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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0738-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

BRONK H. MILLER, a/k/a
ABDUL-HALIM MUHAMMAD
ASADULLAH,

Defendant-Appellant.

Submitted February 17, 2022 – Decided May 19, 2022

Before Judges Haas and Alvarez.

On appeal from the Superior Court of New Jersey, Law
Division, Camden County, Indictment No. 16-07-1947.

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

Grace C. MacAulay, Camden County Prosecutor,
attorney for respondent (Jason Magid, Assistant
Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Bronk H. Miller was convicted by a jury of lesser-included second-degree reckless manslaughter, N.J.S.A. 2C:11-4(b)(1). The trial judge sentenced him to ten years' imprisonment, subject to the eighty-five percent parole ineligibility mandated by the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2, to run consecutive to a sentence defendant was already serving. The jury acquitted him of second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b), and second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a). Prior to sentencing, the State dismissed the final indictment count, certain persons not to possess, N.J.S.A. 2C:39-7(b). On the initial appeal, we remanded for review of a surveillance video purporting to show defendant removing a handgun from his clothing shortly before the off-camera shooting for which he was prosecuted. State v. Miller, No. A-5253-17 (App. Div. July 22, 2020) (slip op. at 2-4). We again remand, this time for a new trial.

During the State's case-in-chief, an investigating officer narrated key video footage. The individual identified as defendant on the film was partially obscured by a set-up menu when played on a computer screen. We requested the trial court conduct a hearing and make findings as to whether the video shown to the jury was similarly obscured. The judge denied defendant's motion

for a new trial after the showing, opining that the menu did not obscure the film when played on a seventy-inch screen.

Having viewed the film ourselves on a seventy-inch screen, we do not find the dark object defendant appears to be holding to be readily identifiable. Yet, as the film depicting defendant was played to the jury, the detective said defendant extracted an item in "the shape of [a] gun." This testimony was highly prejudicial. The detective narrated all the surveillance videos shown to the jury, including an earlier film in which a third party standing near defendant removed from his pants pocket a silver and black object which the detective described as "consistent with maybe the butt of . . . like a handgun." The statements were prejudicial. Additionally, the judge did not instruct the jury as to credibility in the closing charge, which may have enhanced the potential for prejudice by virtue of the detective's interpretive narration.

The shooting took place outside of a bar, beyond the surveillance camera's range. Police recognized defendant from still photos taken from the surveillance video. Clothing and sneakers that matched those of the figure on video were later identified as defendant's and were taken from his apartment.

The parties stipulated that a presumptive positive test indicated blood was present on the laces of defendant's right sneaker and the front exterior of the right leg of his pants. However, there was not enough blood for DNA testing.

The adult daughter of Lois Reyes, defendant's girlfriend, testified that defendant displayed a black and silver handgun to his friends at her sister's birthday party about two weeks prior to the shooting. The jury watched a video of that incident taken from Reyes's cell phone.

The State also introduced several wiretapped conversations in which defendant, using distinctive slang, appeared to instruct Reyes. The detective also narrated these conversations, interpreting them to be defendant's attempt to enlist Reyes to help him dispose of the gun. In one conversation, Reyes assured defendant she had wiped the prints off what he had referred to as a "hot block." The detective explained "hot block" is slang for a gun used in a shooting.

Defendant raises the following points on appeal:

POINT I

OPINION TESTIMONY BY THE LEAD DETECTIVE AS TO THE CONTENT OF SURVEILLANCE VIDEOS AND THE MEANING OF INTERCEPTED COMMUNICATIONS WAS IMPROPERLY ADMITTED AS LAY OPINION TESTIMONY, THEREBY DEPRIVING DEFENDANT OF HIS RIGHT TO DUE PROCESS AND A FAIR TRIAL.

A. The Detective's Opinion Testimony About What He Believed The Surveillance Videos Depicted Was Inadmissible.

B. The Detective's Testimony About The Meaning Of Code Words And Slang Used During The Intercepted Phone Conversations And The General Meaning Of Those Conversations Was Not Properly Admitted As Expert Or Lay Opinion Testimony.

POINT II

THE TRIAL COURT ERRED WHEN IT PERMITTED THE STATE TO INTRODUCE, AS LAY-OPINION TESTIMONY, IDENTIFICATIONS OF DEFENDANT MADE BY THREE LAW ENFORCEMENT OFFICERS FROM STILL PHOTOS.

POINT III

THE TRIAL COURT ERRED IN ADMITTING EVIDENCE ABOUT DEFENDANT'S ALLEGED PRIOR GUN POSSESSION UNDER N.J.R.E. 404(B).

POINT IV

THE TRIAL COURT'S FAILURE TO INSTRUCT THE JURY ON HOW TO EVALUATE THE CREDIBILITY OF THE WITNESSES WHO TESTIFIED AT TRIAL DENIED DEFENDANT HIS RIGHTS TO DUE PROCESS AND A FAIR TRIAL.

POINT V

DEFENDANT'S SENTENCE IS MANIFESTLY EXCESSIVE AND MUST BE REDUCED.

I.

In State v. Singh, a detective testified at trial regarding surveillance videos, twice referring to the individual depicted on the film as "the defendant," and identifying the defendant's sneakers on the film. 245 N.J. 1, 4-5 (2021). The Court limited its decision to the question of whether the detective's testimony constituted plain error. Id. at 11. The Court found that the detective's two references were fleeting and harmless error: "[t]he detective should not have referenced defendant in his summary of the surveillance footage . . . [but] that fleeting reference did not amount to plain error in light of the other evidence produced." Id. at 5. The court also found that it was permissible for the detective to state that the sneakers the suspect was wearing on the surveillance tape were similar to the defendant's "because he saw defendant wearing them on the night of his arrest." Id. at 4-5. The testimony was proper because, as N.J.R.E. 701 requires, it was "rationally based on the witness's perception and . . . such testimony help[ed] the jury." Id. at 5.

Here, the improperly admitted testimony was more problematic. The detective told the jury the virtually indiscernible object in defendant's hand was

in "the shape of [a] gun." That highly prejudicial testimony was not rationally based on his perception of the event. See N.J.R.E. 701. Rather, it was based on his perception of a film the jury could interpret for itself. The detective's testimony invaded the jury's province as factfinder.

Defendant unsuccessfully objected to the testimony, which "usurped the jury's role" in discerning the nature of the object in the video footage. See id. at 20. In this case, unlike Singh, the object at issue—the gun—was not introduced in evidence. In Singh, the jury physically had the sneakers, which they could compare to those shown in the video. Ibid. Here, in contrast, the video depicts a dark, indiscernible object. Thus, the police witness's characterization of the object, key to determining defendant's guilt, was prejudicial. In light of the fact that the jury actually acquitted defendant of other gun-related charges, and that the trial judge did not reiterate the credibility charge as part of his closing instruction, the detective's interpretation of the surveillance footage was "of such a nature as to have been clearly capable of producing an unjust result." R. 2:10-2.

The proofs in this case include: video of defendant with a silver handgun less than two weeks before the shooting; video of defendant's associate with an object that appears to be a silver handgun on the night of the shooting; video of

defendant with the victim minutes before the shooting while holding a black object; and defendant's recorded concern in conversation with his girlfriend about a "jawn," or object. In those conversations, he expressed worry he could serve life. The State never recovered the handgun. This purely circumstantial evidence may or may not have been enough to convict defendant, absent the detective's narration.

Defendant complains the detective's interpretation of the phone calls between himself and Reyes required expert qualification. We agree the detective should have been qualified as an expert before he explained the slang used during the conversations. However, the error was ultimately harmless because the officer's credentials would have been sufficient to qualify him. If he testifies again on retrial, he must be qualified as an expert before explaining slang terms.

Furthermore, the officer testified regarding language that did not require expert testimony—such as the use of the word "that" in one of defendant's telephone conversations. The officer connected it to defendant's prior use of the word "jawn." Again, defendant did not object to the failure to qualify the detective as an expert, or to the detective's comments regarding words that did

not require interpretation. Nonetheless, that harmless error can be readily corrected on retrial.

The officer's credibility became critical because he narrated the video and the slang defendant used in his conversations with Reyes. This made the inclusion of the credibility charge in the final closing instruction crucial. The omission of such an instruction is evaluated "in the context of the State's entire case against defendant" in order to determine whether an unjust result can ensue. See State v. Harris, 156 N.J. 122, 183 (1998). Here, omitting the credibility instruction became highly prejudicial in light of the nature and significance of the detective's testimony.

II.

Defendant also objects to the admission of testimony from three officers identifying defendant from still photos extracted from surveillance video. This objection lacks merit. The officers all had prior contact with defendant and said in a neutral fashion they knew him from the community. After they testified, the judge instructed the jury that their knowledge of defendant should not prejudice him in any way as police are often familiar with the residents of their community regardless of involvement in criminal activity.

The officers' testimony was proper. In State v. Sanchez, the Supreme Court held a parole officer could testify that she recognized the defendant in a surveillance video photograph, without explaining her employment or the manner in which she knew him. 247 N.J. 450, 469-77 (2021). The Supreme Court said the testimony was admissible under N.J.R.E. 701 even though the witness did not participate in the crime, witness the crime, or make the photographs or the video, because she was acquainted with the defendant, thus satisfying the first prong of the N.J.R.E. 701 test. Id. at 469. The nature of the parole officer's contacts with the defendant satisfied the second N.J.R.E. 701 prong. She had over thirty face-to-face contacts with the defendant over the course of thirty months, he had not changed his appearance, there were no other witnesses available to identify the defendant, and the quality of the photograph placed the witness in a better position than the jury to identify the defendant. Id. at 474-75.

Here, the officers all knew defendant and had interacted with him on multiple occasions. Although the record does not indicate whether defendant's appearance changed, no non-law enforcement witnesses were available to testify, and the surveillance videos were of poor quality. The judge's instruction

cured any prejudice from the officers revealing their employment. Thus, no error occurred in admitting their testimony.

III.

Defendant contends that admitting the birthday video was also prejudicial error under State v. Cofield, 127 N.J. 328 (1992); see also N.J.R.E. 404(b). We disagree.

The evidence was relevant because the State, unable to place the gun in defendant's hand at the time of the murder, needed to place a gun in his possession at some point close in time to the shooting. Defendant's access to a handgun was a highly relevant and material issue. See State v. Gillispie, 208 N.J. 59, 87-88 (2011). The evidence was clear and convincing.

While Reyes's daughter displayed hostility towards defendant, the film itself was not biased. See State v. Hernandez, 170 N.J. 106, 126-28 (2001). Furthermore, the evidence of this prior bad act was highly probative but not overly prejudicial. This was no different than the admissible testimony in Gillispie that the defendant had previously possessed a handgun. 208 N.J. at 90-92.

IV.

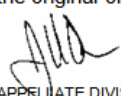
The individual errors here—the detective's interpretation of the video, the failure to qualify him as an expert before testifying about the telephone conversations, and the court's failure to give the credibility instruction as part of the final charge—have the cumulative effect of raising a doubt as to whether the trial was fair. See Sanchez-Medina, 231 N.J. at 469; see also State v. Weaver, 219 N.J. 131, 155 (2014) ("When legal errors cumulatively render a trial unfair, the Constitution requires a new trial."). We are unable to conclude these cumulative errors were harmless or that defendant's trial was fair.

V.

We do not address the issue of defendant's sentence in light of our determination that a new trial is warranted.

Reversed and remanded for a new trial.

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



CLERK OF THE APPELLATE DIVISION