

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1797-14T1

STATE OF NEW JERSEY
IN THE INTEREST OF D.N.,

a juvenile.

Submitted November 15, 2016 – Decided December 7, 2016

Before Judges Yannotti and Fasciale.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Somerset
County, Docket Nos. FJ-18-277-14 and FJ-18-
316-14.

Joseph E. Krakora, Public Defender, attorney
for appellant D.N. (Daniel S. Rockoff,
Assistant Deputy Public Defender, of counsel
and on the brief).

Michael H. Robertson, Acting Somerset County
Prosecutor, attorney for respondent State of
New Jersey (James L. McConnell, Special
Deputy Attorney General/Acting Assistant
Prosecutor, of counsel and on the brief).

PER CURIAM

D.N., a sixteen-year-old juvenile at the time the offenses
were committed, appeals from an adjudication for acts that, if
committed by an adult, would constitute second-degree unlawful
possession of a handgun, N.J.S.A. 2C:39-5(b); disorderly persons

offense of possession of under fifty grams of marijuana, N.J.S.A. 2C:35-10(a)(4); petty disorderly persons offense of defiant trespass, N.J.S.A. 2C:18-3(b); and disorderly persons offense of obstructing the administration of law, N.J.S.A. 2C:29-1(a). We affirm.

We ascertain the following facts from the record. D.N. entered a grocery store after an employee had previously told D.N. he was not allowed in the store. The owner called the police and told the responding officer that he wanted to press charges against D.N. for trespassing. The officer arrived at the scene, searched D.N. before placing him in his patrol car, and seized a small amount of suspected marijuana.

The officer transported D.N. to police headquarters and placed him in an interview room. D.N.'s mother, L.T., arrived at police headquarters and joined him in the interview room. The officer used a "Juvenile Miranda¹ Warning" form to advise D.N. and L.T. of D.N.'s Miranda rights. D.N. and L.T. acknowledged they understood the rights by initialing the form in five places. The officer then asked D.N. if he would waive his Miranda rights and he responded "no." D.N. was released to his mother.

¹ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

On January 8, 2014, L.T. called the police. When an officer responded, L.T. was crying and told the officer that she had found in her kitchen cabinet a red backpack containing a handgun. L.T. signed a consent to search the backpack. The police seized several items, including a nine-millimeter handgun and a box of ammunition. L.T. told the police that D.N. had been home earlier in the day and that he left when L.T. told him to go to school.

On January 9, 2014, L.T. called the police to report that D.N. had returned home. The police asked if they would answer questions regarding the items found the day before, and the police sent a patrol car to transport L.T. and D.N. to headquarters. A detective and lieutenant joined L.T. and D.N. in an interview room and used a "Juvenile Miranda Warning" form to advise D.N. and L.T. of D.N.'s Miranda rights. D.N. and L.T. acknowledged his rights verbally and initialed the form. They both signed the waiver portion of the form, agreeing to speak with police. The two-hour interview was video-recorded and transcribed.

D.N. first denied knowing anything about the backpack or handgun. D.N.'s mother repeatedly encouraged him to tell the detective and lieutenant where he got the gun. D.N. had long periods of silence before he would answer many questions. L.T.

told D.N. "we [are] in this together I'm not going nowhere, I'm not going nowhere." Both L.T. and D.N. cried.

Later in the interview, D.N. admitted that a gang member was going to pay him to deliver the backpack to someone else. D.N. said he met the gang member's "baby mother" at the planned location and told her what happened to the backpack. She told D.N. he had "a couple of hours" to pay them \$800.

The judge conducted a motion to suppress hearing and took testimony from the responding officers and the detective from the interview. The judge denied the motion to suppress stating "in reviewing the totality of the circumstances, . . . this was [an] individual who was intelligent; [and] he was involved, again, in a similar circumstance a few weeks earlier." The judge concluded "the statements, therefore, are admissible and [do not violate] his Miranda rights."

D.N. pled guilty to second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b); disorderly persons offense of possession of under fifty grams of marijuana, N.J.S.A. 2C:35-10(a)(4); petty disorderly persons offense of defiant trespass, N.J.S.A. 2C:18-3(b); and disorderly persons offense of obstructing the administration of law, N.J.S.A. 2C:29-1(a). Pursuant to a negotiated plea agreement, the State agreed to

dismiss the remaining counts.² The judge sentenced D.N. to two years of probation, participation in a residential treatment program, 100 hours of community service, a drug evaluation, and no contact with the victims of the trespass. The judge also imposed the appropriate fines.

On appeal, D.N. raises the following points:

POINT I

THE JUVENILE'S STATEMENT SHOULD HAVE BEEN SUPPRESSED BECAUSE: (A) THE OFFICERS PERMITTED HIS MOTHER TO PRESSURE HIM INTO INCRIMINATING HIMSELF; (B) NO ONE OFFERED HIM ADULT AID; (C) THE OFFICERS IGNORED HIS ATTEMPTS TO END THE INTERROGATION; (D) THE OFFICERS MISLED HIM ABOUT HIS RIGHT TO REMAIN SILENT; AND (E) NO REASONABLE JUVENILE IN THESE CIRCUMSTANCES WOULD HAVE FELT FREE TO LEAVE.

A. Because The Police Obtained Incriminatory Statements from D.N. Only By Permitting His Mother To Engage In A Highly Coercive Interrogation, In Violation Of State In the Interest of A.S., 203 [N.J.] 131 (2010), D.N.'s Statement Was Not Voluntary.

B. No One Provided D.N. With The Adult Assistance Required by State v. Presha, 163 [N.J.] 304 (2000). His Mother, Who Had An Overriding Conflict of Interest, Did Not

² The remaining counts which were dismissed were second-degree possession of a firearm for an unlawful purpose, N.J.S.A. 2C:39-4; third-degree receiving stolen property, N.J.S.A. 2C:20-7(a); and fourth-degree underage possession of a handgun, N.J.S.A. 2C:58-6.1.

Assist D.N. In Understanding His Rights, Or Buffer Him From the Police.

C. The Police Obtained Incriminating Statements From D.N. Only By Improperly Ignoring His Attempts To Stop The Interrogation, Including His Request To "Just Stop Asking Me" Questions, And His Choice To Remain Silent For Long Periods.

D. Far From Merely Ignoring D.N.'s Attempts To Invoke His Right to Remain Silent, Police Misled Him By Directly Contradicting The Miranda Warning.

E. Because Officers Took D.N. Into Custody At His Home, Bringing Him To The Police Station After His Mother Called 911 On Him, No Reasonable Juvenile In His Position Would Have Felt Free To Leave The Interrogation Room.

We uphold the factual findings underlying the trial court's disposition on a motion to suppress "'so long as those findings are supported by sufficient credible evidence in the record.'" State v. Robinson, 200 N.J. 1, 15 (2009) (quoting State v. Elders, 192 N.J. 224, 243 (2007)). Thus, appellate courts should reverse only when the trial court's determination is "so clearly mistaken that the interests of justice demand intervention and correction." State v. Lamb, 218 N.J. 300, 313 (2014) (citation omitted). The legal determinations which flow

from those findings, however, are afforded no deference and are subject to our de novo review. State v. Coles, 218 N.J. 322, 342 (2014).

"The requirement of voluntariness applies equally to adult and juvenile confessions." State v. Presha, 163 N.J. 304, 313 (2000) (citing N.J.S.A. 2A:4A-40, which states "[a]ll rights guaranteed to criminal defendants by the Constitution of the United States and the Constitution of this State . . . shall be applicable to cases arising under [the New Jersey Code of Juvenile Justice]"). Our main inquiry is whether the suspect's will was overborne by police conduct. Ibid. We consider the totality of the circumstances, including "the suspect's age, education and intelligence, advice as to constitutional rights, length of detention, whether the questioning was repeated and prolonged in nature and whether physical punishment or mental exhaustion was involved." Ibid. (quoting State v. Miller, 76 N.J. 392, 402 (1978)). We also consider whether the suspect had previous encounters with the law. Ibid.

In determining whether a confession was knowing, intelligent, and voluntary, in a juvenile case, a parent's presence is a "highly significant factor," to be given more weight when balancing it against the other factors. State in the Interest of A.S., 203 N.J. 131, 147 (2010) (quoting Presha,

supra, 163 N.J. at 315). The parent is to serve as a "buffer" between the juvenile and police and is there to act in the best interest of the juvenile. Ibid. However, a parent can "advise his or her child to cooperate with the police or even to confess to the crime if the parent believes that the child in fact committed the criminal act." Id. at 148 (citing State in the Interest of Q.N., 179 N.J. 165 (2004)). While it may be atypical for a parent to encourage a child to confess, a "mother's 'urgings [are] consistent with her right as a parent to so advise her son.'" Ibid. (quoting Q.N., supra, 179 N.J. at 177).

We reject D.N.'s assertion that his statement to the police was involuntary. He contends L.T. did not provide adult aid or serve as a buffer between him and police. D.N. maintains that L.T. essentially interrogated D.N. herself.

D.N. erroneously compares his interrogation to what had occurred in A.S. Id. at 131. In that case, A.S., F.D.'s fourteen-year-old adopted daughter, was accused of sexually assaulting F.D.'s four-year-old biological grandson. Id. at 135. Unlike here, however, the Court found F.D. had a conflict of interest because the victim was her grandson and she could not provide the adult aid contemplated in Presha, but this was

just one factor in finding A.S.'s statement was involuntary. Id. at 148.

L.T. expressed concern for her own safety and the safety of her other two children. She repeatedly encouraged D.N. to tell the detective and lieutenant where he got the handgun because she was concerned that he would get charged with something more serious. L.T. asked D.N. "you [want to] go to jail for somebody that's [going to] be out free?" She told him "[e]verything that gun trace[s] back to is on you" and asked him "you want your whole life to go down the drain[?]" She also told him the gang members who asked him to deliver the gun were not his friends and expressed concern that he could have been shot while involved with these people.

L.T. was acting in her child's best interest during the investigation. Furthermore, a parent's presence is only one factor to consider, albeit one we weigh heavily. D.N. was also sixteen-years-old and had been in a similar situation about two weeks prior to his statement in which he opted to not give a statement to police. As a result, he was familiar with the process and intelligently understood his rights.

D.N. also contends that his statement should have been suppressed because he attempted to invoke his right to remain silent and the detective and lieutenant contradicted the Miranda

warnings during the interrogation. "[F]or a confession to be admissible as evidence, prosecutors must prove beyond a reasonable doubt that the suspect's waiver was knowing, intelligent, and voluntary in light of all the circumstances." Presha, supra, 163 N.J. at 313 (citing State v. Burris, 145 N.J. 509, 534 (1996); State v. Kelly, 61 N.J. 283, 294 (1972)). If there is a clear and unambiguous invocation of the right to remain silent, that invocation must be scrupulously honored. State v. Diaz-Bridges, 208 N.J. 544, 564 (2011) (citing State v. Johnson, 120 N.J. 263, 281 (1990)).

"If, however, the invocation is equivocal or ambiguous, leaving the investigating officer 'reasonably unsure whether the suspect was asserting that right,' we have not required that the interrogation immediately cease, but have instead permitted officers to clarify the otherwise ambiguous words or acts." Id. at 564-65 (quoting Johnson, supra, 120 N.J. at 283). The court engages in "a fact-sensitive analysis to discern from the totality of the circumstances whether the officer could have reasonably concluded that the right had been invoked." Id. at 565.

D.N. argues that there were long silences in the interview, he cried, and told his mother to "just stop asking" him about the gun. These contentions, however, do not amount to a clear

or unambiguous invocation of the right to remain silent. The judge found D.N.'s statement to "just stop asking" him questions was directed at his mother, not at the detective and lieutenant, as D.N. was responding to his mother's question. D.N.'s periods of silence and crying do not amount to an invocation of his right to silence either. See Id. at 568-69 (stating that emotional reactions in interrogations could simply indicate that the suspect realizes the enormity of the crime; "[t]here is no basis on which to conclude, merely because a suspect responds to a question by weeping or moaning, that he or she intends to invoke the right to silence"). As the judge stated, "at some point after [D.N.'s] mother had cried and he had cried, he understood what he was about to do and did." D.N. was a sixteen-year-old scared of being hurt by the people who gave him the handgun and was reacting to his mother's emotional state as well.


D.N. asserts that the detective contradicted the Miranda rights by telling him "you got two choices right now you[re going to] help yourself out or look me in the eye and tell me to go fuck myself. No more of this silence, this deep silence. Those are your two decisions so, what is it?" This statement does not amount to a violation of D.N.'s Miranda rights. It is reasonable that the detective wanted to clarify how D.N. wanted

to proceed because D.N. was silent for long periods of time. See State in the Interest of A.W., 212 N.J. 114, 138-39 (2012) (holding that the suspect waived his Miranda rights and the statement was admissible even when the detective repeatedly told the suspect he had to speak with her).

D.N.'s argument that the police violated his Miranda rights because he was in custody is without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). Whether he was in custody or not, he was properly advised of his Miranda rights, which is required in custodial interrogations.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION