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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3693-15T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MELVIN Q. ROUSE,

Defendant-Appellant.

Submitted September 14, 2017 — Decided October 3, 2017

Before Judges Alvarez and Nugent.

On appeal from the Superior Court of New
Jersey, Law Division, Hudson County, Docket
No. 14-08-1402.

Joseph E. Krakora, Public Defender,
attorney for appellant (Rebecca Gindi,
Assistant Deputy Public Defender, of
counsel and on the brief).

Esther Suarez, Hudson County Prosecutor,
attorney for respondent (Kerry J. Salkin,
Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Melvin Q. Rouse entered a guilty plea to an
amended charge of second-degree robbery, N.J.S.A. 2C:15-1, after
his motion to suppress an out-of-court identification was

denied. On March 11, 2016, the trial court sentenced him to five years of drug court probation and imposed appropriate fines, penalties, and assessments. Defendant now appeals, alleging that the victim's show-up identification was impermissibly suggestive and unreliable. We affirm.

While in Jersey City, Peter Vincent was robbed on May 8, 2014. One of the assailants, wielding a tire iron, struck him on the head, causing injury. Earlier that night, Susan Wecht had been robbed in a similar fashion in the same area. The perpetrators were seen traveling in a black truck, with an attached rear bicycle rack.

Detective Mark D'Ambrosio testified at the Wade¹ hearing that an ambulance transported Vincent to a location where six occupants of a truck similar to that described by the victims had been detained within minutes of the second robbery. A third person, not Wecht or Vincent, identified the vehicle, but not the occupants. D'Ambrosio stated that the show-ups were illuminated by a street light and a police vehicle overhead light.

Vincent remained in the ambulance while shown the six suspects, including defendant, from a distance of about

¹ United States v. Wade, 388 U.S. 218, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 (1967).

seventeen feet. Vincent is Caucasian, while the occupants of the vehicle are African-American.

Before the show up, D'Ambrosio told Vincent that the persons he would be seeing "may or may not" be the perpetrators. D'Ambrosio completed a "Show-Up Identification Procedures Worksheet" only for the three persons Vincent identified, including defendant, and not for the three persons Vincent did not recognize. D'Ambrosio did not recall asking Vincent while at the scene about his level of confidence, although he remembered that Vincent's positive identifications were made within seconds of seeing the suspects.

D'Ambrosio witnessed Wecht's similar identification process. She was seated in the rear of a police car approximately ninety to one hundred feet from the ambulance, and only identified a female perpetrator. The two victims had no contact with each other. Given the angle of the ambulance, D'Ambrosio did not believe it was possible for Vincent to have seen Wecht identify anyone.

After the show-up, Vincent received medical attention at a hospital emergency room, including stitches to close his head wound. Approximately two hours later, he was taken to the police station where D'Ambrosio videotaped his statement and showed him

two tire irons. During the interview, Vincent said he was one-hundred percent confident in his identifications.

One of defendant's investigators testified that he also interviewed Vincent. His notes indicated that Vincent stated he could not recognize the suspect's facial features because of the poor lighting conditions, and that only three persons were shown to him, not all six occupants of the vehicle. Vincent said police brought "them all out[,]" which the investigator interpreted as meaning that the suspects were shown to Vincent as a group, not individually.

The judge found D'Ambrosio credible. Accounting for system and estimator variables as defined in State v. Henderson, 208 N.J. 208, 248-72 (2011), he also found the identification to be reliable. The judge further opined that D'Ambrosio's documentation sufficiently complied with the Attorney General Guidelines as well as Rule 3:11. See Office of the Attorney Gen., N.J. Dep't of Law and Pub. Safety, Attorney Gen. Guidelines for Preparing and Conducting Photo and Live Lineup Identification Procedures 1 (2001). Therefore, he held that defendant failed to meet his burden to demonstrate that there was a very substantial likelihood of irreparable injury and denied the motion.

