MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

D.C.,

Appellant-Respondent,

v.

State of Indiana,

Appellee-Petitioner.

December 19, 2022

Court of Appeals Case No. 22A-JV-1636

Appeal from the Marion Superior Court

The Honorable Geoffrey Gaither, Judge

Trial Court Cause No. 49D09-2201-JD-387

Bailey, Judge.

Case Summary

[1] D.C. appeals his adjudication as a juvenile delinquent for possession of marijuana, as a Class B misdemeanor if committed by an adult.[1] D.C. raises one dispositive issue for our review, namely, whether the State presented sufficient evidence to support his adjudication. We reverse.

Facts and Procedural History

[2] In January 2022, D.C. was on probation for a prior offense. On January 14, after officers became aware of a social media post that depicted a firearm, officers conducted a search of D.C.'s residence. When the officers arrived, D.C.'s mother, Paula Owens, came to the door. Owens advised the officers that she needed to get dressed before they could enter. While the officers waited, they heard "ruffling" sounds, as if someone was "moving stuff around." Tr. at 10.

[3] After "a couple [of] minutes," officers entered the house. *Id*. at 10. In D.C.'s room, they found a baggie that contained a "green leafy substance." *Id*. at 14. Officer Ryan Bowersox with the Indianapolis Metropolitan Police Department believed that the baggie contained marijuana. Then, in the bedroom belonging to D.C.'s parents, officers located a "similar" package that they believed contained marijuana. *Id*. at 19. As a result, on January 18, the State filed a

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[1] Ind. Code § 35-48-4-11(a)(1) (2022).

petition alleging that D.C. was a juvenile delinquent because he had committed possession of marijuana, as a Class B misdemeanor if committed by an adult.[2]

[4] The trial court then held a hearing on the State's petition. During the hearing, Officer Bowersox testified to the results of the search. In addition, the State presented the testimony of Amanda Mohaupt, a forensic scientist with the Indianapolis Marion County Forensic Service Agency ("Crime Lab"). Mohaupt testified that, based on the results of the tests she had performed on the sample, she concluded that the sample "was in fact marijuana." Tr. at 36.

[5] Mohaupt testified that she tested a sample that was found to contain marijuana but that the Crime Lab "d[id] not quantif[y] the THC within the sample." Tr. at 34. The State then asked Mohaupt if there was any indication that the sample contained "over the legal amount of . . . THC." *Id*. at 36. Mohaupt replied: "Since we do not do percentage based on the analysis and that [sic] there is no other cannabinoids present in the sample[,] it is marijuana based on other testing." *Id.* During her testimony, the State offered as evidence a laboratory report, which indicated that a plastic bag contained more than 2.98 grams of marijuana. It further stated that the substance was "found to contain Tetrahydrocannabinol (THC), percentage not determined." Ex. at 4. The court admitted that laboratory report over D.C.'s objection.

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[2] The State also alleged that D.C. had committed dangerous possession of a firearm, as a Class A misdemeanor if committed by an adult, based on a firearm officers had found in D.C.'s parent's bedroom. The court entered a finding of not true on that allegation.

[6] On cross examination, Mohaupt testified that she had determined that the sample contained "Delta 9 THC," but that she did "not do [a] percentage determination[.]" *Id.* at 37. D.C. then asked: "You don't know how much THC was in the sample, correct?" Mohaupt replied: "We do not do percentage determination, correct." *Id.* at 38.

[7] At the conclusion of the evidence, the court entered a true finding on the allegation that D.C. had committed possession of marijuana, as a Class B misdemeanor if committed by an adult. The court then adjudicated D.C. a juvenile delinquent and discharged him to the custody of his parents. This appeal ensued.

Discussion and Decision

[8] D.C. contends that the State failed to present sufficient evidence to support his adjudication as a juvenile delinquent. Our standard of review is well settled:

> We neither reweigh the evidence nor judge the credibility of witnesses. The State must prove beyond a reasonable doubt that the juvenile committed the charged offense. We examine only the evidence most favorable to the judgment along with all reasonable inferences to be drawn therefrom. We will affirm if there exists substanti[al] evidence of probative value to establish every material element of the offense. Further, it is the function of the trier of fact to resolve conflicts in testimony and to determine the weight of the evidence and the credibility of the witnesses.

J.C. v. State, 131 N.E.3d 610, 612 (Ind. Ct. App. 2019) (citation omitted). We will affirm a juvenile delinquency adjudication unless no reasonable factfinder could have found the respondent guilty beyond a reasonable doubt. *B.T.E. v. State*, 108 N.E.3d 322, 326 (Ind. 2018).

[9] To support D.C.'s adjudication, the State had to show that he "knowingly or intentionally possesse[d] (pure or adulterated) marijuana, hash oil, hashish, or salvia[.]" Ind. Code § 35-48-4-11(a)(1) (2022). On appeal, D.C. specifically challenges whether the State's evidence was sufficient as a matter of law to demonstrate that the green, leafy substance found in his home was marijuana.

[10] "Marijuana" is defined under Indiana law as follows:

> (a) "Marijuana" means any part of the plant genus Cannabis whether growing or not; the seeds thereof; the resin extracted from any part of the plant, including hashish and hash oil; any compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin.
>
> (b) The term does not include:
>
> * * *
>
> (6) hemp (as defined by IC 15-15-13-6) . . . .

I.C. § 35-48-1-19.

[11] And "hemp" is defined under Indiana law as follows:

> As used in this chapter, "hemp" means the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol [THC] concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis, for any part of the Cannabis sativa L. plant.

I.C. § 15-15-13-6 (2020) (emphases added). "Thus, as a matter of Indiana law, the difference between legal hemp and illegal marijuana is determined by the percent concentration of THC in a particular substance: to be illegal, the percent concentration of THC must be more than 0.3%." *Fedij v. State*, 186 N.E.3d 696, 708 (Ind. Ct. App. 2022).

[12] D.C. correctly asserts on appeal that the State presented no evidence that any of the substances found in his home had a percentage of THC that was more than 0.3%.[3] Indeed, the forensic analysis of the green, leafy substance indicated only that the substance was marijuana. But the laboratory report expressly provided that, while the sample was found to contain THC, the percentage of THC was "not determined." Ex. at 4. Likewise, Mohaupt testified that, while she determined that the sample contained "Delta 9 THC," she did "not do [a] percentage determination." Tr. at 37. And when D.C. asked if it was correct to

[3] On appeal, D.C. additionally contends that the court abused its discretion when it admitted as evidence the laboratory report because, according to D.C., the State had not proven that the substance that Mohaupt tested was the same substance that officers had found in his room. However, we need not decide whether the court abused its discretion when it admitted the report because, even if properly admitted, the State failed to present sufficient evidence to support D.C.'s adjudication.

say that Mohaupt did not know how much THC was in the sample, she responded: "We do not do percentage determination, correct." *Id*. at 38. In other words, the State did not present any evidence to demonstrate beyond a reasonable doubt that the substance officers found was illegal marijuana as opposed to legal hemp.

[13] The State does not acknowledge the difference between illegal marijuana and legal hemp, or the amount of THC that separates one from the other. However, the State nonetheless appears to contend that it presented sufficient evidence to support D.C.'s adjudication because circumstantial evidence proved that the substance was marijuana and not hemp. "It is true that the State can prove the identity of a drug by circumstantial evidence." *Fedij*, 186 N.E.3d at 708. "However, the State cannot premise a conviction 'upon evidence which is uncertain or speculative or which raises merely a conjecture or possibility.'" *Id*. (quoting *Vasquez v. State*, 741 N.E.2d 1214, 1216 (Ind. 2001)).

[14] In support of its argument, the State relies on Officer Bowersox's testimony that he had been "trained in marijuana detection" and that he had "taken part in over 100 marijuana arrests or investigations." Appellee's Br. at 8. The State contends that, in order to agree with D.C., this Court "would have to give no weight to his testimony that he found a green, leafy substance, and that he concluded that it was marijuana, and that his conclusion was based on training through two sources and over 100 cases of experience." *Id*. at 10.

[15] However, while we acknowledge Officer Bowersox' training and experience, his testimony that the substance found in D.C.'s room was marijuana was not grounded in the statutory distinction between legal and illegal substances and was, thus, speculative. Indeed, there is nothing in Officer Bowersox' testimony to demonstrate that he was capable of determining the amount of THC in a given substance based simply on his observation. And Mohaupt testified that, even after her tests on the substance, she did not know how much THC it contained. *See* Tr. at 38. Further, on cross-examination, D.C. asked Mohaupt if it were possible that the sample contained "0.1% or even less," Mohaupt respond that "it's hard to determine." *Id*. at 37.

[16] The State demonstrated that D.C. possessed a green, leafy substance that was consistent with the appearance of marijuana. But the State did not present any evidence to prove that the percent concentration of the substance contained more than 0.3% THC, which would make the substance illegal. *See Fedij*, 186 N.E.3d at 708. Because the State did not present any evidence regarding the amount of THC that was present, the State had no evidentiary basis from which a reasonable fact-finder could conclude that the seized substance was in fact marijuana and not hemp. Instead, the State has premised D.C.'s adjudication as a juvenile delinquent for possession of marijuana on nothing more than conjecture, which is not permissible. *See Vasquez*, 741 N.E.2d at 1216.

Conclusion

[17] We hold that the State failed to present sufficient evidence to show that D.C. possessed marijuana. We therefore reverse his adjudication as a juvenile delinquent accordingly.[4]

Riley, J., and Vaidik, J., concur.

[4] Both D.C. and the State agreed that, in its written dispositional order, the court incorrectly stated that D.C. had been adjudicated a juvenile delinquent for having committed possession of marijuana, as a Class A misdemeanor if committed by an adult. Because we reverse D.C.'s adjudication, we need not remand to the trial court to correct that scrivener's error.