

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MATTHEW DAVIS, ¹	§	
	§	No. 680, 2010
Respondent Below,	§	
Appellant,	§	Court Below: Family Court of
	§	the State of Delaware, in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	Cr. Id. No. 1006027071
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: May 4, 2011

Decided: May 9, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

ORDER

This 9th day of May 2011, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Matthew Davis (“Davis”), the respondent-below, appeals from Family Court orders finding him delinquent of, and sentencing him for, Theft of a Firearm² and Possession of a Handgun by a Prohibited Juvenile (“PHPJ”),³ and denying his Motion for Acquittal. On appeal, Davis claims that the Family Court erroneously denied his acquittal motion, because there was insufficient evidence to support the

¹ The Court, *sua sponte*, has assigned pseudonyms to all parties under Supreme Court Rule 7(d).

² 11 *Del. C.* § 1451.

³ 11 *Del. C.* § 1448(a)(5).

court's finding that he was delinquent of the two charges. We find no error and affirm.

2. On June 24, 2010, David Hoban reported to the Newark Police Department that his silver Smith and Wesson 9mm handgun, serial number PBA1923, was missing from his home. Mr. Hoban and his wife believed that the gun, which was located in a drawer within Mr. Hoban's bedside nightstand, was stolen sometime between 9:00 a.m. and 6:00 p.m. on June 21, 2010. The gun was not discovered to be missing until the next morning. According to the Hobans, there had been no sign of a break-in, and the only persons having keys to the home were Mr. and Mrs. Hoban, and A.S., Mr. Hoban's stepdaughter. A.S., as well as her friend, J.E., knew that the Hobans owned several guns that were kept in their home.

3. On June 21, 2010, A.S., who had been left home unsupervised, invited J.E. and Appellant Davis over to help her with her chores. After A.S. picked up J.E. and Davis from J.E.'s house, the three minors drove back to the Hobans' residence. They remained there for approximately thirty minutes, during which A.S. asked J.E. and Davis to help clean her bathroom while she (A.S.) cleaned her bedroom.

4. A.S.'s bedroom and bathroom are located directly across the hall from Mr. and Mrs. Hobans' bedroom, where the gun was kept. According to A.S., J.E.

and Davis disappeared for approximately fifteen minutes to clean the bathroom, but A.S. could neither see, nor confirm based on the noises she heard, that both J.E. and Davis were in the bathroom at that time. J.E. also testified that while she and Davis were cleaning the bathroom, Davis left the bathroom at one point to return to A.S.'s bedroom.

5. A.S. testified that towards the end of the thirty-minute period, she went into the basement to clean her cat's litter box, while J.E. and Davis remained outside the house in the car. J.E. testified, however, that when A.S. went to clean the litter box, J.E. and Davis were still cleaning the bathroom. A.S. and J.E. also gave inconsistent testimony regarding what occurred thereafter. A.S. testified that she had driven J.E. and Davis back to J.E.'s house, where the three remained for a few hours before dropping Davis off at school for an afternoon class. J.E. testified, however, that they first dropped Davis off at class and that only A.S. and J.E. went to J.E.'s home. In any event, Mr. Hoban discovered that his gun was missing the next morning.

6. When questioned by Detective Frederick Nelson of the Newark Police Department, J.E. stated that the day after she and Davis were at A.S.'s home, Davis told her (J.E.) that he had a gun which (J.E. assumed) was Mr. Hoban's gun. At trial, however, J.E. testified that she had been truthful with Detective Nelson, but denied telling Nelson that Davis had a gun.

7. On June 30, 2010, Officer Peter Stewart of the New Castle County Police Department recovered Mr. Hoban's gun at Robert Cooper's residence while searching Cooper's home pursuant to an unrelated search warrant. Cooper admitted that he had stolen the gun from a "young boy who [had] stole[n] it from [a] white girl's father," and he directed the police to the residence from where he (Cooper) had stolen the gun. Officer Stewart used the police command point system to compile a photo array of persons who lived on that street and that matched Cooper's description of the "young boy."⁴ From that photo array, Cooper identified Davis as the young person from whom he had stolen Mr. Hoban's gun. At trial, however, Cooper testified that he could not recall identifying Davis in the photo array.