On appeal, defendant raises the following points:

POINT I

THE STATE FAILED TO PROVIDE THE COURT WITH EVIDENCE NECESSARY TO DETERMINE RELIABILITY BECAUSE THE OFFICER WHO CONDUCTED THE SHOW-UP IDENTIFICATION FAILED TO RECORD ANY OF THE SALIENT DETAILS OF THE IDENTIFICATION IN VIOLATION OF DELGADO, RULE 3:11 AND THE ATTORNEY GENERAL'S GUIDELINES. AS A RESULT, THE IDENTIFICATION SHOULD BE SUPPRESSED. []

POINT II

ALTERNATIVELY, THE COURT ERRED BY DENYING THE MOTION TO SUPPRESS THE IDENTIFICATION BECAUSE THE OUT-OF-COURT IDENTIFICATION PRESENTED A VERY SUBSTANTIAL LIKELIHOOD OF IRREPARABLE MISIDENTIFICATION. []

A. The Court's Decision Not To Suppress The Identification Was Based On Factual Findings Unsupported By The Record.

B. P.V.'s Out-of-Court Identification Was Tainted by a Number of Estimator Variables Casting Substantial Doubt Upon the Reliability of His Identification of Mr. Rouse.

We defer to the trial court's findings of fact, so long as they are supported by sufficient credible evidence in the record. State v. Johnson, 42 N.J. 146, 162 (1964). We also defer to the trial court's credibility findings. State v. Cerefice, 335 N.J. Super. 374, 383 (App. Div. 2000).

In Delgado, the Court required law enforcement officers to create "a written record detailing the out-of-court identification procedure," as well as a written record of "the

dialogue between the witness and the interlocutor, and the results." State v. Delgado, 188 N.J. 48, 63 (2006). After Delgado, Rule 3:11 was adopted, which made admissibility of an out-of-court identification contingent upon the existence of a written record of the identification procedure. R. 3:11(a). The rule specifies the details to be documented, including the "dialogue between the witness and the officer," and the "witness' statement of confidence." R. 3:11(c); Accord Guidelines, supra, N.J. Dep't of Law and Pub. Safety at 6.

Only after a Wade hearing can a court determine from the totality of the circumstances if a legitimately challenged identification is nonetheless reliable and admissible. Henderson, supra, 208 N.J. at 238-39. Contrary to defendant's contention on appeal, however, the State did provide adequate evidence establishing the reliability of the identification.

Here, a sufficient written record was created of the salient details of the show-up as required by Delgado, Rule 3:11, and the Attorney General Guidelines. D'Ambrosio's recall of the circumstances was imperfect, but the judge found him to be a credible witness.

Vincent identified the suspects approximately ten to forty minutes after the incident, well within Henderson's two-hour timeline, which has the acknowledged "benefit of fresh memory."

Supra, 208 N.J. at 259. D'Ambrosio told Vincent that the persons he was going to be shown "may or may not" be the culprits. This too contributes to the identification's reliability. See Henderson, supra, 208 N.J. at 261. Although Wecht and Vincent were shown the suspects while ninety-five to one-hundred feet from each other, they had no contact, could not hear each other, and Vincent had no sight line to Wecht's identification. We therefore agree with the trial court that the combination of D'Ambrosio's testimony and his written reports adequately established reliability. The out-of-court identification was properly ruled admissible.

Defendant also contends that the judge made factual findings unsupported by the record. We do not agree.

D'Ambrosio testified that Vincent was shown the suspects one-by-one, and could not have seen Wecht's identification from his location. The investigator's testimony did not even contradict this, as Vincent's words were ambiguous. The investigator said that Vincent reported that the suspects were all brought out, but that does not necessarily mean he meant they were brought out as a group as the investigator concluded. It is equally plausible that Vincent meant only that he saw all six of the truck's occupants. Although the lighting conditions were


less than ideal, they included street lights and a police overhead light.

It is undisputed that while at the station, Vincent was shown two tire irons before he was asked the degree of his confidence in the identification. This was inconsequential. When initially shown the suspects, Vincent identified only three of the six, and did so within seconds.

Nor do we agree with defendant that the estimator variables, particularly racial bias, stress, and weapon focus, reduce the reliability of the identification in this case. See Henderson, supra, 208 N.J. at 218, 261, 267. The record does not support the argument. Just enumerating the factors that can have an impact on an identification does not make it unreliable. Accordingly, we consider the judge's denial of the motion to have been proper.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION