Circuit Court for Prince George's County
Case No.: C-16-JV-22-000089

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 330

September Term, 2023

IN RE: C.L.

Friedman,
Ripken,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: March 18, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Following an adjudicatory hearing, the Circuit Court for Prince George's County, sitting as a juvenile court, found appellant, C.L., a minor, involved in the delinquent acts of armed carjacking, carjacking, conspiracy to commit armed carjacking, conspiracy to commit carjacking, robbery with a dangerous weapon, motor vehicle theft, theft, and unauthorized removal of property. The court placed appellant on supervised probation for twelve months and GPS monitoring for ninety days. This timely appeal followed.

QUESTION PRESENTED

The sole question presented for our consideration is:

> Did the juvenile court err when it denied C.L.'s motion to suppress the victim's show-up identification of him, where the show-up, which took place after the victim was repeatedly told by two officers that they had caught the individuals who carjacked her, was impermissibly suggestive, and where the victim's identification was unreliable?

For the reasons set forth below, we shall affirm the judgment of the juvenile court.

BACKGROUND

The State alleged that appellant was one of two people who carjacked Patty Watkins on December 10, 2022 in Prince George's County. Shortly after the carjacking occurred, police conducted a show-up identification[1] during which Ms. Watkins identified appellant as one of the carjackers.

[1] A show-up is a type of extra-judicial identification in which a victim is presented with a single potential suspect. This type of procedure is permissible and may be justified "by the police's need to assess quickly whether they had the culprit, in which case the search could be concluded, or whether the culprit was still at large, in which case the suspect in custody could be released and the search could be continued while the trail was still fresh." *In re D.M.*, 228 Md. App. 451, 474 (2016). *See also Green v. State*, 79 Md. App. 506, 514-15 (1989) (noting that the "practice of presenting single suspects to persons for the purpose of

(continued…)

A. Motion to Suppress

Prior to trial, appellant filed a motion to suppress Ms. Watkins's show-up identification on the ground that the procedure was impermissibly suggestive. In addition, appellant sought to suppress any in-court identification on the ground that it would be tainted by the initial identification. Appellant argued before the juvenile court, as he does before this Court, that the show-up procedure was impermissibly suggestive because on multiple occasions police officers "told Ms. Watkins . . . they had caught the individuals who had committed the carjacking."

On the morning of the adjudicatory hearing, C.L.'s attorney asked the court to rule on his motion to suppress. The State asked that the motion be heard during the adjudication hearing because Ms. Watkins's testimony with respect to the motion would be duplicative if she had to testify at both a motions hearing and the adjudicatory hearing. C.L.'s attorney objected and the following occurred:

> [APPELLANT'S COUNSEL]: I would like the identification issue to be reached separately. There is a lower evidentiary standard in that identification hearing, a motions hearing, and I think there's evidence that I'd like to introduce that has hearsay that I would like separated from the trial and [C.L.] has a right to have the motions to be heard separately, so I'd ask for that today, Your Honor.
>
> THE COURT: All right. We're going to do it – still call it at the same time because the testimony that's being presented – that would be presented, would be presented during the trial portion. And as to any question that you may have or cross examination, the bench can distinguish between the motions and the trial. And at some point we can, when we get to the

identification" may be justified by "the desirable objectives of fresh, accurate identification which in some instances may lead to the immediate release of an innocent suspect and at the same time enable the police to resume the search for the fleeing culprit while the trail is still fresh" (quotation marks and citation omitted)).

> identification, finish that off. And depending on where that is, we'll proceed to the trial.
>
> So we're going to do it altogether. It will be separate in a sense that we'll distinguish when we're doing the suppression, but there's no need to, especially with the Court's time constraints, to have it separated.

In response to the court's ruling, C.L.'s attorney asked to present certain evidence pertinent to the motion to suppress at the start of the adjudication hearing. The court granted that request. After a recess, the following colloquy occurred:

> THE COURT: . . . All right. So there is a Motion to Suppress Identification, and we're going to just do this all in one shot, correct?
>
> [APPELLANT'S COUNSEL]: Correct.
>
> THE COURT: Obviously, the Defense has the burden to begin with to show that it was unnecessarily suggested [sic]. So I'm going to just start with that, and then – because if you don't get that hurdle, then we'll just go on to the other phase.
>
> [APPELLANT'S COUNSEL]: I understand, Your Honor. Yes.
>
> THE COURT: So we'll start with that.

Thereafter, appellant's counsel played portions of four video recordings obtained from the body-worn camera of Prince George's County Police Officer Diggs.[2] In video recordings identified as Defense Exhibit 1 for identification, Officer Diggs made certain statements in the presence of the complaining witness, Ms. Watkins, including the following:

> • "Hey, good job on calling so fast. [O]kay. Two more car[] jackers not around, you know, so."

[2] The record does not include Officer Diggs's first name.

> • "They'll come and explain all that, but they're going to take – they're going to take it to our evidence processing thing, but they'll probably let you have your stuff back because it's sort of an open-and-closed case now, since we caught him. The detective will kind of answer all that."
>
> • "It happens. Yeah, car jackings are kind of – you know, they're weird like, if we're in the area, we'll catch it pretty fast. That's what I was telling you earlier, because we were coming – we were coming down Temple Hills and we saw the Toyota, so two of my guys turned around quick to go see if that was it and I was staying here so I can verify it. So, yeah, I mean, it's good stuff. I mean, the car jackings are out of control, you know, but the County's not prosecuting them, so, yeah."

At the State's request, a portion of Defense Exhibit 1 depicting an earlier portion of the interaction between Officer Diggs and Ms. Watkins was also played. It included the following statements:

> "OFC. DIGGS: 10-4. Okay. She says she can. She says she can – she told me, she was like, "I can look at their body and say that was them. I mean we were here within two minutes and saw the car. Okay. Yeah. Yeah. Yeah, all right. Use 6400 block of Gifford, G-i-f-f-o-r-d, Lane. And I'm just sitting here with her. We can just wait, and that's fine. They got the suspects. So we're just waiting to do our little search in the car and everything like that.["]
>
> * * *
>
> "OFC. DIGGS: Okay. So you can just sit in the car. So they're going to have a car jacking detective come out and talk to you. Since you said (indiscernible), you can look at their eyes and try to ID them. So we're trying to see if we can positive ID on."
>
> "MS. WATKINS: Okay."
>
> "OFC. DIGGS: So they're going to bring you – this is what we call a show up. They're going to ride over there. They're not going to be – they're not going to be able to see you. They're hiding in the car, and you think that's them, and you can say it. If you don't think it's them, the[n] you don't have to ID them. And then they'll take a statement from [you]. Your car, sounds like it's totaled. It's not driveable.["]
>
> "MS. WATKINS: Okay.["]

Appellant's counsel also played video clips from the body-worn camera of Officer Charles Richardson, who, she proffered, arrived at the scene and spoke to Ms. Watkins "after Officer Diggs had been in contact with" her. Those video clips included the following conversations between Officer Richardson and Ms. Watkins:

> "OFC. RICHARDSON: Yeah, we caught of [sic] them. Could you ID them?"
>
> "MS. WATKINS: I think I can."
>
> "OFC. RICHARDSON: Okay. Like clothing, their clothing and stuff, too?"
>
> "MS. WATKINS: Black."
>
> "OFC. RICHARDSON: Yeah, well, I'm sure they're going to do like a show up or something like that. I don't know how they're going to do it, yet, but it's going to be for the investigators."
>
> * * *
>
> "OFC. RICHARDSON: No, I know it's a traumatic experience, but the good thing is we did – we think we have the right two, so it's going to take a little bit of time with the detective and it shouldn't be too-too long. I mean, it's pretty cut and dry. This is his family?["]
>
> "MS. WATKINS: Uh-huh."
>
> "OFC. RICHARDSON: Got you. All right. You can shut that door. I'll only be right in my car there, make a couple of phone calls, okay. If you need anything, just call. I mean, I know it's kind of annoying right know [sic]. It's going to take a second, but. If you need anything, just let me know. I'll be right here."
>
> "MS. WATKINS: Okay."
>
> * * *
>
> "THE OFFICER: Okay. Did they take your phone and stuff, too?"
>
> "MS. WATKINS: Yeah."

> "THE OFFICER: Okay. So, they told you, "Get out of the car while they were holding you at gunpoint. Did they say anything else?"
>
> "MS. WATKINS: No."
>
> "THE OFFICER: Okay. And you left you [sic] phone in the car?"
>
> "MS. WATKINS: Yeah. He told me, 'Don't take the phone.'"
>
> "THE OFFICER: Got you. How did they call in the Uber? Did they just – did you just verify, 'Hey, come pick them up there?'"
>
> "MS. WATKINS: Uh-huh."
>
> "THE OFFICER: Okay. (indiscernible), so you know, they're going to send you a credit. Thank you so much. Like I said, this is traumatic, but on a good note, nothing really good about this, but we did catch them. That's a very good thing. We got to get these criminals off the street."

Appellant's counsel also marked for identification a still photograph taken from Officer Richardson's body camera recording of the show-up identification. The State did not present any argument on the motion to suppress.[3] In support of the motion, appellant's counsel argued that Officer Diggs and Officer Richardson told Ms. Watkins "repeatedly that there are two more car jackers not around[,]" that this "is an open and closed case since we caught them[,]" that "car jackers are out of control, but the County's not prosecuting them[,]" that we will see if the County prosecutes "this time," that they believed both carjackers were caught and apprehended, that the identification should not take too long

[3] The State did not file a written opposition to the motion to suppress. At the adjudicatory hearing on March 21, 2023, the judge stated that she had not read the motion to suppress, but based her decision on the arguments presented by appellant's counsel at the hearing. After the juvenile court announced its decision to deny the motion, the prosecutor stated that if she had made an argument in opposition to the motion to suppress, she "would have made the same arguments Your Honor made."

because it was "pretty cut and dry[,]" that "[w]e did catch them[,]" "[t]hat's a very good thing[,]" and that "[w]e got to get these criminals off the street." Appellant's counsel continued, stating:

> And then later, bringing the complaining witness for an identification procedure in which [C.L.] and the Co-Respondent are escorted out of police cars in handcuffs, one by one, in a parking lot where there's no one else but police officers, multiple police cars with their sirens on and asks to identify them.
>
> So I think, Your Honor, this more than proves that this was an unnecessarily suggest[ive] identification procedure.
>
> * * *
>
> The police in this case chose to do a show-up and they chose to tell the victim repeatedly, over and over again that we think we caught them, he thinks we caught them. We got the guys. We've got to get these criminals off the street.
>
> So at this point the burden shift[s] to the State to prove that this was nonetheless reliable identification and I have further evidence for that in cross examination for the complaining witness on that issue.

The court rejected appellant's arguments. It determined that the evidence presented in support of the motion to suppress did not establish that the statements made by the police officers and the show-up procedure were unnecessarily suggestive. For that reason, the burden did not shift to the State to show that the identification was reliable. In reaching that conclusion, the court recognized that the officers said several times that they had caught the individuals, but it also noted that Officer Richardson asked Ms. Watkins if she thought she could identify them and said, "[i]f you can, you can" and "[i]f you can't, you can't." The court determined that "the words 'we think we caught them' or 'they have been apprehended'" did not, in themselves, make the identification unnecessarily

suggestive. The court noted that such words "are different from, '[t]his is the man,'" and the identification of a particular person. The court also rejected the argument that a show-up identification is unnecessarily suggestive when a defendant is shown wearing handcuffs or when a defendant is on the ground surrounded by law enforcement officers, with lights and sirens in operation.

B. Adjudicatory Hearing on the Merits

Ms. Watkins testified that on the day of the carjacking, she was operating her Toyota Corolla while working as an Uber driver. The weather was cool and sunny. She received a request to pick up a customer at Roberts Drive and Gifford Lane in Prince George's County. When she arrived at that location, she saw two young men standing directly in front of her car. Her view of them was unobstructed. The young men walked around the car and entered it through the rear passenger doors, each entering from a different side of the vehicle. Ms. Watkins began to drive and, when she "got halfway up the block[,]" the two men sat up and "put a gun to [her] head." In later testimony, Ms. Watkins explained that each individual had a gun and one gun was pointed on each side of her head. She could see both men through the rear-view mirror. She saw only one gun through the rear-view mirror but felt both guns against her head. Although both men wore masks, she could "see their eyes" and that is what she "remember[ed] the most." They told her to get out of the car and leave her phone, which she did.

Ms. Watkins was able to get help from a person in a nearby home and they called 911. Ms. Watkins told the 911 dispatcher that the individuals who carjacked her were "[t]wo black young men" and that she "didn't get a good look at them." She estimated that

they were "anywhere in their twenties." After Ms. Watkins told the dispatcher that they "had on black[,]" the dispatcher asked, "All black?" and Ms. Watkins responded, "Uh-huh."

When the police arrived, Ms. Watkins described the two men as being "tall" and "slim." She told the police that she knew the individuals were young because she saw their eyes, that the individuals wore all black including black hoodies and jackets, and that they were about five feet, six inches tall. According to Ms. Watkins, one of the police officers said, "I think we got them."

A detective drove Ms. Watkins to a location where there were multiple police cars. She observed officers bring forward two individuals "one by one." The detective never said anything to her. Ms. Watkins was in a vehicle about thirty feet away from where the two suspects were located. Each suspect was handcuffed and was escorted out of a police vehicle by a police officer. Ms. Watkins identified the two suspects as the young men who had carjacked her. At the time of the identification, Ms. Watkins was "scared" and "afraid," but she had no doubts about her identification. When asked how she knew that the suspects were the individuals who carjacked her, Ms. Watkins explained:

> It was the way they walked. When I picked them up, I saw how they walked to the car. So when I went to identify, to the way that they walked, their demeanor.

Ms. Watkins acknowledged that on the day of the carjacking, she told Officer Diggs that the individuals who carjacked her wore face masks and that she could not identify them. Later, Ms. Watkins told Officer Richardson that she thought she could identify the individuals who carjacked her. On re-direct examination, Ms. Watkins explained that

initially she was "devastated," but after officers arrived she "calmed down," reviewed in her mind what had happened, and was able to make an identification. She never felt that it would be a problem if she did not make an identification. Over appellant's objection, Ms. Watkins made an in-court identification of C.L. as one of the individuals who carjacked her.

In addition to Ms. Watkins, the State presented testimony from three Prince George's County police officers. Officer John Windsor testified that on December 10, 2022, he responded to the call for an armed carjacking. While on route to the location, he observed a vehicle matching the description of the one that had been carjacked and followed it. At one point, he lost sight of the vehicle, but he was flagged down and told the vehicle had crashed into some woods in the area of the 5200 block of Temple Hill Road and that the occupants had fled. He broadcast that information. Thereafter, he observed suspects running and police officers running behind them.

Officer Devon Fournier also responded to the call for a carjacking. While setting up a perimeter at the location where the Toyota had crashed, he observed two individuals in the woods. He told another officer, "I think I see them in the woods[,]" and then "the two individuals started taking off running." Eventually Officer Fournier apprehended two individuals, one of whom he identified as C.L. Thereafter, Officer Fournier and a K-9 officer conducted a search and located a firearm in the woods.

Officer Charles Richardson testified that as he was responding to the call for an armed carjacking, he observed a vehicle matching the description of the carjacked vehicle traveling on Temple Hill Road. When he tried to initiate a stop, the vehicle fled. When

the vehicle entered a bend in the road, Officer Richardson lost sight of it for a couple of minutes. Shortly thereafter, the vehicle was located crashed in a ditch on the side of the road. Officer Richardson then participated in the pursuit of the two male suspects who fled from the vehicle into a wooded area. After the two individuals were apprehended, Officer Richardson placed them in handcuffs. At the adjudicatory hearing, he identified C.L. as one of the individuals he had apprehended. The portions of the video from Officer Richardson's body worn camera that were played during the court's consideration of appellant's motion to suppress were admitted in evidence.

Appellant did not call any witnesses, but six photographs were admitted into evidence. At the close of the evidence, appellant's counsel renewed his motion for judgment of acquittal. Counsel argued, among other things, that the photographs showed that at the time of the show-up identification, C.L. was not wearing all black clothing. Counsel asserted that the photographs showed C.L. wearing gray jeans, a gray sweater and hoody, and a black jacket that did not have a hood.

In addition, appellant's counsel argued that the juvenile court had "to consider the identification of [appellant] anew here and has to consider it with the standard of beyond a reasonable doubt[.]" Counsel argued that the State failed to meet its burden of showing that Ms. Watkins's identification of C.L. was reliable. She argued that Ms. Watkins was unable to provide the 911 dispatcher "with any description except that [the carjackers] were two young black men in their twenties, and that they were wearing face masks." It was only later that she was "able to tell officers that they were wearing face masks and hoodies and that she was able to tell by their eyes that there [sic] were young." Counsel pointed

out that Ms. Watkins traveled only a half a block with the carjackers in the back seat of her car and that, "presumably" her "eyes [were] on the road[.]" As for her degree of attention, Ms. Watkins was focused on the guns to her head. Moreover, Ms. Watkins's description of the carjackers "was extremely vague[,]" she repeatedly stated that "it happened so fast she could not get a . . . good look at them." She "could not see their faces, could not provide any specific descriptions of their eyes, the shape, the color, did not say anything about their complexion, [or] about their hair." In addition, she initially told police that she could not identify them and she did not provide an accurate description of the clothing appellant was wearing. Appellant's counsel acknowledged that "the length of time between the crime and the confrontation" weighed in favor of the State. Counsel asked the court to find that Ms. Watkins's identification of appellant at the show-up was unreliable and that her in-court identification was tainted by the show-up identification.

C. Juvenile Court's Ruling

On March 22, 2023, the juvenile court announced its decision from the bench. After making findings of fact, the court referenced its prior finding that the show-up identification was not unnecessarily suggestive, stating:

> So the issue became the identification at the Motion to Suppress hearing. The Court found that the Respondent did not meet its burden by showing that it was unnecessarily suggestive. While there were comments made to the witness or in front of the witness as to they caught the individuals, we caught the suspects, that the Respondent was handcuffed at the time of that show-up identification. The Court found, based on case law, that that was not impermissibly suggestive, as no officer specifically stated this is the person. Therefore, there was no shift to the State to show reliability, so there never

had been – reliability had not been yet addressed. And so then, that's why the Court now looks at Pattern Jury Instruction 3:30[4] and 3:10.[5]

[4] Maryland Criminal Pattern Jury Instruction ("MPJI-Cr") 3:30 addresses the identification of a defendant and provides:

> The State has the burden to prove beyond a reasonable doubt that the offense was committed and that the defendant was the person who committed it. You have heard evidence about the identification of the defendant as the person who committed the crime. In assessing the accuracy and reliability of an identification, you should consider all the circumstances surrounding the identification.
>
> Among the circumstances you should consider are:
>
> (1) The opportunity of the witness to observe the person who committed the crime, including
> (a) the length of time the witness observed the person;
> (b) the distance between the witness and the person;
> (c) the extent to which the person's features were visible;
> (d) the lighting conditions at the time of the observation;
> (e) whether there were any distractions occurring during the observation; and
> (f) any other circumstance that affected the witness's opportunity to observe the person committing the crime.
>
> The ability of the witness to observe the person committing the crime. [In assessing ability to observe, you should also consider whether the witness was affected by:
>
> (a) stress or fright at the time of the observation;
> (b) personal motivations, biases or prejudices;
> (c) uncorrected visual defects;
> (d) fatigue or injury; and
> (e) drugs or alcohol.]
>
> (2) Other circumstances surrounding the identification, including:
> (a) the length of time between the crime and the identification;
> (b) [the manner in which the defendant was presented to the witness.]
> (c) [whether the identification procedure was suggestive and influenced the witness to identify the defendant.]
>
> (3) The accuracy of the witness's prior description(s) of the person.

(continued…)

(4) The witness's degree of certainty. Certainty may or may not be a reliable indicator of accuracy. A person, in good faith, may be confident but mistaken.

(5) [Prior identifications. You should consider whether the witness previously identified or failed to identify the defendant. You should also consider whether any prior identification was consistent or inconsistent with the identification that the witness made at trial.]

(6) [Prior knowledge of defendant. You should also consider whether the witness knew the defendant or had previous exposure to [him] [her].]

(7) [The defendant and the witness who identified [him][her] are of different races. Some people have greater difficulty accurately identifying people of a different race than people of their own race. You should consider whether the difference in race between the defendant and the identifying witness affected the accuracy of the witness's identification [taking into account the witness' background and experience]].

[The identification of the defendant by a single eyewitness as the person who committed the crime, if believed beyond a reasonable doubt, can be enough evidence to convict the defendant. However, you should examine the identification of the defendant with great care.]

Finally, you should consider any other factors affecting the reliability of the witness's identification, including the witness's credibility or lack of credibility. It is for you to determine the reliability of any identification and give it the weight you believe it deserves.

[5] MPJI-Cr 3:10 addresses credibility of witnesses and provides:

You are the sole judge of whether a witness should be believed. In making this decision, you may apply your own common sense and life experiences.

In deciding whether a witness should be believed, you should carefully consider all the testimony and evidence, as well as whether the witness's testimony was affected by other factors. You should consider such factors as:

(1) the witness's behavior on the stand and manner of testifying;

(continued…)

The court proceeded to make various findings about Ms. Watkins's identification of appellant. It found that Ms. Watkins's encounter with him was "very brief," that she was close to him in the car, and that she observed him through the rearview mirror when he leaned forward. The court noted that appellant's facial features were "not fully visible" because he was wearing a mask and a hoodie, but the event occurred on a sunny afternoon. Although Ms. Watkins was "looking at the gun" and "was very frightened," there was nothing blocking her field of vision. The court noted that it had not heard from the detective who actually performed the show-up identification and did not know if there was body camera footage showing the identification. The court considered that Ms. Watkins "did not have any bias or motive to lie[,]" that she was wearing her "glasses at the time[,]" that there was "no evidence of any fatigue[,] injury, drugs or alcohol[,]" and that Ms. Watkins was frightened and under stress. In addition, the court recognized that there was not a long period of time between the crime and the time the identification was made.

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(2) whether the witness appeared to be telling the truth;
(3) the witness's opportunity to see or hear the things about which testimony was given;
(4) the accuracy of the witness's memory;
(5) whether the witness has a motive not to tell the truth;
(6) whether the witness has an interest in the outcome of the case;
(7) whether the witness's testimony was consistent;
(8) whether other evidence that you believe supported or contradicted the witness's testimony;
(9) whether and the extent to which the witness's testimony in court differed from the statements made by the witness on any previous occasion; and
(10) whether the witness has a bias or prejudice.

You are the sole judge of whether a witness should be believed. You need not believe any witness, even if the testimony is uncontradicted. You may believe all, part, or none of the testimony of any witness.

With respect to the accuracy of Ms. Watkins's description of the carjackers, the court reviewed a photograph showing that appellant wore a black jacket "with gray pants, gray jeans." The court noted Ms. Watkins's statement that the carjackers wore all black, but found that "she did not focus on the individual's pants." Lastly, as to degree of certainty, the court recognized that Ms. Watkins had no doubt about her identification of appellant, but noted that "certainty may or may not be a reliable indicator of accuracy[,]" and that "such identification should be examined with great care."

After making those findings, the court stated that "the crux of the issue . . . at the time of trial" was whether the police officers' statements influenced Ms. Watkins "in any way[.]" The court held as follows:

> And while this was difficult to reach this conclusion is because at first glance it would appear that the officers' comments would influence what she stated, that she was able to make the identification. However, just looking at the facts, reviewing the evidence, there is nothing that Ms. Watkins testified to or was in cross examination, revealed that she was not certain as to who committed this offense.
>
> She said she has no doubt. She explained as to why she initially said she couldn't ID, but then why she was able to reflect and then make the identification. We are all aware not only about the single identification, but aware as to when witnesses provide general descriptions – black male, white male and subsequently identify a suspect that if the identifier is deemed credible, then that identification would stand. And at this juncture, the Court does not have anything to find Ms. Watkins' testimony not credible. As such, she identified who the person was that was in the car that committed this crime. And for those reasons, the Court would find the Respondent involved as to all of the counts[.]

STANDARD OF REVIEW

Our review of a delinquency proceeding conducted by a juvenile court without a jury is governed by Maryland Rule 8-131(c), which provides:

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

DISCUSSION

The sole issue before us is whether the juvenile court erred in denying appellant's motion to suppress the show-up identification. In reviewing a denial of a motion to suppress, "'we confine ourselves to what occurred at the suppression hearing[,]'" and '"view the evidence and inferences that may be reasonably drawn therefrom in a light most favorable to the prevailing party on the motion[.]'" *Lindsey v. State*, 226 Md. App. 253, 262 (2015) (quoting *Gonzalez v. State*, 429 Md. 632, 647 (2012)), *cert. denied*, 447 Md. 299 (2016). We accept the court's factual findings unless they are clearly erroneous, but extend no deference to the court's ultimate conclusion as to the admissibility of the identification. *White v. State*, 374 Md. 232, 249 (2003). We make an independent constitutional evaluation by "'reviewing the relevant law and applying it to the unique facts and circumstances of the case.'" *Thomas v. State*, 213 Md. App. 388, 416 (2013) (quoting *In re Matthew S.*, 199 Md. App. 436, 447 (2011)).

In evaluating the admissibility of an extrajudicial identification, we apply a two-step inquiry. *Smiley v. State*, 442 Md. 168, 180 (2015); *Jones v. State*, 395 Md. 97, 109 (2006); *Morales v. State*, 219 Md. App. 1, 13 (2014). "First, the burden falls on the accused to establish that the procedures employed by the police were impermissibly suggestive." *Morales*, 219 Md. App. at 13. *See also Matthew S.*, 199 Md. App. at 447 (stating same). Principles of due process protect an accused from "the introduction of evidence of, or

tainted by, unreliable pretrial identifications obtained through unnecessarily suggestive procedures." *James v. State*, 191 Md. App. 233, 251-52 (2010) (quotation marks and citations omitted). Although by "its very nature," a "one-on-one show-up is suggestive, just as 99 out of every 100 judicial or in-court identifications are suggestive[,]" the fact of "mere suggestiveness does not call for exclusion" of the identification. *Turner v. State*, 184 Md. App. 175, 180 (2009). In *Turner*, we noted that the jury "is perfectly capable of weighing the pluses or minuses of such an identification. That is why mere suggestiveness does not call for exclusion." *Id.* at 180. We also noted that "[m]any self-evidently suggestive one-on-one show-ups shortly after a crime has occurred are deemed to be permissibly suggestive, and therefore unoffending, because of the exigent need to take quick action before the trail goes cold." *Id.* In order to suppress a show-up identification, the procedure "must be not only suggestive, but *impermissibly* suggestive." *Id.* (emphasis in original).

A pretrial identification will be excluded as a violation of due process only if it "was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification." *Simmons v. United States*, 390 U.S. 377, 384 (1968). In *Upshur v. State*, 208 Md. App. 383 (2012), this Court stated that exclusion is only warranted "where there is a very substantial likelihood of irreparable misidentification, to wit, a situation where the identification could not be found to be reliable[.]" *Id.* at 402 (quotation marks and citation omitted). "Impermissible suggestiveness exists where the police, in effect, repeatedly say to the witness: 'This is the man.'" *Matthew S.*, 199 Md. App. at 448 (further

quotation marks and citation omitted) (quoting *McDuffie v. State*, 115 Md. App. 359, 367 (1997)). To do something impermissibly suggestive is

> "to feed the witness clues as to which identification to make. THE SIN IS TO CONTAMINATE THE TEST BY SLIPPING THE ANSWER TO THE TESTEE. All other improprieties are beside the point."

Id. (emphasis in original) (quoting *Conyers v. State*, 115 Md. App. 114, 121 (1997)).

If the trial court finds that the procedure was not impermissibly suggestive, the inquiry stops there, and both the extrajudicial identification and any in-court identification are admissible at trial. *Smiley*, 442 Md. at 180; *Jones*, 395 Md. at 109 (stating same). If the accused shows that the identification procedure was impermissibly suggestive, the court proceeds to the second step. At that point, the burden shifts to the State to show, under a totality of the circumstances, and "'by clear and convincing evidence, that the independent reliability in the identification outweighs the corrupting effect of the suggestive procedure.'" *Matthew S.*, 199 Md. App. at 448 (further quotation marks and citation omitted) (quoting *Gatewood v. State*, 158 Md. App. 458, 475 (2004)).

In evaluating the reliability of an out-of-court identification, we consider: (1) the opportunity of the witness to view the perpetrator at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the perpetrator; (4) the level of certainty demonstrated by the witness at the confrontation; and, (5) the length of time between the crime and the confrontation. *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972); *Thomas*, 213 Md. App. at 417; *Matthew S.*, 199 Md. App. at 452-53.

A. Impermissible Suggestiveness

In the case at hand, we are not persuaded that the juvenile court erred in denying appellant's motion to suppress. The statements made by the officers expressed what is implicit in all show-up identifications; that is, that they apprehended a person they believed may possibly have committed the crime, and that they wanted the witness to confirm or dispel that belief. *See Foster v. State*, 272 Md. 273, 291 (1974) ("'[P]olice are in effect saying to the witness, We have apprehended this person because we believe he may possibly be the one who committed the crime. Look at him and tell us whether you can identify him as the culprit.'" (further quotation marks omitted) (quoting *Davis v. State*, 13 Md. App. 394, 402-03 (1971))). Although officers told Ms. Watkins several times that they caught the suspects, that they thought they had the right individuals, that the case was "sort of an open-and-closed case now, since we caught him[,]" and that it was "pretty cut and dry[,]" no officer told Ms. Watkins that they had the individuals who committed the carjacking. The officers' statements did not slip the answer to Ms. Watkins or rise to the identification of a particular person or a statement that appellant was the person who committed the carjacking. Officer Richardson told Ms. Watkins that police thought they had "the right two" and he asked her if she could identify the individuals who had been apprehended. There was also evidence that an officer told Ms. Watkins to look at the suspects and "if you think that's them, . . . you can say it. If you don't think it's them, the[n] you don't have to ID them." Officer Diggs told Ms. Watkins "you can look at their eyes and try to ID them." The record supports the conclusion of the juvenile court that the

officers' statements did not give rise to a very substantial likelihood of irreparable misidentification and were not impermissibly suggestive.

The juvenile court also rejected appellant's argument that the show-up was impermissibly suggestive because he was shown wearing handcuffs and was in a location where he was surrounded by law enforcement officers and their vehicles with lights and sirens in operation. One of the objectives of a show-up identification is to allow for a fresh, accurate identification "'in the immediate wake of a crime while the apprehension of the criminals is still turbulently unsettled.'" *In re D.M.*, 228 Md. App. at 474 (quoting *Turner*, 184 Md. App. at 185). *Accord Green*, 79 Md. App. at 515. In some instances, that may lead to the immediate release of an innocent suspect and at the same time enable the police to resume the search for the fleeing culprit while the trail is still fresh. *Id*.

In *Anderson v. State*, 78 Md. App. 471 (1989), we considered whether a show-up identification was impermissibly suggestive. *Id.* at 494. In that case, evidence showed that the witness overheard police broadcasts describing the defendant on the way to making the identification. *Id.* At the location of the identification, the defendant was on the ground surrounded by at least ten armed police officers. *Id.* We recognized that the circumstances of the identification typified "the very nature of the one-on-one show-up at or near a crime scene in the immediate aftermath of a crime." *Id.* We further recognized that "[t]he reliability that is gained through the immediacy of the identification far outweighs the peripheral suggestiveness of the circumstances." *Id.*

In the instant case, the presence of police officers, police vehicles, and the fact that appellant was shown wearing handcuffs are typical of show-up identifications. The

evidence supported the trial court's determination that the show-up was not impermissibly suggestive.

B. Reliability

Appellant argues that, notwithstanding the juvenile court's finding that the show-up identification was not impermissibly suggestive, we should address the reliability prong of the required analysis because the juvenile court addressed that issue at the conclusion of the adjudicatory hearing. He contends that the State failed to meet its burden of proving that the indicia of reliability were strong enough to outweigh the corrupting effect of the impermissibly suggestive identification. The State maintains that if we determine that the identification procedure was impermissibly suggestive, we should order a limited remand of the case to allow the juvenile court to address the issue of reliability. Alternatively, if we do not order a limited remand, the State argues that we should affirm on the ground that the State met its burden of proving, by clear and convincing evidence, that Ms. Watkins's identification was sufficiently reliable.

These issues of reliability perhaps arise because of the confusing manner in which the motion to suppress was addressed below. Nevertheless, as we have already noted, once the juvenile court determined that the show-up identification procedure was not impermissibly suggestive, the inquiry ended. Therefore, the juvenile court was not required to consider the issue of reliability with respect to the motion to suppress Ms. Watkins's identification. *Smiley*, 442 Md. at 180; *Jones*, 395 Md. at 109. Nor are we. For the reasons set forth above, the juvenile court did not err in determining that the show-up

identification procedure was not impermissibly suggestive and both the extrajudicial identification and the in-court identification were admissible at trial.

Even assuming that the identification was impermissibly suggestive, appellant would fare no better because, considering the totality of the circumstances, the State met its burden of showing, by clear and convincing evidence, that the identification was reliable. The second step of the due process inquiry requires the suppression court to screen the identification's reliability to determine '"[i]f there is a very substantial likelihood of irreparable misidentification.'" *Small v. State*, 464 Md. 68, 92 (2019) (further quotation marks and citation omitted) (quoting *Perry v. New Hampshire*, 565 U.S. 228, 232 (2012)). As we have already stated, the State bears the burden of proving reliability by clear and convincing evidence. *Matthew S.*, 199 Md. App. at 447. The United States Supreme Court has set forth five factors for determining the reliability of an identification:

> We turn, then, to the central question, whether under the 'totality of the circumstances' the identification was reliable even though the confrontation procedure was suggestive. As indicated by our cases, the factors to be considered in evaluating the likelihood of misidentification include the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of the witness' prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation.

Biggers, 409 U.S. at 199-200. *See also Small,* 464 Md. at 92 (citing *Biggers*).

Although the juvenile court did not specifically reference the *Biggers* factors, and instead referenced two pattern jury instructions, it clearly considered the necessary factors. Our review of the record convinces us that the State met its burden of proving, by clear and convincing evidence, that Ms. Watkins's identification was sufficiently reliable to be

considered by the juvenile court. With respect to the first factor, the opportunity of Ms. Watkins to view the criminal at the time of the crime, the evidence showed that the day of the incident was "sunny," that Ms. Watkins was wearing her glasses, that as she arrived at the spot to pick up her passengers, she observed "two young men" standing "directly in front of [her]." She observed them walk around her car and enter the rear passenger doors. Ms. Watkins testified that the young men were wearing masks and hoodies and that they sat up and put a gun to each side of her head. She observed the men through her rear-view mirror. This factor militates in favor of reliability.

The second required factor, the witness's degree of attention, also weighs in favor of reliability. Ms. Watkins had a clear view of the young men when she arrived to pick them up. That fact was not negated by the subsequent fear she experienced when the guns were put to her head and her focus was on the weapons.

The third required factor, the accuracy of Ms. Watkins's prior description of the criminal, also weighs in favor of reliability. She described the carjackers as "two black young men wearing black[,]" who were about five feet, six inches tall, "slim," and wearing hoodies or a hood. As the juvenile court noted, photographs revealed that appellant wore a black jacket, but that his pants were gray. The court did not give much weight to the fact that appellant's pants were gray, stating that Ms. Watkins did not focus on the individuals' pants. Nevertheless, there was no evidence to counter the fact that appellant was a young black male with a slim build and that he wore at least some black clothing.

The fourth required factor, the level of Ms. Watkins's certainty at the time of the confrontation, also militates in favor of reliability. Although as appellant notes, a witness

may be confident but mistaken, the fact remains that Ms. Watkins identified appellant quickly and stated that she did not at any point have any doubt about her identification.

The fifth required factor involves the time between the crime and the identification. Appellant concedes this factor weighs in favor of reliability. There was no evidence revealing the precise time between the carjacking and the identification, but the juvenile court found that approximately fifteen to twenty-five minutes passed between the call for assistance and the identification. Ms. Watkins testified that immediately after exiting her car, she ran to nearby homes and knocked on doors to get help. A person came outside and called 911 for her and then she spoke to the 911 operator. It can be inferred from that testimony that only a short amount of time occurred between the carjacking and the call for assistance. In addition, the police commented on Ms. Watkins's quick call for help, telling her, "good job on calling so fast." There was no evidence as to how long Ms. Watkins waited with the police before making her identification. However, it is clear that this case did not involve the passage of hours, much less days. For those reasons, the fifth factor weighed in favor of reliability.

For these reasons, even if we were to find that the show-up procedure utilized by the police was impermissibly suggestive, which we do not, under the totality of the circumstances, the State met its burden of proving, by clear and convincing evidence, that

Ms. Watkins's identification was sufficiently reliable. The juvenile court did not err in admitting Ms. Watkins's identification of appellant.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, SITTING AS A JUVENILE COURT, AFFIRMED; COSTS TO BE PAID BY APPELLANT.