

NOTICE

Memorandum decisions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law, although it may be cited for whatever persuasive value it may have. See McCoy v. State, 80 P.3d 757, 764 (Alaska App. 2002).

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

RONTE LEE BENEDICT,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13428
Trial Court No. 3AN-17-04611 CR

MEMORANDUM OPINION

No. 7017 — July 27, 2022

Appeal from the Superior Court, Third Judicial District,
Anchorage, Michael D. Corey, Judge.

Appearances: Owen Shortell, Law Office of Owen Shortell,
Anchorage, under contract with the Office of Public Advocacy,
for the Appellant. Michal Stryszak, Assistant Attorney General,
Office of Criminal Appeals, Anchorage, and Treg R. Taylor,
Attorney General, Juneau, for the Appellee.

Before: Wollenberg, Harbison, and Terrell, Judges.

Judge WOLLENBERG.

Following a jury trial, Ronte Lee Benedict was convicted of first-degree robbery, second- and fourth-degree weapons misconduct, tampering with physical evidence, and fourth-degree theft in connection with a series of incidents that took place

one evening in June 2017.¹ At a bench trial following the jury verdict, Benedict was additionally convicted of third-degree weapons misconduct (felon in possession of a concealable firearm).²

Benedict now appeals his convictions, raising two claims. First, Benedict argues that the superior court erred in failing to instruct the jury regarding the potential pitfalls of first-time, in-court identifications. Second, Benedict contends that there was insufficient evidence to sustain his conviction for evidence tampering.

Having reviewed the record, we find no reversible error as to either claim. We therefore affirm Benedict's convictions.

Factual background

During the evening of June 11, 2017, the Anchorage Police Department received at least nineteen 911 calls from multiple callers in the vicinity of 14th Avenue and Ingra Street. The callers variously reported hearing multiple gunshots, seeing a man take bicycle tires from a neighbor's house, and observing a man attempting to break into an apartment building. The callers generally identified the man in question as Black or dark-skinned and wearing a black hat and dark clothing.

At Benedict's trial, multiple witnesses testified about their observations that evening. One witness, Rodney Brown, testified that he first encountered Benedict in the alley next to his house. Brown recognized Benedict from past interactions with him at the bus stop, and he offered Benedict a drink. The two hung out for a while at Brown's

¹ AS 11.41.500(a)(1), AS 11.61.195(a)(3)(B), AS 11.61.210(a)(1), AS 11.56.610(a)(1), and AS 11.46.150(a), respectively. The jury also found Benedict guilty of third-degree assault, AS 11.41.220(a)(1)(A), but this count merged with the first-degree robbery conviction.

² AS 11.61.200(a)(1).

house, and at one point, Benedict asked Brown to film him rapping. After Benedict pulled out a handgun (apparently to use as a prop), Brown put the camera away. The two went outside and fired shots into the air.

Brown was then approached by his neighbor, Nathaniel Tonn, who heard the gunshots while working on his house and wanted to know what had happened. According to Tonn, as he and Brown were speaking, Benedict threw down a bicycle tire and approached them, confronting Tonn and taking out his gun. Benedict seemed upset and worried that Tonn would call the police. Brown was able to calm Benedict down, and Tonn went back into his house to continue working.

Later in the evening, as Tonn was loading tools into a truck parked in the alley, Brown, and then Benedict, joined him. Both Brown and Tonn testified that at some point, Benedict pulled out his gun, put it against Tonn's forehead, and asked for the truck. Tonn told him to take the truck and fled. However, Benedict was not able to start the truck.

Several residents of a nearby apartment building testified that, at another point in the evening, a man fired shots outside and attempted to break into the building. (It is unclear whether this incident occurred before or after Benedict tried to take Tonn's truck.) One resident of the apartment building, Patsy Bell, testified that she heard a commotion outside and when she looked out her window, she saw a man shoot a firearm twice. She then observed her neighbor, Thomas Booker, confront the man, and the two pointed guns at each other. Bell said that, after Booker returned to his apartment, the man fired his gun three more times and started kicking the door of the building, threatening to kill everyone inside.

After Thomas Booker returned to his apartment, he told his son, Nyree Booker, what had happened. Nyree testified that the two began watching footage from their exterior cameras and saw the man Thomas had confronted riding through the area

on a bicycle. They then heard a commotion, looked out the window, and saw the man pointing a gun at a woman. At some point, the man started banging on the front door with a gun and fired a shot into the apartment upstairs.

Ultimately, several Anchorage police officers responded. Three officers testified that they observed a man, who matched the description provided by dispatch and was later identified as Benedict, running in an alley. (As we noted earlier, the various 911 callers generally provided a similar description of the suspect.) Two officers gave chase and passed by Rodney Brown, who pointed after Benedict and said that he had just tried to rob someone. The officers lost sight of Benedict after he passed behind a house. The third officer backtracked to cut Benedict off. This officer momentarily lost sight of Benedict as Benedict ran into a yard but then saw him trying to jump over a wooden fence. The officer caught up to Benedict and was able to apprehend him.

Because Benedict did not have a weapon on him when he was arrested, officers began to search for a gun along the path Benedict had run. Using the assistance of a K9 unit, the officers found a handgun at the bottom of an old garbage can in a wheelbarrow in the northeast corner of the yard where Benedict was apprehended. The police also recovered four shell casings from the area near Rodney Brown's home. And they identified a bullet hole in the apartment building and recovered an expended bullet inside the building.

Benedict was charged with multiple offenses, including armed robbery (for attempting to take Tonn's truck at gunpoint), several counts of weapons misconduct (for firing a gun at a dwelling, for possessing a gun while intoxicated, and for possessing a gun as a convicted felon), theft (for stealing the bicycle tire), and evidence tampering (for concealing the gun in the garbage can). At trial, several civilian witnesses — including Rodney Brown, Nathaniel Tonn, Patsy Bell, and Nyree Booker — identified Benedict in court as the man they had observed on the night in question. An expert in latent

fingerprint analysis testified that Benedict's fingerprint was discovered on the magazine of the handgun that was found in the garbage can. And a crime laboratory technician testified that the bullet and empty shell casings came from this same handgun.

Benedict testified in his own defense, admitting to interacting with Booker and Brown during the night but denying all of the criminal allegations. Benedict claimed that he never had or used a gun, but he did tell the jury that he had found a handgun magazine while using Brown's bathroom and he had moved it aside — insinuating that Brown may have been the perpetrator.

After the close of evidence, Benedict moved for a judgment of acquittal on the evidence tampering charge — arguing that the evidence showed, at most, that he had abandoned the gun during the police pursuit, not that he “concealed” the weapon, as required for the offense. The court denied Benedict's motion.³

Ultimately, Benedict was convicted of the charges listed above.⁴ This appeal followed.

Benedict's claim that the court was required to give an instruction regarding the fallibility of first-time, in-court identifications

At trial, Benedict asked the superior court to preclude witnesses from making an in-court identification of him as the man they observed on June 11, or at least to adopt an alternative procedure for asking them to make the identification (as opposed to identifying him while he was seated at the defense table). The superior court denied Benedict's requests, and multiple witnesses identified Benedict for the first time at trial

³ Benedict also moved unsuccessfully for a judgment of acquittal on the fourth-degree theft charge.

⁴ The jury acquitted Benedict of one count of third-degree assault, and the State dismissed two additional charges of assault mid-trial.

as the man they saw that night in June. Later, Benedict asked the court to provide the jury with an instruction regarding cross-racial identifications. The court denied this request as well, noting that many of the witnesses were the same race as Benedict.

On appeal, Benedict does not challenge the superior court’s denial of his requests to modify the procedures for identification or provide a specific instruction related to cross-racial identifications. Rather, he contends that the in-court identifications violated his due process rights under the Alaska Constitution in the absence of a specific instruction on the pitfalls of eyewitness identification. He argues that such an instruction was required under the Alaska Supreme Court’s decision in *Young v. State*, and that the trial court was on notice from his requests at trial that the in-court identifications took place in a suggestive setting.⁵

In *Young*, the supreme court adopted a new test for evaluating the admissibility of out-of-court eyewitness identifications under the due process clause of the Alaska Constitution.⁶ In addition, the court held that if an out-of-court identification is admitted and “if eyewitness identification is a significant issue in a case,” a trial court should provide a jury instruction setting out the factors affecting eyewitness reliability.⁷ But the court distinguished out-of-court pretrial identifications from first-time, in-court identifications, such as the ones that occurred in this case — explaining that in-court identifications do not trigger application of the same due process protections as

⁵ *Young v. State*, 374 P.3d 395 (Alaska 2016).

⁶ *Id.* at 426-27.

⁷ *Id.* at 428-29 (holding that, in cases where identification is a significant issue, an instruction regarding the fallibility of eyewitness testimony is “necessary for the jury’s information in giving their verdict” under Alaska Criminal Rule 30(b)).

suggestive pretrial identifications.⁸ Accordingly, the court made clear that a trial court has discretion to decide the procedures for any first-time, in-court identifications.⁹

To the extent that Benedict is arguing on appeal that the superior court's procedure for conducting the first-time, in-court identifications in his case constituted a *per se* violation of his due process rights, we conclude that *Young* resolves this issue — with its grant of discretion to trial courts to determine the proper procedure for in-court identifications — and we reject that claim.

However, it appears as though Benedict is primarily challenging the absence of a jury instruction regarding the fallibility of eyewitness identifications. We question whether this issue is preserved, as Benedict never requested such a general instruction on evaluating in-court eyewitness identifications. As we explained, he only requested a specific jury instruction regarding cross-racial identifications.

But, in any event, we conclude that any error in failing to give a general instruction on the evaluation of eyewitness identifications was harmless. In this case, the reliability of each individual in-court identification was reinforced by the sheer number of in-court identifications that were made, in addition to the overwhelming evidence of Benedict's involvement in the charged incidents.

As Benedict acknowledges, one of the eyewitnesses who identified him at trial knew him from interactions that took place prior to the incidents on June 11. Rodney Brown testified that he had previously seen Benedict at the bus station multiple

⁸ *Id.* at 411-12 (noting that courtrooms have a number of safeguards in place that are intended to ensure due process, such as an “impartial judge and jury, competent defense counsel, the rules of evidence, [and] the State’s burden of proof”).

⁹ *Id.*

times and that, on that night, he saw Benedict point a gun at Nathaniel Tonn's head.¹⁰ Indeed, Benedict and Brown spent time together in the hours leading up to that incident.

Six other eyewitnesses to the events that took place on June 11 also testified that Benedict was the person they observed that night. All of the witnesses viewed Benedict while there was still light in the sky, and many of the witnesses had an extended opportunity to view Benedict during the evening. In addition, numerous recordings of 911 calls placed that evening were played at trial, which provided descriptions that generally matched Benedict. And multiple officers testified at trial that Benedict matched the description of the perpetrator as relayed to them by dispatch.

These identifications were further supported at trial by other evidence connecting Benedict with the alleged incidents. When the officers arrived at the scene, Benedict took off running and was apprehended after the officers pursued him. Officers discovered a handgun, with Benedict's fingerprint on the magazine, in the same yard where Benedict was arrested. And the bullet casings recovered near Brown's home, as well as the bullet recovered inside the apartment building, matched that same handgun.

Finally, Benedict's attorney was able to cross-examine each of the witnesses who provided in-court identifications, and he specifically noted the circumstances under which the witness was making the identification (*i.e.*, with Benedict seated at the table designated for the defendant).

For these reasons, we are not persuaded that the absence of a case-specific jury instruction regarding the factors that should be considered in evaluating eyewitness identifications appreciably affected the jury's verdict.¹¹ We therefore reject Benedict's

¹⁰ Tonn, who knew Brown as his neighbor and would not have confused him for Benedict, also corroborated Brown's testimony at trial.

¹¹ See *Young v. State*, 374 P.3d 395, 430 & n.233 (Alaska 2016) (noting that "given
(continued...)

claim that the superior court committed reversible error by not providing the jury with an instruction on the reliability of eyewitness identifications.

However, we take this opportunity to encourage trial courts to consider providing this kind of jury instruction whenever eyewitness identifications are an important component of the State’s case, including when the identifications are made for the first time during trial. Even though such an instruction may not be required in these circumstances under *Young*, the supreme court recognized that “the suggestiveness and reliability of first-time, in-court identifications present many of the same issues as those that affect pretrial identifications.”¹² Thus, an instruction on the factors to consider when assessing eyewitness identifications may assist the jury in its evaluation of in-court identification evidence.¹³

Benedict’s claim that there was insufficient evidence to sustain his conviction for evidence tampering

Benedict also argues that the superior court erred in denying his motion for a judgment of acquittal on the charge of tampering with evidence. To convict Benedict of tampering with evidence, the State had to prove that he “destroy[ed], mutilate[d], alter[ed], suppress[ed], conceal[ed], or remove[d] physical evidence with intent to impair

¹¹ (...continued)
the other eyewitnesses and corroborating evidence, the error in failing to give an eyewitness identification instruction was not of constitutional dimension” and therefore examining whether the failure to give eyewitness fallibility instruction “appreciably affected the verdict”).

¹² *Id.* at 412.

¹³ See Alaska Criminal Pattern Jury Instruction 1.24, Use Note (2020) (“If an eyewitness identifies the defendant for the first time in court (i.e., without having made an identification before trial), the trial court should consider whether to include an appropriate instruction.” (citing *Young v. State*, 374 P.3d 395, 411-12 (Alaska 2016))).

its verity or availability in an official proceeding or a criminal investigation.”¹⁴ The State alleged that Benedict committed this offense by placing the handgun into a trash can when he was running from the police but momentarily out of their sight — thereby “concealing” it from discovery by the officers pursuing him.

When a defendant is charged with evidence tampering under a “suppression” or “concealment” theory, the act of tossing away contraband when being approached or chased by police is not necessarily sufficient to prove the offense.¹⁵ We have interpreted the terms “suppress” and “conceal” narrowly, so as to avoid unduly harsh results that were not within the legislature’s intent. Thus, a defendant’s act of dropping or tossing away evidence in the sight of the police does not generally constitute the *actus reus* of evidence tampering, regardless of the defendant’s intent, unless the disposal of evidence destroyed it or made its recovery substantially more difficult or impossible.¹⁶

On appeal, Benedict does not challenge the sufficiency of the evidence to support his *mens rea* — *i.e.*, that he intended to conceal the weapon from the police. Instead, he argues that the act of placing the gun in a trash can did not constitute the *actus reus* of the offense because the act did not destroy the gun or make it substantially more difficult to recover. In particular, he emphasizes that the trash can was in the same yard where he was apprehended minutes later and that the police were able to locate the gun soon after he was arrested. The State argues that Benedict’s placement of the gun

¹⁴ AS 11.56.610(a)(1).

¹⁵ *Anderson v. State*, 123 P.3d 1110, 1118 (Alaska App. 2005), *abrogated on other grounds by Young*, 374 P.3d 395; *see also Stepovich v. State*, 299 P.3d 734, 741-42 (Alaska App. 2013).

¹⁶ *Anderson*, 123 P.3d at 1119; *Vigue v. State*, 987 P.2d 204, 210-11 (Alaska App. 1999).

while out of view of the officers *did* make it substantially more difficult for police to recover, noting that the officers had to deploy a K9 search unit in order to discover the weapon.

In assessing the sufficiency of the evidence to support a criminal conviction, this Court views the evidence (and the inferences that could reasonably be drawn from that evidence) in the light most favorable to supporting the verdict.¹⁷ In this case, the parties do not dispute the facts, or the inferences to be drawn from those facts, that constitute the basis for Benedict's conviction. Rather, the parties disagree as to whether those facts are sufficient to meet the legal definition of the offense. While we think this is a close case, we ultimately agree with the State that there was sufficient evidence to support Benedict's conviction for tampering with evidence.

Our prior case law is instructive on this point. In *Y.J. v. State*, for example, we examined two different acts that the State alleged constituted evidence tampering.¹⁸ First, we examined Y.J.'s act of throwing a gun over a fence while momentarily out of officers' sight during a chase (where, unbeknownst to Y.J., another officer was running and saw the gun fall).¹⁹ In doing so, we discussed our earlier decisions in *Vigue v. State* and *Anderson v. State*, in which we held that the defendants' acts of tossing drugs to the ground and tossing a handgun and ammunition from a car, both in the plain sight of the police, constituted abandonment of, rather than tampering with, evidence.²⁰ Although we suggested that Y.J.'s act of tossing the gun might *not* constitute evidence tampering

¹⁷ See *Iyapana v. State*, 284 P.3d 841, 848-49 (Alaska App. 2012); *Morrell v. State*, 216 P.3d 574, 576 (Alaska App. 2009).

¹⁸ *Y.J. v. State*, 130 P.3d 954, 955-56 (Alaska App. 2006).

¹⁹ *Id.* at 955-57.

²⁰ *Id.* at 956 (discussing *Vigue*, 987 P.2d at 210, and *Anderson*, 123 P.3d at 1118-19).

based on this prior case law since it was (fortuitously) done in the presence of law enforcement, we declined to definitively decide this issue.²¹

Second, we examined Y.J.’s subsequent act of stashing the gun’s holster under a bed, after he fled into an acquaintance’s nearby condominium. The police were able to locate the holster quickly when they searched the condominium for weapons and confirmed that the holster did not belong to any residents.²² We concluded that this conduct *did* constitute the *actus reus* of evidence tampering, reasoning that the police would not have found the holster unless they entered the residence and searched because Y.J. concealed the weapon in another family’s home while out of sight of the police.²³ We also noted that, “[e]ven after the police located the holster, they had to question [the resident] in order to ascertain that the holster did not belong to a member of his family.”²⁴

In the present case, it is true that Benedict disposed of the handgun during a police chase when he was momentarily out of sight. But he did not merely toss the gun along his route; he deliberately hid the weapon in an unusual location — inside of an old trash can that was itself placed in a wheelbarrow in the corner of someone else’s backyard. Thus, Benedict’s conduct more closely resembles Y.J.’s act of hiding the holster under the bed than his act of tossing the gun over the fence.

And as in *Y.J.*, where the officers were able to locate the holster quickly after searching the residence, the fact that officers found the weapon shortly after

²¹ *Id.* at 957-58. We acknowledged, however, that the State offered plausible distinctions between *Vigue* and *Anderson* on the one hand, and Y.J.’s conduct on the other — since the officer was only fortuitously on the other side of the fence when Y.J. tossed his gun. *Id.* at 957.

²² *Id.* at 956.

²³ *Id.* at 957-58.

²⁴ *Id.*

apprehending Benedict also does not defeat a finding that Benedict concealed evidence for purposes of establishing the criminal offense.²⁵ Indeed, the police became aware of the placement of the firearm only after a K9 unit alerted them to its presence. And even after the police located the weapon, they had to conduct forensic analysis to match Benedict's fingerprints to the fingerprint found on the gun's magazine in order to establish his possession.

Viewing the circumstances of this case in the light most favorable to the verdict, as we are required to do, we conclude that a reasonable juror could determine that Benedict's act of placing the gun inside the trash can made finding it substantially more difficult. We therefore conclude that there was sufficient evidence to support Benedict's conviction for tampering with evidence.

Conclusion

The judgment of the superior court is AFFIRMED.

²⁵ See *id.* at 958; see also *Adams v. State*, 2008 WL 1914340, at *6 (Alaska App. Apr. 30, 2008) (unpublished) (affirming a conviction for evidence tampering when the defendant threw a knife behind a building after he stabbed someone and was fleeing the scene, but no one observed him dispose of the knife and the police had not yet become involved).