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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1068-19**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

HAROLD J. MOLT, JR.,
a/k/a HAROLD A. MOLT, JR.,
HAROLD A., JR., HAROLD A.
MOLT, HAROLD AGUSTUS-JR.,
MOLT, HAROLD AGUSTUS
MOLT, HAROLD SAUGUSTUS
MOLT, and KANAKWIIIO,

Defendant-Appellant.

Argued December 12, 2022 – Decided January 12, 2023

Before Judges Whipple, Mawla and Marczyk.

On appeal from the Superior Court of New Jersey, Law
Division, Bergen County, Indictment No.17-09-1352.

Thomas P. Belsky, Assistant Deputy Public Defender,
argued the cause for appellant (Joseph E. Krakora,
Public Defender, attorney; Thomas P. Belsky, of
counsel and on the briefs).

Deepa S.Y. Jacobs, Assistant Prosecutor, argued the cause for respondent (Mark Musella, Bergen County Prosecutor, attorney; Deepa S.Y. Jacobs, of counsel and on the brief).

PER CURIAM

Defendant Harold Molt appeals from a September 6, 2019 judgment of conviction for second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a)(1); third-degree unlawful possession of weapons, N.J.S.A. 2C:39-5(c)(1); third-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(c)(2); third-degree criminal mischief, N.J.S.A. 2C:17-3(a)(1); and third-degree hindering, N.J.S.A. 2C:29-3(b)(1). We affirm the convictions and remand for a restitution hearing.

Defendant raises the following arguments:

POINT I

THE TRIAL COURT ERRED IN PERMITTING LAY OPINIONS FROM DETECTIVE [MICHAEL] GRASSI IDENTIFYING [DEFENDANT] IN THE SURVEILLANCE VIDEO AND COMPARING HIS CLOTHING AND TRUCK TO THOSE ASSOCIATED WITH THE PERPETRATOR BECAUSE THE OPINIONS WERE NOT BASED ON THE DETECTIVE'S FIRSTHAND KNOWLEDGE AND WERE NOT HELPFUL TO THE JURY.

POINT II

THE TRIAL COURT DEPRIVED [DEFENDANT] OF HIS CONSTITUTIONAL RIGHT TO PRESENT A COMPLETE DEFENSE WHEN IT ERRONEOUSLY PREVENTED HIM FROM INTRODUCING EVIDENCE THAT TWO OTHER INDIVIDUALS, WHO POSSESSED A MOTIVE TO COMMIT THE CHARGED OFFENSES, WERE ACCUSED OF VANDALIZING THE POLO CLUB'S PROPERTY THREE DAYS BEFORE THE INCIDENT IN QUESTION.

POINT III

THE CUMULATIVE EFFECT OF THE ERRORS DEPRIVED [DEFENDANT] OF HIS RIGHTS TO DUE PROCESS AND A FAIR TRIAL SUCH THAT HIS CONVICTIONS SHOULD BE REVERSED.

POINT IV

BECAUSE THE TRIAL COURT DID NOT ORDER RESTITUTION DURING [DEFENDANT]'S SENTENCING PROCEEDING[,] THIS COURT SHOULD VACATE THE RESTITUTION AMOUNT INCLUDED IN THE JUDGMENT OF CONVICTION, OR IN THE ALTERNATIVE, REMAND THE MATTER FOR A PROPER RESTITUTION HEARING.

The record informs our decision. The Polo Club, which is located in Mahwah, consists of twenty-eight homes and twenty-nine lots, housing about 150 to 200 individuals. A one-lane bridge leads into that residential community and is owned by the Polo Club. The Ramapough Nation Tribe occupies land adjacent to Polo Club property.

The Polo Club installed and maintained old-fashioned outdoor lanterns with halogen lightbulbs to illuminate the bridge during the night. The Polo Club also maintained a video surveillance system on the bridge, consisting of cameras and license plate readers. The system cost between five and ten thousand dollars to install. According to James Olivari, a Polo Club trustee and resident, the one-lane bridge is the only entrance and exit for the Polo Club. Because the bridge is just one lane wide, only one vehicle can occupy it at any given time.

Olivari testified to the fact that, when the Ramapough Nation held events, some guests parked vehicles along the bridge and road. This prevented Polo Club community residents from entering or exiting. To address this problem, Polo Club installed "No Parking" signs along the bridge and road before the events relevant to the matter under review.

On May 13, 2017, Olivari found the walkway of the bridge damaged and vandalized. Two bronze "Polo Club" signs that adorned the wall of the bridge had been removed, while other signs had been spray-painted with green paint. Some of the surveillance cameras were also spray-painted green; others had been forcibly removed. The bulbs within the old-fashioned-style lamps had also been destroyed, and shards of glass were scattered all over the bridge.

Olivari notified the Mahwah Police Department (MPD) and retrieved the surveillance footage of the bridge. Detective Michael Grassi of the MPD responded to the scene and took photographs prior to canvassing the area and interviewing the inhabitants of nearby houses.

Surveillance footage established on May 12, 2017, from approximately 10:20 p.m. to 11:37 p.m., an individual vandalized the walkway of the one-lane bridge and the old-fashioned-style lights by spray-painting video cameras and signs. He also used a loaded shotgun and a metal crowbar to destroy other property.

The individual captured on video wore a head and face covering as well as a jacket with a rectangular symbol on the left chest area with a vertical zippered pocket. Additionally, the individual wore two-tone gloves, had a "heavy" physique, and walked with a "distinctive gait," resembling a limp. Shortly before 11:14 p.m., the perpetrator can be seen on video with a prybar in his left hand and a long-barreled weapon in his right hand.

The surveillance footage also showed the individual walking across the bridge holding what appeared to be a camera with the cords hanging loose. At 11:18 p.m., the individual left the scope of the surveillance footage and headed

towards the Polo Club property. Finally, at 11:37 p.m., a pickup truck with an extended cabin and a rack on the back left the area.

Detective Grassi also reviewed earlier surveillance video, which revealed at 2:50 p.m., an extended cabin Toyota registered to defendant was near the bridge. The operator of this vehicle wore a Batman shirt, and the vehicle resembled the one leaving the bridge area in the surveillance video taken at 11:37 p.m. that night.

After Detective Grassi observed a weapon in the video surveillance, he and other officers examined the damage to the lamps at the bridge and discovered twenty-five to thirty holes on the back part of the lamp. A few days later, the MPD learned someone observed "Polo Club" signs floating in the Ramapo River.

Detective Grassi subsequently returned to the scene and observed defendant fishing near the bridge. He approached and asked defendant if he had seen or heard any information regarding the vandalism on May 12, 2017. Defendant replied "[n]o, I was not in town Friday or the weekend." Detective Grassi believed defendant was lying, given he had seen defendant's vehicle on surveillance entering the bridge's walkway at 2:50 p.m. on May 12, 2017.

Sergeant Michael Doyle of the Bergen County Sheriff's Office, Firearms and Ballistics Unit, tested a metal fragment from the damaged lamps on the bridge, determining they were discharged bullet fragments. As the investigation continued, the MPD monitored social media for possible leads and discovered defendant's Facebook posts, which consisted of pictures connecting him to the vandalism.

Detective Grassi recalled the individual seen on the surveillance video wore a jacket with markings on the left chest area; in the Facebook posts, defendant wore a "Milwaukee Tools" jacket with a collar and a rectangular marking in the left chest area. Additionally, the front of the palm and the back of the individual's gloves showed up on the surveillance tape as two different colors, and the Facebook photos showed defendant wearing gloves of two different colors or materials on the palm of the front and back. Grassi also found a YouTube video in which defendant expressed dissatisfaction with the location and wording of the "No Parking" signs.

On May 25, 2017, members of the MPD went to the Ace Hardware store in Suffern, New York, to ascertain whether defendant had patronized the store in order to procure items used to vandalize the Polo Club property. The store's surveillance showed defendant at the store at 11:26 a.m. on May 12, 2017, the

day of the vandalism. Detective Grassi identified the individual in the store's surveillance footage as defendant. The footage showed defendant was wearing a t-shirt bearing a Batman symbol at the time. The footage also demonstrated defendant purchased "three cylindrical objects" from the Ace Hardware and walked with a limp. Store records corroborated the fact that defendant had purchased two cans of green spray paint and one furnace filter from the Ace Hardware store. The Batman t-shirt defendant wore in the Ace Hardware surveillance video matched the t-shirt he wore in a Facebook post, as well as surveillance footage that captured him on the walkway of the bridge at 2:50 p.m. the day of the vandalism in his registered vehicle.

Defendant was arrested for vandalizing the Polo Club's property while driving the Toyota registered in his name. A search of defendant's vehicle revealed a large metal prybar that resembled the one used during the vandalism. The MPD also found gloves resembling those worn by the individual during the vandalism in the passenger compartment of defendant's vehicle. Defendant's shoes had green paint on them. Further, defendant possessed the credit card used to purchase green spray paint from the Ace Hardware store.

On September 26, 2017, a Bergen County grand jury charged defendant. A trial was held, and a jury convicted defendant of all charges.

On September 6, 2019, the judge sentenced defendant to five years in prison with a forty-two-month period of parole ineligibility for count one, and three years in prison on counts two through five, both sentences to run concurrently. The judge also ordered defendant to pay \$250 to the Violent Crimes Compensation Board, \$375 to the Safe Neighborhoods Services Fund, \$30 to the Law Enforcement Officers Training and Equipment Fund, and \$10,000 in restitution. This appeal followed.

Defendant argues two evidentiary rulings made during the trial were erroneous and entitle him to a new trial. First, the judge permitted Detective Grassi to provide lay opinion testimony. Detective Grassi testified to defendant's identity based on his prior interactions with defendant and the items recovered during a search of defendant's vehicle following his arrest. Second, as part of his defense, defendant also sought to introduce evidence that on May 9, 2017, two individuals, Steven Smith and Dwaine Perry, allegedly vandalized¹ the Polo Club property on the one-lane bridge before being charged in municipal court. The judge denied defendant's attempt to introduce this evidence as third-

¹ The individuals who allegedly vandalized the Polo Club's one-lane bridge on May 13, 2017, were found not guilty in municipal court before defendant's trial. The record does not contain a copy of the municipal complaint or the dismissal order.

party guilt, finding the evidence irrelevant because defendant did not demonstrate these charges stemmed from an event on May 12, 2017.

Our review of a trial judge's evidentiary rulings is limited. State v. Buckley, 216 N.J. 249, 260 (2013) (quoting State v. Buda, 195 N.J. 278, 294 (2008)). The trial judge's evidentiary rulings "should be upheld 'absent a showing of an abuse of discretion' or 'a clear error in judgment.'" State v. Lora, 465 N.J. Super. 477, 492 (App. Div. 2020) (quoting State v. Perry, 225 N.J. 222, 233 (2016)).

"Lay opinion is admissible 'if it falls within the narrow bounds of testimony that is based on the perception of the witness and that will assist the jury in performing its function.'" State v. Sanchez, 247 N.J. 450, 466 (2021) (quoting State v. Singh, 245 N.J. 1, 14 (2021)). Opinion testimony of a lay witness is governed by N.J.R.E. 701, which states, "[i]f a witness is not testifying as an expert, the witness'[s] testimony in the form of opinions or inferences may be admitted if it: (a) is rationally based on the witness'[s] perception; and (b) will assist in understanding the witness'[s] testimony or determining a fact in issue." The rule was adopted to "ensure that lay opinion is based on an adequate foundation." Singh, 245 N.J. at 14 (quoting State v. Bealor, 187 N.J. 574, 586 (2006)).

"The first prong of N.J.R.E. 701 requires the witness's opinion testimony to be based on the witness's 'perception,' which rests on the acquisition of knowledge through use of one's sense of touch, taste, sight, smell or hearing." Ibid. (quoting State v. McLean, 205 N.J. 438, 457 (2011)). Therefore, the witness's knowledge may not be acquired through "hearsay statements of others." Sanchez, 247 N.J. at 469 (citing N.J.R.E. 701). But "[t]he witness need not have witnessed the crime or been present when the photograph or video recording was made in order to offer admissible testimony" about what is depicted. Ibid.

Under the second prong, the lay witness's testimony must "assist the trier of fact either by helping to explain the witness's testimony or by shedding light on the determination of a disputed factual issue." Singh, 245 N.J. at 15 (quoting McLean, 205 N.J. at 458). It is well established that a police officer may provide testimony describing "what the officer did and saw," because "[t]estimony of that type includes no opinion, lay or expert, and does not convey information about what the officer 'believed,' 'thought' or 'suspected,' but instead is an ordinary fact-based recitation by a witness with first-hand knowledge." Ibid. (quoting McLean, 205 N.J. at 460). When the officer's testimony transitions

into non-expert, lay opinion testimony, the parameters of his or her testimony are different.

In Singh, the Court determined:

a police officer's lay opinion met N.J.R.E. 701's first prong There, an armed robbery was captured on surveillance video and the officer who arrested the defendant was properly permitted to testify that the sneakers worn by the perpetrator in the video were "similar" to the sneakers worn by the defendant when the officer encountered him shortly after the robbery. Although the officer did not witness the crime, he had personal knowledge of the sneakers worn by the defendant in its immediate aftermath, and his testimony thus satisfied N.J.R.E. 701's first prong.

[Sanchez, 247 N.J. at 468 (citations omitted).]

In Sanchez, the Supreme Court affirmed our reversal of a trial judge's decision to bar a parole officer's testimony about telling "a detective investigating a homicide and robbery that [the] defendant was the individual depicted in a photograph derived from surveillance video taken shortly after the crimes." Id. at 458. The Court concluded the parole officer "became familiar with defendant's appearance by meeting with him on more than thirty occasions during his period of parole supervision," therefore "[h]er identification of defendant as the front-seat passenger in the surveillance photograph was 'rationally based on [her] perception,' as N.J.R.E. 701 requires." Id. at 469.

Applying these principles to this case, we conclude the trial court did not abuse its discretion by allowing Detective Grassi to offer lay opinion testimony. Defendant argues Detective Grassi's identifying defendant and comparing items in photos was improper lay opinion testimony because Detective Grassi's opinions were not based on his personal knowledge. That argument belies the record.

Detective Grassi met defendant and interacted with him while investigating the area of the one-lane bridge, just five days after the crime. Detective Grassi observed defendant walking with his "specific gait," which matched the gait of the individual in the surveillance video vandalizing the Polo Club property. When defendant was arrested on May 25, 2017, he was driving the Toyota extended-cabin vehicle that Detective Grassi recalled from the surveillance tape during and before the crime. Following defendant's arrest, officers searched his vehicle, finding a metal prybar with a green substance on it, gloves, and sneakers bearing a green-colored substance.

Detective Grassi also observed the property damage firsthand while investigating the crime. Like in Singh, where the officer was permitted to testify that the shoes in a video were similar to the ones the defendant wore during his arrest, Detective Grassi compared the items used to vandalize the Polo Club

property to those recovered from defendant's vehicle during a search incident to lawful arrest. Further, like in Sanchez, where a parole officer met the defendant numerous times before identifying him in a video, Detective Grassi interacted with defendant while investigating the vandalism at the one-lane bridge before defendant's arrest, noticing defendant's unique gait during this interaction. Accordingly, defendant's argument that Detective Grassi lacked personal knowledge to qualify as a lay witness lacks merit.

Detective Grassi's testimony was also helpful to the jury. Indeed, the record suggests the individual's identity was the dispositive issue at defendant's trial. When Detective Grassi testified, defendant's identity remained in issue. The surveillance video from the one-lane bridge was not so clear that Detective Grassi's testimony was needless. Moreover, the individual wore a facial covering, and the vandalism occurred at night. Accordingly, the surveillance footage from the one-lane bridge was not so clear that witness testimony would be unhelpful to the jury. See id. at 473 (citing United States v. Anderson, 783 F.3d 727, 746 (8th Cir. 2015)) ("[R]elative low quality of the footage" favored admission of lay opinion testimony "because the surveillance photograph made it difficult" to positively identify defendant). Accordingly, Detective Grassi's testimony that the sneakers, prybar, gloves, and vehicle were like those in the

surveillance video from the crime scene was helpful to the jury and based on his personal knowledge. The trial court's decision to allow him to offer lay testimony therefore was not "so wide of the mark that a manifest denial of justice resulted." Lora, 465 N.J. Super. at 492 (quoting Perry, 225 N.J. at 233).

Defendant next argues the trial court abused its discretion when it denied a request to present evidence that other individuals had been charged with similar vandalism at the Polo Club bridge. An abuse of discretion occurs "when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467-68 (2012). Even if we disagree with the trial judge's conclusions, the trial judge's ruling should not be disturbed unless the ruling was "so wide of the mark that a manifest denial of justice resulted." Lora, 465 N.J. Super. at 492 (quoting Perry, 225 N.J. at 233).

The Federal and New Jersey Constitutions guarantee criminal defendants a meaningful opportunity to present a complete defense. Crane v. Kentucky, 476 U.S. 683 (1986); State v. Budis, 125 N.J. 519 (1991). A complete defense includes a criminal defendant's right to introduce evidence of third-party guilt. State v. Cotto, 182 N.J. 316, 332 (2005). Evidence of third-party guilt must have a rational tendency to engender a reasonable doubt with respect to an

essential feature of the State's case. State v. Fortin, 178 N.J. 540, 591 (2004). This standard does not require a defendant provide evidence that substantially proves the guilt of another, but instead permits evidence that creates the possibility of reasonable doubt. Perry, 225 N.J. at 238.

However, a defendant's right to present evidence of third-party guilt is not limitless. To prevent unsupported claims from derailing the trial process, a defendant may not introduce evidence of third-party guilt, yet leave this evidence's connection to the present case up to "mere conjecture." State v. Sturdivant, 31 N.J. 165, 179 (1959); see State v. Loftin, 146 N.J. 295, 345 (1996). The evidence a defendant seeks to admit in support of a third-party guilt defense must be capable of demonstrating some link between the third-party evidence and the victim or the crime. Perry, 225 N.J. at 239. The relevance of this evidence is conditioned on its ability to create a logical connection capable of inducing reasonable jurors to regard the event as bearing upon the State's case. Sturdivant, 31 N.J. at 179. Consequently, the decision to admit or exclude evidence of third-party guilt is highly fact-sensitive and rests within the trial court's discretion. Perry, 225 N.J. at 239.

In State v. R.Y., the Court provided a helpful example of admissible evidence of third-party guilt. 242 N.J. 48 (2020). In that case, the defendant

was charged with aggravated sexual assault. Id. at 60. As part of his defense, he sought to introduce a statement one of the child victims made to a caseworker for the Division of Child Protection and Permanency (DCPP). Id. at 62. The child stated to the caseworker that another individual, the defendant's stepson, and not the defendant, had assaulted her. Id. at 56-57. After the DCPP interview, the victim told the police the defendant assaulted her. Id. at 57-59. The defendant sought to introduce the victim's prior statement during trial, but the trial court denied its admission in part because it was insufficient to establish third-party guilt. Id. at 62. Our Supreme Court reversed, finding the victim's earlier statement to the DCPP caseworker was clear evidence of third-party guilt, and sufficiently connected to the issue before the jury. Id. at 68-69.

Defendant argues the trial judge erred when it did not allow him to offer evidence that Smith and Perry were accused of vandalizing the Polo Club's one-lane bridge on May 9, 2017. It is notable that Smith and Perry were charged with disorderly persons offenses pursuant to N.J.S.A. 2C:17-3(a)(2).

Smith and Perry's actions outlined in the summonses differ greatly from defendant's vandalism. Indeed, Smith and Perry apparently tampered with the cameras along the bridge, turning the lens so they could not record activity along the bridge. Defendant, meanwhile, spray-painted the cameras, removed Polo

Club signs before throwing them in the Ramapo River, and destroyed light fixtures with a shotgun.

There must be "some link" between the third-party evidence and the victim or the crime. Perry, 225 N.J. at 239. Here, defendant merely pointed to Smith and Perry as individuals who recently vandalized the same property; however, their actions differed so greatly from defendant's that their alleged conduct has no "link" to this crime. See ibid. Because of the contrast between Smith and Perry's alleged actions and defendant's, tying Smith and Perry to the May 12, 2017 vandalism at the one-lane bridge would be based on "mere conjecture." Sturdivant, 31 N.J. at 179. This evidence cannot "create the possibility of reasonable doubt." Perry, 225 N.J. at 238. Accordingly, the trial judge's decision to exclude defendant's evidence of third-party guilt was not "so wide of the mark that a manifest denial of justice resulted." Lora, 465 N.J. Super. at 492 (quoting Perry, 225 N.J. at 233).

Finally, defendant argues, and the State agrees, defendant is entitled to a remand for the court to conduct an ability-to-pay hearing before ordering him to pay restitution. Defendant caused the Polo Club to suffer a loss by vandalizing its property; however, the record offers no indication the judge considered defendant's ability to pay before ordering him to pay restitution. Oliveri testified

the damage and cost to replace the camera and video system was about \$3,500. Further, the repair, labor, and replacement costs of the old-fashioned-style lights were about \$6,700. Finally, the cost to repair and replace the "No Parking" signs was \$309. Consequently, we remand to the trial court for the judge to conduct an adequate ability-to-pay hearing before ordering defendant to pay restitution. N.J.S.A. 2C:44-2(c)(1); RSI Bank v. Providence Mut. Fire Ins. Co., 234 N.J. 459, 478 (2018).

Affirmed in part and remanded in part. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION