SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1993-14T4
A-2903-14T4
A-5473-14T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ALEXANDER RUIZ-NEGRON, a/k/a ALEXANDER RUIZ, and ALEXANDER RUIZNEGRON,

Defendant-Appellant.

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RAMON D. RUIZ-PEREZ, a/k/a RAMON PEREZ, PEREZ RAMON, RAMIN RUIZPEREZ, RAMON RUIZ, and RAMON D. RUIZ,

Defendant-Appellant.

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LUIS R. GARCIA, a/k/a RICO GARCIA
and LOUIS LUISITO,

Defendant-Appellant.

Submitted February 27, 2017 – Decided March 10, 2017

Before Judges Sabatino, Nugent and Haas.

On appeal from Superior Court of New Jersey, Law Division, Cape May County, Indictment No. 13-01-0043.

Joseph E. Krakora, Public Defender, attorney for appellant Alexander Ruiz-Negron (Mark Zavotsky, Designated Counsel, on the brief).

Joseph E. Krakora, Public Defender, attorney for appellant Ramon D. Ruiz-Perez (Richard Sparaco, Designated Counsel, on the brief).

Wayne Powell, attorney for appellant Luis R. Garcia.

Robert L. Taylor, Cape May County Prosecutor, attorney for respondent (Gretchen A. Pickering, Assistant Prosecutor, of counsel and on the brief).

Appellant Alexander Ruiz-Negron filed a supplemental pro se brief.

Appellant Ramon Ruiz-Perez filed a supplemental pro se brief.

PER CURIAM

This prosecution arose out of the gunpoint robbery of a gas station attendant. Tried together by a jury, defendants Alexander Ruiz-Negron, Ramon D. Ruiz-Perez, and Luis R. Garcia were found guilty of armed robbery, aggravated assault, and other offenses

committed in the incident. After appropriate mergers, they were each sentenced to an extended thirty-five-year custodial term.

In their appeals, which we consolidated for purposes of this opinion, defendants raise numerous arguments challenging their convictions and sentences. For the reasons that follow, we affirm the convictions but remand to the trial court for resentencing.

I.

The State's proofs at trial showed that four armed and masked men arrived at a gas station in Dennis Township at approximately 11:30 p.m. on June 13, 2012. There were two employees on duty: an attendant who was outside working the gas pumps, and a co-worker who was on duty inside the convenience store. Neither employee testified at trial. However, circumstantial evidence showed that the attendant was attacked and hit on the head with a gun by one of the robbers. The robbers left with cash and a black Toshiba laptop computer they removed from the gas station.

The attendant reported the robbery to his boss, the owner of the gas station, and described what had happened. The police responded and began an investigation. Video surveillance footage of the gas station confirmed the robbery had occurred, but the footage was not clear enough to enable identification of the robbers.

Shortly after the robbery, police officers applied for a search warrant in an unrelated drug investigation concerning the sale of heroin at a residence in Woodbine Borough. After obtaining the search warrant, the State Police generated what is called an "Operational Plan." The Plan stated that several of the robbery suspects were tied to narcotics activity at that location, and that "[i]t is possible that the execution of the search warrant today will reveal info[rmation] related to the robbery."

As authorized by the warrant, police officers searched the Woodbine residence. Among other things, they discovered and seized two laptops, one of which was a black Toshiba of the kind reported stolen from the gas station. The police then obtained a Communications Data Warrant ("CDW") to search the contents of the laptop. They found that the laptop contained photographs of the attendant and other persons of Indian descent, corroborating that it was the laptop stolen from the gas station.

The court before trial denied defendants' motion to suppress the laptop. The court found that it was within the scope of the search warrant that had been issued for the residence in the narcotics investigation. In addition, the court ruled that the laptop's discovery was inadvertent and met the plain view exception to the Fourth Amendment.

After hearing testimony from multiple witnesses, including several officers who took part in the investigation, the jury found all three defendants guilty of each count charged in the indictment. Specifically, the jury convicted defendants of the following: first-degree armed robbery, N.J.S.A. 2C:15-1(a)(1) (count one); second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a) (count two); second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b) (count three); second-degree aggravated assault, N.J.S.A. 2C:12-(1)(b)(1) (count four); third-degree theft, N.J.S.A. 2C:20-3 (count five); and second-degree conspiracy to commit robbery, N.J.S.A. 2C:5-2 (count six). After obtaining these guilty verdicts, the State decided to not pursue "certain persons" weapons charges in a second phase of the trial.

The State moved for, and the trial judge granted, extended-term sentences against each defendant because they all are persistent offenders. Defendants accordingly were each sentenced to extended-term sentences of thirty-five years imprisonment on the robbery conviction (merged with other charges), plus a concurrent fifteen year extended-term sentence on the weapons offense.

II.

Through the briefs of their respective appellate counsel, defendants have raised a host of issues. In addition, Ruiz-Negron and Ruiz-Perez have filed pro se supplemental briefs amplifying counsels' arguments and presenting further points. The briefs raise many of the same issues, although not all defendants join in all of their co-defendants' arguments.

Rather than repeat the numerous point headings in this opinion, we reorganize the arguments generally in chronological order and corresponding to the sequence of pretrial and trial events. We now consider those points in turn.

A.

All three defendants argue that the warrant the police obtained to search the residence in Woodbine as part of the drug investigation was not sufficient to permit the seizure of the laptop stolen from the gas station. They contend that the affidavit the police provided to the warrant judge was deficient in omitting reference to the robbery and an expectation that the premises might contain evidence of the robbery. At a minimum, defendants contend that the trial court should have granted defense counsel's request for an evidentiary hearing pursuant to Franks v. Delaware, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978).

We reject defendants' arguments and decline to remand for a Franks hearing.

Search warrants are "presumed to be valid," and a defendant challenging one must demonstrate that "the warrant was issued without probable cause or that the search was otherwise unreasonable." State v. Chippero, 201 N.J. 14, 26 (2009) (quoting State v. Evers, 175 N.J. 355, 381 (2003)). Once a search warrant is issued, police officers can "use only those investigatory methods, and . . . search only those places, appropriate in light of the scope of the warrant." State v. Reldan, 100 N.J. 187, 195 (1985) (quoting Harris v. U.S., 331 U.S. 145, 152, 67 S. Ct. 1098, 1102, 91 L. Ed. 1399, 1407 (1947)).

"An analysis of the reasonableness of the methods used in a search, as well as the areas searched, should focus upon whether the search in its totality was consistent with the object of the search." Ibid. In such an analysis, the terms of the search warrant "must be strictly respected." State v. Bivins, 435 N.J. Super. 519, 524 (App. Div. 2014) (citing State v. Rockford, 213 N.J. 424, 441 (2013)). If the police seize evidence outside the scope of the warrant, that evidence ordinarily should be suppressed. State v. Smith, 212 N.J. 365, 388 (2012) (citing State v. Handy, 206 N.J. 39, 45 (2011)).

In this case, defendants contend that the Toshiba laptop fell outside the scope of the search warrant, because the police allegedly did not believe that it pertained to drug distribution. Specifically, the warrant authorized the police to seize "[d]ocuments, cellular phones, papers, and records (whether kept manually and/or by mechanical electronic devices) pertaining to the illegal possession, use, distribution, manufacture and trafficking of controlled dangerous substances[.]" According to the State, when the Toshiba laptop was seized at the residence, the police were not sure if it contained such information.

As the trial judge found, the Toshiba laptop fell within the scope of the warrant. The police were at the residence looking for information for the drug investigation. They appropriately seized an electronic device, pursuant to the warrant, that could have contained documents or records about narcotics distribution at the residence. Specifically, the police seized two laptops from the residence: the black Toshiba laptop from the gas station and a gray Toshiba laptop.

Defendants contend that the police must have known the black laptop did not contain drug-related information, because the Operational Plan anticipated that the premises might also contain evidence from the robbery. However, as defendants acknowledged at the suppression hearing, it was not immediately evident that

the black laptop was the same laptop taken from the gas station, as its color and model were not unique. As one defense counsel argued, "[t]here are probably hundreds or thousands of them in [S]outh Jersey that are similar to this computer." The laptop's connection to the robbery was not confirmed until its contents were examined with the authorization of the CDW, which defendants have not challenged.

Even if the police had immediately recognized the item as the laptop stolen in the robbery, as defendants assert, the police could have properly seized it under the search warrant. The search of the residence took place two months after the robbery. The participants in the drug trade could have used the laptop in the interim to keep records. Although the screen on the laptop was cracked, nothing in the record indicates when that crack occurred, or whether the laptop was inoperable for any amount of time after it was stolen. The police therefore could not have known if the laptop was used after the robbery for drug purposes. They were authorized to seize it to investigate that distinct possibility.

We reject defendants' claims that the search warrant represented a "subterfuge" for seizing the laptop simply because the Operational Plan noted the possibility that the premises might also contain evidence relating to the robbery. That potential evidential bonus to law enforcement does not undermine the

legitimacy of the warrant. The search warrant was independently and amply justified by the supporting affidavit, which detailed reasons why the police believed the residence would contain evidence of illegal narcotics activity. The subjective intent of police officers in executing a valid warrant is generally irrelevant, as our Supreme Court first recognized in State v. Bruzzese, 94 N.J. 210, 219-20 (1983), cert. denied, 465 U.S. 1030, 104 S. Ct. 1295, 79 L. Ed. 2d 695 (1984). See also State v. Bacome, ___ N.J. ___, ___ (2017) (reiterating this principle).

The trial court denied defendants' request for a Franks hearing to question the propriety of the affidavit presented to obtain the search warrant. The United States Supreme Court in Franks provided an avenue for relief to criminal defendants in instances where the government applies for a search warrant based on an affidavit that knowingly or recklessly contains a material misrepresentation, or knowingly or recklessly omits material information in a misleading fashion. Franks, supra, 438 U.S. at 155-56, 98 S. Ct. at 2676, 57 L. Ed. 2d at 672. See also State v. Howery, 80 N.J. 563, 567 (1979).

We agree with the trial court's observation that here there are no indicia of "deliberate falsehood or . . . reckless disregard for the truth" or "internal wrongdoing" by the police in providing the affidavit. The affidavit was supported by probable cause,

given the number of controlled drug sales associated with the premises. The possible nexus of the residence to the perpetrators who were involved in the robbery was not essential, and the omission of that possibility from the affidavit does not undermine the sufficient grounds for the warrant.

We discern no practical purpose that would be served by remanding the matter now, post-trial, for a Franks hearing. Moreover, the State's evidential use in the robbery case of the laptop seized pursuant to the narcotics-related warrant would likely be permissible in any event under the inevitable discovery doctrine. See State v. Finesmith, 406 N.J. Super. 510, 522-23 (App. Div. 2009). Once the laptop was seized and a CDW was separately obtained to review its contents, it is likely the police would have realized the laptop's connection to the gas station robbery.

In sum, the trial court's denial of the suppression motion and defendants' request for a Franks hearing was sound and consistent with the law. We affirm those determinations.

B.

Ruiz-Negron argues that he was entitled to a new trial because of the dismissal of Juror #5 shortly after the trial began. We disagree.

After opening arguments and a portion of the testimony of the police sergeant who was the State's first witness, Juror #5 asked to speak with the judge. She disclosed that she recognized in the audience a person that might be a girlfriend of one of the defendants, and whom she might have met at a party.

Over the objection of defense counsel, who argued that Juror #5's information was innocuous and did not taint her, the judge dismissed her. The judge found no need to question the other jurors about the subject. However, the judge did issue curative instructions to the jury immediately after Juror #5 was dismissed. The judge cautioned the jurors that they should not speculate on why the other juror was excused, and should not speak to anyone or form any opinions about the incident.

The trial judge acted reasonably under the circumstances and did not misapply his authority in refraining from interviewing the other jurors about Juror #5's revelation or granting the drastic measure of a mistrial. In instances of a juror's removal, "the decision to voir dire individually the other members of the jury best remains a matter for the sound discretion of the trial court." State v. R.D., 169 N.J. 551, 561 (2001). The application of an abuse of discretion standard in such cases "respects the trial court's unique perspective." Id. at 559.

Here, the judge did not abuse his discretion in choosing not to voir dire the remaining jurors, as the trial had barely started. There was no recess involving all of the jurors after Juror #5's spontaneous request to and questioning by the court. Hence, the other jurors had no opportunity to speak with Juror #5 in the jury room after she was excused. There is no proof that she had raised the subject with them beforehand.

The judge's curative instructions were swift and clear, and we must presume the jurors obeyed them. See State v. Ross, 218 N.J. 130, 152 (2014). No "manifest injustice" occurred to compel a mistrial. State v. Harvey, 151 N.J. 117, 205 (1997), cert. denied, 528 U.S. 1085, 120 S. Ct. 811, 145 L. Ed. 2d 683 (2000).

The circumstances here are markedly distinguishable from the case relied upon by the defense, State v. Wormley, 305 N.J. Super. 57 (App. Div. 1997), certif. denied, 154 N.J. 607 (1998). In Wormley, a juror in a criminal case revealed mid-trial that the victim was her former co-worker, that the victim had spoken to her about the case, that she had seen another State witness in the "vicinity" of the crime scene, and that she had also "heard things" about the case because she resided in the area. Id. at 68.

Given those multiple and potent sources of potential prejudice, and the realistic possibility that the other jurors could have been affected while serving with the tainted juror for

several days, we concluded that the trial judge in Wormley should have conducted a voir dire of the entire jury. Id. at 70. No such imperative existed here. Hence, we affirm the trial judge's handling of the that spontaneously arose concerning with Juror #5.

C.

Garcia and Ruiz-Perez argue that the hearsay rules were violated and their rights under the Confrontation Clause were transgressed by two separate incidents during the trial.

First, the trial court admitted, over objection, the gas station attendant's out-of-court statement to the investigating police officer, Mark Siino, describing what had occurred. The statement was made approximately twelve minutes after the robbery. The court found that the statement was an admissible excited utterance under N.J.R.E. 803(c)(2).

We agree with the trial court's ruling. There was not sufficient time for the declarant victim to deliberate or fabricate. The State provided an ample foundation that the victim, who had been injured during the robbery, was still under the stress of a startling event. See N.J.R.E. 803(c)(2); State v. Buda, 195 N.J. 278, 297-98 (2008) (holding that a declarant's statements about the defendant's assaultive conduct satisfied the excited utterance exception, because the declarant was still under the stress of a startling event hours later without having a realistic

opportunity to deliberate or fabricate); see also State v. Lazarchick, 314 N.J. Super. 500, 522 (App. Div.), certif. denied, 157 N.J. 546 (1998) (holding that a statement by an assault victim nearly one hour after the incident while he was still bleeding and injured was admissible as an excited utterance).

Although defense counsel did not explicitly raise the Confrontation Clause in objecting to the admission of the attendant's statement to Officer Siino, the trial court had no constitutional obligation to exclude the statement even if such denial of confrontation rights had been asserted. The attendant's statement to the responding officer was not "testimonial" within the meaning of the Confrontation Clause as interpreted by the United States Supreme Court in Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004), and its progeny.

The circumstances here are akin to those in Michigan v. Bryant, 562 U.S. 344, 131 S. Ct. 1143, 179 L. Ed. 2d 93 (2011), in which the Court deemed non-testimonial certain statements made by a shooting victim to police officers while he was on the ground and wounded. In finding the statement non-testimonial, the Court noted that an "objective analysis of the circumstances of an encounter" under the Confrontation Clause must include whether the statement was made "at or near the scene of the crime versus at a police station, during an ongoing emergency or afterwards[.]" Id.

at 360, 131 S. Ct. at 1156, 179 L. Ed. 2d at 108. The Court noted that the non-testimonial nature of the victim's statement in Bryant was supported by the fact that a gun was involved and "[a]t no point during the questioning did either [the victim] or police know the location of the shooter." Id. at 373-74, 131 S. Ct. at 1164, 179 L. Ed. 2d at 117.

The elements of the emergency doctrine are likewise present in this case. The victim was still at the crime scene, wounded, and emotionally upset. The police did not know where the armed robbers had gone, or the location of the gun used to threaten and strike the attendant. There is ample reason to consider the dynamic situation one of an ongoing emergency.

Even assuming, for the sake of argument, that the attendant's statement to Officer Siino should have been excluded, its admission was harmless in light of the State's other evidence of guilt. The surveillance video, although it does not identify the robbers, establishes the sequence of events at the gas station, which comprised the majority of the attendant's hearsay statement. The identities of the robbers were supported, albeit not with perfect descriptive precision, by other evidence presented at the trial.

Defendants were linked to the robbery by testimony concerning the unexplained presence at the Woodbine dwelling of the laptop stolen from the gas station. The singular admission of the

attendant's excited utterance, when considered in context, is insufficient to compel a new trial in light of the prosecutor's case as a whole. See State v. Sterling, 215 N.J. 65, 101-02 (2013).

The second hearsay-related issue raised by Garcia and Ruiz-Perez concerns a brief reference during Police Detective Devine's testimony that alluded to information the detective had received from a confidential informant. However, before the detective elaborated on the point and he divulged any substance, defense counsel interposed an objection, which the judge rightly sustained. The detective consequently did not answer the pending question, and the prosecutor moved onto other topics.

We discern no violation of the hearsay doctrine or the principles of State v. Bankston, 63 N.J. 263, 268 (1973) arising from this event. The police witness did not divulge what the confidential informant had said to him. The court's immediate intervention upon objection prevented any improper disclosure of substance.

D.

All three defendants argue that the court improperly admitted "other-crime" evidence in violation of N.J.R.E. 404(b), without conducting an analysis of the factors under State v. Cofield, 127

N.J. 328 (1992) or an evidentiary hearing under N.J.R.E. 104. This argument has no merit.

The proofs in question on this issue concern defendants' alleged prior involvement in drug distribution. However, the court sustained an objection by counsel to this proof, and it was not admitted into evidence. No Cofield analysis or Rule 104 hearing was therefore needed. The judge also immediately issued a curative instruction, which we presume was followed by the jurors. State v. Martini, 187 N.J. 469, 477 (2006), cert. denied, 549 U.S. 1223, 127 S. Ct. 1285, 167 L. Ed. 2d 104 (2007).

Garcia also argues that he received an unfair trial based on various references during the case to the arrest and search warrants. Because this was not objected to at the time of trial, we apply a plain error standard of review to this newly-raised argument. R. 2:10-2; see also State v. Macon, 57 N.J. 325, 336 (1971). Under that standard, "we must disregard any error unless it is clearly capable of producing an unjust result. Reversal of defendant's conviction is required only if there was error sufficient to raise a reasonable doubt as to whether [it] led the jury to a result it otherwise might not have reached." State v. Atwater, 400 N.J. Super. 319, 336 (App. Div. 2008) (internal citations and quotations omitted).

We perceive no such plain error warranting reversal on this issue. Although a police officer testifying for the State, without objection, did refer at times to the search warrant for the premises where the stolen laptop was found, and the CDW that allowed the contents of the laptop to be inspected, those occasional references were inadequate to deprive Garcia of a fair trial.

The situation here is distinguishable from the more extreme circumstances presented in State v. Milton, 255 N.J. Super. 514 (App. Div. 1992) and State v. Alvarez, 318 N.J. Super. 137 (App. Div. 1999), which Garcia relies upon in his brief. In Milton, the State elicited testimony from an investigator divulging a warrant that had been issued for the search of the defendant's person. Milton, supra, 255 N.J. Super. at 517-19. In Alvarez, supra, 318 N.J. Super. at 148, the prosecution made "repetitive references" to an arrest warrant issued for defendant and a related warrant to search his premises. In the present case, the testifying officer alluded to the warrant for the search of the Woodbine premises generally. There was no reference to any warrant to search Garcia himself, as no such warrant existed. More importantly, the defendant's trial counsel in Milton objected to the references following the prosecutor's opening statement. See supra, 255 N.J. Super. at 519.

Although Officer Devine did briefly allude to the court's finding of probable cause, the lack of objection to his passing remark by defense counsel is indicative of the absence of any significant perceived prejudice. See State v. Timmendequas, 161 N.J. 515, 576 (1999) (citing State v. Irving, 114 N.J. 427, 444 (1989)). The prosecutor here did not comment on the warrants, nor about probable cause, in his summation. In sum, we find no plain error or any reason to set aside Garcia's conviction on this basis.

E.

Garcia separately contends the judge improperly vouched for the credibility of two civilian witnesses, Luis Montalvo Rodriguez and Michelle Serrano, by noting to the jurors that those witnesses had not been promised anything by the State. The pertinent background is as follows.

Montalvo testified that he had overheard a conversation among the defendants after the robbery in which they discussed having taken about $70, a bag of change, and a computer. He also testified that he had previously seen a laptop, which Ruiz-Perez brought to his house after the robbery. Serrano testified that she had received a call from Ruiz-Perez after the robbery, asking to borrow her truck. She offered to give him a ride and, while in the car, heard Ruiz-Negron and Ruiz-Perez discuss the robbery.

Defense counsel requested that these two witnesses be advised by the court of their rights against self-incrimination. The judge declined to do so, but clarified to the jurors that no immunity had been granted and no promises by the State had been made. Defense counsel did not object to these instructions.

Although the court's instructions may not have been necessary, Garcia has not demonstrated that they had the clear capacity to produce an unjust result. Macon, supra, 57 N.J. at 336. We reject Garcia's claim that the trial judge prejudicially "vouched for" the witnesses' credibility. The judge only stated a fact that had been triggered by defendants' own action in raising the subject matter of the voluntariness of the witnesses' testimony. The judge accurately stated that the witnesses had been provided with immunity and that Montalvo had criminal charges pending against him. The judge did not go further than that.

The possibility that these witnesses could face criminal exposure conceivably could cut both ways, either as an incentive for them to be truthful when called by the State or, conversely, as biased witnesses who had a motive to placate the prosecution's desire to prove defendants' guilt. In fact, in closing argument, defense counsel portrayed both Montalvo and Serrano as witnesses who should not be believed. No plain error occurred even if the court's instruction was gratuitous.

F.

Ruiz-Perez argues that he was entitled to a new trial because the trial court should have declared a mistrial, sua sponte, when Officer Devine mentioned Ruiz-Perez's attempt to elude arrest. His trial counsel objected to the testimony, arguing that the officer's statement that defendant "ran from the scene and was arrested" was unduly prejudicial. The court sustained the objection and gave an appropriate curative instruction. No mistrial was requested. We agree that any potential prejudice was adequately addressed.

G.

All three defendants argue that the court should have conducted a hearing after a deliberating juror, Juror #12, expressed misgivings about his guilty vote on the substantive charges before the trial proceeded into the next phase on "certain person" charges. The juror reported that, although no one rushed him, he felt rushed to vote on the case without additional time, and had second thoughts after the court recessed. The judge interviewed the other jurors after this disclosure, and concluded that there was no basis to set aside the verdict.

Juror #12 did not express his doubts to the court until the day after the jury was polled when each juror had verified his or her votes of guilty. The judge specifically asked Juror #12,

"when you left here yesterday, at 4:45 [p.m.], you were confident with your verdict and your answer to me that it was unanimous?" The juror responded, "At the time." The judge then followed up by asking, "Did you have those same concerns prior to 4:45 yesterday afternoon?" Juror #12 responded, "No." This exchange makes clear that Juror #12 freely joined in the unanimous guilty verdict, as shown through the jury polling.

Defendants argues that the verdict was not "final" on the day after the jurors were polled because the case was then scheduled to proceed into a second phase on the certain-persons charges. We agree with the State that the reported verdict on the other counts the previous day was indeed "final" for purposes of this issue. See, e.g., United States v. Marinari, 32 F.3d 1209, 1213 (7th Cir. 1994), (holding that, "[w]here a poll is taken, the verdict becomes final and 'recorded,' when the twelfth juror's assent to that verdict is made on the record."). Marinari sensibly underscores the "practical reason" why the finality of a verdict occurs when the jurors are separated, noting that "[i]t is from that time that the jurors are exposed to outside contacts." Id. at 1214 (internal citations omitted).

Here, the jurors had left the courthouse with instructions to "return back for tomorrow" for a planned second phase of the

trial.[1] The jurors received no instructions from the court after delivering the verdict about refraining from discussions about the case or verdict with outsiders or reading external materials. In fact, Juror #12 admitted that he had spoken his mother the previous night, which apparently caused him to further doubt his decision. The dispersal of the jurors signifies that the jury was effectively discharged as to those adjudicated counts of the indictment. Even though the jury was to return the next day for the certain-persons offenses, the verdict on the other charges was final after the jury was polled and released for the day. Juror #12's after-the-fact misgivings are insufficient to require the reported verdict to be disturbed. We consequently affirm the trial court's denial of relief.

H.

Defendants all contend that the verdict was against the weight of the evidence. We disagree. Although the gas station attendant did not testify and substantial components of the State's case were circumstantial, there is a reasonable basis to support the jury's findings of guilt, particularly the seized laptop that culpably linked defendants to the robbery.

[1] As we have already noted, the State ultimately chose to forego the second phase.

Defendants have not demonstrated that the record "clearly and convincingly" reflects a miscarriage of justice, affording, as we must, all reasonable inferences to the State's proofs. R. 3:20-1; State v. Sims, 65 N.J. 359, 373-74 (1974).

I.

Lastly, we turn to sentencing issues. The defense objects to the trial court's imposition of a second extended term for the weapons offenses in addition to the extended terms imposed for the robbery convictions. The State concedes that the imposition of such a second extended term was illegal and that these matters must be remanded for resentencing to correct the error. See N.J.S.A. 2C:44-5(a) (stating "[n]ot more than one sentence for an extended term shall be imposed."). See also State v. Bull, ___ N.J. ___ (2017) (applying this prohibition). On remand, the State may designate the offense to which a single extended term should apply.

Apart from this conceded error, defendants all argue that their common thirty-five-year sentences were plainly excessive. We disagree. We are satisfied that the sentencing court appropriately considered and weighed the pertinent aggravating and mitigating factors for each defendant in accordance with the statutes and case law. See, e.g., State v. Case, 220 N.J. 49, 65 (2014); State v. Fuentes, 217 N.J. 57, 73 (2014). In addition,

all of the defendants have criminal records that qualify them as persistent offenders eligible for extended terms. See N.J.S.A. 2C:44-3(a).

Applying our limited scope of review, we decline to second-guess the trial court's analysis of the aggravating and mitigating factors and its imposition of lengthy prison terms for this violent crime involving a weapon and the use of force. See State v. Bieniek, 200 N.J. 601, 612 (2010) (instructing appellate courts to refrain from "second-guessing" discretionary sentencing decisions that do not shock the judicial conscience).

J.

All other arguments raised by defendants, individually and collectively, lack sufficient merit to warrant discussion. R. 2:11-3(e)(2).

Affirmed as to defendants' convictions. Remanded for resentencing to correct the multiple extended-term sentences that were improperly imposed.