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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2506-21

STATE IN THE INTEREST
OF C.S., a juvenile.

Submitted March 21, 2023 – Decided May 26, 2023

Before Judges Messano and Rose.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Hudson County,
Docket No. FJ-09-0256-22.

Joseph E. Krakora, Public Defender, attorney for
appellant C.S. (John P. Flynn, Assistant Deputy Public
Defender, of counsel and on the briefs).

Esther Suarez, Hudson County Prosecutor, attorney for
respondent State of New Jersey (Meagan E. Free,
Assistant Prosecutor, on the brief).

PER CURIAM

Following a bench trial, C.S. was adjudicated delinquent for acts which, if committed by an adult, would constitute second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b)(1); second-degree possession of a handgun for an unlawful purpose, N.J.S.A. 2C:39-4(a)(1); and second-degree aggravated

assault, N.J.S.A. 2C:12-1b(1). C.S. also was adjudicated delinquent for fourth-degree possession of a firearm by a minor, N.J.S.A. 2C:58-6.1. The trial judge sentenced C.S. to a two-year probationary term, conditioned upon his completion of a residential program.

The judgment was based on the Family Part judge's finding that C.S. fired a gun on a Jersey City residential street in September 2021. Identification of the shooter was the central issue a trial. No weapon or ballistics evidence was recovered at the scene. Nor did police locate any eyewitnesses. The State's evidence against defendant was wholly circumstantial, based on video footage pieced together and narrated by the lead detective, and the recovery of C.S.'s cell phone at the scene, which was turned over to the juvenile's mother, D.S. (Dana),¹ shortly after the shooting.

C.S. now appeals from a March 31, 2022 dispositional order, raising the following points for our consideration:

POINT I

THE IMPROPER ADMISSION OF HEARSAY
TESTIMONY THAT THE RED IPHONE
BELONGED TO THE JUVENILE REQUIRES
REVERSAL.

¹ For ease of reference, we use a pseudonym for D.S.

POINT II

THE DETECTIVE'S (A) SUBJECTIVE DESCRIPTION OF THE SUSPECT'S CLOTHING[;] (B) IDENTIFICATIONS OF C.S. IN SURVEILLANCE VIDEOS; AND (C) NONNEUTRAL LAY OPINION THAT THE VIDEO SHOWED THE SUSPECT SHOOTING A GUN VIOLATED N.J.R.E. 701, INVADED THE PROVINCE OF THE FACTFINDER, AND REQUIRE REVERSAL.
(Not Raised Below).

POINT III

THE CUMULATIVE EFFECT OF THE ERRORS DEPRIVED THE JUVENILE OF A FAIR TRIAL.
(Not Raised Below).

We reject the contentions raised in points I and II. Because we conclude C.S. failed to demonstrate any error or pattern of errors rising to the level – either singly or cumulatively – that denied him a fair trial, we also reject the claims raised in point III. Accordingly, we affirm.

I.

A seven-year veteran of the Jersey City Police Department at the time of trial, Detective Jeison J. Martinez was assigned to the Cease Fire Unit, whose members investigated non-fatal shootings in the City. Around 9:33 p.m. on

September 30, 2021, Martinez and other officers responded to the area of XX² Sheffield Street following "reports of shots fired." During direct examination, the prosecutor elicited testimony from Martinez that police found a red iPhone "in front of [XX] Rutgers [Avenue] on the Sheffield [Street] side of the ground, on the sidewalk." Defense counsel objected to the ensuing exchange:

[PROSECUTOR]: And who came to claim the red iPhone?

[MARTINEZ]: While we were standing by trying to figure out if it was part of the crime scene at the moment, a female approaches us, and she was looking for her son, and she recognized the phone that was on the ground.

[PROSECUTOR]: And – and –

[MARTINEZ]: And she stated that –

[DEFENSE COUNSEL]: Objection. Hearsay, Your Honor. All of his last three statements are all hearsay as to what this person said to them when she approached them.

Overruling the objection, the trial judge reasoned, "Well, [Martinez] indicated that the witness approached and was looking for her son. That part is not hearsay, because there were no statements that were offered for the truth of the matter asserted. [Martinez] was a witness to that personally occurring." But

² We omit residential addresses for privacy purposes.

the judge sustained the objection to the extent Martinez "was about to indicate . . . what [Dana] was about to say."

During her ensuing oral decision adjudicating C.S. delinquent, the judge referenced Martinez's testimony about Dana's identification of the phone. The judge's conclusion was based on the various video footage depicting C.S., "combined with his mother coming to the location saying she's looking for her son, retrieving the red iPhone, and the red iPhone being seen on the video in use by the same individual wearing the same sweatshirt."

C.S. maintains Martinez's testimony constituted inadmissible hearsay and warrants reversal in view of the judge's conclusion. We disagree.

N.J.R.E. 801(c) defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Thus, "if evidence is not offered for the truth of the matter asserted, the evidence is not hearsay, and no exception to the hearsay rule is necessary to introduce that evidence at trial." State v. Long, 173 N.J. 138, 152 (2002). Relevant here, if statements are offered "only to show that they were in fact made and that the listener took certain action as a result thereof, the statements are not deemed inadmissible hearsay." State v. Stubblefield, 450

N.J. Super. 337, 351 (App. Div. 2017) (quoting Carmona v. Resorts Int'l Hotel, Inc., 189 N.J. 354, 376 (2007)).

C.S.'s hearsay argument lacks context. Following the objected-to exchange, the State elicited from Martinez's testimony that he released the phone to Dana, obtained her identifying information, and requested "her son's age and his name." Martinez later explained that after he viewed the various video footage he had compiled – including a surveillance video depicting an individual matching the shooter's description using a red iPhone – he searched Dana's name in a police database, which revealed her children's names. Based on the information received from Dana, Martinez obtained a photo of the child, who matched "the approximate age of her son." Comparing that photo to the video footage, Martinez determined C.S. was the person he had seen in the various video footage.

Because the testimony concerning Dana's identification of C.S.'s cell phone explained Martinez's actions, it was not hearsay. See Stubblefield, 450 N.J. Super. at 351. In light of our deferential standard of review, we discern no basis to disturb the judge's evidentiary ruling. See State v. Garcia, 245 N.J. 412, 430 (2021) (stating appellate courts "defer to a trial court's evidentiary ruling absent an abuse of discretion").

II.

For the first time on appeal, C.S. contends Martinez presented impermissible lay testimony during his narration of the surveillance videos by describing the suspect's clothing and body type, identifying C.S. as the person wearing the distinctive clothing depicted in the footage, and opining that the suspect fired a gun.³ To support his argument, C.S. relies on the Court's decisions in State v. Sanchez, 247 N.J. 450 (2021), and State v. Singh, 245 N.J. 1 (2021), and our decision in State v. Watson, 472 N.J. Super. 381 (App. Div. 2022), certif. granted, 252 N.J. 598 (2022). While his appeal was pending before us, C.S. filed a letter pursuant to Rule 2:6-11(d), citing the Court's recent decision in State v. Higgs, 253 N.J. 333 (2023).

We therefore commence our review with seminal principles underscoring this developing area of law. N.J.R.E. 701 provides: "If 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." To be admissible, lay opinion testimony must be

³ Following C.S.'s objection to the authentication of the video footage, the State called another detective to lay the foundation for their admission. The judge's decision overruling C.S.'s objection is not challenged on appeal.

supported by an "adequate foundation." Sanchez, 247 N.J. at 466 (quoting Singh, 245 N.J. at 14). To establish an adequate foundation for the admission of lay opinion testimony, the proponent of the testimony must satisfy two requirements. See ibid.

Initially, the opinion testimony must 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.'" Singh, 245 N.J. at 14 (quoting State v. McClean, 205 N.J. 438, 457 (2011)). Relevant here, "[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." Sanchez, 247 N.J. at 469.

Secondly, lay opinion is "limited to testimony that will 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). Critically, the witness may not "express[] . . . a belief in [the] defendant's guilt" or "give an opinion on matters that [a]re not beyond the understanding of the jury." Id. at 15-16 (quoting McLean, 205 N.J. at 463).

In Singh, the Court applied the foregoing principles in its assessment of the admissibility of lay opinion testimony provided by a police officer, who

identified the defendant as the individual depicted in the events shown in a video surveillance recording. Id. at 17. The Court found the officer's two references to the individual as "the defendant" constituted improper lay opinion but nonetheless determined the error in admitting the testimony harmless "given the fleeting nature of the comment and the fact that the detective referenced defendant as 'the suspect' for the majority of his testimony." Id. at 17-18.

In Sanchez, the Court identified factors relevant to "a trial court's determination whether lay opinion testimony will assist the jury." 247 N.J. at 470-73. Those factors include "the nature, duration, and timing of the witness's contacts with the defendant," id. at 470, "if there has been a change in the defendant's appearance since the offense at issue," id. at 472, "whether there are additional witnesses available to identify the defendant at trial," ibid. (quoting State v. Lazo, 209 N.J. 9, 23 (2012)), and "the quality of the photograph or video recording at issue," id. at 473.

In Watson, we identified six factors to guide trial courts in safeguarding the province of the jury from unwarranted intrusion by narration, stating, as the Court "made clear in Sanchez, no single factor is dispositive." 472 N.J. Super. at 466-69 (citing Sanchez, 247 N.J. at 473-474). Pertinent to this appeal, we stated narration testimony could be helpful in focusing the jury's attention if the

video recording were complex or contained distracting images, such as "a crime in progress, immediate flight from a crime scene or other chaotic situation . . . display[ing] multiple persons or vehicles in motion." Id. at 469. In essence, "the decision to allow a witness to describe and highlight something on the screen that the jury could see for itself must be made on a case-by-case if not comment-by-comment basis." Id. at 459.

More recently, in Higgs, our Supreme Court held the detective's "testimony invaded the province of the jury by usurping the jury's assessment of the image in the video." 253 N.J. at 366. In Higgs, defense counsel objected to the officer's testimony that, based on his experience, the object in the video "appeared to be a firearm." Id. at 365. Further, "he based his opinion solely on watching the video"; he "was not on the scene during the relevant time and had no prior interaction or familiarity with either defendant or the firearm in question." Id. at 366. Noting the video at issue "did not involve a lot of activity or a chaotic scene that the jury needed assistance viewing," the Court "d[id] not rule out the possibility of allowing a law enforcement officer to testify about a sequence in a video that is complex or particularly difficult to perceive." Id. at 366.

Because C.S. failed to object to Martinez's narration of the video evidence at trial, we review his belated contentions under the plain error standard. R. 2:10-2. Thus, "we disregard any alleged error 'unless it is of such a nature as to have been clearly capable of producing an unjust result.'" State v. Funderburg, 225 N.J. 66, 79 (2016) (quoting R. 2:10-2). We review a trial court's evidentiary rulings "under the abuse of discretion standard because, from its genesis, the decision to admit or exclude evidence is one firmly entrusted to the trial court's discretion." State v. Prall, 231 N.J. 567, 580 (2018) (quoting Est. of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 383-84 (2010)).

Against those legal principles, we consider Martinez's narration of his collection of surveillance camera footage that led to his identification of C.S. as the shooter. During the trial, the State played five video recordings while Martinez narrated. Martinez described how the investigation developed, commencing with footage from a Ring video doorbell camera provided to police by the residents of XX Sheffield Street. Martinez said this video depicted "two individuals walking westbound on Sheffield. And a loud bang is heard, and they take cover and . . . both of them shoot back." Police did not identify these individuals. Their attempts to recover residential surveillance camera footage depicting the person who shot at these individuals were futile.

Following his encounter with Dana, Martinez returned to police headquarters and reviewed footage from an Office of Emergency Management (OEM) camera "that was situated [at] the corner of Rutgers and Sheffield." The State argued this footage depicted C.S. firing a gun. The prosecutor played the video recording, stopping intermittently to question Martinez about his observations.

After the first clip was played, Martinez told the judge he "s[aw] a group of individuals congregated on the northeast corner of Sheffield and Rutgers in front of [XX] Rutgers." Near the fire hydrant Martinez observed "a male dressed in [a] black hoodie with a large design that cover[ed] the whole chest area [and] light-colored pants." Although Martinez could not see the person's sneakers in the "still shot," he "recall[e]d they were black sneakers."

After the prosecutor played the second clip, Martinez testified:

First, I saw a car stopped with . . . the group's attention focuses east of Sheffield. Then, when the car pulls out . . . almost everybody in the group starts walking away north on Rutgers. And the person I described earlier with the black hoodie, the large design on the chest, light-color pants, and black sneakers, he doesn't leave with the group. He – well, he's missing a shoe. He puts on his other shoe and then he runs . . . west, at first, out of the camera view to the right by the tree. When he reappears on camera, I observe him extending his arm and then I saw a flash of a gun before

he ran towards the corner and then north on –
(indiscernible – voice trails off).

Later, on cross-examination, Martinez acknowledged the individual's face is not discernible in the video footage, no shell casings were recovered near the crime scene, and no firearm was recovered.

But Martinez also narrated video footage from three other surveillance videos that painted a clearer picture of C.S.'s identity. Explaining that the Intelligence Unit had an ongoing investigation in that high crime area, Martinez viewed footage from a "PTC camera,"⁴ taken at 8:03 p.m. on the same day as the shooting. Martinez testified:

I see a juvenile, w[ho] has the same hoodie of the actor from the OEM camera video. . . . I can see more of the design on the front, which covers the entire front of the hoodie. It shows white on the top, orange and then it also shows white on the bottom, which is consistent with the [OEM camera] video that I observed from the shooting scene.

After observing the next clip, Martinez testified:

Well, now, I see the full body. So, I see the light-colored pants, which matched the description of the aforementioned shooting video and black sneakers. And the juvenile also matches the body type of the male seen at the shooting.

⁴ According to Martinez a PTC camera is "moveable"; it can "zoom[] in and out."

Martinez explained that after viewing this PTC video footage, he recalled viewing surveillance footage two days before the shooting from the "Old Bergen and Danforth PTC camera" depicting "that hoodie and a male matching the same description." The State played the video from this camera and Martinez testified: "I see . . . the juvenile that I saw from the previous video wearing the same hoodie but now without the hood up, so I can see . . . more of his face. And at the moment, . . . he was utilizing a red iPhone."

Based on his observations of the video evidence, Martinez ran Dana's name through the police data base and obtained C.S.'s photograph, and "determined this juvenile, [C.S], to be the same person[, who w]as wearing the black hoodie with the distinctive design in the front." Martinez then viewed OEM video from outside XY Rutgers Avenue from 6:54 p.m. on the day of the shooting. Martinez testified that this footage depicted Dana "checking her mail in front of the house," and moments later, C.S. is seen "dressed with [sic] a black hoodie, with a large design in the front, light-colored jeans and black sneakers; and he's walking towards . . . [XY] Rutgers."

Martinez's testimony was not out of bounds and differed from the officers' narration in Singh and Higgs in two important ways. His narration of each video clip underscored the step-by-step process that led to his identification and arrest

of C.S. as the shooter. And the matter was tried before a judge, whose decision reflects her findings were based on her own assessment of the video images.

Martinez testified that the steps he undertook in this investigation included his extensive review of the video footage, depicting C.S. wearing the distinctive hoodie and using the red iPhone recovered at the scene. Martinez broke down the OEM video footage of the shooting which, based on his narration and our review of the video recording, depicted "a lot of activity." See Higgs, 253 N.J. at 366; Watson, 472 N.J. Super. at 469. Martinez's ability to identify details about the shooter's clothing and body type were essential to the investigative steps he undertook to identify C.S. and arrest him as the shooter. His testimony about those steps was helpful to the judge's understanding of the significance of C.S.'s clothing.

Sitting as factfinder in this matter, the trial judge detailed her factual findings. As one notable example, the judge described the shooting scene after the car drove off, and found:

Most of the individuals walk away from that area and one individual goes into the street. You can see the individual wearing a black or dark colored hoodie, light colored jeans, and dark sneakers. That person goes into the street. You see the person lift their arm and with an object in their hand, you see sparks fire from that individual's hand. You then see the individual attempt to run. At some point during the incident, you see the

individual lose a shoe and then have to put the shoe back on. And then you see at some point the individual flee that area and go down the block or around the corner.

After she rendered her decision, the trial judge responded to Dana's inquiry about her findings. The judge clarified her interpretation of the video depicting the shooting, stating: "The video clearly shows . . . [C.S.'s] body and you see him extending his arm and you see the shape of a weapon in the shadow next to your son on his left side on the ground. So, I'm not just looking at a spark." Even if we were to conclude Martinez improperly opined that the individual in the video fired a gun, we are convinced the judge's decision was based on her independent observation of the video evidence and not based on the detective's opinion.

Instead, the judge emphasized each of the investigative steps described by Martinez and credited the "excellent police work" in this circumstantial case. The judge was convinced the totality of the video footage showing C.S. wearing the same distinctive clothing and the recovery of the red iPhone identified by Dana, proved beyond a reasonable doubt that C.S. was guilty of the crimes charged.

In view of the trial judge's decision, we discern no error, let alone plain error, in the detective's narration of the surveillance footage. We therefore

perceive no reason to disturb the judge's decision, which finds support in the record evidence. See State in Interest of D.M., 238 N.J. 2, 15 (2019) (recognizing our limited standard of review on an appeal from an adjudication of delinquency); see also State v. McNeil-Thomas, 238 N.J. 256, 271-72 (2019) (citing State v. S.S., 229 N.J. 360, 379 (2017) (reiterating the deferential and limited scope of appellate review of factual findings based on video evidence)).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION