

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: J.H.

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: J.H.

No. 831, 832 WDA 2013

Appeal from the Order January 16, 2013
In the Court of Common Pleas of Clearfield County
Juvenile Division at No(s): CP-17-JV-0000145-2012
CP-17-JV-0000146-2012

BEFORE: PANELLA, J., MUNDY, J., and STABILE, J.

MEMORANDUM BY PANELLA, J.:

FILED: April 23, 2014

Appellant, J.H., a minor, appeals from the dispositional orders¹ entered January 16, 2013, in the Court of Common Pleas of Clearfield County, following his adjudication on the charge of, *inter alia*, rape of a child.² We affirm.³

The juvenile court summarized the facts and procedural history of this case as follows.

¹ J.H. purports to appeal from the order entered April 12, 2013, which denied his Motion for Reconsideration and/or Motion for a new Trial. We have amended the caption accordingly.

² 18 PA.CON.S.TAT.ANN. § 3121(c).

³ On September 27, 2013, this Court consolidated the appeals J.H. filed from the two separate dispositional orders docketed at 831 WDA 2013 and 832 WDA 2013.

On November 7, 2012, an Juvenile Petition Alleging Delinquency was filed against Juvenile, J.H., in the above captioned matters charging him with count(s) of: Rape of a Child, Criminal Attempt to Commit Rape of a child, Involuntary Deviate Sexual Intercourse with a child, all felonies of the first (1st) degree; Indecent Assault, a felony of the third (3rd) degree; and Harassment, a summary. The Complaint alleges that in 2008 through 2009, Juvenile anally penetrated a male juvenile (age four (4) and five (5) at the times stated) (hereinafter "N.S.") and forced said N.S. to perform oral sex on him. The complaint also alleges that Juvenile forced N.S.'s older sibling, also a male juvenile (age eight (8) and nine (9) at the times stated) (hereinafter "L.S.") to give Juvenile oral sex on two occasions. The Complaint further indicates that N.S. reported the assault in August 2012 which eventually led to the disclosure by both victims to the police and the filing of the charges.

Juvenile appeared before the Clearfield County Department of Probation Services Juvenile Division (hereinafter "Juvenile Probation Department") on November 27, 2012 for an intake interview, accompanied by his attorney. On January 15, 2013, one (1) day before the Adjudication hearing, Juvenile faxed a Motion for Continuance to the [c]ourt, and did not serve the Commonwealth. The [c]ourt denied the Motion.

On January 16, 2013, an Adjudication and Disposition Hearing was held before this [c]ourt, with the commonwealth and Juvenile, represented by counsel, presenting evidence and testimony. The [c]ourt found Juvenile delinquent and ordered that he be placed on two (2) years['] probation, submit to DNA testing, and have no contact with the victims. The [c]ourt also found that it was in the best interests of Juvenile to be removed from the home of his parents, and he was thereafter placed at Appalachian Youth Service (AYS) in Edensburgh, Cambria County, Pennsylvania, where he currently remains.

Juvenile filed a Motion to Set Aside Offender's Need for Registration on January 17, 2013, and a Motion for Reconsideration and/or Motion for a new Trial on January 25, 2013. A [h]earing on said Motions was held on March 15, 2013, and the [c]ourt ordered appropriate letter briefs from the parties thereafter. On April 12, 2013, the [c]ourt issued an Opinion and Order denying Juvenile's Motions and ordered that he comply with any and all applicable sex offender registration requirements.

Juvenile Court Opinion, 8/6/13 at 1-2. This timely appeal followed.

On appeal, J.H. raises the following issues for our review:

1. Did the lower court err by denying the motion for continuance of trial filed by defense counsel?
2. Did the lower court err by ordering an out of home placement disposition at the same moment of adjudication?
3. Did the lower court err by adjudicating appellant J.H. due to lack of weight and sufficiency of the evidence?
4. Did the Clearfield County Juvenile Probation department operating under the direction of the [c]ourt err in obtaining a Psycho/Sexual evaluation of the juvenile recommending treatment prior to adjudication?

Appellant's Brief at 11 (unnumbered).

We note that

The Juvenile Act grants broad discretion to the court in disposition. ***In the Interest of A.D.***, 771 A.2d at 53 (citing 42 Pa.C.S.A. §§ 6341, 6352; ***In re Love***, 435 Pa.Super. 555, 646 A.2d 1233 (1994)). This Court will not disturb a disposition absent a manifest abuse of discretion. ***Love***, 646 A.2d at 1238. The purpose of the Juvenile Act is as follows:

Consistent with the protection of the public interest, to provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community.


42 Pa.C.S.A. § 6301(b)(2). "This section evidences the Legislature's clear intent to protect the community while rehabilitating and reforming juvenile delinquents." ***In the Interest of J.C.***, 751 A.2d at 1181.

In re L.A., 853 A.2d 388, 394 (Pa. Super. 2004).

With our applicable standards of review in mind, we have examined the certified record, the briefs of the parties, the juvenile court's opinions, and the applicable law, and we find that the juvenile court ably and methodically addressed the issues J.H. presented on appeal. Accordingly, we affirm on the basis of the juvenile court's well-written memorandum opinions. **See** Juvenile Court Opinion, 4/12/13; 8/6/13.

Dispositional orders affirmed. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/23/2014

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
JUVENILE DIVISION

IN RE: J [REDACTED] H [REDACTED]
D.O.B. 04-07-1995

FILED

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NO: CP-17-JV-145-2012
NO: CP-17-JV-146-2012

OPINION AND ORDER

Currently before the Court is Juvenile J [REDACTED] H [REDACTED]'s Motion for Reconsideration and/or Motion for a New Trial and Motion to Set Aside Megan's Law Registration. An Adjudication and Disposition hearing was held on January 16, 2013, wherein the Court found Juvenile delinquent on the charges of Rape of a Child, a felony of the first (1st) degree, and Involuntary Deviate Sexual Intercourse (IDSI), a felony of the first (1st) degree. The Court ordered that Juvenile be immediately placed at the Appalachian Youth Services (AYS) in Ebensburg, Pennsylvania until further order by the Court, and that he serve two (2) years probation.

On January 17, 2013, Juvenile filed a Motion to Set Aside Megan's Law Registration. Additionally, on January 25, 2013, Juvenile filed a Motion for Reconsideration and/or Motion for a New Trial. Arguments were heard before the Court on March 15, 2013 and briefs were timely submitted thereafter by both parties, making this matter ripe for decision.

Motion for Reconsideration/New Trial

I. Discovery

Juvenile raises several issues regarding the discovery provided in this case. Juvenile avers that he did not receive discovery materials from the Commonwealth until January 15, 2013 – one (1) day prior to the Adjudication and Disposition hearing. Juvenile argues that the Commonwealth is at fault for the lateness of the discovery. The Court disagrees.

Petitions Alleging Delinquency were filed against Juvenile on the grounds previously stated on November 7, 2012. The Juvenile's intake interview occurred on November 27, 2012 with the Clearfield County Department of Probation Services Juvenile Division ("Juvenile Probation Department"). At the interview, Commonwealth avers that Juvenile and his counsel were present and provided information from the Juvenile Probation Department, including that counsel was told that he had to file a formal appearance in order to receive discovery. Commonwealth also avers that counsel was notified several times by the District Attorney's Office that a formal appearance was required in order to receive discovery materials. According to the record, counsel did not enter an appearance on the record until January 14, 2013. *See* Entry of Appearance, Jan. 14, 2013. As such, the Court does not find that the Commonwealth violated any discovery rules in providing such materials the following day.

II. Denial of Motion to Continue

Juvenile also argues that this Court erred in failing to grant his Motion to Continue, which was faxed to the Court on January 15, 2013. Juvenile's Adjudication and Disposition hearing date was set for January 16, 2013 at 11:00 a.m. Juvenile, as well as his parents and counsel, were notified of the hearing date by letter and/or fax on January 7, 2013. In his Motion, Juvenile requested additional time for further investigation and to obtain all discovery matters, claiming that counsel had only been recently advised that he had to enter a formal appearance. *See* Juvenile's Mot. for Continuance, ¶¶ 2-3, 5, Jan. 15, 2013. Juvenile also claimed one of his parents was unavailable for the hearing date. *See* Juvenile's Mot. for Continuance, ¶ 4, Jan. 15, 2013.

The Court first notes the lateness and improper service of the Motion, in that Juvenile failed to make service upon the Commonwealth in violation of Rules 344 and 345 of the

Pennsylvania Rules of Juvenile Court Procedure. *See* Pa.R.Juv.Ct.P. 344, 345. Further, the grant or denial of a motion for continuance is in the discretion of the courts. *See Commonwealth v. Ross*, 57 A.3d 85, 91 (Pa. Super. Ct. 2012).

As explained, counsel was informed on November 27, 2012, Juvenile's intake date, of the requirement of a formal appearance for discovery materials. Counsel had months to make an appearance, and yet failed to do so until January 14, 2013. Additionally, "a bald allegation of an insufficient amount of time to prepare will not provide a basis for reversal of the denial of a continuance motion." *Id.* Accordingly, the Court finds Juvenile's allegations meritless. Therefore, the Court did not err in denying Juvenile's Motion for Continuance.

III. Credibility of Witnesses

Juvenile next challenges the competency and credibility of the Commonwealth's witness, N [REDACTED] S [REDACTED], a minor, based on an allegation that he has Asperger's Syndrome. Juvenile also challenges the accuracy of the report of Dr. Allenbaugh. As the fact-finder in a juvenile delinquency hearing, the Court determines the credibility of all witnesses and evidence. *See Commonwealth v. Cruz*, 919 A.2d 279, 281-82 (Pa. Super. Ct. 2007) ("[t]he finder of fact is the exclusive judge of the weight of the evidence as the fact finder is to believe all, part, or none of the evidence presented and determines the credibility of the witnesses."). According to the record, the Court completed a full competency and veracity evaluation of N [REDACTED] S [REDACTED], and upon no objection by either the Commonwealth or Juvenile, found him competent to testify. *See* Tr. Adjudication and Disposition Hr'g, 14-26, Jan. 16, 2013. The Court finds Juvenile waived any issue regarding the competency of N [REDACTED] S [REDACTED].

In regards to the report of Dr. Allenbaugh, Juvenile requests that the report be set aside as a matter of law, depicting the report as “inconclusive.” The Court notes that according to the record, the Commonwealth never entered Dr. Allenbaugh’s report into evidence during the hearing, nor was Dr. Allenbaugh called as a witness. *See* Tr. Adjudication and Disposition Hr’g, Jan. 16, 2013. Commonwealth avers that the report was for treatment purposes only. As the report was not entered into evidence, the Court declines to acquiesce to Juvenile’s request.

IV. Weight of Evidence

Juvenile argues that the Court’s finding of delinquency was against the weight of the evidence. The Court notes:

The decision of whether to grant a new trial on the basis of a challenge to the weight of the evidence is necessarily committed to the sound discretion of the trial court due to the court’s observation of the witnesses and the evidence. A trial court should award a new trial on this ground only when the verdict is so contrary to the evidence as to shock one’s sense of justice. A motion alleging the verdict was against the weight of the evidence should not be granted where it merely identifies contradictory evidence presented by the Commonwealth and the defendant.

Commonwealth v. Chamberlain, 30 A.3d 381, 396 (Pa. 2011) (internal citations omitted).

Further,

A verdict is said to be contrary to the evidence such that it shocks one’s sense of justice when ‘the figure of Justice totters on her pedestal,’ or when ‘the jury’s verdict, at the time of its rendition causes the trial judge to lose his breath, temporarily, and causes him to almost fall from the bench, then it is truly shocking to the judicial conscience.’

Cruz, 919 A.2d at 282 (quoting *Commonwealth v. Davidson*, 860 A.2d 575, 581 (Pa. Super. Ct. 2004) *appeal granted on other grounds* 871 A.2d 185 (Pa. 2005)).

At the hearing, Commonwealth called the victims, L [REDACTED] and N [REDACTED] S [REDACTED], who testified to the incidents involving Juvenile. Tr. Adjudication and Disposition Hr’g, 3-39, Jan.

16, 2013. L. testified that in the spring/summer of 2008, Juvenile forced Lucas to perform oral sex on him on two occasions. Tr. Adjudication and Disposition Hr'g, 5-10, Jan. 16, 2013. N. testified that beginning in 2008, Juvenile "put his private in my butt." Tr. Adjudication and Disposition Hr'g, 28, Jan. 16, 2013. Further, N. testified that Juvenile forced N. to perform oral sex on him. Tr. Adjudication and Disposition Hr'g, 29, Jan. 16, 2013. N. further testified that these incidents occurred multiple times each, and did not stop until he was in first grade (2011). Tr. Adjudication and Disposition Hr'g, 29-31, Jan. 16, 2013.

Based on the testimony presented at trial and credibility of the witnesses, the Court does not find that the finding of delinquency was against the weight of the evidence.

V. New Evidence

Juvenile argues that he has located witnesses, subsequent to the hearing, who can provide an alternate theory to the victims' claims and motives. Juvenile attached affidavits by these witnesses to his Motions.

The standard for after-discovered evidence as set forth by the Supreme Court of Pennsylvania is:

To obtain relief based on after-discovered evidence, appellant must demonstrate that the evidence: (1) could not have been obtained prior to the conclusion of the trial by the exercise of reasonable diligence; (2) is not merely corroborative or cumulative; (3) will not be used solely to impeach the credibility of a witness; and (4) would likely result in a different verdict if a new trial is granted.

Commonwealth v. Pagan, 950 A.2d 270, 292 (Pa. 2008). Additionally, "a defendant who fails to question or investigate an obvious, available source of information, cannot later claim evidence from that source constitutes newly discovered evidence." *Commonwealth v. Padillas*, 997 A.2d 356, 364 (Pa. Super. Ct. 2010).

Juvenile proffers affidavits from a mutual friend of the H [REDACTED] and S [REDACTED] families, a classmate of the Juvenile and/or victims, and Juvenile's sister. Juvenile did not offer an explanation as to a reason why these witnesses could not have been obtained prior to the hearing when exercising reasonable diligence. Clearly, these witnesses could have been attained prior to the hearing – one witness is Juvenile's own sister. Therefore, Court finds that these witnesses do not meet the *Pagan* requirements for after-discovered evidence. As such, the Court declines to grant Juvenile relief based on these witnesses.

Motion to Set Aside Megan's Law Registration

Juvenile argues that the sex offender registration requirement is not applicable in this case. Juvenile argues that the Commonwealth presented testimony which did not establish beyond a reasonable doubt that Juvenile was fourteen (14) years-old or older at the time the incidents occurred. The Court disagrees.

In accordance with the Pennsylvania Sex Offender Registration and Notification Act (SORNA), effective December 20, 2012, a "Juvenile Offender" is defined as

An individual who was 14 years of age or older at the time the individual committed an offense which, if committed by an adult would be classified as an offense under 18 Pa.C.S. § 3121 (relating to rape), 3123 (relating to involuntary deviate sexual intercourse) . . . [and] is adjudicated delinquent for such offense on or after the effective date of this section."

42 Pa.C.S.A. § 9799.12 ("Juvenile offender") (West 2013). SORNA is applicable to "an individual who, on or after the effective date of this section, is a *juvenile offender* who was adjudicated delinquent within this Commonwealth . . . and has a residence within this Commonwealth." 42 Pa.C.S.A. § 9799.13(8)(i) (emphasis added). Therefore, SORNA only applies to juveniles who commit certain offenses and are at least fourteen (14) years-old at the time of the offense.

Juvenile, d.o.b. 04-07-95, turned fourteen (14) years-old on April 7, 2009, making it the date upon which sex offender registration would become applicable. At the hearing, L [REDACTED] S [REDACTED] testified that the incidents with the Juvenile occurred in the spring/summer of 2008. *See* Tr. Adjudication and Disposition Hr'g, 5, Jan. 16, 2013. He further testified that although there were several incidents, none of them occurred after 2008. *See* Tr. Adjudication and Disposition Hr'g, 9-10, Jan. 16, 2013. Therefore, Juvenile would not have been fourteen (14) years-old at the time he committed any offenses against L [REDACTED] S [REDACTED].

However, N [REDACTED] S [REDACTED] testified that the incidents with Juvenile began in 2008 and continued into 2011 or 2012. *See* Tr. Adjudication and Disposition Hr'g, 28-31, Jan. 16, 2013. Although he did not testify to specific dates, N [REDACTED] did testify that Juvenile did not stop until N [REDACTED] was in first grade (the 2011-2012 school year). *See* Tr. Adjudication and Disposition Hr'g, 29-31, Jan. 16, 2013. According to the testimony, Juvenile would have been over the age of fourteen (14) during the offenses that occurred against N [REDACTED] S [REDACTED].

Juvenile argues that Commonwealth has failed to prove Juvenile's age at the time the offenses occurred beyond a reasonable doubt. The Court does not find that beyond a reasonable doubt is the Commonwealth's burden under SORNA. "The registration, notification, and counseling requirements for offenders under Megan's Law II are not criminal punishment, but represent non-punitive, regulatory measures designed to safeguard the public." *Commonwealth v Price*, 876 A.2d 988, 992 (Pa. Super. Ct. 2005) (citing *Commonwealth v. Williams*, 832 A.2d 962 (Pa. 2003)). SORNA continues to have the same non-punitive purpose as its predecessor, Megan's Law. *See* 42 Pa.C.S.A. § 9799.11(a)(1)-(2).

Because SORNA is non-punitive, the Court finds that the standard 'beyond a reasonable doubt' is not the Commonwealth's burden. Although the Commonwealth must

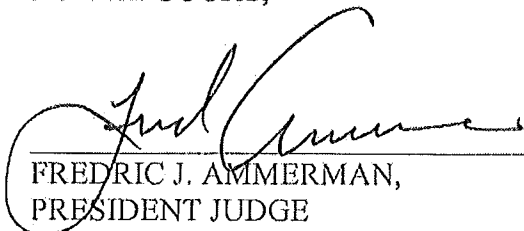
prove beyond a reasonable doubt all of the elements of the underlying offense which subjects an offender to SORNA, such is not the burden for a SORNA-only provision. Rape of a Child and IDSI do not contain elements which require that Juvenile was at least fourteen (14) years-old at the time of the offense. Therefore, the Commonwealth is not required to prove Juvenile was over fourteen (14) beyond a reasonable doubt. The Court finds that by a preponderance of the evidence, Juvenile was over the age of fourteen (14) at the time offenses against Nick Swortwood occurred. Therefore, Juvenile is subject to sex offender registration under SORNA.

Based on the forgoing, the Court enters the following:

ORDER

AND NOW, this 12 day of April, 2013, upon consideration of Juvenile's Motion for Reconsideration and/or Motion for a New Trial and Motion to Set Aside Megan's Law Registration, arguments before the Court, and briefs submitted thereafter, it is the ORDER of this Court that said Motions shall be and are hereby DENIED. Juvenile must submit to sex offender registration and comply with all requirements as set forth in the Pennsylvania Sex Offender Registration and Notification Act (SORNA), 42 Pa.C.S.A. § 9799.10 et seq.

BY THE COURT,


FREDRIC J. AMMERMAN,
PRESIDENT JUDGE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
JUVENILE DIVISION

IN RE: J.H.

D.O.B. 04-07-1995

FILED

AUG 06 2013

William A. Shaw
Prothonotary/Clerk of Courts

CA
DA
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Law
DeBoer

NO: CP-17-JV-145-2012

NO: CP-17-JV-146-2012

OPINION

Background and Procedural History

On November 7, 2012, a Juvenile Petition Alleging Delinquency was filed against Juvenile, J.H., in the above captioned matters charging him with count(s) of: Rape of a Child, Criminal Attempt to Commit Rape of a Child, Involuntary Deviate Sexual Intercourse with a child, all felonies of the first (1st) degree; Indecent Assault, a felony of the third (3rd) degree; and Harassment, a summary. The Complaint alleges that in 2008 through 2009, Juvenile anally penetrated a male juvenile (age four (4) and five (5) at the times stated) (hereinafter "N.S.") and forced said N.S. to perform oral sex on him. The Complaint also alleges that Juvenile forced N.S.'s older sibling, also a male juvenile (age eight (8) and nine (9) at the times stated) (hereinafter "L.S.") to give Juvenile oral sex on two occasions. The Complaint further indicates that N.S. reported the assault in August 2012, which eventually led to the disclosure by both victims to the police and the filing of the charges.

Juvenile appeared before the Clearfield County Department of Probation Services Juvenile Division (hereinafter "Juvenile Probation Department") on November 27, 2012 for an intake interview, accompanied by his attorney. On January 15, 2013, one (1) day before the Adjudication Hearing, Juvenile faxed a Motion for Continuance to the Court, and did not serve the Commonwealth. The Court denied the Motion.

On January 16, 2013, an Adjudication and Disposition Hearing was held before this Court, with the Commonwealth and Juvenile, represented by counsel, presenting evidence and testimony. The Court found Juvenile delinquent and ordered that he be placed on two (2) years probation, submit to DNA testing, and have no contact with the victims. The Court also found that it was in the best interests of Juvenile to be removed from the home of his parents, and he was thereafter placed at Appalachian Youth Service (AYS) in Ebensburg, Cambria County, Pennsylvania, where he currently remains.

Juvenile filed a Motion to Set Aside Offender's Need for Registration on January 17, 2013, and a Motion for Reconsideration and/or Motion for a New Trial on January 25, 2013. A Hearing on said Motions was held on March 15, 2013, and the Court ordered appropriate letter briefs from the parties thereafter. On April 12, 2013, the Court issued an Opinion and Order denying Juvenile's Motions and ordered that he comply with any and all applicable sex offender registration requirements.

Juvenile filed a Notice of Appeal on May 7, 2013. The Court ordered Juvenile to file a concise statement of matters complained of on appeal in accordance with Rule 1925(b) of the Pennsylvania Rules of Appellate Procedure. Juvenile filed said Concise Statement on June 18, 2013, raising the following grounds on appeal:

1. Whether the Trial Court erred in its consideration of the sufficiency of the evidence at the time of the juvenile trial to determine delinquency.
2. Whether the Trial Court erred in its consideration of the weight of the evidence as the time of the juvenile trial in determining delinquency.
3. Whether the Trial Court erred in denying the juvenile's defense counsel's motion for continuance when the Commonwealth's discovery was received on the evening prior to trial.
4. Whether the Trial Court erred in ordering residential treatment from the bench, contemporaneously with adjudication of delinquency.

5. Whether Juvenile Probation office of Clearfield acting under the authority of the Court erred in obtaining a Psycho/Sexual Evaluation of the Juvenile recommending sex offender treatment prior to adjudication.
6. Whether the Trial Court erred in admitting testimony from an eight (8) year old victim with Asperger's Syndrome without considering testimony from medical experts regarding this Syndrome and veracity of testimony.

Analysis

1. *The Court's Finding of Delinquency was not Against the Sufficiency or Weight of the Evidence.*

For his first two grounds on appeal, Juvenile challenges this Court's finding of delinquency, arguing that the finding of such was against the sufficiency and weight of the evidence. The Court disagrees.¹

To begin, the standard applied to a challenge based on sufficiency of evidence requires the Court to "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*, 2005 PA Super. 251, ¶ 7, 879 A.2d 293, 296-97 (2005). Further, "[u]nless the evidence presented at trial is 'so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances,' the verdict should not be disturbed on appeal." *Commonwealth v. Lee*, 2008 PA Super. 205, ¶ 7, 956 A.2d 1024, 1027 (2008) (quoting *Commonwealth v. Davis*, 799 A.2d 860, 866 (Pa. Super. 2002)).

In the contrary, "a true weight of the evidence challenge 'concedes that sufficient evidence exists to sustain the verdict' but questions which evidence is to be believed."

¹ Although the Court previously addressed Juvenile's challenge regarding the weight of the evidence in the Opinion and Order dated April 12, 2013, the Court will briefly readdress the issue here in connection with the challenge regarding the sufficiency of the evidence.

Commonwealth v. Galindes, 2001 PA Super. 315, ¶ 23, 786 A.2d 1004, 1013 (2001) (quoting *Armbruster v. Horowitz*, 744 A.2d 285, 286 (Pa. Super. Ct. 1999)). Further,

An allegation that the verdict is against the weight of the evidence is addressed to the discretion of the trial court. A new trial should not be granted because of a mere conflict in the testimony or because the judge on the same facts would have arrived at a different conclusion. . . . Trial judges, in reviewing a claim that the verdict is against the weight of the evidence do not sit as the thirteenth juror. Rather, the role of the trial judge is to determine that ‘notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice.’

Commonwealth v. Widmer, 560 Pa. 308, 319-20, 744 A.2d 745, 751-52 (2000) (quoting *Commonwealth v. Brown*, 538 Pa. 410, 648 A.2d 1177 (1994)) (internal citations omitted).

At the Hearing, Commonwealth called the victims, who testified to the incidents involving Juvenile. Tr. Adjudication and Disposition Hr’g, 3-39, Jan. 16, 2013. L.S. testified that in the spring/summer of 2008, Juvenile forced L.S. to perform oral sex on him on two occasions. Tr. Adjudication Hr’g, 5-10. N.S. testified that beginning in 2008, Juvenile “put his private in my butt.” Tr. Adjudication Hr’g, 28. Further, N.S. testified that Juvenile forced N.S. to perform oral sex on him. Tr. Adjudication Hr’g, 29. N.S. also testified that these incidents occurred multiple times each, and did not stop until he was in first grade (2011). Tr. Adjudication Hr’g, 29-31.

Juvenile also testified at the Adjudication Hearing. He stated that during the summer of 2008, he would have been thirteen (13) years old and was friends with the victims. Tr. Adjudication Hr’g, 53-54. He indicated that the friendship with the victims continued on and off until 2012, depending on the relationship between his parents and the victims’ parents. Tr. Adjudication Hr’g, 55-56. He also denied that he ever penetrated either of the victims or forced them to perform oral sex on him. Tr. Adjudication Hr’g, 54. On cross-examination, Juvenile confirmed that he was friends and hanging out with an eight-year-old (L.S.) and a

four-year-old (N.S.), while he was thirteen. He further confirmed that he was friendly with the victims up until several weeks before the filing of the Complaint, and that he never personally had a fight with either of the boys. Tr. Adjudication Hr'g, 57. Juvenile affirmed that his version of the events is that the victims made up the allegations- even though they were his friends and there was no bad blood between them. Tr. Adjudication Hr'g, 57.

Based on their testimony at the Hearing, the Court finds that the victims were credible witnesses and their version of events was genuine. On the other hand, the Court finds that Juvenile's contention – the victims made up the story – lacks any basis or evidence. Based on the testimony presented at trial and credibility of the witnesses, the Court does not find that the finding of delinquency was against the sufficiency or weight of the evidence.

2. *The Court did not Err in Ordering Juvenile be Placed in Residential Treatment upon Disposition.*

For his third (3rd) grounds on appeal, Juvenile argues that the Court erred in ordering that he be placed in a residential treatment facility contemporaneously with the adjudication hearing. The Court disagrees.

Rule 409 of the Pennsylvania Rules of Juvenile Court Procedure states:

Adjudicating the juvenile delinquent. Once the court has ruled on the offenses as provided in Rule 408, the court shall conduct a hearing to determine if the juvenile is in need of treatment

...

(2) *In need.*

- (a) If the court determines that the juvenile is in need of treatment, supervision, or rehabilitation, **the court shall enter an order adjudicating the juvenile delinquent and proceed in determining a proper disposition under Rule 512.**

PA.R.J.Ct.P. 409(A)(2)(a) (emphasis added). Rule 512 states the proper procedure, duties, and findings of a court conducting a dispositional hearing. *See* PA.R.J.Ct.P. 512. However, neither Rule 409 nor 512 prohibit a court from holding the dispositional hearing immediately following the adjudication hearing. In fact, the only time requirement for dispositions is described in Rule 510, which states that the dispositional hearing must be held within twenty (20) days if the juvenile is detained and within sixty (60) days if he or she is not detained. *See* PA.R.J.Ct.P. 510.

Rule 512 requires that if a court places a juvenile in a facility it must be “the least restrictive type of placement that is consistent with the protection of the public and best suited to the juvenile’s treatment, supervision, rehabilitation and welfare.” PA.R.J.Ct.P. 512(D)(4)(b). In the case at bar, the Court adjudicated Juvenile on the offenses of Rape of a Child and Involuntary Deviate Sexual Intercourse, and ordered that he be placed at AYS until further order of the court.

In accordance with section 6352 of the Juvenile Act, this Court entered a Statement of Reason setting forth the reasons, goals, terms, and conditions of disposition as well as the basis for the decision of placement at AYS. *See* Statement of Reason Pursuant to 42 Pa.C.S.A. § 6352, filed Jan. 21, 2013; *see also* 42 Pa.C.S.A. § 6352. In this Statement, the Court articulated reasons for placing the Juvenile at AYS, finding that he needs intensive in-patient treatment to address the sexual offenses, because of the nature of the offense, and due to the age and potential future contact with the victim.

This Court finds that the disposition ordered in this case complies with the rules and procedural requirements of the Pennsylvania Rules of Juvenile Court Procedure and the

Juvenile Act. Finding no contrary provision, the Court did not err in ordering Juvenile's disposition contemporaneously with the adjudication finding.

3. *The Psycho/Sexual Evaluation was Performed for the Purposes of Disposition Recommendation not for as Evidence or Expert Report for Adjudication.*

Juvenile next argues on his fourth (4th) grounds on appeal that the Juvenile Probation Department, acting under the authority of the Court, erred in obtaining a Psycho/Sexual report prior to adjudication. The Court disagrees.

As discussed in the Court's previous opinion, the Psycho/Sexual evaluation conducted by Dr. William G. Allenbaugh of Project Point of Light was not entered into evidence against Juvenile during the adjudication hearing. *See* Opinion and Order, 4, April 12, 2013; *see also* Tr. Adjudication Hr'g, 3-48. Further, Dr. Allenbaugh was not called as an expert witness by the Commonwealth or Juvenile; therefore, he made no recommendation to the Court concerning Juvenile's culpability in relation to the charges. *See* Opinion and Order, 4, April 12, 2013; *see also* Tr. Adjudication Hr'g, 3-48. The Court submits that the Psycho/Sexual report was utilized only by the Juvenile Probation Department in preparing a recommendation for the Court, for consideration of disposition options.

Section 6341 of the Juvenile Act states:

(b.2) Evidence on the finding of delinquency. –

- (1) No statements, admissions or confessions made by or incriminating information obtained from a child in the course of a screening or assessment that is undertaken in conjunction with any proceedings under this chapter, including, but not limited to, that which is court ordered, shall be admitted into evidence against the child on the issue of whether the child committed a delinquent act under this chapter or on the issue of guilt in any criminal proceeding.

...

(d) Evidence on issue of disposition. –

(1)(i) **In disposition hearings under subsections (b) and (c) all evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and relied upon to the extent of its probative value even though not otherwise competent in the hearing on the petition**

(ii) Subparagraph (i) includes any screening and assessment examinations ordered by the court to aid in disposition, even though no statements or admissions made during the course thereof may be admitted into evidence against the child on the issue of whether the child committed a delinquent act.

42 Pa.C.S.A. § 6341(b.2), (d) (emphasis added). The evidentiary provisions of the Juvenile Act clearly permit the Court greater latitude to consider documents or other evidence in the determination of disposition. Whether the report could or could not have been admissible for adjudication purposes against the Juvenile is irrelevant as the report was not admitted during the Hearing. As such, the Court finds that the Psycho/Sexual report was a written report helpful in determining what level of treatment needed by the Juvenile. Therefore, the Court finds that reliance on the report was proper in accordance with the Juvenile Act.

4. The Court did not Err in Denying Juvenile's Motion to Continue or in Admitting Testimony of the Victim.

Lastly, Juvenile argues that the Court erred in denying Juvenile's Motion to Continue filed on January 15, 2013, and that the Court erred in admitting testimony from the victim N.S. The Court disagrees.

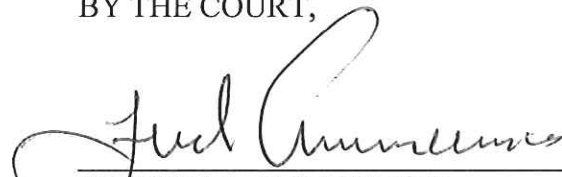
The Court has previously addressed the denial of Juvenile's Motion to Continue and the testimony of the victim in the previous Opinion and Order. *See* Opinion and Order, 2-3, April 12, 2013. As such, the Court finds that no further discussion is needed.

However, the Court notes, in regards to Juvenile's claim that N.S. had Asperger's Syndrome, that Juvenile failed to present any evidence that N.S. suffers from Asperger's Syndrome. Further, Juvenile specifically asked N.S. during his testimony if he had any illnesses or diseases or if he had ever heard of Asperger's Syndrome, to which N.S. replied in the negative to both questions. Tr. Adjudication Hr'g, 39. Subsequently, Juvenile failed to call N.S.'s parent or doctor to testify to confirm or dispute N.S.'s assertion. *See* Tr. Adjudication Hr'g, 48-58.

For the reasons set forth herein and in the previous Opinion and Order by this Court, the Court finds that Juvenile's Motion to Continue was properly denied, and that the Court did not err in admitting testimony from N.S.

BY THE COURT,

August 6 2013
DATE



FREDRIC J. AMMERMAN,
PRESIDENT JUDGE