

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2123-16T3

STATE IN THE INTEREST
OF J.F., a juvenile.

Submitted March 21, 2018 – Decided April 20, 2018

Before Judges Fuentes and Koblitz.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Monmouth
County, Docket Nos. FJ-13-1098-16, FJ-13-
1164-16 and FJ-13-0309-17.

Joseph E. Krakora, Public Defender, attorney
for appellant J.F. (Alison Perrone, Designated
Counsel, on the brief).

Christopher J. Gramiccioni, Monmouth County
Prosecutor, attorney for respondent State of
New Jersey (Mary R. Juliano, Assistant
Prosecutor, of counsel and on the brief).

PER CURIAM

J.F. appeals from the November 28, 2016 adjudication of
delinquency for behavior which, if committed by an adult, would
constitute fourth-degree possession of a firearm by a minor,
N.J.S.A. 2C:58-6.1(b) (Count Two), and fourth-degree criminal

trespass, N.J.S.A. 2C:18-3(a) (Count Three). He was found not to have committed second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1) (Count One). J.F. argues the evidence was insufficient to establish his guilt beyond a reasonable doubt.¹ We disagree and affirm.

At the adjudication hearing, seventeen-year-old K.Y. testified she left school with her friend, K.M., at around 2:30 p.m. on January 22, 2016, to meet with "Jo-Jo" and J.F. at a local restaurant. The group of friends then went to the Rug Mill Apartment Complex (Rug Mill) to "hang out." No one in the group lived in Rug Mill. K.Y. explained that the group entered Rug Mill by walking through an unlocked door and then through a second, locked door by fiddling with the top of the door until it popped open. They then went up to the fifth floor stairwell.

While the group was in the stairwell, K.M. asked to see Jo-Jo's "strap," or gun. Jo-Jo's jacket was hanging on the stairwell. J.F. took a handgun from Jo-Jo's left jacket pocket, put the safety

¹ The court sentenced J.F. to eighteen months in the Juvenile Intensive Supervision Program (JISP) with a one-year suspended sentence on this adjudication. The court also sentenced J.F. to a concurrent eighteen-month term of JISP with a two-year suspended sentence for a violation of probation on Juvenile Complaint FJ-13-1164-16. Additionally, J.F. pled guilty to behavior that, if committed by an adult, would constitute third-degree theft and was sentenced to a concurrent eighteen-month term of JISP with a two-year suspended sentence on Juvenile Complaint FJ-13-0309-17.

on, took the bullets out and then asked Jo-Jo to take out a bullet from the chamber of the handgun. J.F. then handed the handgun to K.M., who wanted to see it. The group left Rug Mill around 4:30 p.m. with the handgun in Jo-Jo's left jacket pocket, after J.F. put the gun back.

The State introduced three photographs and "Snapchat" videos that showed K.M. holding the handgun, as K.Y. described. The State also submitted photographic evidence showing K.M. and J.F. standing in the stairwell without the handgun. Additionally, the State submitted a cell phone video taken in the stairwell by K.Y., showing herself and the others with the handgun. Although the building had surveillance video of the entryway and elevators, no video evidence was introduced depicting the group entering the building or the elevators, or leaving Rug Mill.²

On appeal, J.F. raises the following issue:

THE ADJUDICATION OF DELINQUENCY MUST BE
REVERSED BECAUSE THE EVIDENCE DID NOT
ESTABLISH THE JUVENILE'S GUILT BEYOND A
REASONABLE DOUBT.

A person under the age of eighteen years who possesses, carries, fires or uses a firearm is guilty of a fourth-degree crime. N.J.S.A. 2C:58-6.1(b) and (c). A person who enters or

² Testimony concerning an assault on another juvenile was also presented, but is irrelevant to this appeal.

secretly remains in a dwelling and knows he or she is not licensed or privileged to do so is guilty of a fourth-degree crime. N.J.S.A. 2C:18-3(a). To prove criminal trespass, the State must prove both that a defendant "knowingly enter[ed] or remain[ed] without authorization" and "that the 'entry or remaining' occur[red] in a 'structure.'" State v. Braxton, 330 N.J. Super. 561, 566 (App. Div. 2000) (quoting State In re L.E.W., 239 N.J. Super. 65, 70 (App. Div. 1990)). A structure is, among other things, a building, room, or "any place adapted for overnight accommodation of persons." N.J.S.A. 2C:18-1.

Certain general principles apply. No state shall deprive any person of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; See N.J. Const. art. I, ¶ 1. "No person may be convicted of an offense unless each element of such offense is proved beyond a reasonable doubt. In the absence of such proof, the innocence of the defendant is assumed." N.J.S.A. 2C:1-13(a). Juveniles charged with acts of delinquency have many of the same due process rights as a criminal defendant. See State In re A.R., 447 N.J. Super. 485, 507 (App. Div. 2016) (noting that "juveniles charged with offenses that would be crimes if they had been committed by adults" have equal rights to a fair trial). Among these rights afforded to juveniles is the right to require

the State to prove every element of an offense beyond a reasonable doubt. State In re J.G., 151 N.J. 565, 593-94 (1997).

J.F. argues the record in this case does not contain sufficient credible evidence to support the trial court's determinations. J.F. points out that he made no statements incriminating himself and no physical evidence linked J.F. to the handgun. None of the photos submitted into evidence show J.F. with the handgun. Although the Rug Mill building had surveillance video of the entryway and stairwells, no video existed showing J.F. or the others in the group entering the building, in the building and stairwells, or exiting the building.

To prove the handgun charge beyond a reasonable doubt, the State had to prove that J.F. was a minor at the time of the incident, that the "strap" in the photos and referred to in K.Y.'s testimony was indeed a firearm, and that J.F. possessed that firearm. N.J.S.A. 2C:58-6.1(b). The trial court found J.F. was indeed a minor at the time of the incident based on his undisputed date of birth on the juvenile delinquency complaint. In finding the gun was real, the court noted the handgun's appearance and the fact that K.Y. testified to J.F.'s removal of the bullets from the gun.

Lastly, the State had to prove J.F. "possessed" the handgun. "[C]riminal possession signifies 'intentional control and

dominion, the ability to affect physically and care for the item during a span of time, accompanied by knowledge of its character.'" State v. Scott, 398 N.J. Super. 142, 150-51 (App. Div. 2006) (quoting State v. Brown, 80 N.J. 587, 597 (1979)). Proof of ownership of the item is not necessary; possession may be actual or constructive, exclusive or "jointly exercised by two or more persons," and may be proven by direct or circumstantial evidence. Id. at 151 (quoting State v. Rajnai, 132 N.J. Super. 530, 536 (App. Div. 1975)).

K.Y. testified that J.F. took the handgun from a jacket pocket, put the safety on, took the bullets out and handed it to K.M. When the group left the Rug Mill, K.Y. testified that J.F. put the handgun back in Jo-Jo's pocket. The trial court found K.Y.'s testimony credible and found the photographic evidence corroborated K.Y.'s testimony. Although the handgun was in Jo-Jo's jacket pocket, J.F. exercised "intentional control and dominion" over the handgun. Scott, 398 N.J. Super. at 150-51. Additionally, the fact that the handgun was in Jo-Jo's pocket does not disprove J.F.'s possession of the handgun because possession may be "jointly exercised by two or more persons." Id. at 151.

The trial court also adjudicated J.F. delinquent for criminal trespass under N.J.S.A. 2C:18-3(a). To prove the violation, the State had to show beyond a reasonable doubt that J.F. entered the

Rug Mill apartment building knowing he was not authorized to do so. N.J.S.A. 2C:18-3(a). K.Y. testified none of the juveniles lived in Rug Mill and access was obtained by gaining entry through a locked door. The court found that Rug Mill was an apartment building, making it a dwelling under N.J.S.A. 2C:18-1 and N.J.S.A. 2C:18-3. The court also found J.F. was not privileged to be in the building, as he did not live there and did not receive permission from anyone to be in the building.

J.F. argues that the State's evidence was circumstantial and thus did not prove the charges beyond a reasonable doubt. A trial court may, however, find the State proved its case beyond a reasonable doubt with purely circumstantial evidence, because "[c]ircumstantial evidence may be 'more certain, satisfying and persuasive than direct evidence.'" State v. Thomas, 256 N.J. Super. 563, 570 (App. Div. 1992) (quoting State v. Dancyger, 29 N.J. 76, 84 (1959)). The evidence proffered by K.Y., however, was direct evidence that J.F. trespassed and possessed the gun. K.Y.'s testimony was "evidence that directly proves a fact, without an inference, and which in itself, if true, conclusively establishes that fact." Model Jury Charges (Criminal), "Circumstantial Evidence" (rev. Jan. 11, 1993).

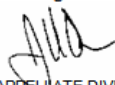
Our scope of review in juvenile delinquency cases is the same as the one applicable to any court's decision after a bench trial.

L.E.W., 239 N.J. Super. at 76. The trial court's fact findings are "binding on appeal when supported by adequate, substantial, credible evidence." State In re W.M., 364 N.J. Super. 155, 165 (App. Div. 2003). A reviewing court's deference to those findings "is especially appropriate 'when the evidence is largely testimonial and involves questions of credibility.'" N.J. Div. of Youth & Family Servs. v. C.S., 367 N.J. Super. 76, 112 (App. Div. 2004) (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)). An appellate court should "give deference to those findings of the trial judge which are substantially influenced by [the] opportunity to hear and see the witnesses and to have the 'feel' of the case." State v. Miller, 449 N.J. Super. 460, 472 (App. Div. 2017) (alteration in original) (quoting State v. Locurto, 157 N.J. 463, 471 (1999)).

The trial court provided a well-reasoned decision, although it mistakenly referred to the evidence as circumstantial. The court found K.Y.'s testimony was credible and corroborated by the photographic evidence. These factual findings are not "so clearly mistaken that the interests of justice demand intervention and correction." State v. S.S., 229 N.J. 360, 374 (2017) (quoting State v. Gamble, 218 N.J. 412, 425 (2014)).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION