

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3971-14T2

STATE IN THE INTEREST
OF C.P.

Argued November 29, 2016 – Decided March 23, 2017

Before Judges Messano and Espinosa.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Atlantic County, Docket No. FJ-01-149-13.

John R. Stein argued the cause for appellant C.P. (Jacobs & Barbone, P.A., attorneys; Louis M. Barbone and Mr. Stein, on the brief).

Sevan Biramian, Special Deputy Attorney General/Acting Assistant Prosecutor, argued the cause for respondent State of New Jersey (Diane M. Ruberton, Acting Atlantic County Prosecutor, attorney; Mr. Biramian, of counsel and on the brief).

PER CURIAM

C.P. appeals from the Family Part's January 5, 2015 order adjudicating him delinquent for conduct that, if committed by an adult, would constitute two counts of first-degree aggravated assault with a victim less than thirteen-years old, N.J.S.A. 2C:14-2(a)(1); second-degree sexual assault, N.J.S.A. 2C:14-2(b); two

counts of fourth-degree criminal sexual contact, N.J.S.A. 2C:14-3(b); and third-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a).

The testimony at trial revealed that C.P.'s family and E.E.'s (Eddie's) family were close friends.¹ C.P., who was twelve years old and considerably bigger and taller than Eddie, attended a party celebrating Eddie's eighth birthday at his home. Eddie's mother, E.E. (Esther), testified that the two boys were alone in the basement of the home for several hours in the afternoon that day watching a movie.

The next day, using juvenile terms and descriptions, Eddie told his mother that C.P. masturbated in front of him, put his mouth on Eddie's penis and put his penis in Eddie's mouth. A few days later, Esther reported the incident to Detective Heather Stumpf of the Egg Harbor Township Police Department. On August 8, 2012, five months after the incident, Stumpf interviewed Eddie. On February 28, 2013, Sergeant Luke Ireland of the Atlantic County Prosecutor's Office also interviewed Eddie. The judge admitted video recordings of both interviews into evidence at trial.

In both, Eddie essentially reiterated what he told his mother. However, in the interview with Ireland, for the first time, Eddie

¹ We use initials and pseudonyms to protect the confidentiality of those involved.

stated that C.P. penetrated his anus with his penis and ejaculated. Ireland, at one point, explained to Eddie the difference between the truth and a lie, and assured the child it was acceptable to say he could not remember. Eddie responded he was able to remember most of the answers because he went over them with Esther and both prayed he would be able to recall the incident. Eddie testified at trial about the incident in generally similar fashion.

The State called C.P.'s mother, C.P. (Connie), as a witness. She testified that the day after the party, Esther called and relayed Eddie's allegations. Connie was upset and confronted her son. C.P. said he fell asleep while playing video games and awoke because he "felt something wet on his penis and saw [Eddie] with his mouth on his penis." C.P. pushed Eddie away and told him never to do that again or he would tell.

After the State rested, C.P.'s father, E.P. (Ernest), testified. On the day in question, he and Eddie's father accompanied the boys to the basement, set up the equipment so they could watch a movie and stayed for a while before returning upstairs. During the ensuing hours, Ernest, Connie and Esther all went to the basement to check on the boys, and no one saw anything out of the ordinary. Near 6:00 p.m., as C.P. and his family were readying to return to their home in Maryland, the group gathered to take a picture in the living room. The photograph was admitted

into evidence and shows no sign of discord or discomfort between Eddie and C.P.

Ernest also stated that he spent considerable time in the basement while the boys were there because he knew Eddie's parents had pornographic movies in the house. Indeed, Eddie's father briefly testified on the State's case. He admitted owning two pornographic movies but denied the boys had access to them.

After receiving written summations from both sides, Judge Joseph L. Marczyk filed a comprehensive written decision reviewing all the testimony in detail. Judge Marczyk found Esther was a credible witness and there was no evidence that she or Eddie bore some "grudge" against C.P. or his family. The judge found Eddie to be "forthright," not "evasive," "candid" and with "a clear recollection of the events." Judge Marczyk noted Eddie was generally consistent regarding details, however, he noted Eddie never mentioned anal penetration until he spoke to Detective Ireland. The judge concluded there was reasonable doubt whether Eddie was "touched or penetrated anally." The judge also rejected any "claim that it was [Eddie] who initiated the improper sexual acts."

Judge Marczyk made detailed credibility findings about the remaining witnesses. He concluded "the State ha[d] proven beyond a reasonable doubt that . . . C.P. [wa]s guilty of all of the

charges filed against him," making specific factual findings as to the elements of each offense. Thereafter, a different Family Part judge entered a dispositional order placing C.P. on probation for eighteen months, with conditions that he have no contact with children under the age of fifteen and complete recommended therapy.

C.P. raises the following points on appeal:

POINT I

THE STATE FAILED TO PRESENT SUFFICIENT CREDIBLE EVIDENCE PROVING C.P. GUILTY BEYOND A REASONABLE DOUBT OF THE CRIMES CHARGED.

- A. THE TESTIMONY OF E.E. IS RIDDLED WITH MATERIAL AND CRITICAL INCONSISTENCIES, WAS . . . DIAMETRICALLY OPPOSED TO THE OBJECTIVE EVIDENCE AND THERE WAS NO CREDIBLE BASIS UPON WHICH TO ADJUDICATE C.P. DELINQUENT.
- B. THE TRIAL COURT FAILED TO FIND UNDISPUTED EXCULPATORY FACTS WITHIN THE RECORD WHICH RENDERED A FINDING OF DELINQUEN[CY] IMPLAUSIBLE ON PROOF BEYOND REASONABLE DOUBT STANDARD.
- C. THE TRIAL COURT'S FINDINGS OF FACT AND CREDIBILITY ARE NOT ENTITLED TO DEFERENCE.

POINT II

THE TRIAL COURT ERRED IN FAILING TO GRANT DEFENDANT'S MOTION FOR ACQUITTAL GIVEN THE STATE'S FAILURE TO PROVE ANY CRIME BEYOND A REASONABLE DOUBT.

Having considered these arguments in light of the record and applicable legal standards, we affirm for the reasons expressed by Judge Marczyk. We add only the following.

C.P. argues Eddie's testimony and the statements he made to Esther, Detective Stumpf and Detective Ireland are riddled with inconsistencies and not worthy of belief. He also contends Judge Marczyk overlooked exculpatory evidence provided by Connie and Ernest, and there was no physical evidence to support Eddie's version of events.

Our review of the judge's decision following a bench trial is limited. The trial court's factual findings are binding on appeal and should not be disturbed unless "they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." State In re W.M., 364 N.J. Super. 155, 165 (App. Div. 2003) (quoting Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974)). Our deference to those findings "is especially appropriate 'when the evidence is largely testimonial and involves questions of credibility.'" Cesare v. Cesare, 154 N.J. 394, 412 (1998) (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)).

In this case, Judge Marczyk noted Eddie was the "critical witness." The judge had the opportunity to assess the child's

testimony, consider whatever inconsistencies there may have been and reach a decision as to his credibility. Judge Marczyk determined Eddie's testimony was believable and sufficient to sustain the charges beyond a reasonable doubt. We find no reason to disturb the judge's conclusions.

Affirmed.²

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



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² We need not address the second point raised by C.P. in any detail. The record fails to reveal defense counsel made any motion for acquittal at the end of the State's case. If such a motion were made, our de novo review of the record indicates it lacked any merit. See State v. Williams, 218 N.J. 576, 593-94 (2014) (noting we apply a de novo standard of review to the trial court's denial of a motion for acquittal).