

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0537-15T4

IN THE INTEREST OF L.C.,
A JUVENILE.

Submitted April 26, 2017 – Decided July 31, 2017

Before Judges Fuentes, Gooden Brown and
Farrington.

On appeal from the Superior court of New
Jersey, Chancery Division, Family Part, Union
County, Docket Nos. FJ-20-691-15, FJ-20-790-
15, FJ-20-842-15, FJ-20-855-15 and FJ-20-918-
15.

Joseph E. Krakora, Public Defender, attorney
for appellant (Alison S. Perrone, Designated
Counsel, of counsel and on the brief).

Grace H. Park, Acting Union County Prosecutor,
attorney for respondent (N. Christine Mansour,
Special Deputy Attorney General/Acting
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

The juvenile, L.C., challenges identification evidence
introduced by the State during a bench trial before Judge Robert
A. Kirsch as too suggestive, unreliable and unpersuasive to support
the adjudications of delinquency. L.C. also argues that the

Court's weighing of the dispositional factors does not support the length of the sentence. For the reasons which follow, we affirm.

L.C. was adjudicated delinquent for acts which, if committed by an adult, would constitute four counts of first-degree armed robbery and related aggravated assault and weapons offenses, specifically four counts of armed robbery, a first degree offense in violation of N.J.S.A. 2C:15-1; four counts of possession of a weapon for an unlawful purpose, a second degree offense in violation of N.J.S.A. 2C:39-4a; four counts of aggravated assault, a fourth degree offense in violation of N.J.S.A. 2C:12-1b(4); three counts of unlawful possession of a weapon, a second degree offense in violation of N.J.S.A. 2C:39-5b; and one count of attempted armed robbery, a second degree offense in violation of N.J.S.A. 2C:15-1 and N.J.S.A. 2C:5-1, for which he received an aggregate five-year sentence to Jamesburg.

The charges stemmed from a robbery spree over several days, during which L.C. robbed owners and employees of small business establishments at gunpoint using a silver revolver with tape on the handle. The evidence presented by the State consisted of in-court and out-of-court eyewitness identifications, video surveillance footage and still photographs derived therefrom, a mask found on L.C.'s person, and a loaded silver revolver with tape on the handle recovered in proximity to L.C.

On appeal, L.C. argues:

POINT I

THE ADJUDICATION OF DELINQUENCY MUST BE REVERSED BECAUSE THE STATE'S UNRELIABLE AND SUGGESTIVE IDENTIFICATION EVIDENCE DOES NOT SUPPORT A FINDING THAT THE JUVENILE WAS A PARTICIPANT IN THE ROBBERIES.

POINT II

A CORRECT WEIGHING OF ALL FACTORS DOES NOT SUPPORT THE IMPOSITION OF A FIVE-YEAR TERM OF INCARCERATION.

We first address L.C.'s arguments that the State's identification evidence does not support a finding that L.C. was a participant in the robberies. L.C. was arrested on March 9, 2015, after attempting to commit the last of a series of armed robberies involving multiple small businesses.

At trial, testimony was adduced showing that on March 8, 2015, an African-American youth, later identified as L.C., entered the Scarlet Grocery store wearing a mask, which covered the lower portion of his face up to the bridge of his nose. He was dressed in all black. His appearance caused the store employee, Melvin Flores, to be suspicious. After standing at the ATM, L.C. walked toward Flores, pulled out a silver revolver and pointed it at Flores' head. Thereafter, according to the other employee, Carlos Abreu, he pointed the gun at Abreu, at which time Abreu threw himself to the ground and banged on the freezer door, after which

L.C. ran out of the store. The employees did not hand over any money, nor did they initially report the incident to the police.

On the following day, a heavysset African-American woman came in with an African- American juvenile, later identified as L.C.'s co-juvenile. The woman surveyed the store, bought some candy and gum and left with the African-American male. According to Flores, the juvenile was wearing a gray hoodie with white tassels. Flores followed them out of the store and observed them in front of a house conversing. Shortly thereafter, another African-American man entered the store, with his hands in his waistband and wearing a mask on his face up to the bridge of his nose. Flores told Abreu to hit the alarm and the man fled. Flores and Abreu observed the two men, and the woman, running down Fifth Street.

The police arrived in approximately two to three minutes in response to the alarm. Officer Rodney Dorilus testified that on March 9, he was working in the municipal court, and had left for lunch when he heard the radio broadcast of an armed robbery at 75 Fifth Street. A description was given of two men and a woman and the direction they were last seen proceeding. He decided to head toward the location in a marked police vehicle. He saw the three suspects crossing East Jersey toward Sixth Street. They were walking rapidly when he first saw them, but when they observed the marked vehicle they slowed down and were walking casually.

The officer testified that he called for additional units which arrived within a minute as the three suspects started to split up. Officers Leonardo Nunes, Rogerio Alves and several other units arrived at the scene. Officer Dorilus detained the woman, Alves, the co-juvenile, and Officers Victor Matos and Nunes detained L.C. Officer Dorilus identified the co-juvenile in court as the individual wearing the gray hoodie and L.C. as the other African-American youth. On cross-examination, the officer testified that there were no other groups of individuals who matched the description of the individuals involved in the robbery in the vicinity of the arrest. The three were patted down and placed in separate radio cars. Flores and Abreu were taken to the scene of the arrest approximately ten or fifteen minutes later, where they individually viewed the three suspects one-by-one. Both Flores and Abreu identified all three individuals.

Flores testified that the police told him nothing prior to conducting the identification procedure. He identified the co-juvenile first. He further testified that the person who walked into the store on March 9 with the woman, was not the person who pointed the gun at him on March 8. Abreu was driven to the location by the police, about a three-minute drive. During the drive, he testified the police told him they were going to take him to the people they "had nabbed" one by one so he could identify

them. Abreu testified the people were handcuffed, behind the patrol car, while he was sitting in the patrol car about 20-22 feet away. He identified, in court, the co-juvenile as the person who accompanied the female into the store on March 9, and L.C. as the person who had pointed the weapon at him on March 8.

On cross-examination, Abreu testified that the individual who pointed the gun at him wore all black clothing. He recognized L.C. in part because of the clothes he wore, because L.C. wore the same clothes on March 8 and 9. Abreu, who testified that he was previously the owner of the Scarlet Grocery, stated the store had approximately ten video surveillance cameras. The surveillance videos introduced into evidence corroborated the identifications.

After the identification, the suspects were taken to headquarters for booking. Flores and Abreu were taken to police headquarters to give statements. Abreu, a native of the Dominican Republic, understands "a little bit" of English, but cannot read English. Abreu in his statement said, "Yes. He (the co-juvenile) was outside today, but he had the gun yesterday." Flores, a native of El Salvador, was interviewed by Detective Michael Gonzalez. Detective Gonzalez is fluent in Spanish and testified that Flores was nervous and said he feared retribution. The questions were asked in Spanish and both answers and questions were recorded in English. In court, Detective Gonzalez identified the co-juvenile

and noted he was wearing a gray pullover hoodie with white draw strings. He also identified L.C. in court as wearing a black short sleeve shirt. He testified he was familiar with both juveniles from previous interactions.

Detective Gonzalez testified on cross-examination that Flores indicated in his statement that on the day after the robbery, only L.C. came into the store, and L.C. had been the one with the gun on March 8. According to Flores, the co-juvenile, dressed in gray with white draw strings, never came into the store on March 9. When questioned during cross-examination about his statement, Flores stated that he did not recall his response to the question: "When you arrived at the scene where the possible suspects were, did you identify anyone there?" to which his answer was, "Yes. There were three shown to me separately. I identified the two that were in the store -- the girl and black male that came inside with his hand in his waistband. Then the other guy that was waiting for them outside." Flores affirmed on cross-examination that it was L.C. who came in with the gun, that he was nervous the day he gave the statement, and that he had trouble understanding the detective's questions. He further testified the co-juvenile did not have a weapon on either day.

Abreu testified that on March 9, a woman and a young man wearing a gray hoodie came into the store and bought candy. The

two left and then a male came into the store who Abreu thought was the same individual who had just been in with the female. The alarm was pushed and the police arrived in seconds. He and Flores told the police the direction in which the people had gone.

Officer Leonardo Nunes testified he heard the radio broadcast and responded to the vicinity looking for suspects fitting the description of the robbers. He heard Officer Dorilus call for backup and went to the area of Sixth Street and Broadway. He testified that Officer Dorilus had the female detained, and told him to get the other suspect who was walking away. This suspect was an African-American man wearing a black hoodie and had hair coming out from under the hoodie. He held the suspect by the front of his pants and patted him down "everywhere except his privates" and handcuffed him. He stayed with the individual through the identification process. Officer Nunes identified L.C. as the suspect he detained.

After checking Officer Matos' police vehicle and finding it empty, Officer Nunes placed L.C. in the rear of the car and followed Matos to police headquarters. Officer Matos observed L.C. moving about in the back of the car. When Officer Matos took L.C. out of his vehicle, he found a silver revolver with white tape on the handle on the floor. Officer Matos alerted Officer Nunes to the gun, which Officer Nunes removed from the vehicle.

The gun had two bullets in it. No one else had been in the passenger compartment that day. Officer Nunes spoke to Flores and Abreu after finding the weapon and asked them in Spanish to describe the weapon. They described a revolver and specifically stated it had white tape on the handle. After they described the weapon, Officer Nunes showed them the gun, which had been found in Officer Matos' vehicle, and both Flores and Abreu simultaneously identified the gun. The gun and the bullets were produced in court and Officer Nunes identified it as the one he recovered from Officer Matos' vehicle and identified by Flores and Abreu.

Officer Alves testified that he was at the lineup. He is fluent in Spanish. He testified that he told Flores and Abreu that "we have possible suspects obtained here based upon your descriptions. Tell me yes or no if they were involved." He testified that the "Two of them were very excited. Not scared, but excited when they saw . . . the suspects." When asked to describe how they were excited, he stated, "Describe how they were excited. Very certain of what they saw. They were trying to get their message out. Yeah, yeah, yeah. That -- kind of excited."

Officer Alves testified that he processed both L.C. and the co-juvenile. He identified a black ski mask and a black cotton hat as having been taken from L.C., whom he identified in the court room. He further testified L.C. gave a home address which

is five or six blocks from the Scarlet Grocery. L.C. was wearing a black hooded sweatshirt, black sweatpants and black boots. He also testified at the time of the arrest the co-juvenile was wearing a gray sweatshirt with matching gray pants and black sneakers.

As a result of the arrests in connection with the Scarlet Grocery robbery, an investigation was conducted of similar recent robberies in the area. The investigation revealed that on March 5, 2015, L.C. robbed the Bienvenido a Elin Deli, also located in Elizabeth. The store has four surveillance cameras, two of which were recording on that day. The owners, Rafael Rosario and his wife Luz Jimenez, were both working at the time of the robbery.

On the day in question, Rosario testified he had been assisting a customer when a young African-American man, "tall" wearing a hoody which he removed, and a "nice haircut" 16 or 17 years old came into the store, and asked if he sold "loosies". Rosario told him no and he left. While he continued assisting the customer, a second African-American man came into the store, shook snow off his feet, said hello to Jimenez and then pointed a gun at her. Rosario described it "like a .38," "shiny and silver like", "a revolver". The person holding the gun was a "young guy, about 14, 15, 17 years old. He was black, wearing a black hooded sweatshirt and black pants." He was "skinny". Rosario gave him

the money in the register and a laptop. Rosario testified that he observed the person run straight on Fifth and then turn onto South Park.

Rosario called the police and gave the responding officers a copy of the surveillance video. Approximately one week later, a police officer arrived at the store and showed Rosario photographs of potential suspects. However, he was unable to make an identification. On March 27, 2015, Rosario went to the police station where he gave a statement. He was unable to identify L.C. as one of the persons who robbed him. Jimenez identified the co-juvenile as the one wielding the gun.

Officer Alexander Blanco testified at the trial. On March 5, he was on duty on Fifth Street when he received a call from dispatch about a robbery and responded in approximately one minute. He found the owner outside the store, obtained a description which matched the one he had received from dispatch and proceeded north on Fifth toward the area of South Park and Court Street. Officer Blanco watched the surveillance video with Rosario and his wife, and realized there were two suspects. He broadcast the information from the video over the police radio, took cell phone pictures of the surveillance video images and sent them by text to other police units.

When L.C. and the other suspected juvenile were arrested on March 9, Blanco requested the arresting officers to send him a picture of the juveniles. The picture showed the co-juvenile wearing the same gray sweat shirt with white draw strings as he did in the Bienvenido a Elin Deli video. Blanco testified he was wearing the same sweatshirt in court. Blanco also testified that the co-juvenile had a distinctive haircut: "It had a straight line across the forehead." He further testified that he saw the co-juvenile and L.C. in the holding cell on March 9, and he noticed that L.C. had bushy eyebrows, the same as the person in the surveillance video.

On March 7, Nicholas Haddad, son of the owner of the Elizabeth Truck Stop, was robbed at gun point by an African-American man in black clothing wearing a ski mask. The truck stop has sixteen surveillance cameras, fourteen of which were working. Four cameras recorded the robbery. Haddad testified he was working the seven a.m. to four p.m. shift. At approximately 2:35 p.m., he was taking out the trash when an African-American man wearing all black clothes came in and asked for Newport 100 cigarettes. Haddad left the trash and walked back to the front of the store. He went around the counter to retrieve the cigarettes. When he turned around, the man had a silver gun in his face. The assailant told Haddad to give him cash from the first register which amounted to approximately

\$150.00. He then demanded cash from a second register which was empty. The assailant then demanded Haddad's license and wallet, which Haddad did not have on him. Finally, the assailant demanded the sixteen or seventeen packs of Newport 100 cigarettes that Haddad had left. The man then put the gun down the front of his pants and left. Haddad followed the man out the door and watched him go right toward Sixth Avenue. The incident was captured in the surveillance video.

On March 9, the police came to the Truck Stop and Haddad recounted the facts of the robbery. On March 12, Haddad brought videos and stills from the cameras at the Truck Stop to his initial interview with Detective Gonzalez. Haddad returned to police headquarters on March 18 to view a photo array. The photo array consisted of six photographs, the target, L.C., and five other photographs. The array was prepared by Detective Gonzalez, but conducted by Detective Wlazlowski. Haddad identified the individual portrayed in picture number 4 as the robber. Picture number four was a photograph of L.C.

We are required to accept the findings of a trial judge following a bench trial unless "they are so manifestly unsupported or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." S.D. v. M.J.R., 415 N.J. Super. 417, 429 (App. Div. 2010) (quoting Cesare v. Cesare,

154 N.J. 394, 412 (1998)). In State v. Henderson, 208 N.J. 208 (2011), our Supreme Court set forth a non-exhaustive list of system variables to be considered and evaluated in determining whether an out of court identification has been tainted.

Prior to trial, Judge Kirsch held a Henderson hearing with regard to the March 8 and 9 incidents and, after evaluating the system variables set forth in State v. Henderson, supra, declined to suppress the identification evidence in a decision set forth on the record on June 5, 2015. Judge Kirsch found the in and out of court identifications made by Haddad and Flores, in combination with the videos and still photographs in evidence, and the physical evidence recovered from L.C.'s person and the police vehicle in which he was transported, established beyond a reasonable doubt that L.C. was the individual involved in each of the subject incidents.

We find the State met its burden, and the burden thereafter shifted to the defense to prove a very substantial likelihood of irreparable misidentification. We find the fact finding and credibility determinations of the trial court to be amply supported by the record. For the reasons stated by Judge Kirsch in his decision, declining to suppress the identification testimony, and his written decision of June 5, 2015, finding L.C. committed four

counts of armed robbery together with related weapons and assault charges, the adjudications of delinquency are affirmed.

We turn to L.C.'s argument that the court did not correctly assess and weigh mitigating and aggravating factors, thereby imposing an excessive sentence. Although L.C. had no prior adjudication, he had previously been in residential treatment on more than two occasions and failed to complete the programs. The psychological evaluations in L.C.'s Juvenile Pre-Disposition Report support the custodial sentence, as do the findings of the trial judge placed upon the record. Pursuant to N.J.S.A. 2A:4A-43(c)(3):

The court may fix a term of incarceration under this subsection where:

(a) The act for which the juvenile was adjudicated delinquent, if committed by an adult, would have constituted a crime or repetitive disorderly persons offense;

(b) Incarceration of the juvenile is consistent with the goals of public safety, accountability, and rehabilitation and the court is clearly convinced that the aggravating factors substantially outweigh the mitigating factors as set forth in section 25 of P.L.1982, c.77 (C.2A:4A-44).

For the reasons set forth by the trial judge, we find no abuse of discretion.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION