

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF B.D.J.

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: B.D.J.

No. 450 WDA 2012

Appeal from the Order of February 9, 2012
In the Court of Common Pleas of Greene County
Criminal Division at No(s): CP-30-JV-0000006-2001

BEFORE: GANTMAN, J., WECHT, J., and FITZGERALD, J.*

MEMORANDUM BY WECHT, J.

Filed: March 18, 2013

B.D.J. ("Appellant"), a minor, appeals the disposition order entered in the Court of Common Pleas of Greene County on February 9, 2012, after Appellant was adjudicated delinquent of receiving stolen property.¹ We affirm.

On February 14, 2011, a Greene County juvenile probation officer filed a delinquency petition against Appellant, alleging that Appellant had committed the following delinquent acts: theft by unlawful taking,² receiving

* Former Justice specially assigned to the Superior Court.

¹ 18 Pa.C.S. § 3925(a).

² 18 Pa.C.S. § 3921(a).

stolen property, and criminal mischief.³ On November 10, 2011, Appellant and his lawyer appeared before the juvenile court for an adjudication hearing. On that date, the Commonwealth presented the following evidence, as summarized by the juvenile court:

[T]he Commonwealth called Derrick Durbin, who testified that on May 10, 2010, he noticed that his 2007 Honda ATV was missing. He called the Pennsylvania State Police and Trooper Jason Clayton responded. Durbin told the officer that he should check out [Appellant's] residence because friends of his had already suggested that [Appellant] was involved. Furthermore, at some previous time, [Appellant] had expressed to Durbin admiration for that ATV. Several months later he heard from one Brandon Richter that his ATV was at the residence of Steven Strohmeier. Equipped with the title and the keys to the ATV, he went to the Strohmeier residence, about 8 or 10 miles away.

The Commonwealth called Steven Strohmeier of Cameron, West Virginia. He testified that he bought an ATV from [Appellant] some time in the spring [of] 2010. Like Durbin, he had previously been acquainted with the juvenile. After some negotiations, he agreed to pay [Appellant] \$1,800.00. As part of the transaction, [Appellant] prepared and signed [a] document he called a Bill of Sale, which listed the VIN number of a 2007 Honda ATV to be sold to Steven Strohmeier. Ex. 2 Trans. 11-10-2011 Hearing.

Next, the Commonwealth called Grant Herrnberger, a West Virginia State policeman. He related that on November 23, 2010, he was dispatched to the house of Steven Strohmeier, where he met both Strohmeier and Durbin. Durbin had gone to the house and demonstrated to Strohmeier that his key started the ATV and that the VIN number on the title matched the number on the vehicle. Strohmeier then called [the] police. Officer Herrnberger took a statement and Durbin took the ATV. Later, [Durbin] took it to Barnhart's Suzuki for a repair estimate.

³ 18 Pa.C.S. § 3304(a)(2).

Juvenile Court Opinion ("J.C.O."), 5/2/2011, at 3-4.

After presenting this evidence, the Commonwealth requested a continuance, which the juvenile court granted. The parties reconvened on December 16, 2011. The Commonwealth presented no further evidence, and rested its case. Appellant did not testify, nor did he present any other evidence. The juvenile court adjudicated Appellant delinquent of receiving stolen property, but found Appellant not-delinquent of theft and criminal mischief.

A disposition hearing was scheduled for February 9, 2012. On February 6, 2012, three days before the scheduled disposition hearing, Appellant, through counsel, filed a motion seeking a continuance. Appellant alleged that he could not secure transportation to the hearing. The motion was denied. Appellant failed to appear for the February 9, 2012 hearing. At the commencement of the hearing, Appellant's counsel renewed the request for a continuance, which the juvenile court once again denied. The juvenile court conducted the disposition hearing with Appellant *in absentia*. Appellant was placed on probation until his eighteenth birthday, which constituted approximately nine months. Appellant also was ordered to pay restitution in the amount of \$1,800 to Strohmeyer, representing the amount that the latter paid for the ATV, and in the amount of \$537.92 to Durbin, which reflected the amount of damage done to the ATV.

On March 9, 2012, Appellant filed a notice of appeal. On the same date, Appellant filed a concise statement of errors complained of on appeal

pursuant to Pa.R.A.P. 1925(b). On May 2, 2012, the juvenile court issued an opinion pursuant to Pa.R.A.P. 1925(a). On May 3, 2012, Appellant filed a motion for leave of court to supplement his Pa.R.A.P. 1925(b) statement with an additional issue that Appellant sought to pursue on appeal. On May 8, 2012, the juvenile court granted Appellant's motion and filed a supplemental Pa.R.A.P. 1925(a) opinion addressing that additional issue.

Appellant raises the following four questions for our review:

1. Whether the Court's determination that the Commonwealth carried its burden of proving, beyond a reasonable doubt, that every element of Title 18 Pa.C.S.A. § 3925(a), receiving stolen property, was supported by the evidence and applicable law?
2. Whether the Court's determination of the amount of restitution owing to the alleged victim was supported by the evidence and applicable law?
3. Whether the Court made an adequate inquiry into and finding that the Juvenile was in need of treatment, supervision, or rehabilitation before entering an adjudication of delinquency?
4. Whether the Court abused its discretion in allowing the disposition of these charges to proceed in the juvenile's absence?

Brief for Appellant at 9.

In his first issue, Appellant purports to challenge the sufficiency of the evidence presented to sustain his delinquency adjudication of receiving stolen property. Although Appellant characterizes his argument as a sufficiency challenge, closer inspection reveals that Appellant's argument in fact challenges the weight of the evidence.

Appellant claims that Strohmeyer's testimony was "tainted by bias, because he was an interested party." Brief for Appellant at 14. Appellant further maintains that Strohmeyer's testimony was "self-contradicting and wholly unreliable." *Id.* at 15. Essentially, Appellant argues that Strohmeyer's testimony was incredible and unworthy of belief. Finally, Appellant alleges that inadmissible hearsay also contributed to the adjudication.

Appellant's argument does not challenge the quantity, but rather the quality, of the evidence presented. Stated differently, Appellant is challenging the credibility of the evidence presented at his hearing. Thus, Appellant's challenge goes to the weight of the evidence, not its sufficiency. ***See Commonwealth v. Wilson***, 825 A.2d 710, 713–14 (Pa. Super. 2003) (claims challenging the credibility of evidence are challenges to the weight of the evidence).

Appellant did not raise a weight challenge in his 1925(b) statement, nor did Appellant preserve the issue in a Pa.R.J.C.P. 520 post-dispositional motion. Thus, this claim is waived. ***See Commonwealth v. Lord***, 719 A.2d 306, 309 (Pa. 1998) (any issues not raised in a 1925(b) statement are waived); ***In re R.N.***, 951 A.2d 363, 371-72 (Pa. Super. 2008) (failure to raise weight challenge in post-dispositional motion in juvenile delinquency case constitutes waiver of that claim).

Appellant's second issue also is waived. Appellant challenges the sufficiency of the evidence offered by the Commonwealth to support the

restitution award. The entirety of Appellant's argument with regard to this claim consists of one-half of one page of text. The argument contains no citations to authority, nor does it include any substantive development of the claim. "[W]here an appellate brief fails to provide any discussion of a claim with citation to relevant authority or fails to develop the issue in any other meaningful fashion capable of review, that claim is waived." ***Commonwealth v. Johnson***, 985 A.2d 915, 924 (Pa. 2009) (citing ***Commonwealth v. Walter***, 966 A.2d 560, 566 (Pa. 2009)).

Next, Appellant contends that, pursuant to the Pennsylvania Supreme Court's recent decision in ***Commonwealth v. M.W.***, 39 A.3d 958 (Pa. 2012), the juvenile court erred in adjudicating Appellant delinquent before making a specific finding that he was in need of treatment, supervision, or rehabilitation. Brief for Appellant at 16. Appellant did not object to the sequence of the juvenile court's findings during the adjudication and disposition process. Also, Appellant did not raise the issue in his initial Pa.R.A.P. 1925(b) statement, even though ***M.W.*** had been decided a few weeks prior to that filing.⁴ However, Appellant sought leave of court to file an amended Pa.R.A.P. 1925(b) statement, which the juvenile court granted. Appellant first raised this issue in that amended statement, which was filed on May 3, 2012.

⁴ Appellant filed his initial Pa.R.A.P. 1925(b) statement on March 9, 2013. ***M.W.*** was decided on February 21, 2012.

In *M.W.*, our Supreme Court was called upon to interpret the Juvenile Act, 42 Pa.C.S. §§ 6301-65, to determine the proper procedure that a juvenile court must follow before reaching a final delinquency adjudication. After reviewing the statutory language and the applicable procedural rules, the Court held that, **before** adjudicating a juvenile delinquent, “the juvenile court must (1) determine that the juvenile has committed a delinquent act [beyond a reasonable doubt], *and* (2) determine that the juvenile requires treatment, supervision, or rehabilitation.” *M.W.*, 39 A.3d at 966 (emphasis in original).

Instantly, the juvenile court acknowledges candidly that it did not make a specific finding regarding Appellant’s need for treatment, supervision, or rehabilitation before rendering its December 16, 2011 delinquency adjudication. J.C.O., 5/8/2012, at 1. Nonetheless, Appellant is not entitled to any form of relief. Appellant is not entitled to retroactive application of *M.W.* The general rule in Pennsylvania is that the Supreme Court’s initial interpretation of a statute becomes part of the statute itself, and thus relates back to the statute’s date of enactment. *Commonwealth v. Shaffer*, 734 A.2d 840, 844 (Pa. 1999). However, a party is only entitled to the retroactive benefit of a new decision if the identical issue was raised and preserved “at all stages of adjudication up to and including direct appeal.” *Commonwealth v. Cabeza*, 469 A.2d 146, 148 (Pa. 1983); *see also Commonwealth v. Tilley*, 780 A.2d 649, 652 (Pa. 2001). Thus, even though in a criminal case a new decision involving a criminal law must be

applied “to all cases still pending on direct review,” *Schriro v. Summerlin*, 542 U.S. 348, 351 (2004), a criminal defendant/appellant must have preserved the legal challenge in the court below to be entitled to retroactive application of that new decision. *Commonwealth v. Roney*, 866 A.2d 351, 359 n.32 (Pa. 2005).

Here, Appellant failed to object to the sequence of the events as they occurred in the juvenile court. Therefore, even though the juvenile court admits that it did not consider Appellant’s need for treatment, supervision, or rehabilitation before adjudicating Appellant delinquent, Appellant is not entitled to the application of *M.W.* to his case. Consequently, Appellant is not entitled to relief.

In his last issue, Appellant challenges the juvenile court’s denial of his request for a continuance prior to the disposition hearing, arguing that the denial was an “unreasonable abuse of discretion.” Brief for Appellant at 17. Appellant argues that the continuance was necessary because he did not have transportation to the disposition hearing. Appellant notes his right to be given the opportunity to speak at the disposition hearing, which he was not afforded in this case because of the juvenile court’s denial of his continuance request. Finally, Appellant further maintains that his presence was necessary so as to present evidence pertaining to the court’s necessary duty to craft a disposition that is “best suited to the child’s treatment, supervision, rehabilitation, and welfare.” *Id.* (quoting 42 Pa.C.S. § 6352(a)).

In his Pa.R.A.P. 1925(b) statement, Appellant did not lodge a specific challenge to the juvenile court's denial of his continuance request. Appellant challenged only the juvenile court's decision to conduct the hearing with him *in absentia*, not its decision to deny the continuance request. As noted *supra*, issues not contained in a Pa.R.A.P. 1925(b) statement are waived. **Lord**, 719 A.2d at 309. Thus, this issue, too, must be deemed waived.

Order affirmed. Jurisdiction relinquished.

Fitzgerald, J. concurs in the result.