SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3879-15T3

STATE OF NEW JERSEY

IN THE INTEREST OF J.L.,

A JUVENILE.

Argued October 3, 2017 – Decided October 13, 2017

Before Judges Yannotti and Carroll.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Hudson County, Docket No. FJ-09-0595-16.

Daniel S. Rockoff, Assistant Deputy Public Defender, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Mr. Rockoff, of counsel and on the brief).

Frances Tapia Mateo, Assistant Prosecutor, argued the cause for respondent (Esther Suarez, Hudson County Prosecutor, attorney; Ms. Mateo, on the brief).

PER CURIAM

J.L., a juvenile, appeals his adjudication of delinquency for an act which, if committed by an adult, would constitute fourth-degree theft, N.J.S.A. 2C:20-3a and N.J.S.A. 2C:20-2b(3). J.L. argues that the trial judge should have granted his motion for

acquittal at the close of the State's evidence, and that there was insufficient credible evidence to support the adjudication, both as to the theft itself and the value of the stolen items. We disagree and affirm.

The theft charge arose out of events that occurred in a middle school classroom on November 18, 2015, at approximately 2:38 p.m. During the final class period of the day, the victim was teaching science to a class of thirty-three students, including J.L. She testified that J.L.'s seat was approximately three feet away from her desk so she could "closely monitor[]" him. While in the middle of the classroom giving the students "closing instructions," the victim heard a commotion and observed J.L. lean over her desk and look into her personal effects. J.L. then ran from the classroom "in a great hurry" and "without authorization."

The victim used her intercom phone to alert school officials that J.L. was "roaming." She then went over to her desk to see why the other students appeared so upset and saw that her iPhone was missing. She testified she used the phone as a timer in the classroom, and that she left it, along with her purse, in a basket on her desk, "in an area where kids are [not] supposed to go."

Since it was dismissal time, the remaining students in the classroom were released "after we made certain that none of [them] had it[.]" The victim called police and, with the aid of a friend,

used a "Find my iPhone" application to track her phone. She testified she "looked up on the school system, cross-referenced where [J.L.] lived and there the phone is going toward[] [J.L.'s] house."

Accompanied by police, the victim went to J.L.'s home, where she asked him to "[j]ust give the phone back and there will be no consequences." J.L. "started to cry" and "was kind of shaky." Neither the police nor the victim entered the home, however, and the phone was never recovered.

The victim testified, without objection, that she originally paid "about $500" for the iPhone model 5c, and $48 for its protective case. When asked the value of those items, she stated she would have to pay her cell phone carrier $500 for the phone and $48 for the case. Instead, she went "off-market" and bought a replacement iPhone 5c and case at a total cost of $300.

On cross-examination, the victim testified she was familiar with the "sibling pick-up program" at the school. She explained the program permits "approved children" to report to a younger sibling's classroom at 2:40 p.m. and remain there "until the younger sibling's teacher dismisses them." To be approved for the program, the school sends a letter to parents, who must sign and return it if they wish to participate. J.L. was "not on [the

victim's] list to leave for sibling pickup," nor was she aware that J.L. had any younger siblings in the school.

After the State rested, defense counsel moved for a directed verdict of acquittal. Counsel argued the State failed to adduce any evidence that J.L. ever possessed or exercised control over the teacher's phone. In denying the motion, the judge acknowledged that the victim did not observe J.L. with the phone in his possession. However, the judge found that, giving the State the benefit of all inferences that could be derived from the circumstantial evidence presented, it was "clear that the motion should be denied."

J.L.'s father, B.L., testified that his younger daughter attends the same school. B.L. stated he became familiar with the sibling pick-up program through his wife, and that J.L. "leaves his class a little early" to pick up his younger sister from her classroom on days when B.L. is unable to pick her up. When asked whether J.L. picked his sister up on November 18, 2015, B.L. replied: "Yeah, I believe so because I was . . . laying down and both of them [were] in the house so obviously he picked [her] up." On cross-examination, B.L. indicated his wife was the source of much of his knowledge and he "never saw the document or filled out the papers" to authorize the children's participation in the sibling pick-up program.

After considering the evidence, the judge adjudicated J.L. delinquent, despite his counsel's argument that the State failed to prove the alleged theft. The judge reasoned:

> [The victim] has a class in which [J.L.] is one of the students and at about 2:38 p.m. shortly before the [] last class of the day ended . . . the attention of [the victim] was called to [J.L.] and to her desk and she did see [J.L.] leaning over her desk and that was shortly before he ran out of the class without authorization. He did not have permission to leave the class, certainly not [to] run out of the class.
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> And the reason why he ran out of the class without permission is because he had taken her phone without her permission from where the phone was on top of the desk in a basket. That was shortly before the bell rang. She saw him looking at the top of her desk and then shortly after that she noticed that her phone was missing.
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> . . . .
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> Based on those findings of fact, namely the fact that [J.L.] had [] approached the desk and was looking at the items on top of the desk, that at some point he was leaning over the desk, I conclude that without the permission of the teacher [] he . . . purposely took the phone and exercised control over it.
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> He took it away with him. His purpose was to deprive the owner of the phone. And I think that the fact that he left the class without permission and ran out is an indication to me that he did in fact take that phone and together with the other circumstantial evidence it satisfies the State's burden of proof beyond a reasonable doubt.

However, the judge concluded the State did not present sufficient evidence to show that J.L. committed third-degree theft, as originally charged, which required a finding that the stolen items ranged in value from $500 to $75,000. Instead, based on the victim's testimony, the judge found the value of the stolen phone was approximately $348, thus establishing a fourth-degree theft.

At a subsequent dispositional hearing, the court ordered six months of informal home detention, conditioned on J.L. successfully completing an evening reporting center program and undergoing random substance abuse testing. This appeal followed.

On appeal, J.L. raises the following arguments:

> POINT I
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> THE COURT ERRED BY (1) NOT DISMISSING THE CASE, BECAUSE THE STATE OFFERED NO EVIDENCE THAT J.L. COMMITTED THE OPERATIVE ACT, AND ERRED AGAIN BY (2) ADJUDICATING J.L. GUILTY BEYOND A REASONABLE DOUBT.
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> > (1) The Court Erred By Not Granting J.L.'s Motion To Dismiss At The Close Of The State's Case.
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> > (2) The Court Erred By Not Entering A Judgment of Acquittal At The Close Of Trial.
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> POINT II
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> THE COURT ERRED BY NOT DISMISSING THE CASE AND BY ADJUDICATING J.L. GUILTY OF FOURTH-DEGREE THEFT, BECAUSE THE STATE OFFERED NO EVIDENCE

OF THE FAIR MARKET VALUE OF THE USED PHONE AT THE TIME AND PLACE OF THE OPERATIVE ACT, WHICH IS AN ELEMENT OF THE OFFENSE. THE REPLACEMENT COST OF A NEW PHONE, WHICH THE COURT RELIED ON INSTEAD TO ASSESS VALUATION, IS IRRELEVANT TO A CONVICTION UNDER N.J.S.A. 2C:20-2B.

Our standard of review in juvenile delinquency bench trials "is narrow and is limited to evaluation of whether the trial judge's findings are supported by substantial, credible evidence in the record as a whole." State in the Interest of J.P.F., 368 N.J. Super. 24, 31 (App. Div.) (citing State v. Locurto, 157 N.J. 463, 471 (1999); State v. Johnson, 42 N.J. 146, 161 (1964)), certif. denied, 180 N.J. 453 (2004). In order to find a violation, the court must conclude that the State proved each element of the offense charged beyond a reasonable doubt. State ex rel. J.G., 151 N.J. 565, 593-94 (1997). We do not engage in an independent assessment of the evidence as if "[we] were the court of first instance." Johnson, supra, 42 N.J. at 161. Rather, we give special deference to the trial judge's findings, particularly those that are substantially influenced by the judge's opportunity to observe the witnesses directly. Id. at 162. However, we need not defer to the trial judge's interpretation of the law. State v. Brown, 118 N.J. 595, 604 (1990).

Mindful of these standards, we reject J.L.'s arguments and affirm substantially for the reasons expressed by Judge Alvaro L.

Iglesias in his cogent oral opinion. We add the following comments.

J.L. first argues that the trial court erred in denying his motion for a judgment of acquittal. He contends "the State offered no evidence that J.L. ever took anything off [] the teacher's desk" and the court "erroneously relied on so-called circumstantial proofs," which he asserts were inadequate to adjudicate him guilty beyond a reasonable doubt. We do not find this argument persuasive.

In reviewing a motion for acquittal based on insufficient evidence pursuant to Rule 3:18-1, we apply the same standard as the trial court. State v. Bunch, 180 N.J. 534, 548-49 (2004); State v. Felson, 383 N.J. Super. 154, 159 (App. Div. 2006). Thus, a motion for judgment of acquittal will not be granted where:

> [V]iewing the State's evidence in its entirety, be that evidence direct or circumstantial, and giving the State the benefit of all its favorable testimony as well as all of the favorable inferences which reasonably could be drawn therefrom, a reasonable jury could find guilt of the charge beyond a reasonable doubt.
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> [State v. Reyes, 50 N.J. 454, 459 (1967).]

The probative value of proffered evidence is not diminished by the fact that it is circumstantial. See State v. Carroll, 256 N.J. Super. 575, 603 (App. Div.), certif. denied, 130 N.J. 18

(1992). Circumstantial evidence alone will support a judge or jury's verdict of guilt. Ibid. Also, an inference reasonably may be drawn by a factfinder when "'it is more probable than not that the inference is true; the veracity of each inference need not be established beyond a reasonable doubt in order for the [finder of fact] to draw the inference.'" State v. Thomas, 132 N.J. 247, 256 (1993) (quoting State v. Brown, supra, 80 N.J. 587, 592 (1979)).

Here, the State's proofs that J.L. stole the phone from his teacher's desk were entirely circumstantial. Nevertheless, the judge properly applied the Reyes standard and, viewing the evidence in the light most favorable to the State, and affording the State the benefit of all reasonable inferences, correctly denied J.L.'s motion for a judgment of acquittal.

We likewise reject J.L.'s next contention that the judge should have dismissed the charges at the conclusion of the case, following his father's testimony. However, B.L.'s testimony did not exonerate J.L. B.L. did not return the required papers to the school, and J.L.'s name did not appear on the school's approved list for the sibling pick-up program. The incident occurred in November, more than two months into the school year; the teacher was unaware that J.L. had a younger sibling in the school; and, during those two months, there is no competent evidence that J.L. left class early to pick up his younger sister. B.L.'s testimony

thus failed to rebut the judge's reliance on J.L.'s abrupt, unauthorized departure from the classroom as a basis for finding he committed the theft. Additionally, B.L. was sleeping on the day of the incident, and his testimony about the sibling pick-up program was largely dependent on information he gleaned from his wife, who did not testify.

Equally unconvincing is J.L.'s final argument that the State failed to prove the value of the phone and protective case. J.L. correctly asserts that, in a theft prosecution, the stolen items are to be valued at the time of the theft. State v. Gosa, 263 N.J. Super. 527, 537 (App. Div.), certif. denied, 134 N.J. 477 (1993). "[F]or purposes of fixing the degree of an offense, that value shall be the fair market value at the time and place of the operative act." N.J.S.A. 2C:1-14m.

Theft is graded as a third-degree crime if the amount involved exceeds $500 but is less than $75,000, N.J.S.A. 2C:20-2b(2)(a); a fourth-degree crime if it is at least $200 but does not exceed $500, N.J.S.A. 2C:20-2b(3); and a disorderly persons offense if the amount involved is less than $200. N.J.S.A. 2C:20-2(4)(a).

> It has consistently been held in this State that the owner of an article of personal property, whether or not he is generally familiar with the value of like articles, is competent to testify as to his estimate of the value of his own property and that the extent

> of its probative value is for the consideration of the [trier of fact].
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> [State v. Romero, 95 N.J. Super. 482, 487 (App. Div. 1967) (citing Teets v. Hahn, 104 N.J.L. 357, 359 (E. & A. 1928); Nixon v. Lawhon, 32 N.J. Super. 351, 355-56 (App. Div. 1954); Kazanjian v. Atlas Novelty Co., 34 N.J. Super. 362, 369 (App. Div. 1955)).]

Thus, in the present matter, the victim was competent to testify as to the value of her stolen phone and case. Her testimony that it cost $348 to purchase a like model iPhone and case was sufficient to establish fourth-degree theft. Moreover, J.L. did not object to this testimony. A failure to object leads to the reasonable inference that the issue was not significant in the context of the trial. State v. Macon, 57 N.J. 325, 333 (1971).

Affirmed.