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This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1333-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DAVID J. MANTONE,

Defendant-Appellant.

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Argued telephonically January 26, 2018 –  
Decided February 7, 2018

Before Judges Fasciale and Moynihan.

On appeal from Superior Court of New Jersey,  
Law Division, Monmouth County, Indictment No.  
15-01-0117.

John Menzel argued the cause for appellant.

Carey J. Huff, Assistant Prosecutor, argued  
the cause for respondent (Christopher J.  
Gramiccioni, Monmouth County Prosecutor,  
attorney; Carey J. Huff, of counsel and on the  
brief).

PER CURIAM

Defendant appeals from a conviction of fourth-degree  
operating a vehicle during the period of license suspension as a

result of a subsequent motor vehicle conviction, N.J.S.A. 2C:40-26(b). Defendant was also found guilty of other traffic violations, which are not the subject of this appeal. We affirm.

While driving, defendant was stopped for an expired registration. After the officer requested documentation, defendant provided a valid insurance card and an expired registration, but did not supply a driver's license. The officer asked for defendant's background information and defendant provided a false name, date of birth, and social security number. The officer discovered this information to be false. Defendant then admitted to providing his brother's information and driving with a suspended license, which the officer confirmed. The jury found defendant guilty of driving with a suspended license in violation of N.J.S.A. 2C:40-26(b).

On appeal, defendant argues:

POINT I

ALTHOUGH STATUTORY CRITERIA AND OTHER FACTORS UNDER OUR COURT RULES FAVOR DEFENDANT'S ADMISSION INTO THE PRETRIAL INTERVENTION PROGRAM ["PTI"], THE PROSECUTOR EITHER FAILED TO PROVIDE SUFFICIENT FACTS OR EMPLOYED INAPPROPRIATE FACTORS OR FAILED TO CONSIDER OTHER APPROPRIATE FACTORS IN REJECTING DEFENDANT'S PTI APPLICATION.

POINT II

DENYING DEFENDANT'S RIGHT TO TESTIFY AS TO HIS THOUGHT PROCESS AND MOTIVATION FOR COMMITTING THE CRIME OF WHICH HE WAS CONVICTED DENIED THE JURY THE OPPORTUNITY TO CONSIDER WHETHER HIS

MENTAL STATE AND CHARACTER WERE SUCH THAT HE  
COULD HAVE BEEN FOUND NOT GUILTY.

A. Mistake of Law

B. Character

Defendant applied for PTI, but the prosecutor denied his application. Defendant appealed his PTI denial and the PTI judge affirmed, finding that the prosecutor properly considered all relevant factors. Defendant argues the prosecutor improperly weighed the factors of N.J.S.A. 2C:43-12 in denying his PTI application. We disagree.

A defendant's admission into PTI is based upon the recommendation of the criminal division manager, with the consent of the prosecutor. R. 3:28(c). A defendant's suitability for PTI is examined pursuant to the factors listed in N.J.S.A. 2C:43-12 and the procedures set forth in Rule 3:28. State v. Roseman, 221 N.J. 611, 621 (2015). The weight of the various factors are left to the discretion of the prosecutor and criminal division manager. State v. Wallace, 146 N.J. 576, 585-86 (1996). Deference is given to the prosecutor's determination unless "a defendant can 'clearly and convincingly establish that the prosecutor's refusal . . . was based on a patent and gross abuse of . . . discretion'" so as to subvert the purpose of PTI. Id. at 582 (second alteration in original) (quoting State v. Leonardis, 73 N.J. 360, 382 (1977)).

The prosecutor considered defendant's prior criminal history and prior driving record, including three convictions for driving while intoxicated; defendant's education; his family life; professional achievements; and his previous counseling for alcohol treatment. The prosecutor explained that defendant failed to remain offense-free since his previous convictions, demonstrated a pattern of anti-social behavior, was not deterred by prior court contacts to abide by the law, and that the interests of society weighed against admission to PTI. Defendant exhibited a pattern of driving offenses, including offenses that placed others in the way of harm. Defendant failed to show the prosecutor's denial was a "patent and gross abuse of discretion." Wallace, 146 N.J. at 584. We defer to the prosecutor's decision.

Defendant further argues that the trial judge abused his discretion in excluding testimony, which inhibited his mistake of law defense pursuant to N.J.S.A. 2C:2-4(b) and relevant character evidence. A "trial judge has broad discretion to exclude evidence as unduly prejudicial pursuant to N.J.R.E. 403." State v. Nantambu, 221 N.J. 390, 402 (2015). As such, "a trial court's evidentiary rulings are 'entitled to deference absent a showing of an abuse of discretion.'" State v. Brown, 170 N.J. 138, 147 (2001) (quoting State v. Marrero, 148 N.J. 469, 484 (1997)).

Defendant submits that the trial judge erred in limiting his testimony regarding his own character as a law-abiding citizen because he did not think he had committed a criminal offense at the time of his act. Thus, defendant asserts that he would have testified that when he was arrested, he did not knowingly commit a criminal offense, but instead believed it was a motor vehicle violation.

N.J.R.E. 405(b) permits specific instances of conduct to be admitted when character or trait of character "is an essential element of a charge." N.J.S.A. 2C:40-26(b) does not require a defendant to know the act is a crime. Knowledge of the criminal law is not required for a defendant to be culpable. State v. Savoie, 67 N.J. 439, 457 (1975). Thus, defendant's testimony regarding his knowledge of whether N.J.S.A. 2C:40-26(b) yields a criminal conviction is irrelevant to the offense and is not "an essential element of [the] charge." N.J.R.E. 405(b). The trial judge did not abuse his discretion in excluding the testimony.

Finally, we address defendant's mistake of law argument. A mistake of law defense is available if: "(1) [i]t negatives the culpable mental state required to establish the offense; or (2) [t]he law provides that the state of mind established by such ignorance or mistake constitutes a defense." N.J.S.A. 2C:2-4(a). N.J.S.A. 2C:40-26(b) does not provide that mistake of law is a

viable defense to a violation of the statute. Furthermore, the State was only required to prove beyond a reasonable doubt that defendant knowingly drove a vehicle with knowledge of his suspended license. See N.J.S.A. 2C:2-2(c)(3). Defendant testified at trial that he had knowledge of both, and therefore his lack of knowledge that his offense was criminal in nature, rather than a motor vehicle offense, is of no moment. His state of mind as to the nature of crime fails to negate the culpable mental state required to establish the offense. We see no error in the judge's decision to reject the defense.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION