SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3259-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MICHAEL E. MITCHELL,

Defendant-Appellant.

Submitted March 6, 2018 – Decided March 26, 2018

Before Judges Yannotti and Mawla.

On appeal from Superior Court of New Jersey, Law Division, Middlesex County, Indictment No. 14-05-0525.

Joseph E. Krakora, Public Defender, attorney for appellant (Lauren S. Michaels, Assistant Deputy Public Defender, of counsel and on the brief; Rochelle Watson, Assistant Deputy Public Defender, on the brief).

Andrew C. Carey, Middlesex County Prosecutor, attorney for respondent (Joie Piderit, Assistant Prosecutor, of counsel and on the brief).

Appellant filed a pro se supplemental brief.

PER CURIAM

Four robberies occurred on separate dates in Middlesex County in December 2011 and January 2012, involving cellular telephone (cell phone) stores. As a result, defendant was charged with four counts of first-degree robbery, N.J.S.A. 2C:15-1 (counts one, six, eleven, and sixteen); four counts of second-degree conspiracy to commit robbery, N.J.S.A. 2C:5-2 and N.J.S.A. 2C:15-1 (counts two, seven, twelve, and seventeen); four counts of third-degree theft by unlawful taking, N.J.S.A. 2C:20-3(a) (counts three, eight, eleven, and eighteen); four counts of third-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b) (counts four, nine, fourteen, and nineteen); and four counts of second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a) (counts five, ten, fifteen, and twenty). Co-defendants Mack Mitchell and Emendo Bowers (John Doe) were also charged in the indictment.

Prior to trial, defendant filed a motion to suppress his recorded statement to the police, which was denied. Defendant was tried by a jury, which returned a guilty verdict for theft by unlawful taking (counts three, eight, and eighteen); conspiracy to commit robbery (counts seven and seventeen); possession of a weapon for unlawful purpose (counts ten and twenty); and first-degree robbery (count sixteen). Defendant was found not guilty of counts one, two, five, and six. The jury was unable to reach

a verdict on counts eleven, twelve, and fifteen, which the State dismissed.

On appeal, defendant challenges the motion judge's decision regarding the motion to suppress. Defendant also challenges his conviction on the basis of the trial judge's failure to grant a mistrial due to alleged irregularities in the jury deliberation process. For the reasons that follow, we affirm.

We recite the following facts from the record. On December 8, 2011, Amit Soni opened the T-Mobile store located on Route 1 South in Edison. According to Soni, shortly after opening, two men entered the store. Soni described one man as "mixed Spanish African American" and of a lighter complexion, and the other man as African American and of a darker complexion.

Soni stated one of the men sat in a chair and asked Soni to help him find the cheapest cell phone because he had lost his. Soni stated he attempted to look up the man's cell phone number, but could not find the account. Then, the other man "took out a gun . . . [h]ad it up to his chest and told [Soni] 'You know what it is? Go to the back.'"

The man with the gun instructed Soni to go to the back room of the store and ordered him to lay face down on the ground. Soni testified the men asked him where the cash and tablets were, and

Soni pointed at the safe where there was approximately $1300 in cash. Soni testified:

> [t]hen the third person came in and they just started filling up bags with the phones that were in here, and prepaid cards. Whatever they could find, they were just filling up. They also asked me where are the bags. And I told them the T-Mobile shopping bags are in the front of the store. So they grabbed some of those bags, which . . . I could just see from the corner of my eye they were putting phones in there. I had a brown bag, which I had some food[] from the day before. They emptied that out, put the phones in there, and then they also . . . grabbed . . . garbage bags and they started putting phones in there too.

In total, the men stole approximately $40,000 worth of merchandise and prepaid cards. The robbery was captured on videotape and played for the jury.

Edward Perez was employed at a Radio Shack in South Brunswick. Perez testified that on December 19, 2011, between 10:00 and 11:00 a.m., two men entered the store and asked for help finding headphones. Perez attempted to show the men headphones when one of them took out a gun, pointed it at the back of his head, and ordered him to walk to the back room and lay face down on the ground.

Perez described both men as African American, and stated one man was approximately five feet and ten inches and of darker complexion than the other man, who was about five feet and eight

or nine inches. Perez also stated both men were wearing jeans and baseball hats, one man's hat had a C logo on it, and one man had a hood over his hat.

Perez testified the men asked him for the keys to the inventory, and removed $24,573 worth of merchandise by placing it into clear garbage bags. Perez also stated "the lighter[-complexion] guy, the shorter guy, he started putting on gloves. They looked like [white] latex gloves." The men left the store through the rear exit.

Hikanshi Upal was employed at the AT&T store on Route 1 North in Edison. Upal testified that on January 5, 2012, at approximately eleven o'clock in the morning two men walked into the store and one of them asked for a cell phone case. Upal stated one man had a lighter complexion and was wearing a hoodie and jeans. Upal stated the other man was a darker complexion, slimmer and was wearing a hoodie with red thread. Upal directed the men to the cell phone cases, but was suddenly grabbed and pushed by the slimmer man towards the back room of the store. Upal stated the man who grabbed him held a gun to the back of his head and ordered him to open the safe.

Thereafter, the men began collecting the cell phones and placing them in large black plastic bags. Upal recalled the men were wearing clear, translucent gloves. He also testified the

slimmer man was on his cell phone, and he heard him say, "Okay, I'm hurrying up."

After filling the bags with cell phones, the men asked Upal where the cash was and took it. They then lead Upal to the back room, where they told him to remain until they left. Upal testified they exited from the rear of the store and he heard a car drive by as they left.

On January 12, 2012, Detective Frank Todd of the Edison Police Department was conducting surveillance near a T-Mobile store located on Parsonage Road in Edison. Detective David Salardino was conducting surveillance near a Radio Shack and Verizon Wireless in Wick Plaza in Edison. Detective Todd testified he observed a black Buick drive near the T-Mobile store. After a few minutes, the passenger, described as African-American, approximately five feet and eleven inches, wearing a black baseball hat and a black-hooded sweatshirt and black gloves, exited the car. A second man, also described as African-American, approximately five feet and eight inches, wearing a black baseball cap, black-hooded sweatshirt, and gray jacket, also exited the vehicle. Detective Todd stated he observed the taller man talking on his cell phone at the same time the driver was on his cell phone. Detective Todd believed they were speaking to each other.

Detective Todd also observed the Buick pull into a driveway adjacent to a building on Parsonage Road. He contacted Officer Steve Todd of the Edison Police Department, who was in plain clothes and operating an unmarked vehicle, to tail the Buick. Officer Todd testified the Buick began to back out of the parking spot, down the street, and into the driveway of the T-Mobile. Officer Todd stated the driver was on his cell phone and turned into a 7-Eleven parking lot. Officer Todd followed the vehicle into the 7-Eleven parking lot, activated his lights, approached the vehicle, and asked the driver to hang up the cell phone. The driver, defendant, complied and was subsequently arrested.

The car defendant operated was towed and impounded. In the vehicle police found: a pair of blue jeans, a hat bearing the letter P, a Samsung T-Mobile Phone, a Nintendo DS3 in the box, an AT&T GoPhone in the box, a Nikon Coolpix Camera in the box, plastic gloves, deposit slips for defendant's bank accounts, defendant's cell phone, and paperwork associated with several cell phones, including co-defendant Mack Mitchell's.

As police were following defendant, Mariusz Dabrowski and Harold Eaddy were working at the T-Mobile store. Dabrowski testified two men entered the store wearing clothing he thought was too warm for the weather. Dabrowski stated he immediately dialed 9-1-1 on his phone, but did not place the call. The men

asked about phone accessories, and Dabrowski helped the taller man at the front of the store. Dabrowski stated the taller man was on his phone and he could hear his conversation, including the person on the phone who stated, "I circled the store a couple of times." The shorter man then pulled a gun on Eaddy, and directed both Eaddy and Dabrowski to the rear of the store, where both were instructed to lie on the floor with their hands at their sides. The two men then emptied a secure storage cage of cell phones, mobile modems, accessories, and $10,000 in cash from the safe. Dabrowski stated the men were wearing black gloves.

Following defendant's arrest, he was read his Miranda[1] rights. Defendant waived his rights and gave a statement to police. Defendant claimed he was on his way to New Brunswick for a memorial service and was on his telephone calling for directions. Defendant stated he did not know the men who had entered the T-Mobile store, co-defendants Mack Mitchell or Emendo Bowers, and denied dropping them off at the store. However, defendant later admitted he dropped them off, but stated he did not know them. Defendant claimed he lived in Pennsylvania, did not know where Edison was, and claimed he purchased his iPhone from a flea market in Columbus.

[1] Miranda v. Arizona, 384 U.S. 436 (1966).

Defendant was subsequently interviewed by Detective Drewrey Lea and Detective Theodore Hamer. The interview was recorded and played for the jury. At the beginning of the interview, defendant was read his Miranda rights and indicated he understood them. Defendant then questioned why his lawyer was not present. Detective Lea stated he was unaware defendant had a lawyer, but that defendant could stop talking at that point or waive his right to have a lawyer present. Defendant stated he would listen, and Detective Hamer further clarified whether defendant was willing to waive his rights. Defendant stated he was and that he understood Detective Hamer's instructions. Detective Lea began to question defendant when defendant stated "I ain't being recorded or nothing." Detective Lea then asked if defendant wanted to stop the recording, and defendant stated he did because "I never been informed that I was being recorded." Both Detective Lea and Detective Hamer indicated the recording would be turned off, but it was not.

Defendant then admitted he dropped off Mack Mitchell, but stated he did so because it was on his way to a memorial service and he would be in the area. Defendant repeated he became lost trying to find the memorial service. When police questioned defendant regarding the robbery, defendant stated "I don't know . . . I do not know, I honestly don't know what they was gonna do,

I don't know nothing, I don't know nothing about what they was gonna do, at all."

The jury then deliberated and returned a guilty verdict on the aforementioned counts of the indictment. On appeal, defendant argues the following points:

> POINT I — [DEFENDANT] SELECTIVELY INVOKED HIS RIGHT TO SILENCE BY ONLY AGREEING TO PROVIDE A STATEMENT IF THERE WAS NO RECORDING. THE POLICE VIOLATED THAT RIGHT BY CONTINUING WITH A RECORDED INTERROGATION, UNBEKNOWNST TO HIM. THERE WAS THUS NO VALID MIRANDA WAIVER, RENDERING DEFENDANT'S SECOND STATEMENT INVOLUNTARY AND REQUIRING SUPPRESSION.
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> POINT II — THE INTEGRITY OF JURY DELIBERATIONS WAS IRREPARABLY COMPROMISED BY THE FAILURE TO GRANT A MISTRIAL WHEN A JUROR REFUSED TO PARTICIPATE IN DELIBERATIONS, AND BY THE TEN-DAY BREAK IN DELIBERATIONS.
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> > A. — After The Jury Announced It Was Deadlocked, Followed By Another Note Indicating That A Juror Did Not Want To Participate In Deliberations, The Trial Court Erred In Failing To Conduct Further Inquiry, Or Alternatively Declaring A Mistrial.
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> > B. — The Trial Court's Dispersal Of The Jury For Ten Days During Deliberations Was A Structural Defect In The Trial So Intrinsically Harmful That Reversal Is Automatically Required.

In defendant's supplemental pro se brief, he argues the following additional points:

POINT I — [DEFENDANT] SUBMITS THAT HE SHOULD NOT HAVE RECEIVED A LIFE SENTENCE FOR THE JANUARY 12, 2012 ROBBERY.

POINT II — [DEFENDANT] SHOULD [NOT] (sic) RECEIVE A LIFE SENTENCE BECAUSE THIS CONVICTION IS NOT SUBSTANTIALLY EQUIVALENT TO HIS TWO PRIOR CONVICTIONS.

I.

Defendant argues the motion judge erred by denying the motion to suppress his recorded statement to police. Defendant asserts he conditioned his Miranda waiver on not being recorded, and police misled him to believe the recording had ceased. Therefore, defendant claims his statement was involuntary. Defendant also claims his constitutional privilege against self-incrimination was violated when he gave "an involuntary statement predicated upon the police officers' promise that they would not record him." The motion judge found defendant knowingly and voluntarily provided his statement and could not qualify his waiver by stating he did not want the interview recorded.

"[A]n appellate court reviewing a motion to suppress must uphold the factual findings underlying the trial court's decision so long as those findings are supported by sufficient credible evidence in the record." State v. Rockford, 213 N.J. 424, 440 (2013) (alteration in original) (quoting State v. Robinson, 200 N.J. 1, 15 (2009)). "Those findings warrant particular deference

when they are 'substantially influenced by [the trial judge's] opportunity to hear and see the witnesses and to have the "feel" of the case, which a reviewing court cannot enjoy.'" Ibid. (alteration in original) (quoting State v. Elders, 192 N.J. 224, 243-44 (2007)). "Thus, appellate courts should reverse only when the trial court's determination is 'so clearly mistaken "that the interests of justice demand intervention and correction."'" State v. Gamble, 218 N.J. 412, 425 (2014) (quoting Elders, 192 N.J. at 244).

Generally, a Miranda waiver is invalid if a defendant did not waive his rights knowingly, intelligently, and voluntarily. Miranda, 384 U.S. at 475. "In determining the voluntariness of a defendant's confession, we traditionally look to the totality of the circumstances to assess whether the waiver of rights was the product of a free will or police coercion." State v. Nyhammer, 197 N.J. 383, 402 (2009). We must "consider such factors as the defendant's 'age, education and intelligence, advice as to constitutional rights, length of detention, whether the questioning was repeated and prolonged in nature and whether physical punishment or mental exhaustion was involved.'" Ibid. (quoting State v. Presha, 163 N.J. 304, 313 (2000)).

With regard to the electronic recording of voluntary statements made by individuals in custody, the Supreme Court has

stated it "perceive[s] benefits to all involved if custodial interrogations are recorded electronically." State v. Cook, 179 N.J. 533, 560 (2004). The Court concluded its "prior decisions highlight a concern for the reliability and trustworthiness of confessions as a prerequisite to their use." Ibid. As a result of Cook, Rule 3:17(a) was adopted, which states:

> Unless one of the exceptions set forth in paragraph (b) are present, all custodial interrogations conducted in a place of detention must be electronically recorded when the person being interrogated is charged with . . . robbery, . . . violations of Chapter 35 of Title 2C that constitute first or second degree crimes, any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes.

In addition, Rule 3:17(d) provides:

> The failure to electronically record a defendant's custodial interrogation in a place of detention shall be a factor for consideration by the trial court in determining the admissibility of a statement, and by the jury in determining whether the statement was made, and if so, what weight, if any, to give to the statement.

Here, the following colloquy took place:

> DET. HAMER: Okay alright. He's . . . gotta read your rights. Anytime we talk that's protocol.
>
> [DET. LEA]: You understand?
>
> [DEFENDANT]: Yeah.

[DET. LEA]: Alright I'm gonna read them to you and just need you to answer yes or no if you understand them, you understand?

[DEFENDANT]: Yeah.

[DET. LEA]: Alright. . . . You have the right to remain silent, you understand that right?

[DEFENDANT]: Yes.

[DET. LEA]: If you decide to make any statements you must understand that it may later be used again in the event of trial, you understand that?

[DEFENDANT]: Yes.

[DET. LEA]: If you initially decide to make a statement, but during the course of questioning decide you do not wish to continue you have the right to stop, you understand that right?

[DEFENDANT]: Yeah.

[DET. LEA]: You have the right to have a lawyer present, you understand that right?

[DEFENDANT]: Yes.

[DET. LEA]: In the event you could not afford counsel the State will provide counsel, you understand that right?

[DEFENDANT]: Yes.

Defendant then inquired as to why his lawyer was not present. Detectives responded that they did not know he had a lawyer, and again informed defendant of his rights, and stated "[y]ou could stop talking to us", and asked defendant if he was willing to

waive his rights. Defendant responded he was willing to waive his rights and talk to the officers. Shortly thereafter, detectives asked defendant a question and the following exchange occurred:

> [DEFENDANT]: "I aint being recorded or nothing."
>
> [DET. LEA]: You want me to stop the recording?
>
> [DEFENDANT]: Yea.
>
> [DET. LEA]: You want me . . .
>
> [DEFENDANT]: Cause I never been informed that I was being recorded.
>
> DET. HAMER: Alright.
>
> [DET. LEA]: Okay.
>
> DET. HAMER: We can turn it off.
>
> [DET. LEA]: Alright I'll stop the recording, alright. I'm gonna turn it off too so . . .
>
> [DEFENDANT]: Alright.

As demonstrated by the record, the detectives thoroughly informed defendant of his Miranda rights and consequently recorded defendant's entire statement pursuant to Rule 3:17(a). There is no evidence defendant's statement was not voluntary. However, defendant argues his request to have the recording cease conditioned his Miranda waiver, and thus the failure to stop recording made his statement involuntary.

Defendant analogizes the officers' conduct to the facts in Arnold v. Runnels, 421 F.3d 859 (9th Cir. 2005). In Arnold, defendant was advised of his Miranda rights, orally waived his rights, and completed a written waiver. Id. at 862. Subsequently, an officer indicated a portion of the interview would be recorded and defendant indicated he did not want to be recorded. Id. at 863-63. On appeal, the Ninth Circuit Court of Appeals reversed, finding:

> Any reasonable application of the law must begin by recognizing that Arnold clearly and unequivocally invoked his Miranda rights selectively, with respect to a tape-recorded interrogation. See Connecticut v. Barrett, 479 U.S. 523, 529 (1987) (holding that a suspect can selectively invoke Miranda rights as to a written statement, but waive them as to oral interrogation; and explaining that the words of a Miranda request will be "understood as ordinary people would understand them"). See also Michigan v. Mosley, 423 U.S. 96, 103-04 (1975); Bruni v. Lewis, 847 F.2d 561, 563 (9th Cir. 1988). Any reasonable application of the law must recognize that Arnold's statement precluded the interrogator from turning on the tape recording during the interrogation. See Miranda, 384 U.S. at 473-74 ("If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease.").
>
> [Arnold, 421 F.3d 859 at 864-65.]

Here, the discussion that took place between the officers and defendant was much different from Arnold. In Arnold, once the

officer began to record, defendant stated he did not wish to talk on tape, the officer continued to record him, and re-read him his Miranda rights. 421 F.3d 859, 863-64. Afterwards, the defendant in Arnold consistently replied "no comment" to the officer's questions. Ibid. As a result, the court concluded defendant had clearly invoked his right to silence due to the fact that he did not speak to the officer. Id. at 864-65. Here, defendant continued to speak with the officers after asking to not be recorded. Therefore, there was no indication that defendant did not wish to speak with the officers as took place in Arnold, 421 F.3d at 864-65. See also Miranda, 384 U.S. at 473-74.

Defendant also argues the detectives' misrepresentation that they stopped the recording coerced his statement. Although police misrepresentations should be analyzed to determine whether a statement was voluntary, "misrepresentations alone are usually insufficient to justify a determination of involuntariness or lack of knowledge." State v. Cooper, 151 N.J. 326, 355 (1997). "Moreover, a misrepresentation by police does not render a confession or waiver involuntary unless the misrepresentation actually induced the confession." Ibid. In addition, the court has drawn distinctions between oral misrepresentations and misrepresentations regarding tangible evidence. See State v. Patton, 362 N.J. Super. 16, 46 (App. Div. 2003) (holding the police

fabrication of an audiotape purporting to be a witness's description of the murder and surrounding details was made "to elicit a confession and admission of that evidence at trial, violates due process, and any resulting confession is per se inadmissible.")

Here, the detectives' representation that they ceased recording did not coerce defendant to give a statement because he had already stated he wished to speak with them. In addition, the facts here are dissimilar from Patton because police did not manufacture evidence. Rather, detectives adhered to the mandate to record the interview. For these reasons, we affirm the motion judge's decision to deny the motion to suppress.

II.

Defendant argues, for the first time on appeal, the trial judge mishandled the jury deliberation. The jury deliberated on November 18 and November 19, 2015. Thereafter, the jury was released for Thanksgiving, and returned Monday, November 30. That day, the jury sent a note stating it had reached a verdict on counts sixteen to twenty, but were hung on counts one through fifteen.

The trial judge then instructed the jury to continue deliberating, which it did for another eighty-nine minutes before requesting a lunch break. After lunch, they continued to

deliberate and sent a note stating they were "having an issue with one of the jurors [who is] being extremely argumentative. She refuses to participate in the discussion. What can we do?" The trial judge instructed the jury to go home for the day and stated:

> All right. First thing we're going to do is I'm going to send you home after you're done here. You're . . . going to come back tomorrow. Give it one more . . . try.
>
> There's some things I want to say to you. I don't know who it is, I don't want to know. I don't know what the problem is. And I understand what one side is characterizing — or one group or one person perceives as being argumentative, someone else may be perceived as taking a principled stand on the issue. So, I understand that.
>
> Okay. But I want you to go home, not think about the case, not think about the facts, come back tomorrow again, see what we can do, but think about this, that as I read to you the instruction before, this is not meant to be a debate like we see on TV . . . . This is . . . meant to be a principled, reasoned[,] calm discussion of the facts with an open mind, and — and an honest attempt to look at the facts from the other person's perspective.
>
> You may not be able to accept that. There may come a point where you say; look, this is it, I feel the way . . . — this is my position. And as I told you before, the — language I used is "if you can do so without violence to individual judgment."
>
> So, . . . you have to consider that. And . . . you know, certainly that's why we have [twelve] of you deliberating, but having said that, it's been a long day. I want everybody

> to just take a deep breath, go home, have as pleasant an evening as you can. . . .
>
> Maybe come back in the morning a little bit fresher, and people will be in a position to have a . . . calmer discussion.

The jury continued to deliberate the following day and sent a note at 11:02 a.m., which stated "WE HAVE GONE AS FAR AS WE'RE GOING TO GO." The trial judge stated he was inclined to accept a partial verdict, and counsel agreed.

Generally, an appellate court will not consider issues which were not raised in the trial court. State v. Galicia, 210 N.J. 364, 383 (2012). Even so, we find defendant's argument lacks merit, as there is no evidence the trial judge mishandled the issues with the jury.

> [T]he Sixth Amendment of the United States Constitution and Article I, paragraph 10 of the New Jersey Constitution . . . ensure that "everyone charged with [a] crime has an absolute constitutional right to a fair trial in an atmosphere of judicial calm, before an impartial judge and an unprejudiced jury."
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> [State v. Tyler, 176 N.J. 171, 181 (2003) (alteration in original) (quoting State v. Marchand, 31 N.J. 223, 232 (1959)).]

"The securing and preservation of an impartial jury goes to the very essence of a fair trial." State v. Williams, 93 N.J. 39, 60 (1983). This is a right "of exceptional significance." Ibid. "That constitutional privilege includes the right to have the jury

decide the case based solely on the evidence presented at trial, free from the taint of outside influences and extraneous matters." State v. R.D., 169 N.J. 551, 557 (2001).

"The trial court's duty is to give life to that constitutional principle by impaneling a jury that 'is as nearly impartial "as the lot of humanity will admit."'" State v. Loftin, 191 N.J. 172, 187 (2007) (quoting State v. Jackson, 43 N.J. 148, 157–58 (1964)). "[A]ll doubts about a juror's integrity or ability to be fair should be resolved in favor of removing the juror from the panel." Loftin, 191 N.J. at 187.

> [A] new trial will be granted when jury misconduct or the intrusion of irregular influences into jury deliberations "could have a tendency to influence the jury in arriving at its verdict in a manner inconsistent with the legal proofs and the court's charge." The test is "not whether the irregular matter actually influenced the result but whether it had the capacity of doing so."
>
> [State v. Scherzer, 301 N.J. Super. 363, 486 (App. Div. 1997) (citations omitted) (quoting Panko v. Flintkote Co., 7 N.J. 55, 61 (1951)).]

Defendant claims the trial judge's response to the jury's note, which stated a juror was "argumentative" and "refuse[d] to participate in the discussion" was reversible error. Defendant argues the trial judge should have granted a mistrial.

At the outset, we note defense counsel did not raise any concerns regarding the note from the jury or the trial judge's manner of addressing the issue. "[T]rial errors that 'were induced, encouraged or acquiesced in or consented to by defense counsel ordinarily are not a basis for reversal on appeal. . . .'" State v. A.R., 213 N.J. 542, 561-62 (2013) (quoting State v. Corsaro, 107 N.J. 339, 345 (1987)). "The doctrine of invited error does not permit a defendant to pursue a strategy . . . and then when the strategy does not work out as planned, cry foul and win a new trial." State v. Williams, 219 N.J. 89, 101 (2014). When addressing an issue of invited error, the appellate court should engage in "a close, balancing examination of the nature of the error, [and] its impact on the . . . jury's verdict . . . ." State v. Harper, 128 N.J. Super. 270, 278 (App. Div. 1974).

Despite defendant's arguments to the contrary, we are satisfied the trial judge addressed the jury dispute appropriately. Indeed, the judge acknowledged the jury's difficulties, required it continue to deliberate for a reasonable time, and after receiving the jury's note, reminded the jury of its charge before adjourning for the day, and the following day the jury continued deliberating without further incident. This was not an abuse of discretion.

Moreover, the trial judge was not required to grant a mistrial merely because the jury stated a juror was argumentative and could not reach a verdict. "[A] jury's declaration of inability to reach a verdict does not require an immediate grant of a mistrial or preclude the judge from giving a non-coercive instruction requiring additional deliberation." State v. Banks, 395 N.J. Super. 205, 218 (App. Div. 2007). Therefore, it was reasonable for the judge to instruct the jury to go home for the evening, and return the next day to continue to deliberate. See State v. Harris, 156 N.J. 122, 184 (1998) (holding it was not error for the trial court to require the jury to continue to deliberate where "[t]he jury had not yet reached a point at which agreement was impossible.").

We reject defendant's claim that adjourning the trial for Thanksgiving break was reversible error. The trial judge has the discretion to disperse the jury for "the night, for meals, and during other authorized intermissions in the deliberations." R. 1:8-6. As defendant concedes, there is no precedent defining the permissible length of time for dispersal because the matter is left to the discretion of the trial judge. In addition, the record demonstrates that defense counsel agreed, without objection, to the adjournment. This contention lacks sufficient merit to warrant further discussion. R. 2:11-3(e)(2).

III.

In his pro se supplemental brief, defendant argues he should not have received a life sentence for his robbery conviction because of the disparity between his sentence and that of his co-defendants, which ignores precedent in pursuit of "a predictable degree of uniformity in sentencing." State v. Hodge, 95 N.J. 369, 379 (1984). He further contends the court erred in granting the State's motion for an extended term because his robbery conviction is not substantially equivalent to his two prior offenses.

"A sentence will not be revised by an appellate court if within the statutory limits in the absence of a clear showing of abuse of discretion." State v. Tyson, 43 N.J. 411, 417 (1964) (citing State v. Benes, 16 N.J. 389, 396 (1954)). "[A] sentence of one defendant not otherwise excessive is not erroneous merely because a codefendant's sentence is lighter." State v. Hicks, 54 N.J. 390, 391 (1969). Neither is a defendant's sentence necessarily manifestly excessive if his sentence is more severe than that of his or her co-defendant. Tyson, 43 N.J. at 417 (citing State v. Gentile, 41 N.J. 58, 59-60 (1963)).

N.J.S.A. 2C:43-7.1(a) states, in relevant part:

> A person convicted of a crime under . . . N.J.S.A. 2C:15-1 [robbery] . . . who has been convicted of two or more crimes that were committed on prior and separate occasions, regardless of the dates of the convictions,

> under any of the foregoing sections or under any similar statute of the United States, this State, or any other state for a crime that is substantially equivalent to a crime under any of the foregoing sections, shall be sentenced to a term of life imprisonment by the court, with no eligibility for parole.

Here, the sentencing court determined:

> [Defendant] has three first degree armed robbery convictions, this being his third. So, he has previously been convicted under one of the foregoing sections, namely . . . the first[-]degree armed robbery section.
>
> . . . .
>
> [S]ubstantial[ly] equivalent refers to . . . whatever [the offense is referred to] in the other state or in the United States code, that that crime be substantially equivalent to our crime of first[-]degree armed robbery.
>
> There is no requirement anywhere in the statute or any case law that I could find that says that [the] . . . actual conduct has to be similar.

The sentencing court correctly analyzed defendant's prior convictions and correctly applied N.J.S.A. 2C:43-7.1(a). Based on defendant's prior convictions for first-degree robbery, defendant must receive a term of life imprisonment. For this reason, defendant's argument regarding the disparity between his sentence and those of his co-defendants lacks sufficient merit to warrant further discussion. R. 2:11-3(e)(1)(E).

Affirmed.