

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

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| IN THE INTEREST OF: J.P., a Minor, | : | IN THE SUPERIOR COURT OF |
| | : | PENNSYLVANIA |
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| APPEAL OF: J.P., a Minor, | : | |
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| Appellant | : | No. 1696 MDA 2013 |

Appeal from the Dispositional Order entered on August 28, 2013
in the Court of Common Pleas of Luzerne County,
Juvenile Division, No. CP-40-JV-0000023-2012

BEFORE: LAZARUS, STABILE and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED JULY 07, 2014

J.P., a minor, appeals from a dispositional Order following her adjudication of delinquency of possession of drug paraphernalia. **See** 35 P.S. § 780-113(a)(32). We affirm.

The juvenile court set forth the following relevant factual and procedural history:

[O]n February 19, 2011, [J.P.] was reported missing by her mother and Corporal Kunes of the Hazleton State Police Barracks was the primary investigator. N.T. 8/28/2013, at 29. [J.P.] was located on State Route 940 south of the Jeddo Star and as part of the state police investigation and a missing persons case the juvenile is interviewed in person by the police. **Id.** at 30. During the interview, [J.P.]’s sister informed Corporal Kunes that [J.P.] was in possession of drug paraphernalia and it was presented to Corporal Kunes by [J.P.]’s sister. **Id.** at 31. Corporal Kunes further testified that [J.P.] admitted that she uses that particular pipe to smoke drugs and she further related that she would do anything to get high on drugs. **Id.** at 35. At that point, Corporal Kunes retained possession of [J.P.]’s pipe and subsequently charged her with one (1) count of drug paraphernalia. **Id.**

Juvenile Court Opinion, 1/29/14, at 1-2.

On August 28, 2013, J.P. was adjudicated delinquent of possession of drug paraphernalia. The juvenile court then entered a dispositional order, placing J.P. on indefinite probation. J.P. subsequently filed a timely Notice of Appeal.

On appeal, J.P. raises the following question for our review:

1. Whether the Juvenile Court erred by denying [] [J.P.]’s Motion for Judgment of Acquittal for possession of drug paraphernalia pursuant to 35 P.S. § 780-113(a)(32)[,] where the Commonwealth failed to present evidence sufficient to establish beyond a reasonable doubt that [] [J.P.] intended to use the pipe to inhale a controlled substance?

Brief for Appellant at 2.

J.P. contends that the Commonwealth failed to satisfy its burden of proof because it failed to present sufficient evidence to establish beyond a reasonable doubt that she intended to use the pipe to inhale a controlled substance. **Id.** at 6. J.P. also contends that her statement that she used the pipe to smoke drugs may not be the sole basis to sustain her adjudication because the Commonwealth failed to satisfy the *corpus delicti* rule.¹ **Id.** at 7.

In evaluating a challenge to the sufficiency of the evidence supporting an adjudication of delinquency, our standard of review is as follows:

¹ The corpus delicti rule places the burden upon the prosecution to establish that a crime has actually occurred before a confession or admission of the accused connecting him to the crime can be admitted. **Commonwealth v. Smallwood**, 442 A.2d 222, 225 (Pa. 1982).

When a juvenile is charged with an act that would constitute a crime if committed by an adult, the Commonwealth must establish the elements of the crime by proof beyond a reasonable doubt. When considering a challenge to the sufficiency of the evidence following an adjudication of delinquency, we must review the entire record and view the evidence in the light most favorable to the Commonwealth.

In determining whether the Commonwealth presented sufficient evidence to meet its burden of proof, the test to be applied is whether, viewing the evidence in the light most favorable to the Commonwealth, and drawing all reasonable inferences therefrom, there is sufficient evidence to find every element of the crime charged. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by wholly circumstantial evidence. The facts and circumstances established by the Commonwealth need not be absolutely incompatible with a defendant's innocence. Questions of doubt are for the hearing judge, unless the evidence is so weak that, as a matter of law, no probability of fact can be drawn from the combined circumstances established by the Commonwealth.

In re A.V., 48 A.3d 1251, 1252-1253 (Pa.Super.2012) (quotation omitted). Under 35 P.S. § 780-113 (32)(a) possession of drug paraphernalia is defined as follows:

- (a) The following acts and the causing thereof within the Commonwealth are hereby prohibited:

(32) The use of, or possession with intent to use, drug paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of this act.

35 P.S. § 780-113(a)(32).

To sustain a conviction of drug paraphernalia[,] the Commonwealth must establish that items possessed by defendant were used or intended to be used with a controlled substance so as to constitute drug paraphernalia and this burden may be met by the commonwealth through circumstantial evidence.

Commonwealth v. Little, 879 A.2d 293, 300 (Pa.Super.2005).

Here, the juvenile court has addressed J.P.'s claims as follows:

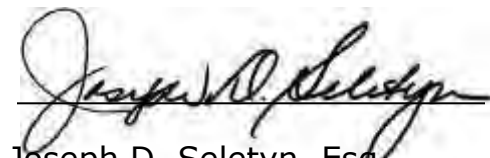
Instantly, a review of the evidence demonstrates sufficient evidence was presented to support [the juvenile court]'s finding that [J.P.] be declared a delinquent child in need of care, treatment, supervision or rehabilitation pursuant to Pennsylvania's Juvenile Act based upon [the juvenile court] finding [] [J.P.] factually responsible of the crimes of: Count (1) Possession of Drug Paraphernalia, 35 P.S. § 780-113 (A)(32). Testimony was presented from the arresting officer, Corporal Kunes, that [J.P.] had a pipe on her person and it had residue consistent with his training and experience to be marijuana. (N.T. at 50). [The juvenile court] found credible the testimony of Corporal Kunes and Alyssa Kelchak, sister of [] [J.P.], who testified she took possession of the pipe directly from [] [J.P.] and Corporal Kunes further testified that [] [J.P.] admitted that she uses that particular pipe to smoke drugs and she further related that she would do anything to get high on drugs. (N.T. at 35). Based on the forgoing, [J.P.] was properly found to be factually responsible of the crimes of: Count (1) Possession of Drug Paraphernalia, 35 P.S. § 780-113 (a)(32).

Juvenile Court Opinion, 1/29/14, at 3. We adopt the sound reasoning of the juvenile court for the purpose of this appeal. **See id.**

Upon review, we conclude that the juvenile court did not err in its adjudicating J.P. delinquent.

Dispositional Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/7/2014