

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0994-07T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

vs.

JOSEPH CARDELL,

Defendant-Appellant.

Argued: December 9, 2009 - Decided: January 5, 2010

Before Judge Cuff and Payne.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Indictment No. 05-10-1007-A.

John Douard, Assistant Deputy Public Defender, argued the cause for appellant (Yvonne Smith Segars, Public Defender, attorney; Mr. Douard, of counsel and on the brief).

John R. Cascarano, Assistant Prosecutor, argued the cause for respondent (Edward J. De Fazio, Hudson County Prosecutor, attorney; Mr. Cascarano, on the brief).

PER CURIAM

On February 22, 2005, two men assaulted the attendant of a gas station in Kearny and took cash and cigarettes from the

office. Defendant Joseph Cardell was arrested that night. At the time of the robbery, defendant was seventeen years old. The State sought a waiver of Family Part jurisdiction. The judge found probable cause that defendant inflicted bodily injury on the attendant while armed with a deadly weapon in the course of a theft and granted the application.¹ It is from that order that defendant appeals. We affirm.

On appeal, defendant presents the following argument:

POINT I

THE DECISION TO TRANSFER THE CASE AGAINST THE JUVENILE TO THE LAW DIVISION SHOULD BE REVERSED BECAUSE THE COMPETENT EVIDENCE DID NOT SUPPORT A FINDING OF PROBABLE CAUSE THAT AN ENUMERATED OFFENSE HAD BEEN COMMITTED, OR THAT THE JUVENILE WAS INVOLVED IN IT.

Specifically, defendant argues that the decision to transfer the charges against defendant from the Family Part to the Law Division was founded on incompetent and inadmissible evidence. Therefore, the finding of probable cause lacks factual support. Defendant argues that the State used a statement against him of a non-testifying co-defendant contrary to Bruton v. United States, 391 U.S. 123, 88 S. Ct. 1620, 20 L. Ed. 2d 476 (1968);

¹ Following waiver, defendant pled guilty to first degree robbery. In accordance with the plea agreement, he was sentenced as if he had committed a second degree offense. He is serving an eight-year term of imprisonment subject to a No Early Release Act, N.J.S.A. 2C:43-7.2, period of parole ineligibility.

State v. Haskell, 100 N.J. 469, 475-80 (1985); and State in the Interest of M.C., 335 N.J. Super. 325, 329 (App. Div. 2000). Defendant also asserts that the identification evidence was so impermissibly suggestive that a Wade² hearing was required before it could be considered.

A juvenile over the age of fourteen at the time of the charged delinquent act may be involuntarily waived from the jurisdiction of the Family Part to the Law Division if the State demonstrates that there is probable cause that the juvenile committed acts which, if committed as a adult, would constitute one or more statutorily designated crimes. N.J.S.A. 2A:4A-26a(1); N.J.S.A. 2A:4A-26a(2)(a). If the juvenile is between the ages of fourteen and sixteen years of age, the State must establish probable cause, but the juvenile can defeat waiver if he can demonstrate the probability of rehabilitation before reaching age nineteen. N.J.S.A. 2A:4A-26a(1); N.J.S.A. 2A:4A-26a(2)(a); N.J.S.A. 2A:4A-26e. When a juvenile is sixteen years of age and older at the time of commission of certain offenses, including armed robbery, the State need only establish probable cause. N.J.S.A. 2A:4A-26e. Probable cause is a "'well-grounded suspicion or belief'" that an offense has taken

² United States v. Wade, 388 U.S. 218, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 (1967).

place and that the juvenile "[was] a party to it." State in the Interest of A.J., 232 N.J. Super. 274, 286 (App. Div. 1989) (quoting State in the Interest of De Simone, 60 N.J. 319, 322 (1972)). See also State in the Interest of B.G., 247 N.J. Super. 403, 409 (App. Div. 1991). Probable cause may be established through the use of hearsay testimony alone, because a probable cause hearing "does not have the finality of trial," State in the Interest of J.L.W., 236 N.J. Super. 336, 346 (App. Div. 1989), certif. denied, 126 N.J. 387 (1991), and "need not be based solely on evidence admissible in the courtroom," A.J., supra, 232 N.J. Super. at 286. See also State in the Interest of B.T., 145 N.J. Super. 268, 273 (App. Div. 1976), certif. denied, 73 N.J. 49 (1977). Moreover, the nature of a probable cause hearing "'does not require the fine resolution of conflicting evidence that a reasonable-doubt or even preponderance standard demands.'" State v. J.M., 182 N.J. 402, 417 (2005) (quoting Gerstein v. Pugh, 420 U.S. 103, 122, 95 S. Ct. 854, 867, 43 L. Ed. 2d 54, 69 (1975)).

In the context of referral hearings, this court has explained, "[w]e have applied the general definition of probable cause found in State v. De Simone, 60 N.J. 319, 322 (1972), when considering whether probable cause has been established in a referral hearing." J.L.W., supra, 236 N.J. Super. at 347

(citing A.J., supra, 232 N.J. Super. at 286) In De Simone, supra, the Supreme Court held:

As to probable cause, it must be remembered that the showing need not equal a prima facie case required to sustain a conviction. No more is demanded than a well-grounded suspicion or belief that an offense is taking place and the individual is party to it.

[60 N.J. at 322.]

Here, the State produced evidence that clearly and plainly established probable cause that defendant was a participant in an armed robbery on February 22, 2005. The police officers who responded to the scene testified at the waiver hearing. One of these officers interviewed the victim and an eyewitness, and related to the grand jurors the facts learned from these interviews. Another responding officer, Officer Wagner, reported the results of supplemental investigation efforts that included a report of the apprehension of defendant and his colleague and a statement by defendant's colleague designating defendant as the person who struck the gas station attendant. The other responding officer, Officer Canaley, related the circumstances of the identification of defendant by the victim based on a single photograph.

It is of no consequence that the testimony of the officers was replete with hearsay or that the use of a single photograph

may be impermissibly suggestive or that the statement of the non-testifying co-defendant may not be used at trial. A probable cause hearing is analogous to a grand jury proceeding at which the rules of evidence are not applicable. B.T., supra, 145 N.J. Super. at 273. The State assembled sufficient evidence to establish that defendant was one of the two men who assaulted the gas station attendant and stole a significant amount of cash and cigarettes from the station.

We, therefore, affirm the June 14, 2005 order waiving the jurisdiction of the Family Part and transferring this matter to the Law Division.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION