

SUPERIOR COURT OF PENNSYLVANIA

**Commonwealth v. Clay, 376 Pa. Super. 425**

546 A.2d 101 (Pa. Super. Ct. 1988) · Decided August 8, 1988

SUMMARY

The Pennsylvania Superior Court affirmed the adjudication of delinquency and dispositional order committing David Clay to a juvenile sex-offender program. The court held that the evidence supported the eyewitness identification, treated the appeal as a direct appeal from the dispositional order, and found the remaining claims waived or otherwise lacking merit.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                     |
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| COURT                 | Superior Court of Pennsylvania                                                                                                                                                                                                                                                                                                                                                      |
| WRITING FOR THE COURT | Tamalia, J.; Johnson, J.; Cercone, J.                                                                                                                                                                                                                                                                                                                                               |
| JURISDICTION          | Pennsylvania                                                                                                                                                                                                                                                                                                                                                                        |
| DECIDED               | August 8, 1988                                                                                                                                                                                                                                                                                                                                                                      |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                            |
| PROCEDURAL POSTURE    | Juvenile appealed from an order adjudicating him delinquent and committing him to Cornwells Heights Youth Development Center after the juvenile court denied post-trial relief. The Superior Court treated the appeal as a timely direct appeal from the dispositional order.                                                                                                       |
| STANDARD OF REVIEW    | On review of a juvenile dispositional order, the court reviews all the evidence in the light most favorable to the Commonwealth and determines whether the juvenile court could reasonably have concluded that the appellant was properly identified as the offender. A ruling on a motion for a new trial based on the weight of the evidence is reviewed for abuse of discretion. |
| PRECEDENTIAL VALUE    | Published precedential opinion of the Superior Court of Pennsylvania                                                                                                                                                                                                                                                                                                                |
| PARTIES               | David Clay v. Commonwealth of Pennsylvania                                                                                                                                                                                                                                                                                                                                          |

TOPICS

- appellate procedure
- preservation of error
- standard of review
- criminal procedure
- evidence

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the juvenile court abused its discretion by refusing to grant a new hearing or new trial on the ground that the adjudication was contrary to the weight of the evidence.
2. Whether the Commonwealth's failure to provide the victim's statement before the adjudicatory hearing denied Clay a fair proceeding under Pennsylvania Rule of Criminal Procedure 305.
3. Whether the juvenile court improperly restricted cross-examination concerning the victim's civil complaint against Tyler School of Art and the lighting conditions at the scene.
4. Whether the appeal should be treated as a direct appeal from the juvenile court's dispositional order despite having been filed from the denial of post-trial motions.

## HOLDINGS

1. Because the Juvenile Act provides no right to post-trial motions or relief, and the appeal ultimately concerned the final dispositional order, the court would treat the matter as a timely direct appeal from that order.
2. The juvenile court did not abuse its discretion in rejecting Clay's weight-of-the-evidence challenge because two eyewitnesses made positive, unqualified identifications and the evidence supported the adjudication.
3. Clay was not entitled to appellate relief based on the Commonwealth's failure to provide the victim's statement because Rule 305(B)(2) was discretionary, the criminal rules did not otherwise apply to the juvenile proceeding, and Clay failed to object at the hearing.
4. Clay waived appellate review of the claim that he was improperly denied cross-examination concerning the victim's civil complaint and the lighting conditions because he failed to object and failed to include the issue in his Rule 1925(b) statement.

## KEY QUOTATIONS

*“A motion for new trial on grounds that the verdict is contrary to the weight of the evidence concedes that there is sufficient evidence to sustain the verdict but contends, nevertheless, that the verdict is against the weight of the evidence.” (431)*

*“Where the opportunity for positive identification is good and the witness is positive in his identification and his identification is not weakened by prior failure to identify, but remains, even after cross-examination, positive and unqualified, the testimony as to identification need not be received with caution” (431-432)*

## FACTUAL BACKGROUND

The victim encountered Clay near the entrance to the Tyler School of Art campus and testified that the area was well lit and that she saw his face from approximately ten feet away. Later that night, she was attacked, dragged, threatened with a meat cleaver, and raped. She selected Clay from two photographic arrays and, along with her

husband, identified him in a lineup. Clay was sixteen years old, and the Commonwealth's petition to transfer the case to adult court was withdrawn.

## PROCEDURAL HISTORY

Clay was adjudicated delinquent on April 14, 1987, based on findings that he committed possession of an instrument of crime, prohibited offensive weapon, aggravated assault, and rape. On April 29, 1987, the juvenile court entered a dispositional order committing him to a sex-offender program. After Clay filed post-trial motions and appealed from their denial, the Superior Court treated the matter as a direct appeal from the dispositional order, affirmed the adjudication, and held that the remaining evidentiary claims were waived.

## DISPOSITION

affirmed

## CASES CITED

- In the Interest of McDonough, 287 Pa. Super. 326, 430 A.2d 308 (1981)
- In Interest of Leonardo, 291 Pa. Super. 644, 436 A.2d 685 (1981)
- Commonwealth v. Whiteman, 336 Pa. Super. 120, 485 A.2d 459 (1984)
- Commonwealth v. Taylor, 324 Pa. Super. 420, 471 A.2d 1228 (1984)
- In Interest of DelSignore, 249 Pa. Super. 149, 375 A.2d 803 (1977)
- Commonwealth v. Kloiber, 378 Pa. 412, 106 A.2d 820 (1954)
- Commonwealth v. Ricci, 161 Pa. Super. 193, 54 A.2d 51 (1947)
- Commonwealth v. Sharpe, 138 Pa. Super. 156, 10 A.2d 120 (1939)