

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-865-2013
vs. :
 : CRIMINAL DIVISION
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 :
 :
 : 1925(a) Opinion
MARIE RHINEHART,
Appellant

**OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this court's judgment of sentence dated June 16, 2014 and docketed June 23, 2014. The relevant facts follow.

On April 30, 2013, police were dispatched to 111 Underwood Street in the borough of Jersey Shore. When the police arrived, Tonya Chambers informed them that Appellant was supposed to be watching Dakota Chambers' one-year old baby, but the baby was crawling around unattended while Appellant and the other occupants of the residence were in Appellant's bedroom smoking bath salts.¹

The baby and the other occupants stayed downstairs with Officer Brian Fioretti. Officer Fioretti noticed that the baby's diaper was badly soiled with both urine and feces, so he had the other female occupant change the baby's diaper.

Chief Shawn Hummer and Appellant went upstairs. Appellant told Chief Hummer that "Tonya Chambers is bipolar and she doesn't know what she's talking about." Nevertheless, Appellant gave the police permission to search her residence, because "she had

¹Dakota Chambers is Appellant's daughter and the baby is Appellant's grandson. Tonya Chambers is Dakota

nothing to hide.”

Five tubes for smoking narcotics were found in the headboard or on the bed in Appellant’s bedroom. A wooden box, which contained a blue pipe and a multicolored pipe for smoking narcotics, was hanging on the bedroom wall. Three opened and empty containers of “crystal bubbly” bath salts were found in a garbage can in the bedroom. Two additional tubes for smoking narcotics, a straw, a plastic baggie, and three small containers were found in Appellant’s pocketbook. Appellant admitted that the items found in the pocketbook were hers, including a small amount of marijuana.

Both Chief Hummer and Captain Martin Jeirles noticed that Appellant’s speech was slow and her movements were lethargic, which led them to believe that she was under the influence of controlled substances.

Children and Youth Services were called and the baby was removed from the residence. The baby stayed with another relative until his mother returned from Altoona.

Appellant was charged with endangering the welfare of children, possession of a small amount of marijuana, and possession of drug paraphernalia. Appellant waived her right to a jury trial on February 11, 2014, and a bench trial was held on March 7, 2014. At trial, Appellant conceded her guilt with respect to the drug paraphernalia and small amount of marijuana, but she contested the charge of endangering the welfare of children. The court found Appellant guilty of all the charges.

On June 16, 2014, the court sentenced Appellant to three years’ probation.

Appellant filed a notice of appeal on July 1, 2014. The sole issue asserted on appeal is that her conviction for endangering the welfare of children was not supported by

Chambers’ half-sister; they have the same father.

sufficient evidence, because the Commonwealth did not establish that Appellant knowingly violated a duty of care, protection or support, as there was no evidence presented that the bath salts were snorted or smoked.

When reviewing a challenge to the sufficiency of the evidence, the court must determine whether, viewing the evidence and all reasonable inferences that can be drawn from the evidence in the light most favorable to the Commonwealth as the verdict winner, the evidence is sufficient to enable the fact-finder to find every element of the crime beyond a reasonable doubt. Commonwealth v. Nypaver, 69 A.3d 708, 714 (Pa. Super. 2013).

A parent, guardian or other person supervising the welfare of a child less than 18 years of age commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection or support. 18 Pa.C.S.A. §4304(a)(1).

Appellant readily admitted that she was responsible for caring for the baby while the child's mother, Dakota Chambers, went to Altoona to take care of some legal business. Trial Transcript (T.T.), March 7, 2014, at 37. Appellant contends, however, that the evidence was insufficient to establish that she had snorted or smoked bath salts. The court cannot agree.

The court did not hesitate in concluding that Appellant had smoked bath salts on the date in question. Although the court believed that there was some exaggeration by both Tonya Chambers and Appellant and it did not accept Ms. Chambers' testimony that the child was left alone downstairs, the court found beyond a reasonable doubt that Ms. Chambers walked into Appellant's bedroom and saw Appellant getting high. T.T., at 56. Ms. Chambers credibly testified that she walked into Appellant's bedroom and saw Appellant smoking out of a metal tube. T.T., at 8, 14. Ms. Chambers testimony on this point was

corroborated by the tubes and bath salt containers that were found in Appellant's bedroom, as well as the police officers' testimony that Appellant appeared to be under the influence of controlled substances because her speech was slow and her movements were lethargic. Officer Fioretti also testified that the child was able to crawl around and pull himself up to try to get into items around the house. T.T., at 17. From the evidence presented and the reasonable inferences that could be drawn from the evidence, the court reasonably concluded that Appellant violated a duty of care, protection and support when she smoked bath salts around the child, who was mobile and could have had access to the pipes or the bath salts. T.T., at 57. The court can only imagine what would have happened if the child had accidentally ingested some of the bath salts or any residue that could have been left in the bath salt containers in the bedroom garbage can or if he had come in contact with a hot metal tube or pipe.

DATE: _____

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
Kirsten Gardner, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)