in her right ear matching the earring he found in his Wife's vehicle and that she did not have an earring in her left ear. *Id.*, 32.

The victim, Rebecca Levano, testified that around 11:15 p.m. she heard a crash and went outside of her house. *Id.*, 37. At that time, she observed her 1999 green Geo Tracker smashed into a telephone pole diagonally from her house. *Id.*, 36-37. Ms. Levano proceeded towards the area of the accident at which time she saw her neighbor, Mr. Houser, with FC in his custody. *Id.* 37.

Ms. Levano testified that her vehicle sustained significant damage to the front-end as a result of being crashed into the telephone pole, and that the insurance company deemed her vehicle totaled. *Id.*, 41. Ms. Levano was later contacted by Officer Jeremy Brown to identify a pink Motorola Verizon car charger and a blue lighter. Ms. Levano identified these items as hers and indicated that they were in her vehicle immediately prior to the vehicle being taken. *Id.*, 39. Ms. Levano testified that in addition to her vehicle being smashed and the Motorola charger and blue lighter being taken, the car stereo from her car was ripped out of the dashboard, but was still laying on the floor. *Id.*, 40. Ms. Levano did not testify to having a previous relationship or

acquaintanceship with FC and specifically testified that at no time did she give FC permission to drive her vehicle. *Id.*, 39.

Officer Jeremy Brown of the Williamsport Bureau of Police responded to the accident scene at the corner of St. James and Cemetery Street in Williamsport on October 23, 2009. *Id.*, 44. Officer Brown identified FC as the individual who was being detained by Mr. Houser. *Id.*, 45. The Officer testified that when a search incident to arrest was conducted, he removed from FC's pockets a pinkish colored cell phone charger and a lighter. Officer testified that there was damage to both the vehicle and telephone pole and that there was a smudge of blood on the dash. *Id.*, 47. Officer Brown testified that FC was not injured as a result of the accident and that she was not bleeding from what he observed. *Id.*, 51.

Officer Brown testified that while he was aware that there was allegations that another individual was with FC at the time of the incident, there was no cooperation with FC in determining who that individual was. *Id.*, 47. Officer Brown testified that he ascertained from the Commonwealth of Pennsylvania that the Department of Transportation had no record of FC possessing a valid operating license number in the state of Pennsylvania. *Id.*, 46. Officer Brown testified that FC drove in a reckless manner based on witness' testimony of the tires squealing and the fact that she plowed into a telephone pole with total disregard for person or safety. *Id.*, 47.

III. Discussion

In evaluating a challenge to the sufficiency of the evidence, a court must determine whether, viewing the evidence in the light most favorable to the Commonwealth as the verdict winner, together with all reasonable inferences therefrom, the trier of fact could have found that each and every element of the crimes charged was established beyond a reasonable doubt. *Commonwealth v. Little*, 879 A.2d 293, 297 (2005). Although a conviction must be based on more than mere suspicion or conjecture, the Commonwealth is not required to establish guilt to a mathematical certainty. *Commonwealth v. Thomas*, 867 A.2d 594, 597 (2005). If the record contains support for the conviction, then the fact-finder's decision may not be disturbed. *Id.* The fact-finder is free to believe some, all, or none of the evidence. *Id.* This analysis is the same whether the fact-finder is hearing an adult criminal trial or juvenile evidentiary hearing.

FC argued that she did not steal the victim's car, that she did not drive the victim's car, and that she did not even enter the victim's car, let alone smash it into a telephone pole. FC argued that she could not have been in the car, and especially could not have driven the car, because there were drops of blood located in both the driver side and passenger side of the car and she was not bleeding. The Court does not accept FC's argument. No one was able to view the person with FC when she took and crashed the car. The crash was severe enough to total the car. If the other individual was bleeding as a result of the crash, his blood could have been deposited in both compartments of the car, especially if he leaned over to grab any of the controls in the driver's side when he knew that FC was imminently causing the car to crash.

Although, FC would like the Court to believe that there is some neighborhood conspiracy against her, the Court finds that testimony of the various residents of the victim's neighborhood credible. Furthermore, the Court finds FC has no credibility. The Court accepts Ms. Miller's testimony that she observed FC crawl across the console from the driver's side to exit the vehicle on the passenger's side. She observed FC from the time she exited the vehicle until the time she was detained by Ms. Houser. FC denied any involvement in the crash to the neighbors, telling Mr. Houser that she was in the neighborhood because she had just exited from his house, not knowing that it was his. With this information, and upon seeing another individual flee and his neighbor's car crashed, Mr. Houser detained the suspicious FC. The Court finds the actions of the neighbors to make common sense, and in no way point to a conspiracy against FC. FC was caught red handed stealing the victim's car, recklessly crashing the victim's car, stealing items belonging to the victim from the car, and doing this without possessing a driver's license. FC did not accept responsibility for her actions when she was apprehended by Mr. Houser, nor when she was in Court, and does not now.

The evidence that she did in fact violate Title 18 Section 3924(a), Theft from a Motor Vehicle; Title 18 Section 3925(a), Receiving Stolen Property; Title 18, Section 3921(a), Theft by Unlawful Taking; Title 75 Section 1501(a), Drivers Required to be Licensed; Title 75 Section 3714(a), Careless Driving; and Title 75 Section 3745, Accidents involving Damage to Unattended Property is overwhelming, as detailed above, therefore the order of January 21, 2010 should be affirmed and FC's appeal denied.

BY THE COURT,

Joy Reynolds McCoy, Judge

cc: Ryan Gardner, Esquire
DA
Judges
Gary Weber, Esquire (Lycoming Reporter)
Terra Koernig, Esquire-Law Clerk
Jerri Rook, Executive Secretary to Judge McCoy