8. Davis was arrested and charged with theft of a firearm and possession of a gun by a prohibited juvenile. After a two-day trial, the Family Court found Davis delinquent of both charges. Subsequently, Davis moved for acquittal on both charges on the ground that there was insufficient evidence to support a finding of delinquency. The Family Court denied that motion and sentenced Davis to mandatory Level V incarceration at a youth rehabilitative services facility for a

⁴ The police command point system enables an officer to look up an address and determine whether any police calls have been reported or associated with that address. If there is a police report associated with a particular address, the system will generate a list of any participants, suspects, victims, witnesses, or persons contacted in connection with that police report.

minimum of six months, followed by aftercare and other conditions to be imposed upon release.⁵ Davis directly appeals.

9. On appeal, Davis claims that there was insufficient evidence for the Family Court to find him delinquent of theft and possession of Mr. Hoban's gun. As for the theft charge, Davis argues that there was no direct evidence, such as fingerprints, linking him to the gun; nor did the State present any evidence showing that Davis actually took the gun. As for the possession charge, Davis argues that Cooper's testimony had too many inconsistencies and was too "vague" to be credible. Based on the lack of credible evidence, Davis contends, his acquittal motion should have been granted.

10. This Court reviews a trial court's denial of a motion for judgment of acquittal to determine whether, viewing the evidence in the light most favorable to the State, "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."⁶ We do not distinguish between direct and circumstantial evidence.⁷ Rather, we treat circumstantial evidence the same way as

⁵ See 10 Del. C. § 1009(e).

⁶ *Williams v. State*, 539 A.2d 164, 168 (Del. 1988) (quotation marks and citations omitted), see also *Vincent v. State*, 996 A.2d 777, 778-79 (Del. 2010).

⁷ *Skinner v. State*, 575 A.2d 1108, 1121 (Del. 1990).

testimonial evidence, and draw inferences from that evidence.⁸ Under Delaware law, an individual can be convicted based solely on circumstantial evidence.⁹

11. Here, the evidence was sufficient to support the Family Court's finding of delinquency on both charges. Regarding the theft charge, as the trial judge noted, Davis was "one of only three likely suspects." A.S. and J.E. both testified that they knew that there were guns in the Hobans' house. Although A.S. and J.E. gave inconsistent testimony as to what occurred when A.S. went to clean the litter box in the basement, A.S. and J.E. both testified that they could not fully account for Davis' whereabouts while inside the Hobans' residence. Detective Nelson testified, based on J.E.'s police statement, that the day after they were in the Hobans' residence, Davis told J.E. that he had a gun, and that J.E., who knew that Davis had been in the Hobans' home, concluded that the gun belonged to Mr. Hoban.

12. Although J.E. later denied making that statement to Detective Nelson, the trial judge noted that J.E. was "a reluctant witness." It was for the trial judge, as the trier of fact, to resolve any conflicts in testimony and to decide which parts

⁸ *Vincent*, 996 A.2d at 779.

⁹ *Id.*

of J.E.'s testimony were credible.¹⁰ Here, it was reasonable to infer from the testimony presented that based on his friendship with A.S. and J.E., Davis knew that there were guns in A.S.'s home. It was also reasonable to infer that after he left A.S.'s home on June 21st, Davis was in possession of a gun, which he had stolen when he left A.S.'s bathroom unsupervised, given the proximity of A.S.'s bathroom to the master bedroom where the gun was kept.

13. Officer Stewart's and Robert Cooper's testimony further support the conclusion that Davis had possession of Mr. Hoban's gun. Cooper led the police to Davis' home, which Cooper identified as the place from which he had stolen Mr. Hoban's gun. Officer Stewart testified that Cooper had also identified Davis as the person from which he had stolen the gun, and that Davis had stolen the gun from a "white girl's father." Although at trial Cooper could not recall having identified Davis, that did not preclude the trial judge from crediting Officer Stewart's testimony as to Cooper's earlier identification. It was for the trial judge, as the trier of fact, to determine whether Cooper's testimony was credible and to resolve any conflicts in his testimony.¹¹

14. Based on the (admittedly circumstantial) evidence presented, a rational trier of fact could find beyond a reasonable doubt that Davis had the opportunity to

¹⁰ *Poon v. State*, 880 A.2d 236, 238 (Del. 2005) (“[I]t is the sole province of the fact finder to determine witness credibility, resolve conflicts in testimony and draw any inferences from the proven facts.”).

¹¹ *Id.*

steal Mr. Hoban's gun, and that he did so while inside the Hobans' residence on June 21, 2010. Accordingly, the Family Court did not err by denying Davis' motion for acquittal based on insufficient evidence.

NOW, THEREFORE, IT IS ORDERED that the judgments of the Family Court are **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice