

In the Interest of J.M.N.

Colorado Court of Appeals

39 P.3d 1261

December 6, 2001

Summary of Opinion

Defendant juvenile was adjudicated for painting Nair, a hair remover, on horse in the shape of a swastika. On appeal, the Court of Appeals said this conduct was torture under the Colorado cruelty to animals statute. It affirmed the adjudication of delinquency for cruelty to animals.

Text of Opinion

J.M.N., a juvenile, appeals from a judgment adjudicating him delinquent based on a finding that he committed acts that, if committed by an adult, would constitute the crime of cruelty to an animal. We affirm.

The evidence at trial established that J.M.N., along with two other juveniles, used a liquid depilatory to emblazon a swastika upon a horse.

I. [omitted]

II.

J.M.N. next argues that the trial court erred in its rulings on several discovery violations. Again, we do not agree.

Discovery in juvenile delinquency proceedings is governed by Crim. P. 16. See C.R.J.P. 3.3.

Crim. P. 16(III)(g) states:

If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, prohibit the party from introducing in evidence the material not disclosed or enter such other order as it deems just under the circumstances.

This rule gives the trial court broad discretion in determining the appropriate remedy, if any, for a discovery violation. *People v. Loggins*, 981 P.2d 630 (Colo.App.1998).

A.

On the morning of trial, J.M.N. made a motion to preclude the testimony of the prosecutor's expert witness, the veterinarian who examined the horse, on the grounds that the prosecutor had failed to disclose timely a written report prepared by the veterinarian.

The trial court found that the failure to provide the report was not caused by bad faith. As a remedy, the court ruled that the veterinarian could not testify until after J.M.N. had had an opportunity to review the report. In addition, the court indicated that it would permit J.M.N. to endorse his own expert witness if,

after reviewing the report, he wished to do so.

We have reviewed the record and conclude that it supports the trial court's finding that the prosecutor did not deliberately withhold the veterinarian's report. We further conclude that the trial court acted within its discretion in crafting a remedy that afforded J.M.N. an adequate opportunity to prepare his cross-examination of the veterinarian and investigate the possible existence of favorable evidence.

B.

J.M.N. also objected to the admission of a videotape, which showed J.M.N. and the other juveniles "partying" at the property where the horse was stabled, because the prosecutor had failed to provide him with a duplicate copy of the videotape during discovery.

However, the record establishes that J.M.N.'s counsel was aware, no later than the first day of trial, that the videotape was available at the prosecutor's office. Thus, because J.M.N.'s counsel made no effort to view the videotape during the subsequent two-week trial recess, the trial court acted within its discretion in ruling that no discovery sanction was warranted.

C.

We also perceive no error in the trial court's refusal to strike the testimony of the owner of the horse on grounds that the prosecutor had failed to preserve and provide a copy of the witness' first written statement to the police. J.M.N. did not establish that the witness' written statement had exculpatory value that was apparent when it was destroyed. See *People v. Apodaca*, 998 P.2d 25 (Colo.App.1999) (to establish a due process violation for failure to preserve potentially exculpatory evidence, the defendant must establish that the evidence possessed an exculpatory value that was apparent before it was destroyed).

Similarly, we find no error in the trial court's ruling allowing a juvenile accomplice to testify that the substance applied to the horse was "Nair," a liquid depilatory. J.M.N. had argued that the police had taken a small sample of an unknown substance from the affected area of the horse's back and then had destroyed that substance without submitting it for laboratory testing. However, the record supports the trial court's determination that J.M.N. failed to show the destroyed substance had any exculpatory value. See *Arizona v. Youngblood*, 488 U.S. 51, 109 S.Ct. 333, 102 L.Ed. 2d 281 (1988)(the failure to preserve evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant, does not violate due process unless the defendant can show bad faith on the part of the police).

III.

Finally, J.M.N. contends the trial court erred by denying his motion for judgment of acquittal. We disagree.

The allegations of a delinquency petition must be proven beyond a reasonable doubt. Section 19-2-804(1), C.R.S.2001.

As relevant here, "[a] person commits cruelty to animals if he knowingly or with criminal negligence ... tortures [or] torments ... any animal." Section 18-9-202(1)(a), C.R.S.2001.

The standards for reviewing the sufficiency of evidence supporting a judgment of juvenile delinquency are the same as those for reviewing the sufficiency of evidence supporting a judgment of conviction in a criminal case. See *People in Interest of A.P.E.*, 988 P.2d 172 (Colo.App.1999), rev'd on other grounds, 20 P.3d 1179 (Colo.2001). The reviewing court must determine whether the evidence, viewed as a whole and in the light most favorable to the prosecution, is sufficient to support a conclusion by a reasonable person that the defendant is guilty of the crimes charged beyond a reasonable doubt. Kogan

v. People, 756 P.2d 945 (Colo.1988).

Here, J.M.N. argues that the evidence was insufficient because the prosecution did not prove, in its case-in-chief, that the delinquent act occurred in Colorado, that the delinquent act was committed on the date alleged in the petition, or that the injury to the horse was sufficient to support a finding of "torture." J.M.N. also argues that the accomplices' testimony was not corroborated.

However, the prosecution called a witness in its case-in-chief who testified that the horse was boarded in Adams County, Colorado. Thus, the proof of location was sufficient, and the evidence subsequently adduced when the prosecution was allowed to reopen its case was merely cumulative. There also was ample evidence establishing that the delinquent act occurred on the date alleged in the petition.

Moreover, the testimony of the veterinarian that the afflicted areas on the horse were swollen and that the horse responded in a manner that indicated that the animal was in pain was sufficient to support a finding of "torture" under the cruelty to animals statute.

Furthermore, contrary to J.M.N.'s contention, a trier of fact may convict a defendant upon the uncorroborated testimony of an accomplice. See *People v. Martinez*, 187 Colo. 413, 531 P.2d 964 (1975). In any event, here, the testimony of each accomplice was in fact corroborated by the testimony of the other, as well as by the horse's owner, who testified that J.M.N. was present at the scene on the day in question.

The judgment is affirmed.