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Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2721-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ANDREW GRANDISON,

Defendant-Appellant.

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Submitted April 11, 2018 – Decided April 26, 2018

Before Judges Alvarez and Geiger.

On appeal from Superior Court of New Jersey,  
Law Division, Essex County, Docket No. 2016-  
042.

Mark A. Bailey, attorney for appellant.

Robert D. Laurino, Acting Essex County  
Prosecutor, attorney for respondent (Frank J.  
Ducoat, Special Deputy Attorney General/Acting  
Assistant Prosecutor, of counsel and on the  
brief).

PER CURIAM

Defendant Andrew Grandison appeals his conviction of  
disorderly persons simple assault, N.J.S.A. 2C:12-1(a)(1),

sentence to a 120-day jail term, and \$500 fine. On appeal, defendant seeks a reversal of his conviction and dismissal of the assault charge or, alternatively, a remand to the Law Division for a new, de novo trial. He contends the Law Division erred when it held a video of the incident was not sufficiently authenticated and, therefore, inadmissible. He further argues he was prejudiced by the trial court's failure to sequester a witness while explaining the legal standard to authenticate a video. He also contends the jail sentence imposed was excessively harsh and the case should be remanded for resentencing. Alternatively, defendant argues the case should be remanded to the Law Division because the court did not apply the correct standard of review. We reject these arguments and affirm the conviction and sentence.

On March 15, 2016, defendant was involved in an altercation with three other men, Kenneth,<sup>1</sup> Ekene Atanmo, and Ebere Chukwunyere, over a parking spot in the driveway of a body shop located in Newark. After blocking the car of the other men, defendant began shouting at them to move their car and stop blocking his business. As the argument escalated, defendant punched Kenneth. While Chukwunyere was holding Kenneth back from retaliating, defendant punched Chukwunyere twice. After being

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<sup>1</sup> Kenneth's surname is not identified in the record.

punched, Chukwunyere blacked out and fell to the ground. Defendant was later arrested.

Defendant was charged with simple assault and pled not guilty. The case proceeded to trial before a Newark Municipal Court judge (MCJ). Defendant did not request sequestration of witnesses. On the first day of trial, defendant sought to admit a video recording of the incident into evidence. In the presence of State's witness Chukwunyere, the MCJ explained the standard for admissibility of the video.

Chukwunyere and Atanmo testified for the State. Defendant did not testify and presented no witnesses. At trial, defense counsel played a video recording for both witnesses in an effort to impeach their testimony. After questioning the witnesses regarding the contents of the video, defense counsel sought to admit the video into evidence. The MCJ declined to admit the video into evidence, finding the witnesses could not properly authenticate it.

Following the two-day trial, the MCJ issued an oral decision finding defendant guilty of simple assault. After recounting the facts in detail, the MCJ found Chukwunyere's testimony to be "compellingly credible, believable, and truthful." The MCJ also found his testimony to be consistent, forthright, straight forward, and honest, noting "[h]is version of the events made

sense." The MCJ further found that Chukwunyere's testimony was corroborated by Atanmo's testimony. Additionally, the MCJ found Atanmo's testimony to be "whole[ly] credible, believable, and truthful. His testimony was consistent with that of [Chukwunyere], and provided the [c]ourt with a clear picture of what happened in this case." The MCJ placed great weight in their testimony.

Noting defendant had recently been convicted of aggravated assault, placed on probation for three years, and ordered to pay \$8000 in fines and assessments, the MCJ applied aggravating factors three, N.J.S.A. 2C:44-1(a)(3) (risk defendant will commit another offense), six, N.J.S.A. 2C:44-1(a)(6) (prior criminal record and seriousness of offense), and nine, N.J.S.A. 2C:44-1(a)(9) (need for deterrence). The MCJ also applied mitigating factor eleven, N.J.S.A. 2C:44-1(b)(11) (imprisonment would entail excessive hardship to defendant or his dependents). He concluded the aggravating factors outweighed the mitigating factor and determined a jail sentence was appropriate. The MCJ sentenced defendant to a 120-day county jail term, required him to complete an intensive anger management program while incarcerated, ordered him to pay a \$500 fine and appropriate penalties and assessments, and prohibited him from having any contact with the victim.

Defendant appealed to the Law Division. After conducting a trial de novo, the Law Division judge issued a comprehensive

written opinion, which recounted Chukwunyere's and Atanmo's testimony in detail. The Law Division judge found their testimony to be credible. In ruling the video recording was inadmissible, the judge stated: "[T]here is no evidence accepted by this [c]ourt that would impeach the credibility of the witnesses' testimony."

The evidence showed that with others present, defendant turned and punched Kenneth twice. Chukwunyere placed himself between Kenneth and defendant to prevent further escalation. Chukwunyere was then punched twice in the face by defendant. Chukwunyere fell to the ground and blacked out. The police were called and defendant left before they arrived. Chukwunyere was taken to the hospital by Atanmo.

With regard to the admissibility of the video recording proffered by defendant, the Law Division judge stated:

The [defendant] submits that the video footage demonstrates inconsistencies in the witnesses' testimony- damaging their credibility. However, I find that Judge Batista properly denied the admission of the video into evidence because neither witness authenticated the video. Recalling [State v. Wilson, 135 N.J. 4 (1994)], above, a person present when the film was made must testify that the film accurately depicts the events as that person saw them when they occurred.

First, Mr. Chukwunyere could not identify that it is his vehicle that appears in the film. He could not identify the individuals in the video. He could not confirm the video was a video of the incident. He testified

that two people were moving their hands, but could not testify that the video accurately depicted what happened because it was too far away. He could not testify to how many people were gathered around together. Mr. Chukwunyerere did testify that it appeared to be the driveway in question. Likewise, Mr. Atanmo could not identify any events happening in the video recording because the camera was too far away and unclear.

I am in agreement with the municipal judge. The time the video was taken is questionable, as there is a 'jump' of six minutes at the beginning of the video. The witnesses did not identify any of the parties involved. The video cuts off in the middle of what appears to be a fight. The video is taken from a great distance away, and any figures are grainy and impossible to identify.

[Defendant] relies on Wilson, however, which in part states that "a witness need only identify the persons, places, or things shown in the photograph or videotape." This is of little help to the [defendant], as it is evident that neither witness could not identify any of the parties, even if they do admit that the location of the video appears to be an accurate representation of the scene of the incident. [Defendant] sought to challenge the version of events according to the State's witnesses, and this video in no way is reliable enough to merit such a challenge. The video was not properly authenticated by defense counsel and the municipal judge did not err in excluding it from evidence.

. . . .

As noted above, I find that the video was not properly authenticated by the State's witnesses. They did not testify that the

events depicted in the video were an accurate reflection of how they perceived the incident.

With regard to the alleged failure to sequester the witness, the Law Division judge stated:

[Defendant] next argues that Mr. Chukwunyere's testimony was tainted because he was present when the judge explained the standard of admissibility. N.J.R.E. 615 states that "at the request of a party, or on the court's own motion, the court may, in accordance with the law, enter an order sequestering witnesses." Sequestration is within the discretion of the trial judge. State v. Williams, 404 N.J. Super. 147, 159 (App. Div. 2008). Its purpose is to prevent "prospective witnesses from hearing what the other witnesses detail in their evidence, for the less a witness hears of another's testimony, the more likely is he to declare his own knowledge simply and unbiased." Here, defense counsel made no request to have Mr. Chukwunyere sequestered during the discussion as to the admissibility of the videotape.

Neither did the judge make a sequestration request. "Absent a clear showing of prejudice an inadvertent violation of a sequestration order does not trigger automatic exclusion of the witness' testimony." Defense has not made a clear showing of prejudice. I add that the second witness, Mr. Atanmo, was sequestered and, like Mr. Chukwunyere, could not authenticate the video.

The Law Division judge held the State had proven defendant committed simple assault beyond a reasonable doubt by purposely punching Chukwunyere twice, causing him physical pain. He found defendant guilty and imposed the same sentence the MCJ had imposed.

This appeal followed. On appeal, defendant makes the following arguments:

POINT I

THE LAW DIVISION COMMITTED REVERSIBLE ERROR WHEN IT HELD THE VIDEO WAS NOT SUFFICIENTLY AUTHENTICATED AND THEREFORE INADMISSIBLE.

POINT II

THE DEFENSE ESTABLISHED A CLEAR SHOWING OF PREJUDIC[E] RESULTING FROM THE FAILURE TO SEQUESTER THE WITNESS WHILE EXPLAINING THE LEGAL STANDARD TO AUTHENTICATE A VIDEO.

POINT III

SENTENCING THE DEFENDANT TO THE MAXIMUM JAIL SENTENCES WAS [E]XCESSIVE, HARSH AND THEREFORE THE COURT SHOULD REMAND THE CASE FOR RESENTENCING.

POINT IV

THE LAW DIVISION COMMITTED REVERSIBLE ERROR WHEN IT APPLIED THE WRONG STANDARD OF REVIEW.

Defendant argues the Law Division judge erred in ruling the video allegedly depicting the incident was inadmissible because it had not been properly authenticated. He contends the testimony presented satisfied the standard for authentication under N.J.R.E. 901. We disagree.

"[T]he decision to admit or exclude evidence is one firmly entrusted to the trial court's discretion." Estate of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 383-84 (2010) (citing



Green v. N.J. Mfrs. Ins. Co., 160 N.J. 480, 492 (1999)). "We review the trial court's evidentiary ruling under a deferential standard; it should be upheld absent a showing of an abuse of discretion, i.e., there has been a clear error of judgment" which is "so wide of the mark that a manifest denial of justice resulted." State v. J.A.C., 210 N.J. 281, 295 (2012) (citations omitted).

"Since a videotape falls within the definition of a 'writing' under N.J.R.E. 801(e), a videotape containing relevant evidence is 'generally admissible' if properly authenticated." State v. Loftin, 287 N.J. Super. 76, 98 (App. Div. 1996) (quoting Wilson, 135 N.J. at 16-17). "Authentication of a videotape is much like that of a photograph, that is, testimony must establish that the videotape is an accurate reproduction of that which it purports to represent and the reproduction is of the scene at the time the incident took place." Ibid. (citing Wilson, 135 N.J. at 15).

When a party appeals from a de novo trial on the record, we generally "consider only the action of the Law Division and not that of the municipal court." State v. Oliveri, 336 N.J. Super. 244, 251 (App. Div. 2001) (citing State v. Joas, 34 N.J. 179, 184 (1961)). In determining that the video had not been properly authenticated and was thus inadmissible, the Law Division judge found:

The time the video was taken is questionable, as there is a 'jump' of six minutes at the beginning of the video. The witnesses did not identify any of the parties involved. The video cuts off in the middle of what appears to be a fight. The video is taken from a great distance away, and any figures are grainy and impossible to identify.

Each of these findings is amply supported by the record. We discern no abuse of discretion in ruling the video inadmissible.

We next consider defendant's claim that he was prejudiced by the failure to sequester witnesses while the trial court discussed the standard for authentication of video recordings. We, again, disagree. We review a trial judge's sequestration decision under an abuse of discretion standard. Williams, 404 N.J. Super. at 159 (citing State v. Miller, 299 N.J. Super. 387, 399 (App. Div. 1997)). As defendant did not request sequestration before the trial court, we apply a plain error standard of review. State v. Hyman, 451 N.J. Super. 429, 455 (App. Div. 2017) (citing State v. Townsend, 186 N.J. 473, 498 (2006)).

The purpose of sequestration is "to prevent prospective witnesses from hearing what other witnesses detail in their evidence" so that their testimony is not shaped or tailored by another witnesses' testimony. Williams, 404 N.J. Super. at 160 (quoting State v. DiModica, 40 N.J. 404, 413 (1963)). The MCJ's discussion of the requirements for authentication was not

testimony of a witness. Therefore, there was no need to sequester witnesses during that discussion. Moreover, although Chukwunyere was present in the courtroom during the MCJ's discussion of the authentication standard, Atanmo was not. Yet their testimony regarding authenticating the video was similar. Both were unable to authenticate the video. We discern no abuse of discretion, much less plain error.

Defendant further argues the Law Division judge applied the wrong standard of review. He argues the Law Division judge failed to properly evaluate the credibility of the witnesses and conduct an independent analysis of the facts. We are unpersuaded by this argument.

On appeal from a municipal court ruling, the Law Division conducts a trial de novo. See R. 3:23-8(a)(2); State v. Kuropchak, 221 N.J. 368, 382 (2015). The Law Division is obliged to "determine the case completely anew on the record made in the Municipal Court, giving due, although not necessarily controlling, regard to the opportunity of the magistrate to judge the credibility of the witnesses." State v. Johnson, 42 N.J. 146, 157 (1964) (citations omitted). The Law Division judge does not affirm or reverse what occurred in the municipal court. "Rather, [the judge] reviews the transcript and makes an independent determination of the sufficiency of the evidence presented, giving

appropriate deference to any credibility assessments that the municipal court judge may have made." State v. Kashi, 360 N.J. Super. 538, 545 (App. Div. 2003), aff'd, 180 N.J. 45 (2004).

The Law Division judge conducted an appropriate trial de novo, undertaking a thorough review of the evidence, and determining the case completely anew. The Law Division judge rendered independent credibility determinations, findings of fact, and legal conclusions in his well-reasoned written opinion.

Finally, we address defendant's argument that his sentence to the maximum jail term was excessive and unduly harsh. Defendant was on probation when he committed the instant offense. He contends, however, he was fully compliant with his conditions of probation. He claims the sentence ensured he would lose his job, have bills and fines he would not be able to pay once he is released from jail, and be prevented from completing batterer's counseling. He claims the sentence is even more problematic given the alleged lack of credibility of the witnesses. We find this argument to be without merit.

We first note defendant was sentenced to a 120-day jail term, not the maximum jail term of six months. See N.J.S.A. 2C:43-8. Second, this was not defendant's first offense. He had recently been convicted of aggravated assault and was on probation for that crime. Third, the victim was knocked unconscious and suffered

other injuries. Fourth, defendant was ordered to complete an anger management program while serving his jail term.

"Appellate review of sentencing is deferential, and appellate courts are cautioned not to substitute their judgment for those of our sentencing courts." State v. Case, 220 N.J. 49, 65 (2014) (citing State v. Lawless, 214 N.J. 594, 606 (2013)). "The test 'is not whether a reviewing court would have reached a different conclusion on what an appropriate sentence should be; it is rather whether, on the basis of the evidence, no reasonable sentencing court could have imposed the sentence under review.'" State v. Roach, 146 N.J. 208, 236 (1996) (quoting State v. Ghertler, 114 N.J. 383, 388 (1989)).

Having considered the record, we are satisfied the sentence is not manifestly excessive or unduly punitive and did not constitute an abuse of discretion.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION