J-S75038-13

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: D.J.G., a Minor,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: D.J.G., a Minor,	:	
Appellant	:	No. 1562 EDA 2013

Appeal from the Dispositional Order entered on April 26, 2013
in the Court of Common Pleas of Pike County,
Juvenile Division, No. CP-52-JV-0000119-2012

BEFORE: GANTMAN, SHOGAN and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.: **FILED MARCH 18, 2014**

D.J.G. (or "the juvenile") (d.o.b. 12/12/97) appeals from the Dispositional Order entered after he was adjudicated delinquent of one count each of possession of a weapon on school property,[1] graded as a first-degree misdemeanor, and sale and use of air rifles,[2] a summary offense. We affirm.

In its Opinion, the juvenile court set forth the facts underlying this appeal as follows:

> This appeal stems from an incident that occurred on October 16, 2012. On that day, [D.J.G., a student,] arrived at Wallenpaupack High School at approximately eight-thirty in the morning. He was seen by [] Assistant Principal Lisa Tait ("Tait") around this time. A short time thereafter, [D.J.G.] left the school[']s grounds and walked on the highway of Route 6. [] Tait and the [School] Principal noticed [D.J.G.'s] absence and searched for him by car[,] finding him [approximately one mile away, standing] alongside the road. [Tait and the Principal eventually convinced D.J.G. to enter the car and return to school.] As they were bringing [D.J.G.] back to Wallenpaupack

[1] ***See*** 18 Pa.C.S.A. § 912(a) and (b).

[2] ***See*** 18 Pa.C.S.A. § 6304(b)(1).

> High School, [] Tait noticed [the handle of a black "[A]irsoft" brand pellet handgun protruding from D.J.G.'s] pocket[,] and [she] confiscated it[,] fearing that it was a real handgun. By ten o'clock that morning, [D.J.G.] was returned to the school[, where he was] interviewed by two [Pennsylvania S]tate [P]olice [Troopers, James Gilhooley and Robert Covington.] [D.J.G.] admitted to [Troopers Gilhooley and Covington that he was] in possession of the [A]irsoft gun.

Juvenile Court Opinion, 7/11/13, at 1-2.

On February 27, 2013, the juvenile court conducted an adjudicatory hearing, at which Tait, Trooper Gilhooley, and Trooper Covington testified. Each of these witnesses testified that the Airsoft pellet gun was constructed of light plastic, and had a bright orange cap, indicating that it was a toy.[3] N.T., 5/31/13, at 11-12, 16, 22. Additionally, Troopers Gilhooley and Covington testified that the magazine of the Airsoft gun was filled with approximately ten small, plastic pellets, which are the projectiles that the gun expels. ***Id.*** at 15-16, 18-19, 23.

Trooper Covington testified, from his personal experience with Airsoft guns, that they fire plastic pellets via either pressurized air or a spring mechanism. ***Id.*** at 23. Additionally, Trooper Covington stated that he allows his nine-year-old son to use an Airsoft gun, but requires him to wear goggles while using the gun because of its capacity to cause injury to the eyes. ***Id.*** at 23-24.

[3] The Airsoft gun was not admitted into evidence at the adjudicatory hearing.

The following interaction transpired when Trooper Covington was asked to testify (as a layman) as to his experience with, and opinions regarding, Airsoft guns:

> Q. [The Commonwealth]: If, in fact, [an Airsoft gun pellet was] fired into an eye[, this] could cause injury, correct?
>
> A. [Trooper Covington]: I would imagine. I'm no doctor, but I wouldn't want it to hit me in the eye[,] I know that.
>
> * * *
>
> Q. [Defense counsel]: The types of toy guns you are familiar with and that your son has, they're similar to the type of gun that [D.J.G. possessed], a toy gun?
>
> A. [Trooper Covington]: Yeah[, they are b]asically the same thing[.] [Airsoft guns a]re pretty weak, not as powerful as a BB gun, more powerful than a Nerf gun. Me personally [*sic*] I put it somewhere between [a] BB gun and Nerf gun.
>
> Q. [Defense counsel]: [Inquires of Trooper Covington how powerful an Airsoft gun is in comparison to a paintball gun].
>
> A. [Trooper Covington]: … I've been hit by a paint ball gun[,] and I've been hit by an airsoft gun[,] and a paint ball gun hurts worse.

N.T., 5/31/13, at 24.

At the close of the adjudicatory hearing, the juvenile court adjudicated D.J.G. delinquent of the above-mentioned offenses. Subsequently, the juvenile court entered a Dispositional Order, requiring D.J.G. to pay a $100 fine and the costs of prosecution, and placing him under the supervision of the Pike County Probation Office for an indeterminate period of time, to be reviewed in six-month intervals until his eighteenth birthday. In response,

D.J.G. timely filed a Notice of Appeal and a court-ordered Pa.R.A.P. 1925(b) Concise Statement of Errors Complained of on Appeal.

D.J.G. presents the following issues for our review:

> 1. Whether the [juvenile] court erred in adjudicating [D.J.G.] delinquent on one count of Possession of a Weapon on School Property and one count of Sale and Use of Air Rifles where [the] evidence was insufficient[,] as all Commonwealth witnesses testified that the alleged "weapon" and "air rifle" was actually a toy, and the Commonwealth failed to introduce the item in question[?]
>
> 2. Whether the [juvenile] court erred in adjudicating [D.J.G.] delinquent on one count of Possession of a Weapon on School Property and one count of Sale and Use of Air Rifles where the verdict was against the weight of the evidence and all Commonwealth witnesses testified [that] the alleged "weapon" and "air rifle" was actually a toy, and the Commonwealth failed to introduce the item in question[?]

Brief for Appellant at 6.

First, D.J.G. challenges the sufficiency of the evidence supporting his adjudications of the above-mentioned offenses. ***Id.*** at 13-20. Our standard of review regarding this claim is as follows:

> In reviewing a challenge to the sufficiency of the evidence, we must determine whether, viewing all the evidence admitted at trial, together with all reasonable inferences therefrom, in the light most favorable to the Commonwealth, the trier of fact could have found that each element of the offense charged was supported by evidence and inferences sufficient in law to prove guilt beyond a reasonable doubt. This standard is equally applicable to cases where the evidence is circumstantial rather than direct so long as the combination of the evidence links the accused to the crime beyond a reasonable doubt. Moreover, it is the province of the trier of fact to pass upon the credibility of witnesses and the weight to be accorded the evidence produced. The fact[-]finder is free to believe all, part or none of the evidence. The facts and circumstances established by the

> Commonwealth need not be absolutely incompatible with the defendant's innocence, but the question of any doubt is for 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.

In the Interest of T.B., 11 A.3d 500, 504 (Pa. Super. 2010) (citation and brackets omitted).

D.J.G. contends that the Commonwealth failed to establish a *prima facie* case to adjudicate him delinquent for possession of a weapon on school property because the Airsoft pellet gun was a *toy*, and not a "weapon," as that term is defined in the criminal statute. Brief for Appellant at 13-14. Specifically, according to D.J.G., the Airsoft gun does not qualify as a weapon because "there was no evidence presented from the Commonwealth that the toy in question was capable of causing serious bodily injury." ***Id.*** at 14 (emphasis omitted); ***see also*** 18 Pa.C.S.A. § 912(a) (defining a "weapon, in relevant part, as any "firearm, shotgun, rifle and any other tool, instrument or implement capable of inflicting *serious bodily injury*." (emphasis added)).[4]

D.J.G. also challenges the sufficiency of the evidence supporting his adjudication of delinquency for sale or use of air rifles, 18 Pa.C.S.A.

[4] Since the term "serious bodily injury" is not defined in section 912, we look to the general definitions provision of the Crimes Code, 18 Pa.C.S.A. § 2301 (defining "serious bodily injury" as an "injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ."). ***See In re M.H.M.***, 864 A.2d 1251, 1255, 1257 (Pa. Super. 2004) (utilizing section 2301's definition of "serious bodily injury" in determining whether a paintball gun fell under the definition of "weapon" contained in 18 Pa.C.S.A. § 912(a)).

§ 6304(b)(1), arguing that "[t]he Commonwealth has presented insufficient evidence to determine that the item possessed was an air rifle and not merely a toy." Brief for Appellant at 19. According to D.J.G, "[b]ased upon the testimony presented in [c]ourt, the toy possessed by [D.J.G.] could not expel a pellet with a force that would reasonably be expected to cause bodily injury." ***Id.*** at 20; (citing 18 Pa.C.S.A. § 6304(g) (defining an "air rifle," in relevant part, as "[a]ny air gun, air pistol, spring gun, spring pistol, B-B gun, or any implement that is not a firearm, which impels a pellet of any kind with a force that can reasonably be expected to cause *bodily harm*." (emphasis added))).[5]

The juvenile court addressed these claims in its Opinion, analyzed the relevant statutory provisions and definitions, and determined that the Commonwealth presented sufficient evidence to establish all of the elements of the offenses of which D.J.G. was adjudicated delinquent beyond a reasonable doubt. ***See*** Juvenile Court Opinion, 7/11/13, at 3-6, 7-8.[6] Our review discloses that the juvenile court's analysis is supported by the record and the law, and we thus affirm on this basis in rejecting D.J.G.'s sufficiency challenge. ***See id.***

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[5] Although neither section 6304 nor the Crimes Code defines the term "bodily harm," section 2301 of the Crimes Code defines a virtually identical term, "bodily injury," as follows: "Impairment of physical condition or substantial pain." 18 Pa.C.S.A. § 2301.

[6] The juvenile court states in its heading on the top of page 3 that the court's analysis under that heading regards the weight of the evidence; however, in actuality, the analysis pertains to the sufficiency of the evidence.

As an addendum, we observe that there is analogous Pennsylvania case law that is relevant to the issue of whether an Airsoft gun meets the definition of a "weapon" under 18 Pa.C.S.A. § 912(a). In ***Picone v. Bangor Area Sch. Dist.***, 936 A.2d 556 (Pa. Cmwlth. 2007), our Commonwealth Court was presented with a case wherein the minor appellant brought into school an Airsoft pellet gun, shot the gun at his girlfriend, and a plastic pellet struck her on the thigh, leaving a welt where it struck her. ***Id.*** at 558. In addressing whether the appellant's conduct warranted his expulsion by the School Board under a provision of the Public School Code ("School Code"),[7] the Commonwealth Court was required to determine whether the Airsoft pellet gun constituted a "weapon" under section 13-1317.2(g) of the School Code (defining a "weapon," in pertinent part, as any "firearm, shotgun, rifle and any other tool, instrument or implement capable of inflicting serious bodily injury.").[8] The ***Picone*** Court held that the Airsoft pellet gun fell under the definition of "weapon" because (1) "there is no dispute that pellet guns

[7] ***See*** 24 P.S. § 13-1317.2(a) (providing that a school district is required to expel any student, for at least one year, who is determined to have brought onto or is in possession of a "weapon" on school property). Furthermore, we observe that the level of proof required to prove a case before a School Board is by the preponderance of the evidence, rather than proof beyond a reasonable doubt, the higher level of proof required in the instant case. ***See A.B. v. Slippery Rock Area Sch. Dist.***, 906 A.2d 674, 677 n.5 (Pa. Cmwlth. 2006).

[8] Notably, this definition of "weapon" is essentially identical to the definition of "weapon" contained in 18 Pa.C.S.A. § 912(a).

are capable of inflicting serious injury to an eye";[9] and (2) "a pellet gun is intended to shoot plastic pellets at a relatively high velocity and is capable of causing serious bodily injury." ***Id.*** at 562.

We consider ***Picone*** as persuasive authority in support of our determination that the Commonwealth in the instant case presented sufficient evidence to establish all elements of the offense of possession of a weapon on school property. The evidence presented in this case establishes that an Airsoft pellet gun, in limited circumstances (such as if it is fired in a victim's eye), is "*capable* of inflicting serious bodily injury." 18 Pa.C.S.A. § 912(a) (emphasis added).

Additionally, we conclude that the juvenile court in this case properly adjudicated D.J.G. delinquent of sale and use of air rifles, and correctly rejected his claim that the Airsoft gun found on his person "could not expel a pellet with a force that would reasonably be expected to cause bodily [harm]." Brief for Appellant at 20 (citing 18 Pa.C.S.A. § 6304(g) (defining "air rifle"). Since we have already determined that an Airsoft gun is capable of inflicting "serious bodily injury," therefore, it necessarily is capable of inflicting "bodily harm," a lower threshold of injury. ***See In re M.H.M.***, 864 A.2d at 1255 (rejecting the juvenile appellant's contention that a paintball gun does not meet the definition of an "air rifle," and concluding that a

[9] The Commonwealth Court noted that the appellant had "agreed with the [School's] Director of Safety and Security, the School Police Officer and the superintendent, who all testified that, if a pellet from the soft air pellet gun struck someone in the eye, the pellet could cause serious bodily injury." ***Picone***, 936 A.2d at 558.

paintball gun is, in fact, an 'implement that … impels a pellet of any kind with a force that can reasonably be expected to cause bodily harm.'" ***Id.*** (quoting 18 Pa.C.S.A. § 6304(g)).

Accordingly, based upon the above authorities, and the rationale advanced by the juvenile court in this case, ***see*** Juvenile Court Opinion, 7/11/13, at 3-6, 7-8, we conclude that there was sufficient competent evidence presented at the adjudicatory hearing to adjudicate D.J.G. delinquent of possession of a weapon on school property and sale and use of air rifles.

Additionally, D.J.G. challenges the verdict based upon the fact that the Commonwealth did not introduce the Airsoft gun in question into evidence at the adjudicatory hearing, pointing out that Trooper Gilhooley had returned the gun to D.J.G.'s mother because the Trooper "didn't feel it was dangerous for anyone to be possessing the item." Brief for Appellant at 17-18 (quoting N.T., 2/27/13, at 18). The juvenile court has concisely addressed this claim in its Opinion, and we adopt the court's sound rationale herein in rejecting D.J.G.'s claim. ***See*** Juvenile Court Opinion, 7/11/13, at 8-9.

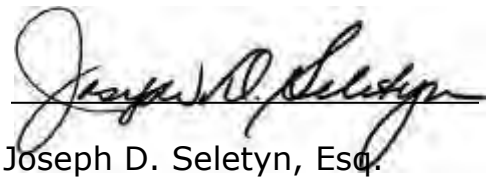
In his final issue, D.J.G. argues that his adjudications of delinquency of the above-mentioned offenses were against the weight of the evidence. Brief for Appellant at 20-21. In connection with this claim, however, D.J.G. fails to set forth any independent argument, and merely incorporates by reference his arguments advanced in support of his sufficiency challenge.

It is well-settled that "'incorporation by reference' is an unacceptable manner of appellate advocacy for the proper presentation of a claim for relief[.]" ***Commonwealth v. Briggs***, 12 A.3d 291, 342 (Pa. 2011) (finding the appellant's claim waived where he "incorporated by reference" the argument set forth in a separate brief). Moreover, our Appellate Rules mandate that an appellant must develop an argument with citation to and analysis of relevant legal authority. Pa.R.A.P. 2119(a). Where, as here, an appellant's argument is underdeveloped and fails to contain citation to any legal authority, the claim may be deemed waived. ***Commonwealth v. Gibbs***, 981 A.2d 274, 281 (Pa. Super. 2009); Pa.R.A.P. 2119(a). Therefore, for the foregoing reasons, we determine that D.J.G. has waived his weight challenge.

Dispositional Order affirmed.

Shogan, J., concurs in the result.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 3/18/2014

S 150338/13

IN THE COURT OF COMMON PLEAS OF
PIKE COUNTY, PENNSYLVANIA
JUVENILE

IN RE: IN THE INTEREST OF D.J.G.	:	
	:	**119-2012 JUVENILE**
	:	

OPINION SUBMITTED PURSUANT TO PENNSYLVANIA RULE OF APPELLATE PROCEDURE 1925

AND NOW, this 11th day of July, 2013 after careful review of the record, we continue to stand by our decision and respectfully request the Superior Court to uphold our Order of February 27, 2013. This Court would also like to add, pursuant to PA Rule of Appellate Procedure 1925, the following:

I. FACTUAL AND PROCEDURAL HISTORY

Appellant D.J.G. [redacted], a juvenile, appeals from this Court's Order of February 27, 2013, which adjudicated him a delinquent on one count of Possession of a Weapon on School Property and one count of Sale and Use of air rifles. The Court found that the Juvenile had brought to school an air soft weapon that was capable of causing serious bodily injury to others and that he then left the school with that weapon and walked along a public highway before being found.

This appeal stems from an incident that occurred on October 16, 2012. On that day, the Appellant arrived at Wallenpaupack High School at approximately eight-thirty in the morning. He was seen by an Assistant Principal, Lisa Tait, around this time. A short time thereafter, the Appellant left the school's grounds and walked on the highway of

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Route 6. Ms. Tait and the Principal noticed his absence and searched for him by car, finding him alongside the road. As they were bringing him back to Wallenpaupack High School, Ms. Tait noticed the air soft gun in his pocket and confiscated it fearing that it was a real handgun. By ten o'clock that morning, the Juvenile was returned to the school and had been interviewed by two state police officers, where he admitted to being in possession of the air soft gun.

On February 27, 2013 this Court held an adjudication hearing to determine if the juvenile was delinquent. After hearing all of the evidence and arguments from both sides, this Court adjudicated the juvenile as delinquent. On May 24, 2013, a Notice of Appeal was field by the Appellant raising two grounds for appeal:

1. Whether the Trial Court erred in adjudicating the juvenile delinquent on one count of Possession of a Weapon on School Property and one count of Sale and Use of Air Rifles where the verdict was against the weight of the evidence and all Commonwealth witnesses testified the alleged "weapon" and "air rifle" was actually a toy, and the Commonwealth failed to introduce the item in question.
2. Whether the Trial Court erred in adjudicating the juvenile delinquent on one count of Possession of a Weapon on School Property and one count of Sale and Use of Air Rifles where the evidence was insufficient as all Commonwealth witnesses testified that the alleged "weapon" and "air rifle" was actually a toy, and the Commonwealth failed to introduce the item in question.

The Court files this document in response.

II. DISCUSSION

A. THE ADJUDICATION OF THE JUVENILE AS DELINQUENT ON ONE COUNT OF POSSESSION OF A WEAPON ON SCHOOL PROPERTY AND ONE COUNT OF SALE AND USE OF AIR RIFLES WAS NOT AGAINST THE WEIGHT OF THE EVIDENCE.

This Court, following a full adjudication hearing and after carefully weighing the evidence and testimony of all three witnesses presented, adjudicated the juvenile delinquent.

The evidence presented to the Court, both direct and circumstantial, was not tenuous. All three of the witnesses called by the Commonwealth in this case had direct and personal knowledge of not only the juvenile himself, but also of the air soft gun in question. Ms. Tait placed the juvenile on the highway shortly after the drop off time, saw the air soft gun sitting in his pocket and detected the presence of pellets inside of it. Troopers Gilhooley and Covington spoke to the juvenile, who admitted to them having possession of the air soft gun and Trooper Covington gave testimony as to the mechanics of it. The evidence firmly linked the juvenile, his location at, arriving and departing from the school and his possession of the air soft gun.

The sole point of contention in questioning was to whether the air soft gun was a toy or a gun. Noticeably, however, there was no contention in counsels' questioning or in the witnesses' answers that the air soft gun was not capable of causing serious bodily injury if fired at something like a person's eye.

The evidence presented clearly pointed to the conclusion that the juvenile was at the school and on the highway, that the juvenile was in possession of a loaded air soft gun and that this gun, even if it was meant to be a toy, could cause serious bodily injury if fired at someone.

The law was fully applied in the instant case as both the parties discussed the

relevant statutes at length and the Court even adjourned temporarily in order to read the relevant statutes before reaching a verdict. The first of these was 18 Pa. C. S. A. § 912, which contains in relevant part:

> *"(a) Definition.* --'[W]eapon' for purposes of this section shall include but not be limited to any knife, cutting instrument...firearm, shotgun, rifle and any other tool, instrument or implement capable of inflicting serious bodily injury.
> *(b) Offense defined.* –A person commits a misdemeanor of the first degree if he possesses a weapon in the buildings of, on the grounds of, or in any conveyance providing transportation to or from any elementary or secondary publicly-funded educational institution, any elementary or secondary private school licensed by the Department of Education or any elementary or secondary parochial school."

18 Pa. C. S. A. § 912(a) and (b).

The Court heard testimony from both Assistant Principal Lisa Tait and Trooper James Gilhooley, which showed that the juvenile was in possession of an air soft gun when he arrived at and departed from the school. While the only direct evidence presented of the juvenile with the air soft gun was when he had left the school and travelled along Route 6, this incident occurred not long after Ms. Tait saw the juvenile at the school shortly after drop off at approximately 8:30 A.M. Less than two hours later, the juvenile was observed on the road, was detained by the Principal and Ms. Tait, and was speaking to Trooper Gilhooley. Trooper Gilhooley also testified that the juvenile admitted to possessing the air soft gun at the school.

This meets the location elements of § 912(b), which prohibits possessing a weapon "in the buildings of, on the grounds of, or in any conveyance providing transportation to or from any elementary or secondary publicly-funded educational institution". *Id.*

Testimony was given by Trooper Robert Covington that he has experience with similar air soft guns. In his experience, the air soft gun could

cause harm, notably to a person's eyes, and that he requires his own children to wear goggles while using them. They had even caused a welt to appear on his skin when fired at point-blank range. As serious bodily injury is defined as "[b]odily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ", the air soft gun is more than capable of qualifying as "any other tool, instrument or implement capable of inflicting serious bodily injury". 18 Pa. C. S. A. §§ 2301 and 912(a).

Furthermore, in the case of *Commonwealth v. Brougher*, a similar air soft pistol was found to satisfy the requirements for a deadly weapon enhancement because it was capable of causing serious bodily injury and it was "irrelevant whether the air-soft pistol was designed as a weapon or a toy". *Commonwealth v. Brougher*, 978 A.2d 373, 379 (Pa. Super. 2009). From the facts of both cases, there is no evidence that this air soft gun was in any way less dangerous than the one in *Brougher*.

The testimony of Ms. Tait also provided direct evidence that the juvenile was on Route 6 with the air soft gun in his possession. The limitations on air rifles under 18 Pa. C. S. A. § 6304, provides in relevant part:

> "*(b) Carrying or discharging air rifles.*
> (1) It shall be unlawful for any person under 18 years of age to carry any air rifle on the highways or public lands unless accompanied by an adult, except that a person under18 years of age may carry such rifle unloaded in a suitable case or securely wrapped.
> *(g) Definitions...*
> *"Air rifle."* --Any air gun, air pistol, spring gun, spring pistol, B-B gun, or any implement that is not a firearm, which impels a pellet of any kind with a force that can reasonably be expected to cause bodily

harm."
Pa. C.S. § 6304(b) and (g).

As the air soft gun is capable of causing substantial bodily harm, explained *supra*, it is also capable of causing bodily harm. The testimony also establishes that the juvenile carried the item onto a highway without the accompaniment of an adult, as he was found alone and never claimed to have supervision. Ms. Tait's testimony also proves that the air soft gun was not in any kind of case or wrapped at all, but was instead wedged in the juvenile's pocket. Ms. Tait and Trooper Gilhooley also both testified that there were things inside the air soft gun, which Trooper Gilhooley confirmed were pellets.

Finally, the definitions section of § 6304 specifically defines an air rifle as including air pistols. All three witnesses testified that this air soft gun looked like a real handgun. Trooper Covington also explained that air soft guns, like the one in this case, could operate either via air or via spring, both of which would be covered by the definitions subsection of § 6304. The elements of the statute were thus satisfied.

In assessing that evidence, this Court was "free to believe all, part or none" of it as well as "determine the credibility of the witnesses". *Commonwealth v. Diggs*, 597 Pa. 28 (2008) (citing *Commonwealth v. Cousar*, 593 Pa. 204 (2007)). This Court found the testimony presented by the witnesses both believable and credible. The Commonwealth was the only party to present witnesses at the adjudication, these witnesses testified on the whole that the juvenile had the air soft gun when he came, remained and departed from the school and was on Route 6. Trooper Covington also

testified as to the substantial bodily harm that could result from being shot by this air soft gun.

The weight of the evidence fully supported the adjudication. The evidence for the Court's decision, listed *supra*, was unchallenged throughout the proceeding. There was no counter evidence to directly oppose the verdict that the juvenile was in violation of both 18 Pa. C. S. A. 912 and 6304.

B. ADJUDICATING THE JUVENILE DELINQUENT ON THESE COUNTS WAS BASED ON SUFFICIENT EVIDENCE.

The standard of review for sufficiency of the evidence is "well settled:

> [T]he standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt".

Commonwealth v. Kim, 888 A.2d 847, 851-852 (Pa. Super. 2005) (citing *Commonwealth v. Lehman*, 820 A.2d 766, 772 (Pa. Super. 2003) (other citations omitted)).

> Furthermore, it is not necessary to preclude every possibility of evidence: "Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proof [of] proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence."

Id.

Here, the evidence clearly establishes the guilt of the juvenile beyond a reasonable doubt. He was seen in both the school and on the highway. He was seen in possession of the air soft gun. The air soft gun was even seen and identified by Trooper Covington, who confirmed its potential for causing substantial bodily harm.

While the Commonwealth used circumstantial evidence to show that the juvenile arrived and was on campus with the air soft gun, direct evidence confirmed

that when he left campus he had it on his person and that it was on his person on the highway.

For direct evidence, Assistant Principal Tait saw the juvenile, in possession of the air soft gun, walking away from the school on Route 6. This is in direct violation to 18 Pa. C. S. A. § 6304. Furthermore, Ms. Tait found the juvenile in this position not long after having seen him on school grounds, thus providing further circumstantial evidence of the juvenile transporting himself from the school with the air soft gun.

No evidence was presented or admitted to indicate the juvenile did not have the air soft gun at any point in this time. The juvenile also admitted to the troopers that he was in possession of the air soft gun. Additionally, no evidence was provided to contest the testimony that the juvenile was in these places at these times. The sufficiency of the record is therefore on the side of the Commonwealth, which has provided sufficient evidence for each element of the two offenses to be found beyond a reasonable doubt.

Finally, the Juvenile challenges the verdict based upon the fact that the air soft pistol was not introduced into evidence at the trial. The testimony presented clearly indicated that the State Police returned the weapon to the juvenile's parent at the school since it is not illegal for an adult to simply possess such a weapon. However, the evidence also supported the conclusion that the air soft gun was very familiar to Trooper Covington and that he was familiar with its operation and the risks it posed to others. That evidence supports the conclusion that the device was an air soft pistol, that it had pellets loaded in it, and that it was capable of causing serious bodily injury

under appropriate circumstances. This evidence was clear, direct and credible. Certainly, no evidence contrary to this conclusion was presented. As a result, the failure to introduce the pistol into evidence was clearly explained, while the other evidence supporting the conclusion that the pistol was capable of causing serious bodily injury remained uncontested.

III. CONCLUSION

The evidence on the record is sufficient to support the adjudication, we respectfully request the Superior Court to uphold our Order of February 27, 2013.

BY THE COURT,

HON. JOSEPH F. KAMEEN, P.J.

cc: Shannon L. Muir, Esq.
Pike County District Attorney's Office
Pennsylvania Superior Court
NV CT. Adm.