

Supreme Court of New Jersey

STATE OF NEW JERSEY, :

Plaintiff-Petitioner, :

v. :

SHAQUAN KNIGHT, :

Defendant-Respondent. :

DOCKET NO. 088970

CRIMINAL ACTION

On Certification Granted from a Final
Judgment of the Superior Court,
Of New Jersey, Appellate Division.

Sat Below:

Hon. Jack M. Sabatino, P.J.A.D.

Hon. Joseph L. Marczyk, J.A.D.

Hon. Mark K. Chase, J.A.D.

BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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Counter-Statement of Procedural History

The State relies on the procedural history set forth in the Appellate Division opinion as supplemented herein. State v. Knight, 477 N.J. Super. 400, 410-411 (App. Div. 2023). On December 21, 2023, the Appellate Division affirmed the defendants' convictions, but remanded for a resentencing. (DFa1-59). Defendant Shaquan Knight filed a petition for certification on January 31, 2024, and defendant Fuquan Knight filed a petition for certification on January 25, 2024.

On May 10, 2024, this Court granted the petitions for certification, "limited to defendant's challenge to the trial court's determination to permit the jury to view the surveillance video multiple times in slow motion." State v. Knight, 257 N.J. 244 (2024); State v. Knight, 257 N.J. 248 (2024).

Counter-Statement of Facts

In the late morning on October 11, 2018, Thaddeus Osbourne drove to Poppies Deli, located at 520 Central Avenue in East Orange (9T70-14), to cash a winning sports bet he had placed. (1T8-5 to 9-5). Mr. Osbourne parked his car across the street from the deli at Auto Zone. (1T9-16 to 19). He received his \$500 winnings in cash. (1T10-4 to 11). Inside the store, Mr. Osbourne saw Shaquan Knight ("defendant Shaquan"), whom he recognized. (1T11-9 to

25). Mr. Osbourne had seen defendant Shaquan approximately five times in the past and had previously purchased marijuana from him. (1T29-7 to 12). Defendant Shaquan asked Mr. Osbourne if he wanted to buy marijuana, and Mr. Osbourne said he did. (1T12-25 to 13-6). The two headed outside toward the back of the store to complete the transaction. (1T13-9 to 11).

As they walked, “one of the guys” with defendant Shaquan “grabbed [Mr. Osbourne] and pushed [him] toward the back of the store.” (1T16-1 to 2). That same person held a knife to Mr. Osbourne’s neck. (1T17-17 to 19). By that time, three men were present: defendant Shaquan; the man holding the knife, later identified as Kyler; and an additional man who held a gun toward Mr. Osbourne’s face, whom Mr. Osbourne identified as Fuquan (“defendant Fuquan”). (1T17-24 to 20-4). All of the men stood within one to two feet of Mr. Osbourne, enabling him to clearly see their faces. (1T20-9 to 24). The man holding the knife accused Mr. Osbourne of owing him money. (1T21-6 to 7). Defendant Shaquan took Mr. Osbourne’s wallet and keys, but later gave his keys back. (1T22-14 to 23-9). Mr. Osbourne estimated that he was robbed of \$550 or \$560. (1T23-15 to 20).

The men ran down Halsted Street toward Central Avenue. (1T24-7 to 8). Mr. Osbourne got into his car and followed them for a short time as they fled toward Princeton Street, but then he drove home. (1T24-10 to 24). Mr.

Osbourne then called 911. (1T25-13 to 15). Mr. Osbourne met with East Orange Police Department Officer Hassan Gafaar, Sergeant Jackson, Captain Martin, and Detective Dan Parker at his home, (9T70-2 to 16), all of whom returned to Poppies Deli with Mr. Osbourne and reviewed the surveillance video of the robbery. (1T26-1 to 19; 7T106-16 to 19). Poppies Deli is one block away from Mr. Osbourne's home. (9T78-10 to 12). Mr. Osbourne identified defendant Shaquan, who was the only robber in the store with him, from the video, and provided a physical description of the other two men. (1T26-23 to 27-9; 9T73-11 to 12).

That same day, Mr. Osbourne was taken to police headquarters where he provided a recorded statement. (1T27-10 to 14; 9T75-1 to 6). During that statement and due to Mr. Osbourne's previous familiarity with defendant Shaquan and defendant Fuquan, detectives conducted a "one-on-one" photo display of each man to determine if Mr. Osbourne could identify them in photos. (1T27-15 to 18; 11T67-14 to 68-14). Mr. Osbourne was able to successfully identify photos of both defendants. (1T28-14 to 29-6; 11T68-15 to 21). He was familiar with two of the suspects based on numerous prior encounters in the area, but did not know their names. (11T183-1 to 15).

During a search of defendants' residence, detectives located the sweatshirt and pants worn by defendant Shaquan during the robbery as well as

Mr. Osbourne's wallet underneath the nightstand in defendants' bedroom. (11T88-10 to 89-10). Detectives did not locate a gun, knife, or any other articles of clothing the robbers wore in the surveillance videos. (11T119-9 to 20).

At trial, the State played several surveillance videos, including from Poppies Deli (11T27-3 to 42-16). The video at issue is exhibit S-31, showing a rear view of Poppie's interior and back door which offered a view into the back parking lot. The Appellate Division summarized the video as follows:

Starting at 11:41:38, the video shows four men walking by the back door. The video appears to show Osbourne, closely followed by a man the State contended was Kyler, who seemed to be holding onto Osbourne by the neck or shoulder. Walking behind them is another man, who the State contended was Fuquan, holding a black and brown object in one hand. The last man walking in the group allegedly is Shaquan, who does not appear to be holding anything. The robbery apparently occurred off-camera. [State v. Knight, 477 N.J. Super. 400, 413 (App. Div. 2023)].

The surveillance videos were originally played during Detective Felix Lantigue's testimony. During his testimony, the video footage was stopped numerous times for the State to ask Detective Lantigue questions and for Detective Lantigue to answer those questions by pointing to various people and scenes in the videos. (11T40-15; 11T45-10 to 11; 11T46-2 to 3; 11T47-16 to 17; 11T64-21 to 22; 11T109-25). At multiple junctures and in the interest

of time, the video was played at a faster rate of two to three times' speed. (11T47-7 to 9; 11T84-9 to 10; 11T109-20 to 21). During this testimony, defense counsel had no objections to the pauses in the videos or rates of speed at which they were played.

During deliberations, the jury requested to review the footage depicting Poppies' back door, the inside of Poppies facing the back door, the inside of Poppies from behind the cashier, and Princeton Street, as well as review the 911 call and Mr. Osbourne's testimony. (17T112-7 to 113-2). Defense counsel requested that the videos be played at normal speed. (17T114-13 to 15). The court agreed that this request warranted playing at normal speed but acknowledged that the jury could "ask for something different." (17T114-19 to 24).

After the court asked for an additional note to clarify one of the jury's requests, the jury altered their request, asking to "only see the video from the back door of Poppies, the view from inside pointing towards the door. Can you please replay it at least three times, slowly and pause." (17T124-9 to 12). When defense counsel objected, the court stated that the jury can review evidence "any way they want to" and while the court and counsel cannot pause it, the jury can. (17T125-1 to 126-12). The video was played three times at normal speed for the jury, and playback was paused at various times as

directed by the juror selected as the “pauser.” (17T148-2 to 149-21). After that, the video was played in slow motion several more times per the pauser’s request. (17T150-13 to 156-6). The next day, the jury again asked for a 6-second portion of the video to be replayed in slow motion with one pause, which the court allowed. (18T89-22 to 90-2).

Point I

Additional testimony was not required for the State to play slow motion surveillance footage, or for the jury to view the same, because no alteration of the video was created by the simple slowing-down of an already-admitted video, and defendant is precluded from arguing such for the first time in this appeal.

The State laid a proper foundation for the surveillance videos which were admitted in evidence during the State’s case-in-chief without objection and played on a video player for the jury. Defendants do not deny the relevancy of the video. The prosecutor later played the video in slow motion during its summation, and at no point did either defendant object. Defendants never contended the State was required to lay an additional foundation when played in slow motion for the jury. Furthermore, defendants are precluded from arguing this issue for the first time in this appeal because it was not raised in either of their petitions for certification or in the Appellate Division. For all these reasons, defendant fails to show that the State’s use of slow

motion during its summation without additional testimony constitutes plain error. R. 2:10-2; State v. Funderberg, 225 N.J. 66, 79 (2016).

First, it should be noted that during his summation, defendant Shaquan Knight's counsel stated, "I expect you're probably going to watch some of that [surveillance footage] in much slower speed in a little while." (15T175-13 to 15). Also, defendant Fuquan Knight's counsel noted, "They could show you the video, they could do it in slow-mo, they could do it in fast-mo, they could rewind," but it would not prove his client's guilt. (15T200-1 to 5). Neither defendant objected when the State did exactly as they had anticipated and played the video in slow motion. Thus, defendants cannot now, for the first time, argue that the additional testimony was required before playing the video in slow motion after clearly anticipating such would take place.

Significantly, "this Court does not consider arguments that have not been asserted by a party[.]" State v. J.R., 227 N.J. 393, 421 (2017). This Court has ruled that a defendant, "may not present entirely new arguments to this Court." State v. Harris, 209 N.J. 431, 445 (2012) (citing to State v. Gandhi, 201 N.J. 161, 191 (2010)). Furthermore, defendants failed to raise this issue in their petitions for certification, and this Court granted certification explicitly to review the trial court's determination to permit the jury to view the

surveillance footage multiple times in slow motion. (DSa60-61). Even so, this argument lacks merit and does not reach the standard of plain error.

When a defendant does not object to an alleged error at trial, they must meet the “high bar” of plain error. State v. Singh, 245 N.J. 1, 13 (2021); R. 2:10-2. Under that standard, “an unchallenged error constitutes plain error if it was ‘clearly capable of producing an unjust result.’ R. 2:10-2. ‘Thus, the error will be disregarded unless a reasonable doubt has been raised whether the jury came to a result that it otherwise might not have reached.’” Ibid.

Defendant argues that this Court’s decision in State v. Watson, 254 N.J. 558 (2023), “contemplated that a witness would testify to lay a foundation whenever a video is played at an altered speed or enlarged for the jury.” (Db11). But Watson concerned the admissibility of narration evidence by a witness who did not observe the events depicted in a video in real time. Id. at 599-600. It did not address the specific issue raised here because no slow-motion video was shown to the jury. Id. at 572-73. Watson suggested that expert testimony would not be required to lay a foundation for basic techniques, such as adjusting the speed of a video, as occurred in this case. Id. at 606. It did not, as defendant erroneously suggests, provide “‘a lay witness’ should ‘testify about those basic techniques’” (DSb12) (emphasis added). This

Court merely noted “a lay witness can testify about those basic techniques.” Id. at 606 (emphasis added).

Unlike the present case, Rodd v. Raritan Radiologic Associates, P.A., 373 N.J. Super. 154 (App. Div. 2004), cited by defendant (DSb12), concerned the use of computer technology to digitally enhance an image. In Rodd, the plaintiff “digitally scanned select portions of . . . mammograms into a computer to produce super-magnified images, which were then projected onto a six-foot by eight-foot screen for the jury to view.” Id. at 160. The Appellate Division held that the computer-generated, super-magnified diagnostic images were not properly admitted demonstrative evidence because they did not accurately portray the original, unenhanced evidence. Id. at 167-71.

Likewise, Nooner v. State, cited by defendant, is distinguishable because it concerned the computer enhancement of photographs taken from videotape by “freezing each frame”, “transfer[ring] it to [a]computer”, “soften[ing] the pixels on the suspect’s face to remove graininess[,]”, and “mosaic[ing] out’ the victim[,]”, and four expert witnesses testified about the various enhancement processes. 907 S.W.2d 677, 686 (Ark. 1995). In Swinton, also cited by defendant (DSb13-14), the court found that bite mark photographs enhanced by the use of a computer software program were “computer

generated”, and their introduction required expert testimony. 847 A. 2d 921, 938, 941 (Conn. 2004).

The use of a basic function on a video player did not alter the video evidence such that a new piece of evidence was created. The slow-motion function used in this case did not enhance or alter the original video. The videos were simply slowed down so that the jury could better see what was already contained on the videos and assisted the jury’s understanding of the evidence. For these reasons, as well as the failure to object, any error had no capacity to produce an unjust result. R. 2:10-2.

Point II

The trial court properly granted the jury’s request to review the video footage in slow-motion with pauses.

Rising innovations in surveillance technologies has led to surveillance video evidence becoming a staple in criminal trials. “[T]he trend of increase[ed] use of surveillance video evidence at trials will continue in lockstep with the ongoing proliferation of video recording devices and new surveillance technologies[.]” State v. Watson, 472 N.J. Super. 381, 472 (App. Div. 2022), rev’d on other grounds, 254 N.J. 558 (2023). Criminal investigations “involve ‘canvassing the surrounding neighborhood not just for potential suspects and eyewitnesses but also for public and privately-owned

video cameras that may have captured a reported crime, the events leading up to it, or its aftermath (e.g., flight from the scene).” State v. Knight, 477 N.J. Super. 400, 416 (App. Div. 2023).

Determining the truth is a jury’s most essential task. “It is the jury's function to determine the facts based on its careful and considered evaluation of all of the evidence.” State v. Muhammad, 359 N.J. Super. 361, 381 (App. Div. 2003). Video surveillance footage can be extremely probative, and can “enhance[] a judge or juror's assessment of credibility by providing a more complete picture of what occurred.” State v. Cole, 229 N.J. 430, 450-51 (2017) (internal citations omitted). As this Court has recognized, “[t]he power of a video of contemporaneously recorded events at the crime scene can hardly be disputed.” State v. Garcia, 245 N.J. 412, 431 (2021).

“Generally, once an exhibit has been admitted into evidence, the jury may access it during deliberations, subject to the court’s instructions on its proper use.” State v. Burr, 195 N.J. 119, 133-34 (2008) (citing R. 1:8-8).

“Courts have broad discretion as to whether and how to conduct read-backs and playbacks.” State v. Miller, 205 N.J. 109, 122 (2011). Judges should ordinarily grant the jury’s request for the playback of evidence. Ibid. Here, a proper foundation was laid for the admission of the surveillance videos which were admitted into evidence, and no additional foundation was needed when

segments of those same admitted videos were slowed down using a basic function on the video player.

Given the case law of this Court, along with other jurisdictions, this Court should adopt the same reasoning and allow the presentation of video evidence replayed in slow-motion within the trial court's discretion, subject to offsetting considerations as found by the Appellate Division below. Additionally, the replay of the slow-motion surveillance video did not prejudice either defendant because it was played in open court, under the trial judge's supervision, and was not proffered as proof of intentionality.

A. The case law of this Court, coupled with that of other jurisdictions, supports the Appellate Division's opinion that whether a jury should be able to view a slow-motion replay of surveillance footage should be left to the trial court.

This Court's two recent opinions, State v. Watson, 254 N.J. 558 (2023) and State v. Higgs, 253 N.J. 33 (2023), recognized the value in surveillance footage and the importance of the jury's ability to view it. The fifty-seven second video in Watson showed an entire robbery committed inside a bank. 254 N.J. at 570. The video was "highly relevant to the core issue of identification," and "whether the robber's fingers touched areas where fingerprints could have been left but were not found." Knight, 477 N.J. Super at 417.

In State v. Higgs, an officer’s patrol car dashcam video footage was played during defendant’s murder trial. 253 N.J. at 341. A different officer, who had not been present at the scene, narrated portions of the video during the trial. Ibid. This Court held the officer’s testimony “invaded the province of the jury by usurping the jury's assessment of the image in the video,” and, significantly, noted “[t]he video was in evidence and the jury should have been permitted to view it slowly, frame by frame, to determine for themselves what they saw on screen[.]” Id. at 367.

Replaying videotaped evidence in open court, under the trial judge’s supervision, and upon the jury’s request, is a routine circumstance and is permissible. State v. Weston, 222 N.J. 277, 292-93 (2015). See also Miller, 205 N.J. at 125-26 (no error in replaying videotaped testimony rather than reading from transcript). As noted in the Appellate Division’s opinion, no New Jersey case directly addresses the question of whether it is permissible to admit surveillance video to be played in slow motion; however, courts in other jurisdictions have held that it is proper.

The Appellate Division stated, “we have no precedents specifically addressing the issues raised here concerning the playback of surveillance videos in slow motion and in other altered modes to jurors at their request during deliberations.” Knight, 477 N.J. Super at 417. Thus, the court engaged

in an analysis of analogous case law regulating the playback of video or audio-recorded trial testimony for deliberating jurors. Ibid. Under that case law, a court's decision to allow the playback of trial testimony for deliberating jurors is vested in the discretion of the trial judge. Ibid.

In its discussion of testimonial playbacks, the court cited State v. Burr for its determination that once an exhibit has been admitted into evidence, the jury may access it during deliberations, subject, of course, to the court's instructions on its proper use. Ibid. (quoting 195 N.J. 119, 133-34 (2008)). The Appellate Division stated that this Court held in Burr, and again in State v. Miller and State v. A.R.,¹ “a video-recorded statement must be replayed in open court under the direct supervision of the judge. The trial court retains the “ultimate discretion” to deny such playback requests.” Id. at 418. In this case, the opinion noted that because there is no testimonial component to the surveillance video of the crime scene, the specific concerns of allowing a jury to review testimonial playbacks are not present with surveillance footage.

The Appellate Division also discussed law from the Supreme Courts of North Carolina, Pennsylvania, Kentucky, Georgia, and also the Seventh Circuit, to emphasize that other jurisdictions have generally allowed slow-motion replays of video evidence “within the trial court's discretion, subject to

¹ 213 N.J. 542 (2013).

offsetting considerations.” Id. at 419. See Commonwealth v. Cash, 137 A.3d 1262, 1277 (Pa. 2016) (trial court did not abuse its discretion by admitting slow motion surveillance video because it “enhanced the jury’s understanding of the events surrounding the [crime]”); Burkhart v. Commonwealth, 125 S.W.3d 848, 850 (Ky. 2003) (slow motion video replay upheld where the jury reviewed the tape in the “controlled conditions of open court, minimizing any risk of undue emphasis”); State v. Brewington, 471 S.E.2d 398, 403 (N.C. 1996) (no abuse of discretion in permitting the jury to view a videotape in slow motion); Brown v. State, 411 S.E.2d 366, 366-67 (Ga. Ct. App. 1991) (slow motion review of a surveillance videotape did not alter or enhance the recording “so as to present ‘different and distorted images’ from what was admitted in evidence during the trial”); United States v. Plato, 629 F.3d 646, 652 (7th Cir. 2010) (upholding the district court’s decision to allow a surveillance video of a drug sale to be replayed for a jury in slow motion).

Defendants cannot provide any New Jersey or out-of-state law to support their claim. Defendants quote Commonwealth v. Jordan, 65 A.3d 318, 329 (Pa. 2013) to support the argument that viewing a slow-motion video is prejudicial. However, the court in that case stated, “[s]uch distortion may enhance the jury's understanding or it may do the opposite. ... If the judge concludes that the jury's understanding will be enhanced and that the slow motion or freeze

frame is more probative than prejudicial, then the judge should admit the evidence. Ibid. (citing Commonwealth v. Hindi, 631 A.2d 1341, 1345 (Pa. Super. Ct. 1993)).

Likewise, defendants' reliance on State v. Michaels, 264 N.J. Super. 579, 644 (App. Div. 1993), and State v. Burr is unhelpful. Defendants use these cases to imply the same concerns that may occur with the replay of recorded testimony are also concerns when slow-motion surveillance videos are permitted. However, notwithstanding that surveillance footage is non-testimonial by nature – as it usually does not contain audio – the Court in Burr noted the courts have the ultimate discretion to grant a jury's request for recorded playback, and it must occur in open court. All these cases support the same conclusion: that, balanced against any undue prejudice to the defendant, the trial court has the ultimate discretion to deny or grant such playback requests.

Similarly unhelpful for defendants, Rodd concerned the use of computer technology to digitally enhance an image. The plaintiff “digitally scanned select portions of . . . mammograms into a computer to produce super-magnified images, which were then projected onto a six-foot by eight-foot screen for the jury to view.” 373 N.J. Super. at 160. That is a far cry from a surveillance video being slowed-down using a basic function on the video

player, as we had in this case. Like Rodd, Suanez v. Egeland, relied on by defendants, is a case involving a recreated video of a car crash, not footage from the actual crime scene. 330 N.J. Super. 190, 195 (App. Div. 2000) (the court noting, “[t]he differences between the test depicted on the video tape and the actual accident were many.”)

This Court should apply the same reasoning adopted by the Appellate Division and aforementioned jurisdictions. Granting the jury’s request to play the surveillance video in slow motion in this case did not distort, bolster, or alter the contents of the video in any way; it simply depicted the sequence of events at the time of the robbery in a manner that helped the jury to better understand it. As this Court has noted, “[t]he video was in evidence and the jury should have been permitted to view it slowly, frame by frame, to determine for themselves what they saw on screen[.]” Higgs, 253 N.J. at 367 (emphasis added). Given the very short, rapid activity in the six-second segment that is not easy to follow at normal speed, the replays were reasonably allowed.

B. The Appellate Court’s suggestions for a model jury charge, as well as the factors it listed for trial courts’ consideration are sufficient to alleviate any possibility that a jury may place undue weight on a video alone.

The Appellate Division’s proposed non-exclusive factors for trial courts to consider in cases dealing with the admission of surveillance video and juror

requests for slow-motion replays, as well its recommendation to the Model Criminal Jury Charge Committee, are well-reasoned and entirely sufficient to alleviate any possibility that a jury may place undue weight on a video alone. Defendants' assertion that this Court should go even further and inform jurors that slow-motion has been demonstrated to bias viewers in favor of perceiving the actions as intentional in addition to demanding a regular speed replay for each slow-motion replay, is unreasonable and raises the danger of confusing a jury. Instead, this Court should embrace the approach of the Court in Miller, which "authoriz[ed] the presumptive use of video playbacks, [and] also acknowledge[d] and embrace[d] advances in technology while addressing the practical concerns they raise." 205 N.J. at 125.

After finding that the trial court properly exercised its discretion to permit the jury to view the surveillance video in slow-motion, and that no plain error occurred when the court did not provide the jurors with a cautionary instruction on how to consider this evidence, it opined that, "going forward it will be beneficial for trial judges and counsel to have guidance in dealing with the admission of surveillance videos and with requests by deliberating juries to replay surveillance video evidence, and to do so at modified speeds or with intermittent pauses." Knight, 477 N.J. Super. at 425.

The well-reasoned considerations for trial courts offered by the Appellate Division’s opinion properly leaves the decision of whether to permit relevant video evidence and slow-motion replays in the hands of the trial courts. Trial courts have the ultimate discretion to grant or deny requests for video playback requests. Knight, 477 N.J. Super. at 418; see also A.R., 213 N.J. at 555. The first two factors outline when and how slow-motion video surveillance footage can be presented during trial or at a jury’s request. Id. at 425-26. The third lists five considerations trial courts should examine when exercising their discretion in admitting surveillance video recordings into evidence or allowing the replay of them. Id. at 426.

Separate from these well-reasoned factors, the Appellate Division recommended to the Model Criminal Jury Charge Committee “that it consider creating a model charge that specifically addresses situations in which, as here, a jury requests the replaying of surveillance video evidence, and to caution jurors to afford such evidence only appropriate and not undue weight in comparison with the other evidence at trial.” Ibid.

These suggested factors and recommendation for a new jury charge are entirely sufficient to alleviate any possibility that a jury may place undue weight on video evidence. The defendants’ suggestion that this Court should inform jurors that slow-motion has been demonstrated to bias viewers in favor

of perceiving the actions as intentional in addition to demanding a regular speed replay for each slow-motion replay goes too far and runs the risk of confusing the jury.

First, the procedures used by the trial court, and approved of by the appellate court, that the video playbacks occur in open court under the judge's supervision and in the presence of counsel, are appropriate. To mandate that each time a video is played in slow-motion, it must be coupled with a replay at regular speed, is unnecessary. If the trial court reasonably finds that slow-motion presentation would assist the jurors' understanding of the pertinent events and help them resolve disputed factual issues, any further limitations on how it should be presented should be left to the trial court.

The suggestion offered by the Appellate Division, that the Model Criminal Jury Charge Committee create a model charge “that specifically addresses situations in which, as here, a jury requests the replaying of surveillance video evidence, and to caution jurors to afford such evidence only appropriate and not undue weight in comparison with the other evidence at trial,” alleviates the concerns raised by defendants because this type of charge “might also usefully draw to the jurors' attention the possibility that viewing such video evidence in slow motion might subconsciously increase their perceptions of an actor's intentionality.” Knight, 477 N.J. Super. at 426. Thus,

this type of charge is simple and easy to understand, allowing the jurors to focus on the issues in the case while understanding to not place undue weight on video evidence in comparison with the other evidence presented.

C. In this case, defendants suffered no undue prejudice because the video was not presented to prove intent, and the court gave the jury charge to consider all the evidence before the jury's deliberations began.

The slow-motion replay viewed by the jurors did not unfairly prejudice the defendants. Instead, the jury used the slowed-down video to assist them in resolving the “critical disputed issue of identification” by helping them to identify the actors and ascertain what each of them was individually doing. The studies proffered by defendants are inapplicable here because they discuss perceived intent, which was not the main focus of the surveillance footage. Finally, the judge's charge to consider all the evidence during its general jury charge alleviated any possible prejudice defendants argue they suffered. Given the very short, rapid activity in the six-second segment that is not easy to follow at normal speed, the replays were reasonably allowed.

In order to prove that the slow-motion replay of the surveillance video was unduly prejudicial, defendants cite to research indicating that the slow-motion presentation of video evidence can have the capacity to increase observers' perceptions that the conduct of the persons shown on the videos was

intentional. The main article cited by defendants, “the Caruso Study,” as well as the other literature proffered, is distinguishable from the case at hand.

As the Appellate Division noted, these studies are inapplicable in the present case because they discuss the possible exaggeration of an actor’s intent when viewed in slow-motion. Knight, 477 N.J. Super at 421-22. The court took pains to explain why the context of the studies is distinguishable from the case at hand, stating:

The context here is distinguishable from the two experiments that were the subject of the Caruso study because it involves identifying multiple actors and their respective actions. The Caruso study focused on video footage of: (1) a single defendant robbing and shooting a store clerk, and (2) a single football player making disallowed helmet-to-helmet contact with an opposing player.

[...]

For the single-robber example, a central question for the jury was whether the defendant intended to kill the victim. For the football example, a central question for the referees was whether the sole defender intended to strike the runner's helmet with his own. Intentionality in both examples was at the heart of the matter. By contrast, it was crucial for this jury to sort out: (1) who were the three men walking with Osbourne behind the deli; and (2) what each person was doing during that segment. [Id. at 421-22].

The video in this case assisted the jurors in resolving the “critical disputed issues of identification.” Id. at 421. “The video shows the physical appearances of the four men, their sizes, their features, and their clothing. The video also shows where each of three alleged culprits were walking in relation to the victim, and what they individually were doing at that time.” Ibid.

Although defendant Shaquan argues that the video was potentially influential in affecting how the jury evaluated his degree of involvement in the events at the scene, and that he and the State argued sharply different conclusions about his intent from the video, the Appellate Division found “to the extent the video had probative value of ‘intentionality’ beyond its bearing upon identification, we conclude it was not unduly prejudicial to Shaquan's interests.” Id. at 423. It opined, “[t]o be sure, the video was also evidential of the actors' displayed apparent intent to rob Osbourne. But that was not as vital as identifying who they were and their respective actions in the footage.” Id. at 422.

Furthermore, the video was not necessarily at odds with defendant Shaquan’s argument that he had not been a part of the robbery; with counsel pointing out he was the last person to walk behind the door in the video, and was caught off guard and confused. (DSb38). Additionally, the prosecutor did not argue intent. When the State argued, “[t]here's Shaquan walking up,

following up just as we heard from Thaddeus Osbourne. Doesn't look scared, doesn't look surprised. This is part of the plan,” he was noting that Osbourne had said three people robbed him, and that defendant Shaquan was one of them. (16T240-2 to 5; 1T17-24 to 20-4). This is squarely within the issue of identification.

Additionally, defendant Fuquan’s argument that the jury was exposed to a “distorted reality” because it “allowed the jury to perceive something that it had not been able to see during trial” is preposterous. (DFb16). “It is the jury's function to determine the facts based on its careful and considered evaluation of all of the evidence.” Muhammad, 359 N.J. Super. at 381. To argue that the jurors should not have been able to view the surveillance footage in slow motion to better determine whether or not defendant Fuquan was carrying a shotgun goes against the basic function of a jury – fact-finding. Again, this was not new evidence that had not been presented at the trial, the slow-motion function used in this case did not enhance or alter the original video. The videos were simply slowed down so that the jury could better see what was already contained on the videos and assisted the jury’s understanding of the evidence.

Finally, the trial court instructed the jury to consider all the evidence in the case. As noted by the Appellate Division, “here the trial court generally

instructed the jury to consider all the evidence during its general jury charge. Thus, even if the trial court was required to give the jury a separate instruction prior to playing surveillance videos during deliberation, the general jury charge offset any alleged error from the omission.” Knight, 477 N.J. Super. at 425.

Conclusion

The trial court did not abuse its discretion in allowing the jury to view the surveillance footage in slow-motion with pauses. For the foregoing reasons and authorities cited in support thereof, the State respectfully requests that this Court affirm the Appellate Division's decision.

Respectfully submitted,

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Filed: August 19, 2024