

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

In re J.C.

Court of Appeals No. E-23-026

Trial Court No. 2022 JF 071

DECISION AND JUDGMENT

Decided: June 28, 2024

* * * * *

Kevin J. Baxter, Erie County Prosecuting Attorney, and
Kristin R. Palmer, Assistant Prosecuting Attorney, for appellant.

Lorie K. Brobst, for appellee.

* * * * *

DUHART, J.

{¶ 1} This is an appeal by appellant, J.C., from the April 6, 2013 and August 31, 2023 judgments of the Erie County Court of Common Pleas, Juvenile Division. For the reasons that follow, we affirm the judgments.

{¶ 2} J.C. sets forth three assignments of error:

- I. The trial court erred to the prejudice of appellant, J.C., when it entered a judgment denying his motion to suppress when the judge did not preside over the suppression hearing. Such error is plain and mandates immediate remand.
- II. The trial court erred and abused its discretion to the prejudice of appellant, J.C.[,] when it denied his motion to supp[r]ess the unreliable non-photo array identification of him as a perpetrator.
- III. The trial court erred and abused its discretion to the prejudice of appellant, J.C.[,] when it adjudicated him to be a delinquent child for committing the act of (complicit) committing a theft offense, did (complicit) inflict harm to another in violation of R.C. § 2911.02(a)(2). [Sic.]

Background

{¶ 3} In the early morning hours of November 5, 2022, the Sandusky Police Department (“SPD”) received a call from a citizen who witnessed three juveniles attempting to open doors on parked cars in downtown Sandusky, Ohio. An officer responded, located the three juveniles in that area, detained them, put them in a police cruiser and drove to the citizen’s apartment. The officer used a show-up identification, where each juvenile got out of the cruiser and was observed by the citizen. J.C. and his two co-defendants were identified by the citizen as the juveniles he saw that morning.

{¶ 4} Shortly thereafter, police received a call that a robbery occurred in the downtown Sandusky vicinity. Another SPD officer (“second officer”) responded and met with the victim, who reported that he was assaulted twice and robbed of his wallet by three juveniles. The victim described the juveniles. The second officer knew of the earlier call which involved juveniles in the area, so he contacted the officer who handled that call (“first officer”) and shared the victim’s descriptions of the juveniles. The first officer advised that he had three juveniles in his cruiser, and he had seen them downtown around the time that the victim was assaulted and robbed. The first officer confirmed that the juveniles in his cruiser matched the descriptions provided by the victim.

{¶ 5} The second officer drove the victim to the first officer’s cruiser, and a show-up identification was conducted, where the victim viewed the three juveniles in the backseat of the cruiser. The victim identified J.C. and his two co-defendants as the juveniles who assaulted and robbed him that morning.

{¶ 6} On November 7, 2022, a two-count criminal complaint was filed against, inter alia, J.C., which alleged that J.C. was 15 years old and appeared to be a delinquent child, in that on November 5, 2022, J.C., while committing theft, did inflict physical harm to another. It was further alleged that J.C. participated in the assault of the victim while taking his wallet without consent, which constituted robbery in violation R.C. 2911.02, a third-degree felony. On December 28, 2022, the complaint was amended to a felony of the second-degree, due to a typographical error.

{¶ 7} On November 30, 2022, J.C. filed a motion to suppress the two show-up identifications, and the victim’s statement identifying J.C. and his two co-defendants as the three juveniles who robbed him. In his motion, J.C. claimed the identifications were suggestive and unreliable in violation of his due process and equal protection rights. The State responded and argued the facts established that the show-up identifications were reliable. A hearing was held on December 22, 2022, before a magistrate, who denied the motion from the bench. The magistrate proceeded to adjudication.

{¶ 8} On December 28, 2022, the magistrate issued a decision finding the State proved, beyond a reasonable doubt, that J.C. committed robbery via complicity, and he should be adjudicated a delinquent child. The magistrate further found that the State did not meet its burden on the criminal mischief charge, and recommended that charge be dismissed.

{¶ 9} Also on that day, a judgment entry (“the entry”) was issued, signed by the magistrate and the judge, denying J.C.’s motion to suppress. The entry indicated that the court found the victim’s show-up identification of J.C. and his co-defendants “as the individuals who assaulted him and took his wallet was accurate and considering the totality of the circumstance[s] very reliable.”

{¶ 10} On January 27, 2023, J.C. filed his objections to the magistrate’s decision concerning both the motion to suppress and adjudication. Regarding the suppression motion, J.C. asserted the entry was void because the “[j]udge had no basis for signing a judgment entry on a motion to suppress that he did not preside over and hear the

testimony.” J.C. claimed the magistrate should have issued a magistrate’s order, which the judge could have adopted. J.C. further argued that the show-up identification by the victim was inherently suggestive, and violated J.C.’s constitutional rights.

{¶ 11} Regarding the magistrate’s decision recommending that J.C. be adjudicated delinquent, J.C. challenged the magistrate’s consideration of complicity to commit theft as J.C. was not charged with complicity. J.C. also objected to the magistrate’s findings that one of his co-defendants, J.K., was not credible, while the victim was credible.

{¶ 12} On March 7, 2023, the court denied J.C.’s motion to suppress, and ruled J.C. was a delinquent child for committing robbery, in violation of R.C. 2911.02(A)(3).

{¶ 13} On April 6, 2023, the court entered disposition, and on April 26, 2023, J.C. filed a notice of appeal. On August 18, 2023, we dismissed the appeal for lack of a final appealable order, and on August 31, 2023, the juvenile court issued an amended disposition. J.C. filed an amended appeal.

December 22, 2022 Hearings

Motion to Suppress Hearing

{¶ 14} At the hearing, three witnesses testified.

Officer Zachary Blair

{¶ 15} Officer Blair testified he was employed by the Sandusky Police Department (“SPD”), and on November 5, 2022, at about 3:40 a.m., he received a call to respond to a robbery complaint. He met with the victim who reported that about 2:30 a.m., he was followed from downtown Sandusky by three subjects, who attacked him

near the Sandusky library (“library”) and stole his wallet. The victim, who had lacerations on his face, said he had been drinking at the bars; the officer smelled the odor of intoxicants emanating from the victim, but it was not strong. Blair did not believe the victim was drunk, as his speech was not slurred, he was not swaying, and he did not display signs of being highly intoxicated. The victim repeatedly said his attackers were just kids and described them as “two black males wearing dark clothing, and a third black male with braids wearing a grayish-white sweatshirt.”

{¶ 16} The officer was aware of an earlier call for criminal mischief which involved juveniles in the area, so he contacted Officer Darian Cook, also with SPD, and shared the victim’s descriptions of the juveniles. Cook advised he had three juveniles in his police cruiser for criminal mischief and curfew violations, and in addition, Cook had seen the juveniles downtown around 3:00 a.m. Cook confirmed the juveniles in his cruiser matched the descriptions provided by the victim.

{¶ 17} While Blair was transporting the victim to the gas station where Cook was parked, the victim asked for water and to stop for a beer. Blair pulled up next to Cook’s cruiser, Blair rolled down the back window where the victim was, Cook opened the backdoor to his cruiser so the victim could see the juveniles in the backseat, and Blair turned his spotlight towards the juveniles. The victim did not hesitate in identifying the three juveniles as his attackers. This identification occurred within 15 to 20 minutes after Blair responded to the robbery call.

{¶ 18} Blair further testified that he obtained video footage from City Hall and the library, which depicted the three juveniles following the victim from downtown, with J.C. walking near the victim, while the two other juveniles were walking behind them. Blair recognized J.C. in the footage as the juvenile with braids, due to previous interactions for complaints of unruliness.

The Victim

{¶ 19} The victim testified that on November 5, 2022, he was out drinking for about five or six hours at two bars in downtown Sandusky and had eight beers, but he was not drunk as he had to go to work that day. After the victim left the bar, at around 2:15 to 2:30 a.m., he called for a cab for himself and a buddy. While waiting for the cab, he and his buddy were walking by the parking garage when three juveniles came up and made conversation, “[i]t was mainly [J.C.] at first.” The juveniles asked where the victim and his buddy had been; the victim told them.

{¶ 20} As the victim and his buddy walked around the parking garage, the buddy walked further ahead of the victim; the victim thought his buddy was kind of nervous. The juveniles continued to follow the victim, who was now alone, and make conversation. When the victim was by the popcorn wagon, he tried to get away from the juveniles, but the victim was punched in the face by J.C.; the victim did not fall down.

{¶ 21} The victim then ran towards the courthouse and library, still waiting for a cab to pick him up; the juveniles followed. All the while, J.C. attempted to have a conversation with the victim as the victim tried to get away. The victim was punched in

the face again, this time by juvenile, J.K.; the victim did not fall. Juvenile, S.G., stole the victim's wallet out of his back pocket. The three juveniles ran off and the victim hid.

{¶ 22} The victim had a cellphone with him, and after the first attack, he felt nervous to call 911 because he did not know what the juveniles' intentions were, as they were still following him, and he did not want them to take his phone. The victim did, however, reach for his phone, and one juvenile said go ahead, call the police, we don't care. After the second attack, the victim called the cab company to see where the cab was, as he wanted to get out of the area and knew a cab was on the way. The victim's cab arrived 10 or 15 minutes later. The victim called the police when he got home.

{¶ 23} The victim's encounter with the juveniles spanned five blocks. The victim did not know if his buddy heard the assault; the buddy did not come back to help the victim.

{¶ 24} Following his call to police, the victim was taken by an officer to Circle K gas station to try to identify who attacked him. The victim "knew right away" the juveniles in the backseat of the police cruiser were his attackers, as he recognized their faces. The victim described that the gas station parking lot was lit, the window to the police cruiser was down, and there were no obstructions to his view.

{¶ 25} The victim was shown video surveillance footage, and noted it showed they were all in the area, but it did not show the assaults. The victim was 100% certain the two people in the courtroom, J.C. and J.K., assaulted him and stole his wallet.

Officer Darian Cook

{¶ 26} SDP Officer Cook testified that on November 5, 2022, he was dispatched to a criminal mischief complaint in downtown Sandusky, after a citizen reported subjects were attempting to open car doors near his residence. Cook recalled he had observed juveniles in downtown Sandusky earlier, at about 3:00 a.m., talking to the victim.

{¶ 27} Later, Cook saw three juveniles, who exactly matched the descriptions provided by the citizen, running away from the area. Cook recognized the juveniles, as he had contact with them in the past. The officer detained the juveniles, at about 3:30 or 4:00 a.m., for curfew violations, and to investigate the criminal mischief complaint.

{¶ 28} Cook drove the juveniles to the citizen's home for a show-up identification. The juveniles were removed from the police cruiser individually, and the citizen identified the three juveniles as the ones he saw attempting to open car doors. Cook noted the citizen was standing at his front door, at street level, in a well-lit area.

{¶ 29} Not long after, Cook was contacted by Officer Blair, who believed the juveniles also matched the victim's descriptions of his attackers. Cook met Blair at the gas station for a show-up identification. Cook opened the back door to his cruiser so that all three juveniles were visible, and a spotlight was used, although the parking lot was lit. The victim identified the three juveniles, within 30 to 45 seconds, as the perpetrators.

Adjudicatory Hearing

{¶ 30} At the hearing, four witnesses testified.

J.K.

{¶ 31} J.K., one of J.C.'s co-defendants, testified that he alone robbed the victim of a vape in downtown Sandusky on November 5, 2022. J.K. denied hitting the victim and denied that anyone was with him when he robbed the victim.

{¶ 32} J.K. was confronted with surveillance footage which contradicted his testimony that he was alone. J.K. admitted he was one of the people in the footage, but he could not identify the others. In the footage, J.K. wore a yellow jacket.

Victim

{¶ 33} In addition to the victim's testimony given at the suppression hearing, the victim provided more details regarding the location of the second attack. He testified that all three juveniles caught up to him near the courthouse and library, he was then punched in the face and his wallet was taken.

{¶ 34} A few days after the assaults, the victim's hearing was kind of muffled, so he went the hospital where he was diagnosed with a ruptured eardrum. He was told his eardrum would heal on its own.

{¶ 35} A couple of weeks later, the victim received his wallet back from the police, but \$20 cash, a credit card and medical insurance card were missing and were never found.

Officer Blair

{¶ 36} In addition to his testimony at the motion to suppress hearing, Officer Blair testified that the victim was not showing signs of being impaired so that he could not care for himself, he remembered where he was and where the incident happened. The victim had lacerations, dried blood, and redness on his face.

{¶ 37} The victim was able to describe the subjects as kids, black males, two were wearing dark clothing, one was wearing a white and gray sweatshirt, and one had braids. When Blair took the victim to the gas station for an identification of the subjects, the victim identified the three juveniles as his attackers “without hesitation.”

{¶ 38} The police obtained surveillance footage from City Hall, which appeared to show an altercation, and footage from the library showed the victim and the three juveniles walking past. Based on previous interactions with J.C. and his co-defendants, the officer was able to identify the juveniles in the footage. He also noted the juveniles were wearing the same clothing as when he saw them in Cook’s police cruiser.

{¶ 39} Blair testified the victim’s wallet was later located at a church next to the library.

Officer Cook

{¶ 40} In addition to his testimony at the suppression hearing, Officer Cook testified that he located the three juveniles in a backyard on Fulton Street and secured them in his police cruiser. The victim’s wallet and its contents were not found on the juveniles, but J.K. possessed a vape.

{¶ 41} Cook also testified that he had previously observed J.K. standing on a corner with the victim on Columbus Avenue, at approximately 3:00 a.m.

Magistrate's Decision

{¶ 42} The magistrate summarized the testimony of the four witnesses given at the adjudicatory hearing. The magistrate indicated that he considered the evidence and certified the following decision to the court.

{¶ 43} J.C. was charged with: robbery, a felony of the second degree; criminal mischief, a misdemeanor of the third degree; and, a curfew violation.

