

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

In the Matter of: :
M. D., : No. 09AP-468
(Appellant). : (C.P.C. No. 08JU03-3019)
: (REGULAR CALENDAR)

D E C I S I O N

Rendered on December 24, 2009

Yeura R. Venters, Public Defender, and *Paul Skendelas*, for appellant.

Ron O'Brien, Prosecuting Attorney, and *Katherine J. Press*, for appellee.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations, Juvenile Branch.

KLATT, J.

{¶1} Defendant-appellant, M.D., appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, adjudicating him to be delinquent as a result of committing criminal damaging. Because the trial court's judgment is supported by sufficient evidence, we affirm.

{¶2} On the morning of December 26, 2007, Michael Hassey looked outside his window and saw M.D.¹ throwing rocks at his neighbor's red truck. He called the Columbus Police Department and then went outside to tell M.D. to stop throwing rocks.

¹ At this time, M.D. was almost 12 and one-half years old.

Hassey walked to his neighbor's house and told him that someone was throwing rocks at his truck. His neighbor, Brian Houts, walked outside and saw that his red truck had been damaged. Police officers apprehended M.D. shortly after the rock throwing incident and Hassey identified M.D. as the individual he observed throwing rocks at his neighbor's truck.

{¶3} As a result, Houts filed a complaint in the trial court which alleged that M.D. was a delinquent child for committing criminal damaging in violation of R.C. 2909.06. The case proceeded to an adjudicatory hearing before a magistrate at which Hassey and Houts testified to the above events. At the end of the hearing, the magistrate dismissed the criminal damaging charge. The magistrate determined that the state failed to prove that Houts' truck was the truck that M.D. damaged.

{¶4} The State filed an objection to the magistrate's decision. After a hearing on those objections, the trial court sustained the state's objection and rejected the magistrate's decision.² Accordingly, the trial court adjudicated M.D. delinquent and ordered him to pay restitution and work community service.

{¶5} M.D. appeals and assigns the following error:

THE TRIAL COURT ERRED IN OVERRULING THE MAGISTRATE'S DECISION FINDING APPELLANT NOT GUILTY OF THE OFFENSE OF CRIMINAL DAMAGING AS THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT A GUILTY VERDICT. THIS DENIED APPELLANT DUE PROCESS UNDER THE STATE AND FEDERAL CONSTITUTIONS.

² When the trial court rules on objections to a magistrate's decision, it "shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law." Juv.R. 40(D)(4)(d).

{¶6} In his sole assignment of error, M.D. contends that his conviction is not supported by sufficient evidence. We disagree.

{¶7} In *State v. Jenks* (1991), 61 Ohio St.3d 259, the Supreme Court of Ohio delineated the role of an appellate court presented with a challenge to the sufficiency of the evidence:

An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.

Id. at paragraph two of the syllabus.

{¶8} Whether the evidence is legally sufficient is a question of law, not fact. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386. Indeed, in determining the sufficiency of the evidence, an appellate court must "give full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson v. Virginia* (1979), 443 U.S. 307, 319, 99 S.Ct. 2781, 2789. Consequently, the weight of the evidence and the credibility of the witnesses are issues primarily determined by the trier of fact. *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶79; *State v. Thomas* (1982), 70 Ohio St.2d 79, 80. A jury verdict will not be disturbed unless, after viewing the evidence in the light most favorable to the prosecution, it is apparent that reasonable minds could not reach the conclusion reached by the trier of fact. *State v. Treesh* (2001), 90 Ohio St.3d 460, 484; *Jenks* at 273.

{¶9} In order to find that M.D. committed the offense of criminal damaging, the state had to prove beyond a reasonable doubt that he knowingly, by any means, caused, or created a substantial risk of physical harm to any property of another without the other person's consent. R.C. 2909.06(A)(1). M.D. claims that the state failed to present sufficient evidence to prove that the damaged truck identified by Hassey was the same damaged truck that Houts owned. We disagree.

{¶10} Hassey testified that on December 27, 2007, he saw M.D. throwing rocks at his neighbor's red truck. Hassey lived at 98 East Ninth Avenue in Columbus, Ohio. Houts lived at 88 East Ninth Avenue in Columbus, Ohio, and owned a red Ford F-150 truck. Houts testified that his truck was damaged on December 27, 2007. He saw the damage after Hassey told him that someone was throwing rocks at his truck. Viewing this evidence in a light most favorable to the state, as we must, the state presented sufficient evidence to prove that the truck Hassey saw M.D. damage was Houts' truck. M.D.'s lone assignment of error is overruled.

{¶11} The trial court's decision is supported by sufficient evidence. Accordingly, we overrule M.D.'s assignment of error and affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch.

Judgment affirmed.

BRYANT and McGRATH, JJ., concur.
