

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN THE INTEREST OF: J.D., A MINOR

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1836 EDA 2012

Appeal from the Dispositional Order of May 9, 2012  
In the Court of Common Pleas of Philadelphia County  
Juvenile Division at No(s): CP-51-JV-0001663-2012

BEFORE: BENDER, J., LAZARUS, J., and COLVILLE, J.\*

MEMORANDUM BY LAZARUS, J.

Filed: February 15, 2013

J.D. appeals from the dispositional order imposed following his adjudication of delinquency by the Court of Common Pleas of Philadelphia County based on the following offenses: (1) possession of firearm prohibited;<sup>1</sup> (2) carrying firearms on public streets or public property in Philadelphia;<sup>2</sup> (3) possession of firearm with altered manufacturer's number;<sup>3</sup> (4) possession of firearm by minor;<sup>4</sup> (5) possession of instrument

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\* Retired Senior Judge assigned to the Superior Court.

<sup>1</sup> 18 Pa.C.S.A. § 6105(a)(1).

<sup>2</sup> 18 Pa.C.S.A. § 6108.

<sup>3</sup> 18 Pa.C.S.A. § 6110.2(a).

<sup>4</sup> 18 Pa.C.S.A. § 6110.1(a).

of crime;<sup>5</sup> (6) recklessly endangering another person;<sup>6</sup> (7) firearms not to be carried without a license.<sup>7</sup> Upon review, we affirm.

The facts of this case are as follows. On April 14, 2012, at approximately 3:18 p.m., Philadelphia Police Officer David O'Connor ("Officer O'Connor") was in a radio patrol car parked in the 800 block of East Church Lane in Philadelphia when he heard what he identified as a gunshot coming from an eastbound direction. Officer O'Connor perceived the sound as originating a block away from where he was stationed, at the intersection of Wister and Church Lane. While Officer O'Connor was connecting with radio dispatch to check if any gunshots were reported in that specific area, he observed J.D. "running eastbound in the 800 block of Church Lane, holding a dark-colored revolver in his right hand." N.T. Adjudicatory Hearing, 5/9/2012, at 7. Upon giving a flash description of J.D. and his clothing over the police radio, Officer O'Connor pursued J.D. in his patrol car by traveling eastbound in the 800 block of East Church Lane. He observed J.D. discard the revolver with his right hand onto the property located at 861 East Church Lane and then continue running in the westbound direction. Officer O'Connor then shifted the radio patrol car into reverse gear, stepped out of

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<sup>5</sup> 18 Pa.C.S.A. § 907(a).

<sup>6</sup> 18 Pa.C.S.A. § 2705.

<sup>7</sup> 18 Pa.C.S.A. § 6106(a)(1).

the car and apprehended J.D. "at the corner of Boyer and Church Lane, which is 800 East Church Lane." *Id.* at 8. Upon being apprehended, J.D. exclaimed, "I didn't have no gun. It ain[']t my gun!" *Id.* Officer O'Connor then placed J.D. in the rear of the radio patrol car, and drove to 861 Church Lane, where he observed and recovered a .32 caliber revolver, dark-silver in color, with a black handle, and an obliterated serial number. The revolver was "loaded with five live rounds and one spent casing." *Id.* at 9.

At an adjudicatory hearing on May 9, 2012, the parties stipulated to the admission of a ballistics report prepared by the Firearms Identification Unit indicating that the firearm was operable, and "that there was gunshot residue in the barrel of all six chambers, flint in five chambers; . . . and that there was one fired cartridge case recovered." *Id.* at 14.

At the hearing, Officer O'Connor testified on cross-examination that he noticed another person who had been "at least 20 feet" behind J.D., and who appeared to be running after J.D.. *Id.* at 10.

The parties stipulated that J.D. had been previously adjudicated delinquent of a felony drug offense, as well as of possession of a firearm by a minor, and of possession of a firearm with a number altered. *Id.* at 14; 16.

On May 9, 2012, J.D. was adjudicated delinquent of all charges at an adjudicatory hearing before the Honorable Kevin M. Dougherty, and on May 21, 2012, the court ordered J.D. committed to PA Childcare (Luzerne County) for four years. J.D. filed a motion to reconsider on May 15, 2012,

which was denied by operation of law on June 26, 2012. J.D. then filed a timely notice of appeal on June 28, 2012, as well as a court-ordered statement of errors complained of on appeal, pursuant to Pa.R.A.P. 1925(b).

On appeal, J.D. raises the following issue for our review:

Was the verdict against the weight of the evidence where [J.D.] was being chased by another individual and [J.D.'s] running is given as the reason that the sound that the police officer heard was thought to be a gunshot?

Brief of Appellant, at 6.

Our Supreme Court has set forth the following standard of review for claims that the verdict is against the weight of the evidence:

The weight of the evidence is exclusively for the finder of fact who is free to believe all, part, or none of the evidence and to determine the credibility of the witness. An appellate court cannot substitute its judgment for that of the finder of fact. Thus, we may only reverse the lower court's verdict if it is so contrary to the evidence as to shock one's sense of justice. Moreover, where the trial court has ruled on the weight claim below, an appellate court's role is not to consider the underlying question of whether the verdict is against the weight of the evidence. Rather, appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim.

***Commonwealth v. Champney***, 832 A.2d 403, 408 (Pa 2003) (citations omitted).

In reviewing weight of evidence challenges in cases involving juveniles, this Court applies the same standard. ***In the Interest of R.N.***, 951 A.2d 363, 370 (Pa. Super. 2008) (citation omitted). An appellate court should not "substitute its judgment based on a cold record for that of the

judge who conducted the juvenile adjudication hearing.” *Id.* at 371. It is not within the province of an appellate court to determine whether the verdict is against the weight of the evidence; instead, an appellate court reviews whether the trial court properly exercised its discretion. *Id.* (citation omitted).

Here, J.D. challenges the trial court’s verdict as contrary to the weight of the evidence presented during trial. J.D. argues that the trial evidence was consistent with J.D.’s being pursued by someone with a firearm. J.D. claims that what Officer O’Connor heard “may not have been a gunshot to the extent that his conclusion that it was a gunshot was based on the fact that [J.D.] was running.” Brief of Appellant, at 9.

The trial court found the key witness, Officer O’Connor, to be a credible and reliable witness based on Officer O’Connor’s testimony at the adjudicatory hearing, which the court found consistent with the evidence recovered from the scene and with J.D.’s own statement.

Officer O’Connor testified, *inter alia*, that the sound that he heard approximately one block away from where he was stationed at the time of his routine patrol was “clearly a gunshot.” N.T. Adjudicatory Hearing, 5/9/2012, at 7. Further, Officer O’Connor indicated that almost immediately upon hearing the gunshot, he observed J.D. running with a dark-colored revolver in his hand; that he then followed J.D. who was running eastbound in his patrol car; that Officer O’Connor then saw J.D. discard the firearm “with his right hand onto the property of 861 East Church Lane” and noticed

how J.D. "then proceeded to run westbound." *Id.* Officer O'Connor also testified that after he apprehended J.D. at 800 East Church Lane, J.D. made a spontaneous declaration, "I didn't have no gun. It ain[']t my gun!" *Id.* at 8. In addition, Officer O'Connor stated that he then proceeded to recover the firearm from 861 East Church Lane where he saw J.D. discard the weapon moments before, and that the recovered revolver had "an obliterated serial number," was operable, and contained "five live rounds of ammunition and one spent casing." *Id.* at 9. Officer O'Connor further testified that he made his initial observations of J.D. in broad daylight; that he observed J.D. in close proximity; that there were "no obstructions to [his] line of sight;" that he did not lose sight of J.D. at any point; and that he noticed that J.D. had an "excited demeanor." *Id.* at 9-10. The Court indicated that Officer O'Connor had an "alerted degree of awareness," and that the fact that Officer O'Connor "proceeded immediately to recover a firearm from 861 Church Lane where [J.D.] was seen discarding the weapon demonstrat[ed] a level of certainty of Officer O'Connor's observations." Trial Court Opinion, 8/1/2012, at 3. The court concluded that the record showed that Officer O'Connor's observations were "reliable and accurate, as they proved consistent with the physical evidence recovered at the scene and the implicating statement provided by" J.D.. *Id.* The court, therefore, found beyond a reasonable doubt that the defendant was "guilty of each and every offense" for which he was charged. N.T. Adjudicatory Hearing, 5/9/2012, at 16.

Upon review of the briefs, the record and the relevant law, we find that the trial court did not abuse its discretion in adjudicating J.D. delinquent of all charges.

Adjudication affirmed.