

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

IN THE INTEREST OF: J.K., A MINOR	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
APPEAL OF: J.K.	:	
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	:	
	:	No. 854 WDA 2022

Appeal from the Order Dated May 3, 2022
In the Court of Common Pleas of Allegheny County Juvenile Division at
No(s): CP-02-JV-0000074-2022

BEFORE: BOWES, J., OLSON, J., and KING, J.

MEMORANDUM BY BOWES, J.:

FILED: January 18, 2024

J.K. appeals from the dispositional order entered following his adjudication of delinquency for acts that would constitute robbery and two firearms offenses if committed by an adult.¹ We affirm the adjudication of delinquency for robbery and reverse the adjudication of delinquency for the firearms offenses.

The certified record reveals the procedural history and relevant facts as follows. On May 1, 2021, the victim was selling beverages along the street in front of the Kingsley Center in the East Liberty neighborhood of Pittsburgh when he observed Appellant operating a vehicle that was idling at a red traffic light. The victim recognized Appellant through their participation in high

¹ The juvenile court initially committed Appellant to out-of-home placement at the Summit Academy. However, following the first commit review hearing on July 26, 2022, the court released Appellant from placement and terminated supervision. Order, 7/26/22, at 1.

school football, social media, and Appellant's reputation as a local barber. The victim approached Appellant and, failing in his attempts to sell Appellant a beverage, inquired whether Appellant was available to cut his hair. Appellant responded in the affirmative, and the two agreed to meet in the parking lot of a nearby Target department store. The pair met as agreed, the victim got into the back seat of Appellant's vehicle, and while the two were in route to Appellant's home, Appellant allegedly brandished a firearm and robbed the victim of approximately two hundred dollars, allowing the victim to retain his telephone and three dollars for bus fare home.

The Commonwealth initially charged Appellant with robbery and possession of firearm by a minor. However, prior to the adjudicatory hearing, the Commonwealth added an additional firearm offense, possessing a firearm without a valid license. **See** N.T., Adjudicatory Hearing, 4/19/22, at 4-5.

During the adjudicatory hearing, the victim confirmed that he knew the perpetrator from social media, athletic events at their respective schools, and through his familiarity with Appellant's ability to cut hair. **Id.** at 11-14. When questioned about the weapon that Appellant possessed during the robbery, the victim described "a black gun with a [green] beam on it". **Id.** at 21. Critically, this testimony was the only evidence that the Commonwealth presented about the firearm. It did not introduce the firearm or any report describing the weapon.

The victim's testimony describing Appellant's vehicle was inconsistent. He initially stated that he could not remember any damage to the vehicle,

which he described as a four-door vehicle with a trunk. **Id.** at 26, 32. Regarding Appellant's identity, the victim testified that he did not actually know Appellant's name at the time of the incident, nor had the victim ever spoken to Appellant in person until the incident. **Id.** at 32-34. Despite this, the victim noted on redirect examination that he recognized Appellant's face from their snapchat interactions. **Id.** at 40. As for the vehicle, the victim demonstrated that he had a basic ability to distinguish cars from SUVs. **Id.** at 41-42. The victim then read the police report detailing his initial interaction with police after the incident, and thereafter maintained that the vehicle operated by Appellant was a black SUV with a broken taillight. **Id.** at 44-45. Re-cross revealed that the victim initially stated the taillight was not damaged, and his testimony from the preliminary hearing revealed he previously asserted that the vehicle was a black car with two doors and a trunk, rather than an SUV. **Id.** at 46-49.

The Commonwealth then presented Detective Jeffrey Wingard, who testified that upon reading the responding police officer's report and interviewing the victim and Appellant, he took a photograph of a black SUV with a broken taillight. **Id.** at 54. Detective Wingard further testified that the photograph of the vehicle was consistent with the description provided by the responding officer. **Id.** at 55. Appellant's mother also testified at the adjudicatory hearing, stating that on the date of the incident, Appellant would have been operating a black Lincoln Aviator SUV. **Id.** at 64. The vehicle had a "hatch" rather than a trunk, and one of its taillights was damaged. **Id.**

Additionally, Appellant's mother agreed that the vehicle depicted in a photo taken by a detective was indeed the vehicle that Appellant would have been driving the night of the robbery. ***Id.*** at 65.

Upon the conclusion of testimony and argument, the juvenile court judge issued several findings. First, the judge noted that he did not believe there was an issue with the victim's apparent confusion regarding vehicle types. ***Id.*** at 73. Second, the victim was deemed to be credible, and the judge determined that he was truthful in his testimony. ***Id.*** Pursuant to the juvenile court, this credibility determination was further bolstered by the testimony of Appellant's mother. ***Id.*** After determining that the Commonwealth proved its case beyond a reasonable doubt, Appellant was adjudicated delinquent on all counts. ***Id.*** at 74. Appellant was detained until his disposition hearing, which was deferred to a later date. ***Id.*** at 75.

The juvenile court conducted Appellant's dispositional hearing on May 3, 2022. During the hearing, Appellant presented testimony from his grandmother, mother, and a teacher that indicated his positive characteristics and hard-working nature. Despite this, while noting Appellant's need for treatment, the juvenile court emphasized the issue of juveniles carrying firearms and directed that Appellant be supervised at an out-of-home placement facility.

Appellant filed a post-dispositional motion challenging the sufficiency and weight of the evidence for Appellant's adjudication of delinquency, which was denied. ***See*** Post-Dispositional Motion, 5/11/22, at ¶¶ 9-15; Juvenile

Court Order, 6/28/22. Appellant filed a timely notice of appeal. The juvenile court did not direct Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925.

Appellant presents the following questions for our review:

- 1) Whether the evidence was insufficient to adjudicate [Appellant] delinquent of Firearms Not to be Carried Without a License and Possession of a Firearm by Minor, where the Commonwealth failed to prove that the object he possessed was a firearm?
- 2) Whether the Juvenile Court abused its discretion in denying [Appellant's] post-disposition motion for a new adjudication hearing where the weight of the evidence overwhelmingly showed that [Appellant] was misidentified as the perpetrator, and therefore, his adjudications for Robbery, Firearms Not to be Carried Without a License, and Possession of a Firearm by Minor shocked the judicial conscience?

Appellant's brief at 6.

Appellant's first issue challenges the juvenile court's determination that the Commonwealth offered sufficient evidence to establish that his conduct met all the elements of the crimes of Firearms Not to be Carried Without a License and Possession of a Firearm by a Minor. **See** 18 Pa.C.S. §§ 6110.1(a); 6106(a)(1). We therefore begin with our standard of review for sufficiency of evidence challenges, which are reviewed under the following standard:

We must determine whether the evidence admitted at trial, and all reasonable inferences drawn therefrom, when viewed in a light most favorable to the Commonwealth as verdict winner, support the conviction beyond a reasonable doubt. Where there is sufficient evidence to enable the trier of fact to find every element of the crime has been established beyond a reasonable doubt, the sufficiency of the evidence claim must fail.

The evidence established at trial need not preclude every possibility of innocence and the fact-finder is free to believe all, part, or none of the evidence presented. It is not within the province of this Court to re-weigh the evidence and substitute our judgment for that of the fact-finder. The Commonwealth's burden may be met by wholly circumstantial evidence and any doubt about the defendant's guilt is to be resolved by the fact[-]finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances.

Commonwealth v. Rodriguez, 141 A.3d 523, 525 (Pa.Super. 2016) (cleaned up). Additionally, "evidentiary sufficiency is a question of law," thus "our standard of review is de novo and our scope of review is plenary." ***Commonwealth v. Diamond***, 83 A.3d 119, 126 (Pa. 2013).

Appellant asserts that the Commonwealth failed to present sufficient evidence to prove beyond a reasonable doubt that the weapon allegedly used by Appellant was indeed a firearm. **See** Appellant's brief at 20. The Commonwealth concedes that, due to a lack of circumstantial evidence sufficient to establish the barrel or length of the alleged firearm, Appellant's adjudications for Carrying a Firearm Without a License and Possession of a Firearm by a Minor should be reversed. **See** Commonwealth's brief at 20-21. We agree.

Section 6110.1(a) of the Crimes Code governs possession of a firearm by a minor and reads, in pertinent part: "a person under 18 years of age shall not possess or transport a firearm anywhere in this Commonwealth." 18 Pa.C.S. § 6110.1(a). In order for the juvenile court to adjudicate Appellant

delinquent under Section 6110.1(a), the Commonwealth was required to prove three things beyond a reasonable doubt: (1) the weapon was indeed a firearm as provided by statute; (2) appellant was in possession of the firearm; and (3) appellant was under the age of 18. **See id.; see also In re Interest of J.R.R.-N.**, 2017 WL 3298472, at *3 (Pa.Super. 2017) (non-precedential decision).

As to the first element, the Commonwealth must have proved that the weapon used was a firearm as defined by statute. **See** 18 Pa.C.S. § 6110.1(a). Our legislature defines a firearm as follows:

Any pistol or revolver with a barrel length less than 15 inches, any shotgun with a barrel length less than 18 inches or any rifle with a barrel length less than 16 inches, or any pistol, revolver, rifle or shotgun with an overall length of less than 26 inches. The barrel length of a firearm shall be determined by measuring from the muzzle of the barrel to the face of the closed action, bolt or cylinder, whichever is applicable.

18 Pa.C.S. § 6102. The Commonwealth may prove that a firearm meets the requirements of Section 6102 with circumstantial evidence. **See Commonwealth v. Rozplochi**, 561 A.2d 25, 31 (Pa.Super. 1989) (holding that testimony about a gun being placed in an envelope was sufficient circumstantial evidence to meet the barrel length requirements of Section 6102).

Both Appellant and the Commonwealth direct our attention to **Commonwealth v. Rapp**, 384 A.2d 961 (Pa.Super. 1978), wherein we confronted whether a conviction under 18 Pa.C.S. § 6105, which governs

persons not to be in possession of a firearm, could survive in light of the Commonwealth's failure to prove the barrel length of the subject weapon. **See** Appellant's brief at 18-19; Commonwealth's brief at 13-14. In **Rapp**, the weapon in question was a shotgun, and it was never produced or entered into evidence, nor was its barrel length ever detailed. **Rapp, supra** at 962. Regarding the requirements of Section 6102, we observed that "the length of the weapon's barrel . . . represents an indispensable element of the charged offense without proof of which a conviction may not be sustained." **Id.** Consequently, we held that the Commonwealth failed to meet its burden of proof, and the judgment of sentence was reversed. **Id.**

We have repeatedly emphasized that it is critical for the Commonwealth to demonstrate and prove, whether by direct or circumstantial evidence, barrel length for firearm offenses. **See, e.g., Commonwealth v. Freeman**, 256 A.3d 34, 2021 WL 1944392, at *10-11 (Pa.Super. 2021) (non-precedential decision) (reversing a conviction for firearms not to be carried without a license where the only evidence proffered by the Commonwealth as to barrel length was a recanted statement from the victim); **Commonwealth v. Grant**, 2019 WL 5538284, at *4-5 (Pa.Super. 2019) (non-precedential decision) (holding that testimony from multiple witnesses identifying "a small gun" or "handgun," in conjunction with detective testimony regarding ballistics was sufficient circumstantial evidence to meet definition of firearm); **Commonwealth v. Bush**, 2019 WL 5295414, at *3-4 (Pa.Super. 2019) (non-

precedential decision) (ruling that testimony about an “audible click” as heard by the victim of an attempted shooting, in addition to ballistics analysis that empty shell casings were consistent with a specific style of small handgun, was sufficient circumstantial evidence for barrel length purposes).

In the instant matter, the record is entirely devoid of any indication as to the length of the barrel of the firearm allegedly used by Appellant. Appellant and the Commonwealth likewise observe that no firearm was ever offered into evidence by the Commonwealth. **See** Appellant’s brief at 20; Commonwealth’s brief at 17. The only description of the weapon was that of the victim at Appellant’s adjudication hearing. **See** N.T., Adjudication Hearing, 4/19/22, at 21. When asked to describe the gun, the victim responded that “[i]t was a black gun with a beam on it.” **Id.** (clarifying that by “beam” he meant “laser”). Notably absent from the Commonwealth’s evidence is any reference whatsoever to the size of the weapon, the make or model, or any reference to its physical characteristics beyond its color and an attachment. The Commonwealth therefore failed to “prove an indispensable element of the charged offense[.]” **Rapp, supra** at 962. Consequently, the Commonwealth did not meet its burden of proof in showing that the weapon was indeed a firearm. **See** 18 Pa.C.S. § 6102; **see also** 18 Pa.C.S. § 6110.1(a).

Thus, viewing the evidence in the light most favorable to the Commonwealth, we have no choice but to hold that there is insufficient

evidence to conclude beyond a reasonable doubt that the weapon Appellant allegedly possessed was indeed a firearm.² **See Rapp, supra** at 962. Having concluded that the Commonwealth failed to prove that the alleged weapon was a firearm as provided by statute, we need not address whether the Commonwealth proved beyond a reasonable doubt that Appellant was in possession of the firearm and under the age of 18. The Commonwealth failed to sufficiently prove the elements of Possession of a Firearm by a Minor beyond a reasonable doubt. **See** 18 Pa.C.S. § 6102. Consequently, we reverse the adjudication of delinquency for Possession of a Firearm by a Minor.

Turning now to Carrying a Firearm Without a License, Section 6106 provides:

(1) Except as provided in paragraph (2), any person who carries a firearm in any vehicle or any person who carries a firearm concealed on or about his person, except in his place of abode or fixed place of business, without a valid and lawfully issued license under this chapter commits a felony of the third degree.

18 Pa.C.S. § 6106(a)(1). As with Possession of a Firearm by a Minor, Section 6106(a)(1) correspondingly requires the Commonwealth to prove: (1) “that the weapon was a firearm;” (2) “that the firearm was unlicensed;” and (3) “that where the firearm was concealed on or about the person, it was outside his home or place of business.” **Commonwealth v. Hewlett**, 189 A.3d 1004,

² The Commonwealth concedes both that barrel length, as defined in 18 Pa.C.S. § 6102 is an essential element of the offenses outlined in 18 Pa.C.S. §§ 6106(a) and 6110.1, and that it did not satisfy this element during the adjudication. **See** Commonwealth’s brief at 17-21.

1009 (Pa.Super. 2018). Circumstantial evidence may be used to prove the elements beyond a reasonable doubt. ***See id.***

For the identical reason listed above, the Commonwealth has failed to prove beyond a reasonable doubt that Appellant was in violation of Section 6106(a)(1), Carrying a Firearm Without a License. Specifically, the Commonwealth neglected to adduce evidence of the barrel length, which is a necessary component of establishing that a weapon is indeed a firearm. ***See*** 18 Pa.C.S. § 6102; ***Hewlett, supra*** at 1009. Thus, even viewing the evidence in the light most favorable to the Commonwealth, we cannot conclude the Commonwealth proved beyond a reasonable doubt that Appellant was carrying a firearm without a license in violation of 18 Pa.C.S. § 6106(a)(1). We therefore reverse the adjudication of delinquency for Carrying a Firearm Without a License.

Appellant's second issue challenges the juvenile court's determinations regarding the weight of the evidence. The standard of review for a claim that an adjudication of delinquency is against the weight of the evidence is well-established:

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 witnesses. 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) (cleaned up).

Highlighting inconsistencies in the victim's testimony regarding his (1) familiarity with Appellant's physical appearance and (2) description of the vehicle used in the robbery, Appellant argues that his adjudication of delinquency was contrary to the weight of the evidence and that the juvenile court abused its discretion in crediting the victim's testimony. **See** Appellant's brief at 23-24. In raising this weight claim before the juvenile court, Appellant asserted the following pertinent challenges:

10. [Appellant]. . . respectfully maintains that the Court's ruling was against the weight of the evidence and [Appellant] should at a minimum be granted a new trial.

- a. While [Victim] identified [Appellant] as the person who robbed him, his description of the car he rode in indicates that he was wrong about the identity of the driver.
- b. [Victim] testified that the actor was driving a black sedan; both the Commonwealth's own witness and [Appellant's] mother testified that [Appellant] drove an SUV.
- c. [Victim's] testimony that the driver was [Appellant] should be given less weight . . . in light of the fact that [Victim] had never spoken to [Appellant]; that he had only seen him one time when his high school team played [Appellant's] team in a football game months prior; and he never asked the driver if he was, in fact, [Appellant].

. . . .

15. [Appellant] respectfully asserts that the testimony of Detective Wingard and [Mother] was credible and that their testimony should have been given greater weight than the testimony of [Victim].

Post-Dispositional Motion, 5/11/22, at ¶¶ 10, 15

The juvenile court denied Appellant's post-dispositional motion without specifically addressing the claim that the adjudication of delinquency was against the weight of the evidence. While the court's ensuing Rule 1925(a) opinion also neglected to confront the issue squarely, it provided an assessment of the pertinent testimony and a determination of the witnesses' credibility, albeit in the context of addressing the sufficiency of the evidence.

In this vein, "the Court found all testifying parties to be reasonably creditable," stating from the bench:

First of all in regard to the vehicle itself, you know, I can understand the difference between SUV, a truck, a car, that there are many instances where that's, you know, children are not able to do that. I don't find that issue here today.

Basically what I find, I find that [Victim] was credible, I find he was telling the truth. As indicated he has been consistent with prior hearings as well. He identified [Appellant] here today just as he identified him there and the vehicle when this incident happened.

I don't find anything that refutes that at all. Mother's testimony definitely doesn't or there hasn't been anything else. The only thing that I find that [Appellant] has (inaudible) how much time has passed by. And he doesn't believe or it's not understood that his victim. You know, recognized him.

So, based on everything that's been testified to I find that the witness is credible, that he saw this defendant

there and that's the one that robbed him and, therefore, I find that the Commonwealth has proven its case beyond a reasonable doubt. Therefore, [Appellant] is found to be delinquent in regard to the amended petition[.]

. . . .

Although . . . [Mother's testimony was also] credi[ble], nothing in her testimony disproves or disputes [Victim's] testimony. This Court believes [Victim] was robbed at gun point by [Appellant], a young man who [he] knew through the local high school football league, through mutual associated, through snapchat and as a person who cut hair. This Court finds that the Commonwealth met its burden beyond a reasonable doubt that the events occurred at the hands of [Appellant].

Juvenile Court Rule 1925(a) Opinion, 1/13/23 at 10 (citing N.T., 4/19/23 at 73-74).

Thereafter, the juvenile court issued a supplemental opinion that expressly addressed Appellant's claim that the adjudication was against the weight of the evidence.³ That opinion further elaborated,

The issue to be addressed is [Appellant's] challenge to the weight of the evidence finding in this matter. This court, after hearing the evidence presented at the hearing held on April 19th, 2022, found that [Appellant] was in possession of a firearm and that he was involved in a robbery in which \$200 was taken from the victim by [Appellant].

. . .

³ On October 12, 2023, this Court entered an order that noted the juvenile court's failure to confront the merits of Appellant's properly preserved weight of the evidence claim and remanded the case to the juvenile court for the issuance of a supplemental Rule 1925(a) opinion within ten days that addressed the claim. **See** Order, 10/12/23, at 2. On December 22, 2023, the court filed the supplemental opinion that we discuss in the body of this memorandum.

[T]he court has heard overwhelming testimony directly from the victim of the robbery that he knows [Appellant] and that [Appellant] was the person who robbed him [.]

With the grounds for a delinquency adjudication established, it is evident to this court that the ruling of delinquency should stand based on the weight of the evidence. For the reasons set forth in this Opinion, the decision of the court should be affirmed.

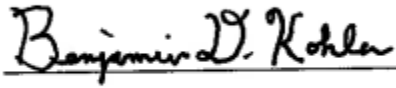
Supplemental Juvenile Court Opinion, 12/22/23, at 1-2 (cleaned up).

We do not discern an abuse of discretion. As the juvenile court noted in addressing the testimony, generally, on the date of the hearing, and later in confronting Appellant's weight claim directly, the victim testified credibly. **See id.** at 1-2; Juvenile Court Rule 1925(a) Opinion, 1/13/23 at 10; N.T., Adjudicatory Hearing, 4/19/22, at 73. Moreover, both Detective Wingard and Appellant's mother supported the relevant portions of the victim's account. **See** N.T., Adjudicatory Hearing, 4/19/22, at 53-55, 64-65. Accordingly, we cannot conclude that the juvenile court abused its discretion in rejecting Appellant's weight claim based on the evidence concerning the assailant's identity and the type and appearance of the assailant's vehicle. **See Champney, supra** at 408.

In light of the foregoing, we reverse the adjudication of delinquency for the firearms offenses outlined in §§ 6110.1(a) and 6106(a)(1), and affirm the adjudication of delinquency for robbery. As the juvenile court terminated supervision on July 26, 2022, the reversal of Appellant's adjudications for the firearms offenses will not upset the juvenile court's May 3, 2022 dispositional order.

Adjudication of delinquency affirmed in part and reversed in part.
Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 1/18/2024