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Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-4328-14T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JAMAL SPEIGHTS,

Defendant-Appellant.

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Submitted May 24, 2017 — Decided January 30, 2018

Before Judges Fuentes and Simonelli.

On appeal from Superior Court of New Jersey,  
Law Division, Union County, Indictment No.  
14-01-0046.

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

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

The opinion of the court was delivered by

FUENTES, P.J.A.D.

Defendant Jamal Speights was tried before a jury and convicted on one count of second degree robbery, N.J.S.A. 2C:15-1, and acquitted of fourth degree unlawful possession of prescription medication legend drug, N.J.S.A. 2C:35-10.5(e)(2). On March 6, 2015, the court sentenced him to a term of eight years imprisonment with an eighty-five percent period of parole ineligibility and three years of parole supervision, as mandated by the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2.

In this appeal, defendant argues the trial court erred when it denied defense counsel's application to charge the jury on the offense of receiving stolen property, N.J.S.A. 2C:20-7(a), as a lesser included offense of second degree robbery. Defendant also contends the court should have disregarded defense counsel's objections and charged the jury on accomplice liability. Finally, defendant argues the court improperly excluded evidence that showed the police officer who arrested him used excessive force and needlessly injured him, thereby demonstrating the officer's bias against him. We affirm.

At approximately 1:30 a.m. on July 27, 2013, Plainfield Police Officers Hans Noriega and Charles Martina were on patrol in a marked police car on Park Avenue heading toward Seventh Street. At this point, Officer Noriega saw a man "on his knees . . . getting assaulted by [a man] . . . I saw . . . throwing punches

downward." Noriega also saw defendant "going into the victim's pockets." Noriega "yelled out of [his police car] window, 'stop, police.'" According to Noriega, "the person who was throwing the punches downward," whom Noriega later identified as defendant, looked at the patrol car and began to run as the officers made a U-turn. Noriega testified that before defendant started to run, he saw him "drop[] what appeared to be a pill bottle." When asked what caused him to conclude the object defendant discarded was a pill bottle, Noriega responded: "Because [it was an] orange bottle with [a] white cap."

Noriega and Martina chased defendant in their patrol car as defendant ran north towards Second Street. They continued to follow defendant several streets and then doubled-back toward the direction where the assault occurred. Martina, who was driving the patrol car, put the vehicle in reverse and continued chasing defendant driving backward. As soon as the patrol car reached defendant, Noriega stepped out to apprehend him. However, defendant again fled. Noriega chased defendant on foot while calling for him to stop. Noriega testified this foot-chase continued north on Park Avenue until defendant turned right onto East Second Street and began to head east.

The pursuit ended when defendant reached a dumpster. According to Noriega:

I observed he was holding an object in his hand and at that point I told him to show me his hands so something dropped from his hands. And at that point he didn't want to comply so I threw a couple of punches towards his facial area to get him to comply and once he was on the floor I was trying to flip him over so that I can put his hands behind his back, put him in handcuffs.

Q. And then were you able to place the suspect in handcuffs?

A. Not until my partner arrived.

[Emphasis added.]

Noriega testified that the "object" defendant dropped from his hand was a black, foldable wallet that contained a sticker of the Virgin of Guadalupe, and two \$100 bills, three \$20 bills, and one \$5 bill and "maybe a couple of singles." As a result of a search of defendant's person incident to his arrest, Noriega also found a "black flip phone." Noriega testified that he never lost sight of defendant during the entire chase, both while he was in the passenger seat of the patrol car, and when he pursued him on foot.

The police transported the victim to the station where Noriega interviewed him. The victim gave a brief account of what occurred, which he characterized as a robbery. He also described the content of the wallet, including the religious sticker. The police also recovered the orange pill bottle Noriega saw defendant discard

during the foot-chase. The police took a formal statement from the victim at the Plainfield Police Station. In response to defense counsel's questions on cross-examination, Noriega testified that he wrote in his report that the victim told him "that five [b]lack males started to attack him[.]" The police returned to the victim the wallet, currency, and cellphone they seized from defendant. On cross-examination, Noriega testified he was not aware of guidelines established by the Attorney General that required police officers to retain evidence seized from a suspect in connection with the commission of a crime.

In his appellate brief, defendant concedes that Officer Martina's testimony at trial was similar to Noriega's account of events. With respect to the assault upon the victim, although Martina testified he saw "a lot of foot traffic at the time because there's several bars right in the area," he did not see anybody else hitting the victim at that time. Martina also corroborated Noriega's testimony with respect to defendant fleeing on foot once he saw the police patrol car. Martina lost "visual contact" only after defendant ran into an alley. Martina gave the following account of how the event developed:

Q. And when you pulled up and Officer Noriega alerted you to what he was seeing did you see anybody else hitting the victim?

A. No, it was just the victim and the actor.

Q. Do you know how long he had been hitting him at that time?

A. No, I do not.

Q. And approximately how long from the time that you initially saw the defendant hitting the victim were you able to place him in handcuffs?

A. Three to four minutes.

After the State rested its case, defendant called only one witness — Plainfield Police Aide Devon Irving. In response to defense counsel's question, Irving testified that police records show defendant had an open warrant for his arrest at the time he was transported to the police station to be processed for this offense. In her summation to the jury, defense counsel stated:

You're going to hear about flight, and certainly [the prosecutor] will say to you that Mr. Speights ran because he — that was evidence of his guilt, that that's some consciousness of guilt, that he ran from the police. Well, we heard today from Ms. Irving that there's another reason that Mr. Speights may have ran and that is because he had an open bench warrant on unrelated charges. But keep that in mind.

Against his factual backdrop, defendant now appeals raising the following arguments.

#### POINT I

THE DEFENSE REQUEST TO CHARGE THE JURY ON RECEIVING STOLEN PROPERTY AS A LESSER OFFENSE SHOULD HAVE BEEN GRANTED; ALTERNATIVELY, THE

JUDGE SHOULD NOT HAVE INSTRUCTED THE JURY ON ACCOMPLICE LIABILITY OVER DEFENSE OBJECTION.

POINT II

THE TRIAL COURT IMPROPERLY EXCLUDED EVIDENCE THAT POLICE FURTHER INJURED DEFENDANT AS PART OF THE ARREST; THAT EVIDENCE BOTH REBUTTED CLAIMS THAT DEFENDANT WAS RESISTING ARREST AND ALSO DEMONSTRATED BIAS AGAINST DEFENDANT WHICH COULD HAVE AFFECTED THE JURY'S DETERMINATION OF THE OFFICERS' CREDIBILITY.

POINT III

THE SENTENCE IMPOSED IS MANIFESTLY EXCESSIVE.

We reject these arguments and affirm. None of defendant's arguments have sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We make only the following brief comments. In argument Point I, defendant claims the trial court should have charged the jury to consider third degree receiving stolen property as defined in N.J.S.A. 2C:20-7(a), as a lesser included offense of robbery. We disagree. A trial court "'shall not charge the jury with respect to an included offense unless there is a rational basis for a verdict convicting the defendant of the included offense.'" State v. Cassady, 198 N.J. 165, 178 (2009) (quoting N.J.S.A. 2C:1-8(e)).

The Legislature defined the offense of third degree receiving stolen property as follows:

A person is guilty of theft if he knowingly receives or brings into this State movable

property of another knowing that it has been stolen, or believing that it is probably stolen. It is an affirmative defense that the property was received with purpose to restore it to the owner. "Receiving" means acquiring possession, control or title, or lending on the security of the property.

[N.J.S.A. 2C:20-7(a) (emphasis added).]

By contrast, a person commits the crime of second degree robbery "if, in the course of committing a theft, he [or she]: (1) Inflicts bodily injury or uses force upon another[.]" N.J.S.A. 2C:15-1(a)(1). The term "bodily injury" means "physical pain, illness or any impairment of physical condition[.]" N.J.S.A. 2C:11-1(a). Here, the testimony of the two police officers, who witnessed and described the assault upon the victim, indisputably stated defendant used physical force and inflicted bodily injury on the victim in the course of committing the theft of his property. There is no rational basis in this record from which a jury could find defendant "received this property" in any other manner.

Defendant's remaining arguments do not warrant further comment or discussion. R. 2:11-3(e)(2).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION