

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE**  
**IN AND FOR SUSSEX COUNTY**

STATE OF DELAWARE,	)	
	)	
v.	)	Case No. 1003003117
	)	
PATRICIA UHEY,	)	
Defendant.	)	

*Laura Browning, Deputy Attorney General*  
*Tasha Stevens, Esquire, counsel for Defendant*

Date Submitted: October 12, 2010  
Date Decided: October 13, 2010

**ORDER**

The Court is in receipt of Defendant’s Motion for New Trial pursuant to Court of Common Pleas Criminal Rule 33 filed on July 2, 2010. After reviewing the Defendant’s motion, the Court finds insufficient grounds to grant a new trial. Defendant’s Motion for New Trial is denied.

**DISCUSSION**

Patricia Uhey was charged with several drug related offenses on March 5, 2010. The allegations were that two items of drug paraphernalia were found in Uhey’s bedroom in a house that was occupied by Uhey and her male Co-Defendant. On June 28, 2010, this Court found Patricia Uhey (“Defendant”) guilty of one count of Possession of Drug Paraphernalia, a violation of 16 Del. C. § 4771(a). Defendant was found not guilty on another count of Possession of Drug Paraphernalia and Criminal Nuisance. Defendant now seeks a new trial due to prejudice allegedly caused by the wrongful admission of evidence.

The Court, on motion of a defendant, may grant a new trial if required in the interest of justice. *CCP Crim. R. 33*. Defendant asserts two grounds in support of her motion, each based on the Court’s ruling not to suppress the evidence of Defendant’s act of pointing that occurred in response to pre-Miranda warning interrogation. Specifically, Defendant objects to the admission into evidence of the Police Officer’s testimony that the Defendant pointed to the bedroom where paraphernalia was located in response the Police Officer’s question as to which room was hers. Defendant’s argument is premised on the theory that the physical act of pointing constituted nonverbal communication.

First, Defendant argues that the Court erred in admitting the nonverbal communication because the State did not disclose the event in response to Defendant's discovery request. Second, Defendant contends that any incriminating nonverbal communication made in response to police questioning was wrongfully admitted because it was subject to the protection of the Fifth Amendment's Self Incrimination Clause, as made applicable to this State through the Fourteenth Amendment.

Whether the Court erred in its admission of the nonverbal communication need not be decided today. The State produced sufficient evidence at trial notwithstanding the nonverbal communication for the Court to find the Defendant guilty beyond a reasonable doubt. Specifically, the State satisfied its burden of proof by testimony of the police that photographs of Defendant and her child were found in the same room where the paraphernalia was found, the Sippy cup with Defendant's maiden name printed on the side found next to the paraphernalia on the floor in the same room, the fact that Defendant's parents owned the home searched, that Defendant used the address of the residence on her drivers license, that only a woman and child's clothing was located in the bedroom and the lack of any evidence that Defendant shared the room in which police officers found the paraphernalia. Accordingly, the admission of the nonverbal communication did not prejudice Defendant.

Because the Court finds that Defendant was not prejudiced by the admission of the nonverbal communication, the Court cannot find that interest of justice requires the granting of a new trial.

Therefore, Defendant's Motion for New Trial is **DENIED**.

**IT IS SO ORDERED THIS 13th OF OCTOBER, A.D. 2010.**

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The Honorable Rosemary Betts Beauregard