SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4892-14T4

STATE IN THE INTEREST
OF N.A., a juvenile.

Submitted January 10, 2017 – Decided February 17, 2017

Before Judges Messano and Guadagno.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Ocean County, Docket No. FJ-15-502-15.

Joseph E. Krakora, Public Defender, attorney for appellant N.A. (Steven E. Braun, Designated Counsel, on the brief).

Joseph D. Coronato, Ocean County Prosecutor, attorney for respondent State of New Jersey (Samuel Marzarella, Chief Appellant Attorney, of counsel; Roberta DiBiase, Senior Assistant Prosecutor, on the brief).

PER CURIAM

N.A. appeals from the Family Part's May 7, 2015 order of disposition adjudicating him delinquent for conduct that, if committed by an adult, would constitute two counts of the disorderly persons offense of possession with intent to use drug paraphernalia, N.J.S.A. 2C:36-2, and the disorderly persons offense of possession of less than fifty grams of marijuana,

N.J.S.A. 2C:35-10(a)(4). The judge imposed a twelve-month period of probation, ordered a substance abuse evaluation, imposed various financial penalties and suspended N.A.'s driver's license for twelve months.[1]

The complaints charged N.A. with conduct that took place at his home on October 27, 2014. Pre-trial, the State moved to admit evidence that later that same day, N.A. tested positive for marijuana based on a urine screen performed at school. The judge reviewed that evidence, as a proffer, applied under N.J.R.E. 404(b), the four-prong analysis enunciated in State v. Cofield, 127 N.J. 328, 338 (1992), and denied the State's motion.

At trial, N.A.'s mother, N.G., testified that, on the day in question, she was getting ready to give her son a ride to school when their paths crossed as N.A. came into the house from the backyard, and she exited the home. N.G. detected the odor of marijuana on N.A. N.G. went to a shed in the backyard and noticed the padlock on the door was uncharacteristically unlocked. She entered the shed, detected the smell of marijuana and found a small bag that contained another small bag of marijuana and "a

[1] The judge and the parties used the term "suspension" in the proceedings in the Family Part and before us; however, N.A. was only sixteen-years-old at the time of his sentence, and therefore was ineligible for any license except a student learner's permit. See N.J.S.A. 39:3-13.1.

circle cylinder thing," later identified as a grinder. N.G. contacted police who later arrived at the house. N.G. gave them the two items, as well as a pipe she found two months earlier inside a container in N.A.'s bedroom drawer.

On cross-examination, defense counsel asked N.G. if she was "concerned about [N.A.'s] marijuana use," "interested in him receiving services," and frustrated that N.A. was not "receiving any services through his school." N.G. answered affirmatively. Additionally, defense counsel vigorously cross-examined N.G. as to whether other people — N.A.'s friends and those belonging to a neighboring "gun club" — have access to the shed.

D.G., N.G.'s husband and N.A.'s stepfather, testified that others had access to the shed. The State called N.A.'s stepsister, J.G., who denied that the marijuana and paraphernalia were hers.

Toms River police officer Michael Scneidt responded to the home and retrieved the three items from N.G. On re-direct examination, the prosecutor asked Scneidt if he took "notes while [at N.A.'s home] for the writing of your report later." He answered affirmatively. Defense counsel interjected without objecting, "I'd just note for the record that those notes were never provided to the defense." Scneidt testified the notes were just "contact information," i.e., "[n]ame, date of birth, address,

telephone number." The State's expert identified the substance seized as marijuana.

After denying N.A.'s motion for acquittal and hearing the summations of counsel, the judge concluded the State had proven the three offenses beyond a reasonable doubt. Noting that N.A. had no prior adjudications, defense counsel asked the judge to impose a twelve-month probationary term and limit the loss of N.A.'s driver's license to "six months at the most a year, but not anything more than that." She asserted anything beyond "six months or a year [was] excessive . . . ."

In imposing sentence, the judge noted he could suspend N.A.'s license for a period between six months and two years, and that counsel "mentioned [twelve] months." The judge concluded twelve months was appropriate.

N.A. raises the following points on appeal:

> POINT I — LAY TESTIMONY REGARDING THE APPEARANCE AND ODOR OF MARIJUANA WAS ADMITTED INTO EVIDENCE WITHOUT A FOUNDATION AS TO WHETHER THE WITNESS HAD PERSONAL KNOWLEDGE OF THE APPEARANCE OR ODOR OF MARIJUANA (NOT RAISED BELOW)
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> POINT II — THE JUDGMENT OF ACQUITTAL SHOULD HAVE BEEN GRANTED AND THE STATE COULD NOT PROVE THE CHARGES BEYOND A REASONABLE DOUBT
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> POINT III — THE CONVICTIONS MUST BE REVERSED BECAUSE OF THE FAILURE OF PATROLMAN SCNEIDT TO PROVIDE HIS NOTES WHICH WERE USED FOR PREPARING HIS POLICE REPORT TO THE DEFENSE

POINT IV — DESPITE RULING IN N.A.'S FAVOR REGARDING THE STATE'S MOTION TO ADMIT N.J.R.E. 404(b) EVIDENCE, THE COURT NONETHELESS CONSIDERED EVIDENCE OF PRIOR OFFENSES OR BAD COUNDUCT IN SUSTAINING THE COMPLAINTS (NOT RAISED BELOW)

POINT V — THE IMPOSITION OF A ONE-YEAR SUSPENSION OF DRIVING PRIVILEGES WAS EXCESSIVE

We have considered these arguments in light of the record and applicable legal standards. We affirm.

"Lay opinion testimony . . . can only be admitted if it falls within the narrow bounds of testimony that is based on the perception of the witness and that will assist the jury in performing its function." State v. McLean, 205 N.J. 438, 456 (2011). N.A. never objected when his mother testified about smelling marijuana on him or in the shed, so we review the argument under the plain error standard. State v. Taffaro, 195 N.J. 442, 454 (2008) (citing R. 2:10-2 (reviewing whether the error was "clearly capable of producing an unjust result")).

N.A. does not argue that his mother's testimony was improper "lay opinion"; rather, he argues there was no foundation testimony explaining her familiarity or knowledge of the smell of marijuana. Of course, had there been a timely objection, the State could have supplied the answers to this alleged deficiency. In any event, the admission of N.G.'s lay opinion testimony, even without a

proper foundation, does not "raise a reasonable doubt as to whether [it] led the [judge] to a result [he] otherwise might not have reached[.]" Taffaro, supra, 195 N.J. at 454 (quoting State v. Macon, 57 N.J. 325, 336 (1971)).

In Point III, N.A. argues that Scneidt's failure to preserve any notes he took compels reversal. In State v. W.B., 205 N.J. 588, 608-09 (2011), the Court held "if notes of a law enforcement officer are lost or destroyed before trial, a defendant, upon request, may be entitled to an adverse inference charge molded . . . to the facts of the case." We need not consider whether Scneidt's recordation of only pedigree information even implicates some form of relief. It suffices to say that defense counsel never sought an adverse inference charge or any other form of relief when the issue arose.

In Point IV, N.A. argues that despite barring the prosecutor from introducing evidence of drug use on the day in question, the judge considered N.A.'s prior drug use in adjudicating him delinquent of the paraphernalia charges. The argument lacks sufficient merit to warrant discussion. R. 2:11-3(e)(2). Defense counsel specifically questioned N.G. about the subject on cross-examination, and those questions had nothing to do with the evidence barred by the judge at the pre-trial hearing.

In Point II, N.A. contends the judge should have granted his motion for acquittal. We again disagree.

When deciding a motion for acquittal based upon the insufficiency of the State's evidence, the trial court must apply the time-honored standard set forth in State v. Reyes, 50 N.J. 454 (1967):

> [W]hether[] viewing the . . . evidence in its entirety, be that evidence direct or circumstantial, and giving the State the benefit of all its favorable testimony as well as all of the favorable inferences which reasonably could be drawn therefrom, a reasonable jury could find guilt of the charge beyond a reasonable doubt.
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> [Id. at 458-59 (citation omitted).]

We review the decision of the trial judge de novo applying the same standard. State v. Bunch, 180 N.J. 534, 549 (2004).

Here, N.G. testified that she smelled marijuana on her son's person as he came into the house from the backyard. She immediately investigated and saw the usually-padlocked shed was unlocked. N.G. entered, smelled marijuana and found a small bag of the substance and an item later identified as a grinder. She had previously found a small pipe hidden in N.A.'s bedroom drawer. This evidence, and all favorable inferences drawn from it, established the necessary elements of the offenses charged.

Finally, we reject N.A.'s contention that the suspension of his driver's license for twelve months was excessive. Pursuant to N.J.S.A. 2C:35-16, absent "compelling circumstances," the judge was required to suspend N.A.'s driver's license for not less than six months nor more than two years. Defense counsel acknowledged there were no compelling circumstances in this case and urged the judge to impose a suspension that did not exceed one year. That is precisely what the judge did. The statute permits the judge's broad exercise of discretion. State v. Bendix, 396 N.J. Super. 91, 95 (App. Div. 2007). We find no reason to reverse.

Affirmed.