{¶ 44} J.K., who had already been adjudicated a delinquent child for robbery, testified that he had been with J.C. and S.G. on the day of the robbery, but they were not together at the time J.K. robbed the victim. J.K. admitted, after he viewed the security footage, that he appeared in the footage, but he did not recognize the other two people as J.C. and S.G. The magistrate did not find J.K. credible and placed no weight on his testimony.

{¶ 45} The victim testified that after he was struck in the face, he did not call police as he was nervous and just wanted to get away and get home. This explanation seemed reasonable to the magistrate. The victim further testified that after he was struck again and his wallet was taken, he hurried away and hid up a driveway until his cab arrived. He did not call the police because he was afraid if he pulled out his phone the juveniles would take that too. This explanation also seemed reasonable to the magistrate.

{¶ 46} The magistrate thought if the victim had been completely sober, he may have handled things differently, but the fact that he may have been slightly to moderately intoxicated did not negatively impact his credibility. The victim was concise with his answers and did not speculate when he did not recall or know an answer. He also did not overdramatize or try to embellish what happened to him. The magistrate found, based on all of the victim’s testimony, that the victim was a very credible witness.

Robbery

{¶ 47} The magistrate observed the elements of the crime of robbery, R.C. 2911.02 (A)(2), pursuant to “OJI CR 511.02” are:

1. In committing . . . the offense of theft offense . . .
2. inflicted . . . physical harm on [the victim];
3. venue.

{¶ 48} The magistrate found that based on S.G.’s testimony, it was undisputed that S.G. took the victim’s wallet and committed a theft. Since J.C. did not take the wallet, the magistrate examined complicity to theft and noted the victim was outnumbered three to one and was somewhat intoxicated, so he did not fight back, all of which made it easy for S.G. to take the wallet. The magistrate found, beyond a reasonable doubt, that J.C. and J.K. supported, assisted, and cooperated with S.G. in the theft of the victim’s wallet.

Theft

{¶ 49} The magistrate found S.G. did not innocently pick up the victim's wallet from the ground. Rather, after the victim was struck in the face, S.G. moved behind the victim, reached in his back pocket, and removed the wallet. The magistrate found that after the three juveniles took the victim's wallet, they removed \$20.00 and a credit card, and discarded the wallet, which made it unlikely that the victim would recover his property. The magistrate concluded, beyond a reasonable doubt, S.G. acted with purpose to deprive when he took the wallet, and the victim did not consent to having his wallet taken.

Physical Harm

{¶ 50} The magistrate noted the victim testified he was struck in the face, he did not know if he was bleeding, and his hearing was muffled due to a ruptured eardrum. Pictures showed the victim had a swollen lip and bloody nose. The magistrate concluded, beyond a reasonable doubt, that the three youths inflicted physical harm on the victim, as J.K. struck the victim and the other two juveniles were complicit.

Judgment Entry - December 28, 2022

{¶ 51} Concerning J.C.'s motion to suppress the show-up identification, the court found that: the victim was very certain with his identification of the three youths; the crime occurred about 2:50 to 3:00 a.m., and the show-up identification happened about 3:55 to 4:00 a.m.; the timeliness of the identification, an hour or so after the crime, lends to its accuracy and reliability; the victim's show-up identification of J.C., S.G. and J.K. as

the individuals who assaulted him and took his wallet was accurate, and considering the totality of circumstance, very reliable. The court denied J.C.'s motion to suppress.

March 7, 2023 Judgment Entry

{¶ 52} The matter before the court was J.C.'s objections to the magistrate's decision, and the December 28, 2022 judgment concerning J.C.'s motion to suppress.

{¶ 53} J.C.'s first objection related to the December 28, 2022 judgment entry. He argued that since this entry resolved the hearing on the motion to suppress, which was before the magistrate, the entry could not be captioned as a "judgment entry." Rather, J.C. asserted the magistrate should have issued an order, which the court could have immediately adopted. Due to this error, J.C. submits the decision is void.

{¶ 54} Initially, the juvenile court observed that a magistrate would issue a decision, rather than an order. The court found the caption judgment entry was not technically correct, but the entry contained the magistrate's findings and conclusions with regards to the motion to suppress, and the court's approval of the magistrate's findings. The court further found the entry was also consistent with the magistrate's comments on the record at the conclusion of the hearing. Next, the court found J.C. failed to demonstrate prejudice as a result of the miscaption. Thus, the court denied this objection.

{¶ 55} Regarding J.C.'s motion to suppress the show-up identification, the court set forth the same findings as those in the December 28, 2022 judgment entry. The court denied this objection.

First Assignment of Error

J.C.'s Arguments

{¶ 56} J.C. argues the trial court erred when it entered a judgment denying his motion to suppress when the judge did not preside over the suppression hearing. J.C. asserts the error is plain and mandates immediate remand.

{¶ 57} J.C. submits the magistrate presided over the suppression hearing, made an oral ruling on the record, but never issued a written decision. J.C. contends “[t]he magistrate affixed his signature below the signature of the trial judge, who rendered Judg[.]ment over a contested issue in which the trial judge did not preside. This is plain error.”

{¶ 58} In support of his arguments, J.C. cites to Juv.R. 40. He sets forth a magistrate’s decision shall be in writing, identified as a magistrate’s decision in the caption, signed by the magistrate, filed with the clerk, and served on all parties or their attorneys no later than three days after the decision is filed. A magistrate’s decision shall indicate conspicuously that a party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Juv.R. 40(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Juv.R. 40(D)(3)(b). *See* Juv.R. 40(D)(3)(a)(iii).

{¶ 59} J.C. asserts that since the magistrate never issued an order or decision determining the motion to suppress, it was improper for the court to proceed further with adjudication or disposition.

The State

{¶ 60} The State argues that Juv.R. 40(C)(2) provides that magistrates are “authorized, subject to the terms of the relevant reference, to regulate all proceedings as if by the court and to do everything necessary for the efficient performance of those responsibilities[.]” And, the juvenile court “refer[s] a particular case or matter or a category of cases or matters to a magistrate by a specific or general order of reference or by rule,” and “may limit a reference by specifying or limiting the powers[.]” Juv.R. 40(D)(1)(a) and (b).

{¶ 61} The State submits that courts have decided that a magistrate’s ruling on a motion to suppress is a decision, not an order. The State relies on *State v. J.A.C.*, 2018-Ohio-361, ¶ 10, fn. 2 (12th Dist.) and *In re J.B.*, 2017-Ohio-293, ¶ 18 (8th Dist.).

{¶ 62} The State notes that the magistrate announced his decision from the bench at the end of the suppression hearing, and a judgment entry, signed by both the magistrate and the juvenile court judge, was filed. The entry set forth findings of fact and conclusions of law, and the denial of J.C.’s motion to suppress. The State recognizes that although the entry did not comply with Juv.R. 40(D)(3)(a)(iii), the juvenile court correctly found that J.C. demonstrated no resulting prejudice. In addition, the State

observes that J.C. filed specific objections to the magistrate’s ruling on the motion to suppress, and those objections were considered and rejected by the juvenile court.

Analysis

{¶ 63} Upon review of J.C.’s argument, we find *Zoellner v. Zoellner*, 2020-Ohio-406 (6th Dist.) instructive, where we set forth:

“A trial court’s failure to comply with Civ.R. 53 [similar to Juv.R. 40] constitutes grounds for reversal only if the appellant shows the alleged error has merit and the error worked to the prejudice of the appellant. *In re Estate of Hughes*, 94 Ohio App.3d 551, 554 . . . (9th Dist. 1994).”

. . . “Civ.R. 53(D)(3)(a)(iii) [and Juv.R. 40(D)(3)(a)(iii)] use[] the mandatory ‘shall’ to impose an obligation on magistrates to identify their decisions and to notify the parties of the necessity to file objections in order to avoid forfeiting the parties’ arguments on appeal.” *M.H. v. J.H.*, . . . 2017-Ohio-8679, ¶ 9 [(9th Dist.)]. “The clear import of [Civ.R. 53(D)] is to provide litigants with a meaningful opportunity to register objections to the [magistrate’s decision] and the failure to provide such an opportunity to object is prejudicial error.” *Id.*, quoting *Ulrich v. Mercedes-Benz USA, LLC*, . . . 2007-Ohio-5034, ¶ 13 [(9th Dist.)].”

Id. at ¶ 12-13.

{¶ 64} In *Zoellner*, we found the appellant had a meaningful opportunity to register objections to the magistrate’s entry because she did, in fact, file objections. *Id.* at ¶ 13.

{¶ 65} Here, upon review of the record and the applicable law, we find procedural defects due to the magistrate’s failure to provide a written decision regarding J.C.’s motion to suppress, and the juvenile court’s issuance of a judgment entry, signed by the judge and magistrate, denying J.C.’s motion to suppress. We further find, however, that J.C. presented no arguments that he was prejudiced as a result of these procedural mistakes, nor does the record support a finding that J.C. was in any prejudiced. Instead, the record shows that J.C. was clearly afforded the opportunity to file objections to the denial of his motion to suppress, the juvenile court fully considered J.C.’s objections, and offered specific reasons, supported by the record, as to why the objections were not well-taken.

{¶ 66} Having found no prejudice, we find J.C.’s first assigned error not well-taken.

Second Assignment of Error

{¶ 67} J.C. argues the trial court erred and abused its discretion to his prejudice when it denied his motion to suppress the unreliable non-photo array identification of him as a perpetrator.

{¶ 68} J.C. observes that if a witness identifies a defendant before trial, due process mandates the court to suppress evidence of this prior identification if the

confrontation was unduly suggestive of the defendant's guilt to the extent that the identification was unreliable, under the totality of the circumstances. *State v. Murphy*, 91 Ohio St.3d 516, 534, 2001-Ohio-112. J.C. also notes that “[w]e have repeatedly held that one man show-ups which occur shortly after the crime are not per se improper, *State v. Click* (May 9, 1989), Montgomery App. No. 11074, 1989 Ohio App LEXIS 1716, and that prompt on-the-scene show-ups tend to insure the accuracy of identification, involve a minimum intrusion, and support the prompt release of persons not identified. *State v. Gilreath* (June 19, 1992), Greene App. No. 91 CA 35, 1992 Ohio App. LEXIS 3271.”

{¶ 69} J.C. contends he “was identified seated among two others in a dark vehicle by a victim seated in another dark vehicle illuminated by only by a light emanating from victim’s vehicle.” [sic.] J.C. also asserts “the victim displayed signs of memory impairment and admitted to consuming alcohol the evening prior through the early morning hours of November 5, 2022[, and] [i]t was very shortly after the victim left the bar drunk that he alleges he was robbed.” J.C. argues he “was located on an unrelated matter, a distance from the place where victim alleges he was robbed, and several hours after the robbery allegedly occurred. J.C. was brought before the alcohol consuming victim under prejudicial circumstances.”

State

{¶ 70} The State argues that under the totality of the circumstances, the victim’s identification of J.C. was not unnecessarily suggestive, nor was there a substantial likelihood of misidentification.

{¶ 71} The State cites to, inter alia, *State v. McCreary*, 2016-Ohio-4753 (6th Dist.), where we set forth:

Ohio courts have held that one-on-one identification[s] . . . may be suggestive under certain circumstances, [but they] “[are] impermissible only where there is [a] substantial likelihood of misidentification.” *State v. Torres*, . . . 2007-Ohio-2502, ¶ 81 [(8th Dist.)], quoting *State v. Batey*, 8th Dist. Cuyahoga No. 74764, 1999 WL 685647 (Sept. 2, 1999). In order to determine whether, under the totality of the circumstances, the identification of appellant was reliable in this case, we must consider the following factors: (1) the opportunity of the witness to view the suspect at the time of the crime; (2) the witness’ degree of attention; (3) the accuracy of the witness’ prior description of the suspect; (4) the level of certainty of the witness; and (5) the length of the time between the crime and the identification. *State v. Brown*, . . . 2011-Ohio-643, ¶ 10 [(6th Dist.)] citing *Neil v. Biggers*, 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972).

Id. at ¶ 14.

{¶ 72} The State notes appellate review of a trial court’s denial of a motion to suppress poses a mixed question of law and fact. *State v. A.P.*, 2018-Ohio-3423, ¶ 26 (12th Dist.).

{¶ 73} The State submits that when the *McCreary* factors are applied to the facts of J.C.'s case, the following results demonstrate the show-up identification was not unnecessarily suggestive, and there was not a substantial likelihood of misidentification.

(1) The victim testified at the suppression hearing that he had the opportunity to view and interact with the three subjects over several blocks, for around 10 to 30 minutes. The State notes the encounter lasted a prolonged time, so the victim was able to see the subjects, he was close enough that he spoke to them, they were able to strike him in the face twice, and steal his wallet.

(2) The victim paid a heightened degree of attention to the subjects because they were making him nervous, as evinced by the detailed descriptions given, which were specific enough for Officer Cook to recognize the three juveniles in his custody on unrelated complaints, matched the descriptions. The victim also correctly recalled where the juveniles were seated in the backseat of the cruiser during the show-up identification.

(3) The victim's descriptions of the suspects were accurate, as the suspects were wearing clothes which matched the descriptions, according to Officer Blair's testimony. The officer also testified he obtained video footage from City Hall and the library which showed the three juveniles following the victim from downtown Sandusky.

(4) The victim testified he knew right away that the subjects in the cruiser were the ones who attacked him; he recognized their faces. Officer Cook testified the victim, within 30 to 45 seconds, identified the subjects as the ones who robbed him, and Officer Blair testified the victim, without hesitation, positively identified all three subjects as his

attackers. Further testimony given at the suppression hearing established that at the time of the victim's show-up identification: the gas station parking lot was lit; the rear window of the cruiser, where the victim sat, was rolled down; the backdoor of the cruiser, where the three juveniles sat, was open so they were visible; Officer Blair used a spotlight to add more light to the area; and, there was nothing to obstruct the victim's view.

In addition, the victim testified he had been drinking, but was not drunk. Officer Blair testified the victim had an odor of intoxicants coming from him, which was not strong, and the officer did not believe the victim was drunk, as his speech was not slurred, he was not swaying, and he did not show signs of being highly intoxicated.

(5) The length of time between the crime and the victim's identification of the subjects occurred about an hour or so after the crime, which supports its reliability.

{¶ 74} The State contends there was competent, credible evidence to support the juvenile court's findings regarding the show-up identification.

{¶ 75} The State cites to several cases in support of its arguments: *State v. Hakim*, 2011-Ohio-5525, ¶ 24 (6th Dist.) (show-up identification within one hour of the crime was not unduly suggestive where subject matched the description given by witnesses, the subject was not handcuffed, the area was well-lit, and witnesses were sure of their descriptions and identifications); *State v. Young*, 2009-Ohio-4770, ¶ 20-21 (6th Dist.) (show-up identification was not unnecessarily suggestive where the witness was 100 percent certain it was the subject who stood by a police car, handcuffed, one hour or so after the crime, the witness's physical description matched the subject, and the witness

had viewed the subject at arm's length during the crime); and, *State v. Wilson*, 2005-Ohio-2108, ¶ 8-9 (6th Dist.) (there was not a substantial likelihood of misidentification where victim had ample opportunity to view suspect from a distance and up close, victim's attention was drawn to suspect due to suspect's suspicious behavior and the tug of war with victim's purse, victim gave a detailed described of suspect and was certain of her identification).

Standard of Review

{¶ 76} On appeal, a challenge to the trial court's ruling on a motion to suppress presents a mixed question of law and fact. *In re A.J.S.*, 2008-Ohio-5307, ¶ 50. The appellate court must accept the trial court's factual findings if supported by competent and credible evidence, since the court is in the best position to resolve factual questions and evaluate the credibility of witnesses. *Id.* If those facts are accepted as true, the appellate court affords no deference to the trial court's legal conclusions, and must independently review the legal conclusions to evaluate whether the facts satisfy the applicable legal standard. *Id.* See also *State v. Henderson*, 2012-Ohio-1396, ¶ 3 (6th Dist.).

Analysis

{¶ 77} A review of the record shows the victim had a substantial opportunity to view and interact with his assailants at close range, for several blocks, over a period of about 10 to 30 minutes. The victim gave police detailed descriptions of the three kids who punched him in the face twice and stole his wallet, which descriptions were accurate.

The victim identified his assailants only one hour or so after the crimes, while they were in a police cruiser, parked in a well-lit parking lot with additional lighting provided by police. The victim knew right away the three subjects in the cruiser were the ones who attacked him.

{¶ 78} The record also reveals that the victim admitted he was drinking before the crimes occurred, but he was not drunk. Officer Blair verified the victim smelled of intoxicants, which was not strong, but the victim did not show signs of being highly intoxicated. The officer did not believe the victim was drunk.

{¶ 79} Police later obtained video footage from the area of the crimes, as described by the victim, which showed the three juveniles following the victim. The area was adequately lit, and the footage depicted the juveniles as described by the victim.

{¶ 80} The record, however, does not support J.C.'s argument that he and the victim were both in dark vehicles, illuminated by only by a light emanating from the victim's vehicle, when the identification transpired. Nor does the record substantiate J.C.'s assertions that the victim displayed signs of memory impairment or that J.C. was located several hours after the robbery allegedly occurred.

{¶ 81} Upon our review of the record and the relevant law, and considering the totality of the circumstances, we find the show-up identification of J.C. by the victim was reliable and there was not a substantial likelihood of misidentification. We further find the juvenile court did not err when it denied J.C.'s motion to suppress the show-up identification.

{¶ 82} Accordingly, we find J.C.’s second assignment of error not well-taken.

Third Assignment of Error

{¶ 83} J.C. argues the trial court erred and abused its discretion to his prejudice when it adjudicated him to be a delinquent child for being complicit in this robbery. J.C. notes that at adjudication, after his motion to suppress was denied, the court permitted the identification of J.C. as the victim’s perpetrator. J.C. asserts “had the trial court properly suppressed the identification, the only credible testimony was from J.K. who admitted that he alone robbed the victim. J.K. also testified that he was with J.C. later that morning, but that J.C. was not with him earlier in the morning, when he robbed the victim.”

{¶ 84} J.C. requests that we find the trial court’s conduct was unreasonable, arbitrary, and/or unconscionable, and remand for further action.

Analysis

{¶ 85} Upon review, we find that J.C. failed to comply with App.R. 16(A), which states “[t]he appellant shall include in its brief, under the headings and in the order indicated, all of the following:

...

(6) A statement of facts relevant to the assignments of error presented for review, with appropriate references to the record in accordance with division (D) of this rule.

(7) An argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies. . . .

{¶ 86} App.R. 12(A)(2) provides that the appellate “court may disregard an assignment of error presented for review if the party raising it fails to identify in the record the error on which the assignment of error is based or fails to argue the assignment separately in the brief, as required under App.R. 16(A).”

{¶ 87} On appeal, the appellant has the burden of demonstrating error. *See* App.R. 16(A)(7). Absent such a showing, the appellate court is bound to presume that the trial court’s result was proper. *State ex rel. Fulton v. Halliday*, 142 Ohio St. 548, 549 (1944). “It is not the function of this court to construct a foundation for [a party’s] claims; failure to comply with the rules governing practice in the appellate courts is a tactic which is ordinarily fatal.” *Kremer v. Cox*, 114 Ohio App.3d 41, 60 (9th Dist. 1996).

{¶ 88} Inasmuch as J.C.’s assigned error was unsubstantiated by evidence in the record or legal authority, and he did not develop any arguments beyond statements, speculation and observations, we disregard this assignment of error and find that J.C. failed to carry his burden of establishing the juvenile court erred when it found he was a delinquent child.

{¶ 89} Accordingly, we find J.C.’s third assignment of error not well-taken.

Conclusion

{¶ 90} Having found J.C.’s assignments of error not well-taken, we affirm the judgments of the juvenile court. J.C. is ordered to pay the costs of appeal, pursuant to App.R. 24.

Judgments affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, J.

JUDGE

Myron C. Duhart, J.
CONCUR.

JUDGE

Gene A. Zmuda, J.
CONCURS AND WRITES
SEPARATELY.

JUDGE

ZMUDA, J.,

{¶ 91} I agree with the majority’s well-reasoned analysis affirming the trial court’s judgment as to appellant’s second and third assignments of error. I write separately, however, because I believe the majority’s analysis on appellant’s first assignment of error regarding whether appellant suffered prejudice, while correctly resolved, was unnecessary based on appellant’s failure to allege that he suffered any such prejudice.

{¶ 92} Appellant's first assignment of error is premised on the trial court's alleged violation of Juv.R. 40. Specifically, appellant argues that because both the magistrate and the trial court signed the magistrate's decision denying appellant's motion to suppress, that the magistrate never entered a written decision to be approved by the trial court. In support of that argument, he notes that a magistrate's decision, pursuant to Juv.R. 40(D)(3)(a)(ii) must be designated as a magistrate's decision, and that it must contain certain language explaining appellant's rights to object to that decision. Since the decision entered did not contain this information, appellant argues that the trial court's simultaneous adoption of the magistrate's decision was void and his appeal should be reversed for that reason only. Appellant makes no argument that he suffered prejudice as a result of the trial court's alleged error. I believe appellant's argument regarding the void nature of the trial court's judgment fails as a matter of law.

{¶ 93} In *In re. H.S.*, 2017-Ohio-457 (4th Dist.), the Fourth District Court of Appeals explained that violations of the procedural requirements of Juv.R. 40 render a trial court's judgment voidable, rather than void. *Id.* at ¶ 44. It is only when a trial court lacks jurisdiction to enter judgment that the order is void. *Id.* at ¶ 34. Here, the trial court's simultaneous adoption of the magistrate's decision, while inconsistent with the requirements of Juv.R. 40, does not indicate that the trial court lacked jurisdiction to adopt the magistrate's decision. As a result, the trial court's judgment was voidable, rather than void. *Id.* Therefore, appellant was obligated to show that he suffered prejudice as a result of the trial court's failure to comply with Juv.R. 40. *See Zoellner v.*

Zoellner, 2020-Ohio-406 (6th Dist.); compare *In re. J.B.*, 2017-Ohio-293 (8th Dist.), citing *In re. T.S.*, 2012-Ohio-858 (9th Dist.) (holding that the appellant showed that the trial court’s failure to comply with Juv.R. 40 “created confusion and prejudiced the parties” regarding their procedural rights following entry of magistrate’s decision and was reversible error). Because appellant seeks reversal of the trial court’s judgment solely on the grounds that the trial court violated Juv.R. 40, without any allegation that he suffered prejudice as a result of that violation, his argument fails as a matter of law.

{¶ 94} For this reason, I believe we do not need to determine whether appellant suffered prejudice to resolve his first assignment of error. Instead, I would find appellant’s first assignment of error not well-taken as a matter of law and would enter judgment accordingly pursuant to App.R. 12(B). I join in the balance of the majority’s opinion as to appellant’s second and third assignments of error.

This decision is subject to further editing by the Supreme Court of Ohio’s Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court’s web site at:
<http://www.supremecourt.ohio.gov/ROD/docs/>.